

independent and effective investigations and reviews

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Police Investigations &  
Review Commissioner

PIRC/00474/17  
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# Report of a Complaint Handling Review in relation to Police Scotland

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# What we do

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

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

Finally, where we consider appropriate, we can make recommendations, issue reconsideration directions and identify learning points for Police Scotland.

\*Sections 34 and 35 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 as amended ("the Act") provide that the Police Investigations and Review Commissioner ("the PIRC") may examine the manner in which particular kinds of complaints are dealt with by Police Scotland.

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# Executive Summary

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## The Complaints

The complaints in this case arose after the applicant's parents' home was searched and items belonging to him were seized by officers.

We have reviewed eight complaints, namely that:

1. a Detective Inspector visited the applicant at [named prison 1] and offered him *"a deal"*;
2. a Detective Inspector swore and expressed disgust at the length of the applicant's prison sentence;
3. a Detective Inspector did not record the applicant's allegation that a constable had lied in court;
4. the officer who led the search on the applicant's parents' house was not aware that the property had a rear door, and swore on discovering this;
5. no search warrant was shown to anyone prior to the applicant's parents' house being searched;
6. during the search, officers broke open and damaged two flight cases despite the keys being available;
7. an officer lied about not knowing the applicant's whereabouts while he was on home leave from prison; and
8. a Detective Chief Inspector, who visited the applicant at [named prison 3], failed to record his complaint about the police.

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## Police Scotland's Decision

Police Scotland did not uphold any of the complaints.

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## Our Findings

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

Consequently, we have issued four reconsideration directions to address the shortcomings we have identified in Police Scotland's handling of complaints 4, 5, 6 and 7.

We have also identified a learning point and made a separate observation, with an additional reconsideration direction.

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

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# Background

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On 4 April 2007, the applicant's parents' home (where he resided) was searched under a firearms warrant. The applicant was found to be unlawfully in possession of firearms that were subsequently seized. As a consequence, the applicant was convicted of offences under the Firearms Act 1968 and sentenced to five years imprisonment.

Between 7 – 14 April 2010, the applicant was granted home leave from prison and was staying at his parents' house. During this time period, Police Scotland were granted a search warrant under the Firearms Act 1968. This was in response to intelligence that they had received, with the outcome being that the applicant's parents' house was searched on 14 April 2010 and several items were seized.

The applicant thereafter returned to prison at the end of his home leave. He said that, two days after his return, he was told that he was being put back to closed conditions pending a police investigation.

The applicant was unhappy with the manner in which the search was carried out and the conduct of the officers during his interactions with them thereafter.

The applicant initially reported his complaints to Police Scotland in May 2014, and submitted further correspondence dated 7 September 2014 and 24 October 2014. The applicant received correspondence from Police Scotland dated 20 November 2014. This correspondence enclosed a copy of a previous letter that had been issued to him in 2010. At this time, Police Scotland advised the applicant that they considered the letter from 2010 to have addressed his concerns. The applicant continued to correspond with Police Scotland, sending them additional letters dated 23 March 2015 and 20 June 2015. He received a further letter from Police Scotland dated 7 July 2015 advising him that his complaints had already been investigated.

On 5 October 2015, the applicant requested that we review the manner in which the police had handled his complaints. Our review found that Police Scotland had not investigated nor responded to his complaints. Accordingly, on 4 March 2016, we made a recommendation to Police Scotland that they record the applicant's complaints, investigate them, and provide him with a response addressing his concerns.

Detective Chief Inspector A was appointed as the enquiry officer; however, the enquiry was later passed to Inspector B to progress. The applicant's correspondence dated 12 January 2017 was used to inform his complaints.

The applicant received a response to his complaints in a letter dated 18 October 2017 from Chief Inspector C.

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# Complaint 1

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The applicant complained that Detective Inspector D visited him at [named prison 1] and offered him “a deal”.

Within his correspondence to the police dated 12 January 2017, the applicant said that when Detective Inspector D visited him in [named prison 1], Detective Inspector D said he was convinced that the applicant had further firearms and ammunition hidden somewhere, and that if he disclosed it to him, then all could be sorted without any further upheaval to his family.

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

Chief Inspector C said the following in response to the complaint:

*“... The Detective Inspector, states that, at the material time, following your conviction and sentence, he attended at [named prison 1] in order to interview you in an attempt to discover if you had any additional weapons or ammunition secreted elsewhere. The interview concluded with no issue with you failing to provide any further information. The Detective Inspector states that he did not offer any form of “deal” during the interview and at no time was the issue of parole discussed. A Detective Constable who was also present during your interview supports the Detective Inspector’s version of events.*

*In considering the circumstances, of this allegation, I am faced with two opposing version of events. You have provided an account that a Detective Inspector offered you a “deal” in respect of your parole. The Detective Inspector refutes this allegation and it is supported by a Detective Constable. Having considered the evidence, available to me, on the balance of probabilities, I do not uphold this allegation”.*

## Our Review of Complaint 1

In order to inform our review, we have been provided with a copy of the statements given by Detective Inspector D. In response to this allegation, Detective Inspector D said “*I did not offer any form of a deal. I do not know what kind of a deal I could have offered to a man that had been convicted and sentenced at the High Court*”. Detective Inspector D reiterated this position in a further statement that he provided dated 21 March 2017 and added “*at no time was the issue of parole discussed. [The applicant] was a convicted prisoner and I was not in any position to have any influence on this conviction or sentence*”. Detective Inspector D’s position in both statements is supported by the statement provided by Detective Constable E – the officer present with him. In her statement, Detective Constable E said “*Detective Inspector [D] did not offer any kind of “deal” to [the applicant]*”.

The standard of proof that is applied to non-criminal complaints about Police Scotland is the ‘Balance of Probabilities’. This is a test that is used to assess the available evidence in order to determine which version of events is considered more probable. In this case, we note there are two officers statements that state that the applicant was not offered a “deal” in contrast to the applicants position that he was.

Accordingly, we can confirm that the response provided by Chief Inspector C is based on the material information available and that he has correctly applied the balance of probabilities test to inform his decision not to uphold the complaint.

We therefore conclude that this complaint has been handled to a reasonable standard.

## Our Conclusion on Complaint 1

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

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

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## Complaint 2

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The applicant complained that Detective Inspector D swore and expressed disgust at the length of his prison sentence.

Within his correspondence to the police dated 12 January 2017, the applicant said that when Detective Inspector D attended at [named prison 1] to speak to him, he swore and expressed disgust with the courts, the judge, and at his sentence.

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

Chief Inspector C said the following in response to the complaint:

*"The Detective Inspector, states that, at the material time, following your conviction and sentence, he attended at [named prison 1] in order to interview you. He states that the nature of your sentence was not his concern and made no adverse comments about it. A Detective Constable who was also present states that you were interviewed within an interview room that the Detective Inspector did not swear at you, or express any disgust at your sentence nor pass any derogatory remark about same.*

*In considering the circumstances, of this allegation, I am faced with two opposing versions of events. You have provided an account that a Detective Inspector was uncivil to you. The Detective Inspector refutes this allegation and it is supported by a Detective Constable. Having considered the evidence, available to me, on the balance of probabilities, I do not to [sic] uphold this allegation".*

## Our Review of Complaint 2

In respect of the interview he had with the applicant, Detective Inspector D said in his statement of March 2017 that *“at no point time did I swear at [the applicant], the nature of his sentence was not my concern and I made no adverse comments about this”*. Detective Inspector D is supported in his position by Detective Constable E, who said that during the interview *“[Detective Inspector D] did not swear at [the applicant] nor did he express any disgust at [the applicant’s] sentence nor pass any derogatory remark”*.

Accordingly, we can confirm that the response provided by Chief Inspector C is based on the material information available and that he has correctly applied the balance of probabilities test to determine that the complaint was not upheld.

We therefore conclude that this complaint has been handled to a reasonable standard.

### Our Conclusion on Complaint 2

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

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

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## Complaint 3

The applicant complained that Detective Inspector D did not record his allegation that a constable had lied in court.

Within his correspondence to Police Scotland dated 12 January 2017, the applicant said that during the course of his interview with Detective Inspector D at [named prison 1], he said to Detective Inspector D something along the lines of *“your lot lied in court”*. The applicant said that Detective Inspector D responded to this comment with words to the effect that he was only interested in CID staff, and that the actions of other police officers were not his concern.

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

Chief Inspector C said the following in response to the complaint:

*“The Detective Inspector, states that, at the material time, following your conviction and sentence, he attended at [named prison 1] in order to interview you and he states that, at no time during the interview, did you raise any allegation to him regarding a police officer from [named police office AA] lying in court. Had you done so, the Detective Inspector has*

*confirmed that he would have taken the appropriate action. A Detective Constable who was also present during your interview supports the Detective Inspector's version of events and states that at no point during the interview did you make any allegation that a police officer from [named police office AA] had lied in court.*

*In considering the circumstances, of this allegation, I am faced with two opposing versions of events. You have provided an account that a Detective Inspector neglected his duty to record a complaint. The Detective Inspector refutes this allegation and it is supported by a Detective Constable. Having considered the evidence available to me, on the balance of probabilities, I do not uphold this allegation.*

### **Our Review of Complaint 3**

As mentioned previously, we have been provided with copies of the statements given by Detective Inspector D to inform the complaint enquiry. In response to this allegation, Detective Inspector D said that *“at no point during the interview within the prison did [the applicant] raise any allegations around those officers who had given evidence at his trial”*. Detective Inspector D re-iterated this position in a further statement that he provided dated 21 March 2017, and added that if the applicant had raised this allegation with him, then he would have taken the appropriate action. Detective Inspector D's position is supported by that of Detective Constable E. In her statement, Detective Constable E said that *“at no point during the interview did [the applicant] make any allegation that a police officer from [named police office AA] had lied in court”*.

Accordingly, we can confirm that the response provided by Chief Inspector C is supported by the material information available and that he has correctly applied the balance of probabilities test to determine that the complaint was not upheld.

We therefore conclude 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.

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## **Complaint 4**

The applicant complained that the officer who led the search on his parents' house was not aware that the property had a rear door, and swore on discovering this.

In his correspondence with Police Scotland dated 12 January 2017, the applicant said that when he was asked to exit his home, he had asked the officer by which door he should leave. The applicant said that, upon hearing this, the officer swore and started shouting, *“who carried out the fucking recce...”*.

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

Chief Inspector C said the following in response to the complaint:

*“At the material time, five police officers that were trained Force Hostage & Crisis Negotiators with [legacy police force] were called to [named police office AA] to assist in the planned firearms operation. Two of the police officers have since retired. The three remaining officers recall the making of two telephone calls. These telephone calls were made simultaneously to two separate addresses. The police officers who made the calls delivered specific instructions to the occupants. The officers refute the allegations, stating that they did not swear during the course of the telephone call. There are no recordings available of these calls.*

*In considering the circumstances of this allegation, I am faced with two opposing versions of events. You have provided an account that a police officer swore on discovering that there was more than one door to your dwelling house. All three officers, who are still serving with Police Scotland, refute this allegation and it is partially supported by a senior officer who was present. Having considered the evidence available to me, on the balance of probabilities, I do not uphold this allegation.”*

## Our Review of Complaint 4

The response from Chief Inspector C states that the officers have refuted the applicant's allegation. However, of note is that it is not sufficient to simply state that officers refute an allegation without providing any further information explaining why it is refuted.

We have established that the three officers referred to in Chief Inspector C's response are namely Sergeant F, Constable G, and Constable H. We have been provided with a copy of their respective statements.

We can confirm that the statement given by Sergeant F specifically said that he spoke with the applicant's brother in the presence of Constable G. He said that at no point was he uncivil whilst he was in conversation with the applicant's brother. Sergeant F said that he was not present when other officers spoke with the applicant, and therefore he could not make any comment on what was said during that particular conversation.

Constable G provided a statement. He confirmed that he was paired with Sergeant F, and said that Sergeant F did not swear on the phone.

Accordingly, whilst Sergeant F and Constable G have confirmed that, they did not speak with the applicant; their respective statements do not offer any information relative to the call that was made to the applicant. For this reason, we consider their statements to offer no real evidence to either support or deny the applicant's allegation that an officer swore whilst on the phone to him.

We have also been provided with a copy of Constable H's statement. Within his statement, Constable H recalls having made one of the calls to either the applicant or his brother, however he could not remember which subject he spoke to. He said that when he made the call there were no questions asked from the person with whom he was speaking with, and that the person on the call understood his

instructions. He said he refuted the allegation made. He said that he delivered instructions, that he did not swear at the person to whom he was speaking with, and added that he “*wholly refute[d] any allegation of incivility on my part*”.

Of note is that there was only two telephone calls made on the date in question – one to the applicant and the other to his brother. Given that Sergeant F has confirmed that he contacted the applicant’s brother, it would seem reasonable to infer that, by default, it was Constable H that contacted the applicant. We also note that Chief Inspector C’s response has said that the position of the officers is partially supported by that of a senior officer. During the course of the review, our enquiries with Police Scotland have established that the ‘senior officer’ at that time was in fact Constable G. As we have mentioned previously, Constable G said that he was paired with Sergeant F, and that Sergeant F advised that he was not present when the other call was made to the applicant. We note from the paperwork that these calls were made simultaneously. We therefore consider the statement provided by Constable G to add no evidential value to the allegation as to whether Constable H swore whilst he was on the phone to the applicant despite Chief Inspector C using it to support his response.

Accordingly, there are two version of events - that of the applicant (who said that the officer swore) and that of Constable H, who refutes any allegation that he was uncivil and denied that he swore.

Section 6.12.7 of the Complaints about the Police Standard Operating Procedure (“CAP SOP”)<sup>1</sup> provides:

*“There will be times when, after investigation, conflicting accounts just cannot be reconciled. In such instances the complaint will not be upheld. However, an explanation as to why must be provided... This explanation should describe what evidence the enquiry officer found in the course of the enquiry in respect of each allegation”.*

Taking cognisance of the provisions of the CAP SOP, we consider that Chief Inspector C’s response has failed to provide an explanation to the applicant on how he reached his determination not to uphold the complaint. Furthermore, Chief Inspector C’s assertion that the officers’ refutation of the allegation is supported by a senior officer is not supported by the material information available. Nonetheless, given that the available evidence (as detailed within our consideration of this complaint) is equally balanced, we consider that Chief Inspector C has correctly advised the applicant that his complaint in this regard was not upheld.

That said, the crux of the applicant’s complaint is that the officer who called him – who we have established as being Constable H – was not aware that his parent’s property had a rear door. The significance of this allegation is that the applicant believes that his brother was the original target for the search. He also believes that, given he was on home leave at the material time, officers made the decision ad hoc to search his parents’ house alongside that of his brothers. The applicant considers the fact that the officers did not know that his parents’ house had a rear door to add support to his belief that the search was unplanned. The applicant raised this issue on numerous occasions in his correspondence with Police Scotland. Despite this, his concerns have been repeatedly ignored.

As mentioned above, we have established that the officer that telephoned the applicant was Constable H. We note that, within his statement, Constable H has said that he was not asked any questions whilst he was on the phone, and that the person to whom he spoke with understood his instructions. This is contrary to the applicant’s account, whereby he said that he asked the officer which door he was to leave by. The applicant also stated that his father took the phone from him. It is not clear whether the applicant’s father spoke to Constable H. This aspect of the complaint has not been explored by the enquiry officer.

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<sup>1</sup> Complaints about the Police Standard Operating Procedure Version 1.02

Neither Chief Inspector C nor Constable H provided any details about what information was available to Constable H before he made the call or what information and the level of detail should have been provided to a negotiator in these circumstances.

We consider that this element has not been explored by Chief Inspector C in his response letter to the applicant.

Accordingly, we consider that insufficient information was provided to the applicant to enable him to understand the determination reached in relation to his allegation. Specifically, in relation to the aspect of his complaint regarding officers not knowing that the property had a rear door, we consider that this has not been explored in the response letter, that there has been insufficient enquiry, and that the response is inadequately reasoned. As such, we consider that the complaint has not been handled to a reasonable standard.

## **Our Conclusion on Complaint 4**

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

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

In reconsidering this complaint Police Scotland should:

- obtain a statement from Constable H that specifically addresses the applicant's allegation as to whether he was aware that the property had a rear door;
- obtain a statement from the applicant's parents to inform this complaint; and
- provide the applicant with a further response. The further response should detail the information obtained from Constable H in respect of whether he was aware that the property had a rear door, explain whether his complaint is upheld/not upheld, and a clear explanation should be provided in this regard.

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## **Complaint 5**

The applicant complained that no search warrant was shown to anyone prior to his parents' house being searched.

Within his correspondence to Police Scotland dated 12 January 2017, the applicant said that three separate properties were searched at the same time, and that at least 7 adults were removed along with children. He said that no one was shown or given a copy of the search warrant.

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

Chief Inspector C said the following in response to the complaint:

*"As you were aware, you and your parents were instructed to leave your home in the early hours of 14 April 2010, as part of a planned firearms operation led by officers of [legacy police force]. At this time, your house was kept under the control of police officers, and at 1345 hours that day the house was searched.*

*The search officers state that at this time, they were in possession of a search warrant issued by [named sheriff court] in terms of Section 46 of the Firearms Act 1968 as amended, and as the dwelling house was now empty, there was no person to show this warrant to at that time.*

*In considering the circumstances, of this allegation, I am faced with two opposing versions of events. You have provided an account that the search warrant was not shown to any person prior to the house being searched. I can confirm that there is no requirement in law for this to occur during the search of an empty dwelling house. Having considered the evidence, available to me, I do not uphold this allegation".*

## **Our Review of Complaint 5**

From the paperwork we have been provided, we can confirm that Chief Inspector C's response accurately reflects that, at the time the officers had attended the applicant's parents' home to carry out the search, there were no persons within. Accordingly, Chief Inspector C has reasoned that there was no requirement at that stage to have shown anyone a copy of the search warrant as there was no one at the locus to show it to.

However, we consider that Chief Inspector C has missed the crux of the applicant's complaint. We understand from the paperwork provided that the applicant and his parents were asked to leave his parents' property in the early hours of 14 April 2010, at around 0230 hours. We also understand that the officers whom initially attended at his house at approximately 0230 hours are different from the officers who carried out the search at approximately 1345 hours. Although Chief Inspector C has explained as to why the search officers who attended at approximately 1345 hours did not show the applicant the search warrant, he has failed to explore and provide an explanation as to why the applicant or his parents were not shown a copy of the search warrant when they were asked to leave at approximately 0230 hours and/or at the point when the applicant was detained. We note that none of the officers that attended at 0230 hours have addressed in their respective statements whether the applicant was shown a copy of the search warrant; whether they explained the purpose of the search; or whether they informed the applicant that he could see a copy of the search warrant at a later time i.e. at the local police office.

As aforementioned, we have been provided with a copy of the relevant search warrant. We can confirm that the search warrant was granted on 13 April 2010, that it was for the applicant's parents' house, and that it was indeed in place when the applicant was asked to leave his home at approximately 0230 hours on 14 April 2010.

Accordingly, the fact that none of the officers that dealt with the applicant when he was initially detained have mentioned in their statements whether they showed him a copy of the search warrant and/or explained to him that he could see it at a later time, coupled with the lack of explanation in the response letter from Chief Inspector C on whether the actions of the officers were correct, we consider that there has been insufficient enquiry into the applicant's complaint.

Furthermore, although not a stand-alone complaint in itself, we note that there is no explanation as to why the applicant and his parents were asked to leave the property at 0230 hours when the search was not carried out until 1345 hours.

Accordingly, for the aforementioned reasons, we consider that this complaint has not been handled to a reasonable standard.

## **Our Conclusion on Complaint 5**

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

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

In reconsidering this complaint Police Scotland should:

- obtain statements from all officers who had dealings with the applicant at the time he was detained. The officers should specifically address whether they showed the applicant a copy of the search warrant at this time. If not, the officers should provide their rationale behind this decision. The officers should also address whether they provided any information to the applicant as to what the search warrant covered, and whether he could access a copy of this at a later time;
- obtain a statement from the applicant's parents to inform this complaint;
- the complaint should then be re-assessed taking cognisance of the points raised within our consideration and the further information obtained from the officers; and
- the applicant should be provided with a further response. The further response should explain to the applicant the information obtained through the further enquiries; why he was asked to leave his property at approximately 0230 hours despite the search not being carried out until 1345 hours; and provide an explanation as to whether the officers followed procedures in this regard. The applicant should be informed as to whether his complaint is now upheld/not upheld. Any determination provided should be supported by the material information available and be clearly explained to the applicant.

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## Complaint 6

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The applicant complained that during the search, officers broke open and damaged two flight cases despite the keys being available.

Within his correspondence to the police dated 12 January 2017, the applicant said that, when he and his parents were removed from the property, his mother was questioned as to where the keys for the shed were. The applicant said that the keys for the shed were hanging at the back door of the property and that his mother informed the officer of this. He said *“the police used the keys to open the shed but the flight cases were wrenched open even though the keys were in their possession and they used the bunch to unlock the shed padlock.”*

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

Chief Inspector C said the following in response to the complaint:

*“As this was considered to be a criminal allegation, a report was submitted to CAAPD, COPFS, Hamilton for their consideration. Notification has now been received from the Procurator Fiscal that she is taking no further proceedings in connection with this allegation.*

*I have also considered this allegation and confirm that I will also be taking no further proceedings.”*

### Our Review of Complaint 6

From the paperwork we have been provided, we can confirm that Chief Inspector C has advised the applicant correctly in that this allegation was considered by the Crown Office and Procurator Fiscal Service (COPFS), who thereafter determined that they were not taking any further action.

However, although Police Scotland considered the applicant’s complaint to amount to a criminal allegation against the police, and in doing so have correctly referred the matter to COPFS in accordance with procedure, our position is that this allegation is not necessarily criminal. In the applicant’s correspondence with Police Scotland, he has not complained specifically that his flight cases were damaged/vandalised. Instead, the crux of the applicant’s complaint is that the flight cases were damaged despite the keys having been made available to the officers that carried out the search. Accordingly, we consider that this should have been identified by Police Scotland and that an explanation should have been provided to the applicant to address his concern. The response provided by Chief Inspector C in this regard has not explored this aspect of the allegation, and has failed to provide detail of any information that was provided by the officers during the complaint enquiry in this regard. The fact that the police treated the complaint as a criminal allegation also meant that they were unable to provide the applicant with a determination. i.e. whether it was upheld/not upheld.

As no explanation has been provided by Chief Inspector C to demonstrate as to how he has reached his conclusion not to take any further proceedings in respect of this complaint, we consider the

complaint response to be inadequately reasoned. We consider that this complaint has not been handled to a reasonable standard.

## Our Conclusion on Complaint 6

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

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

In reconsidering this complaint, Police Scotland should:

- conduct further enquiries into the applicant's complaint, if they deem it is required to do so, in order to facilitate providing the applicant with a further response; and
- provide the applicant with a further response that specifically addresses his concern that officers damaged his flight cases, despite the keys having been made available to the officers who carried out the search. The response should provide to the applicant the information uncovered during the investigation into his complaint, be based on the material information available and clearly explain to the applicant whether his complaint is upheld/not upheld and the determination behind any decision reached should be clearly explained.

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## Complaint 7

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The applicant complained that an officer lied about not knowing his whereabouts while he was on home leave from prison.

In his correspondence sent to the police dated 12 January 2017, the applicant said that the officer – Detective Constable J - from [named police office BB] told him that he did not know the prison the applicant had been serving his sentence. The applicant said that the officer had waited until he was released on license to interview him about the property that had been seized during the search of his parents' house on 14 April 2010.

The applicant said that, every prisoner that leaves on home leave has a 'license' with specific conditions, and that details of those conditions are passed to the local police office. He said that, on the

day he spoke to Detective Constable J, Detective Constable J had previously called [named police office AA] – the applicant’s local police office – requesting that they contact him to ensure that he was home.

## **Police Scotland’s Handling of Complaint 7** (not upheld by the police)

Chief Inspector C said the following in response to the complaint:

*“The police officer at [named police office AA] refutes the allegation, and states he recalls having a conversation with you at the material time, and that he spoke to you and confirms that he did not lie to you regarding not knowing where you were whilst you were on home leave from prison.*

*In considering the circumstances of this allegation, I am faced with two opposing versions of events. You have provided an account that a police officer at [named police office AA] lied to you. The police officer refutes this allegation. No other evidence is available. Having considered the evidence available to me, on the balance of probabilities, I do not uphold this allegation”.*

## **Our Review of Complaint 7**

We note that Chief Inspector C’s response focuses on an officer from [named police office AA], and explains that the officer refutes the allegation; that he could recall the conversation referred to by the applicant; and that he did not lie. However, it is clear from the applicant’s correspondence with Police Scotland that the officer this complaint relates to is an officer from [named police office BB], whom the applicant named as Detective Constable J. We have been provided with a copy of Detective Constable J’s statement. Within his statement, Detective Constable J does not mention any conversation he had with the applicant, and fails to address whether he lied to the applicant about not knowing his whereabouts. Accordingly, we are unclear as to the information upon which Chief Inspector C has based his response.

Furthermore, we note that the response from Chief Inspector C does not explain to the applicant the delay in him being interviewed regarding the property that was seized from him on 14 April 2010; and why, according to the applicant, the officer had waited for him to be on home leave on ‘license’ prior to speaking to him. We note from the crime report that was raised in this connection was updated by Detective Constable J on 21 September 2010 to state that the applicant was in serving a prison sentence. The crime report was further updated by Detective Constable J on 26 October 2010 to state that the applicant was on home leave from [named prison 2] and that he would endeavour to interview the applicant after caution whilst he was on home leave, however this did not happen. We note that there are various further updates within the crime report with regards to when the applicant would be spoken to in this connection, however none of this has been explained to the applicant in the response letter; nor has an explanation been provided on whether the delay in the applicant being spoken to was appropriate or procedurally correct.

Accordingly, Detective Constable J has not addressed this complaint in his statement. Furthermore, we consider Chief Inspector C’s response either explains another officer’s position as opposed to that of Detective Constable J’s and/or is not supported by the material information available. We therefore conclude that this complaint has not been handled to a reasonable standard.

## Our Conclusion on Complaint 7

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

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

In reconsidering this complaint, Police Scotland should:

- record each aspect of this complaint as two separate complaints; (i) that the officer lied about knowing the applicant's whereabouts; and (ii) the delay in the applicant being spoken to;
- obtain a further statement from Detective Constable J that addresses the applicant's concerns; and
- issue the applicant with a further response. This further response should explain to the applicant the material information available; address his concern that Detective Constable J had lied to him about not knowing his whereabouts; address his concern surrounding the delay in him being spoken to and consider as to whether this delay was proportionate and was procedurally correct. The response should clearly explain to the applicant as to whether his complaint is upheld/not upheld based on the material information available and clearly explain the rationale behind this.

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## Complaint 8

The applicant complained that, Detective Chief Inspector K, who visited him at [named prison 3], failed to record his complaint about the police.

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

Chief Inspector C said the following in response to the complaint:

*"The police officer who visited you refutes the allegation. He states that on 13 July 2010, he attended with another police officer, and spoke to you at [named prison 3] to interview you regarding your letter of complaint. During this meeting, the police officer gave a full explanation to you in relation to all the points you had raised and gave you an opportunity to make a formal complaint about the police but you declined to do so. The police officer states that you did not want any further enquiry to be made and that the main reason for you writing*

*the letter was frustration with the Scottish Prison Service for withdrawing your home leave. This was all recorded in a hand written statement which you signed in agreement.*

*In considering the circumstances, of this allegation, I am faced with two opposing versions of events. You have provided an account that a police officer on visiting you at [named prison 3], failed to take a complaint against the police. The police officer refutes this allegation. Having considered the evidence, available to me, on the balance of probabilities, I do not uphold this allegation”.*

## **Our Review of Complaint 8**

Detective Chief Inspector K provided a statement to inform the complaint enquiry, a copy of which was provided to us. We can confirm that Detective Chief Inspector K said that he attended a meeting with the applicant at [named prison 3] to discuss the applicant’s complaints. He said that, upon giving the applicant an opportunity to make a formal complaint, the applicant declined to do so, saying that he did not want any further enquiry made; and that his frustration was with the Scottish Prison Service who had withdrawn his home leave.

Detective Chief Inspector K said that he refutes the allegation. He said that he gave the applicant an opportunity to make a complaint; however, he declined and that his wishes in this regard were recorded in a statement that was signed by the applicant.

A copy of the hand written statement referred to by Detective Chief Inspector K – dated 13 July 2010 – has been provided to us. We can confirm that this statement detailed that the applicant did not want any further investigation into his complaints and that it has indeed been duly signed by the applicant. Accordingly, we can conclude that the applicant agreed that he did not wish to progress the complaint at the material time, and that the response from Chief Inspector C is accurate and based on the material information available.

We therefore conclude that this complaint has been handled to a reasonable standard.

## **Our Conclusion on Complaint 8**

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.

## Learning Point

With regards to complaint 8 - during the course of our review, we have noted that the applicant's complaints were initially allocated to a Detective Chief Inspector for enquiry, and thereafter re-allocated to a Detective Inspector. This is despite this particular complaint relating to the actions of a Detective Chief Inspector, whom is of a higher rank than the complaint enquiry officer.

At the point in which the complaint was made, the enquiry officer would not have been in a position to have established as to whether his enquiry into the complaint would uncover information that could have potentially resulted in misconduct proceedings. Whilst we acknowledge that there is no clear guidance in the Complaints about the Police Standard Operating Procedure regarding the minimum rank that a complaint enquiry must be, we consider it to be good practice for Police Scotland, where practicably possible, to appoint an enquiry officer of a higher rank than the subject officer.

We consider we are supported in our position given the provisions of section 10(5) of The Police Service of Scotland (Conduct) Regulations 2014 which states that:

*“An investigator appointed under paragraph (4)(a) must –  
(a) be a constable of a higher rank than the constable being investigated.*

We consider that this should be borne in mind for future reference.

## Observation

In his correspondence with us and indeed Police Scotland, the applicant has expressed his concerns about not getting his property back. From the paperwork we have been provided by Police Scotland, we note that as part of the complaint enquiry, Inspector B recorded that Detective Constable J had given the productions (seized in 2010) to the army without obtaining a statement from them to inform the potential criminal enquiry; and that the productions were handed over despite them potentially being required for a criminal case. We also note that this was done prior to the applicant being interviewed with regards to being in possession of these items. We note that, through his solicitor at a later date, the applicant advised the police that he had purchased the items through many different stockists and that the items were indeed his.

Despite this shortcoming being identified by Inspector B during the complaint enquiry, we cannot establish from the paperwork we have been provided as to whether Detective Constable J was the subject of any corrective advice or training, or indeed whether there was any organisational learning in this regard.

Furthermore, we note that this shortcoming has not been highlighted to the applicant, nor has he been informed of the outcome of this shortcoming having been identified.

Section 6.12.8 of the Complaints about the Police Standard Operating Procedure provides:

*“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 an explanation provided to the complainer as to what action as taken and why.”*

With this in mind, the fact that a shortcoming was identified and recorded within the complaint paperwork, we consider that this should have been recorded as a complaint about the police and responded to accordingly. We therefore issue a reconsideration direction under section 35(7) of the 2006 Act that this concern is recorded as a complaint against the police, and that the applicant is provided with a response that addresses this concern; explains whether this complaint is upheld/not upheld; and provides a clear rationale in this regard.

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## What happens next

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

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

**Jacqui Jeffrey**  
**Senior Review Officer**