

Report of a Complaint Handling Review in relation to Strathclyde Police

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

Summary and Key Findings

The applicant requested that the Commissioner review the manner in which Strathclyde Police dealt with two complaints.

The Commissioner found that both complaints were dealt with in a reasonable manner. However, the Commissioner made a single recommendation in respect of one of the complaints.

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

At the time of the incident which gave rise to his complaints, the applicant was the joint owner of a cocker spaniel dog.

On 24 June 2010, the applicant was at home with his partner, Ms A. In the early evening they were visited by Ms A's relative, Mr B, and his children, Child C, Child D and Child E. An incident occurred whereby the applicant's dog bit Child E. Mr B and Ms A took Child E to hospital where he received treatment for injuries to his face, before being discharged with a course of medication.

The following day, Mr B reported the incident to Strathclyde Police. Constables F and G attended at Mr B's home and noted his statement. On 30 June 2010 the case was allocated to Constable H for investigation. On 4 July 2010, Constables H and K attended at Mr B's home. A further statement was taken from Mr B and a statement also noted from Child C.

At around this time the applicant called Strathclyde Police to enquire as to what action was being taken in relation to the dog attack. Constable J thereafter telephoned Ms A to make arrangements to attend the applicant's home.

At around 7.20 pm Constables H and J arrived at the applicant's home where they noted a statement from Ms A in a downstairs room. The applicant was using a laptop computer in an upstairs room when Constables H and K returned with Ms A. Following an apparent exchange with the applicant, Constable H formed the view that the laptop was being used to record their conversation.

A short time later, Constable H detained the applicant under section 14 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) and conveyed him to a local police office.

At 7.45 pm the applicant was processed into custody by Sergeant K. He was placed in a cell for a period of time before being interviewed under caution. At around 9.30 pm the applicant was arrested before being released.

The Complaints

Based on the contents of the application form, and the information obtained from Strathclyde Police, the Commissioner has identified the following complaints:

- (1) that a police officer was rude and confrontational; and
- (2) that a police officer made an unprofessional comment regarding the applicant’s dog.

The Commissioner’s Review

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

Complaint 1: Rude and confrontational behaviour

The applicant stated the following in his statement:

“[The officers] came back upstairs ... I was working on my laptop I put it to the side, [Constable H’s] attitude had changed completely she stood up and said ‘I’m not comfortable with this laptop’. I told her I was looking at houses and she said ‘I could speak to you here or I could take you to [local police station]’. She appeared to be in a real panic and said again ‘I’m not comfortable with this laptop.’ Her attitude was unbelievable, it was almost like she had a chip on her shoulder ... She then said I was being detained under Section 14 and read me my rights, I picked up my phone and she told me to turn off the phone, again she had an attitude and was rude.

We arrived at [local police station] and she opened the door and said ‘Out’. She said ‘this way’ she was very abrupt ...

My complaint about the police is purely against [Constable H] who I feel was over the top and over reacted, her attitude was unprofessional and unbecoming of a Police Officer ...”

Internal Handling

Inspector L was appointed to make enquiries into the applicant’s complaints and obtained statements from the applicant, Ms A, Mr B and Constables H and K.

In his report, Inspector L summarised the accounts of the various witnesses. He noted the following in respect of Constable H and J’s statements.

“Statement of Constable [H] states that throughout the incident and during her dealings with the complainers she acted in a professional manner and was polite and courteous at all times.

Statement of Constable [J] states that throughout the incident and during his dealings with the complainer he acted in a professional manner, he was polite and courteous at all times

and he further states that he was present throughout when Constable [H] was speaking to the complainers and states that she was also professional, polite and courteous at all times.”

On 22 July 2010, Chief Inspector M provided the applicant with the following response to the complaint:

“With regards to the complaint of Constable [H] displaying a bad attitude being unfriendly, rude and confrontational, the statements from the officers indicate that they were professional at all times and CCTV evidence within the charge bar area at [local] police office shows all officers and yourself [the applicant] interacting in a professional and at times friendly manner. I’m sorry if you feel that the service provided was less than satisfactory however I can find no evidence to substantiate your complaint.”

Consideration

The evidence in relation to this complaint is equally weighted on both sides. On the one hand, there is the evidence of the applicant which is supported by Ms A. On the other, there is the evidence of Constable H who denies the allegation and is supported in this by Constable J. During the course of this review, the CCTV footage from the charge bar was examined but was found not to indicate any animosity between the applicant and Constable H at that stage. It should be noted, however, that the applicant makes no specific complaint about Constable H arising from his time at the charge bar.

In order to uphold this complaint, Strathclyde Police would require to have been satisfied that there was sufficient evidence, based on the balance of probabilities, that Constable H had been uncivil towards the applicant. As there is no basis for preferring one account over the other, Strathclyde Police was correct in finding this complaint to be unsubstantiated. The Commissioner recognises that the applicant and Ms A strongly dispute the accounts given by Constables H and J; however, in the absence of further evidence to support their claims it is not possible to substantiate this complaint.

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

However, it is apparent from Strathclyde Police’s file that the findings went beyond those communicated to the applicant. The Complaint about the Police (CAP) form completed in respect of this complaint contains the following note:

“Advice given to both officers [Constable H and Sergeant K] in relation to the use of powers granted in terms of Sec 14 Criminal Procedure (S) Act 1995 which relates to offences punishable by imprisonment.”

The complaints file indicated that Strathclyde Police had created a separate case reference (different from the applicant’s case reference) for recording the advice that was given to Constable H and Sergeant K in this connection. However, it was not clear from the complaints file why this had been done. Following enquiries by the Commissioner’s office, on 7 July 2011 Strathclyde Police provided the following explanation as to why the advice had been given and why it had been recorded under a separate case reference:

“During the course of reviewing the complaint enquiry, it became apparent that the offence for which [the applicant] was detained could not be punishable by imprisonment. Detention under Section 14 should only be used for crimes or offences where such an outcome is possible. The Procurator Fiscal and Court will often determine admissibility of any evidence

obtained as a result of such detention which could be open to challenge. Nonetheless, local managers found fault in the decision of [Constable H] in detaining [the applicant] and Sergeant [K] who accepted the detention.

As a consequence of the finding of fault, both officers received corrective advice which was delivered verbally. The advice was given for an issue which was not one of the allegations made by the [applicant] and as such a separate reference number was raised to ensure the finding was properly recorded.”

Strathclyde Police has never informed the applicant of its finding that his detention under section 14 was unlawful. In the Commissioner’s view, the decision not to do so was wholly inappropriate. The Commissioner recommends that Strathclyde Police apologises to the applicant for unlawfully detaining him under section 14, and for failing to advise him of this finding when it came to light during the examination of the complaints.

Complaint 2: Unprofessional comment

According to the applicant, Constable H advised Mr B that if the applicant and his former wife were decent people, they would have the dog “put down”.

Internal Handling

Constable H stated the following in connection with this complaint:

“I gave an entirely factual update to the family and at no time expressed any personal opinions.”

Mr B stated the following:

“At no time did [Constable H] make any comment, regarding [the applicant] or any actions that he should take and at no time did he comment that if he was decent he would have the dog put down ...”

Inspector L noted the following in his report:

“Statement of [Mr B] states that he is the father of the two year old boy who was bitten by [the applicant]’s dog and he states that Constable [H] attended at his home where he reported the incident. He found her very professional, impartial and helpful. He further states that at no time did she make any comment that if [the applicant] or [Ms A] were decent that they would have the dog put down ...”

Chief Inspector M provided the following response to the complaint:

“With regards to Constable [H] being unprofessional by stating to [Mr B] that if you had any decency you would have the dog put down. Constable [H] states that she never used that phrase to Mr [B] or to any other member of the family. Mr [B] has also been interviewed and confirms that the officer never said those words to him or to anyone else in the family and I can find no evidence to substantiate your complaint in his regard.”

Consideration

As can be seen from the terms of Constable H’s account, Chief Inspector M’s comment that the officer had denied using the phrase alleged by the applicant is, strictly speaking, inaccurate. Nevertheless, following appropriate enquiries no evidence has been found to support the

applicant's complaint. Accordingly, the Commissioner considers that Strathclyde Police reached the correct decision in respect of this complaint.

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

One final matter concerns the applicant's concern – communicated only to the Commissioner's office – that the letter of response issued by Chief Inspector M was not received by the applicant until October 2010, despite being dated 22 July 2010. Strathclyde Police's complaints file has been examined in this connection and contains nothing which would suggest there was any delay on the part of Strathclyde Police in issuing Chief Inspector M's letter.

Conclusions, Recommendations and Learning

Complaint 1: Rude and confrontational behaviour

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was reasonable. However, the Commissioner recommends that Strathclyde Police apologises to the applicant for unlawfully detaining him under section 14, and for failing to advise him of this finding when it came to light during the examination of the complaints.

Complaint 2: Unprofessional comment

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

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