

Report of Complaint Handling Reviews 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 complaints arose from an investigation carried out by Northern Constabulary into allegations made against him by a former business partner.

Of the 22 complaints considered within this review, the Commissioner found that thirteen were not dealt with in a reasonable manner. The Commissioner made a number of recommendations.

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 owns and operates a business within the area over which Northern Constabulary has jurisdiction.

On 6 April 2006, Miss A (who at that time was the applicant's business partner and who is formerly a special constable with Northern Constabulary) attended a local police station to report that she had received a number of letters of both a sexual and defamatory nature. She suspected that the applicant was responsible for writing and sending the letters. Miss A provided Constable B with the contact details of potential witnesses to her allegations.

Over the following weeks, Constable B took statements from 11 people named by Miss A. Constable B then passed the paperwork to Detective Constable C. The majority of the witnesses stated that the applicant had used inappropriate language and gestures towards a number of his staff. The remaining witnesses stated that the applicant had not said anything which they had found offensive or made them feel uncomfortable.

Following enquires, it was suspected that the applicant might have sent similar letters to another female, Miss D, which had been received by her in 2002. It was also suspected that the applicant had made a number of false reports to the police in 2002 concerning a "proowler" on his business premises.

On 8 September 2006, Detective Constable C travelled to the applicant's place of business to arrange a suitable date for interview. The following day, the applicant voluntarily attended a local police station and was interviewed by Detective Constable C and Sergeant E. The incident log states that the applicant was interviewed in relation to "a series of incidents committed between

2002 and 2006 involving sending of letters to female staff, making false reports regarding prowlers and making obscene gestures and comments in the presence of females.”

During the interview, the applicant denied all the allegations and provided handwriting samples for comparison. At the conclusion of the interview, the applicant was arrested, cautioned and charged.

After being charged, the applicant sent letters to Miss A on 14 and 15 September 2006 barring her from entering his business premises. The following is an excerpt from one of those letters:

“As you are aware, there are a number of matters between us which are now sub judice and which ought not to be openly discussed. I have been approached by more than 30 customers who, together with our staff (past and present) have without exception expressed their discomfort and embarrassment at the tone of your conversations with them. Several customers have also added that they found your presence to be intimidating and that they would prefer not to see you or be approached by you whilst they are legitimately at [the applicant’s place of business].”

The applicant also wrote to Northern Constabulary on 18 September 2006 enclosing copies of his letters to Miss A and expressing concern that she was discussing matters relating to the case against him which she knew to be sub judice. The applicant wrote to the Procurator Fiscal in the same terms on 29 September 2006 and 10 October 2006. On several occasions prior to his trial, the applicant contacted the police and the Procurator Fiscal, providing information he believed to be relevant to the case against him. In particular, the applicant produced information which he believed demonstrated personal bias against him on the part of certain police officers and which threw doubt upon the credibility of Miss A.

In November 2006, Miss A attended at a local police station where she advised Detective Constable C that she wished to attend the applicant’s business premises to uplift property. Miss A asked if she could be accompanied by police officers. According to Detective Constable C, he informed her that officers could not accompany her but that he would speak to the Duty Sergeant about having officers positioned close by in case a breach of the peace occurred. Constables F and G were allocated this task. Both state that they parked at an opening some 600-800 metres from the applicant’s place of business. In the event, Miss A retrieved her property without incident.

In a letter to the police dated 2 March 2007, the applicant reported that his wife had been “seriously indecently assaulted” by Miss A. Two male detectives were tasked with interviewing the applicant’s wife and attended at her home in this connection on 26 April 2007. The applicant’s wife was unavailable for interview at this time. Within days, a further attempt was made to interview the applicant’s wife, when a plain clothes female officer attended her place of work. This was not fruitful and the applicant wrote again to the police, alleging a network of friendships which ultimately connected this officer to Miss A.

Arrangements to interview the applicant’s wife were then made directly with a female officer (Detective Constable H) from outside the local area. On 7 June 2007, however, the applicant wrote to Detective Constable H advising that due to the incident reviving his wife’s memories of a traumatic childhood event, it was now “too much for her”, and that his wife would be unable to speak to the police about the incident in the meantime. The applicant stated

“I am continuing to discuss the issue with my wife and I would be most grateful if, for the moment at least, this matter could be set aside until such time as she feels she can deal with it in a less emotional manner.”

The applicant’s trial took place in February 2008. A letter written to the applicant by his defence solicitor dated 12 February 2008 explained the outcome as follows:

“On that date, you pled guilty to the first charge of breach of the peace in amended terms.

Any reference to you making comments of a sexual nature was removed from the original charge. Any reference to you performing gestures simulating sexual intercourse with persons was removed from the charge. Any reference to there being witnesses under the age of sixteen was removed from the charge. Any reference to you sending anonymous letters or cards containing offensive material was removed from the charge.

Your not guilty plea to the second charge of making false allegations to the police was accepted by the Crown.

The Sheriff heard a plea in mitigation on your behalf and thereafter admonished you in respect of this matter. For the avoidance of doubt you were not placed on the Sex Offenders Register and the plea which you tendered, which was clearly acceptable to the Crown, meant that no Sex Offenders registration could possibly have been contemplated.”

The Complaints

Based on the contents of the application form received from the applicant, and the information obtained from Northern Constabulary, the Commissioner has identified the following complaints:

1. that police “tipped off” Miss A in respect of a Detective Constable’s plan to visit the applicant;
2. that the applicant was charged before all the available evidence was considered;
3. that witnesses were not allowed to add to their original statements;
4. that statements were not obtained properly;
5. that a statement supporting the applicant was withheld from the Procurator Fiscal;
6. that statements were sought only from persons who supported the allegations against the applicant;
7. that police relied upon evidence of a “vulnerable” witness;
8. that, despite not having been interviewed, witness details appeared on a charge sheet;
9. that emerging evidence was not passed to the Procurator Fiscal;
10. that DNA, fingerprint and handwriting samples were not forensically examined;
11. that a police officer’s actions indicated an “unacceptable level of personal familiarity” with Miss A;
- 12-14. that an officer made offensive remarks about the applicant;
15. that an officer could not have been impartial during the police investigation into the alleged actions of the applicant;
16. that an officer’s “Bebo” site had inappropriate content removed by its administrator;
17. that police obstructed an investigation of alleged indecent assault on the applicant’s wife;

18. that, in respect of the above, the police claim that the applicant's wife failed to make herself available for interview;
19. that Miss A was given a "police escort" to the applicant's business premises;
20. that police failed to investigate the report of Miss A wasting police time;
21. that police failed to fully investigate the report of Miss A attempting to influence defence witnesses; and
22. that police officers caused untrue and damaging information about the applicant to circulate.

The applicant first raised a complaint about the police on 13 November 2006 in connection with police officers "escorting" Miss A to his business premises to collect her belongings. On 23 January 2007, Chief Inspector J prepared a report on the applicant's complaint, having met with him on 16 January 2007. Chief Inspector J reported that the applicant was content that his complaint had been conciliated as a result of the enquiries he had undertaken and the explanations and assurances he provided.

Upon learning that the Procurator Fiscal was taking proceedings against him, the applicant wrote to Chief Inspector J on 2 March 2007 expressing his dissatisfaction with the conciliation of his complaint. There followed a protracted series of correspondence over more than two years between the applicant and Northern Constabulary, during which time the applicant raised a large number of additional complaints. As well as the numerous letters he sent, between 2007 and 2009 the applicant also provided five statements to police in respect of his complaints.

During this time, the applicant raised several counter-allegations against Miss A and continued to allege impropriety and corrupt practice by police officers which he maintained gave Miss A an advantage. The applicant also gave to the police details of a number of witnesses he maintained would be able to provide a more balanced account of the matters in respect of which he was charged.

On 19 March 2009 Chief Inspector K responded to the majority of the applicant's complaints in a 17 page letter. In response, the applicant sent a 16 page letter to Chief Inspector K, stating that he would now submit his complaints to the Commissioner's office for review. In light of this, Chief Inspector K wrote to the applicant advising that there was nothing further for him to address. Notwithstanding this, Northern Constabulary undertook a review of the applicant's complaints file.

Following the review, the Deputy Chief Constable wrote to the applicant on 9 July 2009 stating the following:

"Having reviewed the circumstances of your complaint, I am satisfied that the original enquiry undertaken by Chief Inspector [K] was thorough and that the conclusions he detailed to you in his letter of 16th [sic] March 2009 were justified. Furthermore, the Area Procurator Fiscal received all the information made available to me. In conclusion, I am satisfied that your complaint was thoroughly investigated and that there are no grounds for me to consider further action."

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Northern Constabulary. Each complaint is set out in turn and is followed by details of its handling and the Commissioner's views on this. Where necessary, further background information has been provided.

Complaint 1: Miss A was allegedly “tipped off”

In his letter dated 11 November 2007, the applicant states that, thirty minutes before Detective Constable C arrived at his place of business on 8 November 2006, Miss A came to collect her daughter, Miss L, who had been receiving lessons from the applicant in connection with the business he operated.

The applicant alleges that Miss A had been “tipped off” by someone within Northern Constabulary in order that Detective Constable C would not see the applicant in Miss L’s company. The applicant believes that, had Detective Constable C witnessed this, it would have cast doubt upon Miss A’s allegations against him.

The applicant stated that Mrs M and Mrs N could “substantiate this evidence” and that Miss A had told other witnesses that she had received a telephone call from the local police advising her of Detective Constable C’s imminent attendance.

Internal Handling

In his statement Detective Constable C stated that he did not have any contact with Miss A on the day on which he visited the applicant. Detective Constable C also stated that at no time did the applicant mention to him that Miss A had turned up and removed her daughter prior to his arrival. According to Detective Constable C, his decision to visit the applicant was made “spur of the moment” on the basis that he had an hour left on his shift, having returned from an engagement some distance away just after 5pm.

Chief Inspector K stated the following in his response of 19 March 2009:

“In your letter of 11th November 2007 you allege that Police Officers within [the local police station] ‘tipped off’ [Miss A] that Police were attending to interview you at [your business premises]. I have not uncovered any evidence that this was the case.”

Consideration

The applicant contends that, if the allegations made against him by Miss A were true, it would be highly unlikely that Miss A would have allowed her daughter to be alone with him. According to the applicant, it was therefore important that Miss L was not seen in his company as it would have placed doubt upon the credibility of the allegations made against him. Consequently, the applicant believes that Miss A was tipped off about the fact that Detective Constable C was attending at his place of work and that she thereafter quickly removed Miss L from his care.

The following account is taken from Mrs N’s statement:

“The day [the applicant] was charged, [Miss A] came to my house to tell me it was going to happen. She was jumping for joy because she thought he was going to jail. The police had phoned her and she had to rush to get over to [the applicant’s place of business] to get her daughter who was having a lesson with [the applicant] at the time. Her daughter [Miss L] had also been working at [the applicant’s place of business] with [the applicant].”

At first glance, Mrs N’s statement is supportive of the applicant position. However, the Commissioner notes that the date on which the applicant was charged was 9 September 2006, the day after Detective Constable C’s attendance at the applicant’s place of work. Accordingly, Mrs N’s statement is not supportive of the applicant’s allegation that Miss A was “tipped off” on 8 September 2006.

Furthermore, Detective Constable C states that his decision to attend the applicant's place of work was taken on the "spur of the moment" and that he did not inform Miss A of his plans. There is accordingly no evidence that Detective Constable C's intentions were known to anyone else at the time.

In light of this, the Commissioner considers that the conclusion reached by Chief Inspector K was a reasonable one. In the Commissioner's view, however, Chief Inspector K's response to the complaint was cursory and failed adequately to explain the basis for his conclusion. In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, given that the basis for the conclusion is set out above, the Commissioner makes no recommendation in this connection.

Complaint 2: Charging the applicant without considering all the available evidence

In his letter dated 2 March 2007 the applicant stated:

"The poor quality of this investigation has been caused by a combination of inexperience and incompetence. The officers should not have charged me so quickly after my interview. There were several clear opportunities during that interview for officers to establish that there were going to be a number of significant counter allegations, across a wide range of issues and that crucially [Miss A]'s credibility may well then have been in very serious doubt. In particular, the allegations made by [Miss L] and [Ms DD] were blatantly spurious. The officers at that point had good grounds in law to defer charging me, pending their further enquires. This opportunity they failed to grasp. Once charged of course all further police enquiries then became seriously restricted."

In a further letter dated 26 February 2008, the applicant claimed that the police "declined to follow up legitimate lines of enquiry offered to them and which would have led to [his] vindication." The applicant added:

"I offered substantial evidence on this matter at my original interview on 9th September 2006. Offers of other leads were given to police constantly by other witnesses. The police deliberately chose not to pursue these lines of enquiry, fearing that they would be likely to lead to the disclosure of evidence which again contradicted their view of the case."

Internal Handling

Chief Inspector K's response to this complaint was as follows:

"You indeed observe that once you were charged further Police enquiries are restricted in nature, in fact, normally only instructed on the direction of the Procurator Fiscal.

Police Officers duties are covered by statute i.e. Police (Scotland) Regulations 1967 [sic]. However such statutory limits are not restrictive of the Procurator Fiscal who in your case, as in all other cases, can direct further enquiry by the police if deemed necessary."

Consideration

Chief Inspector K explained in his response that once a person is charged, further enquiry is conducted on the instruction of the Procurator Fiscal. However, he failed to address the applicant's complaint in which he questioned why he was charged before all the available evidence was considered.

For this reason, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary issues the applicant with a response addressing the specific complaint.

Complaint 3: Refusal to allow witnesses to add to their original statements

In a number of his letters to Northern Constabulary, the applicant states that three witnesses (Mrs N, Miss O and Mrs P) sought to add to the statements which they originally gave to the police regarding the allegations against him. According to the applicant, however, Mrs N and Mrs P were advised by the police that they could not add to their original statements.

Internal Handling

On 13 July 2007, Chief Inspector K sent to the applicant three separate letters dealing with various aspects of his complaints. In the first, Chief Inspector K advised that he would investigate the above claim as a new allegation. On the same date, Chief Inspector K wrote to a Procurator Fiscal depute enclosing correspondence from the applicant. The letter contains the following passage:

“In his letter dated 2nd July 2007 [the applicant] poses a question in respect of the re-interview of [Mrs N] in regard to the criminal case against him. You may wish to consider this matter further.”

In his further letter to the applicant dated 13 July 2007, Chief Inspector K stated the following:

“The matter of whether [the police] ever intend re-interviewing Mrs [P] and Mrs [N] is none of your business. This is a matter affecting you as an accused person and I will not communicate with you on this as the matter is sub-judice and to do so may leave me standing accused of attempting to pervert the course of justice in disclosing matters relevant to a criminal case to the accused person.”

In his third letter to the applicant dated 13 July 2007, Chief Inspector K advised as follows:

“I note your comments in regard to [Mrs P]’s statement. Your observations that [Mrs N] has been denied by the police to lawfully add to her statement will be considered by me in my review of your complaint against the police. ...

I have referred the matter of Mrs [N] wishing to add to her statement to the Procurator Fiscal.”

On 19 March 2009 Chief Inspector K issued the following response to the complaint:

“The failure to re-interview the three specific witnesses you listed in your correspondence dated 2nd March 2007 was acted upon and subsequently witness statements were forwarded to the Procurator Fiscal.

The reasoning behind the explanation given to the witnesses Mrs [P] and Mrs [N] has been addressed with both of these persons. It is concluded on the balance of probability that there was a misunderstanding which arose and the Police Officer has been advised of the correct procedure in future cases.”

Chief Inspector K added

“[Mrs P] was interviewed following communication between the Procurator Fiscal and police at [the local area]. It is unfortunate but due to process the matter took the length of time that it did.”

Consideration

The applicant is concerned that several witnesses were refused the opportunity to provide additional statements regarding the allegations against him. Mrs P made the following comments in relation to the provision of an additional statement:

“When I went to make this second statement, (I was) dismayed when [Constable Q] said I couldn’t contribute in any other way until such time as it came to court and that I would be able to appear for the prosecution and the defence.”

Mrs N stated the following:

“During the passage of time, I discussed with [Mrs P] and [the applicant] the statement I had made and we realised that we had been manipulated by [Miss A] and that the statement I made was biased against [the applicant]. Although I do not think I told [the applicant] what was in my statement, I told him I did not want to go to court and wanted to retract the statement. [Mrs P] felt the same ...

Myself and [Mrs P] decided that we would try and withdraw our statement because we felt that we did not want to go to court and we had been manipulated by [Miss A]. I wrote to the Procurator Fiscal about my concerns that my original statement could be misconstrued and that I had been advised I could not change or withdraw my statement.

I received a reply from Inspector [R] at [a local police station], who I had copied the letter to. He informed me that I could make an additional statement. I had originally been told this was not possible. I did thereafter make a second statement which I believe added balance to my original statement.”

Constable Q’s position in relation to this complaint was as follows:

“The only witness that I spoke to after the report had been submitted to the PF was [Mrs P] who attended at [a local police station] wishing to withdraw her statement. I explained that this was not possible as the statements had already been forwarded to the PF.

[Mrs P] was very insistent that she did not want her statement to be used against [the applicant] as she felt it was as a result of a personality clash between [the applicant] and the complainer in this case. I suggested she contact the reporting officer in this case, as I was not able to give her any further information. I spent some considerable time explaining the court process to [Mrs P] and answered her many questions. At no time did she ask to make any addition to her statement and had she done so I would have noted such a statement and forwarded it to the reporting officer.

I do not know who the other alleged witness is but to my best recollection I spoke to no other person in relation to withdrawing/changing/adding to his or her statements.”
[emphasis in original]

Accordingly, Constable Q’s position is that Mrs P asked that her statement be withdrawn and that, if she had asked to provide an additional statement, Constable Q would have allowed her to do so. In these circumstances, Constable Q advised Mrs P that she could not withdraw her earlier statement. In the absence of any other evidence supporting Mrs P or Constable Q’s respective positions, the Commissioner does not believe that the complaint can be determined either way. In the Commissioner’s view, the response given to the complaint – that the situation arose as a result of a misunderstanding – is justified by the evidence. In any event, it is clear that an additional statement was subsequently taken from Mrs P.

In relation to Mrs N's account, neither she nor the applicant refers to the officer who allegedly told her she could not make an additional statement. Accordingly, it is unclear what basis Northern Constabulary had for stating that the situation in respect of Mrs N arose from a misunderstanding and that the "police officer" concerned had been advised of the correct procedure for future cases. In the Commissioner's view, the available evidence does not justify such a finding.

Accordingly, overall the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary re-evaluates the evidence that was gathered in respect of the complaint concerning Mrs N and issues the applicant with a further response clarifying its position on the matter.

Complaint 4: Failure to take proper statements

The following excerpts from two of the applicant's letters to Northern Constabulary detail his concerns in this connection:

"If, as you say, the [local] police have acted so impartially, so professionally, why ... are three witnesses wanting to add to their statements? ... How often in your police service have so many witnesses wanted to do that?" (letter dated 2 March 2007)

"The evidence they gave to the police has been obtained by deception. It has been edited and quite deliberately misinterpreted. These people gave their statements in good faith. They made it absolutely clear at the time that they were not to be regarded as complainants. They did not wish to complain. They have no complaints against me." (letter dated 26 June 2007)

Internal Handling

Based on the files supplied by Northern Constabulary, the applicant has not received a specific response to this complaint.

Consideration

As no response was provided to the applicant, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

The applicant appears to believe that, because three witnesses wished to add to their original statements, the way in which those statements were obtained must have been defective.

During its complaints investigation, Northern Constabulary obtained statements from the three individuals named by the applicant. Having had regard to these statements, the Commissioner notes that all three confirm that the information they originally provided to Constable B was correct and that they had no concerns over the way in which their initial statements were obtained. All three confirm that the reason for wishing to make a subsequent statement was to highlight, given Miss A's subsequent actions, the concerns they had regarding her credibility.

Given this, there is no evidence that Constable B acted in a biased or unprofessional manner. Accordingly, the Commissioner does not consider it necessary to recommend any further action in relation to this complaint.

Complaint 5: The withholding of a statement from the Procurator Fiscal

In his letter dated 26 February 2008 the applicant stated the following:

“In July 2006 Ms [S] made a statement to an officer ... at the [local] police station. That statement did not support the allegations made by [Miss A]. To this day that statement has never been presented to the Defence. The Fiscal has indicated that he has never had sight of that statement. Which officer took it and where is that statement? Why was it not submitted in the proper manner to the Fiscal? Why did it not get passed to the Defence?”

Internal Handling

Detective Constable C provided the following account in relation to this complaint:

‘[The applicant] alleges that as reporting officer I failed to forward statements to the Procurator Fiscal. ... I was not provided with the statement of [Ms S] by Constable [B] although I note from IMPACT that a statement was taken from her. I did not deliberately hold back this statement, rather I missed that it had ever been taken and did not include [Ms S] on the witness list for that reason alone.’

Chief Inspector K issued the following response to the complaint:

“You ... allege that a witness statement was deliberately withheld from the Procurator Fiscal. I have had no further clarity from you on this specific matter.”

The applicant replied to Chief Inspector K in a letter dated 28 April 2009:

“The witness statement of [Ms S] – unfavourable to the police I understand – has never been disclosed. The Fiscal informed my Defence Counsel that he had not received any such statement. Where is it and why was it not disclosed at the outset of the enquiry?”

Consideration

The statement in question was taken from Ms S by Constable B on 10 July 2006 and was included within the files sent to the Commissioner’s office. According to the statement, Ms S did not personally witness the applicant acting inappropriately and had no concerns for anyone who attended his place of business.

During the course of the review, the Commissioner’s office sought clarification from Northern Constabulary as to what occurred in respect of Ms S’s statement. The following response was received from Inspector I on 8 October 2010 by email:

“In respect of the question regarding the statement noted from [Ms S], the response from [Detective Constable C] is as follows:

‘I am aware that a statement had been taken from the witness [Ms S] but not submitted to me by Constable [B]. Once this became known the statement was immediately submitted onto the IMPACT crime reporting facility. I am unaware if this was sent via that facility or in hard copy to the Procurator Fiscal. Perhaps the Fiscal’s Office ... could confirm if they ever received that statement.’

I contacted the Procurator Fiscal’s office. Staff there cannot find any trace of an e-copy or hard copy of [Ms S]’s statement noted by the Police. I checked the Northern Constabulary IMPACT crime reporting facility and [Ms S]’s statement is shown as ‘pending’ indicating it was not transmitted by that facility. Detective Sergeant [T] transmitted other statements but as this was a number of years ago he cannot recall the background and why [Ms S]’s statement is shown as pending. However, the Procurator Fiscal’s office ... do have a precognition statement noted from [Ms S] on 14 December, 2007. That was submitted

by [the applicant]'s solicitor, therefore the Procurator Fiscal had access to what this witness was stating."

Whilst Ms S was subsequently precognosed by the applicant's solicitor, it seems clear from the above that her original statement was not supplied to the Procurator Fiscal. In the Commissioner's view, it is difficult to understand why the information supplied to his office was not obtained during the complaints investigation, and why Chief Inspector K needed further clarity from the applicant in order to deal with this complaint.

For these reasons, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, in light of the explanation provided by Northern Constabulary to the Commissioner's office, the Commissioner does not require any further substantive work in his connection.

It is important to make clear that in her statement Ms S does not dispute the allegations which had been made against the applicant; rather, her position is simply that she did not personally witness any inappropriate behaviour. Nevertheless, the Commissioner considers that the statement ought to have been disclosed to the Procurator Fiscal. In these circumstances, the Commissioner recommends that Northern Constabulary apologises to the applicant for its apparent failure to disclose the statement, and also for Chief Inspector K's poor response to the complaint.

Complaint 6: The pursuit of only those witnesses who would support the prosecution

In his letter dated 26 February 2008, the applicant stated that local police had been "overzealous in their inquiries, pursuing only those witnesses who would support their perceived notion of 'evidence' ". He alleged that the police had "cherry picked" both witnesses and the content of their statements. The applicant also alleged that certain witnesses had not been contacted despite their details having been provided to the police.

In various letters the applicant comments that the case against him cost many thousands of pounds, and that he had provided the details of witnesses whose testimony could have prevented the case against him from progressing as far as it had.

Internal Handling

Chief Inspector K issued the following response to this complaint:

"There is a clear and distinct point in regard to Police Officers obtaining statements from witnesses to alleged crimes as opposed to obtaining statements from sundry others who have not witnessed a crime nor been victim to it. There are varying reasons why neither sundry others may not have seen a crime taking place nor an accused engaged in conduct similar to that as alleged of you. The police are not duty bound to use a fishing net approach to interview all and sundry unless they have specific evidence about the specific incidents under investigation. The majority of witnesses put forward by you did not witness nor have any evidence in regard to the specific allegations made against you. In this regard they were properly witnesses of your character and conduct and competent for your defence to lead in any criminal proceedings."

Consideration

In respect of the applicant's concern that the police "cherry picked" the content of witness statements, the Commissioner can confirm that all statements referred to in the police report were sent to the Procurator Fiscal. Accordingly, leaving aside Ms S's statement (see complaint 5 above) all relevant information was sent to the Procurator Fiscal.

In respect of the applicant's concern that the police "cherry picked" witnesses, the Commissioner can confirm that the names of the witnesses referred to by the applicant were supplied to the Procurator Fiscal, and that the police thereafter awaited instructions as to whether these individuals were to be interviewed. In addition, on more than one occasion, officers told the applicant to ensure that he also provided any such information to his defence solicitor.

It is clear that a number of the witnesses referred to by the applicant were not in a position to provide eyewitness testimony. In the Commissioner's view, Northern Constabulary was correct in stating that it was not the role of the police to obtain statements from witnesses who sought to verify the applicant's good character.

In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 7: The reliance upon a vulnerable witness

In his letter dated 2 March 2007 the applicant stated that the police failed to recognise that a witness who had given a statement supporting Miss A's allegations (Miss DD), suffered from various psychological conditions. According to the applicant, these conditions rendered Miss DD an unreliable witness and any decision to call her as a witness at trial might be detrimental to her personally. The applicant later claimed that because the police had not made this information known to the Procurator Fiscal, "[the Procurator Fiscal's] subsequent decision to proceed was based upon flawed evidence."

Internal Handling

Chief Inspector K issued the following response to this complaint:

"As stated previously the Police role in the entire case was to present factual evidence to the Procurator Fiscal, this they did. It was not the Police role to research the mental health of the witnesses. Correctly, observation could be made of such to the Procurator Fiscal but it was not the Police role to probe such to the degree you suggest should have occurred ...

You pose somewhat hypothetical points regarding Ms [DD] which I suggest only she can answer to you. My review of Ms [DD]'s evidence established that she had made a statement to police officers and had no concerns or allegations to make about the making of her statement."

Consideration

The Commissioner acknowledges that if an officer is aware that a witness suffers from a condition which he or she believes may undermine his or her credibility, this should be reported to the Procurator Fiscal. However, simply because a witness suffers from a psychological condition does not necessarily mean that any evidence they give will be unreliable or incredible. In the Commissioner's view, it is not the role of the police to conduct in-depth enquiries into the mental health of witnesses. In any event, it is notable that the statement provided by Miss DD is not out of step with the accounts provided by many other witnesses.

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

Complaint 8: Failure to interview witnesses whose details were passed to the Fiscal

In his letter dated 3 October 2007 the applicant stated the following:

“Details of witnesses who have never even been interviewed by the police have been passed to the Fiscal in a manner which suggested to the Fiscal that they would be supporting the allegations against me.”

In a further letter dated 30 May 2008 the applicant referred to earlier correspondence about the list of witnesses. He stated:

“This list is the ‘Information’ or ‘Complaint’ document set out by the Fiscal in his application before the Court. This document will be in the PF file which you now possess. It lists [Mrs M] and Ms [V] as complainants – neither were interviewed prior to the use of their names in this document. [Mrs N], Mrs [W], Mrs [P] – all wrote to protest at their inclusion by the Fiscal. [Ms V] complained to the police formally about the inclusion of her name as a prosecution witness. In addition, [three other named people] were so listed without their knowledge or consent. (The non-existent witness [named] was later identified by my Solicitor after he spoke to the Fiscal).”

Internal Handling

In terms of the files supplied by Northern Constabulary, it does not appear that this complaint has been considered or responded to.

Consideration

As no response was issued to this complaint, the Commissioner does not consider that it was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary issues the applicant with a response.

Complaint 9: Failure to disclose emerging evidence to the Procurator Fiscal

In his letter dated 2 March 2007 the applicant stated the following:

“The police case to the Fiscal blatantly lacks vital background, crucial details and evidence. I contend that these omissions have probably been deliberate. I also contend that [local] officers ... have been professionally incompetent and [biased] in their investigation of this matter ...

I have at least 43 witnesses, all prepared to give you and my solicitor statements relating to [Miss A], her relationships, her allegations, her conduct at [the applicant’s business] in front of staff and customers, her interfering with witnesses, her attempts to pervert the course of justice, her state of mind immediately prior to her assault charge and after, her text messages to me, letters I have written on her behalf throughout the period of the complaint being lodged with the police, clearly showing the levels of trust and personal friendship placed in me by [Miss A] and her personal and intimate ‘friendships’ at [a local police station]. Every single point I have raised will be corroborated by numerous witnesses, not one of whom has been interviewed or even considered by your ‘impartial’ and ‘professional’ [local police] officers as having any bearing on these harrowing allegations.

The Procurator Fiscal must be made aware of the failures of his [local] police officers as a matter of extreme urgency, before this fiasco goes too far. I sincerely hope that you will now approach the Fiscal with this complaint and bring to his attention the serious deficiencies and implications of this case as it stands.”

The applicant raised this matter again in his letter on 26 February 2008 in which he stated that the police had declined

“... to follow up legitimate lines of enquiry offered to them and which would have led to my vindication. I offered substantial evidence in this matter at my original interview on 9 September 2006. Offers of other leads were given to police constantly by other witnesses. The police deliberately chose not to pursue these lines of enquiry, fearing that they would be likely to lead to the disclosure of evidence which yet again contradicted their view of the case.”

Internal Handling

In his (undated) statement, Inspector R stated the following:

“Despite assurances from staff that [were] in dialogue with the Procurator Fiscal, who incidentally was the recipient of some of [the applicant]’s correspondence and was well aware of and had been informed of [the applicant]’s allegations by the police as they were linked to a ‘live case’, I wrote directly to [a Procurator Fiscal Depute] on 21 August 2007 requesting confirmation of his instruction that no further action be taken with regard to [the applicant]’s claims. He advised me that he would discuss the matter with [the Procurator Fiscal]. I heard nothing further on the matter although I was aware that the matter had been scheduled for court ... The impression given from the Fiscal’s office was that ... the police should not go down the route of interviewing the individuals he had listed as he would be able to cite them as defence witnesses at any subsequent trial.

Throughout this enquiry, [the applicant] was advised that should any of the persons he listed have any concerns at all regarding [Miss A]’s conduct towards them they should contact the police immediately. Interestingly, no one has come forward to date with any criminal allegations.”

Chief Inspector K issued the following response to the complaint:

“The police officers conducted enquiries acting upon reports received from members of the public and reported such to the Procurator Fiscal in accordance with procedures. The question of the police need to interview further witnesses in the case as put forward by you was passed to the Procurator Fiscal for direction. The Procurator Fiscal’s decision in this regard is a matter for the Procurator Fiscal.”

Consideration

It is clear that Northern Constabulary forwarded the applicant’s correspondence in this connection to the Procurator Fiscal. In the Commissioner’s view, given that the applicant’s allegations related to a case which the Procurator Fiscal was considering, it was appropriate that Northern Constabulary sought the Procurator Fiscal’s instructions as to how to proceed. It was therefore a matter for the Procurator Fiscal, not Northern Constabulary, to decide what should be done in relation to the applicant’s allegations.

In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner. Whilst the Commissioner acknowledges the applicant’s concerns regarding Miss A’s credibility, the appropriate forum in which to challenge this, and her credibility in general, was through court proceedings.

Complaint 10: Failure to examine forensic samples

In his letter dated 26 February 2008 the applicant stated the following:

“Why was no attempt made by the police to analyse my DNA, fingerprints and handwriting samples? These were freely given on 9 September 2006. I appreciate that DNA and fingerprint tests on the documents may have been inconclusive as they had all been

handled by so many people already, including myself. This, to be fair was a fact not lost upon [Detective Constable C] at the time I gave the samples. However subsequent forensic handwriting analysis obtained by my defence counsel indicated that it was NOT my handwriting on those letters and cards. Had the police submitted this evidence for analysis at the time this information would have been uncovered much sooner and the entire matter could have been reviewed in my favour, without incurring massive public expenditure. Why did the police charge me before such evidence had been obtained? ... Who failed to submit these samples? Why were such omissions allowed to go unnoticed, unchecked and the entire file submitted, apparently without any police supervision whatsoever?"

Internal Handling

According to Detective Constable C's statement, the Procurator Fiscal had notified him on 24 October 2006 that it was not his intention to have the samples of handwriting analysed. The following is an excerpt of Detective Constable C's statement:

"... none of the original letters seized in 2002, three years before I transferred to the Command Area, were sealed or protected in a manner in which I could have had them tested for fingerprints or DNA. Secondly, according to IMPACT these letters appeared to have been handled by [the applicant] and other persons at the stables despite clear instructions from police about forensic considerations. Thirdly, ... a questioned document compared against [the applicant's] handwriting would not have proved his innocence. A questioned document report would only provide an opinion as to the probability of common authorship. Grampian Police laboratory definitions of conclusions are attached to this statement. As is illustrated even a 'Unlikely' conclusion is not definitive proof that the sample author is not responsible for the questioned material. Fourthly once a case is reported it is the responsibility of the Procurator Fiscal to direct any further necessary enquiry. In this case, once I informed [the Procurator Fiscal] that the questioned document section would take some 12 months until they provided a conclusion he instructed me not to send the questioned document and handwriting samples away."

Chief Inspector K's response of 19 March 2009 stated the following:

"You question the process adopted by the Police/Crown Office in forensic examination of questioned documents in this case. The need for any forensic examination of documents was a matter for the Procurator Fiscal to direct in this case."

Consideration

In respect of the letters which the applicant was alleged to have sent, Detective Constable C advised that, given the number of persons who had handled them (including the applicant), DNA and fingerprint analysis would not have provided any conclusive result. The applicant appears to accept this point.

As noted above, there is evidence that the decision not to pursue handwriting analysis was one made by the Procurator Fiscal rather than Northern Constabulary. As the police are effectively agents of the Procurator Fiscal, they are subject to his/her instructions as to the nature and extent of their enquiries. The Commissioner does not consider that Northern Constabulary can be held accountable for the Procurator Fiscal's decisions in this connection.

In the Commissioner's view, Northern Constabulary's response to this complaint, although brief, was essentially a reasonable one.

Complaint 11: Inappropriate relationship between a police officer and the alleged victim

The applicant states that (in respect of Miss A's arrest on an unrelated matter in June 2006) he had heard a voicemail message which had been left for Miss A by a police officer (Constable F). The applicant claims that this message indicated that Miss A was being treated favourably by the police. According to him, he had made the police aware of the existence of the message but they failed to capture the evidence.

Internal Handling

Constable F provided the following account on 20 March 2008:

"On 13 June 2006 I was aware that [two other police officers] were dealing with an incident involving [Miss A], who had been a Special Constable stationed [locally]. I had no involvement in this incident.

With regards to the allegations, I did not contact [Miss A] by text but I do recall contacting her by telephone as she requested advice about completing a Disclosure form for [a specified post]. I advised her to put this incident on the form as it was a pending case but I did not discuss the incident with her."

Chief Inspector K issued the following response to the complaint:

"You allege inappropriate contact between a female police officer [Constable F] and [Miss A] following [Miss A]'s arrest in regard to a specific incident. Following my enquiries I have not found any evidence that substantiates your claim. The female Police Officer involved admits some contact with [Miss A] but only in regard to advice [Miss A] was seeking in a matter not connected to her arrest. The Police Officer had no involvement with [Miss A] during her arrest for the incident which you allude to.

The impression created by [Miss A] that she has 'inside' support from Police Officers is not something that I have found evidence to substantiate."

On 28 April 2009, the applicant wrote the following to Chief Inspector K:

"You have not found any evidence because you have not looked for it. Did you contact [mobile phone provider] to obtain the voicemail records in relation to this matter? I gave to you, in February/March 2007, full details of the call and [Miss A]'s personal mobile number ... Inappropriate assurances were given to [Miss A] by [Constable F], leaving no doubt in the listeners mind exactly whose side the police were on. Without having obtained that independent evidence you cannot therefore simply assume that this conversation did not take place.

I reject your assertion that this call was innocuous on the grounds that your investigation has failed to obtain the necessary independent corroborative evidence."

Consideration

The applicant's position is that Constable F had an inappropriate relationship with Miss A. According to the applicant, the content of the voicemail message left by Constable F on Miss A's telephone is evidence to support the existence of that relationship. In his letter dated 2 March 2007, the applicant stated the following:

"... Clearly, [Miss A] believed she had considerable 'inside' support from [local] officers. She had no hesitation whatever in furthering that impression to all here at [the applicant's place of business] on her return."

In the Commissioner's view, the applicant's complaint is not about the voicemail message per se, but rather that the message indicates a level of support for Miss A, which resulted in a biased investigation into the allegations against him. However, the applicant's allegation is based upon the assumption that Constable F was involved in the investigation of Miss A's claims. From the files received from Northern Constabulary, Constable F was not involved in the investigation. Accordingly, in the Commissioner's view, even if it were established that Constable F had developed an inappropriate relationship with Miss A, there is no evidence that this had any impact on the nature and extent of the investigation of the allegations against the applicant. Furthermore, the fact that Miss A was arrested, charged and reported to the Procurator Fiscal in connection with the unrelated incident tends to suggest that Miss A did not enjoy the level of influence or support which the applicant claims.

In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 12: Constable Q's allegedly offensive remarks to Mrs M

According to the applicant, during a meeting between Constable Q and Mrs M (unrelated to her enquiries into the allegations against the applicant), Constable Q made inappropriate comments about the applicant. In his letter dated 26 February 2008 the applicant stated the following:

"[Constable Q] ... spoke to [Mrs M] in the full knowledge that [Mrs M] was a very significant defence witness. [Constable Q] told [Mrs M] that she was currently dealing with a very serious case involving a 'serious local sex pervert' whom she described as claiming to be 'a pillar of local society' ... 'who had brought more than 50 witnesses against her...' 'but that she would make sure he was put down' ... 'that he would get all he deserved, regardless'. ... [She gave Mrs M information] that left her in absolutely no doubt whatsoever who the defendant was – me. [Mrs M] was of the opinion that the sole purpose of [Constable Q]'s conversation with her was to influence her and cause her to rethink her support of me."

Internal Handling

Constable Q provided a statement by email dated 14 April 2008. She stated that her only contact with Mrs M had been when she took a statement from her on 28 January 2008 in relation to the applicant's allegation that documents had been stolen from his office. Constable Q did not address the allegation made by the applicant.

In a further (undated) statement Constable Q stated the following:

"I have never referred to [the applicant] as a 'pervert' nor as 'dangerous' or referred to him in such negative terms to members of the public. Once again this is hearsay.

I feel it prudent to mention an incident which occurred a number of years ago when [the applicant] was still employed by [a business in competition with that of the applicant] and drove the lorry which transported the clients who wished to compete at shows. 2 friends and myself were entering a team competition and en route to the show we were trying to decide on a name and [the applicant] suggested we call ourselves [the perverts]. From that time he often referred to us as that. I feel this demonstrates that 'pervert' is a word he himself uses and it is not one I would use in conversation with any member of the public.

I have no idea who [the applicant]'s defence witnesses were. Based on hearsay and if I did not name [the applicant] then how can a complaint be made? This is a ridiculous charge. Once again the word 'pervert' is not one I ever use."

Chief Inspector K did not provide a response directly addressing this complaint.

Consideration

As detailed above, Constable Q denies the claims made by the applicant. However, no statement was taken by Mrs M who is clearly a crucial witness in relation to this complaint. In light of this, and the fact that no response was issued to the applicant, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

The Commissioner recommends that Northern Constabulary seeks a statement from Mrs M and thereafter provides the applicant with a response to this complaint.

Complaint 13: Constable Q's allegedly offensive remarks to Mrs W

In his letter dated 26 February 2008 the applicant stated the following:

"On one occasion [Constable Q] told Mrs [W] that I was a 'dangerous pervert' and that 'she must never allow me near her daughters, unaccompanied'. These unsolicited remarks were made without any evidence being offered to support such a statement."

Internal Handling

Chief Inspector K issued the following response to this complaint:

"You made mention in your letter of 2nd March 2007 of Constable [Q]'s interview of the witness [Ms X] and comments made to [her mother Mrs W]. Mrs [W] who was present at the interview of her daughter had no concerns in regard to the Police Officer's conduct. Mrs [W] in her interview by me could not give specific details about what Constable [Q] may have said in regard to you. She could not recall what Constable [Q] said. Constable [Q] denies referring to you in such terms as a danger to children, therefore I find in the balance of probability that your allegation against Constable [Q] in this regard is unsubstantiated."

Consideration

Chief Inspector K found this complaint to be unsubstantiated on the basis of Constable Q's response and the fact that Mrs W could not provide specific details of her conversation with Constable Q. What Mrs W actually said in her statement was as follows:

"During the conversation [with Constable Q], it became known that [my daughter] got a lift with [the applicant] to the stables. [Constable Q] asked me if I was concerned and when I said no, she replied that we should be, or gave a look that suggested it. I cannot recall the exact conversation."

Accordingly, while Mrs W could not recall the exact conversation she had with Constable Q, she is clear that Constable Q gave the impression, either direct or indirectly, that her daughter should not be in the company of the applicant alone. It therefore supports one particular aspect of the applicant's complaint, and undermines Chief Inspector K's response that the complaint is unsubstantiated.

For these reasons, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary re-evaluates its position on this complaint in light of the terms of Mrs W's statement, and thereafter provides the applicant with a further response.

Complaint 14: Constable Q's allegedly offensive remarks to Mrs P

In his letter dated 26 February 2008 the applicant stated the following:

‘[Constable Q] later gave another witness, [Mrs P], much concern about her lack of professional impartiality in this enquiry. This included uncorroborated and unsubstantiated remarks made by [Constable Q] to the effect that I was a ‘pervert’ and was ‘dangerous’. ... Inspector [R] ... totally disregarded all evidence that his officer was already subject to other – very similar but still outstanding complaints. He persuaded Mrs [P] to allow him to informally ‘resolve’ her complaint.

Internal Handling

From the files received from Northern Constabulary, it does not appear that this complaint has been considered or responded to.

Consideration

As no response was issued to this complaint, the Commissioner does not consider that it was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary conducts enquiries into this complaint and, in particular, seeks Mrs P's account of the incident. A further response should be issued in light of these enquiries.

In the Commissioner's view, it is important when ascertaining its position on complaints 12, 13 and 14, that Northern Constabulary considers the evidence given by Mrs M, Mrs W and Mrs P together, rather than confining their respective accounts to each individual complaint.

Complaint 15: Constable Q's impartiality

The applicant alleged that, by virtue of her having secondary employment with a business in competition with his own, Constable Q lacked impartiality in investigating the allegations against him.

“You should be aware that [Constable Q] has a very close working relationship with [a rival business], the arch-competitors of my business ... The rivalry between the two [businesses] is both commercially tense and very personal, with anonymous complaints having been sent on a regular basis in the past, by people from [the rival business] to myself and the company, causing nuisance and distress. I do not therefore consider [Constable Q] to be impartial at all in this matter, as she clearly has personal interests in a commercially competitive organisation. She clearly has not reported her interests to any Senior Officer nor the investigating Officer, as she ought to have done if she is to claim impartiality.”

The applicant also complained that the police failed to investigate the circumstances surrounding Constable Q's secondary employment and alleged that she had not sought appropriate permission from the Chief Constable to undertake such work.

Internal Handling

Constable Q gave the following account in respect of this complaint:

“On 8th June 2005 a memo was sent from myself to Inspector [Y] requesting permission to undertake unpaid instructorial work at [the rival business]. The Area Commander granted this permission.

I was at the time taking exams to qualify as a[n] instructor [in a particular field] ... I chose qualifying as a[n] instructor as this is a lifelong passion and hobby of mine. In order to qualify as an instructor after passing my exam I had to undertake 250 hours of instruction, which would have been impossible, and so the 'working' at the [rival business] was mutually beneficial."

Chief Inspector K issued the following response to the complaint:

Constable [Q]'s involvement in interests outwith her duty time as a police officer is the sole remit of the Chief Constable. There are several procedures to follow when seeking to pursue employment or interests outwith the police service whilst being employed as a Police Officer. In my enquiry I am satisfied that Constable [Q] has endeavoured to comply with these procedures."

Consideration

The Commissioner acknowledges that any interests which Constable Q wished to pursue in her own time were a matter between herself and the Chief Constable. In this respect, the Commissioner considers Northern Constabulary's response to have been reasonable.

However, there was no attempt to address a key element of the applicant's complaint, namely that given her interest with a rival business Constable Q should not have been involved in the investigation into the allegations made against him. For this reason, the Commissioner does not consider that this complaint was handled in a reasonable manner.

Mrs P herself made a similar complaint to Northern Constabulary in which she questioned Constable Q's impartiality. On 20 December 2010, following a recommendation by the Commissioner (see report reference PCCS/294/PF-NC), the then Deputy Chief Constable issued Mrs P with a comprehensive response to this complaint. The Commissioner recommends that Northern Constabulary now issues the applicant with a similar response.

Complaint 16: Constable Q's "Bebo" web page

The applicant alleges that Constable Q had a "Bebo" web page from which inappropriate content required to be removed by the site's administrators.

Internal Handling

Chief Inspector K issued the following response to the complaint:

"You add additional concerns about Constable [Q]'s use of her Bebo internet site and this is a matter for Northern Constabulary to address."

Consideration

In the Commissioner's view, the response to this complaint is cursory and does not explain why it was considered that the applicant should not be given a fuller response. The Commissioner therefore does not consider that this complaint was dealt with in a reasonable manner.

It is unclear to the Commissioner the background or context of this complaint; however, in terms of section 34(6) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, it appears that the applicant may be a "relevant complainer" in respect of the complaint (so far as an application to the Commissioner's office is concerned). The Commissioner therefore recommends that Northern Constabulary considers this complaint and issues the applicant with a response. If, following consideration, Northern Constabulary believes that the applicant is not entitled to a substantive response, the reasons for this should be explained to him.

Complaints 17 and 18: Obstruction of investigation

Whilst not entirely clear, it appears to be the applicant's belief that Northern Constabulary has tried to make it as difficult as possible for his wife to give a statement in relation to the alleged indecent assault she was subjected to by Miss A. The applicant also complained that the alleged incident was not referred to the Procurator Fiscal.

Internal Handling

In her statement dated 16 August 2008 the applicant's wife stated the following in respect of this complaint:

"Had the issue been dealt with correctly at the time by Northern Constabulary I would make a complaint. However, for various reasons I have lost faith in Northern Constabulary and the perpetrator has since left the area. I wish to leave things as they are. I have been informed that at any point in the future I can contact the police and make a statement of complaint if I choose to do so."

Chief Inspector K issued the following response to the complaint:

"Unfortunately the allegation that you raised on behalf of your wife could not be acted upon as Police Officers were not afforded the opportunity by your wife to meet with her in this regard ...

A number of efforts were made to contact your wife in relation to the alleged sexual assault on her which you made on her behalf. The police officers tasked with this investigation quite rightly took the matter seriously and were endeavouring to contact your wife in a number of ways to progress the matter. I'm sure you'll understand their need to do so. Unfortunately your wife did not allow herself to be interviewed and hence no further action was possible. These police officers acted with the best of intentions in trying to contact your wife. It is unfortunate that this activity by these police officers caused you some discomfort."

Following Chief Inspector K's response, the applicant complained that the police had wrongly claimed that his wife had not made herself available for interview in connection with the alleged assault upon her. The applicant made the following comments in this connection:

"My wife was NEVER given a fair and sympathetic opportunity to report such a delicate matter ...

To say that my wife's allegations could 'not be acted upon' as police officers were not 'afforded the opportunity' to meet my wife is untrue, rude, arrogant, insensitive and fails miserably to address the REAL issues as to why my wife was not interviewed fairly and with sensitivity." [emphasis in original]

Northern Constabulary's review of the applicant's complaints reached the following conclusion in respect of this issue:

"It is unclear exactly what [the applicant] is alleging here but it is abundantly clear that several attempts were made to ensure [the applicant's wife] could be interviewed and allowed to express any allegation she needed to make against [Mrs A].

The letter dated 7th June 2007 to Detective Constable [H] from [the applicant] actually states 'I would be most grateful if, for the moment at least, this matter could be set aside'. At this particular interview [which had just taken place] Chief Inspector [AA] again offered

[the applicant] *to contact him personally if he wished him to assist his wife in any way in taking forward such an allegation.*"

Consideration

Following the matter being reported, Northern Constabulary made three attempts to obtain a statement from the applicant's wife. On the first attempt, the applicant's wife was unavailable. Following this, Detective Constable Z wrote to the Procurator Fiscal, stating:

"[The applicant] has further alleged that, a number of years ago, his wife was indecently assaulted by [Miss A] while she stayed with them. [The applicant's wife] was not at home when we visited and, despite leaving my contact details, to date she has not contacted me to confirm she wishes to make a complaint. Should she make such an allegation, it will be investigated and reported separately."

On the second attempt, the applicant's wife was at her place of work and unable to provide a statement. On the third attempt, the applicant's wife cancelled the pre-arranged meeting with Detective Constable H. As detailed in the background section of this report, the applicant wrote to Northern Constabulary on 7 June 2007 stating:

"I am continuing to discuss the issue with my wife and I would be most grateful if, for the moment at least, this matter could be set aside until such time as she feels she can deal with it in a less emotional manner."

It is therefore clear that attempts were made by Northern Constabulary to progress the allegation against Miss A. There is accordingly no evidence to support the applicant's complaints. In these circumstances, the Commissioner considers that Northern Constabulary's response to the complaints was reasonable. Contrary to the applicant's comments, the Commissioner does not consider there to be anything objectionable in the response.

In respect of the complaint that the alleged indecent assault was not reported to the Procurator Fiscal, until a formal statement is obtained from his wife, the allegation is based entirely on hearsay evidence. It was therefore entirely reasonable that the matter was not formally reported to the Procurator Fiscal. In any event, as noted above the applicant and his wife have advised Northern Constabulary that they wish no further action to be taken in connection with the matter.

Complaint 19: Miss A's "police escort" to the applicant's business premises

In his letter to the Deputy Chief Constable dated 13 November 2006, the applicant complained that Miss A had been escorted to his business premises by two police officers to collect her personal belongings. He stated:

"In total disregard of my ban on [Miss A]'s presence at this business and without any warning or notification to me of her intentions, two police officers in a marked patrol car personally escorted her to [my business premises] on the afternoon of Tuesday 7 November 2006 under the pretext that she wished to collect property belonging to her."

Internal Handling

On 16 January 2007, Chief Inspector J met with the applicant, following which, on 23 January 2007, he prepared a preliminary report on the complaint. Chief Inspector J found that it might have been more appropriate for the officers concerned to have spoken with the applicant to provide a clear explanation that they were there primarily to prevent a breach of the peace and to emphasise their impartiality in the matter. In his report, Chief Inspector J advised that he had offered an apology to the applicant for the incident and told him that both officers had been made aware of the complaint and offered advice in respect of any future incidents of a similar nature.

Chief Inspector J understood the complaint to have been conciliated and, following the meeting, he wrote to the applicant as follows:

“Through my investigations, I am satisfied that there was no impropriety on the part of the officers involved and, indeed, their attendance was well intentioned and the reasons for not accompanying [Miss A] were partly due to her own request and also the officers’ concern that accompanying her into the premises may have inflamed the situation or given more of an impression of bias. This clearly didn’t have the intended effect and although there appears to have been an element of damned if you do and damned if you don’t in this instance I do accept that by not contacting you either prior to their arrival or upon attending [your business premises] they have unfortunately caused a perception of possible bias towards [Miss A]. Notwithstanding the good intentions of the officers involved I would like to apologise to you for any additional concern this has caused you at this difficult time.

With regard to your concern that [Miss A] may have exercised some form of influence with staff at [the local police station] due to her previous association with Northern Constabulary as a Special Constable I have investigated this matter and found nothing to indicate that this is the case. I fully acknowledge, however, that this is a matter of perception with certain people and I can assure you that Inspector [R] will be reinforcing with his staff the need for the highest levels of professionalism, integrity and impartiality at all times.”

Shortly afterwards, the applicant learned that the charges against him were to be pursued by the Procurator Fiscal. On 2 March 2007, he wrote to Chief Inspector J advising that he was not satisfied with the outcome of this complaint. Specifically, he stated:

“As you will appreciate, the matter of investigation and resolution of this complaint now has much more serious implications.”

During the further investigation into this complaint, statements were obtained from the officers involved (Detective Constable C, Constable F and Constable G). On 19 March 2009 Chief Inspector K issued the following response:

“Chief Inspector [J] advised you that Police Officers often attend in circumstances when there is a dispute between parties and one or other has requested Police Officers attendance. This [is] in order to ensure the requesting party that a breach of the peace will be prevented. [Miss A] had attended at [the local police station] on the occasion you mention for that very reason. She was apprehensive about attending at [the applicant’s place of business]. She made no allegations against you at this time.

There was no other reason for the Police Officers to attend [your business premises] other than to prevent a breach of the peace occurring. It is unfortunate, and correctly observed by you that the Police Officers chose not to enter [the business] premises but remained at a distance. These Police Officers opportunity for preventing a breach of other peace were limited by such action.

Further to Chief Inspector [J]’s response to you dated 23rd January 2007, I respond to your letter dated 13th November 2006 as follows. In doing so I have considered your account, the Police Officer’s accounts and the account of [Miss A] in this regard.

... The Police Officers did not provide a personal escort for [Miss A]. They merely positioned themselves in order that they could respond to any calls for assistance in regard to her attendance at [your business premises]. Such call for assistance could equally have come from you. Indeed if the Police Officers intention was to personally escort [Miss A] I venture they would have continued with her into the premises, which they did not do.

[Miss A] *did not advise the Police Officers that she was at any risk from you and they correctly told her that they could not come to [your business premises] with her but that in case of any issues arising they would position themselves in the vicinity.*

The Police Officers were not obliged to warn you of any visit to your premises because it was not their intention, unless a call for assistance was received, to visit the premises.

Whatever impression [Miss A] gave you of the reason for the Police Officers presence in the area, the true reason is as I have outlined above.

In my enquiry I have found no evidence to substantiate your suggestion that the Police Officers were friends of [Miss A] nor endeavouring to conspire to deliberately engineer a breach of the peace against you.

... I understand the perception [the police officers] action has created with you. The Police Officers would have been better advised to have carried through their attendance into the premises. However, I do not view their lack of doing so as unprofessional nor misconduct.

The Police Officers did consider [Miss A]'s account and hence their reason to position themselves in the vicinity of the premises. As Chief Inspector [J] advised you in his letter of 23rd January 2007 they did so in a manner which they considered would best show impartiality and neutrality in the matter, i.e. remaining outwith the premises and not seen to take sides in the dispute by turning up with and accompanying [Miss A] into the premises.

...The [local police] were not contacted by [Miss A] in regard to her subsequent visit to the premises. The Police Offices who had attended [the applicant's place of business] the previous day had no grounds to investigate [Miss A] for making malicious allegations against you, as she had not made any allegations in this regard."

Consideration

Chief Inspector J found that the actions of the officers involved had the potential to create a perception of bias and apologised to the applicant for this. The officers were given advice in this regard. In the Commissioner's view, however, the subsequent response issued by Chief Inspector K rendered Northern Constabulary's position on the complaint unclear. In particular, unlike Chief Inspector J, Chief Inspector K considered that Constables F and G ought to have "carried through" their attendance into the applicant's place of business itself.

In the Commissioner's view, the manner in which Chief Inspector J dealt with this complaint, and the response he issued in this connection was entirely reasonable.

Complaint 20: Failure to investigate further allegation against Miss A

The applicant believes that Miss A's reasons for asking officers to "escort" her to his business premises were false and that she should be investigated for wasting police time. He is dissatisfied at the fact that Northern Constabulary did not initiate an investigation into these claims. In a letter dated 23 March 2007 the applicant stated

"I ... make a formal complaint that [Miss A] has made false reports to the police regarding her personal safety. These reports were wholly without foundation and intended to assist her to pervert the course of justice in her favour. Her complaints wasted valuable police time."

Internal Handling

Chief Inspector K issued the following response to the complaint:

“You also put forward suggestions about [Miss A] making false reports to the Police to secure Police Officers attendance at the [your business premises] when she attended to uplift belongings.

... I have addressed the issue in relation to the Police Officers presence in the vicinity of [your business premises].”

Consideration

It is the applicant’s position that, having reported her allegations to the police on April 2006, Miss A continued to contact him to seek advice and assistance from him. He also states that Miss A was content for him to meet with her daughter on a private, one-to-one basis. The applicant argues that, given this, Miss A’s claims that she feared for her personal safety were false and therefore should have been investigated for wasting police time.

Although Chief Inspector G indicates that in his response to complaint 19 he addressed the present complaint, this does not appear to be the case. The issue raised by this complaint is that Miss A lied to the police when she claimed that she needed a police escort to the applicant’s business premises, and that the police failed to investigate this.

In view of the absence of an explicit response to this complaint, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary now considers and responds to this complaint.

Complaint 21: Failure to investigate further claims against Miss A

Background

Within a number of letters sent to the police (2006 onwards), the applicant claims that Miss A openly discussed the case against him. Specifically, he alleged the following:

“[Miss A] has approached numerous customers and staff members of this business, providing them with intimate details of her allegations, the conduct and progress of the Police enquiry – including forensic analysis and ‘findings’ – together with what she expects ‘her’ witnesses to say, and what the outcome will be. Of concern too, is the fact she has outlined to many of them the exact nature of the case and how it is likely to be dealt with at Court.”

The applicant believed that Miss A’s alleged conduct had the potential to be “extremely prejudicial” to any future criminal proceedings against him. He also claimed that, despite being given an assurance that the police had spoken to Miss A regarding her alleged conduct, she continued to “harass, harangue and intimidate” witnesses. According to the applicant, 18 defence witnesses had been deliberately targeted by Miss A in an attempt to influence the evidence they might give on his behalf.

The applicant initially asked police for help with how to deal with Miss A’s alleged behaviour. Dissatisfied with the responses which he received, the applicant made the following complaint:

“I reported some time ago that [Miss A] was interfering with witnesses and attempting to pervert the course of justice. This was shortly after I was charged in September 2006. I reported the matter twice by telephone to Sergeant [CC], I wrote to the commanding officer ... and to the Procurator Fiscal on two occasions. I received a response to my second letter to the Fiscal, who intimated that the allegations were to be investigated. To my knowledge, no police enquiry has been carried out.”

On 24 October 2006, the Procurator Fiscal sought Detective Constable C's comments on, amongst other things, the applicant's allegation that Miss A had attempted to pervert the course of justice. On 25 November 2006, Detective Constable C provided the following response:

“[The applicant] was advised that his witnesses should attend [the local] Police Station to provide statements. At this time [Sergeant CC] contacted [Miss A] and any witnesses directly about this case. [Miss A] accepted this advice. No witnesses have come forward to make complaints on [the applicant]'s behalf.

... In addition [Miss A] as the complainer was only informed that [the applicant] had been charged and a report was to be submitted. Since then there has been nothing to update her with and consequently nothing for her to update the other witnesses with as is alleged.”

Following the applicant's meeting with Chief Inspector K on 19 April 2007, Chief Inspector K sent the following memo to the local Area Commander, Superintendent BB:

“One thing that seems to be clear is that [the applicant] is putting forward various witnesses in regard to the allegations against him and also inferring that one of the witnesses in the case against him, [Miss A], has been interfering with witnesses and wasting police time. I enclose a list of witnesses [the applicant] provided to me at our meeting on 19 April 2007 which he sent to Inspector [R]. He also advised me that he has previously reported [Miss A]'s interference with witnesses to the Procurator Fiscal ... and that he had received correspondence from the Procurator Fiscal ... that the matter had been passed to the police for enquiry.

I attach a statement from [Detective Constable C] ... in which it appears he has addressed the actions arising from the Procurator Fiscal ... in regard to the above. From my meeting with [the applicant] on 19 April, it seemed that he was making clear criminal allegations against [Miss A] and it may be prudent that these are investigated as separate criminal allegations from the case currently libelled against him.”

On 4 May 2007, Detective Constable Z and Detective Sergeant T attended the applicant's home. Detective Constable Z subsequently sent the following memo to the Procurator Fiscal:

“[The applicant] has again contacted [the local] Police indicating that he wished to make a number of complaints against [Miss A]. These included perverting the course of justice, intimidation/harassment of witnesses and false reports to the Police. This afternoon, accompanied by Detective Sergeant [T], I attended at [the applicant]'s home where he explained the nature of his complaint.

In essence [the applicant] has compiled the list below of witnesses whom he believes have overheard [Miss A] either discussing the case with various people or have been spoken to by her, discussing the case. Both [Detective Sergeant T] and myself are of the opinion that, albeit it would be unadvisable for [Miss A] to discuss the case, there did not appear to be any criminal act committed by her. [Miss A] has since been advised by police regarding this conduct. “

On 21 August 2007, Inspector R wrote to the Procurator Fiscal in the following terms:

“My understanding is that the matter was discussed with yourself and members of our C.I.D and your instruction was that we take no action regarding this 'complaint'. In light of his latest correspondence I spoke with your office ... and she has asked that I forward the attached letters from [the applicant] for perusal. I would appreciate a reply from yourself as to whether or not there is any change in the position currently adopted i.e. no action in relation to [the applicant]'s claims.”

Internal Handling

Chief Inspector K issued the following response to the complaint:

“Other than hearsay evidence from you at the time, there was no evidence uncovered that [Miss A] was interfering with witnesses and attempting to pervert the course of justice. Indeed in my own enquiries and interviews of witnesses in regard to your complaints against Police Officers I have found no evidence hearsay or otherwise to substantiate these allegations against [Miss A].

Notwithstanding this, a report on the matter of [Miss A]’s alleged interference of witnesses was made to the Procurator Fiscal. The decision on whether or not to take proceedings or instruct further Police enquiry in this regard was the remit of the Procurator Fiscal.

... The matters regarding [Miss A]’s interference of witnesses have not been substantiated to me in my interview of witnesses ...

In regard to [Miss A] allegedly interfering with witnesses in the case there was no evidence found to substantiate this but nevertheless [Miss A] was advised to refrain from discussing the case concerning you if she was indeed doing so.”

In his review of the complaints dated 20 April 2009, Superintendent BB stated:

“The allegation that Inspector [R] did not have a proper investigation carried out into allegations that [Miss A] threatened witnesses is not supported by the evidential statements ... Of course a great deal of evidence was provided to the Procurator Fiscal by [the applicant]’s defence solicitor and I would have expected any such evidence as to impropriety by [Miss A] to have been addressed by the Procurator Fiscal.

A memorandum dated 4th May 2007 from Detective Constable [Z] to the Procurator Fiscal ... contained a list of 13 witnesses referred to by [the applicant] to [Detective Constable Z] as persons who could support his allegation against [Mrs A].

Clearly if the Fiscal had required these persons to be seen then instructions would have been given accordingly.”

Consideration

As can be seen from the above description of the actions taken in respect of the applicant’s allegation against Miss A, Northern Constabulary reported to the Procurator Fiscal the background to the allegation and supplied a list of the witnesses who Miss A had allegedly attempted to influence. Following Chief Inspector K’s memo to Superintendent BB suggesting that it may be “prudent” to separately investigate the applicant’s allegations, Detective Constable Z wrote to the Procurator Fiscal updating him on what was discussed during his meeting on 4 May 2007 with the applicant and his view on the allegations made. The Commissioner notes that Chief Inspector K also wrote to the Procurator Fiscal on 21 August 2007 specifically asking for further instruction on whether or not the complaint should be progressed. There is no indication within the police file that the Procurator Fiscal instructed further work be carried out.

In the Commissioner’s view, given that the allegations made by the applicant were intrinsically connected to the case against him (in which the Procurator Fiscal had initiated criminal proceedings) it was appropriate for the police to await instruction from the Procurator Fiscal before commencing enquiries. The Commissioner does not consider that Northern Constabulary may be held responsible for the fact that no such instruction was given.

Accordingly, the Commissioner considers that the response provided to the applicant by Chief Inspector K was reasonable.

Complaint 22: The circulation of untrue and damaging information

In a number of his letters the applicant expresses concern that, following the conclusion of the proceedings against him, officers disclosed that he had been convicted of “everything”. The applicant named Miss D as a witness who could verify this claim. The applicant also complains that the circulation of this information led to his being publicly “vilified” and to his wife becoming involved in a “face to face confrontation”.

Internal Handling

During the complaints investigation, a statement was obtained from Miss D in which she provided the following account:

“... I was told by my father in law that the police had phoned to say I was not required at court as [the applicant] had pled guilty.

When I got home I phoned [Detective Constable C] and asked him what was going on as I did not know I was going to court. He could not understand why I had not been told I was going to court. He tried to explain to me about what had happened. That he had pled guilty to Breach of the Peace and something about remarks being made. I was not very well at the time and found it difficult to understand. He did say that he had been admonished but I did not understand and he said it was a warning.”

Detective Constable C stated the following in respect of this complaint:

“On Monday 11 February 2008 I received a call from [Miss D] [who] informed me she had heard rumours that [the applicant] had been let off by the court for sending her offensive letters in 2002. I informed [Miss D] that [the applicant] had pled guilty to a single charge of Breach of the Peace relating to comments made by him to a female. And that all the charges relating to sending offensive letters and wasting police time had been dropped by the Procurator Fiscal service.”

Chief Inspector K issued the following response to this complaint:

“You allege that a police officer misinformed a victim as to the outcome of the court proceedings against you in as much as you were convicted of every offence when, in reality, you pled guilty to an amended charge of breach of the peace ...

[In your letter dated 10 March 2008 you refer] to your wife being subjected to threatening behaviour by another. This was brought to the attention of the [relevant] Divisional Commander.”

Consideration

There is nothing in the above passages that amounts to a response to the applicant's complaint. For this reason, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

However, the evidence of Detective Constable C and the witness named by the applicant clearly does not support the complaint. Consequently, no further action is recommended in this connection.

Conclusions, Recommendations and Learning

Complaints 6, 7, 9, 10, 11, 17, 18, 19 and 21

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

Complaints 2, 3, 5, 8, 12, 13, 14, 15, 16 and 20

In the Commissioner's view, the manner in which these complaints were dealt with by Northern Constabulary was not reasonable. For the reasons given, further work has been recommended in each.

Complaints 1, 4 and 22

In the Commissioner's view, the manner in which these complaints were dealt with by Northern Constabulary was not reasonable. However, for the reasons given no further action is recommended in this connection.

John McNeill
Police Complaints Commissioner for Scotland

Hamilton House
Caird Park
Hamilton
ML3 0QA