

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

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

Summary and Key Findings

The applicant raised four complaints regarding the involvement of police officers in his removal to a hospital for psychiatric assessment/treatment. Of the four complaints considered, the Commissioner found that three were not handled reasonably. The Commissioner made two recommendations in respect of complaints 1 and 3.

A learning point was identified in respect of 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

On the evening of 24 November 2007, the applicant's wife, Mrs A, was concerned for his mental wellbeing and arranged for an out-of-hours doctor to attend at their home to examine him. When Doctor B arrived, the applicant refused to allow an examination to take place as Doctor B was unable to provide any identification. The applicant continued to refuse to be examined, stating that he would rather see his own doctor, and he pushed Doctor B away from him.

Mrs A and Doctor B agreed that the applicant required urgent medical help and decided to call the police. Sergeant C and Constable D attended at the applicant's home and were advised by Doctor B that the applicant needed to be taken to Hospital X as he required urgent treatment. Attempts were made to encourage the applicant to go to hospital but he insisted that he wanted to stay at home to "relax". Sergeant C and Constable D state that the applicant was aggressive and threatened that he would shoot them if they did not leave his home.

Constables E and F arrived at the property and Sergeant C held a small briefing to determine the course of action to be taken. A decision was then made to detain the applicant under mental health legislation and remove him forcibly if necessary. A violent struggle ensued and CS spray was utilised. Leg restraints and handcuffs were applied and the applicant was taken to a police vehicle to be conveyed to Hospital X.

On arrival at Hospital X, the applicant was assessed and refused admission. Arrangements were made for him to be taken to Hospital Y instead. The applicant was thereafter driven by Constables E and F to Hospital Y.

On 8 July 2009, the applicant's solicitor wrote to Lothian and Borders Police advising that he had been instructed to lodge a complaint about the incident.

The Complaints

Based on the information supplied by the applicant and that obtained from Lothian and Borders Police, the Commissioner has identified the following complaints:

- (1) that officers of Lothian and Borders Police acted on a doctor's instructions and took the applicant to hospital;
- (2) that the applicant was not informed where he was being taken;
- (3) that officers did not loosen the applicant's restraints when asked to do so; and
- (4) that the applicant's request to use a toilet was not granted.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Lothian and Borders Police. Each complaint is set out in turn and is followed by details of Lothian and Borders Police's handling of it and the Commissioner's views on this.

Complaint 1: Acting on doctor's instructions

Internal Handling

Superintendent G responded to the solicitor's letter of complaint on 13 July 2009 advising that the Deputy Chief Constable had appointed a senior officer to investigate the incident. A Complaint About the Police (CAP) form was completed and Inspector H was appointed as the investigating officer.

Operational statements were provided by Constables D and E on 15 July and 22 July 2009, respectively. An undated statement was also obtained from Sergeant C. Sergeant I took a statement from the applicant on 4 August 2009 which raised this particular complaint. Sergeant I also noted a statement from Mrs A on 5 August 2009. On 4 August 2009 Inspector H obtained medical authorisation from the applicant for the release of personal information which was forwarded to his general practitioner and Hospital Y. Extracts from mental health legislation were also obtained.

In August 2009 Inspector H compiled an undated report which was forwarded to the Deputy Chief Constable. In the report, Inspector H noted that no statement was available from Constable F as the officer had resigned from Lothian and Borders Police. With regard to complaint 1, Inspector H stated:

"The Mental Health (Care and Treatment) (Scotland) Act 2003, provides that a constable may enter premises and detain an individual. The individual's doctor should arrange for the person to be assessed. On this case at [Hospital X] and the [Hospital Y]."

On 25 August 2009, the Deputy Chief Constable issued the following response to the complaint:

"Firstly, you alleged that on 25 November 2007, officers wrongly acted on a doctor's instruction when they restrained you then conveyed you to hospital. The medical notes of the doctor show that he believed your condition to be such, that immediate medical help was necessary to provide you with the help you required, therefore he arranged for you to be admitted to hospital immediately. The officers who attended your home, did so in

response to a request from your wife and the doctor. They were then asked to assist in conveying you to hospital.

I understand how upsetting this experience must have been for you, but I must emphasise that the officers acted within the law and with your best interests in mind to ensure that you were given the help and care you required. Accordingly, I am unable to substantiate this allegation.”

A copy of the Deputy Chief Constable’s response was also provided to the applicant’s solicitor.

Consideration

Sergeant C states that, following the attendance of Constables E and F, he held a small briefing to discuss the course of action. Both Sergeant C and Constable D state that the decision was then taken to detain the applicant under the “Mental Health Act”. Constable D states that this decision was taken in consultation with the applicant’s wife and Doctor B.

The relevant legislation governing the detention of persons in such circumstances is the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). From the information provided, it is unclear under which section of the 2003 Act the applicant was detained. As can be seen from the statements of Sergeant C and Constable D, it is also unclear which legislative framework they believed they were acting under.

The 2003 Act specifies the persons authorised to detain a person suffering from a mental disorder. Section 297(1) gives the police the power to remove from a public place a person reasonably suspected to be suffering from a mental disorder, provided the police suspect that the person is in immediate need of care or treatment. However, those powers do not extend to the removal of such persons from a private residence.

Although the Deputy Chief Constable advised the applicant that the attending officers acted within the law, the precise legal basis for the action taken by the officers was not explained to the applicant. Nor is this apparent from Lothian and Borders Police’s complaint file.

It is clear that the officers who attended the incident were faced with an extremely difficult situation, and the Commissioner does not in any way dispute that they acted with the applicant’s best interests in mind. However, where a complaint arises from the use of police powers it is incumbent on police bodies to state explicitly and accurately the basis upon which those powers were exercised. As the legal basis for the removal of the applicant from his home has not been fully explained to him, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. Accordingly, the Commissioner recommends that Lothian and Borders Police writes to the applicant explaining the precise legal basis for the action taken by the attending officers.

Complaint 2: Failure to inform applicant

The applicant complains that he was not told that he was being taken to Hospitals X and Y.

Internal Handling

Details of the handling of this complaint are as set out under complaint 1. In respect of this complaint, Inspector H stated:

“The complainer’s wife states that she told her husband that he was going to get the help he needed.

[Sergeant C] states that he asked the complainer to accompany him to the hospital, but that the complainer flatly refused. [Constable D] corroborates [Sergeant C].”

The Deputy Chief Constable stated the following in his response:

“Secondly, you alleged that on 25 November 2007, while you were in the police van at your home and at [Hospital X], officers did not tell you where you were being taken. I understand that prior to you entering the police van, you were informed by your wife, and also by the sergeant who attended your home, that you were being taken to hospital. I am therefore unable to substantiate this allegation.

Consideration

Both Constable D and Sergeant C’s statements detail that, on initially entering the applicant’s home, he was asked if he would accompany them to Hospital X. Constable D states that, having refused this request, the applicant was asked the same question but again refused.

Constable D provides the following account of her actions following the applicant being restrained:

“... I tried to calm [the applicant] down by explaining why he was handcuffed and why he was restrained and what was going to happen next.”

The available evidence suggests that the applicant was informed of the officers’ intention to take him to Hospital X and the reasons for this. However, contrary to the Deputy Chief Constable’s response, there is nothing in Mrs A’s statement to suggest that she told the applicant where he was being taken.

The Deputy Chief Constable’s letter of response is also silent on the applicant’s complaint that he has not informed that he was being taken to Hospital Y. In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, the Commissioner notes the following passage in the account given by Constable E:

‘[The applicant] was further assessed and considered to be so violent he could not be detained at the unit. Therefore, [Constable F] and myself assisted medical staff by conveying him to [Hospital Y].’

Given Constable E’s position that the police involvement at this point was purely to assist medical staff, it could be considered that the onus was on the medical professionals at Hospital X to decide whether or not to inform the applicant where he was being taken.

Overall, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, for the reasons given, he makes no recommendation in this connection.

Complaint 3: Failure to loosen restraints

The applicant complained that during his examination at Hospital X his handcuffs were not loosened following his request to this effect.

Internal Handling

In respect of this complaint, Inspector H stated:

“The statements of the police officers refer to the complainer’s aggressive and violent behaviour when attempts were made to restrain him prior to conveying him to hospital. The complainer’s unpredictable behaviour, threats and attempts to head butt, kick and bite the

officers, show that the restraints employed were necessary to ensure the safety of everyone concerned.

[Constable E] relates that when the complainer was assessed at [Hospital X], he was considered to be so violent that he could not be detained there and staff requested that he be taken to the secure accommodation at [Hospital Y]."

The Deputy Chief Constable provided the following response:

"You further alleged that while in the rear of the police van at [Hospital X], officers did not loosen your handcuffs when you complained that they were digging into your wrists. You acknowledge that a doctor examined your wrists while you were at [Hospital X], however, staff assessed that, while you were clearly unwell, your condition was such that you could not be detained there. Accordingly, it was decided at that time not to remove your handcuffs. In consideration I cannot substantiate this allegation."

Consideration

The statements of Sergeant C, Constable E and Constable D all indicate that the applicant was considered to be too violent to be detained at Hospital X, although none of them makes any reference to the applicant requesting that his restraints be loosened. The Commissioner acknowledges that the potential risk posed by the applicant was such that the restraints could not be removed.

However, the complaint made by the applicant was that the handcuffs were not loosened. A statement has not been taken from the examining doctor and there is no reference to this complaint within the statements provided by the officers involved. As a consequence, it has not been addressed in either Inspector H's report or the Deputy Chief Constable's response. Additionally, while the response implies that the applicant acknowledged a doctor at Hospital X had examined his wrists, the applicant actually stated the following:

"The police opened the back doors but I wasn't allowed out. The doctor examined me visually through the door and looked at the handcuffs. I asked for them to be slackened, but the police said they couldn't do that."

As there is no statement from the doctor in question, it is not possible to verify whether the applicant's wrists were physically examined. Although the Commissioner acknowledges that circumstances may have prevented further checks from taking place, in his view it is unlikely that a visual inspection would have been sufficient to determine if the restraints were, in fact, too tight.

For the reasons given, the Commissioner considers that the handling of this complaint was not reasonable. The Commissioner therefore recommends that Lothian and Borders Police obtains the accounts of the examining doctor and the officers involved, and provides the applicant with a further response to this complaint.

Complaint 4: Refusal of access to toilet

The applicant complains that he was not allowed to use the toilet at Hospital X, resulting in him having to urinate himself whilst handcuffed in the rear of the police vehicle.

Internal Handling

Inspector H stated the following in his report:

“The officers’ evidence to the previous allegation provides explanation as to why the complainer may not have had his restraints removed to allow him to go to the toilet. However, [Constable E] states that he cannot recall the complainer soiling himself while in police care.”

The Deputy Chief Constable provided the following response:

“Finally, you alleged that while at [Hospital X], you were not permitted to go to the toilet and later soiled yourself as a result. You will appreciate that as your behaviour necessitated the handcuffs being left on, there was no way of allowing you to use the toilet at that time and I apologise for any discomfort you may have experienced due to this. I am unable to substantiate this allegation.”

Consideration

Within the statements of the applicant, Sergeant C and Constable E, there are conflicting accounts of whether the applicant asked to go to the toilet and whether he urinated himself. Whilst Constable D made no reference to this issue, Sergeant C stated that at no time did the applicant ask to go to the toilet. As noted above, Constable E stated that he had no recollection of the applicant urinating himself whilst in police care. Accordingly, the Commissioner is doubtful that this complaint is substantiated.

The Deputy Chief Constable appears to have approached this complaint on the basis that, due to his behaviour, the applicant would not have been permitted to use the toilet in any event. An apology was therefore given as to any discomfort caused by this. Assuming the applicant’s account to be correct, the Commissioner considers that the Deputy Chief Constable’s response was a reasonable one. Although all persons in police custody should be treated with dignity, there are circumstances where necessity does not permit this. In the present case, there is a substantial body of evidence that the applicant posed a significant physical threat to those around him. In the Commissioner’s view, it would therefore have been understandable if, while conveying the applicant to an appropriate medical facility, officers were reluctant to remove the restraints in order to allow the applicant to use the toilet.

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

Conclusions, Recommendations and Learning

Complaint 1: Acting on doctor’s instructions

The Commissioner does not consider that this complaint was dealt with in a reasonable manner by Lothian and Borders Police. The Commissioner recommends that Lothian and Borders Police writes to the applicant explaining precisely the legal basis for the action taken by the attending officers.

Complaint 2: Failure to inform applicant

In the Commissioner’s view, the manner in which this complaint was dealt with was not reasonable. However, for the reasons given, the Commissioner makes no recommendation in this connection.

Complaint 3: Failure to loosen restraints

In the Commissioner’s view, the manner in which this complaint was dealt with by Lothian and Borders Police was not reasonable. The Commissioner recommends that Lothian and Borders

Police obtains the accounts of the examining doctor and the officers involved, and provides the applicant with a further response to this complaint.

Complaint 4: Refusal of access to toilet

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

Learning Point

As noted above, Inspector H commented in his report that no statement had been taken from Constable F on the basis that he had resigned as a police officer. However, the fact that an officer has resigned or retired from a policing body does not justify the decision not to obtain a statement from him/her if this is considered necessary in a complaints investigation. This issue has been highlighted in a previous Lothian and Borders Police review (PCCS/00431/PF – L&B).

John McNeill
Police Complaints Commissioner for Scotland

Hamilton House
Caird Park
Hamilton
ML3 0QA