

# 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 applicant's complaint arises from his being stopped by police officers who believed him to be driving under the influence of alcohol.

The Commissioner found that the applicant's complaint was handled in a reasonable manner and recommended no further action.

## 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 2 May 2009 the applicant's van was stopped by Constables A and B who suspected him of driving under the influence of alcohol. The officers signalled for the applicant to stop by activating the police car's blue flashing lights, following which the applicant drove into the car park of a supermarket. When the officers advised the applicant that they suspected him of being under the influence of alcohol, the applicant protested that he did not in fact drink alcohol. The applicant was asked on two occasions to blow into a breathalyser but both times the applicant did not blow hard enough for the device to produce a reading. According to the applicant, he was suffering from a virus which affected his ability to breathe into the breathalyser. The applicant then coughed up and spat out phlegm, some of which landed on Constable B's shoe.

The applicant was thereafter arrested on suspicion of driving under the influence of alcohol, for refusing to provide a breath sample and for a breach of the peace (in respect of his spitting on Constable B's shoe). He was taken to a police station where he was asked once more to use a breathalyser. The results of this breath test indicated that the applicant had not been drinking. The applicant was then charged with a breach of the peace and for failing to provide a roadside breath sample. The charge of breach of the peace was later amended to one of assaulting a police officer.

## The Complaint

Based on the contents of the application form, and the information obtained from Strathclyde Police, the Commissioner has identified a single complaint, namely that police officers were uncivil to the applicant.

## The Commissioner's Review

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

The applicant has complained that the officers concerned "spoke down" to him and that their manner towards him was "aggressive". According to the applicant, during the incident Constable B had thrown to the ground a notebook which the applicant had in his possession. The applicant also alleged that the officers' decision to stop him in the car park of supermarket was made with the deliberate intention of causing him embarrassment.

### *Internal Handling*

On 5 May 2009 the applicant provided a statement to Inspector C in which he said the following:

*"I saw the Police van behind me with its blue lights on but I paid it little attention. I then turned left into the [supermarket] car park and was aware that the police van followed me in.*

*Two young thugs got out of the van dressed in police uniforms and pounced on me. They came up to my van and accused me of being drunk, red eyes, bloodshot eyes and smelly.*

*I immediately asked them for ID as I was carrying a large sum of cash. I also wrote everything down ...*

*... One officer caught the book I was writing in and threw it in the gutter. They told me that I had to provide a breath test ...*

*I tried to use the breathalyser but I had great difficulty in blowing it due to a heavy cold or flu. The previous week I was meeting people from various countries and I was worried I might have pig flu. My symptoms were chest full of phlegm, sore head and severe coughing over long, long periods.*

*I was also embarrassed and humiliated due to there being 300 people watching me."*

On 7 May 2009 Constable B provided an operational statement in which he said the following:

*"As we took hold of his arms, he tried to write something in his diary and refused to let go of it and his pen. I pulled these from his grasp, and placed them on the ground so I could handcuff him ...*

*... [the applicant] repeatedly challenged the grounds for our suspicions about him smelling of drink, and I told him frankly that he had, at that time, a stale odour and bloodshot eyes (using those exact words) ...*

*... At no time was I or any other officer uncivil to him, despite his obvious best efforts to provoke such a response.*

*[Inspector C] has made me aware of the allegations made against me by [the applicant] and I refute them ...*

*... As [the applicant] seemed to presume we should know him and to know he was a teetotaler, I pointed out to him I didn't know him. This was not done in an aggressive manner ...*

*... Although there were some onlookers standing outside the [supermarket] there were only about half a dozen at most and only a few people at most in the car park itself."*

On 19 May 2009 Constable A provided an operational statement in which he fully supported Constable B's version of events.

Inspector C prepared a report regarding the applicant's complaints which is dated 9 September 2009. The report concluded that the complaint was unsubstantiated due to a lack of corroborating evidence. Due to the applicant also having made criminal allegations against the officers (which are not the subject of this review) Inspector C's report was sent to the Area Procurator Fiscal. The Area Procurator Fiscal notified Strathclyde Police of his decision regarding the applicant's criminal complaints in May 2010.

On 8 July 2010 Chief Superintendent D wrote to the applicant providing the following response to his complaint:

*"The two officers concerned deny your allegation that they were uncivil towards you and believe that they dealt with you professionally at all times. They were sufficiently concerned by your actions and demeanour that they suspected you may have been driving while drunk and thereafter performed their duties within the law.*

*There is no evidence to support your allegation and I therefore find it to be unsubstantiated ...*

*... The officer complained of states that you were informed that you were under arrest, however you refused to stop writing in your book and this was taken from you so you could be handcuffed. He put it on the ground while you were handcuffed and it was then retrieved and taken to the police office and returned to you later. The officer denies that there was anything untoward in his action and he is supported by his colleague. With the evidence before me I find that your allegation is unsubstantiated.*

*You then go on to allege that when you told this same officer that you could not be drunk as you were an abstainer, this officer answered you aggressively and stated he didn't know who you were.*

*The officer denies that there was anything untoward in his response. He states that you appeared to make the presumption that both he and his colleague should have known who you were. The officer states that he had no previous dealings with you nor did his colleague. Again, I cannot support the allegation.*

*You allege that these two officers dealt with you in a public place, i.e. the car park at [the supermarket] and there were a couple of hundred people there, a number of whom knew you and they did this to embarrass and humiliate you.*

*In response to this allegation, I firstly have to say that you have no grounds nor offer any evidence for alleging these officers had any reason to embarrass or humiliate you. The officers concerned say that there were only a handful of people there and most of these seemed attracted by your behaviour. The officers were carrying out their lawful duty in a proper manner and this happened to be in a public place. Due to the nature of the suspected offence they were dealing with, they had no option but to deal with you at that location. I cannot support your allegation."*

### *Consideration*

Both officers firmly deny the allegations made by the applicant and it is clear from Inspector C's report that there is no evidence to support the applicant's account. In these circumstances, the complaint is clearly unsubstantiated. In the Commissioner's view, Chief Superintendent D's response thoroughly and accurately explained the outcome of the enquiries into the complaint.

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

### **Conclusions, Recommendations and Learning**

In the Commissioner's view, the manner in which this complaint was handled by Strathclyde Police was reasonable. Accordingly no further action is recommended in this connection.

**John McNeill**  
**Police Complaints Commissioner for Scotland**

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