

independent and effective investigations and reviews

pirc

Police Investigations &
Review Commissioner

PIRC/00168/17
December 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 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.

Executive Summary

The Complaints

The complaints in this case arose following the applicant's arrest and detention in police custody on 6 April 2017. We have reviewed eleven complaints, namely:

1. that officers detained and arrested the applicant without good reason;
2. that officers did not read out the applicant's rights when he arrived at the police office;
3. that an officer delayed contacting the applicant's solicitor without good reason;
4. that the applicant was placed in a cell that was infested with ants;
5. that, whilst within a cell, officers handcuffed the applicant without good reason and that the handcuffs were too tight;
6. that an officer left the applicant in a cell naked and without clothes that fitted him;
7. that officers asked the applicant to pull back his foreskin without good reason and humiliated him;
8. that an officer asked the applicant if he had any suicidal thoughts, which was not necessary;
9. that officers were uncivil towards the applicant, calling him "an idiot, childish and foolish".
10. that officers did not offer the applicant a drugs test; and
11. that officers took DNA samples and impressions of his fingerprints without good reason.

Police Scotland's Decision

Police Scotland upheld complaints 4, 5, 6 and 7. The remaining complaints were not upheld.

Our Findings

We have found that Police Scotland handled complaints 1, 2, 4, 5, 6, 7, 8, 9, 10, and 11 to a reasonable standard but not so complaint 3.

We have not made any recommendations.

Background

On 6 April 2017, Constables L and M¹ were within a shopping centre when they saw the applicant. As he matched the description of a man who had been involved in an assault in November 2016 which Constable L was investigating, the officers detained the applicant under section 14 of the Criminal Procedure (Scotland) Act 1995. The applicant objected and was subsequently arrested for obstructing the officers in their duties. Constables L and M took the applicant to the police office where he was held in custody for several hours. The applicant was charged with resisting/obstructing Constables L and M but was not charged in connection with the assault allegation.

On 19 July 2017, the applicant submitted complaints about his arrest and detention. Inspector N investigated the complaints. He met with the applicant on 17 August 2017 to take his statement of complaint and agree the 'heads of complaint' that would form the basis of the complaint enquiry. The applicant added further complaints during telephone conversations with Inspector N on 30 October 2017 and 14 March 2018.

Chief Inspector P wrote to the applicant on 22 August 2018 to notify him of the outcome of the complaint enquiry.

¹ Police Scotland referred to these two officers by name when notifying the applicant of the outcome of his complaints but denoted other officers by using a lettering system. To avoid confusion, this report replicates the lettering used by Police Scotland. As we have now removed the names of Constables L and M (and also the enquiry officers) , the lettering runs out of sequence.

Complaint 1

The applicant complained that officers detained and arrested him without good reason.

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

As part of the complaint investigation, Inspector N obtained accounts from Constables L and M. He also viewed a CCTV image relevant to the assault enquiry to consider whether it was reasonable for Constables L and M to have identified the applicant as the suspect.

Constables L and M explained that they had identified the applicant as the suspect in the ongoing assault investigation because he matched the description given by the victim and also a CCTV image of the suspect.

In the complaint response,² Chief Inspector P explained that, having identified the applicant as the possible suspect, Constables L and M were entitled to detain him pending further enquiry under the legislation that applied at the time i.e. Section 14 of the Criminal Procedure (Scotland) Act 1995.³ Chief Inspector P stated that Inspector N had reviewed Constable L's assault enquiry during his complaint investigation. Inspector N was satisfied that the applicant was the man in the CCTV image meaning that it was reasonable for Constables L and M to suspect him of being responsible for the assault. Accordingly, Chief Inspector P was satisfied that the officers had reasonable cause to detain the applicant.

Chief Inspector P then considered whether Constables L and M were correct in subsequently arresting the applicant for resisting them. She explained the police guidance relating to the use of handcuffs i.e. that they can be used where a police officer "*deems it is necessary to prevent the subject from assaulting, injuring or offering violence to themselves or other officers/staff*". She considered that Constable M's position as explained in her statement (that she felt threatened by a change in the applicant's body language), justified the use of handcuffs on this occasion. Both officers also stated that the applicant actively tried to prevent them from applying the handcuffs and Chief Inspector P confirmed that this constitutes an offence.

Chief Inspector P did not uphold the applicant's complaint as she found that 'on balance'⁴ Constables L and M had acted correctly in first detaining the applicant in connection with the assault and then arresting him for resisting/obstructing them in the course of their duties.

Our Review of Complaint 1

We have considered the information provided by the applicant and Constables L and M. We have also viewed information provided by the person who reported the assault in November 2016, and the CCTV image of the applicant taken on the same date, which led Constables L and M to detain him in April 2017.

² The full complaint response to complaints 1,2,3,5 and 9 is included at Appendix I

³ The relevant legislation is reproduced at Appendix II

⁴ This refers to the 'balance of probabilities' test which means that all available evidence has been evaluated to determine which version of events is considered to be the more probable. See Appendix IV

We can confirm that the victim described a distinctive jacket which matched the applicant's clothing on the day of the alleged assault. This was confirmed from the CCTV image of the applicant which was taken around the time of the assault. The applicant was wearing the same jacket on 6 April 2017 when Constables L and M approached him.

Chief Inspector P has explained why she considered Constable L's suspicion that the applicant was responsible for the assault in November 2016 was reasonable and, consequently, why Constables L and M were justified in detaining the applicant under Section 14 of the Criminal Procedure (Scotland) Act 1995.

Chief Inspector P also considered the accounts provided by Constables L and M which describe the applicant's actions after they approached him. She accurately set out the officers' position within the complaint response. Chief Inspector P also explained why she considered the applicant's actions, as described, to be obstructive and, consequently, why she determined that the Constables L and M were justified in arresting the applicant under Section 90 of the Police and Fire Reform (Scotland) Act 2012.⁵

In conclusion, we consider that Chief Inspector P provided a detailed and well-reasoned response to this complaint which reflected the available information and which clearly explained the legislation which allowed the officers to first detain and then arrest the applicant. We therefore conclude that the complaint was handled 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.

Complaint 2

The applicant complained that officers did not read out his rights on arrival at the police office.

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

As part of the complaint enquiry, Police Scotland obtained statements from Constables L and M and Sergeant G who was the custody supervisor when the applicant was brought into the police office. Inspector N also considered the content of CCTV footage from the police office and the applicant's custody record.

Chief Inspector P explained to the applicant that "*arrested persons have the right for a solicitor and a reasonably named person to be contacted*". According to Sergeant G, he informed the applicant of these rights when he arrived at the police office. He said that the applicant requested a solicitor but did not ask for anyone else to be told of his arrest. Chief Inspector P confirmed that Sergeant G's position was supported by a document known as the 'Rights of Accused Form' which is contained within the

⁵ The relevant legislation is reproduced at Appendix III

custody record. The form recorded that the applicant was informed of his rights and did indeed request a solicitor but replied 'no' when asked if he wished a reasonably named person to be contacted.

Constable L said in his statement that he recalled the applicant being informed of his rights. Constable M confirmed that she was present when the applicant was booked into custody but did not make any reference as to whether he was informed of his rights.

Chief Inspector P referred to the CCTV footage which, although the audio aspect was at times unclear, showed all three officers explaining the applicant's right to have a solicitor contacted. She was unable to determine whether the applicant was also informed of his right to have a reasonably named person notified of his arrest. This was due to the poor sound quality on the recording.

Chief Inspector P stated that the footage also showed Sergeant G asking Constables L and M whether the applicant may require an interpreter, to which Constable L replied that the applicant had been in the UK since 2015 and seemed to understand English.

Chief Inspector P did not uphold the applicant's complaint 'on balance' as she considered from the available information that the applicant was informed of his rights. This was because: both Sergeant G and Constable L had confirmed that the applicant was informed of his rights; information in support of their position was recorded on the 'Rights of Accused Form'; and, the CCTV footage verified that the applicant was asked if he wanted a solicitor to be contacted.

Our Review of Complaint 2

We have considered the content of the officers' statements, the applicant's custody record and the CCTV footage.

As explained in the complaint response, the quality of the audio recording from the custody footage is poor. Nonetheless, we have been able to confirm that Sergeant G told the applicant that he was entitled to have a solicitor notified of his detention. We have been unable to determine whether the applicant was also told about his right to have a reasonably named person notified of his detention. However, the 'Rights of Accused' form records that the applicant requested a solicitor at 11:40 hours and also that he did not ask for anyone else to be notified of his detention. The solicitor's name was recorded on the form. The available information therefore supports Police Scotland's position 'on balance' that the applicant was notified of his right to have a solicitor contacted and suggests that he was also told about his right to have another person notified of his detention when he first arrived at the police office.

In her complaint response, Chief Inspector P broadly considered whether the applicant understood what he was being told. This is important as Chief Inspector P found that the applicant would have benefitted from the services of an interpreter in relation to other aspects of his time in police custody.

In relation to this complaint, Chief Inspector P reflected on a discussion between the officers about the applicant's understanding of English. She also noted that the officers explained to the applicant that a solicitor was another name for a lawyer, and had asked whether he wanted a lawyer told about his detention. The video footage shows that the applicant replied "*for sure*" when asked this question. Furthermore, within his correspondence to us, the applicant said that, when he was brought into custody, Constable M asked him if he wanted the police to tell the solicitor about his arrest and that he had replied "*of course*". This is largely consistent with the video recording. Therefore both the video footage and the applicant's correspondence suggest that he understood what he was being told about his right to have a solicitor notified.

In conclusion, although it could not be established with certainty that the applicant was informed of all of his rights on arrival at the police office, the video footage confirms that he was informed of his right to have a solicitor notified. The 'Rights of Accused' form was also completed in full which suggests that the applicant was also told about his right to have another person notified of his arrest. On that basis, we consider that Police Scotland was warranted 'on balance' in not upholding this complaint. As Chief Inspector P provided an accurate analysis of the available information, fully explained why she did not uphold the complaint and gave some consideration as to whether the applicant was able to fully understand what he was being told, we consider that this complaint was handled to a reasonable standard.

The applicant made a separate but related complaint about his access to a solicitor which he said did not happen until several hours later. This allegation is considered under complaint 3.

Our Conclusion on Complaint 2

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

No further action is required.

Complaint 3

The applicant complained that officers delayed contacting his solicitor without good reason.

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

In her response, Chief Inspector P referred to the applicant's custody record. This shows that the applicant's request for a solicitor was logged at 1140 hours and that Sergeant G contacted the solicitor at 1314 hours. Chief Inspector P explained the reasons for the delay stating that the booking in process continued for another 45 minutes and that staff were dealing with other business within the custody area.

Chief Inspector P did not uphold the applicant's complaint as she did not consider the delay in contacting his solicitor to be unreasonable.

Our Review of Complaint 3

We have considered the information contained within the applicant's custody record, the officer's statements, the applicant's statement and his correspondence to the PIRC.

We can confirm that the 'Rights of Accused' form records that Sergeant G contacted the applicant's preferred solicitor at 13:14 hours. Sergeant G also recorded separately on the custody record that he spoke with the solicitor by phone and that the solicitor had declined to attend. In the complaint response, Chief Inspector P explained why she did not consider a delay of approximately 1.5 hours to be unreasonable.

We are satisfied from the available information that Police Scotland contacted the applicant's solicitor shortly after he was arrested. However, it is clear from the applicant's complaint statement that he believed Police Scotland had not contacted a solicitor until 17:30 or 18:00 hours. In that regard, the custody record shows that the interpreter arrived at the police office at approximately 17:30 hours. According to Constable L, he spoke with the applicant at 17:50 hours along with the interpreter and completed the Solicitor Access Recording Forms (SARF) at that time.⁶ He said that the applicant wished to speak to a solicitor prior to being interviewed. Constable L therefore contacted the duty solicitor who spoke with the applicant by phone at 18:15 hours and then attended at the police office a short time later. Constable L recorded this solicitor contact in the custody record.

Chief Inspector P should have explained that Police Scotland contacted the applicant's preferred solicitor after he arrived at the police office, and subsequently contacted the duty solicitor before he was interviewed. Although we agree that the complaint should not have been upheld, we consider that the complaint was not handled to a reasonable standard as the response did not directly address the applicant's concern that the solicitor was not contacted until approximately 18:00 hours. Nonetheless, we have not recommended any further action as this report now explains the sequence of events.

Our Conclusion on Complaint 3

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

No further action is required.

Complaint 4

The applicant complained that, at the police office, he was placed in a cell that was infested with ants.

Police Scotland's Handling of Complaint 4 (upheld by the police)

Police Scotland obtained accounts from the officers and staff who had been on duty at the police office during the applicant's period in custody. Chief Inspector P explained to the applicant that according to the accounts, the applicant had not reported the presence of ants in his cell, nor had any other prisoner. Some of the officers and staff members stated that there were no ants in the cell while others did not refer to this particular complaint. Nonetheless, Chief Inspector P upheld the complaint as the cell area had been treated for an ant infestation.

Our Review of Complaint 4

During our review, we considered the information provided by custody staff about the presence (or otherwise) of ants in the cell area. Several staff members stated that they did not see any ants,

⁶ The SARF process is separate from the initial custody procedures during which an arrested person is informed of their rights and a solicitor is notified if requested. See Appendix III

although PCSO H acknowledged that ants could easily enter the building as the area is well ventilated. He also recalled that the area had been treated with ant powder in the past.

During the complaint enquiry, Inspector N established that the cell area had indeed been treated for an ant infestation. It is not clear from the available information whether the treatment was carried out before or after the applicant was held in custody. However, regardless of when the area was treated, the fact that the cells had been subject to an ant infestation at any time and PCSO H's comments about the ease with which ants could enter the building, lend significant weight to the applicant's position that ants were present within his cell. We therefore agree with Chief Inspector P's rationale for upholding the complaint and, consequently, consider that the complaint was handled to a reasonable standard.

Our Conclusion on Complaint 4

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

No further action is required.

Complaint 5

The applicant complained that whilst within the cell, officers handcuffed him without good reason and that the handcuffs were too tight.

Police Scotland's Handling of Complaint 5 (upheld by the police)

As part of the complaint investigation, Police Scotland obtained accounts from the officers who were on duty in the custody area during the applicant's period in detention. This included statements from the custody supervisors, Sergeants G and K. CCTV recordings from the applicant's cell and information from the applicant's custody record were also taken into account.

In her response to this complaint Chief Inspector P acknowledged that handcuffs are uncomfortable, more so when they are applied for long periods. She found that the available evidence did not support the applicant's assertion that the handcuffs were too tight. Nonetheless, Chief Inspector P upheld the applicant's complaint as she found that the use of handcuffs on this occasion was not warranted. She explained that the handcuffs were applied because the applicant did not comply with the strip search procedures. The search had been authorised as the applicant had failed to answer a series of questions which are used to assess the level of risk/vulnerability of persons in police custody. His refusal to answer meant that he was identified as high-risk. Chief Inspector P explained that, in these circumstances, she would have expected the applicant to be placed on increased observations but that his failure to answer the vulnerability questions did not justify a strip search. She concluded that there should have been no reason to apply handcuffs as these were only used as a consequence of his failure to comply with the strip search process.

Chief Inspector P informed the applicant that Sergeant G's actions in authorising the strip search and the application of handcuffs would be considered under Police Scotland's conduct regulations.

Our Review of Complaint 5

We have viewed Chief Inspector P's full response to this complaint which we consider to be comprehensive. She explained that the handcuffs were applied whilst the applicant was in the custody area as he did not comply with the strip-search procedures. She also provided a well-reasoned position as to why a strip-search was not justified on this occasion. As Chief Inspector P considered that a strip-search should not have been authorised, it followed that there should have been no reason to use handcuffs when the applicant did not comply with the search.

Chief Inspector P also considered whether the handcuffs were correctly applied. To do this, she reflected on the content of the witness statements which indicated that the handcuffs had been checked for tightness and that the applicant did not complain about them being too tight. Nonetheless, the fact that Chief Inspector P considered that handcuffs should not have been used at all provided sufficient grounds to uphold the applicant's complaint.

We can confirm that Chief Inspector P followed Police Scotland's complaint handling procedures by apologising to the applicant and by referring her findings for consideration under the police conduct regulations.

For the above reasons, we consider that this complaint was handled to a reasonable standard.

Our Conclusion on Complaint 5

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

No further action is required.

Complaint 6

The applicant complained that, without good reason, an officer left him in a cell naked and without clothes that fitted him. The applicant said in his statement that, when he was taken to the cells, he was told to remove his clothes and was given clothing that was too small for him. He therefore had to use a blanket to cover the lower part of his body.

The clothing provided to the applicant was an anti-ligature suit which is normally issued when a person is at risk of self-harm.

Police Scotland's Handling of Complaint 6 (upheld by the police)

Chief Inspector P explained that it is the custody sergeant, in this case Sergeant G, who authorises the removal of clothing and the issue of an anti-ligature suit. She also referred to her findings in complaint 5 where she had already explained that the applicant's clothes were removed as he refused to co-operate with the strip search process. In line with her findings for complaint 5, she upheld this complaint on the basis that there was no justification for a strip-search, therefore it followed that the applicant's clothing should not have been removed.

Chief Inspector P apologised to the applicant and stated that Sergeant G's actions, in authorising the removal of the applicant's clothing, would be considered under Police Scotland's conduct regulations.

Our Review of Complaint 6

Having assessed all of the available information, we agree with Chief Inspector P's rationale for upholding the complaint. Chief Inspector P has already explained why there was no justification for a strip-search to be carried out. Had the search not been authorised, it appears unlikely that the applicant's clothing would have been removed. This is because the recorded information points to the applicant's clothing being retained and the anti-ligature suit being issued because he did not fully comply with the search process and not because officers considered him to be at risk of self-harming.

In conclusion, we are satisfied that the decision to uphold this complaint is supported by the material information available. In addition, the complaint response is in accordance with Police Scotland's complaint handling procedures as Chief Inspector P apologised to the applicant and explained the action that would be taken as a result of the complaint. We therefore consider that the complaint was handled to a reasonable standard.

Our Conclusion on Complaint 6

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

No further action is required.

Complaint 7

The applicant complained that, without good reason, officers asked him to pull back his foreskin and humiliated him.

Police Scotland's Handling of Complaint 7 (upheld by the police)

Chief Inspector P re-iterated her position that there was insufficient justification to conduct a strip search. She therefore upheld the complaint on the same basis as complaints 5 and 6.

Chief Inspector P acknowledged that being strip-searched and asked to expose intimate parts of his body without good reason would have been an unpleasant experience for the applicant and she apologised to him in that regard. She further explained that the actions of Sergeants G and K in authorising the search would be considered under Police Scotland's conduct regulations.

Our Review of Complaint 7

We have already stated under complaint 5 that Chief Inspector P provided a well-reasoned explanation as to why she determined that a strip-search was not justified in the applicant's case. We therefore

consider that it was appropriate for Chief Inspector P to uphold the applicant's complaint about the intimate nature of the search and the embarrassment this caused. Chief Inspector P again apologised to the applicant and told him about the action she had taken as a result of his complaint. For those reasons, we consider that the complaint was handled to a reasonable standard.

Our Conclusion on Complaint 7

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

No further action is required.

Complaint 8

The applicant complained that an officer asked him whether he had any suicidal thoughts, which was not necessary.

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

Chief Inspector P did not uphold the applicant's complaint as officers are required to ask questions about the needs of those who are detained in police custody. She provided the following explanation:

"Custody records confirm that these questions were indeed asked of you.

The Custody SOP States, the 'Risk Assessment Question set' is a format of questions that custody staff should ask everyone brought into police custody. Included in this list of questions are the following:

- *Have you ever attempted self-harm or suicide?*
- *Do you have any thoughts at this time of self-harm or suicide?*

These questions are intended to ensure that every prisoner has the appropriate care plan to suit their needs and must be asked of everyone, regardless of how they may present at the charge bar. It is mandatory that all custody staff booking in prisoners at the charge bar must ask these questions."

Our Review of Complaint 8

It is evident from the custody record that the applicant was asked about his mental health. However, Chief Inspector P highlighted in the complaint response that the officers and staff concerned acted in accordance with the relevant custody procedures. She also explained why the health and welfare questions are necessary. We therefore consider that Chief Inspector P has provided a suitable

response to this complaint. Consequently, we consider that this complaint was handled to a reasonable standard.

Our Conclusion on Complaint 8

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

No further action is required.

Complaint 9

The applicant complained that officers were uncivil towards him, calling him “*an idiot*”, “*foolish*” and “*childish*”.

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

As part of the complaint enquiry, Police Scotland retrieved CCTV footage from the custody area of the police office. Chief Inspector P stated that the footage of the applicant being booked into custody and being released did not support his position that officers/staff were uncivil towards him and that no-one called him an “*idiot*”, “*childish*” or “*foolish*”. Albeit that the sound quality fluctuated, she found that all officers/staff were “*courteous and well-mannered*”

Chief Inspector P explained that the applicant had appeared at the charge bar area of the custody suite on another occasion. This was not identified initially which meant that the footage was not downloaded in time to be considered during the complaint enquiry. This is because footage is only retained for a short period. In that respect, Chief Inspector P stated “*I recognise that this does not assist in considering matters under review here and the loss of the footage has deprived me of additional evidence which would have greatly assisted in my determinations and this is regrettable*”.

Chief Inspector P explained that other cameras had captured the applicant being moved around the custody area but they did contain audio. She also stated that the camera outside the applicant’s cell was not working at the time he was in custody.

The officers and staff who dealt with the applicant during his period in custody provided statements. Two nurses and the interpreter also provided accounts. Their responses to the applicant’s incivility allegation were fully explained in the complaint response. In summary, all either denied that they or colleagues were uncivil towards the applicant, or, confirmed that staff were polite, helpful or patient.

Chief Inspector P did not uphold the complaint as she could find no evidence to support the applicant’s incivility allegation. She said that the content of the statements countered the allegation and the CCTV footage, although limited, showed that staff dealt with the applicant appropriately.

Our Review of Complaint 9

We have viewed the various witness statements from the police officers, staff and other parties who dealt with the applicant during his period in custody. We can confirm that Chief Inspector P accurately explained their content in the full complaint response.

In respect of the CCTV footage, where sound has been recorded, the quality is poor. Accordingly, we could hear very little of the dialogue. The sections that are audible support the complaint response as we agree that the officers appeared courteous towards the applicant. We did not hear any of the officers call the applicant 'idiot, childish and/or foolish'. Chief Inspector P acknowledged in the complaint response that, for several reasons, the CCTV footage was incomplete. However, we agree that the limited footage available supports the witness statements, all of which counter the applicant's complaint to some extent. On that basis, we consider that Chief Inspector P was justified in not upholding the applicant's complaint. As she has provided a detailed and well-reasoned explanation for reaching this conclusion, we consider that the complaint was handled to a reasonable standard.

Our Conclusion on Complaint 9

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

No further action is required.

Complaint 10

The applicant complained that he was not offered a drugs test.

Police Scotland's Handling of Complaint 10 (not upheld by the police)

Chief Inspector P provided the following response:

"The only occasion where any form of drugs test is arranged by the police is when someone has been arrested for driving whilst under the influence of drugs. Only specially trained officers are authorised to carry out 'impairment tests' in terms of Section 6B of the Road Traffic Act 1988 and suspects may be required to provide a sample of blood which would then be taken by a medical practitioner.

You were arrested for resisting police officers after you were detained as a suspect for assault. Therefore, officers were not expected to arrange a drugs test for you.

As drugs testing procedures do not exist to test prisoners in similar circumstances to yours, and indeed the vast majority of prisoners, this allegation is not upheld."

Our Review of Complaint 10

We have considered the content of the applicant's custody record, which does not suggest that officers suspected him of being under the influence of drugs. Even if the applicant had appeared to be under

the influence of drugs, the correct course of action in those circumstances would have been to seek medical advice and consider removing the applicant to hospital rather than conducting a drugs test.⁷ The complaint response would have been strengthened if Chief Inspector P had explained this aspect of the custody procedures. Nonetheless, Chief Inspector P explained that drugs tests are only arranged by the police in relation to specific road traffic offences. As the applicant was not arrested for such an offence, we agree that this complaint should not have been upheld.

As Chief Inspector P explained the circumstances under which the police may seek a drugs test, which did not apply in the applicant's case, we consider that the complaint was handled to a reasonable standard.

Our Conclusion on Complaint 10

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

No further action is required.

Complaint 11

The applicant complained that officers took DNA samples and impressions of his fingerprints without good reason.

Police Scotland's Handling of Complaint 11 (not upheld by the police)

Chief Inspector P provided the following response:

"Legislation exists that allows officers to take fingerprint impressions and DNA samples from all arrested persons. This is contained within the Criminal Procedure (Scotland) Act 1995, Section 18.

The practice of taking such impressions and samples is necessary, as it enables the police to confirm the identity of those who are arrested. It also alerts the police if a prisoner's fingerprints or DNA have been found in relation to another crime.

This allegation is not upheld"

Our Review of Complaint 11

We have considered the content of the applicant's correspondence to the PIRC. He questioned whether officers would have been entitled to take fingerprints and DNA samples in relation to the alleged assault as he had not been arrested for that offence. The applicant did not consider that samples would be required to provide evidence in respect of the obstruction allegation for which he had been arrested.

⁷ See Appendix V

At the time of the applicant's arrest/detention on 6 April 2017, Section 18(2) of the 1995 Act allowed officers to obtain physical data from a person who was arrested or detained. The wording was amended on 25 January 2018 to reflect the provisions of the Criminal Justice (Scotland) Act 2016 which ended the use of detention.

Section 18 of the 1995 Act enables the police to obtain samples, if deemed appropriate by the constable, having regard to the circumstances of the suspected offence. In practice, samples may be collected for evidential purposes to assist in investigation of the suspected offence, or for identification and crime detection purposes. Samples collected for identification and crime detection purposes are often referred to as criminal justice samples. The current legislation does not distinguish between criminal justice and evidential samples.

Chief Inspector P suggested in the complaint response that it is necessary to take fingerprints and DNA samples on every occasion in order to confirm the identity of an arrested person and for the purposes of cross-reference. To consider Chief Inspector P's position, we have viewed the guidance provided to officers in the Custody, Fingerprint and DNA Standard Operating Procedures (SOPs) which were in force in 2017.⁸ These support that the officers acted in line with established procedures by obtaining fingerprints and DNA samples from the applicant as his status was that of an arrested person. We therefore consider that Chief Inspector P was justified in not upholding the complaint as samples were obtained from the applicant in accordance with the relevant police procedures. While the complaint response could have been more detailed and explained the legislation and police procedures more clearly, we consider that the complaint was handled to a reasonable standard as Chief Inspector P informed the applicant that the samples were taken under the terms of the 1995 Act.

Our Conclusion on Complaint 11

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

Lynn McCord
Review Officer

Ilya Zharov
Head of Reviews and Policy

⁸ See Appendices V, VI and VII

Appendix I

Extracts Police Scotland's response letter dated 22 August 2018

(Redacted and paragraphs numbered)

1. [Complaint 1]

2. In support of this allegation you state you were detained by a male police officer (Constable [L]) and a female police officer (Constable [M]) at 1100 hours on 6 April 2017 and they did not tell you why this was happening. You later told [Inspector N] on 30 October 2017 that the court case against you was not being progressed by the Procurator Fiscal and, for this reason, the officers were wrong in detaining and arresting you.
3. Both these officers have provided statements that address this allegation.
4. [Constable L] states he was investigating an assault that had taken place within the [shopping centre] on 23 November 2016, where the culprit had spat in the face of the victim. An extract from [his] notebook shows how the victim provided the officer with a detailed description of the culprit, including the fact that he was wearing [a distinctive jacket (description included in original)]. There were no CCTV images that captured the actual incident, however CCTV within a nearby shop showed footage of a male walking through their premises just prior to the assault. The male matched the victim's description and was wearing a distinctive looking [jacket].
5. [Constable L] recalls how he saw you at 1045 hours on 6 April 2017 within [the shopping centre] and how your appearance matched the male recorded in the CCTV footage referred to above. He states that he approached you and in the presence of [Constable M] informed you of the reason for speaking with you and he then noted your personal details. He remembers being able to fully converse with you and you appeared to understand although English is not your first language. [Constable L] states how he then informed you that you were being detained in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995 on suspicion of assault. He notes you were cautioned that you were not obliged to say anything and you had intimated you understood and elected to make no reply. This was times at 1050 hours.
6. [Constable L] explains he then walked you to a less public area of the shopping centre and told you that you were being handcuffed. He states the reasons for handcuffing you were that you were unknown to him and his colleague, and they did not know if you posed any risk. [Constable L] states at this point, you placed your hands palm to palm, locked your fingers on both hands and opened your arms at the elbows. He remembers applying a handcuff to your left wrist and telling you to relax your arms in order for the second cuff to be applied. The officer adds that you continually refused to relax your arms and continued to tense your forearms and move your arms around in an effort to avoid being handcuffed. [Constable L] subsequently states he informed you that you were under arrest for resisting police officers carrying out their duty. His statement shows that, after a short struggle. He managed to fully apply the handcuffs to both wrists and at this stage you stopped resisting.
7. [Constable M] states how she was aware of the details of [Constable L's] investigation into the assault and that she had seen the CCTV image he refers to.

8. The officer adds that she was with [Constable M] when she saw you in the shopping centre on 6 April 2017 and that you appeared to be the male in the CCTV image. She describes how they approached you and that [Constable L] told you that you were being detained as a suspect for this assault, as you matched the description given by the witness and the image from CCTV. [Constable M] then explains how your “*communication then became hostile towards*” them as did your body language. She states you “*tensed up and recoiled*” and how this made her “*wary*” of you and she was unsure as to how you were going to behave. For that reason she felt an “*element of threat*” from you.
9. [Constable M] explains how she and her colleague did not know you and due to the change in your demeanour, it was decided to apply handcuffs for their safety. She states how at all times, the procedures were explained to you and that you were told the handcuffs were to be applied for the journey to the police station. The officer adds that as soon as they told you this, you placed your hands palm to palm, close to the trunk of your body, locked your fingers on both hands and opened your arms at your elbows, in an effort to prevent handcuffs being applied. She describes how [Constable L] applied a handcuff to your left wrist, and asked you to relax your arms so he second cuff could be applied. She remembers you not saying anything and how you just stood silent in the same position, pulling your arms into yourself. This meant, she and [Constable L] tried to pull your arms away from your body, continually giving you instructions to do so, so that they could apply the other handcuff. [Constable M] states you would have been well aware that they wanted you to move your arms due to their efforts, even if you did not understand what they were asking of you.
10. [Constable M] explains how [Constable L] then informed you that you were under arrest for an offence under Section 90 Police and Fire Reform (Scotland) Act 2012, namely resisting or obstructing a police officer in the execution of their duty. She describes how after a short struggle with your arms, she and [Constable L] managed to get the second handcuff onto your other arm. Once the handcuffs were applied, she recalls you did not struggle and the handcuffs were checked for tightness and ‘double locked’ to prevent them from becoming tighter.
11. In determining whether the officers had good reason to detain you, their use of Section 14 of the Criminal Procedure (Scotland) Act 1995 will now be considered. This legislation (now replaced with similar measures in January 2018), allowed officers to detain individuals where there was reasonable suspicion that they committed a crime punishable by imprisonment. Spitting in someone’s face is the common law crime of assault, which can be punishable by imprisonment. This legislation was used where there was insufficient evidence to report an individual to the Procurator Fiscal and allowed officers to interview suspects and to take their photographs, fingerprint impressions and DNA samples. Detained persons can also be searched and any item or piece of clothing recovered could be retained as evidence if deemed relevant to the enquiry.
12. In reviewing [Constable L’s] investigation into the assault, the CCTV image of the man in the shopping centre matches the description given by the witness. [Inspector N] has met you in person and has viewed CCTV footage of you being taken into the custody suite at [the police office]. He notes that at the time you were brought into custody, you were wearing [the distinctive jacket]. He is certain that you are indeed the male depicted in the [CCTV image] meaning it would be reasonable to suspect you as being responsible for the assault.
13. Having established that the officers had reasonable cause to detain you, the question of whether they were correct in arresting you for resisting them will now be considered.
14. Worthy of note is the police guidance on handcuffing which states that handcuffs may be justified where a police officer “*deems it necessary to prevent the subject from assaulting, injuring or offering violence to themselves or other officers/staff*”.

15. Therefore, due to the nature of the crime you were suspected of and the fact that [Constable M] saw that you tensed up and felt threatened by your body language, the officers could be justified for attempting to handcuff you. Your subsequent behaviour indicates you were trying to prevent the handcuffs being applied and were therefore actively resisting the officers. As explained by [Constable M], this is an offence and it is for this reason you were arrested. This meant you could be reported to the Procurator Fiscal for this specific offence.

16. Having reviewed the circumstances leading to your detention and subsequent arrest, I believe on the balance of probabilities that the officers acted correctly.

17. [Complaint 2]

18. You state you were not informed of your rights when you were taken into the cells area of [the police office]. In addition, you recall asking for a solicitor and being told by officers it was “*too problematic*” and that you “*kept on asking for one*”.

19. This allegation was put to the police officer who was responsible for informing you of your rights as an arrested person. This was Sergeant G and he records how he initiated the booking in process when you were brought into the cells. Arrested persons have the right for a solicitor and a reasonably named person to be contacted.

20. In response to the allegation, Sergeant G states that he did inform you of your rights on arrival at the police station. He adds that you asked for a solicitor to be told but did not elect to have anyone else informed.

21. In the statement provided by [Constable L] he recalls you being informed of your rights. However, [Constable M] states she was present when you were booked in but makes no reference in her statement about you being informed of your rights.

22. As part of the investigation into your complaint, [Inspector N] has viewed the CCTV footage that covers the booking in area, known as the charge bar. This footage also has sound, however for much of the recording there is a great deal of background noise from another prisoner shouting and banging on his cell door. Also, the audio quality fluctuates with periods of no sound or where it is very faint due to the modulation and pitch of people’s voices.

23. In the recording, the custody sergeant can be heard “*do you want a lawyer told you are at this police station?*” You did not answer this question. [Constable L] is then heard saying “*a solicitor is another name for a lawyer, do you want a lawyer told*”. [Constable M] also attempts to explain your right to have a solicitor contacted. The audio recording breaks up at this stage but your head movements would infer that you would like a lawyer to be informed. After this question, prisoners are normally asked if they would like a reasonably named person told that they are in custody. However, due to the sound quality, it is unclear from the CCTV footage that you were asked this question. The custody sergeant can be heard asking [Constables L and M] if you need [an interpreter] and [Constable L] tells him that you seem to understand English and supports this assertion by recording the fact that you have a British driving licence, dated 2015, and have therefore been in the United Kingdom since that time.

24. When arrested persons are brought into custody, a document known as ‘Rights of Accused Form’ is completed by the officer reading a prisoner their rights. When this form is completed on the computer terminal at the charge bar, the relevant times are recorded as an officer asks the questions and notes the prisoner’s response. Details recorded on this form cannot be altered and are time stamped.

25. This form records that you were informed of your right to have a solicitor told about your arrest. It shows you answered yes to this question and the time is recorded as 1140 hours and that the solicitor requested was [details provided in original].
26. In respect of your right to have a reasonably named person informed, the form shows that you answered 'no' to this question and this is timed at 1141 hours.
27. From looking at the evidence provided, your allegation is countered by Sergeant G and [Constable L] who both state you were informed of your rights. The rights of accused form, recorded at the time, also supports their account. Furthermore, CCTV footage verifies the fact you were asked if you wanted a solicitor contacted but it is unclear as to whether you were asked about having a reasonably named person contacted, due to the sound quality.
28. Therefore, on the balance of probabilities, this allegation is not upheld.

29. [Complaint 3]

30. You made this complaint in the statement you provided to [Inspector N] in which you state your lawyer was contacted "*about 5.30pm or 6pm*".
31. The role of making sure that your solicitor was contacted was the responsibility of the custody sergeant, who informed you of your rights when you were presented at the charge bar.
32. As stated earlier, the rights of accused form shows you has asked for a solicitor to be informed at 1140 hours. It also shows the solicitor was contacted and the custody record was updated to that effect at 1314 hours by the custody sergeant.
33. Sergeant G, in responding to this allegation states there was no undue delay in contacting your solicitor, "*given that there were staffing implications*" in connection with your circumstances and other ongoing business within the cells area.
34. After you were informed of your rights, the CCTV footage shows the custody sergeant asking questions about your care and welfare, logging details of any property on your possession and dealing with administrative tasks concerning your arrest. This took approximately 45 minutes and during this time spent most of his time at the charge bar and only out of view of the camera for very brief periods. The custody record also shows that at 1302 hours, he had updated the custody database to record details of the fact that you were strip searched.
35. It is reasonable to expect that amongst all of this, time would then be required to find a more suitable and quiet place to phone the solicitor and provide them with the details of your case. Furthermore, the care and welfare of prisoners is paramount for custody staff so I do not deem this to be an unreasonable delay.

36. [Complaint 5]

37. [In your statement] you recall how at times you were handcuffed to the front and also to the back. You describe how the handcuffs were too tight and how, because of this, it was difficult to sleep. Furthermore, you explain how during your time in the cell, the door was open and two, sometimes three officers were watching you. you state that at one point a male and female officer adjusted the handcuffs.

38. When any prisoner is processed into custody in order to ensure their care and welfare a series of questions are asked to allow officers to assess any vulnerabilities and create a care plan for that person's time in custody. This is recorded on our National Custody System (NCS).
39. After the second question you refused to answer any further questions meaning that you would have automatically been recorded as high risk until the questions to determine risk are completed. In this instance I would expect these circumstances along with any other relevant information to be used to create a care plan and suitable increased level of observation to be applied to your time in custody.
40. At 11:46 Sergeant G records the vulnerability decision as follows:
- Level: HIGH
- Reason: COMPLIANCE ISSUES – STRUGGLED WITH OFFICERS. DID NOT COMPLY WITH PROCEDURE RE RISK QUESTIONS HENCE U/K RISK. PRESENTED WELL WITH NO REASON TO BELIEVE UNDER INFLUENCE IN ANY WAY.
41. Where a person is arrested or detained and brought into custody then as per Section 12.10.10 and 12.1.11 of the Care and Welfare of Persons in Police Custody Standard Operating Procedure (hereafter referred to as the Custody SOP) states –
- 12.1.10 Both the extent and location of the search are decided by the custody supervisor who should take into account all the relevant information available. There are three levels of search available, namely;*
- *Standard search*
 - *Strip search*
 - *Intimate search*
- 12.1.11 Where the custody supervisor decides that a strip search or intimate search is necessary, the reasons and justification for this **must** be recorded on the custody computer system. If a strip search is carried out it **must** be authorised by an officer holding the rank of at least sergeant. **For all cases of intimate and internal searches officers should record all direction given by the Procurator Fiscal (PF) in their official police notebooks. Further information in relation to intimate and internal searches can be found in the Drugs Investigation SOP.***
42. At 13.02 Sergeant G recorded the following on the Officer Notes section of the NCS:
- FAILED TO ANSWER RISK QUESTIONS. NO TRACE OF SUBJECT FOR RESEARCH PURPOSES. STRIP SEARCH AUTHORISED BY [SERGEANT G] DUE TO U/K RISK. SEARCH NOT CONCLUDED DUE TO RELUCTANCE TO SEARCH UNDER FORESKIN. PUT ON CONSTANT OBS.
43. In relation to your handcuffs being too tight, the arresting officers and Sergeant G state that upon application of the handcuffs that they were checked for tightness and double locked.
44. Custody records show Constable D visited your cell at 1459 hours and 1700 hours. He states he came on duty at 1400 hours, carrying out custody officer duties, which involves checking on the care and welfare of prisoners. He recalls how he attended to check on you. the officer also remembers speaking to you and asking if you wanted a blanket or food and to check that your

“handcuffs were not too tight and to check them periodically”. He explains how he gave you a blanket but you would not communicate with him. There is also a handwritten custody record, which provides details of when officers visited your cell. There is an entry on this attributed to Constable D which states *“handcuffs loosened to aid circulation”*. Constable D also appears to be the officer who is the closest match to your description. Constable D refutes this allegation that your handcuffs were too tight.

45. Constable C states you did not engage with him or the other officers and how you did not speak or acknowledge their requests. He states he remained with the PCSO for a short time and stood at the cell door keeping observations on you until the custody sergeant had arranged for other officers to attend. He cannot remember if you had any handcuffs applied.

46. Constable A was also assigned to carry out constant observation duties at your cell and he attended there shortly after 1510 hours. He was accompanied by Constable B. He states how both of them commenced observations on you by sitting on chairs outside your cell. At this time he saw you were handcuffed to the front and were naked from the waist up. He recalls asking you if you required anything and you did not say anything as you turned your head and faced the wall. Constable A explains how at all times during his observations you remained lying on your mattress facing the wall and did not engage in any conversation. He recalls that both he and his colleague were relieved of these duties at about 1800 hours, shortly after this the interpreter arrived and you were out of your cell for interview.

47. Constable F states that about 2025 hours he conducted a strip search of you with Constable L. He makes no mention in his statement of you being handcuffed.

48. In making my determination, the first consideration for me is was there justification to handcuff you? The reason you were handcuffed and your clothing removed was due to the fact that you refused to cooperate with the strip search process.

49. As per the notes mentioned earlier Sergeant G states his reason for strip searching you was that you refused to answer the vulnerability questions and were not on any systems so therefore presented as an unknown risk. Having reviewed all of the information available to me regarding the reason for your strip search I do not find justification for a strip search based on the following reasons:

- You presented well and were not under the influence of substances
- You were not on any police systems and therefore had no warning markers. I would have expected to see a marker for either drugs or concealing on a previous record or system.
- Your detention did not relate to a drugs offence or an offence where it could reasonably be considered that you were concealing something about your person.
- As English is not your first language it is reasonable that you would require an interpreter and may not readily answer vulnerability questions.
- As it was your first time in custody it would be reasonable to consider that you may be nervous and not understand the processes which would be compounded by the language barrier.

31. Therefore had you not been strip searched then there would have been no reason to apply handcuffs within the cell.

32. The second consideration is whether the handcuffs were too tight. Throughout your time in the cell, it would appear for much of the time you refused to engage with the officers watching you and therefore did not complain about the tightness of the handcuffs. The arresting officers and custody sergeant state they checked your handcuffs for tightness and double locked to ensure

they didn't get any tighter. Constables D and E both state they removed the handcuffs on occasion, with constable D stating "*this was done to aid circulation*". This does not mean the handcuffs were too tight; being in handcuffs for lengthy periods of time could cause discomfort simply due to movement being restricted. Both the nurses also have no record of you complaining about the tightness of the handcuffs.

33. There are officers that either make no mention of you being handcuffed or cannot remember. However, these officers were accompanied by colleagues that either remember this being done correctly or who refute the allegation and state that you did not complain and that the handcuffs were periodically checked and loosened. CCTV evidence and the custody record does not offer any evidence to support your allegation.

34. Taking into account all of the available evidence, this allegation is upheld.

35. I apologise and can advise that the actions of Sergeant G will be considered under terms of the Police Service of Scotland (Conduct) Regulations 2014.

36. [Complaint 9]

37. In your statement you recall how during your time in your cell you were told to "*sit up, sit up*" when you were half asleep. You also remember how at times officers were rude to you, saying you were "*childish*" and "*foolish*".

38. Statements were noted from the ten police officers and the members of police support staff after they were asked to respond to this allegation.

39. [Constable L] refutes this allegation stating "*at no point was I uncivil to [the applicant] and did not hear any other person being uncivil to him calling him 'an idiot, childish and foolish'*"

40. [Constable M] states, "*I cannot recall any person calling [the applicant] 'idiot, childish and foolish' whilst he was in police custody*".

41. Sergeant G, who booked you into the cells, states "*at no point did I witness any officer being anything other than polite and civil towards [the applicant]*"

42. Sergeant K, on duty in the cells later that day, and who oversaw your eventual release states, "*At no time during my dealings with [the applicant] did I make any uncivil comments or witness any incivility towards him by other staff or officers*".

43. The following officers are shown on police custody records as having visited your cell.

44. Constable A was assigned to provide constant observations on you. He explains he was with Constable B. In his statement he responded, "*I was later contacted and informed that [the applicant] had made several complaints against the police and his treatment at [the police office] of which I have no knowledge of*".

45. Constable B states "*Custody staff and I were polite and professional at all times when speaking to [the applicant]. I refute this allegation.*"

46. Constable C states "*At no point was I uncivil to [the applicant] and did not hear any other officers being uncivil towards him*".

47. Constable D states "*I refute this allegation and did not see any other officers do this*".

48. Constable E states *“At no time when I was with [the applicant] did any officer call him an idiot, childish or foolish”*.
49. Constable F states *“During my full interaction with the male he was treated in a civil manner and at no point was he called an idiot, childish and foolish”*.
50. PCSO H states he has never called anyone in custody an *“idiot, foolish or childish”*.
51. During the time you were in custody, you were also attended to by two nurses.
52. Nurse I saw you at 1800 hours. she states she visited your cell with the custody sergeant and that other police officers were sitting outside and the door was open. The nurse explains how the *“custody sergeant was polite and professional as he asked the care and welfare questions but the prisoner did not answer”*. She also adds *“when I was there I was not aware of any conversation between him and the other officers”*.
53. Nurse J saw you shortly before your release. She was asked if she had any recollection of your case. After checking her notes, she could find nothing to suggest that you were treated in a manner that was not acceptable. She explained she would remember if staff treated any person in this way and she has always found staff to be civil in how they communicate with prisoners.
54. Furthermore, the interpreter who attended states *“I got the impression that the police staff were keen to release him. However, his reluctance to answer the questions or allow the strip search to be fully completed meant that he could not be let out. I remember the police officers being helpful and very patient towards the man. I did not witness any aggressive behaviour. I was in the man’s presence for approximately 2 ½ to 3 hours”*.
55. CCTV footage has been obtained of your time at the charge bar from 1140 to 1228 hours when you were being booked in and from 2024 to 2034 hours as you were being released. After retaining the relevant DVDs it was found during subsequent enquiry you were at the charge bar from 1800 to 1825, during which time Constable L, Sergeant K, Nurse I and the interpreter would have been present. Such recordings are only retained on the CCTV database for a limited period of time, and this period was found to have been automatically deleted when a request for it was made.
56. The Standard Operating Procedure (SOP) in relation to Complaints about the Police deals with the issue of CCTV in custody suites as follows:
- 6.3.4 Once PSD receive a complaint about the police, contact will be made with the complainer by telephone, wherever possible within three working days, and in the case of minor, non-serious complaints, an effort to resolve the complaint by telephone will be made. This is known as Early Resolution. When Early Resolution has not been achieved the complaint will be allocated for early investigation. Where the complaint appears to relate to a period of time in police custody, the PSD Complaints Assessment and Resolution Unit will arrange for any available custody CCTV to be retained for the enquiry officer.*
57. I recognise that this does not assist in considering matters under review here and the loss of the footage has deprived me of additional evidence which would have greatly assisted in my determinations and this is regrettable.
58. As explained above, from the CCTV that is available, the sound quality fluctuates, but at no time were any police officers or support staff heard to be uncivil when they spoke to you and there

was no instance of anyone calling you an “idiot, childish and foolish”. In fact the tone adopted by all of the staff heard on these CCTV recordings can be described as courteous and well mannered. There are other cameras that recorded your movement in the cells area but these do not have sound. There was also a camera immediately outside your cell but this was not working at the time when you were in custody.

59. In making my determination, I can find no evidence, other than your statement, which supports this allegation. The police officers, members of support staff, as well as the interpreter and two nurses, all provide statements which counter the allegation and the limited CCTV coverage shows you being dealt with in an appropriate manner.

Appendix II

Section 14 of the Criminal Procedure (Scotland) Act 1995

14 Detention and questioning at police station

(1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment, the constable may, for the purpose of facilitating the carrying out of investigations—

(a) into the offence; and

(b) as to whether criminal proceedings should be instigated against the person,

detain that person and take him as quickly as is reasonably practicable to a police station or other premises and may thereafter for that purpose take him to any other place and, subject to the following provisions of this section, the detention may continue at the police station or, as the case may be, the other premises or place.

Appendix III

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

90 Assaulting or impeding police

(1) It is an offence for a person to assault—

- (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
- (b) a person assisting A while A is acting in such capacity.

(2) It is an offence for a person to resist, obstruct or hinder—

- (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
- (b) a person assisting A while A is acting in such capacity.

(3) The capacities are—

- (a) that of a constable,
- (b) that of a member of police staff,
- (c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,

(d) that of a person who—

- (i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
- (ii) is carrying out functions as a member of that team.

Appendix IV

Extracts from Police Scotland's complaints about the Police Standard Operating Procedure V.6

6.11.6 The decision whether to uphold a complaint must be taken on the 'balance of probabilities'. That is, the enquiry officer must use their own professional judgement to decide, based on all available evidence, whether one account is more probable than the other.

6.11.7 There may be occasions when it is simply not possible to conclude that one 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. This explanation should describe what evidence the enquiry officer found in the course of the enquiry for each allegation.

Appendix V

Extracts Police Scotland's Care and Welfare of Persons in Police Custody V.6

8.4 Solicitor Access

8.4.1 The role of the custody supervisor should be to administer the 'Rights of Accused' and thereafter send intimation to a named or duty solicitor if requested

8.4.2 It is the sole responsibility of the investigating officer to complete the Solicitors Access Recording Form (SARF) procedure and contact Scottish Legal Aid Board (SLAB) via the solicitor contact line. This is not a custody staff function.

18 Medical Provision

18.1.1 Medical provision for custodies is the responsibility of National Health Service (NHS) Scotland. Should medical advice and/or assistance be required in relation to any custody, it is the responsibility of the custody supervisor to make direct contact with the HCP.

18.1.2 Any reference to a HCP includes Doctors, Nurses and Paramedics. A custody should be seen by a HCP if there is any reason to believe that they:

- Are suffering from any illness or injury including alcohol and drug withdrawal if applicable;
- Have taken drugs, including New Psychoactive substances (NPS – legal highs)
- Have consumed any other substance which might conceivably cause harm;
- Have indulged in solvent abuse;
- Are a pregnant female;
- Appear to be suffering from a mental illness;
- Whose condition is such to suggest that he/she requires medical assistance.

18.1.3 The custody supervisor is to discuss the case with the HCP to determine whether a visit is required or not, or to arrange for the removal of the custody to hospital, even though the custody may not have complained of their condition nor requested the services of a HCP.

18.1.4 Particular care is to be taken in relation to custodies who are:

- Drunk or
- Under the influence of drugs

19. Custody Welfare Considerations

19.8.4 There may be occasions, where in the interests of safety, it is necessary to remove a custody's clothing whilst within a cell. Where this occurs, a full dynamic risk assessment must be carried out to ensure that it is justifiable and the FCI made aware. The custody supervisor **must** ensure that the rationale is documented on the custody computer system. The decision should be regularly reviewed to ensure it remains proportionate to the risk. Should the risk be downgraded, suitable clothing should be returned to the custody at the earliest opportunity

20. Fingerprinting, Photographing and DNA Sampling of Custodies

20.1.1 Section 18 of the Criminal Procedure (Scotland) Act 1995 provides that the police may take, where it is considered appropriate, fingerprints, palm prints and other prints and impressions from external parts of the body from anyone who is arrested or detained under Section 14 of the Criminal Procedure (Scotland) Act 1995.

20.1.2 It is the responsibility of the custody supervisor to ensure that fingerprints, palm prints and photographs are taken from all persons arrested for all crimes, including children, each time they are apprehended.

20.3 DNA Samples

20.3.1 For procedures relating to DNA sampling refer to the DNA Sampling and Retention SOP.

Appendix VI

Extracts Police Scotland's Fingerprints Standard Operating Procedure

2. Arrested or Detained Persons

2.1 Section 18 of the Criminal Procedure (Scotland) Act, 1995 amended by the Crime and Punishment (Scotland) Act 1997 Section 47 (1) empowers a constable, or at a constable's direction a Police Custody and Support Officer (PCSO):

'where a person has been arrested and is in custody, or detained under Section 14 (1) of the Act, to take from the person, or require the person to provide him with, such physical data as the constable may, having regards to the circumstances of the suspected offence in respect of which the person has been arrested or detained, reasonably consider it appropriate to take'.

2.2 This effectively means the taking of fingerprints, palm prints or any print or impression, of an external part of the body, via ink and paper or created by a device approved by the Secretary of State (Livescan).

2.4 Fingerprints and palm prints should be taken from all persons arrested for all crimes, including juveniles, each time they are apprehended.

2.5 Finger and palm prints, if necessary, will be taken from **detainees** at the request of the detaining officer or enquiry officer or representative from Forensic Services

2.6 However, it is stressed that these impressions can only be used for furthering enquiries into the crime for which the individual has been detained.

Appendix VII

Extracts Police Scotland's DNA Sampling and Retention Standard Operating Procedure

3. CRIMINAL JUSTICE (CJ) SAMPLING

3.1 Section 18 of the Criminal Procedure (Scotland) Act 1995 relates to the taking of relevant physical samples, including DNA, and applies to individuals who have been arrested and are in custody or detained under Section 14(1) of said Act.

3.2 Subject to 3.9 below, a DNA CJ sample must be taken from any individual, regardless of age, who is in custody or detained under Section 14(1) of the 1995 Act, if it is decided to charge that individual with an arrestable offence and report for the consideration of:

- a Children's Hearing;
- the Procurator Fiscal; or
- the matter is concluded by the issue a Police Fixed Penalty Notice.

3.3 The legislation provides powers for the taking of samples from individuals who are compliant and the taking of certain samples from individuals who refuse to comply.

3.4 Section 18(6A) of the Criminal Procedure (Scotland) Act 1995, allows a Constable, or at a Constable's direction, a Police Custody or Security Officer (PCSO), to take from the inside of a compliant person's mouth by means of swabbing, a sample of saliva or other material

3.9 It is not necessary to take a DNA CJ sample from an individual who already has a profiled 'convicted' sample on the DNA database as this sample is retained indefinitely. A check of an individual's Criminal History Record will indicate if they are recorded as DNA 'C'. Be aware that any other marker other than DNA 'C' means that any DNA profile for this individual is only temporarily held and may subsequently be deleted; therefore unless record indicates DNA 'C', a further CJ sample must be taken if the subject has been arrested and charged.