

# 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 an investigation conducted into the applicant for alleged Data Protection offences.

A single complaint was considered, namely that Police Scotland had unlawfully delayed the investigation and subsequent report to the Crown Office and Procurator Fiscal Service (COPFS) in respect of the allegations made against him.

The review found that the complaint was dealt with to a reasonable standard. No recommendations were made.

### 3. Background

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The applicant is a serving police officer.

In 2012 the applicant was investigated for and subsequently charged with three counts of assault allegedly committed whilst he was on duty. As a result of these charges the applicant had a prolonged period of absence from duty suffering with “*stress and psychological disorders*”.

In May 2013 intelligence was received by Police Scotland that a “*documented criminal*” had been provided with “*confidential policing information*” by the applicant’s brother, who in turn had obtained the information from the applicant. A decision was made by Police Scotland’s Counter Corruption Unit (CCU) to put any investigation into these potential breaches of Data Protection legislation on hold until applicant had returned to duty.

The applicant returned to duty in April 2014, at which time the Data Protection investigation was “*resurrected*”.

In June 2014 the applicant was interviewed in respect of these allegations. A few months later, following further investigation, the applicant was reported to the Procurator Fiscal by Detective Constable A for multiple alleged breaches of the Data Protection Act 1998.

In December 2015 the applicant was found not guilty on two charges of assault and not proven on the third.

In August 2016 the applicant provided a statement to Inspector B complaining that CCU’s delay in investigating the alleged Data Protection breaches had been unlawful and breached his human rights.

The applicant’s complaint was investigated and a letter of response dated 11 April 2017 sent to the applicant by Superintendent C.

### 4. The Review

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#### Complaint: Investigation unlawfully delayed

In his statement the applicant complained that CCU had delayed their investigation into the DPA allegations, and further stated that he believed this delay contravened the Police and Fire Reform (Scotland) Act 2012 and the Human Rights Act.

Specifically the applicant stated that he believed “*the CCU used the welfare issue purely as a front to delay the investigation in order to wait and see the outcome of my assaults trial*”. He alleged that if he was to be found guilty of assault and dismissed from the Police Service then “*I don’t think they would have reported the DPA contraventions to the PF*”.

## *Police Handling of Complaint*

In her letter dated 11 April 2017 addressing the applicant's complaint, Superintendent C wrote:

*"The officers involved in the investigation into the contravention of the Data Protection Act you refer to state that their enquiry was temporarily closed as they were aware that you were absent from work due to a psychological disorder. They state that, as per departmental policy, the interviewing of officers who are absent in relation to stress related illnesses are not conducted. On 7 May 2014, it was established that you had returned to work and the enquiry recommenced.*

*Section 20(1)(d), Police and Fire Reform (Scotland) Act 2012 describes one of the duties of a constable as 'to take such lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders with all due speed to justice' with Section 22(d) of the same Act creating the offence 'for a constable to neglect or violate the Constable's duty'.*

*From the accounts of the officers involved in the investigation of which you were the subject, it appears that any delay was reasonable in that it exclusively considered your wellbeing. In fact, had they chosen to interview you whilst you were absent from work due to stress related issues, they might well have faced criticism.*

*Article 6, Human Rights Act provides for a 'fair and public trial or hearing' which, amongst other things, describes this as being 'held within a reasonable time'.*

*Once again, from the accounts of the officers, I consider the temporary cessation of the interview to be reasonable.*

*I have therefore categorised your allegation as a Quality of Service complaint and on the balance of probability, I must conclude that this allegation is not upheld."*

## *Consideration of Complaint*

The paperwork provided by Police Scotland – specifically the accounts of the officers involved and the content of the Standard Prosecution Report submitted to COPFS – supports that the decision not to interview the applicant was taken by Detective Inspector D, the senior investigating officer, in the interests of the applicant's welfare.

Detective Sergeant E – who conducted initial enquiries prior to the investigation being sisted – and Detective Constable A – who ultimately progressed the investigation when the applicant returned to duty – both state that this decision had been taken by Detective Inspector D because the applicant was absent from duty with a psychological illness linked to the ongoing assault investigation. The decision was thus taken with consideration for his health. Both officers further state that this decision was "as per Departmental Policy" when an officer was absent with a stress-related illness.

Superintendent C has since confirmed to the PIRC in a letter dated 27 June 2017 that the decision made by Detective Inspector D was "not a policy contained in any SOP or elsewhere codified".

However it does not necessarily follow that simply because the rationale for a decision is not part of “*codified*” policy that it is not justified. In this case, it is considered that Superintendent C’s conclusion – that the decision to delay interviewing the applicant was taken in the interests of his welfare – is well-reasoned.

Furthermore, it demonstrates good complaint handling – in accordance with paragraph 6.15.9 of Police Scotland’s standard operating procedure in relation to Complaints About the Police that Superintendent C has specifically referred to the relevant legislation when explaining how she arrived at her conclusion.

It is considered that Superintendent C’s response to the applicant is somewhat deficient because, although she has concluded that it was justified to delay in interviewing the applicant, she has not explained why other elements of the investigation into the applicant were not progressed during the his absence. Indeed in order to fully address the applicant’s complaint, it would have been helpful for Superintendent C to explain to the applicant why he needed to be interviewed under caution at all.

The paperwork provided supports that the requirement to interview the applicant was to allow him the opportunity to provide a legitimate policing purposes for the searches he undertook on police systems. Detective Inspector D states that he was informed on 31 July 2013 by Detective Sergeant E that she was in possession of a sufficiency of information to interview the applicant in relation to the allegations however, due to the applicant’s absence, the decision was taken to suspend the investigation until his return.

Detective Constable A states that he was informed on 7 May 2014 of the applicant’s return to duty and thus the enquiry could be progressed. Detective Constable A states he then conducted an “*intelligence led audit*” to establish the dates and times that the applicant had accessed the Scottish Intelligence Database. Following this audit, Detective Constable A made arrangements to interview the applicant on 12 June 2014.

It does not appear that, in coming to her conclusion, Superintendent C has taken into consideration whether this audit could have been conducted prior to the applicant’s return to duty, thereby expediting his interview. However the applicant’s interview did occur some 6 weeks after his return to duty. Taking into account that it is considered reasonable to have delayed the applicant’s interview until his return due to concerns for his psychological welfare, it is considered that these minor delays are not sufficient justification to question whether the applicant’s complaint should be upheld.

As Superintendent C’s response to the applicant is sufficiently well-reasoned based and reflective of the balance of information available, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

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