

Report of a Complaint Handling Review in relation to Grampian Police

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

Summary and Key Findings

The applicant's complaints arise from his being interviewed by Grampian Police in relation to allegations of rape, assault and breach of the peace.

Of the three complaints considered, the Commissioner found that two were dealt with reasonably while the other was not. The Commissioner made two recommendations.

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 15 July 2008 the applicant was detained by Sergeant A and Constable B in relation to an allegation of rape. The applicant was interviewed in relation to the allegation and subsequently released.

On 24th July 2008 the applicant was arrested in relation to an alleged breach of the peace. The following day the applicant was released on the instruction of the Procurator Fiscal and immediately re-arrested on the same charge of rape. On 26 July 2008 the applicant was interviewed by Detective Sergeant C and Detective Constable D in relation to this allegation, along with five separate allegations of breach of the peace and an allegation of assault.

At the conclusion of his interview the applicant was charged with rape and each of the alleged breaches of the peace. The applicant's t-shirt was seized by police as evidence.

Following trial, the applicant was convicted of rape and sentenced to 12 years in prison.

The Complaints

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

- (1) that police officers were aggressive and made inappropriate comments to the applicant;
- (2) that the applicant was denied a court appearance; and

(3) that Detective Sergeant C took the applicant's t-shirt.

The Commissioner's Review

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

Complaint 1: Police officers were aggressive and made inappropriate comments.

In his letters to Grampian Police the applicant describes those incidents in which he believes Detective Sergeant C and Detective Constable D were aggressive and made inappropriate comments towards him. The applicant states the following in his letter of 11 February 2010:

- (a) *"firstly when he came to my house on the 15th of July, 2008 in company of [Detective Constable D] at around 11 am, he was very aggressive to me and my flatmate. My flatmate can confirm."*
- (b) *"during the interview, I did ask about a lawyer since I was not strong English. He [Detective Sergeant C] pointedly told me it was not time for a lawyer by pointing harsh at my face."*
- (c) *"[Detective Constable D] pointedly told me they have not started dealing with me. They have not even gone half way, that by the time they finish with me I will not see [Location X] again. To me this is blank threat and racial hatred."*
- (d) *"[Detective Constable D] while in the course of the interview threatened me by calling me a black man and sternly warned me that by the time they finish dealing with me, I will not see [Location X] again."*
- (e) *"The whole interview was about intimidation and racial bullying. The tone of voice of [Detective Sergeant C] and [Detective Constable D] was not just harsh but very bullish."*
- (f) *"[Detective Sergeant C] called me a p***k and a criminal to intimidate me."*

The applicant submitted further letters to Grampian Police which were received there on 28 February; 2, 15 and 23 March; and 4 and 12 April 2010. In these letters the applicant repeated several of his previous complaints and raised the following further complaints:

- (g) *"[Detective Constable D] pointedly told me on the 27th of July during the interview that they will do to me all that the woman have complained about even though I protested my innocence of these charges. These [sic] seem like passing judgement before the trial."*
- (h) *"While I was giving my details at the counter, [Sergeant A] pointed at me and shouted that if I don't talk or tell them what happened, I will be in serious trouble."*

Internal Handling

On 24 February 2010 Detective Inspector E visited the applicant in prison to obtain a statement from him regarding the complaints. However, the applicant refused to provide a statement on the basis that he was in the process of appealing his conviction.

Detective Inspector E and Detective Sergeant F thereafter viewed CCTV footage of the applicant's police interview. On 5 March 2010 Superintendent G wrote to the applicant's solicitor in the following terms:

"You alleged that on 15 July 2008, at [address], that Officers spoke to you in a manner you perceived as aggressive.

Without discussing this matter further and/or providing a statement, it is very difficult to determine what you mean by this. Furthermore, the Officers you name in your complaint were not the officers who attended at your address and those who did have denied this allegation. I therefore can only find this aspect unsubstantiated.

You alleged that during an interview on 26 July 2008, at [location], that you advised the Officer concerned that your spoken English was not strong and enquired about the services of a Solicitor, but that this request was denied.

Both the Officers who interviewed you state they found your spoken English to be good and had no problems understanding you. This is corroborated by [Detective Inspector E and Detective Sergeant F] who also made this observation.

On review of the taped interview there is also no indication to suggest a concern here, nor did you raise this point during your interview.

It was also explained to you that no legal right exists for a Solicitor to be present during interview. As an arrested person, you are afforded the right of having a Solicitor notified of your arrest and this was done on this occasion. I therefore find this aspect of your complaint unsubstantiated.

You allege ... that Officers spoke to you in an aggressive manner and pointed harshly at your face.

There is no evidence to support this allegation, both the Officers concerned deny this took place and this is corroborated by audio and video footage of the interview. Indeed, Detective Inspector [E] and Detective Sergeant [F], in viewing all of the footage available, state that both Officers came across very well in a calm, professional and thorough manner.

This interview followed the correct procedures both legally and ethically. The only person in the footage who appears to be aggressive is yourself, gesticulating with your hands and pointing. I therefore find this aspect of your complaint unsubstantiated.

You allege ... that Officers engaged in a course of action that you interpreted as discriminatory towards you on grounds of race, threatened you, called you a black man and told you that you would never see [Location X] again.

There is no evidence to support this allegation. Both Officers strongly deny making these comments and there is nothing on the interview tapes to the contrary. I therefore can only find this aspect of your complaint unsubstantiated.

You allege that ... Officers switched off the interview tapes and told you that you would never see [Location X] again.

There is no evidence to support this allegation and both Officers deny this. I therefore find this aspect of your complaint unsubstantiated."

On 23 March 2010 the applicant wrote to Grampian Police stating that he was now prepared to provide a statement regarding his complaints. A statement was subsequently obtained from him by Detective Inspector E on 9 April 2010. During the meeting the applicant told Detective Inspector E that he had not seen Superintendent G's letter dated 5 March 2010.

Following receipt of further correspondence from the applicant, Superintendent G wrote to the applicant's solicitor on 27 April 2010. Superintendent G requested that the applicant be shown his letter of 5 March 2010 as soon as possible.

In response to the applicant's letters in which he repeated complaints 1 (a)–(f) and raised complaints 1 (g) and (h) Superintendent G wrote to him referring to the content of his letter of 5 March 2010. Superintendent G also addressed complaint 1 (f), stating:

"Detective Inspector [E] has again viewed all the interview tapes and there is no evidence to substantiate this allegation."

With regard to complaint 1 (g) Superintendent G stated:

"In respect of [complaint 1 (g)] and [other matters not forming part of this review], they all relate to matters dealt with or heard at the High Court of Justiciary during the trial and are not a matter for Grampian Police."

Consideration

In relation to complaint 1 (a) the papers provided to the Commissioner's office by Grampian Police make clear that on 15 July 2008 the applicant was detained by Sergeant A and Constable B, not Detective Sergeant C and Detective Constable D. Accordingly, the applicant's allegation against Detective Sergeant C and Detective Constable D in this connection is unfounded.

As noted above, Superintendent G states in his letter of 5 March 2010 that Sergeant A and Constable B denied the allegation. However, the complaints file contains no evidence of this and no statements appear to have been produced by these officers. Moreover, there is no evidence of any account having been taken from the applicant's flatmate who he claims witnessed the incident. For these reasons, the Commissioner does not consider this element of the complaint to have been dealt with in a reasonable manner. The Commissioner recommends that accounts are obtained from Sergeant A, Constable B and the applicant's flatmate and that a further response is issued to the applicant in light of these enquiries.

Complaints 1 (b) - (g) relate specifically to the applicant's interview with Detective Sergeant C and Detective Constable D which was recorded on CCTV. As such there is irrefutable evidence regarding these complaints.

In relation to (b), the footage confirms that the applicant told the officers that he would like to talk "through a lawyer". Detective Sergeant C is seen to refuse this applicant's request; however, contrary to the applicant's allegation Detective Sergeant C does not point at the applicant when doing so. It is clear from the footage that the applicant understands Detective Sergeant C and Detective Constable D and that he is able to communicate clearly with them. In any event, Superintendent G explained in his letter of response that there was no legal right for suspects to have a solicitor present during interview. Although the law has since changed in this area, the position adopted by Superintendent G was correct at the time he issued his response. In these

circumstances, the Commissioner considers that Grampian Police dealt with this complaint in a reasonable manner.

In relation to (c), Detective Constable D is heard on the CCTV footage saying to the applicant:

“...we’re not finished with you yet, we’re not even half way there”.

However, there no indication whatsoever in the footage that Detective Constable D meant this as a threat or that the comment was racially motivated. At that stage in the interview Detective Sergeant C and Detective Constable D were indeed approximately half way through questioning the applicant about the allegations against him. Accordingly, given its context the Commissioner has no concerns about Detective Constable D’s comment. In the Commissioner’s view, as Detective Constable D clearly made a comment about not being “even half way there”, Grampian Police ought to have provided a fuller response. However, as Grampian Police was correct in concluding that the applicant’s concerns were clearly unfounded, the Commissioner considers on the whole that this element was dealt with in a reasonable manner.

In relation to (d), Detective Constable D does indeed refer to the applicant on more than one occasion as a “black man”. However, he does so when describing to the applicant the content of witness statements. In the Commissioner’s view, there is no scope for suggesting that in doing so Detective Constable D was seeking to threaten the applicant. In these circumstances, the Commissioner considers that this element of the complaint was dealt with in a reasonable manner.

In terms of complaint (e), Detective Sergeant C and Detective Constable D interviewed the applicant for almost three hours. During the course of the interview Detective Sergeant C and Detective Constable D question the applicant robustly about the allegations against him. At times both Detective Sergeant C and Detective Constable D question the applicant’s version of events and point out inconsistencies in his account. The Commissioner considers that in doing so Detective Sergeant C and Detective Constable D were merely carrying out their duties. At no point does either officer behave in a manner that could be described as bullying or unduly intimidating. As such the Commissioner considers that this complaint was dealt with in a reasonable manner.

With regard to complaint 1 (f), although this was raised by the applicant in his letter of 11 February 2010, Superintendent G did not respond until his letter of 27 April 2010. In his response, Superintendent G explained that according to the CCTV footage there was no evidence that Detective Sergeant C spoke to the applicant in the manner he had alleged. The Commissioner supports this conclusion and therefore finds that this element of the complaint was dealt with in a reasonable manner.

In relation to complaint (g), as noted above Superintendent G explained that as this related to matters dealt with by the High Court at the applicant’s trial, it was not a matter for Grampian Police. It is not clear to the Commissioner why Superintendent G sought to distinguish between this element of the complaint and the other elements raised by the applicant. There is nothing in the complaints file to indicate which of the applicant’s complaints were raised as evidence at trial and which were not. Even if the matter was raised in evidence, the Commissioner does not consider that, by itself, this would justify the decision not to provide a substantive response to the applicant.

Accordingly, the Commissioner does not consider that this element of the complaint was dealt with in a reasonable manner. However, as the CCTV footage does not show Detective Constable D speaking to the applicant in the manner alleged by him, the Commissioner makes no recommendation in this connection.

The Commissioner notes that the applicant has not received a response to element (h) of his complaint. Accordingly, the Commissioner does not consider that this element was dealt with in a reasonable manner. The Commissioner recommends that Grampian Police issues the applicant with a response.

Complaint 2: Denied a court appearance

In his letter dated 11 February 2010 the applicant complained that by arresting him on 25 July 2010 he had been denied a court appearance as at the time of his arrest he was in a holding cell waiting to attend court.

Internal Handling

On 5 March 2010 Superintendent G wrote to the applicant stating:

“Detective Inspector [E] established that the Procurator Fiscal at [location] had instructed that you be released from custody pending further enquiries into the Breach of the Peace charge on which you were being held. This negated the requirement for you to appear in Court that day. The Officers involved therefore acted lawfully in apprehending you for a Rape enquiry. As a result of subsequently being charged with serious crimes, you were kept in custody to appear in court the next lawful day ... I therefore find this aspect of your complaint unsubstantiated.”

Consideration

The Commissioner has little to add to Superintendent G’s response. It is clear that at the time of his arrest the applicant had been released from custody and therefore was not due to appear in court. Accordingly, it is not the case that the applicant’s arrest resulted in him being denied a court appearance.

Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 3: The applicant’s t-shirt

In his letter dated 11 February 2010 the applicant stated the following:

“When I was locked up in the cell, [Detective Sergeant C] came alone in the afternoon and standing in the door ordered me to give him my T-shirt. He never mentioned what the purpose was for and neither did he caution me it will be used in evidence for prosecution. He just demanded that I hand it to him with intimidating looks and threat.”

Internal Handling

Superintendent G provided the following response to this complaint:

“Enquiries reveal that two Officers attended your cell when the T-shirt was taken possession of. They were lawfully entitled to take possession of this item as evidence during their enquiries into a serious crime which was explained to you. I therefore find this aspect of your complaint unsubstantiated.”

In relation to the applicant’s concern that he was dealt with in an intimidating and threatening manner, Superintendent G stated:

“Both Officers deny this allegation and there is no evidence to support it and again I find this aspect of your complaint unsubstantiated.”

Consideration

In the Commissioner's view, given the allegations he faced the officers concerned were entitled to take possession of the applicant's t-shirt.

As both officers involved in this process deny acting in an intimidating manner, there is no evidence to support this element of the applicant's complaint,

Accordingly, the Commissioner considers that Grampian Police dealt with this complaint in a reasonable manner.

Conclusions, Recommendations and Learning

Complaint 1: Police officers were aggressive and made inappropriate comments.

In the Commissioner's view, overall the manner in which this complaint was dealt with by Grampian Police was not reasonable. In respect of element (a) the Commissioner recommends that accounts are obtained from Sergeant A, Constable B and the applicant's flatmate and that a further response is issued to the applicant in light of these enquiries.

In respect of element (h) the Commissioner recommends that Grampian Police issues the applicant with a response.

Complaint 2: Denied a court appearance

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

Complaint 3: The applicant's t-shirt

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

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