

Report of a Complaint Handling Review in relation to Police Scotland

Index

- 1. Role of the PIRC**
- 2. Key findings**
- 3. Background**
- 4. The Review**
- 5. Conclusions**

1. Role of the PIRC

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

The complaints in this case arose from two separate incidents, where the applicant was alleged to have committed a breach of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 on each occasion.

35 complaints were considered, namely:

1. that Constable E failed to include the time and date on a calling card delivered to the applicant’s address;
2. that Constable E “ordered” the applicant not to have any correspondence with members of Company YY;

3. that Constable E failed to respond to the applicant's correspondence or make contact with the applicant during February 2016;
4. that Constable E took too long to investigate an allegation against the applicant (Police Incident XX);
5. that Inspector J lied about the reason for his visit to the applicant's home on 8 March 2016, and thus failed to adequately explain the purpose of noting a statement from the applicant;
6. that Inspector J failed to take a statement from the applicant regarding the incident on 18 January 2016;
7. that Inspector J did not investigate the applicant's allegation of assault;
8. that Inspector J did not sufficiently investigate an allegation against the applicant (Police Incident XX);
9. that the applicant was unjustifiably arrested under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 on 9 March 2016;
10. that the arresting officers did not follow the provisions of the relevant legislation or police procedures in relation to mental health;
11. that the arresting officers did not enquire after the applicant's welfare, despite being aware of his mental ill health;
12. that the arresting officers used unreasonable force on the applicant and refused to loosen his handcuffs;
13. that the arresting officers did not monitor the applicant, check his condition or apply first aid on route to the custody office at Police Office RR;
14. that the applicant was not provided with adequate clothing to keep warm in the police van or in the custody cell;
15. that the arresting officers handed the applicant over to different officers in a police van, without first giving a sufficient briefing on the applicant's condition;
16. that the applicant was not taken to see a doctor following his arrest, and was lied to by the arresting officers about this;
17. that one of the arresting officers lit a cigarette beside the police car, which the applicant found inappropriate;
18. that the arresting officers lied to the applicant by telling him that he would not be charged, but then improperly charged him;
19. that officers at Police Office RR "*dumped*" the applicant on the ground and "*dragged*" him across the concrete floor;
20. that an officer behind the counter at Police Office RR told the applicant that he could not see a doctor;
21. that officers at Police Office RR failed to provide the applicant with an Appropriate Adult;
22. that a sergeant at Police Office RR said "*here are your rights*", and dropped the letter of rights on the floor;
23. that an officer at Police Office RR did not provide the applicant with his reading glasses or a large-print version of the letter of rights, despite this being available;

24. that an officer at Police Office RR told the applicant that he may need to remove his trousers;
25. that officers at Police Office RR restrained the applicant unnecessarily when taking him to see the nurse;
26. that an officer at Police Office RR displayed bias against people with mental health conditions;
27. that officers did not submit a concern report about the applicant, and nor did they notify the local authority or the Mental Welfare Commission;
28. that there was a conflict of interests in Inspector J investigating the applicant's original complaints at same time as progressing a charge against him;
29. that Inspector J, Temporary Chief Inspector L, Inspector H and Chief Inspector AA each contributed to unacceptable delays in the applicant's complaints being investigated and responded to;
30. that Temporary Superintendent G and Temporary Chief Inspector L failed without reason to provide the applicant with information regarding the charges against him;
31. that Inspector J did not send the applicant's statement regarding the incident on 18 January 2016 to the Crown Office and Procurator Fiscal Service (COPFS), despite telling the applicant that he would do so;
32. that Inspector H did not provide the applicant with documentary evidence to support her assertion that the applicant's statement had been included with the standard prosecution report sent to the COPFS;
33. that Inspector H failed to inform the applicant that she had asked the COPFS to review the standard prosecution report;
34. that there was a conflict of interests in Inspector H investigating complaints when she herself was the subject of complaints made by the applicant; and
35. that Inspector H failed to answer the applicant's queries regarding why he waited for a number of months yet heard nothing about the charges made against him.

The review found that 22 complaints were dealt with to a reasonable standard while thirteen complaints were not. Two reconsideration directions were given and twelve recommendations were made.

3. Background

The applicant resides with his partner, Ms A, in a small village in a rural part of Scotland – Location ZZ. Until the events described in this report, the applicant was an active director of a local community company – Company YY. The applicant has a history of mental ill health and, at the material time, was taking prescribed medication to treat depression.

Police Incident XX

The applicant was requested by Ms C, another director of Company YY, to attend a meeting with herself and Mr B, the chair of Company YY, at Location WW on 18 January 2016. The purpose of this meeting was to discuss emails which Mr B had received from the applicant regarding the running of

Company YY. The applicant had also reported fellow directors of Company YY to the Office of the Scottish Charity Regulator (OSCR).

The applicant, Mr B and Ms C met in a car park at Location WW, where Mr B and the applicant left their cars and were driven to a local bar and restaurant – Bar VV – by Ms C. At Bar VV, the applicant states that all three individuals were involved in a heated discussion. After the meeting, all three individuals returned to Location WW in Ms C's vehicle.

On 22 January 2016, Mr B's wife, Mrs D, telephoned Police Scotland to report that the applicant's behaviour at Bar VV had been "*threatening*". The call was given a reference (Police Incident XX) and was attended by Constables E and F, who obtained a statement from Mr B. In this, Mr B stated that the applicant behaved aggressively, that he had felt threatened by the applicant, and that at one point he believed the applicant was preparing to assault Ms C, forcing Mr B to intervene.

On 24 January 2016, Constable E obtained a statement from Ms C regarding the applicant's behaviour at the meeting on 18 January 2016. Ms C stated that the applicant had been aggressive and that she had been frightened by him.

Constable E thereafter attended at the applicant's home on 2 February 2016, however states there was no answer at the applicant's address, thus a Police Scotland Call Card was left. As a result, Constable E contacted Mr B, who advised Constable E that he believed the applicant was out of the country, and provided Constable E with the applicant's e-mail address.

Constable E sent an e-mail to this address, requesting that the applicant contact him when he was back in Scotland, and also requesting that the applicant cease contacting any members of Company YY until after Constable E had been able to meet with him.

Between 2 February 2016 and 4 February 2016, the applicant sent Constable E a number of e-mails from overseas, requesting Constable E confirm his reasons for trying to meet with him, and also discussing the applicant's ongoing problems with Company YY. The applicant also on one occasion attempted to contact Constable E by telephone, however this was not successful. The applicant ultimately confirmed to Constable E that he would return to Scotland on 14 February 2016.

On 4 February 2016, Constable E attended at Bar VV to obtain CCTV footage from the time of Police Incident XX. Constable E was advised by staff at Bar VV that their CCTV system was not working, however they would contact him should this be repaired and the relevant footage be available. At this time Constable E also obtained a statement from Mr M, who had been working in the bar during Police Incident XX and had witnessed some aspects of the incident.

Between 5 February 2016 and 15 February 2016, the applicant sent Constable E a further 22 e-mails, including four which had also been sent to Temporary Superintendent G wherein the applicant made complaints about Constable E. Temporary Superintendent G thereafter contacted Inspector H, who at the material time was performing duties as an Acting Chief Inspector, requesting that Inspector H contact the applicant to address his concerns about Constable E.

Inspector H clarified the circumstances of Police Incident XX with Constable E, and thereafter instructed that, due to the complaints made by the applicant, Constable E should not respond to the applicant's e-mails. Inspector H attempted to contact the applicant by telephone to discuss his complaint, without success.

On 19 February 2016, the applicant's complaints about Constable E were allocated to Inspector J for enquiry. As the applicant had left the country again in the interim, Inspector J did not contact the applicant until his return to Scotland on 7 March 2016, arranging to attend at the applicant's home on 8 March 2016. On that date, Inspector J attended at the applicant's address alongside Constable K.

At this stage, the applicant informed Inspector J that he no longer wished to progress a complaint against Constable E. Inspector J states that he then explained to the applicant that a sufficiency of evidence existed to charge him for threatening or abusive behaviour in respect of Police Incident XX, and to report the matter to COPFS. Inspector J thereafter cautioned and charged the applicant with a breach of Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 ("the 2010 Act").

The applicant indicated to Inspector J that he wished to report an alleged assault on him by Mr B, which had occurred during the same incident at Bar VV. Inspector J states he agreed to obtain what he refers to as an "*extra-judicial statement*" from the applicant covering his involvement in Police Incident XX. The applicant states that he believed the purpose of this statement was to address the allegations made against him by Mr B.

The applicant indicated that he did in fact wish to pursue a complaint about Constable E. Inspector J therefore arranged for the applicant to sign a 'Heads of Complaint' form agreeing the matters he wished Inspector J to look into in this respect. The applicant then complained to Inspector J that he believed Inspector J had misled him about the reasons for his attendance at the applicant's home. That same evening, the applicant submitted an online complaint form via the Police Scotland website making further complaints about Inspector J.

The following day, 9 March 2016, Temporary Chief Inspector L advised Inspector J that as he himself was now the subject of a complaint from the applicant, he should cease progressing the applicant's complaint against Constable E. Inspector J states that he therefore contacted Sergeant N, Constable E's supervising officer, to request he conclude the ongoing investigation into Police Incident XX.

The applicant's role in Police Incident XX was ultimately reported to COPFS on 14 April 2016.

Police Incident UU

On the morning of 9 March 2016 at approximately 11.00hrs, Ms A telephoned Police Scotland and reported that the applicant had been behaving in an agitated manner, had been stressed by the events of the previous day, and had left the house with skiing equipment stating that he may not return. Ms A reported that the applicant was on medication for depression, and she expressed concern to the police that the applicant may be suicidal and intending to cause himself harm. Ms A provided a description of the applicant and his car, and advised that he may be heading towards Location TT.

At approximately 11.30hrs, the applicant's car was traced near to Hotel SS by Constables P and Q. Constable P states that when approached, the applicant refused to open the window of his car and appeared to be using his phone, however subsequently alighted from the car.

The applicant states that at this point, he was grabbed from behind by the officers and told he was being arrested. Constable P however states that when the applicant alighted from the car, he verbally abused the officers, stated that he wanted to kill himself, and began walking towards the main road. Constable P therefore arrested the applicant for a contravention of Section 38 of the 2010 Act (threatening or abusive behaviour). The applicant was handcuffed and placed in the rear of the police vehicle.

Due to the applicant's behaviour, it was assessed that he could not be transported to the local station in their police vehicle, thus Constable P requested a custody van be sent from the custody suite at Police Office RR. The applicant subsequently calmed, thus a decision was made to continue transporting him towards Police Office RR in the police vehicle, with the agreement that the custody van would meet with them en route. The custody van subsequently met with his police vehicle near to Location WW, where the applicant was transferred to Constables R and S.

The applicant states that during the journey, he was advised by Constable P that he was being taken to see a doctor. Constable P states that he told the applicant he would be able to see medical staff at Police Office RR.

Constables R and S conveyed the applicant in a custody van the remainder of the distance to Police Office RR. At approximately 13.15hrs, the applicant was removed from the police van by Constables R and S with the assistance of Constable T, and carried to the charge bar area of Police Office RR, where the applicant was booked into custody by Sergeant U and the Police Custody and Security Officer, Mr V. The applicant did not respond to the risk assessment questions posed to him as part of the custody process. The applicant was thereafter placed in a cell subject to constant observations, commenced by Constable R.

At approximately 14.45hrs the applicant was taken to see Nurse W, the on-duty healthcare professional (HCP) at Police Office RR, who conducted an assessment of the applicant's mental and physical well-being. Nurse W also established from the applicant that he had an appointment with his own GP later that same day. A decision was thereafter made by Sergeant X to release the applicant from custody in Police Office RR.

At approximately 16.00hrs, Constables Y and Z transported the applicant to Police Office QQ, where the applicant was met by Ms A, in order that he could attend the appointment with his GP.

The applicant's role in Police Incident UU was ultimately reported to COPFS on 22 March 2016.

Complaints About the Police

On 10 March 2016, the applicant submitted an online complaint form via the Police Scotland website, complaining about the actions of Constables P and Q in relation to Police Incident UU.

Later the same day, the applicant sent a series of emails to Temporary Superintendent G including further complaints about the nature of his arrest, the actions of Constables P and Q, and about his treatment whilst in custody at Police Office RR. Within these emails, the applicant advised that he and Ms A would be out of the country between 13 March and 12 April 2016, and requested not to be contacted by Police Scotland within this time period.

On 12 March 2016 Temporary Chief Inspector L spoke to Ms A by telephone, acknowledging receipt of the applicant's complaints and confirming these were being progressed. On 13 March 2016 the applicant sent a letter to Temporary Chief Inspector L advising that he had made requests for information within his emails to Temporary Superintendent G which he expected to receive responses to.

On 17 March 2016 Temporary Chief Inspector L sent an email to the applicant stating "*Prior to providing what information I can I should like to clarify that you are happy for me to contact you.*" The applicant confirmed that he would accept correspondence by email and raised a number of additional issues in relation to the investigation into Police Incident XX and his time in custody, reiterating that he also awaited responses to the queries posed to Temporary Superintendent G.

On 18 March 2016 the Chief Constable's Office received a further letter of complaint from the applicant stating that he had no faith in Temporary Chief Inspector L investigating matters within her own force area. The applicant emailed Temporary Chief Inspector L again on 29 March 2016 pointing out that he had not received a response from her. In response, the applicant received an email stating that Temporary Chief Inspector L was not available and that correspondence sent to her was being automatically forwarded to Inspector BB.

On 7 April 2016 the applicant emailed Inspector BB reiterating his request for information. Inspector BB advised the applicant that his correspondence was being passed to Chief Inspector AA. On 18 April 2016 the applicant submitted an online complaint form via the Police Scotland website complaining that he had received no acknowledgement or response to his letter to the Chief Constable.

On 22 April 2016 Chief Inspector AA contacted the applicant by email and apologised for the delay in progressing his complaint. The applicant responded to Chief Inspector AA reiterating his request for information previously made to Temporary Superintendent G and Temporary Chief Inspector L. On 25 April 2016 Chief Inspector AA telephoned the applicant. Chief Inspector AA subsequently emailed the applicant providing the information requested by the applicant.

On 26 April 2016 the applicant submitted a lengthy email to Chief Inspector AA explaining in detail his concerns in relation to the investigation into Police Incident XX, the events comprising Police Incident UU and his subsequent time in custody at Police Office RR, and his correspondence latterly with Temporary Superintendent G and Temporary Chief Inspector L. On 27 April 2016 the applicant submitted an online complaint form in this regard. Later the same day the applicant submitted a further online complaint form.

On 5 May 2016 the applicant sent Chief Inspector AA a copy of a seventeen-page letter which he had submitted to the Criminal Allegations Against the Police Division (CAAPD) of the COPFS. In this letter, the applicant complained that he had not been permitted to provide a statement in relation to the allegation made against him by Mr B, and further complained that he had been repeatedly assaulted by the officers who had arrested him in connection with Police Incident UU.

On 7 May 2016 the applicant emailed Chief Inspector AA to complain further about Constables P and Q in relation to Police Incident UU. On 11 May 2016 Chief Inspector AA allocated the substantive investigation into the applicant's complaints to Inspector H, requesting that she compile and agree a Heads of Complaint form with the applicant and obtain a statement from him and Ms A.

On 17 May 2016 the applicant submitted an email to Chief Inspector AA complaining about the Police Scotland complaints process itself. On 19 May 2016 Inspector H issued a heads of complaint form to the applicant for his agreement. On 20 May 2016 the applicant sent an email to Chief Inspector AA complaining about the content of the Heads of Complaint form.

On 21 May 2016, the applicant submitted a letter addressed to Inspector J complaining about his involvement in Police Incident XX. In this letter, the applicant also intimated that he wished to pursue criminal charges against Constables P and Q, Sergeant U, and Inspector H.

On 24 May 2016 the applicant submitted a letter to the Professional Standards Department complaining about the way his complaints had been handled thus far. On 28 May 2016 the applicant submitted self-compiled Heads of Complaint form to Chief Inspector AA listing 53 complaints about the police.

On 29 May 2016 the applicant contacted Inspector H by email to complain about the lack of detail and heads of complaint she had compiled previously and asking further questions regarding the investigation into Police Incident XX.

On 1 June the applicant submitted an online complaint form listing a further six complaints, numbered 54 to 59, requesting these be added to his heads of complaint.

Later the same day, the applicant submitted a further online complaint form detailing a complaint about Inspector J. Finally, the applicant submitted a revised, completed list of 60 complaints about the Police, dated 1 June 2016. Also on 1 June 2016 the applicant submitted an online complaint form restating his complaint about the functionality of Police Scotland's online complaint form.

On 11 June and 13 June 2016 the applicant submitted two emails to Chief Inspector AA complaining that he had once again been denied the opportunity to provide a detailed statement about his complaints and further complaining that the statement he had provided regarding his allegation of assault against Mr B had not been sent to COPFS alongside the original report.

A final letter dated 18 July 2016 responding to the applicant's complaints was issued by Chief Inspector AA. On 5 October 2016 the applicant submitted an application for review to the PIRC.

4. The Review

Complaint 1: Insufficient detail on calling card

The applicant complained that Constable E failed to include any time and date on the calling card which he delivered to the applicant's address.

Police Handling of Complaint 1

In his letter to the applicant dated 18 July 2016, Chief Inspector AA wrote:

"Sometime between 10.30-1050hrs on 2 February 2016 [Constable E], along with a colleague, tried to trace you at your home address in relation to [Police Incident XX]. As there was no answer a Police Scotland Call Card was completed and posted to you at this address by [Constable E]. This is common practice for officers to do this when they are trying to trace a member of the public.

In relation to no time and date being included on the Call Card I can advise that there is no requirement for the officer to provide these details and there is no section on the Call Card which prompts the officer to record the time and date. The Call Card has the following sections which require to be completed:

Contact [OFFICER'S NAME]

Police station [LOCATION WHERE OFFICER WORKS]

Direct Tel No: [NUMBER TO BE USED INSTEAD OF 101 IF APPROPRIATE]

At the top of the Call Card, the recipient is directed to read any message on the reverse of the Card and, if necessary, contact the officer. [Constable E] wrote the following message:

"MESSAGE FOR [Applicant] – CAN YOU PLEASE CALL ME, I NEED TO SPEAK WITH YOU REGARDING AN INCIDENT. [Officer's signature below]"

Given the foregoing [Constable E] completed all the required sections of the Call Card correctly and all the relevant information required was included.

For your information the Call Card that you received is a standard form of communication used nationally by Police Scotland. In light of your complaint contact has been made by the relevant department who produce these items and a suggestion made that they may wish to revise the Call Card to include a specific section to record the time and date...

Given all the explanations above I do not find that any aspects of this allegation in relation to [Constable E] are upheld."

Consideration of Complaint 1

It is considered that Chief Inspector AA's response to the applicant is well-reasoned and informative. This is because he has explained the standard format of the card and come to the conclusion that no omission was made. Chief Inspector AA has also identified that the information alluded to by the applicant may be helpful, and has advised that he has submitted a suggestion to revise the card to the relevant department. This demonstrates good complaint handling.

In the applicant's correspondence to the PIRC, he has indicated that he believes Constable E deliberately did not include the time and date on the calling card in order to disguise that he delayed calling at the applicant's home until he knew the applicant would be out of the country and hence unable to address the allegations in person. However, there is nothing in the material information available to support that this is the case. Rather, the papers provided indicate that Constable E's next available opportunity to speak with the applicant alongside a second police officer to provide corroboration of any action taken was the day on which he called at the applicant's home. In addition, Constable E does not appear to have been aware at that time that the applicant was out of the country.

On the basis of the foregoing, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 2: Inappropriate order given

The applicant complained that Constable E ordered him not to have any correspondence with persons associated with Company YY, and that he believed this order was inappropriate and had no legal basis.

Police Handling of Complaint 2

In his letter, Chief Inspector AA wrote:

"On 2 February 2016 after [Constable E] had posted the Call Card at your home address the officer was advised by the person making the complaint in [Police Incident XX] that you were out of the country. This person also showed [Constable E] a further unwanted email that you had sent to him. This email did not contain anything of a criminal nature but the content of it has been described by [Constable E] as becoming 'more heated' in nature. [Constable E] requested your email address from this member of the public which they provided.

About 1832hrs, same date, [Constable E] sent the following email to you:

"[Applicant],

I have been trying to make contact with you; I require speaking to you in person regarding an incident reported to the Police.

I have been informed that you are not in the country at this time, are you able to advise when you will be returning home so I can arrange to come and speak with you.

In the meantime can you refrain from having any correspondence with board members and other persons connected to [Company YY]...

Regards

[Constable E]"

As highlighted above, [Constable E] did not use the word 'order' anywhere in his email to you. The purpose of [Constable E] sending this email to you was a preventative measure to try and stop any further escalation between you and any of the board members of the [Company YY].

It was clear to the officer from the enquiries that he had carried out at that time that you were not satisfied with the outcome of the meeting that took place on 18 January 2016 at [Bar VV]. [Constable E] was, in effect, trying give you advice to prevent any more complaints being made to the police about your behaviour or communications that you were sending at that time.

About 1916hrs, same date, you sent the following email to [Constable E]:

"Dear [Constable E]

... I am a member of [Company YY] do I understand that you are ordering me not to communicate with any other members of my community who are members and there are many? ...Yours faithfully"

... About 1259hrs on 3 February 2016 [Constable E] sent you the following email:

"[Applicant],

I am not ordering you to do anything; it was a request in an attempt to prevent any further escalation until I speak with you in person...

Regards

[Constable E]."

It is clear in this correspondence from [Constable E] that the officer did not order you to do anything and explained that this was merely a request to you which you could choose to ignore if you so wished. ...

As previously stated the advice that was given to you by [Constable E] about whether this was an order or not is clear and unequivocal. The contents of [Constable E]'s emails to you are perfectly acceptable. [Constable E] had your best interests in mind when sending these emails to you...

Given all the explanations above I do not find that any aspects of this allegation in relation to [Constable E] are upheld."

Consideration of Complaint 2

Whilst it is understandable for the applicant to have interpreted Constable E's initial email as an order, it is considered that the subsequent email from Constable E clarified matters with the applicant, and it is therefore justifiable for Chief Inspector AA to have based his conclusion on the content of the second email rather than the first alone.

It is also considered reasonable for Chief Inspector AA to have concluded that Constable E's stated intention – to prevent the applicant from sending further emails to Mr B which might have escalated matters – was in the applicant's best interests. It is therefore considered that Chief Inspector A's response to the applicant is again well-reasoned and informative.

For these reasons, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 3: Failure to respond

The applicant complained that Constable E failed to respond to a number of e-mails sent by the applicant whilst the applicant was abroad. Consequently, Constable E failed to provide the applicant with information requested in those e-mails, and failed to make arrangements to meet with the applicant during his time in Scotland between 14 and 19 February 2016.

In his application to the PIRC, the applicant wrote: *“Reasons given for him not responding to meeting offer are not valid and police also claim I would not meet with him. False.”*

Police Handling of Complaint 3

In his letter, Chief Inspector AA wrote:

“Between 0800-0900hrs on 4 February 2016 you attempted to have a telephone conversation with [Constable E] via the internet but due to the weather conditions where you were this was not successful.

Following this conversation you emailed [Constable E] twice explaining why the internet was not working.

[Constable E] then sent you the following email:

[Applicant].

I could tell you were phoning through the internet.

You have said you will be home around the 14th February 2016; are you able to advise exactly what dates so we can arrange an appointment for me to come and visit you at home.

Regards

[Constable E]”

You sent the following email to [Constable E]:

“Dear [Constable E]

May I suggest you set out any points you have to make by email. I will speak to you on my return to [the village] 14th-17th February. There is no risk of further escalation, I am not in UK and have no plans whilst I am on holiday to further address issues at [Company YY].

Kind regards

[Applicant]”

[Constable E] did not reply to this email due to other operational commitments that day.

About 0257hrs on 5 February 2016 you sent the following email to [Constable E]:

“Dear [Constable E]

Please clarify who has made a complaint about me.

Also what specifically that complaint is.

Whether that complaint constitutes an offence?

When you are able to clarify the aforementioned items I am very happy to arrange a meeting.

Venue and time to be mutually agreed.

I note you visited my home without prior contact and therefore I assume than an agreed appointment is not a pre-requirement then?

Please also clarify the exact names of people you would advise and prefer that I do not contact and the reasons for this?

When you have explained this the basis for a meeting will be somewhat clearer.

As soon as I have a reliable Internet connection I will copy you into ALL the relevant correspondence with [Mr B], [Company YY] Directors, [development agency] and OSCR that led to my need to vent my frustration with said [Mr B], who in my opinion has cheated me and the entire [village] community. ...

If you need to speak with me face to face sooner, please advise me of your exact availability at [Police Office QQ] between 14 and 17 February and I will call you to arrange an appointment to meet you there. At such meeting I am happy to answer any questions you may have.

Yours sincerely

[Applicant]”

On 5 February 2016, in addition to this email, [Constable E] received an additional 16 emails from you. [Constable E] was unable to review the contents of all your emails prior

to terminating duty that day due to their lengthy content and other operational commitments.

Between 6-7 February 2016 [Constable E] was on rest days.

Between 8-9 February 2016 [Constable E] was working but was unable to review the contents of all your emails due to other operational commitments. He also saw that you had sent an addition email to him on 6 February 2016.

Between 10-14 February [Constable E] was on rest days.

On 15 February [Constable E] returned to duty and saw that he had received a further 4 emails from you which you had sent to [Temporary Superintendent G] and copied [Constable E] in to.

Also on 15 February 2016 [Inspector H] was carrying out A/CI duties as the Area Commander... At this time she was made aware of the emails that you had sent to [Temporary Superintendent G]. He requested that [Inspector H] contact you by telephone in an effort to answer some of the queries that were in the emails.

[Inspector H] contacted [Constable E] and sought clarification over the circumstances of [Police Incident XX] and what your status was in the investigation i.e. witness, suspect or accused. It was established at that time that you were an accused person in this case. It was also established that you had now made a complaint about the police in respect of [Constable E] in relation to [Police Incident XX].

Due to these two factors [Inspector H] instructed [Constable E] not to respond to the emails that you had sent to him and not to provide any of the information that you had previously requested regarding [Police Incident XX]. [Constable E] was advised by [Inspector H] that she would contact you directly by telephone and deal with the matters referred to in the emails of that day.

For clarification a suspect is a person where there is a reasonable cause to suspect that a person has committed an offence and an accused is a person where there is sufficient evidence to report them criminally to COPFS for an offence.

[Inspector H] made attempts to contact you by telephone that day but there was no reply. I can advise you that had [Inspector H] been able to contact you by telephone that date none of the information you had previously requested of [Constable E] i.e. witness names, details of the allegations against you etc. would have been disclosed to you.

It should also be noted that [Constable E] would not have been in a position to provide the information that you requested as you were an accused person in this investigation.

As you were an accused person in this case there are certain legal rights that you require to be afforded before any information can be divulged to you. It is not police practice or procedure to provide a suspect or an accused prior intimation of the details of the crime to allow that person to decide whether they are willing to meet with the police or not.

As previously explained above, [Constable E] was unable to respond to your request to arrange a meeting due to a combination of operational policing commitments and the volume of correspondence that you sent to the officer.

On 17 February 2016 [Constable E] reported unfit for duty and was therefore absent from duty from then until you left [the country].

On 18 February 2016 your complaint about the police was received from the Professional Standards Department... in respect of [Constable E] and it was no longer appropriate for [Constable E] to have contact with you should he have returned to duty.

It is acknowledged that [Constable E] did not contact you on 5, 8 or 9 February 2016 but there are reasonable explanations for this...

Given all the explanations above I do not find that any aspects of this allegation in relation to [Constable E] are upheld."

Consideration of Complaint 3

In a statement addressing the complaints made by the applicant, Constable E states that he did not have enough time whilst on duty to review all of the applicant's e-mails received between 4 and 5 February 2016, and did not wish to reply until such times as he had reviewed them all. Constable E also states that he was not prepared to reply to the queries posed by the applicant by divulging sensitive information due to concerns over compliance with the Data Protection Act. Constable E states that he was then on leave from 9 February until 15 February 2016, by which time the applicant's complaints about him had been received, and he was therefore advised by Inspector H not to communicate with the applicant further.

It would have been helpful for Chief Inspector AA in his response to take a view on whether or not Constable E needed to read all of the applicant's submissions prior to making arrangements to meet with him or calling at his home. Notwithstanding, it is reasonably likely that the significant volume of correspondence submitted by the applicant affected Constable E's ability to reply to the applicant and progress matters.

Taking the foregoing into account, it is considered that Chief Inspector AA's conclusion is justified and that his response adequately explains why the applicant was not provided with the information he had requested in his e-mails. It is therefore concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 4: Police incident XX not investigated timeously

The applicant complained that Constable E took too long to investigate Police Incident XX, leading to the unavailability of CCTV evidence from Bar VV.

In his application to the PIRC, the applicant wrote: "[Constable E] *deliberately delayed contacting me to ensure that CCTV footage at [Bar VV] would no longer be available to contradict the charge he was proposing to make on me.*"

Police Handling of Complaint 4

In his letter, Chief Inspector AA wrote:

“On 22 January 2016 at 1249hrs [Police Incident XX] was reported to the police. [Constable E] attended and noted a statement of complaint for the person reporting the matter that day. In his statement another witness was named.

On 23 January 2016 [Constable E] contacted the additional witness by telephone to make arrangements for a statement to be noted from them in relation to [Police Incident XX].

On 24 January 2016 [Constable E] noted a statement from this additional witness.

At this stage in the investigation there were two witness statements identifying you as the person responsible. [Constable E] planned to trace you at the earliest opportunity in relation to your part in [Police Incident XX]. To be able to take this course of action he required to see you in person while accompanied by another police officer who provides corroboration.

Between 25-27 January 2016 [Constable E] was on rest days.

Between 28-31 January 2016 [Constable E] was on duty but there was no other officer available to provide corroboration therefore efforts could not be made to trace you.

On 1 February 2016 [Constable E] was on rest day [sic].

On 2 February 2016 [Constable E] was on duty and made efforts to trace you as previously described within this letter but you were out of the country.

On 4 February 2016 you advised that you were out of the country until 14 February 2016.

Also on 4 February 2016 [Constable E] noted an additional witness statement in respect of [Police Incident XX]. Enquiries were also carried out at [Bar VV] in relation to the CCTV but the system was not working at that time.

On 14 February 2016 you returned to the country and it was possible that you may have been available to be seen. However as previously explained [Constable E] was unable to respond to your request to make an arrangement due to being unable to go through the volume of email correspondence you sent to the officer along with other operational commitments.

On 15 February 2016 [Constable E] was instructed not to have contact with you in relation to [Police Incident XX] as you had now made a complaint about the police in respect of him and it was no longer appropriate for him to have contact with you.

On 17 February 2016 [Constable E] continued enquiries into this incident and attended at [Bar VV] to establish if CCTV was working. He was advised that it was working now but that there was no recording of 18 January 2016 because the system was broken at that time.

[Constable E] thereafter reported unfit for duty and was absent from work.

On 18 February 2016 your complaint was allocated to [Inspector J]. No progress could be made with enquiries into [Police Incident XX] until the nature of your complaint was known.

[Inspector J] reviewed [Police Incident XX] and noted that the investigation still required to be concluded and the reporting officer, [Constable E] was now absent from work. [Inspector J] made the assessment that he would conclude this investigation when he met with you in relation to your complaint about the police. It was established that you were not available to be seen until after 6 March 2016.

On 7 March 2016 contact was made with you and arrangements were made to see you on 8 March 2016.

On 8 March 2016 [Inspector J] had an arrangement to meet with you regarding your complaint about the police and made a decision to take the opportunity to try and conclude matters in relation to [Police Incident XX] when he met with you. Therefore [Inspector J] decided to caution and charge you with a Section 38 Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour) offence in relation to your behaviour on 18 January 2016 at [Bar VV]. [Inspector J] thereafter noted a voluntary statement from you at your request regarding [Police Incident XX] and an allegation that you were assaulted during this incident.

On 10 March 2016 [Inspector J] updated [Sergeant N] who is [Constable E]'s supervisor and advised that the circumstances of [Police Incident XX] could be reported to COPFS. At that time 2 of the 3 officers who are stationed at [Police Office QQ] were absent from work due to sickness and the 3rd was due to go on annual leave.

On 25 March 2016 a decision was made by [Sergeant N] that due to the staff shortages and other outstanding and operational matters it was not possible for another officer to submit the report to COPFS. As [Constable E] had a working knowledge of the incident he would complete the Standard Police Report (SPR) and submit it to COPFS on his return to work.

On 13 April 2016 [Constable E] returned to work from being absent.

On 14 April 2016 [Constable E] completed the SPR and it was submitted to COPFS that date.

Given the foregoing I have concluded that [Constable E] carried out timeous enquiries into [Police Incident XX], he updated the incident log regularly with progress and also recorded the reasons why he could not progress matters as planned.

The officer made concerted efforts to bring the investigation to a conclusion as quickly as possible. However, a combination of the following factors certainly delayed matters reaching a conclusion – you being out of the country and unavailable; your reluctance to co-operate with [Constable E] in respect of meeting with him; the significant volume of correspondence sent to [Constable E] for him to assess; and you placing unreasonable conditions on the officer in that he has to provide information to you before you would co-operate with the police.

[Constable E] was absent from work from 17 February 2016 and was no longer responsible for how matters were progressed. [Constable E] submitted the SPR within a day of returning to work.

Therefore, I do not find any evidence to suggest that [Constable E]'s enquiries were unacceptably prolonged.

Given all the explanations above I do not find that any aspects of this allegation in relation to [Constable E] are upheld. However, through investigation an organisational issues [sic] has been identified as follows:

Guidance in respect of submission of SPRs to COPFS from the police advises that they should be submitted within 28 days of caution and charge. In your case, the report should have been submitted to COPFS by 5 April 2016. The report was therefore submitted 8 days late.

Therefore, I do acknowledge that the SPR was not submitted within the expected timescales. This was due to a combination of reasons as has been explained and was not down to the poor performance of any one particular officer. This has been recorded as a Quality of Service allegation in relation to the late submission of the SPR which I find upheld. Please accept my apology on behalf of Police Scotland for this."

Consideration of Complaint 4

It is considered that Chief Inspector AA's response to the applicant is well-reasoned and extremely detailed in respect of the enquiries undertaken into Police Incident XX and the dates these were done. The information provided by Chief Inspector AA accurately reflects the content of the crime report. This is particularly relevant with regard to the issue of the CCTV at Bar VV, which Constable E originally established was not functioning on 4 February 2016, and followed up on 17 February 2016.

Additionally, Chief Inspector AA has identified that an aspect of the applicant's complaint has been upheld because the SPR was not submitted to COPFS within the expected timescales. Although this was not specifically the subject of the applicant's complaint, it demonstrates good complaint handling to have identified this issue and acknowledged it in the response to the applicant.

It is therefore concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 5: Misled by Inspector J

The applicant complained that Inspector J lied to him and his partner, Ms A, regarding his reasons for visiting the applicant at home on 8 March 2016.

In his application to the PIRC, the applicant wrote: "Police response not accepted. [Inspector J] wished to give impression that all was well. Nothing to worry about."

Police Handling of Complaint 5

In his letter, Chief Inspector AA wrote:

“On 7 March 2016 [Inspector J] spoke to you and arrangements were made to see you at your home the following day. [Inspector J] advised you during this conversation that the purpose of the meeting was to deal with your complaint about the police. You informed [Inspector J] that having spoken to a member of Professional Standards Department (PSD)... you now considered the matter to have been dealt with satisfactorily and there was no need for [Inspector J] to meet with you. This was at odds with the assessment made by [PSD] therefore [Inspector J] required to meet with you to clarify this.

On 8 March 2016 [Inspector J] attended at your home address with a colleague. On arrival [Inspector J] explained that the purpose of this meeting was to clarify whether you still wished to progress matters in relation to your complaint about [Constable E] and also to conclude the enquiry into [Police Incident XX].

You confirmed that you did not want to progress your complaint any further and you were satisfied with the explanations that had been given to you over the telephone by [PSD]. There was therefore no need for [Inspector J] to carry out anything further in respect of your complaint about the police.

[Inspector J] then moved on to the matter of [Police Incident XX]. [Inspector J] explained that a complaint had been made about your conduct on 18 January 2016 at [Bar VV]. [Inspector J] informed you of the names of the individuals who were directly involved and are known to you. [Inspector J] also informed you that there was an additional witness who was a barman who was working at [Bar VV] when this incident occurred. [Inspector J] went on to explain to you that the other persons who had been in the premises at the time of the incident had not been traced and that there was no CCTV footage available.

[Inspector J] then informed you that there was sufficient witness evidence to report you to the Procurator Fiscal for consideration of prosecution and in fairness to you he was going to caution and charge you which he then did. You replied to the charge of contravention of Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour) ‘I’m denying it’. This was recorded in [Inspector J]’s official police notebook.

On 8 March 2016 when [Inspector J] met with you at your home he did explain then the purpose of this visit. The colleague who accompanied [Inspector J] that day has provided an account that [Inspector J] provided clear explanations for the visit and did this on more than one occasion.

[Inspector J] was acting with best intentions in that he knew [Police Incident XX] required to be concluded and it had been difficult up until then to make arrangements to see you. He knew that [Constable E] was absent from work and it was not known at that time when he was likely to return. The officer therefore took the opportunity to caution and

charge you while he was at your home and this afforded you the right to make a response to the charge should you wish to do so.

It is acknowledged that [Inspector J] did not make it clear to you during your conversation with him on 7 March 2016 that part of the purpose of meeting with you was also to deal with you as an accused for [Police Incident XX]. However, it is not usual procedure for the police to give persons prior notifications that they are an accused person in a case or that they want to see them to caution and charge them with an offence. The reason for this is that the accused person will then try and evade the police.”

Consideration of Complaint 5

In his letter of response to the applicant, Chief Inspector AA has provided a reasonable explanation for Inspector J’s decision to charge the applicant at the same time as making enquiries into the applicant’s complaints.

However it is clear from Ms A’s statement, and the account provided by the applicant, that both the applicant and Ms A were under the impression that Inspector J made arrangements to meet with the applicant solely for the purpose of making enquiries into the applicant’s complaints about Constable E, and that Inspector J advised the applicant and Ms A that the meeting was “*nothing to worry about*”. The root of the applicant’s complaint is therefore that by advising it was “*nothing to worry about*”, Inspector J in fact deliberately gave a false impression as to the nature of the meeting to the applicant, since Inspector J also intended to charge the applicant in relation to Police Incident XX.

Chief Inspector AA has approached this issue by advising the applicant that it is not usual procedure for the police to give prior notification to an individual that they are an accused person, for the reason that they may then attempt to evade the police. Although this may be an accurate description of standard procedure, it does not address the core of the applicant’s complaint, which is that it was inappropriate of Inspector J to use the phrase “*nothing to worry about*”.

For this reason, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that further response be sent to the applicant explaining whether it is considered that Inspector J deliberately misled the applicant and Ms A by advising that there was “*nothing to worry about*” when he intended to charge the applicant for an offence.

Complaint 6: Statement not obtained

The applicant complained that Inspector J did not take a statement from him regarding his part in Police Incident XX, despite not having sufficient evidence from witnesses to support the submission of a report to COPFS.

In his application to the PIRC, the applicant wrote:

“Police response more clearly explains procedure but he lied about significance of the independent witness... Therefore I do not accept the police response.”

Police Handling of Complaint 6

In his letter to the applicant dated 18 July 2016, Chief Inspector AA wrote:

“After being cautioned and charged you informed [Inspector J] that you wished to make a statement in relation to you having been assaulted by one of the witnesses in [Police Incident XX] and that the assault happened during this incident.

[Inspector J] advised you that any statement that was noted from you would not normally be considered admissible as you had now been cautioned and charged for an offence in relation to this incident. It is clear that to make this report of assault you would have to make a comment about the matters you had been accused of.

The guidance about statements of an accused person states:

“The law is quite clear that after any reply (or no reply) is made to the caution and charge, the only statements made thereafter by the accused person which will be admissible in evidence are statements that are made not in response to police invitation and that unaffected by questioning, except for the purposes of clearing up ambiguities in the statement.”

The reason for this is that once there is sufficient credible evidence to report the circumstances to COPFS it is unfair to interview you as you may provide additional information that could incriminate you further. The opportunity to make any comments about the incident would have been at the time of caution and charge when you were asked if you wanted to make any reply.

As you were insistent that you wanted [Inspector J] to note a statement from you he noted what he has referred to as an ‘extra judicial statement’ which is also referred to as a ‘Voluntary Statement’. [Inspector J] made it clear to you that the purpose of the statement was to obtain details about your allegation of assault

Prior to [Inspector J] noting this statement he cautioned you at common law and made you aware that whatever you said could be used as evidence. This was recorded at the beginning of your statement. The officer also offered you the assistance of a solicitor which you declined. Thereafter a statement was noted from you, it was read over to you and was signed by you, [Inspector J] and his colleague. This is all in accordance with procedures.

[Inspector J] noted this statement on your instruction and was not permitted to ask you any questions about the incident. [Inspector J] was quite clear that the purpose of noting a statement from you was to record your allegation of assault and he advised you of this.

However, once he started noting your statement from you, you provided information about the background information about [Company YY] and your perceived grievances with members of the Company which was not the purpose of this statement. Therefore [Inspector J] had to remind you on a number of occasions to try and keep to the matter of your allegation of assault.

It would appear that it was your understanding that you were giving a statement about the ongoing issues which led up to you having grievances with members of [Company YY], your concerns about the operating practices of members of [Company YY] and details of the behaviour of the witnesses on 18 January 2016. [Inspector J] advised you while noting the statement that this was not the purpose of it and you stated

“The first part of this statement was given on the basis of any belief, incorrect as it appears that I was giving this statement in relation to the charge which has been made”.

[Inspector J] made it clear on a number of occasions before and during noting the Voluntary Statement from you what the purpose of it was.”

Consideration of Complaint 6

Inspector J was aware that the applicant was intent on providing his own account of events. The applicant was therefore correctly cautioned and charged by Inspector J, thereby affording him protection against self-incrimination.

In his response, Chief Inspector AA has explained to the applicant that he was not interviewed regarding Police Incident XX on account of there already being a sufficiency of evidence to report him to the Procurator Fiscal. Chief Inspector AA has also advised accurately that Inspector J was unable to question the applicant about his part in Police Incident XX as he had already been charged in this connection. The response is supported by the record of Constable E’s enquiries as detailed in the crime report, and ultimately by the information submitted to COPFS in the SPR document.

It is therefore considered that Chief Inspector AA’s response is in line with the material information available, correctly reflects procedure and is adequately reasoned. Accordingly, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 7: Advised assault would not be investigated

The applicant complained that Inspector J told him that an allegation of assault made by the applicant against Mr B would not be investigated, and hence subsequently failed to investigate this allegation.

In his application to the PIRC, the applicant wrote: “[the] report shows he sought further advice. Therefore I do not accept the police response. That assault should have been investigated.”

Police Handling of Complaint 7

In his letter, Chief Inspector AA wrote:

“You described the assault on you as the male witness placing his hand on your arm while you were pointing at the female witness. It was [Inspector J]’s initial impression that this did not amount to common law assault which is defined as:

Every attack directed to take effect physically on the person of another is assault; whether or not actual injury is inflicted. There must be a criminal intent but it is not necessary, in order to constitute this crime, that the attack should take effect.

[Inspector J] explained that this information would be passed to [Sergeant N] for their attention. You then asked when the person you reported had assaulted you would be arrested, charged and questioned about your allegation, [Inspector J] informed you that this might not necessarily happen. This would be dependant [sic] on whether it was assessed that a crime had been committed or not.

[Inspector J] later contacted a member of the Crime Management and Performance Unit (CMPU) and discussed your allegation of assault with them. This department has responsibility for the ethical recording of crimes and to ensure they meet the Scottish Crime Recording Standards (SCRS). It was their opinion that your allegation did not constitute an assault and as such would not be recorded as a crime. Therefore there was no requirement for any further enquiries to be carried out.

Your statement was forwarded to [Sergeant N] for their information. This statement and decision making about how this allegation was dealt with was explained in the 'Remarks' section of the SPR submitted to COPFS in relation to [Police Incident XX].

I wish to advise you that in respect of the statement that you provided to [Inspector J] on 8 March 2016 it has been confirmed that the original handwritten statement which you signed was submitted to [COPFS] on 19 April 2016 at the time the SPR was submitted. This document was added to the Procurator Fiscal's case file.

A typed copy of this statement was then submitted electronically to [COPFS] on 8 June 2016."

Consideration of Complaint 7

The crux of the applicant's dissatisfaction would appear to be a disagreement between his account of events and that of Inspector J. In this connection, Inspector J states he advised the applicant that the outcome of his report of assault could not yet be determined, whereas the applicant states that Inspector J explicitly told him the assault allegation would not be investigated when it was first reported.

Ms A, who was present when the allegation was first reported, states that, after the applicant had provided his statement regarding the allegation of assault against Mr B, she queried with Inspector J whether or not Mr B would be "questioned" about the incident. According to Ms A, Inspector J advised that he would not as it was part of the same incident. Ms A does not, however, state that she or the applicant was advised by Inspector J that the allegation of assault would not be investigated at all.

As reflected in Chief Inspector AA's response, it is evident from Inspector J's statement and from the updates added to the crime report that Inspector J took advice from the appropriate departments, and took note of the guidance provided in the Scottish Crime Recording Standard, before making a decision that the applicant's allegation of assault did not require to be investigated.

Non-criminal complaints about the police are considered on the balance of probabilities. On the basis that the material information available supports that Inspector J took advice on whether or not to pursue enquiries in relation to this matter, and as there is nothing to support the applicant's position that Inspector J explicitly advised him that his allegation of assault would not be investigated, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 8: Police incident XX investigated “improperly”

The applicant complained that Inspector J and other officers of Police Scotland failed to carry out sufficient enquiry into Police Incident XX, to the applicant's detriment. The applicant stated that he believed this to be “because I had lodged a previous complaint against [Constable E] or for some ulterior motive” and thus the investigation carried out was not fair.

In his application to the PIRC, the applicant wrote: “The entire investigation was improper and there are indications that [Constable E] was in fact disciplined for some aspects of it. I ask PIRC to check and verify if this was in fact the case.”

Police Handling of Complaint 8

In his letter, Chief Inspector AA wrote:

“Section 20 of the Police and Fire Reform (Scotland) Act 2012 defines the duties of a police officer which include:

- a) To prevent and detect crime,*
- b) To maintain order,*
- c) To protect life and property,*
- d) To take such lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders with all due speed to justice.*

A police officer carried out these duties impartially and without bias. Any investigation is monitored by a supervisory officer to ensure that it is carried out in a right and proper manner. In addition to this, incidents are reviewed by CMPU to ensure that they are SCRS compliant. CMPU were contacted regarding your complaint and advised that it did not constitute a crime.

By 24 January 2016 there was sufficient evidence to report you as an accused person to COPFS in relation to [Police Incident XX]. On 4 February 2016 an additional witness statement was noted in the case against you which supported the accounts given by the other two witnesses.

Therefore the decision to take this course of action could not have been motivated by you making a complaint about [Constable E] as you did not do this until 15 February 2016.

There is no evidence of any other ulterior motive on behalf of the police for reporting you to COPFS and there is no evidence of collusion by the police with any of the witnesses in the case against you."

Consideration of Complaint 8

The explanation provided to the applicant by Chief Inspector AA in his response reflects the content of the crime report in relation to Police Incident XX, the SPR submitted to COPFS, the statements of Mr B and Ms C as obtained by Constable E during his enquiries, and the statements obtained from Constable E and Inspector J addressing this matter. There is no indication from the paperwork available that the applicant was charged with an offence by Inspector J for any reason other than that there existed a sufficiency of evidence to do so and thereafter report the matter to COPFS for consideration of prosecution. Chief Inspector AA's response is therefore well-reasoned and supported by the material information available.

Additionally, there is no indication from the evidence available to the PIRC that Constable E has been "disciplined" for any aspect of his role in the enquiry into Police Incident XX, as suggested by the applicant.

On the basis of the foregoing it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 9: Threatening or abusive behaviour

The applicant complained that he was arrested under section 38 of the 2010 Act for threatening or abusive behaviour when he did not swear at, abuse or threaten the officers in any way.

The applicant believes that the officers "*fabricated the pretext for a criminal arrest*".

Complaint 10: Mental health protocol not followed

The applicant complained that the officers involved in his arrest did not follow the provisions of either Police Scotland's standard operating procedure in relation to Mental Health and Place of Safety ("the Mental Health SOP") or the mental health legislation. In particular, the applicant stated that the officers did not check the availability of an appropriate place of safety before taking him to Police Office RR.

The applicant believes that the officers' failure to follow protocol resulted in him being "*criminalised*".

Police Handling of Complaints 9 and 10

In his letter, Chief Inspector AA wrote:

"About 1056hrs on 9 March 2016 a report was made to the police by your partner, [Ms A] that you had left your home address and she believed that you were suicidal. [Ms A] provided a physical description of you and what you were wearing, details of the vehicle

you were in and informed the police that you were on medication for depression. She believed that you would be travelling towards [Location TT] and would be heading for hills that you go skiing on.

This information was logged on police systems [Police Incident UU] and a look out request for you was passed by the Area Control room (ACR) over the police radio to all officers on duty in [local divisions'] Road Policing Units and Armed Response Units.

At this time [Constables P and Q] were travelling [nearby] and advised that they would carry out a check of [Location ZZ]. About 1131hrs [Constable P] advised the ACR that your vehicle had been traced near to [Hotel SS]...

[Constables P and Q] saw your vehicle parked on the access road to [Hotel SS]. On seeing your vehicle [Constable P] immediately turned the police car around by which time you had driven off in the opposite direction of the way the police car was headed. The police car came up behind your vehicle and [Constable P] was just about to activate the blue lights to indicate for you to pull over when you pulled into a lay-by.

[Constables P and Q] approached your vehicle and noted that you matched the physical description that had been passed in the look out request. At this time the officers tried to engage you in conversation however you refused to speak or open the door or window of your vehicle. You appeared to be on your mobile phone and your car was locked.

*About 5 minutes of verbal negotiations were carried out by the officers during which time they advised you that concerns had been reported about you and they were just trying to check on your welfare. You then got out of your car and you are described by the officers being immediately aggressive towards them, you were shouting and screaming at them saying "f*ck off", called them "c*nts" and informed them that they had "ruined your life".*

*The officers continued verbal communications with you in an effort to calm you however you continued with a tirade of verbal abuse and continually told the officers "to f*ck off" so that you could kill yourself. You then walked away from the officers at a brisk pace towards the [main road]. This is a busy trunk road with vehicles travelling at speed. You were still shouting and screaming while walking away. Given that you had told the officers that you wanted to kill yourself they were extremely concerned for your safety and well being and believed that you were going to place yourself at significant risk of harm by walking on to the roadway. This action could also have endangered the road users.*

Therefore, [Constable P] informed you that you were under arrest for contravention of Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour). He then took a hold of you by the arm to gain control of you and prevent you from being able to harm yourself.

At this point you began to struggle violently with both officers who were trying to get control of you as you were under arrest. Due to your behaviour you were handcuffed to the front in a stacked position. You were led to the police vehicle and continued to struggle with both officers. An attempt was made to use the front of the police vehicle as

an object to place you up against in an attempt to gain control and restrain you however this resulted in you head butting the bonnet of the car.

[Constables P and Q] removed you from that position so that you wouldn't injure yourself and placed you in the rear of the police vehicle. You continued to struggle violently throughout and once in the rear of the police vehicle you threw yourself through the gap between the two front seats and appeared to be trying to escape from police custody. You were then assisted back into the rear of the car and began head butting the car door window.

It was not safe to transport you in a car as you posed a risk to yourself and to the officers because of the manner you were behaving in. Therefore a request was made for a police van to attend from [Police Office RR] so you could be transported safely. While waiting for the police van to attend you did calm down after several minutes. [Constable P] then started driving the police vehicle with you and [Constable Q] seated in the back.

At [Location WW] you were transferred into a police van and were transported to [Police Office RR]. [Constables P and Q] obtained the key to your vehicle from you with your permission. They then attended at your home address and collected [Ms A]. They then gave her a lift to where your vehicle was parked so that she could return your vehicle home for you. After doing this the officers then made their way back to their station...

Radio transmissions between [Constable P and the ACR] that day have been listened to and a summary of them is as follows:

During the transmissions recorded between 11:31:17hrs and 11:31:47hrs [Constable P] advises the ACR that they have traced your vehicle at [Hotel SS], that they have turned their vehicle around and they are coming up behind your vehicle.

During the transmissions recorded between 11:35:28hrs and 11:36:00hrs [Constable P] advises that you have stopped your vehicle and that it is you that is in the car. The officer goes on to explain that you are not co-operating with them and you are refusing to leave your car. The officer advises that they are negotiating with you. [Constable P] is then heard to say something similar to "oh, that's him come out" in a startled tone and then cuts off his transmission abruptly.

During the transmissions recorded between 11:38:23hrs and 11:39:28hrs [Constable P] gives an update on the situation and advises that you had "kicked off" and you had been arrested for a breach. The officer requests that ACR staff inform the Custody staff at [Police Office RR].

The officer also requests that a doctor be contacted to attend at the police station to carry out a psychiatric assessment on you. The ACR staff query if you have been detained under Section 297 (of the Mental Health (Care and Treatment) (Scotland) Act 2003) and [Constable P] confirms that you not [sic] and that you have been arrested for making threats. The officer also requests that your partner, [Ms A], be contacted and updated that you had been traced.

At points during these transmissions from [Constable P] you can be heard in the background shouting and screaming in an extremely aggressive manner. At one stage [Constable P] asks the ACR to repeat their transmission to him because he cannot hear what is being said because of how loudly you are screaming and shouting.

During the transmissions recorded between 11:40:03hrs and 11:40:40hrs [Constable P] advises the ACR that you are “turning out to be a bit of a handful” but that they would start making their way to [Police Office RR]. [Constable P] requests that a van be sent from [Police Office RR] to assist because you had tried to escape from the car and dealing with you was “a bit difficult”.

During transmissions recorded between 11:40:50hrs and 11:41:17hrs [an ACR officer] confirmed that she will contact your partner and inform her that you had been traced safe and well but that you were now in police custody.

During the transmissions between 11:45:17hrs and 11:45:47hrs [Constable P] advises the ACR that you are “still quite irate” and that they can’t start making their way to [Police Office RR] at that time because your behaviour was making it unsafe to do so. [Constable P] asks for your partner to be notified and for a van to attend. The ACR confirm that this is all in hand. [Constable P] advises that if they are able to start making their way to [Police Office RR] they will and that they were trying to calm you down. The officer describes your demeanour as “extremely manic”.

During the transmissions recorded between 11:45:57hrs and 11:46:37hrs [an ACR officer] confirms that she has your partner on the telephone and that she is just to give her an update that you have been traced. The ACR confirm that this is correct. They also give the unique identification numbers of the officers in the van so that [Constables P and Q] can contact them direct [sic] about meeting up.

These transmissions support the written accounts provided by [Constables P and Q] by way of their Operational Statements.

The police regularly deal with people who have varying mental health issues and some people intimate an intention to kill themselves. It is the priority of the police to keep people safe and ensure that they receive any necessary assessment or treatment for their health and well being.

In the majority of cases that the police deal with, people with mental health issues are co-operative and are seeking help. In these circumstances the police have the authority to detain that person under Section 297 of the Mental Health (Care and Treatment) Act 2003 and take them to a Place of Safety so long as:

- (i) they haven’t committed an offence; and*
- (ii) they reasonably suspect that the person has a mental disorder; and*
- (iii) they are in a public place; and*
- (iv) the person is in need of immediate care and treatment; and*
- (v) it is considered to be in the interest of that person or necessary for the protection of any other person.*

Section 300 of the Act defines a Place of Safety as a hospital, premises which are used to provide a care home service or any other suitable place (other than a police station) where the occupier is willing to receive a person with a mental disorder.

Had you been co-operative with the attending officers this would have been the preferred course of action that would have been taken with you. However, due to the level of violence and verbal and physical aggression you were displaying along with the concern that you were going to cause serious harm to yourself, the officers made the decision to arrest you.

You were arrested for contravention of Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour). The definition of this statutory offence is:

- (1) A person ("A) commits an offence if –*
 - (a) A behaves in a threatening and [sic] abusive manner,*
 - (b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and*
 - (c) A intends by the behaviour to cause fear and alarm or is reckless as to whether the behaviour would cause fear or alarm.*

Given the circumstances as described above there was sufficient evidence and cause to arrest you for this offence.

A decision to arrest a person who has a mental disorder is a last resort and the decision to take away your liberty was not taken lightly. It was not convenient in any way for the officers to have to restrain you, arrest you, have you taken into police custody, fill out use of force forms and report the circumstances to COPFS for consideration of a prosecution...

As per the explanation [above] on 9 March 2016 you were not dealt with under the Mental Health (Care and Treatment) Act 2003 as you were arrested for contravention of Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour). Therefore there was no requirement to follow the guidelines of Police Scotland Mental Health and Place of Safety Standard Operating Procedure.

From the point that concerns were reported to the police by [Ms A] on 9 March 2016 it was the focus and priority of the police to trace you, ensure that you were safe and well and then make an assessment about what was the most appropriate course of action thereafter. There was no prior intention to arrest you for any offence.

When [Constables P and Q] traced you they started verbal communications with you explaining that concerns had been raised, that they wanted to ensure that you were safe and well and ascertained if you were in need of any treatment or support. However, due to your behaviour towards the officers by shouting, swearing and screaming at them and stating you were going to kill yourself, you were arrested. Any processes under the Mental Health (Care and Treatment) Act 2003 ceased then...

You were not detained under Section 297 of the Mental Health (Care and Treatment) Act 2003 therefore there was no requirement to take you to a place of safety. You were arrested and taken into police custody to ensure that you were afforded your legal rights, which is the correct and proper process.

Given all the above explanations and in the absence of any other evidence to the contrary, I do not find any aspect of this allegation upheld.”

Consideration of Complaint 9

The applicant's position is that he was arrested for threatening or abusive behaviour despite not swearing at, abusing or threatening the officers in any way. In contrast, both Constables P and Q state that, after being approached, the applicant exited his car and began to scream, shout and swear at them. Both officers state also that they believed the applicant to be an immediate threat to both himself and other road users. The officers' position is broadly supported by the radio transmissions.

Taking into account the material information available, it is considered that Chief Inspector AA was justified on the balance of probabilities in concluding that sufficient evidence existed for the applicant to have been arrested for an offence under section 38 of the 2010 Act.

It is therefore concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Consideration of Complaint 10

On the morning in question, when Ms A telephoned Police Scotland to report that the applicant had left the house stating that he may not return, she informed the police that the applicant was “suicidal” and “on medication for depression”. Both of those pieces of information were immediately recorded on police systems. Accordingly, it is clear from the evidence available that Police Scotland was aware that the applicant had a recognised mental illness before the “lookout request” was circulated on police radio and the applicant was subsequently traced by Constables P and Q.

However, while both Constables P and Q state that they knew at the time that the applicant had expressed suicidal intentions, it is unclear as to whether Constables P and Q had been made aware by the control room that the applicant had a mental illness. In addition, when later asked by the control room if the applicant had been detained under section 297 (of the 2003 Act), Constable P queried what section 297 was.

There is no indication in the papers provided that Constables P or Q were asked during the complaint enquiry about whether they knew before encountering the applicant that he had a mental illness, whether they considered detaining the applicant and removing him to a place of safety, or whether they were even aware of the relevant powers available to them under the 2003 Act. For those reasons, it is considered that sufficient enquiry has not been conducted into the complaint.

In his response, Chief Inspector AA has detailed sections 297 and 300 of the 2003 Act. Setting out the relevant legislation is good practice in complaint handling, as is the overall level of detail provided in Chief Inspector AA's response. However, it is considered for the reasons below that Chief Inspector AA's response is not adequately reasoned or in line with the relevant procedures and legislative provisions.

In the papers provided to the PIRC, Police Scotland has cited a protocol agreed between Hospital PP and the legacy police force for the area, dated 2012. The protocol states that, when an officer finds an individual suffering from a mental disorder, the officer is to assess whether any crime has been committed, and whether removal to hospital under section 297 of the 2003 Act would be in the interests of the individual or necessary for the protection of any other person. Where the individual has committed an offence for which they would normally be arrested, they are not to be taken to hospital. Instead, they are to be arrested and taken into police custody, where arrangements are to be made for a medical assessment.

However, the protocol was agreed between a local hospital and a legacy police force prior to the inception of Police Scotland in 2013. Accordingly, the Mental Health SOP – the current version of which was issued in October 2014 – clearly takes primacy over the protocol, particularly in respect of the applicant's encounter with Police Scotland, which occurred in 2016.

Chief Inspector AA has concluded that the provisions of the 2003 Act and the Mental Health SOP did not apply in the applicant's case as there was a sufficiency of evidence that the applicant had committed an offence, and therefore he was arrested for this offence rather than detained in order to receive treatment.

As stated in the consideration of Complaint 9, it is acknowledged that sufficient evidence existed for the applicant to have been arrested for an offence under section 38 of the 2010 Act. However, Chief Inspector AA's response does not consider whether it would have been *more appropriate* for the applicant to have been detained and taken to a place of safety under section 297 of the 2003 Act, for example to his home or to a hospital, rather than arrested and taken into police custody. In this connection, Chief Inspector AA does not appear to have taken account of the following provisions of the Mental Health SOP:

“4.3 ... a person is not necessarily offending when they are encountered by the police, it is important that any response avoids criminalising the person by apprehending or charging them when an alternative solution can be found.”

“4.5 Every situation should be considered individually whilst taking cognisance of all available options and the impact on the individual. Other appropriate options may be considered if it is safe to do so. ...”

“7.1 ... unless there are exceptional circumstances, when a crime has been committed, a person should be dealt with for the crime regardless of perceived mental disorder.”

“7.2 The exceptional circumstances may include where the crime/offence is of minor nature and it would not generally be considered in the public interest to prosecute, or where the offence is

directly linked to their disorder (e.g. bizarre or concerning behaviour that constitutes a breach of the peace)."

In respect of whether "exceptional circumstances" existed in the applicant's case, it is noted that the prosecution report submitted by the police concludes with the following:

"Given the accused's highly irrational state the officers attending felt they had no choice but to arrest him primarily for his own safety.

It is the reporting officer's opinion that no further proceedings should be taken against the accused, who clearly has mental health issues..."

On the basis of the foregoing points, it is concluded that this complaint was not dealt with to a reasonable standard. A reconsideration direction is given to Police Scotland under section 35(7) of the Act.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. The reconsideration is not subject to the PIRC's supervision.

In reconsidering the complaint, Police Scotland should obtain further statements from Constables P and Q to ascertain: a) whether the control room informed them before they encountered the applicant that he had a mental illness; b) whether they were aware of the relevant powers available to them under the 2003 Act; and, if so, c) why they did not utilise these powers in the applicant's case by detaining him and removing him to a place of safety.

If it transpires that the control room did not inform Constables P and Q that the applicant had a mental illness, Police Scotland should establish why this was the case and identify any relevant organisational learning.

Police Scotland should then reassess whether, irrespective of there having been sufficient evidence to arrest the applicant under section 38 of the 2010 Act, it would have been more appropriate for the applicant to have been detained and taken to a place of safety under section 297 of the 2003 Act. The reassessment should take into account the provisions of the Mental Health SOP, the requirements of the 2003 Act and the points made in this report.

The applicant should then be provided with a further response to his complaint which: i) outlines the further evidence obtained from Constables P and Q; ii) details in full the reassessment of the complaint; and iii) communicates any organisational learning identified.

Complaint 11: Mental health/welfare not checked

The applicant complained that at no time did either of the arresting officers enquire after his mental welfare, despite a reported concern over his mental health.

Police Handling of Complaint 11

This particular allegation was not directly addressed in Chief Inspector AA's letter dated 18 July 2016. However, the following section of the letter provides some explanation of the relevant issues:

"From the point that concerns were reported to the police by [Ms A] on 9 March 2016 it was the focus and priority of the police to trace you, ensure that you were safe and well and then make an assessment about what was the most appropriate course of action thereafter..."

When [Constables P and Q] traced you they started verbal communications with you explaining that concerns had been raised, that they wanted to ensure that you were safe and well and ascertained if you were in need of any treatment or support. However, due to your behaviour towards the officers by shouting, swearing and screaming at them and stating you were going to kill yourself, you were arrested."

Consideration of Complaint 11

The appropriateness of the reaction of Constables P and Q to the applicant's behaviour and expression of his mental ill health has been dealt with in Complaints 9 and 10. The matter of how the applicant's allegations have been recorded and addressed by Police Scotland is discussed separately later in this report.

In his statement, Constable Q asserts that when he first approached the applicant's vehicle in response to the concern call, he attempted to engage with the applicant and explained that he was there to check on the applicant's welfare and provide him with assistance, however the applicant initially would not engage with him. Constable Q goes on to state that after several minutes of "*gentle persuasion*", the applicant began to react negatively to the presence of the officers and began to shout and swear at them and stated he "*wanted to kill himself*".

Constable P states that he attempted for approximately five minutes to establish the applicant's well-being with no response, before the applicant exited his car and became "*instantly aggressive*".

There is therefore evidence available that both Constables P and Q attempted to establish the state of the applicant's mental well-being without success, and this has been reflected in Chief Inspector AA's response.

On the basis that both officers have provided accounts that they attempted to make enquiries with the applicant as to his mental welfare, and as Chief Inspector AA's response explains this material information to the applicant, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 12: Handcuffs too tight

The applicant complained that the arresting officers repeatedly refused to loosen the handcuffs applied to him, despite his explaining to them that the handcuffs were causing him pain.

In his application to the PIRC, the applicant wrote that he did not accept the police response as “*police have lied about fact [sic] that I was originally handcuffed behind my back*”.

Police Handling of Complaint 12

In his letter, Chief Inspector AA wrote:

“The reason for your arrest is described [above]. The guidance for police officers is that any use of force by a police officer must be legal, proportionate and reasonable. Two criteria must be met when force is used:

Justification – where the force used is reasonable and proportionate to the perceived threat and [emphasis in original]

Preclusion – where other reasonable options have, either, been attempted and failed or are considered inappropriate.

The police have guidance in relation to the use of force and it categorises the level of offender behaviour on a scale of 1-6 with 1 being a person who is compliant and 6 being a person who is demonstrating serious/aggravated assaultive resistance. During your contact with [Constables P and Q] you demonstrated the following behaviour:

Level 2 – Verbal Resistance by shouting, swearing and verbal challenges to requests and instructions given by the officers.

Level 3 – Passive Resistance when the officers first approached you in your car you refused to respond or acknowledge the officers and refused to comply with their requests.

Level 4 – Active Resistance where you were actively struggling in an attempt to prevent being arrested and obstructed the officers in the execution of their duty.

The officers had tried to carry out tactical communications with you which failed. The officers then tried to use the least intrusive control skills by placing their hand on your arm in an attempt to gain control of you and this also failed. The next tactical option available was to restrain you using handcuffs. Handcuffs are primarily used as a temporary control and restraining device for the following reasons:

Safety of the public; Safety of police officers; and Safety of the subject.

Given the level of physical violence and aggression you displayed towards [Constables P and Q] along with verbal resistance and intimating that you were going to kill yourself, the officers made a dynamic tactical decision to use handcuffs to gain control of you for your

own safety and the safety of others. It is my assessment that this was legal, proportionate and reasonable in these circumstances.

You were handcuffed to the front in a stacked position which is in accordance with the Officer Safety Training (OST) which officers attend every year. While being transported by [Constables P and Q] you complained that the handcuffs were too tight. The officers stopped the vehicle and the handcuffs were checked. They were found to be in the correct position on your wrist, there was a sufficient gap between the bracelet of the cuff and your wrist, and the handcuffs were properly secured and were double locked as per guidelines. Therefore, there was no requirement to loosen the handcuffs.

It should be noted that being handcuffed to the front is a much more comfortable position than being handcuffed to the rear. This was an option available to the arresting officers due to the level of violence and aggression you were demonstrating towards them but chose not to use this. The officers have demonstrated that they took your comfort and well being into consideration.

A review of the CCTV footage of you coming into the Custody Suite of [Police Office RR] show you handcuffed to the front. These handcuffs were removed by [Constable T] within 2 minutes of your arrival at the police station. You were seen by the on duty Health Care Professional (HCP) approximately 90 minutes after the handcuffs were removed. The HCP has noted that you did not have any visible injuries or handcuff marks to your wrists which would still have been noticeable if they had been too tight. You were also asked by the HCP if you had suffered from any injuries in the past 7 days you stated that you had none.”

Consideration of Complaint 12

In their statements, both Constables P and Q state that after being advised he was under arrest for a contravention of Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, the applicant was handcuffed stacked to the rear, and not to the front as asserted by Chief Inspector AA. As a result, Chief Inspector AA's assertion that Constables P and Q chose not to handcuff the applicant to the rear is not supported by the material information available.

As identified by Chief Inspector AA, the CCTV evidence shows that the applicant was handcuffed to the front when brought into custody. Accordingly, it would have been helpful for the enquiry officer, Inspector H, to have asked precise questions of Constables P, Q, R and S to establish at what stage the applicant's handcuffs were changed from the rear to the front, and why this was done.

Notwithstanding the above, both Constables P and Q state that when they were advised by the applicant that the handcuffs were causing him pain, the handcuffs were checked and found to be applied correctly. Furthermore, Nurse W in her statement confirms that there were no obvious marks on the applicant's wrists caused by the handcuffs, nor did he advise her when asked that he had any injuries.

Consequently, it is considered that Chief Inspector AA's conclusion not to uphold the applicant's complaint is justified on the basis that the balance of the material information available supports that the applicant's handcuffs were not applied too tightly, and were checked by the officers when the applicant raised concerns with them. On this basis, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 13: Physical condition not checked

The applicant complained that the arresting officers witnessed him beat his head against the windscreen of the police car, but did not subsequently check his condition or give any first aid. The applicant further complained that he had beaten his head repeatedly on the metal seats in the police van, however officers did not check or monitor his condition at any point during the journey to Police Office RR, or after his arrival at the station.

In his application to the PIRC, the applicant wrote *"Police claims I was assessed and monitored are entirely FALSE."*

Police Handling of Complaint 13

In his letter, Chief Inspector AA wrote:

"Although you had struck your head on the police vehicle you did not have any visible injuries. While in the rear of the police vehicle you were supervised by [Constable Q] who maintained observations on you and your physical and mental well being. This was continued by [Constable S]. The officers did not have any concerns for you during this time.

You were later seen by the Health Care Professional (HCP) at the Custody Suite, [Police Office RR] who also noted that you did not have injuries and you said that you had not been injured at any time in the previous 7 days.

Also arrangements were made for you to be released from police custody so that you could also attend at appointment with your GP...

Given all the above explanations and in the absence of any other evidence to the contrary, I do not find any aspect of this allegation upheld."

Consideration of Complaint 13

Constable S states that whilst she and Constable R were transporting the applicant in the custody van, she sat in the rear with the applicant to maintain observations. She further states that she regularly attempted to speak to the applicant to check his welfare however he either ignored her or swore at her. Constable S's account of her interaction is supported by the statement of Constable R, who states that Constable S sat with the applicant on route to Police Office RR, and that the applicant was abusive towards her when she tried to engage with him. Chief Inspector AA's response to the applicant in respect of this part of the journey to Police Office RR therefore reflects the information available.

In their statements regarding the incident, both Constables P and Q confirm that whilst they were effecting his arrest, the applicant head-butted the bonnet of the police vehicle “*violently*” and also threw himself from the rear of the police vehicle into the centre console and, whilst seated, head-butted the rear windows. Both officers state that it was this behaviour by the applicant which prevented them from transporting him to Police Office RR in their vehicle immediately.

However, although both officers acknowledge that Constable Q sat with the applicant in the rear of the car, neither officer comments on whether or not they took into consideration that the applicant may have injured himself by his behaviour or queried this with the applicant, and it does not appear that either officer was asked to clarify this as part of the complaint enquiry. It is therefore considered that sufficient enquiry was not conducted into the applicant’s complaint.

Furthermore, the Custody SOP states, at paragraph 15.19.1, that all police staff should be aware of the risks associated with head injuries. Appendix T notes that a blow to the head can result in internal injuries, and explicitly notes that not all head injuries are visible. Chief Inspector AA’s explanation – that although officers were aware the applicant had struck his head, they had no concerns as he had no visible injuries – is therefore not consistent with the relevant Police Scotland procedures.

For these reasons, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that further statements be obtained from Constables P and Q specifically addressing whether or not they gave any consideration to the possibility that the applicant may have suffered a non-visible head injury, and what measures were taken by officers to ensure the applicant’s well-being. A further response should thereafter be sent to the applicant describing the outcome of these enquiries and explaining, with reference to the Custody SOP and on the basis of the facts established, whether or not it is concluded that all officers involved in the applicant’s arrest and transportation to Police Office RR gave the appropriate consideration to the applicant’s physical well-being.

Complaint 14: Insufficient clothing

The applicant complained that officers did not ensure that he had sufficient clothing to keep warm whilst effecting his arrest, transporting him to the custody suite or when he was detained in a cell.

In his application to the PIRC, the applicant wrote that he should have been provided with additional clothing from his car.

Police Handling of Complaint 14

In his letter, Chief Inspector AA wrote:

“When you were arrested you were wearing a pair of trousers, a T-shirt and footwear. You were not in a state of undress and you were not kept outside for any length of time. You were initially transported in a police car which would not be unduly cold. You were thereafter transferred to a police van where you were placed in what is referred to as the ‘prisoner transport cage’ in the rear. You were transported for approximately 30 miles in this vehicle. It is acknowledged that this would not have been as comfortable as a police

car however due to the circumstances it is my assessment that this course of action was not unreasonable. You were thereafter provided with a blanket in the cell...

Given all the above explanations and in the absence of any other evidence to the contrary, I do not find any aspect of this allegation upheld."

Consideration of Complaint 14

It would have been helpful if the enquiry officer had clarified with Constables P or Q as to whether they gave any consideration to whether the applicant may have required additional clothing for the journey to Police Office RR.

Notwithstanding, Chief Inspector AA has concluded that the applicant was not treated unreasonably as he was not in a state of undress and was not kept outside for any length of time. As the CCTV evidence shows that the applicant was on the date in question wearing a long-sleeved top and trousers, it is considered that Chief Inspector AA's response is adequately reasoned and in line with the material information available.

For the reasons given above, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 15: Handover briefing insufficient

The applicant complained that when Constables P and Q passed him into the care of Constables R and S, they did not provide Constables R and S with a sufficient briefing about his history or current condition.

In his application to the PIRC, the applicant wrote: *"If briefing had been sufficient or said officers professional, they would have assessed and monitored me which they did not..."*

Police Handling of Complaint 15

In his letter, Chief Inspector AA wrote:

"When there was a request made for a van to attend from [Police Office RR], [Constables S and R] were informed of the reason that they were required to attend and were also made aware of how you had been behaving towards the police.

When you were transferred from the police car to the police van [Constables P and Q] ensured [Constables S and R] were briefed about the circumstances of your arrest and subsequent behaviour. [Constable S] sat on the rear seats of the police van and maintained observations of you for the entire journey back to [Police Office RR]. During this time [Constable S] spoke to you explaining what would happen when you arrived at [Police Office RR]. This was to reassure you about what was happening and why...

Given all the above explanations and in the absence of any other evidence to the contrary, I do not find any aspect of this allegation upheld.”

Consideration of Complaint 15

Constable R states that he was advised by Constables P and Q that the applicant had been arrested, and was to be transported to Police Office RR. Constable R states also that he was aware that the reason he had been summoned to assist was because the applicant was being uncooperative and struggling with the officers.

Constable S states that she had been asked to assist as the applicant was struggling with Constables P and Q, and they required more suitable transportation to take him to Police Office RR.

Neither Constable P nor Q provides any detail in their statements as to what briefing they provided to Constables R and S at the time the applicant was passed into their care.

Sergeant U, who accepted the applicant into custody at Police Office RR, states that she was advised by Constables R and S that the applicant had originally been traced as a missing person, and had subsequently resisted arrest.

However, it is unclear from the statements of any of the officers as to whether or not Constables R and S were made aware that the applicant had come into contact with the police as a result of a concern for his mental health, and had subsequently been arrested by Constables P and Q for “*his own safety*”, as stated within the Incident History. Likely as a result of this, Chief Inspector AA has not adequately explained in his response whether Constables R and S were provided with a sufficient briefing about his history or current condition, which is the crux of the applicant’s complaint. It is therefore concluded that this complaint was not dealt with to a reasonable standard.

It is recommended that further statements be obtained from Constables P, Q, R and S to establish whether Constables P and Q made Constables R and S aware of concerns for the applicant’s mental health and the precise reasons for his arrest. A further response should thereafter be sent to the applicant describing the outcome of these enquiries and fully explaining whether it is considered that Constables P and Q provided a sufficient handover briefing to Constables R and S in the circumstances.

Complaint 16: Lied to about seeing a doctor

The applicant complained that the arrested officers lied to him repeatedly by telling him that they would take him to see a doctor.

In his application to the PIRC, the applicant wrote: “*Do not accept that these officers, who regularly arrest and send or take persons to this same custody suite do not know how that suite operates.*”

Police Handling of Complaint 16

In his letter, Chief Inspector AA wrote:

“The process for being seen by a doctor is that if you are in need of immediate medical assistance you are either conveyed by the police or ambulance to Accident and Emergency for treatment. This was not necessary in your case.

If a person is displaying signs of a mental health disorder then the person is assessed and triaged by the on duty HCP. The HCP at [Police Office RR] is a Nurse employed by [the NHS] who specialises in Custodial and Forensic Care. The HCP then decides what the best course of action for that person is. There is no doctor based at [Police Office RR] however a psychiatric physician can be called out to attend at the police station.

The HCP who assessed and triaged you on 9 March 2016 is a Senior Practice Nurse. This is a summary of her assessment of you:

The HCP saw you at 1445hrs that day. You were seen by the HCP in the treatment room and there were no police officers present during this examination. This examination by the HCP had been requested by [Sergeant U] (Custody Supervisor).

The HCP had been briefed by [Sergeant U] that there had been a concern for a person report in respect of you and that you had been brought in to the police station because you had been arrested. The HCP was not informed what you had been arrested for. There is no requirement for them to know this as they are independent of the police and this is an important part of their role.

The HCP noted that you were very angry when you first came in to the treatment room and this was due to your perception of how you had been treated by the police since you had been arrested that day. They noted that you weren't violent or aggressive but you were clearly unhappy with what was happening to you.

The HCP explained their role and gained your consent to examine you. You calmed down fairly quickly and engaged well with the HCP. From their routine, basic observations they had no concerns for your physical well being and you had no apparent physical injuries. You were asked if you had suffered any injuries in the past 7 days and you said that you hadn't.

If a person discloses to the HCP that they have been injured by the police in any way, including by being handcuffed, the HCP makes a note of this. There is no note of this in your record.

A lengthy discussion then took place between you and the HCP during which you provided your medical history and a full account of what had happened which resulted in you coming into police custody.

During this examination it was established that you had an appointment with your GP at 1730hrs that day. The HCP clarifies with the Custody Sergeant that there was no reason for you to remain in custody due to the nature of the offence you had committed.

Therefore, you could be released to allow you at access [sic] medical support in relation to your medical health.

The HCP had 2 options – the first was to keep you in custody and request that a forensic physician be called out to attend at [Police Office RR] to examine you. It takes approximately 1 hour for the doctor to attend then approximately another hour for the assessment to be carried out. It was the HCP's opinion that the probable outcome of this would be that you would be referred to [Hospital PP] for further assessment and this takes approximately 3 hours to arrange an appointment for you to be seen.

The second option was, with your consent, contact your GP and advise them of what had occurred that day and request that you are given a mental health assessment. Thereafter, arrangements would be made for you be released from police custody into the care of [Ms A] to allow you to attend your GP appointment at 1730hrs.

The second option was the HCP's preferred option for the following reasons:

- 1. You would be examined by a doctor quicker than if you stayed in police custody.*
- 2. It would reduce the levels of distress you were experiencing by being in police custody.*
- 3. You would be released into the care of someone familiar to you which would also reduce your levels of distress.*
- 4. You would be examined by a doctor who knew you and your medical history.*

Thereafter you were released from police custody to allow you to attend your appointment with your GP at 1730hrs that day. You were transported by the police to [Police Office QQ] where you were left in the care of [Ms A].

You were transported by the police to minimise any distress to you in the event that you were left to find your own way... You were dropped off at the police station as this was more discreet option than being dropped off at the doctor's surgery and this was again done to minimise the distress to you.

When decisions were being made about what was going to happen to you once you were in police custody every effort was made to make it the least intrusive to you and it was your best interests that were the priority.

It should be noted that [Constables P and Q] had made a request to the ACR for a doctor to attend at [Police Office RR] so that you could be examined on your arrival. It was their understanding that there would have been a doctor there to see you. This was not a deliberate attempt to mislead or lie to you. It was a lack of understanding on behalf of the officers about the processes of health care provisions within the Custody Suite as they have never worked in this Division of policing. Both officers have now been advised of the correct processes for their future reference...

Given all the above explanations and in the absence of any other evidence to the contrary, I do not find any aspect of this allegation upheld."

Consideration of Complaint 16

Whether or not Constables P and Q should have given consideration to using the powers available to them under the 2003 Act to detain the applicant and remove him to a hospital for immediate treatment, or to a Place of Safety, is discussed elsewhere in this report.

In respect of their comments to the applicant that he would be seen by medical personnel, it is clear from the radio transmissions made available that when reporting to ACR that the applicant has been arrested, Constable P requests a doctor be present at Police Office RR to perform a “*psychiatric assessment*” on the applicant. Constable P also states in his account of the incident that he advised the applicant he would be able to see “*medical staff*” once accepted into custody.

In her account, Sergeant U states that she was informed by Constables R and S that Constable P had requested that a doctor meet with officers at Police Office RR to assess the applicant. This account is supported by the CCTV available of the applicant’s acceptance into custody at the charge bar.

Although the applicant was clearly misinformed that he would be able to see a doctor when he arrived at the Custody Suite, there is nothing in the evidence available to support that he was deliberately lied to by officers about this. Rather, the available information indicates that Constables P and Q in fact attempted in good faith to arrange for a doctor to attend at the custody suite, but were unaware that this would not be possible. Chief Inspector AA’s response to the applicant acknowledged these circumstances and confirms that the officers have since been advised of the correct procedure. It is considered that Chief Inspector AA’s response is detailed and well-reasoned.

On this basis, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 17: Officer lighting a cigarette

The applicant complained that after handcuffing him, one of the arresting officers began to light a cigarette. The applicant states he objected to this and found it unprofessional.

Police Handling of Complaint 17

In his letter, Chief Inspector AA wrote:

“[Constables P and Q] both deny that either of them smoked a cigarette while you were in the police vehicle.

Given all the above explanations and in the absence of any other evidence to the contrary, I do not find any aspect of this allegation upheld.”

Consideration of Complaint 17

In their accounts obtained as part of the complaint enquiry, both Constables P and Q explicitly state that neither did they smoke nor see the other smoking at any point during the incident.

In his application to the PIRC, the applicant has differentiated between the act of smoking and the act of lighting a cigarette, which he states Constable P began to do but ceased when the applicant complained. Although the officers refer to “*smoking*”, it is considered that the acts are sufficiently similar for Chief Inspector AA to have come to an appropriate conclusion, on the balance of probabilities, based on the officers’ denial that they smoked.

On this basis, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 18: Lied to about charge

The applicant complained that Constables P and Q advised him that he would not be charged for an offence, however he was subsequently reported to COPFS. The applicant therefore considered that Constables P and Q had lied to him.

Police Handling of Complaint 18

In his letter, Chief Inspector AA wrote:

“The term cautioned and charged means that a formal charge is read out to you detailing the time and date of the offence, the location where the offence occurred, the details of how you committed the offence and what offence you committed. Once the charge has been read over to you, you have the opportunity to make a formal reply which will be noted by the police and may be used as evidence.

From reviewing the Standard Police Report (SPR) which has been submitted to COPFS in respect of the incident on 9 March 2016 [Police Incident UU] I can confirm that you were not formally cautioned and charged for this offence. The circumstances of the incident have been reported to COPFS for their consideration of a prosecution without formally cautioning and charging you. This was an acceptable way to proceed in these circumstances. Formally charging you on 9 March 2016 would not have been in your best interests and may have had a detrimental impact on your mental well being.

[Constables P and Q] were correct when they informed you that you hadn’t been charged in relation to [Police Incident UU]. It would appear there has been a misunderstanding about the term ‘charged’ which you believed meant that if you hadn’t been charged then no report would be made to COPFS...

For the reasons given above I do not find any aspect of this allegation upheld.”

Consideration of Complaint 18

The appropriateness of the actions of Constables P and Q in response to the applicant's behaviour and expression of his mental ill health has been dealt with in Complaints 9 and 10.

Notwithstanding, taking into consideration that Constables P and Q had by this time arrested the applicant for an offence, it would have been helpful for the enquiry officer to have specifically clarified with Constables P or Q why they then told the applicant that he would not be charged.

It is, however, considered that Chief Inspector AA is justified in his assessment that formally charging the applicant *"would not have been in [his] best interests and may have had a detrimental impact on [his] mental well being"*. Accordingly, Chief Inspector AA's conclusion – that not formally charging the applicant but reporting the circumstances of the incident for consideration of a prosecution was an acceptable way to proceed in those circumstances – is well-reasoned.

Furthermore, the SPR confirms that the applicant was indeed later advised that a report would be made to the Procurator Fiscal, even though he was not formally charged. In these circumstances, it is reasonable for Chief Inspector AA to conclude that *"there has been a misunderstanding about the term 'charged'"* rather than that Constables P and Q deliberately misled the applicant.

On the basis of the foregoing, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 19: Dropped and dragged across floor

The applicant complained that he was physically lifted from the police van by his *"limbs"*, *"dumped"* on the concrete floor of Police Office RR, and subsequently *"dragged"* to the charge bar.

Police Handling of Complaint 19

In his letter, Chief Inspector AA wrote:

"On arrival at [Police Office RR] you were displaying Level 3 – Passive Resistance behaviour by failing to comply with requests and instructions such as alighting from the police van, walking yourself into the police station and refusing to answer risk assessment questions which inform your care plan while in custody.

[Constables S and R] repeatedly asked you to get out of the vehicle. These requests were repeated by [Constable T] who was called down to the Custody Suite to assist the other officers who were dealing with you. It was the assessment of all officers that you were displaying Passive Resistance and you were not suffering from any ailment or injury which was causing you to behave in this way.

I have reviewed the CCTV footage of you coming into the Custody Suite, [Police Office RR] on 9 March 2016 and a summary is as follows:

At approximately 1316hrs you are carried into the police station. [Constables S and R] have an arm each and [Constable T] who had been called in to assist you with you was carrying your legs. You are placed gently on the floor of the Custody Suite.

At approximately 1317hrs [Constable T] kneels down beside you so that he is at your eye level and begins talking to you in a calm and polite manner. [Sergeant U] comes round from behind the charge bar and also kneels down to speak with you.

At approximately 1318hrs [Constable T] removes the handcuffs from you, you are brought to your feet and then you are assisted towards the bench behind you where you sit down.

Throughout this you made no effort to get up yourself and you refused to walk.

There is no evidence to suggest that you were ‘dumped’ or ‘dragged’ anywhere in the Custody Suite. The officers are seen and heard to be treating you with dignity and respect.

Given the foregoing explanations I do not find any aspect of this allegation upheld.”

Consideration of Complaint 19

Chief Inspector AA’s response to the applicant accurately reflects the accounts of the incident provided by Sergeant U and Constables R, S and T.

The CCTV available from the custody suite of Police Office RR was provided to the PIRC as part of the review of this complaint. In the footage, Constables R and S, and Constable T, can be seen carrying the applicant to the charge bar, where he is then placed sitting on the ground with his legs extended in front of him. Constable T and Sergeant U can be seen bending down to speak to the applicant, and Sergeant U can be heard asking the applicant why he is sitting on the floor. The applicant states that he does not feel well, and is then encouraged to sit on the available bench by Sergeant U and provided with a cup of water.

The statements obtained from Constables R and S, Constable T and Sergeant U are therefore supported by the CCTV from the point that the applicant is brought into the custody suite. While there is no CCTV in respect of the applicant being removed from the van and carried through the car park, it is considered that Chief Inspector AA’s assertions that “*there is no evidence to suggest that you were ‘dumped’ or ‘dragged’ anywhere in the Custody Suite*” and that the officers “*are seen and heard to be treating you with dignity and respect*” is supported by the material information available.

For the reasons given above, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 20: Disrespectful comment

The applicant complained that a “*lady officer*” behind the counter at Police Office RR told him, when he asked for a doctor, “*that’s not how it works here*”.

In his application to the PIRC, the applicant stated that he did not find the reply given by Sergeant U to have been “*respectful*”.

Police Handling of Complaint 20

This particular allegation was not directly addressed in Chief Inspector AA’s letter dated 18 July 2016.

Consideration of Complaint 20

In the CCTV footage from the charge bar, the applicant can be heard stating that he needs to see a doctor. Constable S then appears to advise Sergeant U that the arresting officers – Constables P and Q – had requested a doctor be in attendance at Police Office RR in order to assess the applicant. Sergeant U then replies “*that’s not how it works*”, which is almost identical to what the applicant asserts.

On the basis that the applicant’s complaint has not been addressed, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that a response be sent to the applicant which takes into account the CCTV footage and addresses both his complaint and his belief that the comment was not respectful.

Complaint 21: Appropriate Adult not provided

The applicant complained that he was not provided with an Appropriate Adult and was denied one when he requested it, even though a sign on the wall of Police Office RR stated that he had the right to be assisted by an Appropriate Adult.

In his application to the PIRC, the applicant wrote: “*Police have not addressed the specifics of the complaint and have used my alleged criminality as an excuse why this was not needed.*”

Police Handling of Complaint 21

In his letter, Chief Inspector AA wrote:

“An Appropriate Adult is a specially trained person who is present when a person in custody is formally interviewed as a suspect by the police. They are used when the person who is being interviewed has a mental disorder or learning disability. As there was no need for you to be formally interviewed by the police, there was no requirement for an Appropriate Adult to be provided.”

Consideration of Complaint 21

As detailed in this report, the applicant came into contact with the police as a result of a reported concern for his mental health. Accordingly – and as evinced by the applicant’s Custody Record – custody officers were aware that the applicant had suffered from mental health problems “*for 30 years*”.

Paragraph 4.3 of Police Scotland's standard operating procedure in relation to Appropriate Adults (the "Appropriate Adults SOP") states that the role of the Appropriate Adult is to facilitate communication between an individual with a mental disorder and the police, including ensuring that the individual understands their rights in respect of solicitor access, caution and charge, and further understands the purpose of any medical examination or other police procedures including custody procedures. Paragraph 5.1 of the Appropriate Adults SOP states that if any officer suspects that a person coming into contact with the police has a mental disorder, or they are advised by another person that an individual has a mental disorder, then an Appropriate Adult must be requested.

Furthermore, paragraph 14.2 of the Custody SOP states that when a person in police custody is provided with guidance notes regarding their rights and entitlements whilst in police custody, an Appropriate Adult must be provided where necessary.

Accordingly, Chief Inspector AA's assertion that an Appropriate Adult is required only where an individual is being formally interviewed by police is not consistent with the provisions of the Appropriate Adult SOP and the Custody SOP.

For this reason, it is concluded that this complaint was not dealt with to a reasonable standard. A reconsideration direction is given to Police Scotland under section 35(7) of the Act.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. The reconsideration is not subject to the PIRC's supervision.

In reconsidering the complaint, Police Scotland must, take into account what was known about the applicant's circumstances alongside the provisions of the Appropriate Adult and Custody SOPs. A further response should thereafter be sent to the applicant explaining whether or not consideration should have been given to requesting an Appropriate Adult to provide him with assistance during his time in custody.

Complaint 22: Letter of Rights dropped onto floor

The applicant complained that Sergeant U deliberately dropped the Letter of Rights on the floor of the cell, which the applicant considered demeaning and improper.

Complaint 23: Unable to read Letter of Rights

The applicant complained that he could not read the Letter of Rights as he did not have his glasses and was not provided these. He also complained that when he requested a large-print version of the letter, he was told this could not be provided, despite the letter itself stating that a large-print version was available.

Police Handling of Complaints 22 and 23

In his letter, Chief Inspector AA wrote:

“A ‘Letter of Rights’ is given to every person who is in to [sic] police custody. [Sergeant U] attempt [sic] to hand this to you but refused to take it from her. As such [Sergeant U] left the leaflet on the floor of your cell for you to read later if you so wished. This is routine practice for those persons who are refusing to co-operate.

None of the officers who were on duty in Custody Division on 9 March 2016 or those who were carrying out constant observations on you have any recollection of you requesting your reading glasses or a larger print version of the ‘Letter of Rights’. There is no record of either of these requests on your custody record.

In respect of a request for reading glasses to be provided, I can advise that this is usually facilitated. However, due to the circumstances of you being in police custody, disclosing that you suffered from depression and that you had previously tried to kill yourself and refusing to answer the risk assessment questions it is unlikely that this item would have been provided to you. The reason for this is that you could have caused harm to yourself or others.

There is another version of the ‘Letter of Rights’ which is written in such a way that it can be understood by children or people with a learning disability. It was clear to officers that you did not fit either criteria and it would have been demeaning to you should you have been given this version.

It has been confirmed that there is no large print version of the ‘Letter of Rights’. Therefore I have contacted the Custody Inspector based at [Police Office RR] and highlighted this to him for consideration of having a large print version introduced...

In light of the explanations above I do not find any aspect of this allegation upheld.”

Consideration of Complaint 22

In her statement, Sergeant U states that the applicant was offered a copy of the Letter of Rights whilst within his cell, however he refused to take this and so it was left in the cell beside him.

Mr V, who was performing duties as a Police Custody and Security Officer when the applicant was accepted into custody, states that he cannot recall who gave the applicant the Letter of Rights, however the usual procedure was that if an individual did not take the form then he would “pop it” into their cell.

There are therefore two accounts available in respect of this particular incident, namely those of Sergeant U and the applicant. The applicant states that the letter was simply dropped in the cell, while Sergeant U states that it was left in the cell after it was offered to the applicant but he refused to take it.

It would have been useful for Chief Inspector AA to explain to the applicant why his account was not preferred to that of Sergeant U. Nonetheless, as the CCTV available from the charge bar lends support

to Sergeant U's statement in terms of the applicant's earlier behaviour, it is considered justifiable, on the balance of probabilities, for Chief Inspector AA not to have upheld the complaint. On the basis of the foregoing, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Consideration of Complaint 23

Sergeant U states that the applicant did not at any point request his glasses, nor did he ask for a large-print version of the Letter of Rights, which would have been provided to him had he asked as these were kept "to hand".

Mr V states that he cannot remember the applicant requesting his glasses or asking for a large-print version of the Letter of Rights, and further states that he is not sure if a large-print version exists.

As these statements are somewhat contradictory, the PIRC sought clarification in this respect. Police Scotland has advised that although a large-print version of the letter does not exist, this could be easily achieved in the Custody Suite by photocopying the document and enlarging the image. A copy of the Letter of Rights has also been provided to the PIRC. Although the document does not refer to the availability of a "large-print" version, it does refer to the availability of an "easy-read" version, which Chief Inspector AA has confirmed to the applicant is a version "written in such a way that it can be understood by children or people with a learning disability".

The crux of the applicant's complaint, however, is that he made custody staff aware that he could not read the Letter of Rights, but this issue was not resolved. It is therefore considered that a suitable conclusion to this complaint depends more on whether or not it can be established that the applicant did indeed make this request, rather than on the existence of a large-print version of the document.

In this connection, it is considered that the balance of the available evidence – from the accounts of Sergeant U and Mr V and from the applicant's Custody Record – supports Chief Inspector AA's conclusion that custody staff were unaware of the applicant's requirement for a large-print version of the letter or a reading aid. On this basis, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 24: Warned trousers could be removed

The applicant complained that Constable T advised him that he may need to take the applicant's trousers off.

In his application to the PIRC, the applicant wrote: "I felt this was disrespectful. I was not going to be left alone, and was not left alone. The suggestion was unnecessary."

Police Handling of Complaint 24

In his letter, Chief Inspector AA wrote:

“The guidance in relation to a custody’s clothing states that it can be removed if it is to prevent self harm. Trousers, by the very nature of them, can be used as a ligature. Quite often there are strings and cords on trousers which can be removed and also be used as a ligature. If the Custody Supervisor assesses that there is a risk to the custody to have certain items of clothing on, then these can legitimately be removed and an anti ligature suit will be provided. This course of action is taken to ensure the safety of the custody, it is only done with the custody’s consent and is not meant in any way to be demeaning.

If a custody refuses to remove items of clothing then clothes will not be forcibly removed and they are placed under constant observations. As a decision had already been made that you were going to be constantly monitored by a police officer there was no requirement to remove your trousers...

In light of the explanations given above I do not find any aspect of this allegation upheld.”

Consideration of Complaint 24

Paragraph 9.2.4 of the Custody SOP states that any item of clothing which an individual may use to harm themselves should be removed.

Although Constable T makes no mention in his statement of telling the applicant that his trousers may have to be removed, it is considered that Chief Inspector AA’s response reflects the relevant procedures and provides an explanation as to why such a suggestion may have been made by Constable T.

Accordingly, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 25: Restrained when taken to nurse

The applicant complained that he was restrained by two officers whilst being escorted to and from the nurse’s office, yet whilst being examined by the nurse he was not restrained at all and no officers were present.

Police Handling of Complaint 25

In his letter, Chief Inspector AA wrote:

“It is the policy of Police Scotland that all persons who are in police custody will be under the control of at least one officer when being moved to and from a cell. To be in control of a person the officer must have ‘hands on’ which involves taking hold of the custody’s arm and walking with them. This act of holding your arm is referred to as ‘Control Skills’ and is the lowest level of physical use of force.

There are numerous posters on the walls of the Custody Suite which show a picture of a custody being held by the arms by 2 escorting officers. This use of control is for the

purpose of ensuring the safety of officers and custodies and is legal, proportionate and reasonable.

In light of the explanations given above I do not find any aspect of this allegation upheld.”

Consideration of Complaint 25

It would have been helpful for Chief Inspector AA to have explained to the applicant why it was not considered necessary for officers to have control of him whilst he was being seen by Nurse W. However, the crux of the applicant's complaint is that he was restrained when being moved around Police Office RR, rather than *not* being restrained whilst with the HCP. As Chief Inspector AA has explained why the applicant was restrained, it is considered that the applicant has been given an adequately reasoned response to his complaint.

It is therefore concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 26: Officer displayed bias

The applicant complained that when he asked Constable R if he could see a doctor, Constable R queried whether he required “*a mental kind of doctor... or a normal kind of doctor*”, which the applicant perceived as bias towards those with mental illness.

Police Handling of Complaint 26

In his letter to the applicant dated 18 July 2016, Chief Inspector AA wrote:

“This allegation has been recorded as an on duty, non criminal allegation of Incivility in respect of [Constable R] and [Sergeant U]...”

The CCTV which covers the charge bar area of the Custody Suite has been reviewed for 9 March 2016. All the officers who had dealings with you on that date have also submitted Operational Statements and statements have been noted from the Health Care Professional (HCP) and Police Custody and Security Officers (PCSOs) who were on duty that day.

There is no evidence to suggest that any officer or member of staff was demeaning towards you. On the CCTV footage all officers can be heard to be polite to you and were using calm verbal communication in an effort to persuade you to start co-operating with processes at the charge bar.

The quality of the audio recording of the CCTV for the period when you are in the cell is not clear enough to make out the content of any conversations you had with police officers or PCSOs.

However, while [Constable R] was carrying out constant observations on you at the cell you repeatedly stated that you wanted to see a doctor. The officer has intimated that he asked you whether you wanted to see a doctor for a medical reason or for a mental

health reason. On being asked this question you immediately became angry towards the officer, you got up off the mattress and made your way over to the officer and 'squared up' to him displaying aggressive body language. The officer remained seated and asked you to calm down. You thereafter returned to the mattress.

This question was asked so that the officer could make an assessment of whether you required any immediate medical assistance. It was neither demeaning nor offensive. The way you reacted to this question is another example of your unpredictable and disproportionate behaviour towards police officers that day.

Therefore, I do not find any aspect of this allegation upheld."

Consideration of Complaint 26

In his statement, Constable R states that when he was conducting observations on the applicant, the applicant requested a doctor several times. Constable R states that he tried to gain more information from the applicant about whether or not he required a doctor for his physical health or mental health, which he states the applicant found disrespectful. Constable R has therefore made clear that he drew a distinction between the applicant's requirement for a doctor to attend to his mental health or a doctor to attend to his physical health.

Chief Inspector AA has formed the conclusion that, as Constable R's request was designed to make an assessment of the urgency of the applicant's requirement for a doctor, it was neither demeaning nor offensive.

However, the essence of the applicant's complaint is that Constable R allegedly inferred that a mental health doctor was not a "normal" doctor. In order to adequately address this complaint, it was necessary to establish whether or not Constable R made the comment alleged by the applicant and, if so, for Chief Inspector AA to take a view on whether or not the comment was appropriate.

As it was not established whether Constable R made the alleged comment, it is considered that the complaint enquiry was insufficient in this respect. Accordingly, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that a further account be obtained from Constable R to establish whether or not he made the comment alleged by the applicant. A further response should thereafter be sent to the applicant explaining the outcome of these enquiries and providing a position on whether or not the comment, if made, was appropriate.

Complaint 27: Concern report not submitted

The applicant complained that Constables P and Q did not follow procedures, specifically that they did not submit an adult concern form and did not inform the Local Authority or the Mental Welfare Commission of his arrest.

Police Handling of Complaint 27

In his letter, Chief Inspector AA wrote:

“This allegation has been recorded as an on duty, non criminal allegation of Irregularity in Procedure – Other in respect of [Constables P and Q]...

On 9 March 2016 [Constables P and Q] terminated duty at 1500hrs and at this time you were still in police custody and the matter was still ongoing.

[Constable P] returned to duty on 10 March 2016 and obtained an update on the outcome of the events on the previous day. [Constable P] was also advised that a welfare check had been carried out on you that morning and you were safe and well. [Constable P] thereafter submitted a Concern Report to his supervisor. This report was thereafter submitted to the Public Protection Unit for assessment that date.

On 11 March 2016 the Concern Report was reviewed by a member of staff in the Public Protection Unit and was assessed as standard risk. The form was then sent to Adult Services [local area NHS] for their consideration of any further action.

The Concern Report contained details of the events of 9 March 2016, the safe and well check carried out on 10 March 2016 and made reference to the previous incident [Police Incident XX] which you had just been cautioned and charged for.

The guidance for the submission of Concern Reports is that it should be submitted prior to the officer terminating duty. However, I am of the opinion that it was perfectly acceptable and reasonable for the officers to wait until the incident had concluded before submitting the Concern Report. This allowed for full details and the outcome of the incident to be shared with the partner agency.

Therefore, I do not find this allegation upheld.”

Consideration of Complaint 27

Paragraph 16.2 of the Mental Health SOP provides that it is the duty of the officer – in this case Constable P – to ensure the Concern Report is completed and submitted in all mental health incidents.

A copy of the Concern Report submitted by Constable P was provided to the PIRC as part of the review. The content of the Concern Report has been accurately repeated by Chief Inspector AA in his response to the applicant.

Additionally, Inspector BB advised the PIRC in an email dated 31 January 2017 that the relevant form history section of Police Scotland’s Vulnerable Person Database records this particular form as having been shared with partner agencies.

As the enquiry conducted has established that the Concern Report was completed and submitted by Constable P in accordance with his duties, it is considered that Chief Inspector AA’s conclusion is well-reasoned and in line with protocol.

On this basis, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

The complaints reviewed from this point onwards were not specifically responded to in Chief Inspector AA's letter dated 18 July 2016. Instead, Chief Inspector AA stated:

"... a decision was made that these additional complaints would not be recorded as allegations given that they are intrinsically linked to the complaint about the police process rather than the actions of officers..."

Any further complaints that have been communicated by you have also not been recorded by the Professional Standards Department... as an assessment has been made that the additional complaints that you have made are in relation to the ongoing complaints process and are not new complaints."

Complaint 28: Conflict of interest – Inspector J

The applicant complained that it was a conflict of interest for Inspector J to investigate the applicant's complaints about Constable E at the same time as Inspector J was investigating the allegation made against the applicant by Mr B.

Police Handling of Complaint 28

As outlined above, this particular allegation was not separately addressed in Chief Inspector AA's letter dated 18 July 2016. However, the response provided in relation to Complaint 5 partially responds to this complaint, specifically:

"... [Inspector J] was acting with best intentions in that he knew [Police Incident XX] required to be concluded and it had been difficult up until then to make arrangements to see you. He knew that [Constable E] was absent from work and it was not known at that time when he was likely to return. The officer therefore took the opportunity to caution and charge you while he was at your home and this afforded you the right to make a response to the charge should you wish to do so."

Consideration of Complaint 28

There is nothing in the material information available to support that Inspector J elected to charge the applicant for a contravention of Section 38 of 2010 Act for any reasons other than to bring the enquiry into Police Incident XX to a conclusion and because he considered there to be a sufficiency of evidence to do so.

However, the crux of the applicant's complaint is that it was not appropriate for Inspector J to investigate Police Incident XX at the same time as making enquiries into the applicant's complaints. The CAP Record – a record of the complaints made and outcomes identified by Police Scotland – in relation to this specific complaint identifies that it should be *"carefully considered whether it is appropriate [for Enquiry Officers] to carry out enquiries into matters that are subject of the complaint under investigation by them"*. However, such a consideration has not been reflected in Chief Inspector

AA's response to the applicant. Additionally, no conclusion as to the particular circumstances of this complaint has been reached or communicated to the applicant.

For these reasons, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that the crux of the complaint now be addressed by way of a further response to the applicant offering Police Scotland's view on whether (and, if so, why) Inspector J's actions in dealing with the applicant's complaints and Police Incident XX simultaneously were appropriate in the circumstances.

Complaint 29: Delays in complaint enquiry

The applicant complained that the length of time taken to investigate his original complaints about Constable E was unacceptable, meaning that his scheduled court appearance to answer the charge against him in relation to Police Incident XX would occur before he would be advised of the outcome of his complaints about the police.

Police Handling of Complaint 29

Although this complaint was not directly responded to, Chief Inspector AA wrote the following in his letter:

"I am aware that you are unhappy with the length of time that it has taken for your complaint to be dealt with. The guidance for the timescale for complaints about the police to be concluded is 56 days from when they are recorded by the police. It was hoped that your complaint would have been concluded within this time, however as the process went on and your complaint was near to conclusion, you made more complaints about the police. These complaints had to be reviewed, acknowledged, assessed, recorded and allocated to an Enquiry Officer.

Once I took over as the Area Commander... and had a chance to reviewed [sic] your complaint it was apparent that it had broadened considerably than when [Inspector J] or [Temporary Chief Inspector L] were dealing with it. Therefore I appointed [Inspector H] as the Enquiry Officer on a full time basis and was tasked with dealing solely on your complaint. I removed her from her usual duties as a Response Police Inspector as testament to how seriously I was treating your complaint and was making every endeavour to have the matter brought to a conclusion quickly. However, I do acknowledge that a change in staff did have an impact on your complaint being concluded and was something that you had no control over. Therefore, please accept my apology on behalf of Police Scotland for this."

Consideration of Complaint 29

The paperwork provided by Police Scotland confirms that enquiry was already being made into the applicant's recorded complaints about Constable E – as evidenced by the enquiries conducted with the

applicant by Inspector J – before the applicant made further complaints about Inspector J, and subsequently about Police Incident UU and the officers involved in that incident.

As the subject of new complaints from the applicant, it would have been inappropriate for Inspector J to continue investigating the applicant's complaints about Constable E. Accordingly, it was appropriate for the complaints to be reallocated. Chief Inspector AA has acknowledged and apologised for the delay in this connection.

It would have been helpful for Chief Inspector AA to have explained to the applicant why – after being “*reviewed, acknowledged, assessed, recorded and allocated*” – it was considered necessary for the same officer to deal with all of the complaints made by the applicant, especially when a substantive amount of work had already been conducted on his complaints about Constable E, and these complaints had already been recorded for approximately 4 weeks. It would also have augmented Chief Inspector AA's response to have explained to the applicant that his complaints about the police would not have impacted upon the criminal proceedings instructed by the COPFS.

However, as Chief Inspector AA has acknowledged a shortcoming on the part of Police Scotland and provided an apology for this, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 30: Failure to provide information

The applicant complained that Temporary Superintendent G and Temporary Chief Inspector L failed to provide information requested by the applicant in relation to the charges against him and the officers involved in those charges.

In his application to the PIRC, the applicant wrote: “*I believe the delay was to give police enough time to come up with sufficient excuses and to cover their tracks as best they could before responding.*”

Police Handling of Complaint 30

This allegation was not directly addressed in Chief Inspector AA's letter dated 18 July 2016.

Consideration of Complaint 30

The applicant's complaint relates to a series of emails between him, Temporary Superintendent G and Temporary Chief Inspector L.

The applicant first requested details regarding the charges against him, and the shoulder numbers of the officers he had come into contact with during Police Incident UU, in an email sent directly to Temporary Superintendent G on 10 March 2016:

“*Can you please confirm the following to me*

1. Case number for first charge and detail

2. *Officer number of officer who charged me on Tuesday last.*
 3. *Any other detail I am allowed to know about that incident and that charge.*
 4. *Case number for yesterday's referral to procurator fiscal and charge based on my illegal arrest and detention.*
 5. *Officer numbers of first two who attended yesterday*
 6. *Officer numbers of two in police van who failed to pay attention to my welfare.*
 7. *Officer number of Desk Duty Sergeant at point where I was dragged across floor of [Police Office RR], same officer who threw my rights onto cell floor.*
 8. *I wish to make complaints about ALL of these officers but have almost no way of knowing who they were.*
- If I cannot know any of these details then please let me know."*

Despite this request being acknowledged, and despite the applicant reiterating this request on several further occasions to a number of other officers, the applicant was not provided with the details he had requested until 25 April 2016, when a response was sent to him by Chief Inspector AA.

The applicant subsequently submitted an online complaint form dated 27 April 2016 specifically stating *"I wish to know why three senior officers at Police Scotland found it not possible to provide information that took [Chief Inspector AA] less than one day to provide"*. A file note within the CAP Record indicates that this further correspondence was assessed by the Professional Standards Department and sent to Chief Inspector AA to be included and addressed alongside the applicant's existing complaints.

The paperwork provided by Police Scotland includes a statement provided by Temporary Chief Inspector L addressing the complaints made about her. In a further email to the applicant dated 7 May 2016, Chief Inspector AA wrote:

"... I have spoken with [Temporary Superintendent G], [Temporary Chief Inspector L] and [Inspector BB]. I can advise that [Temporary Superintendent G] had passed your correspondence to [Temporary Chief Inspector L] to respond, [Temporary Chief Inspector L] had commenced collating details... and she had hoped to share this information with you face to face rather than via e-mail and that [Inspector BB], whilst aware of the complaint had not been passed any actions to progress in [Temporary Chief Inspector L]'s absence.

Whilst I will address this matter within my final complaint review I do not, at this time, believe that there was any intention to withhold the information you requested, merely [Temporary Chief Inspector L]'s desire to share this as part of this initial Enquiry Officers face to face meeting with you. It is however my view that the prompt sharing of the requested information would have gone part way to allay any fears or concerns you may have had and this, again in my view, has compounded the issue of the lack of faith in policing that you have and for that I apologise."

A file note included in the CAP Record provided to the PIRC states that, following receipt of the applicant's further online complaints dated 1 June 2016, a decision was made by Chief Inspector CC to "draw a line" under the applicants complaints, for reasons of "proportionality" and to avoid creating further "unnecessary work". However, unless the applicant was subject to Police Scotland's 'unacceptable actions' policy – and there is nothing in the papers provided to suggest that he was – his complaints should have been recorded and responded to.

Notwithstanding, it is unclear why this particular complaint has not been addressed by Chief Inspector AA in his final letter to the applicant, given that enquiry had already been conducted and information was available in order to fully respond to the complaint. Furthermore, Chief Inspector AA had already advised the applicant that it would be included within his response.

On this basis, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that the applicant's complaint now be addressed. A response should be sent to the applicant explaining, with reference to the points made above and the material information available, whether his complaint is upheld. The response should also confirm whether any learning has been identified and passed on to the officers concerned.

Complaint 31: Statement not sent to COPFS

The applicant complained that Inspector J did not send the applicant's statement, concerning his allegation of assault against Mr B, to the COPFS despite telling the applicant that this would be done.

Police Handling of Complaint 31

This particular allegation was not directly addressed in Chief Inspector AA's letter dated 18 July 2016. However, the response provided in relation to Complaint 7 partially responds to this complaint, specifically:

"I wish to advise you that in respect of the statement that you provided to [Inspector J] on 8 March 2016 it has been confirmed that the original handwritten statement which you signed was submitted to [COPFS] on 19 April 2016 at the time the SPR was submitted. This document was added to the Procurator Fiscal's case file.

A typed copy of this statement was then submitted electronically to [COPFS] on 8 June 2016."

Consideration of Complaint 31

In an email to the applicant dated 31 May 2016, Inspector H acknowledged that the applicant wished to raise this matter as an additional complaint. Inspector H also explained that the applicant's statement in respect of his allegation against Mr B – as noted by Inspector J at the applicant's home on 8 March 2016 – was not withheld from COPFS as reference to it had made within the SPR submitted in respect of Police Incident XX. Inspector H advised however that she would not be able to provide the applicant

with an explanation as to why the statement itself was not submitted, as she would need to carry out further enquiries.

As Chief Inspector AA has explained to the applicant that his statement was submitted to the Procurator Fiscal on 19 April 2016 alongside the completed SPR, it is considered that the applicant's concerns have effectively been addressed. Accordingly, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 32: Failure to provide “evidence”

The applicant complained that Inspector H failed to provide him with “*documentary evidence*” to support her assertion that his statement in relation to an alleged assault by Mr B had in fact been sent to the COPFS.

Police Handling of Complaint 32

This allegation was not directly addressed in Chief Inspector AA's letter dated 18 July 2016.

Consideration of Complaint 32

In an email to Inspector H dated 31 May 2016, the applicant requested he be provided with “*the reference*” to his statement contained within the SPR submitted to COPFS. In her response to the applicant, Inspector H wrote that direct reference to the statement obtained from the applicant by Inspector J was made in a section of the SPR, however this particular section was “*non disclosable*”, meaning that she could not provide the applicant with the specific contents. The applicant subsequently made this matter the subject of a specific complaint about Inspector H, which was submitted to the Professional Standards Department via an online complaint form dated 1 June 2016.

As referred to above, a decision was made by Chief Inspector CC to “*draw a line*” under the applicant's complaints, meaning that the applicant's correspondence would be acknowledged but not specifically responded to. The file note further states that it may be necessary for a letter to reinforce this position.

There is however no explanation provided as to why this particular matter could not be addressed within Chief Inspector AA's final letter, nor does it appear that the applicant has been told that his complaint would not be addressed or given any explanation for this. As noted above, there is also nothing to suggest that the applicant was subject to Police Scotland's ‘unacceptable actions’ policy.

For those reasons, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that a response be sent to the applicant now addressing this complaint taking account of the points made above and in line with the Complaints SOP.

Complaint 33: Failure to provide full update

The applicant complained that Inspector H failed to advise him that she had requested COPFS “review” the report submitted in respect of Police Incident XX. The applicant states that he believes this to be unacceptable, and that if a review had been requested then he should have been advised immediately.

In his application to the PIRC, the applicant wrote: “[Inspector H] *only provided information under threat of further complaint. This is improper.*”

Complaint 34: Conflict of interest – Inspector H

The applicant complained that there was a conflict of interest in Inspector H investigating complaints the applicant had made about the police when she herself was the subject of a number of his complaints.

Complaint 35: Failure to respond

In his self-compiled Heads of Complaint document dated 1 June 2016, the applicant complained that Inspector H had not answered why he had waited almost three months and had not yet heard the outcome of the charge made against him relating to Police Incident UU.

Police Handling of Complaints 33 to 35

These allegations were not addressed in Chief Inspector AA’s letter dated 18 July 2016.

Consideration of Complaints 33 to 35

As referred to above, a decision was made by Chief Inspector CC to “*draw a line*” under the applicants complaints, meaning that the applicant’s correspondence would be acknowledged but not specifically responded to. The file note further states that it may be necessary for a letter to reinforce this position.

There is however no explanation provided as to why these particular matters could not be addressed within Chief Inspector AA’s final letter, nor does it appear that the applicant has been told that his complaints would not be addressed or given any explanation for this. As noted above, there is also nothing to suggest that the applicant was subject to Police Scotland’s ‘unacceptable actions’ policy.

It is therefore concluded that these complaints were not dealt with to a reasonable standard. It is recommended that a response be sent to the applicant now addressing each of these complaints in line with the Complaints SOP.

5. Conclusions

Complaints 1 to 4, 6 to 9, 11 and 12, 14, 16 to 19, 22 to 25, 27, 29 and 31

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

Complaint 5: Misled by Inspector J

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that further response be sent to the applicant explaining whether it is considered that Inspector J deliberately misled the applicant and Ms A by advising that there was “nothing to worry about” when he intended to charge the applicant for an offence.

Complaint 10: Mental health protocol not followed

It is concluded that this complaint was not dealt with to a reasonable standard. A reconsideration direction is given to Police Scotland under section 35(7) of the Act.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. The reconsideration is not subject to the PIRC’s supervision.

In reconsidering the complaint, Police Scotland should obtain further statements from Constables P and Q to ascertain: a) whether the control room informed them before they encountered the applicant that he had a mental illness; b) whether they were aware of the relevant powers available to them under the 2003 Act; and, if so, c) why they did not utilise these powers in the applicant’s case by detaining him and removing him to a place of safety.

If it transpires that the control room did not inform Constables P and Q that the applicant had a mental illness, Police Scotland should establish why this was the case and identify any relevant organisational learning.

Police Scotland should then reassess whether, irrespective of there having been sufficient evidence to arrest the applicant under section 38 of the 2010 Act, it would have been more appropriate for the applicant to have been detained and taken to a place of safety under section 297 of the 2003 Act. The reassessment should take into account the provisions of the Mental Health SOP, the requirements of the 2003 Act and the points made in this report.

The applicant should then be provided with a further response to his complaint which: i) outlines the further evidence obtained from Constables P and Q; ii) details in full the reassessment of the complaint; and iii) communicates any organisational learning identified.

Complaint 13: Physical condition not checked

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that further statements be obtained from Constables P and Q specifically addressing whether or not they gave any consideration to the possibility that the applicant may have suffered a non-visible head injury, and what measures were taken by officers to ensure the applicant's well-being. A further response should thereafter be sent to the applicant describing the outcome of these enquiries and explaining, with reference to the Custody SOP and on the basis of the facts established, whether or not it is concluded that all officers involved in the applicant's arrest and transportation to Police Office RR gave the appropriate consideration to the applicant's physical well-being.

Complaint 15: Handover briefing insufficient

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that further statements be obtained from Constables P, Q, R and S to establish whether Constables P and Q made Constables R and S aware of concerns for the applicant's mental health and the precise reasons for his arrest. A further response should thereafter be sent to the applicant describing the outcome of these enquiries and fully explaining whether it is considered that Constables P and Q provided a sufficient handover briefing to Constables R and S in the circumstances.

Complaint 20: Disrespectful comment

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that a response be sent to the applicant which takes into account the CCTV footage and addresses both his complaint and his belief that the comment was not respectful.

Complaint 21: Appropriate Adult not provided

It is concluded that this complaint was not dealt with to a reasonable standard. A reconsideration direction is given to Police Scotland under section 35(7) of the Act.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. The reconsideration is not subject to the PIRC's supervision.

In reconsidering the complaint, Police Scotland must, take into account what was known about the applicant's circumstances alongside the provisions of the Appropriate Adult and Custody SOPs. A further response should thereafter be sent to the applicant explaining whether or not consideration should have been given to requesting an Appropriate Adult to provide him with assistance during his time in custody.

Complaint 26: Officer displayed bias

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that a further account be obtained from Constable R to establish whether or not he made the comment alleged by the applicant. A further response should thereafter be sent to the applicant explaining the outcome of these enquiries and providing a position on whether or not the comment, if made, was appropriate.

Complaint 28: Conflict of interest – Inspector J

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that the crux of the complaint now be addressed by way of a further response to the applicant offering Police Scotland's view on whether (and, if so, why) Inspector J's actions in dealing with the applicant's complaints and Police Incident XX simultaneously were appropriate in the circumstances.

Complaint 30: Failure to provide information

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that the applicant's complaint now be addressed. A response should be sent to the applicant explaining, with reference to the points made above and the material information available, whether his complaint is upheld. The response should also confirm whether any learning has been identified and passed on to the officers concerned.

Complaints 32-35

It is concluded that these complaints were not dealt with to a reasonable standard. It is recommended that a response be sent to the applicant now addressing each of these complaints in line with the Complaints SOP.

Recording of complaints

Paragraph 6.5.1 of the Complaints SOP provides that "*accurate and consistent recording is a fundamental part of effective complaint handling*", and paragraph 6.15.7 states that the final letter of response should "*clarify whether each allegation is upheld or not*".

Within the CAP Record, it is noted that the first 53 heads of complaint submitted to the police by the applicant (those prior to 1 June 2016) were, as described by Sergeant DD, "*rolled-up*" into ten allegations as they relate to the same issues but are expressed in different terms. Within Chief Inspector AA's final letter to the applicant, each specific complaint made by the applicant has (except where noted in this report) been addressed and responded to within those ten amalgamated allegations.

However, where an allegation is capable of being upheld or not upheld independently of other allegations, it should be recorded as a distinct head of complaint. It is therefore unclear why, when almost all of the complaints have been addressed separately in the letter of response and were

evidently capable of being upheld or not upheld individually, they have not been recorded separately and have instead been subsumed into ten overarching allegations.

In this respect, the PIRC identified a total of 35 separate heads of complaint, and the complaint handling review has been conducted on this basis. It should be noted that there were additional complaints made by the applicant and addressed in Chief Inspector AA's response which have not been included within this review as the applicant intimated that he was satisfied with the response he had received from Police Scotland.

In respect of the 35 heads of complaint identified within this report, it is recommended that each of these be recorded by Police Scotland as distinct complaints about the police. In addition, the further response sent to the applicant as a result of the recommendations made elsewhere in this report should, in keeping with the Complaints SOP, clarify in relation to each of the 35 complaints whether these are recorded as upheld or not upheld.

Jennifer Millar
Review Officer

Peter Innes
Senior Review Officer