

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 arose from the arrest of her son following an incident outside a nightclub.

Of the four complaints considered, the Commissioner found that all were dealt with in a reasonable manner.

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 3 am on 16 December 2009, Mr A approached Constables B and C who were in a police vehicle. Constables B and C state that Mr A informed them that his jacket was in a nearby nightclub and that the door stewards there were refusing him entry to retrieve it. According to Constables B and C, Mr A was intoxicated and they told him to contact the nightclub the following day in order to retrieve his jacket. Constables B and C believed that the applicant had accepted this advice.

Constable B states that a short time later, while being driven past the same nightclub, he witnessed Mr A "running towards the door of the club". Constable C (who was driving the police vehicle) states that "[Mr A] had gone to the front door of the [nightclub] where there seemed to be a scuffle breaking out between him and the door staff."

The officers attended the incident and were informed by the door staff that Mr A had run past them in an attempt to gain access to the club, kicked at the doors and been restrained.

Constable B states that he took hold of Mr A "in an attempt to calm him and take him away from the door staff." According to Constables B and C, Mr A was warned that he risked being arrested if he continued with his behaviour. Mr A then broke free from Constable B before falling to the ground and engaging in a further struggle with Constable B. Constables B and C then restrained Mr A who was thereafter arrested for a breach of the peace.

Mr A was taken to a police station and issued with a fixed penalty notice in respect of the offence, which he accepted and paid.

On 23 December 2009 Mr A's mother (the applicant) wrote to Lothian and Borders Police complaining about the officers and reporting Mr A's jacket as having been stolen.

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 the police officers did not assist Mr A;
- (2) that Mr A was not advised that the incident would be recorded on the Police National Computer and enhanced disclosure checks;
- (3) that the applicant's allegation of theft was not investigated; and
- (4) that the time taken to investigate the applicant's complaints was longer than the timescales laid down.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Lothian and Borders Police.

Complaint 1: Failure to assist Mr A

The applicant stated the following in her letter to Lothian and Borders Police of 23 December 2009:

"[Mr A] approached [Constables B and C] and asked for assistance in retrieving the jacket and keys, they simply told him to 'go home'. I trust that their statements include the fact that he approached them whilst parked in their vehicle across the road from the Club to ask for assistance in the first instance.

Whilst he is 100% responsible for his own actions, I believe that this became a situation which then escalated out of proportion by the failure of these people in authority to carry out their basic functions and responsibilities to members of the public under the influence or not. It is my understanding that the primary role of the Police Service in Scotland is the protection of life and property and the prevention of crime. A young man all be it under the influence who found himself in very unfamiliar territory approached these officers and asked for assistance in getting his jacket and keys back, without them he would be unable to gain access to the place where he was to stay. Had the appropriate assistance been given at this point, the situation would not have occurred and he would have made his way without incident. I think it is reprehensible and culpable for Police Officers to send a youth away on a winters night without his jacket and without his keys."

Internal Handling

The applicant's complaints were investigated by Inspector D who obtained statements from the applicant and Constables B and C, among others. Statements provided by door staff at the time of the incident were also obtained. Mr A was abroad at the time of the complaints investigation and appears to have been largely out of telephone contact. A statement was therefore not obtained from him. On 16 June 2010, Inspector D emailed Mr A offering him to provide further comment if

he felt he had anything to add to the applicant's letter of complaint. There is no evidence within the complaints file of Mr A having availed himself of this opportunity.

Constable B stated the following in respect of this complaint:

"Constable [C] and I advised [Mr A] that due to the level of intoxication he was under that he should perhaps forget about trying to obtain his jacket at the time and return to the club at a reasonable time the following day when sober and recover his jacket then.

[Mr A] acknowledged Constable [C's] advice and stated that he was quite happy with that arrangement."

Constable C stated:

"I advised [Mr A] that the door staff were well within their rights to refuse him admittance and that he would be better served trying to reunite with his friends, to get home safely and to contact the manager of the premises the following day when sober to retrieve any property he might have left there.

[Mr A] appeared to take this onboard. He thanked me for the advice and walked away from the police vehicle."

On 6 September 2010 the Deputy Chief Constable wrote to the applicant in response to this complaint, stating:

"Inquiries have revealed that staff at the [nightclub] had searched the premises at the request of your son prior to his approach to the police, however, could find no trace of his jacket and keys. This information was apparently relayed to your son by staff.

Although unaware of this fact when approached by your son, the police officers have advised him that he should reunite with his friends, go home and return to the premises the following morning. Given the operational demands facing the police at this time, this advice seems to be proportionate in the circumstances and was accepted by your son. The officers have confirmed that they checked your son's welfare and that he raised no issues with them. I also note from your son's custody record that at the time of his subsequent arrest he was in possession of a mobile phone, a bankcard and £62 in cash."

Consideration

The applicant believes that Constables B and C should have assisted Mr A in retrieving his property from the nightclub. However, the officers had no power to instruct the door staff to allow Mr A to enter the premises to search for his jacket. Indeed, as Mr A was intoxicated it would have been an offence under section 111 of the Licensing (Scotland) Act 2005 for him to have attempted to enter the nightclub. The officers also had no power to instruct the door staff to search for the jacket (although, unknown to them at the time, staff at the nightclub had already conducted such a search).

The Commissioner also does not consider it reasonable for the applicant to expect the officers themselves to have entered the premises to search for Mr A's jacket. In the Commissioner's view, this would not have been an appropriate use of the officers' time, particularly given the time at which Mr A approached them (approximately 3 am, when many licensed premises would be closing).

In the circumstances, the Commissioner considers that the initial advice given to Mr A by Constables B and C was entirely appropriate. Accordingly the Commissioner considers that this complaint was dealt with in a reasonable manner.

The applicant believes that if Constables B and C had assisted Mr A the situation which gave rise to his arrest would not have occurred. The Commissioner does not share this view. The Commissioner has already stated that the advice given to Mr A by the officers was appropriate. Given that Mr A appeared to accept the advice given to him, the officers had no indication that he was about to act in the way he did. In the Commissioner's view, responsibility for the situation which developed lay squarely with Mr A.

Complaint 2: The recording of the fixed penalty

The applicant states the following in her letter of 23 December 2009:

"On his release from custody, [Mr A] contacted the Police Office and reported his property lost and went straight to the court to pay the fixed penalty having been advised that this was the best course of action by your staff at the charge bar and that it would not be recorded as a previous conviction. He was not advised that it would however be recorded on [the Police National Computer] and it would be revealed on any applications for enhanced disclosure under the heading – other relevant information."

Internal Handling

Constable B stated the following in this connection:

"I stated [to Mr A] that due to the relative minor nature of the offence he would be issued with a fixed penalty ticket. I further explained that this would result in him paying a £40 fine and that would be the end of the matter and he would have no criminal conviction. [Mr A] accepted this."

Constable C stated:

"It was explained [to Mr A] that a fixed penalty would not count as a criminal conviction in the same manner as it would should the matter go to court, he be found guilty and be subject to traditional judicial disposal. It was further explained to him, on his asking, that should enhanced disclosure be sought, for example in the case of an application to join the police service, the matter would be disclosed. [Mr A] appeared to take ... full cognisance of this and accepted the fixed penalty ticket."

Inspector D stated the following in his report:

"In addition to the subject officers' statements, Part 2a of the Fixed Penalty Notice 'Important Information for the Immediate Attention of the Person in Receipt of this Notice' which was handed to [Mr A] states: 'Payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you. This information may be considered relevant information in an enhanced disclosure certificate.'"

The Deputy Chief Constable issued the following response to this complaint:

"The officers concerned have indicated that they took into consideration the minor nature of the offence when they issued the FPN [Fixed Penalty Notice] to your son. The officers have indicated that they fully outlined the scheme to your son who accepted the ticket. The reverse of the FPN also clearly states that whilst payment will not result in a record of a

criminal conviction, the information may be considered relevant information in an enhanced disclosure certificate.

I can find no evidence to suggest the officers have incorrectly advised or misled your son.

Accordingly I am unable to substantiate this complaint.”

Consideration

In terms of the evidence supplied to the Commissioner, Mr A was advised by Constable C of the possible implications of accepting the fixed penalty for any enhanced disclosure certificate he sought in the future. As Mr A has not provided his own version of events regarding the complaints, it is unclear whether or not he accepts that he was advised of this. In any event, as noted above, recipients of fixed penalty notices are clearly advised on the reverse of the notice that acceptance of the penalty may be considered “relevant information” for the purposes of an enhanced disclosure.

Accordingly, in accepting the fixed penalty, Mr A must be deemed to have been aware of and to have accepted the possible implications for any enhanced disclosure certificate he sought in the future. Had Mr A not been content to accept the penalty, it would have been open to him to decline the offer and to contest any proceedings raised against him by the Procurator Fiscal. Mr A chose not to do so.

In these circumstances, the Commissioner considers that the Deputy Chief Constable's response to this complaint was reasonable. The Commissioner also notes that according to the complaints file the applicant has been advised that it is unlikely that Mr A's acceptance of the fixed penalty would be included in any enhanced disclosure certificate issued in respect of him.

Complaint 3: Failure to investigate the alleged theft

As noted above, in her letter of 23 December 2009 the applicant reported Mr A's jacket as having been stolen. She stated the following in her statement of 2 March 2010:

“Despite my reporting his jacket stolen in my original letter – nothing appears to have been done to investigate the matter. The enquiry has taken a considerable number of weeks to investigate and during that timeframe evidence has no doubt been lost which could have possibly shown different facts and corroborated the true version of events.”

Internal Handling

The Deputy Chief Constable issued the following response to this complaint:

“... you allege that, following the submission of your letter of complaint dated 23/12/09 reporting the theft of your son's jacket and keys, the matter was not timeously investigated and specifically that CCTV footage from the [nightclub] was not recovered.

Our records indicate that your correspondence was received at [police station] on 08/01/10 when it was categorised and correctly investigated as a complaint against the police. As a result of this categorisation, the alleged crime was not recorded until some time after your initial notification.

I therefore find this allegation to be substantiated and apologise for that failing.

In respect of CCTV footage, inquiries at the premises indicate that the recording of public areas from the date of the incident would have been available up to 08/01/10. Regrettably, this was the date that your correspondence was recorded as received at [police station].

Notwithstanding the foregoing, upon receipt of your correspondence, there has been no immediate attempt to contact the [nightclub] with regards the availability of CCTV. I am unable to comment on whether CCTV would have provided any positive lines of enquiry in respect of the theft of your son's jacket and keys.

Accordingly, I find the allegation to be substantiated and I apologise for that failing."

On 11 September 2010 the applicant emailed the Professional Standards Department of Lothian and Borders Police stating that to date she had received "no feedback regarding the enquiry that was made regarding the theft ..."

On 19 October 2010 Superintendent E wrote to the applicant in response to her email, stating:

"In respect of the investigation into the reported theft of your son's property, I can confirm that all enquiries have now been completed, but that the crime remains unsolved. You will of course be contacted should that situation change.

Consideration

Lothian and Borders Police has acknowledged that the investigation into the applicant's allegation of theft did not commence as quickly as it should have. No immediate attempt was made to recover CCTV from the nightclub. However, as noted above CCTV footage from the nightclub would only have been kept until 8 January 2010, the same date as the applicant's letter of 23 December 2009 was recorded as having been received by Lothian and Borders Police. Accordingly, even if the allegation of theft had been recorded timeously, it is possible that the CCTV footage would not have been available by the time enquiries had commenced.

As noted above, the applicant received an apology for the initial failure to record the alleged offence and the failure to make immediate contact with the nightclub regarding the CCTV footage. It is, however, clear that notwithstanding these failures the alleged offence has been investigated by Lothian and Borders Police. According to the crime report, enquiries were made with the duty manager and door staff of the nightclub but Mr A's property could not be found. Indeed, staff at the nightclub were under the impression that Mr A had not been in the nightclub on the night in question. A statement was also obtained from Mr A's friend, Ms F, who confirmed that the applicant was in the nightclub but that, at the time she spoke to him, he made no mention of having lost any property. Ms F did, however, say that Mr A had contacted her the following day stating that he had lost his coat.

In light of the above, and given that Lothian and Borders Police has apologised for its initial failure to record the alleged offence and for the failure to make immediate contact with the nightclub regarding the CCTV footage, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 4: Time taken to investigate complaints

The applicant stated the following in her email sent to Lothian and Borders Police on 11 September 2010:

“... nor do you make any reference to the amount of time the enquiry into the complaint against your force has taken which is many months longer than the time scales laid down.”

Internal Handling

Superintendent E stated the following in his response of 19 October 2010:

“I do apologise for the time taken on this the enquiry, however, I am aware of the difficulties officers have had in communicating with your son due to his travels although recognise we could have copied any issues to yourself.”

The delay in completing the investigation into the crime and into your subsequent complaint was partly due to the apparent reluctance of your son’s friend [Ms F] to come forward to provide a statement to the police.”

Consideration

As noted above, the applicant’s letter of complaint was received by Lothian and Borders Police on 8 January 2010 and the Deputy Chief Constable’s response was issued on 6 September 2010. The total time taken to deal with the applicant’s complaints was therefore approximately eight months.

In March 2011 (ie after the applicant’s complaints were dealt with) the Commissioner issued statutory guidance to policing bodies on the handling of complaints. In terms of the guidance, the Commissioner expects policing bodies to complete complaints investigations within 40 working days, although it is acknowledged in the guidance that many factors may influence the time required to deal with particular complaints (e.g. complexity).

The Commissioner is aware that Lothian and Borders Police’s complaint handling procedures do not currently specify a time period for the completion of the handling of complaints. The Commissioner has already asked all Scottish police forces to ensure that their procedures comply with the statutory guidance. The Commissioner therefore expects Lothian and Borders Police’s procedures to be amended to specify a timescale for the handling of complaints, reflecting that set out in the guidance. The Commissioner will in the near future assess the procedures of all police forces for compliance with the guidance.

In the Commissioner’s view, it is not appropriate to judge the handling of the present complaints against guidance that was not in place at the time they were dealt with. Nevertheless, the Commissioner must consider whether the time taken to deal with the applicant’s complaints was excessive in the circumstances.

It is clear from the complaints file that a number of efforts were made to obtain a statement from the applicant’s friend, Ms F, who was in his company on the night in question. On 3 March 2010, an email was sent to Mr A seeking a telephone number for Ms F. Mr A supplied the number on 22 March 2010, following which various unsuccessful attempts were made to contact Ms F. On 24 May 2010, Inspector D emailed Mr A seeking clarification of whether Ms F was prepared to cooperate in the investigation. Mr A replied on the same date, advising Inspector D that Ms F was indeed willing to speak to him and that Mr A would contact her in this connection. On 16 June 2010, Inspector D emailed Mr A once more advising that he had yet to hear from Ms F and that he felt he should “now be moving the report forward.” On the same date, the applicant responded advising that she was trying to make contact with Ms F in this connection. Ms F’s statement was finally obtained on 7 July 2010, following which Inspector D’s report on the complaints was submitted to the Deputy Chief Constable.

In general, the Commissioner would consider a period of 8 months to deal with a number of relatively straightforward complaints as excessive. In the present case, however, it is clear that at least part of the delay was caused by the difficulties encountered in obtaining a statement from Ms F. In these circumstances, and bearing in mind that the complaints were dealt with prior to the introduction of the statutory guidance, the Commissioner does not consider that the period involved was excessive.

Conclusions, Recommendations and Learning

Complaints 1-4:

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

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