

# Report of a Complaint Handling Review in relation to Strathclyde Police

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

## **Summary and Key Findings**

The applicant's complaints centre on the actions of police officers on the night her son died and her subsequent contact with officers in this connection.

Of the four complaints considered, the Commissioner found that two were not dealt with in a reasonable manner. The Commissioner made a number of recommendations in this connection and also identified a learning point. The remaining two complaints, which concerned the manner in which the other complaints were dealt with, were not upheld by the Commissioner.

## 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 11 February 2010, officers of Strathclyde Police called at the applicant's home as there was reason to believe that her son, Mr A, had died. The applicant was not at home at this time and the officers, one of whom was Detective Constable E, spoke to her husband, Mr B, and father, Mr C.

On the applicant's return home, Mr B telephoned the local police station to arrange to attend the hospital mortuary to identify the body. The applicant, Mr B, Mr C and the applicant's younger son, Child D, thereafter followed Detective Constable E by car to the mortuary.

There are essentially two versions of the subsequent events.

According to the applicant's statement, Detective Constable E suggested that Mr B and Mr C should identify Mr A and she agreed to this. The applicant claims, however, that Detective Constable E stopped her and Child D from entering the hospital mortuary and said that they could wait in their car.

Detective Constable E states that the applicant asked if she could attend the mortuary to identify Mr A. Detective Constable E explained to the applicant that two family members could make the identification and that it was a matter for the family to decide who did so. According to Detective Constable E, Mr B and Mr C stated that they would identify the body and the applicant remained within the family car along with Child D.

In the days following Mr A's death, Mr B collected some of Mr A's belongings from the local police station. It was noted at this time that Mr A's mobile phone and digital music player were missing

from his property. The applicant states that she reported this to the police but that no enquiries were made into the whereabouts of the missing property.

## The Complaints

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

- (1) that Detective Constable E showed a lack of sensitivity towards the applicant and her family on the night Mr A died;
- (2) that Strathclyde Police's enquiries into the whereabouts of Mr A's property were inadequate;
- (3) that the investigation into the applicant's complaint was not conducted by an independent person; and
- (4) that the letter of response the applicant received from Strathclyde Police contained inconsistencies.

## The Commissioner's Review

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

### Complaint 1: Lack of sensitivity

In her letter to Strathclyde Police dated 15 March 2010, the applicant stated the following;

*"On arrival [at the hospital] my husband and father were advised by [Detective Constable E] to identify my son rather than me. I was then told that as only two people were allowed in to the hospital, my young son and I were forced to stand and wait outside in the hospital grounds in the freezing cold ... we were both very distressed and probably in a state of shock."*

In her statement dated 26 March 2010, the applicant stated:

*"[Detective Constable E] had asked who was going to identify the body. He said it would be a good idea if it was my dad and [husband]. I accepted that. We all walked towards the door and [Detective Constable E] didn't let [Child D] and me into the Hospital – he stopped us from walking in and we weren't allowed in. He then said we could sit in the car."*

The applicant also referred to this complaint in her letter to Strathclyde Police of 29 March 2010:

*"My young son and I were told that we were not allowed to enter the hospital building, and thus the most devastating news was imparted to us by my elderly father in the cold hospital ground ...*

*... I still cannot come to terms with the fact that I did not see him or say goodbye to him, and this has made his passing even more difficult to comprehend and to accept."*

### *Internal Handling*

The applicant's complaints were investigated by Inspector F who took statements from, among others, the applicant, Mr B and Mr C. Detective Constable E also submitted a statement in respect of this complaint.

In addition to the passage quoted above, the applicant stated the following in her statement:

*"I was then forced to wait outside with [Child D] on the roadway and this has made the death of my son harder to bear. If I was allowed into the Hospital and we had more discussion then it would have been easier.*

*[Detective Constable E] never suggested or offered at any point to let me in to see my son. I didn't feel happy about that at all.*

*My dad suggested that I didn't go and identify [Mr A] and I accepted that – I didn't think that I would not be given the opportunity to say goodbye to [Mr A]. I just don't know why [Detective Constable E] kept [Child D] and I outside."*

An addendum to the applicant's statement reads:

*"[Detective Constable E] approached and suggested that it should be my dad and [husband] who identify [Mr A]. They all agreed and I accepted that."*

The applicant's husband, Mr B, stated the following in his statement:

*"At the Hospital there was a difficulty parking the car which added to our stress. We sat down at the car [sic] and we were then told by [Detective Constable E] that only 2 could go into the Hospital. It was decided between us that myself and [Mr C] would go in to identify the body.*

*As a result of this my wife and [Child D] were left outside alone in the freezing cold weather unaware of what was happening inside ...*

*... As a result of the post mortem my wife never got the chance to see [Mr A].*

*Now I feel that this would have been a chance for my wife to see [Mr A] but she didn't get the offer."*

Mr C stated the following:

*"We spoke about it on the way down as to who would identify the body. We got out the car and [Detective Constable E] got out his car. I, [the applicant] and [Mr B] agreed that it would be better if [Mr B] and I went in to identify the body as [the applicant] was really upset. The strain would have been too much for her to go in. Detective Constable [E] was in agreement – he accepted that.*

*We were standing in the grounds and Detective Constable [E] said it would be better if [the applicant] went back and sat in the car ...*

*... The only disappointing thing was that [the applicant] never saw [Mr A] again – that was the last we had seen him ...*

*My only complaint is that [the applicant] never got to see [Mr A] – if she had been told that night by the police that this was the last time we could see him then she would have gone in ... This should have been explained."*

Detective Constable E stated that he and Sergeant G had attended the applicant's home where they spoke to Mr B, explaining that they were carrying out enquiries to identify a male whose body had been found in a flat. The officers obtained from Mr B a recent photograph of Mr A but they were unable to confirm any identification from this. According to Detective Constable E he explained to Mr B that police enquiries had led them to believe that the body might be that of Mr A but that they required to be 100 per cent sure. Detective Constable E's statement goes on:

*"I asked [Mr B] if there were any members of the family who could make formal identification at [the hospital].*

*I explained the procedure of identification to [Mr B] and that we would require 2 persons who knew [Mr A] to make the identification.*

*Mr [B] said he would attend [the hospital] and [Mr C] who was present also agreed to make a formal identification.*

*Mr [B] stated his wife ... was not at home and he would prefer to wait for her to explain the circumstances to her ...*

*About 2100 hours, I was contacted by [Mr B] to say he would be attending at [the police station] to travel to the [hospital]. I spoke with [the applicant] who was obviously upset stating that it could not be her son as he was a fit young man and too young.*

*On arrival at [the police station], I spoke with [the applicant] again. I could see that [she] was upset ...*

*I explained to her the reasons we asked her family to make a formal identification and explained that we had to be 100% sure it was [Mr A] and the formal identification was the procedure used to confirm this ...*

*[The applicant] asked if she could also attend to identify the deceased.*

*I explained that 2 family members could make the formal identification and it was up to the family as to how carried out the identification.*

*[Mr B] and [Mr C] stated that they would make the identification. [The applicant] remained within the family car along with [Child D] ...*

*After [the identification] was confirmed I made my way to the entrance door of the Mortuary Department, where I observed [the applicant] and [Child D] standing outside their family car. [Mr B] and [Mr C], thereafter, left the Hospital premises and joined [the applicant] and [Child D]."*

Inspector F stated the following in his report:

*"[Detective Constable E] states that at no time whatsoever did he refuse [the applicant] access to the mortuary and force her to remain standing outside. He states that she made her own way back to the motor vehicle and as far as he is aware sat within it and that if she had insisted in gaining access to see her son this would have been agreed without question. It was also noted that the course of action he took at this time was accepted and supported by both the husband and father of the [applicant]. [Detective Constable E] has also stated that he [was] of the opinion that there was no waiting area within the mortuary and that the complainer would have had to enter the viewing area."*

In his letter of response to the applicant dated 14 April 2010, Superintendent H stated the following:

*"I appreciate this has caused you much distress, however, [Detective Constable E] has indicated that he advised you, your husband and your father that in his opinion it would be better if you did not enter the mortuary to identify your son at that stage, as his perception was that you were quite understandably upset.*

*I accept that ultimately [Detective Constable E] is not qualified, or indeed in any position to state this with any certainty, however, he assured me he gave this advice to try and safeguard your wellbeing and because he thought, at that moment, that it was the correct advice to give. I understand that [Mr B] and [Mr C] agreed with this suggestion and that ultimately it was your's and their decision as to who entered the mortuary at that time.*

*[Detective Constable E] has also intimated repeatedly during the investigation that at no time did he deny you access to the mortuary and either ask, or expect, you to wait outside, stating that to the best of his knowledge you had walked to your car and he assumed you had decided to remain there. I realise that you disagree with [Detective Constable E's] version of events and may therefore offer you my most sincere apology for this genuine misunderstanding.*

*[Detective Constable E] had no way of knowing that you would not be given access at a later stage and also that you would be denied a further opportunity to visit [Mr A] either by mortuary staff, the undertakers, or indeed the Procurator Fiscal. Ultimately this decision, and any subsequent viewing is outwith the realms of the Police Service. [Detective Constable E] may well have given you different advice at that stage if he had known this was indeed the case and perhaps on hindsight, this would have been the correct and most appropriate course of action in the circumstances.*

*Detective Constable [E] has also informed me that he was of the belief that after the decision had been made in relation to identification; you had walked back to your motor vehicle voluntarily and intended to wait within it with [Child D]. Subsequently, on exiting the mortuary after the identification process, he became aware of you standing outside with [Child D]. Unfortunately, his lack of knowledge of [the hospital] was a factor in his actions and on reflection it would have been more appropriate to find a more suitable area for you to remain, and ultimately to be given the news of your son's tragic death. I fully accept that point and the fact you had to receive the news in the circumstances you did is a matter of deep regret. Notwithstanding, I have been assured that [Detective Constable E] never intentionally allowed this to happen ...*

*In summary, I regret that you believe the actions of Detective Constable [E] were insensitive. I have spoken at length with him regarding your concerns and he is undoubtedly sorry that you are of the opinion that his actions have added to your grief. He may well have been insensitive; however, he is adamant that he tried at all times to be as professional and sensitive as possible. I am certain that under no circumstances were any of his actions intended to cause you further distress. I regret if this has been the case ...*

*I accept wholeheartedly that there are many learning points for my officers in relation to the entire circumstances, and I would like to reassure you that these will be learned. For example, at [the hospital concerned] in similar circumstances, I would expect my officers; if possible, to make enquiries about future viewings for deceased relatives and to offer appropriate advice at this stage. I am sure that this simple course of action would go some way to preventing some of the distress you may have felt.*

*Notwithstanding this point, may I once again offer you my most sincere sympathies and I apologise unreservedly for any hurt, anguish or distress the action of my officers may have*

*caused. Having made enquiries into the circumstances of your complaint, I am now satisfied that the action of my officers were carried out with the best of intentions and were in no way a deliberate attempt to cause you or your family any further distress or upset. However, with the benefit of hindsight, I am of the opinion that my officers could, and should, have taken a more appropriate and considerate course of action."*

### Consideration

In essence, the applicant's complaint is that Detective Constable E refused to allow her (and also Child D) to enter the mortuary to view Mr A's body. Ultimately, Detective Constable E's alleged actions gave rise to further upsetting consequences for the applicant, for example the fact that she was informed of the positive identification in the hospital grounds during cold weather. In addition, as matters transpired she did not have a further opportunity to view Mr A's body.

Both Inspector F in his report, and Superintendent H in his response to the complaint, refer to Detective Constable E as denying the allegation that he refused the applicant entry to the mortuary. However, nowhere in his statement does Detective Constable E deny this allegation. It appears from Superintendent H's response that Detective Constable E may have been spoken to on more than one occasion during the complaints investigation; however, there is no record of such discussions and therefore no evidence to support the position adopted by Inspector F and Superintendent H on this issue.

Moreover, there is no indication in the statements given by Mr B and Mr C as to whether they witnessed Detective Constable E refusing the applicant entry to the mortuary. The closest either witness comes to addressing this issue is in Mr C's statement where he states that Detective Constable E "said it would be better if [the applicant] went back and sat in the car." In the Commissioner's view, however, this does not amount to evidence that Detective Constable E refused to allow the applicant into the mortuary.

Given the lack of evidence on this crucial issue, the Commissioner does not consider it possible to reach a conclusion on the substance of the applicant's complaint. For this reason, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Strathclyde Police seeks a further account from Detective Constable E as to whether he refused the applicant entry to the mortuary. The Commissioner also recommends that Mr B and Mr C are asked to comment on whether they recall witnessing Detective Constable E doing so. A further response to the complaint should thereafter be issued in light of these enquiries.

It is worth highlighting that there are other assertions made in Inspector F's report for which there is no supporting evidence. Inspector F states, for example, that according to Detective Constable E if the applicant had insisted on entering the mortuary he would have allowed her to do so without question. Nowhere in Detective Constable E's statement does he make such a remark. Inspector F also refers to Detective Constable E as stating that there was no waiting area within the mortuary and that the applicant would have had to enter the viewing area itself. Again, there is nothing within Detective Constable E's statement to justify this comment.

The Commissioner considers it appropriate to comment on one further aspect of the complaint, given its importance to the applicant. This concerns the fact that, following the formal identification process, she did not have a further opportunity to view Mr A's body. Although it is unclear from the complaints file precisely how the applicant was denied this opportunity, the Commissioner acknowledges how distressing this must be for the applicant. In the Commissioner's view, however, whatever the outcome of the recommendation he has made in respect of this complaint, neither Detective Constable E, nor Strathclyde Police as an organisation, could have foreseen that the applicant's visit to the hospital on 11 February 2010 would be the only opportunity she would have to view Mr A's body. The Commissioner therefore agrees with the position adopted by

Superintendent H in his response to this aspect of the complaint and the “learning point” he identified which may assist in avoiding a similar situation occurring in future.

## Complaint 2: Enquiry into whereabouts of son’s property

The applicant stated the following in her statement:

*“I noticed that the [mobile phone and digital music player] were missing [from Mr A’s property] and phoned [the police station]. I was told by [Constable J] ... that ‘it was my word against theirs that these things were missing’. I phoned [Constable J] a couple of times regarding this and kept getting the same response. My brothers went down and asked the same question on 20<sup>th</sup> and were told the same thing.*

*My complaint here is that the police should have done more to ascertain where [Mr A’s] property was and to at least check out what had happened to it. Surely the police should have made more enquiries into this. The police gave me the impression that what I was saying about the property wasn’t worth checking out.”*

### Internal Handling

Constable J stated the following in his statement:

*“[The applicant] also asked if we (police) had recovered [Mr A’s mobile phone and digital music player] as they were new and could not be found at his home address.*

*I advised her that the police had not recovered these items.”*

Constable K also provided a statement in which he described the discussion he had with the applicant’s brothers who called into the police station to discuss the missing property. Constable K checked the death report but could find no mention of a digital music player. He advised the applicant’s brothers that if the applicant (as Mr A’s next of kin) wished to report the item lost or stolen she could contact the police in this connection.

Inspector F noted the following in his report:

*“The account of [Constable J] is at odds with that of the complainer ... He categorically states that he was extremely helpful and spoke to both her and her husband at length, explaining the procedure to them and trying to be as helpful to them and informative as possible. He further states that at no time did [the applicant] ask him to recover the property or allege, merely that she was enquiring into its whereabouts. [Constable J] did say that all procedures relating to the death and subsequent recovery of property were explained to [the applicant], the fact that the property was not recovered from the locus at the time and the fact that ownership could prove extremely difficult to ascertain and was in effect disputed.*

*[Constable J] is extremely disappointed by the allegation as he states that he spoke to the complainer at length on numerous occasions, outwith what was normally necessary, or indeed expected and attempted to be as helpful as possible. He even met with the complainer’s husband at the office to personally hand over the deceased’s clothing as this afforded a further opportunity to officer advice and support. He refutes the allegation put to him.*

Superintendent H stated the following in his letter of response:

*“In relation to ... the recovery of [Mr A’s] property, may I say that I completely understand and appreciate your frustrations. [Constable J] has been interviewed and I accept that the*

*discussions surrounding disputed ownership of the property may have influenced our actions and this should not have been the case. In this respect, albeit belatedly, I have instructed the Criminal Investigation Department ... to investigate the circumstances surrounding [Mr A's] property and to try and ascertain its whereabouts. This is ongoing at the time of writing. As soon as I have this information to hand and the investigation is concluded I will be in contact with you to inform you of the outcome."*

### *Consideration*

In the Commissioner's view, the handling of this complaint suffers from the same deficiencies as that of complaint 1 above. Aside from the passage from his statement quoted above, Constable J does not address the applicant's complaint, let alone refute it. Specifically, there is nothing within Constable J's account to justify the comment that "at no time did [the applicant] ask him to recover the property". Contrary to Inspector F's report, there is also no reference within Constable J's statement to the ownership of the missing property being "disputed". This issue is also mentioned in Superintendent H's response but there is nothing within the complaints file to indicate that a third party was claiming ownership of the items in question. Although there is some reference to Mr A keeping "bad company", there is no support for the assertion that those individuals were disputing the applicant's claim to ownership of the property.

In addition, despite the applicant's claim that her brothers were given the same response as she was when they made enquiries into the missing items, no statements were taken from those witnesses. Inspector F states in his report that this was because both individuals lived elsewhere in the UK; however, there is no indication as to why their accounts were not sought over the telephone.

For these reasons, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. Since an investigation was subsequently undertaken to determine the whereabouts of the missing property, the Commissioner does not consider it necessary to recommend further substantive work by Strathclyde Police in this connection. Nevertheless, despite the assurance given by Superintendent H in his response, there is nothing within the complaints file to indicate that the results of the CID investigation into the missing property were communicated to the applicant. It appears from Mr B's statement that the digital music player was produced to the family by a friend of Mr A some time after the death. However, the Commissioner recommends that, in the event it has not already done so, Strathclyde Police advise the applicant of the outcome of its investigation into the missing mobile telephone.

### **Complaint 3: Investigation not carried out by independent person**

In her letter to Superintendent H dated 29 March 2010, the applicant questioned the "independent nature and objectivity" of the investigation into her complaints. She repeated this concern in her letter to the Commissioner's office of 25 May 2010, and in her application form in which she questioned why the investigation had been conducted by an Inspector based at the same police station as the officers subject to complaint.

### *Internal Handling*

Although the applicant's concerns were not treated as a formal complaint, on 31 March 2010 Superintendent H wrote to the applicant in response to her letter of 29 March. Superintendent H sought to assure the applicant that Inspector F's investigation would be "fair and impartial and will seek to establish the truth of the situation."

## Consideration

Inspector F is indeed based at the same police station as the officers subject to complaint in this case. In the Commissioner's view, however, this does not, in itself, mean that his choice as enquiry officer was inappropriate or that the investigation was not carried out with an appropriate degree of independence. Indeed, the majority of complaints about the police are, at least in the first instance, dealt with locally by the policing division in which the incident giving rise to the complaint occurred. In the Commissioner's view, there is nothing objectionable in this practice, provided the officers involved in dealing with the complaint had no personal involvement in the incident which gave rise to it, or any connection with the officer subject to the complaint which might, on an objective view, call into question their impartiality.

In March 2011 (ie after the present complaints were dealt with by Strathclyde Police) the Commissioner issued statutory guidance regarding the handling of complaints about the police. The following guidance is given in respect of potential conflicts of interest:

*"Where an enquiry officer considers that his involvement in the complaint could give rise to a conflict of interest, or where he considers that his involvement could, on an objective view, raise doubts about his impartiality, the enquiry officer should immediately declare this. The enquiry officer's line manager can then decide whether it is appropriate for him or her to continue dealing with the complaint."*

There is no evidence that the deficiencies the Commissioner has highlighted in the handling of complaints 1 and 2 are as a result of Inspector F being anything other than impartial. However, in an effort to deal with the applicant's concern in this connection, the Commissioner recommends that Strathclyde Police provides an assurance to her that there is nothing in Inspector F's involvement in the complaints which could, on an objective view, raise doubts about his independence or impartiality.

## Complaint 4: Inconsistencies in the letter of response

The applicant claims the written response she received from Superintendent H contained an error in that it falsely stated that she had been visited by a female officer at her home. The applicant did not make this complaint to Strathclyde Police but as it concerns the manner in which her complaints as a whole were dealt with, the Commissioner has considered it as part of the review.

Superintendent H stated the following in his response:

*"Both [Detective Constable E] and the female police officer who attended at your home address on the evening of 11 February 2010, namely [Sergeant G], were attempting to warn and advise you, and in effect prepare you that there was no certainty at this stage that the deceased was [Mr A]."*

In his statement, Detective Constable E advised that Sergeant G (a female officer) accompanied him to the applicant's home where they spoke with Mr B and Mr C. The applicant was not at home at this time. Likewise, Mr B and Mr C both state that two officers, one of whom was female, called at the house.

It is therefore clear that a female officer visited the applicant's home while she was not present. Although Superintendent H's letter gives the impression that this female officer spoke to the applicant, this is a minor error which had no material impact on the handling of the applicant's complaints.

## Conclusions, Recommendations and Learning

### Complaint 1: Lack of sensitivity

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was not reasonable. The Commissioner recommends that Strathclyde Police seeks a further account from Detective Constable E as to whether he refused the applicant entry to the mortuary. The Commissioner also recommends that Mr B and Mr C are asked to comment on whether they recall witnessing Detective Constable E doing so. A further response to the complaint should thereafter be issued in light of these enquiries.

### Complaint 2: Enquiry into whereabouts of son's property

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was not reasonable. The Commissioner recommends that, in the event it has not already done so, Strathclyde Police advise the applicant of the outcome of its investigation into the missing mobile telephone.

### Complaint 3: Investigation not carried out by independent person

For the reasons given, the Commissioner does not uphold this complaint. However, in an effort to deal with the applicant's concern in this connection, the Commissioner recommends that Strathclyde Police provides an assurance to her that there is nothing in Inspector F's involvement in the complaints which could, on an objective view, raise doubts about his impartiality.

### Learning Point

The Commissioner has highlighted to Strathclyde Police (and other police forces) on many previous occasions the need for auditable records to be kept of all enquiries undertaken in respect of complaints. This case highlights the difficulties that are caused when no such records are kept. It is simply unacceptable for an enquiry officer's report, used to inform the response to a complaint, to contain comments and assertions for which there is no apparent evidence. As there is some evidence that police witnesses may have been spoken to informally during the complaints investigation, the Commissioner has proceeded on the basis that the deficiencies identified result from a failure to produce records of these discussions, rather than for any other reason.

The absence of auditable records of discussions with witnesses is not merely a procedural deficiency: failure to keep such records raises real doubts as to whether the statements attributed to witnesses reflect their true position on the matter. The Commissioner will be assessing the adequacy of records regarding complaints through his powers under section 42 of the Police, Public Order and Criminal Justice (Scotland) Act 2006.

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

Hamilton House  
Caird Park  
Hamilton  
ML3 0QA

