

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

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## 1. Role of the PIRC

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

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

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

## 2. Key findings

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The complaint in this case arose after officers attended at the applicant’s property to arrest him under the terms of an apprehension warrant issued for his non-attendance at court. One complaint was reviewed, namely:

- that when officers arrived at the applicant’s home they did not show a warrant.

The review found that the complaint was not dealt with to a reasonable standard. A learning point has been identified.

### 3. Background

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The applicant was due to attend court on 7 November 2016 in connection with several alleged offences, including careless driving. He did not attend the proceedings and, accordingly, an apprehension warrant was granted for his arrest. The applicant's solicitor wrote to him on 8 November 2016 to inform him of the action taken as a result of his non-attendance at court and to explain that a warrant had been granted.

On 30 November 2016, two police officers attended at the applicant's home address to arrest him under the terms of the apprehension warrant. The applicant refused to open the door of the property and shouted at the officers from an upstairs window, stating that he wished to see the warrant documentation. Despite being informed by his solicitor that a warrant had been issued, he questioned its validity and stated that he wished to see a *"wet signature and a crown stamp"*.

Four officers, including two sergeants, attended to assist. The officers were in possession of a copy of the warrant details, however the original document was held at a police office some distance away. As the officers considered the applicant's behaviour at that point to be *"disorderly"*, it was assessed that entry to the property should be forced to effect the applicant's arrest, rather than wait for the original warrant to be obtained.

The applicant submitted his complaint prior to leaving custody on 1 December 2016. Inspector G met with the applicant and a statement of complaint was noted. The Police Scotland Heads of Complaint form was also completed. Chief Inspector H responded to the applicant's complaint by letter of 15 February 2017.

### 4. The Review

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#### The Complaint

The applicant complained that when police officers arrived at his home, they did not show him a warrant.

Within his application to the PIRC, the applicant stated that he had not committed a criminal offence and that the warrant was issued unlawfully.

#### *Police Handling of the Complaint*

Chief Inspector H provided the following response:

*"In your complaint you state that on the 30<sup>th</sup> November 2016 you were within your home address when officers arrived at your door with an apprehension warrant. At this time you went to the window and asked to see the warrant which they refused to show you. You state that a sergeant had the*

warrant at his side but would not let you see it. You further state you informed the officers that they were acting unlawfully but they stated to you that they were coming into your house anyway.

At the time of your arrest there were six officers in attendance, four constables and two sergeants. The two sergeants were called to your home address at the request of the first two officers, as they believed that the situation was escalating in relation to your behaviour and demeanour whilst officers were outside your address. You refused to open the door and would only speak to officers via an upstairs window, shouting at officers throughout the incident.

The two sergeants have confirmed that you were hanging out the rear window of your dwelling and that you were highly agitated. Both sergeants intimate that you had dried blood on your teeth and lips and refused to listen to any of the officers who were outside. One of the sergeants has stated that a small crowd had gathered outside your home address who you attempted to agitate into actively becoming involved in your resistance. The sergeant who possessed a copy of the warrant and tried to explain its contents to you has stated that you questioned the validity of the warrant and stated you did not recognise the authority of the crown. He further states you continually shouted over him and refused to listen to what he had to say.

The sergeant states that despite numerous requests, you refused to open the door whilst getting more and more agitated. Therefore to avoid the situation escalating further and prevent continued public disorder a decision was made not to go and get the official documentation which was located in [Location provided], but to force entry to your house to execute the warrant, without further delay.

Under normal circumstances officers are required to be in possession of the actual warrant when forcing entry to a premises, however Section 20 of the Police and Fire Reform (Scotland) Act 2012, states that police officers have a duty to maintain order and prevent crime. In this case it was decided that due to your behaviour, it was necessary to force entry to your house forthwith, to maintain order.

In addition, under the same statute, police officers have a legal duty to serve and execute a warrant issued by a sheriff, justice of the peace or stipendiary magistrate in relation to criminal proceedings, which they were complying with during this incident.

I believe in these circumstances that the officers' actions were lawful, therefore your allegation is not upheld.

## Consideration of the Complaint

The Police Scotland Warrants Standard Operating Procedure ("the Warrants SOP") states at Section 5 that:

- "On making an arrest under warrant, the constable must inform the person apprehended of the substance of the warrant. The officer is also bound to show the warrant, if asked, unless by doing so the warrant is liable to be lost or destroyed."

- *It is competent for a police officer to apprehend a person under warrant although he does not have the warrant in his possession at that time”.*

Accordingly, it appears that the attending officers initially fulfilled the requirements of the Warrants SOP by informing the applicant of the details of the warrant, as there is no requirement for an officer to either be in possession of a warrant or show that warrant at the point of arrest.

However, the applicant was preventing officers from arresting him by remaining within his address and refusing entry. Under those circumstances, the Warrants SOP states that:

- *“If admittance is refused, doors may be broken open, but this should only be done as a last resort, and only when actually in possession of the warrant”*

Although the officers were not in possession of the original warrant, the complaint response considered that the officers were entitled, under the provisions of Section 20 of the Police and Fire Reform (Scotland) Act 2012, to enter the applicant’s property without possession of the warrant due to his disorderly behaviour. In that respect the complaint response is supported by the information provided within the officers statements in relation to the applicant’s demeanour. The applicant’s own account of the incident supports the officers’ position that he refused to open the door, shouted from a window and challenged them about the validity of the warrant. Furthermore, the complaint response set out the factors that led Sergeants E and F to consider that there was an element of urgency to the situation and that the applicant’s arrest could not be delayed to allow the original warrant to be retrieved.

Other witnesses who may have been in the vicinity were not interviewed during the complaint investigation. For example, Constable B noted in his statement that the applicant shouted to a *“small group of persons who had gathered on waste ground nearby”*. Constable A and Sergeant E also referred to the group while Constable C noted that the applicant *“shouted at people passing by”*. No statements were recorded from those witnesses however it appears from the information available that their details were not noted during the incident. Furthermore, the applicant did not provide the details of any persons who may have witnessed the incident and who could potentially have provided independent accounts of his demeanour and the actions of the police officers. Accordingly, while it is recognised that there may have been an opportunity to obtain independent witness statements, it would be disproportionate to expect unidentified witnesses to be traced and interviewed in relation to this complaint investigation.

Additionally, within his statement, the applicant noted that his son returned home while police officers were in attendance. No statement was noted from him, however, as the applicant stated that he arrived after entry to the property had been forced, he would be unable to comment on the applicant’s behaviour prior to his arrest. Accordingly, it is considered that Police Scotland was justified on this occasion on relying on the accounts of the officers involved, and the applicant’s statement, when assessing whether or not his complaint should be upheld.

As the Police Scotland response outlined the information gathered during the complaint investigation in relation to the applicant's behaviour, and explained why the actions of the officers (by forcing entry to his property to effect his arrest without possession of the apprehension warrant) were assessed to be justified and in accordance with the provisions of the relevant legislation, it is considered that the response provided to the applicant in relation to this aspect of his complaint is supported by the material information available and is adequately reasoned.

However, Section 29.7 of the Warrants SOP states that:

- *“Prior to carrying out enquiries to execute a warrant, the officer should satisfy themselves that all relevant checks have been completed to establish if there are warning signals or intelligence markers of note in respect of the person named on the warrant”.*

It is considered that Police Scotland should have been able to demonstrate to the PIRC the level of enquiry carried out in accordance with the Warrants SOP, and explain whether any information was identified prior to attendance at the applicant's property that may have suggested he could be resistant to arrest or challenge the validity of the warrant. Whilst the complaint response assessed the actions of the officers to be justified under the circumstances, it did not assess whether lack of preparation could have caused the situation to escalate unnecessarily. Although it is not suggested that officers should be in possession of the original documentation on every occasion that an arrest is effected under warrant, the complaint investigation should have assessed whether the applicant's actions could have been anticipated in this case and, accordingly, whether the officers should have been better prepared by ensuring the warrant documentation was to hand.

In summary, the Police Scotland response outlined the information gathered during the complaint investigation in relation to the applicant's behaviour, and explained why the actions of the officers (by forcing entry to his property to effect his arrest without possession of the apprehension warrant) were assessed to be justified and in accordance with the provisions of the relevant legislation. In that respect, it is considered that the response provided to the applicant is supported by the material information available and is adequately reasoned. No further action is required of Police Scotland in that connection. However, as the review identified a shortcoming in the complaint investigation, which did not establish the level of preparation undertaken prior to execution of the warrant, it is concluded that the complaint overall was not dealt with to a reasonable standard. A learning point has been identified in relation to the handling of apprehension warrants which is detailed at the end of this report.

## 5. Conclusions

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It is concluded that this complaint was not dealt with to a reasonable standard. A learning point is identified below.

## Learning Point

Police Scotland should ensure that adequate research is carried out prior to the execution of a warrant in accordance with the provisions of the Warrants SOP. This would allow for an informed decision to be made as to whether or not attending officers should be in possession of the original warrant documentation, where practicable, at the time of effecting arrest. Such pre-emptive action would serve to mitigate the potential for unnecessary escalation in circumstances arising from non-possession of warrant documentation.

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