

Report of a Complaint Handling Review in relation to Tayside Police

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

Summary and Key Findings

The applicant was arrested for by officers of Tayside Police for an alleged wildlife crime following allegations by two former employees. The applicant raised complaints about the decision to arrest him and the conduct of a civilian employee of Tayside Police.

The Commissioner found that two out of the three complaints made were not handled by Tayside Police in a reasonable manner. In respect of complaint 1, the Commissioner recommended that Tayside Police reach a firm view on whether the applicant's arrest was appropriate in the circumstances. In the event that Tayside Police decides that the arrest was inappropriate, the Commissioner recommended that it apologises to the applicant for this.

In respect of complaint 2, the Commissioner recommended that Tayside Police apologise to the applicant unreservedly in respect of the comments made by the civilian employee.

The applicant also complained about the time taken by Tayside Police to complete its investigation into his complaints. The Commissioner acknowledged that the complaints raised by the applicant led to a far reaching and complex investigation which resulted in the investigation taking longer than expected. The Commissioner identified the learning point that in such circumstances an applicant is provided regular updates during an investigation and that the reasons for any delay are explained fully in the final response letter.

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 October 2006 the applicant bought a country estate where Mr A was employed as a gamekeeper. Mr A states that, shortly after the purchase, he met with the applicant and noted down the following as to what had been discussed between them:

"Buzzards. Don't poison. Cage/crow traps. In a jute bag. If you're stopped you're taking to [Location Y] to release them. If not, the big Buzzard sanctuary in the sky."

Mr A states that the applicant continued to express concern to him about the number of buzzards on the estate and that he felt under pressure from the applicant to reduce their numbers. Mr A also states the following:

"... although I can't remember the exact words [the applicant] used I was left in no doubt that [the applicant] expected me to get rid of [the buzzards] permanently."

In November 2006, Mr A met with Mr B, a civilian officer with Tayside Police, and explained that the applicant had been complaining about the number of buzzards on the estate and that their number should be reduced. Mr B stated that there was no corroboration of these claims and asked Mr A to keep him informed of any future developments.

Mr A was sacked by the applicant and replaced by Mr C in February 2007.

Mr C states that in October 2007 he was approached by the applicant who described the removal of buzzards from the estate as "company policy". Mr C states that the applicant told him to catch buzzards using crow or "larsen" traps and that the applicant would transport them away from the

estate. According to Mr C, in a later conversation with the applicant in November 2007, the applicant expressed his annoyance that nothing was being done about the number of buzzards on the estate. Mr C's statement contains the following passages:

"I was already doing something that was legal ... but [the applicant] wanted me to do something that was illegal. He never mentioned poison but was very keen on catching them and transporting them elsewhere – whatever that meant."

Mr C was asked to leave his job in December 2007 by another employee of the applicant, Mr D. Mr C states that around this time he visited Mr A and told him that he had been asked by the applicant to remove or kill buzzards from the estate.

Mr B states that he was contacted by Mr A in early December 2007 who told him that Mr C had been:

"... asked to kill buzzards in the same way as he was and we agreed for both of them to come into the office and give statements."

On 6 December 2007, both Mr A and Mr C gave statements to Mr B. Mr B states the following:

"... the applicant appeared to be attempting to cause or permit [Mr A and Mr C] to commit offences against the [Wildlife and Countryside Act 1981] but I was not sure what the charge would be".

Mr B then consulted with a Procurator Fiscal Depute, Ms E, in relation to what the appropriate charge against the applicant would be. Ms E believed that there were two options for charging the applicant. The first was inciting a person to commit a crime under the Wildlife and Countryside Act 1981; the second was to charge the applicant with counselling another to commit a crime under the Criminal Procedure (Scotland) Act 1995. In email correspondence with Mr B, Ms E confirmed that the decision on how to proceed with the case rested with Mr B.

Following this discussion, Mr B advised Constable F that he should arrest the applicant. Constable F states that, as he had limited experience of wildlife crime, he accepted Mr B's advice in the knowledge that he had consulted with Ms E. Constable F also states that the decision to arrest the applicant was taken:

"... in light of the likelihood that if given any prior warning that police wished to speak with him [the applicant] would be able to discuss the matter with witnesses [Mr D] and [Mr G] and influence said witness evidence. This would have also lead to the potential loss of evidence in that if given prior notice that police were attending at [the applicant's estate] any traps or other related evidence on the estate may have been moved or disposed of."

Constable F states that, once the decision to arrest had been taken, it was decided not to carry this out on the applicant's estate where the applicant might have been among his peers and associates. Constable F felt that this would have been "inappropriate, and potentially embarrassing and distressing to the [the applicant]".

Sergeant H, who had supervisory responsibility for Constable F, states that he spoke with Constable F in relation to arresting the applicant. Sergeant H states that he was concerned about arresting the applicant given the period of time that had elapsed since the offence (involving Mr A) was allegedly committed. Sergeant H states that he asked Constable F to liaise further with Mr B to highlight his concerns. Constable F states that he discussed the decision to arrest the applicant with Mr B. In his statement Mr B states that he believed Mr C's more recent allegation against the applicant meant that the passage of time was not relevant.

On 5 January 2008, the applicant was arrested at his home address by Constables F and J. Both constables state that the applicant was arrested for:

“... the offence at common law of inciting other persons to commit a crime, namely to kill or take buzzards on [the applicant's] estate.”

The applicant's solicitor was informed of the arrest and attended the applicant's home while the arrest was still in progress. By this stage the applicant had been placed in a police car. The applicant states that his solicitor approached the police car but was refused access to him. However, Constables F and J state that the applicant's solicitor spoke briefly to the applicant while he was in the police car and that they had no discussion with the solicitor.

The applicant was interviewed in relation to the allegations against him. Constable F states that during the interview:

“... the accused denied inciting [Mr A] or [Mr C] to kill or deliberately take buzzards. He did state that it was his policy that if any buzzard was caught accidentally in a trap then it was to be removed from the trap, placed in a bag then it was to be conveyed elsewhere away from the locus to be released.”

On or around 23 January 2008, a report was submitted to the Procurator Fiscal containing two charges against the applicant. The Procurator Fiscal subsequently decided not to take any proceedings.

The applicant also states that he became aware that Mr B had spoken about him to Mr N and Mr P. The applicant believes that in one of these conversations Mr B used derogatory language to refer to him. The applicant claims that after his arrest Mr P recalled a conversation he had with Mr B in which Mr B told him about a big case involving buzzards. The applicant also claims that after his arrest, Mr P contacted Mr B to ask if he had been referring to the applicant during this conversation and he confirmed that he had been.

The Complaints

Based on the contents of the applicant's application form, and the information obtained from the Strathclyde Police, the Commissioner has identified the following complaints:

- (1) that the decision was taken to arrest the applicant;
- (2) that Mr B conducted himself in an unprofessional manner;
- (3) that the applicant was refused access to his legal representative; and
- (4) the time taken to complete complaint's investigation.

The applicant's solicitors wrote to Tayside Police on 11 January 2008 detailing complaints 1 and 2. Inspector K was appointed to complete a preliminary enquiry in relation to the complaints. During his enquiry, Inspector K met with the applicant and obtained a statement from him on 31 January 2008. Inspector K also obtained statements from Constables F and J and Sergeant H.

Inspector K identified that there were a number of elements to the applicant's complaints which he detailed as follows:

- “1. The unnecessary manner in which he was treated by Constable [F] on 5 January, as per solicitor’s letter;
2. The decision making process regarding the decision to arrest him;
3. The role and credibility of prosecution witnesses and an allegation they made false statements to police; and
4. The unprofessional manner in which [Mr B] conducted himself.”*

Following his enquiry, Inspector K forwarded his report to Superintendent L on 5 February 2008. Inspector K recommended that further enquiry be carried out.

On 3 March 2008, Superintendent L wrote to the applicant stating that Chief inspector M had been appointed as the investigating officer under the Police (Conduct) (Scotland) Regulations 1996. On the same date, Superintendent L informed Chief Inspector M that his report should be submitted to the Professional Standards Department before 11 April 2008.

On 27 March 2008, Chief Inspector M obtained a further statement from the applicant in which complaints 1, 2 and 3 were made. During the course of his enquiries, Chief Inspector M obtained 35 statements and considered a wide range of documents including internal police emails, emails between Ms E and Mr B and the custody history of the applicant. Chief Inspector M noted the applicant’s concerns as being:

- that the decision making process regarding the decision to arrest him;
- the unprofessional manner in which Mr B had conducted himself;
- the unnecessary manner in which the applicant was treated by Constable F, namely his refusal to allow the applicant’s lawyer access to him while still at his home address;
- the role and credibility of witnesses.

On 7 October 2008, Chief Inspector M submitted a report to the Deputy Chief Constable detailing the outcome of his investigation. The report listed a number of findings, recommendations and learning points which centred on the role played by Mr B in recommending that the applicant be arrested, and the lack of supervision of Mr B and Constable F.

On the same date, the Deputy Chief Constable forwarded Chief Inspector M’s report to the Area Procurator Fiscal to allow the question of unlawful arrest to be considered. On 22 October 2008, the Area Procurator Fiscal wrote to the Deputy Chief Constable informing him that, while the arrest of the applicant was “probably inappropriate”, it was carried out in good faith by the arresting officer and that no crime had been committed.

On 29 October 2008, the Deputy Chief Constable wrote to the applicant in response to his complaints.

The Commissioner’s Review

The applicant’s solicitor first contacted the Commissioner’s office by letter on 3 September 2008. He thereafter submitted an application form on 19 September 2008. Having received the application form, the papers relating to the applicant’s complaints were requested from Tayside Police. These were received by the Commissioner’s office on 6 November 2008.

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

Complaint 1: The decision to arrest the applicant

The letter of complaint sent by the applicant’s solicitor dated 11 January 2008 stated:

“While our client understands that the police have certain rights under the Criminal Procedure (Scotland) Act 1995, what has greatly upset him is the unnecessary manner in which he was treated on 5 January. First, his family were present and were greatly distressed by his arrest. Had your force asked him to attend voluntarily, he would have been willing to do so. Why was no such request made to him? Who made the decision to arrest and detain and on what basis?”

The applicant's statement of 27 March 2008 described his complaint as follows:

“I wish to complain about how this whole case has been handled. If all the officers had against me is that I have talked about there being a ‘company policy’ to remove buzzards even though I don’t have the means to do it then there is something far wrong.”

Internal Handling

In relation to the decision to arrest the applicant, Chief Inspector M 's report commented:

“[Mr B] states he decided that as there were two witnesses, [the applicant] should be arrested and interviewed about the allegations. He acknowledges that he did not consider the option of detention under s14 of the CPSA [Criminal Procedure (Scotland) Act 1995], as he was under the impression that he was obliged to arrest, with there being two witnesses; nor did he consider interviewing [the applicant] on a voluntary basis. Although [Mr B]’s recollection of his reasoning is poor, he states he believes he did not consider such an option because the impression from the witnesses was that [the applicant] was a bullying individual.”

Chief Inspector M also took account of Constable F's reasoning:

“Constable [F] states that the aim was to prevent [the applicant] speaking to two further witnesses, namely [Mr D] and [Mr G] before they could be interviewed. In addition, Constable [F] states that they wanted to be able to search for traps and other evidence while [the applicant] was in custody.

In relation to the decision to arrest the applicant at his home, Chief Inspector M's report contains the following passage:

“Due to duty patterns for Constable [F] and [J], there was only two opportunities to affect the arrest of [the applicant], either while he was at a shooting party on the estate or from his home address on 5th January 2008. Sergeant [H] states that he was concerned with the arrest of a business man in front of his peers and the embarrassment that could be caused. This view was also taken Constable [F], so the decision was made to carry out the arrest on 6th January 2008 at [the applicant]’s home address.”

In relation to the information Mr A and Mr C had provided Mr B, Chief Inspector M concluded that Mr B had been under the impression that the applicant had instructed both Mr A and Mr C to kill buzzards. Chief Inspector M noted:

“There is evidence that [Mr B] was confused about what Mr C had actually stated and to the IO referred to fact that there were two witnesses to [the applicant] instructing them to kill buzzards. It was pointed out to him by the IO that examination of [Mr C]’s statement revealed that at no time did he say he was instructed to kill buzzards, rather his reference was to bagging and removal. This was accepted by [Mr B] as a mistake on his part.”

Chief Inspector M found that the attending officers had acted in good faith, but his report concluded as follows:

“What has not been recognised is that while he is the expert in wildlife crime, [Mr B] has limited recent experience of Criminal Justice processes and decision making. His reasoning behind the decision to arrest reflects this, citing that he was obliged to arrest due to the fact that there were two witnesses.

In hindsight, [Mr B] fully accepts that his decision was a mistake and [the applicant] should have been offered the option of attending voluntarily and only detained if he refused to cooperate...

... Should [the applicant] have been arrested? No, there was sufficient cause to require him to be interviewed; however there was already considerable doubt as to what the charges would be before the arrest took place. In addition, [Mr B] applied a dated interpretation of criminal justice processes to the matter and concluded he should arrest [the applicant] because there were two witnesses, not for the progression of the investigation. By so doing, he lost all opportunity of further action, should other evidence have come to light.

At the least, [the applicant] should have been dealt with by way of a voluntary interview and at the most a detention under s14 of the CP(S)A, if he refused to cooperate. In addition, he should not have been charged. With doubt as to the actual offence committed, all facts should have been reported to the Procurator Fiscal without charge.”

In response to this complaint, the Deputy Chief Constable's response stated:

“... we were advised by the Area Procurator Fiscal that he was of the view that whilst your arrest was perhaps inappropriate at the time that it was carried out, it was carried out in good faith by the arresting officers and in his view by doing so they had not committed any crime. He further advised that he was also of the view that there appeared to have been an apparent lack of supervision of the wildlife crime investigation officers involved in this matter and he has fully discussed this with Superintendent [L], the officer with management responsibility for them. This however had no impact on the legality of the action taken by them in arresting you ... having reviewed the circumstances of your complaint, I have instructed that a member of staff receive corrective advice for his part in this matter.”

Consideration

From the paperwork supplied to the Commissioner, it is clear that the applicant's initial concern, as communicated through his solicitor, was that he was not asked to attend Police Station X voluntarily and that, by arresting him at his home, unnecessary distress was caused to his family.

It appears from Chief Inspector M's report that Mr B played a crucial role in deciding whether to arrest the applicant. Tayside Police has identified that his decision-making was flawed from the outset. Mr B was of the view that he was obliged to arrest the applicant on the basis of Mr A and Mr C's allegations. According to Chief Inspector M, the applicant ought not to have been arrested and other options, such as voluntary attendance or detention under section 14 of the Criminal Procedure (Scotland) Act 1995, could have been utilised.

During his investigation, Chief Inspector M found that other officers had been aware of Mr B's decision (Constables F, J and Sergeant H) and that whilst an objection was raised regarding the appropriateness of arresting the applicant, all officers involved appeared to place their faith in the experience and expertise which Mr B had in the area of wildlife crime. In this regard, Chief Inspector M's conclusion that Constables F and J acted in good faith was reasonable.

Chief Inspector M also found that:

- Mr B did not record criminal allegations in the crime management system;
- Mr B had close contact with members of the shooting community who provided him with intelligence, while at the same time participating fully in the investigation of crimes involving these individuals; and
- Mr B had no direct reference to local Area Crime Officers to ensure investigative oversight.

Although related, these three issues are distinct from the applicant's complaint and demonstrate the thoroughness of Chief Inspector M's investigation.

Chief Inspector M also commented in his report that new protocols had been implemented to ensure all wildlife cases are recorded in the crime management system and reviewed by a supervisor prior to any action being carried out. His report also contained two learning points, namely:

- that the operational support division carry out a review of how wildlife crime is supervised, recorded and managed; and
- that Mr B be provided with corrective advice in respect to his actions in this case.

Again, these points demonstrate the comprehensive nature of Chief Inspector M's enquiries. In the Commissioner's view, however, the Deputy Chief Constable's response did not adequately reflect those comprehensive enquiries. Very little of the information detailed above was conveyed to the applicant by the Deputy Chief Constable. Given the firm view of Chief Inspector M and Mr B's acceptance that his decision making was flawed it is unclear why the Deputy Chief Constable reached the view that the applicant's arrest was "perhaps inappropriate". Given the nature of the complaint, it is the Commissioner's view that the Deputy Chief Constable had enough information to reach a firm view on whether the arrest was appropriate or not.

For these reasons, the Commissioner considers that this complaint was not handed in a reasonable manner. The Commissioner recommends that Tayside Police reaches a firm view on whether the applicant's arrest was appropriate in the circumstances. In the event that Tayside Police decides that the arrest was inappropriate, the Commissioner recommends that it apologises to the applicant for this.

Complaint 2: Alleged unprofessionalism on the part of Mr B

Whilst the applicant's overall complaint is that Mr B conducted himself in an unprofessional manner, he has identified the following specific concerns:

- that Mr A and Mr C either colluded with or manipulated Mr B to ensure that the applicant was arrested; and
- that Mr B referred to the applicant using derogatory language during conversations with a number of individuals.

Alleged collusion or manipulation

In addition to the internal handling described under complaint 1 above, Chief Inspector J obtained additional statements from Mr A, Mr C, Mr N and Mr P.

Internal Handling

In relation to this element of the complaint, Chief Inspector M 's report commented:

“The statement provided by [Mr A] is corroborated by [Mr C], [Mr D] and [the applicant]’s own admissions during interview. Despite this point being explained to him, he repeated the allegation and concluded that if [Mr A] had not colluded with [Mr B], he had manipulated him to achieve the arrest, being an ex-police officer.

... there are questions about [Mr B]’s decision making, however there is no evidence of collusion or manipulation leading to this position.”

Chief Inspector M concluded:

“To conclude, the answer to this question is that evidence indicates that [Mr A] did not provide a false statement as alleged by [the applicant] and there is no evidence of him colluding with [Mr B].”

In response to this element of the complaint the Deputy Chief Constable stated the following:

“In respect of your expressed dissatisfaction with the role played by [Mr B] in the enquiries leading up to your arrest I would advise that no evidence came to light during the extensive enquiry carried out to suggest that others had conspired to make false allegations against you and that [Mr B] had played any part in such a perceived conspiracy. The decision of the individuals concerned to approach Tayside Police and provide the information they did was entirely voluntary on their part.”

Consideration

The applicant holds the view that Mr A, Mr B and Mr C have been involved in a plan to ensure his arrest and that this is an example of undue civilian influence on operational policing matters. As evidence of this, the applicant highlights a conversation between Mr B and Mr P in January 2007, when Mr B commented that there was a big case involving buzzards which would be reported on by the press. The applicant states that following his arrest, Mr P contacted Mr B to ask if he had been referring to the applicant during this conversation and that Mr B confirmed that he had. Accordingly, the applicant believes that his arrest had been planned over a long period of time.

The Commissioner notes that Mr A first approached Mr B with his concerns in November 2006. Therefore Mr B would have been aware of Mr A’s allegation at the time he is alleged to have discussed it with Mr P. According to Mr P’s statement, he had a conversation with Mr B during which he was told that two gamekeepers had approached him and said that they had been sacked because they would not kill buzzards. However, Mr P is unclear in his statement as to when this conversation took place.

The Commissioner notes that in January 2007 neither Mr A nor Mr C had been sacked by the applicant. Furthermore, it was only after Mr A and Mr C met with Mr B in December 2007 that Tayside Police proceeded to take any action against the applicant. As such, the Commissioner finds it unlikely that Mr B would have had the discussion in January 2007 which the applicant believes he had.

Additionally, as noted in the internal handling of complaint 1 above, Chief Inspector M analysed the information Mr A and Mr C had provided to Mr B and recognised that, in effect, both were making different allegations. In coming to this view, Chief Inspector M took account of the specific allegations which Mr A and Mr C had made against the applicant and found that only Mr A’s statement made reference to the killing of buzzards and that this was based on an inference on Mr A’s part. Chief Inspector M then went on to comment that Mr C had made no mention **at all** of the

applicant instructing the killing of buzzards and that Mr C only referred to their “bagging and removal”. Chief Inspector M’s report acknowledged that Mr B had accepted that his interpretation of what Mr C had told him had been a “mistake” on his part.

Given that both Mr A and Mr B had made different allegations, the conclusions reached by Chief Inspector M and the response given by the Deputy Chief Constable appear reasonable.

Alleged derogatory language

The applicant believes that the language used by Mr B to describe him during separate conversations with Mr N and Mr P was derogatory. The applicant believes that prior to and during the police investigation Mr B discussed the allegations against him with Mr N and Mr P.

Internal Handling

In relation to this element of the complaint, Chief Inspector M’s report commented:

“[Mr P] states that during a second conversation with [Mr B], he referred to [the applicant] as an ‘arrogant old bastard’ and gave the impression of having a preconceived idea of him. Similarly [Mr N] reports such language from [Mr B]. This does raise a question of his professionalism.”

In response the Deputy Chief Constable stated the following:

*“In relation to the final aspect of your complaint namely that [Mr B] had conducted himself in an inappropriate or unprofessional manner throughout this enquiry by discussing your case with others, a number of individuals were interviewed in relation to this. From these interviews it is apparent that [Mr B] did have occasion to discuss the relevant issues with certain individuals and whilst on one hand some considered him to have acted nothing less than professionally, others referred to him using an inappropriate choice of language on at least one occasion...and as such they may have doubted his professionalism...Tayside Police expects its entire staff to act in an impartial and professional manner at all times and **if this has not been the case on this occasion** I offer you my unreserved apologies... a member of staff has received corrective advice for their identified shortcomings in this enquiry.” (emphasis added)*

Consideration

In the Commissioner’s view, there is sufficient evidence from witnesses to confirm Mr B did use derogatory language when referring to the applicant. Both Mr N and Mr P confirm in their statements that Mr B spoke to them about the applicant in a derogatory manner. In these circumstances, it is difficult to understand the Deputy Chief Constable’s qualified apology as quoted above. According to the evidence, it is clear that Mr B spoke about the applicant to Mr N and Mr P using derogatory language.

In these circumstances, the Commissioner does not consider that this complaint was handled in a reasonable manner. The Commissioner recommends that Tayside Police apologise to the applicant unreservedly in respect of the comments made by Mr B about the applicant to Mr N and Mr P.

Complaint 3: Refusal of access to legal representative

Upon being told that his client had been arrested by Tayside Police, the applicant’s solicitor attended the scene. The applicant is unhappy that he was not given access to his solicitor at that time.

Internal Handling

In response to this complaint the Deputy Chief Constable wrote to the applicant on 29 October 2008 stating the following:

"In response to your complaint regarding your solicitor not being allowed access to you on that day I would advise that there is no legal obligation on the police to allow him access to you at the time of your arrest nor during any formal interview with you at the police station. Whilst on occasions it may be deemed of assistance to allow such access that is a matter for the officer in charge of the case to decide upon. On this occasion an operational decision was made not to allow your solicitor access to you."

Consideration

The applicant states that he was placed in a police car and as his solicitor approached the car he was refused access to the applicant and told that he could contact the applicant at Police Station X. However, Constable F states that an individual (whom he later discovered was the applicant's solicitor) approached the applicant whilst he was seated in the police car and spoke briefly to him. Constable F states that he did not speak to the applicant's solicitor and Constable J corroborates Constable F in this regard.

There is clearly a difference in the recollection of events in relation to whether or not the applicant was granted access to his solicitor. On one hand, both constables recall the applicant speaking to his solicitor, albeit briefly, whilst the applicant claims that his solicitor was denied access to him.

Whatever the true position, the Commissioner considers that Deputy Chief Constable's response accurately represents the legal position regarding a suspect's right of access to a solicitor at the time of his arrest. As such, even if it is correct that the applicant was denied access to a solicitor, this would not suggest any wrong-doing on the part of Tayside Police.

Accordingly, the Commissioner considers that this complaint was handled in a reasonable manner. No further action is required of Tayside Police in this connection.

Complaint 4: Time taken to complete the complaints investigation

The applicant's solicitor originally wrote to Tayside Police raising his complaints on 11 January 2008. He received the final response to his complaints on 29 October 2008. The applicant believes that this timescale is unreasonable. This complaint has not been made to Tayside Police. However, as it relates to the manner in which the applicant's complaints were dealt with by Tayside Police, the Commissioner has considered it as part of his review.

As noted above, Chief Superintendent Q informed Chief Inspector M that his enquiry report should be submitted to the Professional Standards Department before the 11 April 2008. This timescale was not met and indeed the enquiry took an additional five months to complete.

Chief Inspector M responded to requests for updates from the Professional Standards Department on the progress of his investigation by stating words to the effect that his investigation was ongoing and that certain individuals involved in the complaints were yet to be interviewed.

According to a note within Tayside Police's file on 19 August 2008 a weekly Professional Standards Department meeting was held. At the meeting the failure of Chief Inspector M to submit his enquiry report was discussed. It was agreed at the meeting that the Deputy Chief Constable would raise the matter with Chief Superintendent Q in order that he could instruct Chief Inspector M to submit his report without delay.

On 3 September 2008 Chief Inspector M sent an email to the Professional Standards Department stating that he was awaiting information from the Procurator Fiscal which he required to complete his investigation. The information in question consisted of the e-mails which had been sent between Ms E and Mr B.

The Commissioner acknowledges that the complaints raised by the applicant led to a far reaching and complex investigation. The Commissioner also acknowledges that this resulted in the investigation taking longer than expected. The Commissioner has identified as a learning point that, in such circumstances, an applicant is provided regular updates during the investigation and that the reasons for delay are explained fully in the final response letter.

Conclusions, Recommendations and Learning

Complaint 1: The decision to arrest the applicant.

For the reasons given the Commissioner does not consider that this complaint was handled in a reasonable manner. The Commissioner recommends that Tayside Police reaches a firm view on whether the applicant's arrest was appropriate in the circumstances. In the event that Tayside Police decides that the arrest was inappropriate, the Commissioner recommends that it apologises to the applicant for this.

Complaint 2: Alleged unprofessionalism on the part of Mr B

For the reasons given, the first element of this complaint was handled by Tayside Police in a reasonable manner. Accordingly no further action is required in this connection.

However, the Commissioner does not consider that the second element to this complaint was handled in a reasonable manner. The Commissioner therefore recommends that Tayside Police apologise to the applicant unreservedly in respect of the comments made by Mr B about the applicant to Mr N and Mr P.

Complaint 3: Refusal of access to legal representative

For the reasons given, the Commissioner considers that this complaint was handled in a reasonable manner. Accordingly, no further action is required in this connection.

Complaint 4: Time taken to complete the complaints investigation

For the reasons given, the Commissioner recommends that Tayside Police provide its complainers with regular updates during an investigation and that the reasons for any delay are explained fully in the final response letter.

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