

Report of a Complaint Handling Review in relation to Central Scotland Police

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

Summary and Key Findings

The applicant complained that Central Scotland Police had failed to charge his former partner, Ms A, with assaulting him and stealing his mobile phone.

The Commissioner found that one of the applicant's complaints was dealt with in a reasonable manner, while the other was not. For the reasons given in the report, the Commissioner made no recommendations in this connection.

The Commissioner's role

Section 35 of the Police Public Order and Criminal Justice (Scotland) Act ("the Act") gives the Commissioner the power to examine the manner in which a policing body has dealt with a "relevant" complaint, as defined in the Act.

The Commissioner is independent of the police service and performs his functions in a fair and impartial manner. Before considering a complaint, the Commissioner's office obtains all papers held by the policing body against which the complaint has been made. These papers are considered alongside information provided by the applicant. The Commissioner then assesses whether the policing body's handling of the complaint was reasonable in all the circumstances. The Commissioner will look at the entire handling process, from the initial investigation by the policing body to the final response issued to the applicant. Among the factors which the Commissioner takes into account are the following:

- whether the policing body's response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented;
- whether the policing body's response to the complaint is adequately reasoned; and
- whether the policing body has communicated with the applicant in a reasonable manner.

Background

At 3 am on 24 November 2009, officers from Central Scotland Police were called to an address following a report of a domestic assault. On arrival, the officers were informed by Ms A that she had been assaulted and spat upon by the applicant the previous evening.

Later in the morning of 24 November 2009, the applicant was traced by the police to his home address and detained on suspicion of assault and breach of the peace. During police questioning, the applicant denied that he had spat upon Ms A and stated that he had only pushed her away from him in self-defence.

The applicant was later charged with assault and breach of the peace. He was ultimately acquitted of all charges.

The Complaints

Based on the contents of the application form, and the information obtained from Central Scotland Police, the Commissioner has identified the following complaints:

- (1) that Central Scotland Police did not charge Ms A with assault; and
- (2) that Central Scotland Police did not charge Ms A with theft.

The Commissioner's Review

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

Complaint 1: Alleged failure to charge Ms A with assault

In his statement dated 31 December 2010, the applicant alleged that Ms A had assaulted him and complained that she was not charged by police in this regard.

Internal Handling

Inspector B was appointed to investigate the applicant's complaints and produced a report dated 11 February 2010. As part of his investigation Inspector B obtained operational statements from the two officers (Constables C and D) who responded to the call which Ms A had made regarding the alleged assault upon her.

Constable C confirmed that Ms A had alleged that the applicant had assaulted and spat on her. On detaining the applicant subsequently, Constable C noticed that the applicant had "several scratches to his face". The applicant was thereafter taken to a police station and, during questioning, denied that he had assaulted, spat on or swore at Ms A. According to Constable C, the applicant stated that he had "pushed [Ms A] when she started clawing at [him]" and that he had "restrained [Ms A]." The applicant also alleged that Ms A had attacked him.

Constable D supported the account provided by Constable C.

Inspector B also examined the report which had been submitted to the Procurator Fiscal in relation to the incident. Inspector B noted from this that the applicant had intimated while in police custody that he wished to make a counter-complaint of assault against Ms A. Inspector B quoted the following from the report to the Procurator Fiscal:

"A counter complaint was made by the accused against [Ms A] however after enquiry was carried out and following consultation with [the] on-duty Inspector it was decided that no further action would be taken at this time. [Ms A] has provided a statement to officers in which she states she went for his face to push [the applicant] off."

Inspector B supported the decision not to prefer any charges against Ms A, and made the following points in this connection.

- "1. [Ms A] has contacted the Police to make a complaint of breach of the peace and assault.*
- 2. [The applicant] did not contact the Police. His complaint that he was assaulted was made only in response to himself being charged.*
- 3. [Ms A's] statement is consistent with her injuries and the injuries to [the applicant].*
- 4. [Witness E] stated that she heard loud thumping noises. This is consistent with the statement provided by [Ms A].*

5. [Constable D] *found lumps on the back of [Ms A's] head which were consistent with her version of events.*
6. [Witness E] *provides a statement as to [Ms A's] distressed state and is recited a version of events by [Ms A] that is consistent with the statement she provided to Police.*
7. [The applicant] *admits under caution to 'restraining' [Ms A].*
8. [The applicant] *has injuries to his face which are consistent with the version of events provided by [Ms A].*
9. [The applicant] *states under caution 'All I done was push [Ms A] away from me in self defence.'*

All these above points support the version of events provided by [Ms A]."

Inspector B made the following additional comments:

- "1. [the applicant] has made this allegation only after being charged himself.*
- 2. His injuries corroborate his version of events but are also consistent with the version of events provided by [Ms A].*
- 3. [Ms A] was interviewed in relation to this counter complaint and denied assaulting him. She explained his injuries as 'He then let my hair loose and I swung my hand round saying 'Don't ever do that again' I must have caught his face when I did this.'"*

Inspector B concluded his report by stating:

"It is not the case that [the applicant's] counter complaint has been ignored. [The applicant's] complaint has been investigated and following discussion with the duty Inspector the decision has been taken not to prefer any charges against [Ms A] on the evidence available ...Under the circumstances there is clear indication that to have taken action against [Ms A] would have been victimising the victim."

On 22 February 2010, Superintendent F issued the applicant with the following response to the complaint:

"I can confirm that your complaint of assault by [Ms A] was investigated. The available evidence was considered, but after consultation with the duty inspector, it was decided that charges would not be preferred. I understand [Inspector B] has explained what occurred to you. Having reviewed all circumstances, I am satisfied that this decision was appropriate."

Consideration

In terms of the decision not to charge Ms A with assault, the Commissioner considers that the reasons listed by Inspector B are persuasive. In the Commissioner's view, the decision not to charge Ms A was reasonable in the circumstances.

With regard to the handling of the complaint, the Commissioner does not consider that Superintendent F's response was convincing. Rather than simply referring to discussions between the applicant and Inspector B (of which there is no record within the complaints file),

Superintendent F ought to have stated explicitly the reasons why it was not considered appropriate to charge Ms A with assault. As this was not done, and given that there is no record of Inspector B's discussions with the applicant on this issue, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

However, as the reasons as to why Ms A was not charged have been listed above, the Commissioner makes no recommendation in this connection.

Complaint 2: Alleged failure to follow up theft allegation

The applicant complains in his statement that Central Scotland Police did not follow up his allegation that Ms A had stolen his mobile phone.

Internal Handling

As part of his investigation into this complaint Inspector B obtained a statement from Constable G who had dealt with the applicant's allegation of theft. Constable G explained that the applicant had attended at a police station to report the theft of his mobile phone. Ms A was subsequently questioned under caution and denied stealing the phone. Following this interview Constable G liaised with her supervisor, Sergeant H, and it was decided that "there was not enough evidence to substantiate a crime and that ownership could still not be established." Constable G explained that the mobile phone was logged as lost property and that when she attended at [the applicant's address] to inform him of this there was no one at home.

Inspector B concluded as follows:

"Whilst the removal of the mobile phone from [the applicant's] house was clearly a civil matter, having taken enquiry on board we should have updated [the applicant] with the result. [The applicant] is happy that this is resolved through the informal resolution process. I would recommend we apologise to [the applicant] and that I make [Constable G] aware of his feelings."

Superintendent F provided the following response:

"... given the information available and your long term relationship with [Ms A], I consider the removal of the mobile phone to be a civil matter. Nonetheless, my officer has noted details and conducted enquiry. This is a learning point for us. I understand that [Inspector B] has informed you that in any case there was no evidence that [Ms A] had taken your phone. I do agree that we should have kept you updated with the result of this. The officer concerned stated that she did call at your house on one occasion but got no reply. I can only apologise for this and as per your discussions with [Inspector B], the officer will be given advice regarding the appropriate action to take."

Consideration

According to Constable G, Ms A was questioned in respect of the alleged theft and denied under caution that she had stolen the applicant's mobile phone. In the absence of any other evidence to corroborate the applicant's allegation of theft, the Commissioner considers that the decision not to charge Ms A in this connection was entirely reasonable.

Central Scotland Police has acknowledged that the applicant ought to have been informed of the outcome of Constable G's investigation, and has apologised in this connection. In the Commissioner's view, Central Scotland Police dealt with this aspect of the complaint in a reasonable manner.

Conclusions, Recommendations and Learning

Complaint 1: Alleged failure to charge Ms A with assault

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

Complaint 2: Alleged failure to follow up theft allegation

In the Commissioner's view, for the reasons set out above, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly no further action is required in this connection.

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