

Report of a Complaint Handling Review in relation to Tayside Police

under section 35(1) of the Police Public Order
and Criminal Justice (Scotland) Act 2006

Summary and Key Findings

This complaints dealt with in this review arise from three separate incidents involving the applicant and Tayside Police.

Of the six complaints reviewed, the Commissioner found that all were handled reasonably. No recommendations were made.

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

The applicant has lived at her present address since 2001 and states that she has experienced difficulty with her next door neighbours since 2002. She is a former police officer.

On 5 July 2009 the applicant was within her home with her friend, Ms C, when an incident occurred involving her next door neighbour, Ms D. The applicant complained to the police about Ms D's conduct. Constable A was assigned the enquiry and, having attended at the applicant's home, noted statements from both the applicant and Ms C. Before leaving, Constable A advised the applicant that Ms D would be charged with a breach of the peace. Later the same day Constable A attended at Ms D's home. Ms D provided a different version of events to that of the applicant and Ms C, stating that it in fact it had been the applicant who had instigated the argument using abusive language and that her partner, Mr H, could corroborate this.

As a consequence Constable A merely warned Ms D about her conduct. According to Constable A, he then returned to the applicant's home to update her but found that she was not at home. The applicant later complained that she had not received an update in relation to the matter. The circumstances are examined more fully under complaints 1 and 2 below.

On 17 September 2009 the applicant was driving her car when she was involved in a minor collision with another vehicle. The driver of the other vehicle (Ms N) called the police to report the matter. Constable B attended the scene and noted statements from the applicant and Ms N. Having noted the positions of the vehicles involved in the collision, Constable B formed the opinion that Ms N was not to blame for the incident and that, for whatever reason, the applicant's vehicle had struck Ms N's vehicle. A friend of the applicant, Ms M, having spoken to the applicant by telephone, attended the scene of the collision.

According to Constable B, as she had attended the scene alone, she requested the assistance of another unit in order to corroborate the breath test procedure she intended to carry out on the applicant and Ms N. Constables E and F thereafter attended the scene and the applicant and Ms N were breath tested, with negative results. The circumstances of the collision were investigated but no-one was charged with any offences. Both vehicles were then uplifted by a recovery operator. During her time as a police officer, the applicant worked with Constable B. The circumstances are examined more fully under complaints 3 and 4 below.

In November 2009 Inspector G was appointed to conduct enquiry into a complaint about the police made by the applicant in relation to a matter not dealt with in this review. Between November 2009 and January 2010, Inspector G made several unsuccessful attempts to speak to the applicant. On 8 January 2010 Inspector G attended unannounced at the applicant's home. As a result of that visit the applicant made a complaint about Inspector G. This complaint is examined under complaint 6 below.

The Complaints

Based on the contents of the application form, the correspondence received from the applicant and the information obtained from Tayside Police, the Commissioner has identified the following complaints:

- (1) that Constable A failed to keep the applicant updated on the progress of a breach of the peace enquiry;
- (2) that Constable A failed to fully investigate the above enquiry;
- (3) that Constable B failed to note a statement from the applicant on 17 September 2009;
- (4) that Constable B failed to follow the correct policing procedure;
- (5) that Constable B's behaviour was rude and inappropriate; and
- (6) that Inspector G was aggressive and bullying towards the applicant on 8 January 2010.

The Commissioner's Review

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

Complaint 1: Alleged failure to provide updates

On 31 October 2009 the applicant wrote to Tayside Police detailing complaints 1 – 5. In respect of complaint 1, she stated the following:

"Unfortunately, since then [5 July 2009] I have been unable to contact [Constable A] despite leaving numerous messages, I still await an update regarding this incident."

Internal Handling

Inspector J was initially appointed to conduct enquiries into the applicant's complaints. During his investigation into complaint 1, Inspector J obtained a statement from Constable A and arranged for Constable A to provide the applicant with an update in accordance with the request in her letter dated 31 October 2009. Constable A met the applicant on 15 November 2009 and updated her as

requested. On 23 November 2009, a statement was obtained from the applicant by Inspector L. A statement was also obtained from Ms C.

On 24 November 2009, Inspector J submitted a report of his findings in relation to complaints 1 - 5. In respect of complaint 1, he noted the following:

"[Constable A] made enquiry with the neighbours regarding the allegation made and was given conflicting statements, corroborated by a witness. As there was conflicting evidence, Constable [A] warned [Ms D] regarding the situation and thereafter tried to do the same to the complainer. By the time he had gone back to her door, she appeared to have left. He has tried to contact her several times since then, and she has indeed tried to contact this officer ... I have arranged for Constable [A] to reattend and meet with complainer, the complainer has now been fully updated by this officer, in the presence of Constable [P] however she does not recognise that this matter has been conciliated."

On 11 January 2010, Superintendent K wrote to the applicant in response to her complaints. In respect of complaint 1, Superintendent K stated the following:

"I understand that Constable [A] met with you on 15 November 2009 and updated you in regard to this incident. On examination of the circumstances of the enquiry, I am satisfied that Constable [A] has previously made every effort to make contact with you in order that he could update you and that the action taken by him has been proportionate to the circumstances of the complaint. I do not consider that he has failed in his duties in any way but he has been advised in regard to your feelings on this matter. In view of this I now consider the matter concluded."

Upon receipt of Superintendent K's letter, on 14 January 2010 the applicant wrote to the Chief Constable alleging that her complaints had not been handled properly. The applicant also raised complaint 6 at this time. In respect of complaint 1, the applicant stated the following:

"I do not accept that 'Constable [A] has previously made every effort to make contact' with me. On 5 July 2009, Constable [A] left my home on the understanding that he was to charge [Ms D] with a breach of the peace. Despite numerous requests, no up-date was received that day or at any time during the next 8 weeks due to Constable [A] being on sick leave. I did receive one telephone message from Constable [A] towards the end of September but again he failed to return my call thereafter. It was not until 15 November 2009 Constable [A] was directed to up-date me regarding the incident."

Inspector L was appointed to review the issues considered by Inspector J and investigate the fresh complaint (complaint 6) raised by the applicant. A second statement was obtained from the applicant on 15 February 2010.

During Inspector L's review, he obtained the telephone records of Constable A's contact with the applicant. On 30 March 2010 Inspector L submitted a report of his findings to the Deputy Chief Constable. In respect of complaint 1, Inspector L found the following:

"I believe that, in the circumstances, the level of contact is not acceptable and more effort should have been made by Constable [A], particularly in light of his change of mind [not] to charge [Ms D], having told [the applicant] this was to happen."

... I would suggest that Constable [A] receive corrective advice in respect of appropriate contact with complainers."

On 30 March 2010, the Deputy Chief Constable wrote to the applicant in response to all the complaints she had made to date. In respect of complaint 1, the Deputy Chief Constable stated the following:

“Following the incident on 5 July 2009 Constable [A] attempted to make contact with you on 5 occasions by telephone. Enquiries show that there were two calls on 14 August 2009, one call on 24 August 2009 and two calls on 17 September 2009. No effort was made to leave a calling card through your door. I also note from Inspector [L]’s enquiries that you left messages for Constable [A] on the 3 August 2009 and 13 September 2009 asking him to contact you.

Constable [A]’s failure to contact you with an update on the enquiry falls short of the standard of service expected of Tayside Police staff and for that I offer you my unreserved apologies.

I have instructed that Constable [A] receive corrective advice from a member of his Command Team in respect of his involvement in this matter.”

Consideration

The initial enquiry conducted by Inspector J did not consider the specific attempts made by Constable A to update the applicant, or the details of the applicant’s responses in this connection. Indeed, Inspector J’s report stated simply that Constable A had tried to contact the applicant “several times” and provided no view on whether this was sufficient in the circumstances.

However, Inspector L clearly analysed the extent of Constable A’s contact with the applicant and found that it fell below the standard expected. The Deputy Chief Constable offered the applicant an unreserved apology for this.

In the Commissioner’s view, although there were deficiencies in the initial handling of the applicant’s complaint, these were remedied by Inspector L’s enquiries. Given that the applicant has now received an apology from the Deputy Chief Constable, the Commissioner considers that this complaint was ultimately dealt with by Tayside Police in a reasonable manner.

Complaint 2: Alleged failure to fully investigate

Having been advised by Constable A on 15 November 2010 that he had decided to warn Ms D, the applicant made the following comments in her statement of 23 November 2009:

“Regarding the incident that was reported on 5 July I was recontacted by Constable [A] and he said that they [Ms D and Mr H] ... said I started it. Constable [A] said that the witness was [Mr H] and I said that could not be the case, as [Ms D] was alone when the incident happened.

I was told by Constable [A] that he had a statement from [Mr H] corroborating what [Ms D] had said. I do not accept that this matter has been conciliated. I had an independent witness (this was a friend) and [Ms D] had her husband as a witness. “

Internal Handling

As Superintendent K’s response of 11 January 2010 failed to address the issues raised by the applicant, the applicant wrote the following in her letter to the Chief Constable of 14 January 2010:

“... At this time, [Constable A] informed me that he had made enquiry with the perpetrator and decided not to take any further action given a counter-allegation had been made ... On enquiring who the other witness was; he stated it was Mr [H], [Ms D]’s co-habitee, a bias witness. It was explained to me that Mr [H] claimed to have witnessed the whole incident; this was not possible as me and my independent witness saw [Ms D] swiftly leave her house shortly after the incident alone and return complete with Mr [H], proving he had not

actually been present during the incident to be a witness. At this, Constable [A] shrugged his shoulders, stating he was sorry but could not change his decision now.

Given the circumstances, I am not satisfied that sufficient enquiry was made into this incident ... ”

Inspector L noted the following in his report:

“Following the incident on 5 July 2009, Constable [A] has attended and noted statements from [the applicant and Mrs C]. From these statements, there has clearly been sufficient evidence to charge [Ms D] with a Breach of the Peace, and Constable [A] has advised [the applicant] of this course of action. He has also updated CAPTOR to this effect.

Constable [A] has attended at [Ms D]’s address later the same day, and she has advised him that [the applicant] had instigated the argument using abusive language and her partner [Mr H] was corroborating this.

As a result, Constable [A] has taken what [Ms D] has told him, at face value, and issued a warning to [Ms D]. Constable [A] has recorded the warning in his notebook. There is no statement from [Ms D] or [Mr H] recorded in the notebook.

... I believe that there was sufficient evidence for Constable [A] to charge [Ms D] with Breach of the Peace, and when [Ms D] made a counter allegation, this should have been investigated and any offences reported to the Procurator Fiscal as a separate case.”

The Deputy Chief Constable provided the following response in his letter of 30 March 2010:

“... Constable [A] has attended and noted statements from you and your friend, Ms [C]. From these statements, there has clearly been sufficient evidence to charge your neighbour with a Breach of the Peace, and Constable [A] has advised you of this course of action.

Constable [A] attended your neighbours address later the same day, and she has advised him that you had instigated the argument using abusive language and her partner was corroborating this.

As a result, Constable [A] has taken this at face-value, and issued a warning to your neighbour.

In failing to update you, you have not been provided with an opportunity to advise Constable [A] that your neighbour left the house after the incident and returned a short time later with her partner, who is allegedly providing corroboration for your neighbour’s version of events.

As a result, the veracity of your neighbours allegation has not been investigated.

This matter could easily have been resolved had Constable [A] provided the feedback you expected.

I have instructed that when Constable [A] receives corrective advice from a member of his Command Team, he be made fully aware of the consequences of failing to update complainers and in this case, the missed opportunity to correctly deal with an incident which has been part of an ongoing series of incidents between you and your neighbours.”

In an internal communication dated 16 April 2010 the Deputy Chief Constable summarised the terms of the corrective advice as follows:

“After considering the report I have decided that Constable [A] should receive corrective advice in respect of updating complainers on the progress and outcome of enquiries into their complaints, highlighting the missed opportunity on this occasion to investigate fully the allegation of [Ms D] making a false statement to the police.”

Constable A was provided with the advice on 2 May 2010.

Consideration

Having spoken to the applicant and Mrs C, it was Constable A's intention to charge Mrs D with a breach of the peace. However, having then spoken to Mrs D, Constable A changed his intended course of action and instead warned her. Inspector L did not agree with this decision and found that, given there was a sufficiency of evidence to charge Mrs D, Constable A should have done so and then investigated Mrs D's counter-allegation against the applicant. In this connection, Tayside Police has effectively upheld the applicant's complaint.

The applicant is also concerned that Mrs D lied to police officers about Mr H having been present during the incident in question and that he could corroborate her position. During his investigation Inspector L sought guidance from the Procurator Fiscal who advised him that, due to the time which had elapsed since the alleged offence, no action would be taken. As part of the corrective advice given to Constable A, it was highlighted to him that his failure to update resulted in a “missed opportunity” to investigate Mrs D's alleged false statement to the police.

Tayside Police has identified and acknowledged the defects within Constable A's investigation, and the consequences of these have been highlighted to Constable A. Inspector L has also apologised to the applicant in this connection. In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 3: Alleged failure to note a statement

In her letter dated 31 October 2009 the applicant complained that, having attended the scene of the collision, Constable B did not obtain a statement from her or ask her to produce any documents.

Internal Handling

As part of his investigation, Inspector J obtained statements from the two recovery operators and all officers who attended the scene of the collision. A statement was also obtained from the applicant's friend, Ms M, and the driver of the other vehicle, Ms N. Having considered the evidence, Inspector J reached the following conclusion in his report:

“Constable [B] also counters the other allegations in so far as she did take a statement from the complainer ...”

Superintendent K provided the following response in his letter of 11 January 2010:

“On full examination of the circumstances into the enquiry carried out by Inspector [J] into this matter, I can advise that Constable [B] strongly refutes the allegations made and her stance is supported by independent witnesses who were present at the material time.”

In her letter of 14 January 2010 the applicant stated:

“My complaint stands that Constable [B] did not carry out correct Police procedure when dealing with my accident, firstly for not noting my statement ...”

Inspector L noted the following in his report:

"I advised [the applicant] that Tayside Police Force Policy outlines that officers will not, as a matter of course, make protracted enquiry into minor road traffic collisions, but will note sufficient details to enable a Vehicle Accident Report to be completed. I am satisfied that Constable [B] has noted sufficient details and a VAR was correctly submitted. Should there be any dispute between the insured parties, the insurance companies can arrange for full statements to be taken. I advised [the applicant] of current procedures in respect of road traffic collisions and this matter was conciliated at the time of our meeting."

The Deputy Chief Constable provided the following response:

"I understand that Inspector [L] explained to you that Tayside Police Force Policy outlines that officers will not, as a matter of course, make protracted enquiry into minor road traffic collisions, but will note sufficient details to enable a Vehicle Accident Report to be completed. I am satisfied that Constable [B] has noted sufficient details and a Vehicle Accident Report was correctly submitted."

Consideration

Inspector J found that Constable B had in fact obtained a statement from the applicant. The Commissioner has been provided with a copy of Constable B's notebook which records the applicant's details together with her account of how the crash occurred. In the Commissioner's view, it would have been helpful if Superintendent K had advised the applicant of this, rather than merely stating that the allegation was strongly refuted by Constable B.

Inspector L's review also considered whether Constable B acted in accordance with procedure in respect of her handling of the collision. The Commissioner has had regard to the procedures referred to Inspector L (Tayside Police's "Policy and Guidance Road Traffic Accident Reporting"). The policy states:

"Where it is established that no personal injury has been sustained by any party involved, [officers] will not as a matter of course make any protracted enquiry as to the cause of the accident.

... Sufficient details must be obtained to facilitate the completion of a standard Vehicular Accident Form ..."

The policy provides for exceptions to this approach whereby further enquiry would be required. These exceptions relate generally to circumstances where there is evidence of dangerous driving; allegations of related driving offences, where the status of the driver is a relevant factor; or where it is otherwise considered appropriate to report the circumstances to the Procurator Fiscal. None of these factors were evident in the circumstances presented to Constable B.

In the Commissioner's view, Inspector L's review remedied the deficiencies in the initial handling of this complaint. In addition, the explanation provided to the applicant in the Deputy Chief Constables response accurately reflected the circumstances as well as the policy relating to minor road traffic collisions. For these reasons, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 4: Alleged failure to follow correct procedure

In her letter dated 31 October 2009 the applicant stated the following:

‘[Constable B’s] inability to carry out correct Police procedure did not end there, when requiring me to supply a specimen of breath for analysis, she failed to ask me if I had consumed any alcohol and did not correctly recite the section 6 caution/procedure.’

In her subsequent statement, the applicant recalled Constable B telling her something similar to the following:

“‘You know I have to breathalyse you, you know the procedure. Section 6 of the Road Traffic Act. If you fail to provide a specimen of breath we’ll have to take it further.’

According to the applicant, this did not reflect the procedure required in law.

Internal Handling

In his report Inspector J noted that, according to Constable B, the drink-driving procedure was carried out professionally. In respect of this, and the alleged failure to ask the applicant if she had consumed any alcohol, Inspector J stated the following:

“The officers who attended from Central Division to assist Constable [B] ... also state that the procedure for the section 6 caution was carried out professionally ... there was no requirement to ask the Complainer if she had consumed any alcohol, as the Complainer volunteered information that she had not drunk any alcohol for a year ...”

Superintendent K stated the following in his response to the complaint:

“I can advise that Constable [B] strongly refutes the allegations made and her stance is supported by independent witnesses who were present at the material time.”

Inspector L noted the following in his report:

“There is no corroboration of [the applicant’s] allegation that the breath test procedure was not required of her correctly.”

The Deputy Chief Constable provided the following response:

“Constable [B] denies this and states that she recited the lawful requirement from her police notebook.”

Consideration

During the enquiry Constable B told Inspector L that she read the required information to the applicant from her notebook. This account is supported by Constable E. Tayside Police has confirmed to the Commissioner’s office that every police officer’s notebook has a pre-printed section relating to the requirement to obtain breath specimens. A copy of the relevant pages of Constable B’s notebook was obtained during the Commissioner’s review and it contains this printed guidance.

Constable B also told Inspector L that the applicant informed her without prompting that she had not consumed alcohol for over a year prior to the collision, hence negating the need to ask the applicant if she had consumed alcohol that day. No other witnesses, including the applicant’s friend, Ms M, provided any evidence relevant to this complaint.

In these circumstances, the Commissioner considers that the conclusions reached by Tayside Police are reasonable. The Deputy Chief Constable also adequately reflected the outcome of the enquiries in his letter of response.

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

Complaint 5: Alleged rude and inappropriate behaviour

The applicant stated the following in her letter of 31 October 2009:

“Throughout the whole procedure, [Constable B] was extremely rude, shouting at me in front of others, embarrassing not only myself but her as well. I have to complain and question her suitability to deal with this accident as it has become apparent over the years that [Constable B] has a personal vendetta towards me, for some reason unknown to me.”

In her subsequent statement the applicant stated:

“Also, the manner in which she spoke to me was inappropriate and out of order. She was treating me like a school child and her tone throughout was inappropriate. She kept raising her voice. I can’t remember specific words or phrases but the whole thing was inappropriate in the circumstances. I was in shock and it just added to the stress of the whole thing.”

Internal Handling

Having considered the statements obtained from those at the scene, Inspector J reached the following conclusion:

“The complainer does have a witness; [Ms M], a friend, who states that [Constable B] was rude and raised her voice to her. I doubt that the officer has carried out this act, as three other independent witnesses do not corroborate this ... The officers who attended from Central Division to assist [Constable B] also state that no abuse took place ...”

Superintendent K stated the following in his letter of 11 January 2010:

“... nor is there any available supporting evidence in regard to your allegation that Constable [B] was rude to you or that she has a personal vendetta toward you.”

Inspector L reported the following in his report:

“There is conflicting versions of events surrounding the manner in which [Constable B] spoke to [the applicant].”

The Deputy Chief Constable stated the following in his response of 30 March 2010:

“It is clear that you and your friend, [Ms M], feel that the manner in which Constable [B] spoke to you at the scene of the collision was inappropriate and she raised her voice to you. This conflicts with the version of events given by other police officers at the scene, the driver of the other vehicle and the recovery vehicle operators. None of these witnesses speak to Constable [B] talking to you in an inappropriate manner or raising her voice at you. Constable [B] denies the allegation.

As a result, after consideration of evidence provided by all witnesses, I find that there is insufficient evidence to substantiate misconduct on the part of Constable [B].

Inspector [L] also investigated your belief that this is a result of a personal vendetta Constable [B] has against you which began in 1995 when you were a serving police officer with Tayside Police.

Constable [B] denies this allegation and in the absence of any corroborative evidence I am unable to substantiate this allegation.”

Consideration

Although the applicant is supported by the account provided by Ms M, the weight of the evidence supports Constable B's denial that she was uncivil towards the applicant. In these circumstances, the Commissioner shares the view of the Deputy Chief Constable that there is insufficient evidence to establish misconduct on the part of Constable B. In the Commissioner's view, the Deputy Chief Constable also adequately conveyed the nature and outcome of the enquiries.

In respect of the alleged personal vendetta against her, the applicant referred to a discussion that had taken place between her and Constable B in 1995. According to the applicant, as a result of that discussion Constable B had not spoken to her since. The applicant did not, however, provide any further evidence in support of an alleged vendetta. Constable B denied the allegation and provided an account of her professional dealings with the applicant. There was no evidence supporting the applicant's claim.

For the reasons given the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 6: Alleged aggression and bullying

In her letter of complaint dated 14 January 2010 the applicant stated:

“I was met by an arrogant and aggressive stance by Inspector [G] who claimed he had been a number of times at my door and demanded entry. I felt really intimidated by his presence and granted him access. During his time within my home, Inspector [G] continually raised his voice, bullied me and contradicted himself.”

Internal Handling

Inspector L noted the following in his report:

“[The applicant] feels that Inspector [G] should have been more understanding that it was not suitable to interview her at that time. She stated that she had dealt with it by asking him to leave and the matter is concluded.”

The Deputy Chief Constable provided the following response:

“I understand that you were unhappy with Inspector [G] attending at your home to note a statement at an unsuitable time and his manner in dealing with you. I note from the statement you provided to Inspector [L] that you refer to Inspector [G] raising his voice, but made no reference to him displaying arrogance, aggressiveness or bullying.

I also note from your statement that you dealt with the matter by asking him to leave your house and alternative arrangements would be made for a statement to be noted from you and that you advised Inspector [L] that this matter was concluded.”

Consideration

Whilst providing her statement to Inspector L on 15 February 2010, the applicant listed the specific complaints she wished to make. Despite referring to the incident concerning Inspector G, her complaint concerning the alleged actions of Inspector G did not feature among those listed. In the

Commissioner's view, it was reasonable for Tayside Police to assume in these circumstances that the applicant no longer wished to pursue this complaint.

The Commissioner therefore considers that Inspector L's finding and the Deputy Chief Constable's response are reasonable.

Conclusions, Recommendations and Learning

Complaints 1 - 6

In the Commissioner's view, the manner in which these complaints were dealt with by Tayside 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