

# 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 the police action taken in relation to an incident the applicant reported. Three complaints were reviewed, namely:

- 1) that the officer who attended the reported incident on 9 July 2016 failed to take the matter seriously and investigate the circumstances as a crime as the applicant reported it;
- 2) that one of the officers made a sarcastic and uncivil comment towards the applicant with body posture to match; and
- 3) that officers demonstrated a lack of awareness of the rights of citizens/members of the public to take photographs

Of the three complaints considered, it was found that none were dealt with to a reasonable standard. Three recommendations were made.

### 3. Background

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On the evening of 8 July 2016, the applicant contacted the police to report that there was a trailer parked on his business property allegedly blocking access to his rear door and garage. Police attended but were unable to identify or trace the owner of the trailer and no action was taken to remove the trailer at that time.

On the morning of 9 July 2016, the applicant returned to his premises and noted that the trailer had not been moved.

A short time later, the owner of the trailer, Mr A, attended and the applicant spoke with him but Mr A refused to move the trailer.

The applicant photographed Mr A, the trailer, and the vehicle Mr A was driving at the time. The applicant alleges that Mr A then came towards him, forcibly removed the camera from him and broke the camera lens.

The applicant thereafter contacted the police to report an alleged assault. Officers attended and spoke with Mr A who was asked to return the applicant's camera and who did so at the officers' request.

No formal action was taken at that time and the applicant and Mr A were advised to go their separate ways.

The applicant returned home and spoke with his wife who re contacted the police. Different officers attended and noted statement from the applicant and Mr A was subsequently interviewed by officers and thereafter reported to the Crown Office and Procurator Fiscal Service for an alleged offence under Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

The applicant made his complaint in writing via his solicitor in a letter dated 12 January 2017. Inspector B was appointed as the enquiry officer and the applicant received a response to his complaints in writing from Superintendent C in a letter dated 25 March 2017.

## 4. The Review

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### Complaint 1: Failed to investigate

The applicant complains that the officers who attended on 9 July 2016 failed to take the matter he reported seriously and investigate the circumstances

#### *Police Handling of Complaint 1*

In his decision not to uphold the applicant's complaint, Superintendent C reasons that the officers who attended the incident formed the opinion that both the applicant and Mr A might have committed a public order offence. However, he further states that given the minor nature of the incident, the officers exercised their discretion and advised both the applicant and Mr A to go their separate ways.

Superintendent C therefore reasons that although the circumstances could have been investigated as an alleged offence, officers were not wrong to use their discretion and advise the parties to go their separate ways.

#### *Consideration of Complaint 1*

Although the response in this connection reasons that officers were not incorrect to exercise their discretion, it is clear from the STORM incident report that the applicant contacted 999 and informed the operator that he had been assaulted and that his camera had been taken from him and broken. In addition, it is also clear that, on police arrival, Mr A was in possession of the applicant's camera.

Accordingly, the evidence available would support the applicant's position that he contacted the police to report a crime, and there would appear to be evidence available to suggest that Mr A had potentially forcibly removed the applicant's camera from his possession.

Consequently, although the response reasons that the officers were not incorrect to exercise their discretion, if an incident is reported as a crime in the first instance as the applicant alleges, the incident should routinely be recorded and investigated as a crime under the Scottish Crime Recording Standards (SCRS) unless there is credible evidence to the contrary.

In these circumstances, the applicant contacted Police Scotland to report an alleged crime, and the evidence on police arrival would appear to suggest that an offence might have occurred.

Furthermore, when the applicant returned home a short time later, his wife re-contacted the police to report the incident. Although not mentioned in the response, following this second report, different officers attended, noted a full statement from Mr A and carried out enquiries which resulted in Mr A being reported to the COPFS for an alleged offence under Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

In addition, although the response also reasons that the applicant might also have committed a public order offence, there is no suggestion in any of the information or either officers' statement that Mr A made any counter allegation or in any way was alarmed or threatened by the applicant's behaviour; rather, both officers record that Mr A appeared calm on their arrival.

Furthermore, it would also appear to be the case that, although the applicant contacted the police to report an assault and request their assistance, the officers spoke with Mr A on their arrival before engaging with the applicant. At this time, although Mr A could have been a 'suspect' in a criminal allegation, there is no suggestion in the officers' respective accounts that he was cautioned before he was spoken with; rather, the evidence would suggest that the officers accepted his version of events and then reprimanded the applicant for his behaviour. Accordingly, whilst there is nothing wrong with officers exercising their discretion in minor matters, it is considered that in these particular circumstances this is a flawed approach to an allegation of assault and could have potentially undermined further proceedings, particularly if the incident was more serious in nature.

For these reasons, it is considered that the response offered by Superintendent C is inadequately reasoned and is not in line with the Scottish Crime Recording Standard.

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

It is recommended that Police Scotland issue the applicant with a further response which considers the evidence as a whole and the provisions of the SCRS. The response should also consider if the approach taken by the initial attending officers was appropriate in the circumstances.

## Complaint 2: Incivility

The applicant complains that one of the officers made a sarcastic and uncivil comment towards him with a body posture to match.

### *Police Handling of Complaint 2*

The response acknowledges the applicant's concern that an officer made the comment "*I suppose you think it would be ok to take photographs of children in a public place with their parents watching.*"

The response then explains that the officers who attended and spoke with the applicant provided an account in which they both state that they were polite and professional and at no time adopted volatile or aggressive stances or make improper remarks.

Based on these accounts, Superintendent C does not uphold the applicant's complaint.

### *Consideration of Complaint 2*

Constables D and E have provided an account in which they both record that they remained professional in their dealings with the applicant and did not make any sarcastic comments towards him.

Constable E also records within her respective account that neither officer adopted an aggressive or inappropriate stance towards the applicant.

However, it is noted that the applicant's complaint focusses on a specific comment allegedly made by one of the officers. Accordingly, although both officers have provided accounts which deny the allegation that they made sarcastic or uncivil comments, neither specifically addressed within their respective account if they made this particular comment in their dealings with the applicant.

Accordingly, it is considered that the complaint response is inadequately reasoned.

It is therefore concluded that this complaint was not handled to a reasonable standard.

It is recommended that Police Scotland:

- a) obtain further accounts from both officers which specifically address if either made the comment alleged;
- b) based on these accounts, and on the balance of probabilities, re -consider the complaint and;
- c) issue the applicant with a further response. If an officer did make this comment, the response should consider if this comment was appropriate in the circumstances.

### **Complaint 3: Lack of knowledge**

The applicant complained that officers demonstrated a lack of awareness of the rights of citizens/members of the public to take photographs.

#### ***Police Handling of Complaint 3***

The response in this connection explains that the applicant's behaviour could have amounted to an offence under Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. The response reasons that, although this legislation is not specific to taking photographs, it could apply to a scenario where a person felt threatened or alarmed by the manner in which another person was taking their photograph. Superintendent C then states that he is satisfied the officers would have had sufficient knowledge of this legislation and he does not uphold the applicant's complaint.

#### ***Consideration of Complaint 3***

The response acknowledges that there is no specific legislation in place that covers taking photographs in these circumstances.

However, the response reasons that the applicant's actions might have amounted to an offence under Section 38 of the Criminal Justice and Licensing Scotland Act 2010("the Act"). Section 38 can potentially cover a wide range of behaviour which could be perceived as threatening or abusive and it cannot be excluded that in certain specific circumstances, taking photographs of individuals without their consent could potentially amount to an offence under this legislation if that action amounted to

harassment causing fear and alarm. Superintendent's approach is extremely speculative and there is nothing in the available evidence to suggest that the manner in which the applicant took photographs caused Mr A fear or alarm.

In addition, and notwithstanding the above, from reviewing the account of Constable D, it is clear that she did make a comment/offer advice in relation to the matter of the applicant taking photographs in the circumstances. In her statement she records:

*"I put it to [the applicant] that that his approach to the matter was not appropriate behaviour and that with no permission he should not be taking photographs of people."*

Accordingly, the substantive evidence available would suggest that the applicant was provided with advice from Constable D which, whilst precautionary in nature, is not supported by any legislation or legal provision.

For this reason, 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 handled to a reasonable standard.

It is recommended that Police Scotland issue the applicant with a further response which takes into consideration all the material evidence available.

## 5. Conclusions

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### Complaint 1: Failed to investigate

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

It is recommended that Police Scotland issue the applicant with a further response which considers the evidence as a whole and the provisions of the SCRS. The response should also consider if the approach taken by the officers was appropriate in the circumstances.

### Complaint 2: Incivility

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

It is recommended that Police Scotland:

- a) obtain further accounts from both officers which specifically address if either made the comment alleged;
- b) based on these accounts, and on the balance of probabilities, re consider the complaint and;
- c) issue the applicant with a further response. If an officer did make this comment, the response should consider if this comment was appropriate in the circumstances.

## Complaint 3: Lack of knowledge

It is therefore concluded that this complaint was not handled to a reasonable standard.

It is recommended that Police Scotland issue the applicant with a further response which takes into consideration all the material evidence available.

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