

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's complaints arise from his being stopped by police officers for driving through a red traffic light.

Of the 12 complaints considered, the Commissioner found that seven were dealt with in a reasonable manner while five were not. The Commissioner made four recommendations.

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 12 November 2009 at around 2.45 am, the applicant was driving his car when he was stopped by Constables A and B for failing to stop at a red traffic light. The applicant is a foreign national who suffers from Asperger syndrome.

The officers state that they had been following the applicant's car while on mobile patrol and stopped him when they noticed him proceeding through a red light. They activated the blue light on their vehicle and, when it appeared to them that the applicant was failing to stop, they sounded their siren. The applicant thereafter stopped his car.

According to the applicant, prior to his being stopped the police car had been travelling very closely behind him and, if he had proceeded through the red light, it was because of the officers' "unusual and intimidating driving style." The applicant claims not to have been aware that the activation of the blue light on a police vehicle meant that he was required to stop, as this is not the practice adopted by the police in his own country.

After being stopped the applicant became concerned about the manner in which Constables A and B were treating him and asked to speak with their supervisor. Sergeant C later attended the scene along with Constable D.

The applicant subsequently paid the fixed penalty issued to him; however, in the correspondence he submitted to the Scottish Court Service in this connection he indicated that he was not guilty of the offence.

The applicant submitted a letter of complaint about the incident to Lothian and Borders Police on 14 November 2009. Inspector E was appointed to investigate his complaints and a response was issued by the Deputy Chief Constable on 17 March 2010.

The applicant thereafter contacted the Commissioner's office, as a result of which a number of complaints were identified (complaints 6 – 12 below) which had not been addressed by Lothian and Borders Police during its initial investigation. On 21 March 2011, the Commissioner therefore wrote to Lothian and Borders Police asking it to deal with these complaints. On 20 April 2011, the Deputy Chief Constable wrote to the applicant in response to these.

The Complaints

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

- (1) that a police officer drove a police vehicle in an intimidating manner;
- (2) that Constables A and B behaved in a hostile, intimidating, insulting and rude manner towards the applicant;
- (3) that Constables A and B refused to show the applicant their identification;
- (4) that Constables A and B did not treat the applicant as a vulnerable adult;
- (5) that Constable A wrongly told the applicant he would no longer be allowed to drive his car;
- (6) that Constables A and B refused to tell the applicant the location of the red light he had allegedly driven through;
- (7) that Constable B indicated that police practices adopted in Scotland were superior to those adopted in the applicant's home nation;
- (8) that Constables A and B refused to acknowledge the applicant's title, thus wrongly addressing him;
- (9) that Sergeant C told the applicant he would back up his colleagues out of loyalty without hearing all the facts;
- (10) that Sergeant C told the applicant not to raise a formal complaint as it would not lead anywhere;
- (11) that Sergeant C refused to inform the applicant of the procedure for complaining to an independent body; and
- (12) that Constable A only cautioned the applicant when he departed.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Lothian and Borders Police.

Complaint 1: Police vehicle driven in intimidating manner

The applicant described this complaint as follows in his letter of 14 November 2009:

"I was driving my [car] at around 02:55 down [street name] at a speed just below the speed limit of 30 miles per hour while being constantly and very closely (headlights of the police car were not visible) followed by a large police car without apparent reason. I lowered my speed even further to give the police car plenty of opportunities to overtake me on a virtually empty road. However, the police car came even closer, and the two police officers did not indicate their intention. I felt very much watched and slightly intimidated.

Approximately half-way between the bottom of [street], the police officers switched on the blue lights of their car while still being too close for comfort to my vehicle. I got very nervous by their odd behaviour and awaited some indication of clear intention by the police officers. I learned later on that the activation of a blue light in Scotland means that the driver in front has to stop his or her car. I was anxious and confused, and was unable to retrieve this information ...

I was accused [by the officers] of driving through a red light ...

I indicated that if this was the case that I am sorry and that this mistake might have happened because I was very upset about their unusual and intimidating driving style."

Internal Handling

In his statement, Constable A stated:

"About 0245 hours ... I saw [the applicant's car] travelling north in [location]. There was a single occupant in the vehicle ...

I followed the vehicle, at a safe distance, towards [location]. Constable [B] conducted a Police National Computer check on the vehicle."

According to Constable A, the applicant thereafter proceeded through a red traffic light.

Like Constable A, Constable B states that prior to stopping the applicant's car they had followed it at a "safe distance".

Inspector E stated the following in his report:

"Evidence to Support

There is only [the applicant's] statement to support this allegation (driving too close to [the applicant's] vehicle).

Evidence to Refute

At the time of the offence, the officers were on uniformed mobile patrol. They were travelling behind [the applicant]. There were no other vehicles on the road at the time. The officers had every right to drive along the road at the same time as [the applicant]. They were also within their rights to follow him whilst they checked out the vehicle. The officers were not to know that this behaviour made [the applicant] nervous due to him having Asperger's Syndrome.

The officers deny this allegation."

In his letter of response dated 17 March 2010, the Deputy Chief Constable stated:

“Firstly, you raised concerns that in the early hours of 12 November 2009, officers driving their police vehicle behind you at [location], made you nervous and as a result of this, and the contributory factor of you suffering from Asperger’s Syndrome, caused you to drive through a red traffic light. The officers in question were on normal patrol duties when they found their vehicle behind yours. At this point the officers observed you committing the alleged offence and engaged the blue lights and two-tone sirens to indicate they wished you to stop at the first available safe place to do so. Until this point, the officers could not have known of your medical condition, but were merely reacting to the manner of your driving. Thereafter, in line with recognised procedure, you were issued with a Fixed Penalty Ticket for the traffic offence.”

Consideration

In the Commissioner’s view, both the Deputy Chief Constable and Inspector E failed to address the applicant’s primary concern, namely that Constables A and B had, prior to stopping the applicant, driven too closely behind him. As noted above, Constables A and B both state that they followed the applicant’s car “at a safe distance”. Despite this, the Deputy Chief Constable and Inspector E mention merely that the police vehicle was being driven behind the applicant’s car. As a result of this, the applicant was not informed of the key aspect of Constable A and B’s account i.e. that they were driving a safe distance from the applicant’s car.

For this reason, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, as Constable A and B’s accounts are detailed within this report the Commissioner does not consider it necessary to recommend further action by Lothian and Borders Police in respect of this complaint. It is clear that the applicant disputes that the police vehicle was being driven a safe distance from his own car; however, in the absence of any other witnesses, the weight of the evidence (i.e. the accounts of two witnesses against that of the applicant) means that this complaint cannot be substantiated.

Complaint 2: Behaviour of Constables A and B

The applicant stated the following in his letter of 14 November 2009:

“I asked the officers if I can be of any help. At this point the active intimidation and insults started ...

... After stopping the car in a nearby side street, I got out of the car to engage with the officers. Subsequently, I very much felt I was being treated like a common criminal and I experienced a very unfamiliar rough treatment ...

... I answered that I was very upset ... by their rude and intimidating behaviour, and their unusual practice of following me very closely without any apparent reason or indication of intent ...

... My answers must have annoyed both officers who became even more unfriendly and openly hostile. Particularly the male police officer raised his voice, interrupted my statements and showed signs of losing control despite ... me indicating repeatedly that I will pay the £60 that he demanded even if I felt that this is not justified.”

Internal Handling

Constable A stated the following in this connection:

"I alighted from my vehicle and spoke with the driver [the applicant]. I explained why he had been stopped and requested that he take a seat in the rear of our vehicle. I explained the procedure to him and that I would be issuing him with a fixed penalty ticket for 3 penalty points and £60 fine. [The applicant] stated that it was our fault that he had gone through the red light as the police vehicle had made him nervous. I informed him that wasn't an explanation for travelling through a red light. [The applicant] continued with this explanation and he continued to talk over [Constable B] and myself. [The applicant] stated he had to make a statement. When he was asked what he meant, he said that he wished us to note everything he was saying; however it was explained to him that was not the procedure. [The applicant] could not understand how this could happen.

I attempted to explain the process to him but he continued to speak over me. I raised the pitch of my voice to gain his attention and when I had his attention I thereafter lowered my voice to its normal pitch. I explained to [the applicant] that he didn't have to accept the ticket and he could attend court regarding the offence. He declined this and accepted the ticket."

Constable B stated the following:

"[The applicant] continued to say that the police vehicle made him nervous and we hadn't identified ourselves as police. We attempted to explain the process to him but he continually talked over Constable [A] and myself, and he refused to listen. At this time Constable [A] raised his voice in order to gain the attention of [the applicant] who was clearly trying to talk over him. Once Constable [A] had [the applicant's] attention he lowered his tone, however [the applicant] repeatedly tried to talk over Constable [A], constantly saying 'He had to make a statement'. When he was asked what was meant by 'making a statement', he said that he wished us to note everything he was saying, however it was explained to him that was not the procedure. [The applicant] could not understand how this could happen."

Inspector E obtained a signed statement from the applicant in which he stated the following:

"On Wednesday 3^d December 2009 I attended at [police station] where I had a full and frank discussion regarding my complaint with Inspector [E]. The Inspector stated that he would bring my concerns to the attention of the officers mentioned in my complaint.

I do not intend to take this matter further but do not consider the matter completely closed in case I need to contest the points on my licence at a much later date, even if it is very unlikely."

Inspector E noted the following in his report:

"Also, on 16th December 2009 I spoke with the officers mentioned in this complaint and made them aware of [the applicant's] concerns. I then emailed [the applicant] ... to the effect that I had raised his concerns with the officers involved ...

The [applicant] replied to my email clearly unhappy at my actions albeit we had previously agreed them."

Inspector E concluded that the complaint could no longer be considered conciliated. He went on to note the following:

"Evidence to Support

There is only the complainer's statement to support this allegation (aggressive attitude).

Evidence to Refute

Once stopped, the complainer was difficult to deal with in that he continually spoke over the officers. [Constable A] admitted changing the tone of his voice in order to be heard and to get the complainer's attention. This worked and [Constable A] altered his tone to continue the conversation.

Both officers deny this allegation."

The Deputy Chief Constable provided the following response:

"You indicated your concerns at the manner in which the officers conducted themselves when dealing with you and stated they were aggressive ... The Investigating Officer made inquiry into these issues and has given the officers appropriate advice in this regard."

Consideration

According to his signed statement, the applicant did not intend to take his complaint further, apparently on the basis that his concerns would be brought to the attention of the officers concerned. Inspector E thereafter spoke to the officers but following a further expression of dissatisfaction by the applicant, it was concluded that the complaint was no longer conciliated.

In these circumstances, the Commissioner would have expected a more detailed response than the one issued by the Deputy Chief Constable. Specifically, the applicant was given no indication of the officers' positions in respect of the complaint, which clearly contradicted his own. In addition, although there is a record in the complaints file that the officers were spoken to by Inspector E, there is no indication of what was said to them. In these circumstances, there is no apparent basis for the Deputy Chief Constable's comment that the officers were given "appropriate advice" in this connection.

For these reasons, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, as with complaint 1, the officers effectively deny the allegation that they were uncivil or hostile to the applicant and accordingly, in the absence of evidence to support the applicant's position, this complaint is unsubstantiated. The Commissioner therefore makes no recommendation in this connection.

Complaint 3: Refusal to show identification

The applicant stated the following in his letter of 14 November 2009:

"I asked both officers repeatedly for their identification during the conversation. I am aware that police officers have to reveal at least their identification numbers and their police station. However, both officers informed me that I have no right to receive this information from them."

Internal Handling

Constable A stated the following in respect of this complaint:

"[The applicant] requested our collar numbers, which were visible on our uniform. I informed him that my details were on the ticket, which had been issued to him. I gave [the applicant] our collar numbers and he subsequently noted them down."

Constable B stated:

[The applicant] then went on to say again we hadn't identified ourselves as police officers. It was pointed out that we were in a marked police vehicle, in full uniform. He requested our collar numbers, which were given to him from showing him our numbers from our epaulettes on our jackets."

Inspector E noted the following in his report:

"Evidence to Support

There is only the complainer's statement to support this allegation (Refusing to pass details).

Evidence to Refute

[The applicant] stated that he asked the officers for their details in order to make a complaint and the officers refused. This is disputed. Both officers showed [the applicant] their shoulders where their collar numbers are displayed. [The applicant] apparently noted them down. In addition, [Constable A] highlighted to the complainer that the details were on the Fixed Penalty Ticket. It should also be remembered that, when [the applicant] asked to speak to their supervisor, the officers asked [Sergeant C] to attend.

Both officers deny this allegation."

In his letter of response dated 17 March 2010, the Deputy Chief Constable stated:

"You indicated your concerns at the manner in which the officers conducted themselves when dealing with you and stated they refused ... to give you their details... There is, however, conflicting evidence of your dealings with them and their failure to provide details to you. It should be noted that the Fixed Penalty Ticket issued to you also contains the identity of the officers, as well as instructions on how to proceed following its issue."

Consideration

Again, the weight of the evidence does not favour the applicant in respect of this complaint. Both officers claim that the applicant was provided with their collar numbers upon request. In addition, both officers' collar numbers were included in the fixed penalty notice issued to the applicant. Indeed, the Commissioner notes that the applicant identified Constables A and B and also Sergeant C by their collar numbers in his letter of complaint dated 14 November 2009.

In light of this, and the fact that the Deputy Chief Constable adequately conveyed the findings of Inspector E's enquiries in his letter of response, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 4: Failure to treat applicant as vulnerable adult

The applicant states the following in his letter of 14 November 2009:

"I got very scared and upset, and revealed to them that I have Asperger's Syndrome, and that I would like to be treated as a vulnerable adult according to Scottish Law. I even asked both officers to phone a mediator who could confirm and explain to them my disability and the intolerable distress that I was facing. My wish was repeatedly denied."

Internal Handling

Constable A stated the following in respect of this complaint:

“[The applicant] stated he had Asperger’s Syndrome and that it was a disability. He stated that his syndrome made him nervous when he was driving. I asked him if he had made DVLA aware of this to which he stated he hadn’t as his syndrome didn’t effect [sic] his driving.”

Constable B stated the following:

“Whilst waiting for the ticket to print [the applicant] repeatedly said he had Asperger’s Syndrome and that it was a disability and his syndrome made him nervous when he was driving. Constable [A] asked him if he had made DVLA aware of this to which he stated he hadn’t because ‘it didn’t affect his driving’.”

Sergeant C stated the following:

“... I reiterated the reasoning behind the issue of the ticket, to which [the applicant] stated that he was a vulnerable adult, suffering from Asperger’s Syndrome and that as such, he should be treated accordingly.”

Inspector E noted the following in respect of this complaint:

“Evidence to Support

[The applicant’s] statement supports this allegation.

Evidence to Refute

[The applicant] advised the officers that he was a vulnerable adult as he had Asperger’s Syndrome and claims to have requested an Appropriate Adult or mediator to attend. When it was first mentioned he claimed that it made him nervous when driving, then when asked if he had informed DVLA he stated that it did not affect his driving. Asperger’s Syndrome is difficult to detect and [the applicant] had no documentation on him to support his claim.

Both officers, in their statements, acknowledge that [the applicant] stated that he had Asperger’s Syndrome.

Sergeant [C], who attended at the locus when informed that [the applicant] wished to make a complaint, writes in his statement that [the applicant] claimed he was a vulnerable adult and should be treated as such. He made no request for an appropriate adult.

All officers deny this allegation.”

In the letter of response dated 17 March 2010, the Deputy Chief Constable stated:

“You also raised concerns over the provision of an Appropriate Adult at the time of the incident. I am informed that the Investigating Officer has discussed this issue with you at length and can inform you that as a consequence, the Force is examining ways to improve officer training in this regard. The supervisor of the officers involved has also arranged to have a speaker from the National Autistic Society address his team to raise their awareness and in addition, our Intranet site now carries a guidance booklet that includes advice on Asperger’s Syndrome.”

As noted above, following the Commissioner’s letter to Lothian and Borders Police dated 21 March 2011 enquiries were carried out regarding the applicant’s complaint that his wish for a “mediator” to be present during the incident had been denied. As part of these enquiries, additional statements

were submitted by Constables A and B and Sergeant C. Constable B, who had accompanied Sergeant C to the scene, also provided a statement.

Constable A stated the following:

“[The applicant] did ask to contact a third party (unknown); he wasn’t refused but informed that I had no reason to speak to any third party.”

Constable B stated:

“[The applicant] did ask to contact a third party (however did not make clear who this person would be); he wasn’t refused but informed that we had no reason to speak to any third party.”

Sergeant C stated the following:

“At no point in my presence did [the applicant] request that a 3rd party be contacted.”

Sergeant C was supported in his account by Constable D.

In his letter of response dated 20 April 2011, the Deputy Chief Constable stated:

“Secondly you allege that officers did not allow you to contact a third party to come to your assistance.

The officers who stopped you deny the allegation. They confirm that you did ask to contact an unspecified third party but state that there was no operational requirement for them to do so on your behalf. The officers state that you had access to a personal mobile phone but made no attempt to contact any third party. The sergeant and the officer with him have no recollection of you asking to contact a third party.

In the absence of any other information, I do not substantiate the allegation.”

Consideration

It is not entirely clear from the applicant’s letter of 14 November 2009 what he meant by the term “mediator” in the context of this complaint. Lothian and Borders Police has construed his comments as indicating that he wished to have an Appropriate Adult present during the incident, which in the Commissioner’s view was a reasonable interpretation to adopt.

However, nowhere in either of the Deputy Chief Constable’s letters is the applicant provided with a response as to why an Appropriate Adult was not made available in the circumstances. In his letter of 17 March 2010, the Deputy Chief Constable simply refers to improvements that were to be made to training for officers on the subject of autism, but no attempt is made to explain why an Appropriate Adult was not appointed during the incident. Inspector E states in his report that, according to Sergeant C, the applicant did not request the attendance of an Appropriate Adult following Sergeant C’s arrival at the scene. However, Inspector E makes no reference to Lothian and Borders Police’s policy on Appropriate Adults, the appointment of whom is not dependent upon whether the individual concerned requests that one be present.

For these reasons, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

According to Lothian and Borders Police’s General Order 17/99 entitled, “Interviewing Adults Who Are Mentally Disordered” (“the Order”), an appropriate adult should be present whenever a person

with a mental disorder is to be interviewed. The order provides the following definition of a mental disorder:

“For the purposes of this Order, the term Mental Disorder includes people who are mentally ill, people with a learning disability, those with acquired brain damage and people suffering from dementia.

In the Commissioner’s view, while Asperger Syndrome would fall within the above definition of mental disorder, the evidence indicates that the applicant was merely cautioned and charged with the offence and was not formally interviewed by the officers. Accordingly, in terms of Lothian and Borders Police’s policy the applicant was not entitled to have an Appropriate Adult present at the scene.

In a recent review involving Lothian and Borders Police (reference PCCS/234/10/PF-L&B) the Commissioner highlighted guidance issued in this area by the Scottish Appropriate Adult Network. The Network is a body made up of representatives of the Scottish Government, local authorities and the Association of Chief Police Officers in Scotland (ACPOS) and the purpose of its guidance is to provide a framework in which each Appropriate Adult service across the country may operate. The guidance states the following:

“... An appropriate adult should also be present when the person is charged. (If for any reason an appropriate adult cannot be present, the reasons why must be recorded by the Enquiry Officer).”

As a result of that review, in August 2011 the Commissioner recommended that Lothian and Borders Police reviews General Order 17/99 to ensure that it better reflects the guidance issued by the Network. Specifically, the Commissioner recommended that Lothian and Borders Police ensures that the provision of Appropriate Adults is, in appropriate circumstances, extended beyond the police interview setting, to situations in which suspects are cautioned and charged without formal interview. In conducting its review of the order, Lothian and Borders Police were told to consider the procedures adopted by other police forces in this connection, in particular Tayside Police’s Policy and Guidelines on Appropriate Adults issued in October 2010.

The Commissioner makes the same recommendation in the present case.

The Commissioner also considers it important to acknowledge in this connection the measures which are being taken by Lothian and Borders Police to improve officers’ awareness and understanding of autism, including Asperger Syndrome. It is clear from the enquiries undertaken by Inspector E that a significant amount of work has been and is being done in this area, including seminars and training, and an “alert card” system for autism sufferers, similar to the system operated by Strathclyde Police and that introduced recently by Northern Constabulary.

Complaint 5: Comments made by Constable A

The applicant stated the following in his letter of 14 November 2010:

“In the meantime, the male officer continued his strategy of intimidation by telling me that I have committed an offence by not telling the Driver and Vehicle Licensing Agency about my disability and that I was not fit to drive my car anymore. I expressed that I was unaware of any legislation preventing me from driving a car.”

The applicant expanded on this complaint in an email to Lothian and Borders Police dated 16 December 2009:

"I am surprised that the Police is actively trying to distract from the main content of my complaint against two police officers by trying to prevent me from driving, effectively putting even more pressure on me to drop my complaint."

Internal Handling

As noted above, Constable A stated the following in this connection:

"[The applicant] stated he had Asperger's Syndrome and that it was a disability. He stated that his syndrome made him nervous when he was driving. I asked him if he had made DVLA aware of this to which he stated he hadn't as his syndrome didn't effect [sic] his driving."

Constable B stated:

"Whilst waiting for the ticket to print [the applicant] repeatedly said he had Asperger's Syndrome and that it was a disability and his syndrome made him nervous when he was driving. Constable [A] asked him if he had made DVLA aware of this to which he stated he hadn't because 'it didn't affect his driving'."

Sergeant C stated the following:

"With respect to his declaration that he had Asperger's Syndrome, I asked him to clarify as to whether or not he had informed the DVLA of this condition, to which he replied that he had not and that it did not effect [sic] his driving."

Inspector E noted the following in his report:

"I also contacted the DVLA Liaison at Records Branch to establish whether Asperger's Syndrome should be reported to them. The reply was that it was and [Constable A] submitted the relevant form to them. They have received this and their enquiries are ongoing."

Inspector E corresponded with the applicant via email during the course of his enquiries. Part of this correspondence concerned the applicant's belief that the notification of his condition to the DVLA was an attempt to prevent the applicant from driving his vehicle. In his email of 16 December 2009, Inspector E told the applicant the following:

"Firstly, I have had communication back from the DVLA and they say that Asperger's Syndrome is a condition that should be notified to them. We are now duty bound to advise them of the incident which we do using a standard internal pro-forma document. You should also contact them at your earliest convenience."

The applicant responded, reiterating his belief that contacting the DVLA was an attempt to stop him from driving. In his email to the applicant dated 17 December 2009, Inspector E informed him:

"The officers have advised DVLA of your condition simply due to the fact that you mentioned that it contributed to the offence. It is by no means an attempt to stop you driving more a matter of procedure in such circumstances."

The applicant responded, stating:

"The male officer informed me that I was not allowed to drive a car due to having Asperger's Syndrome. This statement is clearly false. The fact that they are now trying to prevent me from driving can only be seen as an attempt to discredit me and to divert

attention from them breaking numerous procedural errors [sic] as outlined in my complaint letter.”

No reference is made to this complaint in the Deputy Chief Constable’s letter of response of 17 March 2010.

Consideration

The applicant’s complaint is that Constable A told him that he had committed an offence by failing to inform the DVLA of his disability and that he was unfit to drive his vehicle. Constables A and B confirmed in their statements that the applicant was asked whether he had reported his disability to the DVLA, but there is nothing in their statements addressing the specific complaint made by the applicant.

In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Constables A and B are asked to provide further accounts addressing the applicant’s specific complaint. A further response should thereafter be issued to the applicant advising him of the outcome of these enquiries.

Complaint 6: Refusal to disclose location of red light

The applicant stated the following in his letter of 14 November 2009:

“I was accused of driving through a red light, an offence that I would only cause deliberately in a severe emergency situation. However, the officers could not identify (i.e. did not want to tell me) the location of the corresponding traffic light, which did not make any sense to me.”

Internal Handling

This complaint was not dealt with initially by Lothian and Borders Police, but was addressed following the Commissioner’s letter of 21 March 2011. As noted above, further statements were obtained from Constables A and B and Sergeant C in this connection, and a statement obtained from Constable D.

Constable A stated the following:

“I made it quite clear to [the applicant] where the locus of the offence was. I further explained that the locus was on the ticket issued to him. At no point did I refuse to tell him where the red automatic traffic light he had failed to comply with was.”

Constable B stated:

“I made it quite clear to [the applicant] where the locus of the offence was. I remember showing him a map and pointing out the locus. We further explained that the locus was on the ticket issued to him. At no point did I refuse to tell him where the red automatic traffic light he had failed to comply with was.”

Sergeant C stated:

“I was not present at the initial stop when [the applicant] was spoken to by Constables [A] and [B], however upon attending and gaining an understanding of the locus of the incident, I discussed this matter in full with [the applicant]. I fully explained the locus of the offence committed and also that the locus was on the ticket that has been issued to him. As per my

previous statement, [the applicant] did not deny having committed the offence, more that he was forced through the red light due to having a Police car following him.”

Constable D stated the following:

“I was not present at the initial stop when [the applicant] was spoken to by Constables [A] and [B]. Sergeant [C] explained fully the locus of where the offence was committed and also that the locus would be on the ticket that would be issued to him.”

In his letter of response dated 20 April 2011, the Deputy Chief Constable stated:

“Firstly you allege that officers refused to tell you the location of the red light you had allegedly driven through.

The officers who stopped you deny the allegation and state that they informed you of the location of the red light. One officer recalls showing you a map of the location and both correctly state that the location was recorded on the fixed penalty ticket issued to you. The sergeant who subsequently spoke to you states that he also informed you of the location of the red light.

In the absence of any other information, I do not substantiate the allegation.”

Consideration

The officers are all clear in their respective statements that the applicant was advised at the scene of the location of the red light he had driven through. The officers also state that the location was detailed in the fixed penalty notice issued to him.

In their original statements, Constables A and B describe the specific location of the red light. However, the location described in their statements is not that specified in the fixed penalty notice. There is accordingly some dubiety over the precise locus of the offence. In the Commissioner’s view, this discrepancy ought to have been identified during the investigation of this complaint.

In light of the failure to do so the Commissioner does not consider that this complaint was dealt with in a reasonable manner. In deciding whether to recommend further action in respect of this complaint, the Commissioner has considered the fact that the applicant has paid the fixed penalty issued to him. As noted above, however, in his correspondence to the Scottish Court Service in this connection the applicant stated that he was not guilty of the offence. Despite this, his payment was processed and the fixed penalty offer deemed to be accepted. In light of these circumstances, the Commissioner recommends that Lothian and Borders Police conducts further enquiries with the officers concerned and writes to the applicant detailing the precise location of the offence.

Complaint 7: Constable B’s comments

The applicant states the following in his letter of 14 November 2009:

“The female officer seemed to have a problem that I showed her [the applicant’s foreign passport] indicating the superiority of the United Kingdom and practices followed in Scotland.”

Internal Handling

Constable A stated the following in this connection:

"I understand that [the applicant] had stated, when he eventually stopped his vehicle, that in his home country the police use a 'white paddle' to indicate for vehicles to stop. It was explained that that process wasn't used in Scotland and that the use of blue lights and sirens was adopted when police required vehicles to stop. At no time did I say that Scottish police practices were superior to any other."

Constable B stated:

"[The applicant] had stated previously when he was eventually stopped, that in his home country the police use a 'white stick' to indicate for vehicles to stop. He could not understand why we were not stopping him with a white stick, but it was explained that that process wasn't used in Scotland. We informed him police requested persons driving a vehicle to stop by activating the blue lights and sirens. At no time did I say that Scottish police practices were superior to any other."

Sergeant C stated:

"At no point did I hear any comment from any officer present that would have lead [sic] to [the applicant] believing this statement to be correct, and indeed, had I heard one of my officers speaking in such a manner, I would have immediately challenged it."

Constable D supported the account given by Sergeant C in this connection.

In his letter of response dated 20 April 2011, the Deputy Chief Constable stated:

"Thirdly you allege that an officer indicated that police practices adopted in Scotland were superior to those in your home nation.

The officers confirm that a discussion took place over differences in how police officers in your own country and in Scotland stopped vehicles. The officers state that they advised you that in Scotland blue lights and sirens were used to stop vehicles but both deny telling you that police practices in this country were superior to those in any other country.

In the absence of any other information, I do not substantiate the allegation."

Consideration

As there is a wealth of evidence disputing the applicant's account, this complaint is clearly unsubstantiated. In the Commissioner's view, the Deputy Chief Constable's response adequately conveyed the findings of the enquiry.

The Commissioner therefore considers that this complaint was dealt with in a reasonable manner.

Complaint 8: Refusal to acknowledge applicant's title

The applicant stated the following in his letter of 14 November 2009:

"Both officers seemed to have a problem with me having a British Doctor title. They deliberately called me repeatedly Mister after discovering my title when assessing my documentation. I did not respond to this provocation."

Internal Handling

Constable A stated the following in respect of this complaint:

"I referred to [the applicant] as Mr [the applicant's surname] throughout the incident in a polite manner; at no time did he complain regarding this or request that he be addressed, as Dr. This wasn't a refusal to address him correctly, if he had stated that he wanted to be addressed as Dr I would have done so."

Constable B stated:

"I referred to [the applicant] as Mr [the applicant's surname] throughout the incident in a polite manner. I remember noting his details from his passport and I did not notice he was a Dr on same, however at no time did he complain regarding this or request that he be addressed, as Dr. If he had requested that he wanted to be referred to as Dr I would have done so."

Sergeant C stated:

"I cannot comment as I was not present when [the applicant] was initially stopped, however can confirm that upon attending and becoming aware of his title, I used it when speaking to him."

Constable D supported Sergeant C's account in this connection.

In his letter of response dated 20 April 2011, the Deputy Chief Constable stated:

"Next you allege that officers refused to acknowledge your title, thus wrongly addressing you.

The officers who stopped you confirm that they referred to you as 'Mr [applicant's surname]' during their dealings with you. Both deny refusing to address you as 'Dr [applicant's surname]' and indicate that you made no such request of them. Both officers have advised that had you made such a request they would have done so. The sergeant who subsequently spoke to you states that he did use your title when speaking to you. The officers have been made aware of your concerns.

In the absence of any other information, I do not substantiate the allegation."

Consideration

There is no evidence to support the applicant's complaint that Constables A and B deliberately sought to provoke or offend him by not using his formal title. Accordingly, this complaint is unsubstantiated. Again, the Commissioner considers that the Deputy Chief Constable's response adequately conveyed the findings of the investigation.

The Commissioner therefore considers that this complaint was dealt with in a reasonable manner.

Complaint 9: Sergeant C's comments regarding loyalty

The applicant stated the following in his letter of 14 November 2009:

"... [Sergeant C] made clear to me that he was 100% behind his junior officers, backing up the content of their story out of loyalty (even without knowing the full case explained by both sides, which is not logical to me)."

Internal Handling

As Constables A and B claimed to be within the police vehicle during Sergeant C's discussion with the applicant, they were unable to comment on this complaint.

Sergeant C stated the following:

"At no stage did I state to [the applicant] that I would back my colleagues simply out of loyalty. I informed him politely and professionally that the officers had been conducting their duty and had acted appropriately in stopping [the applicant] for driving through a red traffic light. I ensured that upon arrival at the locus, I ascertained a full understanding of the facts by first liaising with Constables [A] and [B] and thereafter listening at length to [the applicant]."

Constable D stated:

"At no stage did Sergeant [C] tell [the applicant] that he would back his colleague simply out of loyalty. He was informed that the officers had conducted their duty and had acted appropriately in stopping [the applicant] for driving through a red traffic light. Sergeant [C] ascertained a full understanding of the facts by first speaking with Constables [A] and [B] and thereafter listening to [the applicant]."

In his letter of response to the applicant dated 20 April 2011, the Deputy Chief Constable stated:

"Next you allege that a sergeant told you that he would back up his colleagues out of loyalty without hearing all the facts.

The sergeant and the officer with him both deny the allegation. Both indicate that having ascertained details of the circumstances from the officers who stopped you and from yourself, you were advised that the officers had acted appropriately in stopping your vehicle.

In the absence of any other information, I do not substantiate the allegation."

Consideration

Given the positions adopted by Sergeant C and Constable D, and the lack of any evidence to support the applicant's complaint, this complaint is unsubstantiated. In the Commissioner's view, the Deputy Chief Constable's response adequately conveyed the findings of the investigation.

The Commissioner therefore considers that this complaint was dealt with in a reasonable manner.

Complaint 10: Sergeant C's comments regarding raising a formal complaint

The applicant stated the following in his letter of 14 November 2009:

"He kindly reassured me that he would personally investigate the case, and that there would be no need for me to file a formal complaint that would anyway not lead anywhere."

Internal Handling

Constable A stated the following in respect of this complaint:

"I am unable to comment as I remained within my police vehicle while Sergeant [C] spoke with [the applicant]. I can state that Sergeant [C], on returning to the station, did submit a complaint form with regards to the incident."

Constable B stated:

"I was within the police vehicle, however I do recall hearing [Sergeant C] saying to [the applicant] at the end of the conversation that he would raise the necessary paperwork when he returned to [police station] and when he returned he completed the forms."

Sergeant C stated the following:

"At no stage did I state to [the applicant] not to make a formal complaint. I advised him that he did not have to accept the traffic ticket that had been issued to him and that like any other person; he was entitled to appear at court if he so wished. I also informed him that I would be submitting an official complaint form (WC1) on his behalf which I did at the earliest opportunity, and that the matter would be dealt with by an independent inspector."

Constable D stated:

"At no stage did Sergeant [C] tell [the applicant] not to make a formal complaint. He was advised that he did not have to accept the traffic ticket that had been issued to him and that like any other person; he was entitled to appear at court if he so wished. Sergeant [C] also informed him that if (sic) he would be submitting an official complaint on his behalf and that the matter would be dealt with by an independent Inspector and he would be contacted at the earliest opportunity to discuss the matter."

In his letter of response dated 20 April 2011, the Deputy Chief Constable stated:

"Next you allege that a sergeant told you not to raise a formal complaint, as it would not lead anywhere."

The sergeant and the officer with him both deny the allegation. Both indicate that you were advised that a complaint would be recorded and allocated to an independent senior officer. The complaint was subsequently recorded by the sergeant and was added to the file containing your letter of complaint, which had been received by the Professional Standards Department."

In the absence of any other information, I do not substantiate the allegation."

Consideration

The complaints file submitted by Lothian and Borders Police to the Commissioner's office did not contain any confirmation that Sergeant C had submitted the applicant's complaint to the Professional Standards Department. However, confirmation that this had been done was subsequently provided to the Commissioner's office following a request during the course of the review.

In light of the accounts provided by Sergeant C and Constable D, and the fact that there is no support for the applicant's position, the Commissioner considers that this complaint is unsubstantiated. In the Commissioner's view, the Deputy Chief Constable adequately conveyed this finding in his letter of response.

The Commissioner therefore considers that this complaint was dealt with in a reasonable manner.

Complaint 11: Sergeant C's refusal to provide details of independent complaint body

The applicant stated the following in his letter of 14 November 2009:

"I asked the senior officer for the right procedure on filing a formal complaint to an independent body. He refused to answer my question, and asked me why I am so interested to pursue this case. I answered that I felt that it is important that police officers are better trained in dealing more appropriately with innocent members of the public and that they receive awareness training on how to deal with vulnerable adults having, for example, Asperger's Syndrome. At this point, he made clear that he wanted to stop the conversation, which was disappointing."

Internal Handling

As Constables A and B claimed to be within the police vehicle during Sergeant C's discussion with the applicant, they were unable to comment on this complaint.

Sergeant C stated the following:

"... I not only gave [the applicant] full information regarding the complaints process, but initiated this process on his behalf."

Constable D advised in his statement:

"As previously mentioned, Sergeant [C] gave [the applicant] full information regarding the complaints process numerous times and stated that he would take a note of the official complaint and begin the formal procedure immediately."

In his letter of response dated 20 April 2011, the Deputy Chief Constable stated:

"Next you allege that a sergeant refused to inform you about the procedure for complaining to an independent body.

Again, both the sergeant and the officer with him deny the allegation and state that the complaints process was explained to you.

In the absence of any other information, I do not substantiate the allegation."

Consideration

Given that both Sergeant C and Constable D claim that the applicant was fully informed of the police complaints process, and the fact that there is no support for the applicant's account, this complaint is unsubstantiated.

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

Complaint 12: The issuing of the caution

The applicant stated the following in his letter of 14 November 2009:

"Just before we departed at around 04:00, I was apparently cautioned by the male junior police officer (suddenly appearing as if he has forgotten something important) in a rush from the side, interrupting his line manager who was speaking to me."

Internal Handling

Constable A stated the following in this connection:

“[The applicant] was issued his fixed penalty ticket, caution and charged with the offence in my presence before Sergeant [C] arrived. The caution that he is talking about was the Section 1 [Road Traffic Offenders Act] 1988 warning; I am aware that this is not a requirement but I issued it as a precaution.”

Constable B stated:

“[The applicant] was issued his fixed penalty ticket, caution and charged with the offence in my presence before Sergeant [C] arrived. The caution that he is talking about was the Section 1 [Road Traffic Offenders Act] 1988 warning; I am aware that this is not a requirement but I issued it as a precaution.”

Sergeant C stated the following:

“I was aware that [the applicant] was cautioned regarding the offence at the conclusion of the incident. This was in relation to being warned under terms of section 1 of the Road Traffic Offenders Act in relation to the offence, which he had committed.”

Constable D stated that he was unable to comment on this complaint as he was not aware as to whether the applicant had been cautioned on his departure.

In his letter of response dated 20 April 2011, the Deputy Chief Constable stated:

“Lastly you allege that an officer only cautioned you when he departed.

The officers concerned have confirmed that you were cautioned and charged prior to the arrival of the sergeant. The ‘caution’ to which you refer was actually a notice or a warning of intended prosecution as required under the terms of the Road Traffic Act 1988 for certain road traffic offences.

In the absence of any other information, I do not substantiate the allegation.”

Consideration

Given the available evidence, the Commissioner considers that the Deputy Chief Constable’s response was reasonable.

Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Conclusions, Recommendations and Learning

The Commissioner notes that some of the accounts submitted by officers in this case are remarkably similar. This is particularly so in respect of the numbered responses provided by Sergeant C and Constable D in their respective statements 31 March and 9 April 2011. It is difficult to avoid the conclusion that both officers coordinated their responses, a practice which undermines the purpose of seeking individual statements in the first place. Such a practice among civilian witnesses would quite rightly lead to concerns about the credibility and reliability of their evidence.

Although the Commissioner has no reason to doubt the veracity of these officers' accounts, clearly the practice of coordinating the content of operational or other statements must be discouraged. The Commissioner therefore recommends that Lothian and Borders Police amends its standard operating procedures on complaints about the police to stipulate that that any statements provided by officers in respect of complaints should be prepared and submitted independently of any other officers who are asked to submit statements. This recommendation is in line with recommendations made by the Commissioner in other reviews, notably PCCS/269/09/PF-BTP and PCCS/00149/10/PF-D&G.

Complaint 1: Police vehicle driven in intimidating manner

In the Commissioner's view, the manner in which this complaint was dealt with was not reasonable. However, for the reasons given the Commissioner makes no recommendation in this connection.

Complaint 2: Behaviour of Constables A and B

In the Commissioner's view, the manner in which this complaint was dealt with was not reasonable. However, for the reasons given the Commissioner makes no recommendation in this connection.

Complaint 4: Failure to treat applicant as vulnerable adult

In the Commissioner's view, the manner in which this complaint was dealt with was not reasonable. The Commissioner makes the same recommendation as that made on page 6 of his report reference PCCS/234/10/PF-L&B.

Complaint 5: Comments made by Constable A

In the Commissioner's view, the manner in which this complaint was dealt with was not reasonable. The Commissioner recommends that Constables A and B are asked to provide further accounts addressing the applicant's specific complaint. A further response should thereafter be issued to the applicant advising him of the outcome of these enquiries.

Complaint 6: Refusal to tell location of red light

In the Commissioner's view, the manner in which this complaint was dealt with was not reasonable. The Commissioner recommends that Lothian and Borders Police conducts further enquiries with the officers concerned and writes to the applicant detailing the precise location at which the offence occurred.

Complaints 3 and 7-12

In the Commissioner's view, the manner in which these complaints were dealt with was reasonable. Accordingly no further action is required in this connection.

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