

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

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## 1. Role of 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 the applicant’s detention and arrest in connection with an alleged offence. Three complaints were reviewed, namely:

- 1) That the applicant was arrested despite contradictory witness statements;
- 2) That the applicant requested that an officer speak with his son but this request was refused; and
- 3) That an officer did nothing when the applicant told her he had been assaulted and abused and said it was not her job.

The review found that one of the complaints was dealt with to a reasonable standard and two were not. One recommendation has been made.

### 3. Background

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On 31 July 2014, the applicant was in his vehicle with his son when he parked in a restricted area. Restrictions were in place because of the Commonwealth Games. Ms A and Mr B, who were working as parking attendants, approached the applicant and asked him to move his vehicle. A verbal altercation thereafter ensued in which Ms A and Mr B allege that the applicant spat on Ms A before driving away.

Ms A noted the applicant's vehicle registration number and contacted the police.

Constable C attended and noted statements from Ms A and Mr B. The enquiry was then passed to Detective Constable D.

On 10 November 2014, the applicant was detained in connection with the incident and was interviewed under caution by Detective Constable D in the presence of Detective Constable E. Upon conclusion of the interview, the applicant was charged with two alleged offences.

The applicant was found not guilty of both offences and his case was closed on 16 September 2016.

The applicant made his complaints by phone on 3 October 2016. Detective Inspector F was appointed as the enquiry officer. The applicant received a response to his complaints in writing from Detective Chief Inspector G in a letter dated 15 December 2016. However following further contact from the applicant, Detective Chief Inspector G provided the applicant with an additional response dated 26 January 2017.

## 4. The Review

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### Complaint 1: Contradictory witness statements

The applicant complains that he was arrested and charged despite contradictory witness statements.

#### *Police Handling of Complaint 1*

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

*“Detective Inspector [F] has reviewed these statements obtained by the police from the civilian witnesses in the case. These statements obtained by the police contain sufficient corroborative evidence to substantiate the charges libelled against you and for the circumstances to be reported to the Crown Office for their consideration for court proceedings. In light of these corroborative statements and no independent evidence to the contrary it is my determination that this aspect of your complaint is not upheld.”*

#### *Consideration of Complaint 1*

The response in this connection explains to the applicant that, on the basis of the two witness statements provided by Ms A and Mr B, there was sufficient corroborative evidence to report the applicant to the Crown Office and Procurator Fiscal Service (COPFS). However, the response provided to the applicant fails to address the applicant's specific complaint in that the two statements given by Ms and Mr B were contradictory. It is therefore considered that this complaint was not dealt with to a reasonable standard.

That said, the two witness statements in contention were provided to the PIRC and were examined during the course of the review. Of note is that neither statement was found to contain conflicting or contradictory information.

Accordingly, as this review has addressed the applicant's main concern, no further action is required by Police Scotland in this connection.

### Complaint 2: Refused to take statement

The applicant complains that his request that an officer speak to his son as a witness was refused.

#### *Police Handling of Complaint 2*

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

*“[Detective Constable D] states that she asked you for your son’s details in order that she could speak to him as witness but you refused to provide his details or allow the police to speak with him. [Detective Constable D] further states that she believed that as your son was a child, it was not in his interests to have him interviewed. [Detective Constable E] was present during your detention and arrest supports the account provided by [Detective Constable D]. There is no independent evidence available to me and it is therefore my determination that this element of your complaint is not upheld.”*

## **Consideration of Complaint 2**

The response refers to the officers’ respective accounts in which both record that the applicant refused to provide his son’s details or allow for the police to speak with him. Based upon these accounts, and without any other independent evidence, Chief Inspector G does not uphold the applicant’s complaint.

However, during the course of the review, the PIRC was provided with the applicant’s tape recorded interview. During this interview, the applicant invites the officers on more than one occasion to speak to his son to verify the applicant’s version of events.

Accordingly, the response has failed to consider this evidence or take cognisance of the weight this evidence would lend to the applicant’s account.

It is considered that the response is inadequately reasoned and is not supported by the material evidence available. It is therefore concluded that this complaint was not dealt with to a reasonable standard.

It is recommended that Police Scotland listen to the tape recorded interview and issue the applicant with a fresh response which takes into account all of the available evidence.

## **Complaint 3: Officer’s comments**

The applicant complains that he told the officer who arrested him that the witnesses had assaulted and abused him and his son but nothing was done about it and she stated “not my job”.

## **Police Handling of Complaint 3**

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

*“[Detective Constable D] states that at no time did you make an allegation that person had assaulted or abused yourself or your son and, in furtherance, she states that she did not inform you “not my job”. [Detective Constable E] who was present during your detention and arrest and supports the account provided by [Detective Constable D]. There is no independent evidence*

*available to me and it is therefore my determination that this element of your complaint is not upheld.”*

Following a further letter from the applicant highlighting that Detective Inspector F had not listened to the applicant’s interview tape, Detective Chief Inspector G provided the applicant with following further response in a letter dated 26 January 2017:

*“I have personally reviewed the tape recorded interview and although [Detective Constable D] does not state “Not my job”, she does fail to listen to your claim that you were subject to abuse during the incident. I have now determined that this aspect of your complaint is upheld and I would like to apologise for the failure of [Detective Constable D] to fully investigate this counter allegation...”*

*As per our telephone conversation on Friday, 20 January 2017, I accept you do not wish to pursue your initial complaint at this time, but should you change your mind please contact me and I will direct independent officers to conduct this investigation...”*

### **Consideration of Complaint 3**

As with complaint 2, the original response to the applicant failed to take cognisance of all the available evidence.

However, having listened to the recorded interview, Detective Chief Inspector G acknowledges that, although Detective Constable D did not make the alleged comment above, she did fail to listen to or investigate the applicant’s concerns. In light of this, Detective Chief Inspector G upholds the applicant’s complaint and offers an apology.

It is therefore considered that this complaint was dealt with to a reasonable standard.

No further action is required.

## 5. Conclusions

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### Complaint 1: Contradictory witness statements

It is considered that this complaint was not dealt with to a reasonable standard. However, as the review has addressed the applicant's main concern, no further action is required by Police Scotland in this connection.

### Complaint 2: Refused to take statement

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

It is recommended Police Scotland listen to tape recorded interview and issue the applicant with a fresh response which takes into account all of the available evidence.

### Complaint 3: Officer's comments

It is considered that this complaint was dealt with to a reasonable standard.

No further action is required.

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