

Report of a Complaint Handling Review in relation to Grampian 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 incident in which he sustained serious injuries.

Of the four complaints considered, the Commissioner concluded that one was handled reasonably while three were not. The Commissioner made two 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 21 February 2009 the applicant went on a night out with several friends. After having a drink in a bar with these friends, the applicant, Mrs A and Ms B went to a nightclub. The nightclub closed at 3 am on 22 February 2009. Mrs A and Ms B state that they were unable to find the applicant at that time and therefore took a taxi home.

Shortly after 5 am, the applicant was found by Mr C, Mr D, Mr E and Mr F, lying unconscious in the street below a multi-storey car park. The paramedics who attended deemed the applicant's injuries to be life threatening and conveyed him to hospital. Upon arrival, the applicant was taken to emergency theatre. The applicant sustained a blood clot to his brain and numerous fractures, and was in a coma for five days.

During their attendance at the scene, the paramedics contacted Grampian Police. Initial information received from the paramedics was that the applicant's injuries could have been sustained as a result of an assault or from his having fallen from the upper level of the car park.

Officers of Grampian Police attended and sealed off the locus. House to house enquiries were conducted at this time. It was noted that a local business may have had CCTV coverage of the car park in question. It was arranged for an employee of the business to attend the scene in order that the CCTV images could be checked. The CCTV was checked and found to have stopped recording ten hours before the nightclub closed.

A crime scene manager was appointed and at 10 am a team of officers attended the scene to search the area. A search of the interior of the car park and surrounding area was conducted.

In attempting to trace the applicant's movements on the evening in question, his mobile phone SIM card was examined, as was his bank account records. Neither source provided any additional lines of enquiry.

Statements were obtained from the bar and door staff of the nightclub in question, none of whom could recall the applicant. The friends whom the applicant met that evening and the individuals who found him at approximately 5 am also provided statements, none of which progressed the enquiry in terms of the applicant having been assaulted. Attempts were made to obtain CCTV of other businesses in the area. The CCTV obtained provided no additional lines of enquiry.

A statement was taken from the applicant on 8 April 2009. The last memory the applicant had was that a taxi had been arranged to collect him and the friends with whom he had attended the nightclub. In this connection, the applicant stated the following:

"I don't remember anyone I didn't know speaking to me and I don't remember any of the bouncers speaking to me. I don't remember anything else about the night. I can't remember anything else after [the nightclub] but I woke up in hospital nearly a week afterwards ... It is bugging me that I can't remember what happened to me ... I don't know if I was assaulted."

Upon conclusion of its enquiries, Grampian Police found that there was no evidence of a crime having been committed.

Whilst the applicant has no recollection of the events in question, he does not accept the police explanation and believes that he was kept in the club by door staff and then thrown from the multi-storey car park. He appears to hold this belief as a result of a similar incident which he claims occurred at the same locus approximately three years previously.

The Complaints

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

- (1) that Grampian Police did not properly investigate how the applicant sustained his injuries;
- (2) that a witness provided a statement to police after reading another witness's statement;
- (3) that the applicant's clothing was not returned; and
- (4) that Grampian Police took too long to interview the applicant.

At the time of making this complaint the applicant had moved outside the Grampian policing area. As a result Grampian Police communicated with the applicant mainly by telephone. The content of these telephone conversations has been recorded in a series of file notes. The Commissioner is satisfied that this was appropriate in the circumstances.

The Commissioner's Review

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

Complaint 1: Police investigation

On 6 April 2010 the applicant emailed Grampian Police complaining that its investigation into the incident was “inadequate” and claiming that, had it been handled better, the matter “could have been a criminal case.”

Internal Handling

Sergeant G was allocated to investigate the applicant’s complaints. On 12 April 2010, he spoke with the applicant by telephone to establish his precise concerns. In relation to complaint 1, the applicant listed the following areas of concern:

- that no door to door enquiries were undertaken;
- that no enquiry was made with fast food outlets and other licensed premises as to the applicant’s movements on the evening in question;
- that no posters or notice boards were set up; and
- that the applicant’s picture was not released to the media.

Sergeant G states that, during his initial conversation, he made attempts to explain to the applicant the enquiries that were conducted following the incident. According to Sergeant G, he gave the applicant the following explanation:

“I spoke to him at length regarding this. I had obtained a copy of the job book ... which details the extensive enquiry carried out by the Criminal Investigation Division, with [Detective Sergeant H] as the Enquiry Officer. I fully explained everything that had been done to date and he took all this on board and advised he had not been aware of the depth of enquiry carried out.”

Sergeant G obtained the file in relation to the investigation conducted following the incident. The file contained the CCTV footage that was recovered; witness statements from Mrs A, Ms B (as well as other friends who were with the applicant earlier in the evening), Mr C, Mr D, Mr E, Mr F, staff at the club; the results of door to door enquiries; the applicant’s mobile phone record; the results of a forensic analysis; and the search that was conducted in the area.

According to his briefing note, on 28 April 2010 Sergeant G provided the following account of his conversation with the applicant:

“I explained all the Police enquiry that had been conducted and there was no evidence of criminality, but he was adamant that there had been. It was thoroughly explained that we could not prove that, but it was not through lack of enquiry. He accepted this, but is obviously upset that he does not know exactly what happened to him to cause the serious injuries he received and believes that persons unknown have ‘got away’ with seriously assaulting him.”

The applicant received a further telephone call from Sergeant G on 22 May 2010 which is recorded as follows:

“Despite being advised several times of the level of enquiry carried out by Police, he believes that Police were not robust in dealing with door staff and did not progress enquiry there. He was assured that this was not the case, but did not accept it.

Overall, it is apparent that the complainer is deeply upset that he does not know what happened to him to cause his injuries and that Police enquiries have failed to ‘fill in the blanks’. He vehemently believes his injuries were as a result of a criminal act. Although this may be the case, there is absolutely no evidence to support his belief.”

On 24 May 2010, Sergeant G submitted a report detailing the explanations he had given to the applicant in this connection. On 28 May 2010 Superintendent J wrote to the applicant with following response:

"I would like to assure you that Grampian Police have carried out a thorough enquiry into the circumstances whereby you sustained your serious injuries. The enquiry was carried out by Officers from our Criminal Investigations Department and overseen by a Detective Inspector. All possible evidence was obtained and lines of enquiry fully explored.

I realise that this has been a traumatic and life-changing experience for you, but unfortunately, we have been unable to confirm how the injuries occurred. All enquiries to date have failed to identify a criminal act. Due to the nature of the circumstances, we cannot say that one did not occur, but we have certainly found no evidence that your injuries were caused by a criminal act."

Consideration

The applicant has raised the following specific complaints about the enquiry conducted by Grampian Police:

- (a) that no door to door enquiry was made;
- (b) that no enquiry was made at licensed premises and fast food outlets;
- (c) that no posters or notice boards were set up; and
- (d) that the applicant's picture was not released to the media.

The applicant has received more than one telephone call from Sergeant G in which the position of Grampian Police regarding this complaint was provided. Although Sergeant G may well have provided verbal responses to the above areas of concern, the records of the calls contain no details of this. It is therefore not known what, if anything, the applicant was told verbally in this connection. Superintendent J's response simply assures the applicant that a thorough enquiry was carried out and does not specifically address the above areas of concern. In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

In relation to complaints (a) and (b), the Commissioner has been provided with a record of the door to door enquiries undertaken. This confirms the properties visited and the responses given to the officers involved. The Commissioner can confirm that no evidence was gathered by this means which would have developed the enquiry further in terms of the applicant's suspicion that he was assaulted.

Enquiries were also made with a local business which was open at the time in question. Having shown staff the applicant's photograph, none could recall the applicant being there. Staff at the nightclub were also shown the applicant's photograph but none remembered seeing him on the night in question. The applicant has suggested to the Commissioner's office that these enquiries were not conducted until two weeks after the incident. However, the information available to the Commissioner confirms that staff at the nightclub were interviewed on 28 February 2009, some seven days after the incident. The Commissioner does not consider this timescale to be excessive.

In light of the information given above, the Commissioner does not consider it necessary to recommend further action in respect of these areas of concern.

In terms of complaints (c) and (d), there is no evidence within the complaints file that these have been addressed, and insufficient information to allow the Commissioner to address them in this review. Accordingly, the Commissioner recommends that Grampian Police writes to the applicant providing responses to these areas of concern.

The Commissioner notes that, in an e-mail to Grampian Police's service centre dated 6 April 2010, the applicant made the following comment:

"I believe that the investigation was inadequate ... since I was never found on any CCTV."

Whilst it is not entirely clear what the applicant means by this comment, as noted above CCTV footage was recovered from several locations in the area surrounding the club and from a mobile police patrol van. None of the footage provided any evidence of what happened to the applicant. Attempts were made to recover CCTV footage from the club, a shop and the car park near where the applicant was found. However, none of the cameras at these locations were recording on the night of the incident. In the circumstances, it is unclear what more Grampian Police can do in respect of the gathering and analysis of CCTV evidence.

Complaint 2: Witnesses reading statements

Having spoken to the applicant by telephone, Sergeant G recorded this complaint as follows:

"[The applicant] advised that two females, who he identified as [Mrs A and Ms B] had given statements and one had allegedly been able to read the other's statement before providing her own. He had heard this from one of the females but he could not remember which one."

The complaint is recorded as follows in the Complaint about the Police (CAP) form:

"the subject officer interviewed two women that had been in [the applicant's] company prior to incident and one woman was allowed to copy the statement given by the other woman."

Internal Handling

Sergeant G recovered the statements made by Mrs A and Ms B, and thereafter provided the applicant with the following verbal response:

"I advised him that I had made enquiry regarding the allegation that a witness had been allowed to copy another witnesses statement. I had checked the statements, which were completely different and had been noted by different officers."

Superintendent J provided the following written response:

"Sergeant [G] has advised you that there is no evidence to suggest that any statements have been viewed inappropriately by female witnesses and I see from his report that you accept this."

Consideration

As noted above, the note of Sergeant G's conversation with the applicant describes this complaint as being that a witness was able to "read the other's statement before providing her own"; however, the CAP form describes it as "one woman was allowed to copy the statement given by the other woman". As such it is unclear the precise nature of the complaint made by the applicant.

In any event, the Commissioner considers that the only way to investigate either complaint fully is to obtain an account from the police officers and the individuals involved. Based upon the information available to the Commissioner, no such enquiries have been undertaken.

Accordingly, the Commissioner does not consider this complaint to have been handled reasonably. The Commissioner recommends that Grampian Police obtains the accounts of these witnesses and provides the applicant with a further response to this complaint.

Complaint 3: Clothing not returned

Sergeant G described this complaint as follows, based upon a telephone conversation with the applicant:

“the Subject Officer has failed to return articles of clothing to him that were lodged as productions at the time of the enquiry.”

Internal Handling

According to his briefing note, on 12 April 2010 Sergeant G provided the applicant with the following verbal response to this complaint:

“[The applicant] asked that the clothing the Police had seized be returned to him. I advised him of potential forensic evidence should any events come to light, however he wished the clothing returned. I told him I would progress this.”

On 28 April 2010 Sergeant G discussed this complaint further with the applicant. Sergeant E recorded this conversation as follows:

“I discussed the matter of returning his clothing and advised it would be best if we kept it in case any further evidence came to light and the clothing required to be forensically examined. He agreed we should keep it.”

Superintendent J provided the following response:

“I also note that after discussion with Sergeant [G], you have decided that it is best if Police retain the clothing we took possession of, should any further evidence be obtained which would require the clothing to be forensically examined.”

Consideration

Based on the above information, the applicant was told that he could have his clothing returned but agreed that it should be retained by Grampian Police. In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 4: Time taken to interview the applicant

During a telephone conversation with the applicant on 22 May 2010, the applicant raised a concern that Grampian Police “took too long to come and see him after the event.” The applicant reiterated this complaint within his correspondence with the Commissioner’s office.

Consideration

There is no evidence in the files provided to the Commissioner that the applicant has received a response to his concern. Accordingly, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

However, given the content of the applicant's statement of 8 April 2009 (quoted in the background section of this report) any decision to postpone obtaining his account had no bearing on the outcome of the police enquiries. Accordingly, the Commissioner does not consider it appropriate to recommend further action in this connection.

Conclusions, Recommendations and Learning

Complaint 1: Police investigation

In the Commissioner's view, the manner in which this complaint was dealt with by Grampian Police was not reasonable. The Commissioner recommends that Grampian Police provides the applicant with a written response addressing the issues raised in (c) and (d) above.

Complaint 2: Witnesses reading statements

In the Commissioner's view, the manner in which this complaint was dealt with by Grampian Police was not reasonable. The Commissioner recommends that Grampian Police obtains the accounts of the relevant witnesses and provides the applicant with a further response to this complaint.

Complaint 3: Clothing not returned

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

Complaint 4: Time taken to interview the applicant

In the Commissioner's view, the manner in which this complaint was dealt with by Grampian Police was not reasonable. However, no recommendation is made in this connection.

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