

Report of a Complaint Handling Review in relation to Northern Constabulary

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

Summary and Key Findings

The applicant's complaints arose from enquiries made by an officer of Northern Constabulary into an alleged act of vandalism.

Of the four complaints considered, the Commissioner found that none was dealt with in a reasonable manner. 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.

Background

Although his complaints relate to Northern Constabulary, the applicant resides in the Grampian Police area.

On 22 September 2010, the applicant contacted Constable A of Northern Constabulary in response to an answering machine message left by the officer. Constable A advised that he needed to speak with the applicant and asked if he would be able to attend at a police office. According to Constable A, he advised the applicant that he had been named as a suspect in an investigation into vandalism at the properties of the applicant's former partner, Ms B, and her new partner, Mr C. Ms B had previously made allegations of harassment against the applicant for which he had been reported to the Procurator Fiscal, although no proceedings had been taken against him.

According to Constable A, the applicant denied any involvement in the alleged vandalism. He was advised that whilst it would be preferable if he attended voluntarily, the option was available to detain him if required. Arrangements were made for the applicant to attend a police office on 26 September 2010 at 11 am.

On 24 September 2010, the applicant attended at a police office within the Grampian Police area to make a complaint about the telephone call he had with Constable A. The applicant also advised that he did not intend to meet with Constable A on 26 September 2010 as he felt the officer was "just out to get [him]". Sergeant D of Grampian Police obtained a statement from the applicant and a copy of this was faxed to Northern Constabulary, along with details of the complaint.

On 26 September 2010, Constable A left a further answering machine message for the applicant regarding his failure to attend for interview as arranged. On 3 October 2010, Sergeant E of Grampian Police noted a statement of complaint about the content of this message and also secured a recording of the message. Grampian Police later sent a report dated 8 October 2010 to Superintendent F of Northern Constabulary's Professional Standards Department enclosing the relevant information in respect of this complaint.

The Complaints

Based on the contents of the application form, and the information obtained from Northern Constabulary, the Commissioner has identified the following complaints:

that on 22 September 2010:

- (1) Constable A called the applicant a coward;
- (2) the applicant was questioned on the telephone;
- (3) Constable A was intimidating and unprofessional; and
- (4) that on 26 September 2010 Constable A left a sarcastic and unprofessional answering machine message.

The Commissioner's Review

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

Complaint 1: Derogatory comment

The applicant described this complaint as follows in his statement of 24 September 2010:

"Constable [A] said I was a marine commando in the army units and that I was a coward to do this sort of thing."

Internal Handling

Chief Inspector G acted as the investigating officer in respect of the applicant's complaints and also issued the applicant with a response. An operational statement was obtained from Constable A on 28 September 2010.

In his letter of response dated 12 October 2010 Chief Inspector G stated the following in respect of this complaint:

"In your statement to [Sergeant D] you alleged that on 22 September 2010 you returned a telephone call to [Constable A]. During this call you state that [Constable A] called you a coward, as a previous Royal Marine, in accusing you of vandalism to property..."

... [Constable A] states that it was you that mentioned being a Royal Marine and that you were receiving counselling and still loved one of the witnesses in this case ...

... [Constable A] assures me that he was completely polite and professional during his dealings with you ...

... I trust I have addressed the points in your complaint and conclude that you have perhaps misconstrued your conversation with [Constable A]."

Chief Inspector G concluded that the complaint was unsubstantiated.

On 18 October 2010, the applicant wrote to Chief Inspector G regarding the terms of his response. In relation to this complaint he stated:

"I did not mention to [Constable A] anything about being in the Marines or Army Units. He told me, and said, 'was you not proud to be in the Marines' whereby I answered yes. He said 'do you not think you're a coward doing the things you're doing'. Whereby I answered, 'I don't know what you're on about'."

Chief Inspector G responded to the applicant on 25 October 2010, stating:

"I refer to my recent correspondence and have nothing further to add."

Consideration

Despite the fact that the applicant took notes based on his recollection of the conversation, the evidence in respect of this complaint amounted to the applicant's word against that of Constable A. The difficulty with Northern Constabulary's response is that it failed to recognise this and, by concluding that the applicant had perhaps misconstrued the conversation, instead favoured Constable A's account. This approach to the complaint is wholly unjustified and, in the Commissioner's view, is aggravated by the dismissive response issued to the applicant on 25 October 2010 following an attempt by him to restate his own position on the complaint.

It is notable that Northern Constabulary's response makes no reference to the following passage in Constable A's statement in which he accepts having referred to the perpetrator of the act of vandalism as "cowardly":

"[The applicant] mentioned about being a Royal Marine and that he was receiving counselling and that he wouldn't do that to [Ms B] as he still loved her. I commented that whoever was responsible was behaving in a cowardly fashion which he agreed with."

In light of this passage, and the fact that Constable A advised the applicant that he was a suspect in the investigation, it would be understandable if the applicant had perceived Constable A as implying that he himself was a coward. However, the applicant's position is not that Constable A implied he was a coward but that he called him one explicitly.

As a result of the deficiencies highlighted, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. As there is no evidence to support the applicant's assertion that Constable A called him a coward directly, the Commissioner makes no substantive recommendation in this connection. However, a recommendation to apologise to the applicant for the deficiencies in the handling of the complaint is made in the concluding section of this report.

Complaint 2: Questioning via telephone

In his statement of 24 September 2010, the applicant complains that Constable A should not have questioned him about the alleged vandalism over the telephone.

Internal Handling

Constable A stated the following:

"I explained to [the applicant] that I required to speak to him and would he be available to attend at [police office] ... [The applicant] wanted to know why I wanted to speak to him before he agreed to come to [police office].

I tried to explain that I didn't really want to discuss much over the phone but told him that he had been named as a suspect by two people for spray painting their wall's [sic] ...

I felt I was completely polite and professional but forthright with [the applicant] during our conversation and did explain on a couple of occasions that I would prefer not to discuss things over the phone but he continued to ask questions as to why he was under suspicion."

Chief Inspector G issued the following response to this complaint:

"[Constable A] has responded by advising me that he was rightly investigating a complaint of vandalism to property. In his investigation [Constable A] uncovered that you had been in a relationship with one of the individuals and that it had been alleged that you had caused some problems with that person in the past [sic]. Rightly [Constable A] concluded that he would need to speak with you as to your knowledge of the alleged vandalism. [Constable A] was correct in doing so and acted within the law and his powers and if he had not spoken to you in regard to this matter he may have come in for some criticism in regard to his investigation into this matter.

[Constable A] has advised me that in his telephone call with you he was merely responding to questions put to him by you. [Constable A] asked you to attend at [local police office] in order to discuss the matters reported to him but you wanted to know why [Constable A] asked this prior to you coming to [local police office].

[Constable A] explained to you that he did not wish to discuss matters over the telephone but confirmed that you had been named as a suspect for committing the vandalism which he was investigating and that he had the option to detain you if he required to do so.

[Constable A] advised you that although you denied any involvement in the incident he still required to interview you formally and face to face.

[Constable A] states that it was you that mentioned being a Royal Marine and that you were receiving counselling and still loved one of the witnesses in this case.

[Constable A] has stated that you continued to ask him questions and that was when [Constable A] advised you about allegations about you writing letters to the [local council] and [a national association] ... [Constable A] advised you that the witnesses in these cases had suggested the obtaining of handwriting samples ...

I trust I have addressed the points in your complaint and conclude that you have perhaps misconstrued your conversation with [Constable A]."

The complaint was considered to be unsubstantiated.

In his response to Chief Inspector G's findings, the applicant stated:

"... 4. I did not question [Constable A] at any time ...

6. [Constable A] stated that I wrote letters to [local council] and [national association]. I did write a letter to the [national association] on the Chairman's advice ...

7. *I telephoned [local council] Community Tax Dept after talking with [Constable A]. 23/9/10. They had no idea who I was, or [Constable A]. If they receive any letters it would be confidential.*

8. *[Constable A] did not advise me that the witnesses had suggested the obtaining of my handwriting. He said he would have to take samples of my writing – what for?"*

Chief Inspector G stated the following in his response of 25 October 2010:

"4. I refer to my recent correspondence and have nothing further to add ...

6. I do not believe I can respond to this which is a statement by you.

7. I do not believe I can respond to this which is a statement by you.

8. I refer to my recent correspondence and have nothing further to add."

Consideration

In the Commissioner's view, the handling of this complaint suffers from the same deficiency as highlighted in respect of complaint 1. Again, the evidence in respect of this complaint consists of the competing accounts given by the applicant and Constable A. Despite this, Northern Constabulary appears to have accepted Constable A's position.

The applicant and Constable A clearly have opposing views as to who posed the questions during their conversation. Accordingly, it is simply not possible to establish whether the applicant was questioned over the telephone by Constable A.

Given that Northern Constabulary appears, without justification, to have favoured Constable A's position over that of the applicant, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. As there is no support for the applicant's complaint, the Commissioner makes no substantive recommendation in this connection. However, a recommendation to apologise to the applicant for this deficiency is made in the concluding section of this report.

Complaint 3: Intimidating/unprofessional behaviour

The applicant claims that Constable A was attempting to intimidate him by referring to "evidence" and the possibility of his detention. According to the applicant, Constable A was hoping that the applicant would admit things at interview because he would be frightened. The applicant also felt that Constable A did not act impartially and had taken "[Ms B's] side in things."

Internal Handling

Chief Inspector G provided the following response:

"You state that you are aggrieved about the telephone call with [Constable A]. You further state that you felt [Constable A] was trying to get you to admit to things over the telephone and that he should not have been questioning you this way. You state that you believe that he was trying to intimidate you by talking about evidence and detaining you. You state that you felt that [Constable A] was hoping to frighten you into admitting things. In conclusion, you state that you felt [Constable A] was not being impartial and was taking the side of the other person ...

[Constable A]...confirmed that you had been named as a suspect for committing vandalism which he was investigating and that he had the option to detain you if he required to do so ...

[Constable A] assures me that he was completely polite and professional in his dealings with you ...

I trust I have addressed the points in your complaint and conclude that you have perhaps misconstrued your conversation with [Constable A]."

The complaint was found to be unsubstantiated.

In his letter of 18 October 2010 the applicant stated:

"I feel that [Constable A] did not act professionally or correctly towards me. He was very intimidating and over bearing with his sarky remarks and comments."

In reply, Chief Inspector G stated:

"I refer to my recent correspondence and have nothing further to add."

Consideration

Again, Northern Constabulary appears simply to have accepted the account given by Constable A over that of the applicant. It is clear that there is no evidence to substantiate the applicant's complaint, but this does not justify rejecting his account and accepting that of Constable A.

In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. As there is no evidence to support the complaint, the Commissioner makes no substantive recommendation in this connection. A recommendation to apologise to the applicant for this deficiency is, however, made in the concluding section of this report.

Complaint 4: Further answering machine message

The applicant states the following in his statement of 3 October 2010:

"About 1200 hours on Sunday 26 September 2010, I returned home and saw there was a message on my home telephone answering machine. I played it and heard it was Constable [A] again. In his message he basically says in a sarcastic manner 'Thanks for turning up today. It shows the type of man you are'. He also goes on to say he was going to get a warrant for me and put my car in ANPR as he had my registration number. I've no idea what this ANPR is.

I was disgusted by this second phone call and felt he was goading me into reacting angrily.

His attitude stinks and has completely put me off Police from Northern Constabulary."

Internal Handling

This complaint has not been recorded or investigated by Northern Constabulary, nor was it dealt with in Chief Inspector G's response of 12 October 2010.

In his letter to Chief Inspector G of 18 October 2010, the applicant stated:

"I feel that you have not addressed the points. You have failed to recognise the contents of my recorded message on my answer phone, nor even receiving it..."

Chief Inspector G stated the following in his response of 25 October 2010:

“This refers, I believe, to a second conversation you had with [Constable A]. My recent correspondence addressed your complaint arising from your first conversation with [Constable A]. I still await from Grampian Police the conversation you mention and will deal with these matters when I have that to hand.”

Consideration

It is clear that as of 1 October 2010 Chief Inspector G was aware that the applicant was seeking to make the above additional complaint about Constable A. On that date, Chief Inspector G was sent an email from the Professional Standards Department confirming that an officer of Grampian Police was to obtain a further statement from the applicant in this connection and take possession of the recording of the telephone message. Chief Inspector G was advised that the information would be passed by Grampian Police to the Professional Standards Department which would then forward it on to himself. Grampian Police thereafter sent to the Professional Standards Department a report dated 8 October 2010 enclosing the information. It is not clear from the complaints file when the information was transmitted to Chief Inspector G, if at all.

Based on the contents of the complaints file, there is no good reason why Northern Constabulary has not responded to this complaint. Accordingly, the Commissioner does not consider that it was dealt with in a reasonable manner.

It is clear from the recording of the message that there is some substance to the complaint. The Commissioner recommends that Northern Constabulary investigates the complaint and issues the applicant with a response. Northern Constabulary should explain clearly in its response why it did not deal with the complaint at the time and should also offer an apology in this connection.

Conclusions, Recommendations and Learning

In the Commissioner’s view, the handling of these complaints was particularly poor. Despite the evidence in respect of complaints 3 and 4 being equally weighted between the applicant and Constable A, Northern Constabulary nevertheless appears to have accepted Constable A’s version of events. In addition, the Commissioner does not consider it appropriate for Northern Constabulary to have considered complaints 1-3 in the absence of complaint 4, as the evidence in the latter complaint may have been helpful in the assessment of the others. In the circumstances, the Commissioner recommends that Northern Constabulary apologises to the applicant for the deficiencies in its handling of all four complaints.

Complaint 1: Derogatory comment

In the Commissioner’s view, the manner in which this complaint was dealt with by Northern Constabulary was not reasonable. However, for the reasons given no substantive recommendation is made in this connection.

Complaint 2: Questioning via telephone

In the Commissioner’s view, the manner in which this complaint was dealt with by Northern Constabulary was not reasonable. However, for the reasons given no substantive recommendation is made in this connection.

Complaint 3: Intimidating/unprofessional behaviour

In the Commissioner's view, the manner in which this complaint was dealt with by Northern Constabulary was not reasonable. However, for the reasons given, no substantive recommendation is made in this connection.

Complaint 4: Further answering machine message

In the Commissioner's view, the manner in which this complaint was dealt with by Northern Constabulary was not reasonable. The Commissioner recommends that Northern Constabulary investigates this complaint and issues the applicant with a response. Northern Constabulary should explain clearly in its response why it did not deal with the complaint at the time.

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