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Police Investigations &  
Review Commissioner

PIRC/00436/17  
January 2019

# 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 consider appropriate, we can make recommendations, issue reconsideration directions 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 after the applicant's foster sons were stopped and searched by officers.

We have reviewed six complaints, namely that:

1. officers from Police Scotland unlawfully stopped and searched the applicant's foster sons on 30 October 2017 at a named location;
2. officers from Police Scotland unreasonably handcuffed the applicant's foster sons in a public place on 30 October 2017, one of whom remained in handcuffs until his release into the applicant's care;
3. officers from Police Scotland failed to build a reasonable rapport with the applicant's foster sons in order to establish their backgrounds; and failed to explain to them why they were being searched;
4. officers from Police Scotland failed to contact the applicant directly to explain what was happening to his foster sons and instead it was left to one of his sons to make contact;
5. Police Scotland officers at a named police office failed to make sufficient enquiries with the applicant and his wife to verify his foster son's identity and background; and
6. Police Scotland's complaints procedure appears to be geared to closing discussion down and is unfit for purpose.

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## Police Scotland's Decision

Police Scotland did not uphold any of the complaints.

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## Our Findings

We have found that Police Scotland have handled complaints 1 and 5 to a reasonable standard; but not complaints 2, 3, 4 and 6.

Consequently, we have issued three reconsideration directions to address the shortcomings that we have identified in Police Scotland's handling of complaints 2, 3 and 4.

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

We have also identified a learning point

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# Background

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The applicant was on holiday in a named town in Scotland with his wife, Mrs A, and his two foster sons, Mr B and Child C. Mr B and Child C are asylum seekers.

On 30 October 2017, Mr B and Child C were stopped and searched by Constables D and E under section 23 of the Misuse of Drugs Act 1971. No illegal drugs were found during the search; however Constables D and E took Mr B and Child C to a named police office in order to confirm their identity and asylum status.

The applicant was unhappy that Mr B and Child C were stopped and searched. He was also dissatisfied with their dealings with Constables D and E in this regard. He has implied that the decision taken by Constables D and E to search Mr B and Child C was racially motivated. The applicant was also unhappy with Police Scotland's complaints process.

The applicant submitted his complaints via Police Scotland's online reporting form on 6 November 2017. His complaints were initially dealt with by Sergeant F through Police Scotland's Front Line Resolution (FLR) process; however the applicant remained unhappy and submitted a letter of complaint dated 15 December 2017. Sergeant G was appointed as the enquiry officer and the applicant agreed his 'Heads of Complaint' over the telephone on 11 January 2018. The applicant met with Constable H on 24 January 2018 and provided a statement of complaint.

The applicant received a response to his complaints in a letter from Superintendent J dated 12 February 2018.

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# Complaint 1

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The applicant complained that, Constables D and E unlawfully stopped and searched Mr B and Child C on 30 October 2017.

Within his statement of complaint, the applicant said that, when he asked the officers why his foster sons had been stopped and searched, he was told that the police had intelligence that someone who “*shared the same appearance as [Mr B] was dealing drugs*”. The applicant said that when he queried what the ‘same appearance’ was, he was told that he had an afro, which Mr B has.

The applicant said he considered the reason given to be totally insufficient for having decided to search Mr B. Instead, he contends that the decision was based on Mr B’s ethnic appearance; without any other evidence.

The applicant said that the other officer used the words “*looking furtive*” for having justified the stop and search. The applicant again said that he did not feel that this was justification in itself to search someone.

He said he believed the officers made the assumption that Mr B and Child C were either those individuals, whom the police had intelligence relating to, or linked to them due to their colour.

The applicant said that he did not think this was a proper way in which to conduct searches and could lead people to draw damaging conclusions against the police.

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

Superintendent J summarised the applicant’s complaint as per his statement. He then said the following in response to this complaint:

*“The subject officers [Constables D and E] have provided accounts, within which they report that they were travelling together in an unmarked police vehicle on [named location] at approximately 1350 hours on 30<sup>th</sup> October 2017 when they observed two males, who they now know to be your foster sons [Mr B and Child C]. The officers observed [Mr B] handing a small unknown item to [Child C] who immediately placed the item into his jacket pocket. They then observed [Mr B] rolling a cigarette and regarding this as potentially suspicious behaviour. The officers were also aware of recent intelligence, which suggested that an unidentified black male with an afro style haircut was dealing drugs in the [named town] area and they were of the opinion that [Mr B] was similar in appearance. As a result of the overall circumstances, the officers believed they were justified in stopping and searching your foster sons under terms of Section 23 of the Misuse of Drugs Act 1971.*

*The officer [sic] report that they approached [Mr B and Child C] during which they identified themselves as police officers and showed them their warrant/identification cards. They explained why they had stopped them and why they intended on searching them. They did not detect any language barrier and were of the opinion that [Mr B and Child C] clearly understood everything that was being said. The officers thereafter detained [Mr B and Child C] under terms of Section 23 of the Misuse of Drugs Act 1971 for the purpose of the search. Officers report that [Mr B] attempted to speak over and answer all*

of [Child C's] questions even although he appeared to clearly understand everything that was being said.

*Having considered the information available to me, I am satisfied that there is no evidence that the subject officers stopped and searched your foster sons based purely on ethnicity and appearance but was based on the combined circumstances as a whole. Having assessed the overall circumstances and their documented rationale, I am satisfied that the officers had reasonable grounds to stop and search your foster sons and that the search was justified, proportionate, lawful and necessary.*

*I do not uphold the allegation made against the officers concerned.*

*In view of my determination above I regard that the officers involved do not require additional diversity training and that an apology in relation to the stop and search of your foster sons is not appropriate in respect of this matter.”*

## **Our Review of Complaint 1**

As Superintendent J's response states, Constables D and E both provided statements during the complaint enquiry, copies of which have been provided to us to inform our review. Having read these statements, we can confirm that Superintendent J's response accurately reflects the officers positions and their rationale for having stopped and searched Mr B and Child C.

As part of our review, we have also been provided with copies of the intelligence logs that Constables D and E both referred to in their respective statements. Whilst we are unable to divulge any specific information regarding the intelligence that is held by Police Scotland, we have read the intelligence contained within the respective logs. We can confirm that the response correctly highlights that the applicant's foster sons matched the description of the individuals suspected of drug dealing.

We also note from the paperwork that we have been provided by Police Scotland that the search was carried out under the provisions of section 23 of the Misuse of Drugs Act 1971. This Act enables officers to search a person if the officer has reasonable grounds in which to suspect that they may be in possession of a controlled drug. The officers provided a sufficient explanation of the circumstances and the information available to them to explain why they considered there to be reasonable grounds for suspecting that Mr B and Child C might be in possession of controlled drugs.

Furthermore, section 4.4 of the Stop and Search of the Person in Scotland: code of practice for constables provides the following:

*“...reasonable grounds can be supported by information or intelligence that refers to personal factors. For example, intelligence might include a description of a person ... such a description may refer to a person's physical appearance... Reasonable grounds for suspicion should normally be linked to accurate and current intelligence or information, relating to articles for which there is a power to stop and search, being carried by individuals in any locality.”*

As mentioned section 23 of the Misuse of Drugs Act 1971 provides the power to search a person. We have also mentioned that there was intelligence of alleged drug dealing. We can confirm that this intelligence was recent at the time of Mr B and Child C having been searched; and that the intelligence did contain a description of the physical appearance of the suspects which the officers used in coming to a determination that Mr B and Child C may have been the intended suspects. We can confirm that the officers accounts in respect of the physical appearance of Mr B and Child C do indeed fit the description contained in the intelligence logs. We are satisfied that the information provided by the

subject officers provides sufficient explanation to conclude that the search undertaken was not solely based on the ethnic background of Mr B and Child C.

We consider that the response provided by Superintendent J has provided a detailed explanation as to why the officers stopped Mr B and Child C. The response is well reasoned and is supported by the material information available. We therefore conclude that this complaint has been handled to a reasonable standard.

## Our Conclusion on Complaint 1

We conclude that Police Scotland have handled this complaint to a reasonable standard.

There is no further action required of Police Scotland in this regard.

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## Complaint 2

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The applicant complained that, Constables D and E had unreasonably handcuffed Mr B and Child C in a public place on 30 October 2017; one of whom remained in handcuffs until his release into his care.

The applicant said that when he and Mrs A arrived at the police station, he noted that both Mr B and Child C were handcuffed to the front. Mrs A questioned why it was necessary for both Mr B and Child C to be at the police station and why they were both still handcuffed. The applicant said that it was more than ten minutes after he and Mrs A had arrived at the station before the handcuffs were removed from Mr B. He said that the handcuffs remained on Child C as the police were carrying out checks with the Home Office as Child C had come up on a police record. He said that once the checks had been completed, the handcuffs were removed from Child C.

The applicant's position is that this was *"a disproportionate assessment of the threat posed by two frightened boys"*.

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

Superintendent J said the following in response to this complaint:

*"Police officers are trained in all rigid handcuff techniques held within the national operational safety training programme. The following is a quote from this guidance:*

*"The primary reason for handcuffing is safety. The use of rigid handcuffs will be at the discretion of an individual officer/staff, based on their judgement of the circumstances. The officers/staff must be prepared to justify the use of rigid handcuffs.*

*Circumstances where rigid handcuffs could be applied:*

- *Where the officer/staff deems it necessary to prevent the subject from assaulting, injuring or offering violence to a member of the public.*
- *Where the officers/staff deems it necessary to prevent the subject from assaulting, injuring or offering violence to themselves or other officers/staff*
- *Where the officer/staff deems it necessary to prevent the subject from escaping or attempting to escape from custody.*
- *When the officer/staff deems it necessary to prevent the subject from harming themselves in conjunction with the above, officers/staff must ensure that their actions are also proportionate, legal, accountable, necessary and ethical.”*

*Within their account, the subject officers provide the following rationale for handcuffing [Mr B and Child C] during the search:*

- *To ensure their own safety.*
- *To prevent [Mr B and Child C] from potentially disposing of any items that they could have had in their possession.*
- *To prevent [Mr B and Child C] from escaping until they could complete the search.*
- *To prevent [Mr B and Child C] from escaping until they could verify their identity to ensure they were not wanted by the Police or any other agency.*

*In response to why [Mr B and Child C] handcuffs were not removed until they were released into your care at [named police office]. The officers report that [Mr B and Child C] had both provided inaccurate information regarding them having any previous dealings with Police in the UK. [Mr B] was also found in possession of two identification cards. One of the cards belonged to [Mr B], showing his name and image. The other card displayed the image of a black male (not [Mr B]) with a different name. [Mr B] informed officers that this card belonged to his friend but was unable to provide a reason, as to why he had it in his possession. The officers report that there was no way of checking whether the ID cards were genuine or not, and as a result they were unable to confirm [Mr B's] true identity at that time. The officers asked [Mr B and Child C] to accompany them to [named police office] until they could verify their identity and status. The officers confirmed that they removed [Mr B's] handcuffs once you arrived at the Police Station and confirmed his identity and version of events. They then removed [Child C's] handcuffs, as soon as the Home Office confirmed he had a live asylum claim with no restrictions due to his age.*

*Having considered the information available to me I am satisfied that the application of handcuffs until your foster sons identity and status were confirmed was justified proportionate lawful and necessary in the circumstances and that they were released as soon as possible thereafter.*

*I do not uphold the allegation made against the officers concerned.”*

## **Our Review of Complaint 2**

A statement was taken from Mr B as part of the complaint enquiry. In his statement, Mr B said that, while he and Child C were standing at a named location, two males approached them and handcuffed them. Mr B said that when he asked what was happening, one of the officers said something like “*drugs – you’re under arrest*”. Mr B said that when the applicant and Mrs A attended at the police station, they asked the officers why he and Child C were still handcuffed when nothing illegal had been found on them. Mr B said that, after a while, the handcuffs were removed from him but not from Child C.

There appears to be two separate elements of this complaint (i) that the officers unreasonably handcuffed Mr B and Child C at a named location; and (ii) that Mr B and Child C remained in handcuffs until their release into the applicant's care.

### **(i) officers unreasonably handcuffed Mr B and Child C**

Constable D said in his statement that he handcuffed Mr B, and that Constable E handcuffed Child C. This position is supported by Constable E.

Constable D provided his reason for having handcuffed both Mr B and Child C as being: *“due to the nature of the enquiry, an officer safety point of view, and to prevent the male from escaping or disposing of items...”*. Constable E provided a similar rationale regarding the use of handcuffs by stating that: *“due to the unknown risk and the nature of the enquiry, there being only myself and [Constable D] to deal with both males...”*.

We can confirm that Superintendent J's response has accurately explained to the applicant when officers may use rigid handcuffs in accordance with their operational safety training. Superintendent J has correctly explained that the use of handcuffs is at the *“discretion of an individual officer/staff, based on their judgement of the circumstances. The officers must be able to justify the use of rigid handcuffs.”* He has also accurately explained the officers rationale for having handcuffed Mr B and Child C.

We therefore agree with Superintendent J's position that the use of handcuffs on this occasion was proportionate. It is not unusual for suspects who have been detained under section 23 of Misuse of Drugs Act 1971 to be handcuffed due to unknown risk. Accordingly, we consider that the response from Superintendent J is adequately reasoned.

In this regard, we consider that Superintendent J has provided sufficient detail and a sufficient explanation for the officers rationale regarding their decision to have used handcuffs.

Accordingly, we consider that the response is based on the material information available and is well reasoned. We agree with Superintendent J's determination not to uphold this aspect of the complaint.

We conclude that this aspect of the complaint has been handled to a reasonable standard.

### **(ii) Mr B and Child C remained in handcuffs until their release into the applicant's care**

In their statements, both Constables D and E state that they took Mr B and Child C to the police station. This was in response to Mr B and Child C having told them that they had no previous involvement with police. However, when the officers carried out a search of police systems, they found that, contrary to what they had been told, Child C had previously been arrested for having entered the UK illegally; and Mr B had a pending case against him.

With regards to Mr B having remained in handcuffs, Superintendent J's response relies on the officers accounts that this was due to the officers being unable to confirm his identity. We note from Constable D's statement that he said Mr B had in his possession two student cards; one of which did not belong to him. However, we also note that Mr B said in his statement that he was in possession of his student card and his provisional driving license. Constable E's position is that Mr B had provided two identification cards. However, Constable E only provided information relating to one. It would therefore appear as though Superintendent J's response is solely based on Constable D's position. Accordingly, it does not appear that the discrepancy regarding what identification Mr B had on his person at the material time has been considered by Superintendent J.

As we stated above, the rationale for the detention and application of handcuffs has been properly explained by the subject officers and the final response issued to the applicant. However, we note that Mr B and Child C were detained for the purposes of a drug search. This search was undertaken and proved to be negative. It would appear that the grounds for detention no longer existed at that stage or if they did, then we would expect this to be reflected in the final response to the applicant. Neither of the officers involved have provided in their statements any lawful basis for continued detention of Mr B and Child C beyond this point. We also note that neither of the officers identified the point in time when grounds for initial detention no longer existed.

We also observe that both, Mr B and Child C, were led handcuffed from the location of the search for approximately 400 yards to the local police station. We note that there is nothing in the available evidence that provides any explanation whether this action was necessary and proportionate in the circumstances. Additionally, there is no information available to suggest that the officers attempted to make any enquiries whatsoever about the whereabouts of Mr B and Child C's foster parents before making the decision to take Mr B and Child C to the police station.

The officers have said in their respective statements that their rationale for taking Child C to the police station was to confirm his asylum status. This is supported by the notebook entry provided by Constable E. However, the crux of the complaint is that Mr B and Child C remained handcuffed until they were released into the applicant's care.

The Operational Safety Program provides the following:

*“...if officers/staff elect to use handcuffs, they should continue to monitor matters as a situation develops. If, after handcuffs have been applied, a subject's behaviour improves, officers/staff should review whether using the handcuffs is still necessary and proportionate in all the circumstances. Officers/staff should remember that the longer the period handcuffs are applied, the greater the interference with the subject's rights.”*

We note that the officers have made no mention in their statements of Mr B nor Child C as having made any attempt to escape; having become violent; or not having engaged with the search process. We note from the statements provided by the officers and Mr B, that Mr B and Child C were handcuffed as soon as the officers had approached them. We also note that there appears to have been little or no consideration on whether it was appropriate to have handcuffed Child C at all given that he was only 15 years of age at the time of the search. The only explanation that we can see in relation to Child C having remained in handcuffs is from Constable D, who said in his statement that: “[Child C's] handcuffs remained on him due to a combination of waiting on [Constable E's] update, officer safety and to him sitting next to an exterior door which at any time he could have made good his escape”. Furthermore, neither of the officers have addressed whether the need for the application of handcuffs was reviewed at any stage during their dealings with the applicant's foster children.

The operational safety training provides that:

*“When considering whether the use of handcuffs would be proportionate officers/staff should consider firstly what they aim to achieve by applying the handcuffs and, secondly, whether they could achieve this aim through any other courses of action open to them. Action is only proportionate if it is ‘the least intrusive of whatever alternatives may reasonably be available. If the aim could be arrived at by some other route or means, which constituted less of an interference with the subject's rights than applying handcuffs, then that is the path officers/staff should take.”*

We note that neither Superintendent J's response, nor the officers statements, appear to have considered if there was any other option available to them that would have negated the need for Mr B

and Child C to have been kept in handcuffs whilst they were walking to the police station and whilst waiting in the police station itself. Given that neither officer has suggested that there was any resistance on the part of Mr B and/or Child C, or an issue with the search itself, then it may have been appropriate for Constables D and E to have considered asking Mr B and Child C to accompany them without the need for Mr B and Child C to have been handcuffed and placed in an interview room whilst they awaited the outcome of checks that were being carried out.

We consider that the officers statements are not sufficiently detailed in order to come to a view on whether their decision to have kept Mr B and Child C in handcuffs was proportionate to the potential threat they were assessed to have posed. Furthermore, the response from Superintendent J has failed to address specifically why Mr B and Child C remained in handcuffs, and has not considered if there were any other options available to the officers in this regard.

Accordingly, we consider that this aspect of the complaint has not been handled to a reasonable standard. We therefore have to conclude that the complaint as a whole has not been handled to a reasonable standard.

## **Our Conclusion on Complaint 2**

We conclude that Police Scotland have not handled this complaint to a reasonable standard.

Under section 35(7) of the 2006 Act, a reconsideration direction is given to Police Scotland. The reconsideration direction is not subject to our supervision. In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate.

In reconsidering the complaint, Police Scotland should:

- record each element as a separate complaint (i) officers unreasonably handcuffed Mr B and Child C; and (ii) Mr B and Child C remained in handcuffs until their release into the applicant's care;
- obtain further statements from Constables D and E that specifically addresses the applicant's complaint that Mr B and Child C remained in handcuffs; taking cognisance of the points raised within our complaint handling review;
- consider whether the officers' actions were appropriate and proportionate taking cognisance of the points raised within this complaint handling review and consider whether there were any other actions that the officers could have taken to achieve the same result; and
- provide the applicant with a further response. This further response should clearly explain the officers rationale for having kept Mr B and Child C in handcuffs; explain whether the officers' actions were proportionate in this regard; whether the complaint is upheld/not upheld, and provides a detailed rationale in the determination that is reached.

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# Complaint 3

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The applicant complained that, Constables D and E failed to build a reasonable rapport with Mr B and Child C in order to establish their backgrounds; and that they failed to explain to Mr B and Child C why they were being searched.

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

Superintendent J said the following in response to this complaint:

*"In his statement, [Mr B] reported that the officers were not wearing a police uniform and were wearing normal casual clothing. [Mr B] does not recall the officers telling them that they were police officers or providing their names. He does not recall the officers showing identification to confirm they were police officers and he assumed they were police officers because they had handcuffed them.*

*Within their accounts, the officers report that they approached [Mr B and Child C] during which they identified themselves as police officers and showed them their warrant/identification cards. They explained why they had stopped them and why they intended on searching them. They did not detect any language barrier and were of the opinion that [Mr B and Child C] appeared to clearly understand everything that was being said. The officer's report that they did attempt to build a rapport by asking questions about their holiday in [named town], however they report that [Mr B] kept speaking over [Child C] and telling him what to say. [Constable E] spoke with [Child C] regarding how and when he travelled to the UK. [Constable E] thereafter asked [Child C] about his family, however [Child C] replied by saying that he did not want to speak about his family. [Constable E] apologised for asking this question.*

*Having considered the information available to me, I am satisfied that the officers attempted to build a rapport with [Mr B and Child C].*

*I do not uphold the allegation made against the officers concerned."*

## Our Review of Complaint 3

We consider the applicant's complaint in this regard to be two-fold, namely (i) Constables D and E failed to build a reasonable rapport with Mr B and Child C; and, (ii) Constables D and E failed to explain to Mr B and Child C why they were being searched. As each element has the potential to be upheld/not upheld on its own merit, we have considered each aspect of the complaint separately.

### (i) officers failed to build a reasonable rapport with Mr B and Child C

Superintendent J's response has commented that Mr B kept speaking over Child C. Whilst we can confirm that this has been documented in both Constable D and E's statements, we do not consider this comment in itself to address or add any value to the complaint response; nor does it inform whether the officers had failed to build a reasonable rapport. Of note is the point in which Mr B was speaking over Child C appears to have occurred whilst Child C was being asked his name and age in

order to carry out a police person check. Our view is that the officers having asked Child C for details to identify himself cannot reasonably be considered as rapport.

Superintendent J has accurately reflected Constable E's statement in the response letter. Constable E said that he asked why Child C was in named town, and that as they were walking to the police station, he had asked Child C how long he had been in the UK, how he came to be in the UK, and asked about his family. Noteworthy, however, is that Constable D has not addressed in his statement as to whether he made any attempt to build a reasonable rapport with Mr B. This is contrary to Superintendent J's response.

We also note that Superintendent J has failed to provide any information as to how he reached his determination not to uphold the complaint. i.e. the application of the balance of probabilities test.

Superintendent J's response should have explained to the applicant what level of rapport, if any, he would have expected his officers to have built with Mr B and Child C in the particular circumstances of this case. We can see from Constable E's statement that he explained that he did build rapport with Child C, however we cannot establish from Constable D's statement that any rapport was attempted with Mr B.

Accordingly, as Constable D has failed to address this element of the complaint; we consider the response from Superintendent J is not supported by the material information available. Furthermore, Superintendent J has failed to explain to the applicant how he arrived at his determination not to uphold the complaint. We therefore conclude that this aspect of the complaint has not been handled to a reasonable standard.

#### **(ii) Constables D and E failed to explain to Mr B and Child C why they were being searched**

Superintendent J's response has accurately reflected the content of Mr B's statement in this regard.

Constable D said that, once Mr B and Child C had been handcuffed, he *“fully explained to both males the reasoning for stopping them and that they would be subject to a search, to which both fully understood and were compliant”*.

Constable E said that *“it was explained to both males why they were being searched”*. Constable E also said that Child C fully understood what was being asked of him.

The standard of proof applied to non-criminal complaints about Police Scotland is the 'Balance of Probabilities'. This is a test that is used to assess the available evidence in order to reach a determination on which version of events is considered to be more probable. In this case, we note that there are two statements from the officers - Constables D and E - stating that they explained to Mr B and Child C why they were being searched and that they understood what they were being told. We have on the other side, Mr B's account. Accordingly, we consider that in light of the available evidence, Police Scotland would have no reason to prefer the applicant's version of events over the officers' position. Therefore, on balance, Superintendent J has correctly determined that this aspect of the applicant's complaint is not upheld. We consider that Superintendent J's response would have been strengthened if he had explained this to the applicant.

However, as we have identified a shortcoming in terms of the first aspect of the complaint; we have to conclude that this complaint, overall, has not been handled to a reasonable standard.

## Our Conclusion on Complaint 3

We conclude that Police Scotland have not handled this complaint to a reasonable standard.

Under section 35(7) of the 2006 Act, a reconsideration direction is given to Police Scotland. The reconsideration direction is not subject to our supervision. In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate.

In reconsidering the complaint, Police Scotland should:

- record each aspect of the applicant's complaint separately (i) officers failed to build a reasonable rapport with Mr B and Child C; and (ii) Constables D and E failed to explain to Mr B and Child C why they were being searched;
- obtain a statement from Constable D that addresses the circumstances as to whether he attempted to build a reasonable rapport with either Mr B or Child C; and
- provide the applicant with a further response. The response should detail what level of rapport would have been expected from the officers. It should also accurately reflect the content of the officers statements and explain as to whether the applicant's complaint is upheld/not upheld and the determination behind this.

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## Complaint 4

The applicant complained that, Constables D and E failed to contact him directly to explain what was happening to Mr B and Child C, and that it was instead left to Mr B to make contact.

The applicant said that, he took a call from Mr B, during which he was informed by Mr B that he was at the police station and he told the applicant not to worry. The applicant said that he and Mrs A thereafter attended at a named police office. He said that he did not speak with anyone else other than Mr B whilst he was on the phone.

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

Superintendent J said the following in response to this complaint:

*“[Mr B] reported the following information in his statement “As we were walking back to the Police Station I asked to phone [Mrs A] to try and get her to come and meet us. The phone call was my idea, as I wanted them to know what was happening. I was allowed to phone [Mrs A] but [the applicant] answered the phone and I told him to come to the station. There was some confusion at first because I didn’t say Police Station, just station”.*

*I note from your statement that [Mr B] told you not to worry during this call and asked you to attend the Police Station.*

*Within their accounts, the officers confirmed that they had no objections to [Mr B] making this call.*

*Having considered the information available to me, it is my opinion that the officers acted reasonably by allowing [Mr B] to make the phone call, as per his own request and that this was done with the best of intentions.*

*I do not uphold the allegation made against the officers concerned.”*

## **Our Review of Complaint 4**

We have been provided with a copy of Mr B’s statement. Having read this statement, we can confirm that Superintendent J has accurately reflected its contents in his response.

However, noteworthy is that, although Mr B said that he had asked to contact Mrs A, the statements provided by Constables D and E detail otherwise. Within his statement, Constable D said: *“I requested [Mr B] to phone his foster parents from his mobile phone and ask that they attend the station to assist with establishing the facts, which he did”.* Constable D’s position is supported by Constable E, who said that: *“I was aware that [Constable D] had asked [Mr B] to make contact with his foster family to get them to attend the police station”.*

The crux of the complaint is that the officers did not contact the applicant directly to advise him on what was happening. In relation to Mr B having made the telephone call to the applicant, Constable D said in his statement that *“there was no risk involved in doing this and so I felt there was no requirement or necessity for myself or anyone else to speak with his foster parents”.* Although Constable D has said that he did not feel that there was a risk in Mr B having made the call, he has failed to provide any rationale on why he did not contact the applicant or Mrs A, especially given the age of Child C. Constable D has also failed to explain why he asked Mr B to make the call in the first instance.

Although Constable E has detailed in his statement that he was aware that Constable D had asked Mr B to contact his foster parents, he also has not provided any rationale on why the officers themselves did not contact the applicant or Mrs A; nor has he addressed if it was appropriate for Mr B to have been asked to make contact with them, especially given the age of Child C. Indeed, he has not commented at all on this complaint other than to state that he was aware that Mr B had been asked to make contact with his foster parents. Accordingly, Superintendent J’s response that *“Within their accounts, the officers confirmed that they had no objections to [Mr B] making this call”* is not supported by the material information available.

From the information available, we can determine that Mr B did make the call to the applicant. However, there appears to be two conflicting accounts as to who initiated the call being made. We note that Mr B’s position is that he asked permission from the officers to contact his foster parents, whereas the position of the two officers is that Constable D had asked Mr B to make the call. Accordingly, Superintendent J’s rationale that the officers had acted reasonably given that Mr B had asked to make the call is – on balance - not supported by the information available.

Furthermore, if the officers did ask Mr B to make the call, it is not clear from the paperwork provided why they did not ask him to make the call at the locus of the search.

We also note that the officers justified keeping Mr B in handcuffs due to a number of risk factors. As we stated earlier in this report, it is not clear whether Mr B was still deemed by the officers to be detained in terms of section 23 of the Misuse of Drugs Act 1971, especially at the time of the phone call being made. If this is indeed the case, then this complaint enquiry should have considered whether it was appropriate for the officers to allow a handcuffed detainee to make a phone call to a third party.

For the reasons we have outlined above, we consider that there has been insufficient enquiry into this complaint and that the response provided by Superintendent J is not supported by the material information available.

We therefore conclude that this complaint has not been handled to a reasonable standard.

## **Our Conclusion on Complaint 4**

We conclude that Police Scotland have not handled this complaint to a reasonable standard.

Under section 35(7) of the 2006 Act, a reconsideration direction is given to Police Scotland. The reconsideration direction is not subject to our supervision. In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate.

In reconsidering the complaint, Police Scotland should:

- obtain a statement from Constable E that addresses the applicant's complaint. The statement should cover whether it was appropriate for Mr B to have been asked to contact the applicant or Mrs A; and why neither he nor Constable D felt it appropriate to contact the foster parents, especially given the age of Child C;
- obtain a further statement from Constable D that details his rationale for not contacting the applicant nor Mrs A; and why Mr B was instead asked to make the call; and
- provide the applicant with a further response. This further response should be based on the material information available; and should provide details of the further information obtained from the officers; explain the rationale as to why no officer contacted the applicant nor Mrs A; and explain to the applicant if his complaint is upheld/not upheld based on the further information obtained.

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# Complaint 5

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The applicant complained that, whilst at a named police office, Constables D and E failed to make sufficient enquiries with him and Mrs A to verify Mr B and Child C's identity and background.

The applicant said that, upon attending at the police station, he was told that the officers were waiting on checks to be done with the Home Office relating to Child C as he had come up on a police record. He said that he informed the officers that Child C would appear on a police record as he had been detained upon entering the UK. He said that he was informed that Child C still needed to be checked out by the Home Office, and he accepted this position. However, he said that he was not asked by the police to provide any information that may well have verified as to whom Child C was.

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

Superintendent J said the following in response to this complaint:

*"I note from your statement that on your arrival at [named police office] and in response to your question, a police officer informed you that your foster sons had been detained for a drugs search but nothing had been found. You report that the officers had informed you that they were waiting for checks being done with the Home Office regarding [Child C], as he was known to them for previously being detained on entering the UK. You report you accepted that these checks had to be carried out but you were never asked to provide information, which could have verified [Child C's] identity.*

*Within his account, [Constable D] reports that he introduced himself to you and provided a full explanation, as to how your foster sons had come to the attention of Police and why they had been stopped and searched. He informed you that your foster sons had been taken to the Police Station until they could verify [Mr B's] identity and [Child C's] asylum status. He reports that he removed [Mr B's] handcuffs once you verified his identity.*

*Within their accounts, the officers report that they had made you aware of the Home Office checks, which confirmed that [Child C] had previously been arrested for being in the UK illegally. They also informed you that there was a live asylum claim but due to his age there was no restrictions. As soon as these checks were confirmed [Child C's] handcuffs were removed and he was released into your care.*

*Having considered the information available to me, I am satisfied that the officers did act appropriately and followed the correct protocol regarding verifying your foster sons identity and status. While I understand you might take the view that officers were in business mode, I do not regard that their demeanour or manner was unprofessional or unreasonable, merely that they were carrying out their duties in an appropriate manner.*

*I do not uphold the allegation made against the officers concerned."*

## Our Review of Complaint 5

It is a point of concession that the applicant was told by officers upon his attendance at the police station that they were awaiting a check being carried out by the Home Office in relation to Child C, and that they required to confirm the identity of Mr B.

We can confirm that the response provided by Superintendent J has accurately captured the content of Constable D's statement. Constable D said that when the applicant attended the police station, Constable D introduced himself; and explained to him the full reasoning on how Mr B and Child C had come to the attention of the police, the stop and search, and the reason why they were taken to the police office.

The applicant's position is that officers did not carry out sufficient enquiries with him in order to verify Mr B and Child C's identification and background. Superintendent J's response has addressed this in relation to Mr B by stating that, once the applicant had confirmed who Mr B was, his cuffs were removed. This is supported by the officers statements. Accordingly, it appears that a verbal confirmation by Mrs A and the applicant was sufficient for the officers to accept that Mr B's identity has been established. The fact that the officers accepted verbal confirmation from Mr B's foster parents in relation to his identity casts doubts whether there was any sufficient doubt about Mr B's identity in the first place to justify his detention after the search was concluded.

We consider that Superintendent J's response would have been strengthened if he had specifically addressed why the officers had not asked the applicant or Mrs A any questions to verify Child C's asylum status. We consider that checks were ongoing with the Home Office at the time, which the applicant was apprised of and it would therefore have been inappropriate for officers to have accepted information on face value from the applicant or Mrs A in this regard. This appears to be the position adopted by Constable D who said that: *"Although [Mrs A and the applicant] stated that [Child C] was in the country legally, this could only be confirmed by the Home Office"*.

Furthermore, we note that the applicant mentioned in his complaint that the officers were in 'business mode'. We note that the complaint enquiry officer – Sergeant G - has not established with the applicant what he meant by this and why he considered it to be a negative quality. It is not clear what the applicant meant by the term 'business mode', however this has to be read in conjunction with the general nature of the complaint. The applicant complained that neither he or Mrs A were asked to confirm the identity of Mr B and the asylum status of Child C however as previously mentioned we consider that it was appropriate for the officers to have clarified Child C's status with the Home Office. We consider that Superintendent J has sufficiently addressed this aspect by stating that: *"I do not regard that their demeanour or manner was unprofessional or unreasonable, merely that they were carrying out their duties in an appropriate manner"*.

Accordingly, we consider that having made the decision to make further enquiries into Child C's immigration status, the officers acted appropriately by carrying out the relevant checks with the Home Office. The final response to the applicant would have been strengthened if it referred to the relevant protocol and procedures in this regard. Nonetheless, we consider that the response provided sufficient information and is supported by the available evidence.

## Our Conclusion on Complaint 5

We conclude that Police Scotland have handled this complaint to a reasonable standard.

There is no further action required in this connection.

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## Complaint 6

The applicant complained that Police Scotland's complaints procedure appears to be geared towards closing discussion down and is unfit for purpose.

Within his correspondence to Police Scotland dated 15 December 2017, the applicant said that when he returned home after holidaying in [named town], he made his complaint to the police online. He said that he received a telephone call from Sergeant F from the Professional Standards Department on 10 November 2017, and that he thereafter received a letter from Sergeant F dated 13 November 2017. This letter said that Police Scotland apologise for the experience; that the applicant was now satisfied with the action taken; and that the matter was resolved.

The applicant said that he did not agree with this letter as he had asked for his foster sons, Mr B and Child C, to have been given an apology. He said that the letter did not provide any details of the action that had been taken by Police Scotland in this regard.

The applicant also said that the letter he received did not inform him of his right to take the matter further, only about the way the complaint was handled.

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

Superintendent J said the following in response to this complaint:

*"The National Complaints Assessment & Resolution Unit (NCARU) was created in order to provide a more efficient front line response to complainers and to establish the exact nature of the complaint at an early stage. This process has been found to be extremely successful as it ensures an accurate assessment is being conducted, timely recording and progression of the complaint as per Statutory Guidance (The Police, Public Order and Criminal Justice (Scotland) Act 2006. And, where appropriate and possible, maximises the early resolution of a complaint. This process in turn provides a quality service to the public and offers support to divisions.*

*Please note extract contained within our Standard Operation Procedures as shown below –*

#### 6.5 Early Resolution

**6.5.1** *When a complaint is made face to face, or by telephone, a supervisor may be able to resolve it there and then without the need to progress through the full six stage process (sent to division) set out in the statutory guidance. Rather than conducting an investigation the matter may be resolved by explanation, or a simple apology, or assurance.*

**6.5.10** *Officer(s) subject to the complaint and their first line manager will be made aware of the complaint and that it has been resolved by Early Resolution.*

**6.5.11** *A pro-forma letter, or e-mail, will be sent to the complainer, which explains that the matter has been resolved by Early Resolution and, if the complainer changes their position, they should contact the Professional Standards Department in the first instance.*

*With regards to your complaint about the process, the officer followed procedure as per Police Scotland's guidance and therefore I conclude that this aspect of your complaint is not upheld."*

## **Our Review of Complaint 6**

We have been provided with an email trail from Sergeant F dated 10 November 2017 regarding this complaint. Within his email, Sergeant F said that he had spoken to the applicant and after a long conversation, the applicant accepted that the officers had carried out their duties correctly. We also note that, in the Complaints about the Police Record, it has been noted that the applicant *"was not convinced of the reasons for detention and search but accepted that officers had acted correctly"*.

We have been provided with a copy of the letter that was issued to the applicant by Sergeant F dated 13 November 2017. This letter was issued at the conclusion of the Front Line Resolution (FLR) process. In this letter, the applicant was provided with an apology. The letter also contains the standard paragraphs advising the applicant that if he remained unhappy with the way in which his complaint had been handled, then he may write to the Professional Standards Department. We can confirm that this is normal practice, and is contained within the guidance Superintendent J detailed within his response letter to the applicant. We note from the applicant's correspondence that he wished for Mr B and Child C to be given an apology. We accept that the applicant was the complainer in this case, however he lodged complaints as a parent/guardian in relation to an incident involving his foster children. His complaints centres around what he perceived to be an unnecessary detention of Child C and Mr B. Accordingly, we consider that a meaningful apology, if indeed Police Scotland intended on providing one, would have included, or at least referred to the applicant's children.

We note that within correspondence issued to Police Scotland dated 15 December 2017, the applicant said that the letter he received at the conclusion of the FLR process did not detail what action was taken by Police Scotland. The letter does not state what the applicant's complaint was about, what was discussed with the applicant over the phone, what was agreed or how the complaint has been resolved. However, we fully acknowledge that the current Complaints About Police Standard Operating Procedure does not specify what information should be included within such letters. Accordingly, a Learning Point is issued in this regard.

We can confirm that Sergeant F has followed the correct process in place in that attempts were made to: establish the circumstances that led to the complaint; provide an explanation to the applicant in this regard; and to give an apology if appropriate. We note that, after the applicant had sent a letter advising that he remained unhappy, the six stage complaint process was initiated.

Accordingly, Superintendent J has correctly advised the applicant of the process as per the Complaints about the Police Standard Operating Procedure. We agree that this process has been followed.

Notwithstanding this, the question remains as to whether it was appropriate to have dealt with the applicant's complaints through Front Line Resolution. In this case there is an allegation surrounding the detention of a child, which includes an element of racial discrimination. Police Scotland should consider based on the severity of the allegations made as to whether it was reasonable to attempt to deal with this type of complaint by Front Line Resolution in the first instance.

We conclude that this complaint has not been handled to a reasonable standard. However, a leaning point has been identified

## **Our Conclusion on Complaint 6**

We conclude that Police Scotland have not handled this complaint to a reasonable standard. However, there is no further action required of Police Scotland in this regard.

## **Learning Point**

The letters issued by Police Scotland following their Front Line Resolution process contain insufficient detail in order to allow a complainer to reasonably consider that his/her complaint has been appropriately dealt with. This is a point that is continually raised by complainers.

Police Scotland should give due consideration to improving the letters that are sent at the conclusion of their Front Line Resolution process. These letters should contain sufficient detail to enable a complainer to understand what, if anything, has gone wrong, what will be done as a result of their complaint and any other relevant detail.

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## What happens next

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We have issued three reconsideration directions. We expect these to be implemented within two months of the date of this report. We will continue to liaise with Police Scotland until such time as we consider that the reconsideration directions have been implemented to our satisfaction.

**Nicola Mayes**  
**Review Officer**

**Ilya Zharov**  
**Head of Review & Policy**