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Police Investigations &  
Review Commissioner

PIRC/00615/17  
December 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 Complaints

The complaints in this case arose from an incident on 8 July 2016 during which the applicant was arrested. The applicant alleged that he had been assaulted by neighbours during the same incident. We have reviewed six complaints, namely:

1. that officers failed to investigate the applicant's allegation that he had been assaulted;
  2. that officers failed to investigate properly the alleged assault for which the applicant was arrested;
  3. that officers failed to act in a fair manner by taking the side of the other parties and failing to take the applicant's Asperger syndrome into account;
  4. that the applicant was arrested unlawfully;
  5. that an officer was verbally abusive towards the applicant at the police office; and
  6. that an officer refused to give the applicant food whilst he was taking his medication, despite this being required.
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## Police Scotland's Decision

Police Scotland did not uphold any of the applicant's six complaints.

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## Our Findings

We have found that Police Scotland did not handle any of the applicant's six complaints to a reasonable standard.

We have not made any recommendations in respect of complaints 1 and 2. However, we have made four recommendations to address the shortcomings in Police Scotland's handling of complaints 3, 4, 5 and 6. In summary, we have asked Police Scotland to provide the applicant with a further response to each of those complaints.

We expect our recommendations 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 8 July 2016, police officers attended an incident outside the home of the applicant's mother. The applicant and some of his mother's neighbours had been involved in an altercation. The attending officers believed that the applicant's behaviour towards the neighbours constituted an offence. The officers informed the applicant that he would be detained while they undertook further enquiries.

The applicant informed the officers that he had been assaulted during the incident and refused to accompany them to the police office. A struggle ensued during which the officers restrained the applicant, who was then arrested for obstructing the officers. The applicant was thereafter taken to the police office where he was held in custody over the weekend.

The applicant was charged with obstructing the officers contrary to Section 90 of the Police and Fire Reform (Scotland) Act 2012, behaving in a threatening and abusive manner contrary to Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, and assaulting two of the neighbours. The applicant was found not guilty of the assault charges but was found guilty in respect of the Section 90 and Section 38 offences.

The applicant wrote a letter of complaint to Police Scotland on 31 May 2017. Sergeant A investigated the applicant's complaints and met with him on 3 July 2017 to take a statement and identify the heads of complaint. The applicant also provided Police Scotland with video clips of the incident, which he believed supported his complaints about the police.

Although the complaint enquiry commenced in July 2017, Police Scotland did not issue its findings until five months later, which is longer than would be expected for a complaint enquiry of this nature. However, Sergeant A updated the complaint file in August 2017 to explain that he had informed the applicant that the findings would not be issued until the criminal case against him was concluded. We note that the ongoing criminal case was not the only reason for the delay, as one of the witnesses in the complaint enquiry could not provide their account until 4 December 2017, after which the complaint findings were prepared.

Although sentencing was deferred until 22 January 2018, Superintendent B issued his letter of response to the applicant's complaints on 13 December 2017, when Police Scotland confirmed from the court database that the verdict in the applicant's case had been delivered the previous day.

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# Complaints 1 and 2

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## Complaint 1

The applicant complained that officers failed to investigate his allegation of assault. The applicant stated that he phoned the police on 8 July 2016 to report that he had been assaulted, and also that he told an officer at the scene that he was the victim of an assault. In addition, the applicant's t-shirt was ripped during the incident and he thought this should have alerted officers to the fact that he had been assaulted.

## Complaint 2

The applicant complained that officers failed to investigate properly the alleged assault for which he was arrested. The applicant stated that, had the officers watched his video footage and spoken to him and his mother, he would not have been arrested.

## Police Scotland's Handling of Complaint 1 (not upheld by the police)

As part of the complaint enquiry, Police Scotland reviewed the telephone calls received about the incident of 8 July 2017. In addition, two of the officers who initially attended the incident, Constables C and D, provided statements.

In his letter of response<sup>1</sup>, Superintendent B explained the content of the calls and the statements. He confirmed that a neighbour had called the police to report a fight in the street and that the applicant had also called to report that he had been assaulted. Superintendent B acknowledged that the applicant had also made a counter-allegation of assault when the officers attended at his mother's address to detain him in connection with the assault allegations made by the neighbours. Superintendent B stated that the applicant did not mention his counter-allegation again until he submitted his complaint about the police.

Superintendent B was satisfied that the officers had obtained an explanation as to how the applicant's t-shirt had become ripped. Superintendent B stated that this occurred when one of the neighbours attempted to restrain the applicant to prevent him from assaulting another person. Superintendent B confirmed that the applicant's counter-allegation was mentioned in the police report sent to the Procurator Fiscal, as was the information about the ripped t-shirt, to allow the Procurator Fiscal to make an informed decision.

Superintendent B also explained that the Procurator Fiscal was fully aware of the police report, and also the content of the applicant's video footage which the applicant had sent to the Procurator Fiscal directly.

## Police Scotland's Handling of Complaint 2 (not upheld by the police)

In his response, Superintendent B stated that witnesses initially provided Constables C and D with a verbal account of the incident to the effect that the applicant had: assaulted members of the public;

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<sup>1</sup> The full complaint response is reproduced at Appendix I

committed a breach of the peace; and used religiously prejudiced language. The officers were also told that the applicant had used a hand-held camera during the incident.

Superintendent B explained that the officers thereafter interviewed all the witnesses individually, which resulted in the applicant being reported to the Procurator Fiscal.

## **Our Review of Complaints 1 and 2**

Due to the similarities in the issues underpinning these two complaints, we have considered their handling together. In doing so, we have examined the information gathered by Police Scotland as part of the complaint enquiry, including the relevant incident reports, call recordings, officers' statements and video footage of the incident provided by the applicant. We have also viewed Police Scotland's report to the Procurator Fiscal in connection with the charges against the applicant, along with the associated witness statements.

According to the statements of Constables C and D, neither officer witnessed the disturbance as they arrived after the applicant had returned to his mother's house. They were told by witnesses that the applicant had assaulted two people, had been shouting and swearing, and had used religiously prejudiced language. The officers were aware of the applicant's counter-allegation of assault and this was acknowledged by Constable C when he spoke with the applicant to inform him that he would be detained. During subsequent enquiries, the officers gathered information from witnesses which in the officers' view explained how the applicant's t-shirt came to be ripped.

As explained in the complaint response, the applicant's counter-allegation of assault and the witnesses' explanation as to how his t-shirt became ripped were included in Police Scotland's report to the Procurator Fiscal in connection with the charges against him. The report explains that the applicant reacted when a neighbour took his camera from him. This resulted in another neighbour pulling the applicant back, causing his t-shirt to tear.

Notwithstanding that statements were taken, the officers were aware at the time that the applicant had tried to video record some of the incident. As the applicant's recording may have been able to show the officers what happened prior to the camera being removed, and also the reactions of the applicant and the neighbour who pulled him back, the complaint enquiry should have established whether the officers asked to view the video footage. While both Constables C and D stated that the applicant refused to engage with them, the officers should have been asked by Sergeant A to address specifically whether they requested the video footage and, if so, whether the applicant ignored or refused their request. Police Scotland would then have been better placed to determine whether sufficient investigation was conducted into both assault allegations before it was decided not to report the applicant's assault allegation to the Procurator Fiscal as a separate matter.

As the complaint enquiry did not establish fully the level of investigation conducted into the applicant's assault allegation and the alleged assault for which the applicant was charged – a matter which was at the core of complaints 1 and 2 – we consider that the enquiry was insufficient and we conclude on balance that neither of the complaints was dealt with to a reasonable standard.

Nonetheless, we have not recommended any further action on the part of Police Scotland in respect of these complaints. This is because we have viewed the applicant's footage and can confirm that the alleged assault against him cannot be seen, as the person who removed the camera has their hand over the lens. In addition, the sequence of events before that point is broadly consistent with the information provided by the witnesses. We can confirm also that the applicant is not seen to assault any person. Furthermore, Police Scotland's complaint file shows that Sergeant A contacted the Procurator Fiscal during the complaint enquiry (prior to the conclusion of the criminal proceedings against the applicant) to highlight the existence of the video footage, and the Procurator Fiscal confirmed that the

applicant had already provided a copy. Accordingly, there would in our view be little additional value in Police Scotland revisiting these complaints.

## Our Conclusion on Complaints 1 and 2

We conclude that Police Scotland did not handle these complaints to a reasonable standard.

For the reasons explained above, no further action is required in this connection.

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## Complaint 3

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The applicant complained that officers failed to act in a fair manner by siding with the other parties and failing to take his Asperger syndrome into account.

### Police Scotland's Handling of Complaint 3 (not upheld by the police)

Superintendent B responded as follows:

*"You have stated that you believed that the officers had listened to the false allegations of the mob. That the officers did not interview the witnesses individually in their homes... [and] that the officers had already decided that you were guilty when they approached you at your mother's front door.*

*You think that members of the public should have been told to return to their houses. You think that by allowing these persons to remain in a group it has given allowed [sic] them the opportunity to get their story straight."*

Superintendent B then explained that officers had initially spoken with members of the public at the scene. He confirmed that, once the applicant had been detained, the officers interviewed each witness individually at their respective home addresses.

### Our Review of Complaint 3

We have compared the wording of the applicant's complaint as recorded in his statement against the complaint that was addressed in the response. We note that the applicant made reference to aspects of this complaint in two separate areas of his statement. On page 2, the applicant stated:

*"I think the officers listened to the false allegations of the mob. They knew I had Asperger's and that I had videoed the incident and they didn't consider my Asperger's in how they approached me. The four officers approaching me at once made me feel frightened. I think that it is a crucial issue for Asperger's sufferers".*

On page 5 of his statement, he added:

*“I think that the police officers didn’t act in a fair manner, they took the side of the other parties and took no action against them ... I think the other parties should have been told to return to their houses”.*

Therefore, the applicant’s complaint as explained in his statement was essentially that he was treated unfairly, due in some part to officers failing to take account of the impact of his Asperger syndrome. However, the applicant’s concern in this respect was not included in the heads of complaint form which was completed on the same date as the statement, nor was it mentioned in Superintendent B’s response. Moreover, besides noting the applicant’s contention that *“officers didn’t act in a fair manner”* and despite this being the essence of the complaint, the response made no further reference to fairness.

While the heads of complaint are intended to be a summary of the complaints made, they must accurately reflect the crux of each complaint and should mention any specific concerns to ensure that the enquiry and subsequent response address the issues raised. It is not clear why the applicant’s reference to his Asperger syndrome was omitted from the summarised heads of complaint, but this omission seems to have led to an inadequate response which did not address the applicant’s complaint. We therefore conclude that this complaint was not dealt with to a reasonable standard.

### **Our Conclusion on Complaint 3**

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

We recommend that Police Scotland provide the applicant with a fresh response which addresses directly his concern that the officers did not act fairly and did not take his Asperger syndrome into account.

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## Complaint 4

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The applicant complained that his arrest on 8 July 2016 was unlawful.

### **Police Scotland’s Handling of Complaint 4 (not upheld by the police)**

Superintendent B stated that the initial verbal accounts provided the officers with sufficient evidence to allow them to detain the applicant under Section 14 of the Criminal Procedure (Scotland) Act 1995<sup>2</sup> (“the 1995 Act”) on suspicion of committing the offences listed above whilst they conducted further enquiries. Superintendent B considered that this action was justified and *“the only mechanism available to police officers enquiring into this crime”*.

Superintendent B stated that the applicant was subsequently arrested under Section 90(2)(a) of the Police and Fire Reform (Scotland) Act 2012<sup>3</sup> due to his violent reaction when the officers attempted to

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<sup>2</sup> The terms of Section 14 of the Criminal Procedure (Scotland) Act 1995 are noted at Appendix II

<sup>3</sup> The terms of Section 90(2)(a) of the Police and Fire Reform (Scotland) Act 2012 are noted at Appendix III

detain him, and his continued resistance and obstruction of the officers thereafter. Superintendent B concluded by stating:

*“The attending officers have carried out an initial investigation which legitimised your detention. Your actions when being detained resulted in you being arrested. The officers acted in an appropriate manner and your arrest was justifiable and necessary.”*

## **Our Review of Complaint 4**

The applicant explained to us that he disagreed with Police Scotland’s response to this complaint as the officers failed to inform him of the reason for his detention, which is contrary to the provisions of Section 14(6) of the 1995 Act. We have viewed the applicant’s video recording of his detention and can confirm that Constable C did not provide any explanation about the accusations being made against the applicant, stating only that the officers wished to speak with him at the police office. When the applicant refused to accompany the officers, Constable C told him that he would be detained. It appears to us that Constable C was then unable to explain why the applicant was being detained as the applicant immediately attempted to close the door. This resulted in officers restraining the applicant, after which he was arrested for obstructing the officers.

The content of the officers’ statements suggests that the applicant was restrained at the threshold, but the video footage clearly shows that two officers entered the house. Furthermore, the footage shows that the applicant was not advised that he was being, or had been, detained. Instead, the applicant was told by one of the officers *“I am going to detain you under Section 14”*. At that stage, no officer had physical hold of the applicant, and the applicant remained within the house, albeit at the front door. The applicant thereafter attempted to close the door whereupon two officers rushed into the house and pulled him outside where he was taken to ground on the front path.

As outlined in Police Scotland’s protocol on forcing entry, officers have the common law power to enter a property without a warrant under a limited range of serious circumstances<sup>4</sup>. In addition, guidance produced in 2011 for the Scottish Police College about the interpretation of that power states:

*“The constable may enter by force if refused admission after revealing his identity and the purpose of his errand. However, forcible entry should not be made to arrest a person for a minor crime or offence. The house may be watched to prevent the offender’s escape until a warrant is obtained if such a course is thought necessary, or the case may be reported for proceedings by citation”.*

Superintendent B’s response did not explain whether it was the applicant’s attempt to close the door or his subsequent struggle with the officers that led to him being charged with obstruction. If it was the former, the response should have considered whether the applicant’s actions by attempting to close the door were sufficiently serious to allow the officers to utilise their common law power of entry to effect the applicant’s arrest for obstruction. However, the statements provided by Constables C, E and F strongly suggest that it was the latter, i.e. the applicant struggling with officers after they had entered the property, that led to his arrest. Accordingly, the matter of whether the officers were entitled to enter the house at all was critical to the consideration of the complaint.

While Section 14 of the 1995 Act allows officers to detain a person suspected of committing an offence, it does not give officers the power to enter a person’s property without their consent or a warrant to effect the detention. Crucially, Superintendent B’s response did not address whether the officers involved in this incident had lawful authority to enter the property and forcefully remove the applicant in

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<sup>4</sup> An extract from the relevant procedure is available at Appendix IV

order to effect his detention. Consequently, we find that the response was inadequately reasoned and we conclude that the complaint was not dealt with to a reasonable standard.

## Our Conclusion on Complaint 4

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

We recommend that Police Scotland issue a further response to the applicant which, taking account of our observations:

- a) details the order of events on 8 July 2016;
- b) assesses whether the attending officers acted in accordance with the powers available to them at common law and under Section 14 of the 1995 Act; and
- c) fully explains the reasoning behind that assessment.

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## Complaint 5

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The applicant complained that, on 8 and 10 July 2016, a female officer was verbally abusive towards him at the police office. He recorded in his statement that, on 8 July 2016, the officer told him that he was drunk and spoke about him going to court then jail, which he found to be abusive. The applicant also complained that the same officer was aggressive towards him on 10 July 2016 when she attended at his cell to provide his medication.

### Police Scotland's Handling of Complaint 5 (not upheld by the police)

During the complaint enquiry, Sergeant A sought accounts from custody staff who had been on duty on 8 and 10 July 2016. Superintendent B explained the accounts as follows:

*“A female officer [Constable G] who was on duty on both the 8<sup>th</sup> and 10<sup>th</sup> of July 2016 has provided a statement in which she states that she had no particular recollection of the events or yourself, but she denies the allegation and having ever been abusive to any persons with whom she interacted whilst working within the cells complex [at the police office].*

*A male officer [Constable H] who was on duty on the 8<sup>th</sup> and the 9<sup>th</sup> July 2016 is currently off sick and was contacted by telephone when the details of this allegation was put to him. He stated he has no recollection of this incident. He also stated that he has never been present when any colleague has abused a person in custody.”*

Superintendent B explained that CCTV footage of the cell area was no longer available given the length of time between the applicant being held in custody and the complaints being made. Accordingly, it could not be taken into account during the complaint enquiry. Superintendent B explained also that the custody record showed: that the applicant agreed to answer vulnerability questions several hours after he had been taken into custody; that the applicant was seen by a doctor; and that the applicant had been given food and medicines during his period in custody. Superintendent B concluded by stating that, on the information available, the complaint was not upheld.

## Our Review of Complaint 5

We have assessed the statements gathered during the complaint enquiry and the information recorded in the applicant's custody record.

We note that a female Police Custody and Security Officer (PCSO J) provided a statement in relation to a separate allegation made by the applicant (complaint 6 in this report). PCSO J explained that she too had no recollection of the applicant, but could see from the custody record that she did have some dealings with him during his period in custody. Her statement focused on 10 and 11 July 2016. However, PCSO J made an entry in the custody record on 9 July 2016 which shows that the applicant agreed to answer vulnerability assessment questions when she spoke with him at 03:05 hours. It is not clear which officer thereafter completed the questionnaire. However, as it contains questions about alcohol use, and as the applicant alleged that an officer told him that he was drunk, PCSO J's recorded contact with the applicant during her shift on 8/9 July 2016 may have been relevant to the consideration of this complaint. The questionnaire records that the applicant had not used alcohol within the previous 24 hours. In addition, neither PCSO J's entries in the custody record nor any other entries refer to the applicant being drunk. In our view, these points should have been explored in Superintendent B's response.

In respect of whether the applicant was told that he was going to court on the Monday, we consider that it would not have been unreasonable for an officer to have informed the applicant of the duration of his time in custody and the possible outcome of a court appearance. However, the applicant's complaint is about the manner in which this information was provided. As already explained, none of the officers remembers the applicant or can recall their interactions with him. Nonetheless, Superintendent B ought to have commented on this aspect of the applicant's complaint within his response.

Similarly, the response does not address the applicant's concern that the officer who attended at his cell to provide medication on 10 July 2016 was aggressive towards him and shouted at him. From the information available, it appears to have been PCSO J who issued the medication in question and who spoke with the applicant on 10 July 2016. Accordingly, her account should have been considered as part of the handling of this complaint.

In our view, Superintendent B's response did not properly reflect on the evidence that was most relevant to this complaint. For example, the fact that the applicant was provided with food and medicine is immaterial to the incivility allegation. We consider that Police Scotland has not sufficiently explained how the information available was used to assess the applicant's allegation that an officer was abusive and aggressive towards him. Accordingly, we find that the response was inadequately reasoned and we conclude that the complaint was not dealt with to a reasonable standard.

## Our Conclusion on Complaint 5

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

We acknowledge that, due to the passage of time, there would be little additional value in asking PCSO J to provide a further account as she has already explained that she has no recollection of her dealings with the applicant.

Notwithstanding, we recommend that Police Scotland issue a further response to the applicant which, taking account of our observations, addresses his allegation that an officer was aggressive and abusive towards him. The response should assess whether, on the balance of probabilities, the complaint is upheld and provide full reasoning for the determination reached.

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# Complaint 6

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The applicant complained that, whilst he was in police custody, a female officer refused to give him food whilst he was taking his medication, despite food being required.

## Police Scotland's Handling of Complaint 6 (not upheld by the police)

During the complaint enquiry, Sergeant A asked the Senior Clinical Forensic Charge Nurse, who is involved in the provision of healthcare to persons in police custody, about the requirement for food to be provided along with the medication the applicant was taking. Superintendent B explained in his response that the nurse confirmed that the British National Formulary does not direct that the medication should be taken with food.

Superintendent B also highlighted as follows the content of the statements which were gathered from custody staff in respect of this complaint:

*"[Constable G] has provided a statement in which she states that she has no particular recollection of the events or yourself, but she denies the allegation and having ever been abusive to any persons with whom she interacted whilst working within the cells complex at [the police office]."*

*[PCSO J] has stated that she has no recollection of your time in police custody, however on reviewing the related paperwork she is able to say that about midnight on the 10<sup>th</sup> July 2016, she has provided you with medication... and this was recorded on a medical sheet. There is no record of this PCSO having attended at your cell on the 8<sup>th</sup> July 2016.*

*[Constable K] has stated that about 0033 hours on the 11<sup>th</sup> July 2016 you have requested something to eat and that about 0052 hours on this date this officer has provided you with a cereal bar, which you accepted without complaint.*

Superintendent B concluded the response by stating:

*"Having considered the information available to me, I do not uphold the allegation made against the officer concerned."*

## Our Review of Complaint 6

We have considered the content of the applicant's custody record and the guidance provided to Police Scotland by the nurse.

The 'Medication Management Sheet' within the applicant's custody record states that medication should be issued "as prescribed". The doctor listed the medication along with the quantities and frequency required for each different medicine. The 'Medication Management Sheet' does not specify whether any of the tablets should be taken with food.

In relation to the nurse's guidance, Superintendent B's response correctly identified that the nurse checked the British National Formulary which does not direct that the medication is taken with food. However, the response did not point out that the nurse found other information to suggest that there may be some benefits to the patient if the medication is taken with a snack.

The applicant provided us with the packaging for the medication in question. This has a pharmacy label attached which states that the tablets should be taken with or just after food. Therefore, it was the applicant's understanding that the tablets should be taken with a meal. In our view, the complaint enquiry should have sought to establish whether those instructions were available to custody staff at the time.

Furthermore, we note that the applicant was given the medication in question on two occasions during his period in custody, once with food and once without. This point has not been explored during the complaint enquiry or discussed in the response to the applicant. In that regard, the custody record shows that Constable L provided the tablets along with food at 00:49 hours on 10 July 2016. We cannot determine from the entry alone whether the applicant requested the food or whether this was offered because he was taking the medication. The tablets were issued again at 00:05 hours on 11 July 2016 by PCSO J. The relevant entry in the custody record states only that the applicant was "*given meds*". It does not state whether the applicant asked for food at that time, or whether any such request was refused. Although Superintendent B's response highlighted that the applicant was given a cereal bar a short time later, this did not address the applicant's complaint that food was initially refused.

In conclusion, we consider that Police Scotland did not consider all the material information available and, as a result, the response was inadequately reasoned. We therefore conclude that the complaint was not dealt with to a reasonable standard.

## Our Conclusion on Complaint 6

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

Similarly to complaint 5, we acknowledge that there would be little value in asking custody staff to provide further accounts due to the passage of time.

Nonetheless, we recommend that Police Scotland issue a further response to the applicant which, taking account of our observations, addresses his contention that he required but was refused food while taking his medication. The response should assess whether, on the balance of probabilities, the complaint is upheld and provide full reasoning for the determination reached.

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## What happens next

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We have made four recommendations 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 recommendations have been implemented to our satisfaction.

**Lynn McCord**  
Review Officer

**Peter Innes**  
Senior Review Officer

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# Appendix I

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## Extract from Police Scotland's response letter dated 4 December 2017

(Redacted and paragraphs numbered)

1. **Allegation 1** "On the 8<sup>th</sup> July 2016...the police failed to investigate my complaints of assault"
2. You have stated that on the 8<sup>th</sup> July 2016 you were involved in an incident with neighbours during which you believe you were the victim of an assault. You state that following this incident you telephoned 999 and reported being assaulted and that when officers arrived you made [Constable C] aware that you had been the victim of an assault.
3. You have provided an audio and video clip from the mobile phone footage during which you are heard to respond to [Constable C] informing you that you are being required to attend at the police station by stating "*No, no I'm the one that's been assaulted, I'm the one that's been assaulted.*"
4. You believe that the officers should have recognised that your T-shirt being ripped supported your assertion that you had been assaulted.
5. About 1715 hours on 8<sup>th</sup> July 2016 a call is recorded on police systems from a member of the public reporting that a male from [your mother's address] was fighting with neighbours.
6. About 1723 hours on this date a further call is recorded on police systems from you stating that you had been assaulted by neighbours of your mother, you refer to the perpetrators as being catholic bigots and that this had been the reason for the attack.
7. [Constables C and D] have provided statements in which they have stated that when they attended at your mother's home address in order to detain you in relation to the report made by the member of the public, they acknowledged that you had made a counter complaint and that when you were made aware that you were to be detained you have reacted violently and thereafter made no reference to your counter allegation. You stated "*After being arrested I formed the impression that police were biased so I used my right of silence and I didn't mention anything after this*".
8. The report submitted to the Procurator Fiscal in relation to the crimes you were charged with, includes a reference to you making a counter allegation.
9. The officers have attended at the incident and then taking a course of action to allow them to investigate same. They were aware of you having telephoned the police to make a counter allegation and acknowledged that you have mentioned this when approached. However you have thereafter provided no details to the officers regarding this. When recording statements from the members of the public involved an explanation was provided as to how your t-shirt was ripped, during a moment that one of the members of the public attempted to restrain you to prevent what they believed was you attempting to assault another member of the public. The details known were communicated to the Procurator Fiscal within the police report submitted to allow them to make an informed decision.

10. The next mention of you being assaulted was included within the documentation and video footage provided when you have made this complaint about the police and the subsequent statement that you have provided to [Sergeant A].
11. I am aware that the Procurator Fiscal is fully aware of the content of the documentation and the video footage as you sent a copy to them directly. The statement provided by you and your mother to [Sergeant A] has also been shared with the Procurator Fiscal.
12. Having considered the information available to me, I do not uphold the allegation made against the officer concerned.
13. **[Allegation 2]** “on the 8<sup>th</sup> July 2016...the police failed to investigate the assault for which I was arrested properly.”
14. You have stated that on the 8<sup>th</sup> July 2016 you were involved in an incident with neighbours and that you were subsequently arrested.
15. You believe that the officers listened to what you have described as being false allegations against you...[and] that if the police had spoken with your mother and watched the mobile phone footage you would not have been arrested.
16. About 17.15 hours on 8<sup>th</sup> July 2016 a call is recorded on police systems from a member of the public reporting that a male from [your mother’s address] was fighting with neighbours.
17. On the arrival of [Constables C and D] they have spoken with members of the public who have provided them with an account of what had taken place and this amounted to you assaulting members of the public, committing a Breach of the Peace and using religiously prejudice (sic) remarks. They were also made aware that you had used a camera to record these members of the public.
18. The accounts provided verbally by the members of the public have provided the officers with a sufficiency of evidence for them to detain you under the terms of Section 14 of the Criminal Procedure (Scotland) Act 1995 on suspicion of the aforementioned offences.
19. The officers have later returned and interviewed all the witnesses to this incident and this resulted in you being charged with offences and a report being submitted to the Procurator Fiscal.
20. Having considered the information available to me, I do not uphold the allegation made against the officer concerned.
21. **[Allegation 3]** “On the 8<sup>th</sup> July 2016...I know the police officers didn’t act in a fair manner, they took the side of other parties and took no action against them”.
22. You have stated that you believed that the officers had listened to the false allegations of the mob. That the officers did not interview the witnesses individually in their homes and allowed them to remain in the street outside your mother’s house. You also state that you believe that the officers had already decided that you were guilty when they approached you at your mother’s front door.

23. You think that members of the public should have been told to return to their houses. You think that by allowing these persons to remain in a group it has given allowed them the opportunity to get their story straight.
24. The officers who have attended at this incident have spoken with the members of the public as described in the response to [allegation 2]. The accounts were given verbally at this time.
25. Following your initial detention and subsequent arrest the officers have returned to the home addresses of the respective members of the public. Each witness was interviewed on their own and a statement was recorded.
26. Again as discussed in the response to allegation 1 the full details were reported to the Procurator Fiscal.
27. Having considered the information available to me, I do not uphold the allegation made against the officer concerned.
- 28. [Allegation 4]** “On [the 8<sup>th</sup> July 2016]...I know my arrest was unlawful”
29. The accounts provided verbally by the members of the public have provided the officers with a sufficiency of evidence for them to detain you under the terms of Section 14 of the Criminal Procedure (Scotland) Act 1995 on suspicion of the aforementioned offences.
30. When the officers have subsequently approached you in order to conduct this detention you have reacted violently and were required to be restrained. You have continued to resist the officers and thereafter arrested for a contravention of Section 90 (20a) (sic) of the Police and Fire Reform (Scotland) Act 2012 which related to you resisting arrest and obstructing officers.
31. The actions of the officers in initially detaining you was appropriate and in accordance with Section 14 of the Criminal Procedure (Scotland) act 1995 [which] provides –
- (1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment, the constable may, for the purpose of facilitating the carrying out of investigations –
- (a) into the offence; and
- (b) as to whether criminal proceedings should be instigated against the person, detain that person and take him as quickly as is reasonably practicable to a police station or other premises and may thereafter for that purpose take him to any other place and, subject to the following provisions of this section, the detention may continue at the police station or, as the case may be, the other premises or place.
32. The crimes reported by the members of the public are punishable by imprisonment and in this particular instance the resultant formal detention under the above legislation was proportionate and justified and the only mechanism available to the police officers enquiring into this crime.
33. Your subsequent arrest was a result of your actions when detained. This again was appropriate and legitimate.
34. The attending officers have carried out an initial investigation which legitimised your detention. Your actions when being detained resulted in you being arrested. The officers acted in an appropriate manner and your arrest was justifiable and necessary.

35. Having considered the information available to me, I do not uphold the allegation made against the officer concerned.
36. **[Allegation 5]** “On the 8<sup>th</sup> and 10<sup>th</sup> July 2016 at [the police office] cells a female officer was verbally abusive towards me”.
37. You have stated that when you were brought into custody you have no recollection of being asked any questions. That about 24 hours after being in custody you were seen by a doctor who allowed you to take your prescribed medication. You believe that your mother raised the issue about your doctor as you hadn't asked to see one. You have stated that you have ulcerations in your stomach but that you never discussed this with the doctor or made police aware of this condition.
38. You have stated that on the 8<sup>th</sup> July 2016 about 2330 hours at the cells complex [at the police office] a female officer came into your cell and asked you why you were drunk and then mentioned about you going to court on Monday and then to jail. You state that during this time you had your head under your covers and you did not see this female, and that this female did not swear at you but was shouting at you.
39. That on the 10<sup>th</sup> July 2016 at the cells complex [at the police office] a female officer entered your cell and you believed that this was the same officer who you had heard on the 8<sup>th</sup> July 2016. You believe that during your interaction with this officer she shouted at you aggressively as if irritated by you and told you that they were busy.
40. You have stated that when this officer was shouting at you she spat in your face and you have clarified that this was spittle when she was shouting at you as she was close to your face.
41. The cells complex contains a CCTV system but due to the passage of time and the delay in this complaint being reported this is no longer available.
42. On the 8<sup>th</sup> July 2016 when you have initially been processed within the cells complex [at the police office] you have refused to answer the vulnerability assessment questions posed to you.
43. About 0327 hours on the 9<sup>th</sup> July 2016, you have agreed to answer these questions and during this time you disclosed that you had mental health issues and that you had a stomach ulcer.
44. About 1715 hours on the 9<sup>th</sup> July 2016 you have been seen by a force Medical Examiner (FME) and you have been prescribed with medication in relation to your [medical conditions]. You were also prescribed peptic for your stomach ulcer. This medication was thereafter provided to you at the times suggested by the FME.
45. During your time in custody you have been supplied with food to eat and tea or water to drink when requested and a regular meal times.
46. The details of the times you were seen by the FME, provided with items to eat and drink and provided with medication are recorded in the custody records.
47. Statements have been provided from officers and police staff who were on duty during this time period and they do not recall anything untoward or you making complaints during your time in custody.

48. A female officer who was on duty on both the 8<sup>th</sup> and 10<sup>th</sup> of July 2016 has provided a statement in which she states that she had no particular recollection of the events or yourself, but she denies the allegation and having ever been abusive to any persons with whom she interacted whilst working within the cells complex [at the police office].
49. A male officer who was on duty on the 8<sup>th</sup> and the 9<sup>th</sup> July 2016 is currently off sick and was contacted by telephone when the details of this allegation was put to him. He stated he has no recollection of this incident. He also stated that he has never been present when any colleague has abused a person in custody.
50. Having considered the information available to me, I do not uphold the allegation made against the officer concerned.
51. **[Allegation 6]** “On the 10<sup>th</sup> July 2016 at [the police office] cells a female officer refused to give you food when I was taking my medication, which was required.”
52. You state that on the 10<sup>th</sup> July 2016 at the cells complex at [the police office] a female officer entered your cell and you believed that this was the same officer who you had heard speaking on the 8<sup>th</sup> July 2016. That this officer provided you with [a medication that you take for a particular condition].
53. You state that you asked for food to be taken with this medication, which is something you believe is required. That you were told that they were busy and couldn't give you food at this time and insisted that you take the medication with water and you did so. You were then told that you would have to wait for food and that about half an hour later you were provided with [a] sweetie bar of some sort.
54. The Senior Clinical Forensic Charge Nurse who provides the Police Service of Scotland with Custody Healthcare was asked regarding this issue and has responded by stating that in the British National formulary, there are no directions to take this medication with food.
55. A female officer who was on duty on both the 8<sup>th</sup> and the 10<sup>th</sup> of July 2016 has provided a statement in which she states that she has no particular recollection of the events or yourself, but she denies the allegation and having ever been abusive to any persons with whom she interacted whilst working within the cells complex at [the police office].
56. In a statement provided by a female Police Custody Support Officer (PCSO) she has stated that she has no recollection of your time in police custody, however on reviewing the related paperwork she is able to say that about midnight on the 10<sup>th</sup> July 2016, she has provided you with medication...and this was recorded on a medical sheet. There is no record of this PCSO having attended at your cell on the 8<sup>th</sup> July 2016.
57. In a statement provided by a male officer he has stated that about 0033 hours on the 11<sup>th</sup> July 2016 you have requested something to eat and that about 0052 hours on this date this officer has provided you with a cereal bar, which you accepted without complaint.
58. Having considered the information available to me, I do not uphold the allegation made against the officer concerned.
59. In conclusion, may I take this opportunity to reassure you that we take complaints about the police seriously and always seek to resolve them in a fair and proper manner, which I believe has been achieved on this occasion.

60. It is always disappointing when a member of the public is dissatisfied with the service provided by our officers or the procedures followed by our staff. I would like to thank you for bringing your concerns to our attention and affording us the opportunity to provide an explanation and some reassurance.

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## Appendix II

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### Extract from Section 14 of the Criminal Procedure (Scotland) Act 1995

- (1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment, the constable may, for the purpose of facilitating the carrying out of investigations—
- (a) into the offence; and
  - (b) as to whether criminal proceedings should be instigated against the person,
- detain that person and take him as quickly as is reasonably practicable to a police station or other premises and may thereafter for that purpose take him to any other place and, subject to the following provisions of this section, the detention may continue at the police station or, as the case may be, the other premises or place.
- ...
- (6) At the time when a constable detains a person under subsection (1) above, he shall inform the person of his suspicion, of the general nature of the offence which he suspects has been or is being committed and of the reason for the detention...
- (7) Where a person is detained under subsection (1) above, a constable may—
- (a) without prejudice to any relevant rule of law as regards the admissibility in evidence of any answer given, put questions to him in relation to the suspected offence;
  - (b) exercise the same powers of search as are available following an arrest.
- (8) A constable may use reasonable force in exercising any power conferred by subsection (1), or by paragraph (b) of subsection (7), above.

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# Appendix III

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## Section 90 of the Police and Fire Reform (Scotland) Act 2012

### 90 Assaulting or impeding police

- (1) It is an offence for a person to assault –
  - (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
  - (b) a person assisting A while A is acting in such capacity.
  
- (2) It is an offence for a person to resist, obstruct or hinder-
  - (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
  - (b) a person assisting A while A is acting in such capacity.
  
- (3) The capacities are-
  - (a) that of a constable,
  - (b) that of a member of police staff,
  - (c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
  - (d) that of a person who-
    - (i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
    - (ii) is carrying out functions as a member of that team.

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# Appendix IV

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## Extract from Police Scotland’s Standard Operating Procedure on Forced Entry to Premises

- 2.1 Police officers are regularly required to attend and secure properties against intrusion often utilising the services of a boarding up service where required. Officers may also force entry into premises as part of pre-planned operation or as part of a spontaneous incident requiring immediate action.
  
- 2.2 Officers may undertake these functions using a range of legislation including S20 of the Police and Fire Reform (Scotland) Act 2012 which states that it is the duty of a constable to:

- prevent and detect crime;
- maintain order;
- protect life and property;
- to take such lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders with all due speed to justice;
- where required, to serve and execute a warrant, citation or deliverance issued, or process duly endorsed, by a Lord Commissioner of Justiciary, Sheriff, Justice of the Peace, or Stipendiary Magistrate in relation to criminal proceedings.

2.3 Furthermore, a constable is empowered at common law to enter a house or other building without a warrant for the purposes of:

- protecting life and property;
- on hearing the noise of a serious disturbance in the premises, to inquire into the cause or suppress the disorder;
- close pursuit of a person who has committed or attempted to commit a serious crime, e.g. murder, rape, robbery or theft by housebreaking.