

Report of a Complaint Handling Review in relation to the Ministry of Defence Police

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

Summary and Key Findings

The applicants, Mr B and Mrs E, requested that the Commissioner review the manner in which the Ministry of Defence Police dealt with a number of complaints they had made. The complaints arose from a search of their home on 3 September 2008 following receipt of intelligence that Mr B was in unauthorised possession of Ministry of Defence property.

Of the 12 complaints considered as part of this review, the Commissioner found the handling to be unreasonable in respect of eight and reasonable in the remaining four. A recommendation was made in connection with complaint five.

The Commissioner also made an overall recommendation in connection with the recording of complaints.

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

According to Constable A, intelligence was received at the Ministry of Defence Police Force Intelligence Bureau (FIB) on 2 July 2008 alleging that Mr B, a serving British Army soldier at the time, was in possession of a Common Weapons Sight ("CWS") which he had found on an exercise at Ministry of Defence site Y. A CWS is a piece of equipment which can be fitted to army rifles.

As assuming ownership of Ministry of Defence property without authority constitutes theft, an investigation into the matter was initiated. Policing Body Z was asked to check its records for any firearms certificate issued in the name of the applicant. Policing Body Z confirmed that a valid shotgun certificate was held for two shotguns and that a firearms certificate had been allowed to lapse in 2006.

A warrant to search the applicants' home was craved from the Procurator Fiscal but ultimately was not granted. A decision was then made to proceed with a view to a voluntary search being carried out. According to Constable A, on 2 September 2008 he was contacted by Detective Constable C informing him that a search was going to be carried out on the applicants' home the following day. Constable A states that he then contacted the Royal Military Police on 2 September 2008 and established that no CWS had been reported lost or stolen from Ministry of Defence site Y in the last five years. On the same day, Constable A passed this information to Detective Constable C.

On 3 September 2008, Detective Constable C and Constable D attended at the applicants' home at around 7.20 am or 7.30 am and spoke to Mrs E. Mrs E advised both officers that Mr B was either at Ministry of Defence site X or shooting/fishing at a local estuary. Mr B and Mrs E had relatives staying with them in the house at that time (Mr and Mrs F).

Mr B was in fact on a shooting trip at the nearby estuary with a friend and colleague, Mr G. At the same time as the enquiries into the alleged offence by Mr B, other Ministry of Defence police officers were conducting separate enquiries into an alleged crime involving Mr G.

Mrs E called Mr B on his mobile telephone but was unable to speak with him. After leaving the property and making enquiries at Ministry of Defence site X, the officers decided to go back and intercept Mr B on his return home. Mrs E spoke with her husband on the telephone to advise him of the situation and at around 8.30 am Mr B arrived back at his home with Mr G, where he was met by Detective Constable C and Constable D. As Detective Constable C was aware of the separate police enquiry involving Mr G, he contacted Detective Sergeant H to advise him of Mr G's whereabouts.

As no warrant had been granted for the search, Detective Constable C and Mr B discussed a voluntary arrangement, resulting in Mr B signing a consent form allowing the police to search his home including outbuildings, garages and vehicles. A restricted search of the property was then carried out which focused on a gun cabinet within a closet in the kitchen area. The officers also checked the serial numbers of the shotguns found against those recorded on Mr B's license.

At around the same time, Detective Sergeant H, Detective Constable J and Detective Constable K arrived at the applicants' home to detain Mr G in connection with the separate enquiry. As Mr G was in possession of a shotgun, a decision was taken to arrange for Mr B to store the gun while Mr G was detained. A discussion took place within the property between Mr B and Detective Constable J regarding the safe storage of the shotgun in his gun cabinet. Detective Constable K and Detective Sergeant H joined their colleague in the applicants' home while Mr G's shotgun was signed into Mr B's care. At this time Detective Sergeant H brought into the property a holdall that Mr B and Mr G had used on their shooting trip, leaving it on the floor.

Mr G was then taken to a local police office in relation to the separate enquiry by Detective Sergeant H and Detective Constables J and K. Mr G asserts that Detective Sergeant H made derogatory comments about the applicants' home during the journey. A short while later, Mr B left his home with Detective Constable C and Constable D to allow a search for the CWS to be carried out at Ministry of Defence site X. None of the searches resulted in the finding of any stolen Ministry of Defence property.

The Complaints

Based on the contents of the application form, correspondence received from the applicants, and the information obtained from the Ministry of Defence Police, the Commissioner has identified the following complaints:

- (1) that Detective Constable C failed to identify himself as a Ministry of Defence police officer;
- (2) that consent to carry out the search was obtained by intimidation;
- (3) that officers failed to carry out any research or determine if CWS was missing prior to the search;
- (4) that, for the following reasons, officers were uncivil and caused distress:
 - (a) Detective Constable C did not reassure Mrs E to alleviate her distress
 - (b) Constable D's attitude and manner when questioning Mrs E was unacceptable and compounded her stress
 - (c) Constable D and Detective Constable C added to Mrs E's stress by saying "no" when asked if she could leave a message on Mr B's answering machine

- (d) no consideration was given to the applicants' family or visiting relatives
 - (e) officers were rude and abrupt to Mrs E when she asked for an explanation, stating "he will tell you later"
 - (f) neither Constable D nor Detective Constable C used any manners when speaking to the applicants;
 - (g) Constable D made derogatory comments about dusty private belongings
 - (h) Detective Sergeant H made a derogatory comment about Mr B's rank and home.
- (5) that the terms of the voluntary search were exceeded;
- (6) that officers entered the applicants' home without permission;
- (7) that officers attended at the applicants' home at an unreasonable hour;
- (8) that officers failed to ask Mr B to identify himself;
- (9) that an officer ignored Mr B's request regarding parking;
- (10) that an officer ordered Mr B to store a shotgun belonging to Mr G;
- (11) that an officer handled Mr B's belongings out of sight and without permission; and
- (12) that forms related to the search were not completed.

Mr B called the Ministry of Defence Police on 4 September 2008 to lodge his complaint. Attempts to resolve the situation locally were unsuccessful and Mr B contacted the Professional Standards Department by telephone on 5 September 2008 to make a formal complaint. Mrs E wrote a letter of complaint to the Professional Standards Department on 8 September 2008 asking that a full enquiry be carried out into the incident and the behaviour of the officers in question.

A complaint case was opened by the Ministry of Defence Police on 5 September 2008 and a decision log form was completed by Inspector L on 12 September 2008 noting complaints about Detective Constable C and Constable D. Inspector L recommended that the matter be recorded as a complaint against the police and that a full investigation be conducted. Investigation forms were prepared in line with the Ministry of Defence Police (Conduct) Regulations 2004 and Chief Inspector M was appointed officially as the investigating officer for the applicants' complaints on 22 September 2008.

During his investigation, Chief Inspector M obtained a statement from Mr B and Mrs E on 30 September 2008. Mr B provided a list of 33 complaints at the end of his statement.

A statement was obtained from Mr G, and Mr and Mrs F provided statements to an English police force on 25 October 2008 which were subsequently forwarded to Chief Inspector M.

Constable D and Detective Constable C were interviewed under caution by Chief inspector M on 1 and 5 May 2008, respectively, during which they were given the opportunity to respond to the complaints made against them.

Detective Constables J and K were also interviewed under caution on 14 May 2009. Detective Sergeant H was interviewed under caution on 19 May 2009.

Statements were also obtained from all officers who had an input into the investigation of the intelligence report received.

On 2 July 2009, Chief Inspector M submitted a report to Inspector L which detailed the conclusions he had reached. A final letter of response was sent to the applicants on 14 August 2009 by Superintendent N, along with a redacted copy of the complaint investigation report compiled by Chief Inspector M.

The Commissioner's Review

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

Complaint 1: Alleged failure of Detective Constable C to identify himself

The applicants raised this complaint in their statements of 30 September 2008. Mrs E stated that whilst Detective Constable C identified himself and showed her his warrant card, he "did not state he was MOD police". Mr B's statement complains simply that "[Detective Constable C] did not ID himself at our home as MOD Police."

Internal Handling

Chief Inspector M reviewed the applicants' statements in his investigation report. He noted that according to Mrs E Detective Constable D had introduced himself then showed his identification. Mr B stated that, at approximately 8.45 am, Detective Constable C showed him his identification.

Chief Inspector M commented that during interview Detective Constable C stated emphatically that he had identified himself as a member of the Ministry of Defence Police and shown his warrant card on meeting each of the applicants. Chief Inspector M also noted that Detective Constable C was in the company of a uniformed officer, Constable D. Chief Inspector M determined that there was no evidence to support the view that Detective Constable C had failed to identify himself as a Ministry of Defence Police officer. The complaint was therefore found to be incapable of proof and therefore unsubstantiated. Superintendent N's letter to the applicants of 14 August 2008 confirmed this finding.

Consideration

Mr B provided the following account of the first conversation he had with his wife after the attendance of Detective Constable C and Constable D.

"... I was on a shooting trip with a friend, [Mr G] at the [nearby estuary] when I received a telephone call on my mobile from my wife ... who stated that at about 0720 same day, two MOD Police Officers had attended at our home address wishing to speak to me."

Given the above, and that both applicants' statements confirm that they were shown identification by Detective Constable C, it would appear that their complaint is simply that Detective Constable C did not verbally communicate to them that he was an officer from the Ministry of Defence Police.

Transcripts of the interviews of both Constable D and Detective Constable C have been considered during this review. Detective Constable C states that he identified himself as a Ministry of Defence Police officer to both applicants. His account is supported by Constable C.

The Commissioner notes that there is no independent evidence available to confirm either the account of the applicants or those of Detective Constable C and Constable B. Accordingly, the

Commissioner considers that Chief Inspector M was correct in finding this complaint as “incapable of proof” and therefore unsubstantiated.

For these reasons the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 2: Alleged intimidation

According to Mr B, Detective Constable C stated to him, “You can either let me check your guns and gun cabinet or I’ll go away and get a warrant and then tear your house apart.” Mr B claims that Detective Constable C rushed him into signing the consent form to allow a voluntary search to take place. Mr B complains that neither Detective Constable C nor Constable D advised him of his rights in relation to the search.

Mr B also claims that he felt under duress as he did not want to upset his family further given they were already under increased stress due to his impending military deployment.

Internal Handling

According to Chief Inspector M’s report Detective Constable C stated under caution that he had fully explained the situation to Mr B, advising that there was no warrant and that he was free to decline the proposed search. Chief Inspector M also referred to the fact that none of the witnesses had mentioned Mr B showing any indication that he felt under duress to sign the voluntary search consent form.

Chief Inspector M found that the allegation could not be supported by the available evidence. Superintendent N’s response confirmed this finding.

Consideration

The search form, transcripts and statements in relation to this complaint have been considered as part of the review of this complaint.

Detective Constable C categorically denied that he had made the statement alleged by Mr B. Indeed, it is Detective Constable C’s position that Mr B invited him to search his home without any prompting. According to Detective Constable C he then arranged for the voluntary search form to be signed by Mr B.

Whilst not included within Chief Inspector M’s report, Constable D was asked during interview if Detective Constable C had made the statement alleged by Mr B. In response Constable D said:

“I can say categorically at no stage did [Detective Constable C] threaten to tear his house apart or do anything of the sort.”

According to Constable D, it was made clear to Mr B that he was under no obligation to allow the search to take place.

The Commissioner is unable to comment on Mr B’s description of how he felt during the encounter. Nevertheless, in the absence of any evidence to support his complaint, the Commissioner considers that the conclusions reached by Superintendent N and Chief Inspector M were reasonable.

Complaint 3: Failure to determine if a crime had taken place

In his statement, Mr B claims that neither Detective Constable C nor Constable D had conducted any research on the use of a CWS and had no understanding of the difference between firearms

and shotguns. He also stated that the officers failed to check if any CWS units had been reported missing and that, as no crime had taken place, there should not have been any investigation or a search of his premises.

Internal Handling

In his report Chief Inspector M reviewed the various statements and detailed the pattern of the enquiry from the point of receipt of the intelligence report. He noted that thorough checks were carried out with CID line management including sourcing a photograph of a CWS to assist in identification. According to Chief Inspector M's report Detective Constable C had carried out his role in a satisfactory manner with Constable D being in attendance as a corroborating officer. The complaint was considered to be unsubstantiated in relation to both Detective Constable C and Constable D.

According to Chief Inspector M's report, the Ministry of Defence Police had experience from other sites of significant delays occurring before missing armoury was brought to its attention. His report commented:

"Losses of firearms at [Ministry of Defence site X] have occurred in the near past and there have been other circumstances at MoD sites where significant gaps in time have occurred before armoury deficiencies are brought properly to notice. It is not out of the ordinary for MDP to be proactive in circumstances where an allegation comes to notice that a person is in possession of a component part for a firearm. As such, attendance at [the applicants' home] was a logical step to take so as to investigate the intelligence received previously.

The Investigating Officer considers that the losses of firearms and component parts of same are matter of significant interest to the Police Service and ultimately the Crown Office. The actions taken to enquire/investigate the matter of the common weapons sight are therefore concluded as having been proportionate and necessary."

Consideration

During his interview, Detective Sergeant H explained to Chief Inspector M that, in his experience, the fact that there had not been a report of a theft did not mean that an item had not been stolen. He stated that not all items which went missing from military stores resulted in a complaint of theft. Chief Inspector M noted that the enquiry was purely intelligence-led.

Detective Constable C advised Chief Inspector M during interview that on 2 September 2008 he had been asked by Detective Sergeant H to contact Constable D to assist in the operation. Detective Constable C stated that he read the file and made enquiries at a Ministry of Defence armoury to determine the nature of a CWS and the procedure in place if one was reported lost or stolen. He also tried to establish if there was a serial number for the missing CWS.

Detective Sergeant H commented as follows:

"... FIB had tried to make enquiries regarding if there was any missing, a Common Weapons Sight, because obviously we have to try and establish if a Common Weapons Sight was missing in the first place, but I think up until then their enquiries hadn't revealed much, so we still, we had a situation where we had intelligence that this person had a Common Weapons Sight in his possession and that we still didn't have the reported loss of a Common Weapons Sight. Well obviously because of it being part of a firearm we had to treat it, well, treat it very seriously, and that was the way ahead."

Chief Inspector M asked Detective Constable C if he had any concerns about the fact that there was no reported loss of a CWS. In response Detective Constable C advised that he did consider

this but because it was part of a firearm and it had been determined by senior officers that it required investigation, he took the matter very seriously.

Constable D stated at interview that he had been contacted by Detective Constable C on 2 September 2008 to work with him in the search of the applicants' home. He stated that Detective Constable C gave him a brief outline of the case. Chief Inspector M asked Constable D if he was fully apprised of what a CWS was. Constable D replied that he had previous experience of military equipment and confirmed that he had also viewed a photograph of a CWS on the morning of the search.

It is clear that Chief Inspector M made extensive enquiries into this complaint. While the complaint was made by the applicants in relation to Detective Constable C and Constable D, details were sought from all officers who had an input in the investigation. Chief Inspector M concluded that there was no evidence to support the applicants' allegation regarding a lack of research prior to the search. It was determined during the complaints investigation that although checks to establish if a CWS was missing proved negative, a decision was made to proceed with the search based on previous experience and the fact that the missing equipment was a firearm component. The applicants were made aware of the steps which had been taken in the copy of Chief Inspector M's report provided to them.

In the Commissioner's view, conclusion reached by Chief Inspector M in relation to this complaint was entirely reasonable and fully supported by the evidence gathered. The applicants have also been informed of the steps taken to investigate this complaint and the reasons for the conclusions reached. Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 4: Incivility

In their statements the applicants raised a number of complaints about the manner in which they were dealt with by the officers who had attended their home on 3 September 2008.

Internal Handling

In relation to the allegations of incivility made against Detective Constable C, Chief Inspector M's report commented:

"... No substantial evidence has been disclosed by the various witnesses who were interviewed to the effect that incivility occurred or that there was a lack of consideration toward persons present at the [applicants' home]."

In relation to complaint 4(a) specifically, Chief Inspector M commented:

"...As regards to the assertion that Detective Constable [C] failed, during his first visit to the house, to reassure [Mrs E] properly that her husband had not come to some harm, the content of her witness statement makes clear reference to the words spoken by Detective Constable [C] 'It's nothing to worry about I just need to speak to [Mr B]'. The Investigating Officer considers that these words cannot be classed as anything other than an attempt to reassure the aggrieved party."

In relation to complaint 4(g), Chief Inspector M wrote:

"[Constable D] was asked to account specifically about the alleged derogatory comments emanating from him whilst he was inside the closet area. He provided a partial admission as to the comments he made to [Mrs E] but sought to assure that he had no intention to offend. On being pressed on the matter, [Constable D] stated that he would wish to offer

his apologies for any unintentional offence he may have caused to anyone present during his attendance therein.

Following on from the information above, the Investigating Officer draws attention of the Appropriate Authority to the fact that the complaint matter involving incivility is capable of proof given the evidence gathered.”

Complaint 4(h) has not been recorded as a complaint about Detective Sergeant H and is not addressed in the conclusions section of the investigating officer’s report. However, Chief Inspector M does make the following reference to this element of the complaint in the main body of his report:

“... that [Detective Sergeant H] made a derogatory statement concerning the status of [Mr B] in which he inferred that he was living in a property more akin to an officer ... No corroborative evidence has been found to support [Mr G]’s allegations.”

No direct reference is made within Chief Inspector M’s report to the other individual elements of incivility alleged by the applicants. Chief Inspector M found that, overall, the allegation that Detective Constable C had been uncivil/inconsiderate was unsubstantiated. However, in respect of Constable D, he considered that there was sufficient evidence to support the applicants’ position in relation to complaint 4(g) and he therefore substantiated the complaint of incivility. Constable D was given advice in this connection by Inspector P on 8 October 2009, in which he was counselled against the use of words or behaviour that could cause distress.

Consideration

Many of the elements of this complaint involve competing accounts from the applicants and the subject police officers. While his report makes no reference to some of the individual allegations of incivility, it is evident from the interview transcripts that Chief Inspector M probed the officers concerned on all the allegations made. For completeness, the positions taken by the officers are summarised below.

Complaint 4(b)

Chief Inspector M asked Constable D about the questions put to Mrs E during the officers’ initial visit to the applicants’ home. Constable D stated that it was made plain to Mrs E that there was nothing to worry about on at least two occasions. When questioned about the tone he had adopted during his contact with the applicants, Constable D advised that he considered himself to have been had used his normal tone, speaking in a professional manner. Constable D’s position was corroborated by Detective Constable C.

Complaint 4(c)

Constable D was unable to recall if he and Constable D had told Mrs E not to leave a message on Mr B’s answering service. When asked about the matter during interview, Detective Constable C stated that he had not advised Mrs E that she should not leave a message. Elsewhere in the interview transcript, Detective Constable C makes reference to the fact that, once the officers had left, it was inevitable that Mrs E would contact Mr B to tell him that the police were looking for him. This transpired to be the case, as Mrs E’s statement indicates that she left messages on Mr B’s mobile answering service at 7.47 am and 7.55 am before speaking with him at approximately 8 am.

Complaint 4(d)

Constable D stated that he was aware Mr and Mrs F were at the property along with the applicants’ children, and that Mr F had taken the children away in a vehicle. He stated that the officers did not make themselves known to the other occupants of the house as they were concerned only with Mr B. Constable D stated that it was Mr B’s responsibility to explain to his family why the police were

there, and that he believed that he had been professional in dealing with the occupants of the property.

Complaint 4(e)

Both Constable D and Detective Constable C took the view that it was Mr B's decision whether he wanted to inform Mrs E of the details of the police investigation, and that it would have potentially prejudiced the enquiry had they done so themselves. Constable D stated that on their initial arrival at the applicants' home, Detective Constable C had explained to Mrs E that they were unable to divulge the nature of the enquiry to her but that there was no cause for concern.

Complaint 4(f)

Constable D refuted the applicants' suggestion that he had been bad-mannered when dealing with them. Detective Constable C supported this position, advising that he had not witnessed Constable D being derogatory towards the applicants. Detective Constable C stated that he spoke with Mr B on the telephone later on 3 September 2008 and that he had asked if there was any problem with the search. According to Detective Constable C, Mr B told him that he had been kept informed of what was happening and that he was happy with both Detective Constable C and Constable D.

Complaint 4(h)

Mr G gave the following account of alleged comments made by Detective Sergeant H in a phone call he made while en route to a local police office:

"...He was having a conversation about [Mr B] on the phone and he turned to me to ask what rank [Mr B] held. On being told [Detective Sergeant H] said on the telephone 'He's a staff sergeant but he's living in a captain's house'."

When the statement above was put to Detective Sergeant H, he denied that he had made any such comment. At their respective interviews, neither Detective Constable J nor Detective Constable K, who were also present in the vehicle, recalled this statement being made. Chief Inspector M's report stated that there was no corroborative evidence in relation to Mr G's allegation.

Superintendent N's final response stated that Detective Sergeant H was to receive advice regarding the general level of civility he exercised; however, no reference was made to this specific complaint. While Mr B clearly made this complaint in his statement and brief reference has been made to the incident in the investigating officer's report, it does not appear to have been recorded as a complaint about the police. In the Commissioner's view the complaint should have been recorded and addressed fully in the investigating officer's report.

Given that all subject officers have provided accounts in relation to each allegation of incivility, it is clear that Chief Inspector M made efforts to look into these areas of concern. However, by focussing on the complaint about the derogatory comment made by Constable D, both the investigating officer's report and the final response failed to address all of the applicants' concerns. Accordingly, the Commissioner does not consider the manner in which this matter has been dealt with to be reasonable.

In light of the above accounts, however, the Commissioner does not believe that any of the issues not covered in Chief Inspector M's report are capable of being substantiated. Accordingly, no further work is recommended in this connection.

Complaint 5: Terms of search exceeded

According to Mr B he was advised that that only his guns and gun cabinet would be searched. He complained that, despite this, Detective Constable C ordered him to open his vehicle so it could be searched, and did not ask his permission to search his personal belongings within. Mr B also

stated that Constable D exceeded the agreed terms of the search by searching the closet where his gun cabinet is housed, and personal belongings that could not have contained a CWS.

The applicant is also concerned that the serial numbers of his shotguns were checked as he did not believe this was relevant to the enquiry.

Internal Handling

Detective Constable C and Constable D were questioned about this complaint during interview. Chief Inspector M noted in his report that an operational decision had been made to restrict the scope of the search to minimise disruption to the applicants. Chief Inspector M commented as follows:

"[Mr B] described in his statement that he was perturbed as to the checking of shotgun serial numbers within his gun cabinet. The investigating officer questioned [Constable D] and [Detective Constable C] as to the reasons for checking shotgun serial numbers and found from both officers that they felt it a natural thing to do. Whilst the activity caused questions to be asked from [Mr B] following the search activity his statement reflects his understanding of what [Detective Constable C] was intent on doing (page 2)."

The reference to "page 2" of Mr B's statement relates to his comment that Detective Constable C had asked him if he could search his guns and gun cabinet, and his agreement to this. Chief Inspector M continued:

"It appears evident from the passage at line 11 of the aforesaid statement that [Mr B] understood that the officers were checking his guns and gun cabinet contents. He also signed the consent to search form and made no strong representation at the time when the search/checks were undertaken. The Investigating Officer therefore concludes that post-search protests from the complainer about search parameters being breached do not bear scrutiny and that he was clear as to what was occurring as a consenting householder. Accordingly, the Investigating Officer concludes that this complaint matter as being incapable of proof."

Chief Inspector M found the allegation to be "incapable of proof" and therefore unsubstantiated. Superintendent N's response confirmed this finding.

Consideration

It is evident from the interview transcripts that Constable D and Detective Constable C were questioned about all of Mr B's concerns. Both refuted the allegation that they had exceeded the terms of the consent to search form.

It is clear from the terms of the consent form that the parameters of the search authorised by Mr B were very broad. Taking into account the nature of the searches undertaken by both officers, the Commissioner does not believe the terms were exceeded. Indeed, it could be argued that taking into account the importance placed on the intelligence received, the search of the applicants' home was not sufficiently robust.

In these circumstances, the Commissioner considers that in respect of the search of Mr B's vehicle and personal belongings the conclusion reached by Chief Inspector M and Superintendent N was reasonable.

In relation to Mr B's concerns that his shotgun serial numbers were checked, Constable D and Detective Constable C's purpose was to search for a stolen CWS, an item which the applicant suggests cannot be used with a shotgun.

According to Chief Inspector M's report, both officers felt that checking the shotgun serial numbers was "the natural thing to do". However, there is no indication in the report as to whether Chief Inspector M considered this explanation to be justified. In particular, there is no indication as to whether the checking of the shotgun serial numbers exceeded the agreed terms of the search. In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that the Ministry of Defence Police issues the applicants with a further response stating its position on whether, by checking the shotgun serial numbers, the officers concerned exceeded the agreed terms of the search.

Additionally, while Mr B clearly indicated that he was unhappy with the actions of both Constable D and Detective Constable C, the complaint has been recorded only in relation to Constable D. Although Constable D was the officer physically conducting the search, Detective Constable C was the lead officer and in the Commissioner's opinion, this complaint should have been recorded in respect of both officers.

Complaint 6: Unauthorised entry to applicants' property

According to Mr B stated that Detective Constables J and K and Detective Sergeant H did not ask permission to enter his home during their time at the applicants' property.

Internal Handling

As part of his investigation Chief Inspector M interviewed all three officers under caution. He also considered the statements provided by the applicants, Mrs F and Mr G as well as the account given by Detective Constable C during his interview. Copies of the officers' notebooks were also obtained. None of the officers made reference to requesting permission to enter the applicants' property or being invited in.

According to Chief Inspector M's report Detective Constable J believed that Mrs F had given access to the property, while Detective Constable K and Detective Sergeant H both appeared to have assumed that permission had been given. The applicants and other witnesses all dispute that any authorisation was granted.

In conclusion, Chief Inspector M noted:

"Judging by the position of the complaint and the responses given in interview by the three CID officers, the absence of any mention of access to the property within their respective police notebooks and the responses of [Constable D] to questions posed as to his recollections, the Investigating Officer concluded that the officers failed to properly establish that permission to enter the house had been given purely for the purpose of allowing [Detective Constable C] and [Constable D] to search for a common weapons sight. The exhibited signed voluntary search form refers. On the balance of probabilities, the complaint pertaining to uninvited access is capable of proof against all three officers."

Chief Inspector M found the complaint to be substantiated and recommended that "words of advice" be given to each of the officers, as it was considered that the impact of their actions was not hugely significant. Such advice was given by Detective Chief Inspector I to Detective Sergeant H on 30 September 2009; Detective Constable J on 8 October 2009; and Detective Constable K on 9 October 2009.

In his response Superintendent N advised the applicants that the complaint had been substantiated and that advice was to be given to the officers. An explanation of the phrase "words of advice" in relation to a complaint case was also given.

Consideration

In his report, Chief Inspector M noted that Detective Constable J was of the genuine opinion that he had been invited into the property by Mrs F, but that no evidence was identified in support of this position. Chief Inspector M took the view that there had been presumption on the part of the officers concerned and judged this to be worthy of further action in the form of advice.

In the Commissioner's view, the Ministry of Defence Police undertook a thorough investigation of this complaint and the officers concerned have been counselled in this connection. The applicants have been made fully aware of the outcome of their complaint and have been provided with an explanation of the measures that were taken in light of this.

Accordingly, the Commissioner considers the handling of this complaint to have been entirely reasonable.

Complaint 7: Attendance at unreasonable hour

In his statement Mr B complains that officers attended his home at 7.20 am and suggests that, as he could have been reached at work, this was to enable the police to press him to allow the search.

Internal Handling

This matter has not been recorded as a complaint about the police. However, in the conclusions section of his report, Chief Inspector M stated that a deliberate decision had been taken to visit the applicants' home prior to Mr B leaving for work and that, had he been in possession of Ministry of Defence property, it was more likely to be found at his home rather than his workplace. Chief Inspector M's report stated the following:

"Noting these matters to be contentious in the eyes of the complainer and witnesses, the Investigating Officer formed the view that the CID officers were faced with a routine operational decision to make, i.e. either risk the alerting of personnel at [Ministry of Defence site X] were [Mr B] to be dealt with at his home initially or risk the alerting of [Mrs E] that police officers were to attend at [the applicants' home] if the CID officers attended at [Ministry of Defence site X] initially. In this instance the decision has regrettably caused embarrassment and distress to [Mrs E] in particular. It could easily be argued however that attendance at the home address was an inevitable outcome given the stated objective of the CID officers to gain access to the house in pursuit of the property."

Consideration

As noted above, an operational decision was made to attend the applicants' home as this was determined to be the most likely location of any stolen Ministry of Defence property.

During interview with Chief Inspector M, both Constable D and Detective Constable C stated that the decision to attend at the applicants' home at the given time was to speak with Mr B before he left for work. As Constable D was stationed at Ministry of Defence site X, he was familiar with activities at the base and advised that Mr B would have been due to start work at 8 am.

In the Commissioner's view, this complaint has been thoroughly investigated and the conclusion reached by Chief Inspector M was reasonable. However, because the complaint has not been recorded as such, it is not specified in Chief Inspector M's report as being unsubstantiated. In the Commissioner's view, the applicants should not be expected to interpret an investigating officer's report to determine the outcome of their complaint. Accordingly, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

Complaint 8: Failure to ask Mr B to identify himself

Mr B complains in his statement that Detective Constable C and Constable D did not ask him to identify himself to them.

Internal Handling

This matter has not been recorded as a complaint about the police. However, Chief Inspector M did question both Constable D and Detective Constable C during interview about how they had recognised Mr B. Chief Inspector M made the following comments within his report:

‘[Mr B] was recognised by [Detective Constable C] from a photograph he had seen previously.’

Detective Constable C’s initial contact with Mr B is referred to again in Chief Inspector M’s review of Mr B’s statement:

‘In company with [Mr G], he walked back towards his car whereupon he encountered [Detective Constable C], who looked at [Mr G] and said ‘[Mr B]’. [Mr G] replied ‘[No]’. [Detective Constable C] then turned to [Mr B] and said ‘[Mr B] can I have a private word with you?’. He said ‘Yes’ and proceeded back through the gateway a few yards away from the property.’

No further reference is made to this complaint in Chief Inspector M’s report or Superintendent N’s letter of response.

Consideration

During interview, Detective Constable C and Constable D were asked for their accounts of their initial meeting with the applicant. Constable D stated that Detective Constable C had asked, “Are you [Mr B]?” on approaching him. Detective Constable C confirmed that he asked Mr B to identify himself and that the applicant did so. Detective Constable C also advised during interview that they had viewed a photograph of Mr B prior to attending at his home.

Mr B has a different account of the conversation which took place. The following excerpt is taken from his statement:

‘...[Mr G] and I walked back towards the car; we got alongside the car when [Constable D and Detective Constable C] walked down the lane and turned into the gateway. [Detective Constable C] looked at [Mr G] and said “Mr [A]?”, he replied “No”, he then turned to me and said “Mr [A] can I have a private word with you?” I said “yes” and proceeded back through the gateway and a few yards down the lane.’

Notwithstanding the differences in the accounts given, what is clear is that the identity of Mr B was made known, either directly or indirectly, to the officers during initial contact.

Unfortunately, as this complaint has not been recorded, the applicant has never been provided with a response detailing the police position on this complaint. Accordingly, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, in light of the information provided above the Commissioner makes no recommendation in this connection.

Complaint 9: Alleged ignoring of Mr B’s request

In his statement Mr B complained that when Detective Sergeant H and Detective Constables J and K arrived at his home in relation to their enquiry into the alleged actions of Mr G, they parked on his drive and ignored his request for them not to do so.

Internal Handling

This matter has not been recorded as a complaint about the police. However, Chief Inspector M gives the following account of the complaint in his report (based on Mr B's statement):

"...an unmarked police car pulled into the [applicants'] drive. Inside were [Detective Constable J], [Detective Sergeant H] and [Detective Constable K]. [Mr B] opened the front passenger door and asked [Detective Constable K] 'Can I help you?' She did not reply but indicated to the driver to pull the car into the space next to his [(Mr B's)] car. [Mr B] gave her clear direction and informed her that he did not want her or her car on his drive, asking that they please park in the lane off his property. He insists that at no time did he give the three officer permission to have access to his property."

Chief Inspector M also reviewed the terms of Mr G's statement which reflected those of Mr B in this connection.

Consideration

During his investigation, Chief Inspector M asked the relevant officers for their accounts in response to Mr B's complaint. Detective Constable K denied that Mr B had opened the passenger door and spoke to her or that she was given any direction to park the car off the applicants' property. Detective Constable K went on to state that they had been guided in by Constable D and that it had been unclear where the applicants' property began.

The driver of the vehicle, Detective Sergeant H, also indicated during his interview that they had been waved into the property by Constable D. Detective Sergeant H echoed Detective Constable K's position that there was no clearly defined boundary to the property. When directly asked about the complaint Detective Sergeant H stated that, to the best of his recollection, Mr B did not speak to Detective Constable K.

Detective Constable J also referred in his interview to Constable D directing them to park and stated that none of the officers were aware that they were driving onto private property. When asked about Mr B's claim that he opened the passenger door and spoke to Detective Constable K, Detective Constable J stated that he could not recall such a conversation.

Unfortunately, Chief Inspector M's report makes no reference to these accounts. Consequently, Mr B has not been made aware of the officers' positions. Given that the complaint has not been recorded and that Superintendent N's response provides no information on the position being adopted in relation to the complaint, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

Notwithstanding the above comments, the position remains that there are two competing versions of events incapable of being proven one way or another. Accordingly, the Commissioner makes no recommendation in connection with this complaint.

Complaint 10: Storage of shotgun

In his statement Mr B stated that Detective Constable J had ordered him to store Mr G's shotgun.

Internal Handling

This matter has not been recorded as a complaint about the police. However, Chief Inspector M's report contains the following comments:

“Recognising that [Mr G] was in possession of a licensed shotgun, a decision was made by the Detective officers that an appropriate means of securing same would be to have [Mr B] store the shotgun in his gun cabinet.

[Detective Constable J] was despatched by [Detective Sergeant H] to seek permission from [Mr B] for the temporary placement of the shotgun in his gun cabinet. ...Furthermore, non-police witnesses have indicated an insistence that [Mr B] was to have possession of the shotgun despite his representations to the contrary and keenness to point out the legal constraints for such a course of action.”

Chief Inspector M's review of the statements given by Mr B, Mrs F and Mr G indicates that all made reference to the circumstances of this complaint. In his letter of response Superintendent N advised that Detective Sergeant H was to be given words of advice regarding his inappropriate request to accommodate Mr G's shotgun in his gun cabinet.

Consideration

Unfortunately, this complaint has not been recorded by Ministry of Defence Police. It is clear from investigations carried out by Chief Inspector M, that thorough attempts were made to establish the sequence of events surrounding the storage of Mr G's shotgun. However, Chief Inspector M's report fails to evidence an analysis of the evidence gathered or his conclusion on the complaint. This may be a consequence of the failure to record the complaint. Accordingly, the handling of this complaint is judged to be unreasonable.

However, Superintendent N's response makes it clear that Detective Sergeant H's request that Mr G's gun was stored within Mr B's gun cabinet was “inappropriate”. The Commissioner notes that words of advice were consequently given to Detective Sergeant H for this error. Given this, the Commissioner makes no recommendation.

Complaint 11: Handling of personal belongings

The applicants state that Detective Sergeant H took a dirty, wet bag from where it had been left some distance away from the house, brought it inside and left it on the kitchen floor. Mr B states that he told the officer that he had not given him permission to touch the bag and that it had been deliberately left outdoors because of its condition. Mr B also commented that Detective Sergeant H handled his belongings out of his sight and without his permission.

Internal Handling

This matter was not recorded as a complaint about the police. However, Chief Inspector M gives the following details in the “facts” section of his report:

“Non-police testimony raised a further complaint matter that [Detective Sergeant H] conveyed an unidentified holdall from the [applicants'] driveway and deposited same onto the kitchen floor. Noting the holdall to be in a filthy condition, the householders' and others present were keen to voice their displeasure both at [Detective Sergeant H's] uninvited access into the house and his unwelcome actions in placing a soiled holdall onto the floor.”

Reference was also made to this incident in Chief Inspector M's review of the statements given by the applicants, Mrs F and Mr G.

In his letter of response Superintendent N stated that Detective Sergeant H was to be offered words of advice about the general level of civility he exercised during his contact with the applicants. Such advice was given to Detective Sergeant H by Detective Chief Inspector Q on 30 September 2009.

Consideration

It is clear from the enquiries carried out by Chief Inspector M that thorough attempts were made to establish the sequence of events concerning this complaint. However, Chief Inspector M's report fails to evidence an analysis of the evidence gathered or his conclusion on the complaint. This again may be a consequence of the failure to record the complaint.

Chief Inspector M questioned Detective Sergeant H about this incident during his interview. The officer confirmed that he had taken a bag from outside and brought it indoors as he did not want to leave it unattended. He contested that the bag was not particularly dirty and that it had been placed on a hard wearing, easy to clean tiled surface.

Whilst not clear, it appears to be the police view that the actions of Detective Sergeant H was not appropriate and that he has been provided words of advice for "the general level of civility he exercised" whilst on the applicants' property.

The handling of this complaint is judged to be unreasonable. However, in light of the information provided above, the Commissioner makes no recommendation in this connection.

Complaint 12: Failure to complete forms

In his statement Mr B complained that no "search completion" or "damage check" forms were completed in light of the search.

Internal Handling

Whilst Chief Inspector M's report contains the following description of Mr B's complaint, the remainder of his report is silent on the matter, as is Superintendent L's final response.

"[Mr B] asserts that he ought to have been given a form to say he was content with the search and that no damage had occurred."

Consideration

During his interview of Constable D and Detective Constable C, Chief Inspector M asked both officers for their comments on this complaint. Constable D stated that he did not know if Detective Constable C had had these forms completed. Detective Constable C stated that there was not a Ministry of Defence Police search completion form.

During his review, the Commissioner's office received confirmation from the Ministry of Defence Police that at the time in question there was no standard form for completion following the conclusion of a search. The Commissioner's office was also advised that, had any damage occurred, officers would have been expected to record this (for example, in the form of a notebook entry) but that there was no requirement for this to be signed by the owner of the premises. The Commissioner's office has been advised that it is now policy that the majority of searches of this type are video recorded.

It would therefore appear that no such form existed; however, the applicants have not been informed of this. In the Commissioner's view, this should have been recorded as a complaint about the police and the applicants should have been advised of the procedures that the Ministry of Defence Police follow when conducting a voluntary search. This would served to assure them that there was no failing on the part of the officers present on 3 September 2008.

In the circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, in light of the information provided above, the Commissioner makes no recommendation in this connection.

Conclusions, Recommendations and Learning

Complaints 1, 2, 3 and 6

In the Commissioner's view, the manner in which these complaints were dealt with by the Ministry of Defence Police was reasonable. Accordingly no further action is necessary in connection with these matters.

Complaints 4 and 7-12

In the Commissioner's view, the manner in which these complaints were dealt with by the Ministry of Defence Police was not reasonable. However for the reasons given, no further work is required in this connection.

Complaint 5

In the Commissioner's view, the manner in which this complaint was dealt with by the Ministry of Defence Police was not reasonable. The Commissioner recommends that the Ministry of Defence Police issues the applicants with a further response stating its position on whether, by checking the shotgun serial numbers, the officers concerned exceeded the agreed terms of the search.

Concluding comments

It is clear from the information provided that Chief Inspector M's investigation was wide-ranging and thorough, with the interview transcripts showing detailed questioning of each officer. Significant efforts were made to investigate all of the concerns raised by the applicant. Additionally, Chief Inspector M did not confine himself to investigating the individual complaints raised, and found a number of concerns about the leadership of the two operations which were subsequently highlighted to senior officers. This is to be commended.

Superintendent N's final response provided only the findings which had been reached; Chief Inspector M's report explained the reasons for the findings. Whilst the Commissioner endorses this practice, in this case Chief Inspector M's report did not provide clear analysis and reasoning behind a number of the conclusions reached. This left the possibility of the applicants not being made aware of the Ministry of Defence Police's position in respect of several of their complaints. This may have been consequence of the failure to record a number of the applicants' complaints. Given the thoroughness of the complaints investigation, this is particularly disappointing. It is therefore recommended that the Ministry of Defence Police ensures that its own complaints procedures are correctly followed regarding the recording and investigation of complaints.

John McNeill
Police Complaints Commissioner for Scotland

Hamilton House
Caird Park
Hamilton