

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

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

## **Summary and Key Findings**

The applicant's complaints arise from an allegation he made that his former tenant had damaged and stolen items from his rental property.

Of the two complaints considered in this report, the Commissioner found that both were dealt with in a reasonable manner. The Commissioner made no 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

This report should be read in conjunction with a separate report produced by the Commissioner (reference PCCS/101/10/PF-L&B) dealing with an additional, related complaint made by the applicant.

According to the applicant, he contacted Lothian and Borders Police on 4 June 2007 accusing his former tenant, Ms A, of damaging, and stealing from, his rental property. The applicant stated that Ms A had removed "everything she could" from the property and that the damage and theft had cost him £8,500 in total. He explained that he had reported the matter to Constable C and provided him with Ms A's new address and details of her car.

The applicant states that after more than 2 years he was informed by Constable C that an individual (Mr B) had been arrested in respect of the matter, and reported to the Procurator Fiscal. The applicant wrote to the Procurator Fiscal on 10 November 2009, and was later informed that no proceedings would be taken against Mr B.

Constable C explained in his statement of 15 March 2010 that he had attended the applicant's rental property on 4 June 2007 following a call reporting a theft. On arrival there, Constable C was met by the property manager, who informed him that a number of items had been stolen, including a television, sofa and coffee table. According to Constable C, he then conducted door to door enquiries in the area and handed out "call back" cards.

Constable C stated that he subsequently met with the applicant at a police station on 9 June 2007 to obtain a statement, following which he tried unsuccessfully to trace Ms A. Following further door to door enquiries, Mr E and Mrs F came forward to offer information. Both Mr E and Mrs F informed Constable C that in the early hours of 2 June 2007 they had been wakened by the sound a vehicle's engine. On looking out of their window they observed a van backed up at the common close, into which a male with red hair was loading items including a washing machine. They provided Constable C with the vehicle's registration number.

Constable C thereafter traced the owner of the vehicle who explained that his former employee, Mr B, would have been driving the vehicle on the weekend in question. Constable C then spoke with Mr B to arrange a meeting; however, Mr B failed to keep the agreed appointment.

Constable C explained that Ms A was eventually questioned on 15 May 2008 in respect of the applicant's allegation. Ms A stated that she had given her keys to Mr B for him to transport her belongings to her new address but that Mr B had failed to arrive. As she denied knowledge of any crime, or of the whereabouts of Mr B, Ms A was released on the basis that there was insufficient evidence bring charges against her.

Constable C recalled that Mr B attended the police station in June 2008 and was detained in connection with the alleged offence. During interview, Mr B admitted that he had removed various items from the applicant's property. Mr B was therefore cautioned and charged with theft and a report was sent to the Procurator Fiscal. The Procurator Fiscal ultimately decided that no proceedings should be taken against Mr B.

## The Complaints

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

- (1) that Lothian and Borders Police took an unreasonable amount of time to find Ms A; and
- (2) that Lothian and Borders Police failed to continue its investigation into the matter which the applicant had reported.

## The Commissioner's Review

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

### Complaint 1: The time taken to trace Ms A

In his email to Lothian and Borders Police dated 9 February 2010, the applicant complained about the amount of time it had taken to find Ms A.

#### Internal Handling

Inspector D investigated the applicant's complaints and produced a report dated 31 December 2010. In connection with this complaint, Inspector D explained:

*"The crime was reported on 04/06/07 and [Ms A] was traced on 15/05/08, almost 12 months later. Whilst she was indeed known to the police, it can be difficult to trace persons who live chaotic lifestyles or actively avoid detection. Accordingly, [Constable C] had requested a Locate / Trace Marker.*

However, according to a ... Custody History Print, prior to being detected by [Constable C], [Ms A] was actually detained in police custody for unconnected matters on 19/07/07, 21/12/07, 06/05/08, 07/05/08 and 15/05/08. She was also the victim of a recorded minor assault on 07/03/08.

... It is not known whether [Constable C] was advised when [Ms A] was in custody, as not all the custody records make reference to the Marker. Similarly, it is not known whether [Constable C] was made aware of the assault against [Ms A]. According to the Duty Management System ... [Constable C] was only ever on duty when the incident on 15/05/08 occurred.

[Constable C] is a response officer whose primary role is to attend calls. This role will dictate the time available to conduct routine enquiries. However, whilst he has requested a Locate / Trace Marker to assist in the enquiry, the crime report suggests that other potential lines of enquiry have not been pursued concurrently. This is particularly obvious from 24/06/07 to 17/09/07, from 04/12/07 to 12/02/08 and from 12/02/08 to 02/04/08 where no enquiry was recorded on the crime report.

This situation might be acceptable if [Ms A's] whereabouts were genuinely unknown, however, clearly she was still coming to the attention of the police and residing in the [local] area.

... However, whilst the Reporting Officer does not consider that [Constable C] has neglected his duty, the crime report makes no reference to assistance being sought from the CID or the preparation of a suspect package that could have been actioned by other officers."

Inspector D ultimately decided that the applicant's complaint was substantiated and recommended that Constable C receive "corrective advice" in respect of managing long term enquiries. Additionally, Inspector D recommended that the police division concerned review the manner in which markers and outstanding suspects were managed.

On 5 January 2011, the Deputy Chief Constable provided the following response to the complaint:

*"Your crime was reported on 04 June 2007 and the suspect you identified was traced and interviewed on 15 May 2008. Whilst you have suggested that the police knew the suspect, individuals who choose to lead chaotic lifestyles can often be difficult to locate.*

*As a result, 'information markers' are recorded on police computers. These markers are used to pass on information to other officers who come into contact with suspects, for example, a request to confirm a home address. Whilst the officer in question has requested an information marker to be recorded against the suspects, I believe that he has been over dependent on the outcome of this marker and has not been sufficiently proactive in pursuing other enquiries.*

*... Accordingly, in the circumstances, I do believe that the time taken to trace the suspect was unreasonable and I do substantiate your allegation.*

*I have instructed that the officer be subject to corrective advice and that the Division in which the officer works undertakes an assessment of the procedures in place for the management of information markers and the detection of outstanding suspects."*

## Consideration

In the Commissioner's view, Lothian and Borders Police successfully identified the deficiencies which led to the delay in Ms A being traced in relation to the alleged offence. Lothian and Borders Police also took appropriate steps in providing advice to the officer concerned and a review of the procedures regarding the tracing of suspects.

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

## Complaint 2: Failure to continue investigation

In his email to Lothian and Borders Police dated 9 February 2010, the applicant complained that it had failed to continue its investigation into the matter which he had reported. Specifically, he stated:

*"Since the one whom the police charged [was] not prosecuted, is it not their duty to keep investigating and find out who did commit the crime."*

## Internal Handling

Inspector D addressed this complaint in the following terms:

*"The role of the police in the investigation of crime is to make preliminary enquiries into offences discovered by or reported to them. The particulars of these cases are then reported to the Procurator Fiscal who makes a decision on whether to initiate further proceedings.*

*In this case, [Constable C] has revealed the full circumstances to the Procurator Fiscal in the Police Report ... including the involvement of [Ms A] and the fact that an associate of [Ms A] had not been traced.*

*Based on the information revealed in the Police Report, the Procurator Fiscal decided not to take any proceedings against [Mr B] and did not direct the police to undertake further investigation.*

*In an email to the Procurator Fiscal dated 27/03/10, [a police inspector] took steps to query the reasons for the case being marked no proceedings and specifically suggested: '...were it due to the actions of the police officers reporting the matter, then it might be necessary to examine further the investigations made.'*

*In an email response dated 27/03/10, the Procurator Fiscal was quite unambiguous in her comments and stated: 'Absolutely no evidence of mens rea on behalf of the accused [Mr B] therefore insufficient evidence.'*

Inspector D concluded that this complaint was unsubstantiated given that the Procurator Fiscal did not direct further investigations, and because all the evidence implicated Mr B in the crime.

The Deputy Chief Constable provided the following response to the complaint:

*"The role of the police in the investigation of crime is to undertake enquiries and to report to the Procurator Fiscal who decides whether to initiate further proceedings.*

*In this case, the officer has revealed the full circumstances to the Procurator Fiscal in a police report. Based on the information in the report, the Procurator Fiscal has taken the decision not to proceed with the case and not directed that further investigation should be*

*undertaken. In these circumstances, the officer in question would not be expected to revisit the matter. Indeed, the decisions of the Procurator Fiscal are not routinely communicated to officers.*

*On your behalf, the Procurator Fiscal was contacted on 27 March 2010 and asked why the case had not been progressed. In an e-mailed response, the Procurator Fiscal indicated that there was insufficient evidence against the person to meet the standard of proof required for a criminal case.*

*There is no suggestion that the wrong person has been charged and, whilst I can understand your dissatisfaction with the outcome, I find the allegation to be unsubstantiated.”*

### **Consideration**

In the Commissioner's view, notwithstanding that there was deemed to be insufficient evidence to prosecute Mr B, the available evidence justified his being reported to the Procurator Fiscal in respect of the alleged offence. In these circumstances, the Commissioner considers that Lothian and Borders Police were justified in not carrying out additional enquiries following the decision of the Procurator Fiscal to take no proceedings.

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

### **Conclusions, Recommendations and Learning**

#### **Complaint 1: The time taken to trace Ms A**

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

#### **Complaint 2: Failure to continue investigation**

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

**John McNeill**  
**Police Complaints Commissioner for Scotland**

Hamilton House  
Caird Park  
Hamilton  
ML3 0QA