

Report of a Complaint Handling Review in relation to Strathclyde 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 stopped by police officers while driving his vehicle.

Of the four complaints considered, the Commissioner found that three were dealt with in a reasonable manner, while the remaining complaint was not. The Commissioner made a single recommendation in this connection.

The Commissioner's role

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

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

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

Background

The applicant's account is that on 25 May 2010 he was driving along a road when, on approaching a "severe" bend at a particular junction, he noticed a police vehicle parked within a "keep clear" area. According to the applicant the police vehicle was not displaying blue lights, hazard lights or brake lights at the time. The applicant states:

"... this bend is very dangerous in that any cars parked within the keep clear area obscure the view of oncoming traffic completely. I was outraged at this and even more so since it appeared to be a police car doing absolutely nothing. I could not notice any other danger and/ or vehicles manoeuvring at this point or after. As I proceeded past the car, I noticed two police officers, momentarily paused on the road after checking it was safe to do so, and shrugged my hands in a 'what are you doing parked here' manner whilst at the wheel. Following this I moved on, only to be chased in a dramatic fashion by these two officers and stopped with siren and blue lights a further 100 yards [along the road]."

The police account, provided by Constables A and B is that they had parked their car outside the keep clear area while pursuing enquiries into an unrelated manner. Having completed their enquiries, they returned to the police car and went to drive off. Whilst doing so, Constable B noticed a van exiting from a street adjacent to where he was positioned. As he was unsure of the intention of the van driver he decided to wait until the van had pulled out. During this time, Constable B encroached onto the keep clear area.

Constable B then prepared to drive the police vehicle back on to the main carriageway when he became aware of the applicant pulling up alongside in his vehicle and gesticulating before driving off. Constables A and B thereafter followed and stopped the applicant's vehicle. According to

Constable B, the reason for doing so was that the officers had become concerned for the applicant's welfare. Having stopped the applicant, the officers asked him if "all was in order" (at this point they were not aware of the reason why the applicant had gesticulated at them). Constable A states that the applicant advised he was okay and that he was simply unhappy at where they had been parked. The applicant asked the officers what power they had to stop vehicles, and was told by the officers that police officers can stop any vehicle on a public road at any time.

According to both officers the applicant insisted on a number of occasions that they take his details and provided them with a bank card in this connection. Both officers claim that the applicant was informed that there was no requirement to take his details. Constable B states that, as the applicant was becoming increasingly agitated at the officers' refusal to take his bank card, Constable A took the card from him. Constable A's statement contains the following passage:

"... I finally obliged and took [the applicant]'s card. I kept [the applicant]'s card until I had checked [his vehicle] on [the Police National Computer] to ensure that all was in order with his vehicle. I decided to take [the applicant]'s bank card as he was becoming agitated at my continual refusal.

Once I was satisfied that the PNC check ... was all in order I returned [the applicant]'s bank card and thanked him."

The Complaints

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

- (1) that police officers parked their vehicle in a manner which caused the road to be blocked;
- (2) that police officers stopped the applicant's vehicle without reason to do so;
- (3) that police officers were rude and uncivil when speaking to the applicant about their reasons for stopping him; and
- (4) that the applicant's details were checked on the Police National Computer.

The Commissioner's Review

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

Complaint 1: The manner of the police vehicle's parking

In his statement the applicant stated:

"They stopped me with a siren and blue lights. The two officers approached my car and one of them said words to the effect 'is there a problem, Sir?' I acknowledged there was a problem, they were parked where they shouldn't have been. One of them said 'we were escorting a vehicle out', or words to that effect. I did not see any vehicle. I did not see any reason for the vehicle to be parked."

Internal Handling

Inspector C was appointed to investigate the applicant's complaints. Statements were obtained from the applicant as well as from Constables A and B. No other witnesses to the incident were identified and there was no CCTV coverage of the scene.

Having conducted his enquiries, on 15 July 2010 Inspector C submitted a report of his findings to Superintendent G. On 23 July 2010 Chief Inspector E wrote to the applicant in response to his complaints.

On 6 August 2010, the applicant wrote to Strathclyde Police, expressing his continuing dissatisfaction. On 30 August 2010, a further response to the complaints was issued by Superintendent G.

In relation to complaint 1, Inspector C's report states the following:

"[The applicant] makes the allegation that a marked police vehicle was parked within a 'keep clear' area and on a sharp left hand bend. He provides an image with his correspondence of the locus. There are no other witnesses to the incident other than the complainer and the two police officers. There is no CCTV coverage of the locus."

Chief Inspector E stated the following in his letter to the applicant of 23 July 2010:

"I can confirm that the driver of the police vehicle caused it to stop on the ... 'keep clear' area owing to the presence of another motor vehicle. This other vehicle was present in a side road opposite to the 'keep clear' markings.

... I note that you then happened upon this scene, including the stationary police vehicle on the roadway...

In consideration of the evidence that I have to hand, I am comfortable that the driver of the police vehicle has not committed any road traffic offence. The 'keep clear' areas ... have no legally enforceable meaning and are provided on an advisory basis only. The crux of this issue is that the police vehicle was not 'parked' but was held up due to the presence of another road user. It could also be argued that the police driver exercised caution and courtesy towards the other driver in allowing them precedence. I would also confirm that in this given set of circumstances it would not be appropriate nor for that matter necessary for the blue or hazard warning lamps fitted to the police vehicle to be used.

I understand that on the day of the incident the driver of the police vehicle provided you with an explanation as to the prevailing circumstances that led him to stop the police vehicle ... Inspector [C] also informs me that he has reiterated this information to you. In the circumstances I consider that the actions of the police driver were reasonable, proportionate and I cannot uphold your claim that he deliberately 'parked' the police vehicle in a 'keep clear' area which resulted in your vision being impeded."

In his letter of 6 August 2010 the applicant took issue with the explanation provided by Chief Inspector E regarding the legality of the officers' actions. He quoted various provisions from the Highway Code ("Do not stop or park on a bend" and "You must not leave your vehicle in a dangerous position or where it causes any unnecessary obstruction of the road").

In his response of 30 August 2010 Superintendent G stated:

"I would reiterate the comments that Chief Inspector [E] made ... that the driver of the police vehicle caused his vehicle to stop on the road owing to the presence of another road

user. I am satisfied that the police vehicle was not causing an unnecessary obstruction or parked dangerously. I would also highlight that your version of events is uncorroborated, and as I am sure you are aware, Scottish law requires further corroborative evidence in addition to your own testimony.”

Consideration

The applicant's position is that Constables A and B were parked within a “keep clear” area, simply doing nothing. The officers' position is that, having completed their enquiries on an unrelated matter, they were about to move out of the area in question but decided to wait for another vehicle to emerge from an adjacent street before doing so. Both officers state that they were not parked at any time within the keep clear area and that they had simply encroached on this area whilst waiting for the vehicle in question to pull out.

The Commissioner has been provided with no evidence (other than the applicant's brief observation of the police vehicle and its occupants as he passed by) to support the position that the police car was “parked” within the keep clear area while the officers were doing “nothing”. As noted above, the applicant's account in this connection is disputed by both officers

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

Complaint 2: The stopping of the applicant's vehicle

In his statement the applicant stated:

“There was no need for [Constables A and B] to chase me down and stop me, clearly these officers' egos were insulted by a civilian questioning their conduct when [sic] in this society should be more than accessible.”

The applicant asked Strathclyde Police to investigate whether Constable A and B's actions were correct and he sought an apology if it was found that their actions was not in accordance with procedure.

Internal Handling

Inspector C summarised the respective positions of the applicant and Constables A and B, as follows:

“The complainer maintains that he was signalled to stop by the police ... He finds that this was unnecessary and questions the police powers to do so. Constables [A and B] indicated that they stopped the vehicle using statutory powers and gave an explanation for doing so, i.e. they were uncertain if the [applicant] needed assistance.”

Chief Inspector E responded as follows:

“At this juncture the police officers noted your actions, that you were gesticulating towards them and that you appeared to be agitated and it is their belief that you were shouting at them. As the windows of both the police and your own vehicle were closed, the officers were not able to understand what your issue was. As such, the exact nature of the message that you were attempting to impart was lost on the officers but they clearly noted that you were upset.

... As to the legislation involved here, the Road Traffic Act 1988 Section 163 (1) states ‘a person driving a mechanically propelled vehicle on a road must stop the vehicle on being required to do so by a constable in uniform’. In consideration of the circumstances involved

in your incident, especially following your actions and conduct towards the police officers, I am comfortable that they acted within the law in stopping your vehicle. It is evident from the statements provided by the officers that they were concerned for your wellbeing and wished to establish exactly what your issue was. As a consequence, I cannot uphold your second claim here and I am satisfied that my officers acted in a reasonable and proportionate manner in stopping you whilst you were driving your vehicle.”

Consideration

Section 163 of the Road Traffic Act 1988 provides:

“(1) A person driving a mechanically propelled vehicle on a road must stop the vehicle on being required to do so by a constable in uniform ...

(3) If a person fails to comply with this section he is guilty of an offence.”

Although section 163 does not explicitly provide the police with the power to stop vehicles, in many cases the courts have implied such a power. The case law in this area is at times unclear and inconsistent; however, the following appears to be beyond doubt.

- Police officers in uniform have the power to stop vehicles under section 163 (*Normand v McKellar* 1995 SLT 798; *Chief Constable of Gwent v Dash* 1986 R.T.R 41; *Beard v Wood* 1980 R.T.R 454).
- The only limits upon the use of this power is that it must not be exercised “oppressively” or “capriciously” (*Miller v Bell* 2004 SCCR 534; *Stewart v Crowe* 1999 SLT 899; *Beard v Wood*; *Chief Constable of Gwent v Dash*).
- The stopping of vehicles under section 163 on a “routine” or “random” basis is not, in itself, oppressive or capricious (*Normand v McKellar*; *Stewart v Crowe*; *Beard v Wood*; *Chief Constable of Gwent v Dash*)

Accordingly the question for the Commissioner to determine is whether, in stopping the applicant’s vehicle, the officers were acting oppressively or capriciously (i.e. impulsively or whimsically). Based on the evidence presented to him, the Commissioner does not consider that the officers’ actions fall within either category. Constable A and B are consistent in stating that they stopped the applicant’s vehicle due to concerns for his wellbeing. Although the applicant might perhaps contend that the officers had a different motive for stopping him, or no motive at all, the weight of the evidence (i.e. Constable A and B’s accounts) indicates otherwise. In the Commissioner’s view, the reason put forward by Constables A and B for stopping the applicant’s vehicle could not reasonably be described as oppressive or impulsive. The officers’ evidence is that they were simply concerned for the applicant’s wellbeing.

For the reasons given, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 3: alleged incivility

In his statement the applicant stated:

“The aspects I found to be rude were there [sic] of the officer who was doing the checks when questioning me about ownership of the vehicle, the tone was aggressive and questioning. The second element I found to be rude was the other officer who told me ‘the police can stop anyone for any reason they want’. This left me annoyed.”

Internal Handling

Inspector C summarised the evidence in respect of this complaint as follows:

“The complainer states that both police officers were rude to him. It should be noted that there is no allegation from the complainer of swearing or unprofessional remarks. The issue for the complainer was the tone and aggressive questioning techniques of Constable [A] and the fact that Constable [B] had indicated that the police had the power to stop anyone. Both constables [A and B] maintain that they were polite throughout and Constable [B] states that he was trying to provide an explanation to the complainer.”

Chief Inspector E responded as follows:

“... I understand that you were unhappy with the attitude of the officers towards you and in particular you feel that the tone of the officer who conducted checks via his police radio was aggressive and questioning. Similarly you found the other officer to be uncivil when he stated to you ‘the police can stop anyone for any reason they want’. As to the latter point, I trust that the foregoing explanation regarding police powers to stop vehicles explains and places into context why a police officer may make this comment.

Both police officers are clear in their recollection of events that day and they made the decision to stop your vehicle in order to establish exactly what you meant by your gesticulations and were genuinely concerned for your wellbeing. They strenuously deny that they were uncivil towards you and it is their position that you were very agitated. Again, from the evidence that I have to hand, I am presented with two conflicting accounts regarding the conduct of the officer on this occasion and I cannot therefore judge where the truth of the matter lies. Consequently I cannot uphold your claim that the officers were uncivil towards you.”

Chief Inspector E concluded by acknowledging that the circumstances of the incident had clearly left the applicant with a “less than favourable impression” of the police and apologising for any inconvenience or upset he had been caused. Inspector E also noted that, although he did not consider it appropriate for any action to be taken against the officers, he had made them aware of the applicant’s concerns.

Consideration

The Commissioner shares Strathclyde Police’s view that it is not possible to substantiate the applicant’s complaint given the different version of events provided by the officers concerned. Nevertheless Chief Inspector E offered an apology to the applicant and issued him with a response which was clearly conciliatory in tone.

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

Complaint 4: The checking of the applicant’s details

The applicant stated the following in his letter to Strathclyde Police of 25 May 2010:

“The need for [Constables A and B] to continue to hassle me after our discussion e.g. why did [Constable A] check the details of my car e.g. Vehicle Ownership, ID etc when I had done NOTHING illegal.” [emphasis in original]

Internal Handling

Inspector C's report summarised this complaint as follows:

"... The complainer alleges that this stop was inappropriate and irregular for the officers to conduct checks on both himself and his vehicle."

Inspector C's report makes no further reference to this complaint and Chief Inspector E's response does not address the matter.

In his letter of 6 August 2010 the applicant made the following comments:

"You have failed to answer this query at all in your letter. To run through security checks of a driver (by that I mean car registration, insurance, ID etc) that has done nothing illegal, in an enforcing manner, was in my eyes completely unnecessary and only added to the unrest of a civilian who already felt aggrieved. As mentioned, you have not addressed the legitimacy or need of these checks in your response."

Superintendent G responded as follows in his letter of 30 August 2010:

"As to the actions of the police officer who checked your vehicle through our computer systems, this is a routine procedure that we require to be carried out and I would reassure you that there is nothing sinister, underhand or indeed inappropriate with the actions of the officer. In the circumstances, I can find no issue with the police officer checking both your own details and that of your motor vehicle on our systems and I am comfortable that his actions here were justified and proportionate."

Consideration

The applicant is clearly concerned about the checks carried out by Constable A, which he considers amount to his being "hassled" by the officers.

Superintendent G's position is that the action taken by the officers in this connection were "justified and proportionate." However, other than stating that such action is "routine", the reasons for this finding are unclear from Superintendent G's letter.

As noted earlier in this report, Constable A and B are consistent in stating that the reason they stopped the applicant's vehicle was because of concerns for his wellbeing. In these circumstances, it is unclear why, having established that these concerns were unwarranted, the officers nevertheless proceeded to conduct checks on the applicant and his vehicle. Such a procedure may well be "routine"; however, in the Commissioner's view this does not necessarily justify the carrying out of such checks in the circumstances of the present case.

For these reasons, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Strathclyde Police explains clearly to the applicant why it considers that the checks conducted were justified in light of the reason put forward for stopping the applicant by Constables A and B.

Conclusions, Recommendations and Learning

Complaints 1 - 3

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

Complaint 4

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was not reasonable. The Commissioner recommends that Strathclyde Police explains clearly to the applicant why it considers that the checks conducted were justified in light of the reason put forward for stopping the applicant by Constables A and B.

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