

# 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 from the applicant’s conviction for an offence under the Animal Health and Welfare (Scotland) Act 2006.

A single complaint was considered: that Police Scotland failed to investigate the applicant’s allegation that witnesses at his trial had lied under oath and produced false evidence.

The review found that the complaint was not dealt with to a reasonable standard, however it was not considered necessary to make any recommendation in this connection.

### 3. Background

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In October 2014, the applicant and his brother were convicted of offences under Section 24 of the Animal Health & Welfare (Scotland) Act 2006, relating to the care of cows on various properties utilised by the applicant. The conviction means that the applicant was prevented from keeping livestock for 5 years.

In January 2015 the applicant instructed a solicitor to submit an appeal against both the conviction and his sentence, however this appeal was subsequently rejected and the original verdict upheld.

In August 2015 the applicant alleged that three witnesses – two SSPCA investigators and a vet – had during his trial produced falsified evidence and lied under oath. The applicant states he was advised by an officer at the front desk that he should report his concerns to the SSPCA. On the same date the applicant submitted a letter to Police Scotland requesting his allegations be investigated.

In October 2015 and January 2016 the applicant submitted information and evidence to Police Scotland, alleging that photographs produced by the SSPCA investigators at the trial had been doctored and that some of the animals photographed did not belong to him. He requested the photographs be examined by experts in animal husbandry.

The applicant chased a response from Police Scotland to his correspondence in March 2016. In April 2016 Sergeant A visited the applicant to discuss his allegations. The applicant states that Sergeant A advised him his concerns were a matter for the SSPCA and advised him to contact their complaints department. The applicant states that his photographic evidence was returned to him shortly after this.

On 26 August 2016 the applicant telephoned Police Scotland to obtain an update on their enquiry into his allegations; as a result, a letter dated 8 September 2016 explaining the outcome of police enquiries was issued to the applicant by Inspector B.

On 27 October 2016 the applicant telephoned the Professional Standards Department of Police Scotland and complained about the content of Inspector B's letter, disputing that Police Scotland had ever conducted an "*investigation*" into his allegations.

A response dated 7 December 2016 addressing the applicant's complaint was thereafter issued by Chief Inspector C.

## 4. The Review

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### Complaint: Lack of investigation

The applicant complained that Police Scotland had failed to investigate his allegations that two SSPCA Inspectors and a vet had lied under oath at his trial and had provided falsified photographic evidence.

### Police Handling of Complaint

In her letter to the applicant dated 7 December 2016, Chief Inspector C wrote:

*“When you originally contacted Police Scotland officers attended and spoke with you at length, discussed these concerns with you and noted a statement.*

*Appropriate enquiry was then conducted...*

*After careful consideration of the details available I have found that your complaint has no [sic] been upheld.*

*The case to which you refer was found to have been proven within a Court of Law and thereafter up held [sic] on appeal.*

*The matter was discussed fully with you and in accordance with crime recording standards was fully investigated by Police Scotland. I am writing to confirm the enquiry has now been concluded by Police Scotland.”*

### Consideration of Complaint

A response dated 8 September 2016 addressing the applicant’s original allegations of perjury was issued by Inspector B as follows:

*“[Sergeant A] and [Constable D] (wildlife crime officer) attended and spoke with yourself whereby it was discussed that there has to be evidence to substantiate that a crime of perjury has been carried out. At that time however you were unable to provide any evidence to back his [sic] allegations up. You claimed that you believed an ear and tag of another cow had been superimposed by the SSPCA Inspectors on the body of one of his own cattle when they have taken the photographs for evidence in the court case. The photographs were viewed by police and there appeared to be no discrepancies that you were alleging between the witness statements and the photographs...*

*As well as the photographs taken for the case there were 4 witnesses. 2 x SSPCA Inspectors, 1 x veterinary surgeon and an independent member of the public who had all witnessed the condition of the animals.*

*On viewing the photographs you admitted that all the other photograph were of cattle or premises that belonged to yourself and it was the opinion of [Sergeant A] and [Constable D] at that time that the SSPCA appeared to have had more than enough evidence to*

*substantiate a charge against yourself as many of the cattle were in a poor condition along with their living conditions. This was fully explained to yourself at the time.*

*[Sergeant A] contacted SSPCA to obtain their complaints procedure from them as by your own omission [sic] this complaint is with their officers not the police. You stated that you were going to contact the SSPCA complaints department.*

*It was concluded that you were happy with this course of action and how Police Scotland had dealt with your enquiry. You did state however if you got no joy with the SSPCA then you may come back to police for help.*

*It was explained to you that you would require to produce new evidence to substantiate this allegation that you thought the SSPCA Insp had lied throughout the court case and doctored pictures as without any proof we could not substantiate that a crime had been committed.*

*The matter was discussed fully with yourself and in accordance with crime recording standards was fully investigated by Police Scotland. I am writing to confirm that this enquiry has now been concluded by Police Scotland.”*

The Crime Report indicates that the allegation was initially recorded by Constable E on 7 November 2015, following which enquiries were conducted with the relevant Procurator Fiscal’s office and courts until 13 April 2016 when the enquiry was closed on the basis that it could not be established that a crime had been committed.

In the terms of the Scottish Crime Recording Standard document (the “SCRS”), to constitute perjury the falsehood must be made under oath, be direct and unequivocal, be pertinent to the material point at issue, and deliberately made on a matter of fact and not a matter of opinion or belief.

From the paperwork provided, it was the conclusion of the investigating officers that there was not sufficient evidence presented by the applicant to substantiate that perjury had been committed, as the officers could not detect any discrepancies in the photographs provided by the applicant, nor could the applicant supply a motive for the photographs to have been altered. In this respect, it was also acknowledged by the applicant to Sergeant A that the majority of the evidence presented at trial did directly refer to or represented his livestock and property. As asserted by Inspector B, “*the SSPCA appeared to have had more than enough evidence to substantiate a charge against yourself*” and thus the allegedly doctored photographs or inconsistent testimonies were not essential to prove this.

Furthermore, as referred to in the Crime Report, the applicant had raised his allegations during both the trial and at the subsequent appeal, where his argument was rejected. As noted by Sergeant A in her communication with SSPCA, Police Scotland did “*not feel this is a police matter as this had already been dealt with by the courts*”. Although the applicant may be of the belief that the Sheriff was not competent and that he was denied a fair trial, these are not matters which are the responsibility of Police Scotland.

It is therefore considered that Chief Inspector C's determination not to uphold the applicant's complaint is well-reasoned on the basis of the material information available, and is consistent with the relevant legislation.

It is however considered that Chief Inspector C's response to the applicant is deficient as there has been no explanation provided to him as to what enquiries were conducted into his allegations or why – with reference to the relevant policy and legislation – it was determined that no criminal offence could be substantiated. This information has been provided to some extent in Inspector B's letter of September 2016, however the very fact that a complaint had been submitted by the applicant after receiving this letter should indicate that the applicant was dissatisfied with the explanation provided to him previously and would therefore require a more substantive response.

For these reasons, it is concluded that the applicant's complaint was not dealt with to a reasonable standard. However as it is considered that a sufficient explanation for the decision not to uphold the applicant's complaint has now been provided in this report, it is concluded that no further action is required of Police Scotland in this connection.

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