

Report of a Complaint Handling Review in relation to Central Scotland Police

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

Summary and Key Findings

The applicant's complaint arose from the alleged theft of and vandalism to his property while he was in prison.

The Commissioner found that the complaint was ultimately dealt with in a reasonable manner. 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

In July 2010 the applicant was arrested and charged with the attempted murder of his former partner, Ms A. He was subsequently convicted of this offence and sentenced to a term of imprisonment. Prior to his arrest the applicant had lived with Ms A.

At the time of his arrest the applicant had been driving a car bearing a private number plate registered to him. Following his arrest, the car was impounded by Central Scotland Police and held by a recovery agent. It was later released to Ms A's cousin, Ms F.

Prior to his conviction the applicant was self employed and owned and used a van in connection with his business. The van bore insignia relating to the applicant's business, including his contact details. At the time of his arrest, the van contained a quantity of tools which the applicant used in connection with his business.

While remanded in custody awaiting trial, the applicant reported to the police that Ms A had fraudulently sold his car and private number plate. He also alleged that his van had been removed without his consent to a garage owned by Ms A's relative, Mr B, who the applicant claimed had vandalised the van by removing the business insignia.

Following initial enquiries the police concluded that the alleged incidents were civil in nature and did not justify police involvement. The applicant insisted, however, that his property had been stolen and vandalised. The circumstances were re-assessed by the police but the same conclusion was reached, namely that the matters reported by the applicant were civil in nature.

On 1 October 2010 the applicant lodged a complaint about the police regarding alleged inaction in respect of his allegations. Central Scotland Police responded to the complaint in a letter dated 31 December 2010. A further response was issued to the applicant on 16 May 2011.

The Complaint

Based on the contents of the application form, the correspondence received from the applicant and the information received from Central Scotland Police, the Commissioner has identified a single complaint, namely that Central Scotland Police did not take the appropriate action against people the applicant named as responsible for stealing various items of his personal property.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which this complaint was handled by Central Scotland Police.

In his letter dated 1 October 2010 the applicant reiterated that his car had been fraudulently sold by Ms A who he alleged had also surrendered his private number plate to DVLA. The applicant also questioned why his car, which he understood had been impounded by Central Scotland Police, had been released to Ms F without his authority. According to the applicant, Mr F had not been insured to drive the vehicle. The applicant suggested in his letter that "there may be other charges to be made as regards to all my tools and property which was in the van at the time of the theft." He concluded:

"So I'm writing to you because I feel the officers and sergeant in question dealing with these matters have not fully dealt with these in the proper manner as you can see the extent of the criminal acts that have took place on my property while I'm in here defenceless so I hope in your position you can this to the next step and get to the bottom and solve these matters."

The applicant stated the following in his statement:

"My complaint about the police is that after going through the process of phoning DVLA, I phoned [local] Police Office and told them the story. They told me that the car had been sold and the number surrendered. The police then took a statement from my sister but said they would investigate it. The police then went back and said they had not spoke to anyone in [locality] but told her the Sergeant told her it was a civil matter.

I think that the matter has not been properly investigated which has led to my vehicle [i.e. his car] being sold and criminal damage being caused and possibly my tools stolen.

I would like the matter investigated properly and if there is evidence of theft or damage that persons should be charged."

Internal Handling

Inspector C was appointed to make enquiries into the applicant's complaint. During the course of his initial enquiries he obtained statements from the applicant, Ms A and Mr B. On 17 December 2010 Inspector C submitted a report of his findings to Superintendent E.

In his report Inspector C stated that he had inspected the applicant's van which he found to be undamaged. Inspector C also found the van to contain a number of tools valued at several hundred pounds. According to Inspector C he suggested to Mr B that these be returned to a relative of the applicant as soon as possible in order to avoid any further allegations. Inspector C was later informed that on 27 November 2010 Mr B had taken the items to the applicant's sister but that, as she had refused to accept them, they were returned to the applicant's van.

In his response to the complaint dated 31 December 2010 Superintendent E stated the following:

“... I have now considered that the original advice given to you that the matter was civil was indeed correct. The investigation revealed that no act was carried out with criminal intent.

I explain this further as follows:

The ... van ... was purchased by you following a loan from [Ms A's] mother [Ms D] and paid via the account held by [Ms A] as part of your matrimonial home. The vehicle remains your property and it has been verified that the vehicle is intact and in the safekeeping of [Mr B] ... pending any instruction from yourself or your solicitor. The tools which were used for your trade are still within the vehicle and can be uplifted by any person on your instruction.

The ... motor car ... was part of the matrimonial home and paid for by an account which was also part of the matrimonial home. In order to dispose of this vehicle, this should have been done via a civil legal agreement carried out by your solicitor. The vehicle was paid for via an account in the name of [Ms A] and via a Hire Purchase agreement taken out by [Ms A], therefore it follows that she could be seen as the legal owner of the vehicle and authorised to dispose of it.

The sign writing on [the] van... has been removed by [Mr B] ... so as not to draw any attention to the vehicle and continue its safe keeping. There has been no criminal intent by [Mr B] and therefore no crime has been committed.

The ... motor car ... was released to a relative of [Ms A] on her instruction. It has been verified that this person drove the vehicle legally in respect of driving licence and insurance details and the guidance in relation to releasing vehicles under the Vehicle Recovery Scheme, had been followed properly.

The above information is intended to help you understand how your complaint has been progressed and dealt with. I trust that you are satisfied with the manner in which your complaint has been handled.”

On 10 January 2011 the applicant wrote to Superintendent E disputing these findings. He stated:

“The reason I am writing back to you is there is a few items not mentioned in your letter that causes concern and also some of the content is not true.”

Specifically, the applicant described as “total rubbish” the finding that Mr B had removed the insignia from the applicant's van in order to avoid drawing attention to the vehicle. The applicant claimed that Mr B had in fact tried to sell the van via a website and had only been prevented from doing so by the applicant contacting DVLA. He referred to evidence which his sister had supplied to the police in this connection, consisting of a copy of the advertisement posted on the website.

In relation to the “items” not mentioned by Superintendent E, the applicant referred to the disposal of the private number plate from his car; the inappropriate release of his car to Ms F; and Ms A's disposal of his personal effects including jewellery, clothing, and personal paperwork. The applicant repeated that Mr B had vandalised his van by removing the business insignia, and that Ms B had unlawfully sold his car.

Inspector C was appointed to review the applicant's correspondence and submit a further report to Superintendent E. In his report of 14 May 2011, Inspector C describes the applicant's areas of concern as follows:

(1) that despite Ms A disposing of the applicant's personal belongings, nothing had been done about this in terms of criminal proceedings;

(2) that Mr B had attempted to sell the applicant's van and had only been prevented from doing so by the applicant contacting DVLA; and

(3) that the applicant's car had been driven illegally by Ms F who had no insurance to drive the vehicle.

In respect of point (1) Inspector C stated that Ms A had been reported to the Procurator Fiscal in this connection on 16 March 2011. According to Inspector C he had informed the applicant's sister of this.

In respect of point (2) Inspector C noted that on 19 March 2011 the applicant's van was uplifted by his representative who took the vehicle to the applicant's sister. Following this, it was alleged that a number of tools were missing from the van. Inspector C arranged for a crime report to be prepared in this connection and instructed that the matter be investigated. According to Inspector C, due to the lapse of time, no door to door enquiries or scene of crime examination were undertaken, and no further evidence obtained to identify those responsible.

As to point (3), Inspector C stated that the position regarding this issue remained unchanged from that stated in Superintendent E's response of 31 December 2010.

According to his report, on 1 April 2011 Inspector C met with the applicant in prison in order to update him in respect of items (1) and (2) above. Inspector C noted that the applicant fully accepted the sale of his car by Ms A was a civil matter, and that he was satisfied that Ms A had been reported to the Procurator Fiscal in respect of the alleged theft of his personal belongings. However, according to Inspector C's report the applicant refused to accept that there was no evidence to justify charging Mr B with the theft of his van and tools.

On the same date, the applicant wrote to Central Scotland Police reiterating his concern that nothing could be done in respect of his van and missing tools. Following receipt of the letter, Inspector C reviewed again the circumstances of the alleged theft and decided that Mr B should be interviewed under caution. The interview took place on 19 April 2011 and Mr B denied offering the applicant's van for sale. Mr B also denied that any tools were missing from the van.

On 28 April 2011, Ms A's mother, Mrs G, was also interviewed in respect of the alleged attempt to sell the applicant's van and also the missing tools. Mrs G denied all allegations.

According to his report, on 14 May 2011 Inspector C reported both Mr B and Mrs G to the Procurator Fiscal for the alleged theft of the van and its contents, and the alleged vandalism by removing the business insignia from the vehicle.

On 16 May 2011, Superintendent E provided the applicant with the following, further response to his complaint:

"... You later further complained that you were not satisfied in the way that Inspector [C] had dealt with your initial complaint and highlighted the matter of the theft of your tools and the removal of the sign writing from your vehicle.

I previously wrote to you regarding these matters and further noted your response in respect of your personal belongings. This resulted in further action and a Standard Police Report submitted to the Procurator Fiscal against Ms [A] in relation to a charge of theft ...

The investigation into your further complaint was again conducted by Inspector [C], a senior officer of this force. He conducted an impartial investigation, gathering evidence from witnesses. Following this investigation, a detailed report was submitted which, along with

the evidence gathered, I have now considered that the matter is one which should be referred to the Procurator Fiscal in order that criminal charges could be considered.

I can explain further as follows:

A Standard Police Report has now been sent to the Procurator Fiscal outlining charges of Theft of a motor vehicle and vandalism against two persons.

The above information is intended to help you understand how your complaint has been progressed and dealt with ...

Consideration

In his letter to the Commissioner's office dated 1 April 2011 the applicant acknowledged that the sale of the car by Ms A amounted to a civil matter. Accordingly, it is not necessary to make any further reference to this issue.

As noted above Ms A, Mr B and Mrs G were all reported to the Procurator Fiscal for various alleged offences arising from the applicant's allegations.

In the Commissioner's view, given the applicant's allegations and the evidence indicating that Mr B had attempted to sell the van via a website, there is no reason why Mr B could not have been interviewed under caution at an earlier stage. As matters transpired, it was not until April 2011 that Mr B and Mrs G were interviewed and only after the applicant had expressed continuing dissatisfaction in his letter of 1 April 2011.

As noted above, however, those interviews have since taken place and Mr B and Mrs G reported to the Procurator Fiscal.

Superintendent E's letter of 16 May 2011 provided few details of the enquiries which had been undertaken since receipt of the applicant's letter of 1 April 2011. This may be because at that stage the matter had been referred to the Procurator Fiscal and the applicant would no doubt have been a witness in any subsequent criminal proceedings. However, if this was the reason for providing only limited details, it would have been helpful if Central Scotland Police had explained this in the letter of response.

The applicant has expressed particular concern that the tools subsequently reported missing were seen by Inspector C within his vehicle in November 2010. In the Commissioner's view, the advice offered by Inspector C to Mr B - that the tools be returned to the applicant's representative - was sound. Responsibility for the security of the tools did not transfer to Inspector C simply because he was aware that they were within the vehicle on a particular date. Clearly, any subsequent theft of the items was not a matter for which Inspector C could be blamed.

In conclusion, the Commissioner considers that this complaint was ultimately dealt with in a reasonable manner by Central Scotland Police.

Conclusions, Recommendations and Learning

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

John McNeill
Police Complaints Commissioner for Scotland

Hamilton House
Caird Park
Hamilton