

Report of a Complaint Handling Review in relation to Strathclyde Police

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

Summary and Key Findings

The Commissioner considered twelve complaints arising from an incident in which police officers forced entry to the applicant's home.

Of those complaints considered, nine were found to have been handled reasonably, while three were not. 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.

Preamble

According to the applicant, on the evening of 6 February 2009 he and his partner, Ms A, had been out at a family function. Having consumed a considerable amount of alcohol, they left the venue some time after midnight and were back home and preparing to go to bed by around 1 am. The applicant states that he went to bed first and that the following took place when Ms A came upstairs:

"... she tripped and knocked over a vase containing dried reeds. I went to bed and put in my earplugs ... The reason why [we] use earplugs is so we can get an undisturbed sleep because of the noise from the neighbours next door."

Ms A provides the following account of what happened at this time:

"... When I got home I went straight into the dining room and took my boots off and then I went upstairs to my bed. I might have put the kettle on but I'm not sure."

I was drunk and I probably banged off every wall. At one point I think I knocked over a vase at the top of the stairs. [It] stands on the floor and has reeds in it. I bumped into it and it fell over. It clattered onto the bedroom floor where there's wooden flooring and made a noise."

[The applicant] and I got into bed and I was asleep right away."

At 1.11 am on 7 February 2009 a call was received by Strathclyde Police from Mr and Mrs X reporting a disturbance at the applicant's home. According to the incident log created at the time

of the call, it was noted that a female was screaming and that things were being smashed off the walls. It was stated in the log that the disturbance had been ongoing for around 20 minutes prior to the call being made. Constables B and C were dispatched to attend and arrived at the applicant's home at approximately 1:23 am. The applicant's front door was eventually forced open by Constable C.

Having entered the applicant's home, both Constables found the applicant in bed within the rear bedroom and Ms A in bed within the front bedroom. Both officers state that there was a large vase on its side at the top of the stairs, with its contents of dried reeds scattered across the floor.

The applicant is himself a serving police officer (though not with Strathclyde Police). Realising that his front door had been forced by police officers – and because of the alleged attitude displayed by Constable C – the applicant states that he requested that the officers call for a duty Inspector to attend. The applicant and Ms A then went downstairs with both officers and Constable C called for a supervisor to attend. Inspector D and Sergeant E thereafter attended the applicant's home.

According to Inspector D, having spoken to Constable C, he informed the applicant and Ms A that they were suspects for a breach of the peace committed earlier. Inspector D thereafter cautioned them both.

At some point during this period, the applicant went upstairs to his bedroom to retrieve his mobile phone. He invited Inspector D to accompany him upstairs while he took some photographs on his phone, capturing the damage to his front door and the position of the vase and its contents. According to Inspector D, he noted the following upon going upstairs:

“At the top of the staircase I could see an impression of a vase base and a large quantity of decorative straw strewn from the hallway into the rear bedroom. Within the bedroom I could see a large vase about 1 metre high lying on a quilt as if it had been thrown a distance of approximately 2 and 3 metres. I asked [the applicant] what had happened to the vase and he replied ‘the cat must have knocked it over’. This was not a credible statement.”

Inspector D states that he also noticed two holes in the plasterboard walls within the front bedroom and a broken mobile phone lying adjacent to the damaged walls. Inspector D suspected that the damage was recent and that it may have been caused by someone throwing the mobile phone against the wall.

According to Inspector D, he confirmed with the police control room that there had been two previous “domestic” incidents at the applicant's address, whereby Ms A had been arrested for a breach of the peace. Inspector D then spoke with the persons who reported the incident and established that it was Ms A who had been “the aggressor”, and that the applicant had been trying to calm her down. Inspector D states that “having been identified by witnesses via her voice as being the person responsible”, he instructed Sergeant E to detain Ms A under section 14 of the Criminal Procedure (Scotland) Act 1995 for a breach of the peace. Sergeant E detained Ms A at 2:50 am.

According to Inspector D, he then informed the applicant that he was no longer considered to be a suspect and was being treated as a witness and victim in connection with a “domestic incident”. Inspector D obtained a short statement from the applicant before the police left his home.

Ms A was escorted to a local police station where she was processed into custody. The form completed at the police station in respect of Ms A's detention states that she was detained on the basis that she was “identified by witnesses as being suspect for a breach of the peace.”

Ms A was initially placed in a detention cell before being taken for interview at around 5.15 am. At 5.28 am, Inspector D telephoned the applicant's employer and informed Chief Inspector F of the

events which had occurred. Ms A was arrested and charged with a breach of the peace, detained in custody over the weekend and reported to the Procurator Fiscal. The Procurator Fiscal ultimately took no proceedings against her.

The Complaints

Based on the application received from the applicant and the information obtained from Strathclyde Police, the Commissioner has identified the following complaints:

- (1) that police officers abused their powers by forcing entry to the applicant's home;
- (2) that the officers did not explain why entry had been forced;
- (3) that Constable C was aggressive, agitated and shouted at the applicant;
- (4) that Inspector D had no reason to treat the applicant as a suspect and failed to caution him properly;
- (5) that Inspector D refused to note a voluntary statement from the applicant;
- (6) that Inspector D lied by saying "we heard you running up the stairs";
- (7) that Inspector D told the applicant he had "done [himself] no favours tonight";
- (8) that Ms A was detained without lawful authority;
- (9) that Ms A was unfit for interview due to alcohol taken;
- (10) that the police report submitted to the Procurator Fiscal was incomplete and inaccurate;
- (11) that Inspector D described the applicant as "anti-police" to his employer; and
- (12) that the police incorrectly categorised the applicant as a victim of crime.

The applicant raised his complaints with Strathclyde Police in a self-prepared statement dated 15 February 2009. The complaints were acknowledged by Strathclyde Police by letter dated 23 February 2009.

A further statement was obtained from the applicant on 2 March 2009 confirming the complaints he wished to make. A statement was also taken from Ms A on 3 March 2009 by Chief Inspector G, at which time she raised two separate complaints about the police.

During his investigation into the complaints, Chief Inspector G obtained statements from all the officers who attended the applicant's home as well as the applicant's line manager, Chief Inspector F. Chief Inspector G also obtained CCTV footage of Ms A being processed into custody, and the tape recording of her interview under caution.

On 23 June 2009 Chief Inspector G wrote to the applicant advising that his enquiries were complete and that he was in the process of preparing his final report. On 24 November 2009 Superintendent H issued a response to the applicant's complaints.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Strathclyde Police.

Complaint 1: Unlawful entry to the applicant's home

According to the applicant, as there was no incident or noise coming from his house at the time of Constable B and C's attendance at his home, the officers had no power under common law to force entry. The applicant also states that, as the call made to the police gave the impression that a serious disturbance had taken place, it was therefore malicious.

Background

Constable C states that, upon attendance at the applicant's home, he noticed lights on within the living room area and front bedroom. He thereafter knocked on the door several times, identifying himself as a police officer, but received no response. According to Constable C, he then noticed the light being put off in the front bedroom.

Constable C states that he then visited Mr and Mrs X who had reported the disturbance, and that he was told the following:

"[Mrs X] stated that the female's screaming sounded as if she was getting murdered and that the screaming apparently ceased just as I arrived."

Constable C states that he then returned to the applicant's home where he continued to knock on the door. According to Constable C, as he feared that someone may be injured or require urgent police assistance, he forced the front door and entered the premises. Constable C states that prior to doing so he shouted through the letterbox to warn of his intended course of action.

Internal Handling

Chief Inspector G noted the following in his report:

"Constables [C and B] state that after being informed of the circumstances of the disturbance by the reporters of the incident, [Mr and Mrs X], they forced entry due to justified fears for [Ms A]'s safety."

Superintendent H stated the following in his response to the complaint:

"[Ms A] has supported the ... complaint by stating a belief that police had no right to force entry. The officers who first attended have been interviewed and it is their position that they did force entry to the house because of fears for [Ms A]'s safety after being advised of a disturbance by members of the public. Those persons have confirmed that they did pass information about a disturbance to the police and indeed [Ms A] has herself acknowledged that due to drink she probably knocked over a vase and banged against walls prior to the police arriving. There is also evidence from members of the public that the officers had knocked on your door and identified themselves as the police before entry was made. While I do appreciate that this will not accord with your own position I am of the view that the officers concerned had little alternative but to take the action they did in order to ensure the safety of both of you. Not doing so would have been tantamount to negligence and I am afraid that I cannot substantiate this allegation."

Consideration

It is not in dispute that at the time Constables B and C arrived at the applicant's home there was no obvious ongoing disturbance, a fact which the applicant believes means that the officers had no power to enter his home.

According to the evidence considered by Chief Inspector G, the applicant's door was forced due to concerns for Ms A's safety. The decision was taken after Constable C had spoken to Mrs X (who,

according to Constable C, stated that Ms A's screaming sounded as if she was "getting murdered"). There is nothing in the police file to suggest that Constable C intended to force entry before having spoken to Mrs X.

The Commissioner has had regard to the relevant standard operating procedure relating to forced entry to private property. The procedures state the following:

"Where as a matter of extreme urgency (i.e. where there is imminent danger to life or when in close pursuit of a person who has committed or attempted to commit a serious crime), the police require to gain entry to property, then provided they act in good faith and with the minimum of force, they are entitled to do so using whatever means are necessary to overcome the security of the premises."

Given the terms of the above policy, and the information which was passed to him by Mrs X, the Commissioner considers that Constable C's actions were justified. The Commissioner therefore believes that this complaint was dealt with in a reasonable manner.

Complaint 2: Failure to explain the reason for entering the property

The applicant complains that, having forced entry to his home, Constable C did not inform him of the reasons for his having done so.

Internal Handling

Chief Inspector G reached the following conclusion based on the evidence he considered:

"Constable [C] is clear that he told [the applicant] of the disturbance call and why he had forced entry."

Superintendent H's response to the complaint was as follows:

"... the officer concerned has stated that he did tell you why your door had been forced. This account is fully supported by the other officer present and indeed to a certain extent by your own statement and that of [Ms A] which provide that the officer did tell you about the concerns raised by a neighbour. Taking all of this evidence into consideration, I have decided that this complaint is ... unsubstantiated."

Consideration

The statements provided by Constables B and C indicate that the applicant was told several times of the reason why entry had been forced. Constable C's account was as follows:

"[The applicant] was informed of the disturbance report made to the police and advised that had he answered his front door it would not have been forced."

The officers' accounts are supported by the following passage within the applicant's statement:

"When I got downstairs it was claimed that a call had been received by Strathclyde Police and [Constable C] said that the caller had; 'Concerns for the safety of the female inside the house'" [Constable C] again said; 'We've been at your door for the last 20 minutes, did you think we would just go away?' I again said that I heard nothing and did not hear anyone at the door."

Whilst the Commissioner acknowledges the applicant's belief that the information supplied to the police was malicious, there is clear evidence to suggest that he was informed of the reasons for

the police attendance and why entry was forced. Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 3: Aggressive behaviour

The applicant complains in both of his statements that, having asked Constable C for an explanation as to why he was in his home, Constable C became aggressive towards him. In the statement obtained from him by the police, the applicant states:

“... [Constable C] was aggressive towards me and was shouting at me in the house. His conduct did not go as far as a breach of the peace but he was over the top.”

Internal Handling

Having considered the relevant statements, Chief inspector G found no evidence to support the complaint that Constable C had been uncivil towards the applicant. Superintendent H responded as follows to the complaint:

“I must advise you that during the investigation, Chief Inspector [G] found no support for your position. The officer denies this allegation and is fully supported by his colleague who was present throughout. In the absence of any other evidence, I have found this complaint to be unsubstantiated.”

Consideration

The Commissioner agrees that, based on the information made available to him, there is no evidence to substantiate the applicant's complaint. Indeed, the following extract from Ms A's statement to some extent supports the officers' position:

“I know that [the applicant] has complained about [Constable C] shouting at him. I remember shouting but I don't remember who was shouting at who. I heard [the applicant] shout 'I don't like your attitude' at [Constable C]. That's all I can say about that. I would say that he was agitated when [the applicant] asked him about why he had kicked in the door but I don't remember [Constable C] shouting anything about that.”

In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 4: Failure to properly caution

The applicant describes his complaint as follows:

“... Inspector [D] told me that I was under caution but he didn't actually caution me. What he said was 'you're now cautioned', but he did not advise me of what that meant. I asked him what I was now under caution for and he said 'domestic violence and abuse'. He was very offhand with me. Almost as if he couldn't be bothered. My complaint is that he didn't use any words that would advise me of my rights and that he had no reason to treat me as a suspect in the first place. I am a police officer and I know what a caution is, but he should still have said the words to me. I want to complain about ... him not following proper procedures.”

Internal Handling

Chief inspector G summarised the relevant statements in his report, including that of Ms A who stated:

"I was worried about [the applicant] because just before I was taken into the kitchen I heard the Inspector say 'I'm cautioning you' and pointing at him. I heard [the applicant] say 'on what grounds?' and then 'no comment' and then I was through to the kitchen."

Superintendent H responded to the complaint as follows:

"... you complained that this officer had no reason to treat you as a suspect and although he told you you were 'cautioned' he did not use any form of words that represented what you recognise as a 'caution'. This complaint is to some extent supported by [Ms A] who heard the Inspector say only that he was cautioning you. The Inspector has stated that he quite deliberately used the full terms of the standard Police 'caution' and this is supported by two other officers who were present. His stance in relation to treating both you and [Ms A] as suspects was based on the information supplied by the members of the public who first reported the matter. I cannot disagree with that position and while I have been presented with conflicting accounts of the terms of the 'caution', I have decided that on the balance of what has been reported to me I cannot support your complaint."

Consideration

Having had regard to the statements obtained from all persons present, it is not possible to come to a firm conclusion on whether the applicant was properly cautioned. On the one hand, the applicant is offered support by Ms A; on the other, all officers present recall the applicant being cautioned in full by Inspector D.

In light of this, the Commissioner considers Strathclyde Police's conclusion that the complaint could not be substantiated is a reasonable one. Accordingly the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 5: Refusal to note a voluntary statement

The applicant complains that Inspector D refused to take a voluntary statement from him whilst in his home. According to the applicant, given that he was under caution at this time, Inspector D should have taken a note of his comments.

Internal Handling

In his report Chief inspector G made reference to the statements obtained from Ms A and all officers who had attended the applicant's home.

Superintendent H issued the following response to the complaint:

"You further complained that the Inspector refused to note a voluntary statement that you offered to make and I can confirm that this officer has freely acknowledged this to be the case. You describe this as an Irregularity in Procedure, however the officer's position is that it was unfair to note any statement from you until enquiries at the scene had been completed. While I understand that the Inspector's response that it was for him to decide when a statement should be obtained may have sounded unnecessarily direct, I believe that as things stood at that time his decision was appropriate and I do not propose to take this matter further."

Consideration

According to Inspector D, having cautioned the applicant and Ms A, both parties acknowledged that they fully understood what was happening and then fell silent "for a short time." The applicant

and Inspector D then went upstairs and, having returned downstairs, the applicant asked to make a voluntary statement to Inspector D. Inspector D's response to the complaint is as follows:

"A short time later [Sergeant E] returned to the lounge and was present when I was informed by [the applicant] that he wanted me to note a formal voluntary statement and insisted that I note it immediately. I informed him that as the officer directing the enquiry a statement would be obtained when I decided it would be appropriate and it was not for him to instruct me on the enquiry. He appeared annoyed at this reply and raised his voice saying 'are you refusing to note a statement from me now?' I confirmed that I was. It was my intention to clarify the status of both parties as well as the other evidence available before obtaining a statement from [the applicant]."

Sergeant E gave the following account of Inspector D's actions:

"I returned to the living room with [Ms A] and [the applicant] stated that he wished to give a voluntary statement. [Inspector D] informed him that this may not be appropriate at this time as he was still a suspect and in fairness to him as [Constable C] was just about to complete the statements from the additional witnesses this status may change. [The applicant] was annoyed by this and continued to complain."

There is accordingly no doubt that Inspector D refused to take an immediate voluntary statement from the applicant. The applicant believes that, as he was under caution, Inspector D should have noted his statement upon request; however, the applicant's request for a statement to be taken was made some time after the caution had been administered. Although police officers are expected to note any responses made by a suspect immediately after a caution is administered, in the Commissioner's view this does not extend to the noting of a full voluntary statement whenever requested to do so by the suspect.

In these circumstances, the Commissioner considers that Inspector D's decision not to note a full voluntary statement from the applicant at the time was reasonable. Consequently the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 6: Untruthful statement

According to the applicant, when he raised his concern with Inspector D about his front door having been "kicked in" Inspector D told him that officers "had heard a disturbance and we heard you running up the stairs".

The applicant believes that Inspector D lied in this connection in an attempt to justify the actions of Constables B and C.

Internal Handling

Chief inspector G noted the following in his report:

"[The applicant] alleges that [Inspector D] lied when he said that the [applicant] had been heard running upstairs. [The applicant] believes that the police action could not be justified and the officer lied in an effort to do just that.

...

Inspector [D] states that earlier in the proceedings the [applicant] told him he had been asleep when the police attended. The Inspector countered this by advising that someone [within] the house had been heard running up the stairs. This represented information Inspector [D] had received from Constable [C]."

Superintendent H issued the following response:

“You ... told us that the Inspector lied to you by using the phrase ‘we heard you running up the stairs’. While trying to justify forced entry to the house. Your position is that this was a lie as the Inspector had not been present at the first part of the event. The Inspector has acknowledged that he did have a conversation with you about this, however he recalls telling you that it had been someone other than the police who had heard a person on the stairs. As you will see I have been presented with differing accounts of what was said and I have no way of knowing with absolute certainty which is truly representative of the conversation. I do regret that you have been left with the impression that the officer lied to you, however due to a lack of conclusive evidence I cannot support your views here.”

Consideration

Inspector D stated the following in respect of this complaint:

“I could hear [the applicant], in a raised voice, stating that the Police had no right to enter his house as they were both asleep when the Police arrived. I informed [the applicant] that someone had been heard running up the stairs on the arrival of the police. He then stated that the police were not in a position to have heard anyone running up the stairs. I informed him that I had not stated it was the police who had heard the person.”

None of the police officers involved claim to have heard anyone “running up the stairs”; this information appears to have been reported to the police by a third party. Given the terms of Inspector D’s response to this complaint, the Commissioner does not believe the complaint is capable of being substantiated either way. Accordingly, the Commissioner considers that the response provided by Strathclyde Police to be reasonable.

In any event, the reason for the door being forced was because of concern over the safety of the occupants. That someone was heard running up the stairs prior to entry being forced appears not to have been a factor in the decision to force entry.

Complaint 7: Incivility and implied threat

The applicant complains that, following Ms A’s detention, Inspector D told him that “he had done himself no favours tonight”.

The applicant believes that there was a “hint of menace” in this statement and, given that his status had changed at that point to a potential victim of domestic abuse, he considers the comment to have been inappropriate.

Internal Handling

Chief Inspector G established that Inspector D had indeed made the comment alleged by the applicant. He noted the following in his report:

“Inspector [D] acknowledges that he did tell [the applicant] that he had done himself no favours however he is clear that he told [him] that this was a reference to the incredible version of events previously supplied and was in no way threatening or menacing ...

Sergeant [E] confirms that Inspector [D] did use the phrase ‘you’ve done yourself no favours’ however this was a comment on the lack of help and cooperation the [applicant] had provided. There was no menace to this remark and the Inspector explained the context to the [applicant].”

Superintendent H’s response was as follows:

“... you complained that [Inspector D] spoke to you using the phrase ‘You’ve done yourself no favours tonight’, a remark to which you have attached a menace and potential repercussion. The officer concerned has freely admitted that he did say this to you and the Sergeant who was present has also acknowledged that this comment was made. Again, however it is the case that their interpretation of the phrase differs from your own. From the officer’s perspective, you had by that time given an account of preceding events that in his opinion lacked credibility and his language was designed to convey that in the simplest possible terms. This interpretation was supported by the officer present at the time. I am content that no menacing connotation can be attached to the phrase, however in hindsight I accept that there was better and more appropriate language available and I am sorry if this caused you any form of concern.”

Consideration

The Commissioner agrees that the phrase used appears both inappropriate and inconsistent with the applicant’s status as a potential victim of domestic abuse. However, given that Superintendent H acknowledged that more appropriate language could have been used, and that the applicant has been provided with an apology, the Commissioner considers that this complaint was handled reasonably.

Complaint 8: Unlawful detention

The applicant believes that the decision to detain Ms A was as a result of Inspector D trying to justify the decision to force entry to his home. He considers that there were no grounds for Ms A’s detention and that she was treated as a “scapegoat”. The applicant stated the following in the statement obtained by the police:

“... there was no reason for [Ms A] to be detained and I want to complain that she was detained without lawful authority. The way this happened was that [Ms A] was in the separate dining room with [Constable B] the whole time. Inspector [D] and Sergeant [E] had a chat then Sergeant [E] went into the dining room. Sergeant [E] and [Constable B] came out with [Ms A]. I asked what was going on and Inspector [D] said ‘She’s being detained on suspicion of a domestic breach of the peace’. I want to complain about that. I believe that all three of them [Inspector D, Sergeant E and Constable B] were involved.”

Internal Handling

Chief Inspector G stated the following in his report:

“Inspector [D] states that after being informed of earlier events by neighbours who provided statements to Constable [C] he instructed Sergeant [E] to detain [Ms A]. Sergeant [E] and [Constable B] both state that [Ms A] was detained after evidence was provided by neighbours. Additionally Inspector [D] and Sergeant [E] speak to seeing damage and disruption within the house. Sergeant [E] states that the detention of [Ms A] followed the guidance contained in the Force Domestic Abuse Toolkit.”

The applicant received the following response from Superintendent H:

“When [Ms A] was detained it was on the basis of evidence provided by the members of the public who had reported the incident and also the observations of police officers of damage and disruption within your house. Detention in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995 is designed to allow enquiries to continue while the person suspected of committing a crime is under control. Chief Inspector [J]’s subsequent review of this has concluded that the detention was entirely justified and I agree with his conclusion.”

Consideration

In the Commissioner's view, the question to be addressed is whether there were reasonable grounds to suspect that Ms A had committed the alleged offence.

As noted above, the attendance of the officers was as a result of a phone call made by Mrs X. The contents of the initial incident log are reproduced below:

"[Mrs X] says that she can hear the female screaming next door and things getting smashed off walls, she can't hear the male but thinks it might be a domestic. This has been going on for about 20 mins and it has woken [Mrs X's] 10 yr old child up and she is crying due to the noise."

The decision to detain Ms A was taken by Inspector D. Inspector D provided the following account of the reasoning behind his decision:

"... I then attended [Mr and Mrs X's] address, where I spoke with [Constable C] and [Mr and Mrs X] and obtained a short narrative of the statements that [Constable C] was in the process of noting. The summary was that [Ms A] could be heard shouting at the top of her voice and that this had continued for 10 to 15 minutes, it had been established that the voice was that of the aggressor. [The applicant]'s voice could be heard attempting to calm [Ms A]. During this time items could be heard being thrown against the wall. This information was confirmed by [Mr and Mrs X] and they confirmed that it had awoken their daughter and caused her to cry.

I then returned to the locus and instructed [Sergeant E] to detain [Ms A] in terms of section 14 Criminal Procedures [sic] (Scotland) Act 1995 for a Breach of the Peace, having identified by witnesses via her voice as being the person responsible."

Sergeant E provided the following account of his involvement in the detention of Ms A:

"... I then spoke with [Constable C] who was outside the house having completed the taking of the statements from the neighbours. [Constable C] informed me that the main body of evidence was that [Ms A] had been heard by neighbours to cause the disturbance screaming and yelling and that [the applicant] had been attempting to appease her.

Based on this, I in the presence of [Constable B] detained [Ms A] in terms of the Criminal Procedure (Scotland) Act 1995 for domestic breach of the peace."

During his review, the Commissioner obtained the relevant notebook entries made by Constable C following his second meeting with Mr and Mrs X. Mr X is recorded as stating the following:

"It [illegible] as the sound of a female voice that we could hear the guy trying to calm her down. We gave it 5 or 10 minutes before my wife decided to phone the police. I could only hear shouting and bawling and the sound of stuff being thrown."

Mrs X's statement contained the following details:

"At around 1 am I was wakened by the sound of banging and smashing then the sound of a female screaming. I got up and my daughter and me upset [sic] in the kitchen saying something's going on next door. I could hear a female screaming really high pitched almost a scream at the top of her voice that high you couldn't hear the words. I heard this voice trying to calm her down. Throughout stuff sounded as if it was being smashed or thrown loud crashing noises. This continued for around 10 – 15 minutes before I called the

police. This has happened before and my daughter gets upset that was the final straw for me to call the police.

The screaming was frightening as if she had totally lost it. She was going mad ...”

The Commissioner acknowledges the applicant's belief that the call made by Mr and Mrs X was malicious in nature. Nevertheless, the information provided to the police in this connection was consistent and, prima facie, credible. In the Commissioner's view, it was sufficient to constitute reasonable grounds to suspect that Ms A had committed a breach of the peace. Accordingly, the Commissioner considers that Ms A's detention was justified by the evidence available to the officers at the time.

In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 9: Ms A's fitness for interview

The applicant contends that, due to the amount of alcohol which she had consumed prior to her detention, Ms A would not have been fit for interview and that she should have been certified by a doctor in this connection. Ms A gave the following account of the matter:

“I know that [the applicant] has complained about me being too drunk to be interviewed. He is correct, I didn't know what was going on and I don't think I was fit enough to understand it. I remember bits about the interview, the tape being put on, me being cautioned and then questioned about my boots being in the kitchen. I didn't really understand what they were saying to me, but I don't say that to them. I think I was in shock actually. I couldn't understand why they were asking me questions ... it wasn't right that I was interviewed when I was that drunk.”

Internal Handling

Chief Inspector G stated the following in his report:

“Sergeant [E] has stated that he waited two hours after [Ms A]'s detention to allow her to recover before interview. He states that as the interview began he asked her if she was fit for interview and she responded positively. Constable [C] states that the tape recorded interview started some four hours after the incident and [Ms A] had sobered up considerably ...

The tape recording of the interview has been examined and [Ms A] can be heard confirming that she is fit for interview. Her speech is clear and not slurred. CCTV evidence shows [Ms A] arriving at [the police station] and being processed at the charge bar. She is later seen at the charge bar after she was interviewed. Neither sequence suggests overwhelming intoxication. The casualty surgeon report does not mention alcohol.”

Superintendent H's response was as follows:

“... I will now address your complaint that [Ms A] was unfit for interview due to being under the influence of alcohol, thus rendering the interview unfair. [Ms A] has agreed with your assessment of this while the officers who interviewed her refute this, saying that it took place some two hours after the detention and therefore four hours after the incident itself. Their position is supported by the content of the taped interview in which [Ms A] agrees that she is fit. During this her speech is heard to be clear and CCTV footage of her immediately afterwards shows no sign of intoxication. As a result of this evidence, this allegation is unsubstantiated.”

Consideration

Superintendent H found this complaint to be unsubstantiated based upon Ms A's demeanour during and after interview. The recording of Mrs A's interview was examined during the course of the Commissioner's review and it contains no obvious sign that she was under the influence of alcohol.

Superintendent H also informed the applicant that Ms A had agreed that she was fit to be interviewed. The relevant part of the interview has been quoted below:

"Sgt E – Fair to say that you had a few drinks earlier on this evening and we've left you for a couple of hours and we're talking to you now. How do you feel at the moment?"

Ms A – Okay"

In the Commissioner's view, Ms A's response is too general to amount to an agreement that she was fit to be interviewed. Accordingly, the Commissioner does not share Chief Inspector G and Superintendent H's view that the applicant declared herself fit in this connection.

The custody record of Ms A's detention shows that she was not classed as "sober" until 9:55 am, over four hours after the interview commenced. This is confirmed by the following entry in the custody record at 10:02 am:

"prisoner now appears to be sober and can be visited using codes 1 / 2, down from codes 3 / 4. Sgt [K] aware and in agreement."

Notwithstanding Ms A's demeanour during interview, it appears that custody staff did not believe the applicant to be sober until 9:55 am. Unfortunately, the accounts of the custody staff were not obtained during Chief Inspector G's investigation and their position on Ms A's fitness for interview is therefore unclear.

Additionally, Superintendent H's response does not address the applicant's concern that a doctor should have been called in order to certify that Ms A was fit to be interviewed. Whilst Chief Inspector G's report comments that the casualty surgeon's report did not mention alcohol, given that Ms A's medical examination took place over five hours after the interview, the Commissioner is unclear as to the relevance of this comment.

In these circumstances, the Commissioner does not believe that this complaint has been handled in a reasonable manner. As Ms A's condition was not changed to "sober" until over four hours after the commencement of the interview, this lends weight to the contention that she was not fit to be interviewed. Consequently, the Commissioner recommends that Strathclyde Police obtains the accounts of custody staff to establish their position on Ms A's fitness for interview, and that it provides a further response to the applicant in light of its findings. This response should also address the applicant's concern that Ms A's fitness for interview was not assessed by a doctor.

Complaint 10: Inaccurate report to the Procurator Fiscal

The applicant makes the following complaint in this connection:

" ... I do not believe that the police report submitted to the Procurator Fiscal contained the full facts. I accept that I have not seen the report, but I do not believe that it will have contained information about me being treated as a suspect yet being allowed to wander around the house taking photographs. If these facts have been omitted then in my view they are important and I therefore believe that a full and honest report has not been submitted to the Procurator Fiscal."

Internal Handling

Chief inspector G's report contains the following passages:

"Although [the applicant] has not seen this report his reasoning is that if it does not contain details of him being treated as a suspect or information of his activities when the police were in the house then these are important omissions rendering the report incomplete and dishonest.

Constable [C] states that he submitted a standard report containing all the facts required to justify the charge of Breach of the Peace."

Chief Inspector G concluded:

"The police report submitted to the Procurator Fiscal in this matter has been examined and it had been seen that it represents an account of the circumstances relayed to police by [Mr and Mrs X] as well as details of the police involvement thereafter. While it is true that it does not contain any information that the [applicant] was at one stage treated as a suspect or that he was given the freedom to roam his home, these details would appear to be quite superfluous and irrelevant."

Superintendent H's response was as follows:

"I do appreciate that your complaint was made without you having sight of the report. Chief Inspector [J] has examined the report and I can tell you that he has concluded that it contains all relevant information and the facts necessary to allow the Procurator Fiscal to make an informed decision on the case. On that basis I cannot support the allegation and find it to be unsubstantiated."

Consideration

In the Commissioner's view, while Superintendent H's response might have reflected Chief Inspector G's findings more fully, the Commissioner considers that the complaint was dealt with in a reasonable manner. Although the report does not contain the information which the applicant believes should have been included, the Commissioner shares Chief Inspector G's view that the information in question was not sufficiently relevant to justify inclusion.

Complaint 11: The contact with the applicant's employer

The applicant complains that, following the incident at his home, Chief Inspector F received a phone call from Strathclyde Police alleging that the applicant had been "anti police" during the time the police were present at his home. The applicant stated the following:

"...What constitutes being anti-police? It is certainly not a serving police officer with 20 years police service off duty asking questions of the grounds for his front door being kicked in."

Internal Handling

Chief inspector G obtained a statement from Chief Inspector F (the applicant's line manager) in which he provided an account of the information disclosed by Inspector D. Chief inspector G also made reference to the statement obtained from Inspector D. Inspector D's account was as follows:

"On my return to [the police station] and prior to completing my tour of duty I contacted Chief Inspector [F] and informed him that an off duty incident had occurred with one of his

officers [the applicant]. I provided a brief summary of the incident and informed him that [the applicant]'s status was that of a witness and it was believed he had been the victim of a domestic incident. I informed him that I would confirm the information in writing when the disposal of the 1st diet was known.

I later noted an instruction from Chief Inspector [J] contained within the Vulnerable Persons database report that a report was to be submitted to the [applicant's employing police body] regarding the circumstances. On the 16th February I submitted the subject report ...”

The subject report submitted by Inspector D noted that the applicant:

“... could give no account for the disturbed furnishings or damage and claimed to have been asleep throughout. He declined the offer to take part in the domestic violence pathfinder risk assessment.”

Inspector D also reported the following:

“The vulnerable persons database shows that this is the fourth recorded domestic incident involving [the applicant and Ms A], the last being 25 August 2007.”

The following summary was given by Chief inspector G in his report:

“Inspector [D] states that he spoke by telephone to Chief Inspector [F] ... on 7 February 2009 and advised him of the domestic incident at [the applicant]'s home. He advised that [the applicant] was a victim of abuse but does not otherwise address this allegation.”

Chief Inspector G also stated:

“It should however be noted that on 15 February 2009 Inspector [D] provided a Subject Report for transmission to [the applicant]'s employer regarding the incident. The text of this report explains simply that the [applicant] was a victim in this incident and makes no mention of any anti-police sentiments. It will be seen that both Constables [C] and [B] state that [the applicant] identified himself as a police officer and produced his warrant card in the early stages of proceedings. At the time he was under the influence of drink and, as demonstrate[d] by statements from neighbours, he appeared to be the victim of a domestic incident. In these circumstances, Inspector [D] was obliged to contact the [applicant]'s line managers.

It is also worth noting that all of the police officers who attended the locus have described the conduct of [the applicant] in terms that are easily interpreted as ‘hostile’ and ‘anti-police’.”

Superintendent H's response to the complaint was as follows:

“... [you complain that Inspector D] telephoned your employer and spoke to a senior officer describing you as ‘anti-police’. You believe this to be both false and damaging. The senior officer to whom the Inspector spoke has been interviewed and has confirmed that during this conversation your behaviour was indeed described as ‘hostile’ and ‘anti-police’. The Inspector who is subject to this complaint has not responded to this allegation and it has been left to me to put this remark in context. What Chief Inspector [G]'s investigation has found is that there was a very difficult situation in your home that night; you were faced by police officers who had forced entry to your home; who ultimately detained your partner; and who in your view failed to explain their reasons for exercising police powers.

The officers who attended have universally described you as shouting; failing to cooperate; and making the execution of their duties that much more difficult. I think that it is with those

circumstances in mind that the Inspector made his remarks. It should also not be forgotten that as a serving police officer there is an obligation on you to behave in a disciplined manner whether on or off duty and while I fully understand your frustration at what unfolded in your home, it was appropriate for the Inspector to draw elements of your conduct to [the attention of] your senior officer. I accept that you may well believe that making this report was ultimately damaging to you, however I am satisfied that the Inspector was acting in accordance with his duty and I cannot agree that his remarks were false.”

Consideration

As it was unclear from the information available where the imperative lay to advise the applicant's employer about the circumstances leading to Ms A being charged, the Commissioner's office sought clarification from Strathclyde Police in this connection. Inspector D explained his position as follows:

“My overriding responsibility in contacting [the applicant's employer] was on the basis of general welfare in order that support and assistance may be afforded [the applicant].”

Inspector D also referred to considerations unique to the applicant's employment role, quoting from the relevant standard operating procedures in that context.

The Commissioner has quoted below the relevant passage from Chief Inspector F's statement.

“... I received a telephone call from Inspector [D]. He stated that two of his officers had earlier attended [the applicant]'s address to intervene in an alleged domestic dispute. ...

He added that the two constables had been directed to the locus after separate reports from concerned neighbours. On their arrival at the address, the officers knocked on the door which remained unanswered. He said both officers heard shouting, a continued apparent banging from within and were concerned for the safety and wellbeing of the occupants. They decided and conducted a forced entry of the premises.

Inspector [D] said they were confronted by a 58 year old female with apparent bruising on her arm. She alleged that they were caused by a collision within the house. The constables were then joined by the male occupant of the house [the applicant]. He added that his officers stated they were confronted by 'hostility' and 'anti-police' behaviour by the male who was querying the lawful right and legality of the forced entry without invitation. He said the officers noticed a vase which appeared discarded within the house area broken, and when they queried this, the female [sic] said the cat had inadvertently knocked it over.

Inspector [D] also said his officers had noticed gouge marks in the plaster walls of the house. He continued by saying his officers had been confronted by non-compliance by the male and due to the continued behaviour had issued a warning to the male for his conduct. There appeared to have been alcohol consumption by both occupants of the house.

Inspector [D] stated that Strathclyde Police have a robust policy towards domestic abuse which was followed appropriately. He concluded that their investigation was that the male was the victim and that at present no charges would be preferred against him. He also advised me that this was the third reported domestic incident Strathclyde Police had attended at this address and he wished the incident relayed appropriately to [the applicant's employing policing body] ...

Throughout the conversation with Inspector [D] I was of the opinion that a high degree of tolerance and patience had been shown by his officers in an attempt to defuse and provide an amicable solution. ...

Throughout the conversation with Inspector [D] ... I did not deem that the information imparted a breach of the Data Protection Act or Disclosure. I personally formulated this opinion in the knowledge of a report of potential misconduct by a member of our Force that was 'bringing the Force into disrepute' ..."

The Commissioner notes that, in a number of areas, Chief inspector F's account of what he was told by Inspector D does not accord with the evidence.

Firstly, Chief Inspector F states he was told that the attending officers "heard shouting" and a "continued apparent banging from within" and that this had been the subject of "separate reports" leading to police attendance. It is clear from the statements of Mr and Mrs X that the sounds they claim to have heard from the applicant's home had ceased some minutes before the arrival of police.

Secondly, Chief Inspector F states he was told that a vase had been broken in the applicant's home, whereas according to the evidence it had simply been found lying on its side on the floor.

Thirdly, Chief Inspector F states that he was informed about a bruise on Ms A's arm, which may have created the impression that a physical altercation had taken place. During the police interview of Ms A, it was noticed that she had a bruise on her knuckle. Ms A explained that this could have been caused either by a fall as she was leaving the function, or in the course of falling and knocking over the vase at the top of the stairs. In that context, it is unclear to the Commissioner what purpose was served in discussing this matter with the applicant's employer.

Fourthly, Chief Inspector F states that he was told that the applicant had been issued with a warning. There is no indication in the papers supplied to the Commissioner that the applicant was issued with a warning for his conduct, or that any grounds existed for charges being brought against him. It is therefore unclear to the Commissioner the basis for this apparent comment.

With regard to the comment about Ms A's apparent recollection that it had been a cat which had knocked over the vase, it was in fact the applicant who is alleged (by Sergeant E in his statement and Inspector D's notebook entry) to have given this explanation.

Whilst acknowledging that Chief Inspector F's recollection may not accurately reflect the conversation which he had with Inspector D, his account is of such a specific nature as to cause concern that incorrect information may have been passed to him. As Inspector D's statement does not address this particular allegation, the Commissioner recommends that Strathclyde Police makes further attempts to obtain a statement from Inspector D addressing the apparent inconsistencies described above. A further response should thereafter be provided to the applicant. The response should also include the following:

- (1) a full explanation of the reasons why it was considered necessary to contact the applicant's employer in connection with the incident;
- (2) what was meant by Inspector D when he described the applicant as being "anti-police"; and
- (3) given Inspector D's comments that his primary responsibility was the applicant's "general welfare", why it was considered necessary to refer to him as "anti-police".

If Inspector D is unwilling to provide such an account, Strathclyde Police should issue the applicant with an apology for the information provided to his employer.

Complaint 12: The applicant's status as a victim of crime

The applicant stated the following in his initial statement:

“Once [Ms A] had been taken from the house [Inspector D] and [Sergeant E] told me that they wanted a statement from me as a ‘potential victim’ and witness to a domestic. I asked [Inspector D] what grounds existed for changing my status as a ‘potential suspect’ to that of a ‘potential victim and witness’ and whose evidence did they have for claiming that I am a victim of any domestic violence or abuse.

[Inspector D] refused to answer and [Sergeant E] said at this point ‘I was in the CID in [a different area] for nine years’. I have no idea why [he] made this comment.

I said to him that I had gone to bed about 0115 hours and had heard nothing and had no recollection of any disturbance. The only thing that happened was that a vase had been knocked over at the top of the stairs. I did not wish to make any complaint and I did not wish any referrals to any agency who deals with domestic violence.”

In his subsequent statement the applicant stated:

“When I went back on duty on the Tuesday after I was told by my Detective Sergeant ... that he knew there had been an incident at my house. He said there had been a telephone call from [the police station] ... saying that I was at risk of Domestic Violence. I gave him my version. [He] said that my DCI ... wasn’t aware and that I should tell him. I did that but I don’t know what he already knew.”

Consideration

There does not appear to have been any response to this complaint nor any specific consideration of it during the enquiry. Accordingly, the Commissioner recommends that Strathclyde Police now records this complaint and issues the applicant with a response.

Conclusions, Recommendations and Learning

Complaints 1 – 8 and 10

In the Commissioner’s view, the manner in which these complaints were dealt with by Strathclyde Police was reasonable. Accordingly, no further action is required in this connection.

Complaint 9: Ms A’s fitness for interview

In the Commissioner’s view, the manner in which this complaint was dealt with by Strathclyde Police was not reasonable. The Commissioner recommends that Strathclyde Police obtains the accounts of custody staff to establish their position on Ms A’s fitness for interview, and that it provides a further response to the applicant in light of its findings. This response should also address the applicant’s concern that Ms A’s fitness for interview was not assessed by a doctor.

Complaint 11: The contact with the applicant’s employer

In the Commissioner’s view, the manner in which this complaint was dealt with by Strathclyde Police was not reasonable. The Commissioner recommends that Strathclyde Police makes further attempts to obtain a statement from Inspector D addressing the apparent inconsistencies described above. A further response should thereafter be provided to the applicant. The response should also include the following:

(1) a full explanation of the reasons why it was considered necessary to contact the applicant’s employer in connection with the incident;

- (2) what was meant by Inspector D when he described the applicant as being “anti-police”; and
- (3) given Inspector D's comments that his primary responsibility was the applicant's “general welfare”, why it was considered necessary to refer to him as “anti-police”.

Complaint 12: The applicant's status as a victim of crime

As this complaint was not recorded or dealt with, the Commissioner does not consider that it was handled in a reasonable manner. The Commissioner recommends that Strathclyde Police now records this complaint and issues the applicant with a response.

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