

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

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## 1. Role of the PIRC

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Sections 34 and 35 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the Act”) provide that the Police Investigations and Review Commissioner (“the PIRC”) may examine the manner in which particular kinds of complaints are dealt with by Police Scotland and the Scottish Police Authority. Through agreements with UK police bodies operating in Scotland, the PIRC may also examine the manner in which these bodies deal with complaints. The PIRC cannot review complaints of criminal behaviour against police officers or police staff, or complaints made by persons serving, or who have served with the police, about the terms and conditions of their service.

In performing this review function, the PIRC obtains information from the police body which dealt with the complaint. This information is considered together with information provided by the person who made the complaint (“the applicant”). An assessment is then made as to whether in all the circumstances the complaint was dealt with to a reasonable standard. Among the factors taken into account when making this assessment are the following:

- whether sufficient enquiries into the complaint have been carried out by the policing body;
- 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;
- whether the policing body’s response to the complaint is adequately reasoned; and
- 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.

## 2. Key findings

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The complaints in this case arose from police officers’ attendance at the applicant’s property on 16 April 2016 in connection with a reported disturbance. Three complaints were reviewed, namely:

- 1) that police officers entered the applicant’s property and damaged carpets in the process;
- 2) that the applicant was grabbed and pushed against a door and handcuffs were applied which caused bruising; and,
- 3) that a police officer grabbed the applicant’s arm.

The review found that two of the complaints were dealt with to a reasonable standard and one was not. One recommendation was made.

### 3. Background

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On 16 April 2016, Constables B and C attended at the applicant's address after Police Scotland received a report of an ongoing disturbance involving the applicant, her son (Mr A) and her neighbours. Constables D and E also attended the property a short time later.

When the officers arrived, the applicant came to her front door and exited the property. She was subsequently detained and handcuffed. Mr A remained inside the property and refused to come outside. As the front door had closed over and locked when the applicant came outside, the officers could not gain entry to detain Mr A. Constables F, G, H and J subsequently attended at the scene along with Sergeant K to assist in gaining entry to the property. However, the applicant informed the officers that she had the key in her pocket and that she would unlock the door. The key was then provided to the officers allowing entry to the property after which Mr A was also detained.

The applicant submitted her complaint in person at Police Office X on 19 April 2016. Sergeant L was appointed to investigate the complaints and Chief Inspector M responded to the applicant's complaints by letter of 4 August 2016.

### 4. The Review

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#### Complaint 1: Damaged carpets

The applicant complains that police officers entered her property and damaged carpets.

#### *Police Handling of Complaint 1*

Chief Inspector M provided the following response:

*You advised Sergeant [L] that four Officers entered your house, however all Officers at scene report that only two Officers entered the house to detain your son. You were heard to state that Officers had been in your home prior to Officers entering to detain your son. However, the Officers' position is none of them initially entered your home as you left your property closing the door behind you causing it to lock.*

*I understand that sometime later you unlocked the door to your home at which point only two Officers entered. The position of both of these Officers is that they believed that their footwear was not dirty or wet and they were unaware of causing any mess as they walked across your carpets.*

*It is clear to me that had your son complied with the numerous requests by Officers to present himself at the front door there would have been no requirement for any Officers to enter the property.*

*I have seen the photographs you provided of the damage to the carpets and acknowledge that the carpets may have been marked during the apprehension of your son. While this is unfortunate, available evidence would indicate this was accidental and as previously stated this could have been prevented had your son presented himself at the front door of your home.*

*I therefore find this element of your complaint not upheld.*

## **Consideration of Complaint 1**

The Police Scotland complaint file was provided to the PIRC during the review. The file contained statements provided by the officers who attended at the applicant's address during the incident.

Constable B and Constable F both recorded in their statements that they entered the applicant's property to detain Mr A. Constable B stated that they made their way from the ground floor to an upstairs bedroom where Mr A was located. Contrary to the information contained in the complaint response, neither officer referred to the condition of their footwear or stated whether or not they were aware of causing any damage to the carpets. A third officer, Constable G, stated that he also entered the property although he remained within the vestibule area.

Sergeant K, who did not enter the property, stated that the grass and ground outside the applicant's property was dry and that none of the officers *"had any muddy or visually dirty boots/footwear"*.

It would have been beneficial to the response had the content of the officers' statements been more accurately reflected. However, Chief Inspector M acknowledged that the applicant's carpets could have accidentally been marked by police officers during the incident. It is considered that his assessment is supported by the available information. Accordingly it is concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

## **Complaint 2: Excessive force**

The applicant complains that she was grabbed and pushed against a door and thereafter she had handcuffs applied which caused bruising.

## **Police Handling of Complaint 2**

Chief Inspector M provided the following response:

*"The position of the Officers who initially attended is that you emerged from your house prior to the arrival of the Police van at scene. These Officers detained and handcuffed you.*

*I note that a further element of your complaint relates to the handcuffs being applied to your wrists too tightly. I understand that your handcuffs were applied given your status as a detained person.*

*Handcuffs are approved Police issue equipment used by Officers on a daily basis to restrain and control people in Police custody.*

*It is acknowledged that their design and construction makes them less than comfortable, however, when circumstances allow, appropriate care is taken to ensure they are correctly applied.*

*The manner in which the Officer describes he applied the handcuffs conforms to an approved technique. I understand they were checked by both Officers. I appreciate the handcuffs would have been uncomfortable and I am led to believe an Officer loosened them off at a later time and prior to them being removed at [Police Office Y].*

*Taking all the circumstances into consideration and on the basis of the evidence provided by the Officers, I do not consider they used excessive force to detain you and I find this part of your complaint not upheld.*

## **Consideration of Complaint 2**

The response in relation to the applicant's complaint about the application of handcuffs (that bruising was caused) is supported to an extent by Constable D's account. Constable D confirmed that he applied the handcuffs and that the applicant informed him they were too tight. He therefore demonstrated that this was not the case by showing the applicant he was able to put his finger between the handcuffs and her hand. The response acknowledges that handcuffs may be uncomfortable, and states that they were subsequently loosened before later being removed at Police Office Y. However, of the officers who it appears were present at this time (Constables B, C, D and E), none say within their statements whether they loosened the applicant's handcuffs at a later stage and whether or not any bruising was evident on the applicant's wrists as this information is not recorded in any of the officer's statements. It is therefore considered that the response is not fully supported by the material information available.

The Police Scotland Complaints about the Police Standard Operating Procedure ("the Complaints SOP") provides at section 6.10.3 and 6.12.6 that every reasonable effort should be made to investigate all of the relevant circumstances and information surrounding a complaint; that the investigation should be proportionate; and, should reflect the ability to provide a reasoned response based on the "balance of probabilities". That is, based on all available evidence whether one account is more credible than another. Section 6.15.6 states that the complaint response should fully address the complainer's allegations and concerns, and the reasoning behind any decision should be apparent.

Contrary to the above procedures, the complaint response did not address the applicant's specific allegation that she was "*grabbed and pushed against a door*". It is considered that, given the potentially serious nature of the allegation, a full statement should have been recorded from the applicant that clearly explained her recollection of the incident.

From the information available, it appears the officers present were Constables B, C, D and E. In relation to this aspect of the complaint, Constable D recorded in his statement that the applicant was "*not pushed against any door, as when she emerged she was handcuffed next to her boundary fence, which is some 5 feet away*". Constables B and E referred to the applicant's detention within their statements however neither officer recorded whether this occurred at the door to the property or at the

boundary fence as is Constable D's position. No statement was available from Constable C and it is therefore unclear whether or not he was involved in, or witnessed, the applicant's detention.

Constables B and E both state that Mr A was at an upstairs window during the incident. As no statement was recorded from Mr A, it is unclear whether or not he witnessed the applicant's detention. Constable B also noted that Mr A recorded the incident on his mobile phone. It was later confirmed by the applicant during the review that Mr A did not record the incident, however it is considered that this point should have been fully explored during the complaint investigation.

As no statements were obtained from Mr A or Constable C, and, as the statements provided by Constables B and E did not refer to the applicant's allegation that she was grabbed and pushed against a door, it is considered that insufficient enquiry was carried into this aspect of the applicant's complaint to allow Chief Inspector M to assess 'on balance' whether or not the applicant's complaint should be upheld.

As the response was not in accordance with relevant procedures, and as insufficient enquiry was carried out, it is concluded that the complaint was not dealt with to a reasonable standard. It is recommended that a statement be sought from the applicant that clearly explains how she was grabbed and pushed. A statement should also be sought from Constable C regarding both aspects of the complaint, and more detailed accounts obtained from Constables B, D and E which make reference to whether or not the applicant was grabbed and pushed, whether the handcuffs were loosened and whether or not any bruising was evident on the applicant's wrists. Police Scotland should also make efforts to obtain an account from Mr A. A further response should then be issued to the applicant reflecting all of the available evidence and which explains the reasons for any decision reached.

### Complaint 3: Torn jacket

The applicant complains that an officer grabbed her arm when she was trying to remove a key from her jacket pocket, causing the pocket to tear.

#### Police Handling of Complaint 3

Chief Inspector M provided the following response:

*"The Officers who accompanied you back to the door of your home state that you removed the key from your pocket unaided and handed it to one of them. The position of the Officers is that they are unaware of any damage caused to your jacket.*

*I note that you subsequently showed other Officers a tear around the area of your jacket pocket, however it is unclear to me exactly when and how this damage was caused.*

*In the absence of any supporting evidence the damage was caused by Officers, I find this element of your complaint not upheld.*

### Consideration of Complaint 3

The officers who were with the applicant when the key was removed from her pocket were asked to clarify how the key was obtained, and whether or not any officer took hold of her arm or jacket during this process. Sergeant J and Constables B, F and H recorded in their statements that the applicant retrieved the key from her pocket by herself and handed it over. Constable H stated that she took hold of the applicant's arm however this was after the key had been handed over and the door had been opened. Constable B stated that he did not witness any officer place their hands into the applicant's pocket to remove the house key and that the applicant voluntarily provided the key to officers. He stated that he was *"puzzled as to why her pocket would have been ripped"*.

As already explained in the consideration for Complaint 2, Section 6.12.6 of the Police Scotland Complaints about the Police Standard Operating Procedure ("the Complaints SOP") provides that the decision whether to uphold a complaint must be taken based on the 'balance of probabilities'. That is whether, based on all available evidence, one version of events is considered to be more probable than another. Where conflicting accounts cannot be reconciled, the complaint will not be upheld, however an explanation as to why must be provided.

On the basis of the evidence gathered during the complaint enquiry, it is considered that Chief Inspector M was justified in not upholding this complaint on the balance of probabilities. This is because there does not appear to be anything in the evidence as a whole that would have justified Police Scotland preferring the applicant's account over the accounts provided by Sergeant J and Constables B, F and H. As sufficient enquiry was carried out and as the complaint response is supported by the material information available, it is concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

## 5. Conclusions

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### Complaints 1 and 3

It is concluded that these complaints were dealt with to a reasonable standard. No further action is required in this connection.

### Complaint 2: Excessive Force

It is concluded that this complaint was not dealt with to a reasonable standard.

It is recommended that a statement be sought from the applicant that clearly explains how she was grabbed and pushed. A statement should also be sought from Constable C, and more detailed accounts obtained from Constables B and E which make reference to whether or not the applicant was grabbed and pushed, whether the handcuffs were loosened and whether or not any bruising was evident on the applicant's wrists. Police Scotland should also make efforts to obtain an account from Mr A. A further response should then be issued to the applicant reflecting all of the available evidence and which explains the reasons for any decision reached.



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