

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

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## 1. Role of the PIRC

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

The complaints in this case arose from the applicant being issued a Conditional Offer of Fixed Penalty Notice for causing an “*unnecessary obstruction*”.

Four complaints were considered, namely:

1. that an officer lost his temper and failed to deal with a situation appropriately;
2. that the officers refused to accept an explanation for the offence from the applicant;
3. that the officers failed to accurately record the situation; and
4. that the officers misrepresented the facts of the case to the Court.

The review found that three complaints were handled to a reasonable standard while the remaining complaint was not. A single recommendation was made in this connection. A learning point was also issued.

### 3. Background

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The applicant is a coach driver. On the day in question – 17 May 2015 – the applicant was operating a Rail Replacement service on behalf of Scotland’s train operator.

When he reached one of the stations on his route, the applicant saw that the designated drop-off point for the Rail Replacement coaches had been blocked by three parked cars. The applicant states that as a result he was unable to stop his coach in the designated area and so pulled alongside the parked cars, stopped his vehicle and allowed his passengers to alight and remove their luggage from the luggage hold.

Constables A and B of the local Road Policing Unit were on patrol in the area when their marked police car was held up by traffic. Constables A and B perceived that the cause of the traffic was the applicant’s coach, which was stopped in the centre of the eastbound carriageway.

Constable B approached the applicant and advised him that he was not permitted to stop the coach in its present location and that the applicant was as a result causing an unnecessary obstruction. After a lengthy discussion, Constable B issued the applicant with a Conditional Offer of a Fixed Penalty for a breach of Regulation 103 of the Road Vehicles (Construction and Use) Regulations 1986 (in accordance with Section 42(a) of the Road Traffic Act 1988).

The applicant did not comply with the terms of Conditional Offer and was thus reported to the Crown Office and Procurator Fiscal Service. The applicant defended himself at the subsequent trial. On 16 November 2015 the applicant was found not guilty of the offence as the Justice of the Peace felt that the obstruction caused was not “*unnecessary*”.

On 25 November 2015 the applicant sent a letter, complaining about Constables A and B, to Police Scotland’s Professional Standards Department. On 10 March 2016 Inspector C took a statement from the applicant and obtained his agreement to a list of three complaints for investigation.

On 16 August 2016 Inspector C met with the applicant and his father to discuss her findings in respect of the complaint investigation. The applicant was however unhappy with Inspector C’s findings and with her conduct during the meeting. As a result, on 25 October 2016 the applicant sent a further detailed letter of complaint to Inspector C.

Chief Inspector D responded to the applicant’s complaints in a letter dated 23 March 2017. In this letter, Chief Inspector D also addressed numerous additional issues which the applicant had raised in his October letter.

## 4. The Review

### Complaint 1: Loss of temper

In the statement he gave to Inspector C, the applicant complained that Constable B had an “aggressive attitude” which was “unacceptable” and resulted in his “unwarranted” prosecution. The applicant stated that when he questioned Constable B’s interpretation of the circumstances of the alleged offence, Constable B “became very angry and shouting that I wasn’t allowed to argue with him as he was a traffic officer”.

### Police Handling of Complaint 1

In his letter dated 23 March 2017 addressing the applicant’s complaints, Chief Inspector D wrote:

*“Whilst it is your opinion that [Constable B] lost his temper, [Constable A] ([Constable B]’s colleague), was of the view that [Constable B] dealt with the incident firmly and fairly and at no point lost his temper.*

*I understand that [Inspector C] viewed and listened to the recordings provided by you and saw no evidence of [Constable B] losing his temper or being aggressive, however was of the opinion that [Constable B] was overly assertive in his manner and tone.*

*In view of the aforementioned, this part of your complaint relative to [Constable B]’s manner and tone has been recorded as Incivility, and Irregularity in Procedure, and is upheld [emphasis in original].*

*Please accept my apologies in relation to same.*

*I expect my officers to act with the utmost professionalism, integrity and respect during the execution of their duties.*

*[Constable B] to be [sic] counselled accordingly by line management.”*

In respect of the applicant’s complaint that his prosecution was “unwarranted” and occurred as a result of Constable B’s loss of temper, Chief Inspector D wrote:

*“The officer’s opinion was that by stopping your vehicle in the eastbound lane as opposed to seeking an alternative, you were causing an unnecessary obstruction.*

*In order to deal with this matter the officers could have chosen to 1) Issue a warning to yourself as the driver; 2) Issue you (the driver) with a non-endorsable Conditional Offer of a Fixed Penalty Ticket for a Vehicle Causing Unnecessary Obstruction; or 3) Report you (the driver) direct to the Crown Office and Procurator Fiscal Service, at which point it would be a matter for that Agency to decide whether to take proceedings against you as the driver.*

*As you are aware, you were issued with a Conditional Offer of a Fixed Penalty ticket, which you subsequently elected not to pay, hence the matter being referred to Court...*

*There is no doubt that you stopped your coach in the carriageway to allow passengers to alight, and to obtain their luggage from the luggage area. Therefore you were charged with the offence of causing an unnecessary obstruction. Both officers witnessed this, and therefore deemed the aforementioned offence to have taken place. I also understand that you yourself stated you had stopped your coach in such a position due to the drop off area being occupied by vehicles.*

*... it is clear... that you are extremely aggrieved at having been reported for the offence of causing an unnecessary obstruction. However, because you do not agree with the officers' actions does not necessarily mean that their actions were illegal. The officers' actions were valid based on what they saw on the day, and their opinion that you caused an unnecessary obstruction."*

## **Consideration of Complaint 1**

It is considered that there are two aspects to this complaint: (i) that Constable B "*lost his temper*" with the applicant; and (ii) that this loss of temper resulted in the applicant's "*unfounded criminal prosecution*".

### **(i) Loss of temper**

Constables A and B both provided statements addressing this aspect of the applicant's complaint. Constable A's position has been accurately reflected in Chief Inspector D's response. Constable B, in his statement, denied that he lost his temper however acknowledged that he may have raised his voice or shouted at the applicant "*because the area was very noisy*".

Video footage provided by the applicant was also examined by Inspector C and has been shared with the PIRC. It is considered that Constable B's attitude displayed in the video could be interpreted either as a "*loss of temper*" or as being "*overly assertive*", as it is not considered that there is a great deal of difference between the two.

However the pertinent point is that Inspector C, when dealing with the applicant's complaint, viewed the video and, based on its contents, came to the conclusion that the applicant's complaint should be upheld. Furthermore Police Scotland have recorded that Constable B would be given corrective advice regarding his "*attitude*". It is considered that this is an appropriate outcome to the applicant's complaint.

### **(ii) Unfounded prosecution**

Paragraph 2.4 of Police Scotland's standard operating procedure in respect of Parking provides that "*Cases of obstruction when the driver is present... may be dealt with by means of a non-endorsable conditional offer, or alternatively the driver may be charged with the offence*".

As correctly reflected in Chief Inspector D's response, the applicant was issued with a Conditional Offer of a Fixed Penalty and himself chose not to pay and thus have the matter referred to the Procurator Fiscal. Furthermore, as identified by Chief Inspector D, there is no doubt that the applicant stopped his

coach in the carriageway and that the officers became caught in the traffic tailback resulting from this stop. It is therefore considered that Chief Inspector D's conclusion – that the officers' actions were valid in respect the powers available to them from both the legislation and Police Scotland's procedures – is supported by the material information available.

It is acknowledged that the officers could have used their discretion *not* to issue the applicant with a Conditional Offer of a Fixed Penalty. However it does not necessarily follow that, because this was not the action taken by the officers, their actions must have been as a result of a loss of temper or malice towards the applicant. Rather, the officers' interpretation of the circumstances was that the conditions of the offence had meet met, and thus issuing a Conditional Offer of a Fixed Penalty to the applicant was justified.

On the basis of the foregoing, it is concluded that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

### Complaint 2: Refusal to accept explanation

In the statement he gave to Inspector C, the applicant complained that he had provided several reasons why he felt he had to stop the coach on the road adjacent to the cars parked in the designated drop-off bay, however his "*explanations were not duly noted*" by Constables A or B.

The applicant pointed out that the Justice of the Peace had found him not guilty on the basis that the obstruction caused had not been "*unnecessary*". The applicant therefore considers that Constables A and B should have taken cognisance of his explanations for his actions.

### Complaint 3: Failure to make an accurate record

In the statement he gave to Inspector C, the applicant complained that his "*attempts to have this situation documented were ignored*". Specifically, the applicant pointed out that the officers had incorrectly recorded his employer as a named rail company; and had misrepresented the location of the drop-off point and the lack of alternatives available to him.

### Police Handling of Complaint 2 and 3

Chief Inspector D addressed these complaints together and responded as follows:

*"I understand that [Inspector C]'s enquiries included listening to your version of events and noting your statement, obtaining the officers versions of events, and listening and viewing the recordings you provided. Throughout these enquiries, whilst [Inspector C] identified that you explained about the rail replacement service and pointed out that the reserved drop off area was occupied by cars, she could find no evidence of you making any attempt to identify an alternative location to drop off your passengers in an effort to avoid the aforementioned obstruction.*

*I am also advised that the situation was properly recorded by both officers as part of the recording process in their electronic notebooks, and the completion of the Conditional Offer of Fixed Penalty ticket, as per their own observations and interpretation of the circumstances.*

*In view of the aforementioned, this part of your complaint has been recorded as Irregularity in Procedure, and is **not upheld**.*

In respect of the applicant's specific concern that neither officer recorded that he had stopped his coach directly adjacent to the area designated for coaches to stop, Chief Inspector D wrote:

*"I understand from [Inspector C]'s report that both officers recorded that you stopped in the carriageway causing an obstruction. [Constable A] recorded "Stopped in the middle of the road on [locus]..." as a written note on her PDA. [Constable B] recorded Conditional Offer of Fixed Penalty as "for parking in a narrow road"... As [above], you stopped your coach in the eastbound lane on [locus] in order to allow passengers to alight. As such your actions were deemed by officers to have caused an obstruction. The area designated for coach drop off as part of the restrictions was adjacent to where you had stopped, and was clearly marked with yellow cones and appropriate signage, and whilst that was not noted by either officer, the descriptions used by the officers describe the offence."*

In respect of the applicant's specific concern that Constable B had not correctly recorded the correct location of the drop-off bay, Chief Inspector D wrote:

*"The location of the Drop off bay, as far as I can see from all the material provided to me, was located to the west of the crossing..."*

*[Constable B], in a statement he provided to [Inspector C], states that the designated parking area for coaches was approximately 50 metres east of the crossing. [Constable B] has clearly made a mistake in his recollection of the circumstances/geography at locus."*

## Consideration of Complaint 2

The video provided by the applicant as support for his complaints confirms that, during his discussion with Constable B, he informed Constable B that he was unable to stop in the designated area because the space was blocked, and there were no other suitable places to pull in. Constable B informed the applicant that regardless of the space being blocked, he should have taken alternative action rather than stop the coach in the middle of the carriageway as this had caused an obstruction.

It is considered that this video supports that the mitigation offered by the applicant was taken into consideration by Constable B, however was not considered by Constable B to affect his assessment of the offence. This is further supported by Constable B's statement addressing the allegation, wherein he confirms that, in his assessment, the obstruction caused by the coach was unnecessary and the applicant should have taken a different course of action to prevent blocking the road.

Constable A also states that she and Constable B listened to the applicant's explanation for his action, however she did not believe that his explanation justified his decision to stop the coach in the middle of the road.

The material information available supports that the officers did take cognisance of the applicant's explanation for his actions; however they still considered that he was guilty of the offence of causing an unnecessary obstruction as they assessed that he could have taken a different course of action to prevent obstructing the road. It does not follow that, because the Justice of the Peace interpreted the circumstances differently from the officers, that the officers were not justified in reporting the applicant based on their interpretation of the circumstances at the time. On this basis, it is considered that Chief Inspector D's decision not to uphold the applicant's complaint is well-reasoned.

For this reasons, it is concluded that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

### *Consideration of Complaint 3*

As discussed above, the officers did not consider that the explanation provided by the applicant justified his actions. This position is reasonable.

However the applicant did offer an explanation for his actions and this explanation was accepted by the Justice of the Peace. As the completion of the offence hinged on an interpretation of whether or not the obstruction caused was "*unnecessary*", and the applicant asserted that it was not, it is considered that the officers were obligated to record the applicant's explanations, even if they did not agree with it and it did not affect their own interpretation that he had committed an offence.

In this respect, the statements submitted by Constables A and B to the Procurator Fiscal when reporting this matter do not record the applicant's explanations for this actions or document his perception that there were no other suitable stopping places available to him. Given the eventual outcome of the case, it is reasonable to consider that had the applicant's detailed justification for his actions been included in the report, the matter may have been disposed of at that stage and not taken to court. It is therefore follows that the officers did not present the full facts and circumstances of the incident to the Procurator Fiscal – as they are required to do in accordance with Police Scotland's disclosure obligations – to enable COPFS to make an informed decision.

Furthermore, Chief Inspector D has acknowledged that both officers incorrectly recorded the location of the designated drop-off point and made an assumption that the applicant was employed by the named rail company when he was not.

Taking these points into account, it is considered that Chief Inspector D's conclusion not to uphold this aspect of the applicant's complaint is not well-reasoned.

Finally, it is considered that this element of the applicant's complaint is separate from that considered in Complaint 2 and should therefore have been recorded and addressed separately in Chief Inspector D's response.

For the reasons given above, it is concluded that this complaint was not handled to a reasonable standard. It is recommended that, taking the points made above into account, Police Scotland reassess whether the justification provided by the applicant for his actions should have been recorded by the officers and thus included within the report that was sent to the Procurator Fiscal. A further letter should thereafter be issued to the applicant explaining the outcome of this reassessment and confirming whether or not the applicant's complaint – that officers failed to accurately record the circumstances – has been upheld.

#### Complaint 4: Misrepresentation of facts

The applicant complained that both officers had, in court, "*stated facts that were contrary to the facts that they had seen*". In this respect, the applicant referred to the same issues as discussed in Complaint 3, namely: the officers' assertion that he worked for a named rail company; inaccurate descriptions of the locus and a misrepresentation of the conversation the applicant had with them.

#### Police Handling of Complaint 4

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

*"I understand that you represented yourself in court.*

*As part of her investigation, [Inspector C] caused a statement to be noted from the Justice of the Peace who heard your case, and spoke with the Procurator Fiscal Depute who led the prosecution case. Neither of these parties had any concern about the evidence provided by [Constables A and B], and were satisfied by the representations made by both Police officers.*

*In view of the aforementioned, this part of your complaint has been recorded as Irregularity in Procedure, and is **not upheld.**"*

In respect of the applicant's concern that the officers had erroneously told the Court he worked for a named rail company, Chief Inspector D wrote:

*"It is noted that both officers referred to [rail company] incorrectly, however this was a genuine mistake on their part, and again had no bearing on the case in Court, or indeed the offence in question."*

In respect of the applicant's concern that the officers had provided different descriptions of where he had stopped the coach, Chief Inspector D wrote:

*"The fact remains that you stopped your coach in the carriageway and not in the Drop off Bay (for reasons already discussed), and because officers have used different words and*

*phrasing to describe same, I am of the opinion that this does not essentially make them incorrect, but is a reflection of the officers recollection and interpretation of events.”*

## **Consideration of Complaint 4**

As Chief Inspector D has explained to the applicant, a statement was taken from the Justice of the Peace who heard the applicant’s case in court. In this statement, the Justice confirmed that he “*never queried or doubted*” the evidence given by either Constable A or Constable B during the hearing. The Justice further notes that both officers were subject to cross-examination by the applicant wherein the applicant “*was trying to put a different slant*” on the information the officers provided.

In his statement addressing this complaint, Constable B explained that he had simply been led through the content of the statement he had submitted at the time the offence was reported to the Procurator Fiscal.

That the applicant’s mitigation for his actions was not recorded by the officers has already been discussed in Complaint 3. It is accepted that the applicant has a different perception of the precise circumstances of the incident, especially as he had the benefit of video footage. It is also accepted that, as identified by Chief Inspector D, the officers recorded their own interpretation of the circumstances. At the time the information was recorded, the officers would have no way of knowing that the matter would reach court as this outcome hinged on the applicant’s decision not to pay the Fixed Penalty. Nevertheless, the officers had a duty to accurately record the circumstances of the incident, including the explanations provided by the applicant, lest they be required to report the matter and provide evidence on a future date.

However the fact that the officers accounts differ from the applicant’s does not necessarily mean that the officers deliberately stated, in court, facts contrary to their own knowledge. In this respect, it is noted that the hearing took place some six months after the incident. It is therefore understandable that the evidence provided by the officers in court would reflect the content of the operational statements they noted following the incident as their recollection of the circumstances may have been affected by the passage of time.

Taking these points into account, it is considered that Chief Inspector D’s decision not to uphold the applicant’s complaint is justified. For this is reason, it is concluded that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

Notwithstanding this, it is noted that in a letter to the applicant dated 18 April 2017, Chief Inspector D advised the applicant that this particular allegation had not been referred to the Procurator Fiscal as a criminal allegation about the officers concerned because this action “*would only be progressed when evidence has been provided through enquiry, that the essential elements of a crime had been met, i.e. that it is a crime.*”

Paragraph 6.11.1 of Police Scotland’s standard operating procedure in respect of Complaints About the Police (the “Complaints SOP”) states that:

*“Where a complaint contains an allegation from which it may reasonably be inferred that an **on duty** member of the service may have committed a criminal offence, irrespective of the evidence available, the matter requires to be reported to the COPFS via PSD within **56 days** of the complaint being made.” [emphasis in original]*

Within the paperwork provided by Police Scotland it is indicated that a telephone conversation took place between the applicant and Sergeant E of the Professional Standards Department on 3 February 2016. During this conversation Sergeant E records that the applicant agreed that his complaint was not a criminal allegation and confirmed the differences in interpretation of the circumstances of the offence were discussed openly in court.

On this basis, it is considered reasonable that Police Scotland did not refer the matter to COPFS as a criminal allegation against a police officer. However the rationale provided to the applicant in Chief Inspector D’s letter dated 18 April 2017 is not consistent with the Complaints SOP. This is a learning point for Chief Inspector D.

## 5. Conclusions

### Complaints 1, 2 & 4:

It is concluded that these complaints were handled to a reasonable standard. No further action is required of Police Scotland in this connection.

### Complaint 3: Failure to make accurate notes

It is concluded that this complaint was not handled to a reasonable standard. It is recommended that, taking the points made above into account, Police Scotland reassess whether the justification provided by the applicant for his actions should have been recorded by the officers and thus included within the report that was sent to the Procurator Fiscal. A further letter should thereafter be issued to the applicant explaining the outcome of this reassessment and confirming whether or not the applicant’s complaint – that officers failed to accurately record the circumstances – has been upheld.

### Learning Point

It is noted that in a letter to the applicant dated 18 April 2017, Chief Inspector D advised the applicant that Complaint 4 had not been referred to the Procurator Fiscal as a criminal allegation about the officers concerned because this action “*would only be progressed when evidence has been provided through enquiry, that the essential elements of a crime had been met, i.e. that it is a crime.*”

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