

independent and effective investigations and reviews

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Police Investigations &
Review Commissioner

PIRC/00026/18
February 2019

Report of a Complaint Handling Review in relation to Police Scotland

What we do

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.

Executive Summary

The Complaints

The complaints in this case arose after the applicant was arrested in relation to a breach of the peace.

We have reviewed nine complaints, namely that:

1. during the summer of 2017, the applicant reported to the police that someone had thrown eggs at his home. The applicant said that he did not receive sufficient updates regarding this;
2. the applicant was not given an opportunity to provide his version of events when the police attended in response to an incident on 21 December 2017;
3. on the same date, the officers that arrested the applicant decided to do so without being in possession of all available information;
4. on the same date, officers based their decision to arrest the applicant on the basis of a complaint made by a known trouble-maker that dislikes English people;
5. on the same date, officers failed to show compassion and afford the applicant proper care whilst conveying him to a police station despite him having made the officers aware that he had a recent operation;
6. the applicant requested to discuss the incident of 21 December 2017 with an officer not connected to his arrest, but this request was ignored. The applicant believes this was to limit his complaint and hide issues from senior officers;
7. the officer who spoke to the applicant and his partner on the telephone after the incident on 21 December 2017, slammed the phone down during the conversation with the applicant's partner;
8. the arresting officers did not provide the applicant with details of the accusations that were made against him; and
9. the applicant does not believe that the arresting officers wrote anything in their notebooks whilst they were having discussions with him.

Police Scotland's Decision

Police Scotland did not uphold any of the complaints.

Our Findings

We have found that Police Scotland have handled complaints 1, 2, 3, 4, 5, 6, 7 and 8 to a reasonable standard, but not complaint 9.

We have issued a learning point.

Background

The applicant is involved in a long-standing neighbour dispute with Mr A. On 21 December 2017, the applicant and his partner attended at Mr A's door. This was in an attempt to speak with him regarding dog fouling in his garden as the applicant suspected Mr A's dog was responsible..

A call was made to the police, during which it was alleged that the applicant had been banging and shouting at Mr A's door. Constables B and C attended as a result of the call. Following their enquiries, the applicant was arrested for a breach of the peace. He was taken to a local police station and was subsequently issued with a Recorded Police Warning (RPW).

The applicant contends that he did not do anything wrong. The applicant's complaints relate to his arrest on this occasion, and also the level of service that he has received from Police Scotland when he reported other matters to them involving Mr A.

The applicant contacted Police Scotland's Professional Standards Department by telephone on 27 December 2017 to make his complaint. He subsequently sent a letter of complaint dated 6 January 2018. Inspector D was appointed as the enquiry officer. Due to the applicant having been out of the country for an extended period of time, it was not possible to obtain a statement of complaint. Instead, the contents of his letter of 6 January 2018 was used to form the basis of his complaint, and a 'Heads of Complaint' form was agreed with him via email on 6 February 2018.

The applicant received a letter in response to his complaints dated 20 February 2018 from Superintendent E.

Complaint 1

The applicant complained that, during the summer of 2017, he reported to the police that someone had thrown eggs at his home. The applicant said that he did not receive sufficient updates regarding his report.

Within his letter of complaint to the police, the applicant said: *“last summer sometime, a person was throwing eggs at me whilst I and my partner were sitting outside my greenhouse. I could not see who due to the hedges but the direction and trajectory was from his drying green. I have no doubt it was [Mr A] in response to me complaining to him about his dog crap. I called the police whom said they would ask him and also others in the block. I have no idea of the outcome as the Police only came back to me once saying they could not find him in.”*

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

Superintendent E said that, following research into this matter, he identified two separate incident reports. He said that, as he was unable to determine which incident the applicant was referring to, he reviewed both of them.

Superintendent E detailed the circumstances reported by the applicant in relation to both incident reports, and explained the enquiries carried out by the officers into each of them. In relation to incident report 1, Superintendent E said the incident report records that Constable F spoke with the applicant regarding the matter. He said that Constable F had informed the applicant that door to door enquiries had been carried out, and that nothing of evidential value had been found. The incident report documents that the applicant had said that he was not too concerned about this and had been reporting the matter for information purposes only. Superintendent E said Constable G provided that he assisted Constable F. He confirmed that door to door enquiries were conducted, and that no evidence was obtained. He also said that Constable G was present when Constable F provided the applicant with this update, and said at that stage, the applicant was satisfied that there was nothing further that the police could do.

In relation to incident report 2, Superintendent E said that the applicant reported this incident to the police at 1800 hours on 28 May 2017. He said that, Constable G attended at the applicant’s home in response to his report at 1923 hours on the same date; however, there was no reply and a calling card was left. Constable G later contacted the applicant by telephone, during which the applicant provided him with a verbal account of events and said that he had identified a potential suspect but was not able to offer Constable G any evidence to substantiate his belief. Superintendent E said that Constable G reported that he carried out door to door enquiries, from which he established that the person named by the applicant was unlikely to have been responsible as witnesses had provided information that he was not at home at the material time. Constable G reported that he provided the applicant with an update to this effect, and told him that there were no further lines of enquiry that could be followed at that time. The applicant intimated that he was satisfied with the police action.¹

¹ The full response from Superintendent E in response to this complaint is detailed in the attached appendix. Paragraph’s 1 – 13 refer.

Superintendent E explained the balance of probabilities test to the applicant. He concluded that he was unable to uphold the applicant's complaint, and explained how he had reached his determination.

Our Review of Complaint 1

In order to inform our review, we have been provided with copies of the incident reports that have been referred to by Superintendent E in his response letter to the applicant.

In relation to incident report 1, we can confirm that, after the applicant's report was received on 07 May 2017, the incident report records that door to door enquiries were conducted and that no evidence was obtained. We can further confirm that the incident report was updated at 2108 hours on 07 May 2017 to conclude that the applicant had been spoken to; that he was not concerned; and that he had wished for the police to be notified for information purposes. Accordingly, we consider the response provided by Superintendent E in this regard to be supported by the information available.

However, noteworthy is that Superintendent E's response has said that Constable G had assisted Constable F; that Constable G had confirmed that door to door enquiries were carried out; that he was present when Constable F advised the applicant of the outcome, and that the applicant was satisfied that there was nothing further that the police could do. We have been provided with a copy of Constable G's statement. We note that Constable G's statement does not detail this information. Instead, the only mention that Constable G makes in his statement regarding this incident is that the applicant was provided with the same level of assistance on that occasion as he was given in relation to incident report 2.

Furthermore, we are not clear as to why Superintendent E has referred to the IPCC guidelines in relation to the balance of probabilities given that Police Scotland have their own Complaints about the Police Standard Operating Procedure ("CAP SOP") that adequately explains the application of this test.

Nonetheless, despite Superintendent E's response making reference to information that was not contained within Constable G's statement, we still consider that he was correct in his decision not to uphold the applicant's complaint. Section 6.11.7 of the "CAP SOP" states that, in circumstances where the available evidence is equally balanced, the complaint will not be upheld. In relation to incident report 1, we have the applicant's version of events (whereby he said that he was not provided with an update) versus the detail that has been recorded in the incident report (which said that the applicant was spoken to). Accordingly, in the absence of any information that would lend support to the applicant's version of events, Superintendent E was correct, on balance, to determine that the applicant's complaint in relation to incident report 1 was not upheld.

In relation to incident report 2, we can confirm that the applicant reported that someone had thrown eggs at his property on 28 May 2017. We can also confirm that the incident report records that door to door enquiries were completed, and that the applicant was provided with an update on 29 May 2017. The contents of the incident report are supported by Constable G's statement. Within his statement, Constable G said that he attended at the applicant's address just before 1900 hours on 28 May 2017 however, as there was no reply a calling card was left. Constable G further said that, when he returned to the police station, he attempted to telephone the applicant. He said that he managed to discuss the incident with the applicant, whereby he said he suspected the eggs had been thrown by one particular neighbour, but that he had no proof to support his suspicions. Constable G confirmed in his statement that he carried out door to door enquiries; however, no information was obtained to identify the person responsible. Furthermore, Constable G said that he was informed that the neighbour suspected by the applicant to have thrown the eggs was not at home at the time the incident had occurred. He said that he updated the applicant to this effect. Accordingly, we consider that the response provided by

Superintendent E regarding this incident is supported by the material information available. In this instance, we have the applicant's position that he was not provided with an update versus Constable G's statement, in which he said that he updated the applicant following the door to door enquiries. Furthermore, Constable G is supported in his position by the entries contained within the incident report. Accordingly, we consider that Superintendent E has correctly determined that, on balance, the applicant's complaint was not upheld.

For the abovementioned reasons, we consider 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.

Complaint 2

The applicant complained that he was not given an opportunity to provide his version of events when the police attended in response to an incident on 21 December 2017.

Within his letter of complaint, the applicant said that: "*... I saw the police van arrive and went to see what it was all about. A very tall policeman told me to stand back. I could not understand at the time why he said this but now I realise this was because of what [Mr A] must have said about me. There could be no other reason, as I was calm and speaking in measured tones. He did not want to hear anything I wanted to say about what had happened and just told me to [sic] back to the garden and they would come and see me when they were done speaking to other people.*"

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

Superintendent E detailed the applicant's position as per his letter of complaint.

Superintendent E said that a statement was taken from the applicant's partner; however she was unable to provide any information other than to say that she was aware that the applicant had spoken with the officer, and that he requested the applicant return to his garden. She said that she only knew this from what the applicant had told her. She said that she was not present and could not relay any part of the conversation nor the manner in which the officer spoke to the applicant.

Superintendent E advised that statements had been obtained from Constables B and C - the officers that had been in attendance. He said that Constable B stated that the applicant had approached him in

an agitated and aggressive manner, and that he had to ask him to step back for officer safety reasons. Constable B described the applicant's mannerism as both aggressive and confrontational. Constable B said that at no point during his encounter with the applicant did he attempt to explain his version of events; and that if he done so, he would not have noted the same due the applicants general demeanour and the fact that the applicant was a suspect. Constable C said in his statement that he heard a raised voice and upon looking out of the window of Mr A's home, had witnessed the applicant speaking with Constable B. Constable C described the applicant as appearing aggressive and agitated towards Constable B. He said he overheard Constable B telling the applicant to stand back, and that he continued to monitor the situation until the applicant had returned to his garden.

Superintendent E said that a statement was also taken from a witness, Mr A. Mr A said the officer that was within his house had cause to speak with his colleague out of his window to ensure that he was okay. This was because the applicant had approached his colleague outside the block of flats. Mr A said that he could hear the applicant shouting but could not make out what he was saying.

Superintendent E said that, having reviewed the information available, he was unable to uphold the applicant's complaint. He also summarised his rationale for this decision².

Our Review of Complaint 2

In order to inform the review, we have been provided with a copy of the statements obtained from Constables B and C. We can confirm that Superintendent E has accurately captured the content of Constable B and C's statements within his response letter.

Both officers described the applicant as acting in an "*agitated and aggressive*" manner whilst he was speaking with Constable B, and described him as having been "*very loud*" or having "*raised his voice*". Although Mr A did not say in his statement that he could hear the applicant shouting at Constable B, he did state that the officer that was within his house and taking his statement opened the window to speak with his colleague – Constable B – to ensure that he was okay. This was because the applicant had come out of his garden and was speaking to Constable B. Mr A said that he could not hear what was being said, however heard Constable B tell the applicant to return to his garden. This has been accurately reflected in Superintendent E's response.

Accordingly, the applicant's position that he was speaking in "*calm and measured tones*" is not supported, on balance, by the material information available. On one hand, there is the applicant's version of events. However, this is in contrast to the position of the officers, both of whom have said that the applicant was "*very loud*" or "*raised his voice*". Furthermore, there is the statement from Mr A that said that the officer in his house – Constable C – had cause to look outside to ensure that his colleague – Constable B - was okay. Accordingly, Superintendent E would have had no reason in which to prefer the applicant's account. We consider that sufficient detail has been provided by Superintendent E to explain to the applicant why he was asked to return back to his garden.

Furthermore, as the applicant was a suspect in the incident - with both officers having confirmed that they had corroboration to this effect - we agree that there was no requirement for the officers to have obtained the applicant's version of events at that time. This has been accurately reflected in the response letter from Superintendent E, whereby he has told the applicant that it would not have been best practice to have obtained a statement. This was because the applicant had to be afforded a number of rights as a suspect in a crime, which included being given an opportunity to speak with a legal representative.

² The full response provided by Superintendent E is contained within the attached appendix. Paragraph's 14 – 26 refer.

The response from Superintendent E is supported by the material information available. We consider that he has provided a detailed response that is well reasoned. He has explained why no version of events were noted from the applicant i.e. he was shouting and being aggressive towards Constable B, and because he was the primary suspect in a report meaning that he had the right to discuss the matter with a legal representative prior to any statement being noted.

Accordingly, for the aforementioned reasons, we consider that the complaint has been handled to a reasonable standard.

Our Conclusion on Complaint 2

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

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

Complaint 3

The applicant complained that, on the same date, the officers that arrested him decided to do so without being in possession of all available information.

The applicant said in his letter of complaint that: *“Sometime later they came into our garden and without engaging in any conversation said they were arresting me for breach of the peace. I and my partner ... tried to explain what had happened but they took no notice or wrote anything down. This must be gross dereliction of duty and must be against police regulations, to listen to one side of a story and make the decision to arrest without hearing the other side of the story...”*

Police Scotland’s Handling of Complaint 3

(not upheld by the police)

Superintendent E’s response detailed the applicant’s position as per his complaint letter.

Superintendent E explained that the applicant’s partner had provided a statement. In her statement, she said that whilst the applicant was being arrested for a breach of the peace, she had tried to inform the officers of her version of events but they ignored her and continued to arrest the applicant.

Superintendent E advised that both Constable’s B and C provided statements. Superintendent E said that a decision was made by both constables to arrest the applicant for a breach of the peace after they had obtained two corroborative statements from witnesses. He said that both witnesses spoke to the applicant having acted in a disorderly manner; shouting and swearing in a public place.

Superintendent E said that, when the officers approached the applicant, he had continued to shout and was generally obstructive towards them. He said that each time Constable C spoke to the applicant to try and explain why they were there, the applicant continually spoke over the top of him.

Superintendent E said Constable B stated that the applicant had informed him that the incident took place due to Mr A allowing his dog to foul in his garden, and that as a result, he had decided to challenge this. Constable B said that the applicant's partner was also offering her opinion that the applicant was quite right to have done what he did as Mr A was allowing his dog to foul in their garden.

Superintendent E said that Constable B had stated that at no point did the applicant try to offer any information that inferred that he was innocent. Superintendent E said that no written notes or statements were taken from the applicant or his partner at the time due to both the applicant's aggressive nature, and the fact that he was under arrest and under caution. Constable B said that, for the purposes of fairness to the applicant, no statement was taken from him as he may have further incriminated himself. He said that, as part of the legal process, the applicant must be informed of his rights as an accused person, which includes access to a solicitor.

Constable B also said that no statement was noted from the applicant's partner as the applicant had to be removed to a police station. He said that Constable C had advised her that if she wished to provide a statement, then she could attend at the police station to do so.

Constable C said in his statement that the applicant had continued to shout, and had to be told to refrain from this behaviour. He said that the applicant was shouting regarding Mr A's dog fouling in his garden. Constable C said that at no point did the applicant offer any explanation that suggested that he was innocent. Constable C said that the applicant continually offered an explanation as to why he went to Mr A's door.

Constable C said that he advised the applicant that he was under arrest due to the information that had been obtained from two witnesses. He said that he was unable to record anything in his notebook at the time due to the applicant's disorderly behaviour however as per guidelines he noted the applicant's comments as soon as practical thereafter.

Superintendent E said that, having reviewed all of the evidence, he was unable to uphold the applicant's complaint. He also provided the applicant with the rationale for his determination³.

Our Review of Complaint 3

Superintendent E's response said that Constable C had noted the applicant's comments as soon as practicably possible as per the relevant guidelines. However, we note that this comment does not feature in the statement provided by Constable C. Nonetheless, we can confirm that the remainder of Superintendent E's response has accurately detailed the contents of both Constables B and C's statements on why they did not note any details from the applicant nor his partner at the time.

We consider Superintendent E's response to be both detailed and well-reasoned in that he has explained the officers rationale for not having taken a statement from the applicant at the time of his arrest; and he has correctly informed the applicant that as he was a suspect, it would not have been best practice for a statement to have been obtained from him. He has explained that to have done so may have resulted in the applicant having incriminated himself. Accordingly, we consider that the response has addressed the applicant's concerns; that he has been provided with a well-reasoned

³ Superintendent E's full response is detailed within the attached appendix. Paragraph's 27 – 41 refer.

explanation as to why no statement was noted from him; and that the response is supported, on balance, by the material information available.

We also note that the officers were in possession of two witness statements that corroborated the applicant's behaviour. Accordingly, under Scots Law, this provided suitable grounds to have arrested the applicant without the need to obtain further information at that stage. This is because the applicant would thereafter have been afforded his rights as an accused person. We consider that this has been adequately explained in the response letter from Superintendent E.

We also consider that Superintendent E has adequately reflected the officers statements with regards to why they did not obtain a statement from the applicant's partner at the time i.e. due to her alleged level of intoxication. However, we note that there are two versions of events regarding whether the applicant's partner was intoxicated. Both the applicant and his partner have said that she was not intoxicated; however, both officers have said that she was under the influence of alcohol and was therefore informed she could attend at the police station to provide her version of events. As the evidence in this regard is equally balanced, and in accordance with the provisions of the "CAP SOP", Superintendent E would have had no reason in which to prefer the applicant's version of events.

The response by Superintendent E provides a well-reasoned rationale to the applicant as to why the officers arrested him without obtaining any further information from him or his partner. The response in this regard is supported by the material information available.

Accordingly, we consider that this complaint has been handled to a reasonable standard.

Our Conclusion on Complaint 3

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

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

Complaint 4

The applicant complained that, on 21 December 2017, officers based their decision to arrest him on the basis of a complaint made by a known trouble-maker who dislikes English people.

Within his letter of complaint to Police Scotland dated 6 January 2018, the applicant said in relation to him not being asked for his side of the story that:

"... [Mr A] is well known to the Police as a trouble maker, or maybe they are prejudiced against English people, talk to the Scots, believe all they said arrest the English guy without asking him his side of the story."

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

Superintendent E said the following in response to the complaint:

"In your letter to Police regarding this aspect of your complaint you have detailed a lengthy history of issues between yourself and [Mr A] but have failed to clarify why you think the complainer [Mr A] dislikes English people. You have also not provided any information to substantiate your claim that the Police Officers involved in this case also have a dislike towards English people. [Inspector D] e-mailed you requesting further details on this matter and, although you have responded, you have failed to provide any evidence that demonstrates [Mr A] or the arresting Officers were prejudiced towards you due to your nationality.

Having said that, [Inspector D] has taken your general comments and used these to investigate your complaint and reports the following.

In the statement provided by your partner ... who provides her nationality as English, reports knowing [Mr A] for 2 or 3 years and has not observed anything from him that would suggest he has a dislike or hatred towards English people. She also reports that neither of the arresting Officers actions on the night of the reported incident would suggest that they had any dislike or hatred towards English people.

Both Officers have been questioned regarding your comments and strongly deny that their decision to arrest you was based on your nationality. They have both stated that the decision to arrest you was justified, necessary and proportionate and was based on the evidence they had collated and also as a result of your continued aggressive and abusive conduct on their arrival. They both report that the decision to arrest you was to calm the situation down and to prevent any further criminal conduct by yourself. Had you behaved in a responsible manner they may have been able to deal with this matter at your home address negating the need to formally arrest you and convey you to a custody suite.

Regarding your comment about how they have voted in the independence referendum, voters have a right to privacy and confidentiality. You have not demonstrated any basis to your assertion that the witnesses were biased and your request to explore voting preferences is not legal, justified nor proportionate to the investigation of your complaint.

On review of the evidence collated we have found nothing to substantiate your claim that the Officers have acted in an unethical manner towards yourself due to your nationality and on that basis I am unable to uphold your complaint in respect of this point.

Regarding your belief that [Mr A's] actions towards you are racially motivated, I have tasked Officers with speaking with you on your return from your travels to discuss this matter further and, if necessary, to investigate the matter."

Our Review of Complaint 4

As per Superintendent E's response, we can confirm that Inspector D did email the applicant regarding this complaint. This was to clarify specifically why the applicant believed that he had been arrested because he is English. We have been provided with a copy of the applicant's response in this regard,

within which he has detailed incidents involving Mr A. Having assessed the response, we agree with Superintendent E position that the applicant has failed to specifically demonstrate that either Mr A or the officers were prejudiced against him because he is English.

Nonetheless, the enquiry into this allegation was progressed based on the information provided by the applicant. We can confirm that both Constables B and C provided statements in response to this allegation.

In his statement, Constable B said that, at no point during the applicant's arrest was there any mention of the applicant's nationality or country of birth. He added that at no point did the applicant mention that he believed that his arrest was because he is English. Constable B said: *"I categorically deny the accused's allegation that he was arrested because he was English. He was arrested due to sufficient evidence identifying him as committing an offence."*

Constable C said in his statement that he deals with everyone with *"respect and courtesy"* and that he speaks to others in the way that he would expect to be spoken to. He said that for the applicant to have implied that he is racist is an insult.

As previously mentioned in this review, both officers have said that they arrested the applicant as they had corroboration that he had been acting in a disorderly manner.

Accordingly, it is clear from the officers statements that the applicant was arrested due to his behaviour towards Mr A, and not because he is English. The reasons for the applicant's arrest as per the officers statements has been adequately explained in the response letter from Superintendent E.

We also consider that the applicant's request to be told how the officers voted in the Scottish Independence referendum to be entirely unjustified and disproportionate to the complaint enquiry. Superintendent E has correctly advised the applicant that a voters preferences are both private and confidential.

Furthermore, in relation to the applicant's assertion regarding Mr A, we can confirm from an email trail between Inspector D and the applicant that an agreement was made to speak with the applicant upon his return from his travels if he wished to pursue his allegation against Mr A.

Accordingly, we consider that this complaint has been handled to a reasonable standard.

Our Conclusion on Complaint 4

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.

Complaint 5

The applicant complained that, on the same date, officers failed to show compassion and afford him proper care whilst conveying him to a police station. This was despite him having made the officers aware that he had a recent operation.

Within his complaint letter, the applicant said: *“When they put the cuffs on they led me to [sic] back of the van and they were about to put me in the back of the van. [sic] when I said that I had just had surgery for a gallbladder but they did not seem to care and I ended up with my back on floor and my legs up in the air, crushing my stomach, they then pulled me up to sit on the bench. My partner also told then [sic] to be careful as I had had major surgery, their reply was a blunt terse reply, “yes we know he told us”. So even after knowing I should be handled with more care, they just could not be bothered. If I was the sort to look for ways to have a go at the Police, I could have curled up in a ball and screamed in pain to make a claim against you but that’s not me.”*

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

Superintendent E explained the applicant’s position as per his letter of complaint.

Superintendent E advised that a statement was obtained from the applicant’s partner. He said she reported that the officers were professional throughout their dealings with the applicant. She said that she was behind the applicant, and despite not being immediately behind him, she was close enough to have seen if the officers had acted inappropriately. She confirmed that this was not the case. She said that she had overheard the applicant advising the police that he had recently undergone surgery; however, as she could not hear the full conversation, she had approached the officers and advised them of the applicant’s surgery. She did not report anything untoward regarding their response to the applicant.

Superintendent E confirmed that both Constables B and C provided statements whereby they both said that they were informed by the applicant that he had recently had surgery, and that after this had been checked, he was offered assistance into the police van by Constable C. Superintendent E said that both officers advised that the applicant told them to *“Piss off”*, and that he climbed into the van and lay on the floor. The officers said that they believe that this was done to be *“awkward”* or *“obstructive”*. Both officers added that, as the applicant had required the toilet, they stopped the vehicle and allowed him to do the toilet at the side of the road. Both officers said that at no point did the applicant say that he was in pain or discomfort.

Superintendent E also said that a statement was obtained from Mr A. He said that, at the point the applicant was being taken to the police van, the applicant was *‘wobbling about’*. He also said that at no point did he observe the officers doing anything inappropriate towards the applicant.

Superintendent E concluded his response by saying that: *“Having reviewed all the information collated in respect of this point on the balance of probability I am unable to uphold you [sic] complaint. Superintendent E summarised his rationale for having come to his determination⁴.*

Our Review of Complaint 5

We can confirm that Superintendent E’s response accurately reflects the contents of the statements provided by Constables B and C. Both officers have said in their respective statements that, when they were informed by the applicant of his recent surgery, they checked and found there was a bandage covering his naval area. Accordingly, they offered the applicant assistance to get into the van; however, he told the officers to *“piss off”* and instead entered the van of his own accord and lay on the floor. Both officers have said that they believed the applicant did this in order to be *“awkward”* or *“obstructive”*. They both said that at no point did the applicant say he was in pain or in discomfort. Constable C said that he assisted the applicant in getting seated in the back of the van. This is supported by the statement provided by Constable B.

As Superintendent E has said, a statement was obtained from the applicant’s partner. We can confirm that the content of her statement has been accurately reflected in the response letter. She said that she overheard the applicant advising the officers of his recent surgery and that: *“I never seen the Officer do anything inappropriate to [the applicant] and although I was a few feet away, if they had done something I would have seen this.”*

We have also been provided with a copy of Mr A’s statement. We can confirm that Mr A said that he had a clear view of the officers putting the applicant into the van, and that the officers did not do anything wrong while the applicant was getting in.

Accordingly, there are two opposing version of events. There is that of the applicant, versus that of the two officers, his partner, and Mr A. Both officers have stated that the applicant refused assistance and lay on the floor; with Mr A and the applicant’s partner having stated they did not see the officers doing anything inappropriate. As a result, Superintendent E would have had no reason in which to prefer, on balance, the applicant’s version of events. For this reason, Superintendent E has correctly determined that the applicant’s complaint was not upheld. We consider that the response has provided the applicant with a well-reasoned explanation and is supported by the material information available.

Furthermore, although not specifically detailed within the applicant’s complaint letter, Superintendent E has also explained that the officers had afforded the applicant an opportunity to have a comfort break at the side of the road. Superintendent E has correctly confirmed that this is not normal practice, and that the decision required to be risk assessed; however, in this instance, the officers showed compassion in the circumstances.

Superintendent E also said that the officers kept the cell light on in the vehicle, and were engaged in conversation with the applicant whilst he was being taken to the police station. This would infer that the officers had afforded the applicant a level of care and ensured his safety.

Given the described circumstances, on balance, it cannot be said that the applicant was not treated with care and compassion. Superintendent E has provided a well-reasoned response as to how he has reached his determination and is based on the material information available.

⁴ The full response provided by Superintendent E in respect of this complaint is contained within the attached appendix. Paragraph’s 42 – 50 refer.

Accordingly, taking the circumstances in their entirety into account, we conclude that this complaint has been handled to a reasonable standard.

Our Conclusion on Complaint 5

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

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

Complaint 6

The applicant complained that he requested to discuss the incident of 21 December 2017 with an officer not connected to his arrest, but this request was ignored. The applicant believes that this was done so as to hide issues from senior officers.

Within his letter of complaint, the applicant said: *“When I complained about how the situation went down and wanted to discuss why I had been arrested and not [Mr A], I was told to speak to the duty people at [local police station]. I said that’s Ok but I don’t want to speak [sic] the officers that arrested me, the person said no that’s Ok we will get the duty sergeant whom you saw at [local police station] that night. They said it would be after 10pm when they came back on shift. That night I got a phone call but passed the phone to [applicant’s partner] as I was and still am suffering from a bad ear infection that limits my hearing, especially on the phone. When she asked whom it was speaking, it was not the duty Sergeant but te [sic] officer whom arrested me and this after asking specifically not to speak to him.*

This was done deliberately, as he knew he had messed up the whole thing and wanted to kill any more investigation into what went on. When [the applicant’s partner] found out whom it was, she explained that it was supposed to be the duty sergeant but he just said he was handling it.”

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

Superintendent E said the following in response to this complaint:

“You report that at some point after the night you were arrested you have made contact with the Police Service of Scotland to discuss the matter and, in particular, why you had been arrested and not [Mr A]. You report that you specifically asked not to speak with the officers who were responsible for your arrest. You report that you were informed that a Sergeant would contact you after 10pm when they came back on shift.

In the statement provided by your partner she also confirms that you made contact with Police and asked to speak with somebody regarding your arrest. She was not certain but thinks you requested to speak with somebody not connected to your arrest. She reports that this conversation took place when you phoned the Police from your landline at your home address. She confirms that she was not present during the subsequent phone call you received from another Police Officer but was present when one of the Officers who arrested you called you later that evening.

[Inspector D] has conducted enquiries into this matter and reports that he has reviewed a telephone call that you made to the Police contact centre via the 101 number from your home landline on 23 December 2017. During this telephone conversation you have requested to speak with a Sergeant or Inspector regarding your arrest but at no point have you intimated that you did not want to speak with any person connected to your arrest. The call handler at that time has been unable to make contact with the Duty Sergeant and has informed you that they would pass a message to them to contact you when they were available.

Through enquiries it was established that the duty Sergeant in question was [Sergeant H].

[Sergeant H] has provided a statement to the effect that he returned your call to discuss the matter and some of the questions you were asking he was not in a position to answer without conducting further enquiries. He recalls that initially you have intimated that you did not wish to speak with any person connected to your arrest, however, he explained that these Officers would be best placed to provide a detailed response to any of your questions. He reports that on explaining this you have agreed and intimated that it would be in order for them to call you. He has informed you that they commenced duty at 2200 hours that night and he would request that they call you to which you agreed. He also reports that at no point during the conversation with you did you intimate that you wished to raise any complaint against the Police, he is clear that your conversation was purely seeking answers to questions regarding Police procedure and decisions made on the night of your arrest.

In respect of this aspect of your complaint and having considered the evidence available to me I am presented with two conflicting version of events and am unable to determine whether one version is more credible than [sic] the other. On the balance of probabilities I am therefore unable to uphold your complaint. The rationale for this decisions [sic] is as follows:

- Your version of events is that you specifically requested not to speak with any person connected to your enquiry*
- Your partner would appear to be talking about the phone call to the call centre rather than the conversation with [Sergeant H] so therefore does not add anything of evidential value to your allegation*
- [Inspector D] reviewed your call to the call centre and reports that at no point did you make a request to not speak with Officers connected to your arrest.*
- [Sergeant H] reports during your telephone conversation with him initially you requested to speak with persons [not] connected to your enquiry but, after explaining that these Officers would be best placed to provide the answers you were looking for, you have agreed to allow them to phone you.*
- Both you and [Sergeant H] acknowledge that an agreement was reached that the Officers would make contact with you when they commenced duty at 2200 hours that evening*
- The Officers who commenced duty at 2200 hours that evening were those responsible for your arrest on the 21st of December 2017. [Sergeant H] made this arrangement having checked our roster system.*

The main conflict in the version of events is between your version of events and [Sergeant H's] version and I unfortunately unable to determine which version is correct.

Unfortunately outgoing calls from Police telephones are not recorded and I am not in a position to review the call between yourself and [Sergeant H].”

Our Review of Complaint 6

We have been provided with an audio recording of the telephone call that the applicant made to Police Scotland's 101 call centre. In this call, the applicant initially said that he wished to speak with the on duty sergeant, and then requested that a sergeant or inspector call him back. We can confirm that at no point during the call did the applicant state that he wished to speak with an officer not connected to his arrest. We consider the content of the applicant's telephone call to have been accurately reflected in the response letter from Superintendent E. The applicant said that he wished to speak with a sergeant or inspector, and that there was no point speaking with an officer. We can confirm that the person that returned the applicant's call was indeed a sergeant – Sergeant H.

We can also confirm that Superintendent E has accurately reflected the content of the statement dated 6 February 2018 that was provided by the applicant's partner. Noteworthy, however, is that the applicant's partner provided an additional statement on 17 February 2018, whereby she said that *“I am definitely not certain if [the applicant] specifically asked to speak with somebody not connected to his arrest.”* However, it is an agreed point that the applicant's partner was not present during the call made by Sergeant H to the applicant. Her comments therefore relate to the call that was made by the applicant to the 101 call centre - she was unable to add anything to the discussion that occurred during the applicant's call with Sergeant H. Accordingly, Superintendent E's response has accurately explained that the applicant's partner did not provide anything of evidential value to support the applicant's position.

We have been provided with a copy of the statement provided by Sergeant H, from which we can confirm that Superintendent E's response accurately reflects its contents. In his statement, Sergeant H has detailed that the applicant initially said that he did not wish to discuss the matter with the arresting officers; however, he further explained that he informed the applicant that these officers would be best placed in which to answer his questions. Sergeant H has said that he identified the officers who attended, and that the applicant had understood and acknowledged what he had said. Sergeant H said that the applicant had accepted his offer for the attending officers to return his call.

Accordingly, Superintendent E has correctly informed the applicant that he was presented with two version of events; namely, that of the applicant, and that of Sergeant H with regards to whether his request to speak with someone not connected to his arrest was ignored.

Section 6.11.7 of the Complaints about the Police Standard Operating Procedure provides:

“There may be occasions when it is simply not possible to conclude that on [sic] account is more probable than another. This may occur when the evidence is equally weighted on both sides, for example where there is nothing in the surrounding facts to support either account, or where there is nothing to undermine the credibility of either account. In such circumstances the complaint will not be upheld. An explanation why the complaint is not upheld must be provided. The explanation should describe what evidence the enquiry officer found in the course of the enquiry for each allegation.”

Accordingly, we consider that, based on the balance of probabilities, Superintendent E has correctly determined that the applicant's complaint was not upheld, and he has provided the rationale behind his decision. As such, we consider that this complaint has been handled to a reasonable standard.

Our Conclusion on Complaint 6

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.

Complaint 7

The applicant complained that the officer who spoke to him and his partner on the telephone after the incident on 21 December 2017 slammed the phone down during the conversation with his partner.

Within his letter of complaint, the applicant said that when the officer contacted him, he had passed the telephone to his partner as he was suffering from an ear infection and his hearing was limited. He said that his partner said to the officer *"I don't want to speak with you"* and the officer said *"I don't want to speak with you"* and slammed the phone down.

Police Scotland's Handling of Complaint 7 (not upheld by the police)

Superintendent E said the following in response to this complaint:

"You report that during the telephone conversation between you, your partner and [Constable C], that this officer slammed the phone down after stating that he did not want to speak with your partner. You have also reported that at no point during this telephone conversation were you abusive to the Police Officer or did you make any derogatory comments towards him or his colleague.

In the statement provided by your partner ... she corroborated your version of events that the Officer put the phone down on her during this conversation. [The applicant's partner] is unable to say whether or not you had been abusive towards the Police Officer at any point during the telephone call.

[Constable C] reports that during the telephone conversation with you and your partner, you have been verbally abusive and derogatory towards him. He reports that throughout this telephone call you have been shouting and swearing towards both him and his colleagues at which time you used various phrases including "are you the big one that looks like something

out of the fucking jungle or are you the wee one with the shaved head” and “arseholes”. He reports that he advised you to refrain from this conduct on more than one occasion but you continued in your course of conduct. At some point your partner ... spoke on the phone and apologised for your behaviour. After a short period [Constable C] informed your partner that he was not willing to continue with this conversation due to your abusive behaviour and he advised her that he was terminating the telephone call.

[Sergeant J] reports that he was close by [Constable C] during this telephone conversation and was close enough to hear your tirade of abuse towards the Officer. He overheard [Constable C] reply to you by saying “No I’m not the big one that looks like something out of the jungle, I’m the wee one with the shaved head”. [Sergeant J] asked [Constable C] who he was speaking with and he informed him that he was on the phone to [the applicant]. He heard [Constable C] advise you to refrain from shouting and swearing at him and to stop calling him names. He then heard a female on the phone and during the time the female was on the line he could still hear you shouting and swearing in the background. He overheard [Constable C] inform the female that he was not in a position to take a complaint regarding this matter and that [the applicant] would need to go through the proper channels. He reports overhearing [Constable C] state that he was not willing to listen to this abuse any longer and that he was terminating the call. At that time he placed the handset down.

Having reviewed the information collated I am unable to uphold your complaint in respect of this point. The rationale behind this decision is as follows:

- Although you and your partner both stated the Officer slammed the phone down for no apparent reason, your partner was unable to state that you were not abusive during this telephone conversation.*
- [Sergeant J] and [Constable C] both speak to your abusive conduct and comments during this telephone conversation and are specific regarding some of the reported comments made by you.*
- Both Officers have reported that you were abusive during this telephone conversation and that a request was made for you to refrain from your abusive conduct. Despite this request you continued to shout, swear and use derogatory phrases towards staff. I consider that the Officer was right to terminate the call at that point. I do not consider that staff are needlessly subjected to such behaviour.”*

Our Review of Complaint 7

Superintendent E has accurately reflected the content of the statements provided by Constable C and Sergeant J. Both officers have stated that the applicant was shouting during the telephone call; they have detailed the comments made by the applicant as outlined in Superintendent E’s response; and they have both detailed that, when the telephone was handed over to the applicant’s partner, the applicant could still be heard shouting in the background.

The applicant’s partner has provided two statements to inform the complaint enquiry; however, we note that they provide contradictory versions of events in this regard. In her statement of 6 February 2018, the applicant’s partner said that *“I spoke in an angry manner whilst I was on the phone [the applicant] was in the background shouting and swearing and telling me to put the phone down”*; whereas, in the statement she provided on 17 February 2018 to clarify various points, she said *“I can’t remember if [the applicant] was abusive or not during this telephone conversation. I remember speaking to the Officer but I don’t remember what [the applicant] was doing when I was on the phone”*.

Although the applicant's partner has changed her position, her second statement does not deny that the applicant was shouting and swearing; only that she could not remember what the applicant was doing. Accordingly, we consider that her position does not add anything to support that of the applicant.

Although it is the applicant's and his partners position that Constable C slammed down the phone, we consider that the information available has sufficiently justified why, on balance, Constable C made the decision to terminate the call i.e. due to the applicant shouting. We consider the circumstances to have been adequately reflected in the response letter from Superintendent E, and that he has provided the applicant with a justified reason for Constable C having ended the call.

Accordingly, we consider that this complaint has been handled to a reasonable standard.

Our Conclusion on Complaint 7

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

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

Complaint 8

The applicant complained that the arresting officers did not provide him with details of the accusations made against him. The applicant said that he has still not been given any details to either confirm or refute the allegation.

In his complaint letter, the applicant asked *"why even to this date do I not know who complained about me and what they put forward as evidence that resulted in my arrest. Anyone should be told what they are accused of doing"*.

Police Scotland's Handling of Complaint 8 (not upheld by the police)

Superintendent E said the following in response to this complaint:

"You report at no point during the evening you were arrested was it explained to you what the allegation against you was, who made the allegation or what evidence the Officers had."

In the statement provided by your partner she reports that when Officers spoke to you within your garden on the night of the 21st of December they informed you that you were being arrested for a Breach of the Peace. She stated that they did not need to say anymore it as

[sic] obvious it was as a result of your inappropriate conduct towards [Mr A]. She also reports that she has not seen you with any official paperwork from the Police.

[Constable B] reports that when his colleague, [Constable C], informed you that you were under arrest he stated that this was for a Breach of the Peace and as a result of enquiries carried out there was sufficiency of evidence to arrest you for this matter. He also reports that you laughed throughout this procedure and refused to listen to him or his colleague. He reports that whilst within [local police station] custody area prior to your release you were served with a Recorded Police Warning, which is an official Police document which contains details of the offence committed and the procedure to be followed should you wish to challenge this decision. He also reports that [Constable C] provided you with a full explanation of this process and the rationale behind reaching this disposal. He reports that he observed you take possession of this document and fold it up prior to placing it in your rear trouser pocket.

[Constable C] reports that on informing you that you were under arrest for a Breach of the Peace he also provided the rationale for this decision informing you that they were in possession of evidence from two eye witnesses who both spoke to you conducting yourself in a disorderly manner by shouting and swearing. He also reports that he informed you that he felt it necessary to arrest you at that point due to you living in close proximity to the victim and your state of sobriety, combined with your continued aggressive behaviour. He also reports that whilst within [local police station] custody area and prior to your release from your arrest he issued you with a Recorded Police Warning document which explained the details of the offence committed. He also informed you that if you wished to contest this disposal details of the procedure could be found on the rear of the form. After issuing you with this document he observed you fold this up and place this in your rear trouser pocket.

[Constable K] who was one of the custody staff on duty on the night you were arrested reports that he was present when [Constable C] issued you with the Recorded Police Warning document.

[Inspector D] checked the relevant files and the original copy of the Recorded Police Warning document which is held at [named] Police Station and it contains the relevant details. You were [sic] supplied with the carbon copy. This file is held for Police records should you decide to challenge this disposal through the courts. He has also reviewed the letter you provided in respect of your complaint and it is clear from this letter that you are aware that the complaint was made by [Mr A] as you make reference to him throughout and offer rationale as to why he would make a complaint against you. You have also said that the Officers informed you that they were arresting you for a Breach of the Peace.

Having reviewed the information collated I am unable to uphold your complaint. The rationale behind this is as follows:

- You have disclosed information in your letter that answers two of your three concerns which suggest that you were aware of this information
- You [sic] partner also stated that the Officers informed you that you were being arrested for a breach of the Peace. She also states that it was obvious that this was because of your behaviour towards [Mr A].
- [Constables B and C] both speak to providing you with details of the offence committed by yourself at the point of your arrest. They also speak to informing you that they were in possession of corroborative evidence from two eye witnesses who speak to conducting yourself in a disorderly manner by shouting and swearing in a public place.

- [Constables B and C] *both speak to you being handed a Recorded Police Warning document whilst within [local police station] custody area and to you placing this in your rear trouser pocket.*
- [Constable K] *speaks to observing the above officers handing you a recorded police warning document.”*

Our Review of Complaint 8

Superintendent E has accurately captured the content of the statements provided by Constables B and C. In their respective statements, both officers confirmed that the applicant was informed that sufficient enquiries had been carried out, and that he would be arrested for a breach of the peace. Both officers said that, during this time, the applicant had refused to listen.

Superintendent E has also accurately reflected the content of the applicant's partner's statement. She said that the officers had informed the applicant that he was being arrested for a breach of the peace. She added that the officers did not have to go into any further detail as it was obvious from the applicant's behaviour why he had been arrested.

Furthermore, and as per the Superintendent E's response, we can confirm that the applicant's letter of complaint makes reference to the report against him having been made by Mr A. The applicant does indeed offer up the reasons why he attended at Mr A's home, and confirmed that he was told he was being arrested for a breach of the peace. The applicant then went on to add that *“the only thing I did hear was that I am supposed to have threatened [Mr A]”*

Accordingly, from the information available, it would appear that the applicant was indeed informed that he was under arrest for a breach of the peace. This position is confirmed by both Constables B and C, the applicant's partner, and by the applicant himself. Indeed, from the applicant's own correspondence, it is clear that he was, in fact, aware as to whom had made the allegation against him.

In addition, we have been provided with a copy of the Recorded Police Warning (RPW) that was issued to the applicant on 21 December 2017. We can confirm that the relevant details pertaining to the incident are noted therein. Constables B, C and K have all provided accounts that state the applicant was provided with a copy of the RPW; with both Constables B and C having stated that Constable C explained the process to the applicant and the procedure should he wish to contest the warning through the courts. Accordingly, there are two version of events. The applicant, contends that he was not aware of the allegations against him; however, on balance, we can determine that the applicant was provided with a copy of the RPW, and we can confirm that, having had sight of the RPW, it contains sufficient detail about the allegation that was made against him and the offence that he was reported as having committed.

Accordingly, we consider that Superintendent E has provided a well-reasoned response to the applicant that is supported by the material information available, and has correctly determined that the applicant's complaint was not upheld.

Our Conclusion on Complaint 8

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

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

Complaint 9

The applicant complained that he does not believe that the arresting officers wrote anything in their notebooks whilst they were having discussions with him.

In his letter of complaint, the applicant said that the officers never took a statement from him so anything they wrote must have been after the event.

Police Scotland's Handling of Complaint 9 (not upheld by the police)

Superintendent E said the following in response to this complaint:

"You report that Officers did not record any details in their notebooks during the time they spoke with you and your partner as they were informing you that you were under arrest. You report that if they wrote anything in their notebook it must have been after the event.

[Constable B] reports that nothing was recorded in his notebook during their discussions with you within your garden. He reports that this was due to your aggressive and obstructive behaviour and the need for him to be fully alert to deal with any situation that may occur.

[Constable C] reports that nothing was recorded in his notebook during his interaction with yourself in your garden due to your aggressive behaviour and refusal to listen to anything that was being said. He decided not to record anything at that point as he believed it was more important to remove you from the area to quell the situation and prevent it from escalating.

Having reviewed the information collated I do not uphold your complaint in respect of this matter but feel that it is necessary to provide some further explanation for the officer's procedure on this night.

There is no doubt that it is better to record details at the time to ensure the accuracy of the information. As Police Officers we encounter many situations where it is not possible to record details until later and this is recognised in our operating procedures. Our Police Notebook and PDA's Standard Operating Procedure states "Entries in notebooks and PDA's should be made at the time or as soon as practical thereafter". I am satisfied that the explanation provided by the Police Officers on this occasion justifies their decision not to record details at that time."

Our Review of Complaint 9

Superintendent E has accurately reflected the content of Constable C's statement. However, the explanation provided by Superintendent E in respect of Constable B is not supported by his corresponding statement. Within his statement, Constable B said *"I have recorded the arrest of the*

accused and the fact that he was shouting 'fuck you' at witness [Mr A's] in my official Police notebook." We have been provided with a copy of Constable B's notebook, and we can confirm that these details are indeed contained within, having been recorded at 2120 hours – this being the time that the applicant was arrested.

Superintendent E has correctly informed the applicant that section 4.4 of Police Scotland's Notebooks and PDA's standard operating procedure provides that: *"Entries in notebooks and PDA's should be made at the time or as soon as practicable thereafter."* Accordingly, there was no requirement for the officers to record details within their notebooks at the time of speaking with the applicant in his garden. The reason why this did not happen has been adequately detailed by Constable C, and although not specifically addressed in the statement from Constable B, we note that Constable B described the applicant as having continued to shout and be obstructive whilst they spoke with him. The officers have therefore provided a reasonable explanation that has enabled the complaint enquiry to identify why nothing further was recorded at the time of the applicant's arrest. Furthermore, we note that the provisions of the aforementioned standard operating procedure do indeed allow for information to be noted *"as soon as practicable thereafter."*

However, noteworthy is that, aside from the details recorded by Constable B at 2120 hours, there are no further details recorded by Constable B in his notebook regarding his interaction with the applicant. Although we have not been provided with a copy of the notebook belonging to Constable C, we note that a shortcoming in this regard was identified during the complaint enquiry. Within the corresponding Complaints about the Police Record ("CAP Record"), it has been recorded that the officers were spoken to and *"although circumstances did not allow them to record details of [the applicant's] comments at the time of his arrest they should have made notes at the earliest opportunity. On speaking with both Officers no notes were made later and they cited that [the applicant's] comments were not relevant nor did they infer his innocence at that time. Both Officers have been advised to ensure if they encounter similar circumstances in the future that the [sic] record accurate details in their notebooks at the earliest opportunity. Both Officers recognised that this was a shortcoming on their behalf and will make sure it does not happen again."*

Although we acknowledge that this was not the specific complaint that was made by the applicant, section 6.11.8 of the "CAP SOP" states that:

"during the complaint investigation, information may be uncovered which shows a failing on the part of the police that has not been made as a specific allegation by the complainer. However, if it had been made as a complaint, it would most likely have been upheld. This should not be ignored. Appropriate action should be taken and, where the failing is relevant to the complainer, an explanation should be provided to the complainer of the failing, what action was taken and why."

Accordingly, given that a shortcoming was identified and learning was provided to the officers concerned, Superintendent E's decision not to uphold the applicant's complaint is at odds with the information available.

Furthermore, in relation to the 'notification to complainer', section 6.14.6 of the CAP SOP states that :

"The explanation should be clear and impartial and should communicate whether each allegation is upheld or not. It should fully address the complainer's allegations and concerns, and the reasoning behind any decision should be apparent. The explanation should also include any action to be taken as a result of the complaint, and any learning identified for Police Scotland".

We note that there is no mention within the final response letter to the applicant that a shortcoming and/or learning was identified and that both officers were spoken to as a result. Accordingly, we consider that this complaint has not been handled to a reasonable standard. However, as we have provided details of the shortcoming identified, and confirmed that both officers were spoken to in this regard, there is no further action required of Police Scotland in this connection. Instead, we have issued a learning point.

Our Conclusion on Complaint 9

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 connection.

Learning point

As the shortcomings identified as part of the complaint enquiry were not explained to the applicant, we consider that Superintendent E should familiarise himself with the relevant provisions of the Complaints about the Police Standard Operating Procedure (“CAP SOP”).

Section 6.14.6 of the “CAP SOP” states:

“... the explanation should also include any action to be taken as a result of the complaint, and any learning identified for Police Scotland.”

Furthermore, section 6.14.7 of the “CAP SOP” states:

“The final letter of response should:

Communicate the details of any learning identified for Police Scotland.”

What happens next

No further action is required of Police Scotland in relation to the complaints that we have considered within this review.

Nicola Mayes
Review Officer

Jacqui Jeffrey
Senior Review Officer

Appendix

Copy of Police Scotland's response letter dated 20 February 2018

(Redacted and paragraphs numbered)

Complaint 1

1. *"After conducting research regarding this matter, two separate incidents were discovered under the following incident numbers. namely [Incident report 1] and [Incident report 2]. As we have been unable to determine which incident you refer to both matters have been reviewed.*
2. *The incident relating to reference number [Incident report 1] was reported on 07 May 2015 and you report that you were in your back garden when somebody has thrown eggs into your rear garden. You have reported that you believe the male responsible lives in [named street] but were unable to provide a name for this male.*
3. *[Constable F] (who has since retired) and [Constable G] conducted enquiries into this matter and, from the incident log, it notes that [Constable F] spoke with you regarding this matter and informed you that door to door enquiries had been conducted and nothing of evidential value had been gleaned. At that time you intimated that you were not too concerned about this but were reporting it for information purposes only. [Constable G] provides that he assisted [Constable F] with this enquiry. He confirms that door to door enquiries were conducted and nothing of evidential value was obtained. He was also present when [Constable F] provided you with this update and at that state you were satisfied that there was nothing further the Police could do at that time.*
4. *The circumstances of the second incident, recorded under reference number [Incident report 2], was reported at about 1800 hours on 8 May 2017 when you reported to Police that persons had thrown eggs at your property. At that time you intimated that you suspected that a neighbour from the block of flats at the rear of your property was responsible but no substantive evidence of this was provided by you. No damage was reported to have been caused to your property.*
5. *In your correspondence to Police you report that on reporting this matter to us you received an update to this enquiry to the effect Police "could not find [Mr A] in" and you have not had any update since.*
6. *Information from the incident log shows that Officers attended your home address at 1923 hours on 28 May 2017 but there was no reply. Later the same evening [Constable G] spoke with you by telephone and you relayed the circumstances to him and again intimated that you believed a neighbour from the flats was responsible but again offered no substantive evidence to support this belief.*
7. *[Constable G] has provided a statement regarding their involvement with this incident and the salient points of this are as follows:*
8. *About 1800 hours on 28 May 017 he overheard a call from the control room requesting staff attend and speak with you regarding persons throwing eggs at your property. [Constable G] attended at your home address. The officer found no reply at your property so he left a calling card with his details for you to respond to on your return. He later telephoned you where you provided a verbal account of the*

events over the telephone and you identified a potential suspect to this matter but were not able to offer any evidence to substantiate your belief. [Constable G] then reports that he conducted door to door enquiries at properties where he believed there may be potential to identify witnesses or suspects. As part of this door to door enquiries it was established that it was unlikely the persons you had named was responsible for the reported incident, as witnessed provided information to the effect he was not within his home address at the material time. [Constable G] reports that he provided you with an update regarding this information and that there was no further lines of enquiry that could be followed at that time and you intimated that you were satisfied with Police action.

9. In considering whether to uphold your complaint I have on the one hand your allegation that an officer has not updated you as to the result of your complaint whilst on the other hand police officers state that they did offer such an update. It is not a simple matter of 2 versus 1. When considering the balance of probability as to whether the complaint should be upheld or not I have taken cognisance of IPCC guidance in 2015 which states:

10. 'In deciding whether something is more likely than not to have occurred regard should be had to all of the available evidence and the weight attached to it... Accordingly the assessment of credibility and in particular the weighting to evidence, are integral functions in the application of the balance of probabilities test'.

11. You are an apparently credible individual, there has never been any suggestion otherwise. Likewise the actions and character of the police officer's has not been brought into question previously and I therefore consider them to also be apparently credible professional individuals. There is no other evidence available to me at this time.

12. Considering the above and, when considering the test in relation to the balance of probability, I continue to have two differing views on this matter with no means to establish more accurately what has been said and what hasn't. I am therefore unable to uphold your complaint.

13. It may be helpful for you to know that, where it has been deemed that the allegation is not upheld this does not necessarily mean that I have judged the allegation to be untrue. It simply means, that taking all of the available information into account, there is insufficient evidence to support the allegation."

Complaint 2

14. The incident you refer to that took place on 21 December 2017 is recorded on Police systems under reference [Incident report 3].

15. In the letter you provided to Police you report that Officers arrived near to your address and you went to speak with them. You describe the Officer you spoke with as tall and thin. You state that you were speaking to him in a calm and measured tone and yet he refused to listen to what you had to say and would not listen to your version of events and instead instructed you to return to your garden and stated they would speak with you when they were finished speaking to others.

16. As part of this investigation a statement was obtained from your partner ... but she was unable to provide any information in respect of this element of your complaint other than to say she was aware you spoke with the Officer and he requested that you return to your garden. She reports that she only knows this because you told her. She was unable to describe the manner in which the Officer spoke with you and relay any part of this conversation as she was not present at that point.

17. *The Officer you refer to as tall and thin has been identified as [Constable B] and the night in question he was accompanied by [Constable C]. A statement has been obtained from [Constable B] and the salient points of their statement in respect of this part of your complaint are as follows:*

18. *[Constables B and C] were instructed to attend a call following a report received from witness [Mr A's] partner to the effect that you had attended his door and were banging on it shouting and they believed the door was getting kicked in. On arrival at the location the Officers spoke with the complainer, [Mr A], who provided a brief verbal account of events from his house window. [Constable B] thereafter attended at the home address of a further witness and obtained a statement from them.*

19. *[Constable B] returned to the entrance of [Mr A's] block of flats and stood outside to await the return of his colleague. It was at this point he reports that you have approached him in what he describes as an agitated and aggressive manner and invaded his personal space. He reports that he asked to step back for Officer safety reasons. He described your mannerism at that point as aggressive and confrontational but not amounting to criminal conduct. Whilst speaking with you, [Constable B] reports that his colleague, [Constable C], spoke to him from the window of [Mr A's] property to check he was safe and did not require assistance to deal with your conduct.*

20. *[Constable B] reports that at no point during this encounter did you attempt to offer a version of events but continually asked why the Police were in attendance. He states that had you made an effort to offer a version of events he would not have noted this at that time in fairness to yourself as you had been identified as a suspect and also due to your general demeanour and conduct he would not have spoken with you unless he had been corroborated.*

21. *[Constable B] reports that they asked you to return to your garden and they would attend and speak with you in due course. At that point you have complied with his instruction.*

22. *A statement has also been obtained from [Constable C] and the salient points from his statement in respect of this part of your complaint is as follows:*

23. *Whilst noting a statement from [Mr A], [Constable C] overheard a raised voice from outside the property. On looking from the window at [Mr A's] property he observed you speaking to [Constable B] and describes you as appearing agitated and aggressive towards his colleague. As a result of this he opened the window and spoke with his colleague to satisfy himself that this Officer was not in any danger or requiring assistance. His colleague informed him that all was in order. He overheard [Constable B] instructing you to stand back and formed the opinion that this was because you were standing too close to the Officer. [Constable C] continued to monitor the situation until you returned to your garden.*

24. *[Inspector D] also obtained a statement from witness [Mr A] who confirms that whilst a Police Officer was within his home address obtaining his statement in connection with this incident, the Officer had cause to go to his living room window and open this to speak with his colleague. He was unable to recall fully what the Officer asked his colleague but does recall he was checking if he was ok due to the fact you had approached the Officer who was outside the block of flats and he could hear you shouting but could not make out what you were saying.*

25. *Having reviewed the available information I am unable to uphold your complaint.*

26. *I have based this decision on the following:*

- *Although your version of events is deemed to be credible they are not supported by any other evidence*
- *On returning to the garden you spoke with your partner and there was no disclosure by yourself to her regarding the conduct of the Officer you spoke with.*

- *Both Officers speak to you being agitated and aggressive when you spoke with [Constable B] and, due to your manner, they have made the decision to ask you to return to your garden while they gathered further information from other available witnesses.*
- *Witness [Mr A] confirms that one of the Officers had to check on the others wellbeing during this process.*
- *[Constable B] also recognised that it would not have been best practise to obtain a version of events from you at that point due to the fact you had been identified as a suspect and as a suspect you have a number of rights which are implemented to protect you. This includes being given the opportunity to discuss the matter with a legal representative should you chose to.”*

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27. In the letter you provided to Police you report that the two Officers came into your garden and, without engaging in conversation, they said they were arresting you for a Breach of the Peace. You report that you and your partner tried to explain what happened but the Officers took no notice and never wrote anything down.

28. In the statement noted from your partner ... by [Inspector D] she reports that when the Officer were informing you that you were under arrest for a Breach of the Peace she tried to inform them of her version of events but they have ignored her and continued to arrest you.

29. In the operational statement provided by [Constable B] he provided the following version of events regarding this point of your complaint.

30. After discussing the evidence collated from witnesses with [Constable C] a decision was made to arrest you for the common law crime of Breach of the Peace. This was based on the two corroborative statements obtained from witnesses who both spoke to you acting in a disorderly manner and shouting and swearing in a public place. Both Officers made their way into your garden where you were sitting with your partner.

31. As they approached you to speak with you, and during their initial dialogue with yourself, you have continually shouted and have been generally obstructive towards them. Each time [Constable C] tried to speak with you to explain the situation you have continually tried to speak over the top of him.

32. [Constable B] reports that you informed them that the reason this incident took place was as a result of [Mr A] allowing his dog to foul in your garden and that [Mr A] did not tidy this up. As a result of this you have decided to challenge [Mr A] in an effort to stop this from happening. He reports that your partner ... who was also present at that time was also offering a version of events in an effort to justify your actions, stating that you were quite right to do what you did because of [Mr A] allowing his dog to foul in your garden.

33. [Constable B] is clear that at no point did you offer any information that inferred you were innocent of the crime of Breach of the Peace.

34. [Constable B] states that no written notes or statements were taken from you or your partner at that time due to your aggressive manner. [Constable B] also states that due to the fact you were under arrest, and under caution, in fairness to yourself no statement was noted as it may have incriminated you even further. As part of the legal process you must be offered your rights as an accused person which includes access to a solicitor for consultation and if necessary for them to be present whilst you provide these details to Police.

35. [Constable B] states that regarding your partner, no statement was recorded from her at that time due to both Officers needing to remove you to a Police Station. He states that [Constable C] informed

your partner that should she wish to provide a statement she could attend the Police station to do so and arrangements would be made for this to take place.

36. In the statement provided by [Constable C] he provided the following version of events regarding this point of your complaint:

37. After reviewing the evidence collated from the other circumstantial evidence, a decision was made to arrest you for the common law crime of Breach of the Peace. This was due to their being corroborative evidence naming you as being responsible for conducting yourself in a disorderly manner by shouting and swearing in a public place. He discussed this with [Constable B] and they both made their way into your garden where you were waiting with your partner. The officers observed you sitting next to a fire drinking a bottle of beer and also observed a number of empty bottles of beer nearby.

38. [Constable C] stated that as he attempted to explain the situation to yourself, both you and your partner were continually shouting over the top of him and he reports that he had to advise both of you regarding your conduct and request that you refrain from this behaviour. [Constable C] recalls that you were shouting about [Mr A's] dog fouling within your garden but is clear that at no point did you offer any explanation that suggested you were innocent. He reports that during your outburst you continually offered an explanation as to why you went to [Mr A's] house on the night in question.

39. [Constable C] reports that he then informed you that you were under arrest for a Breach of the Peace and informed you that this was as a result of evidence collated from two eye witnesses that stated you had conducted yourself in a disorderly manner. Due to your continued disorderly behaviour [Constable C] was unable make any record in his notebook at that time and as per guidelines recorded your comments as soon as reasonably practicable.

40. On reviewing all of the information available to me to make a decision in relation to this aspect of your complaint I find that I am unable to uphold your complaint. The rationale behind this is:

- Both you and your partner have provided information that suggests Officers failed to take a note of your version of events prior to arresting you and were not in possession of the facts.*
- Officers were in possession of statements from two apparently credible eye witnesses which corroborated each other and both made reference to you conducting yourself in a disorderly manner in a public place by shouting and swearing.*
- [Mr A's] statement provided evidence that he had been placed into a state of fear by your conduct.*
- Circumstantial evidence collated in the form of mucky foot marks on [Mr A's] door, combined with the fact you were traced shortly after this incident in close proximity to the locus. At that time you had mucky foot wear on which added further credibility to witness [Mr A's] version of events.*
- Your continued aggressive and agitated conduct on Police arrival led them to believe it was necessary to remove you from this location to prevent any repetition of this conduct.*
- Sufficiency of evidence can come in many forms but one which is recognised as best evidence, is that of two or more credible eye witnesses who saw the accused commit the crime. In this case having reviewed the witnesses statements there was sufficient evidence to justify your arrest and the officers have acted appropriately and proportionately*
- Both officers acknowledge that this was a minor offence but a crime none the less. They are also aware that is not always necessary to arrest for a minor crime but they state that your conduct on arrival led them to believe that it was necessary to arrest you and remove you from the locus as they were of the opinion that there was a high likelihood of repetition of this conduct by yourself. They also state that their concerns were confirmed as they escorted you to the Police van when you have shouted "FUCK YOU" on more than one occasion in the direction of [Mr A's] premises.*

- *In respect of the Officers not taking a statement from you prior to arresting you I would comment that as you had been identified as a suspect, operational guidelines when combined with the relevant legislation prevents them from taking your statement at that point, This is to ensure your rights as an accused person are maintained. The guidance provided in police Scotland's crime investigation Standard Operating Procedure states that a suspect should not be asked any questions that may incriminate them in a crime without prior consultation with a solicitor. Taking this guidance into consideration it would have been poor practise for the Officers to allow you to provide your version of events at that time as there would have been a high likelihood that at some point during this you would have offered some information that inferred your guilt.*
- *Officers were committed with your arrest at that time and unable to obtain your partner's statement. However both Officers have intimidated that due to her perceived state of sobriety they offered your partner the option of attending at the Police station to provide a statement. It is recognised that your partner disputes this part of their version of events.*
- *Due to the fact your disposal for this offence was a recorded Police Warning this ruled out the need for Officers to follow up on any statements at that time. Had you challenged this process and requested that the matter be dealt with through the courts, the court would have directed the Officers to obtain any additional statements.*
- *The Officers did not record details at the time due to your aggressive mannerisms and later recorded relevant details. This procedure is a recognised practise as per our Police Notebook and PDA's Standard Operating Procedure which states "Entries in notebooks and PDA's should be made at the time or as soon as practical thereafter".*
- *Both Officers acknowledge that you and your partner offered an explanation for your attendance at [Mr A's] door on the night on question but they are both quite clear on the fact that although this was a reason for your attendance nothing you or your partner provided inferred that you were innocent of the crime. At best your explanations might have provided offered mitigating circumstances for your conduct.*
- *Regardless of the availability of any additional evidence, having reviewed the evidence provided by the witnesses, and your partner ... and the two arresting Officers, there was sufficient corroborative evidence to justify arresting you at that point. Any additional evidence you may have been in possession of depending on its content may have formed a defence had this matter been dealt with through the courts but it would not have formed a defence had this matter been dealt with through the courts but it would not have prevented the Officers from arresting you.*
- *In the statement [Inspector D] obtained from your partner ... it is confirmed that your conduct on the evening of 21 December 2017 was inappropriate and she also provided corroboration for other witnesses versions of events. She stated that you were knocking aggressively on [Mr A's] door whilst shouting and swearing and kicking the door. She also stated that your inappropriate conduct continued when you were back on the street outside [Mr A's] premises where you continued to shout and swear to such an extent a witness asked you to refrain as it was upsetting children within his house. Nothing in her statement inferred that you were innocent or had been wrongly arrested for a crime you had not committed.*
- *In your letter to Police you called into question the credibility of the two named witnesses in this case citing that they both have ulterior motives for fabricating their version of events to incriminate you. In an effort to explain what is meant by a credible witness as far as Policing purposes is concerned – Credibility should not automatically be taken to have exactly the same meaning as truth, as to show a statement to be credible is not the same as to show it is true. By the same token, to find an account not to be credible does not necessarily mean it is untrue. Rather assessing credibility is more to do with determining the plausibility of a witness statement or account. Credibility is ultimately a matter for the court to consider.*

41. *On this occasion the decision to arrest you was not just based on the witness statements, which clearly corroborate each other, but also on the circumstantial evidence already mentioned around the*

mucky footprints and to a certain extent also to include your own admissions on the night when you have intimated your reasons for attending at [Mr A's] door."

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42. In respect of this point you report that as Officers led you to the rear of the Police van you informed them that you had recently undergone a gall bladder operation. You state the officers did not seem to care and you ended up in the rear of the Police van with your back on the floor and your legs up in the air crushing your stomach. The Officers then pulled you up to sit on the bench. You further report that your partner ... told them to be careful with you as you had recently underwent surgery and they replied in a blunt manner that they knew because you had already told them.

43. As part of the investigation into this part of your complaint [Inspector D] obtained a statement from your partner ... who reported that she was present when Officer's informed you that you were being arrested for Breach of the Peace. She reports that the officers were professional throughout this process. As they walked you to the rear of the van she followed closely behind and, although she was not immediately behind you, as you were placed into the rear of the van she believes she was close enough to see if the Officer acted in any way inappropriately. She reports that this was not the case. She reports that she overheard you explaining to the Officers that you have recently underwent surgery but did not hear the full conversation so for this reason she approached the Officers who were by this time seated in the front of the van and she spoke with the Officer in the passenger seat and made them aware of your recent surgery. She does not report anything untoward regarding their response.

44. [Constable B] reports that you escorting you to the rear of the Police van, you have informed them that you had recently undergone surgery. On being informed of this the Officers asked to check and they have lifted your clothing to reveal a large bandage around your naval. He reports that [Constable C] offered to assist you into the rear of the van to which you replied "Piss off" and climbed in to the van by yourself. As you climbed into the van he reports that you threw yourself on to the floor of the van and, in his opinion, you have done this to be awkward. He reports that [Constable C] entered the rear of the van and assisted you onto the seat.

45. He further reports that during the journey to [local police station] Police station [named police station] you have intimated that you requested the toilet and the Officers have stopped the van and allowed this to happen at the side of the road. He reports that at no point during this journey did you mention that you were uncomfortable or in pain.

46. [Constable C] reports that on escorting yourself to the Police van you stated you had recently undergone surgery to have your gall bladder removed and, on being informed of this, they checked and discovered you had a large bandage around the area of your naval. As a result of this information and your age [Constable C] offered you assistance to enter the cell area of the van. You declined this offer and stated "Piss off" to him. You have then climbed into the rear of the van and lay on the floor rather than use the seat. [Constable C] climbed into the van and assisted you up from the floor onto the seat. He believes that you lay on the floor to be obstructive. [Constable C] reports that at no point to [sic] you mention to them that you were in any pain or distress.

47. [Constable C] also states that during the journey to [local police station] you intimated that you required to use the toilet and they have stopped the vehicle and allowed you to do the toilet at the side of the road. Both Officers have stated that they monitored you throughout this journey and continually engaged in conversation with you to ensure your wellbeing.

48. Witness [Mr A] states that he observed the two Police Officer escort you to the rear of the Police Van and at no point did he observe them do anything inappropriate towards yourself. He reports that due to your state of sobriety you were 'wobbling about' as you entered the van.

49. *Having reviewed all the information collated in respect of this point on the balance of probability I am unable to uphold your complaint.*

50. *The rationale behind this is as follows:*

- *Your version of events are not supported by other available evidence*
- *You partner has offered a version of events stating that she did not witness the Officers act in anyway inappropriately towards you as you were being placed in the rear of the van and had acted inappropriately she would have witnessed this.*
- *Both Officers report that you were offered assistance prior to entering the rear of the Police van which you declined and responded by being rude towards them.*
- *Both Officers report that you ended up on the floor of the Police van as a result of your own actions and state of sobriety and this could have been prevented by you taking the assistance you were offered.*
- *During the journey to [local police station] the Officers have shown compassion towards yourself by stopping the Police vehicle to allow you to do the toilet. This is not common practise and decisions to allow a custody to exit the vehicle in any other place than the Police compound are not taken lightly and need to be risk managed very closely.*
- *They have also followed procedure by illuminating the cell light and constantly monitoring you during the journey whilst engaging in conversation with you.”*