

Report of a Complaint Handling Review 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 complaints in this case arose following an incident in which she was arrested for a breach of the peace.

Of the six complaints reviewed, the Commissioner found that five were not handled reasonably. The Commissioner made a number of recommendations.

The Commissioner's role

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

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

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

Background

The applicant had been in a long term relationship with Mr A who lived near to her home. The relationship ended shortly before the incident which gave rise to the applicant's complaints about the police.

At about 11:25 pm on 19 May 2009, Mr A called the police reporting that the applicant was outside his home causing a disturbance. Constables B and C attended and established that the incident concerned a dispute over theatre tickets in Mr A's possession. The applicant claimed that she had purchased the tickets and had attended at Mr A's home to reclaim them. Mr A's position was that the tickets were jointly owned.

According to Constables B and C, Mr A informed them that the applicant had been continually shouting outside his home for approximately two hours. Both officers state that Mr A informed them that the applicant suffered from mental health problems. According to Constable C, while at the scene he was approached by a neighbour who told him that the applicant had been shouting since approximately 10 pm and that he could not get his child to sleep as a result.

Constables B and C state that they tried to reason with the applicant but she was uncooperative and refused to move on or stop shouting. Both officers state that the applicant was warned regarding her shouting but she continued and was therefore arrested. According to Constable B, given Mr A's comments regarding the applicant's mental ill-health, he decided to give her "one more chance". The following account is taken from Constable B's statement:

"I asked [the applicant] if she would remain at home if I returned her to her house instead of the Police Station. [The applicant] made it clear that she would return to locus and it was

obvious that her quest for the tickets had become an obsession. [The applicant's] home is only a short distance from locus and I realised that I had exhausted all avenues."

The applicant was thereafter conveyed to a police station where she was held until the following morning. She was subsequently issued with a Formal Adult Warning for a breach of the peace.

The officers dealing with the applicant believed that she was suffering from some form of mental illness. The police doctor was contacted but declined to attend until later that morning as the applicant had declared that she had been drinking prior to her arrest. During her time in custody, the applicant was under constant observation. The doctor attended at 8:05 am to examine the applicant who was released from custody shortly thereafter.

On 9 June 2009 the applicant wrote to Fife Constabulary complaining about the way in which she was treated during the incident. A written response to her complaints was issued on 20 July 2009.

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's arrest was unjust;
- (2) that the police made no enquiry to establish why the applicant had attended Mr A's address;
- (3) that the applicant was "bundled" into the back of the police van;
- (4) that, following the applicant's arrest, the police did not enquire as to the security of her home;
- (5) that, while detained, the applicant was not provided with food and drink; and
- (6) that the police did not inform the applicant's friend of her arrest.

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: Alleged unjust arrest

In her letter of complaint dated 9 June 2009 the applicant claimed that her arrest had been "totally unjust".

Internal Handling

Inspector D was appointed to carry out enquiry into the applicant's complaints. On 26 June 2009 she met with the applicant who advised that her letter of 9 June 2009 was to be regarded as her statement.

Inspector D obtained operational statements from Constables B and C and a copy of the custody record. On 16 July 2009 she submitted a report of her findings to Superintendent F. The report contains the following passages:

“At 2323 hours on Tuesday 19 May 2009, a call was received by the police requesting that they attend outside [Mr A’s address] as there was a female outside shouting and refusing to leave. She had apparently been at that location for approximately two hours.

[Constables B and C] ... attended and at that time they found Complainer outside the property in an agitated state, shouting and apparently distressed about the location of theatre tickets.

It was established that Complainer and the householder (not a witness) had been in a relationship for several years but this had recently broken down and she had attended at locus to retrieve tickets that she had given to him recently as a gift.

Attempts were made by the police officers present to reason with Complainer attempting to persuade her to return at a more sociable hour to discuss the breakdown of the relationship, when not under the influence of alcohol, however Complainer refused to desist and continued to cause a disturbance outside the property. She also stated to the officers that she would return to locus at a later time if she were made to leave.

As a result of this behaviour and the refusal to desist [Constable B], in the presence of [Constable C] arrested Complainer for Breach of the Peace.”

In respect of the police action in general, Inspector D reached the following conclusion:

“Having examined the facts available I am satisfied that the complainer was dealt with as appropriately as possible under the circumstances and that there are no issues in relation to the professional approach of all involved.

Admittedly, the officers had concerns over Complainer’s mental health ... In the circumstances removal of Complainer to the Police Station ensured her safety and allowed her to be assessed by the FME [Force Medical Examiner].”

In his letter of response to the complaint, Chief Inspector E stated:

“Having examined the circumstances I am content that the incident was dealt with appropriately, proportionately and in a reasonable manner.

I would advise you that in certain circumstances individuals are taken in to custody for their own safety and well being and as a service we have a duty of care to those people. This was certainly the case in these circumstances and is reflected in the fact that you received a Formal Adult Warning and no actual charges were preferred. This also acknowledges your previous unblemished character and ensures that such character remains so.”

On 6 August 2009 the applicant wrote to Fife Constabulary about her complaints generally. In respect of this complaint she commented:

“You say twice that I was taken into custody for my own safety and well being but no mention was made of this at the time and no explanation has been offered as to why my safety and well-being were in any danger and how my treatment by the police officers protected this.”

On 28 August 2009 Superintendent F sent a further response to the applicant but did not address this specific complaint.

Consideration

There is no dispute that some form of disturbance took place outside Mr A's home. However, in effect the applicant believes that, given the minor nature of the disturbance, the actions of Constables B and C were disproportionate.

The statements provided by Constables B and C demonstrate that, despite their efforts to calm the applicant, she continued to cause a disturbance outside Mr A's home. There is evidence that following her arrest Constable C provided the applicant with "one more chance" and offered to take her back to her home address rather than into custody. According to both officers, however, the applicant made it clear to them that if they took her home she would simply return to Mr A's home. Consequently, the applicant was taken into custody.

In the Commissioner's view, the actions taken by Constables B and C were entirely reasonable. Indeed, the decision to give the applicant a final chance demonstrates a willingness on their part to deal with the situation by means other than taking her into custody.

However, in his response to the complaint Chief Inspector E advised the applicant that she was taken into custody for her own well-being. This is clearly incorrect and understandably has led to the applicant to question the response to the complaint.

In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, the Commissioner considers that the information provided above constitutes an adequate response to the complaint and therefore makes no recommendation in this connection.

Complaint 2: Alleged lack of enquiry

In her letter of complaint the applicant states:

"The police made no effort whatsoever to ascertain why I was outside the house of [Mr A] He was in fact holding some valuable tickets which belonged to me and which I wished him to return but he refused to do so. The tickets had my name on them but the police declined to check this."

Following receipt of Chief Inspector E response letter the applicant wrote to him saying:

*"Yet no effort was made to sort out the argument over **my** tickets on which is clearly printed **my** name and bought by me with my bank card."* [emphasis in original]

Internal Handling

Details of the general handling of the applicant's complaints are set out above under complaint 1.

Consideration

It is clear from Constables B and C's statements that they were aware that the applicant's attendance at Mr A's home was in connection with a dispute over the ownership of theatre tickets. In the Commissioner's view, however, the basis for the applicant's arrest remains valid irrespective of who owned the tickets.

Whilst Inspector D's report provides a summary of the police involvement with the applicant, including reference to the disputed ownership of tickets, Chief Inspector E's response makes no mention of this complaint. Additionally, the complaint is not specifically listed in Inspector D's report, nor is it recorded on the CAP form.

In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, as the Commissioner considers that his comments amount to a reasonable response to the complaint, his only recommendation is that Fife Constabulary formally records the complaint.

Complaint 3: Alleged excessive force

In her letter of complaint the applicant states:

“To my astonishment I was then bundled into the back of a police van ...”

In addition, following receipt of Chief Inspector E response the applicant wrote to him alleging that she was “quite roughly bundled into the back of a police van ...”

Internal Handling

Details of the general handling of the applicant’s complaints are set out above under complaint 1.

Consideration

In his statement Constable B states that, having arrested the applicant, Constable C “made motion” to take hold of the applicant’s arm, in response to which the applicant shouted “don’t you dare touch me.” Following this, the applicant was asked to walk to the police van. Constable B concludes his statement by commenting that he and Constable C were courteous to the applicant throughout their dealings with her.

Constable C states that, having been arrested, the applicant “refused to have hands placed on her” when being placed into the back of the police vehicle. According to Constable C, the applicant was therefore “ushered into the police vehicle without being handled, searched or restrained.”

Whilst it is not entirely clear what the applicant means by “bundled”, based on the statements of her arresting officers neither had physical contact with her when she entered the rear of the police van. Accordingly, the weight of the evidence indicates that no force was used. In reaching this conclusion, the Commissioner notes that Mr A was not interviewed during the enquiry into the applicant’s complaints. It is not clear if Mr A witnessed the applicant entering the police van but no doubt this could have been established had his account been obtained. It is important to highlight, however, that even if Mr A had offered support for the applicant’s allegation it is unlikely that this would have substantiated the complaint on the balance of probabilities.

Neither Inspector D’s report nor Chief Inspector E’s response makes specific reference to this complaint or to the responses provided by the attending officers. In addition, the complaint was not formally recorded on the CAP form. In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Fife Constabulary now formally records the complaint.

Complaint 4: Security checks upon the applicant’s home

In her letter of complaint the applicant states:

“The police did not enquire whether my house was secure – in fact I had left all the lights on and the front door unlocked, plus my electric blanket on as I had only thought I was popping out for a few minutes. Little did I know that I was not to return until the following morning.”

Internal Handling

The general handling of the applicant's complaints is as detailed under complaint 1. Inspector D reached the following conclusion in her report:

"It is not common practice to check on the security of the property owned by someone taken into police custody and I would not have expected this incident to be dealt with any differently as Complainer had obviously taken the decision to leave her property insecure whilst remaining at locus for some considerable time."

Chief Inspector E stated the following in his response:

"With regard to the security of your property I would inform you that it is not common practice to check on the security of the property owned by someone taken into police custody and I would not have expected this incident to be dealt with any differently."

Consideration

Inspector D concluded that it was not standard practice for the police to check the security of property occupied by persons taken into custody. In the Commissioner's view, in the absence of any reasonably foreseeable risk or danger to such a person's property, this is a reasonable position to adopt.

There is no evidence that the applicant raised concerns about the security of her home following her arrest or while in custody. Whilst the applicant indicates that she thought she would be "popping out" for a few minutes, the evidence suggests that she had been at Mr A's home for approximately two hours before the police were called. The Commissioner therefore agrees with Inspector D's comment that it was the applicant who was responsible for leaving her property insecure.

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

Complaint 5: Provision of food and drink

In her letter of complaint the applicant stated:

"Whilst in police custody, I was refused any food or drink, apart from water, although I was clearly in a state of shock."

Internal Handling

This complaint was not addressed as part of Inspector D's investigation or within Chief Inspector E's response.

Consideration

As this complaint was not addressed by Fife Constabulary, the Commissioner does not consider that it was dealt with in a reasonable manner. The Commissioner recommends that Fife Constabulary now records and investigates the complaint, and issues the applicant with a response in light of its findings.

Complaint 6: Failure to inform the applicant's friend of her arrest

In her letter of complaint the applicant stated:

"I asked a friend to be informed but the friend informs me that no call was made."

Internal Handling

Inspector D stated the following in her report:

"Complainer did request that contact be made with a friend namely [Mr H] but [Sergeant G], deemed this impractical at that time due to the time of night."

Consideration

Section 15(1) of the Criminal Procedure (Scotland) Act 1995 provides that a person who has been arrested and is in custody at a police station shall be entitled to have intimation of his custody, and of the place where he is being held, sent to a person reasonably named by him or her

"... without delay or, where some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is so necessary."

The police do not have the power to delay notification to a reasonably named person unless the circumstances described above apply. As these circumstances did not apply in the applicant's case, Sergeant G's decision not to contact Mr H was incorrect and unjustified.

This is clearly an issue that ought to have been identified by Inspector D in her investigation. Moreover, there is no reference to this complaint in Chief Inspector E's response. In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Fife Constabulary issues an apology to the applicant for its failure to notify Mr H of her arrest.

Conclusions, Recommendations and Learning

Complaint 1: Alleged unjust arrest

In the Commissioner's view, the manner in which this complaint was dealt with by Fife Constabulary was not reasonable. However, for the reasons given no recommendation is made in this connection.

Complaint 2: Alleged lack of enquiry

In the Commissioner's view, the manner in which this complaint was dealt with by Fife Constabulary was not reasonable. The Commissioner recommends that Fife Constabulary formally records this complaint.

Complaint 3: Alleged excessive force

In the Commissioner's view, the manner in which this complaint was dealt with by Fife Constabulary was not reasonable. The Commissioner recommends that Fife Constabulary formally records this complaint.

Complaint 4: Security checks upon the applicant's home

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.

Complaint 5: provision of food and drink

In the Commissioner's view, the manner in which this complaint was dealt with by Fife Constabulary was not reasonable. The Commissioner recommends that Fife Constabulary now records and investigates this complaint, and issues the applicant with a response in light of its findings.

Complaint 6: Failure to inform the applicant's friend of her arrest

In the Commissioner's view, the manner in which this complaint was dealt with by Fife Constabulary was not reasonable. The Commissioner recommends that Fife Constabulary issues an apology to the applicant for its failure to notify Mr H of her arrest.

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