

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

## Index

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

## 1. Role of 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 the applicant’s detention in connection with a domestic incident. Five complaints were reviewed, namely:

- 1) that officers treated the applicant as a suspect rather than a victim because of his gender;
- 2) that Police Scotland failed to inform the applicant he had been reported to the Procurator Fiscal;
- 3) that officers failed to act upon admissions of assault against the applicant made by his ex-partner in her statement to police;

- 4) that officers failed to deal with the applicant's allegation that his ex-partner had stolen his games console
- 5) that police officers forced the applicant to return a motor vehicle to his ex-partner against his will.

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

### 3. Background

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On 8 November 2014, the applicant and his ex-partner, Ms A, were involved in an altercation over several issues, including the fact that Ms A allegedly sold the applicant's games console. As a result of the argument, both parties contacted the police. Constables B and C attended at the home address of the applicant and Ms A. Ms A made an allegation of assault against the applicant and he was subsequently detained and conveyed to a police office to be interviewed.

The applicant provided a no comment interview and was released for further enquiry. The applicant was then allowed to return to his then home address and uplift the vehicle there. The applicant thereafter drove the vehicle back to his parent's address where he stayed for the night.

Sometime after this, Ms A contacted Constable B to request that the vehicle the applicant had removed from the property be returned to her. Constable B thereafter contacted the applicant and made arrangements for the vehicle to be returned to Ms A.

At a later date, on the instruction of the Domestic Abuse Investigations Unit, Constable B submitted a report to the Crown Office and Procurator Fiscal Service (COPFS) in relation to the assault allegation made by Ms A against the applicant on 8 November 2014.

In July 2016, the applicant was summoned to court in relation to the assault allegation. The case did not proceed and the applicant later received a letter from the COPFS stating that they would not be taking any further proceedings at that time.

The applicant made his complaint online on 16 August 2016. Sergeant D was appointed as the enquiry officer and the applicant received a response to his complaints in writing from Chief Inspector E in a letter dated 10 January 2017.

## 4. The Review

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### Complaint 1: Treated as suspect and not victim

The applicant complains that on 8 November 2014, he was treated as a suspect and not a victim and believes the officers did so because he was male.

#### *Police Handling of Complaint 1*

Chief Inspector E responded to the applicant's complaint as follows:

*"I am advised about 9.10 pm on Saturday 8 November 2014, Officers attended at [address X], following a report from your then partner, [Ms A], that you had assaulted her.*

*I understand, [Ms A] provided officers a statement of complaint, naming you responsible for an Assault. You were then detained in connection with the allegation and conveyed to [named police office] where your detention was formally documented.*

*After being interviewed, an assessment indicated there was insufficient evidence to report the matter to the Crown Office and Procurator Fiscal Service for the consideration of a prosecution, and you were released from custody to allow for further enquiries.*

*Following further enquires and assessment of the evidence available, you were reported to the Crown Office and Procurator Fiscal Service for the consideration into the question of prosecution.*

*I am aware you are not content with the manner in which the Assault investigation was initially handled and that you believe you were simply detained due to being a male. You also state Officers failed to investigate the theft of property belonging to you and they failed to notify you that you had been reported to the Procurator Fiscal in connection with the Assault. You have also expressed dissatisfaction in the manner in which Officers conducted their investigations into a counter complaint made by you of being assaulted by [Ms A].*

*I note you also believe you were forced into returning a motor car against your will.*

*The Officers involved in the case have independently provided their recollection of events. I have also had the case papers associated with this matter reviewed in order to test their accounts with the evidence presented by you in support of your allegations.*

*The Officers who attended the initial call on 8 November 2014, state the allegation made to them clearly identified you as the perpetrator. Their decision to investigate the matter and subsequently detain you, was based on the nature of the allegation made by [Ms A] and not due to your gender.*

*At the time of the original incident you were interviewed under caution, during which you chose to provide a 'no comment' interview. While this was within your rights to do so, I understand you chose not to provide a personal account of events which could well have affected the direction of the enquiry. Had you provided an account, this may well have provided Officers with an opportunity to consider your position on the matter and any counter complaint you may have wished to report.*

*On receiving your recent complaint of Assault, Sergeant [D] tasked Officers with investigation the matter. On the completion of this enquiry, it was found that there was insufficient evidence to report [Ms A] to the Procurators Fiscal.*

*I note you have presented no evidence to support your allegation and as such, on the basis of the evidence available to me, I find your allegation Not Upheld."*

### **Consideration of Complaint 1**

The response in this connection explains to the applicant that when the officer attended the incident, the applicant's ex-partner, Ms A, made an allegation of assault against him.

The response in this connection is supported by the accounts provided by the officers who attended the incident and who confirm that Ms A made an allegation of assault against the applicant on their arrival.

The response also explains to the applicant that he was detained and interviewed in relation to the allegation and provided a "no comment" interview so the officers had no opportunity to consider his version of events or any counter complaint he might have wished to make against his ex-partner. Again, the response in this connection is supported by the accounts provided by the officers who record the detail of the interview in their respective statements, and the associated police report which details the interview questions and which confirm the applicant was specifically asked if Ms A assaulted him.

Accordingly, in light of the evidence available, it is considered that Chief Inspector E is justified in not upholding the applicant's complaint. This is because he has made an accurate assessment of the evidence available to him, and there is nothing in the evidence as a whole to suggest that the applicant was treated as a suspect because of his gender. Rather, as reflected in the response, the applicant was treated as a suspect because of the allegation of assault made against him by his ex-partner. Furthermore, as further reflected in the response, the applicant does not appear to have made any form of counter allegation on police arrival, or at any other time during the process.

It is therefore considered that the response is adequately reasoned and supported by the evidence available.

It is concluded this complaint was dealt with to a reasonable standard. No further action is required in this connection.

## Complaint 2: Not informed reported to COPFS

The applicant complains that he was not informed that he had been reported to the COPFS.

### *Police Handling of Complaint 2*

Chief Inspector E responded to the applicant's complaint as follows:

*"In relation to your third allegation, that you were not informed you had been reported to the Procurator Fiscal and only found out the day prior to your first appearance at court, I am advised that you were not formally cautioned and charged with the offence libelled when you were initially detained.*

*However, following further enquiries and a review of the evidence, a sufficiency of evidence was available to present the circumstances to the Procurator Fiscal for the consideration into the question of prosecution. This was an operational decision taken in light of the available information.*

*The subsequent review of available evidence is a common occurrence and often involves supervisory or specialist Officers assisting enquiry Officers to determine the level of available evidence. Sergeant Grant has confirmed you were not advised by Officers you would be reported to the Procurator Fiscal.*

*This is most unfortunate and simply should not have happened. I am clear, the Enquiry Officer should have established contact with you and advised you of this update.*

*As a consequence I find your allegation Upheld.*

*I apologise if this oversight has added to your concerns and dissatisfaction with the level of service provided. The Officer concerned has now received corrective management advice."*

### *Consideration of Complaint 2*

The response in this connection acknowledges that the enquiry officer should have informed the applicant that he had been reported the Procurator Fiscal, upholds the complaint, offers an apology and confirms the officer in question was provided with corrective advice.

.Accordingly, it is considered this complaint was dealt with to a reasonable standard. No further action is required.

## Complaint 3: Admissions of assault

The applicant complains that officers failed to act on admissions of assault against him made by Ms A in her statement to police.

### *Police Handling of Complaint 3*

Chief Inspector E responded to the applicant's complaint as follows:

*"In considering your fourth allegation, I note while investigating the original allegation you assaulted [Ms A], Officers noted a statement from her, in which she made disclosures that she had knocked a mobile telephone from your hand.*

*I believe you queried this evidence was not used against her to aid with criminal charges. I am aware Sergeant [D] has explained this information was obtained during the noting of a witness statement and not under caution as would be appropriate for a potential suspect. While Officers considered this information to be inadmissible as evidence, I am minded the account as described to me, does not in itself amount to a physical attack.*

*An assault include every attack directed to take effect physically on the person of another, whether or not actual injury is inflicted. There must be criminal intent; an accidental injury, even although caused by a mischievous act, does not amount to assault.*

*After considering all the evidence in this matter, I am not persuaded what was attributed to [Ms A] constituted to an admission of an assault on you. I consider the actions of the offices to be appropriate and proportionate. Therefore, I find your allegation Not Upheld."*

### *Consideration of Complaint 3*

In relation to the applicant's complaint that officer's failed to take action in relation to the admissions made by Ms A in her statement, the response in this connection reasons that the officers involved believed this evidence to be inadmissible because the statement noted from Ms A was not obtained under caution. However, from reviewing the relative accounts of both officers, neither officer addresses this specific complaint or mention that they believed this evidence to have been inadmissible. Accordingly, the suggestion in the response that the officers believed this information to be inadmissible as evidence does not appear to be supported by the evidence available.

The response in this connection also fails to explain to the applicant that, notwithstanding the issue of admissibility of evidence, had the officers reasonably believed Ms A to have made a criminal admission, the option would have been available to cease taking her statement, to caution her, and to thereafter treat her as a suspect. From the evidence available, it is clear that the officers did not follow this course of action, and there is nothing in either account to suggest that either officer reasonably believed a criminal admission to have been made in the first instance.

However, notwithstanding this, in his decision not to uphold the applicant's complaint, Chief Inspector E thereafter explains to the applicant the definition of assault which can be described as every attack directed to take effect physically on the person of another, whether or not actual injury is inflicted. For the offence to be complete, there must be criminal intent, in the sense of intending to cause physical injury, or the fear of physical injury. Based on this definition and criteria, and based on the evidence available, Chief Inspector E thereafter states that he is not persuaded that what Ms A disclosed amounted to the crime of assault.

Accordingly, it is considered that, based on the evidence available and the relevant definition outlined in the response, Chief Inspector E has adequately addressed why this admission was not acted upon or progressed as an allegation of assault.

Furthermore, as outlined in the police response to complaint 1, the applicant did not make a complaint of assault or counter allegation during the criminal enquiry.

It is therefore considered that the response is adequately reasoned and supported by the material evidence available.

It is concluded this complaint was dealt with to a reasonable standard. No further action is required in this connection.

## Complaint 4: Theft of games console

The applicant complains that officers failed to deal with his initial allegation that Ms A had stolen his games console.

### Police Handling of Complaint 4

Chief Inspector E responded to the applicant's complaint as follows:

*"In relation to your dissatisfaction regarding your Playstation and specifically that officers failed to deal with your allegation [Ms A] had stolen the game console while you were out of the country, I am advised Officers examined the information provided by you before explaining to you that given your long term relationship and domestic arrangements, the item could be considered as shared property and as such, the situation was a matter of civil dispute over ownership.*

*I note the Officers decision not to progress further with a criminal investigation against [Ms A] was based on his view.*

*The Family Law (Scotland) Act 2006, provides a set of basic rights for cohabitants whose relationship ends covering; the sharing of household goods bought during the time the couple lived together. This means that if they cannot agree about who owns any household goods; the law will assume that both persons own it jointly and must share it or share what it is worth.*

*Sergeant [D] has since reviewed the circumstances and is in agreement with the initial assessment that your dispute over this item is a civil matter that can be pursued by you through the civil courts.*

*When considering the evidence available, I find this allegation Not Upheld.”*

## Complaint 5: Forced to return vehicle

The applicant complains that he was forced to return a vehicle to his ex-partner, Ms A, against his will.

### Police Handling of Complaint 5

Chief Inspector E responded to the applicant’s complaint as follows:

*“In considering your final allegation, I understand the [named vehicle], was used by both you and [Ms A] and at the end of your relationship, you were the one in possession of the car.*

*I note that on 10 November 2014, following a request from [Ms A] to have the car returned to her, an Officer contacted you and asked if you were willing to return the car to [Ms A]. Your accounts is that you were not happy to give the car to [Ms A] but felt obliged to do so, following this request from the Officer. I understand you thereafter allowed Officers to take the car to [Ms A].*

*The Officer refutes any suggestion she applied any pressure or directed you in this matter. Her position is that you gave consent to provide her with the car and agreed to do so without contesting or challenging the matter or indicating an alternative position on who should have the car.*

*This account is supported by colleagues involved in the matter. The Officers have remained consistent in their position. Following consideration of the evidence available to me, I am not convinced you were pressured into providing the car.*

*While there may have been ground to challenge ownership, the fact [Ms A] was the registered keeper, is likely to have featured in the Officers decision to assist with her request to be reunited with the car. Any dispute over ownership, however, is likely a matter more relevant to civil proceedings.*

*Taking all the circumstance into account, the weight of evidence tends to support the account provided by the Officers. I therefore, find your allegation Not Upheld.”*

## Consideration of Complaints 4 and 5

From the evidence available, both complaints relate to police action in relation to potentially civil matters.

In relation to the applicant's allegation of theft of the playstation, the response to the applicant reasons that officers were correct to advise him that they would not intervene or investigate this allegation because it is a civil matter. In his response, Chief Inspector E makes an assessment in relation to (shared) ownership and references the appropriate legislation.

However, in relation to the applicant's belief that he felt forced to return the vehicle, although the response makes the same assessment in relation to ownership of this vehicle, and states that this would be a matter more relevant to civil proceedings, the police do intervene to a certain extent.

Accordingly, although neither complaint is upheld, there appears to be a different approach adopted by the officers in relation to the two items of property. In relation to the games console, officers do not intervene, and the response to this complaint reasons this is the correct course of action because the question of ownership is a civil matter. However, in relation to the vehicle, although the same issue of ownership arises, police make efforts to accommodate the request of Ms A to have the vehicle returned. In his response to the applicant, Chief Inspector E refers to the accounts of Constables B and C and reasons that there was nothing to suggest that Constable A *forced* the applicant to return the vehicle. However, although both officers provided statements to indicate that their request that applicant return the car was not "forceful", no consideration has been given to whether the applicant was advised by the officers that he was under no obligation to do so as it was considered to be a civil matter. This appears particularly relevant given that the applicant records within his statement of complaint that he was not aware that he had a choice in the matter.

Furthermore, the officer investigating the complaint appears to recognise this issue as he records within a file note that, although it was done with the best of intentions, the officers in question compromised their position of impartiality by intervening in relation to the vehicle.

Accordingly, and in light of this, it is considered that the response to both complaints is inadequately reasoned.

It is therefore concluded that these complaints were not dealt with to a reasonable standard.

It is recommended that Police Scotland revisit both complaints to assess if the officers adopted a fair and consistent approach in relation to both items of property. A further response should thereafter be issued to the applicant.

## 5. Conclusions

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### Complaints 1, 2 and 3

It is concluded that these complaints were dealt with to a reasonable standard.

No further action is required in this connection.

### Complaints 4 and 5

It is concluded these complaints were not dealt with to a reasonable standard.

It is recommended that Police Scotland revisit both complaints to assess if the officers adopted a fair and consistent approach in relation to both items of property. A further response should thereafter be issued to the applicant

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