

Report of a Complaint Handling Review in relation to Central Scotland Police

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

Summary and Key Findings

The applicant made various complaints about the police concerning matters which arose at a time when he and his then wife were in the process of divorcing.

The Commissioner concluded that of the eight complaints, four were handled reasonably while the remainder were not. The Commissioner made two 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.

Case reference/PCCS/00298/07/PF-CSP(A)

Background

On 20 January 2008, the applicant's wife called Central Scotland Police to report that she had been assaulted by the applicant within the matrimonial home. Constables A and B attended the scene.

Following their attendance, the applicant's wife advised Constable A that she had been assaulted. Consequently, the applicant was detained under section 14 of the Criminal Procedure (Scotland) Act 1995. Constable A states that, whilst he was being detained, the applicant alleged that his wife had slapped him on the face. Consequently, the applicant's wife was also detained under section 14. Both the applicant and his wife were conveyed to a local police station.

At 11 am, the applicant's wife was interviewed. She stated that the applicant had spat in her face, punched her in the face and stood on her foot. She also stated that the applicant had lit a match and threatened to burn the house down. She denied having been in the loft on the day in question (this is significant to an issue raised by the applicant at interview).

The applicant was interviewed by Constables A and B at 11:20 am. During the interview, the applicant stated that he and his wife had had a heated argument which led them to be situated within the loft conversion of their home. The applicant stated that, while within the loft, his wife had thrown a chair at him and then began to pull wires from a desktop computer. The applicant states

that, in attempting to stop his wife doing this, a tussle ensued leading to both of them falling on the floor. The applicant claims that his wife slapped him at this point.

At around 12:40 pm, the applicant's wife was examined by a police doctor. The examination found "a little tenderness over the left cheek bone" and a "2x3 cm tender blood clot" on her left foot.

At around 1:10 pm, the applicant's wife was released from custody. At 1:30 pm, the applicant was cautioned and charged with breach of the peace and assault. He was kept in custody until his appearance in court the following day. The police report in respect of the charges against the applicant stated the following:

"As stated in the summary [the applicant's wife] was detained in relation to allegations made by [the applicant] that he was slapped whilst in the loft conversion which is on the upper floor of the house. When the statement was obtained from [the applicant's wife] under caution she had stated that she had not been within the loft conversion at any point that morning and stated that she did not at any point slap the accused. No charges have been brought against [the applicant's wife] as there is no evidence to substantiate any complaints made by [the applicant]."

In addition to the above, the accused stated in his interview that whilst within the loft conversion he grabbed [his wife] and as a result they fell over which may have resulted in [his wife's] injuries. Again this is disputed by [the applicant's wife] as above she stated that she was not in the loft conversion that morning."

According to the applicant, following his appearance in court he attended his father in law's home to ask for him to arrange collection of his personal items. One of these items was a laptop. According to the applicant, his wife refused to give him the laptop. The applicant subsequently called Central Scotland Police to report that his laptop had been stolen. Two officers attended at the marital home and were advised that the ownership of the laptop was disputed and that the matter would be resolved in forthcoming divorce proceedings.

On 20 February 2008, the applicant wrote to the Chief Constable making a number of complaints about the actions taken by a number of officers on 20 and 21 January 2008.

The Complaints

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

- (1) that Central Scotland Police failed to consider the applicant's account of events;
- (2) that officers from Central Scotland Police failed to take photographs of the applicant's house;
- (3) that officers from Central Scotland Police intimidated the applicant;
- (4) that officers from Central Scotland Police failed to request the presence of the police surgeon to examine the applicant; and
- (5) that Central Scotland Police failed to investigate an allegation of theft.

The Commissioner's Review

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

Complaint 1: Failure to take account of applicant's version of events

The applicant's complaint is that officers from Central Scotland Police failed to consider his account of events in relation to the alleged altercation within the loft of his home, namely that Mrs B had thrown a chair at him; tried to pull a computer tower from its position under a desk; and hit him on the chest and face.

Internal Handling

Inspector C was appointed to investigate this complaint and produced a report dated 4 September 2008. During his investigation of this complaint, statements were obtained from Constables A and B. The police report submitted to the Procurator Fiscal was also obtained. On 4 September 2008, Inspector C submitted his findings to Superintendent D. In respect of this complaint, Inspector C made the following comments:

"The Standard Police Report accurately reflects the evidence as per the statements obtained and submitted. [The applicant's wife] has made no mention of the 'loft incident' in her statement and the report has quite rightly been based on the evidence presented by her. [The applicant] has mentioned the 'loft incident' in his replies under caution. These replies have been accurately replicated in the Standard Police Report. Both [Constable A and B] have accurately replicated the replies in their respective statements, thus the 'loft incident' has been mentioned in their statements. Neither officer has specifically stated that a table and chair in the loft were knocked over. However, this does not feature in the statement obtained from [the applicant's wife]. The fact that the table and chair within the loft was knocked over was not in dispute and there is no rebuttal evidence within the report ..."

Superintendent D thereafter wrote to the applicant providing the following response:

"You ask why nothing was mentioned about the incident in the loft conversion in the police officers' statements. The police report accurately reflects the evidence available. You mentioned that there was an incident in the loft conversion in your answers when questioned and these statements were included in the police report and statements."

Consideration

The applicant's central concern is that no consideration was given to his account of events in relation to the altercation which took place on 20 January 2008 within the matrimonial home.

It is clear, however, that, as explained by Superintendent D, the applicant's version of events is recorded in the police report, in the form of answers to police questions. The applicant's position was therefore made clear to the Procurator Fiscal, including his account of his wife's actions and how she came to sustain her injuries. Accordingly, the Commissioner believes that consideration has been given to the applicant's account.

In light of this, the Commissioner is satisfied that Superintendent D's response to this complaint is reasonable.

Complaint 2: failure to take photographs

The applicant complained that officers failed to take photographs of his loft which he maintained would have substantiated his account of the altercation. His letter of complaint asked "Why were photographs not taken as this could now be vital evidence?"

Internal Handling

Inspector C addressed this complaint in the following terms:

“Photographic evidence is not taken as a matter of course and authority for such actions rests with the duty inspector. Although the officers have not requested a photographer in this instance it would in all likelihood have been refused as an unnecessary expense. The fact that the table and chair had been knocked over, this is not in dispute and the officers in attendance could have related this evidence if questioned. It is certainly not vital evidence in the case against [the applicant] as he suggests. It may have provided a modicum of corroboration for [the applicant’s] version of events, however, taking cognisance of the evidence available I would suggest it was insufficient to have proven a case against [the applicant’s wife].”

Superintendent D provided the following response:

“You ask why no photographs were taken. Photographs are not taken as a matter of course, with authority required from the duty Inspector. Although the officers did not request a photographer in this instance it would, in all likelihood, have been refused as being unnecessary in this case.

There was no action taken against [the applicant’s wife] in relation to the incident in the loft as there was insufficient evidence to prefer any charges.”

Consideration

The applicant believes that photographs should have been taken of his loft in order to show that a disturbance had taken place in that area of the house.

Inspector C states in his report that the accounts of Constables A and B would have been sufficient evidence as to the condition of the loft and therefore that photographs were unnecessary. In the Commissioner’s view, this was a reasonable position to adopt. However, Inspector C’s assessment is predicated on the basis that Constables A and B could provide an account as to the condition of the loft. Neither officer confirms in their statements that they entered the loft, nor do they comment on its condition. In this respect, Inspector C’s position is not supported by the information within the complaints file. Consequently, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

In such circumstances, the Commissioner would normally recommend that Constables A and B are asked to provide additional accounts detailing their respective positions on the matter. In the Commissioner’s view, however, there is no value to be gained from making such a recommendation. While the officers would be in a position to confirm or deny the applicant’s claims regarding the condition of the loft, this would not provide support for the applicant’s position as to how the loft had come to be in the condition he claims. In particular, the officers would not be able to support the applicant’s account that the condition of the loft arose in the context of an assault upon the applicant by his wife. In these circumstances, the Commissioner does not consider it appropriate to recommend any further action in respect of this complaint.

Complaint 3: Alleged intimidation

In his letter of 20 February 2008, the applicant made the following complaint:

“I also felt intimidated while I gave my statement as I was telling them what happened and when they read it back to me some words had not been written, and both officers said I didn’t say it, and I noticed there was no tape in the machine...”

This area of concern was not dealt with by Inspector C, nor was it addressed by Superintendent D. Consequently, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Central Scotland Police now considers this complaint and issues the applicant with a written response.

Complaint 4: Examination by a doctor

In his letter of 20 February 2008, the applicant complained that he was not seen by a doctor while in custody. He stated the following:

"I also mentioned about a cut / graze on my left foot which I had now noticed while locked in the cell of which they seemed to take no notice of and just dismissed it.

... Why was I not examined by a doctor after I had found my injuries?"

Internal Handling

Inspector C addressed this complaint in the following terms:

"Examination by a police surgeon of an accused is not routinely carried out particularly in instances of minor injury as was sustained by [the applicant]."

Superintendent D provided the following response:

"You ask why you were not examined by a police surgeon. This is not routinely carried out, particularly in instances of minor injury and in any case you were unable to state how this injury was specifically caused thus rendering any such examination unnecessary."

Consideration

The applicant does not make specifically clear who he informed of the cut or graze to his left foot. However, given that he noticed the injury whilst "locked in the cell", it is reasonable to conclude that custody staff would not have been aware of this injury at the time of the applicant's initial processing into custody.

None of the officers makes reference to a cut or graze to the applicant's foot. In this respect, Superintendent D's response to the effect that the applicant was unable to state how he came by his injury is not supported by the evidence available. Furthermore, the Commissioner does not accept Superintendent D's assessment that simply because the applicant was unable to explain how his injuries were caused, this rendered medical examination unnecessary. On the contrary, Central Scotland Police's policy in respect of the care and custody of prisoners applies irrespective of whether prisoners can account for their injuries.

For these reasons, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, given the apparently minor nature of the injury described by the applicant, the Commissioner does not consider it appropriate to recommend any further action in respect of this complaint. The Commissioner considers that the highlighting of the deficiencies in the handling of the complaint is sufficient in this connection.

Complaint 5: Failure to investigate a theft

In his letter of 20 February 2008, the applicant complained that officers from Central Scotland Police failed to investigate the theft of his laptop. The applicant stated the following:

[My wife] had broken open my briefcase and removed my laptop and usb sticks which contained personal banking information ... I ... reported the incident to the police and I was told someone would come and see me shortly, after waiting 1.1/2 hours there was no show so I telephoned again and was told that they had attended at [the matrimonial home], not to me at [my temporary address]. I was then told someone would come visit me ...

[Constables E and F] arrived shortly after that and I explained the situation and they said they did not have the powers to act as the property was matrimonial property...

I called my solicitors the next day and they both said that the laptop should be classed as personal property ...”

Internal Handling

Inspector C addressed this complaint in the following terms:

“[The applicant] states that [Constables E and F] attended to his call in relation to his property. [Constable E] cannot recall the incident and CARM shows that he was on annual leave at the time. [Constable F] vaguely remembers the incident but not who attended with him. He has taken no action as it was matrimonial property and advised [the applicant] to see a lawyer as it was a civil matter. According to [the applicant] his solicitors stated to him that his laptop should have been classed as personal property and that damage caused to his briefcase should have been classed as ‘criminal damage’.

I would suggest that [the applicant] has been badly advised. The Family Law (Scotland) Act 2006 quite clearly outlines where any question arises as to the respective rights of ownership of household goods it shall be presumed that each has a right to an equal share ... It is not for the police to get involved in disputes over property in matrimonial matters.”

Superintendent D provided the following response:

“In relation to your complaint regarding the property allegedly damaged by [your wife], [Constable F] took no action due to legislative guidance provided to officers regarding matrimonial property. The Family Law (Scotland) Act 2006 quite clearly outlines that where any question arises as to the respective rights of ownership of household goods it shall be presumed that each has a right to an equal share. [Constable F] correctly indicated that the police could not get involved in disputes over property in matrimonial matters and that you would be best served seeking legal advice regarding the matter.”

Consideration

Upon receiving the applicant's report that his laptop had been stolen, officers visited the applicant's wife. They were advised by her that ownership of the laptop was disputed and that this was a matter which would be dealt with in forthcoming divorce proceedings. The matter was therefore classified by Constable F as a civil matter.

The Commissioner agrees with this assessment. Section 25 of the Family Law (Scotland) Act 1985 states that, where ownership of household goods is disputed, whether during or after a marriage, it shall be presumed that each party has an equal share in the goods in question.

In light of this, the Commissioner considers that the disputed ownership of the laptop was a matter for the civil courts, not the police, to deal with. Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Conclusions, Recommendations and Learning

Complaints 1 and 5

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

Complaints 2 and 4

For the reasons given, these complaints have not been handled in a reasonable manner. However, for the reasons given, no recommendations are made in this connection.

Complaint 3: Alleged intimidation

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Central Scotland Police now considers this complaint and issues the applicant with a written response.

Additional issue

Despite being received by Central Scotland Police on 21 February 2008, the applicant's letter of complaint subsequently went missing while being sent between departments. Consequently, the police investigation into the applicant's initial batch of complaints was not initiated until 13 July 2008, when the applicant wrote to state that he had not received any response to his original letter. In his letter of 5 September 2008 Superintendent D informed the applicant that his letter of complaint had been lost and explained:

"I can confirm that your original letter sent on 20 February 2008 was received by our Business Services Unit ... on 21 February 2008. Unfortunately this item of correspondence has gone missing while being sent between departments. I offer my sincere apologies for this error and the resultant delay in the investigation of your complaint."

In his application to the Commissioner's office the applicant complained that he was not provided with an explanation concerning the loss of this letter. The applicant is clearly not satisfied with the amount of detail provided by Superintendent D in his letter of 5 September 2008 and expected a fuller response.

The Commissioner is satisfied that Superintendent D's explanation concerning the loss of the applicant's letter was reasonable in the amount of detail it provided. All that is known is that the applicant's letter went missing between the Business Services Unit of Central Scotland Police and the local police division, with the precise circumstances unknown. Given that the applicant has received an apology in this connection, the Commissioner does not uphold this complaint.

Background

On 7 October 2008, the applicant attended a local police office to report that £8000 had gone missing from his bank account. The applicant stated that this had occurred in September 2005 and that he suspected his wife of having forged his signature in order to gain access to his account. The police log of the incident states the following:

“[Officer Y] has spoken to [the applicant]. The transaction that he is referring to was made over 2 yrs ago before he and his wife separated. As such, this is a civil matter and advice has been given to this effect. [Officer Y] has consulted with [Officer Z] who is in agreement with same. [The applicant] is not happy with the advice given and has advised it is his intention to consult a Lawyer.”

On 5 May 2009, the applicant again attended a local police office reporting the same incident. It was decided that a “full financial investigation” be instigated, during which the applicant’s wife was interviewed. She denied the allegation.

On 11 May 2009, the applicant drove to the marital home whilst his wife was out and forced entry to the property. The applicant’s wife subsequently arrived home to find the applicant there. At 11:10 am, the applicant’s wife called Central Scotland Police.

A number of officers attended the scene which was subsequently cordoned off. During the incident, the applicant was occasionally in dialogue with officers. The police incident log states that the applicant advised officers that he had attended to “take back what is his” and that he would “not leave until he received all his property.” The applicant was under constant surveillance at this time.

At approximately 1:32 pm, officers forced entry to the house. The applicant was arrested for a breach of the peace and conveyed to a local police office. At approximately 5 pm, the applicant was cautioned and charged with a breach of the peace.

On 19 June 2009, the applicant called Central Scotland Police to report that he suspected a motorcycle which he owned had been either stolen or fraudulently sold. A statement was obtained from the applicant in this connection by Constable G on 21 June 2009. Constable G explained that he thereafter spoke with the applicant’s wife who informed him that the motorcycle formed part of the matrimonial estate and that she had sold it to fund repairs to the front door which she alleged the applicant had damaged. The applicant’s wife also informed Constable G that the applicant was aware of her intentions in this regard. According to Constable G, he did not believe that the incident was criminal but nevertheless sought advice from Sergeant M. Sergeant M agreed with Constable G’s assessment. Constable G states that he informed the applicant of the outcome of his enquiries and that the applicant was not happy with this. The police log of the incident was updated on 15 July 2009 to the effect that the motorcycle was marital property and that any dispute regarding its ownership was civil in nature.

On 27 July 2009, the applicant wrote to the Chief Constable making a number of complaints concerning the police investigation into his allegation that £8000 had been stolen from his bank, that his motorbike had been fraudulently stolen, and about the incident occurring on 11 May 2009 for which he had been arrested.

The Complaints

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

- (1) that Central Scotland Police failed to inform the applicant of the result of the fraud investigation;
- (2) that Central Scotland Police wrongfully removed the applicant's car; and
- (3) that Central Scotland Police failed to investigate a theft reported by the applicant.

The Commissioner's Review

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

Complaint 1: The fraud allegation

In his letter of 27 July 2009 the applicant complained that he had not been updated on the findings of Central Scotland Police in respect of its fraud investigation into the funds allegedly stolen from his account. His letter stated the following:

"Around the 20th September 2008 I went to report a fraudulent transaction on my bank account and I was told this was a matrimonial issue as I suspected it was my wife and after having to write a letter of complaint I then spoke to another officer whom [sic] said they would pass the info to the fraud department for investigation but to date I have not been informed of any findings."

In his application to the Commissioner's office the applicant complained that he had not been informed of the results of the police investigation into the fraud allegation he made against his wife.

Internal Handling

Inspector H was appointed to investigate this complaint and produced a report dated 19 January 2010. Inspector H addressed the complaint in the following terms:

"On 05/05/09 [the applicant] attended [the police station] regards a fraud. [Constable J] interviewed [the applicant] and created a crime file ... Enquiry was carried out which included the interview of [the applicant's wife] under caution. It is alleged [the applicant's wife] forged a signature on bank documentation to gain access to money.

Financial Investigation Forms were submitted with written authorisation obtained from [the applicant] on 15/06/09 to obtain documents relating to his bank accounts. These forms were submitted on 19/06/09.

On 20/06/09 [the applicant] was updated by [Constable J]. He was advised she would provide further updates once a reply had been received from the Financial Crime Unit. [Constable J] then requested the crime file be moved to the PMU 'CRIMFIN' holding area while the result was awaited. On 27/06/09 the PMU confirmed the enquiry met the criteria to be moved to CRIMFIN on the basis that when a result was received the crime file would be reactivated. The crime file was then removed from [Constable J's] workload.

On 24/11/09 information was provided by the respective bank and the crime file was forwarded to [Sergeant K] ... to progress.

On 5 February 2010, Superintendent D provided the following response to the complaint:

"... our crime records indicate this matter was reported at [police station] on 05/05/09. Enquiry was initiated which included [your wife] ...being interviewed and documentation

requested from the bank involved. These matters were progressed and you were updated on 20/06/09. Your letter dated 27/07/09 indicated you had not received an update.

Enquiries involving financial institutions can sometimes take a considerable time to complete, however, it is important a complainer is updated, even if the information sought has not yet been received. I apologise for the lack of communication in this regard and have asked for our internal procedures to be reviewed. The officer involved has also been given advice. [Constable L] ... has now been allocated the enquiry and this officer will update you in the near future.

On 19 August 2010, the applicant was informed by letter that the police investigation had failed to trace the person responsible for the alleged theft but that the file would remain open.

Consideration

In respect of the applicant's initial report of 7 October 2008 that money had been stolen from his account, the police incident log states that he was advised at the time that the matter was civil in nature. In this respect the applicant was immediately updated on the police position. However, the fact that the police subsequently initiated a full financial investigation would suggest that the advice given to the applicant in this connection was incorrect.

In relation to the applicant's subsequent report of the same alleged fraud, as noted above the decision was taken on 14 June 2009 to initiate a full investigation. The applicant was informed of the outcome of this investigation by Constable L on 29 July 2010. Superintendent D clearly acknowledged the lack of communication during the investigation and apologised in this connection. Superintendent D also directed an internal review to ensure that such failures would not be repeated and advice was provided to Constable J.

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

Complaint 2: Removal of applicant's car

In his letter of 27 July 2009, the applicant complained that his car had been wrongfully removed by police while parked outside the matrimonial home. In this connection, the applicant stated the following:

"... my vehicle ... was in my driveway, this vehicle was removed by a police contractor under instruction by the police, as this vehicle was on my property and not on a public road it should not have been removed as the police have no authority to remove a vehicle from a private dwelling place."

Internal Handling

Inspector H sought an operational statement from Inspector N who authorised the removal of the applicant's car on 11 May 2009. Inspector N explained his actions as follows:

"The main reason for having the vehicle uplifted was to prevent a repetition of the offence by [the applicant] returning to the house and committing any further Breach of the Peace. In addition to this I was conscious that if [the applicant] was granted a bail condition at court the next day not to approach [the applicant's wife] or the address ... I would be allowing this condition to be breached by having him attend at this location to retrieve his vehicle.

Indeed, on appearing from custody on 12 May 2009, [the applicant] pled not guilty and was released on bail with the conditions: (i) not to enter [the matrimonial home] and (ii) not to contact or communicate with or attempt to contact or communicate with [his wife]."

On 11 November 2009, Inspector H sent Inspector N the following email asking him to clarify the reasons why the he had ordered the recovery of the applicant's car:

"I have a copy of the vehicle document which was completed at the time when the truck arrived to collect the car. It would appear the box for 'Production / Evidence' was initially ticked. This would have happened on 11/5/09, however, it has been amended at [the recovery company] on 21/5/09 and the box for 'Obstruction' under the statutory section has been ticked. This will be why [the applicant] has now been charged £150, however, I feel the term obstruction would relate to a statutory road offence as opposed to an 'obstruction' in a private driveway. Sorry but I need a bit more clarification."

Inspector N responded as follows:

"I have had a look at the Policy and Procedure and to cover my statement, I would say that it was under a Common law that the vehicle was taken i.e. 'The Police are entitled at common law to seize any article found in the possession of an accused person and used or calculated to be used in the commission of an offence'.

It had been used in the commission of the [breach of the peace] offence of barricading himself in the home. In the bigger picture I used my common law powers to prevent an offence the next day by [the applicant] going to the house to collect the vehicle and subsequently breaching his bail."

Inspector H made the following comments in his report:

"On 11/05/09 police dealt with a domestic incident at [the applicant's house] ... [the applicant's wife] left the house prior to [the applicant] barricading himself inside. A Public Order Team was required to enter the house and arrest him for a Breach of the Peace.

During the incident [the applicant's] car ... was removed by police from the private driveway of the house under the Vehicle Recovery Scheme. [The applicant] believes police had no authority to remove the vehicle ... [On picking the vehicle up the applicant] noted damage to the front offside bumper ... which he believes was caused during the vehicle recovery.

Further investigation ... has established that on 11/05/09 [the applicant] arranged for the vehicle to be towed to the locus by a friend ... [the applicant] intended parking the vehicle in the driveway and filling it with personal items from the house. He would then secure the vehicle and return to collect it at a later date. These actions were during a bitter divorce settlement, with [the applicant] intent on depriving [the applicant's wife] from some items in the house which he believed were his.

Prior to police arrival, [the applicant] closed a large metal sliding gate across his driveway and parked the vehicle up against the inside of the gate. He then entered the house which resulted in his wife contacting police and leaving. A siege followed whereby [the applicant] barricaded himself in the house and negotiated through an upper window.

On 12/10/09 enquiry was made at [the vehicle recovery company] where copy documentation relating to the uplift of the vehicle was obtained ... A Vehicle Audit Document completed by an officer at the time the vehicle was uplifted indicates the reason for removal was for Police Purposes i.e. Production / Evidence /Crime. This was subsequently amended on 21/05/09 to indicate the reason for removal was Obstruction ...

The STORM call card for the incident does not list the reason for removal, however, the police report makes reference to the vehicle being removed from the locus to prevent the

complainer having a reason to return to the locus. The vehicle was not listed as a production in the case.

However, as described above the Vehicle Audit Document was amended to indicate the reason for removal was Obstruction. Section 4.1 of the Policy allows vehicles causing an Obstruction to be recovered, however, the powers are given under the Removal and Disposal of Vehicles Regulations 1986. These regulations refer to a vehicle parked on the road. [The applicant's] car was removed from a private driveway.

It should also be noted Section 14.1 of the Policy states vehicles should only be seized and retained if they are of intrinsic evidential value or where forfeiture is to be pursued.

Entries on the system are not entirely clear regards as to why the uplift was changed from Police Purposes to Obstruction. An entry dated 12/05/09 indicates the enquiry officer was going to check with an Inspector what was going to happen with the vehicle ... the computer system is updated on 21/05/09 indicating [Constable J] has instructed the reason for removal should be Obstruction.

To clarify the reason for removal, [Inspector N] was contacted and an operational statement was submitted. [Inspector N] states that the reason for removal was to prevent a further offence being committed by [the applicant] returning to collect the vehicle in breach anticipated bail conditions. Greater clarity was sought from [Inspector N] and after considering the VRS Policy, confirmed the seizure was for Police Purposes in that the vehicle had been used in the commission of a Breach of the Peace."

Superintendent D thereafter provided the applicant with the following response:

"... I am satisfied the removal of your vehicle ... under the Vehicle Recovery Scheme ... was authorised, however, the investigation by [Inspector H] established this was for Police Purposes and the costs involved should have been paid by Central Scotland Police. You should not have been charged £150 for the return of your vehicle. I apologise for this and have arranged to have this money refunded.

... While I accept the removal of your vehicle and subsequent recovery from the removal firm has caused you inconvenience, Central Scotland Police do not compensate vehicles owners. May I also remind you, the requirement to remove your vehicle was as a result of your actions. Considerable police resources were involved that day to bring the incident to an end and this resulted in your arrest and subsequent detention."

Consideration

Inspector H accepted the applicant's position that it was not competent for the police to remove the vehicle for causing an obstruction on a private driveway. However, it was established that the vehicle was in fact removed, using common law powers, for the following reasons:

- that it had been used in the commission of an offence; and
- to prevent a further offence being committed.

Consequently, Central Scotland Police found that the vehicle was recovered for "police purposes" and that it, not the applicant, was responsible for any recovery and storage charges. The sum of £150 was therefore refunded to the applicant in this connection.

Central Scotland Police's guidance in relation to the removal of vehicles states the following in respect of common law removals:

"3.1 Power to Seize Evidence

3.1.1 *The Police are entitled at common law to seize any article found in the possession of an accused person and used or calculated to be of use in the commission of an offence (Mauchline –v- Stevenson 15 S.L.R. 418).*

3.1.2 *This power of seizure applies to both common law and statutory offences even if the statute contravened makes no provision for seizure.”*

Section 14.1.2 of the guidance states the following:

“In most cases the Police do not pay vehicle recovery or removal costs other than where the recovery is for evidence/examination purposes ... In order to control costs and to limit the numbers of vehicles being stored long term, vehicles should only be seized and retained if they are of INTRINSIC EVIDENTIAL VALUE or where FORFEITURE is to be pursued.” [emphasis in original]

The Commissioner is not persuaded by Inspector N's reasons for removing the applicant's vehicle.

The common law powers referred to by Inspector N and detailed in para 3.1 of the guidance above relate to the power of the police to seize “evidence”. In respect of Inspector N's first reason, simply by driving to the scene of where the offence was committed does not, in the Commissioner's view, constitute the vehicle having been used in the commission of an offence. It is not disputed by any party that the applicant was present within the matrimonial home. In this respect, the method of transport used by the applicant in this connection is, in the Commissioner's view, irrelevant. Accordingly, the Commissioner does not consider that the removal of the vehicle served any evidential purpose.

In respect of Inspector N's second reason, whilst the Commissioner understands his rationale, he does not believe it was reasonable to remove the applicant's vehicle on the assumption that he *might* commit an offence. The guidance on vehicle removal makes no reference to such a power being available to police officers.

In any event, para 14.1.2 of the guidance states that vehicles should only be seized for police purposes if they are of intrinsic evidential value or are to be forfeited. In this case, neither of these conditions was satisfied. Accordingly, in the Commissioner's view the vehicle should not have been removed.

For the above reasons, the Commissioner does not believe that the removal of the applicant's vehicle was “authorised” under the police guidance. Accordingly, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Central Scotland Police issues an apology to the applicant for the removal of his vehicle in the circumstances.

Complaint 3: Refusal to properly investigate a theft

In his letter of 27 July 2009 the applicant complained that he had not been informed of the outcome of his allegation that his wife had stolen his motorcycle. In this connection, the applicant explained:

“The police have been given all my contact information so I can't understand why I have not been informed of their findings and why my motorcycle has not been returned to me and find this very poor behaviour by the police.”

Internal Handling

Inspector H obtained an operational statement from Constable G who was involved in investigating the applicant's theft allegation. In his statement Constable G provided the following details of the investigation he undertook into the allegation:

"I ... carried out a check via the police national computer which showed the current keeper of the motorcycle ... as being from [a named location]."

I thereafter asked [the applicant] to provide me with further details regarding his marital situation. He explained that divorce proceedings were progressing but had not been finalised and that no rights of ownership of any matrimonial property had been established. I explained to [the applicant] that in the circumstances I considered the motorcycle to form part of the couples' matrimonial property and that the rights to its ownership should be decided by the court. [The applicant] disputed this, stating that the motorcycle was his. I explained to [the applicant] that in view of the fact that no formal conclusion had been made regarding matrimonial property that I was not in a position to decide who was the rightful owner. I agreed on behalf of [the applicant] that I would ... make enquiry with [his wife]."

Inspector H addressed this complaint as follows:

"[Constable G] has made initial enquiry regards the motorbike and on the basis of information provided by [the applicant] and subsequent interview of [the applicant's wife], has decided this was a civil matter. This has been confirmed by his Sergeant."

[Constable G] has sought guidance from [Sergeant M], but wider advice was not sought from colleagues ...

[Inspector H] has possibly had greater time to consider this aspect and sought advice from various parties including [the applicant's] solicitor who is an expert in matrimonial proceedings and the division of property, however even at this stage the matrimonial property has not been settled. Despite there being disputed ownership there is evidence that [the applicant's wife] may have committed an offence under Sec. 44 Vehicle Excise and Registration Act 1994."

Inspector H concluded that Constable G was correct to classify the motorcycle as matrimonial property. However, he also concluded that Constable G should have considered initiating a separate investigation into whether the applicant's wife had forged the applicant's signature on the vehicle registration document.

Superintendent D provided the following response to the complaint:

"... the report submitted by [Inspector H] has considered the evidence available and collated opinion from appropriate police colleagues. As a result I support the original decision made by the enquiry officer. Information was also provided by your solicitor ... who described the ownership of the motorbike as still in dispute. I would encourage you to seek any redress through the civil court with the assistance of [your solicitor]."

However there is a separate aspect of this part of your complaint which relates to an alleged forged signature on a vehicle registration document which may have assisted the sale of the motorbike. This matter is a separate offence under the Vehicle Excise and Registration Act 1994. I have asked for further enquiry to be made in relation to this offence and apologise this matter was not acted upon at the time. The officer involved has been given advice. [Constable L] has also been allocated this enquiry and will contact you in the near future."

Consideration

According to Constable G, the applicant was informed at the conclusion of his enquiries that the matter was civil in nature. In the absence of any evidence in support of the applicant's position, the Commissioner does not consider it possible to substantiate this complaint.

In respect of Constable G's position regarding the allegation, during Inspector H's investigation divorce proceedings were live and no determination had been made in respect of the division of the matrimonial property. This was confirmed by the applicant's solicitor who was contacted by Inspector H during the investigation into this complaint. In these circumstances, it was a matter for the civil courts, not the police, to deal with the issue of disputed ownership of the property. In the Commissioner's view, it was therefore reasonable for Constable G to conclude that the matter was civil rather than criminal in nature.

The applicant was also advised that as a result of his complaint a separate enquiry was being undertaken into an alleged statutory offence by his wife regarding the sale of the motorcycle.

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

Conclusions, Recommendations and Learning

Complaints 1 and 3

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

Complaint 2: Removal of applicant's car

In the Commissioner's view this complaint was not handled in a reasonable manner. The Commissioner recommends that Central Scotland Police issues an apology to the applicant for the removal of his vehicle in the circumstances.

John McNeill
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