

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

under section 35(1) of the Police Public Order

Summary and Key Findings

The Commissioner reviewed four complaints about how Dumfries & Galloway Constabulary handled two different matters involving the applicant's partner, who is a serving police officer.

The Commissioner found that three complaints were handled reasonably while one (complaint 3) was not. The Commissioner made a single recommendation in relation to complaint 3.

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's partner is a serving police officer. The applicant's complaints about the police relate to two separate and essentially unconnected incidents involving his partner.

Incident 1

On 18 May 2006, the applicant's partner (Ms B) went with Sergeant E on a home welfare visit to a fellow member of police staff (Ms D) who was at the time on sick leave. Ms B was Ms D's line manager.

It had become known to Ms B that, for personal reasons, Ms D and her husband were having to sell their home. Following the meeting, an approach was made directly by the applicant to Ms D and her husband to buy their home for a cash sum that was substantially below the asking price. Ms B herself made the same offer on a separate occasion. Both offers were rejected by Ms D and her husband.

In June 2006, Ms D submitted a complaint to Dumfries and Galloway Constabulary ("D&G") about Ms B, stating that she believed she had been taken advantage of by her. Ms D did not wish to raise a formal complaint about the police but wished the matter to be handled internally and in a less formal way. Following a meeting with Ms D on 1 June 2006, Chief Inspector A wrote a briefing report considering the implications of the matter in relation to Ms D's eventual return to work. Ms B was then invited to take part in a discussion about the issue on 15 June 2006, which was attended by Chief Inspector A and Superintendent K.

During this internal process, the applicant contacted the police and offered to make a statement in defence of his partner with regard to the offers to buy Ms D's property. Ultimately no such statement was obtained from the applicant. Following the internal investigation, Chief Inspector A prepared a briefing note outlining his finding in relation to Ms D's complaint. In the briefing note Chief Inspector A commented that he had advised Ms B from the outset that the complaint was being dealt with informally. Differences of opinion had been expressed with regard to Ms B's judgement in the matter and Chief Inspector A noted that he had advised her that he would "look for her to seek advice from Professional Standards or the Deputy Chief Constable in future cases", which advice she had accepted

The applicant subsequently submitted a request to D&G under the data protection legislation and was provided with a copy of Chief Inspector A's briefing note.

Incident 2

A neighbour dispute between Ms B and Mr J had come to the attention of D&G. The dispute was principally related to interaction between the children of the two families. Chief Inspector L met with Ms B on 20 June 2007 and offered to facilitate formal mediation, following failed attempts at informal resolution through the parents. Ms B apparently rejected this offer. According to Chief Inspector L:

"I advised [Ms B] that as she was not interested in re-establishing good relations with [Family J] that left us no option other than to investigate any future report against her and her family and that if there was any evidence of criminality on the part of anyone, or poor conduct on her part, we would be obliged to report the circumstances."

On 18 July 2007, D&G issued guidance to supervising staff, advising them of how to deal with any further issues involving the two families, in light of Ms B's position as a police officer. According to the applicant, Ms B was not made aware of this guidance at the time of issue.

The applicant subsequently submitted a request for information to D&G under the data protection legislation and was provided with a copy of the guidance which had been given in this connection.

The Complaints

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

- (1) that, during the investigation, a statement was not obtained from the applicant;
- (2) that a briefing note compiled by Chief Inspector A contained "wilful falsehoods";
- (3) that the investigation into Ms D's complaint about his partner was not handled in a proper and unbiased manner; and
- (4) that the guidance note issued in respect of the neighbour dispute was not proportionate to the matter in hand.

The Commissioner's Review

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

Complaint 1: Obtaining of statement

In his correspondence with D&G the applicant expresses his overall dissatisfaction with the enquiry carried out following Ms D's complaint against Ms B. The specific reason given by the applicant for his dissatisfaction was that a statement had not been taken from him. The applicant therefore believes that Chief Inspector A did not consider relevant facts and consequently did not reach a balanced decision.

Internal Handling

The applicant met with Chief Inspector M at his home on 5 November 2009 to discuss his complaints. In a briefing note dated 15 January 2010 Chief Inspector M noted the following:

"Given there was no complaint made in respect of [the applicant] or his involvement, no dispute over the information that he provided and bearing in mind the task Chief inspector [A] was undertaking related to an internal professional standards matter, there was no actual requirement to obtain a detailed statement from him either prior to or following his phone call. I base this upon the fact that [Chief Inspector A] was simply looking at [Ms B]'s actions as [Ms D]'s line manager, not the actual offer to purchase the house nor her husband's involvement in that. It would not seem to me to be proportionate to obtain a full statement of complaint that would simply be confirming information already known, not in dispute and not subject of investigation."

On 26 January 2010, the Deputy Chief Constable wrote to the applicant with the following response to the complaint:

"Having considered the circumstances as presented to me, I did not consider that it amounted to being a Complaint about the Police but related more to an issue over judgement/ integrity on the part of [Ms B] which had lain her open to criticism. I instructed Chief Inspector [A] to review the circumstances and thereafter discuss the matter with [Ms B] as a professional standards / management type issue.

...

Having carefully assessed the information gathered [Chief Inspector A] was clear that there was no complaint or concern raised regarding your involvement in the process and therefore concluded that there was no obvious requirement to speak with you ...

You subsequently telephoned [Chief Inspector A] to discuss your concerns ... you are clear in your recollection that you offered to provide a witness statement but that this was declined ... whilst [Chief Inspector A] does not recall that offer, he appears to have obtained a verbal account from you in respect of your involvement. This verified existing information already in his possession and therefore was not in dispute.

Given that there was no complaint made in respect of you or your involvement, no dispute over the information you provided and bearing in mind the task he was undertaking related to an internal professional standards matter, there was no actual requirement to obtain a detailed statement from you either prior to or following your phone call."

Consideration

In the Commissioner's view, having received a complaint from a member of its staff, there was a duty upon D&G to look into the matter. Notwithstanding the applicant's view that that the enquiry should have included taking a statement from him, given that the actions of Ms B were not in dispute, the Commissioner does not believe that the applicant could have added anything of value. In light of this, and the fact that the matter was an internal one between Ms B, Ms D and their employer, the Commissioner considers that Chief Inspector M's conclusion was correct.

Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 2: Alleged wilful falsehood

The applicant emailed the police on 25 September 2009 expressing the following concerns with the briefing note compiled by Chief Inspector A:

“In his report, [Chief Inspector A] states that I was satisfied with his input. This is factually incorrect. During this call I advised him that I was far from happy with the actions being taken and offered to provide a full statement in respect of the matter and was prepared to be interviewed. He advised me that this was not required as the matter was internal in nature.

The general tone of his report is misleading in the extreme and does not reflect the conversation which took place.

As such [Chief inspector A] has recorded false and misleading information in his report and I wish to make a formal complaint in respect of his actions.”

In a further e-mail sent on 20 November 2009, the applicant made the following comments in relation to Chief Inspector A’s briefing note:

“... in subsequent correspondence dated 19 June 2006 [Chief Inspector A] records that I was satisfied with the course of action which he was following and the fact that a statement from me was not required. This is not correct and is a wilful falsehood and not a true reflection of the circumstances.”

Internal Handling

During the investigation into this complaint, a statement was obtained from Chief Inspector A. The following passages from Chief Inspector M’s enquiry report summarise the content of Chief Inspector A’s account:

“Chief Inspector [A] recorded details of his discussion with [the applicant] in the form of a briefing note that he prepared at the time. [The applicant] is of the belief that this is inaccurate and amounts to being a wilful falsehood.

Chief Inspector [A] has been spoken with during this current review and provided a typed statement outlining that it accurately captured his recollection of the discussion that took place.

There is no additional or independent evidence to support either [party]’s recollection of the conversation. [The applicant] confirmed that his recollection is from memory – he did not take any notes, the conversation was not recorded nor was it witnessed.

The wilful falsehood concern relates to the section of the briefing note prepared by Chief Inspector [A] following a telephone conversation with [the applicant]. It has not been used or relied upon in any judicial proceedings and does not amount to being a wilful falsehood as suggested by [the applicant] – it is simply a dispute over the accuracy of the content of a briefing note of a conversation from two opposing views.”

The Deputy Chief Constable provided the following response to the complaint:

“[Chief Inspector A] recorded details of his discussion with you in the form of a briefing note he prepared at the time. While you are of the belief that this is inaccurate and amounts to

being a wilful falsehood, [Chief Inspector A] ... remains of the opinion that it accurately captures his recollection of the discussion that took place. In the absence of any additional or independent evidence, I am unable to prefer either version of events. I have, however, retained a copy of your email containing your recollection of events alongside the briefing note in order that a balanced perspective is available should the information be required for any reason in the future."

Consideration

Given that the call was not witnessed or recorded, the Commissioner does not believe this complaint to be capable of being proved either way. However, as the applicant was advised during the call that he effectively had no role in the enquiry (in the Commissioner's view a correct position) the Commissioner does not believe there would have been any benefit to be derived from Chief Inspector A intentionally misrepresenting the content of the call.

Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 3: The manner of investigation

The applicant is dissatisfied with the way in which Chief Inspector A investigated the complaint made against Ms B. He stated the following in an email he sent to D&G:

"[Chief Inspector A's] findings were subsequently submitted to the forces senior managers in writing and verbally and were biased and based on his own personal view which was not balanced and complete ...

As I advised you this officer has in the past bullied and harassed [Ms B] and would appear to have a personal vendetta against her. Why else would he fail to properly investigate an allegation?"

Internal Handling

This complaint was not as such by D&G. However, in his response the Deputy Chief Constable stated the following:

"I remain satisfied that, from the information available to me both then and now, [Chief Inspector A] carried out a proportionate review of the situation and dealt with it appropriately as a management issue. His involvement was necessary and in direct response to a concern raised by an aggrieved member of police staff who perceived that her line manager had tried to exploit her weak financial position. There is no direct evidence or information available to me to support that [Chief Inspector A] pre-judged the outcome or treated any party unfairly during the process."

Consideration

Whilst the applicant believes that Chief Inspector A has a "personal vendetta" against his partner, he does not state the precise reasons for his belief that the investigation into Ms D's complaint was biased.

The Deputy Chief Constable's position was that there was no direct evidence to support the view that Chief Inspector A pre-judged the outcome of his investigation or treated anyone unfairly. However, without establishing clearly the reasons for the applicant's belief that Chief Inspector A's investigation was biased, the Commissioner does not believe that this complaint can be fully

addressed. The Commissioner would have expected this matter to have been explored during Chief Inspector M's meeting with the applicant.

In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that D&G establishes the reasons for the applicant's belief that the investigation was biased, carries out any necessary enquiries and issues the applicant with a further response to the complaint.

Complaint 4: Alleged disproportionate response

The applicant first wrote to D&G on 19 August 2009 questioning the guidance which Chief Inspector L had issued regarding the strategy for dealing with the neighbour dispute. The applicant believed that the existence of such a strategy was "excessive in the extreme", insulting and that he personally had been "besmirched".

In his email of 20 November 2009 the applicant stated that the deployment of a strategy in relation to his family was "unacceptable". The applicant also stated that, as he had had little or no contact with Family J, he personally should not have been included in the guidance note.

Internal Handling

The initial response to this complaint was provided by the Deputy Chief Constable on 22 September 2009:

"... it is clear that you take exception to the guidance issued to supervisors by Chief Inspector [L] in July 2007. Whilst I acknowledge your dissatisfaction, I would advise that providing guidance, briefings and strategy in relation to operational matters is not only common practice but essential to police performing their statutory duties. Having considered the terms of the Guidance Note issued by [Chief Inspector L], it is clear that it was issued in response to the prevailing operational circumstances at that time and did not seek to favour or besmirch either family and I am satisfied that it was both proportionate and necessary.

As with other similar guidance notes issued, when the prevailing circumstances change, the guidance can either require updating or simply becomes redundant. This particular guidance note was never in widespread circulation and the copy you received was retrieved from a secure file held in the Professional Standards Unit. I would like to re-assure you that it had already been withdrawn previously as it was no longer considered current or relevant."

Following the applicant's meeting with Chief Inspector M, he sent a further email stating:

"Whilst I do not question the decisions of the force to deploy strategies as and when required I do question this decision to deploy and adopt a strategy in respect of me.

Can you evidence any particular allegation made by the relevant party against me?

I think this is highly unlikely as I had little or no contact with the other family referred to. For the force to adopt and deploy a strategy in respect of me was insulting in the extreme as I have no criminal record and have never come to the adverse attention of the police in any shape or form.

I accept that it may be necessary to issue guidance notes to supervisors but surely this should be where specific allegations have been made against individuals and not a blanket instruction in respect of a family particularly one where the husband resides away during the week.

If you cannot evidence any specific allegations against me then I expect and demand an apology from the Chief Constable and the circulation list of recipients of this strategy written to and advised that this strategy is withdrawn and did not apply to me.”

Chief Inspector M stated the following in his briefing note:

“[The applicant] was not specifically mentioned within the text although he is obviously part of [the family] and therefore included by definition within the general terms. The same applies to the members of the [J Family] and it would not be unreasonable to assume that dependent upon who was ‘available’ at any given time, potentially any members of the respective households could find themselves embroiled in the situation.

The note primarily, however, was to provide advice to supervisors should there be a complaint made about [Ms B]’s involvement given her [position within D&G] and how they could/ should respond to it. It did not contain any detail in relation to incidents, allegations or counter allegations.”

The Deputy Chief Constable’s response of 26 January 2010 stated the following:

“I can confirm that no criminal allegations were made about you in respect of any contact or interaction that you had with the other party involved. You will note that the situation was described as a ‘neighbourly dispute’ and outlined that attempts at resolving the prevailing issues had been unsuccessful. Whilst you are not specifically mentioned within the text, I accept that you are part of [Ms B’s family] and therefore understand from your perspective why you may feel aggrieved by it. The note was drawn up to provide the background to supervisors should they have cause to deal with any escalation in the situation and to give them basic guidance primarily due to [Ms B]’s involvement given her position as a serving police officer.

...

Whilst I appreciate that you remain angry about the situation, I remain satisfied that the guidance was a legitimate and necessary step taken to deal with a challenging situation and only issued after a careful consideration of the known information available. I can assure you, however, that the guidance note referred to is no longer considered relevant nor is it in circulation.”

Consideration

Whilst accepting that the police are entitled to “deploy strategies as and when required”, the applicant does not believe that one ought to have been created in respect of his family. The applicant also emphasises that he should not personally have been included in the guidance issued.

The full text of the guidance note has been reproduced below:

“What could be classed as a ‘neighbourly dispute’ involving [the two families] ... has recently been reported to the police and attempts have been made to resolve the situation through discussion with [Mr J] and [Ms B]. In the absence of both parties agreeing, mediation has not been an option.

With this in mind it has been suggested to both that the only way forward is for each family to ignore each other, thus avoiding the potential for confrontational engagement.

It is however acknowledged that as both families live near each other and to access their home [Ms B’s family] require to pass [Family J’s] home, potential exists for further reports to

be made to the police, and if this is the case, these reports should be addressed per existing procedures, custom and practice with the nature of the incident dictating the level and type of response, including the identification and investigation of any criminal allegation.

It is important that if there is a further report, the police response is both fair and proportionate and that, if challenged, our actions are capable of withstanding scrutiny.

That said, the fact that [Ms B] is a serving police officer [of stated rank] is a factor which cannot be ignored and this provides further challenges for our organisation in respect of:

- *The community perception when an off-duty police officer (of rank) is involved in an incident/set of circumstances*
- *Potential misconduct allegations involving a police officer – even when off duty*

If there are any further incidents involving this particular dispute which would indicate that it has escalated then the expectation would be that the Duty Inspector would be advised and that consultation would take place with the Duty Superintendent in relation to the level and type of response which would follow, particularly if misconduct or criminality involving [Ms B] is alleged.”

In the Commissioner's view, the above guidance amounts simply to a statement that the police should respond to any further incident in terms of existing practice – the same practice applicable to any member of the public or police officer in the same situation. Given that Ms B and her family have not been singled out for any prejudicial treatment, the Commissioner does not believe that the guidance could be considered excessive in its terms.

In relation to the applicant's concern that his name was personally “besmirched” by the guidance, it is clear that he is not named. In the Commissioner's view, the references to Ms B's family are contextual and therefore appropriate in the circumstances.

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

Conclusions, Recommendations and Learning

Complaints 1, 2 and 4

In the Commissioner's view, the manner in which these complaints were dealt with by D&G was reasonable. Accordingly no further action is required in this connection.

Complaint 3

In the Commissioner's view, the manner in which this complaint was dealt with by D&G was not reasonable. The Commissioner recommends that D&G establishes the reasons for the applicant's belief that the investigation was biased, carries out any necessary enquiries and issues the applicant with a further response to the complaint.

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