

Report of a Complaint Handling Review in relation to Dumfries and Galloway Constabulary

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

Summary and Key Findings

The complaints dealt with in this review arose following the applicant's arrest for wasting police time.

Of the four complaints reviewed, the Commissioner found that all had been dealt with in a reasonable manner. No recommendations were made.

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

Between 19 and 21 March 2009 the applicant made six emergency "999" calls requesting police assistance. Four of these calls consisted of requests to be transferred to a named police officer who was dealing with the applicant on matters not related to the present complaints. The applicant was advised on each occasion not to call the emergency number and given the correct number to call. The other two calls related to the applicant reporting that he had been assaulted.

At 1:40 am on 22 March 2009, the applicant called 999 reporting that he was "going berserk" and that he was trying to break into a house. The following is taken from the attending officers' log of the incident:

"Attended and spoke to [the applicant], he is staying with his nephew [Mr A] ... He has been locked out. He is now within the house all in order at this time."

Following this, the applicant was within Mr A's home, in the company of Mr A, Mr A's girlfriend, Ms B, and Mr A's friend, Mr C. According to the applicant, Mr A became involved in a heated conversation on his mobile telephone with Mr D and that Mr A and Mr D arranged between themselves to meet at a specific place in half an hour "for a square go". The applicant describes the subsequent events as follows:

"[Mr A] picked up a brush shank and broke it over his knee. He put one piece down the back of his denims. He then took a black handled kitchen knife from the knife block ... I stood in front of the door to stop him going out but he pushed me out the way and I told him that if he left the flat I would phone the Police. He shoved me out of the way and opened the door and left with the female."

I followed him out the flat to the communal door of the block. I then saw him turn right and right again towards [the specific place]. I went back in and got my mobile phone and went back outside to see if I could see him near [the specific place]. I couldn't see him so I phoned the Police."

At 3:23 am, the applicant called the emergency services again requesting the presence of police officers. The following is an excerpt from the recording of the call:

"My young nephew, my young/cousin's out and he's got a knife or something and he is running about the street ... He's going kinda berserk"

Constables E and F were despatched to the scene. The following account is taken from Constable E's statement:

"Constable [F] and I were on mobile patrol at the time and attended at the locus, but could not trace [Mr A] in the area. I attended at the flat and spoke to [the applicant] who still stated that his nephew [Mr A] was in the street with a knife. I obtained a brief description of events from [Mr C] (who was the only other person in the flat a [sic] this time), who told me that [Mr A] had left the flat a couple of hours earlier."

Constables E and F state that they were aware of the previous 999 calls made by Mr A and, given Mr C's account that Mr A had not been in the house for approximately two hours, they decided to detain the applicant under section 14 of the Criminal Procedure (Scotland) Act 1995 on suspicion that he had wasted police time.

The applicant was subsequently taken to a local police station whilst enquiries continued. At around 5 am, Constable E took statements from Mr A and Ms B. Both confirmed that they had returned to Mr A's home after a social evening but had then left to stay with friends. Ms B recalled that they had left Mr A's home shortly after 2 am; Mr A did not state when they had done so. Mr A also stated that he had received a call from the police advising that the applicant was in custody and that he was asked if he had been threatening people with a knife. According to Mr A he denied this and stated that he had "no idea what they were talking about."

The applicant was then arrested and charged with wasting police time. On 28 March 2009, a further statement was noted from Mr A by Constable E. On this occasion Mr A altered his position and claimed that he had indeed arranged to meet someone for a "square go". Mr A also stated that he had thereafter left his home armed with a piece of wood and that the applicant had only telephoned the police to stop him getting into trouble. In explaining why he had provided an earlier, contradictory, account Mr A stated:

"When the police spoke to me the first time I lied to them about this as I did not know my Uncle was in trouble and I thought it would be me that got in trouble for having the table leg with me."

The applicant was reported to the Procurator Fiscal on a charge of wasting police time. Mr A's subsequent statement was also forwarded to the Procurator Fiscal. Proceedings were instigated against the applicant but were later abandoned.

On 3 September 2009 the applicant e-mailed Dumfries and Galloway Constabulary ("D&G") complaining about the way in which his 999 call at 3:23 am on 22 March 2009 had been handled.

The Complaints

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

- (1) that the police wrongfully detained the applicant;
- (2) that the police wrongfully arrested and charged the applicant;
- (3) that the police failed to properly investigate the applicant's 999 call; and
- (4) that the police has victimised, bullied and discriminated against the applicant.

The Commissioner's Review

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

Complaint 1: Alleged wrongful detention

In his statement the applicant complained that he had been unlawfully detained.

Internal Handling

Detective Inspector G was appointed as the enquiry officer in respect of the applicant's complaints. On 23 September 2010 he obtained a statement from the applicant. Detective Inspector G also obtained operational statements from Constables E and F and retrieved the statements which Constable E had noted from Mr A, Ms B and Mr C at the time of the incident.

As the complaint related directly to the circumstances of the applicant's arrest and the subsequent report to the Procurator Fiscal, Detective Inspector G also discussed the circumstances with the Procurator Fiscal.

On 22 October 2010 Detective Inspector G produced a report detailing his findings. In respect of this complaint, Detective Inspector G concluded:

"Taking into account the information provided by [the Procurator Fiscal], it is my opinion that there is no evidence to support any of the claims in [the applicant's complaint]. [The Procurator Fiscal] has clearly stated that in his opinion the Police officers fully investigated the matter. In addition he states that there were grounds for [the applicant]'s detention and subsequent arrest ... it should also be noted that [the applicant] had two 999 calls to Police that evening and over the previous four days had made a total of sixteen 999 calls to Police either making a complaint that appeared to have no substance or wanting to speak to an Inspector. He was informed not to use the 999 system for this but refused each time. In addition Constable [E] and his colleagues carried out a patrol of the area in an effort to trace [Mr A] and also spoke with the witness [Mr C] prior to detaining [the applicant]."

On 2 November 2010 Superintendent F wrote to the applicant in response to his complaints. In respect of the present complaint, Superintendent F stated the following:

"I have been informed that officers carried out a search for [Mr A] prior to attending at [Mr A's home] and that search met with a negative result. The officers then spoke to [Mr C] who was in [Mr A's home] and obtained an account from him prior to speaking to you. Based on this information and the fact that your version of events differed from what you

had given the Force Communications Centre the officers made the decision to detain you under the terms of the Criminal Procedure (Scotland) Act 1995 Section 14. Officers later traced [Mr A] and [Ms B] and obtained statements from them. There is therefore no evidence which supports your claim that the Police failed to investigate your complaint to a proper standard.

Whilst the officers had not traced [Mr A] at the time prior to detaining you, they later made contact with him by telephone and he subsequently provided a statement to them denying your version of events. I fully accept that you were detained prior to the statement being obtained from [Mr A] however I am satisfied that the officers were justified in detaining you based on the information that had been made available to them at the time. There is therefore no evidence to suggest that the officers were guilty of wrongful arrest against you.

I have already outlined the reasons behind your detention and given the information available to me I am satisfied that your detention was not unlawful. Enquiry has also been made with the Procurator Fiscal regarding your case who confirms that in his opinion there was a sufficiency of evidence for you to be detained under the Criminal Procedure (Scotland) Act 1995 Section 14. As such there is no evidence to support your claim that Dumfries and Galloway Constabulary were guilty of your unlawful detention.” [emphasis in original]

Consideration

Based on the information provided by Constables E and F, the following factors informed their decision to detain the applicant:

- that the applicant had made numerous 999 calls to D&G over the previous week;
- that, contrary to the applicant’s claims, Mr A was not physically in the street/vicinity upon or during the officer’s attendance; and
- that Mr C informed the officers that Mr A and Ms E had left the house approximately two and a half hours earlier.

Of the sixteen calls referred to by Detective Inspector G, the Commissioner has been supplied with a recording of eight calls made between 19 and 22 March 2009. The nature of these calls has been detailed in the background section of this report. The recording of the call made at 3:23 am confirms that the applicant informed the emergency services that Mr A was running about the street and going “berserk”. Constables E and F state that, prior to attending Mr A’s home, they carried out a patrol of the local area and could find no trace of Mr A. Both officers also state that, having spoken to the applicant, he maintained that Mr A was “in the street with a knife.” In addition, the statement given by Mr C (which was provided to Constables E and F at 3:40 am) directly contradicted the information which the applicant had given.

In the Commissioner’s view, the information presented to Constables E and F was sufficient to constitute reasonable grounds to suspect that the applicant was wasting police time. Accordingly, the Commissioner considers that the applicant’s detention was justified by the information available to the officers at the time. Furthermore, the applicant has been provided with a detailed explanation of the action taken by the officers.

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

Complaint 2: Alleged wrongful arrest and charge

The applicant stated the following in his statement:

“The same officers are guilty of wrongful arrest with regards to myself.

... I also want investigated why three officers arrived at the flat that evening. I am of the opinion they made their mind up before they were going to arrest me. They carried out the enquiry in an unprofessional manner. They had no evidence to arrest or charge me."

In support of his complaint the applicant stated that, as three officers attended his 999 call, his arrest must have been pre-planned. The applicant has also written to the Commissioner stating that D&G had no evidence of wrongdoing on his part.

Internal Handling

The handling of complaint 1 and, in particular, the explanation given by Superintendent F in respect of that complaint is equally applicable to this complaint. In respect of the applicant's concern about the number of officers who attended at the flat, Detective Inspector G made the following comments in his report:

"In respect of the claim made by [the applicant] that the Police had already made up their mind to arrest him as three officers turned up to arrest him, there is no evidence to support this claim. This was an operational decision in respect of deployment of officers and was not because of the view expressed by [the applicant] that they had made their mind up to arrest him before hand. The additional officer was also of benefit in the search for [Mr A]."

Superintendent F provided the following information in her response to the applicant:

"The Procurator Fiscal confirms that there was a sufficiency of evidence to prosecute you therefore there is no evidence available to me which supports your claim that the officers were unprofessional and there was no evidence to arrest you.

From all the evidence available I am satisfied that the Police dealt with this incident in an efficient and proportionate manner, interviewing all relevant witnesses and preparing a report for the Procurator Fiscal in which as previously mentioned there was a sufficiency of evidence to prosecute.

The deployment of officers is an operational matter and whilst officers are often found to be patrolling in pairs, the additional officer in this case assisted in the search for [Mr A]. I have noted your view on this matter however I am satisfied that there is no evidence to support your claim that the reason for three officers arriving at your address was that they had made their mind up to arrest you prior to attending there."

Consideration

Following the applicant's detention, Constables E and F called Mr A's mobile telephone. Whilst neither officer makes reference to this call in their statements or in the police report, Mr A provides the following account of what occurred:

"We got a call from the Police saying that my uncle was in custody and asking if I had been threatening people with a knife. I told them I hadn't and I had no idea what they were talking about."

At approximately 5 am, Constable E obtained statements from Mr A and Ms B. Neither statement provided any evidence in support of the applicant's allegation against Mr A.

In the Commissioner's view, given that three witnesses (Mr A, Ms B and Mr C) contradicted the applicant's claims, there was sufficient evidence to charge the applicant with wasting police time. The Commissioner therefore considers that the response provided to the applicant was reasonable.

As noted above, on 28 March 2009 Mr A provided an additional statement in which he claimed that he had indeed arranged to meet someone for a “square go” and had left his home carrying a weapon. Although this account supports the applicant’s position, clearly the decision to arrest and charge the applicant requires to be assessed in light of the evidence that was available to the officers at that time. Mr A’s subsequent account was forwarded to the Procurator Fiscal and it was for him to determine whether proceedings against the applicant should continue in the light of this.

As to the applicant’s concern over the number of officers who attended Mr A’s home, during his enquiries Detective Inspector G established that one of the officers in attendance was a special constable. Detective Inspector G also found that rather than indicating that the applicant’s detention was pre-planned, the presence of the additional officer would have assisted in the search for Mr A. In the Commissioner’s view, this is a perfectly reasonable conclusion.

Complaint 3: Alleged failure to properly investigate

The applicant stated the following in his email of 3 September 2010:

“I phoned the police to report a criminal offence, a male left the location I was present at, with a kitchen knife and a wooden baton. The police attended, as the accused person had left and was no longer present, they telephoned his mobile phone to ask him if he was in possession of offensive weapons, this I found beyond belief. Rather than bother locate this person and do their job professionally they carried out what can only be described as a lazy, unprofessional and incompetent approach toward the report of this criminal act. I was arrested for ‘wasting police time’.”

In his statement the applicant said:

“Officers from Dumfries and Galloway Police failed to properly investigate to a reasonable standard the report of a criminal offence.”

In an email to Superintendent F dated 3 November 2010 the applicant asked:

“Is phoning the suspect of a criminal offence the normal operating procedure for your force?”

Internal Handling

Detective Inspector G stated the following in his report:

“... the Police officers in the case had spoken to all three witnesses in the case and in [the Procurator Fiscal’s] view the investigating officers could not have done anything more to investigate the matter and indeed [Mr A] was interviewed on two occasions and statements obtained.

[Mr A] provided two statements to the Police that were inconsistent with each other. [The Procurator Fiscal] stated in respect of this the reporting officer had correctly submitted both the incriminating and exculpatory statement ...”

Superintendent F issued the following response to the complaint:

“I have been informed that officers carried out a search for [Mr A] prior to attending at [Mr A’s home] and that search met with a negative result. The officers then spoke to [Mr C] who was in [Mr A’s home] and obtained an account from him prior to speaking to you. Based on this information and the fact that your version of events differed from what you had given the Force Communications Centre the officers made the decision to detain you

under the terms of the Criminal Procedure (Scotland) Act 1995 Section 14. Officers later traced [Mr A] and [Ms B] and obtained statements from them. There is therefore no evidence which supports your claim that the Police failed to investigate your complaint to a proper standard.”

In a further letter to the applicant dated 8 November 2010 Superintendent F stated:

“With regard to your question regarding whether phoning the suspect of a criminal offence is normal operating procedure for Dumfries and Galloway Constabulary, I would advise that in normal circumstances, the straightforward answer to that would be no, however, it can and does happen when other enquiries to locate them have proved unsuccessful.

In this case, a search of the area had been carried out to trace [Mr A] which had proven negative. He was thereafter telephoned and asked for his location which he willingly provided. Officers thereafter traced him at which point he provided a statement in respect of the matters under investigation.”

Consideration

The accounts of Constables E and F and Mr A confirm that the applicant had already been detained on suspicion of wasting police time at the point that Mr A was asked over the telephone if he was in possession of an offensive weapon. As noted above, the Commissioner considers that the decision to detain the applicant was reasonable.

It is clear, therefore, that the telephone call to Mr A was in pursuance of enquiries into the suspicion that the applicant had wasted police time. Put simply, Constable E and F's suspicion at that point had shifted from Mr A to the applicant: the officers were not by that stage investigating any offence on the part of Mr A.

In these circumstances, the Commissioner considers that Superintendent F's response to this complaint to be reasonable.

Complaint 4: Alleged victimisation, bullying and discrimination

In his letter of 3 November 2010 to Superintendent F, the applicant stated the following:

“I reiterate to you Superintendent that certain officers of yours are deliberately targeting me and I am being victimised and bullied by them. I WONT accept it. Sometimes the police forget they are the servants of the public, not their masters.” [emphasis in original]

Internal Handling

Superintendent F provided the following response in her letter of 8 November 2010:

“I also note your concerns in relation to certain officers from Dumfries and Galloway Constabulary deliberately targeting you and that you believe that you are being victimised and bullied but you do not provide any further details in that respect. I would simply advise that should you think that a member of the Dumfries and Galloway Constabulary has behaved in that manner toward you or has committed an offence, you are entitled to make a complaint which will be thoroughly investigated.”

Consideration

The Commissioner notes that the applicant has made allegations to D&G of victimisation, bullying and discrimination on at least two occasions (during a meeting with Chief Inspector H on 23 March 2009 and in a letter to the Deputy Chief Constable of 24 August 2009).

However, the applicant's communication with both D&G and the Commissioner's office regarding these allegations is general in nature and he has provided no information that might support his claims. In the absence of such detail, the Commissioner considers that it would be difficult for D&G to carry out any meaningful enquiries into the allegation.

Accordingly, the Commissioner considers that the position adopted, and advice given, by Superintendent F to be reasonable.

Conclusions, Recommendations and Learning

Complaints 1 - 4

In the Commissioner's view, the manner in which these complaints were dealt with by D&G was reasonable. Accordingly no further action is required.

John McNeill
Police Complaints Commissioner for Scotland

Hamilton House
Caird Park
Hamilton