

independent and effective investigations and reviews

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Police Investigations &  
Review Commissioner

PIRC/00331/18  
May 2019

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

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# What we do

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

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

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

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

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# Executive Summary

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## The Complaints

The complaints in this case arose following the applicant's contact with the police on two occasions. We have reviewed the handling of two complaints, namely:

1. that a cardigan relevant to an incident in October 2013 was lost and therefore not used in a subsequent court case involving the applicant; and
  2. that officers failed to seize a lighter relevant to an incident involving the applicant in April 2017.
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## Police Scotland's Decision

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

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## Our Findings

We have found that Police Scotland handled both of the applicant's complaints to a reasonable standard. We have determined that there is no further action required of Police Scotland in relation to the complaints.

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# Background

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On the evening of 29 October 2013, the applicant arrived at a friend's flat where they planned to have some drinks. Another two friends joined them shortly after the applicant had arrived. As the evening went on, the applicant was involved in an altercation and was punched to the face several times, causing severe swelling to his face and resulting in an ambulance being called.

At approximately 18:55, the police and paramedics arrived at the incident. According to the officers involved, the applicant said that he had fallen into a coffee table and he refused to provide his clothing or DNA, or have his injuries photographed. In addition, according to the officers, the applicant was reluctant to provide a statement in relation to how he received his injuries. The accused was charged with assault to injury and was found not guilty when the case was called at court in December 2014.

At approximately 15:30 on 20 April 2017, the applicant was at his home address when he was visited by a friend, Mr A, who he had also met earlier in the day. The applicant welcomed Mr A into his home, however, according to the applicant, Mr A became agitated, began to undress and indicated that he was under the influence of drugs.

Given Mr A's unpredictable behaviour, the applicant asked him to leave, at which time Mr A tried to punch the applicant and missed. Before the applicant could react, Mr A punched him twice on the face. The applicant called the police and, when they arrived, they noticed that he had an injury and his nose appeared to be displaced. The applicant was therefore taken to hospital. Mr A was charged with assault and was found guilty when the case called at court in August 2017.

The applicant submitted a complaint about Police Scotland through his MSP on 9 May 2018. Sergeant B was thereafter appointed to investigate the applicant's concerns, however, as the applicant did not engage further with the police, a statement was not taken from him. Inspector C subsequently wrote to the applicant on 29 July 2018 with the outcome of his complaints. Inspector C's response is appended to this report.

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## Complaint 1

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The applicant complained that the blood-stained cardigan relevant to his case in October 2013 was lost and therefore not used in the subsequent court proceedings.

The applicant provided us with documentation highlighting a timeline of events and his perception of what happened to him. According to the applicant, the incident was an attempted murder as he had established by using a UV light that there were visible footprints over his body. He also stated that, as he was unable to trust the police, he delivered the blood-stained cardigan as well as a notebook to the Procurator Fiscal's office. The applicant advised us that he did not obtain a receipt, and that he received the notebook back but not the cardigan.

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

In his response, Inspector C stated that the police record crimes primarily by way of a crime report. He said that such reports include a summary of all the evidence and decisions made in relation to an enquiry, and that they contain a record of any productions seized. Inspector C continued by stating that, once an enquiry is completed and where evidence exists to substantiate that a certain person is responsible, Police Scotland will report the circumstances to the Procurator Fiscal by means of a Standard Prosecution Report (SPR).

Inspector C said that Sergeant B found no record of the applicant's clothing having ever been seized by officers. He stated that the officers involved in the enquiry said that the applicant refused to provide his clothing to them, and that the applicant did not mention the relevance of a cardigan or any other item of clothing that may have been blood-stained.

Inspector C stated that the applicant advised Sergeant B that the cardigan was delivered by the applicant to the Procurator Fiscal's office, not to the police. Inspector C thereafter stated that Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS) are separate entities, and he provided their details for the applicant to contact them directly about the loss of the cardigan.

Inspector C said that, given the information provided by the applicant and the officers, it appeared that Police Scotland had never held the applicant's cardigan in its possession and therefore was not involved in its loss. He consequently found the complaint not to be upheld.

## **Our Review of Complaint 1**

Police Scotland has provided us with: statements from the officers involved in the enquiry; four statements taken from the applicant; the crime report; the SPR and a copy of Sergeant B's notebook. In it, Sergeant B wrote that, when he visited the applicant to discuss the complaint, the applicant did not wish to provide a statement at the time and the complaint was discussed at his doorstep. Sergeant B also noted that the applicant told him that he had delivered his cardigan to the Procurator Fiscal's office rather than the police. This is in line with what the applicant said in his correspondence to us, namely that he delivered his cardigan to the Procurator Fiscal's office as he did not feel that he could trust the police.

Neither the SPR nor the crime report indicates that any item of the applicant's clothing was seized as a production. Having examined the statements of the officers involved in the enquiry, we note that they have each said that the applicant was uncooperative with them and that he refused to provide the clothing he wore at the time of the incident. We have also considered the four statements that were taken from the applicant. We note that the applicant made no mention in any of these of a blood-stained cardigan or any other item of clothing which may have been blood-stained. Accordingly, the evidence available strongly supports Inspector C's position that Police Scotland did not appear to have possessed or been involved in the loss of the applicant's cardigan.

For the reasons given, we consider that Inspector C was justified in not upholding the complaint, and that his response was adequately reasoned and supported by the material information available. It was also helpful of Inspector C to have provided the applicant with the details of COPFS for him to contact them directly about the loss of his cardigan. Consequently, we are satisfied that this complaint was dealt with to a reasonable standard.

## Our Conclusion on Complaint 1

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

No further action is required of Police Scotland in relation to this complaint.

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## Complaint 2

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The applicant complained that officers failed to seize a lighter which was relevant to the incident involving him in April 2017. In the documentation provided to us by the applicant, he stated that Mr A had used a lighter when he punched him on the face.

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

In his response, Inspector C stated that Sergeant B had reviewed the crime report, the SPR, witness statements and had also taken the accounts of the officers involved in the enquiry.

Inspector C said that, at the time of the incident, the applicant had provided a statement which he signed to confirm its accuracy. He said that Sergeant B had reviewed the statement and it made no mention of a lighter having been used. Inspector C stated that the applicant said in his statement that he had been punched on the face but made no mention of being assaulted with a weapon. Inspector C further stated that the officers involved had advised that, as the applicant had not informed them of any weapon being used, they determined that there was no requirement to take possession of any items as productions.

Inspector C thereafter stated that, with no evidence having been presented to the officers suggesting that a lighter was used as a weapon, the officers would not have been aware to seize items as evidential productions. Inspector C concluded by stating that the complaint was not upheld.

### Our Review of Complaint 2

Police Scotland has provided us with: statements from the officers involved in the enquiry; the applicant's statement; the crime report; and the SPR. Neither the SPR nor the crime report refers to a lighter having been seized as a production or mentioned to the police. In addition, the crime report records that a doctor described the applicant's injuries as having been "*consistent with a blow to the face*".

As Inspector C referred to in his response, Constables D and E said in their statements that there was no mention of a lighter and that they were not aware of the applicant providing a lighter to the police. Both Constables D and E also stated that Mr A said that his bag was still inside the applicant's home. The officers said that the bag was recovered when they went inside and that the applicant had confirmed that it belonged to Mr A. According to Constable D, the items inside the bag consisted of a pair of socks, a blue jacket and a newspaper. Constable F said in her statement that she did not have any involvement with the applicant and did not see a lighter. In the statement obtained from the applicant at the time he reported the incident, the applicant made no mention of a weapon having been

used during the assault, stating only that he had been punched on the face, as outlined in Inspector C's response.

The evidence available supports Inspector C's conclusion that, as there appeared to have been no mention of a lighter and nothing to suggest that a weapon was used, the officers would have had no reason to consider seizing any items. We consider therefore that Inspector C's response was supported by the material information available and adequately reasoned. Consequently, we find that this complaint was dealt with to a reasonable standard.

## **Our Conclusion on Complaint 2**

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

No further action required of Police Scotland in relation to this complaint.

**Emma Reid**  
**Review Officer**

**Peter Innes**  
**Senior Review Officer**

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# Appendix

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## Copy of Inspector C's response letter dated 29 July 2018

(Redacted and paragraphs numbered)

1. *I refer to the recent correspondence, dated 9 May 2018, sent on your behalf by [Ms G] MSP, in which you highlight concerns regarding the manner in which officers of Police Scotland have attended to you on two separate occasions. [Sergeant B] has discussed these concerns with you however I understand that that [sic] since your initial discussion with [Sergeant B] you have not engaged further therefore a statement has not been noted from you. In order for the police to make comprehensive enquiry into any complaint it is important that statements are noted from all relevant people. However, the police also have tight timescales within which we endeavour to complete any complaint investigation therefore enquiry has been carried out based on the information available to us.*
2. *Before addressing the salient points, may I stress that the purpose of any complaints investigation is to examine the conduct of the officers complained about and assess whether their actions, in respect of the allegations, were lawful and proportionate and determine whether they undertook their duties fairly and professionally with due regard to the parameters of acceptable procedural practice. In doing so, I will try to provide detailed responses to the various issues that you have identified as being matters you wished specifically addressed.*
3. *I understand your concerns are that:*
4. *1. Following a crime of serious assault which you reported on 29 October 2013, you are dissatisfied that a cardigan relevant to the case was lost and therefore not used in the subsequent court proceedings against [the accused].*
5. *The primary method used by the police to record any crime reported to officers is in the form of a Crime Report. Crime Reports record a summary of all evidence and decisions made in relation to an enquiry. They also maintain a record of productions seized which may be used as evidence. Once an enquiry is completed, where evidence exists to substantiate that a certain person is responsible, the method by which the police report the circumstances to the Procurator Fiscal is in the form of a Standard Prosecution Report.*
6. *[Sergeant B] has examined the Crime Report, Standard Prosecution Report, witness statements and had also sought accounts from the officers involved in this enquiry.*
7. *He has found that there is no record of your clothing ever having been seized by officers. The officers involved in the enquiry have informed that you refused to provide your clothing to them following the incident and at no time did you make mention of the relevance of a cardigan or any other item of clothing which may have been blood stained. You were interviewed by officers on four occasions during the enquiry, each time providing a statement which you signed confirming accuracy. At no time within the statements have you mentioned the cardigan.*
8. *I understand that following your visit from [Sergeant B], you have advised him that the cardigan was not provided to police officers, but instead was delivered by you directly to the Procurator Fiscal's office. Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS) are entirely separate entities.*

9. *From the information you have provided and that of the officers, it appears that Police Scotland has never had possession of your cardigan therefore has not been involved in its loss. This being the case, this aspect of your complaint is not upheld.*
10. *Given you advised that you delivered the cardigan directly to COPFS, this is a matter you may wish to raise directly with COPFS by writing to them at the address provided below.*
- 11.2. *Following a crime of assault, committed by [Mr A], which you reported on 20 April 2017, you are dissatisfied that officers failed to seize a [lighter] relevant to the case.*
12. *[Sergeant B] has conducted a review of the Crime Report, Standard Prosecution Report, witness statements and has also sought accounts from the officers involved in this enquiry.*
13. *At the time of the incidents you provided officers with a statement which you signed to confirm its accuracy. [Sergeant B] has examined the statement and in it you made no mention of a lighter having been used during the commission of the crime. In the statement you informed that you had been punched twice on the face however at no time did you make mention of having been assaulted with a weapon.*
14. *The enquiry officers advise that you did not inform them that any weapon had been used therefore they determined that there was no requirement to take possession of any items as productions in the case.*
15. *With no evidence presented to officers suggesting a [lighter] had been used as a weapon during the assault, officers would not have been aware to seize any items as evidential productions. Consequently, this aspect of your complaint is not upheld.*
16. *In your letter you have listed a number of further concerns in relation to how criminal proceedings were conducted in and around the court house. These proceedings are not within the control of the police. [Sergeant B] advised you that should you wish to raise these issues with the court or COPFS, you may write to them at the following addresses:*
17. *COPFS*
18. *[Address provided]*
19. *[Named Sheriff Court]*
20. *[Address provided]*
21. *In conclusion, may I take this opportunity to reassure you that we take complaints about the police seriously and always seek to resolve them in a fair and proper manner.*
22. *It is always disappointing when a member of the public is dissatisfied by the performance of our officers or the procedures followed by our staff. I would like to thank you for highlighting your concerns to Police Scotland and allowing us the opportunity to provide an explanation. We now consider this matter concluded.*