

# 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 complaints dealt with in this review arose following Mr A being accused of stealing money from an automated telling machine inside a hospital building.

The Commissioner found that two complaints were dealt with in a reasonable manner, while the remaining complaint was not. For the reasons given in the report, the Commissioner made no recommendations 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

The applicants in this case are Mr A and his wife, Ms B.

At approximately 7.40 am on 13 April 2010, Ms C, a member of staff at a hospital, was using an automated teller machine (ATM) within a public area of the hospital building. Ms C withdrew £150 but forgot to take the money from the ATM before walking away, leaving the money protruding from the machine.

Mr A was at this time on his way to the accident and emergency department of the hospital along with his wife, Ms B, and Child X, their infant daughter. Mr A passed the ATM twenty to thirty seconds after Ms C had left. He noticed the money protruding from the ATM and removed it, putting it in his pocket. Ms C did not witness this occurring but, having realised her mistake, ran back to the machine a few moments later to find the money gone. Ms C contacted staff within the security department of the hospital who accessed CCTV footage of the area in question. This appeared to show Mr A taking the money from the machine. The security department established that Mr A was still within the hospital and they thereafter contacted the police by telephone.

Constable D (a female officer) and Constable E (a male officer) attended the hospital at around 8.15 am and obtained a statement from Ms C. Hospital staff advised the officers that Mr A was not in a position to be interviewed at the time as he was receiving treatment. The officers therefore decided to interview Ms B.

Ms B was asked if she knew anything about the money and replied that she did not. Ms B was thereafter advised that she and Child X would be searched by Constable D. Constable D requested the attendance of another female officer to corroborate the search and Constable G

attended a short time later. Constable D then carried out the search in the presence of Constable G. Constable G took no further part in the incident. Constable D searched Child X's clothing and pram. All of the searches yielded negative results.

Constable E cautioned Ms B and proceeded to question her further. During the interview Ms B advised that Mr A had given her the money and that he had asked her to put it in their car. Constable D recorded the details of the interview in her notebook which Ms B later signed. Ms B led the officers to her car and produced the money from a pocket in one of the car seats. The officers once again asked to interview Mr A but were told by hospital staff that this was not possible as he was still being treated.

The officers left the hospital and returned at 10.15 am, at which point they were allowed to speak with Mr A. Mr A was cautioned and questioned by Constable E. He confirmed that he had taken the money from the ATM and given it to Ms B, but stated that she had not known where the money had come from. Mr A was then charged and advised that the matter would be reported to the Procurator Fiscal.

## The Complaints

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

- (1) that Mr A was not in a fit state to be interviewed;
- (2) that Ms B and Child X were unnecessarily subjected to a search; and
- (3) that Constable E made inappropriate comments to Ms B.

## 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: Mr A's fitness for interview

#### *Internal Handling*

Inspector F was appointed as the enquiry officer in relation to the complaints and he interviewed Mr A on 22 May 2010. With regard to this complaint, Mr A stated:

*"I want to make a complaint about the way the matter was dealt with. I don't think I should have been interviewed at all due to my condition, Inspector [F] has advised me that if the medical opinion of a doctor was that I could be interviewed then I would be, this is perhaps in line with the hospital as there was a bias because it was a member of staff's money."*

Constable D submitted an operational statement on 17 June 2010 in which she stated the following:

*"I was unable to speak to [Mr A] as medical staff confirmed he was being treated for a medical complaint and could not be spoken to at that time ..."*

*... hospital staff confirmed that [Mr A] was being treated and was unable to be spoken to and as such [Constable E] and I left the locus ...*

*... About 1015 hours [Constable E] and I returned to the locus whereby hospital staff stated that the accused was fit to be interviewed ...*

*... the medical staff confirmed the accused was well enough to be interviewed hence the reason he was not interviewed sooner.*

*The witness [Ms B] or the accused at no time appeared to be distressed or upset.”*

Constable E stated the following:

*“I was unable to speak with [Mr A] because he was being examined by a doctor. I thereafter spoke with the witness [Ms B] ...*

*... On returning to the A&E department, the staff again stated that the accused could not be spoken to. [Constable D] and I left the locus and carried out further enquiries. I along with [Constable D] re-attended at locus at 1015 hours where I was informed that I could speak with the now accused ...*

*... I requested on two separate occasions on my initial visit to the locus to speak with the accused, both of the requests were refused which I have no problem with. I returned later in the morning to speak with the accused. Prior to speaking with him I was authorised by the staff that it was okay ...*

*... At no point did the witness [Ms B] or the accused make any comment about any adverse treatment in any way. I strongly believe that this is a malicious complaint made against me and [Constable D].”*

In his report dated 25 June 2010 Inspector F noted the following:

*“... they delayed interviewing him on two occasions whilst he was receiving treatment from medical staff. It was only after the completion of medical treatment with permission from medical staff that [Mr A] was interviewed.”*

Superintendent H stated the following in his letter of 29 June 2010 in response to the complaint:

*“You alleged that on the 13 April 2010 within [hospital] that officers of Strathclyde Police interviewed you whilst you were unfit to be interviewed. The officers were informed on two occasions by hospital staff that they could not interview you as you were receiving medical treatment. Thereafter officers spoke to you only after having been given permission by medical staff at the hospital and informed that you were fit to be interviewed. You did admit to one of the officers that you stole money from a cashline machine and signed his police issue notebook to that effect. The procedure used by the officers in interviewing you was correct.”*

### *Consideration*

In the Commissioner's view, Strathclyde Police was correct to rely upon the opinion of medical staff treating Mr A as to whether he was fit for interview. Having been involved in his treatment, those staff were best placed to decide this matter in the circumstances.

Mr A also suggests that the officers should not have relied on the opinion of medical staff on the basis that they were biased, given that Ms C was herself a member of hospital staff. However, it is clear from the evidence that on two occasions medical staff declined to allow the officers to

interview Mr A on the basis that he was still being treated. In the Commissioner's view, this does not support the applicant's suggestion that medical staff were biased against him, or that officers should not have relied upon their assessment of his fitness for interview.

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

## Complaint 2: The searches of Ms B and Child X

Mr A states the following in his statement:

*"Just before I was removed from the cubicle I remember [Ms B] coming in and crying and saying 'I've just been strip searched' and they had searched [Child X] (four months) and the pram as well and had found nothing ...*

*... My main complaint with the police is the attitude of the officers, particularly the male officer, and also searching my wife and wean when they knew I had received the money from the cashline."*

Ms B stated the following:

*"The male officer told me that me and [Child X] would be getting strip searched. The male officer told me they would have to wait on another female officer before searching me ...*

*... When the female officer arrived the two female officers searched me. I took everything out of my jacket pockets, then they searched me. The female officer that arrived last checked the waistband of my tracksuit, the band at the bottom of my three quarter length trousers and asked me to pull my jumper away from me and shake it. She felt round the top of my pants as well. I didn't take my clothes off at any point during the search ...*

*... The police officer taking my statement today has explained the difference between a strip search and a routine search and I now realise I was subject to a routine search and not a strip search. The male officer did tell me it would be a strip search though. I feel the conduct and attitude of the male officer was wrong and made me feel degraded. I am not complaining about either female officer."*

## Internal Handling

Constable D stated the following in respect of this complaint:

*"At no time did [Constable E] or I threaten either the accused or the witness [Ms B] or inform the witness [Ms B] that she would be strip searched.*

*The witness [Ms B] or the accused at no time appeared to be distressed or upset."*

Constable E stated the following:

*"I observed the CCTV footage which shows both of them walking along the corridor to the accused pointing out to the witness [Ms B] and to the accused removing the money from the machine. As I was unable to speak to the accused I was unsure who would have the money in their possession. The witness [Ms B] was spoken to at length regarding the whereabouts of the money and that if she couldn't / wouldn't hand over the money then she would be searched under Section 60 of the Civic Government (Scotland) Act 1982. I also advised her that the child would need to be searched also. Throughout this conversation the witness [Ms B] denied any knowledge of the money. At this point she was detained under Section 60 of the Civic Government (Scotland) Act 1982. It wasn't until after the*

*search and questioning of the witness [Ms B] that she admitted putting the money in the car, which meant all of the above could have been avoided if she produced the money on first request ...*

*... At no point did I inform her that she would be strip searched. Prior to her being detained under Section 60 of the Civic Government (Scotland) Act 1982, myself and [Constable D] spent a considerable amount of time with the witness [Ms B] explaining to her that we did not want to search the baby or the pram but we would have no option to if the money was not produced ...*

*... At no point did the witness [Ms B] or the accused make any comment about any adverse treatment in any way. I strongly believe that this is a malicious complaint made against me and [Constable D].”*

Constable G's statement contains the following passages:

*“[Constable E] stated the female was not wearing a bra and in order to preserve her dignity and to avoid her feeling intimidated he asked me to corroborate the search. The female was wearing a thin top and at no point was I asked to corroborate a strip search by [Constable D] or [Constable E].*

*In addition the female had not requested 2 female officers to conduct the search. [Constable E] stated he wished myself to carry out the search to avoid any unnecessary malicious complaint and to make the female feel at ease due to her having a young baby with her ...*

*... during the search the baby remained asleep and was not disturbed in anyway.*

*Throughout the search the female was co-operative, calm and in no way distressed. At no point in my presence was the female threatened.”*

Inspector F stated the following in his report:

*“At no time was [Ms B] strip searched nor is there any evidence that she was told she would be strip searched. At the time of the search the whereabouts of the stolen money was unknown. The CCTV footage shows [Ms B] waiting as [Mr A] removed money from the Cashline machine. The search of the complainer [Ms B] and her child was corroborated by [Constable G]. Due to the evidence available the searched were justified.”*

In his response of 29 June 2010 Superintendent H stated the following:

*“You allege that on the same date your wife and child were unnecessarily searched by Police officers. Your wife and child's clothing were searched in terms of Section 60 of the Civic Government (Scotland) Act 1982. This power gives Police Officers the power to search persons that have reasonable cause to suspect may be in possession of stolen property and was correctly used in the circumstances. The officers took care to deal with your wife fairly and equitably and ensured that two female officers carried out the search to preserve her dignity. Your wife and your child's clothing were searched in line with procedure.”*

In a separate letter to Ms B, Superintendent H stated the following:

*“The officer in question ensured that you were searched by two female officers as he was conscious that you may feel uncomfortable with him being present. I can find no evidence that the officer acted in anything other than a professional manner.”*

### Consideration

The basis of Mr A's complaint is that the officers did not need to search his wife and child because they had seen him take the money from the ATM on the CCTV footage.

Superintendent H explained in his response that under section 60 of the Civic Government (Scotland) Act 1982 the officers had the power to search Ms B if they had reasonable grounds to suspect that she was in possession of stolen property. What Superintendent H did not explain, however, was the nature of those grounds; his response merely stated that the powers were used correctly.

The Commissioner has stated in a number of previous complaint handling reviews that where a complainer seeks to challenge the use of police powers, the policing body requires to explain clearly the basis upon which those powers were used. As Strathclyde Police did not do so in the present case, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

As noted above, there is evidence that Ms B was in close proximity to Mr A at the time he took the money from the ATM. In the Commissioner's view, this evidence, in conjunction with the evidence of Ms C that the money she had withdrawn was taken from the machine, constituted reasonable grounds to suspect that Ms B was in possession of stolen property. In light of this, the Commissioner does not consider it necessary to recommend any further action by Strathclyde Police in respect of this complaint.

As well as challenging the legality of the search, Mr A and Ms B have also expressed concern about the manner in which it was carried out. In her statement, Ms B complained that she was told she would be strip-searched; however, this is refuted by the officers. Accordingly, there is no evidence to support this aspect of Ms B's complaint.

In correspondence with the Commissioner's office, Mr A and Ms B have claimed that Constable E (a male officer) was present when Ms B was searched. However, it does not appear from the complaint file that this aspect of the complaint was explicitly raised with Strathclyde Police. If the applicants wish to pursue this complaint, they should contact the Professional Standards Department of Strathclyde Police. In the Commissioner's view, however, given that Ms B was clearly not strip-searched, there was nothing objectionable in a male officer being present during the process. With regard to the manner in which the search was conducted (as opposed to its legality) the Commissioner considers that the officers concerned went to some lengths to maintain Ms B's dignity during the search.

### Complaint 3: Inappropriate remarks

Mr A stated the following regarding this complaint:

*"[Ms B] said she'd given the police the money I'd asked her to put in the car, she also said the police had clearly seen me take the money from the cashline, and had threatened to bring her down to [police station], and get the social work to take the wean while she was there."*

Ms B stated the following:

*"They asked if I was on any drugs or if [Mr A] was. I told them I'd been on heroin but had been clean for five years. When I said that their attitude changed. The male officer's attitude was more arrogant. The way he was talking to me telling me he'd take me to [police*

station]. *He asked if I'd social work involvement, when I said no, he said he'd get the social work to take [Child X] and I'd get arrested. The female officer's attitude was reasonable ...*

*... I asked what would happen if I gave them the money, they said nothing would happen to me. So I took them out to the car and gave them the money back. I thought then that the money [Mr A] had given me was the money from the cash machine. When I handed the male officer the money he said he could do me with reset. He said 'Should I, shouldn't I' and then he went back into the hospital ...*

*I feel the conduct and attitude of the male officer was wrong and it made me feel degraded. I am not complaining about either female officer."*

### *Internal Handling*

Constable D stated the following in respect of this complaint:

*"At no time did [Constable E] or I threaten either the accused or the witness [Ms B] or inform the witness [Ms B] that she would be strip searched ...*

*... [Constable E] and I conducted ourselves in a professional manner at all times."*

Constable E stated:

*"The full procedure that was available to me by law was explained to the witness [Ms B]. That was done in a professional manner at all times ...*

*... I completely deny all the allegations made against me throughout this enquiry. I conducted myself in a totally professional manner. At no point did the witness [Ms B] or the accused make any comment about any adverse treatment in any way. I strongly believe that this is a malicious complaint made against me and [Constable D]."*

Constable G's statement contains the following passage:

*"Throughout the search the female was co-operative, calm and in no way distressed. At no point in my presence was the female threatened."*

Inspector F reached the following conclusion regarding this complaint:

*"There is no evidence that either officer was uncivil to either [Mr A] or [Ms B]. Both officers refute the allegation."*

Superintendent H provided the following response to Ms B:

*"You allege that a male Police officer's attitude towards you was bad and made you feel degraded. The officer denies acting in such a manner and this is corroborated by his colleagues ...*

*... I can find no evidence that the officer acted in anything other than a professional manner.*

*To conclude ... I have fully reviewed your allegation and find it to be unsubstantiated. I do not, therefore intend to instigate any action against the officer concerned.”*

### *Consideration*

The three officers involved in this incident have denied that Constable E was uncivil to Ms B or acted in a manner that would have made her feel threatened. As there is no evidence to corroborate Ms B's version of events, the Commissioner considers that Strathclyde Police was justified in finding this complaint unsubstantiated. In the Commissioner's view, Superintendent H also clearly explained the basis for this decision.

In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner.

## **Conclusions, Recommendations and Learning**

### **Complaint 1: Mr A's fitness for interview**

In the Commissioner's view, the manner in which this complaint was dealt with was reasonable. Accordingly no further action is required in this connection.

### **Complaint 2: The searches of Ms B and Child X**

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

### **Complaint 3: Inappropriate remarks**

In the Commissioner's view, the manner in which this complaint was dealt with was reasonable. Accordingly no further action is required in this connection.

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

Hamilton House  
Caird Park  
Hamilton