

# Report of a Complaint Handling Review in relation to Dumfries and Galloway Constabulary

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

## **Summary and Key Findings**

The applicant's complaints stem from the search of his car by officers of Dumfries and Galloway Constabulary and his subsequent attendance at a local police station.

The Commissioner issued his decision in this case in August 2011. However, following further enquiries by both D&G and the Commissioner's office, the Commissioner reconsidered complaint 3. The Commissioner's further findings in respect of this complaint are set out in an addendum to the original report.

Of the four complaints considered, the Commissioner found that two were dealt with in a reasonable manner while the remainder were not. The Commissioner made four recommendations.

## 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 the evening of 24 July 2008, whilst driving his vehicle to a local festival, the applicant was stopped by Constable A of Dumfries and Galloway Constabulary ("D&G"). Also within the vehicle were the applicant's nephew, Child B (then aged 12), two other passengers, Mr C and Ms D, and the applicant's dog.

Constable A became suspicious of Mr C and Ms D's demeanour and requested the assistance of Constables E and F who arrived a short time later. The applicant's car was then searched and the officers found a small quantity of cannabis, which Ms D accepted belonged to her. An air pistol was thereafter found within the glove compartment. The applicant accepted that the pistol belonged to him.

According to the officers, Mr C and Ms D were detained under section 23 of the Misuse of Drugs Act 1971 and conveyed by the officers to the local police station. Although disputed by the applicant, the officers claim that he agreed to attend the police station on a voluntary basis while enquiries were undertaken into the finding of the air pistol. In any event, it is clear that the applicant and Child B followed the officers to the station in his own vehicle.

While at the police station the applicant was questioned about the air pistol and the drugs which had been found within his vehicle. He was subsequently charged with possessing a firearm in a public place without reasonable excuse, under section 19 of the Firearms Act 1968.

On 29 July 2008 the applicant telephoned D&G to complain about the police handling of the incident. His complaints were allocated to Inspector G for enquiry and a letter of response was issued to him by Chief Inspector H on 6 October 2008.

At the applicant's subsequent trial, the charge against him was found not proven. Following his acquittal, in December 2009 the applicant contacted D&G again to express his dissatisfaction about the way in which his complaints had been dealt with. The applicant also raised further complaints, including that the officers concerned had perjured themselves at his trial. The applicant's concerns were recorded as fresh complaints and were allocated to Chief Inspector J for enquiry. A further letter of response was thereafter issued to the applicant by the Deputy Chief Constable on 22 September 2010.

## The Complaints

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

- (1) that officers stopped and searched the applicant's vehicle without good cause;
- (2) that the applicant was not allowed to witness the search of his vehicle;
- (3) that the applicant was held in a detention room with Child B and a dog;
- (4) that the applicant was not cautioned before he was interviewed and that the officer who interviewed him questioned him in a threatening manner

## The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by D&G. Each complaint is set out in turn and is followed by details of D&G's handling of it and the Commissioner's views on this.

### Complaint 1: The stopping and searching of the vehicle

The applicant made this complaint during his telephone call to D&G on 29 July 2008. According to the note of the call produced by D&G, the applicant complained that his car had been stopped and searched "without good cause" and that he could see no basis for the decision to do so.

In his statement of 21 March 2010, the applicant stated the following:

*"I was never asked to give permission for a search [of my car], but if I had ... been asked I would have consented as I didn't have anything to hide. The police went ahead and searched it without asking."*

### Internal Handling

#### The decision to stop the vehicle

In her statement of 19 November 2008 Constable A stated that on seeing the applicant's vehicle she had decided to carry out a routine stop and check of the driver's documents. Her position was reflected in Inspector G's report of 30 September 2008. The complaint was not addressed specifically within Chief Inspector H's letter of response of 6 October 2008. However, the Deputy Chief Constable stated the following in his response of 22 September 2010:

*"Section 163(1) of the Road Traffic Act 1988 requires that any person driving a motor vehicle on a road must stop on being required to do so by a police constable in uniform. The officer who stopped you that evening was in uniform and driving a marked police*

*vehicle therefore was empowered to stop you during your journey. The purpose of the stop was simply to check the legality of you and your vehicle being on the road and was therefore simply routine and not in connection with any alleged offence at that time ...*

*The stop and subsequent check of your vehicle is sanctioned under the relevant road traffic legislation reproduced and therefore appears to be legitimate.”*

### The decision to search the vehicle

As part of his enquiries, Chief Inspector J obtained statements from Child B and Mr C. Child B does not specify in his statement whether the applicant gave his permission for the officers to search the car. His statement, does, however, contain the following passage:

*“[Constable A] was joined by another Officer and after they had been speaking with [the applicant] for a few minutes they started searching the car.”*

Mr C stated the following:

*“The Police then started searching the car, they opened the boot first. [The applicant] got out of the car, but he was told to get back in. [The applicant] wasn’t asked for permission to search the car.”*

Mr C also stated that the officers had asked him whether he had any objection to them conducting a personal search and that he did not have a problem with this.

According to Chief Inspector J’s report of 29 May 2010, Ms D was not prepared to assist in the investigation of the applicant’s complaints.

Chief Inspector J also reviewed the statements which had been given previously by Constables A, E and F. Constable A stated the following in this connection:

*“Whilst speaking to [the applicant], it was apparent by the actions of the two rear seat passengers that they were uncomfortable with my presence. They would not engage in conversation or give eye contact. Due to being uncorroborated, I requested the assistance of [Constables E and F] ...*

*I informed [Constables E and F] of the circumstances on their arrival ... I asked [the applicant] if he objected to [Constables E and F] and I having a look around his vehicle. The [applicant] agreed (noted in my notebook) and [Constables E and F] started to look in the boot of the vehicle. The boot had within a tent and a small rucksack, found within the pocket of the rucksack by [Constable F] was a small tub containing a green herbal substance ... [Ms D] replied that it was herbal cannabis for her own use.”*

The following note, dated 24 July 2008, is contained within Constable A’s notebook:

*“Owner of vehicle [the applicant] agreed to vehicle search.”*

Constable E stated the following:

*“The driver of the vehicle ... [the applicant] was thereafter asked by ... Constable [A] if we could have a look in the rear boot of his vehicle, to which the accused indicated that we could.”*

Constable F supported Constable E’s account in her own statement.

Chief Inspector J made the following comments in his report:

*“During the road check [the applicant] is adamant that the Police officers did not ask for permission to search his car but [Child B] is neither able to confirm or deny this.*

*[Mr C] corroborates [the applicant’s] allegations that permission was not asked for although he did intimate that he was asked for permission before being subjected to a personal search at the locus along with [Ms D].”*

The Deputy Chief Constable stated the following in his letter of response:

*“Whilst there is various common law and statute legislation in existence that empowers an officer to search a vehicle, none appear to have been relevant at the initial stages of your stop. The officers’, however, all claim that the subsequent vehicle search was done with your permission therefore no legislative power was required.*

*I appreciate that you strongly dispute that such permission was sought and were supported in that stance by one of your passengers. There is, however, no truly independent evidence to support either your account or the officers’ account of events therefore I am unable to prefer either version and am unable to progress this issue any further.”*

### Consideration

#### The decision to stop the vehicle

Section 163 of the Road Traffic Act 1988 (“the 1988 Act”) provides:

*“(1) A person driving a mechanically propelled vehicle on a road must stop the vehicle on being required to do so by a constable in uniform ...*

*(3) If a person fails to comply with this section he is guilty of an offence.”*

Although section 163 does not explicitly provide the police with the power to stop vehicles, the courts have implied such a power in a number of cases. The case law in this area is at times unclear and inconsistent; however, the following appears to be beyond doubt.

- Police officers in uniform have the power to stop vehicles under section 163 (*Normand v McKellar* 1995 SLT 798; *Chief Constable of Gwent v Dash* 1986 R.T.R 41; *Beard v Wood* 1980 R.T.R 454).
- The only limits upon the use of this power is that it must not be exercised “oppressively” or “capriciously” (*Miller v Bell* 2004 SCCR 534; *Stewart v Crowe* 1999 SLT 899; *Beard v Wood*; *Chief Constable of Gwent v Dash*).
- The stopping of vehicles under section 163 on a “routine” or “random” basis is not, in itself, oppressive or capricious (*Normand v McKellar*; *Stewart v Crowe*; *Beard v Wood*; *Chief Constable of Gwent v Dash*)

Accordingly the question for the Commissioner to determine is whether, in stopping the applicant’s vehicle, the officers were acting oppressively or capriciously (i.e. impulsively or whimsically).

In *Beard v Wood* (referred to above) a police officer stopped a vehicle in order to check the driver’s documents and to satisfy himself that the vehicle was in good condition. The evidence at the subsequent trial established that the officer had no reason to suspect that the driver did not have valid documents or that the vehicle was in anything other than good condition. The court nevertheless decided that the stopping of the vehicle was lawful and that the officer’s actions in this connection were neither oppressive or impulsive.

Furthermore, in *Chief Constable of Gwent v Dash* the court stated that the random stopping of cars by the police for the purpose of detecting crime could not be described as capricious.

According to Constable A (who was in uniform at the time), on seeing the applicant's car she "decided to carry out a routine stop and check the driver's documents." Based on the decisions in *Beard v Wood* and *Chief Constable of Gwent v Dash* (as well as the others listed above) the Commissioner does not consider that the stopping of the applicant's car for such a reason can be described as oppressive or capricious. As noted above, the random stopping of vehicles for the purposes of detecting crime does not, in itself, amount to oppression or capriciousness.

For the reasons given, the Commissioner considers that this aspect of the complaint was dealt with in a reasonable manner.

#### The decision to search the vehicle

All three officers state that the applicant permitted some form of search of his vehicle. As noted above, Constable A also recorded in her notebook that the applicant agreed to a search of the vehicle. Against, this, both the applicant and Mr C firmly deny that the applicant consented to the search of the vehicle. Child B does not specify whether the applicant permitted the search and it is not clear from his statement whether he was asked to comment on this issue. In the Commissioner's view, Child B's position on the matter ought to have been made clear, even if this was simply that he could not recall what was said between the applicant and the officers. However, even if he had stated that the applicant did not permit the search, there would still have been three witnesses (Constables A, E and F) claiming that the applicant agreed to a search.

Given the available evidence, the Commissioner considers that D&G was correct to find this complaint unsubstantiated. The Commissioner therefore considers that this complaint was dealt with in a reasonable manner.

#### **Complaint 2: The witnessing of the search**

The applicant stated the following in his statement of 11 September 2008:

*"I was out of the car at this point to see what was going on, when they found the [illegible] in the boot they then searched the rest of the car. I was told to go and sit out of the way. I sat in the front until they had to search my side."*

The applicant complained to D&G that he had not been allowed to witness the search of his car.

#### *Internal Handling*

Following the initial enquiries undertaken into this complaint, Inspector G noted:

*"[The applicant] was present in his vehicle whilst the search was carried out, seated in the driver's seat. He was advised to remain there due to the proximity of the [nearby] road for his safety. Prior to the officers searching the contents of the boot, he was asked to identify his belongings. When the air pistol was discovered in his glove box, he was still seated in the driver's seat."*

Chief Inspector H did not address this complaint in his letter of response of 6 October 2008.

Chief Inspector J stated the following in his report:

*"[The applicant] claims to have been told to remain in the car as [Ms D] and [Mr C] were removed for search. [Child B] was allowed to get out of the car with the dog but advised to remain in the immediate vicinity on the grass verge."*

The Deputy Chief Constable stated the following in his response:

*"From the information available to me it appears that during the search of your car, you were seated in the driver's seat. You were advised to remain there primarily on safety grounds given the proximity of passing traffic ... You appear to have complied with this request without issue.*

*In addition to the potential road safety issues, there was also a question of officer safety. The officers were dealing with your two passengers who required to be searched and had also provided permission for your nephew to step out of the car with the dog on the grounds of comfort. This was a controllable number for the three attending officers in what was an unpredictable situation. Had you also been out of the vehicle, the potential for control was reduced should you or your passengers fail to comply with any reasonable request ...*

*Whilst there may have been elements of the search of the boot compartment that you could not directly witness, the remainder of the search of your vehicle was carried out in your presence. You do not suggest that you have any concern that the officers carried out their search in anything other than a professional manner or deliberately denied you the opportunity to view their actions or comment on the items found.*

*I would therefore conclude that in an ideal world, you would have been outside the vehicle and able to witness the search of the entire vehicle, however, this was only denied in the grounds of personal safety for you and the officers and not through any underhand or devious tactic employed by the officers who were open with you and the passengers in relation to what was found in the vehicle and where."*

### *Consideration*

Both Inspector G in his initial report, and the Deputy Chief Constable in his response, state that the applicant was advised to remain within the car for his own safety. The Deputy Chief Constable also states in his response that the applicant was asked to remain in the car for the safety of the officers.

There is nothing within any of the statements given by Constables A, E and F to support these comments. In the event that the officers provided additional accounts during the course of Chief Inspector J's enquiries, there is no record of these within D&G's complaints file.

In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that D&G provides a further response to the applicant explaining the basis for the comments made by the Deputy Chief Constable in his letter of 22 September 2010.

### **Complaint 3: The applicant's time in the detention room**

In his statement of 11 September 2008 the applicant stated the following in respect of this complaint:

*"... [the female officer] put me in an interview room with my dog and [Child B]. We were all left in there for nearly a couple of hours and I had to chap the door to let the dog get the toilet ...*

*When I was taken out of the room the officers never told [Child B] what was happening."*

In his statement of 21 March 2010 the applicant stated that following the search of the vehicle he was instructed, rather than asked, to accompany the officers to the station. He stated:

*“When we got to the Police Station [Child B] and I were put in a small room with no windows. I remember it was very hot and uncomfortable. We were allowed to keep the pup with us, but were locked in the room ...*

*... [Child B’s] parents weren’t contacted and the Police didn’t pay attention or interest in his welfare or wellbeing at all. We were held at the Police Station for about three hours ...*

*Apart from [the applicant being questioned about the alleged offence] we were kept in the room, but because of the heat and the situation of having the dog, I knocked on the door asking for fresh air and to let the dog out the yard and go to the toilet and we were allowed out to the gates for a few minutes and [Child B] got some juice from my car ...*

*The way we were treated was awful. I didn’t realise I was there on a voluntary basis and I was just imprisoned. I hadn’t been detained or arrested but was locked in a room, my car was locked in a compound and we certainly weren’t free to go home or leave.”*

### *Internal Handling*

Chief Inspector J noted the following in his report:

*“At [police station] a number of background enquiries were carried out during which time [the applicant], [Child B] (and dog) were held in a locked interview room. It would appear that [the applicant] had agreed to return to [police station] on a voluntary basis although there is no record or copy of a signed voluntary attendance form kept at [police station].”*

With regard to what happened following arrival at the station, Child B stated:

*‘[The applicant] and me were put into a room with the dog. [Ms D and Mr C] were taken elsewhere, but I’m not sure where.*

*[The applicant] and I were left in the room for a good couple of hours. At no time was I interviewed or spoken to but [the applicant] was taken out two or three times. I was let out at one stage into the car park to let the dog have a pee. I was allowed to get some juice from our car at the same time ...*

*I have no idea what people were charged with. I recall I wasn’t questioned or interviewed at any time. I was kept in a locked room and wasn’t given any food or drink. I was worried what was happening with [the applicant] when he was taken out of the room as I was left in the room myself.”*

Chief Inspector J also obtained a further statement from Constable E in respect of how the applicant and Child B were treated at the police station. Constable E stated the following:

*“At this time [the applicant], [Child B] and they’re [sic] dog were shown into an interview room near to the front reception area of the police office and offered refreshments by myself. The situation was explained in full to [the applicant] and he appeared to fully understand and was happy to assist the enquiries that were on-going.*

*Throughout that night, when time permitted due to other on-going enquiries with the other occupants in [the applicant’s] vehicle, I along with [Constable A] spoke with him to keep him updated and to make sure they were as comfortable as we could make them in the*

*circumstances, at one point I showed them into the rear yard area and was present when they're [sic] dog was walked to offer it some exercise."*

The Deputy Chief Constable stated the following in his response to the complaint:

*"From the information available to me, you attended [police station] on a voluntary basis and you, [Child B] and your dog were seated within a witness interview room ... You remained there between approximately 21.30 and 23.00 hours at which point you were interviewed in relation to your possession of the air pistol. You finally left the police office with [Child B] at approximately 23.40 hours ...*

*Whilst you were within [police station], you were not actually being held there but were there on a voluntary basis meaning that you were free to go at any time unless the officers chose to detain you in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995 as amended which would allow you to be held for up to six hours for questioning. That fact should have been made perfectly clear to you but I have no information to confirm that it was and therefore I would simply apologise for any misunderstanding caused.*

*Whilst the officers who were dealing with you were also carrying out additional tasks in respect of the other persons who had been within your vehicle, they should have ensured that you were kept informed of progress and the likely timescales until you would be interviewed. In addition, they should have regularly checked on your welfare and provided you with the opportunity to get fresh air and exercise your dog if need be. I believe that this may have occurred on one occasion but only at your request and no further check was made to confirm if this was sufficient or required to be repeated."*

### **Consideration**

The Commissioner is satisfied that the applicant's attendance at the police station was technically on a voluntary basis. All three officers maintain this was the case. Moreover, the applicant himself in his statement of 11 September 2008 states that that an officer "asked me to go to the Police Office with her as it wasn't far away." In addition, the note produced by D&G of the applicant's telephone call of 29 July 2008 states that he "admits he attended voluntarily" at the station.

D&G's Standard Operating Procedure ("SOP") on Care and Custody provides the following:

#### **"7.0 Voluntary Attendance**

*The term 'voluntary attendance' refers to any person who attends at a police station voluntarily and of their own free will to assist the police in an enquiry or investigation and who is not arrested or under detention. If that person is put under any duress to attend or remain at a police station, then they are not voluntary attendees.*

#### **7.1 Voluntary Attendees Free to Leave at Any Time**

*Such persons may leave the police station at any time they wish. If during the investigation circumstances change, the voluntary attendee may be moved to a detention or an arrest. That person will immediately be given their rights as a detained or arrested person.*

#### **7.2 Voluntary Attendee Not a Custody**

*Persons who attend at a police station as a voluntary attendee will always have a record created on the National Custody System. This is the only means of recording their attendance and must be used on all occasions. The National Custody System will generate the Voluntary Declaration Form.*

*The Police have a duty of care towards voluntary attendees consequently a Vulnerability Assessment will be completed on all occasions. (As per the National Custody System process) The reasons for completing the Vulnerability Assessment should be fully explained to the individual. The voluntary attendee will be informed that they are free to leave the police station at any time they wish.*

*A voluntary attendee will not be left unattended at any time and will not be secured or locked in a detention room or cell.”*

The SOP also provides:

*“Voluntary Attendance Forms should be printed off and signed by both attending Officers. The attendee should also be invited to sign the form as per current practice.”*

Although technically the applicant's attendance at the station was voluntary, there appears to be no dispute that the applicant and Child B were locked in a room while there. None of the officers appear to have been asked for their positions on this issue; however, Chief Inspector J acknowledged in his report that the applicant and Child B had been locked in an interview room. In the Commissioner's view, this renders meaningless the Deputy Chief Constable's comment that the applicant "was free to go at any time" (subject to his being formally detained).

As noted above, the SOP states that a voluntary attendee will not be left unattended or locked in a detention room or cell. In the Commissioner's view, there is no justification for distinguishing in this context between an interview room, detention room or cell. The locking of the applicant and Child B in the room was clearly contrary to the terms of the SOP. In addition, it is clear from the available evidence that, again contrary to the SOP, the applicant was left unattended during his time at the station.

D&G has clearly recognised that Child B was not treated in an acceptable manner during his time at the station. At the same time as he responded to the applicant's complaints, the Deputy Chief Constable also wrote to Child B's mother apologising for any distress caused by officers failing to contact her to advise that he was within the station, and also for leaving Child B unaccompanied while the applicant was absent from the room assisting with enquiries. The Deputy Chief Constable explained in his letter that the officers concerned had been provided with guidance on the standard of service expected should a similar situation occur in future. There was, however, no reference in the letter to Child B having been locked in a room during his time at the station. Although in the statement she provided during the complaints investigation Child B's mother appears to be aware that her son was locked in a room, nevertheless the fact that this was not acknowledged in the Deputy Chief Constable's letter was a significant omission.

The fact that no record of the applicant's attendance was created on the National Custody System was once again contrary to the SOP. In addition, no Voluntary Attendance Form was signed and no vulnerability assessment was undertaken in respect of either the applicant or Child B. This is not simply a procedural failing: the absence of any vulnerability assessments posed a potential risk to the applicant and Child B, and also for D&G as an organisation.

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. Accordingly, the Commissioner recommends:

- (1) that D&G apologises to the applicant for failing to treat him in accordance with its SOP during his time at the station and, in particular, for locking him in an interview room;
- (2) that D&G issues a further letter to Child B's mother apologising for Child B having been locked within an interview room while at the police station; and

(3) that D&G ensures that the officers concerned are reminded of the requirements of the SOP in respect of voluntary attendees.

#### Complaint 4: Failure to caution

According to D&G's note of the applicant's telephone call of 29 July 2008, the applicant described this complaint as follows:

*"... whilst at [police station] a male officer asked [the applicant] a whole series of questions about the air pistol, money in the car and the drugs found – believes he should have been cautioned."*

The applicant stated the following in his statement of 21 March 2010:

*"We were held at the Police Station for about three hours. During that time I was taken out into a foyer by a male officer out with [Child B's] presence. The Constable threatened me that he was going to have the car taken to pieces and searched for drugs. He told me that he had checked us all out and believed there were other drugs in the car somewhere. He seemed to have an idea that we were involved in the supply of drugs for some reason."*

#### Internal Handling

Chief Inspector J obtained an additional statement from Constable E regarding the applicant's allegation that he had been questioned in a threatening manner. Constable E firmly denied the allegation and claimed that at no point was the applicant threatened by him or anyone else.

Chief Inspector J noted the following in his report:

*"[The applicant] alleged that this occurred within an area immediately adjacent to the interview room and he initially queried with [Inspector G] whether the area was covered by CCTV cameras. The investigating officer has established that this is not protected by CCTV although because of the time-lapse since the original incident no such footage from any of the station cameras would have been retained in any case." [emphasis in original]*

With regard to the issue of the applicant having been cautioned, the Deputy Chief Constable responded as follows:

*"For the sake of clarity, as a potential witness, you do not require to be cautioned when being spoken to by the police. Should your status have changed from that of being a witness to a suspect or an accused, you would have been cautioned when questioned about the articles."*

With regard to the applicant's allegation that he was questioned in a threatening manner, the Deputy Chief Constable stated:

*"From the information that you provided, this took place in the front foyer with only you and the officer present. There is no CCTV coverage of this area."*

*Whilst the officer has confirmed that he took you from the witness room and spoke to you in the foyer, he states this was simply in relation to the ongoing process that was taking place. He has denied making any threats towards you."*

*In the absence of any additional evidence to support your complaint, I am unable to progress this aspect further."*

### *Consideration*

It is clear from the evidence that the applicant was cautioned before being questioned about the finding of the air pistol. Indeed, the applicant acknowledges this in his statement of 11 September 2009. The Commissioner therefore considers this aspect of the complaint to be unfounded.

With regard to the applicant's allegation that he was questioned in a threatening manner, as there is no CCTV footage of what occurred in the foyer, the only evidence available is that of the applicant and Constable E. Given that Constable E denied the allegation, the Commissioner considers that the Deputy Chief Constable's response was reasonable. In the absence of supporting evidence, it is not possible to substantiate the complaint.

In conclusion, the Commissioner considers that this complaint was dealt with in a reasonable manner.

## **Conclusions, Recommendations and Learning**

### **Complaints 1 and 4**

In the Commissioner's view, the manner in which these complaints were dealt with by D&G was reasonable. Accordingly no further action is required in this connection.

### **Complaint 2: The witnessing of the search**

In the Commissioner's view, the manner in which this complaint was dealt with by D&G was not reasonable. The Commissioner recommends that D&G provides a further response to the applicant explaining the basis for the comments made by the Deputy Chief Constable in his letter of 22 September 2010.

### **Complaint 3: The applicant's time in the detention room**

In the Commissioner's view, the manner in which this complaint was dealt with by D&G was not reasonable. The Commissioner recommends:

- (1) that D&G apologises to the applicant for failing to treat him in accordance with its SOP during his time at the station and, in particular, for locking him in an interview room;
- (2) that D&G issues a further letter to Child B's parents apologising for Child B having been locked within a room while at the police station; and
- (3) that D&G ensures that the officers concerned are reminded of the requirements of the SOP in respect of voluntary attendees.

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## Addendum to Complaint Handling Review PCCS/00185/10/PF – D&G

### Background

Prior to publishing a Complaint Handling Review (CHR), the Commissioner provides a copy of his report to the applicant and the police force concerned. In this case, the CHR was issued to the applicant by recorded delivery on 10 August 2011 and to D&G by email on 11 August 2011.

On 11 August 2011, after receiving a copy of the Commissioner's review, D&G wrote to the Commissioner with regard to aspects of complaint 3. This complaint consisted of an allegation that the applicant, his nephew and his dog were held in a locked interview room during his time at the police station. D&G informed the Commissioner that the applicant might not have been capable of being locked within the interview room. Accordingly the information D&G previously provided to the Commissioner's office in connection with this complaint, which specifically stated the applicant and his nephew were locked in the room, was inaccurate.

Following a conversation between the Deputy Chief Constable and the Commissioner's office it was agreed to delay publication of the CHR. D&G was then asked to provide the following information:

- Confirmation of whether the locking and exit/entry mechanisms of the room in question were the same which were in place in July 2008;
- If so, photographs of the room in question including the locking and exit/entry mechanisms (both inside and out);
- Confirmation of whether it was possible for a person to be locked within the interview room in question; and
- Photographs of all signage within the room in question.

### Evidence provided by D&G

On 16 August 2011, D&G provided the following information:

- A statement from Constable E;
- A statement from Constable F;
- A statement from Inspector G; and
- Photographs (6 in total) of the doors to the witness interview room at the police office and photographs of the inside of this room.

For ease of explanation, the door leading from the main foyer to the interview room is referred to below as "Door A" and the door from the back police office to the interview room is referred to as "Door B".

The information provided by D&G can be summarised as follows.

- The locking mechanisms in place in the interview room have been in place since the station opened in 2004 and were therefore in place when the applicant was within the station in July 2008. This was confirmed by Inspector G in his statement.
- Photograph 1 shows the external view of Door A, which leads from the public foyer of the station into the witness room. When entering through this door from the public area, it is necessary to use a police warrant card to activate the proximity card reader and thereafter enter a four digit number which is unique to that card holder. This will deactivate the

electronic door lock and allow entry into the witness room. The door will automatically lock again when closed to prevent unauthorised access from the foyer.

- Photograph 2 shows the internal view of Door A which has two means of opening from the inside. The push button on the wall will automatically deactivate the electronic door lock and allow the door to be opened. There is no signage advising “push to exit” or similar (the small sticker on the casing is the name of the manufacturer). Accordingly unless familiar with such a system, a user may not know the purpose of the button. Alternatively, the door can be opened simply by turning the locking mechanism situated below the door handle.
- Photograph 3 shows a general view of the room which contains only a table and two chairs for use by the occupants.
- Photograph 4 shows the only signage in the room which advises of the Arrest Referral Scheme in operation.
- Photograph 5 shows the internal view from the witness room of the door which leads into the police office, Door B. Apparently it is not normally locked although it is lockable from the outside using a key held in the key cabinet within the main office. If locked, it may be opened from the inside simply by turning the locking mechanism situated below the handle.
- Photograph 6 shows the locking mechanism of Door B from the outside.
- D&G concluded by stating that given the locking/opening mechanisms in place, anyone within the room could leave at any time simply by opening either door.

Constable E in his statement confirmed the description of the room provided in D&G’s letter. Pertinent extracts from his statement are detailed below:

- *I can confirm that [the applicant], [Child B] and their dog were shown into a witness/interview room directly adjacent to the front reception area of the Police office. I think they may have walked through the police office to get to this room but I cannot be certain.*
- *To my recollection the door leading into the main corridor [Door B] may actually have been left open for part of this enquiry in light of the voluntary circumstances the applicant and his nephew and dog were in attendance and when I was not present, I think that both of my colleagues, Constables [F] and [A] may have spoken with and updated the applicant with what was happening.*
- *I can confirm at no time did the applicant or his nephew ask me if they could leave nor did they express any form of discomfort during their time at [the] Police Office.*

Constable F provided a similar account.

#### The applicant’s position

After obtaining the above information from D&G, the applicant was asked to meet with members of the Commissioner’s staff. He attended a meeting at the Commissioner’s office on 15 September 2011.

The applicant was asked to give his account of his time in the interview room and, specifically, the factors which led him to believe that he was locked in the room.

The applicant advised that on arriving at the station, he parked his car in the gated car park to the rear and was then led to the interview room through the back of the station. He was shown into the interview room, along with his nephew and dog, through Door B. The door was closed and he

heard it being locked behind him. The description the applicant gave of the room matched the photographic evidence provided by D&G.

According to the applicant, after some time in the room his dog started to become distressed. He tried to open the window to get some air as the room was very warm but the window did not open. He then tried to open Door A by trying the handle but again it would not open. He did not try to open Door B as he had heard it being locked behind him. The applicant did not believe there were any locking mechanisms on either door that allowed them to be opened from the inside.

The applicant then began to bang on the door, as a result of which Constable E came and unlocked Door B. The applicant, his nephew and his dog were then allowed out into the car park. His nephew got a drink from the car and his dog wandered about the car park. According to the applicant, after this they were shown back into the interview room through Door B and he again heard the door being locked. After some time had passed, the applicant knocked on the door again to get some water for him and his nephew. Constable E brought them two cups of water.

The applicant drew a diagram showing where he parked his car, and part of the layout of the interview room and the station itself. The diagram appears to correspond with the information provided by D&G.

At this point in the meeting, the applicant was shown photographs 5 and 6 of Door B, photographs 1 and 2 of Door A and was given a description of how the doors could be opened. This description was aided by making reference to the locking mechanisms within the interview room within the Commissioner's office (which appears to be similar to those within the interview room at the station). The applicant was informed of D&G's position that it was not possible to be locked within the interview room.

In terms of photograph (1/2), the applicant thought the exit button was a "buzzer". He did not recall this being there at the material time and advised that, had he been aware, he would have "pressed this for attention." The applicant was then informed that the "buzzer" was in fact an exit button. The applicant also did not recall the locking mechanism as shown on photograph (1/2) and said that his efforts to get out of the room were confined to trying the handle on Door A. The applicant advised that he only tried Door A because, having entered the room, he heard Door B being locked behind him. The applicant advised that there were no signs within the interview room.

### Consideration

Based on the information provided by D&G, it is clear that a person cannot technically be locked in the interview room in question. However, this gives rise to the issue of whether it was reasonable for the applicant and Child B to perceive that they were locked in the room.

As noted in the initial consideration of this complaint, no record of the applicant's attendance at the station was created on the National Custody System, no Voluntary Attendance Form was signed and no vulnerability assessment was undertaken in respect of him or Child B. In other words the applicant was not formally made aware on his arrival at the station of his status as a voluntary attendee who was free to go at any time.

The position in respect to whether each door could be locked is considered further below:

#### **Door A**

The information provided by D&G clearly describes how this door can be opened and is supported by the statements of Constables E and F. The door can be opened from inside the interview room by pressing the exit button and turning the lock.

However, it is significant that there are no signs in the room to advise how to exit by Door A. At interview with the Commissioner's staff, the applicant advised he tried the handle but the door did not open. He did not recall the exit button or the locking mechanism and, significantly, he believed that the exit button was in fact a buzzer. While these mechanisms were in existence at the time, it is clear that they have to be used in the correct order or the door will not open and, consequently, would appear to be locked. Given the lack of any signage in the room to advise how the door can be opened, it is entirely understandable that the applicant came to the conclusion that Door A was locked.

## **Door B**

The information provided above by D&G shows that this door can be opened from inside by turning the locking mechanism. In his statement, Constable E advised that Door B has, to his knowledge, never been locked and can be opened by pulling the door handle. He further stated that the door may have been left ajar during the applicant's time in the interview room. Constable E also advised that the only time this door is closed is to offer occupants privacy whilst speaking with police. Constable F gave a similar account in her statement.

The applicant stated that he and his nephew were shown into the room via this door and he heard the door being locked behind him. He stated that when he wanted out of the room he knocked on this door and Constable E came and unlocked it. He stated there was no locking mechanism as shown in photographs 5 and 6 provided by D&G. He did not try the handle of the door during his time in the room as he believed the door was locked. When he was shown back into this room, he again heard this door locking behind him.

Based on the information provided by D&G, it is clear that even if Door B is locked, it can be unlocked and opened from inside the room. Given the time which has passed since the incident the Commissioner does not believe much weight can be attached to Constable E's recollection that Door B may have been ajar during the relevant period. In addition, the applicant has been consistent in his belief that the door was locked. Importantly, the applicant states he never tried to open the door as he believed it was locked. Accordingly, based on the applicant's account, even if the door was unlocked he would not have been aware of this as he never tried to use the door handle. According to the applicant his belief that the door was locked stemmed from his hearing it being locked.

Taking account of all the circumstances, the Commissioner considers that the applicant's belief that he was locked in the interview room was a reasonable one. It follows that Child B's perception was also a reasonable one. As a result of this, the recommendations the Commissioner made in his initial review have not been changed significantly. The Commissioner remains of the view that the complaint was not dealt with in a reasonable manner, and makes the following recommendations:

- (1) that D&G apologises to the applicant for failing to treat him in accordance with its SOP during his time at the station and, in particular, for giving him what was a reasonable impression that he was locked in an interview room;
- (2) that D&G issues a further letter to Child B's mother apologising for Child B having been under what was a reasonable impression that he was locked within an interview room while at the police station;
- (3) that D&G ensures that the officers concerned are reminded of the requirements of the SOP in respect of voluntary attendees; and
- (4) that D&G places adequate signage in the room in question, to ensure that anyone placed in the room voluntarily knows how to exit it.