

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 complaints arose from his arrest following an incident at his home.

Of the three complaints considered, the Commissioner considered two were not dealt with in a reasonable manner. The Commissioner made a single recommendation 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

In the early hours of 6 February 2010 a taxi driver informed the police that he had dropped off a male (the applicant) who told him he had been stabbed and was "going home to die". As a result of this, Inspector A, Sergeant B and Constables C and D attended at the applicant's home. All the officers involved state that upon entering his home the applicant was hostile, aggressive and threatening towards them, and that he began head-butting and punching the walls.

The applicant was thereafter arrested for a breach of the peace and reported to the Procurator Fiscal. Proceedings were raised against him but he was subsequently acquitted of the alleged offence due to there being no "public element" to his behaviour during the incident.

Following his arrest, the applicant reported to the police that prior to his returning home in the early hours of 6 February 2010 he had been assaulted by Mr E and a male with Mr F's surname, who had stolen a sum of money from him. The applicant was interviewed in relation to this allegation by Constables G and H.

The Complaints

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 the following complaints:

- (1) that there was no evidence to arrest the applicant;
- (2) that the applicant was refused medical attention; and
- (3) that an assault against the applicant was not investigated.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Strathclyde Police. Each complaint is set out in turn and is followed by details of Strathclyde Police's handling of it and the Commissioner's views on this.

Complaint 1: The applicant's arrest

The applicant describes this complaint as follows in his statement:

"I then told [the officers] about the robbery and showed them the mark on my left cheek caused by the Stanley knife. As I was still upset and disturbed by what had happened to me and that the police officers didn't seem to be interested in listening to me, I started shouting, punching the wall in the hall of my house. I also asked them for a doctor to treat my injury. I was told I was not getting a doctor as my injury was not bad enough. Due to this I squared up to the Inspector. I was then arrested for a breach of the peace ...

In June 2010 I went to court for the breach of the peace charge, where I was found not guilty due to the [Procurator Fiscal] abandoning the case during the trial due to there being no public disturbance.

As I was found not guilty at court, I believe there was [no] evidence to arrest me in the first place and as such I was unlawfully arrested."

Internal Handling

Inspector J investigated the applicant's complaints and obtained statements from the applicant, Inspector A, Sergeant B and Constables C and D.

As noted above, all the officers concerned described the applicant's behaviour as hostile, aggressive and threatening. The following passages are quoted from Inspector A's statement:

"On speaking to [the applicant] I could smell and see that he was under the influence of drink and possibly drugs. There was no obvious stab injury or leakage of blood, but he did lift several tops, which had no puncture marks or damage and no blood marks ... I felt that I should at least offer an ambulance, but this was refused, with an outburst. The complainer was very angry ... He started to self harm himself, by headbutting the walls. This headbutting, I would describe as being 'very real' in nature, he was striking the walls with his head with considerable force. I didn't want him to hurt himself, nor did I want to see this, so I struck up a verbal rapport with him. He seemed to calm a bit but constantly shouted and swore ... At this point, he punched his fist right through the door.

At this time, I ordered him to behave, as he seemed to be 'squaring up' towards the two female Officers, he continued to swear and punch walls, so I decided the best course of action, to stop this escalating spiral, was to arrest him and deal with a breach of the peace being experienced by nearby occupants of adjoining houses ...

I am aware ... of recent guidance about a sufficiency of 'public element' in terms of breaching the peace, however, 18 months ago, I was presented with the circumstances of a male who was carrying out a course of conduct that could not be left to continue for either his safety or the safety of Police Officers, in particular the two young female officers, whom he had some unexplained anger towards ...

... I can state that I was concerned about him and the safety of Police Officers in the house and neighbours in the adjoining houses. I could not have left him within that house, alone, in that state of anger and I considered that the level of violence, threats and disturbance was behaviour to a level that caused disturbance at 0200 hours ... in a normally quiet residential area. This man needed to be removed from that situation, as I would not have been doing my job as a Police Inspector if I left him and walked away."

On 1 November 2010 Chief Inspector K issued the following response to the complaint:

"In respect of your complaint that you were unlawfully arrested, you may be aware that the offence of breach of the peace has evolved significantly over the last 18 months and in particular that the 'public element' of this offence is more relevant than ever before. I note that you have stated that you were particularly 'agitated and upset' and in the presence of the police officers you started shouting and punching the wall. The position of all officers present was that you were arrested to prevent you from causing further harm to yourself. I have also been advised that a member of the public, not called as a witness at your trial, had contacted police but he feared that you were going to harm yourself at your home address after he had dropped you near there in his car on the night in question.

In this respect I am satisfied that the officers acted properly and indeed in your best interests and whilst they use their professional judgement to decide what course of action to take, this is always subject to further independent scrutiny by the Procurator Fiscal and ultimately the court. The fact that you were subsequently found not guilty at court does not in itself indicate any wrong doing on the part of the officers."

Consideration

According to Chief Inspector K's response to the complaint, the position of all the officers concerned is that the applicant was arrested "to prevent [him] from causing further harm to [himself]". This is clearly incorrect. Although Inspector A expressed concern in his statement about the applicant harming himself, none of the officers states this as a reason for his arrest. The fact is that the applicant was arrested and reported to the Procurator Fiscal for an alleged breach of the peace. For Strathclyde Police to state otherwise in its response is wholly misleading.

In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Strathclyde Police issues a written apology to the applicant for the misleading nature of its response.

With regard to the substance of the complaint, the question for the Commissioner to determine is whether the applicant's arrest was unlawful given the apparent absence of the necessary "public element" to his behaviour.

As Strathclyde Police states in its response to the complaint, the law surrounding the definition of breach of the peace has developed in recent years. In order to amount to a breach of the peace the conduct in question must be “severe enough to cause alarm to ordinary people” and be “genuinely alarming and disturbing to any reasonable person.” (*Smith v Donnelly* 2001 SCCR 800; *Paterson v HMA* 2008 SCCR 605; *Harris v HMA* 2010 SCCR 15). In addition, the offending conduct must have a public element in that it should cause or threaten a disturbance to the public peace (*Donnelly v HMA*). While a breach of the peace can be committed in a private house, it is the noise created by this in the public street which would make the conduct criminal (*Harris v HMA*). It is important to note that the judgement of the court in *Harris v HMA* was issued some time after the incident which gave rise to the present complaint. Prior to this, there was some uncertainty as to the nature and extent of the public element required to establish a breach of the peace.

In light of the principles established in these cases, and the statements of the officers and the applicant himself, the Commissioner considers that there was sufficient evidence to warrant the applicant’s arrest. As noted above, the applicant’s behaviour during the incident was highly volatile. As well as shouting and swearing at the officers, he also began banging his head and fists off the walls of his home. There is also evidence that he punched his fist through a door. In the Commissioner’s view, such conduct was “severe enough to cause alarm to ordinary people”. In addition, the Commissioner considers that it would have been reasonable for the officers to view the applicant’s conduct as threatening “a disturbance of the public peace” by, for example, causing alarm to those within neighbouring properties. As his statement shows, Inspector A appears to have considered this issue in deciding to arrest the applicant.

For these reasons, the Commissioner considers that the actions of the officers in arresting the applicant were justified.

Complaint 2: Refusal of medical attention

The applicant describes this complaint as follows in his statement:

“I also asked [the officers who attended his home] for a doctor to treat my injury. I was told that I was not getting one as my injury was not bad enough ...

At [police station] I was asked if I had any injuries and I again asked the person at the desk for a doctor to look at my injuries, as I still thought I had been stabbed. I can’t remember if it was a woman or a man who said ‘Your injuries aren’t bad enough to see a doctor’ ...

I was refused medical treatment for my injuries on several occasions”

Internal Handling

All the officers who attended the applicant’s home described him either as having no visible injuries or merely superficial ones. As noted above, Inspector A claims that while within his home the applicant rejected his offer to call him an ambulance.

Inspector J also obtained a statement from Sergeant L, the custody sergeant on duty at the time of the applicant’s arrival at the police station.

Chief Inspector K issued the following response:

“The arresting officers and those responsible for custody duties at [police station] refute this allegation and maintain that you did not request nor require medical attention. The custody sergeant noted on your custody record that you had a scratch to your cheek and cuts and

grazes to both knuckles however his view was that none of these injuries required medical attention. I would also add that the officers involved in your arrest and subsequent interview for your report of robbery saw that the injuries to your face, abdomen and knuckles were superficial. Due to the passage of time, no CCTV evidence is available to prove that a request for a doctor was made and therefore I am left with contradictory versions of what may or may not have happened in respect of this element of your complaint.”

Consideration

The applicant raised this complaint some eighteen months after the incident and accordingly it was not possible to recover CCTV footage of his being processed into custody. The evidence therefore consists of the differing versions of events given by the applicant and the officers concerned. In the absence of additional evidence, it is not possible to establish if the applicant asked for and was denied medical assistance during the incident or following his arrest. In any event, the weight of the evidence points to the applicant as having no injuries or only superficial ones.

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

Complaint 3: Assault not properly investigated

According to his statement the applicant does not believe that the alleged assault upon him was properly investigated.

Internal Handling

Inspector J obtained statements from Constables G and H, the two officers who investigated the alleged assault. According to Constable G there were “clear discrepancies” in the applicant’s account of this incident. The applicant had alleged that Mr E and a male with Mr F’s surname had assaulted him and robbed him of the benefit money he had received, totalling £120. Constable G questioned the applicant as to how he had managed to retain his benefit money given his account that he had been drinking in various pubs throughout the day. According to Constable G, the applicant was unable to provide an answer to this question.

Constables G and H state that the applicant named Mr E as the suspect. Constable H states that the applicant also referred to “another unknown male whom he only knew as [surname of Mr F]”. Some time later, Constable G interviewed Mr E who denied the allegation.

According to Constables G and H on 23 February 2009 they called at the applicant’s home to update him on their enquiries but there was no reply. Constable H believed that the applicant’s address appeared “unlived in”.

Chief Inspector K provided the following response to the complaint:

“I can confirm that a crime report was raised for a robbery against yourself prior to your arrest. This was raised in accordance with the Scottish Criminal Recording Standards and investigations were carried out. I have to report that at this date this crime remains undetected.”

Consideration

In the Commissioner’s view, the response issued to this complaint did not adequately convey to the applicant the nature of the enquiries which had been undertaken in respect of the alleged

assault. Because of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

According to Constable G's statement the applicant named only one suspect in connection with the assault and robbery, Mr E. Constable H states that the applicant also named another unknown male with the surname of Mr F. Given the limited evidence provided by the applicant regarding Mr F's identify it is not surprising that he appears not to have been traced.

The Commissioner notes, however, that the applicant provides the full name of Mr F in the statement he provided as part of the complaints investigation. Ordinarily, the Commissioner would recommend that further enquiries be made in relation to Mr H. However, given the discrepancies in the applicant's account of the alleged incident, and the doubt this raises as to whether the alleged offence in fact occurred, the Commissioner does not consider it appropriate to recommend further action.

Conclusions, Recommendations and Learning

Complaint 1: The applicant's arrest

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 issues a written apology to the applicant for the misleading nature of its response.

Complaint 2: Refusal of medical attention

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

Complaint 3: Assault not properly investigated

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was not reasonable. However, for the reason given no further action is required in connection with this complaint.

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