

# 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 an altercation between the applicant and a bus driver. Four complaints were considered, namely:

1. That Police Scotland took too long to investigate a crime reported by the applicant;
2. That the investigating officer did not provide the applicant with sufficient updates;
3. That the applicant was told that all CCTV relevant to the crime he reported had been collected, however this was not the case; and
4. That Police Scotland did not report a breach of Road Traffic legislation to the Crown Office and Procurator Fiscal Service within the required timescale.

The review found that all four complaints were handled to a reasonable standard. It was however considered necessary to make a single recommendation.

### 3. Background

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On 1 September 2016, the applicant was cycling on the road when he attempted to overtake a bus, which was stopped at a bus stop. The bus began to move as the applicant was overtaking, meaning the applicant had to speed up to complete his manoeuvre, which he states angered the bus driver.

The applicant then perceived that the bus was following him at a reduced distance. When the applicant stopped his bicycle, the bus collided with his rear tyre and the applicant's bike was shunted forward.

The bus driver got out of the bus and approached the applicant whilst allegedly shouting and swearing. The applicant took photographs on his mobile phone of the bus driver and the bus' registration. The applicant states that as he was doing so the bus driver was trying to pull the phone out of his hand. The bus driver then moved the applicant's bicycle to the side of the road and drove the bus away.

The applicant first reported the incident to the bus company and then later to Police Scotland. The applicant's report was investigated by Constable A until January 2017 when it was reallocated to Constable B to be concluded.

On 20 February 2017, the applicant submitted an online complaint about the standard of Police Scotland's investigation into his report. The applicant's complaint was allocated to Constable C, who contacted the applicant by telephone and agreed three complaints to be investigated by Police Scotland.

A letter dated 23 March 2017 responding to these complaints was sent by Chief Inspector D.

On 7 March 2017 Constable B detained the bus driver and interviewed him under caution. At the conclusion of the interview the bus driver was charged with a contravention of Section 38 of the Criminal Justice & Licensing (Scotland) Act 2010 (threatening and abusive behaviour).

On 11 April 2017 Constable B contacted the applicant and informed him that Police Scotland were no longer in a position to report the bus driver to the Crown Office & Procurator Fiscals Service (COPFS) for the offence of Careless Driving as the statutory 6 month time period had elapsed.

The applicant submitted a further online complaint about this matter later that same day. This additional complaint was also investigated by Constable C.

A letter dated 30 May 2017 addressing the applicant's additional complaint was issued by Chief Inspector E.

## 4. The Review

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### Complaint 1: Length of investigation

In his online form dated 20 February 2017, the applicant complained that Police Scotland's investigation into the crime he reported on 1 September 2016 was taking too long to conclude. At the time the complaint was made, the enquiry had taken 5 months without the suspect being traced.

#### *Police Handling of Complaint 1*

In his letter dated 23 March 2017 responding to the applicant's complaints, Chief Inspector D wrote:

*"I have taken the opportunity to review the nature and progress of the enquiry and note the lengthy timescales involved. I believe you are aware [Constable A] transferred to a new role in January 2017 and the investigation of the incident you reported was passed to [Constable B] to progress.*

*I note since the enquiry was transferred, a number of lines of enquiry have been carried out which resulted in the bus driver being charged in relation to the incident and the circumstances being reported to the Crown and Procurator Fiscal Service [sic].*

*[Constable A] has advised there was an initial delay in him progressing the investigation while he waited for the bus company to conclude their own internal investigation. He obtained details of the bus driver and made attempts to trace him, but these proved unsuccessful.*

*Whilst taking into account the position of [Constable A], there is no satisfactory reason for the initial delay in progressing this enquiry. I believe there is a reasonable expectation the investigation would have been progressed with more urgency and expedited in an appropriate timescale. I therefore uphold this element of your complaint...*

*Please accept my apologies for the delay in completing this investigation... [Constable A] has been provided with appropriate management advice in order to minimise the possibility of similar events occurring in the future."*

#### *Consideration of Complaint 1*

As Chief Inspector D has explained in his letter to the applicant, enquiries were made with both Constable A and Constable B to explain the length of time it was taking to bring the applicant's case to a conclusion.

Constable A explained that he initially awaited the outcome of the bus company's own enquiries into the incident. He states he also made an attempt to trace the driver however he was not at home on the day Constable A attended and did not reply to the message Constable A left with his wife.

Constable B explained that he had experienced some trouble in obtaining the relevant video footage from the bus company due to a number of issues. He explains that this meant he was not able to collect the relevant footage until the beginning of March, however once this was done it was only a matter of days before the suspect was traced, detained, cautioned, interviewed, arrested and charged.

In coming to his conclusion, Chief Inspector D has clearly taken each Constable's position into account. He has however then applied his own assessment that, notwithstanding the officers' explanations, the enquiry should have been progressed with much more urgency. Chief Inspector D has therefore upheld the applicant's complaint on this basis. This is considered to be the appropriate way to handle complaints of this nature.

For this reason, 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: Insufficient updates provided

In his online form dated 20 February 2017, the applicant complained that he had made numerous calls for updates however the "assigned officers have not kept myself informed." Specifically, the applicant noted that he had only received two updates – in December and February – and that these updates had only been provided to him in response to calls he had made himself.

### Police Handling of Complaint 2

In his letter responding to the applicant's complaints, Chief Inspector D wrote:

*"A review of our records reveal [Constable A] made numerous attempts to contact you during the week after you reported the incident and he spoke to you on the telephone on 8<sup>th</sup> September 2016. Due to your own work commitments and the Officers [sic] shift pattern, it was not possible to find a suitable time for him to note a statement around that time.*

*I note later arrangements were made for another Officer to note a statement from you and this was carried out on 25<sup>th</sup> September 2016. Following this you did not receive any further updates regarding the progression of the enquiry until you telephoned our Service Centre in December 2016 and then again in February 2017. In response to your calls you were called by the Enquiry Officer or his supervisor and provided updates.*

*Although I am satisfied with the original attempts to contact you and have a statement noted, I believe you should subsequently have been provided with updates regarding the status of the enquiry at an earlier opportunity and I therefore find this element of your complaint upheld.*

*Please accept my apologies for the delay in completing the investigation and the lack of updates you received in relation to it. The Officer involved has been provided appropriate management advice in order to minimise the possibility of similar events occurring in the future."*

## Consideration of Complaint 2

In his account addressing this complaint, Constable A asserts that he could “*recall speaking to/updating [the applicant] on 3 possibly 4 occasions.*” However the Crime Report – which records all updates in respect of an ongoing investigation – indicates that after a statement was taken from the applicant on 25 September 2016, he was not again updated until 4 December 2016 when he contacted the Service Centre himself and thereafter spoke to Constable A’s supervisor. The Crime Report indicates that the applicant was next given an update on 9 December, but was not updated again until 2 February 2017, by which time the enquiry had been reallocated to Constable B.

Police Scotland’s procedure dictates that contact with anyone reporting a crime should be made within 14 days of them reporting the incident, then within 28 days of the incident. Chief Inspector D has clearly identified from the Crime Report that – Constable A’s explanation notwithstanding – these procedures were not followed. Chief Inspector D has therefore upheld the applicant’s complaint on this basis. This is considered to be a good way to handle complaints of this nature.

Furthermore the details in the Crime Report support that, following the applicant’s complaint about this issue, efforts were made to progress the enquiry more quickly and to provide the applicant with updates more frequently. This is considered to be an appropriate reaction to the applicant’s complaint.

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

## Complaint 3: Officer “lied” about CCTV

In his online form dated 20 February 2017, the applicant stated that Constable A had told him “*he had all the CCTV video footage from [bus company]*” and confirmed to him “*there was sufficient detail to bring charges*”. The applicant complained that by making these statements, Constable A had lied to him as the CCTV had not yet been uplifted from the bus company.

## Police Handling of Complaint 3

In his letter responding to the applicant’s complaints, Chief Inspector D wrote:

*“The position of [Constable A] is he did speak with you regarding the CCTV footage and he inferred it had been secured rather than collected. He had spoken to staff at the bus company who informed him they had secured the CCTV footage from the bus involved as part of their own investigation and this footage would be made available to [Constable A].*

*It is clear your recollection of events differ from [Constable A]. When considering the overall manner in which this investigation was carried out, I believe it has fallen below the standard expected.*

*Whilst acknowledging [Constable A] refutes he told you the CCTV had been collected, based on the standard of the enquiry and on the balance of probability, I am minded to uphold this element of your complaint.*

*I regret that on this occasion your dealings with Police Scotland were not as you would have wished... I hope that any future interaction is more positive."*

### Consideration of Complaint 3

The Crime Report confirms that by 16 January 2017, when the enquiry was passed to Constable B, Constable A had not yet obtained the CCTV footage from the bus company and indeed states he had not yet received confirmation from the bus company that it was ready for collection. Constable B thereafter made his own efforts to confirm the footage was available.

Constable A's own account – which has been explained to the applicant by Chief Inspector D – is that he is "fairly certain" he did not tell the applicant that he already had the footage he did not have it, although he had "started to make arrangements" to get it.

Despite Constable A's denial, Chief Inspector D has concluded that the applicant's complaint should be upheld based on the "overall manner in which this investigation was carried out". It is an example of good complaint handling that Chief Inspector D has not limited his assessment of the complaint to whether or not it could be established that the comment was made by Constable A.

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

### Complaint 4: Case not timeously reported

In his online form dated 11 April 2017, the applicant complained that Constable B had not charged the bus driver with any road traffic offence because the incident had occurred more than six months previously and so no report to COPFS could now be made.

### Police Handling of Complaint 4

In his letter dated 30 May 2017, Chief Inspector E explained to the applicant that a "time bar" of six months exists for "the vast majority" of statutory offences, including Careless Driving. He explained that this time bar meant the circumstances of any offence must be reported to COPFS "within six calendar months of the date of offence or proceedings cannot be taken up against a suspect". Chief Inspector E further explained that, in a practical sense, this meant all offences had to be reported within five months to allow the COPFS time to instigate proceedings.

Chief Inspector E also explained that, although he was aware Constable B had inherited the enquiry from Constable A in the middle of January and had thereafter "sought to secure all the available evidence", he was of the opinion that "the situation was not irretrievable" at that point as there was still sufficient time to have the matter concluded by the deadline of 1 March 2017.

Chief Inspector E goes on to explain that when Constable B finally viewed the CCTV collected from the bus company, he assessed that this footage did not constitute sufficient evidence to report the bus driver for the offence of Careless Driving “*without an admission from him, or other corroborating evidence*”. Constable B thereafter detained and interviewed the bus driver, who denied knocking the applicant’s bicycle with his bus however did admit to acting in a threatening and abusive manner towards the applicant, for which he was subsequently arrested and charged.

Chief Inspector E concludes that:

*“While there was insufficient evidence to charge the suspect with a Road Traffic offence, I find it entirely unacceptable he was not traced prior to the approved time period being exceeded which would have rendered any admission from him irrelevant in any case. I therefore find your complaint upheld.”*

Chief Inspector E goes on to explain that due to “*arrangements with the COPFS*” the bus driver would not in fact be reported to COPFS for threatening and abusive behaviour as “*for any statutory offence that is unlikely to be taken up on indictment, they will not accept cases over five months from the date it occurred*”.

Chief Inspector E thereafter wrote:

*“I apologise for the level of service you have received from the reporting of this incident to its conclusion. As it has fallen far below the standard I would expect to be delivered by our Officers. You have every right to expect this matter would have been concluded in a more timely manner and certainly prior to any timescales being exceeded.*

*The Enquiry Officers and their Supervisor have been given suitable management advice in order to minimise the possibility of similar events occurring in the future and Officers across the Division have been reminded of the requirement to carry out enquiry diligently, without undue delay and to meet all timescales. whilst I appreciate this will be of little consolation to you, I am determined this will not be repeated.”*

## **Consideration of Complaint 4**

It is considered that Chief Inspector E’s response to the applicant lacks sufficient information.

Constable B submitted a prosecution report after he had charged the bus driver with threatening and abusive behaviour. The Crime Report suggests that this report was then rejected at the end of March because of the time bar applicable to statutory offences unlikely to be taken up on indictment. Chief Inspector E has not explained to the applicant why Constable B did not inform him of this development during their telephone call of 11 April 2017, instead only confirming to him that the Road Traffic offence would not be reported. Chief Inspector E has likewise not explained why Constable B told the applicant that the Road Traffic offence would not be reported due to the time bar, rather than because he felt there was insufficient evidence on which to base a prosecution. Finally, Chief Inspector E has not addressed why, given that the applicant’s believed he had provided video footage to Police Scotland on

25 September 2016, neither Constable A nor Constable B established that it did not work until after the reporting deadline had already passed in March.

However it is not considered that these deficiencies materially affect the outcome of the complaint. It is clear from this case that Police Scotland failed to make enquiries with enough urgency to be able to report the bus driver to the COPFS within the agreed timescales. Chief Inspector E's conclusion is therefore correct.

Chief Inspector E has also provided the applicant with a detailed response which refers to the relevant legislative provisions. Although Chief Inspector E's response could have provided more detail as to the individual failings identified, it is clear from the paperwork provided that Chief Inspector E has recognised these failings and has addressed them not just with the officers concerned but with the local Division. The applicant's complaint has been upheld and he has been provided with an apology. This is considered to be an appropriate outcome.

It is therefore concluded that this complaint was handled to a reasonable standard.

Notwithstanding this finding, it is clear from the applicant's correspondence with the PIRC that he raised additional concerns at the same time as this particular complaint which have not yet been addressed by Police Scotland and with which he remains dissatisfied. Specifically, the applicant complained that Constable B "*didn't fully understand*" the nature of his allegation against the bus driver; that Constable B had detained, interviewed and charged the bus driver before viewing the applicant's footage of the incident; and that the correct procedures for having a production "*signed in*" were not followed by Police Scotland when the applicant handed in a replacement video disc.

It is accepted that the applicant agreed with Constable C a single head of complaint referring only to the case becoming time-barred before the bus driver could be reported. It is therefore understandable that these issues have not been addressed by Chief Inspector E. However as the applicant is clearly still dissatisfied with these matters, it is recommended that further contact be made with the applicant to establish if he wishes these additional matters to be progressed as complaints about the Police.

## 5. Conclusions

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### Complaints 1-3: Length of investigation

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

### Complaint 4: Case not timeously reported

It is concluded that this complaint was handled to a reasonable standard.

Notwithstanding this finding, it is clear from the applicant's correspondence with the PIRC that he raised additional concerns at the same time as this particular complaint which have not yet been addressed by

Police Scotland and with which he remains dissatisfied. Specifically, the applicant complained that Constable B “*didn’t fully understand*” the nature of his allegation against the bus driver; that Constable B had detained, interviewed and charged the bus driver before viewing the applicant’s footage of the incident; and that the correct procedures for having a production “*signed in*” were not followed by Police Scotland when the applicant handed in a replacement video disc.

It is accepted that the applicant agreed with Constable C a single head of complaint referring only to the case becoming time-barred before the bus driver could be reported. It is therefore understandable that these issues have not been addressed by Chief Inspector E. However as the applicant is clearly still dissatisfied with these matters, it is recommended that further contact be made with the applicant to establish if he wishes these additional matters to be progressed as complaints about the Police.

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