

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 complained to Lothian and Borders Police about the lawfulness of his being stopped and detained on suspicion of carrying a knife.

The Commissioner found that the applicant's complaint was dealt with in a reasonable manner by Lothian and Borders Police. No recommendations were made 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

On 14 December 2009, Lothian and Borders Police received a call from a member of the public informing them of a male who had claimed to be carrying a knife. A description of the male was provided by the person concerned.

Constables B and C dealt with the incident. Both officers were informed by a CCTV operator that a person matching the description of the male had been seen nearby. Constables B and C attended the location given by the CCTV operator and stopped the applicant.

Both officers state that the applicant was informed of their suspicions and that, in the interests of personal safety, he was then placed in handcuffs. According to Constable B, the applicant was thereafter detained under section 50 of the Criminal Law (Consolidation) (Scotland) Act 1995 ("the 1995 Act") in order that he could be searched. Both officers state that, because of the clothing which the applicant was wearing, a thorough search could not be undertaken discreetly. Consequently, Constable B decided to take the applicant to a nearby police station in order that a more comprehensive search could be conducted in private.

No offensive weapons were found during the search and the applicant was thereafter released.

The Complaint

Based on the contents of the application form and the information obtained from Lothian and Borders Police, the Commissioner has identified a single complaint, namely that the applicant was wrongfully detained by police.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaint was dealt with by Lothian and Borders Police.

In his letter of complaint, the applicant's solicitor stated the following:

"It is our client's position that your officers did not tell our client that requirements were made of him in terms of sections 12 and 13 of Criminal Procedure (Scotland) Act 1995, nor was our client formally detained, nor was he arrested. However your officers took our client to [the police station] before releasing him."

Internal Handling

Detective Inspector D was appointed to investigate the complaint. As part of his investigation Detective Inspector D obtained operational statements from Constables B and C. Detective Inspector D also attempted to speak with the applicant; however, the applicant refused to meet, preferring to communicate through his solicitor.

On 21 April 2010, Detective Inspector D wrote to the applicant's solicitor in the following terms:

"The incident on the 24th inst. was generated by a member of the public, who reported that a male fitting the description of [the applicant], had alighted from a Lothian bus ... who on his exit had allegedly thrown a bottle and was heard to say he had a knife. As a result [the applicant] was stopped by the police and detained under the terms of Section 50 of the Criminal law (Consolidation) (Scotland) Act 1995 for the purpose of search.

When stopped [the applicant] was wearing a padded motorbike jacket and trousers which prevented a through [sic] search being conducted, in order to facilitate this [the applicant] was taken to [a nearby police station], in order that this could be completed in a more discreet and respectful manner. Following a negative search [the applicant] was thereafter informed that he was no longer detained and free to go.

I have made a check of Lothian and Borders custody system and the officer's notebooks, and can confirm that these would appear to be correct and reflect the above circumstances and at this time procedurally compliant."

The applicant's solicitor responded advising that the applicant was dissatisfied with this response. On 25 July 2010 Detective Inspector D submitted a report to the Deputy Chief Constable (this report also dealt with an additional complaint made by the applicant concerning an unconnected incident).

Detective Inspector D found the complaint to be unsubstantiated; however he expressed the intention to speak with Constables B and C to highlight the concerns raised by the applicant. The Deputy Chief Constable thereafter addressed the applicant's complaint in a letter dated 21 September 2010:

"Firstly you alleged that on 14 December 2009, when you were the subject of a search under offensive weapon legislation, the officers concerned failed to inform you of specific legislative requirements. I am informed that [Detective Inspector D] wrote to your solicitors on 21 April 2010. In that letter he explained the circumstances that led to your detention and search, and the reasons you were taken to [the police station]. I have also examined the procedures carried out and I am satisfied in light of the information available, the reason you were searched and your detention to facilitate the search were lawful and appropriate. I am therefore unable to substantiate this allegation."

Consideration

In his response of 21 April 2010 Detective Inspector D explained to the applicant's solicitor that the applicant had been detained under section 50 of the 1995 Act. Section 50 empowers constables to detain and search individuals suspected of having a bladed article in a public place.

As can be seen from the information provided, Constables B and C were guided to the applicant's location by CCTV operators who advised them that he fitted the description given by Mr A. In these circumstances, it was entirely reasonable for Constables B and C to have suspected that the applicant may have been the person who claimed to have been carrying a knife. In the Commissioner's view, the applicant's detention under section 50 of the 1995 Act was therefore justified.

In terms of the applicant's concern that he was not informed of the basis for his detention, section 50(2) of the 1995 Act places an obligation on officers to inform detainees of this. In this connection, both Constable B and C state that the applicant was informed of their "suspicions" before detaining and searching him. Accordingly, the weight of the evidence suggests that the applicant was informed of the basis for his detention.

For these reasons, the Commissioner considers that it was reasonable for the Deputy Chief Constable to conclude that the officers had acted lawfully and appropriately.

Conclusions, Recommendations and Learning

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

John McNeill
Police Complaints Commissioner for Scotland

Hamilton House
Caird Park
Hamilton
ML3 0QA