

# 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 police officers having attended at the applicants home in relation to an on-going neighbour dispute. Four complaints were reviewed, namely:

- 1) that Constable A set out to humiliate and intimidate the applicant and did not allow her to explain her position;
- 2) that Constable A was under the influence of illegal drugs when he entered the applicants home;
- 3) that Constable B threatened the applicant with arrest unnecessarily; and
- 4) that Constable A and Constable B refused to leave the applicants home when asked to do so

Of the four complaints considered, it was found that two were handled to a reasonable standard while two were not. Two recommendations have been made in this connection.

### 3. Background

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On 31 August 2016, Constable A & Constable B attended at the applicants home address. The purpose of their visit was to discuss with the applicant an on-going neighbour dispute over access to communal areas. The visit had been prompted by the applicant's neighbour, who had contacted Police Scotland and raised concerns about the volume and tone of various letters that they had received from the applicant as a result of this ongoing dispute.

Whilst at the applicants home, Constable A & Constable B discussed with the applicant the correspondence that she sent to her neighbour. However, the applicant was unhappy with the behaviour of the police officers during their visit, and subsequently made a complaint via Police Scotland's online complaints system on 1 September 2016.

Inspector C was appointed as the enquiry officer. The 'Heads of Complaint' form was agreed and signed by the applicant on 29 September 2016, and a statement of complaint was noted.

The applicant received a response to her complaints from Chief Inspector D in a letter dated 9 May 2017.

## 4. The Review

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### Complaint 1: Constable A set out to humiliate and intimidate

The applicant complained that during the discussion at her home address, Constable A set out to humiliate and intimidate her, and did not allow her to explain her position.

#### *Police Handling of Complaint 1*

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

*"Both officers stated that you were allowed to speak for approximately an hour. [Constable A] denies that he set out to humiliate and intimidate you, refusing to let you speak or explain your position and shout and point at you in an aggressive manner. In addition the other officer in attendance confirmed the meeting with you and that you were allowed to speak and that you were keen to explain your views. At no time did she see [Constable A] shout or point at you in an aggressive manner.*

*You have provided a statement in which you describe the behaviour of [Constable A] and that is your assertion however both officers state that your assertion is untrue that [Constable A] set out to humiliate you, refusing to let you speak or explain your position and shout and pointed at you in an aggressive manner. They state they did allow you to speak and it is more probable that this is the case that with officers being in your house for approximately one hour, I would anticipate would be sufficient time for you to give your views for the reason they were in attendance at your home and as such I do not uphold this allegation of complaint."*

#### *Consideration of Complaint 1*

The applicant in this respect complained that Constable A set out to humiliate and intimidate her; did not allow her to speak or explain her position; and pointed at her in an aggressive manner.

In her statement to Police Scotland dated 16 November 2016, the applicant stated that whilst within her home address, Constable A pointed his finger at her and was aggressive shouting "look at me".

Both Constable's A and B provided statements. Chief Inspector D has accurately reflected the contents of their respective statements within the response letter to the applicant.

In his statement, Constable A stated that he allowed the applicant to speak and denied setting out to humiliate or intimidate her. Indeed, Constable A explicitly stated that he did not believe his actions to be either humiliating or intimidating. Constable A advised that he spoke with the applicant for over an hour and fully listened to her point of view. Constable A further stated that he did not shout, point, or act in an aggressive manner towards the applicant.

Constable A is supported by Constable B. In her statement, Constable B described her attendance at the applicants home along with Constable A and the discussion which thereafter took place. Constable B explained that the applicant was keen to express her position and that she was given opportunity to do so. She also stated that at no point did she see Constable A shouting or pointing at the applicant in an aggressive manner.

Both statements provided by Constables A and B clearly deny the allegations made by the applicant, and corroborate each other. In the absence of any other contradictory evidence, aside from the applicants statement, and based on the balance of probabilities, the decision not to uphold the complaint is supported by the material information available.

That said, it is acknowledged that the response could have been strengthened if Chief Inspector D had explained how she had assessed the available information and reached the conclusion not to uphold the applicants complaint i.e. explained the application of the 'balance of probabilities'. In doing so, Chief Inspector D could have explained that when faced with two conflicting accounts, she had to use her own professional judgement to decide as to whether or not, based on the evidence available, one account is more credible than the other. In this case, the two police officers provided corroborating statements and refuted the allegations. In addition, there was no other available evidence as a whole to suggest that Chief Inspector D should prefer the applicants account.

Furthermore, it should be noted that within Chief Inspector D's response, she made reference to the fact that the officers were within the applicants home for approximately one hour from which she has implied that this was enough time for the applicant to express her views. However this is an assumption that has been made by Chief Inspector D that has no bearing on the determination of the complaint.

Notwithstanding this, it is considered that the complaint has been handled to a reasonable standard. There is no further action required by Police Scotland in this connection.

## Complaint 2: Under the influence of illegal drugs

The applicant complained that Constable A was under the influence of illegal drugs when he entered her home.

### Police Handling of Complaint 2

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

*"As stated above statements were obtained from the officers in attendance at your home. [Constable A] denies that he was under the influence of illegal drugs and the other officer in attendance has stated that she did not observe or suspect [Constable A] was under the influence of illegal drugs when he entered your home.*

*I can confirm that further enquiries were carried out in respect of this allegation and a statement was obtained from the supervisor [Sergeant E] in charge of [Constable A] on that day. [Sergeant E] has confirmed that he made contact with [Constable A] that day,*

*although [Sergeant E] does not recall the specifics of the conversation there were no concerns raised. In addition it may be worthy of note that [Constable A] is reported as having a lisp around certain words which is noticeable when time is spent with him. The enquiry has also established from [Sergeant E] that when [Constable A] speaks he can have excess saliva and this forms at the side of his mouth and is white in appearance and is a natural bodily reaction.*

*All enquiries undertaken show no support that [Constable A] was under the influence of illegal drugs when he entered your home so as such I do not uphold this allegation.”*

## **Consideration of Complaint 2**

The applicant in this respect complained that Constable A was under the influence of illegal drugs when he entered her home.

In her statements dated 29 September 2016 and 16 November 2016, the applicant claimed that Constable A looked unsteady; that he was having trouble controlling his bottom lip and his pupils were enlarged and floating; in addition when sat on her sofa, he appeared as though he was fighting to keep awake, had his right hand in his hairline, and was rocking his head. This behaviour led the applicant to form the opinion that Constable A was under the influence of drugs. The applicant also commented that, when Constable A stood up from the sofa, he staggered as if his knees or back had given out. The applicant formed the opinion that Constable A was not in control of his body. She further stated that Constable A was *“like someone who was leaving a pub, but there was no smell of alcohol”*.

In his statement, Constable A stated he was not under the influence of illegal drugs.

In her statement, Constable B stated that she did not observe or suspect Constable A to be under the influence of illegal drugs when he entered the applicants home.

Sergeant E advised that he would have made contact with Constable A on the date in question to advise him of the diary appointment however he did not recall seeing Constable A in person on the day in question.

Sergeant E further advised that Constable A speaks deliberately and slowly, and has a lisp around certain words. Sergeant E highlighted that when Constable A speaks he can have excess saliva that forms at the side of his mouth, is white in appearance and that this can worsen if he is agitated. Sergeant E acknowledged that Constable A’s speech and the way he presents himself can be construed differently by those that do not know him.

In her response, Chief Inspector D addressed the remarks made surrounding Constable A’s speech and the saliva forming at his mouth, however made no mention of the comments regarding the allegations that Constable A stumbled in a manner compared to someone leaving a pub and/or his behaviour whilst sitting on the sofa.

It is therefore considered that an insufficient enquiry has been carried out into the points raised by the applicant and that this complaint has not been handled to a reasonable standard. It is recommended that Police Scotland:

- (a) Obtain a further statement from Constable A to address the allegations made by the applicant that he was unsteady on his feet; his behaviour whilst sat on the applicant's sofa; and that he stumbled when he stood up;
- (b) Obtain a further statement from Constable B concerning the same points, as detailed above in point (a) in relation to Constable A's behaviour; and
- (c) Provide the applicant with a fresh response that more clearly addresses her allegation.

### Complaint 3: Threatened with arrest

The applicant complained that Constable B threatened her with arrest unnecessarily.

#### *Police Handling of Complaint 3*

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

*"As stated during this enquiry statements were obtained from the officers who attended at your home address [Constable A] has stated that you were informed that the recipient of the letters found them distressing and abusive and that if the situation continued the letters would have to be looked at in more detail with the possibility that offences may be detected. He denies that you were threatened with arrest [Constable B] has stated that she advised you that your neighbours were not willing to pursue with a criminal case against you, however if you continued to send excessive amounts of letters it may require further investigation and that if an offence was detected you may be charged as a result.*

*In these circumstances advice was provided to you and what potentially may happen if offences were detected against you. From the available evidence the officers have stated that you were informed and offered advice as to what may happen if the situation continued. Your interpretation is that you were threatened with arrest. I do not consider that the information provided to you by the officers was a threat of arrest and as such I do not uphold this allegation."*

#### *Consideration of Complaint 3*

The applicant in this respect complained that Constable B threatened her with arrest unnecessarily.

The applicant alleged in her statement of 16 November 2016 that Constable B advised her that her neighbour did not want her to be arrested at this time, but if she persisted she would have a criminal record, and asked her if it would be worth it. The applicant alleged that Constable B never mentioned what she would be arrested for. The applicant also alleged that Constable B stated *"We'll be back and we will arrest you and you will have a criminal record"* however the applicant maintained that she was

not told why the police officers would arrest her. The applicant advised that as the officers were leaving her home, Constable B told her again that she would be arrested.

Constable B detailed in her statement that she advised the applicant that her neighbours were not wishing to pursue a criminal complaint against her at that stage. Constable B further advised the applicant that should she persist with her conduct towards her neighbours and continue to send excessive amounts of letters that it may require further investigation and may result in the applicant being charged if offences are detected.

The statement provided by Constable A supports Constable B's position, whereby Constable A has stated that the applicant was not threatened with arrest. Instead, Constable A advised that he told the applicant that his neighbour found her letters abusive and distressing, and that if the situation continued, the letters would have to be looked at in more detail with the possibility that offences may be detected.

Both Constable A and B deny that the applicant was threatened with arrest and state that the applicant was offered advice on what may happen should further complaints be made. Chief Inspector D's response adequately reflects the information contained within the two officers' statements and the decision not to uphold the complaint is supported by the material information available.

Accordingly, it is considered that this complaint was handled to a reasonable standard. There is no further action required by Police Scotland.

#### Complaint 4: Refused to leave your home

The applicant complained that Constable A and Constable B refused to leave her home when asked.

#### Police Handling of Complaint 4

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

*"[Constable A] has stated that the visit was coming to an end and when you asked them to leave they did so as soon as practical after this. He states he did not refuse to leave when asked as the meeting had naturally come to an end. [Constable B] has stated that it appeared that when you did not like the conversation and what was advised to you, you thereafter asked the officers to leave. As they were about to leave you started a conversation with them again. In order not to appear rude they engaged in further conversation with you. Both officers left your house on mutual conclusion of discussion with you.*

*The officers have given a justified reason for remaining in your house as you were asking further questions and they thereafter left. It would have been rude of them to have ignored you and as such I do not uphold this allegation."*

## Consideration of Complaint 4

The applicant in this respect complained that both Constable's A and B refused to leave her home when asked to do so.

In her statement dated 16 November 2016, the applicant stated that she asked the police officers on three occasions to leave her home, and that Constable A's response was "*we will leave when we are ready*". She further advised that she told the officers to leave when she felt that Constable A was acting in an aggressive manner however they did not leave.

Constable A advised in his statement that they were asked to leave after he explained to the applicant the possible consequences if further complaints were received from the applicant's neighbour, about the letters sent by the applicant. He thereafter stated that "*to conclude the matter I informed [the applicant] that [the neighbour] had written a letter addressing the points raised in her recent letters but that after this, the letters should stop*".

Constable A further stated that the visit was coming to an end when the applicant asked them to leave, and that he left as soon as practical after this.

Constable B provided a statement which advised that the applicant had agreed not to send any further letters and thereafter asked the officers to leave; which she stated they both did. There is no other mention in Constable B's statement about being asked to leave, and there is no comment made regarding the applicant beginning a new conversation after she had asked officers to leave. It is considered that the statements provided by the police officers are inconsistent. Constable A in his statement stated that at one point, the applicant indicated that she no longer wished to discuss the matter and he stood up to leave. Constable A then states that he repeated his advice to the applicant. He was then asked to leave by the applicant. Constable A then proceeded to advise the applicant about the final letter being prepared by the applicant's neighbour and that he did not want the applicant to reply to that letter. Accordingly, it would appear that even after the applicant advised officers that she no longer wished to discuss this matter and Constable A clearly understood it as an invitation to leave, Constable A proceeded to administer further advice to the applicant until she asked him to leave and even then Constable A still remained at the locus to discuss the issue of the final letter between the applicant and her neighbour. This account supports the applicant's position that officers did not leave when she no longer wished to discuss the matter and asked them to leave.

In her statement, Constable B stated that the applicant agreed not to send letters to her neighbours and then asked officers to leave. Furthermore, she states that when applicant did not like the conversation she asked officers to leave and as they were leaving, the applicant initiated further discussion and officers remained at her home and continued discussion in order not to appear rude. Accordingly, Constable B's account of events is inconsistent with the account of Constable A.

In addition, the applicant also makes a specific allegation regarding Constable A saying "*We will leave when we are ready*" however this was not addressed in the respective statements provided by Constable's A or B, nor in the response from Chief Inspector D.

It is considered that this complaint was not handled to a reasonable standard. It is recommended that Police Scotland:

- (a) Obtain a further statement from Constable A specifically addressing whether he stated that “*we will leave when we are ready*”, clarify when and how many times the applicant asked them to leave and when they actually left,
- (b) Obtain a further statement from Constable B concerning the same issues, as detailed above in point (a); and
- (c) Provide the applicant with a fresh response that clearly addresses her allegation and provides a clear explanation about the application of balance of probabilities test to the available evidence .

## 5. Conclusions

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### Complaint 1: Constable A set out to humiliate and intimidate

It is concluded that this complaint was handled to a reasonable standard. No further action is required in this connection.

### Complaint 2: Under the influence of illegal drugs

It is concluded that this complaint was not handled to a reasonable standard. It is recommended that further statements are obtained from Constable A & B and a fresh response is issued to the applicant.

### Complaint 3: Threatened with arrest

It is concluded that this complaint was handled to a reasonable standard. No further action is required in this connection.

### Complaint 4: Refused to leave your home

It is concluded that this complaint was not handled to a reasonable standard. It is recommended that further statements are obtained from Constable A & B and a fresh response is issued to the applicant.

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