

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

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## 1. Role of the PIRC

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

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

- whether sufficient enquiries into the complaint have been carried out by the policing body;
- whether the policing body’s response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- whether the policing body’s response to the complaint is adequately reasoned; and
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented.

## 2. Key findings

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The complaint in this case arose from an allegation of extortion made by the applicant against his ex-partner.

The single complaint considered was that Police Scotland had incorrectly concluded that no crime of extortion had been committed.

The review found that the complaint was dealt with to a reasonable standard. No recommendation was made in this connection.

### 3. Background

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The applicant is a former police officer who left police service in 2012. Between 1995 and 2008, the applicant was in a relationship with a fellow officer, Ms A, and ran a farming business with her.

On 18 May 2015, the applicant attended at the office of Ms A's solicitors to take part in a Sheriff-ordered shuttle mediation session with Ms A to resolve ownership of the farming business following the couple's separation.

During the session, the mediator read to the applicant from two pieces of paper, constituting notes taken by Ms A's solicitor, and a settlement proposal from Ms A which her solicitor had passed to the mediator. The notes attached to the financial proposal offered by Ms A suggested to the applicant that, should he not accept the settlement, he and his new partner would be investigated by Police Scotland on suspicion of fraud, money laundering and benefiting from the proceeds of crime.

In June 2015, the applicant provided a statement to Police Scotland alleging that Ms A and her solicitor Ms C had committed an attempted extortion. A crime report was raised and the matter investigated by Sergeant D, who ultimately concluded that the matter be recorded as No Crime pending further enquiries being made by the applicant's solicitor.

In June 2016 the applicant made a formal complaint about the police disputing this outcome. The applicant's complaint was dealt with by Inspector E, who concluded that aspects of Sergeant D decision-making were flawed. Inspector E agreed to present the facts of the applicant's case to Police Scotland's Legal Services Department for their assessment.

The advice received from Legal Services Department was subsequently relayed to the applicant by Inspector E in a letter dated 6 July 2016.

On 19 January 2017, the applicant gave a further statement to Inspector E, complaining that he disagreed with the conclusion provided by Legal Services.

A letter dated 25 January 2017 responding to the applicant's complaint was issued by Chief Inspector F.

### 4. The Review

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#### Complaint: Incorrect outcome

The applicant complained that he disagreed with Police Scotland's conclusions as he believed that he and Sergeant B had been the victims of an attempted extortion. The applicant stated that he did not believe the explanation offered by Legal Services as to why the circumstances did not amount to a crime was "*justified*".

## Police Handling of Complaint

In his letter to the applicant dated 6 July 2016, Inspector E wrote:

*“...I have received guidance from a senior solicitor from our Legal Services Department in the matter of the alleged attempted extortion.*

*In a detailed response the solicitor has examined the facts of the case, considered the two main elements of the crime of attempted extortion, and made reference to existing criminal and civil case law. Of note:-*

- *‘The threat to seek expenses from the Court of Session in the event that the settlement offer was not accepted is recognised as a legitimate form of pressure as part of settlement negotiations.’*

*While I appreciate your complaint was regarding the threat to report you to the police, this point serves to highlight that “legitimate threats” can be a legal part of the negotiating process. Also of note:-*

- *‘It may be that [Ms A] was trying to achieve an advantage by attempting to induce the complainer to accept less money than he would be due by law, although we are not in a position to determine that because ultimately that is a civil dispute and it would be for a civil court to determine who is owed what.’*

*As such it cannot be established that [Ms A] was seeking to gain any advantage by apparently threatening to report you to the police.*

*The solicitor sums up by saying:-*

- *‘It seems to me that the marking of the CR (crime report) as ‘no crime’ due to insufficient evidence was the appropriate course of action.’*

*With that in mind, the advice I have received further affirms my view that there is insufficient evidence to establish a crime was committed.*

*There may be other avenues whereby you could seek redress regarding your concerns however the mediation session was conducted, however, it would not be for Police Scotland to progress this.”*

In his letter to the applicant dated 25 January 2017 Chief Inspector F wrote:

*“... a crime report was raised following your initial complaint and we believe a sufficient explanation was thereafter the [sic] carried out to allow a reasonable assessment of the circumstances. Thereafter we could not establish that a crime had been committed and the crime report was marked accordingly. [Inspector E] reviewed the circumstances and advised you he does not feel the essential elements of the crime have been met. Notwithstanding, he sought advice from Legal Services who concurred with the view that no crime had been committed.*

*I am aware that in a further attempt to resolve your complaint [Inspector E] contacted the Procurator Fiscal's Office, however they would not consider the circumstances and advised this is an operational matter for the police.*

*I acknowledge the complexities of this case, however in light of the foregoing, I cannot uphold your complaint. [emphasis in original]*

*I am satisfied that your complaint has been fully investigated and that all reasonable attempts have been made to resolve the matter. As such, I do not propose to take the matter any further."*

### Consideration of Complaint

The Scottish Crime Recording Standard document (the "SCRS") provides that an incident will be recorded as a crime if the circumstances of a reported incident amount to a crime defined by Scots Law or an offence under statute, however should subsequent investigation determine that, on the balance of probabilities, no crime has occurred, then the incident will be marked as "No Crime".

The advice received by Inspector E from Ms G of Legal Services was that the circumstances reported by the applicant initially "*could potentially amount to extortion*" as using a threat to report someone to the Police as a lever to alter a bargaining position could amount to a relevant ground of charge. However the key issue in the applicant's case was whether or not there was sufficient evidence that the "*threat*" made by Ms A was for the purpose of "*obtaining [an] advantage*" from the applicant which Ms A would not otherwise be due.

In this regard, Ms G determined that as the incident took place in the context of a civil dispute – and furthermore the alleged threat was made within a mediation session, the purpose of which was to agree the apportionment of monies – there was insufficient evidence to establish that Ms A would achieve an "*advantage*" by making the alleged threat. This is because in the context of an unresolved civil dispute, there was no way for Police Scotland's Legal Services Department to determine, at that stage in proceedings, what each party was owed or due by law and therefore no way to conclusively establish that Ms A's utilised the alleged threat in order to increase her share at detriment to the applicant. Additionally, the applicant gave no explanation in his statement making the allegation as to whether the financial proposal offered by Ms A was considered unreasonable or constituted a claim for monies she would not otherwise be entitled to.

This conclusion was explained to the applicant within Inspector E's letter dated 6 July 2016, and the rationale for determining that the crime report should be marked as "No Crime" is consistent with the provisions of the SCRS.

As the applicant disputed the opinion of the Legal Services department, it is considered that the only option available to Inspector E to further this matter in the circumstances was to refer to the Procurator Fiscal's Service for advice. The paperwork provided to the PIRC by Police Scotland confirms that Inspector E provided the Procurator Fiscal's office with a copy of the response from Legal Services on 13 October 2016 however the response received declined to provide an opinion.

As Inspector E has exhausted the options available to him within the parameters of the available guidance e.g. the SCRS, and has over the course of his correspondence with the applicant provided him with sufficient explanation for the conclusions reached, it is considered that Chief Inspector F's conclusion not to uphold the applicant's further complaint as "*all reasonable attempts have been made to resolve the matter*" is justified. 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.

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