

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 complaint arose from his removal to a place of safety by police officers under section 297 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

The Commissioner found that the complaint was not dealt with in a reasonable manner. A single recommendation was 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

The applicant contacted Grampian Police on 16 July 2010 to report that he had been the victim of an attempted robbery at knife point. Officers thereafter attended the scene to take a statement from him. According to the officers, it proved difficult to obtain the statement as the applicant said he had to catch a train shortly and needed to meet a friend prior to this. Detective Constable A and Constable B then attended the scene and offered to convey the applicant to his friend's house and obtain a statement from him on the way. The applicant agreed to this and during the journey gave Detective Constable A and Constable B a description of his attacker and the events surrounding the incident.

According to Detective Constable A and Constable B, once the police vehicle had reached the applicant's friend's house, the applicant began to give a different account of what he planned to do later that day and appeared to be in a confused state. The applicant then got out of the vehicle and made towards his friend's house. Detective Constable A provided the following account of what happened next:

"... I was unhappy with [the applicant's] demeanour and watched to see where he was going. He walked up [street name] to [block of flats]. He appeared to press the buzzer system then walked away from the door. I suspected that [the applicant] was confused and was concerned for his welfare.

[Constable B] and I moved off and saw [the applicant] walk round the rear of premises. We went to look for [the applicant] and found him in the rear car park. I asked him what he was doing and he stated 'none of your business'. I asked him what his friend's name was and he mumbled a name which I did not hear. I asked where he was going now and he said

away to get his train. I asked what he was going to do about his belongings and he told me to mind my own business. [The applicant] was extremely agitated, salivating at the mouth and was not acting rationally. I asked him if he had any health problems and he stated he was diabetic and had a mental breakdown about a year ago.”

Due to the way in which the applicant was behaving, the officers believed he was suffering a hypoglycaemic attack and called an ambulance. The following is Detective Constable A's account of what followed:

“[The applicant] kept trying to walk away from [Constable B] and I however I was not satisfied with his state of mind and took hold of him in order to prevent him from leaving the area. This enflamed the situation and he became more aggressive raising his fist to me saying ‘let go of me I’ll have your jobs’.

[Constable B] and I managed to persuade [the applicant] to calm down and take a seat in the rear of the Police car until an Ambulance arrived in order for him to be checked over.”

A paramedic attended the scene and established that the applicant was not suffering a hypoglycaemic attack and that his blood sugar level was normal. The ambulance then arrived. Detective Constable A and Constable B state that the ambulance staff agreed with them that something was affecting the applicant's behaviour. According to Detective Constable A he took the following action:

“I explained to [the applicant] that he was not acting as a normal person and that I was unhappy with leaving him to go about his business, as he appeared confused. I asked if he would accompany us to [place of safety] for examination however he refused to do so.

I consulted with the Paramedics and they were in agreement that [the applicant] was not acting rationally.”

As the applicant refused to be examined by a doctor, Detective Constable A states that he was left with no option but to detain him. Detective Constable A and Constable B thereafter removed the applicant to a place of safety (a local hospital) under section 297 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). Having been assessed at the hospital, the applicant was discharged. According to the applicant, he was found not to be suffering from any mental disorder.

On 17 July 2010, the applicant attended a police office to complain about the two officers who dealt with him the previous day. According to the applicant, his removal to a place of safety had been unnecessary and he had therefore been wrongly detained.

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 a single complaint, namely that the applicant was wrongly removed to a place of safety under the Mental Health (Care and Treatment) (Scotland) Act 2003.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaint was handled by Grampian Police.

In his statement dated 17 July 2010 the applicant said the following about his complaint:

I was upset by the manner in which the CID Officers dealt with me and wish to make a complaint regarding their conduct and actions whilst dealing with me on Friday 16 July 2010. Their actions were totally inappropriate and I wish them dealt with appropriately.”

The applicant’s solicitor also wrote a letter to Grampian Police, stating:

“My client believes that he was unlawfully and/or negligently detained by police officers and thereafter sectioned under the mental health legislation. He believes that 2 police officers behaved inappropriately and as a result, he lost his liberty for a period of a few hours.”

Internal Handling

The applicant's complaint was allocated to Sergeant C for investigation, in the course of which statements were obtained from Detective Constable A and Constable B. Sergeant C also obtained an account from one of the ambulance technicians who had attended to the applicant. This confirmed Detective Constable A and Constable B’s position that the applicant had been behaving erratically and irrationally and not making any sense. The ambulance technician also stated that the applicant had kept changing his version of events.

Sergeant C stated the following in his report of 31 August 2010:

“The statements from the officers involved clearly indicated that [the applicant's] behaviour was erratic and unstable. There was a possibility that it was diabetes induced so they summoned an ambulance and sought medical opinion. When it was ascertained that it was not and [the applicant's] behaviour did not improve they sought further medical guidance under the Mental Health Act. This was a reasonable course of action given the circumstances and given that he had advised them that he has previously suffered a ‘mental breakdown’.

[The applicant] was assessed by a suitably trained medical practitioner who advised there were no issues with him and he was released from the hospital. It was not for the officers to decide that he was mentally fit and well.

It is my opinion that they carried out their duties properly.”

On 31 August 2010, Detective Chief Inspector D wrote to the applicant and his solicitor providing the following response to the complaint:

“The Police Officers involved sought medical opinion as there was a possibility your behaviour could have been diabetes related. When it was confirmed this was not the case, the Officers reasonably suspected that you were in a public place and had a mental disorder.

You advised the persons present that you had previously suffered a mental breakdown and it was not unreasonable to suspect there were mental health issues which were causing your behaviour. I am advised that you were confused and providing varying versions of events regarding where you were going and what you were doing. The Officers were of the opinion that it was in your interest to remove you to a place of safety.

The Police Officers took the decision to detain you under the Mental Health Act to allow for further assessment by properly qualified Medical Practitioners. It was not a decision that was taken lightly and it is my opinion that this was a reasonable course of action given the circumstances.”

Consideration

The applicant was removed to hospital under section 297 of the 2003 Act which, subject to various conditions, empowers a constable to remove a person from a public place to a place of safety. The purpose of the provision is to allow the person to be examined by a medical practitioner who, if necessary, may make arrangements for their care and treatment. The power may be exercised only if the following conditions are satisfied:

- (1) the constable must reasonably suspect that a person who is in a public place has a mental disorder;
- (2) the constable must reasonably suspect the person to be in immediate need of care or treatment; and
- (3) the constable considers that it would be in the interests of the person concerned, or necessary for the protection of any other person, to remove the person to a place of safety.

The Commissioner will deal with each of these conditions in turn.

Mental disorder and “public place”

Section 328 of the 2003 Act provides the following definition of mental disorder:

(1) Subject to subsection (2) below, in this Act ‘mental disorder’ means any —

- (a) mental illness;*
- (b) personality disorder; or*
- (c) learning disability,*

however caused or manifested; and cognate expressions shall be construed accordingly.

Section 328(2) states the following:

*(2) A person is not mentally disordered by reason **only** [emphasis added] of any of the following —*

- (a) sexual orientation;*
- (b) sexual deviancy;*
- (c) transsexualism;*
- (d) transvestism;*
- (e) dependence on, or use of, alcohol or drugs;*
- (f) behaviour that causes, or is likely to cause, harassment, alarm or distress to any other person;*
- (g) acting as no prudent person would act.*

According to Detective Constable A and Constable B, the applicant was acting “irrationally” and was displaying the following behaviour: extreme agitation; aggression; antagonism; confusion;

poor concentration; disorientation; and an inability to cooperate. The officers also describe the applicant as salivating.

In the Commissioner's view, the behaviour described above arguably falls within the terms of paragraphs (f) and (g) above. Importantly, however, both officers also state that the applicant told them that he had suffered a "mental breakdown" about a year prior to the incident in question. In light of this, the Commissioner does not believe that the factors which led to the applicant's removal were limited to the kinds of behaviour described in paragraphs (f) and (g).

In light of this, and the fact that the officers eliminated the possibility that the applicant's behaviour was as a result of a diabetic condition, the Commissioner considers that Detective Constable A and Constable B's suspicion that the applicant had a mental disorder was reasonable in the circumstances.

There is also no doubt that the applicant was in a public place at the time of his removal to a place of safety.

Immediacy of care or treatment/ the interests of the person

In order lawfully to remove the applicant to a place of safety, the officers must have had a reasonable suspicion that he was in need of immediate care or treatment. Accordingly, the question to be determined is whether the applicant's behaviour was such as to lead Detective Constable A and Constable B to reasonably suspect that he required immediate care or treatment.

As noted above, the Commissioner believes that the information available to Detective Constable A and Constable B was such as to give rise to a reasonable suspicion that the applicant had a mental disorder. Given that they requested an ambulance, it is clear that Detective Constable A and Constable B considered that the applicant required immediate medical assistance and that they had genuine concerns for his health and safety.

In light of the evidence of the applicant's behaviour, the Commissioner considers that the officers were entitled to form a reasonable suspicion that the applicant was in immediate need of care or treatment. It follows that the officers also acted reasonably in considering that it was in the applicant's interests that he be removed to a place of safety.

Notwithstanding this conclusion, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. Specifically, there is no reference in Grampian Police's response to the main issue raised by this complaint, namely whether the officers' suspicion that the applicant was in need of immediate care or treatment was a reasonable one. Instead, after considering the issue of "mental disorder" and "public place", the response simply focussed on whether it could be said to be in the applicant's interests that he be removed to a place of safety.

The Commissioner has stated on numerous occasions the need for policing bodies to fully justify the use of police powers where this is challenged by way of a complaint. In the Commissioner's view, Grampian Police's response to the present complaint fell short of this standard. This is particularly unfortunate given the applicant's anxiety that the use of section 297 powers in relation to him was unjustified. In future, the Commissioner will expect policing bodies to fully justify the use of its powers under section 297 by reference to evidence satisfying each of the requirements set out in section 297(1).

For this reason, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

The Commissioner has considered the terms of Grampian Police's Mental Health and Place of Safety Standard Operating Procedure (SOP). The SOP sets out the procedure which officers

should follow if they suspect that a person requires to be removed to a place of safety under the 2003 Act. It includes the following passage:

“There may be occasions when a person is found in a public place exhibiting behaviour which may indicate a possible mental disorder but not sufficient to justify a place of safety detention. Other forms of care should be considered e.g. taking the person home, arranging for them to be seen by a GP... consider A and E if a medical condition is suspected.”

However, the SOP provides no guidance as to how those individuals who need immediate care or treatment are to be distinguished from those who do not. In the absence of such guidance, there is clearly a risk that decisions to remove a person to a place of safety will be made on an arbitrary basis or that officers will simply err on the side of caution. The Commissioner recognises that the question of whether someone is in need of immediate care or treatment is a matter of judgement and that there will be cases where the answer to the question is obvious. Equally, however, there may will be cases where the decision to remove an individual is marginal. Accordingly, there may be scope for more detailed guidance to officers on the factors they might employ when assessing this issue.

The Mental Welfare Commission is the body responsible for monitoring the use of section 297 powers. The Commissioner therefore recommends that Grampian Police liaises with the Commission to establish whether there is any scope for amending the SOP to include factors which might assist officers in determining whether a person is in immediate need of care or treatment. As similar issues have featured in other complaint handling reviews, the Commissioner also intends to write to the Commission highlighting these.

Conclusions, Recommendations and Learning

In the Commissioner’s view, the manner in which this complaint was dealt with by Grampian Police was not reasonable. The Commissioner recommends that Grampian Police liaises with the Mental Welfare Commission to establish whether there is any scope for amending the Mental Health and Place of Safety Standard Operating Procedure to include factors to assist officers in determining whether a person is in immediate need of care or treatment.

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