

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

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## 1. Role of the PIRC

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

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

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

## 2. Key findings

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The complaints in this case arose from officers forcing entry to the applicant’s garage in connection with a missing person enquiry. Two complaints were reviewed, namely:

1. that Police Scotland forced entry to the applicant’s premises unlawfully; and
2. that unreasonable force was used by officers to gain entry to the garage.

The review found that neither of the complaints were dealt with to a reasonable standard. Two reconsideration directions were made.

### 3. Background

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On 5 August 2016, entry was forced to a garage associated with the applicant's property (Address X) in connection with a missing person enquiry. The missing person, Ms A, was the tenant of the applicant and was residing at Address X at the time she was reported missing. Ms A was not found in the garage.

The applicant incurred the cost of re-securing the garage door and the repair work carried out.

The applicant made her complaints about the above circumstances on 25 August 2016 and again on 26 September 2016. Chief Inspector B was appointed as the enquiry officer and the applicant received a response to her complaints from Superintendent C in a letter dated 30 November 2016.

### 4. The Review

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#### Complaint 1: Unlawful entry

The applicant complains that Police Scotland forced entry to her garage premises unlawfully. In her letter of complaint the applicant states:

*“At no time did I give permission to Police Scotland to force entry to the premises. At the time, they did not have a perceived or reasonable belief that there was anyone in the garage who required emergency aid or that a life-threatening emergency existed or that there was anyone in the garage at all. There was no extreme urgency to gain access and there was no imminent danger to life.*

*I had already informed Police Scotland that my tenant had no keys to the garage and therefore no access. Police Scotland had also been told the garage was not part of her tenancy agreement.”*

#### Police Handling of Complaint 1

Within the police response to the applicant, Superintendent C acknowledges that the garage in question was not part of Ms A's tenancy agreement and that she did not have access to it. However, the response explains that, because Ms A was classed as a high risk missing person, the decision was taken during a Gold Commander meeting by a trained police search advisor and area commander to force entry to the garage. In support of this decision, the response explains that, as per Police Scotland Standard Operating Procedures, garages and outbuildings are routinely searched during missing person enquiries and states that it is a known phenomenon that missing people and people in crisis often seek refuge in these places. The police response further states that, although Ms A did not have access to the garage, there was a six week window from when the applicant could last confirm the

integrity of the garage during which time Ms A or another person could have attended and changed the locks. The response also explains that, given that Ms A was a high risk missing person, there was an associated degree of urgency and that a three hour delay to wait for the applicant to attend at the garage would not have been acceptable in the circumstances. In support of this decision, Superintendent C also refers to Section 20 of the Police and Fire Reform Act 2012 which states that it is the duty of an officer to “protect life”.

Given the above, Superintendent C reasons that the actions of the officers forcing entry to the garage were proportionate and justified.

### *Consideration of Complaint 1*

As reflected in the response, routine initial searches for missing persons are undertaken and these searches commonly include the place the missing person was last seen, the place they are missing from and the home address of the missing person, including the grounds, outbuildings and surrounding areas.

From the evidence available, Ms A’s home address was searched on 4 August 2016 by officers who were granted access by a friend who had a key to the property. At the time of the initial search, Ms A was graded as ‘medium’ risk missing person. According to the Police Scotland Missing Persons Standard Operating Procedure (“the Missing Persons SOP”), if a person is graded as ‘medium risk’, the risk posed is likely to place the missing person in danger. As the enquiry progressed and new information came to light, at approximately 8:40 pm on 4 August 2016 the risk assessment grading was changed from ‘medium’ to ‘high’. This means that, as per the Missing Persons SOP, the risk posed is immediate and there are substantial grounds for believing that the missing person is in danger through their own vulnerability.

In light of the concern for Ms A’s welfare and as reflected in the response, around mid-day on 5 August 2016 a Gold Commander meeting took place and the police search advisor and local area commander were in agreement that the garage premises associated with the missing person’s address should be searched for the purpose of protecting life and seeking further information which might lead to her whereabouts. A short time after this meeting officers forced entry to the garage.

In support of this course of action Superintendent C refers to Section 20 of the Police and Fire Reform Scotland Act 2012, which outlines the respective duties of police officers, one of which is to protect life.

The response also refers to Police Scotland’s standard operating procedures which outline and explain police powers of search and entry during missing person investigations.

According to paragraph 12.9 of the Missing Persons SOP:

*‘Initial circumstances may dictate an urgent need for a specific property to be searched. Dependent on the urgency and the lack of means to gain access, it may be necessary to force entry into a premises in order to quickly locate missing persons’*

Paragraph 12.9 further states:

*'Common law powers provides that where officers are undertaking enquiries into missing or vulnerable persons and they are in doubt as to a person's welfare, officers have the power to force entry to a premises without warrant in order to save life. This includes circumstances where an officer has reasonable grounds for believing that a person may be within the premises but is unable to respond or answer the door due to illness or injury.'*

Accordingly there are circumstances when the police are empowered to force entry to premises if there are immediate and grave concerns for the safety of a missing person. However, this power to force entry appears to be based on urgency, a lack of alternative means to gain access to the property, and a reasonable belief that the missing person might be within.

From reviewing the evidence available, an officer contacted the applicant at approximately 10:30 pm on 4 August 2017, the night before entry was forced to the garage. The relevant STORM incident is thereafter updated to the effect that the applicant informed officers that there was a garage associated with the property but that Ms A did not have access to it. This fact is also stated within the response which acknowledges that the garage was not part of Ms A's tenancy agreement.

However, the response in this connection reasons that, although the garage was not part of Ms A's tenancy agreement, there was a six week window in which she and other persons could have attended and changed the locks. The response thereafter explains that it is a known phenomenon that missing persons and people in crisis often seek refuge in garages and out buildings. However, the response fails to properly consider the practical implications involved in this particular scenario. The evidence in this case suggests that the garage in question was locked on the outside with 2 padlocks with dead bolts and a lockable handle. In addition, one of the officers who forced entry to the garage acknowledges that the garage door was difficult to open and that specialist equipment was used to force entry. Accordingly, without keys to access the garage or any specialist equipment to effect the removal of the locks, it is difficult to follow the reasoning adopted in the response that the applicant or another person could have entered the garage and replaced the locks. In addition, if in the unlikely event that Ms A had effected entry to the garage and had the padlocks changed, the response also fails to consider the fact the garage was padlocked from the outside. Therefore, for Ms A to be inside, she would have to have been locked in by another person.

Furthermore, although the response in this case also relies on urgency as a reason for the decision to force entry and reasons that a three hour delay in the circumstances in order to wait for the applicant to attend with the keys to the garage would not have been acceptable, as stated above, the information that there was a garage associated to the property was relayed to officers at approximately 10:30 pm on the evening before entry was forced to the garage, approximately 15 hours before entry was forced. Accordingly, if there was an urgent need to force entry to protect life, the response fails to explain or address why the decision to force entry to the garage was not taken as soon as the applicant communicated the information that there was a garage associated with the address or explain why, given that this did not happen, the applicant was not asked to attend with the keys to open to garage at that time.

Accordingly, although the police have a duty to protect life and are empowered at common law to force entry to a premises if there is no other means of entry, an associated degree of urgency and a reasonable belief that the person might be inside, this criteria does not appear to apply in this case.

Accordingly, and for these reasons, it is considered that the complaint is inadequately reasoned and does not fully reflect the material evidence available. 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. 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 this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in section 38 and 40 of the Act, as appropriate. In reconsidering the complaint, Police Scotland must have full regard for the comments and observation made by PIRC in this report. In particular, Police Scotland must specifically address whether, given the 15 hour time gap, there was a sufficient degree of urgency to justify forcing entry without allowing the applicant the opportunity to attend with the keys. The response should also consider whether, based on circumstances, there was a reasonable belief that the missing person might have been inside the garage.

## Complaint 2: Unreasonable force

The applicant complains that unreasonable force was used in order to gain entry to her garage premises. In her letter of complaint the applicant states:

*“Instead of removing the garage’s exterior pad-bolts with bolt cutters and having a locksmith deal with the central lock and handle, Police Scotland chose to entirely destroy my garage door - the outer skin of the door was pulled apart, the door was buckled, a padlock hasp broken off, central lock and handle pulled off and the internal door mechanism completely destroyed. I believe that this information is contained in the report provided by [named company] and lodged with [Sergeant D]*

*Boot marks are visible...evidence that the door had been kicked in...The resultant damage was so excessive and lacking in respect for another’s property that one can hardly believe it was done by serving police officers.”*

## Police Handling of Complaint 2

Within the police response to the applicant, Superintendent C explains that specially trained officers from Police Scotland's Operational Support Unit forced entry to the premises using specialist equipment. In doing so, Superintendent C acknowledges that the security of two padlocks and a locking handle had to be overcome but reasons that no more force than was necessary was used to gain entry to the garage.

## *Consideration of Complaint 2*

The response in this connection explains that the security of the garage was overcome by using specialist equipment in order to remove the two padlocks and locking handle. The response thereafter states that no more force than was necessary was used in order to gain access to the garage but that, due to the urgency of the enquiry, entry was deemed necessary.

However, the response in this connection fails to reflect the extent of the damage caused to the applicant's garage and simply mentions that the padlocks and locking handle were removed. Nevertheless, from examining the complaints file there is an email from an officer, Constable E, detailing the extent of the damage caused. Within this email he states:

*"...the door frame is twisted, and there is damage at the two locking points at the base of the door, The central lock is sheared off. The internal locking bars are cut off, as they were twisted. There is also a bit of damage to the frame."*

The applicant also details fully the damage caused and provides the officer investigating the complaint with photographs of the garage. Notably, this information is not addressed or commented on in the response.

In addition, although the police do have power to force entry to premises in some scenarios, even in the case of a serious and imminent threat to an occupant, the police are still obligated to have regard to minimising the amount of damage caused, and to potentially obtaining the services of approved contractors for the purpose of gaining entry.

This obligation is outlined within paragraph 3.2.1 of the Police Scotland Forced Entry to Premises Standard Operating Procedure ("the Forced Entry SOP") which states:

*"Where there appears to be an immediate threat to the occupant or property and any delay in accessing the property may be detrimental to the health of the occupant...an officer should force entry to the property, having due regard to:*

- *...Causing the minimum amount of damage; and*
- *Contacting other emergency services or approved contractors used for the purposes and gaining and securing property as necessary."*

From the evidence, although there is evidence a contractor was contacted to secure the garage, there is nothing to suggest that any consideration was given to potentially contacting a contractor or

locksmith in the first instance in order to potentially help minimise the damage. Furthermore, although the response reasons that no more force than was necessary was used, the actual extent of the damage that was actually caused is not accurately reflected or commented on in the response.

Accordingly, it is considered that the response is inadequately reasoned and does not properly reflect the material evidence available. It is therefore concluded that this complaint was not dealt with to a reasonable standard.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in section 38 and 40 of the Act, as appropriate. In reconsidering the complaint, Police Scotland must have full regard for the comments and observation made by PIRC in this report. In particular, Police Scotland must consider whether the amount of force used and damage caused was reasonable in the circumstances.

## **Other matters**

It is noted in the overall correspondence in respect of this matter that the applicant incurred the cost of re-securing the garage door and the repair work carried out. Where Police Scotland have caused damage in a case such as this, then they should bear the cost of the damage they have caused.

## 5. Conclusions

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### Complaint 1: Unlawful entry

It is 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. 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 this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in section 38 and 40 of the Act, as appropriate. In reconsidering the complaint, Police Scotland must have full regard for the comments and observation made by PIRC in this report. In particular, Police Scotland must specifically address whether, given the 15 hour time gap, there was a sufficient degree of urgency to justify forcing entry without allowing the applicant the opportunity to attend with the keys. The response should also consider whether, based on circumstances, there was a reasonable belief that the missing person might have been inside the garage.

### Complaint 2: Unreasonable force

It is therefore concluded that this complaint was not dealt with to a reasonable standard.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in section 38 and 40 of the Act, as appropriate. In reconsidering the complaint, Police Scotland must have full regard for the comments and observation made by PIRC in this report. In particular, Police Scotland must consider whether the amount of force used and damage caused was reasonable in the circumstances.

### Other matters

Police Scotland engage with the applicant in respect of the cost of the damage which officers caused to the property and which appears to have been borne by the applicant.

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