



Police Investigations &
Review Commissioner

Report of a Complaint Handling Review in relation to Police Scotland

PIRC/00057/19
January 2020



What we do

Under the terms of the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended (“the Act”), we examine the manner in which non-criminal complaints about the police have been dealt with.

How we do it

First, we obtain the relevant information from the police and the applicant. We then use this to review how the complaint was dealt with by the police and we reach a conclusion on whether the complaint was handled to a reasonable standard. In carrying out our review, we consider factors such as:

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

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



Executive Summary

The complaints in this case arose following the applicant's son taking unwell on a bus, which resulted in him being searched for drugs.

The Complaints

We have reviewed the handling of seven complaints, namely that:

1. an officer used excessive force when detaining the applicant's son for a drugs search;
2. an officer was oppressive with the applicant's son when detaining him for a drugs search;
3. an officer intimidated the applicant's son when carrying out a full search at the police station;
4. an officer twice made the applicant's son strip naked for a search;
5. an officer failed to tell the applicant's son he had been charged with an offence;
6. the custody sergeant did not follow correct procedures when dealing with a vulnerable person; and
7. an officer was arrogant when he pulled over the applicant's vehicle when she and her mother were en route to collect her son.

Police Scotland's Decision

Police Scotland did not uphold complaints 1, 3, 4, 5 or 6 and did not record complaints 2 and 7 as complaints about the police.

Our Findings

We have found that Police Scotland handled complaints 5 and 6 to a reasonable standard but not so any of the other complaints.

Consequently, we have made five recommendations to address the shortcomings in Police Scotland's handling of the complaints. In summary, we have recommended that further statements be sought from the officers involved and a fresh response issued to the applicant. We have also identified a learning point for Police Scotland.

Our recommendations should be implemented by Police Scotland within two months of the date of this report.



Background

The applicant's son, Mr A, has a number of health conditions, including Asperger syndrome. In October 2018, he was travelling on a bus when he became unwell and vomited. The driver asked Mr A to leave the bus but he refused to do so, which resulted in the driver contacting the police for assistance.

Constables B and C attended and, when they spoke with Mr A, he said that he had been drinking. According to Constable B, Mr A did not smell of alcohol but was showing signs that he had taken illegal drugs. Mr A later admitted that he had been smoking cannabis with his friends.

According to the officers, Mr A was not engaging properly with them and the officers believed he may have had controlled drugs on his possession. The officers therefore searched Mr A but, as he was resisting, he was taken to the ground in order to control him. Mr A was thereafter taken to a local police station where he was processed into custody by Sergeant D and strip-searched by Constables B and E.

The applicant made several complaints regarding Mr A's treatment by using Police Scotland's online complaint form on 8 November 2018. Sergeant F met with the applicant to confirm the heads of complaint on 4 December 2018. Inspector G thereafter issued the applicant with a written response on 4 February 2019.

Complaint 1

The applicant complained that Constable B used excessive force when detaining Mr A for a drugs search.

The applicant stated that Mr A had a scrape to his face, bruising to his inner arm and marks on his wrists, and she advised that she had taken photographs of the injuries. Mr A stated that an officer handcuffed him hard behind his back despite him not resisting. He stated that the officer said he was trying to walk away and therefore held onto Mr A's upper arm and was pinching the inside of it and shaking him. Mr A advised that the officer then put his knee on his back and pushed his face onto the concrete. He said he was made to stand up forcibly, his jumper was being pulled and he was being pushed. Mr A further stated that, when more police cars and a van arrived, the officer threw him face down into one of the vehicles.

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

In his response, Inspector G stated that accounts had been taken from the officers, who each advised that they requested Mr A to accompany them and exit the bus which he did. Inspector G said that the officers advised that Mr A was unsteady on his feet, his speech was slurred and he was slightly disorientated. Inspector G stated that Mr A advised the officers that he had been drinking, but there was no smell of alcohol and, given his behaviour, the officers believed that he had taken an illegal substance. Inspector G said that the gentle nipping and shaking of inebriated persons were recognised techniques to try to focus their attention or prompt a response. He advised that the officers admitted that they may have done this.



Inspector G continued by stating that, if an officer believes someone to be under the influence of drugs, there are reasonable grounds to suspect that the person may be in possession of a controlled drug and therefore, section 23 of the Misuse of Drugs Act 1971 (“the 1971 Act”) provides officers with the power to detain that person and search them. He said that the officers informed Mr A of their suspicion and highlighted their intention to search him, but Mr A continued to walk away from them to sit on a wooden fence despite being asked to stand still and keep his hands out of his pockets.

Inspector G advised that due to Mr A being obstructive and making an effort to walk away and lashing out his arms, additional officers were asked to attend to assist in restraining him. Inspector G said that, despite the officers trying to persuade Mr A to comply, he failed to do so and, on his final attempt to break away, the officers forced Mr A to the ground in order to minimise risk to both the officers and Mr A.

Inspector G further advised that, while being taken to the ground, Mr A inadvertently scraped the side of his face. He said that Mr A was held to the ground while handcuffs were applied. He stated that Mr A was then returned to his feet and taken to the police station to be searched.

Inspector G stated that the officers advised that Mr A did not disclose his health conditions but, even if he had, this would not have prevented their need to restrain him. Inspector G also stated that, as there were reasonable grounds to suspect that Mr A may have been in possession of a controlled drug, it was important that the officers were in control of him as there were risks involved in a drugs search.

Inspector G said that he was satisfied that it was necessary for the officers to restrain Mr A, and that the techniques used were recognised restraint techniques and proportionate in the circumstances. Inspector G said that he was sorry that Mr A grazed his face, and said also that it may not have happened had Mr A complied with the officers’ instructions. He concluded that there was no evidence that officers used excessive force and did not uphold the complaint.

Our Review of Complaint 1

Police Scotland has provided us with: the applicant’s pre-prepared statement; Mr A’s pre-prepared statement; both officers’ statements; and its Standard Operating Procedure on the Use of Force (“the Use of Force SOP”).

Constable B stated that the force he used was fair and proportionate. He said that he used verbal communication on several occasions to try and stop Mr A from attempting to walk away. He advised that Mr A continued to attempt to sit on a fence and grind against it as if he could have drugs concealed in his anal passage. Constable B said that, without warning, Mr A again stood and tried to walk away which is when Constable B took him to the ground where he may have inadvertently scraped his face.



Constable C said that Mr A was advised that he was going to be searched and the reasons why were explained. She said that Mr A attempted to break free and resisted by lashing out his arms. She further stated that he was unable to stand still and was staggering. Constable C said that Constable B called for assistance and highlighted that in order for a search to be carried out, Mr A was taken to the ground. Constable C said that in her opinion, the force was not excessive.

As stated at paragraph 4.2 of the Use of Force SOP, any exercise of force must be the minimum amount necessary to accomplish the lawful objective concerned. In this case, the lawful objective appears to have been to conduct a drugs search under section 23 of the 1971 Act, which provides officers with the power to detain a person with the purpose of searching them if the officers believe the person to be under the influence of drugs. Inspector G's response would have been strengthened had he referred to the Use of Force SOP in his response.

Inspector G referred to pinching and shaking being a recognised technique when dealing with inebriated persons to focus their attention or prompt responses. While we acknowledge that this technique is used by staff in police custody centres when trying to rouse someone who is asleep or drunk in a cell, Inspector G did not explain why he considered it appropriate for this technique to be used on Mr A in the circumstances. Moreover, Inspector G advised that the officers said that they may have used these techniques when dealing with Mr A. However, from examining both officers' statements, we note that neither of them referred to nipping or shaking Mr A during their interaction with him. Without the officers commenting on why or indeed whether they used these techniques, it is unclear how Inspector G was able to come to a determination that the officers' actions were proportionate. In addition, the contention that Mr A was thrown face down into a police vehicle was not addressed in either officers' statement or in Inspector G's response.

For the reasons given, we do not consider that Inspector G's response was supported by the material information available or adequately reasoned. Consequently, we are not satisfied that this complaint was handled to a reasonable standard.

Our Conclusion on Complaint 1

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

We recommend that Police Scotland:

- a) seek further statements from Constables B and C to address directly: i) the contention that Mr A was thrown face down into a police vehicle; and ii) the contention that Mr A was pinched and shaken;
- b) reassess all the evidence available on the balance of probabilities;
- c) with reference to the Use of Force SOP, consider whether the officers' actions were appropriate in the circumstances; and
- d) issue a further response to the applicant advising whether the complaint is upheld and fully explaining the rationale for the decision reached.



Complaint 2

The applicant complained that an officer was oppressive with Mr A when detaining him for a drugs search.

Mr A said in his statement that, while he was being searched, Constable B stated “*I will crack your puss if you don't stop moving*”.

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

Inspector G responded to this allegation as part of complaint 1 instead of recording it as a distinct complaint about the police. Inspector G stated that accounts had been sought from the officers involved and they denied that anyone said anything to Mr A along the lines of “*crack your puss*”.

Our Review of Complaint 2

Despite Inspector G stating that both officers denied saying making the remark in question, neither Constable B nor Constable C addressed this allegation in their statements. The basis for Inspector G's position is therefore wholly unclear and not supported by any of the material information available.

Furthermore, as complaint 2 (which was an allegation of oppressive conduct) could be upheld or not upheld independently of complaint 1 (which was an allegation of excessive force), it should have been recorded and responded to separately.

For the reasons given, we are not satisfied that this complaint was handled to a reasonable standard.

Our Conclusion on Complaint 2

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

We recommend that Police Scotland record this as a distinct complaint about the police and seek further statements from Constables B and C to address it. The evidence should then be assessed on the balance of probabilities, with a response thereafter sent to the applicant explaining whether the complaint has been upheld and how this determination was reached.

Complaint 3

The applicant complained that an officer intimidated Mr A when carrying out a full search.

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

Inspector G stated that Mr A raised concerns that he was taken through the rear entrance of the police station and that the officers involved asked for gloves but he was unsure why. Inspector G advised that Mr A also stated that he was requested to remove his clothes, part his buttocks and



at some point during the search an officer said “*f*cking shut up and put your hands against the wall*”.

Inspector G stated that the entrance to the custody suite for prisoners was through the rear door within a secure car park, so as to prevent prisoners attempting to escape when exiting vehicles. He also highlighted that this was the normal point of access for detained or arrested persons.

Inspector G reiterated that, if an officer believes that a person is in possession of a controlled drug, they have the power to search them under section 23 of the 1971 Act. He explained that officers seek authority from the duty inspector to carry out this procedure and that the inspector must be satisfied that there are reasonable grounds to believe that controlled drugs may be found on the suspect.

Inspector G continued by stating that the officers involved in the search provided accounts and advised that approval was granted by the duty inspector for the search to take place. They stated that Mr A was taken to custody through the main custody access door and that during the search they used latex gloves. Inspector G said that the officers advised that Mr A was asked to part his buttocks in order to check whether he had any packages concealed, but that they denied swearing at Mr A or using any inappropriate language.

Inspector G highlighted that drug users were renowned for concealing packages of drugs about their persons, including between their buttocks. He stated that, while it was highly unpleasant for both the person being searched and the officers, it was necessary to search this area. Inspector G did not uphold the complaint.

Our Review of Complaint 3

Police Scotland categorised this complaint as an ‘irregularity in procedure’. In our view, it would have been more appropriate for this complaint to have been categorised as ‘oppressive conduct’ in line with Police Scotland’s complaint handling procedures, which highlight that allegations where an officer has intimidated, threatened or displayed overly aggressive behaviour fall into this category.

Inspector G correctly advised that the main entrance to custody for prisoners was through the rear door and that the officers had the power to conduct the search under the 1971 Act. While Inspector G mentioned that the officers used latex gloves during the search, his response would have been enhanced by outlining that this was in keeping with Police Scotland’s Standard Operating Procedure on the Care and Welfare of Persons in Police Custody (“the Custody SOP”).

Having examined Constable B’s statement, we note that he did not refer to the comments that were alleged to have been made during the search and which intimidated Mr A. During our review, we requested Constable E’s statement as he was present for the strip-search. We were advised by Police Scotland that a statement was not taken from Constable E and instead Sergeant F had a verbal discussion with him. As that discussion was not documented, there is no auditable trail of it taking place, which was a shortcoming in the complaint handling.



Inspector G advised in his response that the officers denied swearing at Mr A. However, given that Constable B did not comment on this and no statement was obtained from Constable E, the basis for Inspector G's position in this respect is unclear.

For the reasons given above, we consider that the complaint enquiry was insufficient and the response unsupported by the material information available. Consequently, we are not satisfied that this complaint was handled to a reasonable standard.

Our Conclusion on Complaint 3

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

We recommend that Police Scotland reclassify this complaint as one of oppressive conduct. Further statements should then be sought from Constables B and E addressing the specific contentions raised. A further response should thereafter be issued to the applicant detailing whether the complaint is upheld and offering a clear rationale as to how the determination was reached.

Complaint 4

The applicant complained that an officer twice made Mr A strip naked for a search.

The applicant said that Mr A informed her that he had been strip searched and she was horrified that she had not been called.

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

Inspector G advised that many drug users go to great lengths to conceal their usage and the controlled drugs that they take. He explained that, for this reason, strip searches are often necessary to recover any illegal substances. Inspector G highlighted that Police Scotland was aware of the impact that strip searches can have on the dignity of those subjected to them. He said that, where possible, officers should avoid removing all of a person's clothing at any one time and should instead search either the upper or lower half of a person's body first and then replace some clothing so that a person is rarely fully naked.

Inspector G stated that accounts had been sought from the officers involved in the search and from Sergeant D who supervised the search, who advised that Mr A was not requested to remove his clothing on more than one occasion and at no time was fully naked. Inspector G said that the officers advised that Mr A was searched only once. Inspector G added that the officers asked Mr A to remove the top half of his clothing first, searched this area and then gave him back his clothing prior to searching his lower body.

Inspector G concluded that he could find no evidence that Mr A was searched more than once or that the search was carried out inappropriately. Therefore, he did not uphold the complaint.



Our Review of Complaint 4

In line with what Inspector G said in his response, Police Scotland's Standard Operating Procedure on the Care and Welfare of Persons in Police Custody highlights that a person's dignity should be preserved at all times and, where possible, only one item of clothing should be removed at a time, searched and returned prior to the removal of the next item.

Mr A stated that he had been asked to take off his clothes and that, after the search was conducted, he was told he could put his clothes back on. Mr A contended that he was then asked to take off his trousers and boxer shorts and spread his buttocks for a second time. Mr A said that he asked why he had to do this again but the officer swore at him and told him to put his hands on the wall.

Constable B stated that Mr A was only searched once and at no time was fully naked. He explained, that Mr A's t-shirt was removed first and placed back on before his lower clothing was removed. Constable E was not asked for a statement and his verbal discussion with Sergeant F was not documented. Again, this was a shortcoming in the complaint handling. Inspector G referred to Sergeant D's statement and said that Sergeant D had advised that Mr A was not twice strip-searched. However, Sergeant D did not refer to this in his statement.

While Constable B directly addressed the applicant's complaint in his statement, there is no auditable trail of a statement being taken from Constable E, and Sergeant D did not address the allegation. We deem therefore that the enquiry conducted by Sergeant F in relation to this complaint was insufficient, and Inspector G's conclusion unsustainable on the balance of probabilities as a result. Consequently, we are not satisfied that this complaint was handled to a reasonable standard.

Our Conclusion on Complaint 4

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

We recommend that statements be sought from Constable E and Sergeant D directly addressing this complaint. The evidence available should then be assessed on the balance of probabilities, and a fresh response issued to the applicant making clear whether the complaint has been upheld and fully explaining how the determination was arrived at.

Complaint 5

The applicant complained that an officer failed to tell Mr A that he had been charged with an offence.

The applicant stated that she asked Sergeant D if Mr A had been charged and was told that he had been charged with obstructing the police. The applicant said that Mr A was unaware of this.



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

Inspector G advised that the formal way for officers to notify a person that they will be reported to the Procurator Fiscal for consideration of prosecution is in the form of a caution and charge. He said that, when charging someone, officers will notify them of the allegation that they face.

Inspector G highlighted that accounts had been sought from the officers and they said that Mr A was cautioned and charged and, when asked if he understood the charge, intimated that he did. Inspector G also stated that the notebooks of the officers documented the caution and charge details. Inspector G did not uphold the complaint.

Our Review of Complaint 5

The applicant's mother provided a pre-prepared statement and said that Mr A told her that he had not been charged with anything. Mr A stated that he was never told that he had been charged with anything, and was ignored when he asked if he had been arrested during the incident.

Again, no auditable statement was taken from Constable E, which was a deficiency in the complaint enquiry. Notwithstanding, Constable B said in his statement that he charged Mr A in the presence of Constable E, and that Mr A replied "sorry". This was also documented contemporaneously in Constable B's notebook, which recorded that Mr A was charged with obstructing the police during a drugs search. Therefore, the balance of the evidence available supports Inspector G's decision not to uphold the complaint.

Accordingly, we are satisfied 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 in this connection.

Complaint 6

The applicant complained that Sergeant D did not follow correct procedure when dealing with a vulnerable person.

In applicant's statement of complaint, she said that Mr A had high-functioning autism with comorbid anxiety and depression. She said that Mr A was known to the police and on the Vulnerable Persons Database. The applicant stated that, once Mr A reached the station during the incident of October 2018, the Vulnerable Persons Database would have confirmed that Mr A was autistic. The applicant said that she asked Sergeant D whether normal procedure for such persons had been followed and he said that it had not been.



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

Inspector G stated that the applicant advised that Mr A presented well and would deny that he had any mental health issues if asked. Inspector G explained that, if officers become aware of any incidents involving a person where there are strong welfare concerns, these may be recorded on the Vulnerable Persons Database. He highlighted that it was not common practice for officers to check this database for every person they came into contact with or took into custody but, should there be any obvious concerns, this may be done.

Inspector G said that accounts had been taken from Sergeant D and the officers who attended to Mr A, who advised that they were unaware that Mr A deemed himself a vulnerable person or had been diagnosed with Asperger syndrome. Inspector G stated that there was an entry on the Vulnerable Persons Database regarding Mr A and the applicant having had an argument regarding his use of cannabis. At that time, Mr A disclosed that there had been a significant decline in his mental health and the police were contacted due to Mr A becoming agitated and displaying signs of becoming violent.

Inspector G said that Sergeant D advised that Mr A was assessed for vulnerability as are all arrested persons. Inspector G advised that everyone is asked the set risk assessment questions when entering custody and he highlighted these in his response. Inspector G advised that Mr A answered "no" to each of them, and that this was documented on his custody record and recorded audio-visually.

Inspector G said that, when officers feel there is difficulty communicating or that a person may have difficulty in understanding questions or procedures while being interviewed, officers can utilise the services of an appropriate adult. He explained that an appropriate adult has a degree of training to help them facilitate interviews and understanding. Inspector G said that the officers had no trouble communicating with Mr A, and that Mr A did not disclose to them that he felt he had communication difficulties or required the services of an appropriate adult. Inspector G did not uphold the complaint.

Our Review of Complaint 6

Sergeant D stated that he booked in Mr A without issue and, when his mother arrived, she shouted at Sergeant D and said that Mr A should not have been booked in without an appropriate adult. Sergeant D said that he did not think that Mr A required an appropriate adult. Sergeant D stated that Mr A's mother said that she had written to a police station to request that, if Mr A was ever being dealt with by them, they call an appropriate adult on his behalf. Sergeant D said that he had no knowledge of this and Mr A had not mentioned it at the charge bar, therefore he could not have been expected to be aware that Mr A required an appropriate adult.

Constable B stated that, throughout the whole incident, Mr A never stated at any time that he was vulnerable or had any form of additional needs. Constable C stated that Mr A did not present as having any particular vulnerability nor did he inform the officers of this.



As stated by Inspector G, everyone taken into custody should be asked set risk assessment questions. These include questions specifically asking whether the person has any mental health problems or has ever received treatment for mental ill health. The questionnaire in Mr A's case supports that he responded "no" to each of these questions. It appears from the applicant's custody record that a check of the Criminal History System also returned nothing of note.

Police Scotland's Standard Operating Procedure on Appropriate Adults states at paragraph 5.14: "*there is no formal assessment process for identifying the need for an Appropriate Adult so the decision to contact one is based largely on information available about, or behaviours displayed by a person during the time they are in the presence of police*". As the evidence available supports that Mr A answered "no" to the relevant risk assessment questions, did not inform the officers of any condition and does not seem to have presented as being vulnerable, it is understandable that an appropriate adult was not contacted by the officers, who appear to have followed the relevant procedure in this connection.

For the reasons given, we consider that Inspector G's response was adequately reasoned, in line with protocol and supported by the material information available. Consequently, we are satisfied that this 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 in this connection.

Complaint 7

The applicant complained that Constable B was arrogant when he pulled over her vehicle while she and her mother were en route to collect Mr A.

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

Police Scotland did not record this complaint, investigate it or respond to the applicant.

Our Review of Complaint 7

In the applicant's statement of complaint, noted in Sergeant F's police notebook, she stated that she and her mother had been stopped by the police whilst on the way to collect Mr A from the police station. She said that she did not like the attitude of the officer who pulled them over and described it as arrogant.

Although this allegation was not listed on the heads of complaint form, no note was made to record that the applicant did not wish to pursue the clear expression of dissatisfaction made in her statement of complaint. Therefore, this complaint should have been recognised and responded to. As this did not happen, the complaint was not handled to a reasonable standard.



Our Conclusion on Complaint 7

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

We recommend that Police Scotland record this as a complaint about the police, carry out the necessary enquiries and provide a reasoned response to the applicant.

Learning Point

Although custody staff must check the National Custody System, Police National Computer and Criminal History System before placing someone in a cell, they are not required to check the Vulnerable Persons Database.

As noted above, it was recorded on the Vulnerable Persons Database in this case that the detainee had mental health issues and had displayed signs of violence. Clearly, both of those are potential risk factors in relation to an individual being in custody. Despite Police Scotland as an organisation holding that information, the custody staff were not aware of it.

Accordingly, Police Scotland may wish to consider whether it would assist the risk assessment process were staff to routinely check the Vulnerable Persons Database upon booking an individual into custody. Alternatively, Police Scotland might prefer to instruct that any officer updating the Vulnerable Persons Database should simultaneously update the Criminal History System with any relevant risk markers.

What happens next

We have made five recommendations and identified a learning point. Our recommendations should be implemented within two months of the date of this report, and we will continue to liaise with Police Scotland until we consider that this has happened.

Emma Reid
Review Officer

Peter Innes
Senior Review Officer

