

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's complaints arise from the actions of police officers following her allegation that she had been assaulted.

Of the three complaints considered, the Commissioner considered that one was handled reasonably whilst two were not. Two recommendations were made.

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 8 August 2010 the applicant became involved in a fight with Ms A outside the applicant's home. Also present at the time of the incident was Ms A's boyfriend (Mr B), Mr C and Mr D. Following the altercation Mr C helped the applicant into her flat, while Ms A and Mr B sat in their car outside the applicant's home.

The applicant and Ms A then separately contacted the police, as a result of which Constables E, F, G and H attended the scene. An ambulance also attended at the applicant's request. Constables E and F spoke to the applicant and Mr C, while Constables G and H spoke to Ms A and Mr B.

Statements were obtained from the applicant, Ms A, Mr B and Mr C. The applicant alleged that Ms A had started the fight and that Mr B had assaulted her. According to Constable F, Mr C's account corroborated the applicant's allegation against Mr B. Ms A alleged that the fight had been started by the applicant and that Mr B had attempted to pull the applicant off her. Mr D claimed not to have seen anything of the incident.

It appears that Constables E and G contacted Sergeant J and it was thereafter agreed that the applicant, Ms A and Mr B would be issued with fixed penalties for an alleged breach of the peace. The applicant was then taken to hospital as a precaution. Whilst at the hospital the applicant was examined by Doctor K who found her to have three bruises to her head and a red mark to the front of her neck. The applicant also complained of soreness and was kept in hospital overnight for observation before being released the following day.

On 19 August 2010 the applicant contacted Strathclyde Police and the following day a statement was obtained from her in which she repeated her allegation of assault against Mr B. Several

attempts were made by Constable F to speak to Mr B in this connection and he was eventually traced at Ms A's address on 16 October 2010. Mr B was thereafter arrested and reported to the Procurator Fiscal.

The Complaints

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

- (1) that Strathclyde Police did not investigate the applicant's assault allegation;
- (2) that Constable E had an attitude and made inappropriate comments; and
- (3) that Ms A and Mr B were allowed within close proximity to the applicant.

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: Alleged failure to investigate assault

The applicant describes this complaint as follows in her statement:

"The police gave me the fixed penalty and left. I told them I wasn't paying it. I told them I felt disgusted by the way I had been treated and was it okay for a man to assault a woman."

Internal Handling

Inspector L conducted enquiries into this complaint. In addition to that of the applicant, statements were obtained from Constables E, F, G, H, Mr C, Mr D and Doctor K.

On 6 December 2010 Inspector L submitted a report of his findings. The following comments were made in respect of this complaint:

"There is evidence from the statements taken by the reporting officer that there was something more to this incident than a stand up fight in the street. It is apparent that the complainer and the other female involved had been fighting at the start of the incident. Had this continued, without intervention, there would have been definite grounds for only a charge of breach of the peace which could have been dealt with by way of Fixed Penalty Notice.

However, the intervention and assault on the complainer by the male involved meant that this had moved on from a minor assault by one female on another.

Further to this there were injuries to the complainer, albeit that these were not immediately apparent. However, the complainer wished to make a complaint of assault by the male on her and under the Scottish Crime Recording Standard this should have been noted by the officers as such.

An investigation was instigated as a result of the complaint and the male has now been charged with a serious assault ...”

On 20 December 2010 Chief Inspector M wrote to the applicant, stating:

“It is clear, that in the circumstances, issuing you with a Fixed Penalty notice for Breach of the Peace was justified and in line with Strathclyde Police procedures and Scots Law. As such, I am satisfied, that as regards your alleged involvement with another female on the evening in question, that my officers followed procedures and guidelines relevant to those circumstances. As such, I consider that their actions in this regard, were justified.

However, as to your assertion that the police officers involved should have noted and investigated your allegation of assault, I agree with your position and I fully uphold your claim here. I am aware that a subsequent inquiry by other police officers from my Command Area has resulted in a report being submitted to the Procurator Fiscal in connection with the alleged assault occasioned upon you.

... I fully understand and would be the first to acknowledge that your involvement with my officers on this occasion may have left you with a less than favourable image of Strathclyde Police. If this is still the case, then it is a matter of regret to me and I would be the first to offer you a full and unreserved apology for any upset that you may have been caused.

Inspector [L’s] findings clearly indicate that the police officers involved made their decision to deal with the incident by issuing Conditional Offer notices. The police officers involved contend that your injuries were not evident to them at the material time and they state that they were presented with conflicting evidence that caused them to reach the decision that they did.

Irrespective of any evidence from other parties, they should have still noted and dealt with your complaint of assault. Please be assured that I will personally provide the police officers with corrective advice in this regard to ensure that there is no repetition of this kind on their part.”

Consideration

The Commissioner notes that the applicant’s allegation of assault was subsequently investigated and Mr B was ultimately charged with serious assault. The applicant has been issued with an unreserved apology and Constables E and F have been provided with corrective advice to ensure that a similar situation does not occur in future. In light of these steps having been taken, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Notwithstanding this, it appears from the following excerpt of Constable E’s statement that it was in fact Sergeant J who had advised him to deal with the matter by issuing fixed penalty notices to those involved:

“I contacted Sergeant [J], updating her with the full details, injuries and persons involved. I was then advised that the issue of a fixed penalty ticket for a breach of the peace would be suitable.”

If, as he suggests, Constable E was acting on the direction of Sergeant J, then clearly Sergeant J should also have been counselled in this connection. The Commissioner therefore recommends that steps are taken to establish Sergeant J’s position on the matter and, assuming she did give such direction, that she is given the same advice as that provided to Constables E and F.

Complaint 2: Attitude of Constable E

The applicant describes this complaint as follows:

"[Constable E] did not help at all ...

... When [Constable E] spoke to me he had a very bad attitude and told me to save paperwork he would issue a fixed penalty notice. When he came in he said 'nice home'. He was quite dry when he said it."

Internal Handling

Constable E stated the following in respect of this complaint:

"...I am aware that [the applicant] has lodged a complaint against myself regarding alleged comments that she says I stated to her. None of these comments I can recall and I refute any allegation of incivility towards her. I maintain that I was polite, courteous and well mannered throughout this incident."

Constable F stated the following:

"... At no point did I hear [Constable E] say he would issued [sic] a fixed penalty notice to save paperwork. I also do not recall [Constable E] say "NICE HOME" when entering the house and cannot confirm in what context this was said.

... I understand that [the applicant] has made a complaint regarding comments made by [Constable E]. I do not recall these comments and feel that he was professional and polite."

This complaint was not addressed in Inspector L's report or Chief Inspector M's response.

Consideration

As no response was issued to this complaint, the Commissioner does not consider that it was dealt with in a reasonable manner.

As noted above, Constable E does not recall having made the alleged comments and states that he was polite, courteous and well mannered throughout his attendance at the applicant's home. Constable F does not recall any comments of the kind alleged by the applicant and states that Constable E was professional and polite.

The Commissioner notes, however, that no statements were obtained from the two paramedics who were present and also that Mr C's statement does not address this complaint. This appears to be a consequence of the complaint not having been considered by Inspector L during his investigation.

In light of this, the Commissioner recommends that Strathclyde Police investigates this complaint by obtaining the accounts of the paramedics who were in attendance and also asking Mr C to address the applicant's allegation. A further response should thereafter be sent to the applicant.

Complaint 3: Proximity to Ms A and Mr B

The applicant describes this complaint as follows:

“The police brought the guy and his girlfriend round when I was getting into the ambulance. I thought this was just provoking the issue and they should have kept them away.”

Internal Handling

Constable E stated the following in respect of this complaint:

“... Upon standing down from this incident I observed the two other accused standing with [Constable G] and [Constable H], further away at the other end of the cul-de-sac and at no time was [the applicant] in any danger, due to the police presence there.”

Constable F stated the following:

“... When I left the locus I observed [Constable G] and [Constable H] and the male and female involved within the car park as they were also being issued fixed penalty notices.

The ambulance was parked further away from them also in the car park and at no point would [the applicant] have been in danger due to the police presence.”

This complaint was not addressed in Inspector L’s report or Chief Inspector M’s response

Consideration

There appears to be no doubt that Ms A and Mr B were outside the applicant’s home being spoken to by Constables G and H. Due to the applicant’s injury the paramedics required her to attend the hospital as a precaution and it was therefore necessary to take her outside to the waiting ambulance. It is therefore likely that the applicant would have been in proximity to Ms A and Mr B at some point during this period.

The Commissioner acknowledges the applicant’s concern about this issue. However, having considered the accounts of Constables E and F (who state that, due to the police presence at the scene, the applicant was not in danger at any point), the Commissioner does not believe there to have been any irregularity in procedure.

As no response was issued to this complaint, the Commissioner does not consider that it was dealt with in a reasonable manner. However, the Commissioner considers that the above information is sufficient to provide the applicant with a reasonable response. Accordingly, no recommendation is made in this connection.

Conclusions, Recommendations and Learning

Complaint 1: Alleged failure to investigate assault

In the Commissioner’s view, the manner in which this complaint was dealt with by Strathclyde Police was reasonable. The Commissioner recommends that steps are taken to establish Sergeant J’s position on the matter and, assuming she did give direction to Constables E and F, that she is given the same advice as that provided to those officers.

Complaint 2: Attitude of Constable E

In the Commissioner’s view, the manner in which this complaint was dealt with by Strathclyde Police was not reasonable. The Commissioner recommends that Strathclyde Police investigates this complaint by obtaining the accounts of the paramedics who were in attendance and also asking Mr C to address the applicant’s allegation. A further response should thereafter be sent to the applicant.

Complaint 3: Proximity to Ms A and Mr B

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was not reasonable. However, for the reasons given no further action is required in this connection.

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