

Report of a Complaint Handling Review in relation to Dumfries and Galloway Police Authority

under section 35(1) of the Police Public Order

Summary and Key Findings

The applicant complained to Dumfries and Galloway Police Authority about the Chief Constable and Deputy Chief Constable of Dumfries and Galloway Constabulary. Her complaints arose from an incident which resulted in her brother being dismissed as an officer of Dumfries and Galloway Constabulary.

Following the decision of the Police Authority, the applicant complained to the Commissioner's office about the manner in which the Authority had dealt with her complaints.

The Commissioner made four recommendations and identified four learning points.

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 brother, Mr A, was a sergeant with Dumfries and Galloway Constabulary ("D&G") but was dismissed following his arrest and conviction on a charge of attempted murder. The victim was Mr A's wife.

On 10 July 2006, a representative of Mr A (Mr B) wrote to the chairman of Dumfries and Galloway Police Authority ("the Authority") expressing concerns over the way in which Mr A had been treated by D&G. On 1 September 2006, the applicant herself made 19 complaints to the Authority against both the Chief Constable and Deputy Chief Constable of D&G. The applicant believes that, had a number of officers within D&G "acted appropriately" (in line with procedure, protocol and guidelines), the incident which gave rise to Mr A's conviction could have been prevented. The applicant's fundamental point is that at the material time Mr A was suffering from mental health problems which were effectively exacerbated by actions taken by D&G.

Following receipt of the complaints, a member of staff at Dumfries and Galloway Council, Mr C, prepared a report for the Authority. Mr C's report contained the following conclusion in respect of the applicant's complaints:

"The complainer has made a series of assertions and allegations against the Chief Constable and the Deputy Chief Constable, which have to be considered under the [Police (Conduct) (Senior Officers) (Scotland) Regulations 1999]. Members have to be satisfied that it can be reasonably inferred that any act or omission complained about amounts to or might amount to misconduct for the purposes of the Regulations.

It is clear that the Complainers are dissatisfied with the circumstances that culminated in the attempted murder of [Mr A]’s former wife, by [Mr A], his conviction in relation to that matter and his subsequent incarceration.

The underlying thrust of their Complaint is that action should have been taken at appropriate times by the Police to address those health issues confronting [Mr A] and that, by implication, the tragic events that followed would have been avoided. It should be pointed out, in this connection, that an alleged breach of a duty of care under the Health and Safety Legislation does not constitute misconduct in terms of the 1999 Regulations.

The Complaint, as previously noted, is against not just the Chief Constable, the Deputy Chief Constable, the Force Executive, but also other named Officers. It seems fairly clear that the Complainers are not really making a complaint against individuals but about the way the Force is perceived to have conducted itself.

The essence of a Complaint under the Regulations is that the Senior Officer in question has done an act or omitted to do an act that amounts to ‘misconduct’, as per the statutory definition. There is nothing in the complaint from which it could be reasonably inferred that the matters complained of amount to misconduct on the part of the Chief Constable and/or Deputy Chief Constable in terms of the Regulations ...

In all the circumstances, it is difficult to see how it can be reasonably inferred that these acts or omissions complained amount to or might amount to misconduct.”

Mr D (a senior administrative official of the Authority) submitted Mr C’s report to the Authority’s Complaints against Senior Police Officers Sub-committee (“the sub-committee”) recommending that members of the sub-committee agree with the conclusions reached and that no further action be taken in respect of the complaints.

The applicant’s complaints were considered at a meeting of the sub-committee on 14 December 2006. At this meeting it was decided that the complaints made by the applicant did not reasonably infer misconduct on the part of either officer. Accordingly, pursuant to paragraph 5(3) of the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999 (“the 1999 Regulations”), the sub-committee decided to take no further action in respect of the applicant’s complaints.

The applicant subsequently referred various complaints to the Commissioner’s office concerning the manner in which the Authority had handled her complaints.

The Complaints

Based on the contents of the correspondence received from the applicant, and the information obtained from the Authority, the Commissioner has identified the following complaints:

- (1) that the Authority failed to acknowledge the applicant’s letter of complaint within a reasonable time period;
- (2) that the Authority was unaware of its responsibilities in respect of complaints about senior police officers;
- (3) that the Authority colluded with D&G when investigating the applicant’s complaints;
- (4) that the sub-committee was composed of councillors who also sat on the Authority’s Complaints about the Police Sub-committee;
- (5) that an Authority official intercepted and censored mail addressed to another official;

- (6) that an administrative official of the Authority denigrated the applicant's complaints;
- (7) that an administrative official of the Authority failed to act impartially;
- (8) that the Authority informed the Deputy Chief Constable of its decision soon after it had been made;
- (9) that the Authority failed to inform the applicant of the reasons behind its determinations;
- (10) that the Authority failed to request supporting documents from the applicant;
- (11) that the Complaints about the Police Sub-committee did not scrutinise the decisions made in respect of her complaints;
- (12) that an administrative official of the Authority failed to advise a colleague about unethical conduct on her part;
- (13) that the Authority failed to adhere to the relevant regulations when investigating the applicant's complaints;
- (14) that an administrative official of the Authority failed to press D&G to investigate complaints made by the applicant; and
- (15) that the Authority tried to make the applicant's complaints "go away".

The Commissioner's Review

The complaints considered by the sub-committee originate from the applicant's belief that the Chief Constable and Deputy Chief Constable of D&G failed in their duty of care towards Mr A. However, rather than restating those complaints, the applicant's correspondence to the Commissioner's office details her concerns over the manner in which the Authority handled them. The applicant's concerns predominantly involve the processes used by the Authority in dealing with her complaint, the specific details of which are set out below under the relevant complaint heading.

Complaint 1: Response time to letter of complaint

The applicant complained about the amount of time taken by the Authority to acknowledge her letter of complaint. The applicant explained in this connection that it had taken the Authority 19 days to acknowledge the letter.

Consideration

The applicant's letter of complaint was received by the Authority on 1 September 2006. An acknowledgment letter was sent to her by email on 19 September 2006. In the email Mr D apologised to the applicant for the delay in responding to her letter of complaint.

The Commissioner agrees with the applicant that the delay in responding to her letter of complaint was excessive. Indeed, according to the Authority's procedures for dealing with complaints against senior police officers, the target in respect of the acknowledgment of complaints is 5 days.

However, as Mr D apologised for the delay the Commissioner recommends no further action in respect of this complaint.

Complaint 2: Awareness of responsibilities

The applicant alleges that the Authority, in particular its chairman, was unaware of its responsibilities in respect of complaints about senior police officers. The reason for the applicant's belief is that, following receipt of Mr B's letter of 10 July 2006, the chairman replied on 31 July 2006 advising that Mr B's concerns were matters which had to be considered by the Deputy Chief Constable in the first instance, and that it would not be appropriate for him to become involved at that stage.

Consideration

According to his letter of 10 July 2006, Mr B had "grave concerns" with how Mr A's case had been handled by D&G and its plan to initiate an internal management review of the case. However, the letter did not make direct reference to the Chief Constable or the Deputy Chief Constable and did not specify the nature of the complaint. In light of this, the Commissioner finds the chairman's position as stated in his letter of 31 July 2006 to be entirely reasonable.

On 30 July 2006 Mr B submitted a revised version of his complaints to the Authority in which he made specific reference to the Chief Constable. The Commissioner has examined the documentation referred to by the applicant in support of her complaint, as well as documentation supplied by the Authority, and is satisfied that the subsequent actions of the Authority demonstrate an awareness of its responsibilities in respect of complaints about senior police officers.

Complaint 3: Alleged collusion

The applicant alleges that the Authority colluded with D&G during its consideration of her complaints. In support of this allegation, the applicant referred the Commissioner to two emails sent by officials of the Authority which she had obtained following a request under the freedom of information legislation.

Consideration

The first email

The first email referred to by the applicant is dated 4 August 2006 and was sent by an official of the Authority (Ms F) to Mr D. Ms F suggested in the email that Mr D "speak informally" to the Deputy Chief Constable about the complaint submitted by Mr B, as well as to elected members of the Authority.

At the time when Ms F sent this e-mail, the Authority had received two letters from Mr B (dated 10 and 30 July 2006) both of which were addressed to the chairman of the sub-committee. As noted above, the letter of 10 July 2006 did not contain any specific reference to the Chief Constable or Deputy Chief Constable and did not detail the nature of the complaint. The letter of 30 July 2006, whilst also not containing any detail as to the nature of the complaint, included the following passage:

"Myself and [the applicant] would be willing to attend at your office to detail the specific allegations which concern us regarding what we perceive as failings by Dumfries and Galloway Constabulary and the Force Executive including the Chief Constable, in the way they dealt with [Mr A] over the three year period ... I am advised by [Her Majesty's Inspectorate of Constabulary] that complaints against Chief Constables / Force Executives i.e. the most senior officers should not be dealt with internally but should be directed to the relevant Police Committee i.e. yourself so that an external body can be appointed to investigate the senior management."

The view taken by Mr C was that Mr B's letter of 30 July 2006, though possibly containing complaints about other officers, did not contain a complaint about the Chief Constable or Deputy Chief Constable. In the Commissioner's view, however, although the nature of the complaints were not made clear, Mr B's letter of 30 July 2006 made clear that he wished to complain about the Chief Constable and Deputy Chief Constable. Accordingly, the Commissioner would have expected the Authority to have invoked its complaint handling process at that point.

It is clear, however, that at the time Ms F emailed Mr D it was not considered that any complaint was being made against the Deputy Chief Constable. Accordingly, based on the information supplied to the Commissioner, Ms F's suggestion that Mr D speak informally to the Deputy Chief Constable does not amount to evidence of collusion between the Authority and D&G. Rather, it appears simply to have been based on a misconception regarding the involvement of the Deputy Chief Constable in Mr B's complaints. Given that Mr B's letter contained concerns about other police officers, it would have been appropriate to discuss these with the Deputy Chief Constable as the officer ultimately responsible for complaints and misconduct.

The Commissioner wishes to emphasise, however, that in circumstances where an authority becomes aware of a complaint against a senior officer, any contact between representatives of the authority and the officer subject to complaint should be on a formal basis, with a record kept of all matters discussed. In the Commissioner's view, such measures are vital to ensure that the role of the authority is, and is perceived to be, effective and impartial.

The second email

In the second email referred to by the applicant, dated 29 September 2006, Chief Inspector G of D&G's Complaints and Professional Standards Unit informed Ms F that no appeal had been received from Mr A in relation to his dismissal from D&G. The applicant states that, given Chief Inspector G was also the subject of a complaint, this contact was inappropriate.

It appears from the email that Chief Inspector G was responding to questions raised by Ms F during a previous discussion. However, there is no record in the Authority's file of such a discussion and therefore the context of Chief Inspector G's email is not entirely clear. In the Commissioner's view, it is essential when authorities deal with complaints about senior officers that a record is kept of all enquiries undertaken. In some cases, failure to maintain such records may cast doubt on whether enquiries were undertaken at all, and therefore call into question the basis for decisions made.

In the present case, however, the Commissioner does not consider Chief Inspector G's email to be relevant. As Chief Inspector G is not a senior officer in terms of the 1999 Regulations, any complaint about him would require to be considered by D&G, not the Authority. In the Commissioner's view, there is nothing in Chief Inspector G's email that might constitute evidence of collusion between the Authority and D&G. As noted above, the email merely confirms that Mr A had not lodged an appeal within the required timescale.

Complaint 4: Composition of the Authority's Sub-committee

According to the applicant, it is unacceptable that the sub-committee was composed of councillors who also sat on the Authority's Complaints about the Police Sub-committee. The basis for the applicant's concern is that members of the Complaints about the Police Sub-committee meet regularly with senior officers of D&G.

Consideration

In respect of complaints about the police, the Authority has two distinct roles. The first is to consider complaints about senior police officers: under the Authority's procedures, this function is performed by the sub-committee. The second is to keep itself informed as to how D&G deal with

complaints about the police generally: under the Authority's procedures, this (statutory) function is performed by the Complaints about the Police Sub-committee.

While it is true that members of the Complaints about the Police Sub-committee meet regularly with senior police officers, the purpose of such meetings is for the Authority to satisfy itself that complaints are being dealt with appropriately. In the Commissioner's view, the fact that members of one committee may sit on another committee does not, in itself, constitute evidence of a conflict of interest or inherent bias. In order to establish a risk of conflict or bias, there would require be evidence of convincing nature going well beyond what the applicant has provided in the present case.

Complaint 5: Interception and alleged censoring of mail

In correspondence sent to the Commissioner's office in February 2010, the applicant wrote the following in respect of this complaint:

"[Mr D] adopts the role of Chief Executive from the very outset. He effectively censors all incoming mail to [Mr H] the Chief Executive, to all councillors in the Sub Committee, to all council employees involved with the complaint ..."

In support of this claim, the applicant again referred the Commissioner to internal emails which she had obtained from the Authority under the freedom of information legislation.

Consideration

An internal email sent by Mr D on 7 August 2006 confirms that he took responsibility on behalf of the Authority for dealing with the applicant's complaints. In the email Mr D wrote:

"...I shall be obliged if you will amend the record to show that I shall be dealing with this issue on behalf of the Council as Police Authority and that any further correspondence coming ... should be routed through myself even if it is addressed to a member. I shall accept responsibility for ensuring that the intended recipient of the correspondence receives a copy."

In letters sent by Mr D to Mr B on 7 and 24 August 2006, Mr D confirms himself as the main point of contact for all future correspondence. In his letter of 24 August, Mr D wrote:

"I shall be obliged if you will note, for future reference, that there is no need for you to duplicate correspondence with the Police Authority which should be addressed to [Mr H], Chief Executive and Clerk and marked for my attention".

In terms of the Authority's procedures for dealing with complaints about senior police officers, the Clerk to the Authority may delegate to another official the task of preparing the report to be laid before the Complaints about the Police Sub-committee. It would appear in this case that Mr D has been delegated this responsibility. Accordingly, the Commissioner is satisfied that Mr D's conduct was not improper.

Although the Commissioner has no reason to doubt that Mr D was indeed delegated the role of dealing with the applicant's complaints, the only evidence of this is Mr D's own letters and email. In the Commissioner's view, all delegations of authority relating to the handling of complaints about senior officers should be recorded by the individual responsible for the delegation, in this case the Clerk.

Complaint 6: Alleged denigration of the applicant's complaints

The applicant alleges that Mr D denigrated her complaints. As evidence of this, the applicant referred the Commissioner to an internal memorandum she had obtained from the Authority under the freedom of information legislation.

Consideration

In the memorandum, dated 19 September 2006, and sent by Mr D to Mr C, Mr D wrote:

"While the complaint involves a number of Officers it would appear to me that the complainants have involved the Chief Constable in an effort to ensure that the Police Authority invoke the provisions of the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999."

The Commissioner does not accept that Mr D's comments in this connection necessarily resulted in the applicant's complaints being denigrated. Mr D was simply expressing his own view that the issues raised by the applicant did not infer misconduct on the part of the senior officers against whom the complaints had been made. Irrespective of whether he was correct in this assessment, Mr D was nevertheless entitled to express this view given his role in dealing with the applicant's complaints. It was for the elected members of the sub-committee, not Mr D, to judge the merits of the complaints in accordance with duties imposed by the 1999 Regulations. In doing so, it was open to the members to reject Mr D's assessment as well as to endorse it.

Complaint 7: Alleged failure to act with impartiality

The applicant alleges that Mr D failed to act impartially during the consideration of her complaints. In this connection the applicant wrote:

"[Mr D] has certain conflicts of interest in this complaint, as he was a friend of [Mr A's ex Father in Law] and his wife was employed by D and G Constabulary. His lack of necessary impartiality is evidenced in his internal memo to the council legal officer [Mr C], in which he denigrates the complaint, implying that a complaint has been made against the Chief Constable only to ensure that the Police Authority invokes the provisions of the Police (Conduct) (Senior Officers) Regulations 1999."

Consideration

As noted above, the Commissioner does not consider that the terms of the Mr D's memorandum necessarily resulted in the applicant's complaints being denigrated.

Nevertheless, the applicant has made several allegations which, if established, would cast doubt on Mr D's suitability for performing any role in respect of the applicant's complaints. There is, however, nothing in the file supplied by the Authority to confirm that these allegations have been raised directly with it. It is not within the Commissioner's statutory remit to consider the allegations against Mr D in the first instance and accordingly it is not possible to address the substance of them in this report. The Commissioner therefore recommends that the Authority now considers these allegations and issues the applicant with a response.

Complaint 8: Letter to the Deputy Chief Constable

The applicant complains that the Authority informed the Deputy Chief Constable "post-haste" of its decision in respect of her complaints. In this connection the applicant wrote:

"[Mr D's] decision to send a copy of the complaint to the [Deputy Chief Constable] post haste, the minute the complaint hearing was over, is totally unacceptable. It should be

noted that the progressing of the complaint took many weeks and months, yet a copy of the complaint was with [the Deputy Chief Constable] the minute the meeting was concluded.”

Consideration

In terms of the Authority's files, on 15 December 2006 the Authority sent the Deputy Chief Constable a letter informing him of the decision reached by the sub-committee. The Chief Constable and the applicant were sent similar letters on the same date.

In the Commissioner's view, there is nothing objectionable about the timings of these letters. Indeed, in terms of paragraphs 5(3) of the 1999 Regulations, the Authority is under an obligation to inform the complainer and the officers concerned "forthwith" of its decision to take no action under the Regulations.

Nevertheless, the Commissioner notes that, unlike the applicant, the Chief Constable and Deputy Chief Constable were sent copies of Mr C's report which was laid before the sub-committee. The report states Mr C's views as to why it could not reasonably be inferred that the alleged acts or omissions amounted to or might amount to misconduct on the part of the Chief Constable or the Deputy Chief Constable. In the Commissioner's view, despite there being no obligation on authorities to provide copies of such reports to senior officers who are subject to complaints, the Commissioner considers there to be nothing objectionable in the Authority having done so. What is objectionable, however, is that no consideration appears to have been given to also supplying the applicant with a copy of the report.

The Commissioner therefore recommends that the Authority disclose to the applicant a copy of the report (redacted as necessary to meet its obligations under the Data Protection legislation). This recommendation should be read alongside that made in respect of complaint 9 below.

Complaint 9: Failure to provide reasons

The applicant complains that she was not provided with details as to how the determinations of her complaints were made. There was accordingly no opportunity to scrutinise the decision-making and no "openness, transparency and accountability".

Consideration

The Authority's letter of response of 15 December 2006 provided the following information to the applicant:

"...The Sub Committee considered all 19 elements detailed in the complaint in terms of regulations 2, 3, 4, 5 and the Schedule to the 1999 Regulations.

Having considered the matter, the Sub Committee found that it could not reasonably be inferred that the acts or omissions referred in the complaint amounted to or might amount to misconduct on the part of either the Chief Constable or the Deputy Chief Constable in terms of the 1999 Regulations. The Sub Committee further agreed that the Police Authority would take no further action in relation to your complaint against the Chief Constable and/or the Deputy Chief Constable."

In the Commissioner's view, this passage merely reflects the relevant paragraph of the Regulations and fails to explain why the sub-committee found as it did.

As the Commissioner has stated on many previous occasions, it is not sufficient merely to advise a complainer of the decision that has been made in respect of their complaints. Policing bodies must provide complainers with sufficient information properly to inform them of how key conclusions

were reached in relation to their complaints. Only then can decisions be subject to appropriate scrutiny.

The Commissioner has already recommended that the Authority disclose a copy of Mr C's report to the applicant. In the event that the Authority's reasons for its decision go beyond the contents of Mr C's report, the Commissioner recommends that the Authority provides the applicant with sufficient additional information to properly inform her as to the basis of its decision.

Complaint 10: Obtaining further information

The applicant complains that the Authority did not seek further information from her in respect of her complaints. In this connection, the applicant wrote:

"[Mr C] was instructed by [Mr D] to prepare a report to present to the committee regarding the complaint. He did not request to see the file of supporting documents or interview any of the complainants. How therefore did he reach his conclusions? Did he contact any officers of Dumfries and Galloway Constabulary?"

As a result of this alleged failing, the applicant believes that a thorough investigation did not take place.

Consideration

There is no evidence within the Authority's files that it actively sought further information from the applicant in respect of her complaints.

In terms of paragraph 5(2) of the 1999 Regulations, where an authority considers that a complaint does not contain sufficient information to allow it to determine whether there is a reasonable inference of misconduct, it may take such steps as it considers reasonable to obtain further information. In the Commissioner's view, the fact that the Authority did not seek further information from the applicant implies that it did not consider it necessary to do so in order to perform its functions under the Regulations.

In the Commissioner's view, several of the applicant's complaints were not capable of inferring personal misconduct on the part of the Chief Constable or Deputy Chief Constable. For example, some of the complaints concern the duty of care which D&G, as an employer, owed to Mr A. While a failure to adhere to such a duty might result in D&G as an organisation being liable to Mr A, such complaints do not in themselves infer personal misconduct on the part of the Chief Constable. Simply because a chief constable is the figurative head of a police force does not mean that he/she is guilty of personal misconduct whenever it is established that organisational failings have occurred.

Within that context, the Commissioner considers that many of the Authority's findings in relation to the applicant's complaints are reasonable. However, it is clear from his report that Mr C believed there to be no evidence to substantiate several of the applicant's specific allegations against the Chief Constable (specifically complaints 1, 3, 6, 9 and 16-18 within the applicant's correspondence with the Authority of 1 September 2006).

In the Commissioner's view, assuming it endorsed Mr C's assessment of these complaints, the sub-committee ought to have approached the applicant to request any further information she could provide in support of them. The Commissioner therefore recommends that the Authority explains to the applicant why it did not consider it necessary to request further information from her in relation to complaints 1, 3, 6, 9 and 16-18.

In making this recommendation, the Commissioner considers it appropriate to quote the following passage from correspondence which the applicant submitted to the Commissioner's office:

“... We had been advised that this [the decision of the sub-committee] would be the likely outcome, which is the reason much of the detail of the complaint was not passed to the council, so that the evidence could not be compromised and [D&G] were not given pre-warning of all the information we have collated, which would allow them the time and opportunity to put their house in order before any further follow up.”

The applicant's position on this matter is therefore unclear. On one hand she is dissatisfied that the Authority did not seek information from her; on the other, she states that she did not provide all information to the council for fear that it might be passed to D&G. In the Commissioner's view, based on the above passage, there was a reasonable possibility that had the Authority approached her for further information, the applicant would have declined to provide it.

Complaint 11: Scrutiny of complaints

The applicant complains that the “full committee” of councillors did not scrutinise the decisions made in respect of her complaints. In this connection, the applicant wrote:

“... [Mr D] has ensured that any scrutiny of the decision made on the 14/12/06 is avoided, by burying the results at the back of a 90 page agenda / report to the full committee. Complaints are always listed as the last item on the agenda / reports and I am reliably informed that as a result, they are never covered in meetings.”

Consideration

As previously explained, the applicant's complaints were considered by a sub-committee of the Authority (comprising five councillors). The applicant believes that the sub-committee's decision should have been scrutinised by the full committee of councillors (comprising 19 councillors).

According to the Authority's procedures, the sub-committee has “full delegations to determine as required, in accordance with the regulations, the complaint/allegation received.” Accordingly, although complaints about senior officers are placed on the agenda of full committee meetings, it is clear that the responsibility of dealing with such complaints rests with the sub-committee.

In respect of the format of the agenda for such meetings, the Commissioner considers that this is a matter for the Authority to determine.

Complaint 12: Complaint handling procedures

The applicant complains that the Authority used another police authority's complaint handling procedures when dealing with her complaints. The applicant also complains that, having become aware of this, Mr C failed to advise a colleague that it would be unethical to adopt another authority's procedures. In this connection, the applicant wrote:

“[Mr C] allegedly has a legal background and as such he should be more than aware that formal complaints must be handled according to due process. However, it would appear that in his interpretation of the procedures anything goes. On receipt of such an email, he should have responded that they had specific regulations to follow and it would be unethical to handle a specific complaint as per another authority's actions rather than by the regulations and that to do otherwise would compromise the complaint.”

Consideration

The Commissioner agrees that it would be inappropriate for the Authority to use another authority's procedures in dealing with the applicant's complaints. However, the Commissioner finds nothing

objectionable in the Authority examining the practices of other police authorities in striving to apply the best possible practice regarding the investigation of complaints about senior police officers.

Furthermore, from an examination of the documentation supplied by the Authority, it is clear that it acted according to its own procedures during the consideration of the applicant's complaints.

Complaint 13: Alleged failure to adhere to the 1999 Regulations

The applicant complains that the Authority failed to adhere to the 1999 Regulations when investigating her complaints. In this connection, the applicant wrote:

“In order for this complaint to have been handled according to the regulations it should have been reviewed by the members of the sub-committee for complaints against senior officers. It was then up to them to appoint an independent investigator to prepare a report. On the basis of an independent report the Authority could then progress the complaint accordingly.”

Consideration

Contrary to what the applicant states, the Authority is under no absolute obligation to appoint an investigating officer under the 1999 Regulations. In terms of paragraph 5(1), an investigating officer must only be appointed where an authority considers that it may reasonably be inferred that an act or omission of a senior officer amounts, or may amount, to misconduct.

In the applicant's case, the sub-committee determined that the complaints about the Chief Constable and Deputy Chief Constable did not reasonably infer misconduct. Accordingly, it was not necessary to appoint an investigating officer under the Regulations.

Complaint 14: Alleged failure to challenge

The applicant states the following in correspondence sent to the Commissioner's office.

“As the council official at the [the Complaints about the Police Sub Committee] meeting ... [Ms F] did not challenge or press the DCC on the Management Review which was requested by the Sub-Committee.”

Consideration

The meeting referred to by the applicant was a meeting of the Complaints Against the Police Sub-committee which took place on 16 March 2007. In attendance at this meeting were three elected councillors, the Deputy Chief Constable, the Head of Professional Standards of D&G and Ms F. It was decided at the meeting to defer consideration of the complaints about the police made by the applicant, other than those relating to senior officers, until D&G had been in contact with the applicant.

The applicant considers this decision to have been improper given that, according to her, she had already informed D&G that she did not wish to engage with the complaints process. Accordingly, the applicant believes that Ms F should have pressed D&G to proceed to a review of her other complaints about the police.

In the Commissioner's view, the applicant's complaint is ill-founded. It is the Authority itself (ie the elected representatives) which has responsibility for monitoring the way in which police forces deal with complaints; it is not a role which ascribes to unelected council officials, such as Ms F, who are attached to the authority).

Furthermore, in order to carry out thorough complaints investigations the police require the cooperation of complainers. In circumstances where this cooperation is not forthcoming, it is not unreasonable for police forces to suspend complaints investigations.

Complaint 15: The Authority tried to make the applicant's complaint 'go away'

The applicant states the following in correspondence sent to the Commissioner's office:

"It was a major crisis and it is our position that [the Authority], fearing another major public outcry, decided to do everything in its power to make the problem go away."

Consideration

The Commissioner has found no evidence to support the applicant's claim. Following the identification of complaints about senior police officers, the Authority correctly invoked its procedures, leading to the applicant's complaints being considered by the relevant sub committee on 14 December 2006.

Conclusions, Recommendations and Learning

Complaints 1-6 and 11-15

For the reasons given, the Commissioner makes no recommendations in respect of these complaints.

Complaint 7: Alleged failure to act with impartiality

For the reason given, it is not possible for the Commissioner to consider the allegations against Mr D at this time. Consequently, the Commissioner recommends that the Authority now considers these allegations and issues the applicant with a response.

Complaint 8: Letter to Deputy Chief Constable

The Commissioner recommends that the Authority discloses to the applicant a copy the report submitted by Mr C to the sub-committee.

Complaint 9: Failure to provide reasons

In the event that the Authority's reasons for its decision go beyond the contents of Mr C's report, the Commissioner recommends that the Authority provides the applicant with sufficient additional information to properly inform her as to the basis of its decision.

Complaint 10: Obtaining further information

The Commissioner recommends that the Authority explains to the applicant why it did not consider it necessary to request further information from her in relation to complaints 1, 3, 6, 9 and 16-18.

Learning Points

- (1) Once a police authority is put on notice that a complaint is being made against a senior officer, any contact with that officer regarding the complaint should be formal in nature, with a record kept of all matters discussed.
- (2) In responding to complaints, police authorities must provide complainers with sufficient information properly to inform them how key conclusions in respect of their complaints were reached.

- (3) In dealing with complaints, police authorities must take steps to record details of any enquiries undertaken.
- (4) Where the clerk of a police authority delegates responsibility for dealing with a complaint about a senior officer to another official, the clerk should record that this has been done.

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