

# Report of a Complaint Handling Review in relation to Northern Constabulary

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

## **Summary and Key Findings**

The applicant's complaint arose from allegations he made about his former employer which he felt were not investigated by Northern Constabulary.

The Commissioner found that the complaint was not dealt with in a reasonable manner but, for the reasons given in the report, no recommendation was made in this connection.

## 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

On 18 August 2008, the police were called to a work site following a call reporting the theft of scrap metal. On arrival Constables A and B observed Mr C, the assistant site manager, loading a lorry with scrap copper piping. Following enquiries, it was established that the copper had come from an outbuilding on the site and that the driver of the lorry, Mr D, was a scrap metal dealer.

Mr C and Mr D thereafter attended a local police station where they provided statements under caution. The scrap metal was also transported to the station and stored in a wash bay at the rear of the station.

Following further enquiries, a crime report in respect of Mr C was submitted to the Procurator Fiscal relating to the alleged theft of the copper piping. The Procurator Fiscal ultimately decided to take no proceedings in this connection.

Meanwhile, on or around 12 September 2008 the Health and Safety Executive contacted Northern Constabulary following an anonymous phone call reporting that the seized copper piping was contaminated with asbestos. Following tests, it was established that the piping was indeed contaminated by asbestos and arrangements were made to have the material removed from the police station. The area was thereafter industrially cleaned, and Constables A and B given health advice regarding asbestos exposure.

The applicant, who was formerly employed by the security company responsible for guarding the work site, contacted Northern Constabulary by letter in December 2008. In his letter the applicant expressed concern about the working practices at the site. The applicant also alleged that his former employers had instructed him to withhold from the police the fact that the seized copper piping was contaminated by asbestos.

In a letter received by Northern Constabulary on 26 October 2009 the applicant complained that this matter had not been investigated by police. The applicant alleged that Mr G, a representative of the site owner, had withheld from the police the fact that the copper was contaminated with asbestos.

## The Complaint

Based on the contents of the application form and the information obtained from Northern Constabulary, the Commissioner has identified a single complaint, namely that the police failed to investigate the applicant's allegation concerning the withholding of information.

## The Commissioner's Review

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

In his statement dated 15 November 2009 the applicant stated that he wished to find out why two individuals, including Mr G, were not questioned over the withholding of information from the police regarding the danger posed by asbestos contamination of the copper piping.

### *Internal Handling*

The applicant's complaint was recorded in a Complaint about the Police (CAP) form dated 27 October 2009. The complaint was investigated by Inspector E whose report on the matter is dated 23 November 2009. As part of his investigation, Inspector E obtained operational statements from numerous witnesses including Constables A and B, whose accounts reflect the information contained in the background section above. The following is a summary of the accounts given by some of the other witnesses:

- Constable F had responded to an earlier reported theft of copper piping at the work site on 10 August 2010. He explained that on arrival at the site he and another officer met with Mr G. Mr G explained that he was seeking advice regarding copper being removed from the boiler room of the work site. According to Constable F, Mr G informed him that it was not possible to enter the boiler room at that time because of the presence of asbestos.

According to Constable F, Mr G did not want to involve the police at that stage as "he had very little evidence to put forward". Constable F explained to Mr G that he would await further contact from him and in the meantime would log the incident and bring it to the attention of the local CID. According to Constable F, he updated the police computer record in respect of the incident and "made note of the asbestos hazard at the alleged locus within the boiler room".

- Inspector H confirmed that Constables A and B had attended the work site on 18 August 2008 in response to the reported theft. According to Inspector H, neither he nor Constables A or B were aware of an asbestos risk relating to the seized copper piping. Inspector H stated that it was only after the incident of 18 August 2008 that he had learned about the earlier incident of 10 August 2008 attended by Constable F.

- Sergeant N stated that in January 2009 he had been given the task of looking into the applicant's allegations of poor working practices followed by his former employer. He met the applicant at his home on 1 February 2009 and noted a statement from him in this connection. According to Sergeant N, "[the applicant] made no criminal allegations and merely complained about poor working practices of [his former employer]."

Sergeant N explained that at the conclusion of the meeting he informed the applicant that there would be no further enquiry into the matter as the applicant was not making any new criminal allegation. Sergeant N also advised the applicant to take his complaints regarding poor working conditions to the relevant employment authorities. According to Sergeant N, the applicant was "happy with this outcome".

- Superintendent K had received information relating to a possible asbestos risk prior to the applicant making an official complaint to the police. He explained that in December 2008 / January 2009 he received information to the effect that asbestos-contaminated material was being held at the police station. He then spoke to Mr J (a health and safety employee of Northern Constabulary) who advised him that the matter had been addressed and that no further action was necessary. According to Superintendent K he had nevertheless asked Inspector L to enquire into the matter. Superintendent K's understanding was that "no crimes or offences were established."

The following are excerpts from Inspector E's report of 23 November 2009:

*"... on 10 August 2008, a report was received from [Mr G] ... to the effect that he believed contractors were removing copper from [the work site]."*

*Police attended at the locus where they were met by [Mr G]. It is the attending officer's evidence that [Mr G] was merely seeking advice and he did not have sufficient evidence that contractors were removing copper from the site. He did however, make it clear that there was asbestos within the areas where he suspected the copper was being removed from ...*

*It is [the applicant's] view that [individuals including Mr G] knew the copper piping was contaminated but failed to notify the police. That being said, there is clearly mention of asbestos contamination in [the incident history] on 10 August 2008.*

*"... [the applicant] has made it clear that he has no complaint against any officer within Northern Constabulary. However, he would appreciate answers to the decision making at this time. Accordingly, it is respectfully requested that this report, along with the attached enclosures be forwarded to the Deputy Chief Constable for his information."*

On 9 December 2009 Chief Inspector M issued the following response to the complaint:

*"I can confirm, following our enquiry into this matter, that police management at the time were informed that asbestos was contained within the property seized, and measures were taken to remove the asbestos from the police property and so protect officers. The officers themselves were also given advice and guidance by the Force Health and Safety Officer in this regard. I also understand that police enquiry was made into the matter, however, there was insufficient evidence to bring charges against anyone in this regard.*

*I hope you can understand that the police did everything they possibly could to enquire into the matter but unfortunately could not establish evidence to bring a prosecution. As I said above, the police did everything they possibly could to remove the threat of the asbestos harm as soon as it was made known to them."*

### *Consideration*

As noted above, there is clear evidence that Mr G informed officers on 10 August 2008 of the existence of asbestos at the locus of the alleged theft. This wholly undermines the applicant's allegation that Mr G withheld this information from the police.

In the Commissioner's view, Chief Inspector M ought to have referred to this evidence explicitly in his letter of response to the applicant. Had he done so, it might well have resulted in the applicant accepting the response he received.

In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, as the relevant evidence has been detailed in this report, the Commissioner makes no recommendation in this connection.

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

For the reasons given the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, no recommendation is made in this connection.

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

Hamilton House  
Caird Park  
Hamilton  
ML3 0QA