

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 his being stopped by the police for allegedly driving through a red traffic light.

Of the four complaints considered, the Commissioner found that two were not dealt with in a reasonable manner. The Commissioner made two recommendations 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 12 October 2010 the applicant's car was stopped by Constables A and B who were in a marked police car. The officers advised the applicant that they had witnessed him drive through a red light. The applicant protested that the light had been at amber when he entered the junction and therefore that he had committed no offence. The officers advised that they did not have any tickets to offer him a fixed penalty and that instead the matter would be referred to the Procurator Fiscal.

On 14 October 2010 the applicant wrote to Strathclyde Police to complain that he did not believe he should have been reported to the Procurator Fiscal. He also claimed that one of the officers had been "over zealous" and had spoken to him "harshly", which he had found "intimidating". According to the applicant, he personally handed this letter of complaint in to a police station.

On 25 October 2010, the applicant was sent a letter from the Procurator Fiscal offering him a fixed penalty for the alleged offence. On 26 October 2010 the applicant sent a further letter to Strathclyde Police advising that he was yet to receive a response to his letter of 14 October 2010. The applicant also advised in this letter that, as he was due to be on holiday between 31 October and 1 December 2010, he had "no other option" but to pay the fixed penalty.

On 28 October 2010 Sergeant C met with the applicant to discuss his complaints. Following this meeting the applicant wrote to Strathclyde Police advising that he still wished to pursue his complaints about the police.

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 should not have referred the applicant to the Procurator Fiscal for allegedly driving through a red light;
- (2) that a police officer was aggressive and intimidating;
- (3) that Strathclyde Police did not provide the Procurator Fiscal with the applicant's correct name or address; and
- (4) that Strathclyde Police did not respond to the applicant's letter dated 14 October 2010.

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: Referral of the incident to the Procurator Fiscal

Internal Handling

Inspector D was appointed as the enquiry officer for the complaints and on 7 December 2010 he met with the applicant to discuss these. On 13 January 2011 Inspector D prepared a report on the applicant's complaints in which he stated the following:

"The complainer maintained that while he had no specific complaint against any particular officer he was concerned that he had received no response in respect of his initial letter and the matter for which he had been reported was 'borderline' and it would have been appropriate for discretion to have been applied ...

... the reporting officer contacted the Procurator Fiscal ... in an effort to clarify the options available to the complainer. He was advised by the Procurator Fiscal that 'the acceptance of this offer is final and I cannot enter into any discussion or review the facts of the case or any other matter'.

The complainer who has since been advised of this has also sought further legal advice in respect of this area of concern and now fully accepts that as he himself chose to accept the Conditional Offer, the matter is not open to further consideration and is satisfied by the enquiries, explanation and service provided by the reporting officer."

On 3 March 2011 Chief Inspector E provided the applicant with the following response:

"As you will appreciate, the issue of the Conditional Offer of Fixed Penalty was an option which the Procurator Fiscal ... chose to present you with as opposed to prosecution and that having sought legal advice, you accepted the offer, which by virtue of doing so, prevents the matter being considered any further by the Procurator Fiscal. I understand that in addition to the advice provided by Inspector [D], having sought further advice you

now fully appreciate this position and are satisfied with the level on enquiry, explanations and assistance provided by Inspector [D].”

Consideration

The applicant acknowledged in his correspondence with Strathclyde Police that, having paid the fixed penalty, nothing could now be done about the matter. The appropriate means for the applicant to challenge the decision to report him to the Procurator Fiscal was to reject the offer of the fixed penalty and thereafter defend himself in any proceedings that might have been raised against him in this connection. By paying the fixed penalty, this opportunity was lost.

In the Commissioner’s view, Strathclyde Police clearly and correctly explained its position with regard to this complaint. In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 2: A police officer was aggressive and intimidating

The applicant stated the following in his letter to Strathclyde Police of 14 October 2010:

“I feel humiliated at the way I was treated like a common criminal; the young Constable was in my opinion over-zealous in his duty. The harshly spoken instructions to remove the keys from my car and get into the back seat felt like being arrested or detained. I could have been spoken to without the necessity for this.”

He stated the following in his letter of 26 October 2010:

“I was intimidated by the charging Constable unnecessarily so. I think the Police can carry out their duty without treating the public in this manner.”

Internal Handling

As noted above, the applicant met with Sergeant C on 28 October 2010 to discuss his complaints. The file supplied to the Commissioner’s office does not contain a record of what was discussed at this meeting and Sergeant C did not obtain a statement from the applicant. The following details are taken from Inspector D’s report of 13 January 2010:

“In response to the letter dated 26 October 2010, Sergeant [C] attended at the complainer’s home address to discuss his concerns. Sergeant [C] explained the police procedures and processes with which the complainer expressed his satisfaction however remained unhappy with regard to a lack of response to his initial letter of 14 October 2010.”

Notwithstanding this account of the meeting between the applicant and Sergeant C, on 28 October 2010 the applicant wrote a further letter to Strathclyde Police in which he stated the following:

“Right from the initial charging which was done by an aggressive and zealous young Policeman; there is a way to address a member of the public and I should have expected a calmer more respectful manner and I do make an official complaint about this.”

The Complaint about the Police (CAP) form records that the applicant believed the police to have been over “over-zealous”; however, this is mentioned in the context of complaint 1 (i.e. the decision to report the applicant to the Procurator Fiscal).

As noted above, Inspector D met with the applicant on 7 December 2010 to discuss his complaints. Inspector D’s report contains the following account of the meeting:

“The complainer maintained that while he had no specific complaint against any particular officer he was concerned that he had received no response in respect of his initial letter and the matter for which he had been reported was ‘borderline’ and it would have been appropriate for discretion to have been applied.”

Chief Inspector E issued the following response:

“I also understand that whilst you do not consider that the officers who dealt with you were in any way aggressive in their approach and you have no specific complaint against them, your main concern is that you still consider the matter as ‘borderline’ in terms of whether you should or should not have been the subject of a report to the [Procurator Fiscal].”

On 15 March 2011, the applicant wrote to Chief Inspector E criticising the terms of his response. In respect of this complaint, he stated the following:

“You fail to address the following:

1. The aggressive and over zealous handling of the young Constable who charged me. Inspector [D] asked me if I wanted to make an official complaint or would I leave it to him to address the situation with the Constable involved. As it was a waste of time for me with no witness to make an official complaint I left it to the Inspector.”

Consideration

As noted above, according to Inspector D’s report the applicant had no complaint about any particular officer. Given that the applicant had clearly complained about a specific officer in his correspondence, Inspector D’s comments indicate that the applicant effectively withdrew this complaint. However, aside from Inspector D’s report, there is no evidence that the applicant did so at the meeting.

Strathclyde Police’s standard operating procedures regarding complaints about the police state the following:

“If the complainer wishes to withdraw the complaint following interview, ensure that he/she signs your notebook to that effect indicating clearly that the complaint is withdrawn entirely, that he/she does not wish to give a statement and that he/she does not wish any further enquiries made.”

There is no evidence within the complaints file that this was done in the present case.

It is, however, clear from the applicant’s letter to Strathclyde Police of 15 March 2011 that he told Inspector D he did not wish to pursue a formal complaint about the officer concerned. The applicant repeated this in his application to the Commissioner’s office but stated that, despite not wishing to pursue a formal complaint, he nevertheless expected a letter of apology in this connection.

In the Commissioner’s view, the applicant’s apparent confusion in this connection could have been avoided had Inspector D followed the procedures quoted above. Specifically, the applicant would have been informed that his decision not to pursue the complaint meant that it was completely withdrawn and that no further enquiries would be made. The applicant would also have signed Inspector D’s notebook to reflect his position with regard to the complaint.

For the reasons given, the Commissioner does not consider that Strathclyde Police dealt with this complaint in a reasonable manner. However, as it is clear from his letter of 15 March 2011 that the

applicant did not wish to pursue this complaint, the Commissioner does not consider it necessary to recommend further action in this connection.

Complaint 3: Incorrect name and address provided to Procurator Fiscal

In his letter to Strathclyde Police of 26 October 2010 the applicant highlighted various errors in the fixed penalty notice relating to his name and address. He considered this to be “very careless of the charging Constable.”

Internal Handling

As noted above, Sergeant C met with the applicant on 28 October 2010 to discuss his complaints. Following the meeting the applicant wrote to Strathclyde Police stating the following:

“I understand from [Sergeant C] that the charging officers did take down my particulars correctly but whoever submitted the charge to the Procurator Fiscals Office made the mistakes. A full explanation of how this could happen in required ...

... I also seriously complain of the gross negligence of the Police providing the Procurator Fiscals Office with a wrong name and address, all that was correct was the post code allowing the letter to get to me.”

With regard to this complaint, the CAP form states the following under the heading “quality of service” heading:

“That incorrect details were noted by officers.”

As noted above, Inspector D noted the following in his report regarding his meeting with the applicant on 7 December 2010:

“The complainer maintained that while he had no specific complaint against any particular officer he was concerned that he had received no response in respect of his initial letter and the matter for which he had been reported was ‘borderline’ and it would have been appropriate for discretion to have been applied.”

Neither Inspector D’s report nor Chief Inspector E’s letter of response makes any reference to this complaint.

In his letter to Strathclyde Police of 15 March 2011 the applicant stated that Chief Inspector E had failed to address the complaint.

Consideration

As with complaint 2, it is clear from the applicant’s correspondence in October 2010 that he wished to pursue this complaint. If, as Inspector D indicates in his report, the applicant effectively withdrew the complaint during their meeting on 7 December 2010, the applicant ought to have been asked to sign Inspector D’s notebook to this effect. This was not done.

The Commissioner also does not consider that this complaint was correctly categorised. In terms of his correspondence, the applicant’s complaint is clearly directed towards Constable A and/or Constable B, which indicates that it is not a quality of service complaint.

In light of these factors, and because no response was issued, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. Unlike complaint 2, there is no indication in the applicant’s subsequent correspondence of any intention not to pursue this

complaint. The Commissioner therefore recommends that Strathclyde Police considers the complaint and issues the applicant with a response. The Commissioner also recommends that Strathclyde Police assesses whether this complaint was correctly categorised in terms of its own procedures, and takes steps to remedy any error made in the initial categorisation.

Complaint 4: No response to letter dated 14 October 2010

The applicant complains that he received no response to his letter of 14 October 2010 which he claims he handed in personally to a local police station. According to the applicant, had he received a reply to this letter he would have been better able to consider his position and “would certainly not have paid the fine ...”

Internal Handling

Inspector D stated the following in his report:

“The complainer maintained that while he had no specific complaint against any particular officer he was concerned that he had received no response in respect of his initial letter ...

[I] apologised to the complainer regarding any lack of response to his initial letter, receipt of which could not be established.

Chief Inspector E stated the following in his letter of response.

“I understand and fully appreciate your concerns that an initial letter you submitted to the [local] Traffic Department ... failed to meet with any response.

As you are aware Inspector [D] has been unable to establish receipt of your initial letter. However, in order that receipt of any future correspondence is established, recorded and dealt with timeously, I ask that all such correspondence be addressed to myself, irrespective of the content.”

Consideration

In his correspondence with the Commissioner’s office, the applicant advised that, during separate meetings with Sergeant C and Inspector D, both officers advised him that Strathclyde Police had received his letter of 14 October 2010 but that no response had been issued. The applicant is therefore concerned at the inconsistency between what he claims to have been told, and the content of Chief Inspector E’s response.

In terms of the file supplied to the Commissioner, the only record of the applicant’s meetings with Sergeant C and Inspector D is the latter’s report. It is not possible to establish from Inspector D’s report what the applicant was told at either meeting.

Strathclyde Police’s complaints file includes a copy of the applicant’s letter of 14 October 2010; however, there is no record on the letter as to the date on which it was received or the person who received it. Indeed, it is likely that it is the copy which the applicant enclosed with his letter to Strathclyde Police of 26 October 2010.

While it is regrettable that the applicant did not receive a response to the letter, the Commissioner is doubtful that any response would have assisted him in deciding whether to pay the fixed penalty. The fact is that two police officers claim to have witnessed the applicant driving through a red light, and reported him to the Procurator Fiscal in this connection. In the Commissioner’s view, any response issued to his letter of 14 October 2010 would not have altered this fact. As noted above,

if the applicant had wished to challenge their accounts it was open to him to decline the offer of the fixed penalty and thereafter defend himself in any subsequent proceedings.

Chief Inspector E acknowledged the applicant's concerns and suggested an approach whereby any future correspondence would be dealt with by him personally. In the Commissioner's view, this amounted to a reasonable response to the complaint.

Conclusions, Recommendations and Learning

Complaint 1: Referral of the incident to the Procurator Fiscal

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.

Complaint 2: A police officer was aggressive and intimidating

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was not reasonable. However, no recommendation is made in this connection.

Complaint 3: Incorrect name and address provided to Procurator Fiscal

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was not reasonable. The Commissioner therefore recommends that Strathclyde Police considers the complaint and issues the applicant with a response. The Commissioner also recommends that Strathclyde Police assesses whether this complaint was correctly categorised in terms of its own procedures, and takes steps to remedy any error made in the initial categorisation.

Complaint 4: No response to letter dated 14 October 2010

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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