

# 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 complaint stems from his detention and subsequent arrest for a breach of the peace.

The Commissioner found that the complaint was not dealt with in a reasonable manner. Two recommendations were made in this connection.

## The Commissioner's role

Section 35 of the Police Public Order and Criminal Justice (Scotland) Act ("the Act") gives the Commissioner the power to examine the manner in which a policing body has dealt with a "relevant" complaint, as defined in the Act.

The Commissioner is independent of the police service and performs his functions in a fair and impartial manner. Before considering a complaint, the Commissioner's office obtains all papers held by the policing body against which the complaint has been made. These papers are considered alongside information provided by the applicant. The Commissioner then assesses whether the policing body's handling of the complaint was reasonable in all the circumstances. The Commissioner will look at the entire handling process, from the initial investigation by the policing body to the final response issued to the applicant. Among the factors which the Commissioner takes into account are the following:

- whether the policing body's response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented;
- whether the policing body's response to the complaint is adequately reasoned; and
- whether the policing body has communicated with the applicant in a reasonable manner.

## Background

On 26 August 2010 the applicant was arrested by officers of Lothian and Borders Police in relation to a disturbance reported by staff at a department store. According to witnesses, the applicant had entered the store with a loudspeaker and film crew and had then made comments through the loudspeaker to the effect "cosmetic products make you fat and ugly". The applicant was asked to leave the shop by members of staff. He continued down the street and behaved in a similar manner outside another shop.

Staff at the department store called the police, and at 3 pm the applicant was detained under section 14 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). He was taken to a police station where he was questioned and charged with a breach of the peace. He was released from custody at approximately 9.50 pm.

The Procurator Fiscal subsequently decided to take no proceedings against the applicant.

## The Complaint

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 a single complaint, namely that the applicant was illegally detained in a cell for over 6 hours without charge, for a breach of the peace which he did not commit.

## The Commissioner's Review

The applicant described his complaint as follows to Lothian and Borders Police:

*“Whilst filming with my film-crew and giving comedic messages over the megaphone (loud-hailer), [department store] staff called the Police and incorrectly stated that I had caused alarm with my actions. The two officers were initially polite but then discussed with each other in front of me whether they should arrest me (whilst holding my wrist – total indignity – I showed no suspicion of leaving the area) and then despite members of the public (who recognised me) the Police handcuffed me in front of the [fast food chain’s] clientele who were jeering and insulting me. I was then driven to [a police station] where I was detained in a cell for 6 hours without charge and then released after 7 hours total (after Breach of the Peace charge) and given AN EXTREMELY OVER THE TOP Bail condition that I was not allowed in [location] for a whole month.” [emphasis in original]*

### *Internal Handling*

On 24 November 2010 Sergeant A sent the applicant the following response to his complaint:

*“At 1414 hours on 26 August 2010, the Force received a telephone call from [department store] making a complaint that a male with a loud hailer had entered the store at the cosmetics Dept and had been insulting and abusive to staff and members of the public who were clearly alarmed at the male’s behaviour. Around 1445 hours the same day, officers located you at [location near to department store]. Complaints of your behaviour outside [a different store] was [sic] also received by officers on foot patrol from members of the public.*

*At 1500 hours, after confirming you were the person responsible for the disturbance at [department store], you were lawfully detained by officers and taken to [police station] for process and to allow further inquiry to be made into the incident. Being handcuffed at the time of arrest or detention is normal procedure and assists in transporting detained and arrested persons to a police station. On your arrival at [police station] you were processed on the Force’s Custody Recording System. After taking you to [police station], the officers returned to [department store and the other store] and noted statements from staff, confirming the alarm you had caused.*

*Around 1805 hours you were seen by [a solicitor] and then around 1815 hours were interviewed by the enquiry officers. The Custody record shows you were formally arrested at 1840 hours (3 hours 40 minutes after being detained) and once address confirmation and other necessary procedures were completed, you were released at 2152 hours, on undertaking to appear at [a] Sheriff Court on 29 September 2010. The terms of your bail at the time of your release were appropriate to the offence you had been charged with. On the evidence available to the officers provided by the witnesses, there was sufficient evidence to charge you with the Breach of the Peace libeled [sic].*

*I am informed that the Procurator Fiscal later took the decision not to proceed the case to court. Any such decision is a matter for the Procurator Fiscal service alone, the Police in Scotland have no locus in any decisions made in that regard. I also appreciate that during your interview with the officers you clearly stated that it was not your intention to cause alarm or insult to any individual, nevertheless, it was individual members of the public’s perception to the contrary that led to the events that followed.*

*I hope I have been able to clarify why the officers took the action they did and that this has been of assistance to you. If you wish to discuss this further or raise other matters please contact me, or the Force Professional Standards Dept ...”*

The applicant responded to this email stating that he wished to “escalate” his complaint as he was unhappy at the manner in which it had been dealt with. He complained that his arrest had been

unlawful as he had committed no offence. On 30 November 2010 Sergeant A sent the following further email to the applicant:

*“I appreciate that your intention and perception of what occurred will differ greatly from that perceived by other members of the public. The fact remains that there was a sufficiency of evidence, from the statements provided, for the officers to prefer a charge of Breach of the Peace. I understand that there will never be agreement on that issue, nor can Lothian and Borders Police interfere with due process once a report has been submitted to the Procurator Fiscal.*

*However, as the Procurator Fiscal took no action to proceed the case further, there is naturally no criminal record attached regarding the incident. I understand your frustration at being taken to a police station and the time that those processes can take, however, your detention and arrest were lawful and appropriate, given the complaints received from the public.”*

### Consideration

In relation to the first element of the applicant’s complaint - that the officers concerned had no grounds to take any action against him - the Commissioner is satisfied that there was sufficient evidence to justify both his detention and subsequent arrest for breach of the peace. According to the police report sent to the Procurator Fiscal, statements were taken from various members of the public who claimed to have been alarmed by the applicant’s conduct. Reasonable apprehension of alarm on the part of members of the public is a key element of the definition of breach of the peace in Scotland. In the Commissioner’s view, Sergeant A adequately explained the basis of the officers’ decision in his responses to the complaint.

As part of the present review, the applicant’s custody record was examined in respect of the length of time which the applicant spent in police custody. The period during which the applicant was detained (approximately three hours and forty minutes) was well within the six hour period specified in section 14 of the 1995 Act at that time. The applicant was thereafter held for a further three hour period as an arrested person. Accordingly, the total period of time in which the applicant was in custody as a detained and arrested person was only slightly longer the period in which the police were entitled purely to detain him. In the Commissioner’s view, when viewed in this context, the applicant’s overall time in custody was not excessive.

In respect of the applicant’s concern about the officers’ use of handcuffs, Sergeant A merely states that this is “normal procedure and assists in transporting detained and arrested persons to a police station.” No attempt was made to obtain the accounts of the officers concerned as to why they considered the use of handcuffs to be justified.

The Scottish Police Service Students’ Training Manual (2007) contains the following passage (at page 73):

*“No Police Force adopts the policy whereby every prisoner will be handcuffed. The application of handcuffs is the use of physical force, therefore it must be justified.”*

Lothian and Borders Police’s standard operating procedure on the use of handcuffs (“the SOP”) provides the following:

*“14.1 Officers must only use officially-issued and approved police handcuffs and must have received the appropriate training and authorisation in their application and use. Handcuffs should only be used in the following circumstances:*

- *When, in the opinion of the detaining/arresting/escorting officers, the subject is, or could become, violent or escape;*

- *To prevent the escape of a prisoner who has been detained/arrested for a serious crime;*
- *When escorting prisoners from one jurisdiction to another; or*
- *When officers are required to escort prisoners in connection with any court business.*

14.2 *In assessing the risks associated with a prisoner/detainee, consideration should be given to:*

- *The person's demeanour;*
- *Any SCRO or other marker indicating violent tendencies, previous escapes etc; and*
- *An officer's previous knowledge of the individual in question.*

14.3 *There may be occasions where officers may consider it unnecessary to handcuff an individual. Such situations can include elderly or infirm prisoners, children, or persons with wrist/lower arm injuries. Careful consideration should also be given to handcuffing any person with an obvious mental health disorder. Where the decision is taken not to handcuff a prisoner, the escorting officer(s) will physically hold the prisoner by applying an approved control and restraint technique."*

The above provisions demonstrate that Lothian and Borders Police's approach to this element of the complaint was inadequate. Sergeant E's response gives the impression that the handcuffing of suspects is standard practice and may be used simply where officers require to transport the person concerned to a police station. However, in terms of the above provisions handcuffing should be undertaken only where there are particular circumstances to justify this. In the Commissioner's view, any blanket policy whereby all detained or arrested persons are handcuffed would be unwarranted.

In the absence of the accounts of the officers concerned, there is no evidence within the complaints file to justify the use of handcuffs in the present case.

The Commissioner is also concerned that despite the applicant's clear desire to "escalate" his complaint, nowhere in either of the responses issued by Sergeant A is the applicant advised of his entitlement to take his case to the Commissioner's office. This is contrary to the standard practice now adopted by police forces whereby all written responses to non-criminal complaints contain a standard passage highlighting this option.

## Conclusions, Recommendations and Learning

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner's recommendations are detailed below.

- (1) That Lothian and Borders Police seeks accounts from the officers who detained the applicant as to why they considered it necessary to handcuff him. A further response to this element of the complaint should thereafter be issued to the applicant. If it is found that in terms of the SOP the officers had no justification for handcuffing the applicant, Lothian and Borders Police should apologise to the applicant in this connection.

- (2) That the Deputy Chief Constable provides the Commissioner with a written assurance that all written responses to non-criminal complaints contain a standard paragraph advising the complainer of the option of taking their case to the Commissioner's office.

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