

Report of a Complaint Handling Review in relation to Lothian and Borders 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 damage allegedly caused to his mobile phone and laptop by police officers who searched his home.

The Commissioner found that, whilst the applicant's substantive complaint had been handled in a reasonable manner, the length of time taken to deal with it was excessive. A single recommendation was made in this connection.

The Commissioner's role

Section 35 of the Police Public Order and Criminal Justice (Scotland) Act ("the Act") gives the Commissioner the power to examine the manner in which a policing body has dealt with a "relevant" complaint, as defined in the Act.

The Commissioner is independent of the police service and performs his functions in a fair and impartial manner. Before considering a complaint, the Commissioner's office obtains all papers held by the policing body against which the complaint has been made. These papers are considered alongside information provided by the applicant. The Commissioner then assesses whether the policing body's handling of the complaint was reasonable in all the circumstances. The Commissioner will look at the entire handling process, from the initial investigation by the policing body to the final response issued to the applicant. Among the factors which the Commissioner takes into account are the following:

- whether the policing body's response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented;
- whether the policing body's response to the complaint is adequately reasoned; and
- whether the policing body has communicated with the applicant in a reasonable manner.

Background

At around 9.30 pm on 1 January 2009, seven police officers attended at the applicant's home in order to implement a search warrant granted in respect of a stolen television. A number of officers state that they tried to get the applicant's attention but that he did not open his door. Consequently, attempts were made to force entry to the property. Five officers then entered the applicant's home; two remained at the front door but left to attend an unrelated incident shortly thereafter. The officers searched the property and seized a television.

At about 10.30 pm on the same date, the applicant telephoned Lothian and Borders Police's contact centre advising that his front door was insecure as a result of the attempts to force entry. During the call, the applicant complained that the attending officers were rude and had broken his mobile phone, laptop and bedroom door during the search. Sergeant A and Constable B attended at the applicant's home shortly after the call and secured the front door. At this time, the applicant signed a statement which included the following comments:

"... the reasons complaints were made have been 100% remedied. I no longer want to make a complaint about the police."

The applicant subsequently called the contact centre at 11.35 pm to express his gratitude to the attending officers. The police record of the call states the following:

"... further call from [the applicant] - occupier of the house stating ... his door is fixed and he wishes his thanks passed on to [Sergeant A's line manager] ... as he says the [Sergeant] at the locus was excellent, and his faith in the police has been restored."

On 3 January 2009, the applicant called the contact centre reiterating his complaint about the damage caused to his door, laptop and mobile phone. Shortly thereafter, the applicant's landlord replaced the front door and bedroom door.

The owner of the stolen television did not identify the one taken from the applicant's home. The television was subsequently returned to the applicant.

The Complaints

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

- (1) that Lothian and Borders Police damaged the applicant's property and possessions during a search of his home; and
- (2) that the length of time taken to deal with the applicant's complaints was "unacceptable".

The Commissioner's Review

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

Complaint 1: Alleged damage to property

On 15 September 2009 the applicant, through an advocacy service, wrote to Lothian and Borders Police complaining about the actions of the officers who conducted the search on 1 January 2009. The letter gave the following description of events from the applicant's perspective:

"[The applicant] asserted that his door was kicked in despite telling police officers that he was trying to open the door. He explained that the police officers' action of kicking the door was preventing him from being able to put his key in the lock. He added that six police officers gained entry to his home and further damaged a bedroom door that was not locked. He believes that it was totally unnecessary to cause damage to his property as he was willing to allow entry to his home. He said that it turned out that the police officers had the wrong person and address.

[The applicant] reported the damage to his landlord ... and they called out a joiner to make repairs to the damage. [The applicant] also called the police to complain about damage that he had discovered to his laptop computer worth £400 and to his mobile phone worth £79. He said that when he spoke with a police officer, he was told to purchase new items and to forward receipts to the police in order to be compensated.

[The applicant] also stated that the female sergeant who had been in charge of forcing entry to his home, later met with him at his home, during which time she explained that the damage had not been malicious and said there was nothing much wrong with either of the doors that were damaged, which [the applicant] found to be an offensive attitude and simply not true.

...[The applicant] is also disappointed by what he described to be unnecessary and overly zealous behaviour from the police officers involved."

Internal Handling

Inspector C was appointed to deal with this complaint. During his investigation, Inspector C obtained the police incident log, the police search log, the crime report of the incident and operational statements from the officers who had entered the applicant's home on 1 January 2009. Inspector C met with the applicant and his advocacy worker on 12 November 2009 and was shown the laptop and mobile phone in question. A statement was obtained from the applicant in which he stated the following:

"I understand the police action and that they need to do their job. I just want the damage to my computer and my phone to be sorted out."

Inspector C submitted his report to the Deputy Chief Constable on 17 December 2009. The report contained the following comments:

"Other than the complainer's statement there is no other evidence to support his claim.

... The statements provided by the officers concerned clearly state that at no time did any officer damage the bedroom door, a laptop or a mobile phone. Several statements refer to the fact that there were numerous electrical items, including mobile phones and computers, lying about within the address. [Constable D] states that a number of these items were already broken and lying in a state of disrepair.

[Sergeant A] speaks to seeing a laptop computer lying in the hallway (where complainer originally stated it had been damaged) propped up against the wall and on charge. She also states that she noticed existing damage to the bedroom door as she entered the property.

In his original telephone call to the [the contact centre], [the applicant] states that officers damaged his computer and mobile phone when they stood on them whilst they were lying in the hallway of his flat (digital recordings of his conversation with [contact centre] staff confirm this to be the case), however in the statement noted by the reporting officer [the applicant] states that the items were damaged when a television set was knocked on top of them whilst they were on charge within his bedroom.

None of the allegations against the officers have been substantiated, mainly due to the fact there is no corroborative evidence to validate the claims made by [the applicant] ... there are two distinctly different versions of events."

On 24 March 2010 the Deputy Chief Constable issued the following response to the complaint:

"I am aware that some dubiety exists as to where the property was when it was allegedly damaged, for example, in an early telephone call to the Force Communication Centre, you stated that the damage to your computer and mobile phone occurred within the hallway of your home, however, in a subsequent statement you made to the investigating officer, you stated that these items were damaged in your bedroom, when a television was knocked on top of them. I do however accept that some confusion may be due to the time elapsed between the incident and the investigation into your complaint.

The officers involved in searching your home have related that on entering they saw many items of property lying strewn around your flat, on the floor and on furniture, including mobile telephone, pieces of electrical equipment and other personal items, which made moving around your flat difficult. They have also stated that they are unaware of damage being caused to any of your property during the search and deny causing any damage other than that caused to your front door. The sergeant who was in attendance during the

search can however recall that your bedroom door bore existing damage and at the time of police arrival was hanging on only one hinge.

... During his enquiry and in an effort to locate an independent witness, the Investigating Officer contacted your landlord ... and also their [maintenance company] ... Unfortunately, neither have been able to identify any of their employees who attended your flat. However, [the maintenance company] have records showing that during January 2009, they replaced a bedroom door and carried out repairs to the front door, bathroom door and kitchen window of your flat.

... I appreciate that the searching of your flat would have been an unsettling experience, but sadly it is a necessary part of our duties. I have considered the information and circumstances made known to me and must inform you that there is insufficient evidence to support your version of events, or that officers caused damage to your property. Accordingly, I am unable to uphold your allegation."

Consideration

During his investigation, Inspector C obtained statements from all persons who attended the applicant's property on the day in question. None of the officers' statements supports the applicant's complaint that his laptop, mobile phone and bedroom door were damaged during the search. Unsuccessful attempts were made to obtain statements from the employees of the maintenance company who replaced the applicant's front and bedroom doors. There is therefore no evidence, other than the applicant's account, that his property or possessions were damaged during the search of his home.

It is also significant, in the Commissioner's view, that the applicant himself has given two varying accounts of events in respect of how his laptop and mobile phone came to be damaged. In his initial call to police on 1 January 2009, he claimed that these items had been "lying in the hallway charging". On the other hand, he stated to Inspector C on 12 November 2009 that the items in question had been damaged in the bedroom due to a television being knocked on top of them.

Given the weight of evidence contradicting the applicant's account, the Commissioner considers that Lothian and Borders Police was correct to find that the complaint was unsubstantiated. Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 2: Length of time taken to deal with complaints

In correspondence submitted via his advocacy worker the applicant complained to the Commissioner about the length of time taken by Lothian and Borders Police to deal with his complaint. The following is a passage from the correspondence:

"[The applicant] also states that he feels that he was intentionally stalled by the police, so as to cloud the whole issue of damage to his home and possessions; he points to it taking 15 months for the police to formally report back to him after the almost immediate complaint he made. I refer you to my letter of 8 March 2010 [to the police], in order to set out the lack of progress information."

Although this complaint has not been made to Lothian and Borders Police, as it concerns the manner in which his substantive complaint was dealt with, the Commissioner has dealt with it as part of this review.

Consideration

According to the applicant 15 months elapsed from his first making his complaint to Lothian and Borders Police, and his receipt of the Deputy Chief Constable's response.

As noted above, it is clear from both his telephone call to Lothian and Borders Police and his signed statement that the applicant was satisfied with the actions of Sergeant A. On this basis the applicant's complaint was resolved and no further action was taken.

According to the applicant, in April 2009, with help from a representative of the Salvation Army, he sent a further letter of complaint to Lothian and Borders Police. The police file indicates that Inspector C made enquiries in this connection with both the relevant police division and the Salvation Army. Despite these enquiries, no trace of the letter could be found and the Salvation Army representative could confirm only that he had helped the applicant write the letter. Indeed, the Salvation Army representative believed that the letter was never delivered to the police.

In light of this, it appears that Lothian and Borders Police were put on notice of the applicant's continued dissatisfaction only upon receipt of his letter of 15 September 2009. Consequently, the applicant's belief that Lothian and Borders Police took 15 months to deal with his complaints and that he was "intentionally stalled" is not supported by the evidence.

Approximately six months elapsed from the applicant's letter of 15 September 2009 and the letter of response issued by the Deputy Chief Constable. Given the relatively straightforward nature of the applicant's complaint, the Commissioner does not consider this length of time to be reasonable. The Commissioner would also have expected regular updates to the applicant following the submission of Inspector C's report, informing him of the reasons for the continuing delay.

Accordingly, the Commissioner upholds this complaint. The Commissioner recommends that Lothian and Borders Police issues the applicant with an apology regarding the time taken to deal with complaint 1.

In March 2011 (after the present complaints were dealt with by Lothian and Borders Police) the Commissioner issued statutory guidance regarding the handling of complaints about the police. The following guidance is given in respect of timescales and updates:

"It will be necessary to have in place timescales to be adhered to. The PCCS therefore expects each police force to acknowledge any complaint received within three working days, update all complainers once every calendar month, and complete all non-criminal complaint investigations within 40 working days ... in instances where the complaint cannot be concluded within the set timescale, it is important that complainers are kept fully informed."

The Commissioner notes that Lothian and Borders Police's complaint handling standard operating procedure ("SOP") does not specify a timescale in which complaints of the kind made by the applicant must be completed. The Commissioner has written to all policing bodies in Scotland instructing them to review their SOPs taking into account the guidance he has issued. The Commissioner expects Lothian and Borders Police to take account of the comments made in this report when reviewing its own procedures.

Conclusions, Recommendations and Learning

Complaint 1: Refusal to pay for damage

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

Complaint 2: Length of time taken to deal with complaints

The Commissioner upholds this complaint. The Commissioner recommends that Lothian and Borders Police issues the applicant with an apology regarding the time to deal with complaint 1.

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