

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 her son being charged with an assault which occurred in a school playground.

Of the three complaints dealt with in this report, the Commissioner considered that two were dealt with reasonably while the remaining complaint was not. The Commissioner recommended further action in this connection.

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

Over the last ten years, the applicant has made a number of complaints against several local authority departments, and schools attended by her children. On 3 February 2009 the applicant wrote to her MP in this connection, referring to complaints about Lothian and Borders Police, the Children's Reporter and local education services. On 27 May 2009 the MP forwarded the applicant's letter to Lothian and Borders Police.

One of the applicant's complaints concerns her son, Child A, being charged with assault. On 29 April 2008, Child A was involved in an altercation with a fellow pupil, Child B, while at primary school. It was alleged that Child A had punched Child B several times in the face resulting in Child B sustaining a black eye, and that he had used racist language towards him. The applicant and Child A alleged that Child A had acted in self defence and was provoked by Child B.

Constable D was assigned to investigate the incident and attended the primary school on 30 April 2008. There he spoke with the head teacher who informed him of the circumstances. Constable D then proceeded to interview separately Child B and his friend, Child C, who had witnessed the alleged assault. They both named Child A as being responsible, and claimed that the alleged assault had been racially motivated. Constable D also noted that Child B had a badly swollen and bruised right eye.

On 15 May 2008 Constable D, accompanied by Sergeant E, attended the home of Child A and charged him with racially aggravated assault. The matter was thereafter reported to the Children's Reporter who ultimately decided not to take the matter further.

The Complaints

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

- (1) that Lothian and Borders Police failed to properly investigate the allegation of assault by Child A;
- (2) that Lothian and Borders Police failed to properly investigate the lack of action by local authority departments into incidents of bullying against her children and lack of supervision in the school playground; and
- (3) that Lothian and Borders Police offered little or no assistance when the applicant requested their presence or help.

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: Failure to investigate assault allegation

The applicant is aggrieved that Child A was charged with assault when the police noted statements from only Child B and Child C. The applicant complains that although other children witnessed the incident, no statements were taken from them. In her letter to Lothian and Borders Police dated 20 July 2009, the applicant states that "[Child A] and some of the other children have given a rather different version of events to that of [Child B] and [Child C]." The applicant believes that the police charged Child A as he was a "soft target" and because his conviction would improve their crime statistics.

Internal Handling

The applicant's letter of 3 February 2009 was passed by her MP to Lothian and Borders Police on 27 May 2009. Inspector F was appointed as the enquiry officer and on 22 June 2009 he contacted the applicant by telephone as she had by this stage moved some distance from the Lothian and Borders Police area. According to Inspector F's report the applicant was content to deal with the complaint by telephone.

Constable D provided a statement in which he detailed his involvement in the investigation of the alleged assault. In particular, he confirmed that he had obtained a statement from Child B who had named Child A as having been responsible for the alleged assault and claimed that it was racially motivated. Constable D noted at that time that Child B had a badly swollen and bruised right eye. As Child B named Child C as having witnessed the incident, Constable D thereafter obtained a statement from Child C who identified Child A as the perpetrator. Like Child B, Child C described the incident as having been racially motivated. Constable D went on to state the following:

"I thereafter attended at [primary school] where I spoke to staff ... and obtained the home address of [Child A]. The staff stated to me that they had noted details of other children present in the playground at the time of the incident should these be required."

According to Constable D, on 15 May 2009 he and Sergeant E charged Child A in the presence of the applicant. In response to the charge, Child A is reported to have stated "He hit me first. It's self defence." Constable D's statement goes on:

"I thereafter submitted a report in respect of the incident to the children's reporter. I stated in the remarks of the report that there were further juvenile witnesses to the incident should the reporter require them. I also mentioned in the report that [Child B's] statement differed slightly from that of [Child C] and that I believed [Child B] had exaggerated the details of the assault in his statement."

On 11 July 2009, Inspector F contacted the applicant by telephone to inform her of the outcome of his enquiries. In his report, Inspector F stated that he:

"... explained what enquiry [Constable D] had carried out during the investigation and that the work and time involved in noting additional statements from all the children who had witnessed the assault, in the presence of their parents, would not have been proportionate to the crime being investigated."

Inspector F also advised the applicant:

"... that the Children's Reporter was made aware that other children had witnessed the incident and that statements had not been noted from them but would be if required by the Reporter."

Inspector F's attempts to resolve the complaint were ultimately unsuccessful and he thereafter prepared a report dated 21 July 2009 detailing the outcome of his enquiries. The report contains the following passages:

"[Constable D] was made aware from [the head teacher of the primary school] that several other young children had also witnessed the incident and were all corroborating [Child B's] version of events ... As there was sufficient evidence to substantiate that a crime had been committed [Constable D] ... attended at the complainer's address where [Child A] was cautioned and charged with racially aggravated assault ...

... [Constable D] also made the reporter aware that the Head Teacher had made him aware that several other young children had witnessed the assault and that their accounts of the incident were the same as [Child B and Child C's]. As there was already sufficient evidence to prove the charges libelled, [Constable D] made the decision not to note statements from the other children based on their ages, the period of time that would be spent interviewing them in the presence of their parents and that this time and effort would not be proportionate to the minor crime being investigated."

On 16 December 2009, the Deputy Chief Constable issued the following response to the complaint:

"I have examined the Investigating Officer's report and I am satisfied that the level of enquiry into the complaint made against your son was appropriate and proportionate to the crime being investigated. The report submitted to the Children's Reporter highlighted that there were other children who had witnessed the incident, but had not provided statements at that stage. Had the Reporter deemed it necessary, arrangements would have been made to have those additional statements noted ...

The investigating officers came to the view, based on the evidence available to them, including notable injuries sustained by the victim, that your son had been responsible for an assault and reported this and other witness statements to the Reporter."

In respect of the applicant's assertion that the police had charged Child A because he was a "soft target", the Deputy Chief Constable stated:

"The police decision to report the assault reflects our responsibility and assessment that an allegation of violence, particularly when there is a perceived racial overtone, merits further investigative action and consideration by the Children's Reporter."

Consideration

In the Commissioner's view, there is an inconsistency between the account provided by Constable D regarding the other children who witnessed the alleged assault, and the terms of Inspector F's report in this connection. As noted above, Constable D states that staff at the school had informed him that the details of several other children who witnessed the incident had been noted in the event that these were required. However, according to Inspector F's report Constable D was informed by the head teacher that the other children who had witnessed the incident "were all corroborating [Child B's] version of events". There is no basis for this comment in Constable D's statement.

In the Commissioner's view, if all the other witnesses to the incident had indicated their support for the accounts given by Child B and Child C, the decision by Constable D to confine his enquiries in the way he did would have been entirely justified. Clearly there would have been no purpose in interviewing other witnesses whose accounts would simply have provided further evidence against Child A, when there was already sufficient to justify his being referred to the Reporter. However, according to the complaints file, there is no evidence as to what these additional witnesses might have said in their statements. As there was already a strong case against Child A, it is highly unlikely that obtaining statements from these witnesses would have resulted in his not being charged with assault. However, their accounts might have shed light on the wider circumstances of the alleged assault and could conceivably have led to Child B also being referred to the Reporter.

It is not clear precisely the extent to which the Deputy Chief Constable relied upon the apparent error in Inspector F's report when he concluded that enquiries into the incident had been "appropriate and proportionate". However, it is reasonable to assume that it played some part in his determination. While the alleged assault was comparatively minor, there is clear evidence of a racial motivation which, in the Commissioner's view, might have justified wider enquiries than those undertaken by Constable D. It is clear from Sergeant E's statement, for example, that the enquiry was considered to be "urgent" and that because of this she had commenced her shift early in order to assist Constable D. The Commissioner is not suggesting that all the additional witnesses ought to have been interviewed, merely that if accounts had been obtained from some of them it might have materially altered the outcome of the investigation.

In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Lothian and Borders Police re-evaluates its response to the applicant, taking into account the apparent error in Inspector F's report and the other issues raised by the Commissioner. Lothian and Borders Police should thereafter issue the applicant with a further response to the complaint.

Complaint 2: Failure to investigate bullying allegations

The applicant refers in her letter of 3 February 2009 to incidents in which her children were allegedly bullied at school and claims that a "serious injustice" has occurred as a result of none of the perpetrators having been prosecuted. She claims that children at the school were not properly supervised within the playground and believes that those responsible for this should have been prosecuted "for neglect of duty in public office".

Internal Handling

In her statement, Sergeant E stated that while at the applicant's home on 15 May 2008, the applicant had raised concerns about Child A being bullied but did not provide any details of this. According to Sergeant E, the applicant made no direct allegations against anyone, nor did she report any specific incident to the police. Sergeant E's statement went on:

"She was advised that the school would be made aware of her concerns about her son's unhappiness at the school, as it was not a criminal matter but one for the school to be involved in."

Inspector F made enquiries with the local child protection team regarding the applicant's allegation that children were not being properly supervised in the playground of the school. According to Inspector F's report:

"it was agreed that unless there was wilful neglect likely to cause unnecessary suffering or injury to the child or there was a criminal allegation being made then the Education Department would take ownership of the enquiry and not the Police."

Inspector F then contacted the local education department who informed him that they were aware of the applicant's complaints about lack of supervision within the school playground. Inspector F was advised to contact the head teacher to discuss the matter further. Inspector F then spoke with the head teacher who explained that the playground was supervised at all break times by eight learning assistants. The head teacher also stated that she had asked the applicant on three occasions to call into the school to discuss the alleged bullying incidents but that the applicant had refused to do so.

In her letter of 20 July 2009 the applicant repeated that the police should investigate the local education authority in respect of the matters she had raised. Following receipt of this letter, the applicant's case was allocated to Inspector G for further investigation. The applicant was informed of this by letter dated 6 August 2009.

In his letter of response dated 16 December 2009, the Deputy Chief Constable stated the following:

"With regard to your concerns over the level of supervision provided for children in school playgrounds, the complaints you have made remain a matter for the Education Authority to address. Where the matter is considered to be more serious or criminal in nature then, in line with protocols, the matter will be reported to the police who will investigate, as was the case with the incident involving your son."

Consideration

In the Commissioner's view, the applicant's allegations of bullying and lack of supervision within Child A's former school are, in the first instance, matters for the school and local education authority rather than the police.

Notwithstanding this, Inspector F made enquiries which apparently established that the applicant had not taken up offers to meet with the head teacher to discuss the incidents of alleged bullying and Child A's situation in the school generally.

For the reasons given, the Commissioner considers that Lothian and Borders Police dealt with this complaint in a reasonable manner.

Complaint 3: Lack of assistance from police

In her letter of 3 February 2009 the applicant lists various occasions when she claimed to have requested police assistance but had received an inadequate service. No dates are provided in respect of these alleged incidents and the information contained within the letter is brief. No further detail is provided in the applicant's letter of 20 July 2009.

Internal Handling

This complaint was considered by Inspector G who noted every instance in which the applicant was recorded as having requested assistance from Lothian and Borders Police between October 2000 and May 2008. According to the reporting system, there were ten such instances. Inspector G reviewed the circumstances surrounding these incidents and concluded that the police had conducted thorough and appropriate enquiries on each occasion.

In his letter of response of 16 December 2009, the Deputy Chief Constable recounted the various incidents and provided an explanation of the action taken by the police on each occasion.

Consideration

Lothian and Borders Police conducted substantial enquiries in respect of this complaint. The Commissioner has considered each of the instances referred to by the Deputy Chief Constable in his letter and believes that the action recorded as having been taken by the police at the time was reasonable.

The Commissioner would have expected to find within the complaints file a report of Inspector G's enquiries; however, given that the file contains details of the incidents in question, and the Deputy Chief Constable responded to each of them in his letter of response, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Conclusions, Recommendations and Learning

Complaint 1: Failure to investigate assault allegation

In the Commissioner's view, this complaint was not dealt with in a reasonable manner. The Commissioner recommends that Lothian and Borders Police re-evaluates its response to the applicant, taking into account the apparent error in Inspector F's report and the other issues raised by the Commissioner. Lothian and Borders Police should thereafter issue the applicant with a further response to the complaint.

Complaints 2 and 3

In the Commissioner's view, these complaints were dealt with in a reasonable manner. Accordingly, no further action is required in this connection.

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