

Report of a Complaint Handling Review in relation to Northern Constabulary

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

Summary and Key Findings

The applicant was detained by officers from Northern Constabulary on 9 September 2009 and taken to a local police station for questioning. The applicant subsequently made various complaints, all of which relate to her detention.

Of the fifteen complaints made to Northern Constabulary, the Commissioner found that 9 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

On 19 August 2009, Detective Sergeant A and Detective Constable B attended a report of a break-in in which a locked door had been forced open and a safe containing a quantity of money stolen. According to Detective Sergeant A, the person/s responsible were selective in the area that they targeted and appeared to have knowledge of the locus. Detective Sergeant A obtained from the householder details of the people who she thought might have such knowledge. The applicant was one of those persons.

Detective Sergeant A and Detective Constable B thereafter attended the applicant's home. Initially, no one answered the door and the officers made their way to leave. However, the applicant's daughter then answered the door and advised the officers that the applicant was not in. Some time later, both officers re-attended the applicant's home and asked her about her knowledge of the locus and where she was at the time of the break-in. A statement was obtained from the applicant in this connection.

Detective Sergeant A states that he conducted further enquiries which cast doubt upon the account given by the applicant. Consequently, at 11.35 am on 9 September 2009 the applicant was detained by Detective Sergeant A and Detective Constable B at her home under section 14 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). She was then taken to a local police station for questioning.

Upon arrival at the police station, the applicant was processed into custody by Sergeant C. During her processing, the applicant informed Sergeant C that she had in the past attempted suicide. Sergeant C therefore took the decision to place the applicant in "anti-suicide" clothing. The applicant was thereafter taken to a cell pending interview and asked to change into this clothing by

Constable D. At 2.11 pm, the applicant was interviewed by Detective Sergeant A and Detective Constable B, during which she maintained the previous account she had given and denied any involvement in the break in. Later that day the applicant was released from custody without charge pending further enquiries.

The Complaints

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

- (1) that officers from Northern Constabulary placed the applicant's daughter in a state of alarm and failed to leave calling cards;
- (2) that the applicant was wrongfully detained by officers from Northern Constabulary;
- (3) that Northern Constabulary failed to send a female officer to detain the applicant;
- (4) that officers from Northern Constabulary did not allow the applicant to contact her daughter by phone or text message following her detention;
- (5) that an officer from Northern Constabulary placed himself in a position where he could view the applicant changing clothes;
- (6) that an officer from Northern Constabulary failed to inform the applicant that she had the right to request the presence of a duty solicitor;
- (7) that Northern Constabulary failed to inform the applicant's husband about her detention timeously;
- (8) that no consideration was given to the applicant's medical condition while she was in police custody;
- (9) that the applicant was made to change clothes in a police cell which contained a video camera;
- (10) that the applicant was left in a state of undress for an inappropriate amount of time;
- (11) that the applicant was held in a cold police cell for two hours and was not informed as to the reasons for this;
- (12) that the applicant's requests for heating and clothing were initially ignored by police;
- (13) that the applicant was threatened and intimidated during a long interview and was not offered a hot drink or a break;
- (14) that the applicant was refused access to her spectacles during a police interview;
- (15) that the applicant was not informed of her status in respect of the police investigation; and
- (16) that Northern Constabulary took an unreasonable time to deal with the applicant's complaints and failed to update her.

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 Northern Constabulary's handling of it and the Commissioner's views on this.

Complaint 1: The actions of the CID officers

The applicant complains that her daughter was alarmed by the way in which Detective Sergeant A and Detective Constable B knocked on her door and looked around the property during their first visit to her home on 19 August 2009. The applicant also complains that both officers failed to leave calling cards with her daughter on this occasion.

Internal Handling

Inspector E was appointed to investigate all the applicant's complaints. As part of his investigation, he obtained a statement from the applicant on 24 September 2009. Inspector E also requested operational statements from all the officers who had come into contact with the applicant during her detention.

In his operational statement, Detective Sergeant A explained the following in respect of his attendance at the applicant's home on 19 August 2009:

"Later that day [19 August 2009] myself and [Detective Constable B] attended the home address of [the applicant] to interview her and obtain a positional statement from her for the period the crime was committed. On attendance at [the applicant's] home address there was initially no reply from the front door and no apparent signs of life within, however prior to leaving, the door was answered by a teenage girl who informed us she was [the applicant's] daughter. I explained who we were and that we wished to speak with her mother and that there was nothing for her to worry about. She indicated that her mother was not at home and I provided her with my name requesting her mother to contact us when available."

Detective Constable B explained the following in his statement:

"Later that day [19 August 2009], [Detective Sergeant A] and I attended at the home address of [the applicant] to obtain a positional statement from her. On attending at the address, there was initially no reply from the front door. A short time later the door was answered by her daughter. [Detective Sergeant A] and I identified ourselves as police officers using our official police warrant cards and informed her that we wished to speak with her mother and reassured her that there was nothing for her to worry about. She informed us that her mother was not at home. [Detective Sergeant A] furnished her with his contact details, and requested that she pass them onto her mother, when she returned."

On 16 February 2010 Superintendent F issued the applicant a response to her complaints. In respect of the present complaint, he stated the following:

"You refer to the behaviour of the officers who called at your house and allegedly scared your daughter. You believe CID officers have calling cards and wondered why they were not used; you claim your daughter was left thinking something happened to her father."

The two officers who called at the house were initially trying to attract the attention of anyone within. They then believed your house was unoccupied and were intending to return later until your daughter answered the door. They are not aware that their contact around your house was anything other than routine."

When they spoke to your daughter, they identified themselves as police officers and showed their warrant cards. One officer left his contact details with her and gave assurance that she should not be concerned. The purpose of the visit was to see you. There was no reason for your daughter to believe anything had happened to her father. The use of 'calling cards' is a practice that some officers have adopted. This can be considered good practice in the right circumstances, but it is not mandatory."

Consideration

In her letter of 14 September 2009 the applicant explained that both officers (who were not in uniform) “hammered” on the front and side doors “for some time”, peered through the windows and went into a neighbour’s garden and stared into the rear of her home. Superintendent D advised the applicant that the officers were trying to attract the attention of person/s within the property and that the officers believed their actions were “routine”.

Having had regard to the statements of Detective Sergeant A and Detective Constable B, neither officer states a belief that their actions were routine. Also, neither officer specifically addresses the applicant’s daughter’s account of their actions.

Additionally, Superintendent F’s response simply recounts the officers’ point of view. It provides little analysis of whether this point of view was correct or whether the complaint was substantiated.

In light of this, the Commissioner does not consider that this aspect of the complaint was dealt with in a reasonable manner. The Commissioner recommends that Detective Sergeant A and Detective Constable B are asked to specifically address this area of concern. A further response should then be sent to the applicant stating Northern Constabulary’s position on the matter.

The applicant also states that, having received no initial response from her daughter, Detective Sergeant A and Detective Constable B should have left a calling card. Superintendent F explained that the use of calling cards is a practice that some officers adopt but that it is not mandatory. He also explained that, in the appropriate circumstances, it is good practice to use calling cards.

Given that officers are not required to use calling cards, the Commissioner does not consider Detective Sergeant A and Detective Constable B’s actions to have been unreasonable. There may be occasions when during the course of a criminal investigation it would not be appropriate to use calling cards. In the Commissioner’s view, the use of such cards is a matter which is best left to the judgement of individual officers.

Complaint 2: Alleged wrongful detention

In her statement the applicant claims that she was wrongfully detained by police on 9 September 2009. Specifically, she explained

“The second bullet point concerned the circumstances of my detention and whether there was specific evidence to do so. I was told that the officers had statements from two witnesses to say that my car was seen at [location] at a time that differed from the time given in my statement. That was all I was told.

The third point I raised was why it was necessary to detain me rather than let me attend on a voluntary basis. I still think that this is the case. I feel that prior to detention they hadn’t spoken to anyone who would support my side of the story such as my neighbours or my husband and son’s neighbours.”

Internal Handling

Inspector E considered this to be a criminal complaint and noted the following in his report:

“It is the Investigating Officer’s opinion that the complaint...is a criminal allegation (unlawful detention) and I respectfully request that a copy of this report together with attached enclosures be forwarded to the Area Procurator Fiscal ...”

On 20 October 2009 Inspector E's report was forwarded to the Area Procurator Fiscal. On 28 October 2009 the Area Procurator Fiscal responded to Superintendent D advising that he did not consider that the allegation gave rise to a reasonable inference of criminality. The complaint was thereafter dealt with by Northern Constabulary as a disciplinary matter.

Detective Sergeant A stated the following in respect of the applicant's detention:

"On Wednesday 19 August 2009 I became aware of a theft from [premises] the previous evening. Myself and [Detective Constable B] thereafter attended the locus where I reinterviewed the complainer [Mrs G] ... and noted a further statement from her. It was clear from the circumstances surrounding this incident that the culprit(s) appeared to have knowledge of the locus and were selective in the area of the dwelling that they targeted. As such details of persons with such knowledge were obtained from [Mrs G]. One such person was [the applicant], a previous work colleague of [Mrs E's husband], who had previously borrowed a large amount of money from [Mrs G] due to financial difficulties."

Detective Sergeant A went on to explain that the applicant was traced and interviewed on 19 August 2009 in respect of the theft. Detective Sergeant A also explained that, following further enquiries, evidence was obtained which cast doubt on the applicant's account and as such the applicant was detained on 9 September 2009. Detective Sergeant A's account is supported in its entirety by that provided by Detective Constable B.

Superintendent F provided the following response to the complaint:

"You question the circumstances of your detention in relation to the sufficiency of evidence. That is something that could be questioned in future Court proceedings and would be subject to scrutiny then. The onus of proof rests with the Prosecutor. I am not in any position to make comment about such evidence at this time.

Whether you would attend at a police station as a detained person or in a voluntary capacity depends on many variables, such as the evidence available and the considerations of the officers towards showing fairness to suspects and accused persons. The decision on how best to deal with such matters is for the investigating officers at the time and is another point that could be tested in any subsequent Court proceedings."

Consideration

As the Commissioner has stated in previous complaint handling reviews, where a complaint arises from the use of police powers it is incumbent on police bodies to state clearly the basis upon which those powers were exercised. In the Commissioner's view, by explaining merely that Detective Sergeant A and Detective Constable B were best placed to decide on how matters were dealt with, Northern Constabulary did not meet this requirement. Furthermore, the Commissioner does not consider it appropriate for complainers to be informed simply that the basis of their detention can be questioned during future court proceedings. In the Commissioner's view, Individuals who complain about the lawfulness of their detention are entitled to be informed of the basis for this, regardless of whether proceedings are taken against them.

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary writes to the applicant explaining clearly the basis for the decision to detain her.

Complaint 3: Absence of female officer

According to the applicant Detective Sergeant A and Detective Constable B should have requested the presence of a female officer before detaining her. The applicant claims that the absence of a

female officer meant that she was not searched at the time of her detention, as she should have been in conformity with relevant police guidance.

Internal Handling

Superintendent F provided the following response to this complaint:

“You have queried why the attending officers were not accompanied by a female officer, if it was their intention to detain you. There is no requirement to have a female officer present for such an action. The only consideration to be given in this respect is that all persons who have been detained shall be thoroughly searched in accordance with police procedures. No person shall be searched by a person of the opposite gender. A female officer was called upon to conduct this search at the station.”

Consideration

Based on the available information, it does not appear that the applicant was searched by either officer upon her detention. This is at odds with the guidance provided to officers within Northern Constabulary’s Care and Custody of Prisoners handbook. Paragraph 4.1 of the handbook states the following:

“It should be noted that the care and custody of prisoners commences at the point of arrest/detention. In order to ensure control and officer safety, all prisoners should be handcuffed even when compliant (except in exceptional circumstances) and a cursory search carried out prior to them being placed in a police vehicle and, in any case, prior to their conveyance/escort to a police station.”

However, paragraph 2.3 of the same handbook states that a “prisoner is to be searched by a person of the same sex.”

Accordingly, given that a cursory search should be undertaken “in any case” prior to a detainee’s conveyance to a police station, in order to satisfy paragraphs 2.3 and 4.1, at least one female officer should have been tasked with detaining the applicant.

Detective Sergeant A and Detective Constable B’s statements do not address the reason why the applicant was not searched. Furthermore, Superintendent D’s response, by concentrating upon the fact that the applicant was ultimately searched by a female officer within the police station, does not deal with the point raised by the applicant. For these reasons, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

The Commissioner notes that the purpose of paragraph 4.1 of the handbook is threefold: to remove any weapon, implement or other article with which it is considered the prisoner is likely to inflict injury or cause damage to property; to obtain evidential material; and to record and provide security for the prisoner’s property. The purpose of paragraph 2.3 is to maintain a detained or arrested person’s dignity.

As noted above, it appears that the only way in which the requirements of paragraphs 2.3 and 4.1 can be met is for a police officer of the same sex as the detainee to always be present at the time of the detainee's detention. In the Commissioner's view, such an arrangement is unlikely to be practicable and could seriously hinder officers in carrying out their duties.

Consequently, in situations where it is not possible for an officer to attend who is of the same sex as the detainee, it will not be possible to adhere to the terms of both paragraph 2.3 and 4.1. In such circumstances, a choice will require to be made between preserving the dignity of the detainee, and ensuring that the detainee is not carrying anything which may cause injury to himself, police officers or others. In the Commissioner's view, placing officers in such a position is likely to result in them facing criticism, whatever choice they make. The Commissioner therefore recommends that Northern Constabulary amends its custody and care handbook to make it clear what it expects of its officers when detaining individuals of the opposite sex.

Complaint 4: Contact with the applicant's daughter

In her statement, the applicant complains that she was not permitted to leave a note for her daughter before she was conveyed to the police station. Specifically, she stated:

"... I was not allowed to leave a note for my daughter saying where I was being taken. I did leave a note but it only said '... if I'm not here when you come home, call dad'. I don't know if my daughter still has the note but I'll ask her. I still think I should have been allowed to leave my whereabouts as my not being in the house while my car was still there, would have worried her."

Internal Handling

Superintendent F provided the following response to this complaint:

"You queried not being able to inform your daughter of your detention and where you were taken by means of a note. This is something for the officers dealing with your case to decide upon, as you were a detained person at that time."

Consideration

Neither Detective Sergeant A nor Detective Constable B explains in their statements why the applicant was prevented from informing her daughter of her whereabouts. In these circumstances, it is not surprising that Superintendent F was unable to inform the applicant why this decision was taken.

As no explanation was provided in this connection, the Commissioner does not consider that the complaint was dealt with in a reasonable manner. The Commissioner recommends that Detective Sergeant A and Detective Constable B are asked to address this complaint and that a further response is issued to the applicant taking into account of their respective positions on the matter.

Complaint 5: Detective Constable A allegedly watched the applicant changing clothes

In her statement the applicant complained that Detective Constable A watched her change her clothing while at her home on 9 September 2009. She stated:

"[Detective Constable A] followed me up the stairs to get changed without asking me. Apart from the fact that he watched me get changed, he has also opened himself up to all sorts of allegations."

Internal Handling

Detective Sergeant A explained the following in his statement:

“Prior to conveying [the applicant] to [the police station], I allowed her to go to her bedroom to get changed. I remained outside the bedroom and at no time did I watch her get changed as has been inferred.”

Detective Constable B supported the account provided by Detective Sergeant A.

Superintendent F provided the following response:

“You asked for a change of clothing before leaving the house. It was explained that, as a detained person, there were restrictions on your rights and movements from that time. The officers considered that it might be best to allow this in the circumstances. The officer who accompanied you upstairs did so only to exercise control over you, as a detained person, to minimise the risks and preserve evidence where necessary. He did not watch you get changed.”

Consideration

Detective Sergeant A denied in his statement that he watched the applicant changing clothes and that he remained outside of the bedroom. Detective Constable B supported this account and stated that it would not have been possible from where he was standing for Detective Sergeant A to see inside the applicant's bedroom.

Accordingly, there are two sources of evidence (that of Detective Sergeant A and Detective Constable B) to the effect that Detective Sergeant A did not watch the applicant changing; and only one source of evidence (the applicant) that he did so. In these circumstances, it was reasonable for Northern Constabulary effectively to conclude that the complaint was not substantiated.

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

Complaint 6: Presence of a duty solicitor

In her statement the applicant complained that she was not informed at the police station of her right to request the presence of the duty solicitor. In this connection, she explained:

“I would also add that when I was being booked in, I was asked if I wanted a solicitor informed. I said I didn't know a solicitor, in fact I think I think I said that twice. I wasn't made aware that I could have a duty solicitor informed. I remember seeing a notice behind the desk and I remember reading it but because I wasn't asked, I didn't know I was entitled to one.”

Internal Handling

Sergeant C (the officer who processed the applicant into custody on 9 September 2009) provided an operational statement dated 20 November 2009. In connection with this complaint, he stated:

“It is normal practice to read the detention rights from a printed sheet. Part of the rights are that they are entitled to a reasonably named person and a solicitor informed of their detention. I asked [the applicant] if she would like anyone informed and then asked if they would like a solicitor informed. I am aware that she requested her husband but do not

recall her stating she did not have a solicitor. Should I have been aware of this I would have offered a duty solicitor."

Superintendent F provided the following response:

"Your rights, after being informed that you were detained under that Section of the Act, would be given to you on arrival at the police station. These consist of being allowed to have intimation of your detention and the place that you are being detained given to a solicitor and one other person reasonably named by you without delay, or where such delay as is necessary in the interests of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is necessary.

[Sergeant C] asked if you wanted a solicitor informed of the circumstances and you answered that you did not know one. You were informed by him that it was up to you if you wanted one told. When he stated you could have one at a later time, you agreed to this option. It is unfortunate he did not make it entirely clear to you that you could have a duty solicitor informed. This point is accepted and will be referred to the officer, to ensure it does not happen again."

Superintendent F also apologised to the applicant for the failing identified by the applicant's complaint. Furthermore, on 13 April 2010 Sergeant C was given a warning in this connection under paragraph 5(3) of the Police (Conduct) (Scotland) Regulations 1996 ("the 1996 Regulations").

Consideration

Northern Constabulary has undertaken a thorough investigation of this complaint and has acknowledged and apologised for the error which occurred. In addition, formal action was taken against Sergeant C in this connection.

In these circumstances, it is difficult to see what more could have been done by Northern Constabulary in respect of this complaint. In the Commissioner's view, the complaint was dealt with in a reasonable manner.

Complaint 7: Contacting the applicant's husband

In her statement the applicant complained that Northern Constabulary failed to contact her husband timeously following her detention. Specifically, she stated:

"... my husband wasn't informed until 1320 hours. I was cautioned in my house at 1135 hours and left the charge bar to go to the cell at 1155 hours. I still feel that this was too long a time after my detention as my husband would be driving and I informed the officers of this fact."

Internal Handling

Detective Sergeant A provided the following account of his attempts to contact the applicant's husband:

"I thereafter made efforts to contact [the applicant's] husband to inform him of her detention, as requested, but initially on contacting him on his mobile phone he informed me he was driving north from [city]. I therefore did not inform him at this time and arrangements were made for him to make contact with me when stopped driving. At 1235 hours same date I duly informed [the applicant's husband] of his wife's detention and that I would make contact with him on her release".

Superintendent F provided the following response:

“There was no untoward delay in informing your husband about your detention. You requested he be contacted at 1142 hours. He was called by the investigating officer but was unable to take the call at the time, as he was driving. He called back at 1235 hours and was fully informed then. You were subsequently informed your husband had been contacted at the start of the tape recorded interview.”

Consideration

The applicant arrived at the police station at 11.40 am. According to the custody record she stated that she wished her husband to be informed of her detention. As explained above, Detective Sergeant A states that he attempted to do so, but that the applicant’s husband was driving at the time. Detective Sergeant A states that he spoke with the applicant’s husband at 12.35 pm, at which time he informed him of his wife’s detention. There is no record within the custody log of the conversations to which Detective Sergeant refers.

On the other hand, the applicant states that her husband was not informed of her detention until 1.20 pm. Despite his being a crucial witness, the applicant’s husband has not been asked to give an account of his contact with Detective Sergeant A on the day in question. Accordingly, the investigation into this complaint appears to have been based solely upon Detective Sergeant A’s account. Furthermore, Superintendent F’s response simply narrates Detective Sergeant A’s position on the matter and provides no analysis of the evidence.

For these reasons, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that the applicant’s husband is asked for his account as to his contact with Detective Sergeant A on the day in question. A further response to the complaint should thereafter be provided to the applicant.

Complaint 8: The applicant’s medical condition

The applicant complained that no consideration was given to her medical condition while she was detained. The applicant provided further details of this complaint in her application to the Commissioner’s office:

“Despite my identification of my medical condition – Multiple Sclerosis – no consideration was given to me being seen by a doctor, nor was any inquiry made as to how this condition – Multiple Sclerosis – affected me, which may have informed my treatment whilst at the Police Station.

My medical condition and its effects on me were known to [Detective Sergeant A] and [Detective Constable B], as it was discussed with them in detail on the 19 August 2009, during a statement taken from me at my home address on that date.”

The applicant also claimed that her condition had worsened since her detention in police custody.

Internal Handling

Sergeant C provided the following account in respect of this complaint:

“My knowledge on MS is limited but I am aware that MS is a disorder of the central nervous system. She did not state she was in pain or request a doctor and I didn’t think it was necessary to contact a doctor.”

Superintendent F provided the following response:

“You have claimed that no effort was made to assess the impact of the police actions on your significant health issues and there was a significant abuse of authority by the officers concerned. You claim not to have been treated with fairness, dignity and respect. Northern Constabulary staff must comply with the minimum standards within the Care and Custody of Prisoners Handbook and must ensure the safety, health and fair treatment of all custodies, regardless of their status or crime committed.”

Consideration

Superintendent F’s response merely reiterates the complaint and explains that police staff must comply with the minimum standards contained within the care and custody handbook. No assessment is made as to whether officers did in fact meet those requirements on this occasion. In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

Clearly a doctor should not be requested in all cases in which a detainee reveals that he/she suffers from a medical condition: each case must be determined by its own facts. Northern Constabulary’s Care and Custody of Prisoners handbook contains the following, non-exhaustive, list of circumstances where it may be necessary to contact a medical practitioner in respect of a detainee:

“The Custody Officer may decide that clinical attention is needed before a decision can be made about a person’s fitness to be held in custody. This is irrespective of whether the person has already received treatment elsewhere, for example, at hospital ...

Examples include:

- *Have suffered a head injury;*
- *Are or have been unconscious;*
- *Have suffered serious injury;*
- *Are drunk and incapable and treatment centres are not available;*
- *Have mental health issues;*
- *Are believed to have taken a drugs overdose;*
- *Are suffering from any other medical condition requiring urgent attention.”*

In the present case, the Commissioner considers that Sergeant C’s decision not to call a doctor to see the applicant was reasonable in the circumstances. The applicant did not request the presence of a doctor nor, in terms of the CCTV footage of her attendance at the charge bar, did she appear as if she required medical assistance.

In the Commissioner’s view, it is also not the case that Sergeant C neglected to consider the applicant’s medical condition. This is evidenced by the fact that Sergeant C questioned the applicant as to her health and recorded her answers on her Custody Status and Care Plan.

In light of the foregoing, the Commissioner makes no recommendation in connection with this complaint.

Complaint 9: Changing of clothes within a CCTV cell

In her statement the applicant complained that she was made to change her clothing in a cell equipped with a CCTV camera.

Internal Handling

Sergeant C stated the following in respect of this complaint:

“[The applicant] was placed in cell F2 which has a camera in it. I have received no guidance as to where a custody should change into a suit. No person viewed the monitor while the complainer changed into the suit.”

Constable D (the officer who assisted with processing the applicant at the police station) provided the following account:

“I took [the applicant] to Cell F2 and asked her to change into the blue suit. At that time, I was not conscious of this being a camera cell. I stayed in the cell while [the applicant] changed into the suit, and therefore I am not aware if she was observed on the camera monitor while she was changing. I have had no guidance regarding the use of camera cells for searching.”

Superintendent F provided the following response:

“You were put in a cell to change into the ‘blue suit’. This cell is one that is fitted with a CCTV camera and it was recording at that time. The images were transmitted to a monitor in the custody office area but this was not being viewed at this time. The original recording on the hard drive at the Custody Area has since been overwritten and no longer exists.

[Sergeant C] informed [Constable D] who was to search you that you were to be held in Cell F2. [Constable D] did not know that this was a cell with a camera in it and took you there without realising that she was subjecting you to a video recorded search and removed your clothing. You should not have been in a cell with a recording device in these circumstances. This was a failure on the part of the officers involved to properly communicate what was being required of you at this time.”

Superintendent F apologised to the applicant for the failings identified following the investigation of this complaint. Sergeant C was subsequently given a warning in terms of paragraph 5(3) of the 1996 Regulations for directing that the applicant change her clothing in a cell covered by CCTV.

Consideration

A thorough investigation by Northern Constabulary established a serious violation of the applicant’s privacy in respect of this complaint. Northern Constabulary has fully acknowledged this and has provided the applicant with an apology. Furthermore, Sergeant C was later subject to disciplinary proceedings in this connection.

In these circumstances the Commissioner is satisfied that this complaint was handled reasonably by Northern Constabulary.

Complaint 10: The applicant being left in a state of undress

In her letter to Northern Constabulary dated 14 September 2009 the applicant complained about being left in a state of undress for an inappropriate length of time. Specifically she stated:

“I then began to strip off my clothing and when I got down to my bra was told to remove that also. I was then given a blue top which I put on and I then removed all my lower body clothing and was given a pair of blue shorts, these didn’t fit and I was left half naked with the cell door open whilst the [Constable D] went for another pair.”

Internal Handling

Superintendent F issued the following response:

“Female custodies in a state of undress will be supervised by a female officer until such time as their state of address is rectified. You were left in the cell with only a short top covering the upper half of your body, when otherwise naked, whilst the female officer went to get different clothing. She was then distracted into assisting with the packaging of your possessions at the Charge Bar whilst you were left in that condition. You should not have been required to remove your underwear in these circumstances.”

An apology was given to the applicant in this connection and Constable D was subsequently counselled by Superintendent H.

Consideration

Again, Northern Constabulary has acknowledged the error that was made in this connection and has issued the applicant with an apology. Furthermore, Constable D was counselled in order to prevent a similar situation occurring in future.

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

Complaint 11: The temperature of the cell

In her statement the applicant complained that she was held in a cold cell for two hours. She stated:

“I still wish to know why I was left for two hours in a cell prior to interview. Due to my health I was freezing and I wasn’t provided with adequate clothing or blankets. I recall [a police officer] putting a blanket through the cell door. I hadn’t asked him for a blanket, so he must have known I was cold. I didn’t know I could ask for blankets.”

Internal Handling

Sergeant C stated the following in respect of this complaint:

“[The applicant] states she was kept in a freezing cell for two hours despite the effect this would have on her health. I am not aware that she had stated that she was cold. Should she have done, a blanket would have been provided.”

Superintendent F provided the following response:

“You were left in a cell to enable the officers to prepare for the tape recorded interview. They were entitled to hold you there for a period not more than six hours from the time you had been informed that you were being detained. They were not aware that you have a medical condition which can be made worse by the effects of cold temperature. The temperature of the cell block in [the police station] complies with that required to qualify, through inspection, as legalised cells. If you were cold, you should have informed staff.”

Consideration

In the Commissioner's view, it is a matter for a person in custody to advise staff whether they are, for any reason, uncomfortable in their cells. Accordingly it was for the applicant to convey to custody staff her concerns about the temperature of her cell. In the absence of such notification, the Commissioner does not consider that Northern Constabulary can be held responsible for any discomfort suffered by the applicant.

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

Complaint 12: Requests for heating and clothing

In her statement the applicant complained that during her police interview her requests for heating and additional clothing were ignored. The applicant provided further details of this complaint in her application to the Commissioner's office:

"Throughout my interview with [Detective Sergeant A and Detective Constable B] I was freezing and made repeated requests for heating and for clothing which were ignored initially. Only after the end of the first tape recording was I provided with a small "suicide blanket" by [Detective Sergeant A] but continued to feel cold. During this time [Detective Sergeant A] stated that he was "warm enough"."

Consideration

As the complaint made in the applicant's statement has not been considered by Northern Constabulary, the Commissioner does not consider that it was dealt with in a reasonable manner. The Commissioner therefore recommends that Northern Constabulary considers the complaint and issues the applicant with a response.

Complaint 13: Alleged threatening behaviour

The applicant complained that she felt intimidated during her police interview. In her application to the Commissioner's office she stated the following:

"I was subjected to an interview for well in excess of 2 hours, during which time I was not offered a hot drink or a break. I was threatened, intimidated and bullied in an effort to make me admit to something that I had no knowledge of."

Internal Handling

Detective Sergeant A explained the following in his statement:

"During the interview [the applicant] maintained her previous account denying any involvement in the crime and disputing discrepancies put to her. She was provided with refreshment and toilet breaks if required between these interviews."

Detective Constable B stated the following:

"During the interview [the applicant] denied any involvement in the crime and disputed the discrepancies that were put to her. She was provided with refreshments and toilet breaks, when required between these interviews."

Superintendent F provided the following response:

“You claim to have been subjected to a prolonged period of intimidation during the tape recorded interview. The interview should have been conducted in accordance with the Guidelines issued and always taking cognisance of the rules of evidence, particularly in respect of interviewing, the ultimate test being the fairness of the interview having regard to all the circumstances.

Police officers have a duty to produce to the appropriate prosecutor all the relevant evidence which they can obtain, for or against an accused person, from whatever source they may legitimately derive it. It is for the prosecution to ensure that any admission by the person accused which has been obtained as a result of what the law regards as unfair means is not led in evidence as an element in proof of guilt. It therefore follows that there may be a difference between the content and result of police questioning in the course of an investigation and what is admissible in evidence.”

Consideration

Although Superintendent F advised the applicant that the interview “should have been conducted in accordance with the Guidelines”, he does not explain the nature of these guidelines. More fundamentally, Superintendent F did not state whether, in Northern Constabulary’s view, the applicant’s interview was conducted in accordance with such guidelines.

In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary now addresses the specific issues raised by the applicant in this complaint and provides her with a further response.

Complaint 14: The applicant’s spectacles

In her statement the applicant complained that she was not provided with her spectacles during the police interview. She stated:

“I would like to add that I took my glasses with me to the police station. When I asked for my glasses so that I could sign the interview label, I was not given my glasses and I therefore couldn’t read what I was asked to sign. The same thing happened when I was asked by [Detective Sergeant A] to sign a data protection form. I would like to know why I wasn’t allowed my glasses when being asked to sign legal documents.”

Internal Handling

Superintendent F provided the following response:

“When you were asked to sign the medical information release note during the taped interview, you informed the officers that you could not read the papers. You stated you required your spectacles but, as this was not practical in the circumstances, one of the officers read the form out and you signed it. The signed form will be submitted as a documentary production if the case goes to Court. It can be challenged at this time. The content of the tape can also confirm if you were unfairly treated, if you believe that the form was not what they told you.”

Consideration

Although Superintendent F informed the applicant that it had been impracticable to obtain her glasses during the interview, he does not explain why this was the case. Given that the applicant is clearly dissatisfied at not being provided with her spectacles, the Commissioner would have expected a fuller explanation as to why she had not been provided with these.

In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary explains to the applicant why it was not practicable to provide her with her glasses during the interview.

Complaint 15: The applicant's status in respect of the investigation

In her statement the applicant complained that she was not informed of her status in respect of the investigation. She stated:

"I still have concerns regarding the circumstances of my release and lack of knowledge. I left the station without any knowledge of what was going on and I have no idea what is going to happen. To this date, I still don't know what's going on with the investigation."

Internal Handling

Superintendent F provided the following response:

"With regard to the circumstances of your release from detention and your claim not to know what is happening in respect of the allegation; this is not a question that I am able to answer as the criminal enquiry is still ongoing."

Consideration

Given that the criminal enquiry was still live at the time the applicant left the police station, and at the time the applicant made her complaints to Northern Constabulary, the Commissioner considers that Superintendent F's response was reasonable.

However, now that almost two years have passed since the alleged offence, the Commissioner considers that there may be some scope for informing the applicant as to whether she remains a suspect in relation to the matter. The Commissioner therefore recommends that Northern Constabulary considers advising the applicant as to her current status in respect of the alleged offence.

Complaint 16: The time taken to deal with the complaint

In her application to the Commissioner's office, the applicant complained about the length of time taken by Northern Constabulary to deal with her complaints. She stated:

"It is 27 weeks since my complaint was lodged In this time period, all contact apart from the initial visit from [Inspector F and Detective Constable J] to conciliate my complaint – which was not prearranged as they maintained they did not have any contact details for me – has been instigated by me. This is surely an adequate length of time for any complaint to be competently investigated, yet reading [Superintendent F's] report, it is plain that other than speaking to officers concerned with my detention and subsequent treatment, no other contact was made with me – the complainant, to obtain a full statement from me regarding this matter. Nor has there been any attempt by the P.S.C.U to update me in respect of my complaint throughout this lengthy period of time."

Consideration

This complaint has not been made to Northern Constabulary. However, as it relates to the manner in which the applicant's complaints were dealt with by Northern Constabulary, the Commissioner has considered it as part of his review.

The period between the applicant making her complaint and her receipt of the written response from Northern Constabulary was around 5 months. Given the relative complexity of the applicant's case, and the number of issues she raised, the Commissioner does not consider this to have been an unreasonable time period in which to investigate and respond to her complaints.

Nevertheless, as noted in the Commissioner's statutory guidance on police complaints (issued subsequent to Northern Constabulary's involvement in the applicant's complaints) where a complaints investigation lasts for an extended period, complainers should be issued with monthly updates on progress. The Commissioner expects to see this occurring in all cases dealt by policing bodies following the issuing of the guidance.

Conclusions, Recommendations and Learning

Complaints 5, 6, 9, 10 ,11 and 15

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.

Complaint 1: The actions of the CID officers

For the reasons given, the manner in which Northern Constabulary dealt with the applicant's complaint that her daughter was alarmed by the actions of the attending officers was not reasonable. The Commissioner recommends that Detective Sergeant A and Detective Constable B are asked to specifically address this complaint. A further response should then be sent to the applicant outlining fully the police position on the matter.

Complaint 2: Alleged wrongful detention

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary writes to the applicant explaining clearly the basis for the decision to detain her.

Complaint 3: Absence of female officer

In the Commissioner's view, the manner in which this complaint was dealt with by Northern Constabulary was not reasonable. The Commissioner therefore recommends that Northern Constabulary amends its custody and care handbook to make it clear what it expects of its officers when detaining individuals of the opposite sex.

Complaint 4: Contact with the applicant's daughter

In the Commissioner's view, the manner in which this complaint was dealt with by Northern Constabulary was not reasonable. The Commissioner recommends that Detective Sergeant A and Detective Constable B are asked to address this complaint and that a further response is issued to the applicant taking account of their position on the matter.

Complaint 7: Contacting the applicant's husband

For the reasons given, the Commissioner does not believe this complaint has been handled reasonably. The Commissioner recommends that the applicant's husband is asked for his account as to his contact with Detective Sergeant A on the day in question. A further response to the complaint should thereafter be provided to the applicant.

Complaint 8: Consideration of applicant's medical condition

In the Commissioner's view, the manner in which this complaint was dealt with by Northern Constabulary was not reasonable. However, for the reasons given no further work is required in this connection

Complaint 12: Requests for heating and clothing

In the Commissioner's view, this complaint was not dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary considers the complaint and issues the applicant with a response.

Complaint 13: Alleged threatening behaviour

In the Commissioner's view, this complaint was not dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary now addresses the specific issues raised by the applicant in this complaint.

Complaint 14: The applicant's spectacles

In the Commissioner's view, this complaint was not dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary explains to the applicant why it was not practicable to provide her with her glasses during the interview.

Complaint 16: The time taken to deal with the complaint

In the Commissioner's view, the applicant's complaints were dealt with by Northern Constabulary in a reasonable time given their relative complexity and the number of complaints she made.

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