

independent and effective investigations and reviews

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Police Investigations &  
Review Commissioner

PIRC/00113/18  
November 2018

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

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# What we do

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We obtain all the material information from Police Scotland and the applicant. We then use this to review how the complaint was dealt with and conclude whether the complaint was handled to a reasonable standard\*. In doing so, we consider factors such as:

- whether Police Scotland carried out sufficient enquiries into the complaint;
- whether Police Scotland's response to the complaint was supported by the material information available;
- whether Police Scotland adhered to the relevant policies, procedures and legal provisions in dealing with the complaint;
- whether Police Scotland's response was adequately reasoned; and
- where the complaint resulted in Police Scotland identifying measures necessary to improve its service, that these measures were adequate and have been implemented.

Finally, where we deem appropriate, we give reconsideration directions, make recommendations and identify learning points for Police Scotland.

\*Sections 34 and 35 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 as amended ("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.

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# Executive Summary

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## The Complaint

The complaint in this case arose after the applicant reported that a council vehicle had hit his car and damaged it.

We have examined the handling of a single complaint, namely that an officer did not undertake sufficient investigation to establish whether the driver of the council vehicle was aware that he had hit the applicant's car.

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## Police Scotland's Decision

Police Scotland did not uphold the applicant's complaint.

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## Our Finding

We have found that Police Scotland did not handle the applicant's complaint to a reasonable standard.

Consequently, we have made a recommendation to address the shortcomings in Police Scotland's handling of the complaint.

We expect our recommendation to be implemented by Police Scotland within two months of the date of this report.

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# Background

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On 17 January 2018, the applicant parked his vehicle in a parking bay outside his home address. The following morning, the applicant noticed damage to his vehicle and spoke to some of his neighbours in that regard. According to the applicant, a neighbour saw a council van parked next to the applicant's car, and the van had been filling a grit bin which was positioned on the pavement directly behind where the applicant's car was parked. Later the same day, the applicant contacted the council in question and spoke to Mr A, a section manager. The applicant also reported the incident to the police on the same date.

On 19 January 2018, Constables B and C attended the applicant's address. The officers spoke with the applicant about the collision, noted his statement and also obtained Mr A's contact details.

On 29 January 2018, Constable B spoke to Mr A by telephone. Mr A said that Mr D had been driving the council vehicle at the relevant time, but was unaware of the collision. Constable B then updated the applicant in this regard.

Later the same day, the applicant complained to Police Scotland via online form. Sergeant E was appointed to investigate the applicant's complaint.

Thereafter, on 21 February 2018, Constables B and C met Mr D and required him to identify the driver of the council vehicle in accordance with section 172 of the Road Traffic Act 1988 ("the Road Traffic Act"). Mr D admitted that he had been driving the council vehicle at the relevant time, but said that he was unaware of the collision.

On 22 February 2018, Sergeant E obtained a statement of complaint from the applicant. The applicant also signed a Police Scotland Heads of Complaint form on the same date. Police Scotland responded to the applicant's complaint by way of a letter from Superintendent F dated 9 April 2018.

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# The Complaint

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The applicant complained that Constable B did not undertake sufficient investigation to establish whether the driver of the council vehicle was aware that he had hit his car.

In his statement, the applicant said that the police: did not speak to the driver of the vehicle quickly enough after the accident; did not examine the council's vehicle quickly enough; and spoke to the driver's manager instead of speaking to the driver himself.

## **Police Scotland's Handling of the Complaint (not upheld by the police)**

In his letter of response, Superintendent F outlined the applicant's position and advised that Constable B had provided an account.

Superintendent F explained that Constable B had stated that he met with the applicant on 19 January 2018, at which time the applicant told him: that he had spoken to Mr A; that Mr A said there was slight damage to a council vehicle; that the council accepted liability for the damage to his car and was happy to cover the cost; and that Mr A had provided his name and contact number. Superintendent F said that this complied with the Road Traffic Act. Superintendent F also referred to section 2.4.1 of Police Scotland's Standard Operating Procedure regarding Road Traffic Collision, and said that it stated the following:

*“A reportable collision is defined under the Road Traffic Act 1988 Section 170 and describes the legal responsibility on those drivers involved to report the matter to the police. Where those involved exchange personal details, there is no legal requirement to report a collision to the police, and this applies to non-injury collisions”.*

Superintendent F explained that Constable B had stated that the applicant was of the opinion that the driver of the council vehicle was aware of the collision. Superintendent F said that, as there was no way of confirming this opinion at that time, Constable B obtained a witness statement from the applicant in case a crime was subsequently identified and also noted Mr A's contact details.

Superintendent F said that Constable B phoned Mr A and left a voicemail requesting a call back, but Mr A did not return his call. Superintendent F advised that Constable B discussed the circumstances of the incident with Sergeant G (his supervisor), and it was agreed that a crime report would not be submitted until they had spoken to the council to establish if there was any evidence of criminality. Superintendent F then explained that Constable B was unable to contact Mr A until 29 January 2018. Superintendent F said that Mr A told Constable B that he had spoken to the driver of the council vehicle (Mr D), and that Mr D was unaware that he had collided with the applicant's car.

Superintendent F explained that, given that there was only minor damage to the applicant's car and that the council vehicle was significantly larger and heavier, Constable B was satisfied with Mr A's explanation. Superintendent F also said that Constable B had discussed the matter with Sergeant G, who was satisfied that sufficient enquires had been carried out and deemed that there was no requirement to speak to Mr A or the driver in person because there was no evidence to suggest that a crime had been committed. Superintendent F explained that the applicant submitted his complaint about the police after Constable B had updated him with this decision.

Superintendent F advised that, in response to the applicant's complaint, Sergeant E arranged for Constable B to speak to the driver in person. Superintendent F advised that, on 21 February 2018, Constables B and C spoke to Mr D and required him to confirm the driver of the council vehicle at the material time in accordance with section 172 of the Road Traffic Act. Superintendent F said that Mr D admitted that he had been driving the vehicle at the relevant time, but was not aware of any collision.

Superintendent F also said that Constable B had examined the damage to the council vehicle, had found very minor damage and had added all of the relevant driver and vehicle details to the police incident log.

Superintendent F further explained that Sergeant E had made him aware that the applicant believed that Mr D was lying about being unaware of the collision. Superintendent F said that he was not aware of any evidence to support the applicant's opinion. Superintendent F also said that he was satisfied that Constable B had made sufficient enquiries to establish whether there was any criminality, as he had spoken to Mr A at the earliest opportunity. Superintendent F said that, by speaking to Mr A, Constable B had established the driver's details and confirmed that he was unaware of the collision.

Superintendent F assessed that the complaint was not upheld.

## Our Review of the Complaint

Section 170(2) of the Road Traffic Act provides that, if a vehicle is involved in an accident and causes damage to another vehicle, the driver of the vehicle in question must stop and, if required to do so by any person having reasonable grounds for so requiring, give their name and address and also the name and address of the owner of the vehicle and the identification marks of the vehicle. Section 170(3) places an obligation on the driver, if they do not give their name and address under section 170(2), to report the accident to the police as soon as reasonably practicable and in any case within 24 hours<sup>1</sup>. It may be a defence for the driver to prove that they were unaware that an accident had taken place.

Constable B's account supports that he initially spoke only to Mr A. As outlined in Superintendent F's response, Constable B stated that he was satisfied with Mr A's explanation that Mr D was driving the vehicle in question and was unaware that he had collided with the applicant's car. As also outlined in Superintendent F's response, Constable B stated that he spoke to his supervisor (Sergeant G), who was satisfied that there was no need to speak with Mr A or Mr D in person. However, although Constable B appears to have relied on Sergeant G's advice, a statement was not obtained from Sergeant G during the complaint investigation. As part of the applicant's complaint was that Constable B did not speak to Mr D quickly enough, Sergeant G's position in this respect was important and his account ought to have been sought by Sergeant E. We consider the complaint investigation to have been insufficient in this connection.

Superintendent F's response went on to advise that, after the applicant submitted his complaint about the police, Constables B and C spoke to Mr D and required him to identify the driver of the council vehicle in accordance with section 172 of the Road Traffic Act. At that time, the officers also examined the damage to the council vehicle. Superintendent F explained that this was done at the request of Sergeant E, the officer investigating the applicant's complaint. However, Superintendent F did not offer any explanation as to why Sergeant E thought it necessary for the officers to speak with Mr D at this later stage when Constable B – and seemingly Sergeant G – had previously considered it unnecessary.

Nonetheless, as he instructed the officers to speak with Mr D during the complaint investigation, Sergeant E appears to have accepted that there was a need for the police to speak to Mr D about the incident and require him to identify the driver of the vehicle in accordance with section 172 of the Road Traffic Act. Consequently, the fact that Constable B did not speak to Mr D at the outset seems to have been a deficiency in the initial enquiry. These points do not sit well with Superintendent F's finding that Constable B "*made sufficient enquiries to establish if there was any criminality by speaking to [Mr A] at his earliest opportunity...*".

Paragraph 6.11.3 of Police Scotland's Standard Operating Procedure ("the Complaints SOP") states that "*an allegation should be upheld where the evidence based findings show that, on the balance of probabilities, the service provided did not reach the standard a reasonable person could expect...*". As Sergeant E instructed the officers to speak with Mr D after the applicant made his complaint, the deficiency in the earlier enquiry was rectified during the complaint investigation. While this was good practice on the part of Sergeant E, it remains the case that there was a shortcoming in the standard of service that was initially provided by the police. In our view, the evidence available suggests that the applicant's complaint should have been upheld in accordance with the Complaints SOP.

For the reasons outlined above, we consider that Superintendent F's response was not adequately reasoned, did not reflect all the material information available and was not in keeping with the relevant procedure. Consequently, we are not satisfied that this complaint was dealt with to a reasonable standard.

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<sup>1</sup> The legislation is outlined in full at Appendix I

## Our Conclusion on the Complaint

We conclude that Police Scotland did not handle this complaint to a reasonable standard.

We recommend that Police Scotland reassess the complaint on the basis of the points outlined in our report. A statement should be sought from Sergeant G and a further response sent to the applicant which fully explains the reasoning for whatever decision is reached. If the complaint is upheld, an apology should be given to the applicant for the shortcomings identified.

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## What happens next

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We have made one recommendation, which we expect to be implemented within two months of the date of this report. We will continue to liaise with Police Scotland until we consider that the recommendation has been implemented to our satisfaction.

**Amy Ferguson**  
Review Officer

**Peter Innes**  
Senior Review Officer

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# Appendix I

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## Extracts from the Road Traffic Act 1988

### 170 Duty of driver to stop, report accident and give information or documents.

(1) This section applies in a case where, owing to the presence of a mechanically propelled vehicle on a road or other public place, an accident occurs by which—

(a) personal injury is caused to a person other than the driver of that mechanically propelled vehicle, or

(b) damage is caused—

(i) to a vehicle other than that mechanically propelled vehicle or a trailer drawn by that mechanically propelled vehicle, or

(ii) to an animal other than an animal in or on that mechanically propelled vehicle or a trailer drawn by that mechanically propelled vehicle, or

(iii) to any other property constructed on, fixed to, growing in or otherwise forming part of the land on which the road or place in question is situated or land adjacent to such land.

(2) The driver of the mechanically propelled vehicle must stop and, if required to do so by any person having reasonable grounds for so requiring, give his name and address and also the name and address of the owner and the identification marks of the vehicle.

(3) If for any reason the driver of the mechanically propelled vehicle does not give his name and address under subsection (2) above, he must report the accident.

(4) A person who fails to comply with subsection (2) or (3) above is guilty of an offence.