

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

Lothian and Borders Police Force

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

November 2008

Case reference: PCCS/0811/00198/PF-LB

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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 Lothian and Borders Police. The complaints relate to two separate incidents, on 20 November 2006 and 24 November 2006 respectively, that resulted in three reports being submitted to the Procurator Fiscal.

Complaint 1 – That the complainer was warned that he would be charged with breach of the peace;

Complaint 2 – That the complainer was charged at all;

Complaint 3 – That the complainer was charged with assault and not with breach of the peace as he had been warned;

Complaint 4 – That it took so long for the charges to be brought;

Complaint 5 – That the reporting officer gave a one sided version of events and did not accurately report the incidents to the Procurator Fiscal;

Complaint 6 – That all of the statements taken were not included or accurately reported;

Complaint 7 – That Mr X was not charged with vandalism although he admitted it;

Complaint 8 – That the complainer did not receive a response to his letter of 25 November 2006;

Complaint 9 – That the responses to his complaints were not given in good time;

Complaint 10 – That the officer the complainer complained about was initially in charge of his complaint;

Complaint 11 – That Inspector J was threatening to the complainer;

Complaint 12 – That Inspector J said that matters were resolved when they were not;

Complaint 13 – That Inspector J's notebook did not accurately reflect the complainer's position and was open to interpretation;

Complaint 14(a) – That Inspector J told the complainer he would try to influence the decision of the Procurator Fiscal in his favour;

14(b) – That he was later told that the decision to proceed with a case was solely at the discretion of the Procurator Fiscal; and

14(c) – That Inspector J met with the Procurator Fiscal and stated that he had given the complainer advice when he had not.

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 20 November 2006 the complainer and his colleague were travelling to work in a van. On driving near to a local school the complainer saw Mr X Junior assisting his children to cross the road. As the complainer drove past, Mr X Junior's hand hit the wing mirror on the complainer's van. The complainer got out of his van and an argument ensued with Mr X Junior. Both the complainer and Mr X Junior stated that physical contact occurred between them before the complainer returned to his van and drove off.

The complainer later reported the matter to the police and stated that Mr X Junior had assaulted him. Statements were taken from both the complainer and Mr X Junior. Mr X Junior then reported to the police that the complainer had assaulted him.

On 24 November 2006 a second incident occurred when Mr X Junior's relative confronted the complainer at his workshop about the first incident. Mr X Senior approached one of the complainer's employees and asked for the complainer by name. When the employee pointed him out, Mr X Senior walked up to the complainer and allegedly assaulted him. A struggle ensued and the complainer's relative and one of his employees wrestled Mr X Senior to the ground, where he was held until the police arrived.

On 25 November 2006, the complainer wrote his first letter of complaint to Lothian and Borders Police about the way both incidents were dealt with by the force. Inspector J was then allocated the complainer's complaints and attempted to resolve the matter at local level.

4. Force internal handling

Complaint 1 – That the complainer was warned that he would be charged with breach of the peace.

The complainer wrote to the force on 25 November 2006 complaining that after reporting the initial incident to the police, it was later suggested that he would be charged with breach of the peace. He sought an explanation because he could not understand how he could be accused of causing a breach of the peace when he was the person who had reported the incident to the police.

The complainer's relative referred in his statement dated 24 April 2007, to a meeting with Inspector J "*sometime in December, about two weeks after [the complainer] wrote*". Inspector J maintained in his statement dated 15 May 2007 that during this meeting, there was a full discussion of the points raised in the complainer's letter, and that he was satisfied that no complaint was being made against any officer or the police in general.

Inspector K was appointed Investigating Officer in February 2007 and prepared a report dated June 2007. In this report he repeated comments made in Inspector J's statement regarding the complaints about the police that the issues raised in the complainer's letter related mainly to the understanding of police procedures. It was also noted that after being charged in relation to the initial incident by Constable D on 6 February 2007, the complainer again complained to Inspector J in a letter dated 8 January 2007. This resulted in a further meeting on 11 January 2007 between Inspector J and the complainer when a "*full and frank discussion*" took place regarding the issues contained in the complainer's letter. It was noted by Inspector K, that Inspector J had explained complaint procedures to the complainer at that time and noted a statement of conciliation from the complainer.

The Deputy Chief Constable, in his letter to the complainer dated 27 July 2007, referred to regular contact between the complainer and Inspector J regarding these incidents, and to the meeting on 11 January 2007. He referred to the complainer having signed the Inspector's notebook to the effect that he was happy to resolve an unspecified complaint about Constable D. There is no further reference specifically to Complaint 1.

Complaint 2 – That the complainer was charged at all; and

Complaint 3 – That the complainer was charged with assault and not with breach of the peace as he had been warned.

Inspector J confirmed in his statement that on 7 January 2007, the complainer telephoned him to complain he had been charged with an offence in relation to the first incident on 20 November 2006. Inspector J stated that he "*explained the procedures leading to this, which he appeared to accept*".

In his second letter to the force dated 8 January 2007, the complainer expressed his dissatisfaction that he was charged with an assault when he was originally informed that he would be charged with breach of the peace. He requested an explanation for the change to the charge.

Inspector J's statement referred to the contents of the letter being discussed in full at the meeting of 11 January 2007 and as a result the complainer wanted "a formal complaint recorded in relation to his dealings with Constable D". No specific reference was made to Complaints 2 and 3.

Throughout the investigation into the complainer's complaints there appears to be no further reference to Complaints 2 and 3 by either the complainer or the force.

Complaint 4 – That it took so long for the charges to be brought.

The complainer in his letter to the force dated 8 January 2007, included the complaint that on 6 January 2007 he was charged with an offence in relation to the incident on 20 November 2006. Inspector J maintained in his statement that the contents of the letter were discussed during a meeting with the complainer on 11 January 2007. It is unclear in what detail Complaint 4 was discussed during the meeting, as there was no specific reference to it in Inspector J's statement.

In his statement of 7 March 2007, the complainer complained again about the time taken to charge him.

Inspector K's report made reference to the complainer's telephone call with Inspector J on 7 January 2007, in which he expressed dissatisfaction regarding the fact that he had been charged. Inspector K noted that Inspector J explained procedures to the complainer and that the complainer had been happy with this.

In his letter of response to the complainer dated 27 July 2007 the Deputy Chief Constable addressed this complaint stating that "*further enquiry required to be undertaken*". Also, due to the Christmas and New Year holidays, the extra duties and annual leave of the officer involved meant that the time between the incident and the complainer being charged "*was not unreasonable*".

Complaint 5 – That the reporting officer gave a one sided version of events and did not accurately report the incidents to the Procurator Fiscal; and

Complaint 6 – That all of the statements taken were not included or accurately reported.

In the complainer's initial letter dated 25 November 2006, he stated that he believed the force was attempting to take no action regarding the first incident and requested an update regarding this. He also referred to a conversation with Constable E regarding the incident on 24 November 2006. During the call the complainer asserted that he had been informed that Mr X Senior was charged with one offence of assault, and that there were to be no charges in relation to the injuries the

complainer's relative and employee alleged they had sustained. Nor was there to be any charge in relation to damage allegedly caused at the time of the incident.

The complainer stated that he could not understand this course of action because the statements of the complainer and his employees all referred to damage and injury caused by the attack.

In his letter dated 8 January 2007 the complainer provided more detail regarding his complaints, that the officer (Constable D) who was dealing with the first incident of 20 November 2006, had a one sided and biased opinion towards him. Inspector J met with the complainer in December 2006 and on 11 January 2007. In his statement of 15 May 2007, Inspector J asserted that following the meeting with the complainer and his relative, he informed Constable D of the complainer's concerns regarding the investigation of the incident on 20 November 2006. He also stated that he provided Constable E with additional information regarding the injuries sustained and damage caused during the incident on 24 November 2006. Inspector J noted that at that time he was fully satisfied that the matter had been appropriately handled.

The complainer telephoned the force again on 20 February 2007, expressing his disappointment with the force because of a letter his solicitor had received from the Procurator Fiscal (PF) dated 11 February 2007 regarding the incidents.

Following this call, the force's Complaints and Conduct Department allocated the complainer's complaints to Inspector K on 26 February 2007. The following day, the force wrote to the complainer to inform him that an independent senior officer had been appointed to investigate his complaint.

The complainer wrote to the force again on 5 March 2007 and reiterated his complaints about the police regarding both incidents. In relation to the first incident, the complainer enquired whether it was possible to view the police report submitted to the Procurator Fiscal, as he had concerns regarding the information that may have been submitted.

In relation to the second incident, the complainer referred to the decision of the Procurator Fiscal to take no proceedings against Mr X Senior. He also stated that he did not believe the Procurator Fiscal would have taken this decision if all the information contained in the statements had been included in the report, or had the Procurator Fiscal been aware that Mr X Senior had admitted the assault.

Inspector K met with the complainer to discuss the outstanding complaints and noted a statement from him on 7 March 2007. In this statement the complainer sought confirmation in relation to both incidents that, "*the notebook entries taken by the reporting officers PC's [D] and [E] match what was contained in the police report to the PF*".

The officers complained about were served with investigation forms at the beginning of April 2007. Inspector K then obtained statements from Constable E (who reported the second incident) on 13 April, Constable D (who reported the first incident) on 14 April, the complainer's relative (who was present at the second incident) on 24 April,

Inspector J (who initially looked into the complainer's complaints) on 15 May, Constable G (who attended the second incident and noted a statement from the complainer's relative) on 16 May, and Constable F (who attended the second incident and noted a statement from the complainer) on 17 May.

In relation to the incident on 20 November 2006, Inspector K stated that he had examined the notebook extracts of Constable D and Constable H which contained the statements of the complainer, Mr X and two other witnesses. He noted that there were no independent witnesses. In his conclusion, Inspector K stated that Constable D followed the correct course of action by reporting both the complainer and Mr X to the Procurator Fiscal, and that the allegation could not be substantiated. However, the actual issue raised by the complainer (that the statements were not accurately reflected in the report to the Procurator Fiscal) was not addressed in the conclusion of Inspector K's report.

In respect of the complaint relating to the incident on 24 November 2006, Inspector K stated that he examined the notebooks of the reporting officers (containing the witness statements) and all of the paperwork pertaining to the report submitted to the Procurator Fiscal regarding the allegation against Mr X Senior. He noted from Constable E's statement that:

"The report reflected the evidence that could be proved and that was corroborated. All other matters referred to by the complainer and his [relative] that were not mentioned in the main body of the report were referred to either in the medical evidence section or the remarks to the report".

Inspector K also noted that some of the information the complainer initially provided to the reporting officer regarding the complainer's injuries was incorrect. The enquiry report concluded that the reporting officer *"made all possible enquiry and submitted all available evidence, including medical, to the Procurator Fiscal"* and that the allegation could not be substantiated.

Inspector K concluded his investigation and the report was submitted to the Deputy Chief Constable in June 2007.

Following receipt of this report, the Deputy Chief Constable wrote to the complainer on 27 July 2007 conveying the findings of the force regarding the above complaints. In relation to the incident on 24 November 2006, he reiterated the response contained in Constable E's statement of 13 April 2007:

"The information supplied to the Procurator Fiscal reflected the evidence that could be proved and corroborated. All other matters referred to by yourself and your [relative] that were not mentioned in the main body of the report were referred to either in the medical evidence section or the remarks to the report." He then stated: *"This information has been confirmed by the investigating officer. In view of the foregoing I find this allegation unsubstantiated".*

In relation to the incident on 20 November 2006, the Deputy Chief Constable stated:

"The investigating officer has verified that all available evidence was reported to the

Procurator Fiscal for his consideration. In the circumstances and in the absence of any evidence to the contrary I find this allegation to be unsubstantiated.”

He advised the complainer that the police only act as an agent when reporting matters to the Procurator Fiscal and the decision whether to proceed or not is made solely by the Procurator Fiscal *“without any consultation with the police”*.

On 16 August 2007 the complainer wrote a detailed letter to the Deputy Chief Constable providing reasons why he was still dissatisfied with the response from the force. He stated that in relation to both incidents he had certain information he was aware of, that he believed had not been forwarded to the Procurator Fiscal, such as the witness statement of his employee and the fact that both Mr X Senior and Mr X Junior had admitted their involvement in the incidents. He maintained that he did not believe the Procurator Fiscal would have taken the decisions not to proceed had the full information been submitted.

A final letter from the Deputy Chief Constable dated 5 September 2007 reiterated the previous conclusions of the force to the complainer. He stated that there was no requirement to mention the employee in his letter to the complainer, as he had been included as a witness in the Procurator Fiscal’s report and reiterated that:

“...the police do not have any influence on the decision of the Procurator Fiscal with regard to cases that we have reported to him”. He also stated *“whether or not Mr X admitted the assault on [him] is not an issue for the police”*.

Complaint 7 – That Mr X was not charged with vandalism although he admitted it.

The complaint that Mr X Senior was not charged with vandalism in relation to the second incident was brought to the force in the complainer’s letter of 25 November 2006. Inspector J made reference in his statement of 15 May 2007, to having discussed the issues in the complainer’s letter with him at a meeting in December 2006. He stated that additional information was then passed onto Constable E.

The complaint that Mr X Junior was not charged with vandalism was made in the complainer’s letter dated 8 January 2007. Inspector J stated that he discussed the issues referred to in this letter at a meeting on 11 January 2007. Inspector J stated that after both meetings he was under the impression that all matters of concern to the complainer had been explained and resolved.

Constable E, who had investigated and reported the second incident to the Procurator Fiscal, was served with an investigation notice on 5 April 2007. On 13 April 2007 he provided a written statement regarding the complainer’s complaints. In this statement he asserted that it had been explained to the complainer at the time of the second incident that *“any damage caused was not strictly vandalism as it occurred when the accused was being ‘restrained’”*. There was no further mention of the complaint in relation to the second incident.

The complainer’s letter of 16 August 2007 again referred to the charge of vandalism regarding the first incident. Following this, the Deputy Chief Constable provided a

final response in his letter dated 5 September 2007. He explained in detail the definition of the offence of vandalism and why Mr X Junior was not charged with this offence in relation to the first incident. No further reference was made regarding why Mr X Senior was not charged.

Complaint 8 – That the complainer did not receive a response to his letter of 25 November 2006.

The complainer's letter to the force of 8 January 2007 stated that he had not received a response to his letter of 25 November 2006.

In his written statement of 7 March 2007, the complainer maintained that despite Inspector J's assurance at the previous meeting with him and his relative, that he would respond in writing to the points raised in his letter, he had not done so.

Following receipt of a conduct investigation form on 27 April 2007, Inspector J provided Inspector K with a statement on 15 May 2007. He maintained that he had a full and frank discussion with the complainer during a meeting of 11 January 2007, after which he was satisfied that all the issues of concern were resolved.

The enquiry officer concluded in his report of June 2007 that *"due to the absence of corroboration for Inspector J's' version of events the allegation [was] substantiated"*. The report recommended that Inspector J should receive corrective advice from his Divisional Commander in relation to this complaint.

Following this conclusion the Deputy Chief Constable wrote to the complainer on 27 July 2007 to convey the findings of the force. The complainer wrote in his letter of 16 August 2007 that he was not entirely happy with the outcome, stating that he believed counselling was inadequate, as Inspector J had *"failed his duties"*.

The Deputy Chief Constable responded in his final letter of 5 September 2007 stating that he believed the decision to provide Inspector J with corrective advice was appropriate and he would not enter into further discussion on the matter.

Complaint 9 – That the responses to his complaints were not given in good time.

The complainer included this complaint in his letter of 8 January 2007. He stated that he understood he should receive an acknowledgement of receipt of a complaint within 5 days, a full reply within 20 working days or a reason for any delay. An entry note between the dates of 25 November 2006 and 12 January 2007 in the force's sequence of events, stated there was a *"Delay in meeting due to courses and annual leave – [the complainer] fully notified by phone and no issues regarding this raised"*.

At a meeting on 11 January 2007 with the complainer and his relative, Inspector J stated that the contents of the complainer's letter of 8 January 2007 were discussed in detail, and he did not feel that there were any outstanding complaints about the police.

The complainer complained again in his letter of 5 March 2007 that Inspector J failed to deal with his complaints initially within set guidelines.

The letter to the complainer from the Deputy Chief Constable dated 27 July 2007 referred to the complaint that it took so long for the charges to be brought, stating there had been an initial delay due to annual leave commitments. However, there was no reference made to timescales or standards of service.

Complaint 10 – That the officer the complainer complained about was initially in charge of the his complaint.

On 7 January 2007 the complainer called the force and spoke with Inspector J. He stated that he was unhappy that Constable D charged him on 6 January 2007, with an offence relating to the incident of 20 November 2006. Inspector J explained procedures which he stated the complainer appeared to accept. The complainer then wrote to the force the next day complaining that the same officer he had complained about, Constable D, was continuing to deal with him. Inspector J met with the complainer on 11 January 2007 and discussed the issues referred to in the letter. He noted an official complaint against Constable D at this time and completed a Complaint Against the Police Form. The complainer signed a statement that he wished to conciliate his complaint on the basis that Constable D was spoken to by a senior officer. Inspector J stated that he believed they had resolved all of the issues.

In a further letter of complaint on 5 March 2007 and in his statement of 7 March 2007, the complainer repeated his concerns that the same officer he complained about had still been dealing with him.

This complaint was addressed by the Deputy Chief Constable in his letter of 27 July 2007. He stated it was not unreasonable for Constable D to complete the enquiry, as the complainer had not made a specific complaint about him until his letter of 8 January 2007. The complainer responded in his letter of 16 August 2007. He stated that he had clearly said in his initial letter dated 25 November 2006 that the investigation regarding the initial incident was biased against him.

The final letter from the Deputy Chief Constable dated 5 September 2007 stated that there was no mention in the complainer's letter of 25 November 2006 that he was making a specific complaint against Constable D, and it was therefore reasonable for him to continue with the enquiry. It was also noted that there appeared to be no complaint against Constable D until he charged the complainer on 6 January 2007.

Complaint 11 – That Inspector J was threatening to the complainer.

The complaint that Inspector J was threatening to the complainer was made to the force in the complainer's letter of 5 March 2007 and reiterated in his statement of 7 March 2007. He stated that during a recorded telephone call, Inspector J was intimidating, threatening and unprofessional. There is no further reference to this complaint.

Complaint 12 – That Inspector J said that matters were resolved when they were not; and

Complaint 13 – That Inspector J’s notebook did not accurately reflect the complainer’s position and was open to interpretation.

In his statement dated 7 March 2007 the complainer brought these complaints to the force. Inspector J was served with a conduct investigation form on 27 April 2007 and provided a statement to the Investigating Officer on 15 May 2007. He stated that after both meetings he had with the complainer he was satisfied that all the matters had been resolved and that both the complainer and his relative “*appeared very happy with the situation*”. Inspector J also referred to a short statement noted from the complainer to the effect that he wished to conciliate the matter in relation to Constable D, which the complainer signed in the presence of his relative. Inspector J sent an undated letter to the complainer confirming that he had spoken with the officer concerned.

The report by Inspector K dated June 2007 included reference to both Complaints 12 and 13. In his statement, Inspector J maintained that he was satisfied after the initial meeting in December 2006 that there was no complaint about the police. He also stated that the complainer had signed his notebook after the meeting of 11 January 2007, stating that he wished to conciliate his complaint about Constable D. In his report, Inspector K found complaint 12 to be unsubstantiated.

The letter by the Deputy Chief Constable to the complainer dated 27 July 2007 reiterated the findings of Inspector K to the complainer. The complainer responded in his letter dated 16 August 2007 stating he had already explained to Inspector K that what was written in Inspector J’s notebook was “*misinterpreted and was open to interpretation*”. The complainer stated that Inspector K and his colleague had agreed with this assertion at a previous meeting and that his witness (Mr Z) could verify this.

In a final response letter dated 5 September 2007, the Deputy Chief Constable stated:

“The entry in Inspector [J’s] notebook dated 11 January 2007, which you signed, clearly states ‘I wish to conciliate my complaint on the basis that the officer concerned is seen by a senior officer and my concerns are fully expressed to him.’ I am satisfied that the wording in Inspector [J’s] notebook is clear, unambiguous and is not open to interpretation.”

Complaint 14a) – That Inspector J told the complainer that he would try to influence the decision of the Procurator Fiscal in his favour;

14b) – That he was later told that the decision to proceed is solely at the discretion of the Procurator Fiscal; and

14c) – That Inspector J met with the Procurator Fiscal and stated that he had given the complainer advice when he had not.

The complainer brought this complaint to the force in his letter of 5 March 2007. This was following receipt of a letter from the Procurator Fiscal dated 11 February 2007, which made reference to advice purportedly given to the complainer by Inspector J.

The complainer telephoned Inspector J on 20 February 2007 stating that he was unhappy with the contents of the letter. In a letter dated 5 March 2007 he complained that although Inspector J had said he would try to influence the Procurator Fiscal on his behalf *"it appears that he has done the opposite"*.

Inspector K noted a statement from the complainer on 7 March 2007 in which he stated that *"The inference is that I did something incorrectly"*.

Although the Deputy Chief Constable's letter to the complainer dated 27 July 2007 did not make specific reference to this complaint, it did state that the police merely act as agents when reporting matters, and the decision to proceed lies with the Procurator Fiscal *"without any consultation with the police."*

In his letter dated 16 August 2007, the complainer responded to the Deputy Chief Constable. He again referred to the above Complaint 14. He stated the letter he received from the Procurator Fiscal clearly referred to communication between Inspector J and the Procurator Fiscal. He also disputed that Inspector J had given him any advice, as was stated in the letter from the Procurator Fiscal. The complainer maintained that as a result, he felt that the force may have influenced the decision of the Procurator Fiscal.

The final response from the Deputy Chief Constable on 5 September 2007 stated that *"the police merely report the facts which we did... to the Procurator Fiscal, who ultimately makes the decision whether or not to take proceedings"*.

5. PCCS review

A letter was received by my office from the complainer's solicitor on 9 November 2007. The complainer was asked to complete and sign an application for review form. The complainer's solicitor responded on 19 December 2007. My office contacted the complainer on 21 December 2007 and the completed application form was received on 8 January 2008.

My office asked Lothian and Borders Police to provide the relevant complaint case papers on 8 January 2008. The force contacted my office on 15 January regarding the complaint and supplied the required information on 8 February 2008.

On 29 October 2008, my office requested copies of statements contained in officers notebooks that the force may have previously typed. The force confirmed by letter dated 4 November 2008 that no such copies existed.

My office called the force on 13 November 2008 to request a copy of any Standard Operating Procedures or guidelines regarding Standard Prosecution Reports. This information was received by email to my office on the same day.

On 17 November 2008, my office asked the force for information regarding a leaflet that the complainer referred to, which outlined standards of service in respect of complaints. The force confirmed that it was unaware of such a leaflet.

The complainer was updated regularly on the progress of his complaint.

6. Consideration

Complaint 1 – That the complainer was warned he would be charged with breach of the peace;

Complaint 2 – That the complainer was charged at all; and

Complaint 3 – That the complainer was charged with assault and not with breach of the peace as he had been warned.

From the information available it is difficult to establish whether Complaints 1, 2 and 3 were actually treated as complaints about the police. Although the complainer mentioned Complaint 1 in his initial letter, he did not refer specifically to this complaint again. However, following on from this, Complaints 2 and 3 were made in his letter of 8 January 2007. It would appear that during both the meeting in December 2006 and the meeting in January 2007, the complaints made in the letters of 25 November 2006 and 8 January 2007 were discussed, and Inspector J was of the view that there were no issues outstanding. In his statement of 15 May 2007 he asserted that on concluding the meeting on 11 January 2007 both the complainer and his relative *“appeared very happy with the situation”*. I note that there appears to be no further reference to these complaints by either the complainer or the force.

It would have been helpful if any existing records of the meetings and telephone calls between Inspector J and the complainer had been made available to my office. However, as there is no information to the contrary it is assumed that the complaints were fully discussed and a satisfactory outcome was reached.

Complaint 4 – That it took so long for the charges to be brought.

It would appear that after the complainer made this complaint initially in January 2007, he remained dissatisfied with the response from the force, as he raised this complaint with the force again in his statement of 7 March 2007. Although the complaint was not noted on a Complaint Against the Police Form or dealt with by the Investigating Officer, a response was eventually given to the complainer by the Deputy Chief Constable in his letter of 27 July 2007. The Deputy Chief Constable acknowledged this complaint and provided a reasonable explanation to the complainer.

Although it is my view that this complaint may have been dealt with more quickly had it been noted initially as a complaint about the police, it is also my view that the Deputy Chief Constable’s explanation was an adequate response to this complaint.

Complaint 5 – That the reporting officer gave a one sided version of events and did not accurately report the incidents to the Procurator Fiscal; and

Complaint 6 – That all of the statements taken were not included or accurately reported.

It is evident from the Complaint Against the Police form that Complaint 5, in respect of the first incident, was originally considered by the force and it is clear that Inspector J believed he had resolved all of the complainer's issues after meeting with the complainer. However from the information available to my office, other than Inspector J's statement dated 15 May 2007, there appears to be no record of the precise issues discussed at the meeting with the complainer.

The complainer called the force on 20 February 2007 to complain that he remained dissatisfied in respect of the above complaints. The complainer's complaints were then allocated to Inspector K of the Complaints and Conduct Department for investigation. I note that the issues in Complaints 5 & 6 are interlinked and relate to the complainer's concern that the force did not submit accurate information to the Procurator Fiscal regarding both incidents.

Although it appears that Complaint 6 was considered by Inspector K, there seems to be no specific reference to Complaint 5 as a separate complaint in his investigation. However it is noted that in Inspector K's report and the Deputy Chief Constable's response to Complaint 6 dated 27 July 2007, there was reference to part of Complaint 5, namely that reports to the Procurator Fiscal were not accurate.

In relation to the first incident on 20 November 2006:

I note from the information available to me that Inspector K obtained a statement from Constable D, who noted witness statements and submitted reports to the Procurator Fiscal regarding the incident, but not from Constable H who also obtained witness statements. Inspector K stated that he had examined the notebooks of both Constable D and Constable H and that the extracts were included in the investigating officer's report to the Deputy Chief Constable. I also note that Inspector K made no comment as to whether all of the information was accurately included in Constable D's reports.

It is of concern that although Inspector K's conclusion regarding this complaint did not actually address the issue raised by the complainer, he was able to reach the conclusion that the allegation could not be substantiated.

From the information available to my office it would appear that both reports submitted regarding the first incident contained all the information provided by all the witnesses, whether corroborated or not. In my view, the outcome reached by Inspector K was correct, and the response communicated to the complainer by the Deputy Chief Constable regarding this incident was also correct when he stated that *"all available evidence was reported to the Procurator Fiscal for his consideration."*

It is also my view that had Inspector K's report encapsulated fully how he had reached his conclusion, it may have allowed the Deputy Chief Constable to provide

the complainer with a more comprehensive response about the information that was included in the reports submitted by Constable D.

In relation to the second incident on 24 November 2006:

I note that Inspector K obtained statements from Constable E, who noted witness statements and submitted a report to the Procurator Fiscal regarding the second incident, from Constable G and Constable F who also noted witness statements. Inspector K stated that he had examined the notebooks of the officers (containing the witness statements) and included extracts in his Investigating Officer's report. Again I note with concern that he made no comment in his conclusion about the accuracy of the information in Constable E's report, other than to state that Constable E submitted all available evidence including medical evidence, to the Procurator Fiscal, and that the allegation was not substantiated.

In his report, I note that Inspector K quoted extensively from the statement taken from Constable E, who had stated that the report reflected the evidence that could be proved and that was corroborated. He also stated that all other matters were referred to in either the medical evidence section or the remarks in the report. Constable E mentioned other information contained in the complainer's statement about the incident, but asserted that this was not corroborated.

It is difficult to understand how Inspector K reached the conclusion in his report that all available evidence had been submitted to the Procurator Fiscal. I note that his report clearly made reference to additional pertinent information that he acknowledged was not corroborated. From the information available to me it would appear that this information was not included in the report to the Procurator Fiscal.

The response from the Deputy Chief Constable reiterated the information contained in both Constable E's statement and Inspector K's report, namely that the information supplied to the Procurator Fiscal "*reflected the evidence that could be proved and was corroborated*". This response was contradicted by the Deputy Chief Constable's assertion in his letter, that all other matters referred to by the complainer and his relative were mentioned in other sections of the report to the Procurator Fiscal. This is of concern because from the information available, this does not appear to be the case.

Given the fact that the complaint regarding the first incident was investigated by the same senior officers in tandem with the complaint regarding the second incident, it is of concern that no comparison was made between the information provided to the Procurator Fiscal in the Standard Prosecution Reports. From the information provided to my office, the two reports submitted about the first incident indeed appeared to contain all available information whether or not it was corroborated, while the report about the second incident did not. A reasonable person might deduce from this that a lack of consistency exists in the force's approach to submitting reports to the Procurator Fiscal.

I note that the force's procedures in regard to submitting Standard Prosecution Reports state that "*the report should be submitted through the Officer's Sergeant to the Divisional Report Checker*" which should ensure some consistency in the

submission of reports. However, from the information available to my office, it is unclear whether this procedure was followed and I note that the Investigating Officer made no reference to this.

The guidance on police reports from the Crown Office and Procurator Fiscal Service (COPFS) and the Association of Chief Police Officers (ACPOS) as at September 2004 state *“There is a clear need for completeness, accuracy and reliability of the information contained in the report.”* In Lothian and Borders’ force procedures provided to my office, it is stated that *“as agents of the Lord Advocate [police officers] must ensure that all reports contain clear and accurate information”* and that the report should present *“pertinent information in a logical and accurate manner for consideration of the Procurator Fiscal”*. I am unable to locate, in the guidance, any mention that only corroborated evidence should be provided in a report. Therefore, it is my view that it would be difficult in this case to argue that the information provided in the witness statements was not pertinent information.

I am concerned that it would appear officers of Lothian and Borders Police, from a Constable to an Inspector in the Complaints and Conduct Department and finally to the Deputy Chief Constable, attempt to justify the omission of pertinent information that could have a bearing on the case, by stating the report to the Procurator Fiscal *“reflected the evidence that could be proved and was corroborated”*. It is my view that by applying such a filter to the information provided in the report, the need for completeness, accuracy and reliability, as set out in the COPFS and ACPOS guidelines, has gone unheeded. This, coupled with the incorrect assertion that all other matters referred to by the complainer were contained in some part of the report to the Procurator Fiscal is of serious concern. As a result, there is a risk that the Procurator Fiscal was not in possession of all available, relevant information on which to base his/her decision.

Taking all factors into account, including the possibility that this might represent a number of coincidental errors, I believe these complaints raise issues that may be indicative of a potentially serious systemic failure.

Complaint 7 – That Mr X was not charged with vandalism although he admitted it.

From the information available to my office it appears that the complaint about the second incident, made in the complainer’s initial letter, may have been resolved during the meeting with Inspector J in December 2006 and I note that the complaint was not referred to again by the complainer. Had notes of the meetings with Inspector J been available to my office, it would have clarified whether the complaint had actually been resolved at that time.

During his investigation into the complainer’s complaints about the police, Inspector K obtained a statement from Constable E on 13 April 2007 in relation to the second incident. Constable E stated that he had explained to the complainer that *“any damage caused was not strictly vandalism as it occurred when the accused was being ‘restrained’”*. I note that Inspector K made no reference to this complaint or the information in Constable E’s statement in his report.

I note that after the complainer made a similar complaint of vandalism regarding the first incident in his letter of 8 January 2007, Inspector J met with him for a second time. Inspector J stated during the investigation into the complaints, that he believed all of the issues in the letter had been resolved during this meeting. It appears from the information available to my office, that there were no notes of the meeting. It also appears that the complainer did not refer to this complaint again until his letter of 16 August 2007, after the letter of response from the Deputy Chief Constable about the force's investigation into his complaints about the police.

In my view, it may have been reasonable for the force to assume, based on the information provided by Inspector J, that these complaints were no longer an issue and did not require to be included in the investigation into the complainers complaints about the police. However, it is clear from his letter of August 2007, that the complainer was not of the opinion that the matter was resolved, particularly in relation to the first incident. Following the letter from the Deputy Chief Constable dated 27 July 2007 the complainer responded when he realised that the complaint had not been answered.

The final response on 5 September 2007 from the Deputy Chief Constable provided a definition of the offence of vandalism and in my view, gave a reasonable explanation why the charge could not be applied to the first incident.

From the information available to me, it appears that the complaint was never raised again regarding the second incident. In response to this complaint about the first incident, it is my view that the Deputy Chief Constable did provide the complainer with a clear explanation after he complained again in his letter of August 2007.

Complaint 8 – That the complainer did not receive a response to his letter of 25 November 2006.

This complaint was initially dealt with at local level by Inspector J, who stated that he met with the complainer and discussed the issues in his letter. I understand, from the information provided to my office, that Inspector J believed the complaints had been resolved. I note that no minutes of the meetings between the complainer and Inspector J were provided to my office.

It would appear that after Inspector K was allocated the complainer's complaints, the complainer reiterated the complaint that he did not receive a response to his initial letter. Inspector K in his report concluded that the complainer was justified, and recommended that corrective advice be given to Inspector J in relation to this matter. Although this information was conveyed to the complainer in the Deputy Chief Constable's letter of 27 July 2007, the complainer responded on 16 August 2007 to advise that he was not satisfied, suggesting that counselling was not adequate as Inspector J had *"failed in his duties"*.

I note that the Deputy Chief Constable responded to this in his final letter of 5 September 2007 stating that the decision was appropriate and he would not enter into further discussion on the matter.

It is my view that the force investigated this complaint about the police, reached a clear conclusion, and recommended that appropriate action be taken. I am also of the view that the final response from the Deputy Chief Constable was appropriate given the circumstances.

Complaint 9 – That the responses to his complaints were not given in good time.

In his letter of 8 January 2007 the complainer made reference to timescales that he understood the force should work to. From the information available to me, it appears that the force did not respond to this specifically. I note that the force did acknowledge a delay in the file notes between November 2006 and 12 January 2007 stating *“Delay in meeting due to courses and annual leave – [the complainer] fully notified by phone and no issues regarding this raised”*. However there appears to be no further reference to any delay.

From the information available to me, it is my view the force did not adhere to its Standard Operating Procedures in relation to complaints about the police. These state that in the event of delays, *“Investigating Officers will be required to submit a memorandum or ‘E’ Mail to the Deputy Chief Constable if the investigation is not completed within 6 weeks and every four weeks thereafter until a report is furnished.”* I note that my office has not been provided with any such memorandum or email sent to the Deputy Chief Constable in relation to this issue.

While I understand that delays may at times be inevitable, it is important that complainers are regularly updated on the progress of their complaints. From the information provided to my office it appears that the complainer again referred to this complaint in his letter of 5 March 2007, yet there appears to be no further communication with the complainer until the letter of 27 July 2007, from the Deputy Chief Constable.

It may be that had the force updated the Deputy Chief Constable of any delay, as per its Standard Operating Procedure, this would have served as a reminder to also communicate with the complainer. It is therefore my view, that the force did not adhere to its complaint handling processes in respect of this complaint.

Complaint 10 – That the officer the complainer complained about was initially in charge of his complaint.

From the information available to me it appears that initially the force was of the view that this complaint had been resolved after Inspector J stated that he explained procedures to the complainer in a telephone call on 7 January 2007. However, the complainer confirmed the complaint in writing the next day. Again, the information suggests that Inspector J did not believe any issues remained outstanding following his meeting with the complainer on 11 January 2007. It was at this time the force recorded a complaint about Constable D on a Complaint About the Police form. I note that complaint 10 was not included on the form. It appears that after this meeting the complainer agreed to conciliate matters on the basis that Constable D was counselled by a superior officer.

In his letter to the complainer on 27 July 2007, the Deputy Chief Constable referred to the complaint and stated that *“At your earlier meeting with Inspector [J], when your letter of 25 November 2006 was discussed, you did not make a specific complaint about Constable [D] therefore it was not unreasonable for Constable [D] to complete the enquiry. You do not appear to have made a complaint against Constable [D] until after he had charged you on 6 January 2007”*.

I note that the final response from the force on 5 September 2007 reiterated that the complaint about Constable D was not made in the complainer’s letter of 25 November 2006 and stated that it was therefore not unreasonable that Constable D continued with the enquiry.

In my view the complainer’s letter dated 25 November 2006 was a letter of complaint. However, from the information provided to me it does not appear that any specific complaint about Constable D was made by the complainer until a telephone call on 7 January 2007. Therefore I am of the view that the response by the force was appropriate.

Complaint 11 – That Inspector J was threatening to the complainer.

The complainer brought this complaint to the force in his letter of 5 March 2007 and in his statement taken during a meeting with Inspector K on 7 March 2007. From the information available to me it does not appear that the force have investigated this complaint or furnished the complainer with a response.

Complaint 12 – That Inspector J said that matters were resolved when they were not; and

Complaint 13 – That Inspector J’s notebook did not accurately reflect the complainer’s position and was open to interpretation.

From the information available to me it appears that Inspector K investigated Complaint 12 and included the outcome in his report that the complaint was unsubstantiated. I note that he made reference to the statement recorded in Inspector J notebook but he did not address Complaint 13 in his investigation or subsequent report, despite having noted the complaint in the complainer’s statement dated 7 March 2007.

The Deputy Chief Constable’s letter of 27 July 2007 reiterated the findings of the investigating officer, stating that he understood the complainer had regular contact with Inspector J’s that culminated in a meeting when he signed Inspector J’s notebook to the effect that he was happy to resolve his complaint about Constable D.

I note that the complainer remained dissatisfied with the force’s response and in his letter dated 16 August 2007, he refuted the assertion that there had been regular contact with the Inspector. He also stated again that the notebook statement he signed was open to interpretation.

The final response from the Deputy Chief Constable quoted directly from the statement in Inspector J's notebook that was signed by the complainer following the meeting on 11 January 2007:

"I wish to conciliate my complaint on the basis that the officer concerned is seen by a senior officer and my concerns are fully expressed to him".

The Deputy Chief Constable then stated:

"I am satisfied that the wording in Inspector [J's] notebook is clear and unambiguous and is not open to interpretation".

It is my view that as the complainer's complaints were investigated, other issues arose that resulted in further complaints being brought to the force. It would also appear that previous complaints the force believed to be resolved were brought up again.

It is difficult to confirm from the information available to me, which of the complainer's issues were indeed resolved by Inspector J, as there appears to be no minutes of the meetings or notes of the telephone calls referred to. Nonetheless, it is my view from the information available to me, that Inspector J did believe that he had resolved the complainer's issues following the meetings in December 2006 and January 2007, that the force investigated Complaint 12 and communicated its response to the complainer.

It is my view that the statement in the Inspector's notebook does not identify exactly what the complaint about Constable D was. Unless the statement is cross referred to the Complaint Against the Police form, there is the potential for a complainer to challenge a statement of conciliation.

However, it is reassuring to note that in spite of this signed statement, the force did not dismiss the complaint to which the statement referred, once the complainer made the force aware that he did not believe it was resolved.

Complaint 14a) – That Inspector J told the complainer that he would try to influence the decision of the Procurator Fiscal in his favour;

14b) – That he was later told that the decision to proceed is solely at the discretion of the Procurator Fiscal; and

14c) – That Inspector J met with the Procurator Fiscal and stated that he had given the complainer advice when he had not.

From the information provided to me it appears that the letter dated 11 February 2007 from the Procurator Fiscal was the catalyst to the complainer making the complaints above. I note that although the complainer had stated these complaints in his letter dated 5 March 2007 and then referred to them again in his statement of 7 March 2007, Inspector K did not appear to note these as complaints about the police. However, it is noted that Inspector K appears to have made some reference to Complaint 14 in his report.

I note that in his letter of response to the complainer on 27 July 2007, the Deputy Chief Constable advised the complainer that the decision to proceed is taken by the Procurator Fiscal “*without any consultation with the police*”. In my view, this response was unfortunate given the fact that the letter dated 11 February 2007 appeared to indicate that Inspector J had in fact discussed a matter with the Procurator Fiscal. It is also of note that Inspector J, in his statement regarding the complaints about the police, stated that he contacted the Procurator Fiscal to enquire about the outcome of the case against the complainer.

In my view, the final response from the Deputy Chief Constable did not address the complainer’s specific concern and merely reiterated that the decision to proceed with a criminal prosecution was ultimately made by the Procurator Fiscal.

From the information available to me, it would appear that the force did not investigate these complaints as complaints about the police. It is my view that it would have been appropriate to provide the complainer with a full explanation about the process of reporting matters to the Procurator Fiscal and any reason that the force may have in speaking with the Procurator Fiscal’s office during this process. I am also of the opinion that, given the circumstances relating to Complaint 6 above, that the complainer should have been given a more comprehensive explanation of any discussion that may or may not have taken place between Inspector J and the Procurator Fiscal.

7. Conclusion

Complaint 1 – That the complainer was warned he would be charged with breach of the peace;

Complaint 2 – That the complainer was charged at all; and

Complaint 3 – That the complainer was charged with assault and not with breach of the peace as he had been warned.

From the information provided, Complaints 1, 2 and 3 were discussed in meetings with Inspector J in December 2006 and January 2007 after which the issues were believed to be resolved. It would have been helpful if any existing records of the meetings and telephone calls between Inspector J and the complainer had been made available to my office. However, as there is no information to the contrary it is assumed that the complaints were fully discussed and a satisfactory outcome was reached and as such **I do not uphold these complaints.**

Complaint 4 – That it took so long for the charges to be brought.

Although it is my view that this complaint may have been dealt with more quickly had it been noted initially as a complaint about the police, it is also my view that the Deputy Chief Constable’s explanation was an adequate response to this complaint, and as such **I do not uphold this complaint.**

Complaint 5 – That the reporting officer gave a one sided version of events and did not accurately report the incidents to the Procurator Fiscal; and

Complaint 6 – That all of the statements taken were not included or accurately reported.

I am concerned that it would appear officers of Lothian and Borders Police, from a Constable to an Inspector in the Complaints and Conduct Department and finally to the Deputy Chief Constable, attempt to justify the omission of pertinent information that could have a bearing on the case by stating the report to the Procurator Fiscal “*reflected the evidence that could be proved and was corroborated*”. It is my view that by applying such a filter to the information provided in the report, the need for completeness, accuracy and reliability, as set out in the COPFS and ACPOS guidelines, has gone unheeded. This, coupled with the incorrect assertion that all other matters referred to by the complainer were contained in some part of the report to the Procurator Fiscal is of serious concern. As a result, there is a risk that the Procurator Fiscal was not in possession of all available, relevant information on which to base his/her decision.

Taking all factors into account, including the possibility that this might represent a number of coincidental errors, I believe these complaints raise issues that may be indicative of a potentially serious systemic failure. **I therefore uphold these complaints and recommend that Lothian & Borders Police satisfies itself that it is following the relevant guidelines relating to the reporting of information to the Procurator Fiscal. I have also drawn the general issues arising, along with the specifics of this case, to the attention of the Crown.**

Complaint 7 – That Mr X was not charged with vandalism although he admitted it.

In the absence of any information to the contrary, it is my view that it would have been reasonable for the force to assume, based on the information supplied by Inspector J, that these complaints were no longer an issue. However, had notes of the meetings been available, it may have helped the force clarify whether the complaints had been resolved at that time.

From the information available to me, it appears that the complaint was never raised again regarding the second incident. In response to this complaint about the first incident, it is my view that the Deputy Chief Constable did provide the complainer with a clear explanation after he complained again in his letter of August 2007. As such **I do not uphold this complaint.**

Complaint 8 – That the complainer did not receive a response to his letter of 25 November 2006.

It is my view that the force investigated this complaint about the police, reached a clear conclusion, and recommended appropriate action to be taken. I am also of the view that the final response from the Deputy Chief Constable was appropriate given the circumstances. Therefore, **I do not uphold this complaint.**

Complaint 9 – That the responses to his complaints were not given in good time.

Had the force updated the Deputy Chief Constable of any delay, as per its Standard Operating Procedure, this may have served as a reminder to also communicate with the complainer. It is my view that the force did not adhere to its complaint handling processes in respect of this complaint, and as such **I uphold this complaint.**

Complaint 10 – That the officer the complainer complained about was initially in charge of his complaint.

From the information available to me, it does not appear that any specific complaint about Constable D was made by the complainer until a telephone call on 7 January 2007. I am of the view that the response by the force was appropriate and as such **I do not uphold this complaint.**

Complaint 11 – That Inspector J was threatening to the complainer.

The complainer brought this complaint to the force in his letter of 5 March 2007 and in his statement taken during a meeting with Inspector K on 7 March 2007. From the information available to me, it does not appear that the force have investigated this complaint or furnished the complainer with a response. **I therefore recommend that Lothian and Borders Police now consider this complaint and respond to the complainer.**

Complaint 12 – That Inspector J said that matters were resolved when they were not; and

Complaint 13 – That Inspector J's notebook did not accurately reflect the complainer's position and was open to interpretation.

From the information available to me it appears that Inspector K considered Complaint 12 as a complaint about the police, investigated the matter and communicated the outcome to the Deputy Chief Constable in his report. I note that the force's outcome was then communicated to the complainer.

In relation to Complaint 13, it is my view that the statement in the Inspector's notebook does not identify exactly what the complaint about Constable D was. Unless the statement is cross referred to the Complaint Against the Police form, there is the potential for a complainer to challenge a statement of conciliation. This is a learning point for the force.

However, it is reassuring to note that despite this signed statement of conciliation, the force did not discount the complaint that the statement referred to once the complainer made the force aware that he did not believe it was resolved. I therefore **do not uphold these complaints.**

Complaint 14a) – That Inspector J told the complainer that he would try to influence the decision of the Procurator Fiscal in his favour;

14b) – That he was later told that the decision to proceed is solely at the discretion of the Procurator Fiscal; and

14c) – That Inspector J met with the Procurator Fiscal and stated that he had given you advice when he had not.

From the information available to me, it would appear that the force did not investigate these complaints as complaints about the police. It is my view that it would have been appropriate to provide the complainer with a full explanation about the process of reporting matters to the Procurator Fiscal and any reason that the force may have in speaking with the Procurator Fiscal's office during this process.

I am also of the opinion that given the circumstances relating to Complaint 6 above, the complainer should have been given a more comprehensive explanation of any discussion that may or may not have taken place between Inspector J and the Procurator Fiscal. Therefore for a sense of completeness, **I recommend that the force now provide an appropriate response to the complainer regarding these complaints.**

Other matters arising from this review:

I note from the information available to me that the Complaint Against the Police Form initially recorded only Complaint 5. The form was then completed at a later date when reference was made to allegations 1, 2, 3 and 4, not previously noted on the form. No other complaints about the police were noted on the form provided to my office. It is my view that such inconsistencies and omissions in recording complaints about the police make the complaint handling process more difficult, and can lead to misunderstandings. This is a learning point for Lothian and Borders Police.

Jim Martin
Police Complaints Commissioner for Scotland
November 2008