

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 her arrest following a disturbance outside her parents' flat.

Of the two complaints considered, the Commissioner found that neither was dealt with in a reasonable manner. For the reasons given in the report, no 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

The applicant lives in a flat located directly above that occupied by her parents, Mrs A and Mr B.

According to the applicant's statement, at around 2.50 am on 28 December 2009, the applicant received a telephone call from Mrs A asking her to call the police. Around this time Mrs A herself made a 999 call requesting police assistance. The applicant heard a "rammy" in the common close but at that stage did not know who was involved. She picked up a baseball bat and made her way downstairs to her parents' flat, telephoning 999 as she did so. When she reached her parents' front door the applicant saw her cousin, Ms C, attempting to force entry to her parents' home. According to the applicant, Ms C was shouting obscenities and making threats against the applicant, Mrs A and Mr B.

A short time later, Constables D, E and F arrived in the communal area outside Mrs A and Mr B's flat where they found the applicant and Ms C.

The events which followed are largely the subject of dispute; however, some facts are established. Upon hearing that the police had arrived, Mrs A opened her front door. Around this time the applicant was arrested for an alleged breach of the peace and for allegedly carrying an offensive weapon contrary to section 47 of the Criminal Law (Consolidation) (Scotland) Act 1995. At some stage, Ms C managed to gain entry to Mrs A and Mr B's flat in an attempt to attack Mr B. She was thereafter arrested by Constables E and F.

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 the applicant should not have been arrested; and
- (2) that Constable D was uncivil 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.

Complaint 1: The applicant's arrest

The applicant was interviewed on 13 January 2010 in connection with her complaints. She stated the following in respect of this complaint:

"I picked up the baseball bat as I made my way down the stairs to my mums and I also phoned 999 on my mobile as I went down. My phone shows me phoning 999 at 0259.

When I got to my mum's door, I saw my cousin [Ms C] was at the door pushing my mum and dad's door open. She was shouting obscenities and that she was going to kill my mum, dad and me. She told me to get back because she was going to kill me but I said 'no'. I then put the baseball bat down in the corner of the landing across from the front door to try to reason with her but she was having none of it. I tried to hold my mum and dad's door shut as she was trying to push it open.

I was still on 999 talking to the operator as I was trying to keep the door closed and then the police arrived. When I [sic] arrived I stepped back and so did she. There were three officers, two males and a female.

When the police came up, I was standing right back and only when they shouted 'It's the police' did my mum and dad open the door. One of the officers went into mum and dad's house and so did [Ms C], the officer tried to grab her but she escaped from him and she managed to get into the living room and assaulted my dad.

I was out on the landing myself with [Constable D] and my mum, as the other officer who had gone into the house had shouted for assistance to deal with [Ms C] and the female officer then went in. [Constable D] also went into the house, I think, but he may not have, I don't know where he came from but he then just flew at me on the landing and he growled at me and said 'you're under arrest' and put a handcuff on my right wrist.

... I would ... like to say that I did not commit a Breach of the Peace, I was only trying to hold the door shut at my mum and dad's house to stop [Ms C] getting in. She was causing a disturbance. With regards to the baseball bat, I was not brandishing it, I had put it into the corner of the landing prior to the police coming and [Constable D] only saw it when he fell over it ...

... My illness does not allow me to swing a baseball bat. I only took it down in the hope that it would deter any attackers just by seeing it."

The applicant provided a further statement on 28 January 2010 in which she described her complaint as follows:

“... I was arrested for nothing as I didn't have the baseball bat when the Officers came.

... I wasn't shouting and swearing.”

Internal Handling

Inspector H was appointed to make enquiries into the applicant's complaints.

On 12 January 2010, Constable D provided an operational statement in which he stated the following:

“On arrival at [the applicant's address] I could hear a disturbance coming from within the close. I heard two females shouting, being aggressive and screaming ...

*... On attending at [the floor on which Mrs A and Mr B's flat is located], I observed two females whom initially appeared to be trying to force their way into [Mrs A's flat]. One female, who was in possession of a baseball bat, shouted 'F*** off, ah'll deal with this myself'...*

... It became apparent that the two females were in dispute as [the applicant] was pointing the baseball bat in the direction of [Ms C] ...

... I cautioned and charged [the applicant] noting her reply, 'I had the bat but I wasn't going to use it' and 'no I didn't shout and swear'.”

Constable F stated the following:

*“Upon arrival at [the floor on which Mrs A and Mr B's flat is located] I observed two females outside the door of [Mrs A's flat]. [The applicant] I noted, was in possession of a baseball bat and shouted phrases similar to, 'F*** off' and 'I'll f***ing deal with this'. I observed [Constable D] instruct [the applicant] to drop the baseball bat several times which she ignored and continued to hold the baseball bat by her side. At this time I observed [Constable D] approach her and grasp her wrist, causing her to drop the bat before applying handcuffs to her wrist ...*

... in my opinion the accused was acting in a disorderly manner and shouting and swearing upon my arrival. This would also have been clearly heard by the other residents of the common close. I also observed her to be brandishing a baseball bat in her right hand on my arrival.”

Constable E stated the following:

“Upon arrival at the locus I observed [Constable D] at the main entry door to the close attempting to gain entry. I thereafter attended at the close entrance and could hear an ongoing disturbance with female voices shouting ...

Upon gaining entry myself and [Constable D] attending [sic] up to the first floor landing where the disturbance was coming from, along with the police witness [Constable F] who followed shortly behind.

I observed [the applicant] in possession of a baseball bat in her right hand and heard her and [Ms C] shouting at each other. [Constable D] then stated to [the applicant] to drop the baseball bat to which she did, lowering it to her waist height and to him thereafter taking hold of her hand to handcuff her. At this point [the applicant] dropped the baseball bat after a short struggle and was then placed onto her knees by myself and [Constable D] and the second handcuff was thereafter applied.”

Mrs A stated the following in her statement of 13 January 2010:

“When I saw [Ms C] running in to [Mrs A’s flat] I went outside and onto the landing where [the applicant] was standing. I then heard a baseball bat clatter to the ground ...

At no time, when I saw her, was [the applicant] swinging or brandishing a baseball bat, she also didn’t cause a Breach of the Peace, it was [Ms C]. [The applicant] cannot swing a baseball bat due to her illnesses.

The officer is completely lying in his report he has made, [the applicant] did nothing.”

Mrs A provided an additional statement on 2 February 2010 in which she stated:

“Inspector [H] asked me about when I first saw the baseball bat. I first saw it when [Constable D] came into my house holding it. When I heard it clatter to the ground I couldn’t say how it got there. [Constable D] must have dropped it but I couldn’t be sure.”

Mr B stated the following in his statement of 2 February 2010:

“I only want to add that I didn’t at any time see [the applicant] holding the baseball bat and I didn’t hear her shouting and swearing, it was only [Ms C] who was creating a disturbance.”

Inspector H also interviewed one of Mrs A’s neighbours who stated the following:

“... I remember waking up to the sound of noise from within the close ... I heard a person shouting, it was one voice, I think it was a female. I also heard a dog barking. I went back to sleep a short time later and didn’t hear anything else. I do not know what it was about or who was involved or even where it happened within the close ... It sounded like a woman’s voice but I didn’t recognise it and wouldn’t recognise it again.

... I do know [the applicant] and I don’t think it was [her] voice. I think it was higher pitched than that.”

Another neighbour stated the following:

“It went on for some time, it was female voices shouting loudly at each other, having an argument and a lot of banging, it sounded like the front door or a door within the close getting banged ...

... [Inspector H] asked me to confirm how many voices I heard. It was definitely two females. I didn't hear any male voices and I couldn't hear what they were shouting. I didn't recognise the voices. I was asked if I know [Ms C] or [the applicant]. I know [the applicant] but couldn't say whether or not it was her voice or not because it was all screaming and loud noise but it was more than one female arguing. I didn't see anyone involved in the incident and I don't know what it was about."

Ms C confirmed in her statement that she had attended at Mrs A's flat in order to confront Mr B. Her statement continues:

"[The applicant] came down and hit me a few times on the back of my head and my back with a baseball bat. There was a lot of shouting and swearing between [Ms C, Mrs A and the applicant]. [The applicant] and me were shouting and swearing at each other and she shouted she was going to kill me ...

I managed to get into the house. In the hallway, I took the baseball bat off [the applicant] ... I put the baseball bat down in the house. I'm not sure if it was in a bedroom or livingroom. I pushed [Mrs A] out the way to get hold of [Mr B] and both [Mrs A] and [the applicant] were shouting at me. I can't remember exactly what was being shouted but it must have been pretty loud.

...[Inspector H] asked me if the shouting and swearing was still going on when the Police arrived. I would say probably but I couldn't be sure. [Inspector H] asked me if [the applicant] had the baseball bat in her hands when the police arrived. She might have picked it up from where I put it down but I can't remember ...

... I wanted to say that because of my medication and because I had some drink, I don't remember everything from that night and it's possible some bits are mixed up."

Inspector H also recovered recordings of two 999 calls made at the time of the incident, the first by Mrs A, the other by the applicant. Although the recordings do not contain evidence that the applicant was swearing or shouting in an aggressive manner, given the difficulty in ascertaining the identities of those whose voices can be heard, they do not rule out this possibility.

As well as summarising the enquiries undertaken in respect of the complaints, Inspector H's report contains the following passage:

"The witness [Ms C] is likely to prove an unreliable witness due to her state of intoxication on the evening in question and the ongoing grievance which she undoubtedly has against the complainer's father."

On 14 March 2011 Superintendent L issued the applicant with the following response to the complaint:

"The officers subject to your complaint deny the allegation. They are supported by a colleague who states that you were shouting and swearing and in possession of a baseball bat. Their position is also supported by an independent witness. Your version of events is supported by your mother and father who state that at no time were you in possession of a baseball bat and you were not shouting and swearing. On the basis of the evidence, I am unable to substantiate your allegation."

Consideration

The applicant was arrested for an alleged breach of the peace as well as an alleged contravention of section 47 of the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”). Her complaint is effectively that her arrest was unlawful on the basis that she was not shouting and swearing during the incident, and also that she was not holding the baseball bat when the officers arrived at the scene.

In the Commissioner’s view, Strathclyde Police was correct to find this complaint unsubstantiated; however, the Commissioner’s reasons for reaching this decision are substantially different from those set out in Superintendent L’s letter of response.

In order to arrest the applicant for an alleged breach of the peace, the officers required to have a reasonable suspicion that she had committed or was committing this offence. Constables D, E and F all claim to have witnessed the applicant shouting and swearing during the incident. In addition, the applicant acknowledges that she took a baseball bat from her home and carried this downstairs to her parents’ flat. In these circumstances, it was not unreasonable for the officers to have anticipated that other residents in the block of flats might be alarmed by the applicant’s alleged conduct. Indeed, it is apparent from the account of one of the neighbours that they were sufficiently concerned to have called the police themselves.

The applicant denies that she was shouting and swearing and is supported in this by Mrs A. However, it is notable that Mr B does not go as far as stating that the applicant did not shout and swear: rather, he states that he did not hear her doing so. This perhaps reflects the fact that according to his statement Mr B appears to have spent much of the incident inside his flat, while the applicant appears to have been outside on the landing. Accordingly, in terms of Mr B’s account it is possible that the applicant was shouting and swearing but that he simply did not hear this.

In any event, this case is different from one in which the police are faced with conflicting accounts from civilian witnesses as to precisely what occurred during an incident. In such a case, officers will require to establish the facts from the witnesses concerned and take appropriate action based on what they are told. In the present case, however, the officers themselves claim to have witnessed an offence being committed. Although there are witnesses who dispute the officers’ accounts, such evidence does not, in itself, render the applicant’s arrest unlawful. The applicant’s complaint is intricately linked with the issue of whether she actually committed the offence for which she was arrested. Ultimately this issue is a matter for the courts.

In these circumstances, the Commissioner considers that the officers were entitled to arrest the applicant for an alleged breach of the peace.

The Commissioner does not, however, consider there to have been any basis for arresting the applicant for an alleged breach of section 47(1) of the 1995 Act. Section 47(1) provides that a person who has with him in any public place any offensive weapon shall be guilty of an offence. Accordingly in order for the police to arrest someone in this connection there requires to be a reasonable suspicion that the person has committed the offence described.

The definition of “public place” within section 47(4) of the 1995 Act was amended by the Criminal Justice and Licensing (Scotland) Act 2010 so as to include areas such as the common closes of properties. However, prior to this, the term “public place”, within the context of section 47(4), did not extend to areas such as those in which the applicant was allegedly found in possession of the

baseball bat (see the decision of the High Court in *Templeton v HM Advocate* 2008 G.W.D 40-593).

In the Commissioner's view, however, given that the officers were entitled to arrest the applicant for an alleged breach of the peace, this finding is of little practical significance.

In correspondence with the Commissioner's office, the applicant has expressed concern regarding the description of Ms C as an "independent witness" in the case. The Commissioner has interpreted this as a criticism of the passage in Superintendent L's response to the complaint in which he refers to Constable D, E and F's position being supported by an "independent witness".

As part of the review, enquiries were made with Strathclyde Police as to the identity of the independent witness referred to by Superintendent L in his letter of response. Superintendent L stated the following in his letter to the Commissioner's office of 9 September 2011:

"... I caused a further review of the relevant file to be undertaken. Pages 13 and 14 of the Investigating Officer's ... Report provides the background to why the reference to 'independent witness' in respect of [complaint 1] was included within my correspondence to the complainer.

Upon reviewing the statements contained within the ... Investigating Officer's Report, I can understand the Investigating Officer's assessment in this matter. An independent witness supports that the complainer was in possession of a baseball bat ..."

It seems clear from these comments that the witness referred to by Superintendent L in his letter of response is Ms C. There are, however, a number of issues which arise from this. Firstly, as noted above, Inspector H stated in his report that given her state of intoxication and her grievance with the applicant's father, Ms C was unlikely to prove a "reliable" witness (or indeed a credible one). In these circumstances, it was inappropriate to cite Ms C's account as support for the officers' position regarding the complaint. Likewise, given Ms C's very strong sense of grievance against Mr B (as well as to some extent the applicant) the Commissioner does not consider that Ms C could properly be described as an "independent" witness to the incident.

As the reference to Ms C in Superintendent L's response appears to have been fundamental to the finding that the complaint was unsubstantiated, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, as noted above the Commissioner considers that, based on the accounts of Constables D, E and F alone, there was sufficient evidence to justify the applicant's arrest for breach of the peace. The Commissioner therefore does not consider it necessary to recommend further action in this connection.

Complaint 2: Alleged incivility

According to the applicant, as she was being arrested she informed Constable D that she had an injury to her arm and was in pain, and that Constable D responded, "I don't give a f*** what's wrong with you".

Internal Handling

Constable D stated the following in respect of this complaint:

"[The applicant] was complaining that she had an issue with a shoulder, however, I explained that due to her conduct I was unwilling to remove the handcuffs at that time ..."

In relation to being uncivil towards [the applicant] I did refuse to reapply the handcuffs, however, deny swearing at her.”

Constable E stated the following in his initial statement:

“In relation to the incivility complaint, at no time did I hear Constable [D] swear or use any such phrase towards [the applicant].”

He stated the following in his additional statement:

“In relation to an officer swearing at [the applicant] this is incorrect as during my time with her no one swore at her.”

Constable F stated:

“With regards to the allegation of incivility, I at no time heard anyone swear at the [applicant] as described.”

The only comment which Ms C makes which may be relevant to this complaint is the following:

“Inspector [H] asked me if I saw any Officer treating [the applicant] in a rough manner and I can say from what I remember, she wasn’t treated badly.”

Neither Mrs A nor Mr B makes any reference to whether they heard Constable D swearing at the applicant.

Inspector H stated the following in his report:

“There is no evidence to support the complainer’s allegation of incivility.

The witnesses [Mrs A], [Mr B] and [Ms C] provide support to the account of [Constable D]. They make no mention of any Officer swearing. The witness [Mr B] further provides that he only heard [Ms C] swearing.

The witnesses [Constable F] and [Constable E] provide full support to the account of [Constable D]. They state that during the time they were present which covered the arrest, they did not hear any Officer swear at the complainer.”

Superintendent L provided the following response:

“You also told us that a male police officer was uncivil towards you and swore at you. The officer subject to your complaint denies the allegation and is supported by other officers and independent witnesses who state that they did not hear any officer swear at you. There is no evidence to support your account. Consequently, I cannot substantiate your allegation.”

Consideration

As neither Mrs A nor Mr B makes any reference to whether they heard Constable D swearing at the applicant, it was incorrect to describe them as providing support for Constable D’s version of events. It would be different if these witnesses had specifically denied hearing such a comment, but that is not the case, according to their statements. Indeed, there is no indication in their respective statements that they were questioned about this issue.

Similarly, according to Inspector H's report Mr B stated that he "only heard [Ms C] swearing". Inspector H appears to have referred to this in order to strengthen his conclusion that there was no support for the applicant's complaint. However, what Mr B in fact stated was "...it was only [Ms C] who was creating a *disturbance*" [emphasis added] In the Commissioner's view, this comment lends no support to Constable D's position in respect of the complaint.

Based on the available evidence (the word of three officers against that of the applicant), Strathclyde Police was correct to find this complaint unsubstantiated. Although there is no indication in their statements that Mrs A and Mr B were asked for their recollection of the matter, there is no purpose in seeking further statements from them. This is because even if they were to support the applicant's position, the evidence would be equally weighted on both sides, and for that reason the complaint would remain unsubstantiated.

Given the deficiencies in the assessment of the evidence the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, the Commissioner does not consider it necessary to recommend further action.

Conclusions, Recommendations and Learning

Complaint 1: The applicant's arrest

In the Commissioner's view, this complaint was not dealt with in a reasonable manner. For the reasons given, however, the Commissioner makes no recommendation in this connection.

Complaint 2: Alleged incivility

In the Commissioner's view, this complaint was not dealt with in a reasonable manner. For the reasons given, however, the Commissioner makes no recommendation in this connection.

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