

Report of a Complaint Handling Review in relation to Northern Constabulary

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 Northern Constabulary's treatment of his allegation that his bicycle lamp had been stolen.

The Commissioner considered two complaints, one of which was found not to have been dealt with reasonably. The Commissioner made a single recommendation 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 1 October 2009 the applicant secured his bicycle to a bicycle rack situated in a town centre. According to the applicant, at the time two valuable cycle lamps were attached to the handlebars. The applicant states that the reason he secured his bicycle in the area in question was that it was covered by CCTV and that a friend (Mr A) owned a market stall directly opposite.

At about 4.15 pm the applicant returned to his bicycle to discover that one of the lamps had been removed. He thereafter called the police to report its theft. The police incident log shows that the call was made at 4.22 pm.

Shortly thereafter, Constables B and C attended and noted a statement from the applicant. Constable C's notebook shows that the statement (which was signed by the applicant) was taken at 4.27 pm. According to the applicant, just before he provided the statement Mr A approached and handed the lamp to the police. The applicant recalls Mr A telling the officers that he had seen someone "eyeing up the bike" and that he had removed the lamp for safekeeping. According to the applicant he was informed by the police that no crime had been committed and that "nobody had done anything wrong". The applicant states that he was not content with this position but did not say anything about it at the time.

Constable B states that, having noted a statement from the applicant, Mr A approached and informed them that, given the value of the lamp, he had removed it for safe keeping. According to Constable B, the applicant thanked Mr A and stated that he did not wish to take the matter any further. Accordingly, no further investigation was carried out. The incident log was updated to reflect this.

Later that day the applicant called at a local police station and expressed concern about how the incident had been dealt with. Although the applicant could not recall the identities of the officers to whom he had spoken, he claimed that an officer would not listen to him.

The applicant called again at the police station on 8 October 2009 and on this occasion spoke to Inspector D. Inspector D explained that in her view there had been no attempt to deprive the applicant of his property and thus the crime of theft could not be proved. Inspector D thereafter updated the incident report to reflect the advice that she had provided to the applicant.

The applicant lodged a complaint with Northern Constabulary via his solicitor on 3 August 2010.

The Complaints

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

- (1) that police officers pressurised the applicant into not pursuing a complaint against Mr A; and
- (2) that Northern Constabulary failed to properly investigate the applicant's allegation that a named individual stole a bicycle lamp.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Northern Constabulary. The Commissioner has dealt with both complaints together.

In his letter of 3 August 2010 the applicant complained that he had been pressurised by Constables B and C "not to pursue" the incident and stated that the actions of Mr A should be looked into more fully. The applicant asked that consideration be given to whether Mr A should be charged with the theft of the bicycle lamp.

Internal Handling

Inspector E was appointed to conduct enquiries into the applicant's complaints; he noted statements from the applicant on 13 and 14 August 2010. In support of his position, the applicant stated the following:

"... I said to the police that if that was the case why was only one light taken and the other one was not taken. The Police did not want anything to do with it from then, they said that no crime had been committed and that nobody had done anything wrong ... I would like to add that from the time of me discovering the light was missing and the arrival of the police, about 20 minutes, why did [Mr A] not return the light to me."

Inspector E also requested operational statements from Constables B and C. Constable B provided a statement but Constable C had left Northern Constabulary prior to the complaint being concluded. Inspector E did, however, obtain a copy of Constable C's notebook and a copy of the incident log relating to the alleged theft.

On 1 September 2010, Inspector E submitted a report detailing his findings.. On 13 October 2010, Superintendent F provided the applicant with the following response to the complaints:

"... The police attended and commenced an investigation by noting a statement from you.

Whilst the police were in attendance a man known to you as [Mr A] approached and informed you that he had removed the light for safekeeping in the belief that he had seen someone eyeing up your bike and knew that the light had a high value. The light, which you value at over £400, was returned to you.

I note in your statement in regard to this complaint that you considered [Mr A] to be your friend. According to the attending officers, you thanked [Mr A] for his intervention and intimated that you did not wish to pursue your complaint of theft any further.

Notwithstanding, you subsequently attended at [a local police station] and intimated to various police officers that you were unhappy with the outcome and believed that [Mr A] had stolen the aforementioned light. The essential elements of the crime of theft were explained to you and that there was clearly no intent on the part of [Mr A] to deprive you of the ownership of your property. I believe you refused to accept this explanation.

The Scottish Crime Recording Standard was introduced in 2004 to ensure uniformity in crime recording practices throughout Scotland. It is a principle of that standard that an incident will be recorded as a crime in all cases if the circumstances amount to a crime defined by Scots Law or an offence under statute, and there is no evidence to the contrary. In this instance there is clear credible evidence that a crime was not committed. The police officers have therefore not pressurised you into not pursuing this matter since there is no matter to pursue.”

On 16 November 2010, the applicant’s solicitor wrote to Superintendent F in the following terms:

“My understanding is that it is the role of police officers to investigate alleged crimes and not to make decisions as to whether or not a potential defender has the required mens rea. It is also interesting to note that [Mr A] only actually gave my client his bicycle lamp back once police officers had arrived. I therefore ask you to reconsider whether or not the police officers in question have in fact handled this situation correctly.”

On 16 November 2010 Superintendent F provided the following response to the applicant’s solicitor:

“The reasons why the alleged theft of the bicycle lamp was not recorded as a crime are clearly articulated in my letter to your client, dated 13 October 2010, which was copied to you.

The role of the police in any investigation is to make an assessment of all the facts and circumstances and only where a sufficiency of evidence is established to thereafter report the matter to the Procurator Fiscal. In this particular instance the facts and circumstances did not substantiate that a crime had been committed.”

Consideration

The alleged failure to investigate the matter

The Scottish Crime Recording Standard states the following:

“The following principles apply:

- All reports of incidents, whether crime related or not will result in the creation of an incident report which is auditable.*
- Following initial registration, an incident will be recorded as a crime in all cases if:*

- (a) *the circumstances amount to a crime defined by Scots Law or an offence under statute,*
- and*
- (b) *there is no credible evidence to the contrary.”*

As noted above, Superintendent F considered there to be “clear, credible evidence that a crime was not committed” in the present case. This conclusion was based on Mr A’s account that he took the lamp for safekeeping and had thereafter returned this to the applicant. The view taken was that Mr A’s account indicated that he had no intention to deprive the applicant of his property.

The applicant disputes this position on two grounds. In his view, both grounds undermine Northern Constabulary’s conclusion that Mr A provided clear and credible evidence that no crime had occurred. Neither ground was addressed by Northern Constabulary during its handling of the complaints.

Firstly, the applicant questions why Mr A did not return the lamp during what he believes was a 20 minute period of opportunity between his return to his bicycle and the arrival of the police officers. In the Commissioner’s view, however, the evidence indicates that the period was substantially shorter than 20 minutes. According to the incident report the applicant reported the alleged theft to the police at 4.22 pm; there is no indication that he delayed in doing so. Constable C recorded the applicant’s statement in his notebook at 4.27 pm, only five minutes after the report was made. According to the statement, the applicant returned to his bicycle at approximately 4.15 pm. In these circumstances, it appears that the period between the applicant discovering the missing lamp and the officers attending was approximately 12 minutes. In addition, it is not clear from the evidence at what stage during that period the applicant would have been visible to Mr A. In the Commissioner’s view, however, the short period of time between the applicant returning to his bicycle and Mr A producing the lamp is not such as to indicate any intention on the part of Mr A to deprive the applicant of his property.

The applicant also questions why Mr A did not remove the second lamp if his true intention had been to prevent someone stealing items from the bicycle. Unlike the applicant’s first ground, however, there is nothing within the complaints file that would allow the Commissioner to address this issue.

As neither of these grounds was addressed by Northern Constabulary, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary addresses the second of the applicant’s grounds, namely the question as to why Mr A did not remove both lamps if his intention was to prevent theft of items from the bicycle.

Alleged pressure not to pursue the allegation

The applicant states that he felt pressurised by a number of officers not to pursue his allegation against Mr A.

In respect of the applicant’s involvement with Constables B and C, Constable B states that it was the applicant himself who withdrew his allegation of theft following the return of the lamp. The applicant provides a different account of what occurred, but given there is no support for either version of events it is not possible to reach a clear view on what was said during the discussions.

In respect of the various officers he claims to have spoken to subsequently, the applicant was informed on a number of occasions that no crime had been committed and therefore that no police action would be taken. Leaving aside the question of whether a crime in fact occurred, it follows that there would have been no purpose in pressurising the applicant to drop his allegation.

Regardless of whether the applicant wished to pursue the allegation, the decision had already been taken that no offence had occurred. The Commissioner therefore considers that Superintendent F's response to this complaint was reasonable.

Conclusions, Recommendations and Learning

Complaint 1: Pressure not to pursue the allegation

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

Complaint 2: Failure to investigate

In the Commissioner's view, the manner in which this complaint was dealt with by Northern Constabulary was not reasonable. The Commissioner recommends that Northern Constabulary addresses the second of the applicant's grounds, namely the question as to why Mr A did not remove both lamps if his intention was to prevent the theft of items from the bicycle.

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