

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

under section 35(1) of the Police Public Order

Summary and Key Findings

The applicant's complaints arose from the break down of his relationship with his then wife.

Of the four complaints considered, the Commissioner found that three were dealt with in a reasonable manner, while the remaining complaint was not. The Commissioner made a single recommendation 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 applicant's first two complaints relate to an incident involving himself and his then wife, Ms A, which occurred on 8 July 2009 within the marital home. Ms A had become alarmed during the incident and the police had been called. Police officers thereafter attended the marital home where the applicant was subsequently detained on suspicion of having committed a domestic breach of the peace. He was later released without charge.

The applicant's two remaining complaints relate to an incident which occurred on 4 September 2009. On this occasion Ms A had attended the marital home to uplift property which she claimed belonged to her. Ms A had requested police assistance in this connection and officers thereafter attended the property.

The Complaints

Based on the contents of the application form, and the information obtained from Dumfries and Galloway Constabulary ("D&G"), the Commissioner has identified the following complaints:

- (1) that officers from D&G used excessive force when detaining the applicant;
- (2) that the applicant was strip-searched by police;
- (3) that officers from D&G facilitated access to the applicant's house by Ms A; and

(4) that officers from D&G failed to support their assertion that an agreement existed which permitted Ms A to access his home.

The Commissioner's Review

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

Complaint 1: Alleged excessive force

In his statement dated 5 March 2010, the applicant complained that the officers who detained him on 8 July 2009 were aggressive towards him. He stated the following:

"I went to the front door and opened it. There were two Policemen standing there. I was standing on the outside step and had pulled the door behind me to keep the dog in.

The taller one asked me if I was [applicant's name]. I said 'yes'. He then said 'We need to talk'. I said 'Talk'. He then seized my right arm and put the handcuffs on. He put it on my right arm. He moved to the left and pulled my right arm behind my back. I had moved forward by then onto the porch as he put the arm up my back. He then grabbed my left arm and pulled it behind my back and put the other handcuff on. I would say that the handcuffs were tight and uncomfortable. I was then taken to the Police van with both Officers taking an arm each."

Internal Handling

Inspector B was appointed to investigate the applicant's complaints and produced a report dated 7 April 2010. As part of his investigation, Inspector B obtained statements from the applicant and all the police officers who came into contact with the applicant on 8 July and 4 September 2009.

Constable C, one of the officers who detained the applicant on 8 July 2009, addressed the circumstances surrounding the applicant's detention in the following terms:

"[Constable D] and I then attended at the home address of [the applicant]. Upon answering the door [the applicant] was requested to identify himself whereby he immediately became obstructive and would not answer the questions asked by Police. He was then informed that he was being detained under Section 14 of the Criminal Procedure (Scotland) Act 1995 on suspicion of a Domestic Breach of the Peace.

Due to the nature of the complaint and the fact that the [the applicant] had been described as a volatile person, [Constable D] and I immediately took hold of him by the lower arms and handcuffs were then applied. He was then placed within the rear of the marked Police van and conveyed to [the police station]."

Constable D supported the account provided by Constable C.

Constables E and F had positioned themselves near to the applicant's home but took no part in the detention. Both explained in their statements that they saw the applicant being led by Constables C and D to the police van and that the applicant "did not appear to be offering any resistance".

Inspector B noted in his report that he had spoken with neighbours of the applicant in respect of this complaint. Specifically, Inspector B explained:

“... subsequent house to house enquiries that I carried out around the [applicant’s home] confirmed that while a number of nearby residents had observed the Police in attendance at his home address, they could not recollect when this was and that on the occasions when Police were in attendance they did not act in a manner which caused them any concern.”

On 21 April 2010, Superintendent G issued a response to the applicant’s complaints. With regard to this complaint he stated:

“In respect of your detention on 8 July 2009, [Constables B and C] denied acting in an aggressive manner towards you while effecting your detention. There is no corroborative evidence to support your claim that the officers were aggressive and subsequent house to house enquiries carried out by [Inspector B] around your home address confirmed that while a number of nearby residents have observed Police attendance at your home address, they could not recollect when this was and that in their opinion when Police were in attendance they did not act in a manner which caused them any concern.”

Consideration

In the Commissioner’s view, Inspector B conducted a thorough investigation into this complaint, which included obtaining statements from all officers involved in the applicant’s detention on 8 July 2009, and contacting the applicant’s neighbours. None of the evidence established by these enquiries provided support for the applicant’s account of events. In the Commissioner’s view, the findings of the investigation were adequately conveyed to the applicant by Superintendent G.

In light of this, the Commissioner is satisfied that this complaint was handled in a reasonable manner.

Complaint 2: The applicant’s treatment while in custody

The applicant states the following regarding his treatment while in police custody on 8 July 2009:

“At [the police station] I was taken to a cell where I was told to get out of my own clothes and put a blue top and pair of shorts on. I found this to be degrading and intimidating and strongly disagreed with what was happening.”

Consideration

There is no evidence within the complaints file that D&G responded to this complaint. The Commissioner therefore does not consider that it was dealt with in a reasonable manner.

The Commissioner recommends that D&G issues the applicant with a response.

Complaint 3: Access to the applicant’s home

The applicant complains in his statement that police officers facilitated Ms A’s access to his home on 4 September 2009. Specifically, he states:

“I also want to complain about a female officer who came to my house with [Ms A] to get her property back. This was on Friday 5 [sic] September about at 5 o’clock at night. [Ms A] came to get her property from the house and within minutes the Police turned up as well. It was a female and male officer that turned up. The two officers spoke with my wife and the other woman who turned up with her outside and came into the house to speak with me about 5 minutes after that.

The female officer explained that they were there to see my wife got her stuff and there was not any problem with it. After she explained the situation I told her [Ms A] had property of mine which I requested back ...

Internal Handling

Inspector B obtained operational statements from Constables H and I who, at the request of Ms A, had both attended the applicant's home on 4 September 2009.

Constable H provided the following account in respect of her involvement:

"Sergeant [M] had been contacted by [Ms A] in relation to attending at [the marital home] to uplift property from the premise [sic]. The premise [sic] is owned jointly by [Ms A] and [the applicant]. I was aware the couple were going through an acrimonious separation. Sergeant [M] requested that we keep a visible patrol in the area at the time.

About 1710 hours, I was within a marked Police vehicle approximately 40 metres from the [applicant's] property. At this time I observed [Ms A] and another female [Ms J] enter the premises. About 2 minutes later I observed [Ms J] exit the property and gesture towards us to go over to the property."

Constable H stated that, following discussion with Ms A and Ms J, she and Constable I entered the property where they spoke to the applicant. Constable H went on:

"I explained that [Ms A] wanted to uplift her property belonging to her and that this had been agreed and arranged with his solicitor. [The applicant] was reluctant to allow [Ms A] entry to remove the items. It was explained that as the premises was jointly owned [the applicant] had no grounds to refuse her entry. [The applicant] attempted to make contact with his solicitor to discuss the matter however was unsuccessful.

[The applicant] agreed to [Ms A's] entry to the property. I remained within the property whilst [Ms A and Ms J] removed [Ms A's] possessions to prevent any confrontation between the pair."

Constable H's account was supported by Constable I.

Superintendent G provided the following response to the complaint:

"[Constables H and I] were in fact present at your home address on 4 September 2009 at the request of your wife. Both officers were shown a solicitors letter by your wife detailing arrangements for her attendance on that date. The Police officers were not in a position to prevent her from entering the house and removing her property."

Consideration

According to their respective statements, Constables H and I attended the applicant's home at Ms A's request in order to prevent a disturbance. When it became apparent to them that a dispute was occurring as to whether Ms A should be permitted entry to the property, they intervened, again apparently in order to prevent a disturbance. According to both officers, Ms A then showed them a letter from her own solicitor indicating that the applicant's solicitor had agreed on his behalf that Ms A attend the property to remove her belongings. It was also explained to the applicant by both officers that, as the property was jointly owned, the applicant had no basis for refusing Ms A entry.

Accordingly, in terms of the evidence, Constables H and I were merely seeking to perform their duties. The Commissioner has found no evidence to indicate that either officer acted in an objectionable manner.

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

Complaint 4: The alleged agreement regarding Ms A's attendance

The applicant states the following in his statement of 5 March 2010:

" ... I told [the officers] I had received a letter from my solicitor which I showed her saying it was suggested my wife would call to uplift her belongings.

I told them that I had not agreed to my wife coming to pick up her stuff ... The Officer also told me that she had seen a letter from my wife's solicitor saying that it had been agreed that my wife could come and pick up her stuff.

I told her that I had shown her the only letter I was aware of ...

I also want to complain that the Policewoman acted incorrectly and that she should not have acted on a letter from my wife's solicitor as I was not aware of it or had even had sight of it."

Internal Handling

Constable H stated the following in respect of this complaint:

"[Ms A] produced a letter from her solicitor which stated that [the applicant's] solicitor had agreed on his behalf that she attend at this time and date to facilitate this. She requested that we speak with [the applicant] to explain the circumstances to him as he seemed to have no knowledge of this arrangement."

Constable H's account was consistent with the account provided by Constable I.

Superintendent G provided the following response to the complaint:

"Both officers were shown a solicitor's letter by [Ms A] detailing arrangements for her attendance on that date. The Police officers were not in a position to prevent her from entering the house and removing her property."

Consideration

The applicant's complaint is that Constables H and I should not have "acted on" the solicitor's letter without his having been made aware of it or had sight of it.

In the Commissioner's view, however, the officers did not "act on" the letter at all. As noted above, Constables H and I had attended the property in order to prevent a disturbance occurring while Ms A uplifted her belongings. Given that Ms A jointly owned the property, she was legally entitled to enter, regardless of the terms of any letter she had received from her solicitor. Accordingly, it seems to the Commissioner that Constables H and I would have performed their duties in this connection regardless of any letter having been produced by Ms A. Indeed, at the time both officers were instructed to attend the applicant's home, neither would have been aware of the letter or its contents. As Superintendent G stated in his letter of response, the officers were not in a

position to prohibit Ms A from entering the property: their role was to prevent a disturbance occurring while she did so.

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

Conclusions, Recommendations and Learning

Complaints 1, 3 & 4

In the Commissioner's view, the manner in which these complaints were dealt with by D&G was reasonable. Accordingly no further action is required in this connection.

Complaint 2: The applicant's treatment while in custody

In the Commissioner's view, this complaint was not dealt with in a reasonable manner. The Commissioner recommends that D&G issues the applicant with a response.

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