

Report of a Complaint Handling Review in relation to Dumfries and Galloway Constabulary

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

Summary and Key Findings

The applicant's complaint stems from an incident which resulted in him being reported to the Procurator Fiscal for an alleged road traffic offence.

The Commissioner found that Dumfries and Galloway Constabulary handled the applicant's complaint reasonably. No recommendations were made.

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 14 December 2009 Ms A and Mr B attended their local police station to report concerns about the way in which a vehicle had been driven in a nearby street. Constable C undertook enquiries and established that the car was registered to the applicant. He attended the applicant's home to speak with him about the alleged incident but received no reply. Constable C also attended the home of Ms A and Mr B to take statements from them. Subsequently, Constable C prepared a Notice of Intended Prosecution ("the notice") in connection with the incident, which he sent to the applicant. It was alleged that the applicant had attempted to enter a one-way street in the wrong direction and had thereafter mounted a pavement on two occasions, causing another vehicle to take evasive action to avoid a collision.

On 10 January 2010 the applicant returned the notice to Dumfries and Galloway Constabulary ("D&G") confirming that he was the driver of the vehicle on 14 December 2009. Subsequently the applicant was charged with careless driving, in contravention of section 3 of the Road Traffic Act 1988.

On 2 February 2010, Constable C submitted a report to the Procurator Fiscal in connection with the alleged offence. The applicant thereafter began corresponding with D&G providing evidence which he believed proved his innocence, and questioning the credibility of Ms A and Mr B as witnesses.

The applicant was subsequently convicted of the offence.

The Complaints

Based on the contents of the application form, the correspondence received from the applicant and the information obtained from D&G, the Commissioner has identified a single complaint, namely that Constable C did not take his response to the charge against him before reporting the incident to the Procurator Fiscal.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaint was handled by D&G.

Internal Handling

Sergeant D met with the applicant on 26 April 2010 to discuss his concerns. On 28 April 2010 he submitted a memo to Superintendent E stating that he had explained to the applicant the procedures which apply once the police decide to report an alleged offence to the Procurator Fiscal. According to the memo, by the end of the conversation the applicant was satisfied with the manner in which he had been dealt with by the police and did not have any complaint.

On 29 April 2010 Chief Inspector F wrote to the applicant confirming the outcome of his meeting with Sergeant D. The letter stated:

"I understand from [Sergeant D], who has met with you to discuss your concerns, that he has been able to explain to you the principles of Scots Law and role of the Procurator Fiscal in prosecuting crimes in Scotland. Hopefully you will now be able to discuss your concerns with him in a manner which should address the issues you have raised in your various pieces of correspondence."

Following receipt of this letter, the applicant continued to correspond with D&G, sending numerous letters, visiting his local police office and conversing with officers in connection with his complaint.

There are briefing notes in the complaint file documenting the contact the applicant had with the police after 29 April 2010. Chief Inspector F noted that the applicant had contacted the local police office on three separate occasions seeking to discuss his concerns regarding the court process and his dealings with the Procurator Fiscal. According to Chief Inspector F he repeatedly advised the applicant that he should seek legal advice as the matters he was raising were not ones which the police could help him with. In respect of the applicant's visit to the police office on 6 May 2010, Chief Inspector F noted:

"... I advised him that the Courts would decide on the credibility of the witnesses and it was the Police function, where there appeared to be a sufficiency of evidence, to report matters to the Procurator Fiscal who would take an independent view of whether to take proceedings or not and if he did so the Court would make a determination on the honesty/reliability of the witnesses ..."

I am happy that throughout my meetings with [the applicant] he did not raise any matters which I would consider to be a complaint against the Police."

The applicant also contacted Chief Inspector G on numerous occasions by telephone to discuss his concerns. In respect of one such conversation of 30 April 2010, Chief Inspector G noted the following:

"I thereafter explained to him at length how the legal system operated and the part that the police played in that process in respect of reporting matters to the Procurator Fiscal for consideration. In this case, a complaint had been received from a seemingly credible"

source which was corroborated. Given the nature of the alleged offence, this provided sufficient evidence to support a report being sent to the Procurator Fiscal. It was explained that in an ideal world, he would have been interviewed in respect of the matter so that his response would also then have been included within the report. As he was not traced at the time, this had not been possible and the report submitted.”

On 12 May 2010 Chief Inspector G issued the applicant with the following response to his complaint:

“From the information that you have provided, I have identified only one complaint relating to the police procedure regarding the fact that the reporting officer, [Constable C], did not interview you in respect of the matter prior to the submission of the Standard Police Report to the Procurator Fiscal.

[Constable C] made attempts to contact you in order that he could interview you regarding the matter as the person suspected of having committed the alleged offence. When he was unable to trace you, he submitted a Standard Police Report to the Procurator Fiscal which was based on the information provided by two apparently credible eye witnesses. In Scots Law, it is not a requirement that you were interviewed prior to the submission of this report albeit it would be preferable to have done so in order that the Procurator Fiscal was also aware of your response to the version of events provided by the witnesses.”

Consideration

According to the statement provided by Constable C dated 23 March 2010, he attempted to contact the applicant at his home address on 14 December 2009 to discuss the incident and thereafter made numerous further attempts to do so. None of those attempts was successful, and the decision was thereafter taken to report the matter to the Procurator Fiscal.

In the Commissioner’s view, D&G has adequately explained to the applicant the steps that were taken by Constable C to obtain his account of the incident. It is also apparent that D&G explained the procedures surrounding the reporting of alleged offences to the Procurator Fiscal and the means by which the applicant might challenge the evidence against him (i.e. at trial). Now that the applicant has been convicted of the offence, his only options are to seek to appeal the conviction or else apply to the Scottish Criminal Cases Review Commissioner for a review of the conviction.

For the reasons given, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Conclusions, Recommendations and Learning

In the Commissioner’s view, the manner in which Dumfries and Galloway Constabulary handled the applicant’s complaint was reasonable. Accordingly, no further action is required in this connection.

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Police Complaints Commissioner for Scotland

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