

# Report of a Complaint Handling Review in relation to Lothian and Borders Police

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

## **Summary and Key Findings**

The complaint dealt with in this report concerns the delay in response to an allegation of theft made by the applicant to Lothian and Borders Police in June 2009.

The Commissioner found that the complaint was dealt with in a reasonable manner.

## 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 resides alone in a rented flat. The flat next door to the applicant is also rented accommodation.

The account detailed below is based upon the applicant's statement, the police incident record and the information gleaned from the tape recording of two telephone calls between the applicant and Lothian and Borders Police's control centre.

Late in the evening of Friday 5 June 2009, the applicant allowed four or five of his next door neighbour's friends into his flat. According to the applicant he had previously helped his neighbours and as a result they kept coming to his house "asking for stuff". After a short time they left and on checking his property thereafter the applicant noticed that items had been stolen. He suspected that the people who had been in his flat were responsible. The applicant approached three of the group concerned who said that they would try to recover the property but that the applicant should not contact the police. The applicant did, however, report the matter to the police at about 12:30 am on Saturday 6 June 2009. He expected the police to attend at his home.

Shortly after reporting the matter to the police, some of the applicant's property was returned to him on the understanding that the person returning it (unknown at that time to the applicant) would try to recover the remaining property. The applicant called the police providing them with this update. The applicant also provided the name of one of the suspects, which was recorded on the police incident report. The applicant agreed to contact the police again if the remaining property was not returned to him.

On the afternoon of 6 June 2009 the applicant telephoned the police from his place of work and arranged for officers to see him at his home later that day. At this time the applicant provided the name of a suspect. The surname of the name provided was the same as that which he gave previously, but the first name was different. The name provided on this occasion was recorded on the police incident report. Staff at the control centre explained to the applicant that due to call demand it was possible that the attendance of the police may have to be delayed until the next morning (Sunday 7 June 2009). The applicant stated that he was working "12 to 8" that day. Control centre staff updated the incident report confirming that the applicant would be available until 11:30 am on the Sunday. The applicant appeared to be content with this arrangement.

The applicant was contacted by the control centre at approximately 5:40 pm on 6 June 2009 and advised that police officers had been diverted from attending his home to deal with an enquiry into a missing child. Arrangements were made for the police to see the applicant the following morning. The applicant was asked if he was happy with this arrangement to which he replied "right ok, yea that's fine".

At 11:08 am on Sunday 7 June 2009 the applicant called the police and informed them that he was going to work. Arrangements were made for the police to see him that night. At about 9:50 pm the control centre updated the incident report to record that the applicant was not available when they called. The applicant was asked to contact the police on his return. The applicant called the police shortly thereafter at which time it was explained to him that officers were dealing with an ongoing incident and were unable to call on him. Arrangements were made to see the applicant on the morning of Monday 8 June 2009.

At about 4:25 am on 8 June 2009 the applicant returned to his home and discovered that his home had been broken into and property stolen. The applicant reported this to the police and officers attended shortly thereafter. Two people were later reported to the Procurator Fiscal for thefts from the applicant's home.

On 7 September 2009 the applicant lodged a complaint with Lothian and Borders Police via his solicitor. On 12 October 2009, the applicant also lodged a civil claim against Lothian and Borders Police in respect of the property stolen from his home. On 3 March 2010, the Deputy Chief Constable issued the applicant with a response to his complaint.

## The Complaint

Based on the contents of the application form, the correspondence received from the applicant and the information obtained from Lothian and Borders Police, the Commissioner has identified a single complaint, namely that Lothian and Borders Police failed to attend his report of theft within a reasonable time.

## The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaint was handled by Lothian and Borders Police.

The applicant complained to the Commissioner's office that, as a result of the length of time taken to deal with his initial allegation of theft, Lothian and Borders Police failed to protect his property, prevent the commission of an offence and preserve order. This point is reflected in the complaint lodged with Lothian and Borders Police by the applicant's solicitor:

*"... it appears that the persons responsible for the break in ... were neighbours of [the applicant] and it is our client's contention that had matters been responded to sooner the second break in would not have occurred given the evidence that was subsequently discovered against them."*

### *Internal Handling*

The complaint was allocated to Inspector A who obtained a statement from the applicant on 19 October 2009. Inspector A also obtained copies of the various incident reports, the first relating to the theft of the applicant's property on 5 June 2009, the other relating to the break-in at the applicant's home on 8 June 2009. In his report Inspector A commented:

*"The STORM Log shows the delays and some of the reasons for them. The complainer did not express his dissatisfaction with the length of delay. The fact that there was a two day delay may be seen as evidence but there is no direct evidence to suggest that the culprits, even if detected at the time of the original call, would not have come back to break into the house at a later time."*

Inspector A obtained copies of the telephone calls between the applicant and the control centre on 6 June 2009. Inspector A stated in his report:

*"Over the course of the next twenty-four hours resources were twice allocated to attend this incident and twice diverted – once to assist with an eight year old missing child, the other to a development in a murder enquiry. The complainer was updated on three occasions and arrangements made for him to be seen during the morning on Monday 8<sup>th</sup> June 2009. At no time did the complainer express dissatisfaction with this and readily agreed to delay his report. This is apparent in the recordings of two telephone calls made to the complainer [by] the [control centre]."*

In his letter of response, the Deputy Chief Constable summarised the various arrangements that had been made to attend the applicant's home and provided an explanation for the delays. The Deputy Chief Constable concluded:

*"While I acknowledge the unfortunate delay in attending your client's original call, this was brought about by unforeseen and exceptional demands. However, there was no break-in at the earlier time. A theft had occurred by persons who had previously pestered him. The subsequent delays in officers attending were a result of the operational demands I have previously mentioned. [The applicant] voiced no concerns when alternative appointments were made for officers to attend."*

### *Consideration*

Whilst it is understandable that the applicant was frustrated with the delay he experienced, it is clear that during the weekend of 6 June 2009 there were a number of competing demands for police resources. Consequently there was a need to prioritise the deployment of those resources, which resulted in appointments to see the applicant having to be rearranged a number of times. Given the very serious nature of the competing demands, the Commissioner considers that it was justifiable to allocate them greater priority than the applicant's allegation.

In light of this, and the fact that the applicant was kept informed of the reasons for police's inability to attend, the Commissioner considers that this complaint was dealt with in a reasonable manner.

In correspondence with the Commissioner's office the applicant also complained about the time it had taken Lothian and Borders Police to deal with his complaint. According to the applicant, his complaint ought to have been dealt with within 20 working days in terms of a commitment given within Lothian and Borders Police's "police charter".

Within the section headed "contacting us", the charter referred to by the applicant details the following commitment:

*"When you write to us we will: ..."*

- *Reply fully within 20 working days or give you a reason for the delay”*

This commitment refers to general correspondence received by Lothian and Borders Police from members of the public. In relation to complaints about the police, Lothian and Borders Police’s guidance does not specify a timescale in which complaints of the kind made by the applicant must be completed.

Between 25 September and 8 October 2009 Inspector A produced a series of file notes recording the difficulty he had experienced in establishing contact with the applicant. Contact was eventually established on 13 October 2009 and the applicant’s statement taken on 19 October.

At the conclusion of his enquiry Inspector A compiled a report dated 4 December 2009. The handling of this complaint was further delayed when Inspector A was instructed to conduct further enquiry relating to comments contained within the applicant’s statement that he had been threatened by his neighbours. This additional work was completed by Inspector A on 13 January 2010. Following this, the Civil Claims Department of Lothian and Borders Police requested that the response to the applicant be delayed.

In the circumstances, the Commissioner would have expected Lothian and Borders Police to advise an applicant of the reasons for the delay. Notwithstanding this, taking into account the contributory factors, the Commissioner does not consider that the time taken to deal with the applicant’s complaint was excessive.

### **Conclusions, Recommendations and Learning**

In the Commissioner’s view, the manner in which this complaint was dealt with by Lothian and Borders Police was reasonable. Accordingly no further action is required.

**John McNeill**  
**Police Complaints Commissioner for Scotland**

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