

Report of a Complaint Handling Review in relation to Dumfries and Galloway Constabulary

under section 35(1) of the Police Public Order

Summary and Key Findings

The applicant requested that the Commissioner review two complaints about Dumfries and Galloway Constabulary arising from his being stopped for an alleged traffic offence on 17 April 2009.

The Commissioner concluded that neither complaint was dealt with in a reasonable manner and made a number of recommendations in this connection.

The Commissioner's role

Section 35 of the Police Public Order and Criminal Justice (Scotland) Act ("the Act") gives the Commissioner the power to examine the manner in which a policing body has dealt with a "relevant" complaint, as defined in the Act.

The Commissioner is independent of the police service and performs his functions in a fair and impartial manner. Before considering a complaint, the Commissioner's office obtains all papers held by the policing body against which the complaint has been made. These papers are considered alongside information provided by the applicant. The Commissioner then assesses whether the policing body's handling of the complaint was reasonable in all the circumstances. The Commissioner will look at the entire handling process, from the initial investigation by the policing body to the final response issued to the applicant. Among the factors which the Commissioner takes into account are the following:

- whether the policing body's response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented;
- whether the policing body's response to the complaint is adequately reasoned; and
- whether the policing body has communicated with the applicant in a reasonable manner.

Background

On 17 April 2009, the applicant (a retired police officer) was stopped by Constables A and B on suspicion of using his mobile phone while driving. Constable B asked the applicant to take a seat in the police vehicle but he declined. The applicant was again asked to leave his vehicle but he continued to refuse, as a result of which Constable B removed the keys from the ignition of the applicant's car. According to both officers, it was explained to the applicant that the reason for asking him to sit in the police vehicle was that it was safer than standing on the road. An agreement was thereafter reached between the applicant and the officers to discuss the matter in a nearby car park. The keys were returned to the applicant so that he could move his vehicle there.

According to the officers, on arrival at the car park the applicant alleged that Constable A was breaking the law by leaving the engine of the police vehicle running. The applicant claims that Constable B was aggressive towards him and had stated that, while his original intention had been to issue a warning, he had decided to "book" the applicant because he had been "such an a**e". The applicant was thereafter issued with an endorsable fixed penalty ticket and was cautioned and charged by Constable B.

According to the officers, as the applicant was entering his vehicle to leave he asked the identity of the supervisor at the local police office and advised that he was going to report the officers for being improperly dressed, as they were not wearing their hats.

The applicant attempted unsuccessfully to speak to a supervisory officer at the local police office before returning home and calling Dumfries and Galloway Constabulary ("D&G") headquarters. He was put through to Inspector C who agreed to meet with the applicant. As the applicant was

known to Inspector C, Inspector C arranged for another officer, Constable D, to accompany him. While at the applicant's home, Inspector C checked a mobile telephone shown to him by the applicant. Inspector C advised the applicant that if he wanted to challenge the fixed penalty he should do so through the courts.

On 18 April 2009 the applicant telephoned Inspector E, at which time he discussed the fact that he had been issued with the fixed penalty notice, as well as complaints he had regarding the conduct of Constable B.

On 25 April 2009 the applicant wrote to the Chief Constable formally complaining about Constable B's conduct and also alleging that he had been charged with an offence he had not committed.

The Complaints

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

- (1) that the conduct of Constable B fell short of the applicant's expectations; and
- (2) that D&G failed to follow its published complaint handling policy.

As noted above, the applicant also complained to D&G that he had been wrongly charged with using a mobile telephone while driving. D&G has informed the applicant on numerous occasions that the appropriate means by which to challenge the fixed penalty is through the courts. The Commissioner shares this view and accordingly this complaint is not considered in this report.

The Commissioner's Review

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

Complaint 1: Constable B's conduct

In his letter to the Chief Constable of 25 April 2009 the applicant complained that when he elected to stay within his own car, Constable B "ordered" him out of the vehicle. He also complained that while at the car park Constable B became even more aggressive and again had ordered him out of his car. As noted above, the applicant also claimed that according to Constable B he had only issued him with the fixed penalty notice because the applicant had been "such an a**e".

Internal Handling

On 28 April 2009, the complaint was recorded in a Complaint about the Police (CAP) form as one of "irregularity in procedure" in relation to Constable B's insistence that the applicant sit in the police vehicle, and as "incivility" with regard to his alleged aggression. On the same date, Chief Inspector F advised the applicant by letter that the matter had been forwarded to Superintendent G for possible resolution.

On 9 May 2009 Inspector E sent a memo to Chief Inspector H regarding the applicant's complaint. He stated:

[The applicant] has requested that Constable [B] be spoken to regarding meeting fire with fire, which I have done ...

Given the process that this has already followed I see no point whatsoever in me visiting him again and am of the view that he should be politely written to and told the matter is closed and to progress the case via the courts."

A reply was sent to the applicant by Chief Inspector H on 13 May 2009. In response to this complaint Chief Inspector H stated:

"With regard to the attitude of Constable [B], I can confirm that Inspector [E] has spoken with him relative to his attitude as requested by you, when you met him on 18th April 2009."

On 13 May 2009, Chief Inspector H telephoned the applicant and advised him that Inspector E had dealt with the issues regarding Constable B. On 23 May 2009 the applicant wrote to Chief Inspector H reiterating complaint 1 and denying that he had acceded to Constable B being counselled regarding his behaviour.

Chief Inspector H responded by letter on 4 June 2009. In relation to complaint 1 he stated:

"This has been brought to the attention of the officer concerned and it is my understanding that both officers have provided an alternative version of events on the evening and that you also conceded that this was a heated discussion between both of you.

Whilst I fully appreciate that this is not to your satisfaction, I still consider that this has been addressed properly and proportionally given the circumstances and that the matter is fully concluded."

The complaints are recorded as having been closed on 4 June 2009. The CAP form records the outcome of the irregularity in procedure allegation as "corrective advice provided to officer", while the incivility allegation is recorded as having been "resolved by corrective advice to officer".

On 14 June 2009, the applicant wrote to Chief Inspector H reiterating this complaint, stating:

"It was the conduct of one of your officers in dealing with me that I took exception to. I have now twice tried to make a FORMAL complaint regarding this and believe that I gave my rationale for doing so."

Chief Inspector H responded to the applicant on 22 June 2009, advising that his letter had been forwarded to Chief Inspector F of the Professional Standards Unit for his information. On 25 June 2009 Chief Inspector F issued the following, further response to the complaint:

"As part of the investigation into the circumstances, both officers who dealt with you on that evening were spoken with and both provided similar independent accounts of you as presenting as extremely challenging and difficult to deal with, possibly as a result of what you saw as their unreasonableness in respect of not accepting your explanation of the circumstances and issuing you with the Conditional Offer notice.

I appreciate that you may feel that Constable [B] acted inappropriately in terms of his attitude toward you, however, having carefully considered the available information, there is no independent evidence to prefer your account over that of the officers therefore there is no information available to enable the matter to be progressed further in terms of misconduct under the Police (Conduct) (Scotland) Regulations 1996.

Whilst you obviously remain dissatisfied at the outcome, I am unsure what other steps you consider could still be taken to resolve the matter give there are no other witnesses to what took place."

The applicant replied to Chief Inspector F on 14 July 2009 stating that although he “may well have presented a challenge” to the officers, he had not been “particularly difficult”.

The statements obtained from Constables B and A regarding this complaint are dated 23 August 2009 and 11 April 2010, respectively. An undated statement was also obtained from Inspector C.

Consideration

Based on the contents of D&G’s file, Constables A and B did not provide written accounts of their involvement in the incident until *after* the responses were issued to the applicant. As noted above the officers’ statements are dated 11 April 2010 and 23 August 2009, while the letters responding to the applicant’s complaints are dated 9 and 13 May, and 4 and 25 June 2009. It was therefore difficult to understand the comments made by Chief Inspector H (in his letter of 4 June 2009) and Chief Inspector F (in his letter of 25 June 2009) to the effect that accounts had been taken from both officers. Clarification on this point was therefore sought from D&G. In his letter to the Commissioner’s office of 30 March 2011 Chief Inspector F stated the following:

“Inspector [E] subsequently obtained a verbal account from both Constable [A] and Constable [B] of what occurred during the exchange with [the applicant].”

Given the concern amounted to an alleged minor incivility, it was not deemed proportionate to obtain full statements from either [the applicant] or the officers therefore there is no audit trail containing information which would confirm matters.”

All the responses provided by D&G to this complaint were based upon these unrecorded, verbal accounts given by the officers. Chief Inspector F explained in his letter of 30 March 2011 that Constable A and B’s statements were requested retrospectively and were not provided until after the Commissioner’s office became involved in the case. According to Chief Inspector F, the content of the officers’ statements “basically mirrored the verbal accounts previously provided” by the officers. It is not clear to the Commissioner what Chief Inspector F meant by the word “basically” in this connection. In any event, in the absence of any record of Constable A and B’s initial verbal accounts it is difficult to understand how any reliable assessment can be made as to whether these reflected the terms of the statements given by both officers months after the incident itself.

It is also difficult to understand why, based upon the evidence within D&G’s file, Inspector E deemed it appropriate to provide corrective advice to Constable B regarding “meeting fire with fire”. Specifically, aside from the applicant’s allegation, there is no apparent basis for concluding that Constable B had been uncivil towards the applicant. Indeed, if Inspector E considered it necessary to give advice to Constable B in light of the officers’ verbal accounts, this might suggest that the officers disclosed information at that time which was omitted in their subsequent statements. In terms of their respective statements, Constable B denied being anything other than “calm and polite” with the applicant, while Constable A stated only that she herself had dealt with the applicant in a professional and courteous manner. Constable A made no reference to the way in which Constable B dealt with the applicant.

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that a further statement is obtained from Constable A regarding whether she witnessed Constable B being uncivil towards the applicant; and that a further response is issued to the applicant in light of this.

Complaint 2: Failure to follow complaint handling policy

In his letter to Chief Inspector H of 14 June 2009, the applicant stated the following:

"I have twice now tried to make a FORMAL complaint regarding this and believe that I gave my rationale for doing so. I expected that you would adhere to the policy in handling such complaints that is published on your force website."

The applicant expands on this issue in his application to the Commissioner's office. There, he states that, according to D&G's website, where a complaint cannot be resolved informally an independent officer will be authorised to look into the matter. The applicant complains that this was not done in his case.

Although the complaint as described in the application was not made explicitly to D&G, the Commissioner has nevertheless considered it on the basis that it concerns the manner in which D&G dealt with complaint 1.

Internal Handling

This complaint was not recorded or dealt with by D&G as a complaint about the police.

Consideration

D&G was unable to supply details of the complaint handling procedures published on its website at the material time. Currently, D&G's website states the following:

"You will normally be contacted by a senior officer who will give you the opportunity to discuss your complaint. Whenever possible, the senior officer will explain why the relevant officer took a certain course of action, what the officer's duties were, the range of powers available to the police and in what circumstances the officer acted. Experience has shown that an explanation by a senior officer may help clarify the police action taken. If you are satisfied with the explanation given by the senior officer, your complaint will proceed no further."

"If your complaint is not resolved informally, a senior police officer - known as an Investigating Officer - will investigate it. This officer must have had no prior involvement with your case and will be of at least Inspector rank."

Following consultation with D&G's Complaints and Professional Standards Unit, the Commissioner is satisfied that the information quoted above is representative of that published by D&G at the material time.

D&G's complaints procedure and policy states the following:

"Where conciliation has not been successful in resolving the complaint at local level, and the Divisional Commander/Head of Department does not consider it appropriate to deal with the complaint in accordance with the terms of Regulation 5 of the Police (Conduct) (Scotland) Regulations, as detailed in paragraph 5.4 herein, the matter will be referred to the Complaints and Professional Standards Unit for consideration of appointment of an Investigating Officer."

An appendix to the policy states:

“The task of the Investigating Officer undertaking the conciliation procedure is to explain and clarify, and if conciliation of the complaint does not prove successful, the complainer has the right to press the complaint to a formal conclusion.”

Accordingly, with regard to the appointment of an investigating officer there appears to be a disparity both within D&G’s procedures, and between those procedures and what is published on D&G’s website. Specifically, whilst the main policy implies that the Complaints and Professional Standards Unit has some discretion over the appointment of an investigating officer, D&G’s website states categorically that a senior officer will investigate the complaint in the event that informal resolution fails. The terms of the online guidance is to some extent reflected in the appendix to the procedures quoted above.

As this complaint was not recorded or dealt with by D&G, the Commissioner does not consider that it was dealt with in a reasonable manner. The Commissioner understands that D&G is currently revising its complaint handling procedures and recommends that the procedures and online guidance are standardised to clarify this issue.

Conclusions, Recommendations and Learning

Complaint 1: Constable B’s conduct

In the Commissioner’s view, the manner in which this complaint was dealt with by D&G was not reasonable. The Commissioner recommends that that a further account is obtained from Constable A regarding whether she witnessed Constable B being uncivil towards the applicant; and that a further response is issued to the applicant in light of this.

Complaint 2: Failure to follow complaint handling policy

In the Commissioner’s view, the manner in which this complaint was dealt with by D&G was not reasonable. The Commissioner recommends that D&G’s procedures and online guidance are standardised to clarify whether an investigating officer will always be appointed in the event that informal attempts to resolve a complaint fail.

Learning Point

The Commissioner would remind D&G of the importance of maintaining auditable records in relation to anything that is founded upon in a complaints investigation. In the Commissioner’s view, if operational statements are considered necessary they should be sought at the earliest opportunity while events remain fresh in the mind, not several months later following his office’s involvement.

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