

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 an incident on 25 January 2016 in which the applicant’s husband was struck by their neighbour’s vehicle. Twenty-four complaints were reviewed, namely:

1. that there was no medical follow up by officers following the incident on 25 January 2016;
2. there was a lack of knowledge of the essential elements in proving charges of Section 2 and 3 of the Road Traffic Act 1988 (“the Act”);
3. that relevant charges were not submitted by the officer submitting the report;
4. that relevant charges were not submitted by an Inspector who was instructed to carry out a review of the circumstances;
5. that an officer lacked knowledge of Section 2 of the Act;

6. that an officer did not libel an additional charge of Section 3 of the Act for the applicant's neighbour blocking in their car;
7. that officers failed to note antecedents in the report to the Crown Office and Procurator Fiscal Service (COPFS);
8. that the letter of complaint was given to the officer completing the report in breach of protocol;
9. that officers failed to carry out follow up checks to ensure there was insurance in place for the applicant's neighbour's vehicle;
10. that an officer used phrases like *"you know the score"* and *"I've told you repeatedly she can park there if she wants."*;
11. that an officer stood with his thumbs in his body armour and stated *"I would welcome a complaint, my supervisor and crime manager are more than happy with what I've done, there's my shoulder number"*;
12. that an officer dismissed the applicant's complaint that her neighbour had parked her car outside the applicant's home address in an effort to intimidate the applicant and her husband and in contravention of Section 103 of the Road Vehicles (Construction and Use) Regulations 1986;
13. that comments made by an officer illustrated his lack of knowledge of parking at lowered kerb regulations;
14. that a hold was not put on the police report before it was forwarded to the COPFS;
15. that an inaccurate report was forwarded to COPFS to meet the police 28 day target for submission of cases;
16. that the applicant's 999 call was not requested which could have been used to corroborate a further charge of breach of the peace;
17. that an Inspector failed to make contact with the applicant and that a period of 62 days passed between the initial complaint being acknowledged and the first officer to speak with her;
18. that there was not a phone call or email from an Inspector despite his Chief Inspector's instruction;
19. that an Inspector deliberately misled a senior officer by sending an email saying that good progress was being made when this was not the case;
20. that an Inspector was deliberately misleading in emails and phone calls to the applicant and her husband regarding a subject report;
21. that an Inspector failed to instruct an investigation regarding the applicant's report of her neighbour's intimidation and obstruction;
22. that the applicant was not provided with information about who was actually investigating the complaint;
23. that the applicant and her husband were not updated when an urgent response marker was put against their address; and
24. that an officer deliberately misled the applicant and her husband that he had obtained background information from their son and that the enquiry was intelligence led.

The review found that eight of the complaints were dealt with to a reasonable standard and sixteen were not. Thirteen recommendations were made.

3. Background

The applicant and her husband, Mr A, have been involved in a long standing dispute with their neighbour, Ms B which has resulted in police attendance on a number of occasions.

On 25 January 2016, the applicant contacted Police Scotland via 999 regarding an incident in which her neighbour, Ms B, drove her car towards her son, Mr C, and Mr A, striking Mr A to his leg. Constables D and E attended, noted statements from the applicant, Mr A and Mr C, and viewed the applicant's CCTV.

At this time, Constable D intimated to the applicant and Mr A that the incident would be reported as an assault and a contravention of Section 3 of the Road Traffic Act 1988 ("the Act") (careless or inconsiderate driving) although the applicant and Mr A intimated to the officers in attendance that they believe the circumstances merited a more serious charge, namely a contravention of Section 2 of the Act (dangerous driving).

On 29 January 2016, the applicant contacted Police Scotland to report that her neighbour Ms B had parked her car on the lowered kerb in front of her driveway blocking the driveway. The applicant believed this was done in an attempt to intimate her and her family and contacted Police Scotland via 101 to report the matter. The applicant was informed by the operator that the Police would not attend because there were no parking restrictions in place and nothing to stop Ms B from parking there. The applicant requested that Constable D contact her to discuss the matter.

On the same evening, the applicant contacted Constable D herself and explained to him what had happened earlier in the day. According to the applicant, no police action was taken in relation to this complaint.

On 5 February 2016, the applicant forwarded a letter to Police Scotland outlining several concerns regarding the manner in which the incident on 25 January 2016 had been dealt with.

On 7 February 2016, Constables D and E attended at the applicant's home address to uplift the CCTV of the incident. According to the applicant, during this meeting she expressed her unhappiness about the charges that were going to be submitted and again reiterated her concern about Ms B parking across the lowered kerb and blocking her driveway.

On 9 February 2016, Chief Inspector F emailed Inspector G to request that he make contact with the applicant with a view to discussing and resolving the issues identified in the applicant's letter.

On 11 February 2016, Sergeant H made contact with the applicant and Mr A via telephone, advised them she had been allocated the enquiry and made arrangements to attend at their home address.

On 17 February 2016, Sergeants H and J attended at the applicant's home address and spoke with her regarding her concerns. During this meeting, the applicant and Mr A informed her that they wished the charges on the police report be amended to reflect a contravention of Section 2 of the Act as opposed

to a Section 3. During this meeting, Mr A also provided Sergeant H with a copy of a report he had compiled which he believed reflected the circumstances, the relevant antecedent information and the appropriate charges.

After the meeting, Sergeant H contacted Inspector G via email and informed him about the meeting and intimated that the applicant and Mr A had made clear that they wanted the report to be amended to reflect a contravention of Section 2 of the Act. Sergeant H also provided Inspector G with a copy of the report which had been compiled by Mr A.

On 23 February 2016, the official police report was forwarded to, and received by, the Crown Office and Procurator Fiscal Service (COPFS) and Inspector G informed Mr A and the applicant that the report had been submitted.

On 23 February 2016, Mr A completed a Police Scotland online complaint form which stated that the applicant's original complaint of 5 February had never been acknowledged or responded to. Inspector K was appointed as enquiry officer and the applicant and Mr A received a response to her complaints from Chief Inspector F in writing in a letter dated 30 November 2016.

4. The Review

Complaint 1: No medical follow up

The applicant complains that there was no medical follow up by officers following the incident on 25 January 2016.

Police Handling of Complaint 1

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

"The officers concerned indicate that on attendance at the initial incident on 25th January 2016 medical attention was offered and declined by yourself. On Inspector [G] becoming aware that you had been in hospital following the incident he made direction for officers to make contact with your GP. On Monday 29th February 2016 Constable [E] made contact with [named] Medical Centre to make enquiry regarding the medical follow up of Mr [A]. Whilst I understand that this is over 4 weeks following the initial incident and after the police report had been submitted there are occasions when Police Scotland submit Police reports to the Crown Office and Procurator Fiscal Service, (COPFS) and continue to carry out further enquiry. Only basic information was provided by your GP practice due to their being no medical mandate in place. Inspector [K] duly had this document signed by you on 18th May 2016 and an update was provided to COPFS on 4th July 2016. Whilst [Constable D] became aware that you had been admitted to hospital in days following the incident given the initial information he did not believe this to be connected with the incident which he was enquiring into. For these reasons I am unable to uphold this allegation."

Consideration of Complaint 1

In his decision not to uphold the applicant's complaint, Chief Inspector F makes reference to Constable D's belief that the reason Mr A was in hospital was not connected to the incident and further explains that a medical update signed by Mr A authorising medical staff to disclose information about his injuries and treatment to the police was subsequently obtained and that this information was ultimately shared with the COPFS.

In relation to Constable D's involvement, from the evidence available there is nothing to suggest that he was aware that Mr A's admission to hospital was connected to the incident. However, the information that Mr A was admitted to hospital, and that it might be connected to the incident, was passed to Inspector G in February 2016 who thereafter instructed Constable E to obtain a medical update. However, as there was no medical mandate in place at that time, only brief details were obtained.

A medical mandate was not obtained from Mr A until 18 May 2016 and appears to have been obtained at the request of the Crown Office and Procurator Fiscal Service (COPFS). COPFS communicated with Constable E on 4 May 2016 to request a statement from Mr A's GP in order to establish if there was

any link between the incident and the referral to hospital. A medical update was then obtained and the information communicated to the COPFS via a subject report on 4 July 2016.

Accordingly, although a medical update was obtained in May 2016 at the request of the COPFS, the response fails to explain why no medical mandate was obtained in February 2016. Obtaining this information would have allowed enquiry officers to connect the hospital admission with the incident. As the response is considered to be inadequately reasoned, it is considered this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the complaint with reference to the points outlined above and issue the applicant with a fresh response. The response should clearly explain how the evidence has been used to inform the conclusions reached.

Complaint 2: Lack of knowledge of essential elements of the offences

The applicant complains about a lack of knowledge of the essential elements in proving charges of Section 2 and Section 3 of the Road Traffic Act 1988. The applicant did not specify which particular officer this complaint referred to.

Police Handling of Complaint 2

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

"The officer concerned reviewed the CCTV footage and the information provided and was of the belief that the charges libelled were appropriate. This was reviewed by Inspector [G] in conjunction with the Crime Manager. Inspector [K] has also reviewed the CCTV footage of this incident in conjunctions [sic] with the definitions of both crimes.

The CCTV footage forms a production as part of the criminal enquiry which is currently with COPFS and is a matter of subjudice. This will form part of the proceedings in the criminal case and it would be inappropriate to state that this was a deliberate act at this time. All aspects of the matter have been reported to COPFS.

Whilst the report was submitted with Ms [B] being reported for S.3 Road Traffic Act 1988, following the additional information provided including the CCTV COPFS are proceeding with S.2 Road Traffic Act 1988. Based on the information I have available I am unable to uphold this allegation."

Consideration of Complaint 2

It is noted that at the date of the response the case against Ms B was still live. In light of this, Chief Inspector F has not addressed the complaint or commented on the evidence available.

However, it is considered that as Chief Inspector F reasons that he could not fully address the applicant's complaint at the time, he should not have determined that the applicant's complaint was not upheld. For this reason it is considered that the complaint has not been dealt with to a reasonable standard. As the criminal case is no longer live, it is recommended that Police Scotland establish which

officers this complaint relates to, reassess the complaint and issue the applicant with a fresh response which fully explains why, based on all the evidence available, including the CCTV and witness statements, and the legal definition and essential elements of each offence, the circumstances merited a charge of Section 3 of the Act rather than Section 2.

Complaint 3: Relevant charges

The applicant complains that the relevant charges were not submitted to the COPFS by the officer submitting the report following the incident on 25 January 2016.

Police Handling of Complaint 3

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

"In respect of this allegation I am aware that a report was submitted to the Procurator Fiscal in respect of a contravention of S. 3 Road Traffic Act 1988 and Assault. The officer concerned based on the information available believed these to be appropriate. This was reviewed by the officer's supervisors and furthermore by Inspector [G] and the Crime Management Department, both from the information contained within the report and CCTV footage. Whilst your complaint was reported to the Procurator Fiscal on 23rd Feb 2016 as above it still allows the Procurator Fiscal to amend the charges as appropriate based on the information contained within the report and any ancillary information which they may request or be submitted following the submission of the initial report, this is done in the form of follow up reports between Police Scotland and Crown Office and Procurator Fiscal Service, (COPFS). I am aware that COPFS have made the decision to proceed with S.2 Road Traffic Act 1988 and Assault however this decision is made by COPFS with the information provided to them. It is therefore reasonable that policy and guidance has been followed in respect of the initial crime recording and case reporting. For these reasons and rationale I am therefore unable to uphold this allegation"

Complaint 4: Relevant charges

The applicant complains that relevant charges were not submitted by Inspector G who was instructed to carry out a full review of the circumstances and the report.

Police Handling of Complaint 4

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

"I am aware that a report was submitted to the Procurator Fiscal in respect of a contravention of Section 3 Road Traffic Act 1988 and Assault. Inspector [G] reviewed the report and the CCTV and discussed the matter with the crime management department. Inspector [G] also engaged with the officers who were dealing with your enquiry and their supervisors. He made arrangement for Sergeants [H] and [J] to attend and speak with yourself and report back to him. Whilst your complaint was reported to the Procurator Fiscal on 23rd February 2016 as above it

still allows the Procurator Fiscal to amend any charges as appropriate based on the information contained within the report and any ancillary information which they may request or be submitted following the submission of the original report, [sic] this is done in the form of follow up reports between Police Scotland and Crown Office and Procurator Fiscal Service, (COPFS). I am aware that you were of the belief that the report should not have been submitted however based on the information I have available I am unable to uphold this allegation.”

Consideration of Complaints 3 and 4

The applicant and Mr A complain that relevant charges were not submitted by the officer who submitted the report. It is noted that the applicant refers to Constable D as the reporting officer in this respect, however, from examination of the relevant police report, it was Constable E who submitted the report.

The applicant also makes a further complaint in this regard in relation to Inspector G who was instructed to carry out a review of the circumstances.

It is noted that the applicant and Mr A raised a further concern regarding the fact that the resolution she proposed was not taken into account as the charges were not amended from a contravention of Section 3 to a contravention of Section 2 of the Act.

However, as the responses the applicant received to these complaints are broadly similar, for the purposes of the review, they will be considered together. Furthermore, the complaint made regarding the resolution proposed by the applicant and Mr A has been subsumed into the above complaints given that the response to this complaint is broadly similar.

The response in this respect reasons that the officer who submitted the report believed the charges libelled to be the most appropriate in the circumstances, and that the officer was supported by his supervisors, Inspector G and the Crime Management Department. The response in this connection is supported by the relative accounts of the officers involved, including Constable E and Inspector G who record that they believed the charges recorded to be relevant to the circumstances.

However, in line with paragraph 6.15.7 of the Complaints SOP, any response to the applicant should explain how the facts were used to inform the conclusions reached.

The response in this connection, although supported by the accounts of the officers involved, does not explain to the applicant why, in line with the appropriate legislation and the evidence available, the charges libelled were considered the most relevant in the circumstances.

In addition, although the response in this connection focuses on the two charges contained within the report, from the applicant's letter of complaint, and email correspondence, it would appear the complaint in this respect would also extend to the fact that other charges the applicant and Mr A believed to be relevant were not included in the report to the COPFS. During the meeting with Sergeants H and J, the applicant and Mr A provided Sergeant H with their own typed report detailing all the charges they believed should have been included in the official report to the COPFS. It is noted that

this information was conveyed to Inspector G before the report was submitted but no additional charges were considered and no explanation has been provided to the applicant and Mr A as to why.

The issue in contention is that, at no point do any of the officers fully explain why they considered the manner of Ms B's driving to be careless or inconsiderate and not dangerous. The fact that the officers libelled a charge of assault against Ms B for driving her car at and striking Mr A, it may be considered that such action was dangerous and not merely careless or inconsiderate. This position is clearly supported by the fact that COPFS changed the charge to Sect 2 of the Act (dangerous driving) from Section 3 (careless and inconsiderate driving). In addition, part of the explanation provided by Chief Inspector F provides that *"This was reviewed by the officer's supervisors and furthermore by Inspector [G] and the Crime Management Department"*. It does not explain on what basis, given the assault charge, they decided that a charge under Section 3 was more appropriate than a charge under Section 2.

Accordingly it is considered that the response fails to fully address the complaint and is not in line with the relevant Complaints SOP. It is therefore considered that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland issue the applicant with a fresh response which explains why, in line with the relevant legislation and evidence available, the charges libelled were considered the most appropriate by both officers. The response should also address why no consideration was given to libelling the additional offences highlighted by the applicant and Mr A within their original letter and subsequent email correspondence. The response should fully explain how the evidence available has been used to inform the conclusions reached.

Complaint 5: No knowledge of Section 2 of the Act

The applicant complains about Constable D's lack of knowledge of Section 2 of the Road Traffic Act 1988. The applicant alleges that when Constable D was told that a Section 2 offence was based on the potential dangers to other road users, he stated *"you could say that about almost anything"*. The applicant believes that this comment shows Constable D has no knowledge of the law.

Police Handling of Complaint 5

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

"The officer concerned has denied this allegation and has stated that he perceived the charges libelled to be appropriate. He sought advice from supervisors and confirmed that the charges were as what he had believed them to be. This was further reviewed by Inspector [G] and the Crime Management Department who agreed the crimes recorded to be relevant. Having considered the evidence available to me, I am presented with conflicting versions and I am unable to determine whether one account is more credible than the other. On the balance of probabilities I am therefore unable to uphold your allegation."

Consideration of Complaint 5

The applicant's complaint in this respect relates to comments made by Constable D which the applicant believes illustrates his lack of knowledge of the legal definition of what might amount to an offence under Section 2 of the Act.

The response in this connection states that Constable D believed the charges labelled to be appropriate and states that his supervisors agreed the crimes recorded to be relevant.

The response to the applicant, the decision made by Constable D, the review by Inspector G and the Crime Management Department appear to ignore the other evidence in the case. It is clear that all these officers considered that a charge of assault was appropriate in the circumstances. The assault being a deliberate act by Ms B in driving the vehicle at the applicant striking her. Consequently, it is hard to understand why all these officers then considered that a charge of careless or inconsiderate driving, rather than dangerous driving, was appropriate for a deliberate act of injury. COPFS clearly considered this to be the case as they changed the charge to a contravention of Section 2 of the Act. This supports the applicants assertion in her complaint, that Constable D displayed a lack of knowledge of Section 2 and undermines Chief Inspectors F's assertion that he was presented with conflicting versions and was unable therefore to reach a determination on the applicants complaint.

The response also fails to address if Constable D made the comment stated above, and if so, whether this would demonstrate a lack of knowledge of the relevant legislation. Accordingly, it is considered that the response is inadequately reasoned and fails to address the crux of the applicant's complaint. For this reason it is considered that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the complaint on the points outlined above and issue the applicant with a fresh response.

Complaint 6: No knowledge of Section 3 of the Act

The applicant complains Constable D did not libel an additional charge of Section 3 of the Road Traffic Act 1988 for Ms B blocking in their car.

Police Handling of Complaint 6

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

"The officer concerned has denied this allegation and has indicated that whereby he did not perceive there to be an additional offence in respect of the vehicle stopping and blocking in the Fiesta. If the officers had evidence of an offence having been committed he would have dealt with it accordingly. Having considered the evidence available to me, I am presented with conflicting versions and I am unable to determine whether one account is more credible than the other. On the balance of probabilities I am therefore unable to uphold your allegation."

Consideration of Complaint 6

The response in this connection states that Constable D did not libel an additional charge for blocking in the vehicle as he did not perceive the vehicle stopping and blocking in the vehicle to amount to an additional offence.

However, it is considered that the question of whether or not the action of Ms B blocking in the vehicle amounted to an offence should be based on the facts and legal definition of what would amount to a Section 3 of the Act instead of the subjective opinion of an officer. Additionally, Constable D appears only to have given consideration to a complaint of a contravention of Section 3 of the Act, without giving consideration to whether other road traffic offences were committed or other road traffic legislation would have been more appropriate to use in the circumstances. For example, causing an obstruction under Section 103 of the Road vehicles (Construction and Use) Regulations 1986.

Accordingly, as the response is inadequately reasoned, it is considered that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the complaint and issue the applicant with a response which explains, with reference to any relevant legislation, whether blocking in the vehicle would amount to an offence.

Complaint 7: Failed to get antecedents

The applicant complains that officers failed to note antecedents in the report to COPFS.

Police Handling of Complaint 7

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

“Antecedent information is contained within the original Police report submitted to the Procurator Fiscal within the remarks section outlining the previous history between yourself and wife and Ms [B]. The officers concerned have indicated that they did not have sight of the letter of complaint at any time. Furthermore on 23rd March 2016 there is an additional report to COPFS providing further background information. This is supportive of the fact that when a report is submitted to Crown Office Procurator Fiscal Service it still permits Police Scotland to provide additional information which is obtained following the initial submission. For these reasons I am unable to uphold this allegation.”

Consideration of Complaint 7

The response in this connection states that the officer who submitted the report outlined the previous history between the applicant, Mr A and Ms B. The response also refers to a subject report submitted to the COPFS on 23 March 2016, detailing further information.

The response is supported by the police report and relevant subject report which were provided to the PIRC and examined during the review and which contain antecedent information regarding the neighbour dispute. It is noted, however, that both reports contain a general overview of the situation and the reasons why it has arisen rather than a detailed breakdown of each particular incident.

Nevertheless, from the evidence available, a detailed breakdown of each of the incidents between the applicant, Mr A and Ms B was also forwarded to the COPFS on 17 October 2016.

Accordingly, it is considered that the response in this connection is adequately reasoned and is supported by the material evidence available. It is therefore concluded this this complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 8: Letter of complaint given to officer

The applicant complains her letter of complaint was given to the reporting officer in order to complete the background information within the police report which is in breach of protocol.

Police Handling of Complaint 8

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

"Both [Constable D] and the reporting officer [Constable E] deny having received any letter of complaint. They state that they obtained statements from yourself [the applicant] and your son at the time following the incident occurring on 25th January 2016...[sic] Having considered the evidence available to me, I am presented with conflicting versions and I am unable to determine whether one account is more credible than the other. On the balance of probabilities I am therefore unable to uphold your allegation."

Consideration of Complaint 8

Constables D and E have both provided an account in which both officers record that they were not provided with a copy of the applicant's letter of complaint at any point during their investigation. The position of both officers is accurately reflected in the response.

In light of this, and in the absence of any evidence in support of the applicant's position, it is considered that Chief Inspector F is justified in not upholding the applicant's complaint. It is therefore considered that this complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 9: Failed to check insurance

The applicant complains that officers failed to carry out follow up checks to ensure there was relevant insurance in place for Ms B's vehicle

Police Handling of Complaint 9

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

“I have been informed that as part of the enquiry by the officer concerned that checks were carried out on the offending vehicle driven by Ms [B] and found to have relevant insurance in force. Inspector [K] has confirmed this by checking the Police National Computer whereby a check was made on the offending vehicle driven by Ms [B] by the officers concerned. I am also in a position to confirm that all vehicles driven at the material time had relevant insurance in place. For these reasons I am unable to uphold his allegation.”

Consideration of Complaint 9

The response in this connection explains that a PNC checked was carried out by the officer who attended the scene which was checked and verified by Inspector K. The response is supported by the relevant Police National Computer (PNC) printout which was provided to the PIRC and which confirms that a checks on the vehicles were carried out and there was insurance in place.

It is therefore considered that this complaint was dealt with to a reasonable standard. No further action is reviewed in this connection.

Complaint 10: Officer using particular phrases

The applicant complains that Constable D used phrases like “*you know the score*” and “*I’ve told you repeatedly she can park there if she wants.*”

Police Handling of Complaint 10

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

“The officer concerned has denied this allegation which is supported by his colleague. Both officers indicate that they were polite in their dealings and respectful addressing yourself and wife at times as “Sir” or “Ma’am”. Having considered the evidence available to me, I am presented with two conflicting versions of events and am unable to determine whether one account is more credible than the other. On the balance of probabilities I am therefore unable to uphold your allegation.”

Consideration of Complaint 10

The position of the applicant is accurately reflected in the response in that she alleges that Constable D used phrases such as “*you know the score*” and “*she can park there if she wants*”. Although not reflected in the response, the account provided by the applicant is supported by Mr C’s account.

Constable D has also provided an account and his position in relation to the allegation is also accurately reflected in the response. Within his account Constable D refutes the allegation and states that at no time did he use these particular phrases. Constable D’s account is supported by the account provided by Constable E.

Accordingly, the applicant and Constable D have provided conflicting version of events and there is support for both accounts. In these circumstances where conflicting accounts cannot be reconciled, according to paragraph 6.12.7 of Complaints SOP, the complaint will not be upheld. However, a full explanation as to why should also be given, detailing what evidence the enquiry officer found in the course of the investigation.

In this instance, Chief Inspector F has failed to properly reflect the evidence in favour of the applicant. However, while it is unfortunate that Mr C's position was not communicated to the applicant in the response, as all other accounts have been accurately communicated and Police Scotland has complied with the Complaints SOP, it is considered that this complaint has been dealt with to a reasonable standard. No further action is required in this connection

Complaint 11: Officer's behaviour

The applicant complains Constable D stood with his thumbs in his body armour and stated "*I would welcome a complaint, my supervisor and crime manager are more than happy with what I've done, there's my shoulder number*".

Police Handling of Complaint 11

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

"The officer concerned has denied this allegation which is supported by his colleague. Both officers indicate that they were polite and respectful addressing yourself and wife at times as "Sir" and "Ma'am". Having considered the evidence available to me, I am presented with two conflicting versions of events and am unable to determine whether one account is more credible than the other. On the balance of probabilities I am therefore unable to uphold your complaint."

Consideration of Complaint 11

The position of the applicant is accurately reflected in the response in that she alleges that Constable D stood with his thumbs in his body armour and stated "*I would welcome a complaint, my supervisor and crime manager are more than happy with what I've done, there's my shoulder number*". Although not reflected in the response, the account provided by the applicant is supported by the account provided by Mr C, who was present at the material time.

Constable D has also provided an account and his position in relation to the allegation is also accurately reflected in the response. Within his account Constable D refutes the allegation and states that at no time did he stand with his thumbs in his body armour or say the above phrase. Constable D's account is supported by the account provided by Constable E.

Accordingly, the applicant and Constable D have provided conflicting version of events and there is support for both accounts. In these circumstances where conflicting accounts cannot be reconciled, according to paragraph 6.12.7 of Complaints SOP, the complaint will not be upheld. However, a full

explanation as to why should also be given, detailing what evidence the enquiry officer found in the course of the investigation.

In this instance, Chief Inspector F has failed to properly reflect the evidence in favour of the applicant. However, while it is unfortunate that Mr C's position was not communicated to the applicant in the response, as all other accounts have been accurately communicated and Police Scotland has complied with the Complaints SOP, it is considered that this complaint has been dealt with to a reasonable standard. No further action is required in this connection

Complaint 12: Dismissed complaint

The applicant complains that Constable D dismissed her complaint that Ms B had parked her car outside her home in an effort to intimidate her and Mr A and in contravention of S.103 of the Road Vehicles (Construction and Use) Regulations 1986. The applicant further complains Constable D told her to phone Police Scotland the next time it happened and someone else would deal with it.

Police Handling of Complaint 12

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

"The Officer concerned has denied this allegation indicating if there was a contravention of regulations in relation to the parking of vehicles then he would have dealt with this complaint. The officer has indicated that he did state he made reference to the fact that if there was any perception of future intimidation or alarm then to contact Police. I am presented with two conflicting versions of events and am unable to determine whether one account is more credible than the other. On the balance of probabilities I am therefore unable to uphold your allegation."

Consideration of Complaint 12

The applicant's complaint in this respect relates to an incident on 29 January 2016 whereby her neighbour parked her vehicle outside her property blocking her lowered access to her off-road parking. The applicant believes this was done in an attempt to intimidate her and her family.

From reviewing the evidence available, the applicant contacted Police Scotland on 29 January 2016 via 101 to report this concern and spoke with an operator who advised her that police would not attend as there were no bail conditions or specific parking restrictions in place. According to the applicant, she thereafter contacted Constable D via telephone on the same date and informed him of the incident. The applicant further states within her account that she reiterated her concerns to Constable D on 7 February 2016 when he and Constable E attended at her home address.

The applicant's complaint in this respect therefore appears to be that she informed Constable D on 29 January 2016 and 7 February 2016 that her driveway had been blocked by her neighbour on 29 January 2016, which she believes was done in an attempt to alarm and intimidate her, and that Constable D thereafter failed to take any action or investigate this.

From reviewing the statement of Constable D, he does not mention whether or not the applicant raised this concern via telephone on 29 January 2016, or in person on 7 February 2016, or state that he would have investigated it appropriately if she had. In addition, from the evidence available, it is Constable E who records within his respective account that that if there had been any obstructions on their arrival they would have been dealt with appropriately.

Furthermore, although the response in this connection acknowledges that Constable D advised the applicant to contact the police if she or any other family member felt alarmed or intimidated, the applicant's complaint in this respect is that she *had* informed Constable D that she felt alarmed and intimidated and that he dismissed her concern and failed to act on this information.

Accordingly, it is considered that the response has failed to address the crux of the applicant's complaint and is inadequately reasoned. It is therefore concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the complaint in light of the points outlined above and issue the applicant with a fresh response.

Complaint 13: Lack of knowledge

The applicant complains about comments made by Constable D which she believes illustrates his lack of knowledge of parking at lowered kerb regulations. The applicant states that Constable D stated "*she can park there if she wants*" and "*your husband will know all about that*".

Police Handling of Complaint 13

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

"The Road Vehicles (Construction & Use) Regulations 1986 S.103 provides that no person in charge of a motor vehicle or trailer shall cause or permit the vehicle to stand on a road so as to cause any unnecessary obstruction of the road. (Regulation 103). The officer concerned has denied this allegation and has indicated that whereby he had evidence of an offence having been committed he would have dealt with it accordingly. He also did not advise [Ms B] that she could park at the lowered kerb. Having considered the evidence available to me, I am presented with conflicting versions and I am unable to determine whether one account is more credible than the other. On the balance of probabilities I am therefore unable to uphold your allegation."

Consideration of Complaint 13

Although similar to the complaint above, the applicant's complaint in this respect relates to comments made by Constable D in relation to the parking obstructions which the applicant believes illustrates his lack of knowledge of the relevant regulations.

The response in this connection reasons that the officer concerned indicated that, if there had been an offence he would have dealt with it accordingly. However, from reviewing the statement of Constable D,

he does not record within his respective account that if he had evidence of an offence being committed he would have dealt with it accordingly.

Any indication in the response that Constable D would have dealt with any obstruction appropriately is not supported by the material evidence available as it would appear to be Constable E who records this assertion within his respective account.

Furthermore, the response in this connection states that Constable D did not advise Ms B that she could park there. However, the applicant's complaint in this respect appears to be that Constable D stated to *her* that Ms B could park there if she wanted. In addition, the response in this connection also fails to address whether or not Constable D made the above mentioned comment regarding the applicant's husband.

From reviewing the respective statements of both officers, both address whether or not Constable D made both the above comments within their respective accounts but these are not reflected within the response. Accordingly, it is considered that the response has failed to fully address the complaint or reflect the material evidence available. For these reasons it is therefore considered that the complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the evidence in light of the comments above and on the balance of probabilities, and issue the applicant with a fresh response.

Complaint 14: Case not put on hold

The applicant complains that the relevant police report was not put on hold even though Inspector G had advised it was incorrect.

Police Handling of Complaint 14

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

"Inspector [K] has reviewed the timeline from the date of the alleged offence to the date the report was submitted to Crown Office and Procurator Fiscal Service. The officer concerned has confirmed he was in dialogue with you over this period and personally reviewed the CCTV footage of the incident and the evidence and was satisfied with the decision making of the charges libelled. Whilst your complaint was reported to the Procurator Fiscal on 23rd February 2016 it still permits the Procurator Fiscal to amend the charges as they believe appropriate based on the information contained within the report and any ancillary information which they may request or which is submitted following the submission of the initial report, this is done in the form of follow up reports between Police Scotland and Crown Office and Procurator Fiscal Service, (COPFS). I am aware that you were of the belief that the report should not have been submitted however officers have acted appropriately in that they have reported the matter to COPFS whereby the opportunity remains for further information to be forwarded to COPFS following the receipt of the initial report and based on the information I have available I am unable to uphold this allegation."

Complaint 15: Inaccurate report

The applicant complains that an inaccurate report was submitted to the COPFS to meet the police 28 day target for submission of cases.

Police Handling of Complaint 15

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

“As previously indicated whilst your complaint was reported to the Procurator Fiscal on 23rd February 2016 as above it still allows the Procurator Fiscal to amend the charges as appropriate based on the information contained within the report and any ancillary information which they may request or be submitted following the submission of the initial report, this is done in the form of follow up reports between Police Scotland and Crown Office and Procurator Fiscal Service, (COPFS). Further on receipt of the letter from [the applicant] I made contact whereby I spoke with you on 9th February 2016 in relation to the letter received from your wife and allocated this for progression to Inspector [G] who made contact both by email and telephone and also requested the attendance of Sergeants [H] and [J]. Based on the information I have available I am unable to uphold this allegation.”

Consideration of Complaints 14 and 15

The response to both complaints is broadly similar in that Chief Inspector F reasons that, although the report was submitted, the police would still be able to submit further information to the COPFS relating to the case in the form of subject reports and/or memos.

However, from reviewing the evidence available, it is clear that enquiries into the incident were still on-going when the report was submitted and that Inspector G had tasked the officers dealing with the incident to carry out further tasks, which included taking a statement from Mr A's GP and viewing the additional CCTV from the applicant's neighbour. Accordingly, although it is correct that information can be forwarded to the COPFS via subject report following further enquiry, the response does not explain to the applicant why the report was submitted before these enquiries were completed, especially given the fact there was some contention over the information and charges contained within the report, or address whether the report was submitted to comply with the target figure of 28 days.

Accordingly it is considered that the above responses are inadequately reasoned and have failed to address the crux of the complaints. It is therefore concluded that these complaints were not dealt with to a reasonable standard. It is recommended that Police Scotland issue the applicant with a further response which explains why, given enquiries were still on-going and there was some contention over the charges contained within the report, a hold was not put on the report as per Mr A's request. The response should also address whether the report was submitted to comply with the aforementioned timescale.

Complaint 16: 999 tape not obtained

The applicant complains that the 999 tape of the applicant contacting the police was not obtained even though it could have been used to corroborate an additional charge of breach of the peace.

Police Handling of Complaint 16

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

"Whilst the officer concerned did not obtain the 999 recording, Inspector [K] has obtained the 999 tape of a recording of a call made to Police Scotland regarding the incident by [the applicant]. This recording lasts 30 second in length and provides no further information of evidential value. [The applicant] requests police indicating that [Mr A] has been hit by their neighbour, when asked further indicates it is by the neighbour's car and confirms that no ambulance is required. It is not standard practice to obtain every 999 recording unless the initial call text recorded indicated there was something of evidential value thereon. Based on the information I have I am unable to uphold this allegation."

Consideration of Complaint 16

The response in this connection explains that the officer who investigated the complaint listened to the tape recording and states that the tape providing nothing of any further evidential value. However, this tape was only requested and listened to as part of the complaints process by Inspector K. The recording was not requested or listened to during the investigation into the original incident by either the investigating officer, or by Inspector G who was instructed to carry out a review of the circumstances.

Accordingly, although the response explains why the police believed it had no evidential value, it does not address the applicant's complaint that consideration was not given to obtaining the tape in the first instance, especially when it was referred to in the applicant's original letter.

It is therefore considered that the response is inadequately reasoned and has failed to address the crux of the applicant's complaint. It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland issue the applicant with a fresh response which fully addresses the applicant's complaint. The response should explain how the evidence has been used to inform the conclusions reached.

Complaint 17: Failed to make contact

The applicant complains that Inspector G failed to make contact with the applicant although he was instructed to do so by Chief Inspector F. The applicant contends that there was a period of 62 days between the initial complaint being acknowledged and the first officer to speak with her and she believes that the reason for this delay is because Inspector G has "an issue with females".

Police Handling of Complaint 17

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

"The officer concerned on receipt of the email from myself requested Sergeant [H] make contact with you to establish if there was a solution to the issue raised by your wife, [the applicant], within her letter to me. On Wednesday 9th February 2016 I discussed with you the receipt of the letter from your wife whereby you emailed me. I forwarded this email to Inspector [G] to progress in my absence as I was finishing for leave whereby Inspector [G] was deputising me. I am aware that Inspector [G] made contact with you by email, this was in no way an attempt to negate engaging with [the applicant] but understood that both of you had been in dialogue with me and would equally communicate the discussions together as you were both involved in the incident. He informed you throughout this period of ongoing actions arranging for Sergeant [H] to engage with you. Based on the information I have available I am unable to uphold this allegation."

Complaint 18: No phone call or email

The applicant complains there was no initial phone call or email from Inspector G following Chief Inspector F's instruction.

Police Handling of Complaint 18

Chief Inspector F responded to the applicants' complaint as follows:

"Inspector [G] made contact via email with you having received the instruction from myself to progress the matter. Inspector [G] also made contact with the supervisors of the officers who were dealing with the enquiry to highlight the issues which you and [the applicant] raised. Further he delegated for Sergeant [H] to meet with you and report back to him. Based on the information I have I am unable to uphold this allegation."

Consideration of Complaint 17 and 18

As reflected in the above responses, Inspector G was instructed by Chief Inspector F to investigate the concerns raised by the applicant in her letter dated 5 February 2016. Notably, the email instruction forwarded by Chief Inspector F specifically requests that Inspector G engage with the applicant with a view to resolving the issues raised.

As reflected in the above responses, Inspector G delegated the enquiry to Sergeant H to progress who made contact the applicant to arrange a meeting. According to the accounts of both the applicant and Sergeant H, Sergeant H then made contact with the applicant via telephone on or around 11 February 2016 to discuss her concerns and arrange a date to attend at her home address. Accordingly, although Inspector G did not email or contact the applicant in the first instance, he did delegate the enquiry to a Sergeant who did make contact.

From the evidence, on 12 February 2016 Mr A therefore contacted Chief Inspector F to query the contact made by Sergeant H. Chief Inspector F appears to have then forwarded this query to Inspector G who has responded to him, copying in Mr A, explaining that he had delegated the enquiry to Sergeant H to progress. From this point any subsequent communication from Inspector G appears to have been with Mr A.

The response in this connection acknowledges this and reasons that this was not done in an effort to negate engaging with the applicant but states that it was understood that both the applicant and Mr A were engaging with Chief Inspector F.

Although this is Chief Inspector F's subjective opinion, it is clear from the evidence available that both the applicant and Mr A engaged with the police via email, letter and telephone at various points during the process. In addition, there is nothing in the evidence as a whole to suggest Inspector G purposefully did not contact the applicant. Rather, the email trail between Inspector G and Mr A appears to have been a result of Mr A's email to Chief Inspector F querying the contact made by Sergeant H. Inspector G thereafter engaged in email dialogue with Mr A in relation to the on-going enquiry.

In addition, although the applicant alleges that contact was not made with her for a period of 62 days, the evidence suggests that contact was made timeously, albeit this was made by Sergeant H and not Inspector G.

Accordingly, it is considered the response to these complaints are adequately reasoned and supported by the evidence available. It is therefore concluded that these complaints were dealt with to a reasonable standard.

Nevertheless, it is noted that although contact is made by Sergeant H, there is some ambiguity and uncertainty surrounding the reason contact was made in the first instance and whether or not this contact was to investigate a complaint, or to simply resolve the concerns raised in the applicant's letter. However, this matter is addressed in the consideration to complaint 22.

Complaint 19: Mised senior officer

The applicant complains that Inspector G deliberately misled a senior officer by sending an email saying that good progress was being made with the complaint when this was not the case

Police Handling of Complaint 19

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

"Inspector [G] made contact via email with you having received the instruction from myself to progress the matter. Inspector [G] also made contact with the supervisors of the officers who were dealing with the enquiry to highlight the issues which you and [the applicant] had raised. Further he delegated for Sergeant [H] to meet with you and report back to him. Inspector [G] also arranged for extra attention to your home address and an urgent response marker. He also

reviewed the police report and CCTV. Based on the information I have available I am unable to uphold this allegation.”

Consideration of Complaint 19

Although not reflected in the response, the applicant’s complaint in this regard appears to relate to the email sent by Inspector G to Inspector F on 15 February 2016 which was in response to Mr A querying Sergeant H’s involvement.

Within this email, Inspector G informed Chief Inspector F that he had delegated the enquiry to Sergeant H and had been updated by Sergeant H that she was “making good progress”.

From the evidence available, including the accounts provided by Inspector G and Sergeant H, Inspector G instructed Sergeant H to make contact with the applicant and Mr A with a view to resolving the issues identified in the applicant’s original letter.

According to the account of Sergeant H she thereafter made enquiries with the crime management unit and the officers who attended the incident before she contacted the applicant and Mr A. Within her statement, Sergeant H thereafter records she made contact with Inspector G to update him regarding the enquiries she had made.

Although this information is not reflected in the response provided, there is nothing in the evidence to suggest that Inspector G deliberately mislead Chief Inspector F, and the evidence available would tend to support the position that Sergeant H carried out the above enquires and updated Inspector G with her progress before the email in question was sent.

Accordingly, as this information is not included in the response, it is considered that the response has therefore failed to address the crux of the complaint. Therefore, it is concluded that this complaint was not dealt with to a reasonable standard. However, as the information contained in this review has addressed the applicant’s main concern, no further action is required in this connection.

Complaint 20: Deliberately misled

The applicant complains Inspector G was deliberately misleading in his emails and phone calls with the applicant and Mr A regarding a subject report.

Police Handling of Complaint 20

Chief Inspector F responded to the applicant’s complaint as follows and included a quote from the applicant’s correspondence to begin with:

“Inspector [G] deliberately tried to mislead me. He stated in an email that the officers would submit a subject sheet with additional info. When emailed, then phoned to ask if the report had been submitted to the PF he stated he would have to check, but he already knew the answer.

Then on a phone call he stated that it had been submitted and I asked if he had not put a hold on it "it's with the PF" was the reply, again lack of integrity."

I have spoken with Inspector [G] who states he did not deliberately mislead you. The officer concerned has indicated that he made you aware that the police report had been submitted to the Crown Office and Procurator Fiscal Service. When a reporting officer has a sufficiency of evidence and written their police report it is transferred to Criminal Justice Case Marking before being transferred to COPFS. As indicated when reported to the Procurator Fiscal on 23rd February 2016 it still permits the Procurator Fiscal to amend charges as they believe appropriate based on the information contained within, productions seized and lodged and any further information retrospectively provided to them in the form of subject reports. Based on the information I have available I am unable to uphold this allegation."

Consideration of Complaint 20

This complaint relates to a phone call Mr A had with Inspector G after he received an email from him dated 23 February 2016 in which Inspector G explained to him that he had requested the officers involved to submit a subject report with the relevant antecedent information. The applicant responded to this email to query if, in light of this information, the police report had already been forwarded to the COPFS.

From the evidence available, both Mr A and Inspector G thereafter record within their accounts that Inspector G contacted the applicant via telephone to discuss the matter. According to Mr A, Inspector G said to him during this conversation that he would have to make enquiries and check if the report had been forwarded to the COPFS. The applicant and Mr A believe this was said in an attempt to mislead Mr A as they believe, given the content of his email on 23 February 2016, he was already aware that the report was with the COPFS. From reviewing the account of Inspector G he does not make any reference to the content of this telephone conversation, other than to state that Mr A communicated to him he was unhappy with the service provided by Police Scotland.

Accordingly, it is considered that the response in his connection has failed to address the crux of the applicant's complaint. For this reason, it is considered that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland:

- (a) seek a further account from Inspector G which addresses the applicant's specific complaint that, based on his email correspondence, he was already aware the report was submitted but stated to Mr A that he would have to check;
- (b) reassess the complaint with reference to this account; and
- (c) issue the applicant with a fresh response which directly addresses the applicant's complaint.

Complaint 21: Failed to instruct investigation

The applicant complains that Inspector G failed to instruct an investigation regarding the applicant's report of Ms B's intimidation and parking obstruction on 29 January 2016.

Police Handling of Complaint 20

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

"Inspector [G] made contact via email with you having received the instruction from myself to progress the matter. Inspector [G] also made contact with the supervisors of the officers who were dealing with the enquiry to highlight the issues which you and [the applicant] had raised. Further he delegated for Sergeant [H] to meet with you and report back to him. Based on the information I have available I am unable to uphold this allegation."

Consideration of Complaint 21

The applicant's complaint in this respect appears to be that Inspector G was asked to investigate the various concerns she raised in her letter dated 5 February 2016 regarding the alleged parking obstruction and intimidation but he failed to do so.

The response in this connection explains to the applicant that Inspector G delegated this enquiry to Sergeant H, and highlighted the applicant's concerns with the officers dealing with the enquiry and their supervisors. However, the response fails to address or explain if Inspector G actually instructed an investigation into the incident on 29 January 2016 when he spoke to these officers or, if not, explain why this particular concern in her letter of complaint was not addressed or an enquiry into it undertaken.

Accordingly, it is considered that the response in this connection is inadequately reasoned and has failed to address the crux of the applicant's complaint. It is recommended that Police Scotland reassess the complaint with reference to the points outlined above and issue the applicant with a fresh response. The response should clearly explain how the evidence has been used to inform the conclusions reached.

Complaint 22: No information provided

The applicant complains that they were not provided with information in relation to who was actually investigating the complaint.

Police Handling of Complaint 22

Chief Inspector F responded to the applicants' complaint as follows:

"I emailed Inspector [G] on 9th February copying yourself and [the applicant] into this correspondence and requested that Inspector [G] make contact with yourselves. Inspector [G] made dialogue with you and advised you that Sergeant [H] would attend and speak with you to establish the nature of the complaint in person and thereafter liaise with Inspector [G]. Over this period there was communication between yourself and Inspector [G] whereby he made enquiry

into the matter originally reported on 25th January 2016. Based on the information I have available I am unable to uphold this allegation.”

Consideration of Complaint 22

The Police, Public Order and Criminal Justice (Scotland) Act 2006 defines a complaint about the police as:

“A statement (whether oral, written or electronic) expressing dissatisfaction about an act or omission by the Authority, by the Police Service or by a person who at the time of the act or omission was a person serving with the police”.

From the evidence available, the applicant submitted a letter to Police Scotland on 5 February 2016 which clearly expresses her dissatisfaction in relation to the manner in which the police responded to and investigated various incidents reported by her and Mr A. However, from the evidence available, there is nothing to suggest that this letter was treated as a complaint about the police or recorded as one at that time.

As reflected in the response, Chief Inspector F forwarded this correspondence to Inspector G, copying both the applicant and Mr A into the email, and asked him to investigate the applicant and Mr A's concerns. However, although both Inspector G and Sergeant H have provided an account in which they record they were allocated the enquiry to investigate and ultimately resolve the issues and concerns identified by the applicant in the letter, neither officer makes any reference to undertaking a complaint investigation.

Accordingly, although the response explains that contact was made by Inspector G in relation to the incident reported by the applicant on 25 January 2016, the response fails to address whether this letter was allocated to Inspector G to carry out investigation into a complaint, or whether the direction was simply to make contact and resolve the issues identified in the letter from a policing perspective. In addition, the response also fails to consider why, given the clear expression of dissatisfaction within the applicant's letter, a complaint against the police was not recorded or investigated in the first instance.

From the evidence available, the applicant and Mr A's complaints were not recorded as formal complaints until Mr A made a further complaint online on 23 February 2016.

It is also noted that the failure to record this letter as a formal complaint in the first instance also resulted in a certain level of ambiguity and uncertainty regarding the subsequent contact made by Sergeant H and the involvement overall of Inspector G which, in turn, led to the applicant and Mr A making other complaints.

Accordingly, as the crux of the applicant's complaint appears to be failure to respond to and record the original complaint, and therefore failure to provide information as to who was investigating the complaint, it is considered the response in this connection fails to address the crux of the complaint, is inadequately reasoned and does not comply with the complaints SOP. It is therefore concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland

reassess the complaint with reference to the points outlined above and issue the applicant with a fresh response. The response should clearly explain how the evidence has been used to inform the conclusions reached.

Complaint 23: No update about STORM marker

The applicant complains they were not provided with an update from Inspector G that an urgent marker had been put against their address.

Police Handling of Complaint 23

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

"In communication to you on 15th February 2016 Inspector [G] informed you that extra attention had been requested to your address, whilst he had requested this he also ensured an urgent response marker was placed on your address as you had requested. Whilst he never specifically clarified this in his email the marker was placed on your address. Based on the information I have available I am unable to uphold this allegation."

Consideration of Complaint 23

As reflected in the response, Inspector G did communicate to Mr A via email that extra attention had been requested at his home address. The response further states that, at this time, an urgent response marker was placed on the applicant's home address. However, as reflected in the response, although the information that extra attention had been requested was communicated to Mr A, the information that an urgent response marker was placed on the applicant and Mr A's address was not.

As this is the crux of the applicant's complaint, and as the response acknowledges that this was not done, it is therefore difficult to understand why the applicant's complaint in this regard has not been upheld.

Paragraph 6.12.3 of the Complaints about the Police Standard Operating Procedure ("the Complaints SOP") states:

"A complaint should be upheld where the evidence based findings show that the service provided by or through the conduct of those serving with the police did not reach the standard which a reasonable person could expect."

It further states at paragraph 6.15.10:

"An apology should always be given when things have gone wrong, either verbally or in writing. Any apology should be unambiguous and sincere."

In light of the fact that it was acknowledged that Inspector G did not specifically clarify that a marker was placed on the applicant's address, it is considered that this complaint should have been upheld.

For this reason, it is considered that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland now reassess whether the applicant's complaint should be upheld and provide the applicant with a further response detailing the outcome of this reassessment, as well as providing him with an apology for the failings identified.

Complaint 24: Officer misleading

The applicant complains Constable D was misleading them by advising that he had obtained background information from their son's statement and stating the investigation was intelligence led.

Police Handling of Complaint 24

Chief Inspector F responded to the applicant's complaint as follows and included a quote from the applicant's correspondence to begin with:

"When [Constable D] was asked what background information he had for the report he stated that he had obtained this from my 16 year old son and that this enquiry was intelligence led. This may be buzz words which may impress members of the public, but we are aware this is bull shit, hence the reason that my report was given to him to submit full antecedent information via memo. It is quite obvious that it was the least amount of effort on [Constable D's] part - surely you get best evidence which comes from either [Mr A] or [the applicant] who were there for all the previous events."

The officer concerned has denied this allegation. He has stated that he and his colleague obtained statements from yourself, [the applicant] and your son at the material time. Having considered the evidence available to me, I am presented with conflicting versions and I am unable to determine whether one account is more credible than the other. On the balance of probabilities I am therefore unable to uphold your allegation."

Consideration of Complaint 24

The position of the applicant is accurately reflected in the response in that she alleges that Constable D stated that he had obtained background information from her 16 year old son and that the enquiry was intelligence led. Although not reflected in the response, the account provided by the applicant is supported by the account provided by her son, Mr C, who was present at the material time.

Constable D has also provided an account and his position in relation to the allegation is also accurately reflected in the response. Within his account Constable D refutes the allegation and states that at no time did he state the enquiry was intelligence led. Constable D's account is supported by the account provided by Constable E.

According to paragraph 6.12.6 of Police Scotland Complaints about the Police Standard Operating Procedure ("the Complaints SOP"), the decision whether or not to uphold a complaint is taken on the

balance of probabilities, that is whether based on all the evidence available, one account is more credible or probable than the other.

The applicant and Constable D have provided conflicting versions of events, both of which are supported.

In these circumstances where conflicting accounts cannot be reconciled, according to paragraph 6.12.7 of Complaints SOP, the complaint will not be upheld. However, a full explanation as to why should also be given, detailing what evidence the enquiry officer found in the course of the investigation.

In this instance, Chief Inspector F has failed to properly reflect the evidence in favour of the applicant. However, while it is unfortunate that Mr C's position was not communicated to the applicant in the response, as all other accounts have been accurately communicated and Police Scotland has complied with the Complaints SOP, it is considered that this complaint has been dealt with to a reasonable standard. No further action is required in this connection

5. Conclusions

Complaint 1: No medical follow up

It is concluded this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the complaint with reference to the points outlined above and issue the applicant with a fresh response. The response should clearly explain how the evidence has been used to inform the conclusions reached.

Complaint 2: Lack of knowledge of essential elements of the offences

It is concluded that the complaint has not been dealt with to a reasonable standard. As the criminal case is no longer live, it is recommended that Police Scotland establish which officers this complaint relates to, reassess the complaint and issue the applicant with a fresh response which fully explains why, based on all the evidence available, including the CCTV and witness statements, and the legal definition and essential elements of each offence, the circumstances merited a charge of Section 3 of the Act rather than Section 2.

Complaints 3 and 4: Relevant charges not submitted

It is concluded that these complaints were not dealt with to a reasonable standard. It is recommended that Police Scotland issue the applicant with a fresh response which explains why, in line with the relevant legislation and evidence available, the charges libelled were considered the most appropriate by both officers. The response should also address why no consideration was given to libelling the additional offences highlighted by the applicant and Mr A within their original letter and subsequent email correspondence. The response should fully explain how the evidence available has been used to inform the conclusions reached.

Complaints 5 and 12

It is concluded that these complaints were not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the complaint in light of the points outlined and issue the applicant with a fresh response.

Complaint 6: Lack of knowledge of Section 3 of the Act

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the complaint and issue the applicant with a response which explains, with reference to any relevant legislation, whether blocking in the vehicle would amount to an offence.

Complaints 7, 8, 9, 10, 11, 17, 18, and 24

It is concluded that these complains have been dealt with to a reasonable standard. No further action is required.

Complaint 13: Lack of knowledge

It is concluded that the complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the evidence in light of the comments made in the consideration and on the balance of probabilities, and issue the applicant with a fresh response.

Complaints 14 and 15

It is concluded that these complaints were not dealt with to a reasonable standard. It is recommended that Police Scotland issue the applicant with a further response which explains why, given enquires were still on-going and there was some contention over the charges contained within the report, a hold was not put on the report as per Mr A's request. The response should also address whether the report was submitted to comply with the aforementioned timescale.

Complaint 16: 999 tape not obtained

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland issue the applicant with a fresh response which fully addresses the applicant's complaint. The response should explain how the evidence has been used to inform the conclusions reached.

Complaint 19: Mised senior officer

It is concluded this complaint was not dealt with to a reasonable standard. However, as the information contained in this review has addressed the applicant's main concern, no further action is required in this connection.

Complaint 20: Deliberately misled

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland:

- (a) seek a further account from Inspector G which addresses the applicant's specific complaint that, based on his email correspondence, he was already aware the report was submitted but stated to Mr A that he would have to check;
- (b) reassess the complaint with reference to this account; and
- (c) issue the applicant with a fresh response which directly addresses the applicant's complaint.

Complaints 21 and 22

It is concluded that these complaints were not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the complaint with reference to the points outlined and issue the applicant with a fresh response. The response should clearly explain how the evidence has been used to inform the conclusions reached.

Complaint 23: No update about STORM marker

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland now reassess whether the applicant's complaint should be upheld and provide the applicant with a further response detailing the outcome of this reassessment, as well as providing him with an apology for the failings identified.

Kirstin McPhee
Review Officer

Catherine Cumming
Acting Senior Review Officer