

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

under section 35(1) of the Police Public Order

Summary and Key Findings

The applicant complained to Dumfries and Galloway Police Authority claiming that the then Deputy Chief Constable of Dumfries and Galloway Constabulary had suppressed her complaints about the police.

The Commissioner found that the Police Authority did not deal with the complaint in a reasonable manner. A single recommendation was made in this connection. The Commissioner also identified two learning points.

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

The applicant and her family occupied a farm from which they were evicted in 1999. The applicant challenged a number of procedural matters concerning the eviction, expressing concerns about a number of bodies, including the police.

In October 2002 the applicant wrote to the Chief Constable of Dumfries and Galloway Constabulary ("D&G") complaining about the (then) Deputy Chief Constable's involvement in the matter. Specifically, the applicant complained about the content of a letter dated 24 September 2002 sent to her by the Deputy Chief Constable and about the action taken by him when she tried to lodge complaints about the police. On 3 November 2002, the applicant also wrote to Dumfries and Galloway Police Authority ("the Authority") lodging complaints about the Deputy Chief Constable.

In October 2003, the applicant communicated her complaints to HM Inspectorate of Constabulary for Scotland (HMICS) but was informed that as HMICS had no power to deal with complaints about senior officers, she should make these to the Authority (as noted above, the applicant had already done so).

The Head of Legal Services for the local authority, Mr A, prepared an initial report on the applicant's complaints for consideration by the Authority. Prior to producing his report, Mr A wrote to the applicant on a number of occasions about her complaint. Details of this correspondence are included later in this report.

The complaints were considered by the “Complaints Against Senior Officers Sub-committee” of the Authority (“the sub-committee”) on 16 January 2003 and the applicant received a response to her complaints on 27 January 2003.

The Complaints

Based on the contents of the application form, the correspondence received from the applicant and the information obtained from the Police Authority, the Commissioner has identified a single complaint, namely that the former Deputy Chief Constable of D&G suppressed complaints about the police.

The Commissioner’s Review

This section sets out the Commissioner’s views on the manner in which the complaint was handled by the Authority. Details of the complaint are set out below and are followed by a summary of the relevant provisions of the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999 (“the 1999 regulations”) and the procedures used by the Authority at the time. Specific details of the handling of the complaint are thereafter given, and are followed by the Commissioner’s views on this.

Further details of the complaint

In her letter to the Chief Constable dated 7 October 2002 the applicant stated:

“With regard to the new complaints procedure and the documentation I requested, [the Deputy Chief Constable] ... refuses to release the information.”

In her letter to the Chief Constable dated 12 October 2002 the applicant stated:

“I have received no acknowledged receipt of the complaint against your Deputy Chief Constable from you.”

In her letter to the clerk to the Authority, Mr B, dated 3 November 2002 the applicant listed the following complaints about the Deputy Chief Constable:

“I have continually been given wrong information of where to raise my complaints against Dumfries Police by the Deputy Chief Constable.

I have had my letters addressed Private and Confidential and for the Personal Attention to Chief Constable ... intercepted and answered by the Deputy Chief Constable.

I have never been asked to make a statement by the Deputy Chief Constable.”

In her letter to Mr A dated 17 November 2002 the applicant wrote:

“In response to your letter of 12 November 2002, I fax two further letters dated 7th and 12th October 2002 [detailed above] which are referenced in the letters you have and further substantiate my complaint that Deputy Chief Constable ... is suppressing my complaints against him.”

The Conduct Regulations and the Authority’s procedures

When a complaint is made about a senior officer of a police force, it is dealt with by the relevant police board or authority (in this case Dumfries and Galloway Police Authority). The board or authority comprises elected council members for the area in which the police force has jurisdiction.

The relevant authority will consider whether the alleged acts or omissions fall within the definition of misconduct as set out in the Schedule to the 1999 regulations. If the authority believes that the alleged act or omission falls within the definition of misconduct it will appoint an investigating officer who, under regulation 5, must be a Chief Constable of another police force in Scotland. However, an investigating officer will not be appointed where it is decided that:

- the complaint does not contain any allegation of an act or omission of a senior officer which would, if proven, amount to misconduct on his part (regulation 5(3)(b));
- the complaint is unfounded or frivolous in nature (regulation 5(4)(a)); or
- the complaint contains allegations of acts or omissions of a senior officer which would, if proven, amount to misconduct of a minor or trivial nature only (regulation 5(4)(b)).

Regulation 5(2) provides:

“Where in the opinion of the police authority a report, allegation or complaint is received which –

(a) appears to relate, or may relate, to an act or omission of a senior officer; but

(b) does not contain sufficient particulars to enable the police authority to determine whether there is a reasonable inference that an act or omission of a senior officer amounts, or may amount, to misconduct,

the police authority may take such steps as it considers reasonable to obtain further particulars.”

The Commissioner has been provided with a copy of the procedures used by the Authority in respect of complaints about senior officers. These procedures are recorded as having been first issued in October 2002 and last revised in May 2008. They are therefore the procedures that were in place at the time the applicant's complaint was made to the Authority.

The procedures contain the following passages:

“2.1 The Clerk to the Police Authority acts as the first point of contact for a member of the Public ... who intimates that they wish to make a complaint/ allegation against a Senior Police Officer. The Clerk provides advice to the Police Authority.

*2.2 The Complaints against Senior Officer Sub Committee of the Council has full delegations to determine as required, in accordance with the regulations, the full complaints/allegation received. **All** complaints/allegations are reported to the Sub Committee. [emphasis in original]*

2.3 The Head of Legal Services [of the local authority] acts as an independent officer in relation to the preliminary stages of the complaint review and prepares an initial report for the Sub Committee (Regulation 5 (2)). In this role the Head of Legal Services will take such steps as they consider reasonable to obtain further particulars as necessary. This provides for a separation of role and function between the Clerk to the Police Authority and the independent officer at meetings of the Sub Committee.”

Internal Handling

On 8 November 2002 the clerk to the Authority, Mr B, wrote to the applicant advising that her complaint about the Deputy Chief Constable would be dealt with in accordance with the 1999

regulations. The Head of Legal Services of the local authority, Mr A, was thereafter appointed to prepare an initial report for the sub-committee.

On 12 November 2002 Mr A wrote to the applicant in the following terms:

“In terms of the Council’s procedures, I require to prepare a Report on your complaint for consideration by the Police, Fire and Public Protection Committee under the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999.”

Mr A listed four items of correspondence (three sent by the applicant and one received by her) which had been provided to him and which were relevant to the complaint. Mr A went on:

“Could you please confirm that I am to treat your three letters as the substance of your complaint against the Deputy Chief Constable?”

Once I have received your reply, I shall be in a position to look at your complaint. It may be that I shall thereafter write to you again seeking clarification on matters. It may be, of course, that I will not need to do that.”

In her response of 17 November 2002 the applicant provided Mr A with copies of two letters she had previously sent to the Chief Constable. Mr A thereafter wrote to the applicant on 22 and 27 November 2002 seeking further clarification but this was in respect of a complaint that is not dealt with in this review.

On 24 November, and again on 1 December 2002, the applicant wrote to Mr A asking “Are you investigating the complaint?” The applicant’s letter of 1 December was copied to the clerk to the Authority, Mr B, who thereafter wrote to the applicant explaining that Mr A was “leading for the Police Authority in the preliminary investigation of your complaint.”

On 23 December 2002 the applicant sent a letter to Mr B requesting a meeting with him, the “Committee Members”, the Chief Constable, an MSP and a doctor. On 7 January 2003, Mr C (an official who undertook duties on behalf of Mr B) responded to the applicant advising that the Authority must act in accordance with the 1999 regulations and therefore her request for a meeting was declined. Mr C explained the following to the applicant:

“The preliminary investigation into your complaints, as per normal practice, is being considered by the Head of Legal Services. He is preparing a report for consideration by the appropriate committee of the Police Authority which will be based on the information that he has requested directly from yourself.”

The sub-committee met to discuss the applicant’s complaint on 16 January 2003. It had at its disposal a report prepared by Mr A together with relevant correspondence. In his report, Mr A listed the applicant’s concerns (so far as relevant to this review) as follows:

- “(i) that the Deputy Chief Constable has obstructed justice;*
- (ii) that the Deputy Chief Constable has continually given wrong information about where to raise complaints by the police;*
- (iii) that the Deputy Chief Constable has intercepted letters marked for the attention of the Chief Constable and answered those letters; and*
- (iv) that the Deputy Chief Constable has never asked [the applicant] to make a statement.”*

In respect of point (i) Mr A stated the following:

“There is nothing in the complaint beyond this assertion to support such an assertion. It may be that this particular complaint is indeed the complaint about the Deputy Chief Constable and that the other matters complained about ... are merely an example of the obstruction of justice. It is difficult to see from the information provided how it can be reasonably inferred that the act/omission complained of amounts to or might amount to misconduct.” [emphasis in original]

In respect of (ii) Mr A stated:

“This complaint would appear to relate to the Deputy Chief Constable giving wrong information to the Complainer about where she should raise her complaints about the police. She does not say what [the Deputy Chief Constable] has told her ... No evidence has been provided that supports the Complainer’s assertion that she had been given wrong information by the Deputy Chief Constable ... There is no information, which suggests that prior to the Complainer writing to HMIC, the Deputy Chief Constable has tried in any way to mislead the Complainer about the manner in which she should make complaints.

It would be misconduct if a Chief Officer suppressed complaints. From the Complainer’s letters, it does seem that there has been certain correspondence between her and the Deputy Chief Constable. She does not appear to be happy with the terms of the responses from the Deputy Chief Constable. However, her letter of 27 October 2002 suggests that she has complained to the Police about the outcome of criminal and civil court cases and has been told that they cannot investigate the Court’s decisions ... The role of the Police is to investigate allegations about crime and not question the decisions of the Court.

Accordingly it is difficult to see how it can be reasonably inferred that the act/omission complained of amounts to or might amount to misconduct.” [emphasis in original]

In respect of (iii) Mr A stated:

“... It is not unusual for a Superior Officer to allow or instruct another to reply either on his behalf, or in his place. It is in fact a relatively common situation. There is no information which suggests that the Deputy Chief Constable has tried in any way to deal with any complaint that the Complainer has made about him in any letter that she has written to the Chief Constable.”

In respect of (iv) Mr A stated:

“The Police will only take statements from individuals if they believe there is a need. This is essentially an operational matter and not within the ambit of the regulations. Accordingly, it is difficult to see how it can be reasonably inferred that the act/omission complained of amounts or might amount to misconduct.”

On 27 January 2003 Mr C sent a response to the applicant's complaint. The response listed the correspondence to which the sub-committee had had regard in considering the complaint, and concluded:

“I have been instructed by the Sub-Committee to advise you of their decision, namely that from the evidence provided by yourself, it could not be reasonably inferred that the acts or omissions referred to in your complaint amount to misconduct in terms of the Police Conduct (Senior Officers) (Scotland) Regulations 1999 and that accordingly, they were taking no action in relation to your complaint.”

Consideration

The sufficiency of the information before the Police Authority

In essence, the applicant's complaint (for the purposes of this review) consisted of a single allegation, namely that the Deputy Chief Constable suppressed complaints. In the Commissioner's view, the other allegations she made (eg that the Deputy Chief Constable persistently gave the applicant wrong information as to how to make a complaint) are simply instances which, in her view, supported this complaint. There is no doubt that in terms of the Schedule to the 1999 regulations the suppression of complaints would, if established, constitute misconduct.

The terms of regulation 5(2) of the 1999 regulations (the power of police authorities to seek further information in relation to a complaint) are quoted above. Although in her correspondence the applicant summarised the complaints she wished to make about the Deputy Chief Constable, she did not provide any information in support of these. In the Commissioner's view, without such information it was not possible for the Authority to determine whether there was a reasonable inference that the alleged acts and omissions amounted, or may have amounted, to misconduct. In these circumstances the Commissioner would have expected the Authority to have exercised its power under regulation 5(2) to obtain further information. This might have involved writing to the applicant asking her to provide any supporting information. The Commissioner acknowledges that Mr A wrote to the applicant seeking confirmation that the substance of her complaints was as set out in her previous correspondence. However, aside from seeking information regarding a complaint which is not subject to this review, there was no attempt to obtain further information from her in support of her complaints.

Once any further information had been received from the applicant, the Authority might then have gone on to request the Deputy Chief Constable to comment on the complaint. In the Commissioner's view, if it had taken these steps the Authority would have been able properly to determine whether the complaint gave rise to a reasonable inference of misconduct.

In the Commissioner's view, as she did not provide any information in support of her complaint, the applicant must bear some responsibility for the absence of detail in Mr A's report. Equally, however, the Commissioner considers that the Authority ought to have been proactive in attempting to obtain any further information from her.

The response to the complaint

The Commissioner considers that Mr C's response to the complaint was overly brief and technical, and failed to explain how the Authority had reached its decision. The Commissioner has in the past highlighted to policing bodies the need for complainers to be provided with sufficient information to properly inform them as to how key conclusions were reached in the response to their complaints. In the Commissioner's view, that standard was not achieved in the present case, although the contents of this report will go some way to explaining the basis of the Authority's decision.

Although published well after the Authority's determination of the present complaint, the statutory guidance issued by the Commissioner recently to policing bodies sets out what is expected in responses issued to complaints about senior officers:

"... even where no inference of misconduct is found, there is nothing in the current regulations to prevent the board or authority from going on to address the substance of the complaint ... The Commissioner therefore encourages the boards to proactively work beyond the minimum standards defined in legislation and to issue a substantive response to complaints even when no misconduct issues are found."

In terms of section 45(3) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, the Authority must have regard to this guidance in respect of all future complaints about senior officers.

In the Commissioner's view, the deficiencies in the response to the complaint were compounded by the failure to explain to the applicant the procedures and processes by which her complaint would be determined. It is evident from some of her correspondence (referred to above) that the applicant was unclear as to why Mr A was involved in the handling of her complaints (see below). A brief explanation to her of the procedures may have alleviated some of these concerns.

Mr A's involvement in the complaint process

The applicant stated the following in her application to the Commissioner's office:

"My complaint is that [Mr A] is not a member of the Police Authority and in terms of the Police Conduct (Senior Officer) (Scotland) Regulations 1999 he should never have been appointed to review the complaint and formulate an opinion that biased my complaint against the Deputy Chief Constable.

In my opinion Dumfries and Galloway Police Authority are corrupting and abusing the preliminary Investigation stage of the Police Conduct (Senior Officer) (Scotland) Regulations 1999. They have effectively conducted an internal investigation upfront that seeks to protect their senior officer."

In her letter to Chief Inspector D of 15 December 2002 (which was copied to the clerk of the Authority, Mr B) the applicant wrote:

"Mr [A] recently advised Dumfries Police officers on the eviction case with his interpretation of Agricultural Law ...

... It seems [Mr A] is not independent where Police Officers are concerned."

Accordingly, the applicant believes that Mr A ought not to have been involved in the handling of her complaints for the following reasons:

- (1) he was not a member of the Authority; and
- (2) that he provided legal advice to police officers regarding the incident which gave rise to the applicant's complaint, and therefore was not independent.

In respect of (1), the Commissioner does not consider that the involvement of the Head of Legal Services of the local authority in providing initial reports to the Authority regarding complaints about senior officers is, by itself, inappropriate. It must be emphasised that the role performed by the Head of Legal Services in this connection is purely to provide details of the complaint, explain the legislative framework and provide advice on the appropriate determination. In terms of the Authority's procedures, the Head of Legal Services does not decide the merits of the complaint: this is purely a matter for the Authority which at any stage is free to depart from the advice provided to them.

Accordingly, the Commissioner does not consider the involvement of the Head of Legal Services of the local authority undermines the role of the Authority, or breaches the provisions of the 1999 Regulations.

In respect of (2), it is clear that the applicant's concerns about Mr A's independence were communicated to the clerk of the Authority. In such circumstances, the Commissioner would have expected to see within the complaints file evidence that these concerns had been addressed. Where a complainer challenges the independence and impartiality of anyone involved in the

handling of their complaints, it is incumbent on the policing body to demonstrate the integrity of the process and to seek to allay concerns about the involvement of the individual in question. No such assurance was provided by the Authority in this case.

For the reasons given above, the Commissioner does not consider that this complaint was dealt with by the Authority in a reasonable manner. Clearly this complaint relates to circumstances occurring a number of years ago. There was a significant delay in the applicant bringing the complaint to the Commissioner's attention and furthermore the Deputy Chief Constable retired from the police service some years ago. Nevertheless the Commissioner considers that the applicant's concerns about Mr A's involvement in the complaints process require to be addressed. The Commissioner therefore recommends that the Authority considers the applicant's concerns in this connection and addresses these fully in a further letter of response.

It is important to make clear that in issuing this recommendation the Commissioner is not calling into question Mr A's integrity or suggesting that his involvement in the complaints process amounted to a conflict of interest. The purpose of the recommendation is simply to provide to the applicant such assurance as can be given regarding the integrity of the complaints process.

Conclusions, Recommendations and Learning

In the Commissioner's view, the manner in which this complaint was dealt with by Dumfries and Galloway Police Authority was not reasonable. The Commissioner recommends that the Authority considers the applicant's concerns regarding Mr A's independence and impartiality and addresses these fully in a further letter of response.

Learning Points

- (1) Police authorities should provide complainers with sufficient information to properly inform them as to how key conclusions were reached in the determination of their complaints.
- (2) In cases where no reasonable inference of misconduct has been established, police authorities should nevertheless issue complainers with a substantive response to their complaints.

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