

# PCCS



Police Complaints Commissioner  
for Scotland

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

**Tayside Police**

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

**November 2008**

Case reference: PCCS/0811/00029/PF-TP

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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 has requested that I review the handling of his complaint about Tayside Police. The complainer's complaints relate to the arrest of his acquaintance – Mr A – and the handling of his subsequent complaint by the force:

**Complaint 1 – That a police officer shouted at Mr A;**

**Complaint 2 – That the complainer's personal details were not recorded by a police officer at the scene;**

**Complaint 3 – That a police officer behaved aggressively towards the complainer;**

**Complaint 4 – That Inspector B's attitude during a meeting with the complainer was defensive;**

**Complaint 5 – That Inspector B did not honour an agreement to contact the complainer;**

**Complaint 6 – That Inspector B did not update the complainer in relation to CCTV footage;**

**Complaint 7 – That the complainer was charged by the force in an attempt to discredit him;**

**Complaint 8 – That the length of time taken by Tayside Police to investigate the complainer's complaint was not acceptable; and**

**Complaint 9 – That it was not appropriate for Superintendent C to base her decision on Inspector B's report.**

## **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 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 not only been adversely affected by an act or omission by the police but also to have witnessed such an act or omission. The complainer is therefore a relevant complainer under the terms of section 34(6) (a) and (c).

### **3. Background**

The complaints raised relate to events of 7 December 2007 when the complainer became involved with police officers during the arrest of Mr A. The background is based upon the statements of the complainer and the police officers present.

Mr A was driving a vehicle when he was stopped by Constables D and E in relation to a contravention of the Road Traffic Act 1988. The statements of Constables D and E assert that after being advised of the reasons for being stopped Mr A did not co-operate with them and he was arrested for breach of the peace because he continued to shout and swear. Mr A struggled with the officers before being brought to the ground by Constable D and handcuffed. The complainer approached the officers and advised them that he was acquainted with Mr A who was experiencing some difficulties in his private life. Constable D's statement noted that the complainer advised Mr A to calm down. Constables D and E assisted Mr A to his feet. Constable D stated that, at this time, he was hopeful that the complainer would be of assistance in dealing with Mr A.

Constable D asserted that the complainer then made a statement about the police which aggravated the situation and encouraged Mr A to continue complaining about the actions of the officers. Constable E maintained that the complainer kept Mr A agitated, making it difficult for the officers to calm him down. Constable D stated that he requested that the complainer move away from the area and explained the reason for his request but the complainer refused to leave. Constable E stated that the complainer refused to move away advising that he was helping the situation and that he continued to attempt to engage Mr A in conversation by making comments about the police.

Constables D and E maintained that the complainer, having accused Constable E of being aggressive with Mr A at this time, was asked again by the officers to move away from the area. Constable D stated that the complainer refused and continued to harangue both officers before Mr A was placed in the police vehicle by Constable D.

Two additional officers arrived at the scene, Sergeant F and Constable G. Constable D stated that he apprised Sergeant F of the situation. Sergeant F stated that the complainer became abusive towards Constable D and that Sergeant F intervened, warning him that if his conduct continued, he would be arrested for a breach of the peace. Statements provided by the attending officers asserted that the complainer commented that this was typical of the police and "*stormed off*".

In his statement, Sergeant F asserted:

*"I liaised with witnesses Constables [D and E] and learned that [the complainer's] earlier conduct had been such that it had made [the] accused more volatile and extremely difficult to placate. On learning that [the complainer] had refused to heed repeated warnings by said officers, despite clearly seeing the impact his behaviour was having on [the] accused, I instructed that [the complainer] be traced and charged with hindering the police in the executing of their duty.*

*I subsequently spoke with witness Inspector [H] who advised that [the complainer] wished to make a complaint regarding my and other officers' conduct. I pointed out to witness Inspector [H] that I had already arranged for [the complainer] to be charged as above stated.*

*Later, same date, I appraised witness Sergeant J of the circumstances and requested that he arrange to have [the complainer] charged accordingly."*

The complainer maintained that on 7 December 2006, he initially saw Mr A speaking with two police officers. A short time later the complainer stated that he saw Mr A being restrained on the ground by Constables D and E. As he had known Mr A for many years, the complainer was of the view that he may have been able to calm him down. The complainer approached the officers and advised them that Mr A was experiencing personal problems which Constable D acknowledged. The complainer asserted that within approximately one minute of speaking to Mr A he had calmed significantly and that the police officers were able to allow him to stand up. The complainer asserted that he advised Mr A that it would be best to allow the police to do their job.

During this process, the complainer stated that Mr A continued to grumble that he had been humiliated. He maintained that Constable E shouted at Mr A in response to this. The complainer stated that he advised Constable E that she was aggravating Mr A. The complainer asserted that Constable D advised him that he was making the situation worse at which point the complainer left the scene without comment. He maintained that throughout his interaction with Mr A he was trying to keep him calm.

The complainer stated that as he returned to his vehicle, he had to pass Constable D and had commented to him that Constable E had made things worse. The complainer asserted that Constable D replied that Mr A had been swearing at the officers for 20 minutes. The complainer maintained that he continued to watch the proceedings from a distance and when he saw another police car arriving he decided to give his name to the force because he believed that Constable E's actions had made the situation with Mr A worse. He stated that on approaching Constable D and offering his details, Sergeant F came towards him in an aggressive manner. The complainer maintained that Sergeant F accused him of having issues with female police officers; that he had a problem with authority and if he did not leave the scene immediately, he would be charged with breach of the peace. The complainer asserted that Sergeant F had his finger two or three inches from his face and chest at this time and that he could feel the officer's breath on his face. The complainer maintained that he did not raise his voice or make aggressive gestures at any time.

He stated that he left the scene immediately and called a local police office on arriving home.

The complainer spoke to Inspector H on the telephone about his concerns. Inspector B subsequently attended the complainer's home the following day regarding his complaints about the police. Inspector B was given a letter that the complainer had prepared in relation to the events of 7 December 2006 and advised the complainer that he would return to note a statement by 13 December 2006. The complainer is of the view that Inspector B's attitude towards him was defensive. In his statement, the complainer referred to being charged with a breach of the peace by two police officers unconnected with the previous incident who attended at his home on 16 December 2006. He stated that on enquiring with the officers why Inspector B had failed to contact him he was informed that he was going to get in touch with him later that day.

The complainer stated that Inspector B called at his home on 18 December 2006 to obtain a statement. The complainer asserted that he asked Inspector B about CCTV footage of the incident at this time and that although he was informed that this would be looked into he was not updated in relation to this matter.

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

The complainer complained to the force by telephone on 7 December 2006. During a meeting with Inspector B on 8 December 2006, the complainer provided the force with a letter raising Complaints 1 and 3. A Complaint Against the Police (CAP) form was completed by Inspector B detailing Complaints 1 and 3.

As the officer in charge of the enquiry, Inspector B noted a statement from the complainer on 18 December 2006. The complainer's statement reiterated Complaints 1 and 3. During the course of the investigation Inspector B obtained statements from Constables D, E and G; Sergeant F and two members of the public who had witnessed the events. Inspector B arranged a CCTV review but found that due to technical difficulties there was no footage of this incident available.

An enquiry report by Inspector B, which appears to have been incorrectly dated 16 December 2006, was forwarded to Superintendent C for consideration. The report noted a description of the events leading to the complaint, the enquiry made and provided a copy of statements and other relevant documentation, with no subsequent analysis of the evidence.

Superintendent C wrote to the complainer on 5 January 2007 in response to his complaint about the police. In reference to Complaint 1, Superintendent C stated:

*“Having examined the circumstances, and taken into account independent witness accounts I am satisfied that the female Police Officer's actions were appropriate in the circumstances.”*

The force advised the complainer in this letter that because a report relating to the complainer had been submitted to the Area Procurator Fiscal (APF), it could not provide a response at that time in relation to Complaint 3.

Superintendent C emailed Superintendent K on 19 April 2007 to advise that the complainer had telephoned the force that day regarding his complaints about the police. This correspondence stated that the complainer advised Superintendent C that he had been informed that no criminal proceedings were being taken against him in relation to the incident. It is also noted that the complainer raised Complaint 7 during this telephone call. Superintendent C maintained that she provided advice to the complainer regarding how to pursue his complaints about the police and noted that the complainer intended to proceed through a solicitor.

A file note made by Superintendent K on 27 June 2007 stated that the complainer had been in contact to advise that he no longer intended to pursue his complaints through a solicitor. Superintendent K noted that the procedure for referring criminal allegations to the APF was explained to the complainer and an appointment for him to meet with Inspector L was arranged for 28 June 2007. An additional statement was taken from the complainer by Inspector L on 28 June 2007. This raised Complaints 2, 4, 5 and 6 whilst reiterating Complaints 3 and 7. The complainer maintained in this statement that he was satisfied with the force response to Complaint 1.

On 14 August 2007, an initial report was submitted to the APF regarding the criminal allegations made by the complainer against Constable E and Sergeant F. The alleged offence detailed was that the officers had behaved in an uncivil and aggressive manner towards the complainer. A copy of Inspector B's report and copies of the two statements made by the complainer, containing further criminal allegations, were also provided to the APF at this time. On 22 August 2007, the APF advised the force by letter that the allegation was not one from which it could be reasonably inferred that a police officer had committed a criminal offence and that no further action was to be taken.

Following the decision of the APF, the force proceeded with a review of the complaints about the police in terms of misconduct regulations. A declaration signed by Inspector L on 12 September 2007 confirmed that he had been appointed as the investigating officer by the Deputy Chief Constable in relation to the matter. During the course of the subsequent enquiry, Inspector L obtained additional statements in relation to the complaint about the police from Sergeant F and Constables D, E and G. Statements were also noted from a further two members of the public who had witnessed the events of 7 December 2006.

An enquiry report dated 5 December 2007 was submitted to the Deputy Chief Constable by Inspector L. Inspector L concluded that there was insufficient evidence to substantiate Complaint 3 and recommended that no action was taken against Sergeant F. This recommendation was agreed by Chief Inspector M and Superintendent N.

Superintendent N wrote to the complainer on 14 January 2008. Superintendent N advised the complainer that as his complaint inferred criminal behaviour on the part

of Sergeant F, a report had been submitted to the APF. As the APF determined that there was no criminal offence committed, the matter was reviewed at the Deputy Chief Constable's instruction as a misconduct issue. In response to Complaints 1 and 3 Superintendent N stated:

*"Having considered the detailed report in terms of the Police (Conduct) Scotland Regulations 1996 and reviewed the circumstances of your complaint he [Deputy Chief Constable] has found that there is insufficient evidence to substantiate any misconduct on the part of the officers."*

The complainer responded to this letter in writing on 17 January 2008 expressing his dissatisfaction with the quality of the response issued by the force. In this correspondence the complainer raised Complaint 8 and reiterated Complaints 5, 6 and 7. A copy of this letter was sent to the Chief Constable with a covering letter dated 22 January 2008 reiterating Complaint 7.

The force responded to the complainer's letter on 31 January 2008. In this correspondence Superintendent N apologised to the complainer for the failure to address the delay or provide an explanation regarding the process or the outcome of the complaint investigation in his previous letter of 14 January 2008.

The force provided a detailed explanation of the enquiry process and addressed a number of the complaints raised. In relation to Complaint 1, Superintendent N referred to Superintendent C's letter of response to the complainer dated 5 January 2007.

In response to Complaint 3, Superintendent N stated:

*"...Having fully considered the outcome of the investigation it was concluded that there was insufficient corroborative evidence to substantiate any misconduct on the part of the officer."*

*I do appreciate your disappointment at this decision but you should not conclude that I disbelieve your version of events or that I consider the events you described did not take place..."*

In relation to Complaint 5 the force offered an apology:

*"...Whilst I accept [Inspector B's] reason for delaying his visit was to allow the officers to complete their enquiries, which included cautioning and charging you, is reasonable I do accept that an explanation should have been provided to you for the delay and again I must apologise for this."*

With reference to Complaint 6, Superintendent N advised:

*"...Inspector [B] did request a review to be undertaken of the cameras covering the locus of the incident. Unfortunately it is reported that there were technical difficulties with the CCTV system in [local town] at that time and no recordings were available of the incident. I appreciate that this will not be a satisfactory*

*position for you but regrettably that is the facts and I can assure you that I too am disappointed by this outcome.”*

A further apology was made to the complainer by the force in relation to the length of time taken to investigate the complaints about the police detailed in Complaint 8:

*“.....the officer involved in your case went off on sick leave and did not return until 17 November 2007. As a result a significant delay was encountered in the investigation commencing. In such circumstances it would be my expectation that the enquiry officer would keep the complainer advised of such a delay in the enquiry but regrettably this did not happen. I have spoken with Inspector L in connection with this point and apologise to you now for this omission.”*

The letter concluded:

*“In conclusion I fully acknowledge that errors have been made in the administration processes concerning your complaint.....I must once again sincerely apologise to you for them. In addition I can advise that as a consequence of your disappointing experience I have reinforced our processes to prevent any repetition.”*

The complainer wrote to the force again on 14 February 2008 reiterating Complaint 7. A copy of this letter was sent to the Deputy Chief Constable with a covering letter also dated 14 February 2008 requesting a response to Complaint 7.

A letter from Superintendent N to my office dated 5 March 2008 stated that the force was in telephone contact with the complainer on 3 March 2008 and advised him that the force would not be considering any further action with regard to this matter until the PCCS complaint handling review had been published.

From the information available to my office, the complainer does not appear to have received a response from Tayside Police in relation to Complaints 2 or 4.

## **5. PCCS review**

A telephone call was received from the complainer on 17 May 2007 regarding his complaints about the police. The complainer was asked to complete an application for review form which was received on 7 June 2007 together with other relevant information.

On 22 June 2007, my office asked Tayside Police to provide the relevant case papers by 4 July 2007. A letter was received from the Deputy Chief Constable on 4 July 2007 stating that the force enquiry was not yet complete and that further contact would be made with my office on completion of the investigation.

My office advised the complainer that the case would be placed on hold until Tayside Police had completed its enquiries.

A letter was received from the complainer on 9 November 2007 advising that he had not received a response from the force in relation to his complaints about the police. On 14 November 2007, my office asked the force to confirm whether the investigation into the complaints was now complete. A response was received from Superintendent N dated 22 November 2007 stating that the matter had not yet been concluded and that the papers would be forwarded as requested when they became available.

On 15 January 2008 my office received confirmation from the force that its investigation had now been concluded. On 4 February 2008 the complainer confirmed that he wished my office to conduct a complaint handling review. A letter detailing the complainer's concerns together with additional relevant information was received by my office on 5 February 2008.

The police files for this case were received by my office on 7 February 2008. On 10 March 2008 the force provided copies of additional letters received from the complainer.

My office contacted Tayside Police on 7 July 2008 to request a copy of additional relevant information in relation to this complaint about the police which was received on 8 July 2008.

The complainer was updated on the progress of his complaint every 28 days in accordance with the PCCS published standards of service.

## **6. Consideration**

### **Complaint 1 – That a police officer shouted at Mr A.**

The complainer is of the view that Constable E exacerbated the situation on 7 December 2006 by shouting at Mr A and expressed his concern in his statement of 18 December 2006.

Superintendent C originally responded to this complaint in her letter of 5 January 2007 at which time she stated:

*“Having examined the circumstances, and taken into account the independent witness accounts I am satisfied that the female Police Officer’s actions were appropriate in the circumstances.”*

As part of the force's continuing investigation, an additional statement was taken from the complainer on 28 June 2007 in which he stated:

*“I am content with the response from Superintendent [C] that the actions of the female police officer has been considered fully and I regard this aspect as closed.”*

In light of the fact that the complainer advised the force that he was content with the outcome of the original investigation in respect of this complaint, I am satisfied that the issue has been addressed.

**Complaint 2 – That the complainer’s personal details were not recorded by a police officer at the scene.**

It is clear that the complainer has repeatedly made reference to his attempt to provide his details to a police officer, before being told to move on by a second officer without the first officer having the opportunity to note his details. It would appear in the complainer’s letter of 8 December 2006 and statement of 18 December 2006 that reference to this complaint could have been interpreted by the force as additional information surrounding the event. The statement from the complainer dated 28 June 2007 is more explicit with reference to this issue. From the information available to me, Complaint 2 does not appear to have been identified nor addressed by the force as a complaint.

**Complaint 3 – That a police officer behaved aggressively towards the complainer.**

The complainer first made the force aware of this issue in the letter supplied to Inspector B during their meeting on 8 December 2006. The complainer reiterated this complaint in his statement of 18 December 2006.

During the enquiry carried out by Inspector B, statements were taken from the complainer, Sergeant F, police officers and two members of the public who were present at the time the incident took place. The report prepared by Inspector B noted that there was no CCTV footage available for review for this incident due to a technical fault. Superintendent C advised the complainer in her letter of 5 January 2007 that she was unable to comment further with regard to this complaint as a report had been submitted to the APF in relation to the complainer as a result of the incident. Superintendent C also stated that the complainer’s position on this issue had been noted.

Inspector L was appointed to investigate this complaint and noted an additional statement from the complainer on 28 June 2007. It was determined by the force that this was a criminal allegation and the matter was reported to the APF with a copy of Inspector B’s report on 15 August 2007. The APF advised the force in a letter dated 22 August 2007 that the complaint did not reasonably infer criminal behaviour on the part of a police officer and that no action would be taken. Following this outcome, the force proceeded with an investigation of this complaint on a misconduct basis. During the course of this investigation Inspector L obtained supplementary statements from the complainer; Sergeant F and Constables D, E and G. Statements were also noted from Mr A and two further witnesses to the events of 7 December 2006 in addition to those already obtained by Inspector B.

A detailed report dated 5 December 2007 was prepared by Inspector L in relation to this complaint and submitted to the Deputy Chief Constable for consideration. In a

letter to the complainer dated 14 January 2008, Superintendent N advised that there was insufficient evidence to substantiate the complaint.

The complainer expressed his dissatisfaction with this outcome in letters to Superintendent N and the Chief Constable dated 17 and 22 January 2008 respectively. In his letter of 31 January 2008, Superintendent N apologised to the complainer for the brief response to this complaint in his previous correspondence and acknowledged that it was inappropriate given the delay in the investigation. In this correspondence Superintendent N provided a detailed explanation of the investigation process and addressed concerns that the complainer had in relation to this particular complaint. Superintendent N also reassured the complainer that details of the complaint about Sergeant F would be retained on record for future reference by the Deputy Chief Constable as required.

The force has acknowledged that the initial response provided to the complainer was not suitable in the circumstances and had sought to remedy this matter. I am of the view that Tayside Police has investigated this matter thoroughly and addressed the complaint.

**Complaint 4 – That Inspector B’s attitude during a meeting with the complainer was defensive.**

The complainer stated in his application to the PCCS that Inspector B was exceptionally defensive during their meeting on 8 December 2006. The matter was brought to the attention of the force in the complainer’s statement of 28 June 2007. From the information available to me, it appears that this issue has not yet been addressed by Tayside Police.

**Complaint 5 – That Inspector B did not honour an agreement to contact the complainer.**

In his statement provided to Tayside Police on 28 June 2007, the complainer raised the issue that Inspector B failed to contact him by 13 December 2006 as agreed during their meeting on 8 December 2006.

On 16 December 2006 two police officers attended the complainer’s home and charged him with an offence related to the incident on 7 December 2006. The complainer asked the attending officers why Inspector B had not contacted him as advised and was informed that Inspector B would be in touch later that day. The complainer stated that Inspector B called at his home on 18 December 2006.

In the force response dated 31 January 2008, Superintendent N advised that the delay was caused by the fact that the complainer was to be charged in connection with his actions on 7 December 2006. The force maintained that this reason for delay was reasonable. However, Superintendent N stated:

*“I do accept that an explanation should have been provided to you for the delay and again I must apologise for this.”*

The complainer acknowledged that the force had recognised inadequacies in the complaint handling of this case in his letter to Superintendent N dated 14 February 2008.

**Complaint 6 – That Inspector B did not update the complainer in relation to CCTV footage.**

The complainer asserted in his statement of 28 June 2007 that while Inspector B was noting his original statement on 18 December 2006, the matter of CCTV coverage of the incident was discussed. The complainer stated that Inspector B advised him that the matter would be looked into and that he would update the complainer. However, the complainer maintains that no update was received.

The report prepared by Inspector B regarding the complainer's complaints about the police made reference to CCTV footage of the area where the incident occurred. Inspector B reported that a CCTV review was arranged but that due to technical difficulties with the system on the day in question, there was no recording available of the incident.

In his letter to the complainer of 31 January 2008, Superintendent N informed the complainer that no CCTV footage had been retained and the reasons why. However, no direct response appears to have been provided to the complainer regarding the complaint that Inspector B failed to provide the complainer with an update.

**Complaint 7 – That the complainer was charged by the force in an attempt to discredit him.**

The complainer is of the view that the force did not take action to charge him in relation to events of 7 December 2006 until it became apparent that he intended to make a complaint about the police. In his statement of 28 June 2007 the complainer stated that that the APF had advised him that no proceedings were being taken in relation to this charge. The complainer asserted that one or more police officers fabricated the charge against him.

As Complaint 7 infers criminal behaviour on the part of Tayside Police, this allegation falls outside the remit of the Police Complaints Commissioner for Scotland, as defined within the Police, Public Order and Criminal Justice (Scotland) Act 2006, which states that a relevant complaint in relation to the Commissioner does not include *“a statement which consists of or includes an allegation of an act or omission which constitutes a crime.”*

**Complaint 8 – That the length of time taken by Tayside Police to investigate the complainer’s complaint was not acceptable.**

The complainer brought this matter to the attention of the force in a letter dated 17 January 2008.

In the force’s letter dated 31 January 2008, Superintendent N sought to explain in detail the reason for the delay in this case. Superintendent N noted that there was no contact with the complainer following the letter from Superintendent C dated 5 January 2007 until 19 April 2007 at which time the complainer advised the force that he would be proceeding through a solicitor. The force explained that it was awaiting contact from the complainer’s solicitor at this time and was unaware that he was proceeding with the complaint about the police through other channels until a letter was received from my office on 22 June 2007. At this time the enquiry was continued and a statement was noted from the complainer on 28 June 2007. As referred to in Complaint 3, a report was sent to the APF regarding an alleged criminal offence on the part of Constable E and Sergeant F and the force was advised that there were to be no proceedings in a letter from the APF dated 22 August 2007.

Superintendent N acknowledged that the complainer was not kept adequately updated throughout the investigation into his complaints about the police. An apology was provided as the complainer was never informed that the misconduct enquiry involving Sergeant F was delayed due to sick leave. It was noted that that Inspector L had been spoken to regarding this matter.

Tayside Police Professional Standards Department guidance on complaints about the police states that a preliminary report should be submitted by the enquiry officer within 14 days. In this case, after the recommencement of the force’s investigations, a report was not submitted until 5 December 2007, some six months after the case was reopened.

**Complaint 9 – That it was not appropriate for Superintendent C to base her decision on Inspector B’s report**

The complainer raised this matter with my office in a letter dated 28 January 2008. There is no evidence in the papers supplied to my office by Tayside Police or the complainer to indicate that this complaint has been referred to the force for its consideration. The PCCS reviews the manner in which the force has handled a complaint about the police and therefore can only consider complaints that have been made to the force in the first instance. Accordingly, this complaint has not formed part of my review.

**Other matters arising from this review:**

I note that Tayside Police acknowledge that there have been errors in the administration of these complaints about the police and that the force has identified learning points from them. In his letter to the complainer of 31 January 2008

Superintendent N stated that as a consequence of the complainer's experience, the force's processes have been improved.

In the course of conducting this complaint handling review, an issue regarding the recording of complaints about the police has come to my attention. On 11 November 2008, the force confirmed to my office that Complaints 3 and 7 were referred to the APF on 14 August 2007. At this time both the complainer's statements were provided to the APF together with Inspector B's initial report under the cover of a Tayside Police – Professional Standards Department Intimation of Complaint Against the Police form. On this form, the force recorded the complaint as "*incivility*" and that the complainer alleged that "*officers were uncivil towards him and dealt with him aggressively*". There is no reference to Complaint 7 on any CAP form nor on the form sent to the APF. From the information available to my office, it is unclear whether the force has recorded Complaint 7 as a complaint about the police.

## **7. Conclusion**

### **Complaint 1 – That a police officer shouted at Mr A.**

In light of the fact that the complainer advised the force that he was content with its response to this complaint, **I do not uphold this complaint.**

### **Complaint 2 – That the complainer's personal details were not recorded by a police officer at the scene.**

The complainer has made the force aware of his dissatisfaction regarding this matter on several occasions. However, the matter does not appear to have been addressed by the force. As such, **I now recommend that Tayside Police consider this complaint and respond to the complainer.**

### **Complaint 3 – That a police officer behaved aggressively towards the complainer.**

I am of the view that Tayside Police has investigated the matter thoroughly. The force has acknowledged that the initial response provided to the complainer was not appropriate in the circumstances and has now communicated its conclusions in detail. Therefore, **I do not uphold this complaint.**

### **Complaint 4 – That Inspector B's attitude during a meeting with the complainer was defensive.**

From the information available to me, the force has not considered this specific complaint. As such **I recommend that Tayside Police now consider this complaint and respond to the complainer.**

**Complaint 5 – That Inspector B did not honour an agreement to contact the complainer.**

Tayside Police has acknowledged its failings with regard to this complaint and advised the complainer that it has improved its practices in respect of the administration of complaints. In light of the fact that the force issued an apology to the complainer on 31 January 2008, **I do not uphold this complaint.**

**Complaint 6 – That Inspector B did not update the complainer in relation to CCTV footage.**

The force has provided the complainer with an explanation of why CCTV footage was unavailable for this incident. However, I am of the view that the complainer has not been provided with a response to the specific issue of Inspector B's failure to update the complainer. **I recommend that Tayside Police responds to the complainer in relation to this complaint.**

**Complaint 7 – That the complainer was charged by the force in an attempt to discredit him.**

This complaint infers criminal behaviour on the part of the force. Such allegations fall outside the remit of the Police Complaints Commissioner, as defined within the Police, Public Order and Criminal Justice (Scotland) Act 2006 which states that a relevant complaint in relation to the Commissioner does not include "*a statement which consists of or includes an allegation of an act or omission which constitutes a crime.*" As such this does not form part of this complaint handling review. Complaints of a criminal nature continue to be considered under separate procedures by the Crown Office and Procurator Fiscal Service.

**Complaint 8 – That the length of time taken by Tayside Police to investigate the complainer's complaint was not acceptable.**

The force has acknowledged its failing in respect of this complaint and has advised the complainer that it has reviewed its procedures to avoid this occurring in the future. In light of the fact that the force provided the complainer with an appropriate apology, **no further action is recommended** in relation to this particular complaint. However, I am of the view that the force should have provided the complainer with updates on the progress of the investigation once the enquiry process was recommenced in June 2007. As such, **I recommend that Tayside Police satisfies itself that complainers are now regularly updated on the status of their complaints.**

**Complaint 9 – That it was not appropriate for Superintendent C to base her decision on Inspector B’s report.**

From the information available to me this complaint has not yet been made to the force. Should the complainer wish to have this complaint addressed, **I recommend that he should in the first instance make this complaint to Tayside Police.**

**Other matters arising from this review:**

As Commissioner, I am concerned with the recording of all complaints about the police made in Scotland. It is not clear from the information provided to my office that all the complainer’s complaints, including Complaint 7, have been recorded by Tayside Police. As such, **I recommend that the force satisfies itself that all complaints, including Complaint 7, have been accurately recorded as complaints about the police.**

Jim Martin  
Police Complaints Commissioner for Scotland  
November 2008