

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 complaint dealt with in this report arose from two police officers entering the applicant's home without permission.

The Commissioner did not consider that the complaint was dealt with in a reasonable manner and recommended further action by Strathclyde Police.

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 12.40 am on 16 June 2010, staff at a children's home contacted Strathclyde Police to advise that two teenage residents, Miss A and Mr B, had absconded. Constables C and D carried out a search of the surrounding area but were unable to trace them.

Constables C and D thereafter made their way to the applicant's home as, due to a previous incident on 28 February 2010, Constable C believed that Miss A and Mr B might be there. After brief observations of the property, during which it was noted that a flickering light could be seen, at approximately 1 am the officers knocked at the front door several times. The applicant, who had been in bed, got dressed and opened the door. He was joined in the hallway by his foster son, Mr E, who had been watching television.

Constable C explained to the applicant that the officers were attempting to trace absconders from a local children's home. The applicant advised that there was no one within the property other than himself and Mr E. Constable C asked the applicant if he and Constable B could come into the property to confirm this, but the applicant declined. The officers sought to persuade the applicant to allow them entry but the applicant continued to refuse. Constable C explained to the applicant that on a previous occasion when Miss A had been reported missing, she had been traced to the applicant's address. It did not appear that the applicant was aware of this earlier incident. The applicant continued to deny Constables C and D entry to his home.

Constable C maintained the belief that Miss A and Mr B were within the applicant's home and decided to enter without his permission. Constable C informed the applicant of his intention and pushed past him. A brief search was carried out by the officers which confirmed that neither Miss A nor Mr B was within the applicant's home.

At around 1.13 am, Miss A and Mr B returned to the home of their own accord. They had been within the grounds of the home.

The Complaint

Based on the contents of the application form, the correspondence received from the applicant, and the information obtained from Strathclyde Police, the Commissioner has identified a single complaint, namely that two police officers entered the applicant's home without permission.

The Commissioner's Review

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

In his letter of complaint to Strathclyde Police, the applicant raised the following specific points:

- (a) that there was no reason to suspect that the missing persons were within his home;
- (b) that it was unreasonable to conduct enquiries at 1 am;
- (c) that the officers did not accept his word that the missing persons were not within his home;
- (d) that it was improper for the officers to have entered his home; and
- (e) that Constable C had pushed him aside.

Internal Handling

Inspector H was appointed to conduct enquiries into the applicant's complaint. Statements were noted from the applicant and Mr E on 20 July 2010 and an operational statement dated 27 July 2010 was supplied by Constable C. Constable D submitted a statement on 15 August 2010, following his return from annual leave.

Constable C stated the following:

"I was very surprised and suspicious that [the applicant] should take what I believed was a very unreasonable stance, I suspected that [Miss A] was within and decided to enter his home. As I was walking past [the applicant], he attended [sic] to block my way but was unable to do so ...

I did not take the decision to enter [the applicant's] flat lightly and was fully aware that I was leaving myself open to a complaint. As someone who has received very few complaints throughout my service, I believe that I conducted myself in a polite and professional manner towards [the applicant] and believe now as I did then, that my actions were essential and justified, albeit regrettable owing to [the applicant's] unreasonable stance considering that the safety and wellbeing of a vulnerable young girl was at stake."

Constable D supported Constable C's position, stating:

"I was very suspicious as to why [the applicant] would not allow a search of the premises.

[Constable C] informed [the applicant] that him and I would enter his home for the purposes of a brief search. It was then that myself and [Constable C] entered into [the applicant's] flat. [The applicant] did make an attempt to block mine and [Constable C's] path, however, his attempt to unsuccessful [sic]."

In her report dated 16 August 2010, Inspector H stated the following:

“[Inspector H] has reviewed the earlier incident referred to which took place on 28 February 2010 about 0343 hours and at that time the same absconder [Miss A] was found within [the applicant’s home] despite [Mr E’s] protestations to [Constable C] that she was not within. The officers therefore had reason to believe that she may well have been there on this occasion also.

Enquiries have not been made with neighbours as the course of action taken by the officers is agreed by all parties concerned in that the complainer declined their request to enter and search the house and they disregarded his wishes to do this. The content of the complaint is focussed on the legality and justification for them doing this rather than the action taken.

Having reviewed the full circumstances I am satisfied that the code red status was appropriate given the impact factors of the late hour, age and vulnerability of the missing persons which placed them at increased risk of harm whilst missing.

After consulting and considering the Force [standard operating procedures] regarding missing persons and absconders, the Children (Scotland) Act 1995 and other statutory provisions relating to entering property, I find no stated legal basis which empowered the officers to enter the complainer’s home against his wishes but recognise that they did this in good faith with the welfare of the absconders in mind.”

The complaint was found to be substantiated and forwarded to Superintendent J who added the following addendum to the report before submitting it to the Professional Standards Department for consideration:

“... I consider that there would be merit in further engagement with [the applicant] by the Area Commander to explain the justification of same as well as the proportionality of their actions.

Subject to any direction on this matter by Professional Standards, and parallel to the above being remitted back to division, I would be supportive, for the matter to be addressed by the division at a local level, either through corrective advice and/or counselling. There are clearly a number of learning points to be addressed, notwithstanding the actions of the officers appear to be motivated by the best intentions.”

Chief Superintendent K of the Professional Standards Department concurred with Superintendent J’s proposed course of action and on 7 September 2010 returned the case to the local division for further action.

On 10 September 2010, Inspector H spoke to Constables C and D and advised them that they had exceeded the powers of search afforded to them as police officers. They were counselled that if they found themselves in similar circumstances in future, they should contact a supervisor for advice and assistance regarding the best course of action to take.

On 20 September 2010, Inspector H met with the applicant and explained the reasoning behind the action which Constables C and D had taken. Inspector H noted the following:

“... [The applicant] recognises that child protection is a priority issue for the police, however remains of the opinion that the officers should have taken his word for it that the missing children were not within his home.

He is however, satisfied that the matter has been reviewed and brought to a conclusion and that his concerns have been highlighted to the officers, who have also been advised to contact a supervisor if they find themselves in similar circumstances in the future.”

On 21 September 2010 Chief Inspector L provided the applicant with the following response to his complaint:

“You are aware that the police actions were deemed necessary as part of the enquiries made to trace vulnerable missing children and that child protection is a priority issue for Strathclyde Police. I appreciate that you did not agree with this action, however I hope that the explanation provided has gone some way to alleviate your concerns that the officers actions were unjustified.”

Consideration

There is no ambiguity surrounding the events which gave rise to this complaint. Strathclyde Police does not contest the applicant’s version of events and accordingly the handling of the complaint focussed upon the legality of the officers’ actions. As noted above, the complaint was found to be substantiated on the basis that there is no legal provision allowing police officers in such circumstances to enter and search premises without permission. In his application to the Commissioner’s office, the applicant stated:

“I cannot accept the findings of the police investigation into my claims as they appear to be contrary to the law which they are charged with upholding. The impression given is that they did not take my complaint seriously and that the conclusion was predictably and inevitably in favour of the police officers.”

It is clear that the outcome of the investigation has not been sufficiently explained to the applicant as he remains unaware that his complaint was in fact substantiated. Chief Inspector L’s response lacks detail and fails to address the complaint or convey the outcome in any meaningful way. Indeed, it is not at all clear from Chief Inspector L’s response that Constables C and D had been found to have exceeded their powers.

The Commissioner has commented in many previous reviews on the often poor quality of responses issued to complainers by police forces. Indeed, on 21 July 2011 the Commissioner wrote to the Chief Constables of all eight police forces reiterating his views on this issue and highlighting the relevant passages of the statutory guidance he has issued on police complaints handling. Moreover, Strathclyde Police itself recognises the importance of accurate and thorough responses to complaints. The following passage is quoted from Strathclyde Police’s standard operating procedures regarding complaints about the police:

“When writing you should :- ...be as accurate and complete as possible; otherwise further correspondence will follow, resulting in extra work and loss of time.”

In the Commissioner’s view, if the above passage in the procedures had been followed in the present case there is every possibility that the applicant would not have considered it necessary to apply to the Commissioner’s office.

There is also no detailed record of what the applicant was told by Inspector H during their meeting on 20 September 2010. The Commissioner has commented on numerous previous occasions about the need for auditable records to be maintained of all action undertaken during the investigation of a complaint.

Whilst it is acknowledged that Constables C and D acted in good faith in taking the action they did, it is clear that they were found to have exceeded their powers by entering the applicant’s home without his permission. Accordingly, the Commissioner recommends that Strathclyde Police writes

to the applicant apologising for the action taken by Constables C and D and also for the poor quality of the response to his complaint.

Conclusions, Recommendations and Learning

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 writes to the applicant apologising for the action taken by Constables C and D and also for the poor quality of the response to his complaint.

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