

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 the search of his home by police officers and his subsequent interview under caution.

Of the six complaints reviewed, the Commissioner found that two were dealt with reasonably while the remainder were not. Three 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

At around 8.45 am on 2 July 2010 Detective Constable A and Detective Constable B attended at the applicant's home in possession of a search warrant. The applicant was advised that the warrant had been obtained in relation to a fraud enquiry and that the officers had the power to search his home and seize paperwork relevant to their investigation. The applicant's home was then searched by Detective Constable A, Detective Constable B, Constable C and Constable F along with Ms D and Ms E of the Department of Work and Pensions. A number of papers were seized from the applicant's home and he was detained on suspicion of fraud. The applicant was then conveyed to a police station for interview.

The applicant was interviewed under caution by Detective Constables A and B and Ms D at around 1 pm the same day. Also present was Ms G who was acting as an appropriate adult. Following the interview the applicant was arrested and charged with fraud. The applicant was held in custody pending a court appearance on 5 July 2010.

At around 6 pm that evening the applicant complained of chest pains and was escorted to a local hospital by Constable K. At around 9.30 pm Constable K, while within the hospital, presented the applicant with police bail undertaking forms which were signed by the applicant, thereby effecting his release from police custody. The release was conditional upon the applicant attending court on 2 August 2010 and also upon his signing in at a named police station at 10 am every Monday and Friday.

The applicant was arrested on 13 July 2010 regarding an unrelated matter. A Police National Computer check showed that he was in breach of the bail condition that he sign in at the named

police station. The applicant was arrested for this and held pending an appearance in court the following day.

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 police officers seized papers they were not entitled to take under the warrant;
- (2) that a police officer opened and read a letter which was obviously unconnected to the search;
- (3) that a police officer was uncivil to the applicant when he asked for a drink of water prior to interview;
- (4) that police officers acted in an oppressive manner during interview;
- (5) that police officers refused to allow the applicant use of the toilet during interview; and
- (6) that a police officer gave the applicant a police bail undertaking form to sign whilst the applicant was under the influence of morphine.

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. Each complaint is set out in turn and is followed by details of Lothian and Borders Police's handling of it and the Commissioner's views on this.

Complaint 1: Seizure of files beyond the terms of the warrant

On 17 July 2010, the applicant wrote to Lothian and Borders Police detailing his complaints. In respect of complaint 1, the applicant stated the following:

"Numerous papers involving my previous complaint were removed and those of communication from the code of conduct and that of the Police Complaints Commissioner have been removed during the search."

Internal Handling

Inspector H was appointed to investigate the applicant's complaints. Detective Constable A and Detective Constable B submitted operational statements on 20 August 2010.

In his operational statement Detective Constable A said the following:

"During the search, all correspondence was checked as to whether it was evidential to the enquiry. No paperwork relating to the Police Complaints Commissioner was removed."

Detective Constable B stated the following:

"During the search, all correspondence was checked to assess whether it was relevant to the ongoing criminal investigation. No paperwork relating to the Police Complaints Commissioner was seized."

In September 2010, Inspector H submitted a report of his findings to the Deputy Chief Constable. According to the report, the evidence to refute this complaint was as follows:

“The statements of [Detective Constable A and Detective Constable B] who both state that as part of the search all correspondence was checked as to whether it was evidential to the enquiry. Both confirm no mail from the PCCS was removed.

... The allegation that officers removed personal correspondence, other than that associated with the fraud enquiry, from the complainer’s house is unsubstantiated.”

The Deputy Chief Constable issued the applicant with a letter of response dated 22 October 2010. In relation to this complaint, the Deputy Chief Constable stated the following:

“You alleged that officers removed personal correspondence, which included mail from the PCCS. As previously stated the officers were in possession of a warrant and all correspondence was checked as to whether it was evidential to the enquiry. No paper work was removed relating to the PCCS and I find your allegation unsubstantiated.”

Consideration

As part of the Commissioner’s review, a schedule relating to the search was obtained from Lothian and Borders Police. The schedule details each article retained by Lothian and borders Police as a result of search.

The schedule details that five sets of “miscellaneous paperwork” were found in various parts of the applicant’s home. Another two entries detail that paperwork was found within a black folder and in the applicant’s bathroom. Each of these entries confirms that Detective Constables A and B found the items in question. Detective Constables A and B state that all paperwork removed was checked and that none related to correspondence which the applicant had with the Commissioner’s office.

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

Complaint 2: Officers read mail unconnected with the search

The applicant stated the following in his letter of 17 July 2010:

“Mail came through my door which was clearly marked Lothian and Borders Police and was in relation to my complaints from a couple of weeks ago ... The officer read this did not give me the chance and then placed it on the shelf along with other mail in my name.”

Internal Handling

Inspector H detailed the following evidence which refuted the complaint:

“The statements of [Detective Constable A and Detective Constable B] who both state that as part of the search all correspondence was checked as to whether it was evidential to the enquiry.

... The allegation that an officer looked through the complainer’s personal correspondence is unsubstantiated.”

The Deputy Chief Constable issued the following response:

“You alleged that, during a search of your home address on 2 July 2010, an officer looked through your personal correspondence then placed it on a shelf. As you are aware the officers were in possession of a warrant, granted by a Sheriff, to enter and search your premises for evidence in connection with an alleged fraud. I am satisfied that the officers acted appropriately and find your allegation unsubstantiated.”

Consideration

As noted above, Detective Constable A and Detective Constable B stated that all the applicant’s correspondence was checked to establish if it was relevant to the enquiry. Given the nature of the enquiry and the terms of the warrant, the officers involved would clearly require to read any paperwork in order to determine its relevance.

In the Commissioner’s view, it was therefore entirely reasonable that all correspondence within the applicant’s home was checked for relevance. In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 3: Incivility

The applicant stated the following in his letter of 17 July 2010:

“Prior to interview I requested a cup of water. [Detective Constable A] went into a strop saying you’re at it. But he eventually got me a drink after two minutes.”

Internal Handling

Inspector H described this complaint as follows in his report:

“It is alleged that [Detective Constable A] prior to interviewing the complainer, refused to provide him with water.”

Detective Constables A and B both state the following in respect of this complaint:

“During the interview the accused was supplied with water when required and allowed to use the toilet.”

The Deputy Chief Constable provided the following response:

“You alleged that, prior to being interviewed at [a police station] an officer refused to provide you with water. Both officers state that you were supplied with water as and when required, therefore I am unable to substantiate your allegation.”

Consideration

As noted above, Lothian and Borders Police considered the applicant’s complaint to be that Detective Constable A refused to provide the applicant with water. In the Commissioner’s view, however, given the applicant’s use of the word “strop” and his claim that the officer said “you’re at it”, the complaint concerns Detective Constable A’s attitude following the applicant’s request for a cup of water. The applicant’s actual complaint has therefore not been addressed.

In his communication with the Commissioner’s office, the applicant stated his belief that the alleged incivility would have been captured on the video recording of the interview. However, the recording supplied to the Commissioner’s office shows no such incident. The recording captures the interview itself and not any events occurring immediately prior to this. As the applicant has

stated that the incident occurred before the interview commenced, the Commissioner would not have expected the recording to contain footage of this.

As Lothian and Borders Police failed to address this complaint, the Commissioner does not consider that it was dealt with in a reasonable manner. However, given the very minor nature of the alleged incivility the Commissioner does not consider it appropriate to recommend further action in this connection.

Complaint 4: Alleged oppressive questioning

The applicant stated the following in his letter of 17 July 2010:

"I was asked questions to which I responded no reply no comment. I felt under pressure as [Detective Constable A] would not accept this and asked me why. I explained on advice from my solicitor he still wouldn't accept this and went on to say they get paid to say that but it doesn't help me. I felt at this stage I was under pressure to make a comment or statement."

Internal Handling

Detective Constable A stated the following in his statement:

"This interview was conducted using the PRICE model and at various points during the interview I asked him numerous questions when he was attempting to control the interview by constantly interrupting my line of questioning. I also clarified various points in relation to questions asked."

Detective Constable B stated the following:

"The requests for water were at points of the interview when the accused was clearly attempting to evade the line of questioning being put to him. This interview was conducted using the PRICE model. At various points during the interview [Detective Constable A] asked the accused numerous questions. The accused attempted to control the interview by constantly interrupting [Detective Constable A]'s line of questioning."

Inspector H concluded that, because Detective Constable A and Detective Constable B both denied the allegation, the complaint was unsubstantiated. The Deputy Chief Constable stated the following in his response:

"Your next allegation concerned an officer, during interview, interrupting you and asking you questions, and not accepting your responses and you felt under pressure to make a statement. I am informed that, at various points during the interview, you were asked numerous questions because you were attempting to control the interview by constantly interrupting the line of questioning. The officers describe the style of interview as being under the PRICE model which provides a framework to test a suspect's answers. As such I believe the officer used this technique to better understand your response while maintaining control. I therefore find this allegation unsubstantiated."

Consideration

As part of the review, the Commissioner's office obtained a video recording of the interview. The following is a transcript of one particular section:

Detective Constable A: *Have you ever claimed anybody else's benefits in the past?*

Applicant: *No comment*

Detective Constable A: *No comment? Right.... we've had quite an open, I would say, certainly an open interview so far and I'm asking you a question and you're no commenting. Can I ask you're no commenting? Now I'm not trying to trip you up here ... I'm just conscious that you know, we've been quite open about everything and I'm asking you a question and you're no commenting and I just want to know why.*

Applicant: *Because my solicitor advised me to go no comment to ... everything you've asked me about so far about myself is fair. If you're asking me about anything that's in relation to criminal activity I've been advised to go no comment.*

Detective Constable A: *So you're saying on...*

Applicant: *... on advice from my solicitor ...*

Detective Constable A: *... to say no comment to any potentially incriminating questions? You realise that that, you know, the purpose of you getting interviewed ... this is something we harp on about quite a bit but, the purpose of you being interviewed ... is to allow you to have your say. Now, enquiry has been done by [Ms D], on behalf of the Department of Work and Pensions, has done a lot of enquiry into this already. So you wouldn't be here if, you know, there wasn't evidence. This is potentially going to be played to a jury or a Sheriff and then if you're saying no comment to certain questions do you not think that incriminates you, in some way? What do you think about it ...? You've been given advice by your solicitor, that's fine but I need to ask you these questions anyway. Have you ever made a claim in respect of anyone else?*

It is an established principle of criminal procedure that an accused person has the right not to incriminate himself and to remain silent during police questioning. It is also routine within criminal proceedings for judges to direct juries that no adverse inference must be drawn from an accused's decision not to answer questions put to him by the police. In light of this, the Commissioner considers that it was misleading for Detective Constable A to suggest to the applicant that he could potentially incriminate himself by answering "no comment".

The Commissioner notes that Detective Constables A and B, Inspector H and the Deputy Chief Constable make no reference to the applicant's concern that Detective Constable A would not "accept" his reply of no comment. Instead, all focussed upon the applicant's conduct during interview. Consequently, no attempt was made to address this complaint. Indeed, it is not clear from his report whether Inspector H viewed the recording of the interview during his investigation.

For these reasons, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Lothian and Borders Police apologises to the applicant for the comment made by Detective Constable A in this connection. The Commissioner also recommends that steps are taken to remind Detective Constable A of a suspect's right not to incriminate himself and the implications of this for the manner of police questioning.

Complaint 5: Use of the toilet

The applicant stated the following in his letter of 17 July 2010:

"I asked for the toilet and was not allowed until I promised that I was coming back in to the interview."

Internal Handling

Inspector H concluded that, as the applicant was permitted to use the toilet, this complaint was unsubstantiated. The Deputy Chief Constable stated the following in his response:

"You also alleged that, whilst within [a police station], officers refused to allow you to use the toilet until you promised to return to be interviewed. The officers state that you were permitted to use the toilet and, in the absence of any support for your version of events, I find the allegation unsubstantiated."

Consideration

In the Commissioner's view, the applicant's complaint is not that he was denied use of the toilet, but rather that his being allowed to do so was made conditional upon his promising to return to the interview. Lothian and Borders Police has therefore failed to address the actual complaint made by the applicant.

The video recording of the interview shows that the applicant asked for the interview to be suspended so that he could go to the toilet. Detective Constable A thereafter confirmed to the applicant that he would take him to his cell for this purpose. Detective Constable A then stated the following:

"I've only got about another two or three questions to ask you, ok, and it's in your interests to come back in, alright? Are you going to back into your cell and not come back out? Is that your plan? Are you going to give us the assurance that you're coming back out?"

The applicant is heard to reply that he will come back to the interview, at which point he and Detective Constable A are seen leaving the room.

It is clear from the footage that Detective Constable A did not state or otherwise imply that the applicant would be denied use of the toilet unless he promised to return to the interview room. Rather, it appears that Detective Constable A was merely trying to ascertain if the applicant would return to the interview room having used the toilet.

As Lothian and Borders Police failed to address this complaint, the Commissioner does not consider that it was dealt with in a reasonable manner. However, in light of the information provided above, the Commissioner does not consider it necessary to recommend further action in this connection.

Complaint 6: The bail undertaking form

The applicant stated the following in his letter of 17 July 2010:

"I was advised during a morphine drowsiness that I was being released at 10 o'clock that evening a copper arrived with paperwork for me to sign for a police undertaking it was not explained properly and all I knew I was signing for was my release. I am currently being held in custody for breach of that undertaking."

Internal Handling

Constable K stated the following in respect of this complaint:

About 2130hrs the same day I attended [the hospital] and served undertaking papers on [the applicant].

At this time he was awake in a bed within [a ward], I explained the facts of the undertaking form to [the applicant] and he confirmed that he understood the conditions.

At this time he has also signed 3 bail forms with no problems and in the opinion of the reporting officer [the applicant] was wide awake and lucid throughout this procedure.

A copy of the bail undertaking forms has then been left with the now accused.”

In his report, Inspector H states that the only evidence in support of this complaint is the account given by the applicant himself. In terms of the evidence refuting the complaint, Inspector H stated the following:

“The statements of [Constable K] who states that, at 2130 hours on 2 July 2010, he attended at [a hospital] to serve the bail undertaking forms on the complainer. The complainer was awake in bed within [a ward]. [Constable K] explained the facts of the undertaking form to the complainer and he confirmed that he understood the conditions. The complainer signed the bail forms and in the opinion of the officer he was wide awake and lucid throughout the procedure

... The allegation that an officer forced the complainer to sign a bail undertaking form while he was under the influence of morphine is unsubstantiated.”

The Deputy Chief Constable provided the following response:

“The officer concerned states that he explained the facts of the undertaking form and that you indicated that you understood the conditions. In the absence of any corroboration for your allegation I am unable to find in your favour.”

Consideration

The applicant's position is that he was given 10 mg of morphine by the ambulance technicians who conveyed him to hospital. His complaint is that he was then asked to sign a form releasing him from custody while subject to a “morphine drowsiness.” According to the applicant, this meant that he did not understand the full detail of the form he was asked to sign.

As noted above, Constable K was asked for his opinion on whether the applicant understood the form he was asked to sign. In the Commissioner's view, however, in order properly to address this complaint it was essential to establish whether the medication described was in fact administered to the applicant and, if so, what effect this would have had on his ability to understand what he had signed. An informed view could then have been taken on whether the applicant ought to have been asked to sign the release form.

In the Commissioner's view, as Inspector H made no attempt to establish these facts, the Deputy Chief Constable's finding that there was no evidence to substantiate the applicant's complaint was premature.

In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Lothian and Borders Police seeks to establish whether the medication described by the applicant had, in fact, been administered to him and, if so, whether this could have impaired his ability to understand the terms of what he was asked to sign. A further response should thereafter be provided to the applicant reflecting the findings made.

Conclusions, Recommendations and Learning

Complaint 1 and 2

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

Complaints 3 and 5

In the Commissioner's view, these complaints were not dealt with in a reasonable manner. However, for the reasons given no further action is required in this connection.

Complaint 4: Officers questioned the applicant in an oppressive manner

In this Commissioner's view, the manner in which this complaint was dealt with by Lothian and Borders Police was not reasonable. The Commissioner recommends that Lothian and Borders Police apologises to the applicant for the comment made by Detective Constable A in this connection. The Commissioner also recommends that steps are taken to remind Detective Constable A of a suspect's right not to incriminate himself and the implications of this for police questioning.

Complaint 6: The bail undertaking form

In this Commissioner's view, the manner in which this complaint was dealt with by Lothian and Borders Police was not reasonable. The Commissioner recommends that Lothian and Borders Police seeks to establish whether the medication described by the applicant had, in fact, been administered to him and, if so, whether this could have impaired his ability to understand the terms of what he was asked to sign. A further response should thereafter be provided to the applicant reflecting the findings made.

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