

Report of a Complaint Handling Review in relation to Central Scotland 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 an incident in which it was alleged that he had assaulted an individual.

The Commissioner considered that the complaints were dealt with in a reasonable manner. No recommendations were made in this connection but a learning point was identified.

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 4 September 2010 the applicant visited his parents together with his son. While the applicant's son was playing outside his bicycle was stolen, allegedly by a local youth, Child X. The bicycle had been returned to the applicant by Child X's parents and they had discussed the cost of damage which had been caused to it.

That evening, Child X attended at the front door of the applicant's parents' house where he was met by the applicant. The two had a disagreement resulting in the applicant telephoning Central Scotland Police to report that Child X had acted in an aggressive and threatening manner.

Sergeant A and Constable B attended the incident but by this point Child X had left. The applicant advised the officers that he did not wish to pursue a criminal complaint against Child X but merely wished him spoken to by the police in front of his parents.

Whilst discussing the matter with the applicant, the officers were advised by radio that Ms C, Child X's mother, had contacted Central Scotland Police alleging that the applicant had assaulted Child X. The officers attended Ms C's house where they were given details of the allegation and told the identity of an apparently independent witness, Ms D. Ms C and Child X insisted that a criminal complaint be pursued against the applicant.

The officers thereafter attended at the home of Ms D. Ms D advised that she had indeed witnessed an altercation between the applicant and Child X but had at no point witnessed physical contact between the two. According to Ms D there had been a lot of shouting and swearing and Child X had been the aggressor. The officers then returned to the home of the applicant's parents; however, the applicant had already left.

Constable B contacted the applicant on his mobile phone and advised him of Child X's allegation. The call was received by the applicant while he was in the course of a lengthy car journey, and Constable B advised that he would phone back the following day to arrange a meeting. Constable B phoned the applicant again on 5 September 2010 and they agreed to meet at a police station on 9 September 2010. Constable B advised that the applicant he would be interviewed under caution but that, as the applicant was attending voluntarily at the police station, he would not be formally detained.

On 7 September 2010 Central Scotland Police received an email from the applicant asking how long the interview was likely to last as he needed to attend an important work-related event a few hours after the arranged meeting time. Sergeant A thereafter telephoned the applicant to discuss the meeting arrangements. The applicant alleges that Sergeant A was aggressive and threatening during this conversation.

On 9 September 2010 the applicant was interviewed under caution by Sergeant A and Constable B, as arranged. During the interview the applicant advised that, due to the way in which Sergeant A had spoken to him on the phone, he had taken advice from several people regarding the situation and had decided that he would be answering "no comment" to all of the questions put to him. The applicant thereafter proceeded to answer each question in this way. At the end of the interview the applicant refused to sign Constable B's notebook. According to the applicant this was because Constable B had failed to note the applicant's comments about Sergeant A's manner during the earlier phone conversation.

In the days following this interview enquiries were made by Central Scotland Police into the alleged offence, but no further evidence was found. On 21 September 2010 Central Scotland Police ended its enquiries into the incident and no further action was taken against the applicant.

The Complaints

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

- (1) that Sergeant A was aggressive and threatened the applicant during a telephone conversation; and
- (2) that Constable B failed to note a pre-prepared statement which the applicant had read out when interviewed under caution.

The Commissioner's Review

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

Complaint 1: Sergeant A was aggressive and threatening

The applicant stated the following in his letter to Central Scotland Police of 12 September 2010:

"[Sergeant A] was rude and aggressive and threatening in his manner. He told me 'I could quite easily come to [the applicant's workplace] and detain you in front of your work colleagues' 'I have enough evidence to lift you whenever I choose and detain you and lock

you up'. I found his manner very alarming and unjustified. I am mystified why he was acting in this way when I only asked a straightforward question."

The applicant stated the following in the statement obtained from him during the investigation of his complaints:

"I said if it was going to take too long could the interview be rearranged for the Friday. I also said if it was only a statement could he not come to the house. That was when he went off on one. He began ranting and he said things like 'Listen, if I wanted to I could come and detain you right now and hold you up to six hours' and 'you work for [applicant's employer], I could easily lift you from your work'. This went on for about five minutes and I couldn't get a word in.

My complaint is about the way [Sergeant A] spoke to me ... when I made contact to enquire how long the interview would take. He was aggressive and bullying and, I believe, overstepped his position and rank."

Internal Handling

Inspector E was appointed to make enquiries into the applicant's complaints. As part of his enquiries, he obtained statements from the applicant, Sergeant A and Constable B.

Sergeant A stated the following in connection with this complaint:

"On answering his phone and having given me the time to introduce myself, [the applicant] responded by stating that [Constable B] had been selective with the truth and that the officer was purposefully pursuing various enquiries in an effort to establish evidence against him. Before I was given a chance to respond [the applicant] clearly stated to me that he was related to a Senior Ranking Police Officer within Central Scotland Police and that this family relative had reviewed the police report and provided information on the reported complaint which was now influencing his decision as to whether or not he would present himself for interview, as had been previously agreed.

I asked [the applicant] to provide more detail in respect of the information he had received from this relative which he declined to offer. He further stated that he had also sought advice from his relative along with other Senior Police Officers in regards to the police investigation and the intended course of police action. [The applicant] was matter of fact in his manner informing me that there was 'no case to answer to' and that neither [Constable B] nor I had any authority to request that he attend voluntarily at [a police station]. While affording [the applicant] the opportunity to speak without interruption I formed the opinion that his comments had been carefully engineered with the intention of intimidating me and ultimately to influence my decision not to pursue any further action in regard to him ...

... I informed [the applicant] that as a person who had been named as being responsible for assaulting a juvenile I had a sufficiency of evidence to detain him under Section 14 of the Criminal Procedure (Scotland) Act 1995. I also informed [the applicant] that where a person showed an active willingness to evade detection then the police were entitled to take all reasonable measures to trace that person, whether that be at their home address or place of work.

During my above response at no time did I raise my voice or use inappropriate language to convey my position, the provided information was factual and conveyed in a manner that left [the applicant] in no doubt that I would pursue all reasonable means to ensure that the reported matter was fully investigated ...

... I confirmed to [the applicant] that I had no desire to detain him in respect of this matter and would prefer that the agreed meeting of Thursday 9th September 2010 still go ahead. [The applicant] agreed that he would attend. The telephone conversation ended with me giving [the applicant] further reassurance that the planned interview would in no way adversely affect his work commitments for that day ...

... I totally refute any allegation made that my conduct throughout this enquiry and the subject contact that I have had with [the applicant] has been nothing other than professional and appropriate given the circumstances of the matter.

At no point did I raise my voice or use inappropriate language to express any point of view nor did I issue any 'threats' in respect of my intended course of action. Any response given to [the applicant] was factually accurate and offered as a rebuttal to his own comments which I had perceived as having been purposefully engineered to not only intimidate but have an adverse influence on the police enquiry in relation to the complaint made against him."

Superintendent F provided the following response to the complaint in his letter of 18 January 2011:

"[Inspector E] has found that your account and that of the officers are largely consistent, but they do come from different perspectives and you have different perceptions on whether the approach adopted by the officers was appropriate. In terms of the approach taken during the telephone conversation you have described, it is clear that the sergeant was firm in his manner of speaking with you. To adopt a firm approach in certain circumstances is not necessarily wrong, but it must be appropriate and I apologise if in your opinion the correct balance was not achieved on this occasion ...

Your concerns were directed in the main at the sergeant. I can confirm that [Inspector E] has spoken to him about those concerns and outlined your views and the distress that was caused. I am assured that the sergeant has taken this on board."

Consideration

Much of the actual content of the discussion which took place between the applicant and Sergeant A is not in dispute. However, there is clear disagreement as to what prompted Sergeant A to mention the possibility of the applicant being formally detained. According to the applicant, Sergeant A did so merely because the applicant had enquired whether his interview might be postponed or take place within his home. On the other hand, Sergeant A claims that his reference to the possibility of detention was prompted by what he perceived to be an attempt by the applicant to intimidate him and influence the decision whether to take further action against him.

In order to uphold the applicant's complaint, Central Scotland Police would require to have been satisfied that there was sufficient evidence, based on the balance of probabilities, that Sergeant A had acted in an aggressive and threatening manner. As there is no evidence to support the applicant's allegation in this connection, it is not possible to substantiate this complaint. Notwithstanding this, Central Scotland Police has apologised to the applicant in respect of his perception of Sergeant A's behaviour and has also communicated to Sergeant A the nature of the applicant's concerns.

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

Complaint 2: Failure to note pre-prepared statement

The applicant stated the following in his letter of 12 September 2010:

"I attended [a police station] on the time and date required. I refused to make any comment because of [Sergeant A's] behaviour. I did however make a short statement and mentioned about [Sergeant A's] behaviour. This was not recorded when it was read back to me and subsequently as it was not a true reflection of what was said I refused to sign."

The applicant stated the following in his statement:

"[Constable B] took the lead and cautioned me but I don't recall what it was about. He asked me if I wanted to say anything and I gave a prepared statement stating that I was a law abiding citizen who had done nothing wrong and had been quite prepared to give my account until I had been spoken to by [Sergeant A] in the way he had. I said I had taken legal advice at work and had been advised to make no comment which I did to all questions.

[Constable B] did not write this down but had obviously noted 'no comment'. I was then asked to sign this notebook but I refused as he had not recorded what I had said about [Sergeant A]. [Sergeant A] signed the book. I saw [Sergeant A] nod to [Constable B] and I took this to mean not to write down the bit concerning him. I protested that this had not been written down but [Sergeant A] said that I had said that they had tried to get me here on false pretences and that I said he was corrupt for not being up front with me. I had no idea what he was talking about ...

My second complaint is that [Constable B] wrote down 'no comment' but did not write down my pre-prepared statement. He was excellent otherwise and I think [Sergeant A] influenced him in doing this."

Internal Handling

Sergeant A stated the following in respect of this complaint:

"Having cautioned [the applicant] at common law and asked the opening question to the interview [the applicant] delivered his pre-prepared response which [Constable B] noted verbatim. Although it was [Constable B]'s intention to progress the interview through various other questions [the applicant] made his position clear that he wished to make no further comment. To evidence this [Constable B] did ask further questions all of which were answered with 'no comment' ...

... [The applicant] further commented that he had received a phone call from a police officer who had threatened him with detention and that if he failed to present himself at [the police station] then the police would have then attended at either his home address or place of work.

At this point I stopped [the applicant] and informed him I was the police officer who had phoned him. I advised [the applicant] that the information that I had provided in respect of detention rights, the authority to complete all positive lines of enquiry and pursue all reasonable means to ensure that the reported matter was fully investigated was in no way given as a 'threat' but was factually accurate and given in response to the ill founded inaccurate information that he had presented.

It was evident from [the applicant]'s response that he was surprised at being challenged on the points that had been discussed during the earlier telephone conversation. He made to justify those comments on the basis of the information that he had been given by [persons

who had apparently advised him]. *I informed [the applicant] that I wasn't prepared to discuss this matter any further but I was prepared to note a counter complaint of a Breach of the Peace in respect of [Child X's] conduct that evening ...*

... At no point during my contact with [the applicant] did he convey that he wished to lodge a complaint in respect of my conduct toward him."

Constable B stated the following in respect of this complaint:

"I did the speaking [during the interview] and [Sergeant A] said nothing at this point. I cautioned [the applicant] at common law regarding an assault. He replied that he hadn't done anything wrong. I then questioned [the applicant] and he gave me a pre-prepared statement. He said that he had taken legal advice and had been advised to make no comment, that he was a law abiding citizen and he objected to the way [Sergeant A] had spoken to him ...

... [The applicant] gave a prepared statement which I recorded in my notebook. The text of it was that he was a law abiding citizen and that he would have assisted but on the advice of his solicitor he was to make no comment. At no time did he make reference to [Sergeant A] during this statement which was delivered quite calmly...

... I completed the interview but [the applicant] refused to sign it. [Sergeant A] signed my notebook. When I had asked the last question I realised that the interview wasn't going anywhere and so I looked at [Sergeant A] who nodded in agreement ...

Inspector E noted the following in his report:

"[Constable B] has, allegedly, noted [the applicant's] pre-prepared statement verbatim although there is no mention of [Sergeant A] as requested by [the applicant]. The reporting officer has no issue with this as both officers were more than happy to discuss this with him and made no effort to hide it. Clearly, whether his name was mentioned or not is a total irrelevance in policing terms and it would be purely subjective as to whether an officer recorded this piece of information or not as it bore no relevance to the enquiry. So, on this issue, the reporting officer has no concerns, negating [the applicant's] complaint on this score."

Superintendent F stated the following in his letter of response:

"You have also challenged the accuracy of the statement noted by [Constable B]. The investigation has found that the officers freely admit that you raised concerns about the way the sergeant had spoken with you previously. It was not recorded in your statement as their recollection was that it was not part of or relevant to the issue being investigated. The purpose of the interview was not to elicit any concerns you had on other matters. Whilst it may be argued that the officers should note what you say regardless of relevance, I think a reasonable balance must be struck. Having considered the circumstances of this case I am satisfied that there was nothing malicious or prejudicial in any omission. There are more appropriate ways to express your concerns, and you have done that by raising this complaint. The officers might have explained their approach better and I apologise if you consider this was a shortcoming."

Consideration

The applicant's complaint is that Constable B failed to note a pre-prepared statement which he read out at the commencement of his interview under caution.

As noted above, both Sergeant A and Constable B state that the applicant's pre-prepared statement was noted by Constable B. Support for this is provided by Constable B's notebook which contains the following entry made during the interview:

"I [the applicant] wish to make a statement first. I'm a law abiding citizen. I'm very surprised I'm even here or been asked to attend. I was more than happy to come in and help you with your [enquiries]. However, in light of recent events and things I've been told, I've sought the advice of a solicitor and they've advised me at this stage to make no further comment."

The complaints file does not contain a copy of the pre-prepared statement and its precise contents are therefore unclear from the evidence. It is also not possible to establish the content from the statements provided by the applicant and the officers concerned. On the one hand, the applicant states that the pre-prepared statement contained details of his concerns regarding his earlier telephone conversation with Sergeant A. On the other hand, Constable B states that the pre-prepared statement did not express any concerns about Sergeant A. Although Sergeant A accepts that during the interview the applicant expressed concerns about the earlier telephone call, it is not entirely clear from Sergeant A's account whether these concerns were expressed in the pre-prepared statement or at some other point in the interview.

It is therefore not possible to establish from the evidence whether Constable D noted the pre-prepared statement in its entirety.

However, the issue raised by this complaint is whether Constable B ought to have noted down the applicant's concerns about Sergeant A's behaviour during the telephone call (regardless of whether or not these concerns were expressed within the pre-prepared statement). In the Commissioner's view, there was no requirement upon Constable B to do so. Sergeant A and Constable B were engaged in an enquiry into an alleged assault by the applicant. In such circumstances, they were required to record accurately any evidence accumulated during the interview. Accordingly, while the officers were required to note the applicant's answers, they were not obliged to record the applicant's reasons for deciding to offer "no comment" to the questions put to him. It might have been different if some adverse inference could be drawn from the applicant's silence during interview; however, that is not the position in Scotland.

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

Conclusions, Recommendations and Learning

Complaint 1: Sergeant A was aggressive and threatening

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

Complaint 2: Failure to note a complaint

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

Learning Point

The applicant in this case was clearly expressing dissatisfaction about the manner in which he was dealt with by Sergeant A during the telephone call. In such circumstances, steps should ideally have been taken following the interview to advise the applicant of his entitlement to pursue a formal complaint against Sergeant A.

Central Scotland Police's standard operating procedures do not refer to the circumstances in which a complaint should be noted. In March 2011, the Commissioner issued to all policing bodies statutory guidance on the handling of complaints about the police. As part of the steps being taken to ensure that the guidance is adhered to, the Commissioner has requested that all policing bodies update their standard operating procedures to reflect key aspects of the guidance. Once such changes have been made, the Commissioner will be carrying out an examination of the amended procedures to ensure that they conform to the guidance.

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