

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

On 31 October 2008, Strathclyde Police forced entry into the applicant's home whilst looking for her son, who was the subject of a "curfew recall notice". The applicant subsequently complained about the police in this connection.

The Commissioner found that the complaint was not handled in a reasonable manner and made two recommendations in this connection. The Commissioner also identified a learning point.

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 son, Mr A, was given early release from a young offenders institution subject to a Home Detention Curfew ("the curfew"). The curfew involved the applicant wearing an electronic tag in order that his movements during the curfew period could be monitored. Whilst tagged he resided with the applicant at her home. The period in which Mr A was monitored was from 2 June until 14 October 2008, following which the monitoring equipment was removed. According to the applicant, Mr A did not reside with her after this date.

On 30 September 2008, the Scottish Prison Service ("SPS") revoked Mr A's curfew and a curfew recall notice was issued to Strathclyde Police at that time. Strathclyde Police's Home Detention Curfews Standard Operating Procedure ("the SOP") states the following:

*"Whilst an HDC recall is **not** a warrant, for the purposes of prioritisation and subsequent enquiry, the HDC recall should be progressed in line with the guidance and minimum standards provided for **apprehension warrants** ..."* [emphasis in original]

On 20 October 2008 the applicant's home was attended by Constable B but he received no reply. Police officers attended the applicant's home again on 31 October 2008. The officers formed the impression that there was someone in the house and that they were refusing to come to the door. Consequently, the officers forced entry to the property and also forced two internal doors which were locked. As a result of the officers' actions the house alarm was activated.

No one was found within the property although the officers found a dog in the kitchen. Constable C left a copy of the recall notice on the table and the officers thereafter left the property. According

to Constable C he then re-secured the front door using the existing lock, leaving the dog in the kitchen.

When the applicant returned home later that day, she found her front door open and her dog missing. After searching her property she also discovered that a ring was missing from one of the bedrooms. It transpired that her home had been the subject of a break-in following the departure of the officers.

The applicant contacted the police in an attempt to establish the circumstances surrounding their visit; however, they were unable to provide her with any further information.

On 31 October 2008 the applicant submitted a letter of complaint to Strathclyde Police. The letter was passed to Inspector D for investigation and on 24 December 2008 Chief Inspector E issued the applicant with a response to the complaint.

The Complaint

Based on the contents of the application form, the correspondence received from the applicant and the information obtained from Strathclyde Police, the Commissioner has identified a single complaint, namely that Strathclyde Police delayed in acting on the curfew recall notice issued in respect of Mr A.

The Commissioner's Review

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

The applicant complains that Strathclyde Police delayed in attending her home following the issuing of the curfew recall notice on 30 September 2008. According to the applicant, when the police finally attended at her home Mr A was not subject to the curfew and no longer lived with her.

Internal Handling

In his report Inspector D noted the following:

"On the subject of her son still being tagged on the home detention curfew it was explained that a number of administrative enquiries were conducted prior to the warrant being actioned which resulted in the delay."

Inspector D concluded that the actions of the officers involved were lawful, appropriate and proportionate. His findings were reiterated by Chief Inspector E who stated the following in his response:

"Officers forced entry to your home under the authority of an Apprehension Warrant and their action was lawful, appropriate and proportionate in the circumstances."

Chief Inspector E went on to state:

"In relation to your son still being tagged and on a home detention curfew after the apprehension warrant was initiated I understand [Inspector D] explained the administrative process which accounted for the passage of time prior to officers attending your home."

Consideration

Whilst there is no information within the police file to confirm why Mr A's curfew was revoked, it is clear that the decision to do so was one taken by the SPS. Strathclyde Police was notified of this decision on 30 September 2008, at which time a warrant enquiry form (a form detailing the actions taken by the police to enforce the curfew recall notice) was created.

On being notified of SPS's decision, Strathclyde Police processed the recall notice as category A – the highest priority level. According to Strathclyde Police's guidance on this matter, a target of 14 days is set to enforce category A notices.

Inspector D advised the applicant that "administrative enquiries" accounted for the time which elapsed before Strathclyde Police acted on the curfew recall notice. The Commissioner has had regard to the warrant enquiry form and notes that the administrative enquiries referred to by Inspector D were completed on 2 October 2008. There is no evidence within the police file that Inspector D made attempts to account for the passage of time between 2 October 2008 and the first visit to the applicant's home by Constable B on 20 October 2008. Consequently, the explanation given in Chief Inspector E's response is not supported by the information contained within the police file.

Despite its own internal timescales not being met, the Commissioner understands that Strathclyde Police was still entitled to enforce the curfew recall notice until being told otherwise by SPS (there is no information within the police file to suggest that SPS provided Strathclyde Police with such an instruction). With regard to the way in which the notice was enforced, the Commissioner has also had regard to the SOP which provides guidance to officers in such circumstances. Section 5.6 of the SOP states:

"Note: There is NO power to force entry to any premises following the revocation of the HDC [Home Detention Curfew]." [emphasis in original]

Accordingly, contrary to Chief Inspector E's comment that the officers acted appropriately in forcing entry to the applicant's home, in terms of the SOP the officers had no power to do so at all.

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner makes the following recommendations:

(1) that Strathclyde Police investigates the delay in implementing the curfew recall notice which occurred between 2 and 20 October 2008; and

(2) that Strathclyde Police issues the applicant with an apology for officers forcing entry to her home in implementation of the curfew recall notice.

Conclusions, Recommendations and Learning

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was not reasonable. The Commissioner recommends:

(1) that Strathclyde Police investigates the delay in implementing the curfew recall notice which occurred between 2 and 20 October 2008; and

(2) that Strathclyde Police issues the applicant with an apology for officers forcing entry to her home in implementation of the curfew recall notice.

Learning Point

Following his meeting with the applicant on 12 November 2008, Inspector D considered that the applicant had accepted the explanations he had provided to her and that her complaint had been resolved. However, no statement or other written record was obtained confirming the applicant's position on whether she believed the complaint had been resolved. In the Commissioner's view, a written record, signed by the complainer, should always be obtained in such circumstances. Failure to do so leaves open the possibility of doubts as to precisely what was discussed and/or agreed.

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