

Report of a Complaint Handling Review in relation to Tayside Police

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

Summary and Key Findings

The applicant's complaint arises from his being arrested and held in custody regarding an alleged bail offence.

The Commissioner found that the complaint was not dealt with in a reasonable manner. However, for the reasons given in the report, no recommendation was made 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

On 6 May 2009, the applicant was detained by Constables A and B under section 14 of the Criminal Procedure (Scotland) Act 1995 for alleged possession and tendering of counterfeit money. The applicant was thereafter conveyed to a police station where he was cautioned, interviewed and subsequently arrested.

It was then established that the applicant was subject to a bail condition, imposed by a sheriff on 29 September 2008, which prohibited him from entering a particular location. As it was alleged that the applicant had tendered counterfeit money while within this location, the applicant was arrested and held in police custody until 8 May 2009.

The Complaints

Based on the contents of the application form, and the information obtained from Tayside Police, the Commissioner has identified a single complaint, namely that the applicant was detained for breaching a bail condition that had already been rescinded.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaint was dealt with by Tayside Police.

On 28 October 2009 the applicant's solicitor wrote to Tayside Police stating the following:

“[The applicant] was then arrested for having breached a bail order which had been imposed in respect of a charge of theft by shoplifting. That order, however, had previously been lifted by Sheriff [C] at [sheriff court]. Our client informed the Duty Sergeant of this fact but the Sergeant apparently refused to look into the matter and accordingly our client was not released from custody until 2.15 p.m. on Friday 8th May.”

In the statement he provided as part of the complaint investigation, the applicant stated:

“I should say that in 2008 I was at court to answer charges of theft by shoplifting ... As a result of that appearance a court ... I was granted bail subject to the usual conditions and that I did not enter [location] ... As part of this criminal process I subsequently appeared before Sheriff [C]. I cannot remember when but it was for sentencing. I believe I was fined and I believe that the bail was stopped ... As a result of my belief and disposal in 2008 I would should [sic] not have been on bail so I should not have been arrested on 6 May and detained in custody on 6, 7 and 8 May 2009. I should not have been detained for breaching my bail.

At the time of my apprehension I challenged the arrest with the Sergeant (not further specified) who did check the facts and told me I was on bail and I was being detained in custody.”

Internal Handling

Inspector D was appointed to make enquiries into the applicant's complaint. On 6 November 2009 he interviewed Ms E, the individual responsible for overseeing the updating of Tayside Police's computer system with bail information sent by the Scottish Courts Service. Ms E stated the following:

“... [The applicant's] bail ... of the 26 September 2008 commences on the 29 September 2008 ... The same records show that on 25 August 2009 [the applicant] appeared for sentencing at [sheriff court] and he was convicted and given probation for one year on the grounds that he did not re-offend and he attended drug counselling ... The [record provided by Ms E] has two dates on it and this confirms to me that the latter date the 25 August 2009 was a manual update entered by my staff. This is four months after the [applicant's alleged wrongful arrest in May 2009]. There are no significant back logs in this area of work in our department therefore if [the applicant] is to be believed that his bail conditions were changed or rescinded then this is a matter for the Scottish Courts Service who have failed to act timeously ...

On the afternoon of 6 November 2009 I also phoned [sheriff court] and confirmed that the bail in question was revoked on the 25 August 2009.”

On 19 November 2009 Sergeant F provided an operational statement in which he stated the following:

“I can confirm that the relevant check in relation to [the applicant's] bail condition was carried out at the time he was brought into custody. This confirmed the condition not to enter [location] which he clearly had done ...

... I can not recall [the applicant] mentioning to me that his bail condition had been rescinded and was no longer in force.”

In the statement he provided to Inspector D, the applicant stated the following:

"I have discussed this matter with Inspector [D] who has investigated it and it appears that the Criminal Courts Service have not updated my bail record and I have been wrongly arrested but I don't accept that fully as the police may have had some hand or part to play. I will ask my solicitor to write to the Scottish Courts Service as some one must pay for this wrongful arrest."

In his report dated 29 November 2009, Inspector D stated the following:

"[The applicant] does acknowledge that he did discuss this with a Police Sergeant and the Sergeant did investigate and respond. The initial letter of complaint is therefore inaccurate ...

... I noted a statement from [Ms E] in which she confirms that accused committed theft by shoplifting on 26 September 2008, appeared at [sheriff court] on 29 September 2008 and was granted bail subject to conditions that he did not re-offend and he did not enter certain prescribed areas ... except for specific reasons.

She confirmed that complainer then attended [sheriff court] on 25 August 2009 in relation to this charge whereupon he was sentenced to one year's probation on the condition that he attended drug counselling and did not re-offend at this time his bail was lifted.

In her statement [Ms E] described the process and also provides a CHS print which confirms her stance that the complainer's recollections are wrong and that the Scottish Court Service has failed to update CHS timeously ...

... On 6 November 2009 I met the complainer at his home address and we discussed his complaint. Initially he was reticent to accept my explanation however he eventually agreed that he should pursue his complaint with the Scottish Courts Services as I believed that Tayside Police had done no wrong. The matter was conciliated.

In his response to the complaint dated 14 December 2009 Superintendent G stated the following:

"I am advised by Inspector [D] that following his initial enquiry he met with you on 8 November 2009 to discuss the issues raised in some depth. I am pleased to note that he was able to provide a full explanation to you in regard to the circumstances of the incident and as a result you intimated your satisfaction with the explanation given and gave a statement to this effect.

... I am pleased that following what appears to have been a constructive meeting with Inspector [D] you now consider the matter concluded in regard to the police and I understand that you are to further progress this issue with the Scottish Courts Service."

Consideration

In his letter to the Commissioner's office dated 1 July 2010 the applicant's solicitor stated that the applicant "refutes any allegation that he was in any way satisfied with the outcome of the investigation by Inspector [D]." In the Commissioner's view, there is substance to this concern. Contrary to the terms of Superintendent G's response, there is nothing within the applicant's statement which justifies the finding that he was satisfied with the explanation provided to him by Inspector D. Indeed, the applicant comments in his statement that he did not accept Inspector D's explanation fully "as the police may have had some hand or part to play."

In light of this, it is difficult to understand why Inspector D and Superintendent G considered this complaint to have been conciliated. There is simply no basis for such a conclusion.

As a result of this error, Tayside Police did not address the substance of the applicant's complaint, despite having conducted enquiries that would have allowed it to do so. According to these enquiries, the bail order imposed upon the applicant on 26 September 2008 (which included the condition prohibiting him from entering a particular location) was revoked on 25 August 2009, some months *after* the applicant's arrest for breaching the bail order. Accordingly, based on these enquiries, the applicant's arrest and subsequently detention in police custody on 7 May 2009 was lawful, since the bail condition prohibiting him from entering the location in question was still in force at that time.

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, given that the complaint is fully addressed in this report, the Commissioner does not require a further substantive response to be issued by Tayside Police.

Conclusions, Recommendations and Learning

In the Commissioner's view, the manner in which this complaint was dealt with by Tayside Police was not reasonable. However, for the reasons given the Commissioner makes no recommendation in this connection.

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