



Police Investigations &
Review Commissioner

Report of a Complaint Handling Review in relation to Police Scotland

PIRC/00612/18
February 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 after the applicant was stopped and searched under section 23 of the Misuse of Drugs Act 1971.

The Complaints

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

1. On 26 December 2018, the applicant was stopped and searched by the police without reasonable grounds;
2. The applicant believes that the stop search was based solely on his ethnicity;
3. The applicant was handcuffed during the stop search without justification;
4. Mobile phone footage taken by the applicant of the stop search may have been deleted by the officers; and
5. One of the officers attempted to emotionally bribe the applicant after the incident.

Police Scotland's Decision

Police Scotland did not uphold any of the complaints.

Our Findings

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

Consequently, we have issued a reconsideration direction and made two recommendations to address the shortcomings we have identified in Police Scotland's handling of complaints 1, 2, 4 and 5. We have also made a learning point.

Our reconsideration direction and recommendations should be implemented by Police Scotland within two months of the date of this report. Our learning point should also be taken forward by Police Scotland in the same timescale.



Background

On 26 December 2018, the applicant was walking to a supermarket near to his home address to use the Automatic Teller Machine (ATM). Whilst walking to the ATM, the applicant saw two police officers nearby, who were talking to a motorist. After having used the ATM, the applicant began to walk back towards his home when the officers – Constables A and B – stopped and searched him under Section 23 of the Misuse of Drugs Act 1971, which was met with a negative result.

The applicant did not consider that the officers' had reasonable grounds to have stopped and searched him, and instead believed he was searched solely based on his ethnicity.

The applicant submitted his complaints using Police Scotland's online reporting form on 30 December 2018. Sergeant C was appointed as the enquiry officer. The applicant provided a statement of complaint and agreed and signed the 'Heads of Complaint' form with Sergeant C on 4 January 2019.

Chief Inspector D responded to the applicant's complaints in a letter dated 21 February 2019.



Complaint 1

The applicant complained that, on 26 December 2018, he was stopped and searched by the police without reasonable grounds.

Complaint 2

The applicant complained that, he believed that the stop-search was based solely on his ethnicity.

Police Scotland's Handling of Complaints 1 and 2 (not upheld by the police)

Chief Inspector D's response letter is contained in full within the attached appendix, with the paragraph's relative to these complaints being as follows:

"13. The first officer states he saw you descending the stairway adjacent to the [named street 2] car park whilst they were dealing with a motorist and you looked away in an apparent attempt to prevent police seeing your face, before crossing the road towards [named supermarket]. Due to this furtive behaviour and his knowledge the area was linked with drug dealing activity by individuals from out with the area, some of whom may be 'black' and being alert to any potential criminal activity, he determined he wished to speak with you so informed the second officer what he had seen.

14. The second officer confirms he was told by the first officer he had seen you on the stairway and had made an attempt to hide your face before walking in the directions of [named supermarket]. This officer states he is also aware the locality has been previously used by individuals from out with the area some of whom were thought to be 'black males' dealing drugs. He also formed the view it would be appropriate to speak with you.

15. Both officers state they approached you within the grounds of [named supermarket]. On initially speaking with you they advise you appeared defensive, hurried and keen to leave their presence. They also state you initially declined to provide personal details, placing your hand in your pockets adding to their assessment your presence may be related to illegal drug activity.

16. Both officers state they considered from what they observed and were experiencing, they had sufficient grounds to merit searching you under Section 23 of the Misuse of Drugs Act 1971.

25. The first officer states during this time he made further efforts to explain to you the reasons for the 'stop search' and he told you the reason was that recent intelligence had been received that the area was being used for drug dealing activity by 'IC3' or 'black males'.

28. In considering whether or not the procedures the officers followed were justified and appropriate and paying particular cognisance to the aspect of ethnicity, I have to consider the above outlined legislation, alongside our internal guidance and policies.

29. Police Scotland will not tolerate any form of discrimination or victimisation. We seek to represent and treat our diverse communities with the utmost of respect and dignity. As such, I have given careful consideration to this complaint to ensure these principles and values were followed.



40. *I have found the officers were acting on intelligence available to them, albeit five months old, which they considered against the circumstances they were faced with. I accept one element of this was your ethnicity.*

41. *In this regard, the 'Stop and Search' Guidance available to the officers stipulates that any decision to stop and search cannot be made based only on physical appearance and/or protected characteristics, a person's ethnicity being one of these protected characteristics.*

42. *This guidance forms part of the training provided to our officers and specifically highlights the need to balance public safety with the rights of an individual being searched. It refers specially in the guidance to:*

- *Equality and Human Rights Considerations*
- *Protected Characteristic Groups*
- *An individual's right at the centre of the decision making*
- *Engagement*
- *Community Relations*
- *Wellbeing*
- *Appropriate communication and recording (and specifically in relation to protected characteristics)*

43. *Having examined your credible account, along with the footage and equally credible accounts of the two officers and considered these against the policy legislation and above guidance, I find that the officers have acted in good faith and were responding to intelligence which advised them of drug dealing activity in the area, which may involve individuals described as 'black males' from out with the area. The aspect of ethnicity was only one element to their considerations. They also took into account the location, what was involved, your actions and engagement. It was the accumulation of these factors which I consider led to them invoking their powers to search.*

44. *I note in the 'stop search' receipt they correctly completed and provided you with they completed the ethnicity section. This they did correctly following guidance on this matter which allows for a review to ensure officers are complying and exercising their duties and powers lawfully and appropriately."*

Chief Inspector D concluded this complaint by stating:

"48. As I have outlined within my letter, I am satisfied the officers considered a number of factors, one of which was your ethnicity, in line with the intelligence and were ultimately justified in their decision to 'stop search'. I am not in a position to uphold this aspect of your complaint ..."

Our Review of Complaints 1 and 2

We consider that complaints 1 and 2 are intrinsically linked. Accordingly, we have provided a single consideration addressing both complaints.

Chief Inspector D said that, in order to determine whether the actions of the officers were justified, Sergeant C carried out an audit of the Scottish Intelligence Database (SID), which identified that a number of intelligence reports were received by Police Scotland between February and July 2018. However, from the paperwork provided, we note that Sergeant C sent an email to the Divisional Intelligence Officer and was subsequently advised that there was intelligence relating to drug



activity in a particular area, and was provided with specific names of the individuals suspected as being involved alongside details of the months in which the intelligence was received. We do not consider that this amounts to an “*audit*” as per Chief Inspector D’s response. Indeed, it could reasonably be inferred from the paperwork provided that Sergeant C did not view the actual intelligence records that the officers relied upon to justify the stop-search of the applicant, and instead has relied upon the information he was provided by the intelligence unit.

Accordingly, in order to inform our review, we requested that Police Scotland provide us with the intelligence reports received during this time frame to support that the area where the applicant was stopped and searched was being used by “IC3” males¹ from out-with the locality for the purposes of dealing controlled drugs. In response, we were provided with copies of intelligence reports that were recorded between February and July 2018 respectively. Having reviewed these reports, we note that the intelligence does indeed refer to IC3/black males and drug dealing activity. However, we cannot say with any degree of certainty that the intelligence we have been provided is the *same* intelligence that Constables A and B were aware of and therefore relied upon in searching the applicant.

The fact the intelligence we have been provided relates solely to IC3/black males, in our view supports the applicant’s position that he was stopped based on his ethnicity. From the statements supplied, the officers have provided no details in relation to the specifics of the intelligence they were aware of, aside from the fact it related to IC3/Black males. As such, we are unable to establish whether they were aware of any other descriptive factors contained within the intelligence that they stated they were aware of that would have led them to reasonably consider that the intelligence could potentially have related to the applicant (i.e. age, height, build, facial hair or other descriptive information) over and above the applicant being of the same ethnicity to which the intelligence pertained. Chief Inspector D has accurately reflected from the ‘stop and search’ guidance, the decision to stop and search cannot be made based solely on physical appearance and/or protected characteristics, which includes a person’s ethnicity. The existence of intelligence on its own is not sufficient to justify a stop-search, there must be reasonable cause to suspect that the intelligence relates to the person who is being stopped, or that he is involved in criminality.

With this in mind, we acknowledge that Constable A said in his account that, the applicant had turned away in an effort to hide his face upon seeing the officers and had walked in the direction of [named supermarket]. Noteworthy is that, Constable B said that he was made aware of the applicant’s presence by Constable A; who told him that the applicant walked in the direction of [named supermarket], where both officers “traced” him. However, Constable B makes no reference to being made aware of the applicant having turned away in an effort to hide his face. Accordingly, Chief Inspector D has not accurately reflected both officer’s positions in this regard.

Both officers then stated that, upon speaking to the applicant he appeared “*hurried*” and keen to leave the presence of the police. However, as we are unable to establish what intelligence the officers were aware of from the accounts they provided to the complaint enquiry, it is not clear specifically from the available information what prompted the officers to speak to the applicant in the first instance. The only description that has been provided by one of the officers is that the applicant *looked away*. Without being able to assess the available intelligence, we do not consider

C codes (identity codes) or 6+1 codes are codes used by the British police in radio communications and crime recording systems to describe the apparent ethnicity of a suspect or victim.

IC3 is used to denote individuals assessed as Black – Sub Saharan African or Afro-Caribbean.



that the circumstances as portrayed by the officers provide justification on their own for the decision to have stopped and searched the applicant.

From the paperwork provided it would appear that the decision taken to “trace” the applicant was primarily based on the fact that he is IC3/black and he was in the locality. Noteworthy, is that Constable A states that the applicant would not provide his details before he was detained. However, based on the available information, it would appear that at the point of the applicant being “traced” there was no lawful grounds to have requested his details. We note that the applicant said in his statement that he informed the officers that he was returning home and he lived “just across the road”. This does not appear to have been considered in the complaint enquiry by the enquiry officer – Sergeant C – as this information is contrary to the information contained within intelligence which provides details of where people involved in criminality are residing.

Accordingly, without being able to understand specifically what intelligence the officers were aware of and referred to as their justification for searching the applicant, we are unable to consider the circumstances as a whole and determine whether Chief Inspector D’s response is supported by the material information and is adequately reasoned. We consider that there has been insufficient enquiry into this complaint to establish exactly what intelligence the officers were aware of, and accordingly whether they were justified to rely on the intelligence to stop and search the applicant. As such, we conclude that this complaint has not been handled to a reasonable standard.

Our Conclusion on Complaints 1 and 2

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

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

In reconsidering this complaint, Police Scotland should take the following action:

- Seek further accounts from Constables A and B. The officers should provide further detail about the particular intelligence they were aware of, and why they considered it to be applicable to the applicant; and
- Provide the applicant with a further response. The further response should be tailored based on the intelligence that the officers were aware of and explain whether the officer’s had reasonable grounds to stop the applicant, and taking into account all of the information available, whether the stop and search was based on the applicant’s ethnicity.



Complaint 3

The applicant complained that he was handcuffed during the stop search without justification.

In his statement of complaint, the applicant said that there was no need for handcuffs as he was co-operative and that if the officers had just asked him at the start about a search, he would have made it easy for them and stood with his arms out to facilitate the search.

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

Chief Inspector D's full response is contained within the attached appendix.

Chief Inspector D said the following in respect of this complaint:

19. *"The officer's state they advised you of your detention and requested you to remove your hands from your pockets but you refused to do so.*
20. *The officers, considered it therefore appropriate to ensure their safety and indeed your own and also to ensure there was no possibility of disposing of evidence, to apply handcuffs to your wrist. For clarity, I refer to the Standard Operating Procedure in relation 'Care and Welfare of Persons in Police Custody', which relates to your position, as you had been detained for the purposes of a search. The police (sic) states:*
21. *Officers are encouraged to consider the use of handcuffs whenever it may be necessary to ensure their safety, the safety of others and the safety of the prisoner.*
22. *The 'Stop and Search' Guidance available to all officers advises:*
23. *The use of force should be the minimum amount necessary to accomplish the lawful objective concerned; and*
24. *During a statutory search (includes Section 23 Search) subjects should be appropriately controlled by means of empty hand skills and/or rigid handcuffs in order to safeguard those involved".*

Chief Inspector D concluded this complaint by stating:

"I am satisfied the officers followed the correct procedures in ensuring adequate control to allow them to carry out the 'stop search' and as such I am not in a position to uphold this aspect of your complaint..."

Our Review of Complaint 3

Chief Inspector D has accurately reflected the provisions of the Care and Welfare of Persons in Police Custody Standard Operating Procedure ("Care and Welfare SOP"), which states that officers should consider the use of handcuffs when necessary. The "Care and Welfare SOP" also states that the use of handcuffs must be justified.

We consider that Chief Inspector D has accurately reflected section 12.2.2 of the Stop and Search guidance available to officers, which states that when a person is subjected to a statutory search,



officers must have adequate control over the person by means of empty hand skills and/or rigid handcuffs.

Furthermore, the operational safety training guidance explains when officers could use rigid handcuffs. We note from this guidance that the use of handcuffs is at the “*discretion of an individual officer/staff, based on their judgement of the circumstances*”. The officers must be able to justify the use of rigid handcuffs.

Chief Inspector D has accurately reflected in paragraph’s 19 and 20 of the final response letter that the officers had stated that the applicant refused to remove his hands from his pockets, and that they applied handcuffs for officer safety; the applicant’s safety, and to prevent possible disposal of evidence. Accordingly, we consider that the officers provided reasonable justification for the use of handcuffs on this occasion, which has been accurately reflected in Chief Inspector D’s response.

We therefore agree with Chief Inspector D’s position that the use of handcuffs on this occasion was proportionate. It is not unusual for suspects who have been detained under section 23 of the Misuse of Drugs Act 1971 to be handcuffed due to unknown risk and the potential to lose evidence.

Accordingly, we consider that Chief Inspector D has provided sufficient detail to enable the applicant to understand the officers rationale, which is supported by the material information available. We also consider that the response is adequately reasoned. As such, we conclude that this complaint has been handled to a reasonable standard.

Our Conclusion on Complaint 3

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

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

Complaint 4

The applicant complained that, mobile phone footage that he had of the stop-search may have been deleted by the officers.

In his statement of complaint, the applicant said that he was trying to video record the officers on his mobile phone, but “...*as the lead officer took the phone out of my handcuffed hand he appeared to look at the footage and shut the phone down. This would have deleted the footage but it’s hard to say if it was on purpose or not*”.

Police Scotland’s Handling of Complaint 4 (not recorded by the police)

Chief Inspector D’s full response to this complaint is contained within the attached appendix.

Chief Inspector D detailed the applicant’s position regarding when his mobile phone was taken from him in paragraph 8. He stated that the applicant said the search “... *included removing your*



mobile phone from your handcuffed hand. You state the device had been recording video footage of the interaction, but when the officer removed the device from your hand it did not save, having been automatically deleted... you think this happened when the officer turned it off”.

In paragraph 45, Chief Inspector D said: *“I understand the aspect of the lost footage on your mobile phone has been accepted by you in your statement, in that it was accidental when the officer took hold of your phone whilst you were being handcuffed. As I have explained the reasoning for control and handcuffing, the taking hold of the mobile phone was part of this and unfortunately as you accept, the rolling footage was lost, but not deliberately so.”*

Chief Inspector D concluded this complaint in paragraph’s 50 and 51.

50. *“This allegation is linked to the actions of the officers in controlling you as determined directly above and I understand you accept the footage was inadvertently lost during these actions, by accident. As such, this aspect of the complaint is not upheld.*

51. *Given the nature of your complaint, I intend communicating with the department which oversees the ‘stop search’ governance process to ensure they are made fully aware. An important element of any complaint handling process is to capture and consider learning to ensure experiences such as these influence guidance provided to our officers.”*

Our Review of Complaint 4

Chief Inspector D said that the applicant had accepted the explanation provided to him regarding the deleted footage. However, we note that the applicant did not say in his complaint statement that he believed the deletion of the footage was accidental. Instead, the applicant stated that it was hard to say whether the footage was deleted purposefully or not. Accordingly, we do not consider that Chief Inspector D has accurately reflected the applicant’s position in this regard.

Furthermore, it is not clear as to how Chief Inspector D came to the view that the footage was deleted accidentally without having carried out any enquiry with Constables A and B. We note that neither officer, in their respective accounts, have provided details as to whether they intended to delete the footage or not. However, having had sight of the email trail between Sergeant C and Constables A and B, we note that Sergeant C did not ask the officers to address this complaint.

Although we accept Chief Inspector D’s position that the officers took the applicant’s mobile phone as part of the *“control and handcuffing”*, we nonetheless consider that there has been insufficient enquiry carried out into this complaint and that the response has not accurately reflected the applicant’s position.

Furthermore, during the course of our review, we requested that Police Scotland provided us with confirmation that, as per Chief Inspector D’s response, communication had occurred with the department that oversees the stop and search governance. However, noteworthy is that we have been informed that this conversation has not, of yet, taken place. As such, Chief Inspector D’s response in this regard is not supported by the material information available.

Accordingly, for the aforementioned reasons, we conclude that this complaint has not been 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 Police Scotland:

- Seek further accounts from Constables A and B which address the circumstances surrounding taking the applicant's mobile telephone; whether they were aware that the applicant was recording at the time, and what they did with the applicant's mobile phone and whether they had any intention of deleting the footage from the applicant's mobile phone; and
- Provide the applicant with a further response. The further response should be supported by the information available; provide the applicant with the information obtained; explain whether the applicant's complaint is upheld/not upheld, and provide a clear rationale for the determination reached.

Complaint 5

The applicant complained that, one of the officers attempted to emotionally bribe him after the incident.

Police Scotland's Handling of Complaint 5 (no determination provided by the police)

Chief Inspector D has not addressed this complaint in his response. We also note that this complaint was not recorded on the Heads of Complaint form, nor the Complaints about the Police Record.

Our Review of Complaint 5

In his complaint submission, the applicant said: *"I still have another recording where [Constable A] tries to emotionally bribe me"*. However, despite this being specifically raised in the complaint submission, we note from the paperwork provided that no enquiry appears to have been carried out to establish why the applicant believed that he was being emotionally bribed, and if this was indeed the case.

The role of the enquiry officer is to establish the circumstances surrounding any complaint, and to ask probing questions to inform the applicant's statement of complaint. However, we note that there is no mention in the applicant's statement about an officer attempting to emotionally bribe him.

Section 6.7.4 of the Complaints about the Police Standard Operating Procedure states:

"It is considered best practice to note full statements from the complainer and relevant witnesses. The statement should cover all the complaints contained within the initial correspondence, and should note any allegation that the complainer no longer wishes to pursue".



Accordingly, given that the applicant raised this in his initial complaint submission, we consider that there has been insufficient enquiry carried out to establish the circumstances of the complaint, resulting in the applicant not receiving a response. As such, we conclude that this complaint has not been handled to a reasonable standard.

Our Conclusion on Complaint 5

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

We recommend that Police Scotland:

- Record this complaint as an official complaint against the police;
- Obtain a further statement from the applicant whereby he can provide details of this complaint;
- Carry out any enquiries necessary to facilitate a further response to be issued to the applicant; and
- Issue the applicant with a further response. The further response should clearly outline the information obtained to inform the complaint, explain to the applicant whether his complaint is upheld/not upheld, and provide a clear rationale for the determination reached.

Learning Point

We note that the 'Heads of Complaint' form was completed on 4 January 2019, and at the same time as a statement of complaint was noted from the applicant, despite which, we note that the 'Heads of Complaint' form only details one complaint (complaint 1 in our review).

Chief Inspector D has correctly highlighted in his complaint response that, after the applicant's statement was assessed, additional complaints were identified and subsequently responded to. However, as we have highlighted in our consideration of complaint 5, a further complaint was made by the applicant in his complaint submission; however no enquiry appears to have been conducted into this complaint, meaning that the applicant has not received a response to the same.

We consider that this shortcoming may have arisen due to the 'Heads of Complaint' not having been properly recorded at the outset of the complaint enquiry.

Section 6.7.5 of the Complaints about the Police Standard Operating Procedure states:

"There should be a clear understanding between the person noting the complaint and the complainer as to what is being investigated. At the conclusion of the statement there must be a summary of the agreed Heads of Complaint Under Investigation, and the complainer should be asked to complete and sign a 'Heads of Complaint' Form ... which lists the description of each allegation. This document can be considered as the agreement between the complainer and the Enquiry Officer and sets out exactly what is to be investigated. It also assists greatly in the recording process".

The requirement to capture all complaints on a 'Heads of Complaint' form is crucial as it thereafter forms the basis of the ensuing complaint enquiry. This should be borne in mind by Sergeant C when dealing with any future complaints.

What happens next

We have given a reconsideration direction and made two recommendations. We expect these to be implemented within two months of the date of this report. We have also issued a learning point.

We will continue to liaise with Police Scotland until we consider that the reconsideration direction and recommendations have been implemented to our satisfaction, and the learning point has been taken forward by Police Scotland.

Nicola Mayes
Review Officer

Jacqui Jeffrey
Senior Review Officer



Appendix

Copy of Police Scotland's response letter dated 21 February 2019

(Redacted and paragraphs numbered)

1. *In your statement of complaint you advise at 2230 hours on Wednesday 26 December 2018, you left your home address ... to use the nearby Automatic Teller Machine at [named supermarket].*
2. *You took a direct route down the stairway at the rear of [named street 1] towards [named street 2], adjacent to the car parking area where you saw two uniformed police officers around five metres away dealing with a motorist regarding a matter unrelated to you or your complaint.*
3. *As you passed by the police officers you state they became aware of your presence and you saw them glance at one another. You continued and walked across [named street 2], into the grounds of the supermarket, making a withdrawal from the ATM before making for home.*
4. *You go on to state, you turned the corner of the supermarket next to the shopping trolley shelter where you saw the officers exit a police vehicle there. It became apparent to you they intended to speak and 'stop search' you.*
5. *Once they approached, you were co-operative from the outset. The officers stood to your front and back, adjacent to the building and trolley shelter. This made you feel uncomfortable and it was about this time you began to use your mobile phone to film the interaction.*
6. *You state the first officer took the lead throughout the interaction and began by asking you where you were going. You state you remained calm and were co-operative, advising you had just used the cash machine and were intending returning straight home. You indicated to the officers you lived within line of sight, at [named street 1].*
7. *You state the first officer appeared disinterested in your explanation, intent on stopping and searching you regardless. The second officer applied handcuffs to your wrists to your front, as you were pushed backwards and held against the building. You were informed you were being detained for the purposes of a 'drugs search'. The first officer searched you, removing personal property from your pockets whilst his colleague kept hold of the handcuffs keeping you against the building.*
8. *You verbally challenged the officers as to the necessity of the drugs search, emphasising you had no involvement with drugs and had merely been to the cash machine as you lived nearby. You advise the first officer replied to the effect 'There is a problem with black people dealing in this area' and continued with the search which included removing your mobile phone from your handcuffed hand. You state the device had been recording video footage of the interaction, but when the officer removed the device from your hand it did not save, having been automatically deleted.. You think this happened when the officer turned it off.*
9. *At the conclusion of the search, which was negative and whilst still handcuffed, the two officers continued to ask you your reasons for being in the area, your identity, address and*



employment status, before ultimately allowing you on your way. They issued you with a 'stop search' receipt.

10. *You undertook to obtain further mobile phone footage of the conclusion of your interaction with the officers.*
11. *It is your position that the stop search was conducted based principally on your ethnic appearance with no contributing factors which would have afforded reasonable grounds for doing so.*
12. *In order to address your complaints both Constables were made aware of the allegations and provided accounts in response.*
13. *The first officer states he saw you descending the stairway adjacent to the [named street 2] car park whilst they were dealing with a motorist and you looked away in an apparent attempt to prevent police seeing your face, before crossing the road towards [named supermarket]. Due to this furtive behaviour and his knowledge the area was linked with drug dealing activity by individuals from out with the area, some of whom may be 'black' and being alert to any potential criminal activity, he determined he wished to speak with you so informed the second officer what he had seen.*
14. *The second officer confirms he was told by the first officer he had seen you on the stairway and had made an attempt to hide your face before walking in the directions of [named supermarket]. This officer states he is also aware the locality has been previously used by individuals from out with the area some of whom were thought to be 'black males' dealing drugs. He also formed the view it would be appropriate to speak with you.*
15. *Both officers state they approached you within the grounds of [named supermarket]. On initially speaking with you they advise you appeared defensive, hurried and keen to leave their presence. They also state you initially declined to provide personal details, placing your hand in your pockets adding to their assessment your presence may be related to illegal drug activity.*
16. *Both officers state they considered from what they observed and were experiencing, they had sufficient grounds to merit searching you under Section 23 of the Misuse of Drugs Act 1971.*
17. *For clarity, Section 23 of the aforementioned Act, determines,*
18. *'If a constable has reasonable grounds to suspect that any person is in possession of a controlled drug in contravention of this Act or of any regulations or orders made thereunder, the constable may-*
 - (a) search that person, and detain him for the purpose of searching him;*
 - (b) search any vehicle or vessel in which the constable suspects that the drug may be found, and for that purpose require the person in control of the vehicle or vessel to stop it;*
 - (c) seize and detain, for the purposes of proceedings under this Act, anything found in the course of the search which appears to the constable to be evidence of an offence under this Act.'*
19. *The officer's state they advised you of your detention and requested you to remove your hands from your pockets but you refused to do so.*



20. *The officers, considered it therefore appropriate to ensure their safety and indeed your own and also to ensure there was no possibility of disposing of evidence, to apply handcuffs to your wrist. For clarity, I refer to the Standard Operating Procedure in relation 'Care and Welfare of Persons in Police Custody', which relates to your position, as you had been detained for the purposes of a search. The police states:*
21. *Officers are encouraged to consider the use of handcuffs whenever it may be necessary to ensure their safety, the safety of others and the safety of the prisoner.*
22. *The 'Stop and Search' Guidance available to all officers advises:*
23. *The use of force should be the minimum amount necessary to accomplish the lawful objective concerned; and*
24. *During a statutory search (includes Section 23 Search) subjects should be appropriately controlled by means of empty hand skills and/or rigid handcuffs in order to safeguard those involved.*
25. *The first officer states during this time he made further efforts to explain to you the reasons for the 'stop search' and he told you the reason was that recent intelligence had been received that the area was being used for drug dealing activity by 'IC3' or 'black males'.*
26. *The officers confirm in their accounts the 'stop search' was negative with no controlled drugs found in your possession. You were released from the detention and issued with a 'stop search' receipt before being allowed on your way.*
27. *Both officers state you repeatedly asked why you had been subjected to the 'stop search', but you repeatedly spoke over them.*
28. *In considering whether or not the procedures the officers followed were justified and appropriate and paying particular cognisance to the aspect of ethnicity, I have to consider the above outlined legislation, alongside our internal guidance and policies.*
29. *Police Scotland will not tolerate any form of discrimination or victimisation. We seek to represent and treat our diverse communities with the utmost of respect and dignity. As such, I have given careful consideration to this complaint to ensure these principles and values were followed.*
30. *As part of the enquiry you provided mobile phone video footage to [Sergeant C]. A review of the four clips was seen to support the events provided by you and the officers.*
31. *Footage 1 – The camera is pointing at your own face and lasts nine seconds. You can be heard to repeatedly ask in an anxious manner, "I wanna know why you guys stop me, I wanna know" to which an officer can be heard stating "you're being detained for the purpose of a drugs search".*
32. *Footage 2 – The camera is pointing at your own face and lasts two seconds. An officer can be heard to state "we're in an area synonymous with drug dealing".*
33. *Footage 3 – The camera is pointing generally downwards and captures part of a marked police vehicle and lasts thirteen seconds. An officer can be heard to state "everything will*



be recorded, everything will be auditable, we will give you a receipt, have you got anything on you” to which you response “everything is recorded, everything is recorded”.

34. *Footage 4 – The camera is pointed at the officers, captures the marked police vehicle and lasts one minute eight seconds. You are heard to say “say the words you said” repeatedly along with “you just to decide because I’m walking down the street, I have to be detained” all in an animated manner not affording the officer any real opportunity to respond. However, in response the officers have both freely provided their names and shoulder numbers when requested, have no objections to being filmed, reiterate your detention was under a statutory power namely Section 23 of the Misuse of Drugs Act and issue you with a ‘stop search’ receipt. This was done in a polite and measured manner.*
35. *Based on the footage you provided, both officers have presented in a calm, measured manner and made efforts to provide you with an explanation as to your detention. I acknowledge you did not wish to accept this at the time as you were understandably frustrated and disappointed at having been stopped and searched.*
36. *During the complaint investigation, it was imperative for [Sergeant C] to confirm the intelligence available to the officers, to ensure their actions were justified.*
37. *He was able to confirm via an audit of the Scottish Intelligence Database that during 2018, specifically between February and July, a number of intelligence reports were received by Police Scotland in relation to drug dealing activity in the area of [named supermarket] and the vicinity of [named street 1]. This intelligence specifically mentioned ‘black males’ linked to Organised Crimes Groups from out with Scotland travelling into the area for the purposes of dealing Class A drugs.*
38. *It is acknowledged the most recent piece of specific intelligence would have been some five months old at the time of your ‘stop search’, however this would still have been available to them to consider and I am advised informed [sic] their knowledge in terms of potential criminal activity in the area. I have considered from this information that the officers acted with justification in an effort to deter and detect criminal activity.*
40. *I have found the officers were acting on intelligence available to them, albeit five months old, which they considered against the circumstances they were faced with. I accept one element of this was your ethnicity.*
41. *In this regard, the ‘Stop and Search’ Guidance available to the officers stipulates that any decision to stop and search cannot be made based only on physical appearance and/or protected characteristics, a person’s ethnicity being one of these protected characteristics.*
42. *This guidance forms part of the training provided to our officers and specifically highlights the need to balance public safety with the rights of an individual being searched. It refers specially in the guidance to:*
 - *Equality and Human Rights Considerations*
 - *Protected Characteristic Groups*
 - *An individual’s right at the centre of the decision making*
 - *Engagement*
 - *Community Relations*
 - *Wellbeing*



- *Appropriate communication and recording (and specifically in relation to protected characteristics)*
43. *Having examined your credible account, along with the footage and equally credible accounts of the two officers and considered these against the policy legislation and above guidance, I find that the officers have acted in good faith and were responding to intelligence which advised them of drug dealing activity in the area, which may involve individuals described as 'black males' from out with the area. The aspect of ethnicity was only one element to their considerations. They also took into account the location, what was involved, your actions and engagement. It was the accumulation of these factors which I consider led to them invoking their powers to search.*
 44. *I note in the 'stop search' receipt they correctly completed and provided you with they completed the ethnicity section. This they did correctly following guidance on this matter which allows for a review to ensure officers are complying and exercising their duties and powers lawfully and appropriately.*
 45. *I understand the aspect of the lost footage on your mobile phone has been accepted by you in your statement, in that it was accidental when the officer took hold of your phone whilst you were being handcuffed. As I have explained the reasoning for control and handcuffing, the taking hold of the mobile phone was part of this and unfortunately as you accept, the rolling footage was lost, but not deliberately so.*
 46. *In conclusion and having carefully considered each of the four allegations and can advise my findings as follows ...*
 47. *Having considered the information available to me, I am content the officers considered the intelligence available to them alongside the other factors and collectively were justified in stopping and searching you. I am not in a position to uphold this aspect of your complaint...*
 48. *As I have outlined within my letter, I am satisfied the officers considered a number of factors, one of which was your ethnicity, in line with the intelligence and were ultimately justified in their decision to 'stop search'. I am not in a position to uphold this aspect of your complaint ...*
 49. *I am satisfied the officers followed the correct procedures in ensuring adequate control to allow them to carry out the 'stop search' and as such I am not in a position to uphold this aspect of your complaint...*
 50. *This allegation is linked to the actions of the officers in controlling you as determined directly above and I understand you accept the footage was inadvertently lost during these actions, by accident. As such, this aspect of the complaint is not upheld.*
 51. *Given the nature of your complaint, I intend communicating with the department which oversees the 'stop search' governance process to ensure they are made fully aware. An important element of any complaint handling process is to capture and consider learning to ensure experiences such as these influence guidance provided to our officers.*
 52. *I thank you for taking the time in raising your complaint and allowing me the opportunity to review".*

