

Report of a Complaint Handling Review in relation to Police Scotland

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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 the applicant's arrest in May 2014. Eleven complaints were reviewed, namely:

- 1) that police officers were rude and swore at the applicant, calling him a 'wimp';
- 2) that a police officer used excessive force by pushing the applicant to the chest;
- 3) that police officers used excessive force by swiping the applicant's legs away causing him to fall;
- 4) that the applicant was unlawfully arrested;
- 5) that police officers used excessive force by applying handcuffs too tightly, and deliberately stopping and starting the police vehicle abruptly, causing the applicant to roll around;
- 6) that, having informed a police officer that he had been punched in the face, no action was taken;
- 7) that having made a complaint about the police regarding his arrest, the applicant and his mother were assured that relevant CCTV evidence would be secured, which was not the case;
- 8) that the applicant's complaint about the police was not investigated;
- 9) that Police Scotland appeared to have no system in place to prevent a failure to investigate his complaint from occurring;
- 10) that when attending at a police office to request a copy of his complaint statement, the applicant was grabbed by a police officer and manhandled out of an interview room to the front counter; and
- 11) that in the months after being arrested, police officers came into the bar where he worked on an increasingly frequent basis and appeared to single him out and harass him.

The review found that seven of the complaints were dealt with to a reasonable standard and four were not. A reconsideration direction is issued in this connection.

3. Background

At approximately 1:30am on Sunday 25 May 2014, the applicant visited a nightclub after finishing work at a nearby pub. On leaving the nightclub a short time later, after having one drink, the applicant was assaulted and sustained an injury to his face. According to the applicant, he approached two police officers (Constables A and B) for assistance. The applicant was subsequently arrested for a Breach of the Peace and transported to a local police office where he was detained for several hours.

Later that day, the applicant attended at Police Office Y to submit complaints about the police in connection with the circumstances of his arrest and the manner in which he was treated by Constables A and B. He met with Sergeant C, and a statement of complaint was noted. The applicant's statement was forwarded to Police Scotland's Professional Standards Department for assessment, and the complaints were then allocated to Inspector D for investigation on 28 May 2014.

Inspector D retired in February 2016 and, at that point, he returned the applicant's complaint file to Professional Standards Department with a covering letter explaining that he had not investigated the complaints. The complaints were subsequently investigated by Sergeant E of Professional Standards

Department. Sergeant E met with the applicant on 11 May 2016 when a further statement of complaint was noted. At that time, the applicant raised additional points of complaint about the lack of investigation into his original complaints and several matters that had arisen following the incident on 25 May 2014. A letter of response was issued to the applicant by Chief Inspector F on 30 September 2016.

In the period between May 2014 and February 2016, when the complaint investigation commenced, a report was submitted to the Procurator Fiscal in connection with the charges against the applicant. On 1 April 2015, the applicant was convicted of an offence under Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010. During the complaint investigation conducted by Sergeant E, information emerged that raised concerns about whether the Procurator Fiscal had been provided with all of the necessary information before deciding whether to raise proceedings. Sergeant E wrote to the Procurator Fiscal on conclusion of the complaint investigation to highlight those concerns.

4. The Review

Complaint 1: Incivility

The applicant complains that police officers were rude and swore at him, called him a 'wimp' and a 'prick' and attempted to belittle him.

Police Handling of Complaint 1

Chief Inspector F provided the following response:

"You state your allegation arose out of the handcuffs being very tight and as a consequence you asked officers to loosen them. The officers initially refused to do anything and the only reaction you received was being told to stop being a wimp and you were called a 'prick'. You state that you thought the officers were attempting to goad you into behaving badly but despite this you did not shout and swear at them. You have denied calling the officers 'pricks' and have stated that whilst it was predominantly the older officer, both officers were rude and swore at you.

[Constable B] acknowledges that you complained about your handcuffs being too tight and the police vehicle was stopped in a layby to allow the handcuffs to be readjusted. Prior to this he states you called both officers 'pricks' and this resulted in him responding with the following comment 'It's no me behaving like a prick'.

Such a comment on its own by [Constable B] would not result in me upholding this allegation if it was said in response to your behaviour but I can inform you that the manner of [Constable B]'s response to the complaint investigation and comments made by him with regard to you, lead to my satisfaction on a balance of probabilities that [Constable B] was rude and attempted to belittle you.

I therefore uphold this allegation with regard to [Constable B] and can inform you that I have recommended that the matter be dealt with under Police Scotland Conduct Regulations and considered along with other issues outlined in this report.

[Constable A] has stated that you called police officers 'fucking pricks' but has failed to offer any further comment on this allegation or refute your assertion, despite being asked to do so.

On a balance probabilities therefore, I uphold this allegation with regard to [Constable A] and intend to deal with it by way of advice to the officer so it can be considered by him as a matter that he can learn from.

Please accept my apologies for the manner in which the officers spoke to you.

Consideration of Complaint 1

The Police Scotland response accurately reflects the information gathered during the complaint investigation. Although there are conflicting accounts about the content of the exchange between the applicant and the officers, Chief Inspector F explained the factors that led him to consider the applicant's version of events to be more probable, in particular the tone of Constable B's statement and his attitude towards the complaint investigation. From the content of Constable B's statement and his email correspondence with Sergeant E, the PIRC considers that Constable B demonstrated utter contempt, not only towards the complainer, but also the complaint handling process. His comments about the complainer are considered inappropriate and wholly unprofessional.

Chief Inspector F upheld the complaint, apologised to the applicant, and explained the action to be taken as a result of his complaint, which the PIRC considers to be appropriate and proportionate. Accordingly, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 2: Excessive force

The applicant complains that a police officer used excessive force by pushing him to the chest without cause or reason.

Within his original statement of complaint noted on 25 May 2014, he stated that Constable B pushed him twice to the chest.

Police Handling of Complaint 2

Chief Inspector F provided the following response:

"Guidelines are provided to police officers with regard to the use of force. Any force used by a police officer or member of police staff must be legal, proportionate, reasonable in the circumstances and the minimum amount necessary to accomplish the lawful objective concerned.

In no circumstances must a person be harshly treated or have greater force used towards them than is absolutely necessary to restrain them.

It is the case that any decision taken by a police officer to use a defensive technique in what they deem to be a confrontational situation is for the individual officer to make based on the circumstances.

There are only two criteria for any use of force by a police officer, those being:

- Justification: where the force used is reasonable and proportionate to the perceived threat, and*
- Preclusion: where other reasonable response options have either been, attempted and failed or are considered to be inappropriate.*

In assessing an allegation of excessive force therefore, I must consider it in terms of these two criteria.

You state you approached a police officer for assistance and he told you he was not interested and pushed you away, an action that took place on two occasions. You assert that there was no reason for the officer to push you as you did not present any threat, were not in the officer's face or personal space and the officer had to step towards you to carry out the action of pushing you.

Using the criteria above, if your statement was viewed in isolation there was no justification for the officer's actions. You did not present a threat and there was no preclusion given that no other reasonable options were considered, such as asking you to step back or wait if I was the case that the officers were dealing with another matter.

The officer's accounts are as follows:

[Constable A] states that whilst speaking to two other males, you approached and challenged him as to why you were speaking to them. You were intoxicated and shouted at him. He states he asked you to walk away and you started to shout and swear stating you were entitled to stand where you wanted. You then stood directly in front of him approximately 30cm from his face in an aggressive manner. In order to create a safe distance he asked you to move back and when he refused he moved you back by using an open hand to your chest to create a safe distance.

He describes you as being unhappy at this and [Constable B] stepped in and also asked you to step back. You refused stating you could stand where you wanted. [Constable B] then warned you about your behaviour and asked you to desist. You then approached [Constable B] in an aggressive manner and he also used an open hand to your chest to create a safe distance.

[Constable B] provides a similar account describing you as intoxicated and argumentative, asserting your right to stand where you wanted whilst shouting and swearing. He states he was concerned by your aggressive tone and manner and created a safe distance between you and him

by using an open hand to your chest. Your response to him was to allege that you had been assaulted.

It is the case that all police officers receive annual officer safety training and a fundamental principle taught is that officers should maintain a safe gap between themselves and a subject they perceive to be a threat. This is to minimise the chances of being assaulted and to keep far enough back to prevent themselves from being easily punched, kicked or struck.

Officers are taught to assess the environment they are in (location, time of day, etc), the demeanour of a subject, their size, stature, skill level and whether they may have any weapons. Further factors to be taken into consideration are whether the subject may be under the influence of alcohol or drugs or they appear to be emotionally attached to a situation.

Officers then have a number of response options available to them such as physical presence, communication skills, defensive tactics (such as pushing or fending a person off), handcuffs, CS spray and the use of a police baton.

The officer's accounts of the incident contradict your recollections. They have justified their actions by describing you as an aggressive individual who was intoxicated. They state that you were asked to step back from them to maintain a safe distance between you and them. You did not step back and therefore they created a safe distance by fending you off with an open hand to your chest, which is an approved officer safety technique.

There is no CCTV footage available and no other witnesses have been identified.

On the basis of the evidence available and on the balance of probability, I do not uphold this allegation.

Consideration of Complaint 2

The analysis of the CCTV evidence provided by Constable B records that he pushed the applicant once to the chest. This is consistent with his notebook entry. However, when Constable B recorded this information in the Analysis of Evidence section of the report (SPR) submitted to the Procurator Fiscal, it could be interpreted that both Constables A and B pushed the applicant.

The COPFS later requested statements from the officers in September 2014. Constable A's statement appears to have been compiled on the basis of the information contained within the SPR, as he states that he also pushed the applicant. However, this information is not supported by the CCTV analysis which was also included in the SPR, or Constable A's notebook entry which makes no reference to him pushing the applicant. Furthermore, Constable A provided additional detail, stating that the applicant stood "approximately 30cm from my face in an aggressive manner". This information is not recorded within the SPR, the CCTV analysis or his notebook entry.

As there appears to be an element of inconsistency in Constable A's account in respect of the applicant's demeanour and which officer(s) pushed him, it is considered that his statement should not

have been so heavily relied upon when determining the outcome of the applicant's complaint. Furthermore, information gathered during the complaint investigation which supports the applicant's version of events was not considered in the complaint response. For example, both officers state that the applicant appeared to be intoxicated which later proved to be incorrect. The applicant's account that he approached the officers as he had been assaulted also proved to be accurate and is in direct contrast to the officers' accounts that he tried to intervene while they spoke to two other men. It is considered that these factors should have been taken into account when determining the outcome of the applicant's complaint. Accordingly it is considered that the complaint response is not adequately reasoned. It is therefore concluded that this complaint was not dealt with to a reasonable standard.

A reconsideration direction is issued to Police Scotland under section 35(7) of the Police Public Order and Criminal Justice (Scotland) Act 2006 in relation to this complaint. The reconsideration is not subject to the Commissioner's supervision.

In reconsidering this complaint Police Scotland should (i) assess the consistency of the information provided by Constable A, (ii) reflect on the comments noted under Complaint 1 in relation to Constable B's attitude towards the applicant (iii) accurately reflect the available evidence which supports the applicant's account of why he approached the officers and which suggests that he was not intoxicated (iv) assess on balance whether or not the applicant's complaint should be upheld and adequately explain any decision reached.

Complaint 3: Excessive force

The applicant complains that police officers used excessive force by swiping (kicking) his legs away without cause. This resulted in the applicant falling to the ground and injuring himself.

Within his first statement dated 25 May 2014 the applicant stated that Constable B "put him to the ground". Within his second statement dated 11 May 2016, he stated that he could "remember [his] legs being kicked from [him] very abruptly".

Police Handling of Complaint 3

Chief Inspector provided the following response:

"This allegation will be assessed under the same criteria as detailed in Allegation 2.

You allege that after being informed you were under arrest, an officer attempted to put a handcuff on you and whilst questioning why you were being arrested you naturally tensed up. You did not fight or resist and had your hands by your side.

You state your legs were then kicked away from you very abruptly, which resulted in you falling to the ground, banging your chin (injuring it) and your watch being damaged.

You state there was no reason for the officers to take the action they did and that their behaviour was excessive and unprofessional.

The technique of taking someone to the ground is a legitimate and recognised tactic taught to officers during officer safety training but again it must be used in a way that is proportionate and legitimate. It is used to gain control of a person by restricting their movement and it gives the officers a point of advantage in which to restrain a person using the minimum force necessary. Kicking a person's legs away in an uncontrolled manner is not a recognised technique taught to officers.

The officers have been asked for their account and have not described you being taken to the ground as part of any attempt to use a recognised police tactic. Their accounts are as follows:

[Constable A] states that [Constable B] informed you that you were under arrest, which resulted in you struggling. You were directed against a nearby wall and officers attempted to place handcuffs on you. You then tucked your arms against your chest actively avoiding being handcuffed. As [Constable A] attempted to loosen your arms, he describes [Constable B] losing his balance and both you and the officer falling to the ground as a consequence of the struggle. At that time you were successfully handcuffed to the rear and were placed in a police vehicle.

[Constable B] describes a struggle and stated that he placed his arm around your body to gain control. You continued struggling and resisted being handcuffed and he states he lost his balance which resulted in you and both officers falling to the ground. Once there you were successfully handcuffed.

This position has been maintained by officers in the initial police report, statements to the court and now in their responses to this allegation.

*A check was made of both officers notebooks. [Constable A] made no direct reference to this element in his notes but [Constable B] recorded the following information "**We attempted to free his arms to apply handcuffs to the rear. He continued to struggle, he was the forced to the ground, facedown and with the aid of others he was handcuffed to the rear**".*

This description of you being forced to the ground is materially different from that of [Constable B] describing losing his balance and both of you falling to the ground.

[Constable B] was asked to clarify his position and comment on the notebook entry that 'others' aided with you being handcuffed. He maintained his position that there was a struggle, you were all close together and general body momentum caused you to trip up and fall over. He states the 'others' he referred to was a doorman from a nearby licensed premise who came to assist the police with controlling you.

[Nightclub T] appears to have been the only premises in the immediate vicinity that was open at the relevant time. The doormen who were working there were identified as a result of another separate incident recorded that night. They were written to as potential witnesses but no response was received.

There is no CCTV available and no other witnesses have been identified.

In summary, if you were struggling and resisting as described by the police officers then it would be legitimate for them to take you to the ground to control you however kicking your legs away in the manner described by you would not.

I am concerned by the discrepancy in [Constable B]'s notebook but I must also accept that officers have been consistent in their accounts in the original police report, statements and subsequent response to your allegations. There is no evidence other than your assertion that your legs were kicked away.

On the basis of the evidence available and on the balance of probability, I do not uphold this allegation.

Consideration of Complaint 3

The Police Scotland response highlights concern that Constable B's notebook entry in relation to this aspect of the incident differs from the information recorded in the SPR and the officers' statements. Despite this concern, the complaint was not upheld on the basis that the officers consistently reported thereafter that the applicant was on the ground as the result of a fall rather than a deliberate action.

However, it is important to note that the officer subject to the complaint, Constable B, himself recorded that the applicant was "forced" to the ground. The SPR and witness statements provided by Constables A and B, which stated that Constable B and the applicant fell, were submitted after the complaints were lodged. If Constable B did indeed lose his balance and fall to the ground, it is considered somewhat unusual that he would record in his notebook that the applicant was "forced to the ground" which clearly implies a deliberate action. It has not been explained why a contemporaneous record such as the notebook entry is considered to be less reliable than the accounts provided subsequently.

Additionally, concerns have already been noted about the consistency of Constable A's account of the incident that led to the applicant's arrest and the reliability of Constable B's account in relation to other aspects of the applicant's complaint. Accordingly it is considered that the decision not to uphold this complaint is not adequately reasoned. It is therefore concluded that the complaint was not dealt with to a reasonable standard.

A reconsideration direction is issued to Police Scotland under section 35(7) of the Police Public Order and Criminal Justice (Scotland) Act 2006 in relation to this complaint. The reconsideration is not subject to the Commissioner's supervision.

In reconsidering this complaint, Police Scotland should (i) reassess the available information from the notebook entries, SPR and statements, (ii) consider the comments made by the PIRC in relation to the content of the SPR and statements (iii) assess on balance whether or not the applicant's complaint should be upheld and adequately explain any decision reached.

Complaint 4: Unlawful arrest

The applicant complains that, on 25 May 2014, he was unlawfully arrested by police officers after he had approached them for help and thereafter did nothing to warrant an arrest.

The words “*unlawful arrest*” were noted on the Heads of Complaint form completed during the applicant’s meeting with Sergeant E on 11 May 2016. Within his statement of the same date, the applicant recorded that he “*believed that [he] had been unlawfully arrested*”. He also stated, in relation to the actions of the officers, that “*there was no reason to take the action they did. Their behaviour was totally excessive and very unprofessional. They escalated the situation*”.

Police Handling of Complaint 4

Chief Inspector F provided the following response:

“On 25 May 2014, police officers had the power to arrest you if they deemed you to be offending against criminal law.

Previous court decisions provide that any act performed by a police officer within his competence or authority is privileged unless it can be shown that the act was done maliciously and without probable cause. This applies whether an individual is found innocent or guilty at court. Even if an accused person is therefore found not guilty at court, it does not automatically follow that the individual was unlawfully arrested.

In light of the above, your allegation of unlawful arrest has to be examined in terms of whether it can be shown that officers acted maliciously and without probable cause when they arrested you on 25 May 2014.

You assert that on 25 May 2014 you had been working at the [Pub S] [Street W, Location X], which closed for business at 1000 hours and you left at 0130 hours. You thereafter went to the nearby [Nightclub T] before leaving at 0200 hours after one drink.

At that time you were approached by a male who you recognised as he had attended the same school as you. the male punched you to the face without provocation and tried to goad you into fighting with him. You refused to become involved and thereafter spoke to other persons (not identified) for a short time before seeing police officers nearby.

You approached the police officers for assistance with the purpose of informing them that you had just been assaulted....

...You state that you approached the police in a reasonable manner and told the officer that you had just been assaulted. You also told him the direction the assailant had went after he assaulted you. The officer did not appear to be dealing with anything else but immediately told you

something like 'not right now' or 'I'm not interested' and pushed you away (to the right shoulder). You questioned why this was the case and why he had pushed you and were perplexed when he then threatened to arrest you. You acknowledge that you did question him further about his actions and from this point were sucked into a scenario where things happened very quickly and you were arrested before having the opportunity to walk away.

You deny being drunk or abusive and have stated that you were unlawfully arrested and wrongly convicted.

Both officers involved in your arrest have been asked for an account. It is appreciated that these may be familiar to you, as both do not alter their positions from the statements previously given to the court in relation to your arrest:

[Constable A] states that he was sitting in a police vehicle when he observed what appeared to be a verbal altercation take place between two males (not identified or traced). He exited the vehicle as did [Constable B], to go and speak to the males.

Whilst speaking to them he states you approached him and began to challenge him as to why he was speaking to them. You appeared to be intoxicated and shouted at him then refused to move away when asked. You then began to swear at the officers. [Constable A] acknowledges he pushed you back.....but describes doing so due to you standing close to him and acting in an aggressive manner. When you refused to desist after several warnings from both officers, he describes you becoming more agitated shouting 'fucking don't touch me' and 'that's assault' and thereafter standing almost nose to nose with [Constable B] whilst stating 'I'm not fucking moving'. You were thereafter arrested.

[Constable B] provides a similar account. He states that you appeared to be intoxicated and were verbally aggressive and confrontational, which led to your arrest. He states that during initial contact you did not make any complaint of having been assaulted and describes you as being an 'intoxicated, verbally abusive and obstructive man seeking to interfere with the actions of the police in their attempt to keep the peace'.

In assessing this allegation I must consider the opposing and alternative accounts provided by you and the police officers.

I accept that you were working until shortly before this incident and were not intoxicated due to alcohol consumption at this time. A breath alcohol reading (BRAC) taken from you for welfare reasons when you were brought into custody supports your position that you had consumed around 1 alcoholic drink prior to the incident.

You have stated you did not know the males being spoken to by police officers and have been unable to provide details of any other independent witnesses to support your assertion that you approached the officers to report having been assaulted rather than to interfere with them.

Evidence was recovered during the investigation which supports your position that at the time of the incident you were the victim of a random assault by the male named by you and that you approached police officers after you had been assaulted. I cannot detail this evidence for you as it includes personal information which is protected by the Data Protection Act 1998 but you should be assured that I have considered it.

You have not been able to provide the identity of the two males being spoken to by police officers despite the likelihood that their accounts would be beneficial to you. The fact that you do not know these persons makes it less credible that you would intervene and challenge the police officers for speaking to them and more credible that you approached them to inform them that you had been assaulted.

Both officers have stated that you did not mention that you had been assaulted when you approached them. They describe you attempting to intervene when they were speaking to two other males and challenging them as to why they were doing so.

There is no CCTV footage available (see Allegation 7) and no other witnesses have been established who can support your account.

You have appeared at court, a trial has taken place during which the accounts of the officers were accepted by a Justice of the Peace and you were convicted.

In summary and as I have previously stated, in order to uphold an allegation of unlawful arrest I must be able to show that the officers concerned acted maliciously and without probable cause when they arrested you on 25 May 2014.

Although there is evidence that supports and adds credibility to your account in terms of events prior to your contact with police officers, there is insufficient evidence to contradict the account of the officers with regard to your behaviour and conduct towards them after you had approached them, that being the actions which led to you being arrested.

I therefore do not uphold this allegation.

Although I do not uphold this allegation, I am satisfied that the evidence relevant to you being assaulted should have been recovered and disclosed in the criminal proceedings prior to your trial.

The Procurator Fiscal has now been provided with a report including detailed information in this regard for their due consideration and determination. Police Scotland has asked the Procurator Fiscal to communicate with you directly on this matter.

Consideration of Complaint 4

Appendix 'O' of the Police Scotland Complaints about the Police Standard Operating Procedure ("the Complaints SOP") provides guidance on defining heads of complaint. A distinction is drawn between complaints of Unlawful Arrest and Unnecessary Arrest as follows:

- **Unlawful arrest or detention** *"is where there is an allegation that an officer did not have power to arrest or detain an individual because there was no provision for the arrest or detention under common law or within statute"*
- **Unnecessary arrest or detention** is *"where there are relevant powers but the complainer believes that an officer should not have arrested them, on the grounds of necessity or proportionality."*

It is not expected that the applicant would have sufficient knowledge of the police complaints system to understand the difference between the terms unlawful arrest and unnecessary arrest. Just because the applicant used the term *"unlawful"*, does not mean that the complaint should have been categorised as such without due consideration of his meaning. From the information provided by the applicant within his statement of 11 May 2016, and taking the wider context of his comments about the actions of Constables A and B into account, it appears that the applicant's complaint would have been more appropriately categorised as a complaint of unnecessary arrest. He did not state at any point that he felt the officers acted outwith their powers, rather that they had acted inappropriately in the situation.

In light of the PIRC's view that the complaint should have been assessed as one of unnecessary arrest, it is considered that the determination should only have been made in accordance with Section 6.12.6 of the Complaints SOP which provides that the decision whether to uphold a complaint must be taken based on the 'balance of probabilities'. That is whether, based on all available evidence, one version of events is considered to be more probable than another. Where conflicting accounts cannot be reconciled, the complaint will not be upheld, however an explanation as to why must be provided.

An analysis of the available evidence was provided within the complaint response which acknowledged that there is some information to support the applicant's version of events prior to approaching Constables A and B. Although Chief Inspector F considered that there was *"insufficient evidence"* to *"contradict"* the accounts of Constables A and B, he raised a number of points that would support the applicant's position about his reason for approaching the officers initially, his position that he was not intoxicated, and whether he would be likely to challenge the officers about their conversation with people he did not know. That information was submitted to the Crown Office and Procurator Fiscal Service (COPFS) following the complaint investigation. It therefore appears that Chief Inspector F considers it to have some bearing on the circumstances of the applicant's arrest and it is unclear if sufficient weight was given to the information supporting the applicant's account when determining the outcome of this complaint.

Furthermore, within the response to Complaint 1, Chief Inspector F raised a concern about Constable B's professionalism, and under Complaint 7 appeared to question the reliability of the statement he provided in response to the applicant's complaints. While it does not necessarily follow that Constable

B's account should be considered as unreliable in relation to every aspect of the applicant's complaints, it is considered that any doubts cast over the overall reliability of the information provided by Constable B should have been fully reflected in the response to each allegation relating to the applicant's arrest and detention.

Observations about the reliability of Constable A's account of the incident are noted under the consideration of Complaint 2.

In summary, it is considered that the complaint was incorrectly categorised as one of unlawful arrest, which affected Police Scotland's ability to provide a reasoned response based on the balance of probabilities. It is therefore concluded that this complaint was not dealt with to a reasonable standard.

A reconsideration direction is issued to Police Scotland under section 35(7) of the Police Public Order and Criminal Justice (Scotland) Act 2006 in relation to this complaint. The reconsideration is not subject to the Commissioner's supervision.

In reconsidering this complaint Police Scotland should re-categorise the complaint as one of unnecessary arrest. A further response should then be issued to the applicant that takes account of the comments made by the PIRC, assesses on balance whether or not the applicant's complaint should be upheld and adequately explains any decision reached.

Complaint 5: Excessive force

The applicant complains that the officers used excessive force by handcuffing him too tightly and deliberately stopping and starting the police vehicle abruptly, causing him to roll around and resulting in pain to his wrists.

Within his statement of complaint, the applicant stated that the van being stopped suddenly caused him to be *'thrown about'*.

Police Handling of Complaint 5

Chief Inspector F provided the following response:

"You have stated that after being arrested you were placed in the caged area of a police van. You informed the officers that the handcuffs were too tight but their response was to abuse you as outlined in Allegation 4....."

....On (sic) route to [Police Office Y] you describe the van stopping abruptly for no reason which you believed to be intentional to cause you pain. The result was that you were thrown about in the rear of the van resulting in further pain.

You have stated that you repeatedly asked for the handcuffs to be loosened and acknowledge that officers stopped on [details of route provided] to readjust them.....

.....[Constable B] has acknowledged that on leaving [Police Office Y] you complained about the 'tightness' of the handcuffs but continued to be abusive. He states however that consideration was given to your request and in [a layby] the police vehicle was stopped and the handcuffs were readjusted.

[Constable B] states that as the driver of the police vehicle, at no point did he apply the brakes of the vehicle deliberately so as to cause you to roll about in the cage of the vehicle with the intention of causing you harm.

[Constable A] has stated that on complaining of the handcuffs being too tight the van was stopped on [details of route provided] and they were loosened. He states that at that time you continued to be aggressive.

He has offered no comment on the manner of [Constable B]'s driving....

....I am satisfied that when you did complain about your handcuffs being too tight, officers took action in a reasonable timescale (on the outskirts of [Location X]) to check on their tightness and to readjust them.

In terms of [Constable B]'s driving, I have no evidence other than your assertion about the manner of driving.

It is the case that there is no physical restraint or seatbelt in the caged area of a police vehicle and there is therefore the possibility than an individual could 'roll' around when the vehicle is in motion and/or stopping and starting.....

...It is not possible to state whether the design of the vehicle was a factor or whether the source of your complaint resulted solely from the tightness of your handcuffs and the manner of the officer's driving. There is insufficient evidence of excessive force with regard to either element.

I do not uphold this allegation.

Consideration of Complaint 5

There appear to be two aspects to the applicant's complaint:

- I. that handcuffs were applied too tightly; and
- II. that Constable B deliberately drove in a manner that would cause the applicant to be unsteady in the rear of the police van.

(i) Application of handcuffs

The complaint response acknowledges that the applicant did raise a concern that the handcuffs were tight. The applicant and Constables A and B confirm in their statements that the police van was stopped during the journey and the applicant's handcuffs were loosened. Accordingly, the response to this aspect of the applicant's complaint is supported by the material information available.

(ii) Manner of driving

The complaint response acknowledges that the lack of seatbelts in the rear of police vans means that an occupant could 'roll around' when the vehicle stops and starts. It does not however address the applicant's complaint that the vehicle was deliberately driven in a manner that caused him to be 'thrown about'

The driver of the vehicle, Constable B, recorded in his statement that "at no time did [he] apply the brakes of the vehicle deliberately so as to cause the accused to roll about the cage of the vehicle with the intention of causing him harm". As already noted, it is considered that Constable B's account in relation to this allegation should be assessed in conjunction with the observations made by Chief Inspector F in relation to Complaints 1 and 7.

Constable A did not comment on the manner of Constable B's driving within his statement. During the complaint investigation, Sergeant E asked him to provide a more detailed statement. Within an email to Constable A dated 10 June 2016, Sergeant E asked him to "state [his] position clearly with regard to each individual allegation". He also provided an example of the type of information that would assist him in addressing the applicant's complaints. Constable A did not respond to Sergeant E's request despite a follow-up email being sent on 24 June 2016. Given the seriousness of the allegation, it is considered that, as the only other witness present, Constable A's account would be an important factor in assessing whether or not the applicant's complaint should be upheld.

In relation to the provision of statements by police officers, Section 6.8.10 of the Police Scotland Complaints about the Police Standard Operating Procedure ("the Complaints SOP") states that:

"Officers against whom allegations are made should not be compelled to provide an operational statement but can, if they wish, provide one. Officers who are witnesses must provide a full operational statement addressing the allegations made".

As it was Constable B who drove the police van, Constable A is not considered to be the subject of this aspect of the applicant's complaint. In accordance with the provisions of the Complaints SOP, it is considered that further efforts should have been made to obtain a more detailed account from Constable A.

It is considered that Police Scotland should have verified whether any Automatic Resource Location (ARL) system information was available that may have shown the speed of the vehicle being driven by Constable B while the applicant was being transported. If available, that information could have been

assessed for relevance, or otherwise, to the allegation made by the applicant about the manner of Constable B's driving.

As no further account was obtained from Constable A and as it unclear whether any relevant information would be available from the ARL system that may have assisted in assessing the applicant's complaint, it is considered that insufficient enquiry was carried out into this aspect of the applicant's complaint. Accordingly it is concluded that the complaint was not dealt with to a reasonable standard.

A reconsideration direction is issued to Police Scotland under section 35(7) of the Police Public Order and Criminal Justice (Scotland) Act 2006 in relation to this complaint. The reconsideration is not subject to the Commissioner's supervision.

In reconsidering this complaint Police Scotland should obtain a further account from Constable A which clearly addresses the applicant's allegation that Constable B deliberately stopped and started the police van to cause the applicant to be 'thrown about'. Efforts should also be made to confirm whether or not any relevant data is available from the ARL system. A further response should then be issued to the applicant that takes account of the observations already made by the PIRC in relation to the reliability or otherwise of Constable B's statement, and which adequately explains any decision reached.

Complaint 6: Lack of action

The applicant complains that, having reported being punched to the face, police officers failed to take any action at that time or thereafter.

Police Handling of Complaint 6

Chief Inspector F provided the following response:

".....There were three [opportunities] for police to properly record that you had been assaulted. Firstly when you reported it to [Constables A and B] on 25 May 2014, secondly when you reported it to [Sergeant C] who noted your complaint and lastly by [Inspector D] who was allocated your complaint.

As highlighted earlier, the officers who arrested you have stated that you did not inform them that you had been assaulted.

[Constable B] has stated that during your initial contact, you did not make any complaint of assault and it was only subsequent to your arrest when he made an examination of CCTV footage that he discovered your involvement in an altercation with another male prior to your arrest. He states that it was clear from the footage that neither officer had a view of the altercation taking place at the time it happened and that they would have acted on it if they had known.

You have not disputed the fact that officers would not have seen the assault on you.

[Constable B] provided a narrative of what he saw on the CCTV to the Procurator Fiscal in the Police Report....

....[Constable B] presents an interpretation of the CCTV that infers you were an active participant in the altercation despite acknowledging that you were punched by the male and slapped by him to the face without striking back.

The failure of police officer to seize CCTV footage has ensured that no further examination can take place.

I cannot state on balance of probability that [Constable A] and [Constable B] were aware that you had been assaulted at the time of your arrest or in the period thereafter. I am satisfied however that given his synopsis of the CCTV, [Constable B] should have recorded a crime record in line with our recording standards (SCRS) at that time.

Having noted that you were punched and slapped by another male, I am satisfied that a failure to record a crime record amounts to Neglect of duty on the part of [Constable B]. I therefore uphold this allegation with regard to [Constable B] and it will be considered along with other matters in terms of the Police Scotland Conduct Regulations.

I do not uphold it with regard to [Constable A].

[Sergeant C] recorded from you in your statement of complaint that you had been punched by a male known to you and that you wished to make an allegation against the arresting officers who ignored you and failed to deal with your assertion that you had been assaulted.

[Sergeant C] has stated he asked you if you wished to report an assault against you and you intimated that you did not. He thereafter forwarded your statement to the Professional Standards Department for progression.

[Sergeant C] has acknowledged that he viewed the relevant CCTV footage but does not recall having witnessed you being assaulted and has little recollection of what he witnessed with regard to your interactions with [Constables A and B].

Given that you did not wish to make a complaint of assault by another male to [Sergeant C] and that he noted a statement and submitted all details to the Professional Standards Department so that the complaint could be investigated, I am satisfied that [Sergeant C] took appropriate action with regard to the information he had at that time and it would be reasonable for him to expect that the officer allocated to investigate the complaint would take measures to investigate the circumstances and thereafter create a crime record if necessary.

I therefore do not uphold this allegation with regard to [Sergeant C].

You are aware that the officer who was allocated your complaint did not investigate the matter and has now retired from Police Scotland. As such he cannot be the subject of Police Scotland Conduct Regulations. I will discuss this further in a later allegation. I will refer to him as [Inspector D].

[Inspector D] had a duty to investigate the concerns you had with regard to the arresting officers failing to deal with your assertion you had been assaulted. He should have discovered that there was relevant exculpatory evidence with regard to this matter and notified the Procurator Fiscal prior to your trial. As previously stated I am bound by data protection with regard to the specifics of the exculpatory evidence but it supports your assertion that you were the victim of an assault.

I uphold the allegation against [Inspector D] for 'Neglect of Duty'.

Please accept my apologies that your report of assault was not properly recorded or investigated and that all exculpatory evidence was not provided to the court prior to your trial. The exculpatory information has now been provided to the Procurator Fiscal for their consideration.

Consideration of Complaint 6

Police Scotland's response made four separate findings in relation to this complaint, stating that it was upheld in respect of Constable B and Inspector D's actions, and not upheld in respect of Constable A and Sergeant C. However, just because some officers may be considered more responsible for a failing than others, does not mean that the complaint should contain separate findings. By splitting the applicant's complaint, Police Scotland has created confusion as to whether or not his allegation was upheld. It is considered that the response should have more clearly informed the applicant whether or not his complaint was upheld overall. Any further action to be taken against the officers concerned could then have been explained separately. Despite this shortcoming in the response, it is considered that a thorough enquiry was carried out into this complaint.

The complaint investigation revealed that, although both Constables A and B stated that they were unaware at the point of arrest that the applicant had been assaulted, Constable B's analysis of the CCTV footage supported the applicant's position that he had been punched and slapped by another person shortly before he spoke with the officers. Police Scotland therefore accepted that a crime report should have been recorded by Constable B at that point.

In addition to the foregoing, it must be considered that the reason for the applicant approaching Constables A and B was to report the assault on him. Therefore, the position of Constables A and B that the applicant did not report that he was assaulted does not appear to be borne out by the overall circumstances.

In relation to the actions of Sergeant C and Inspector D, further advice was sought by Sergeant E from the relevant Police Scotland department, regarding how the Scottish Crime Recording Standards (SCRS) should be interpreted and whether, in the circumstances presented to each officer, a crime report should have been submitted. A copy of the advice received by Sergeant E was provided to the

PIRC during the review. It is considered that the guidance was accurately represented in the complaint response and explains how the conclusions in relation Sergeant C and Inspector D were reached.

Although there was a lack of clarity in the way in which the complaint findings were communicated to the applicant, it is considered that, overall, the complaint can be considered as upheld as failings in the actions of two officers were identified and an apology was issued. It is also considered that sufficient enquiry was carried out into the complaint and that the response is supported by the information gathered during those enquiries. Accordingly it is concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 7: CCTV footage not retrieved

The applicant complains that, when he attended at Police Office X to make his complaint about the police regarding his arrest, he was assured by the police officer who noted his complaint that CCTV evidence would be secured, which was not the case.

Police Handling of Complaint 7

Chief Inspector F provided the following response:

"It is a matter of record that officers failed to secure CCTV evidence in this case. The consequences of that failure permeate throughout your complaint. You have focussed on the officer who noted your complaint ([Sergeant C]) and have stated that he informed you that his first priority would be to seize CCTV to make sure it did not go missing.

Your mother who was with you has confirmed that you were assured that CCTV footage would be secured.

I will examine the actions of [Sergeant C] and [Inspector D], who was allocated the complaint for investigation but will look first at the actions of [Constable B], who reported that he had viewed the CCTV footage and reported the content to the Procurator Fiscal....

.....To comply with procedures officers are expected to fill out a CCTV 'Viewing Log' and note their reasons for accessing the system and document whether any CCTV footage is downloaded.....

[Constable B] informed the Procurator Fiscal that he had viewed the CCTV and as highlighted earlier provided a synopsis of its content. This supported the police narrative of events and he stated that the footage would be submitted as a production once downloaded from the system....

...Our enquiries show that [Constable B] had not recorded on the CCTV Viewing Log that he had accessed the system in the days after your arrest or at any other time.

The expectation would be that if CCTV evidence was available and [Constable B] was going to make reference to it in the police report, then the responsibility for ensuring it was seized as evidence, lay with him as the reporting officer. The provision of a CCTV synopsis, which supported the police narrative without you or your solicitor having the opportunity to view this footage, was prejudicial to you....

...I do not accept the reasons provided by [Constable B] for the failure to seize CCTV footage. I am satisfied that he had a responsibility to do so and this failure amounted to 'Neglect of Duty'. He will be referred for further action under Police Scotland Conduct Regulations in this regard.

I uphold this allegation with regard to [Constable B].

Regarding [Sergeant C] both you and your mother state that the officer informed you that his first priority would be to ensure that CCTV footage was obtained and did not go missing.

The CCTV Viewing Log confirms that [Sergeant C] did view the CCTV footage on the day you made the complaint. He was therefore aware that CCTV was available.

[Sergeant C] has responded to the allegation and states that he informed you and your mother that CCTV would be available to the investigating officer for your complaint and denied stating that he would make a recording of this footage....

....On the balance of probability, I accept that [Sergeant C] informed you that he would secure CCTV and I am of the opinion that he had a responsibility to do so. Unlike the recording of a crime record where evidence will not necessarily be lost through time, CCTV recorded on a hard-drive can be overwritten or lost through system malfunction. I would expect an experienced officer, such as [Sergeant C], to take steps to secure the best available evidence at the earliest opportunity. It was an assumption on his part that it would be secured by someone else. The failure amounts to Neglect of Duty. He will be dealt with by way of advice for future learning. This recognises the fact that although [Sergeant C] informed you that he would secure CCTV and should have done so the greater responsibility lay with [Constable B] and [Inspector D] who was allocated your complaint for investigation.

I uphold this allegation with regard to [Sergeant C].

As with Allegation 6, I consider there to be a significant failure on the part of [Inspector D]. He took no steps to secure the CCTV footage and this amounted to Neglect of Duty. As in previous allegations, no action can be taken in terms of the Police Scotland conduct Regulations as he is no longer a serving police officer.

As a result of this investigation senior officers in the [relevant Police Scotland area] were asked to examine the policies and procedures with regard to accessing CCTV. They instructed a review of practice and new procedures have now been introduced to prevent another incident of this nature.

It must be stated however that failures with regard to this allegation are down to individual officers' actions rather than the policies and procedures that were in place at the time.

Consideration of Complaint 7

As with Complaint 6, it is noted that multiple findings were issued in relation to this complaint. However as the allegation was upheld in respect of each officer who could potentially have secured the CCTV footage, in this instance it is clear that the complaint overall was upheld. It is considered that, based on the available information, the decision to uphold the applicant's complaint is well-reasoned.

The complaint response identified organisational learning for Police Scotland in relation to the securing of CCTV evidence. As a result of the applicant's complaint, a new procedure has been implemented in the relevant Police Scotland area for the securing of Public Space CCTV evidence, a copy of which was provided to the PIRC during the review process. The guidance document now clearly identifies the individual obligations placed on officers to record their access to the Public Space CCTV system, contains clear instructions on downloading footage, and explains the legal responsibilities when downloading, labelling, storing and disposing of CCTV discs.

As the complaint response is well reasoned, and as the applicant was informed of the action taken as a result of his complaint in relation to the officers involved and also the wider procedural change, it is concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaints 8 and 9 noted below have been considered together as they are interlinked

Complaint 8: Complaint not investigated

The applicant complains that, having made a complaint about the police in May 2014, it was never investigated and is only being looked at now, two years later.

Police Handling of Complaint 8

Chief Inspector F provided the following response:

"After you made your complaint to [Sergeant C] on 25 May 2014, your statement was sent to Professional Standards Department (PSD) in Edinburgh along with a 'Complaint Form', which outlined your concerns at that time.

PSD assesses all complaints, record details and make a decision on whether the investigation will be investigated at Division or within PSD. In this case you were spoken to by an officer from PSD on 29 May 2014 and the complaint was assessed as being suitable for investigation by a senior officer in [Police Scotland Division R]. Given the criteria and thresholds in place for enquiries remaining within PSD, I am satisfied that the correct decision was made at the time.

The complaint enquiry log indicates that the complaint was received by the Divisional Command Team within the [Police Scotland Division R] with the responsibility for the administration of complaints on 3 June 2014. It was then allocated to [Inspector D] for investigation on 5 June 2014. The administration team periodically sent out generic reminders to officers who had been allocated complaints enquiring as to the progress of the investigation. These reminders were sporadic and [Inspector D] responded to only one that was sent on 22 March 2015, whereby he indicated that he had the investigation in hand.

[Inspector D] handed in the complaint file and a letter explaining that he had not conducted an investigation into your complaint to the Division on 2 February 2016. The contents of the letter submitted by [Inspector D] cannot be shared with you because it includes sensitive personal information however it has been fully considered in the context of your allegation.

It is known that following representation from your solicitor about the progress of your complaint, the Procurator Fiscal made enquiries with the reporting officer in the criminal case, [Constable B]. He reported that he had contacted [Inspector D] who had your complaint for investigation but had received no response from him. There is nothing to indicate that the Procurator Fiscal made any further enquiries with Police Scotland.

During this enquiry it was established that on 12 January 2015, prior to your trial, [your solicitor] wrote to our Information Management Unit (IMU) making a number of requests. A copy of your statement was requested and your solicitor also asked for details of the officer who noted your complaint, an explanation why CCTV footage was not secured, a copy of your custody record and explanation about your level of intoxication and a copy of statement given in relation to your complaint.

At that time he included a letter to PSD indicating that he was not making a formal complaint but was seeking an update as to the progress of the complaint and explanation about the CCTV. IMU made a response to your solicitor which they considered addressed the issues raised by him. The letter addressed to PSD was not passed on as they did not consider it to be necessary given that your solicitor was not indicating he wished to make a formal complaint.

Enquiries should have been made with PSD and the [Police Scotland Division R] about the complaint investigation at that time.

In summary, failings in the processes employed to monitor allocated complaints in [the Police Scotland Division R] in addition to missed opportunities by the Procurator Fiscal and the IMU contributed to a complete failure by [Inspector D] to progress the investigation into your complaint.

You should be aware that steps have now been taken to address the allocation and monitoring of complaints in [Police Scotland Division R]. The lead officer in the IMU has also been fully advised of this matter and that all enquiries specifically directed to PSD or any other department must be passed on for due consideration before any response is made which is completely accepted by them. Please accept my apologies for Police Scotland failing to investigate your complaint.

Complaint 9: No appropriate complaint system in place

The applicant complains that Police Scotland had no system in place to ensure his complaint was investigated and to prevent such a failure occurring.

Police Handling of Complaint 9

Chief Inspector F provided the following response:

“The evidence outlined in Allegation 8 is directly relevant to this allegation. As an organisation we place responsibility on our police officers to carry out expected core functions but we must have systems in place to deal with situations where they do not do so.

Please accept my apologies that the systems in place at that time did not ensure that your complaint was investigated.

As detailed at Allegation 8, steps have now been taken to address the allocation and monitoring of complaints in [Police Scotland Division R].

I uphold this allegation.

Consideration of Complaints 8 and 9

The complaint response acknowledges that Inspector D did not conduct an investigation into the applicant's original complaints after the file was allocated to him in June 2014. The failure of Professional Standards Department to subsequently monitor the progress of the complaint was also acknowledged. Additionally, the response identified a number of other occasions when Police Scotland as an organisation received communication regarding the applicant's complaint that were not communicated to Professional Standards Department.

The Police Scotland file provided to the PIRC contains further detail of the revised complaint handling procedures now implemented in the applicant's local area. It is noted that significant steps have been taken at a senior level to improve the monitoring and management of complaints since June 2016, both in terms of staff time dedicated to handling complaints and also the introduction of a more sophisticated monitoring system.

As Police Scotland identified a combination of factors that led to the applicant's complaint not being progressed, as he has been informed of the improvements to complaint handling made partly as a result of his experience and, as an apology was issued, it is concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 10: Grabbed by officer

The applicant complains that, having attended at Police Office Y to request a copy of his complaint statement for legal proceedings, he was grabbed by an officer and manhandled out of an interview room to the front counter area, causing him unnecessary embarrassment.

Police Handling of Complaint 10

Chief Inspector F provided the following response:

“..... Enquiries were made with public counter staff at [Police Office Y] and station notebooks were examined to see if there was any record that a message was passed on to [Sergeant C] from you. An entry from July 2014 recorded that a message was passed on to [Sergeant C] from you. This was not considered to be the incident your refer to in this allegation due to the date being a significant period of time before your trial.

I have no evidence that identifies the officer in this matter or the date that the incident happened. I also have no evidence other than your assertion and perception that you were treated inappropriately and caused embarrassment.

Considering the evidence available and on the balance of probability, I uphold this allegation based on your perception. I am unable however to take any further action as I cannot identify the officer concerned.

Please accept my apologies that you were not treated with the respect and courtesy expected by an officer when dealing with members of the public.

Consideration of Complaint 10

It is noted that, during the complaint investigation, Sergeant E twice contacted the applicant by email asking him for further information that may establish when he attended at Police Office Y and whether he did so on more than one occasion. Within the second email, Sergeant E informed the applicant that a notebook entry had been found which showed that he contacted Police Office Y in July 2014 however no other information about that contact was recorded. In his response, the applicant confirmed that he attended the police office prior to his first court date which appears to have been scheduled for 1 April 2015. He also noted in his statement of complaint that the incident occurred “close to [his] trial date”. It is therefore considered that Police Scotland was justified in assessing that the notebook entry from July 2014 did not relate to the applicant’s complaint.

It is however clear that the applicant continually made efforts to obtain a copy of his complaint statement. Furthermore, as one contact with Police Office Y was recorded at an early stage after his arrest, it is reasonable to assess that the applicant would be likely to attend again closer to his trial date if he had still not received his complaint statement. Therefore, although no further information about

the incident could be identified, it is considered that the decision to uphold the applicant's complaint is adequately reasoned.

As the complaint response explained to the applicant why his complaint was upheld, as an apology was issued and, as the response is supported by the material information available, it is concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 11: Harassment

The applicant complains that, shortly after he was arrested, police officers came into the bar where he worked on several occasions and shouted at him for no apparent reason, which he viewed as harassment.

Police Handling of Complaint 11

Chief Inspector F provided the following response:

"You stated that shortly after your arrest on 25 May 2014, police entered the bar where you worked on several occasions. You had not seen the police in there before and they shouted at you for no apparent reason. You had no idea why this occurred but you viewed it as harassment. You described them as going out of their way to be difficult.

All identified incidents at [Pub S] in 2014 have been examined. It is recorded that officers attended at the premises on 8 occasions for various matters, all of which are routine and in line with police duties.

On 10 August 2014, police attended at [Pub S] for the purposes of a licensed premises check. They recorded that around 0045 hours, 3 males were seen to exit the premises in the possession of alcohol. Police officers have the power to enter a licensed premise at any time under Section 38 of the Licensing (Scotland) Act 2005, for the purposes of inspecting the premises and on this occasion they did so. On entering the bar 2 staff members were present and officers saw a male they knew to be under-age standing behind the bar. The male should not have been within the premises and exited by a rear door on seeing the police.

It was reported that officers asked who was in charge and you made it known to them that you were. You were not however a personal licence holder as required in terms of licensing legislation and it was reported that you became confrontational, challenging and swore at the officers.

Officers submitted an Incident on Licensed Premises report for the purposes of our Licensing Department. They indicated that they were concerned about the manner in which the premises were being operated.

Following this report a Licensing Standards Officer met with the Premises Licence Holder and the issues were discussed.

The officers who entered [Pub S] on 10 August 2014 have provided an account. They refute that they singled you out to harass you and indicate that they had been tasked with carrying out a number of licensed premises checks at a variety of premises in [Location X] on the same evening. They state that this is the only occasion they have had any dealings with you and were unaware that you had been arrested on 25 May 2014. They assert that they spoke to you in a polite and courteous manner but you did not extend to them the same courtesy.

We attempted to trace the other member of staff who was working in [Pub S] that night to get an independent account but were unable to do so.

The accounts of the officers directly contradict you in this matter.

Considering the evidence available on the balance of probability, I do not uphold this allegation.

Consideration of Complaint 11

Police Scotland's record of visits to the applicant's place of work and the associated incident reports were provided to the PIRC. It is noted that the frequency of visits did increase shortly after the applicant's arrest, with one incident recorded in June and two in August 2014 where no recorded visits had taken place between February and May. However the circumstances of each incident have been clearly recorded and there is nothing in the available information to suggest that officers attended at the applicant's place of work in order to harass him.

The only incident report that records the applicant being present was that of 10 August 2014. The content of the statements provided by Constables G and H, who attended on that date, have been clearly explained in the complaint response. Both officers state that they had no prior knowledge of the applicant.

Overall, the complaint response is supported by the material information available. It is considered that Police Scotland was warranted in not upholding this complaint as there is nothing in the available information as a whole that would lead Chief Inspector F to prefer the applicant's account over the accounts provided by Constables G and H. It is therefore concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

5. Conclusions

Complaints 1, 6, 7, 8, 9, 10 & 11

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

A reconsideration direction is issued to Police Scotland under section 35(7) of the Police Public Order and Criminal Justice (Scotland) Act 2006 in relation to the four complaints detailed below. The reconsideration is not subject to the Commissioner's supervision.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider these complaints. The person appointed must not have had any previous involvement in the consideration of the complaints. Police Scotland must also adhere to the obligations set out in section 38 and 40 of the Act, as appropriate.

Complaint 2:

In reconsidering this complaint Police Scotland should (i) assess the consistency of the information provided by Constable A, (ii) reflect on the comments noted under Complaint 1 in relation to Constable B's attitude towards the applicant (iii) accurately reflect the available evidence which supports the applicant's account of why he approached the officers and which suggests that he was not intoxicated (iv) assess on balance whether or not the applicant's complaint should be upheld and adequately explain any decision reached.

Complaint 3

In reconsidering this complaint, Police Scotland should (i) reassess the available information from the notebook entries, SPR and statements, (ii) consider the comments made by the PIRC in relation to the content of the SPR and statements (iii) assess on balance whether or not the applicant's complaint should be upheld and adequately explain any decision reached.

Complaint 4

In reconsidering this complaint Police Scotland should re-categorise the complaint as one of unnecessary arrest. A further response should then be issued to the applicant that takes account of the comments made by the PIRC within this report, assesses on balance whether or not the applicant's complaint should be upheld and adequately explains any decision reached.

Complaint 5

In reconsidering this complaint Police Scotland should obtain a further account from Constable A which clearly addresses the applicant's allegation that Constable B deliberately stopped and started the police van to cause the applicant to be 'thrown about'. Efforts should also be made to confirm whether or not any relevant data is available from the ARL system. A further response should then be issued to the applicant that takes account of the observations already made by the PIRC in relation to the reliability or otherwise of Constable B's statement, and which adequately explains any decision reached.

1. Complaint Investigation

Although a reconsideration direction has been issued in this case, it should be noted that the PIRC considers that a thorough investigation was carried out into the applicant's complaints. Sergeant E's diligence in investigating the circumstances of the applicant's arrest and detention, and the attention given to his subsequent complaints, should be commended. This is reflected in the number of complaints that were considered to be reasonably handled.

It is however considered appropriate to issue a reconsideration direction in respect of the remaining four complaints as the PIRC considers that insufficient weight was given to the information gathered during the complaint investigation which supports the applicant's version of events. Furthermore, the rationale applied in the handling of complaints 1 and 7 which questioned the professionalism of Constable B was not applied when considering other complaints in which he was involved. The concern therefore is primarily with the application of the balance of probabilities test when assessing whether or not the complaints should have been upheld, rather than the overall quality of the complaint investigation.

2. Delay

The PIRC notes that the applicant made his complaint on 25 May 2014 and it was not effectively investigated until 11 May 2016, nearly two years later. For members of the public to have confidence in the Police Scotland complaints process, they must be assured that their complaints are promptly investigated and responded to. Significant delays in investigating any applicant's complaint, in this case a period of two years, is wholly unacceptable. Although the PIRC is satisfied that measures have now been implemented in the applicant's local area to ensure that complaints are dealt with timeously, Police Scotland should take steps to monitor the effectiveness of the new procedures.

Lynn McCord
Review Officer

Ilya Zharov
Head of Reviews and Policy