

# PCCS



Police Complaints Commissioner  
for Scotland

**Request for complaint handling review of a complaint about**

**Grampian Police**

**under the provisions of  
the Police, Public Order and Criminal Justice (Scotland) Act 2006**

**July 2008**

Case reference: PCCS/0807/00031/PF-GP

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## **Introduction**

The role of the Police Complaints Commissioner for Scotland was established by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the Act”) to consider and review the way police authorities, police forces and policing agencies handle complaints from the public. I was appointed by the Scottish Ministers as the first Police Complaints Commissioner for Scotland, taking up my powers from 1 April 2007. My office provides a free and independent service, reviewing the handling of complaints fairly, looking at both sides of what has happened and looking at the facts.

I aim to review complaints in an independent, open and fair manner. In line with this aim I will publish the reports of my complaint handling reviews, whilst bearing in mind individuals’ rights to confidentiality. The following report therefore details my consideration, but does not include individual names of complainers, police officers or others affected by the events detailed therein.

## 1. Request for review

The complainer describes himself as a mental health activist who has lobbied government agencies and public bodies about the effects of mental illness. The complainer has requested that I review the handling of his complaints about Grampian Police. The complaints raised relate to the actions of the force in relation to an email sent by the complainer to a number of individuals on 18 January 2004 and an incident which occurred when the complainer visited a residential centre in his area on 11 February 2004. This visit resulted in the complainer's arrest and subsequent detention under the Mental Health (Care and Treatment) (Scotland) Act 2003. The complainer has asked me to review the following summary of his complaints as agreed by him:

1. Grampian Police over reacted to a phone call it received and arrested the complainer without carrying out reasonable enquiries;
2. Grampian Police acted in a heavy handed manner during the complainer's arrest on 11 February 2004;
3. Grampian Police infringed the complainer's human & legal rights by requesting a psychiatric assessment which subsequently stigmatised the complainer as being mentally ill;
4. Grampian Police failed to adhere to statutory guidance regarding:
  - a. questioning suspects
  - b. recording interviews
  - c. stop and search
  - d. arrest process
  - e. discrimination
  - f. neglect of duty
  - g. neglect of confiscated property
  - h. failed to call a police surgeon
  - i. denied the complainer his right to have his solicitor informed
5. The complainer's motor car was damaged whilst in the possession of Grampian Police;
6. Grampian Police took information from a third party without justification and interpreted an email which the complainer sent, entitled "Last Rites", incorrectly;
7. Grampian Police fabricated records and therefore held inaccurate records;
8. The complainer is dissatisfied with the complaint handling process of Grampian Police, including the length of time taken to conclude his complaint;
9. Grampian Police failed to protect the complainer from serious harm.

## **2. Power to conduct a complaint handling review**

Section 35 of the Act provides me with the authority to examine the manner in which an appropriate authority has handled a complaint about a police officer, member of police staff or the service provided by a relevant authority.

In order to carry out such a complaint handling review I request the complaint case papers from the force in question. I examine the facts of the complaint case, looking at information provided to me by both the complainer and the police force. I consider whether the information available does, or does not, support the complaint, and whether or not the force has responded to the complaint in a reasonable manner. I also consider whether the force communicated with the complainer in a reasonable manner, including whether the police force handled the complaint within a reasonable timescale. I then come to a view whether the conclusions drawn by the force in handling the complaint were reasonable in all the circumstances.

Once I have reached my conclusions I prepare a report which details the findings of my case handling review. This is then forwarded to the relevant authority in accordance with section 35(3) of the Act. The complainer will be advised of the conclusions of this review and of what action, if any, I propose to take in consequence of those conclusions. Where the complaint is in respect of an act or omission by an individual police officer that person will also be informed of the conclusions of this review.

### **2.1 Relevant complaint**

Section 34 of the Act provides that I may review the handling of a complaint where the complaint is “a relevant complaint”, defined as

*(1) ... a complaint which is given or sent ... to the appropriate authority in relation to the complaint.*

*(2) .... “complaint” means a written statement expressing dissatisfaction about an act or omission...*

*(3) But “complaint” does not include*

*(a) any statement made by a person serving with, or who has served with, the police, about the terms and conditions of that person's service with the police; or*

*(b) a statement which consists of or includes an allegation of an act or omission which constitutes a crime.*

The complainer has supplied a written statement expressing dissatisfaction about an act or omission by a force. The complaint is therefore a relevant complaint.

## 2.2 Relevant complainer

The Act further provides that I may review the handling of a complaint where the complainer falls within one of the following categories (section 34(6)):

*(a) a member of the public who claims to be the person in relation to whom the act or omission took place;*

*(b) a member of the public not falling within paragraph (a) who claims to have been adversely affected by the act or omission;*

*(c) a member of the public who claims to have witnessed the act or omission;*

*(d) a person acting on behalf of a person falling within any of paragraphs (a) to (c)*

The complainer is a member of the public who claims to have been adversely affected by an act or omission by the police. The complainer is therefore a relevant complainer under the terms of section 34(6)(a).

## 3. Background

On 18 January 2004 the complainer sent an email to a large number of people which he entitled "Last Rites". One of the recipients of this email interpreted it as a message that the sender was contemplating suicide. The recipient contacted Grampian Police who carried out enquiries and established that the complainer was the sender of the email. On 20 January 2004, Grampian Police attended at the complainer's home to check upon his safety and offer assistance. The force states that the complainer became annoyed at the interpretation of his email and believed that properly trained officers with an understanding of his religious beliefs would have known that the interpretation was wrong and, as a result, should not have attended his home.

On 7 February 2004, the complainer visited a local residential centre looking for "respite". During his visit he met with two members of the centre in an effort to discuss matters that were troubling him. The complainer states that during this meeting he was man-handled by one of the members. He also states that he was unhappy with the way that he was dealt with and left the centre in a distressed state. The complainer contacted the police on 8 February 2004 and alleged that he had been assaulted. From the information supplied to me by the force a statement was noted from the complainer and an officer conducted enquiries into the allegations that he had made. Thereafter, the complainer returned to the centre with a letter of complaint which he nailed to the centre door.

The complainer returned again to the centre in the early hours of the morning of 11 February 2004. The centre manager was alarmed at his arrival and called the police. Following a disturbance, the complainer was arrested and taken to the local police station. During his detention at the police office, the Custody Sergeant

became concerned about the complainer's mental health. A psychiatrist attended and examined the complainer, which resulted in the complainer being detained in a hospital under the Mental Health (Care and Treatment) (Scotland) Act 2003. During his stay in hospital, Grampian Police removed the complainer's car from the residential centre and parked it within the police office for safety. Thereafter the complainer made arrangements for a third party to collect the vehicle and return it to the complainer's home. The complainer was released from hospital on 25 March 2004.

The complainer has remained dissatisfied throughout his correspondence with the force, which is voluminous and often lacks clarity, for over a period of almost 4 years. He stated that he was a victim of systemic failures within the force and other agencies into the handling of his complaints.

The complainer also raised a Freedom of Information request with the force during its investigation into his complaints and as a consequence of receiving the information he requested, he raised further concerns and complaints with the force relating to the same incidents.

#### **4. Force internal handling**

The complainer's first letter of complaint was hand-delivered to the force on 23 September 2004. This letter raised Complaints 1 – 5 and detailed 32 specific points surrounding these complaints. Thereafter, the complainer sent further emails and letters detailing his remaining complaints. Over the course of the force enquiries, the complainer sent various letters and emails to the force offering, and seeking, clarification of the circumstances leading up to, and subsequent to, his arrest. For the avoidance of doubt, this report will be limited to the review of the correspondence which detailed complaints about the Police. The correspondence which the complainer sent to the force detailing such complaints is listed below:

- Letter 1, dated 23 September 2004, detailed Complaint 1-5;
- Email 1, dated 16 May 2005, detailed Complaint 6;
- Letter 2, dated 22 May 2005, reiterated Complaint 3;
- Letter 3, dated 12 August 2005, reiterated Complaint 3;
- Letter 4, dated 31 August 2005, reiterated Complaints 1,2,4,6 and detailed 7;
- Letter 5, dated 9 May 2006, detailed Complaints 8 and reiterated Complaints 4 and 6; and
- Letter 6, dated 27 January 2007, detailed Complaint 9 and reiterated Complaints 1, 4 and 6.

Following receipt of the complainer's first letter dated 23 September 2004, a complaint against the Police (CAP) form was completed. Chief Inspector A made an initial assessment on 5 October 2004 where he recorded the complaints as alleging oppressive conduct and irregularity in procedure. Chief Inspector A noted that he had contacted the complainer on 5 October 2004 who stated that whilst he

acknowledged that some of the issues he raised required some examination, he did not want to make a “*big deal*”.

On 11 October 2004, Superintendent B wrote to the complainer advising that his complaints about Grampian Police had been recorded and that a Supervisory Officer would be in contact shortly. On 18 October 2004, a memo was sent by Superintendent C, alongside the complainer’s letter of complaint, to Inspector D instructing him to make enquires into the complainer’s complaints and report his findings.

Thereafter, the complainer continued to correspond with the force regarding his concerns about the original incident and his arrest. The complainer also referred to complaints about other organisations. However, he did not raise further complaints about the police until he sent an email on 16 May 2005 to Inspector D when he detailed Complaint 6. Inspector D contacted the complainer on 17 May 2005, where he apologised for not being in touch for some time, and arranged a meeting for 22 May 2005.

Following the meeting on 22 May 2005, the complainer submitted a “position statement” to the force in which he reiterated Complaint 3. The complainer also wrote to the force on 12 August 2005 reiterating Complaint 3.

A statement provided by Constable E on 30 August 2005 states that the complainer contacted the force to raise a complaint about the conduct of other agencies and individuals. Constable E visited the complainer’s home and noted a further statement from him where he referred to a number of issues and individuals but specifically reiterated Complaint 3.

Inspector D prepared an enquiry report into the complaints and submitted his findings to Superintendent F on 16 October 2005 which covered complaints 1-3 and 5-6. Grampian Police appears to have failed in reporting Complaint 7 in accordance with the Lord Advocate Guidelines for reporting criminal matters. From the information provided it appears that this complaint was passed for consideration to the Area Procurator Fiscal by the complainer and not the force. On 28 October 2005, Superintendent F wrote to the complainer with the conclusions of this report relating to complaints 1-3 and 5-6. These conclusions are stated below:

**Complaint 1** - Grampian Police over reacted to a phone call it received and arrested the complainer without carrying out reasonable enquiries

*“Inspector D’s conclusion is that beyond doubt that you had, by the time the Police arrived, committed offences for which you could lawfully be arrested. I do not think you dispute that. He finds that the Officers making the arrest acted properly throughout and that this aspect of your complaint is unfounded”*

**Complaint 2** - Grampian Police acted in a heavy handed manner during his arrest on 11 February 2004

*“Inspector D finds that on the balance of probabilities, the events unfolded very much as recounted by the [members] and Police Officers present. In*

*their opinion, on their arrival you were in a very emotional state, still presented a potential threat.....They appear to have followed very closely the procedures laid down by the Force for such incidents, with an apparently successful outcome, since neither you, nor they, nor any member of the public was injured."*

**Complaint 3** - Grampian Police infringed the complainer's human & legal rights by requesting a psychiatric assessment which subsequently stigmatised the complainer as being mentally ill

*"The simple fact of the matter is that if an Officer has charge or care of a person, and he believes that person to be in need of medical attention of any kind, he is bound to summon such help and would be in breach of our rules if he did not. It is not necessary that he be proved right for his initial decision to be vindicated, it is the perception of need at the time which is critical."*

Superintendent F concluded that, having taken all the information presented to him into account, the perception of the Custody Officer was that the complainer should be medically assessed in respect of his fitness to appear before a court.

*"The fact of the matter is that he formed that view and having done so was bound in your interest to make contact with the appropriate medically trained person."*

Superintendent F further stated that:

*"The Custody Sergeant was informed that the medical authorities had been trying to see you for some days, having themselves become concerned about your mental condition. In those circumstances it is entirely proper for the Police to facilitate the attendance of health professionals to the Police station and to allow them access to you. That they decided you required to be detained elsewhere was entirely a matter for them and out-with the jurisdiction of the Police."*

**Complaint 5** - The complainer's motor car was damaged whilst in the possession of Grampian Police

*"It is patent however that the vehicle was not damaged by the Police or when the Police had responsibility for it....The damage appears most likely to have occurred between 1 and 4 March outside [the complainer's address], at the hands of persons unknown. It appears unlikely at this remove of time that further information can be uncovered."*

**Complaint 6** - Grampian Police took information from a third party without justification and interpreted an email which the complainer sent, entitled "Last Rites", incorrectly

*"....a concerned recipient contacted Grampian Police and reported concerns that the sender.... was contemplating suicide.... A fairly extensive Police enquiry was instigated, eventually involving both Grampian Police and*

*[another police force].....the Police had no choice but to respond as they did to the information as it stood and to take steps to assure themselves of your well-being.....no fault lies with the police in this matter, and that considerable public resource was expended ensuring your safety because of a communication you sent which would have raised in any reasonable person some anxiety for you”*

On 17 December 2005, the complainer wrote to the force advising that he had ‘rejected’ all but one of the force’s conclusions. Chief Inspector A wrote to the complainer on 20 January 2006, referring to a telephone conversation between them on 18 January 2006, confirming that matters surrounding his complaints were still under review. He also requested further information from the complainer about his original complaints. The complainer wrote again to the force on 25 January and 20 February asking for a response to his letters and an update on the progress of his complaints. Chief Inspector A responded on 27 February 2006 where he apologised for not responding to his earlier correspondence and informed the complainer that the review of his complaints may be several weeks away.

The complainer wrote to the Procurator Fiscal on 18 January 2006, regarding a criminal complaint detailed under Complaint 7 that he had raised with the force on 31 August 2005.

The Crown Office & Procurator Fiscal Service (COPFS) wrote to the force on 2 March 2006 enclosing a copy of the complainer’s letter, requesting either that the force provide the information to allow COPFS to respond or alternatively that the force respond to the complainer direct. It appears that the force opted to respond directly to the complainer.

The complainer then wrote to Grampian Joint Police Board on 27 April 2006, who in turn contacted Superintendent B by email requesting a progress report into the complainer’s complaints. Chief Inspector A responded to this email on 5 May 2006 stating that he had met with the APF to discuss the matters, and noted that following this meeting it was appropriate for the complainer to be re-interviewed.

Chief Inspector A created a file note dated 5 May 2006 which stated:

*“I appreciate that DI [D] has considered matters....I appreciate that complainer did not provide a full statement regarding all of his complaints, but as previously indicated his correspondence has been wide and varied and DI [D] has adopted a sensible approach in his amalgam of issues from these letters”*

Chief Inspector A noted that Inspector G had arranged a meeting with the complainer on 9 May 2006 and that he should meet with the complainer and obtain a statement. He stated that as no statement had previously been noted from the complainer, and the complaints had been taken from the letters sent to the force, Inspector G should note a statement to cover all the complainer’s complaints. He stated that matters would be reassessed following this meeting.

A statement was taken on 9 May 2006 from the complainer which reiterated Complaints 1, 3, 7 and 8. Thereafter the complainer sent a letter to the force re-stating his concerns and summarised his views.

On 14 June 2006, Chief Inspector A wrote to the complainer confirming that a report detailing his complaints would be submitted to the Area Procurator Fiscal (APF) for consideration. The report was forwarded to the APF on 5 July 2006 together with relevant information relating to the complainer's complaints.

Grampian Police responded to the complainer's letter dated 8 August 2006 on 10 August 2006, advising that matters had been referred to the APF, the force was still waiting for a response and would write again at the earliest opportunity. COPFS wrote to the force on 1 September 2006 to advise that in order to satisfy itself it intended to obtain a statement regarding Complaint 2. Chief Inspector A wrote to the complainer the same day and acknowledged the complainer's frustrations at resolving his complaints, and stated that criminal allegations took precedence over non-criminal matters. As such he was unable to provide conclusion until direction was received from the APF.

The APF wrote to the Chief Constable on 18 October 2006 advising she was satisfied that Complaint 2 raised by the complainer did not reasonably infer criminal conduct, therefore matters were now with Grampian Police to resolve.

T/Chief Inspector H sent the force's final response to the complainer on 6 March 2007. This letter dealt with a response to Complaints 4, 6, 8 and 9. This response also covered other matters which are not subject to this review. T/Chief Inspector H stated that:

**Complaint 4 a-g** Grampian Police failed to adhere to statutory guidance regarding:

- a. questioning suspects
- b. recording interviews
- c. stop and search
- d. arrest process
- e. discrimination
- f. neglect of duty
- g. neglect of confiscated property

It should be noted at this time that the complainer has not made the force aware of Complaints 4h and 4i, as shown in Section 1 of this report. It would appear that the following response was given in relation to complaints 4a-g:

*"this matter has been examined by Inspectors [J] and [D] and fully documented in their reports. Superintendent F responded to you in a comprehensive manner to explain the position from Grampian Police. Chief Inspector A reviewed the files and I am satisfied thorough enquiry has been made. This position remains."*

**Complaint 6** - Grampian Police took information from a third party without justification and interpreted an email which the complainer sent, entitled "Last Rites", incorrectly

*"Again this matter was examined by Inspector J and D and responded to by Superintendent F. Chief Inspector A reviewed the files and I am satisfied thorough enquiry has been made. This position remains."*

**Complaint 8** - That the complainer is dissatisfied with the complaint handling process of Grampian Police, including the length of time taken to conclude his complaint

*"you are not satisfied at the outcome and investigation of your allegations. The Complaints process has been explained to you.....Whilst I accept you may not concur with the findings, your complaint has been investigated fully in accordance with the guidelines and accepted procedures."*

*"I can understand your frustrations at the length of time it has taken to resolve your "complaint" and fully sympathise with your plight. Regretfully, I believe we may never be able to resolve all the issues to your complete satisfaction. Your continued dialogue and correspondence with Grampian Police has contributed to the length of time it has taken to reach this stage, however, I believe it was only right and proper your case was thoroughly reviewed and this has taken considerable time. I can only apologise for any undue delay in concluding matters, but I am hopeful we can now draw this matter to a close."*

**Complaint 9** – Grampian Police failed to protect the complainer from serious harm

T/Chief Inspector H responded to the complainer and stated that:

*"the police have a moral obligation to protect all citizens from criminal activity within their jurisdiction, regardless of their location.....the police rely on informed opinion to allow them to carry out their duties in the best interests of all stakeholders."*

T/Chief Inspector H closed his letter stating:

*"whilst I appreciate the responses contained within this letter may not meet with your expectations, please be assured that in reaching my decision I have given matters my careful consideration."*

He concluded that if the complainer remained dissatisfied he should contact Her Majesty's Inspectorate of Constabulary (HMIC).

Following this response, the complainer wrote to the force advising that he remained dissatisfied. T/Chief Inspector H responded on 11 April 2007 expressing regret at the complainer's dissatisfaction. However, he advised that it was the force's view that it had provided comprehensive and full responses on a number of occasions to the complainer, had taken reasonable steps to investigate the matters complained off and that it had no intention to initiate any further enquiry. T/Chief Inspector H

apologised for the delay in concluding his complaints and stated that he was disappointed that in part the complainer had been unwilling to accept the findings or conclusions provided by the force to the matters raised.

T/Chief Inspector H concluded his letter by advising the complainer to contact my office should he remain dissatisfied.

## **5. PCCS review**

A telephone call was received by my office on 18 May 2007 when the complainer requested information in relation to force powers, and indicated that he had a complaint against Grampian Police. My office forwarded an application for review form on the same day and again on 12 June 2007 when the complainer contacted my office making further enquiries and requesting another application form. The complainer was asked to complete and return a signed application form together with any other relevant information. The completed application form and additional documentation were received on 3 August 2007.

My office asked Grampian Police to provide the relevant complaint case papers on 8 August 2007 and again on 22 August 2007. Grampian Police supplied the required information on 24 October 2007.

My office wrote to the complainer on 8 April 2008 requesting that he confirm the grounds of his complaints in his own words prior to review. The complainer responded on 14 April 2008 confirming the grounds of his complaints and raised a question in relation to one area of complaint.

On completion of a further detailed review a second letter was sent to the complainer on 13 June 2008, condensing all areas of complaint as understood by my office.

The complainer responded on 19 June 2008 and stated that although he accepted that our letter dated 13 June 2008 was a revision of the original sent on 8 April 2008 he could not agree this format. The complainer asked if these amendments were at request or instigation of the force.

The complainer wrote again to my office on 24 June and on 27 June 2008 adding further detail to his complaints. To assist the complainer, my office provided a detailed response on 3 July 2008 clarifying that his complaints had been consolidated for clarity and that my office is completely independent of any police force, or policing body.

The complainer confirmed in a letter received by my office on 9 July 2008 that he looked forward to resolution of his complaints.

The complainer has also corresponded with my office by letter regarding the complaints that he has made about the force. In the course of this correspondence, the complainer has highlighted other areas where he is unhappy with the force.

From the files supplied to my office by the force, I can find no evidence that the force has been made aware of these complaints.

The files issued to my office were extensive and complex and the complainer has had lengthy, and often detailed correspondence with the force since June 2004. The complainer wrote several accounts of his complaints and concerns, which often lacked clarity, where he stated new complaints and in some instances reiterated complaints made on other occasions to the force. The complainer was often critical of any response provided by the force, creating difficulty in obtaining resolution to his complaints.

I appreciate that in his correspondence (letters, telephone calls and emails) the complainer regularly refers to different combinations of his complaints in a way that makes it difficult to clearly identify each issue referred to. However, this merely serves to underline the importance of taking an initial statement from the complainer to ensure that all the complainer's concerns are considered and addressed in full. There is therefore in this regard a learning point for Grampian Police.

Due to the number of complaints about the police, relating to a number of different incidents, my office required an extended period of time to consider the papers. This, combined with the fact that my office needed to contact the force several times in order to obtain further information essential to my review, resulted in delays. In accordance with the PCCS published standards of service, the complainer was updated on the progress of his complaint every 28 days.

## **6. Consideration**

On 29 December 2005, Chief Inspector A wrote to Superintendent L and advised that he was satisfied that Superintendent F's response to the complainer on 28 October 2005 had dealt with the matters under review and an appropriate response had been provided to the complainer. However, it was noted for completeness, that operational statements should be obtained from the officers involved throughout the course of dealing with the complainer and filed accordingly. It is of concern that these operational statements had not been obtained prior to Superintendent F's response to the complainer.

From the files supplied to my office, it is clear that the force has spent significant time and resources in trying to deal with, and bring to a conclusion, the complaints which the complainer had brought to it. I understand that this process was lengthened by the detail, content and frequency of the complainer's correspondence. It was also lengthened, in some part, due to the vague, confusing and sometimes unco-operative way in which the complainer dealt with the force.

Notwithstanding this, it is unfortunate that it has taken the force over a year to provide a written response to the complainer regarding his complaints about the police, and in some instances the force has not provided a satisfactory response at all. It may be a learning point for the force to provide complainers with written

confirmation of conversations that have taken place. I am also of the view that the force should have attempted to clarify the complainer's complaints at an earlier stage. Had this detail been incorporated into the complainer's statement, then it may have provided a platform for resolution of the complainer's concerns at a much earlier stage than shown in this instance.

There are nine distinct issues raised by the complainer:

**Complaint 1** - Grampian Police over reacted to a phone call it received and arrested the complainer without carrying out reasonable enquiries

The force has provided me with a synopsis of a tape and Dictaphone recording made by the complainer during the time of his visit to the residential centre on 11 February 2004. In this the complainer describes the scene when he visited the centre and how he had nailed a letter to the centre door. The complainer admits that he banged loudly several times on the door shouting at the employees on the other side. Thereafter the complainer was arrested.

The force responded to the complainer on 28 October 2005 stating that he had "*beyond doubt, committed offences for which he could be lawfully arrested*" This information combined with the statements provided by the arresting officers and the synopsis of the Dictaphone tape where the complainer clearly recounts his actions support the reasoned conclusion provided by the force. It is unfortunate the complainer is unwilling to accept this conclusion.

**Complaint 2** - Grampian Police acted in a heavy handed manner during his arrest on 11 February 2004.

From the information provided to me by the force, the complainer's account of events following his arrest appear to differ to those of the witness statements provided. It is my view that the force provided a satisfactory response to the complainer on 28 October 2005 when it stated that the arresting officers acted within the guidelines of the force standard operating procedures.

**Complaint 3** - Grampian Police infringed the complainer's human & legal rights by requesting a psychiatric assessment which subsequently stigmatised the complainer as being mentally ill.

I note that custody records show that the complainer stated he had previously suffered from mental health issues. During his detention the custody Sergeant became aware of changes in his mood, speech and behaviour and took the precaution of contacting the medical authorities to request a psychiatric assessment as he was concerned about the complainer's fitness to appear at court.

The records show that an assessment of the complainer by the consultant psychiatrist deemed that he would be detained under the Mental Health (Care and Treatment) (Scotland) Act 2003. The information supplied to me suggests that Inspector K provided the complainer with an explanation on 2 September 2004

regarding the circumstances surrounding his detention by the medical authorities. It noted that the medical authorities had contacted the police office after the decision by the custody Sergeant to obtain medical care for the complainer. Two mental health professionals and the complainer's advocacy worker attended at the police office, Thereafter, the complainer was assessed and detained under the Mental Health (Care and Treatment) (Scotland) 2003 Section 24.

From the information provided to me, the force's decision to have the complainer assessed complied with Grampian Police standard operating procedures relating to care and custody of prisoners. Inspector K provided the complainer with a verbal response to his initial query regarding this complaint on 2 September 2004, prior to raising a formal complaint about this matter. This was followed by a letter of explanation on 28 October 2005. From the information provided to me the force followed the correct procedure and provided the complainer with a satisfactory and appropriate response regarding this complaint.

**Complaint 4** - Grampian Police failed to adhere to statutory guidance regarding:

- a. questioning suspects
- b. recording interviews
- c. stop and search
- d. arrest process
- e. discrimination
- f. neglect of duty
- g. neglect of confiscated property
- h. failed to call a police surgeon
- i. denied the complainer his right to have his solicitor informed

I note that the letter from Superintendent F on 28 October 2005 to the complainer failed to provide an adequate response to the complainer regarding Complaint 4a-4g. T/Chief Inspector H did respond to the complainer in very general terms regarding these complaints on 7 March 2007, but it is unfortunate that these matters were not adequately addressed throughout the complaint review process. From the papers presented to me it would appear that the complainer has not presented Complaints 4h and 4i for consideration to the force.

**Complaint 5** - The complainer's motor car was damaged whilst in the possession of Grampian Police.

The force provided a verbal response to the complainer on 9 September 2004 and a written response on 28 October 2005 regarding this complaint. Superintendent F stated that the facts surrounding this complaint were clear. Force records showed that the complainer had given permission to his advocacy worker to collect his car and detail that on 19 February 2004 the advocacy worker arranged, during a telephone call with the complainer, to forward the keys for the vehicle to him in order that the car could be collected from the police compound. The vehicle was collected from the police office on 24 February 2004 with the complainer's permission. A third party who had accompanied the advocacy worker to collect the car confirms that the

vehicle was returned to the complainer's home, and parked and, from his recollection, the vehicle was left undamaged. The force states that the complainer's vehicle was not damaged whilst in the possession of the force and that documentation completed on initial receipt of the vehicle supports this position. The complainer states that on return to his home on 5 March 2004 he noticed his vehicle was damaged. He did not make any complaint to the police at that time, but alleged that it had been damaged whilst in police hands, or that it had been damaged whilst in the possession of a third party. The force responded to the complainer and stated that whilst it was unfortunate that it could not conclusively confirm or deny this complaint, due to the unknown whereabouts of his advocacy worker, the complainer had previously stated to the force that:

*"You said you car was old and of little value and that it was not worth investigating the cause of the damage...By this time it had been established that [third party] had taken possession of the vehicle and that the damage had not occurred whilst the Police had possession of the car. On the basis that it was unclear if a crime had been committed and you were disinterested in pursuing the matter, no further enquiry was made."*

From the information available it is clear the force should have obtained a statement from the third party involved in collecting the vehicle, when this complaint was first brought to its attention. However, the complainer later stated that he did not wish to pursue a complaint in this regard, despite raising the issue on a number of occasions after the event. It is my view that the force has acted within its procedural guidelines and provided a satisfactory response on a number of occasions to the complainer on this matter.

**Complaint 6** - Grampian Police took information from a third party without justification and interpreted an email which the complainer sent, entitled "Last Rites", incorrectly.

Grampian Police responded to this complaint in its letter of 28 October 2005 to the complainer and again in a final letter of response on 6 March 2007. The complainer originally acknowledged that he was the sender of the email and the force explained on both occasions that it had acted with the complainer's wellbeing at the forefront of its investigation. On both occasions the force provided a satisfactory response and communicated this to the complainer.

**Complaint 7** - Grampian Police fabricated records and therefore held inaccurate records.

This complaint is a criminal complaint which is outwith the remit of the PCCS, and as such will not be considered in this review.

However, I note from the file that the complainer wrote to the Procurator Fiscal on 18 January 2006, regarding a criminal complaint detailed under Complaint 7 that he had raised with the force on 31 August 2005. It is of concern that the force appears to have failed to report these matters in accordance with the Lord Advocate Guidelines

for reporting criminal matters, and that these complaints were referred for consideration to the Area Procurator Fiscal by the complainer and not the force. This is a learning point for the force.

**Complaint 8** - That the complainer is dissatisfied with the complaint handling process of Grampian Police, including the length of time taken to conclude his complaint.

Between 24 September 2004 and the completion of the second investigating officer's report in December 2006, the force failed to update the complainer on a regular basis or advise the complainer of its findings. Communication appears to have been instigated by the complainer on most occasions when he continued to request an early resolution to his concerns and complaints.

The complainer raised this as a formal complaint with the force on 9 May 2006 and a written response was provided by T/Chief Inspector H on 6 March 2007. I note that the force acknowledge the complainer's complaints on 10 August 2006 and 1 September 2006. However, the force did not appear to have communicated the conclusions of his complaints until its letter of 7 March 2007.

From the information available to my office, it is not clear what progress the force made between the completion of the report in 28 October 2005 and the final letter of response from T/Chief Inspector H on 6 March 2007 to the complainer. While I appreciate that there may be factors that could have contributed to the delay in my view it would have been prudent to provide the complainer with updates on the progress of the complaints, or some reasonable explanation for delays during this time.

From the information provided the force has considered the complaints raised by the complainer from a series of letters and emails. The response from the force in the handling of these complaints was at times too general and it is my view that the force should have made attempts to obtain a full and detailed statement from the complainer at an earlier stage.

Notwithstanding, I note that in the later stages of the complaint handling process, the force did attempt to address specific complaints and concerns with the complainer. However, the complainer's correspondence was without doubt at times difficult to understand or comprehend due to the confusing combination of questions and statements that he made in relation to his complaints. It is my view that this arguably contributed to the difficulty and delay that the force had in concluding the complainer's complaints.

Whilst the force responded to the complainer in writing on two occasions it is apparent that there had been email and telephone contact between both parties. It is unfortunate that the force did not note in detail all matters discussed with the complainer or provide written confirmation of matters discussed. Although the complainer continued to raise statements of continued dissatisfaction, often engaging in lengthy correspondence which raised the same issues, and on occasion

in a different form, where the force has provided written responses, it has dealt with matters adequately.

**Complaint 9** - Grampian Police failed to protect the complainer from serious harm.

From the information provided to me the complainer inferred this complaint on 27 January 2007. It should be noted that there insufficient detail was provided by the complainer surrounding the circumstances of this complaint. However, T/Chief Inspector H provided a written response to the complainer on 7 March 2007 regarding this complaint and stated that whilst the police have a moral obligation to protect all citizens from criminal activity, the police relied on informed opinion to allow them to carry out their duties in the best interests of all stakeholders.

## **7. Conclusion**

Notwithstanding that the force provided adequate written responses to the complainer in the latter stages of the complaint process, it is my view that Grampian Police should consider providing regular updates to complainers regarding the progress of complaints. Furthermore, the force should also consider the importance of obtaining detailed statements from complainers and others subject to complaint at an early stage of the complaint process. It is my view that this would facilitate efficient and effective complaint handling resolution. Grampian Police should also compile written records of meetings and telephone communication with complainers which would support efficient complaint handling. These matters should be considered as learning points for the force.

**Complaint 1** - Grampian Police over reacted to a phone call it received and arrested the complainer without carrying out reasonable enquiries

I am satisfied that the force has responded appropriately to the complainer on this matter, therefore **I do not uphold this complaint.**

**Complaint 2** - Grampian Police acted in a heavy handed manner during his arrest on 11 February 2004.

I am satisfied that the force has responded appropriately to the complainer on this matter, therefore **I do not uphold this complaint.**

**Complaint 3** - Grampian Police infringed the complainer's Human & legal rights by requesting a psychiatric assessment which subsequently stigmatised the complainer as being mentally ill.

From the information provided to me the force followed the correct procedure and provided the complainer with a satisfactory and robust response regarding this complaint. Therefore **I do not uphold this complaint**

**Complaint 4** - Grampian Police failed to adhere to statutory guidance regarding:

- a. questioning suspects
- b. recording interviews
- c. stop and search
- d. arrest process
- e. discrimination
- f. neglect of duty
- g. neglect of confiscated property
- h. failed to call a police surgeon
- i. denied the complainer his right to have his solicitor informed

In my view the force has not had the opportunity to consider or respond to Complaints 4h and 4i. In relation to Complaints 4a-4g, from the information available to me, I am of the view that the force has not provided a sufficiently detailed response to the complainer. For a sense of completeness **the force should contact the complainer and provide a clear response to all of the above complaints.**

**Complaint 5** - The complainer's motor car was damaged whilst in the possession of Grampian Police.

From the information available I am of the view the force, having taken possession of the car, acted within its own procedures and released the car to a third party with the owner's permission. It is unfortunate that the complainer is unable to accept that it is not possible to confirm where the car was damaged. I am satisfied that the force followed the correct procedures and on a number of occasions provided the complainer with a satisfactory response to this complaint. Therefore **I do not uphold this complaint**

**Complaint 6** - Grampian Police took information from a third party without justification and interpreted an email which the complainer sent, entitled "Last Rites", incorrectly.

The force has provided a satisfactory response to the complainer. **I do not uphold this complaint.**

**Complaint 7** - Grampian Police fabricated records and therefore held inaccurate records.

As noted in this report, Complaint 7 relates to an allegation of an act or omission which constitutes a crime, and thus does not fall within my remit to consider. However, I note that the force appears to have failed in its duty of reporting a criminal complaint to the Procurator Fiscal within the Lord Advocates Guidelines. This matter has since been dealt with by the Area Procurator Fiscal and a decision has been communicated to the complainer.

**Complaint 8** - That the complainer is dissatisfied with the complaint handling process of Grampian Police, including the length of time taken to conclude his complaint.

The complainer first wrote to complain about Grampian Police on 24 September 2004. A final response was not issued by the force until 7 March 2007. The force does not appear to have responded within the guidelines of Grampian Police standard operating procedures relating to Complaints Process. Furthermore, in my view it would have been prudent for the force to clarify the complaints and concerns made by the complainer and obtain a statement at an earlier stage in the process to provide efficient and effective complaint handling resolution. The force should have provided the complainer with updates on the progress of the complaints, or some reasonable explanation for any delay during this time. As such, **I uphold this complaint and further recommend** that the force provide regular updates to complainers in the event of delays in the complaint handling process.

**Complaint 9** - Grampian Police failed to protect the complainer from serious harm.

In my view, based on the papers available to me, the complainer omitted to provide enough detail or clarification regarding the detail of this complaint. The force has attempted to provide a detailed response to the complainer which given the vague nature of the complaint, in the circumstances was commendable. As such **I recommend that should the complainer wish to make this complaint to Grampian Police he should provide detail and clarification to the force.**

Jim Martin  
Police Complaints Commissioner for Scotland  
July 2008