

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

Lothian and Borders Police

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

February 2009

Case reference: PCCS/0902/00288/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 complaints about Lothian and Borders Police. The complaints arise from events of 27 July 2007 when police officers stopped the complainer's Relative A whilst driving a vehicle as they suspected that there had been a contravention of the Road Traffic Act 1988.

Complaint 1 – That Relative A was stopped by the police without reasonable cause;

Complaint 2 – That the police officers that stopped Relative A's vehicle were aggressive and used foul language;

Complaint 3 – That the police officers that stopped Relative A's vehicle refused to provide identification when requested to do so;

Complaint 4 – That the keys for Relative A's vehicle were taken by the police officers without provision of an incident report form;

Complaint 5 – That there were no grounds to believe that Relative A was driving the vehicle without insurance;

Complaint 6 – That the force did not apply the Road Traffic Act 1988 correctly in relation to impounding the vehicle;

Complaint 7 – That a passenger in the vehicle was arrested without reasonable cause;

Complaint 8 – That the police officers left the scene with Relative A's passenger without advising their destination;

Complaint 9 – That police officers at a local police office refused to acknowledge the complainer as the owner of the vehicle or look at the insurance documentation that he provided;

Complaint 10 – That the complainer was threatened with arrest at a local police office without due cause;

Complaint 11 – That the complainer was inconvenienced by having to attend the premises where the vehicle had been impounded and suffered financial loss;

Complaint 12 – That police security officers at police office X were rude and unhelpful; and

Complaint 13 – That the complainer was breathalysed by Lothian and Borders Police in an attempt to intimidate him.

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. He is also a member of the public acting on behalf of a person falling within paragraphs (a) to (c) above. The complainer is therefore a relevant complainer under the terms of section 34(6)(a) and (d).

3. Background

The complaints raised by the complainer arise from events of 27 July 2007 when the complainer's Relative A was stopped by police officers for driving in the evening without his vehicle lights on.

The complainer had recently bought a vehicle from his employee Mr B. Relative A was driving with two passengers – Mr C and Mr D – when he was stopped by Constables E and F. Constable E asserted in his statement that when Relative A opened the window of the vehicle he removed the keys from the ignition to prevent the vehicle being driven away and advised the driver why the vehicle had been stopped. Relative A was asked to take a seat in the police car which was parked to the rear of his vehicle. Mr C and Mr D remained in Relative A's vehicle.

Whilst Relative A was in the police car a Police National Computer (PNC) check was carried out by Constable F via radio which determined that the vehicle was registered and insured in the name of the Mr B. Constable F noted that as Relative A was not the registered keeper of the vehicle, he requested that Constables G and H attend Mr B's home and stated:

"[Mr B] claimed he had sold the motorcar to a male whose name he recalled as being [the complainer] on Monday 23rd July 2007."

The statements of both Constables E and F show that Constable F cautioned Relative A and asked him the following questions – the replies given by Relative A are also noted below:

"Q 'Do you have insurance on the vehicle?'

A 'Should do'

Q 'What do you mean?'

A '[The complainer] sorted it out'

Q 'So you don't know if you have insurance or not?'

A 'Yes.'"

Constable F stated that he then cautioned and charged Relative A with having no insurance. However, immediately afterwards, following a discussion with Constable E both officers agreed that "due to the dubiety such a charge would not be appropriate". Relative A was then informed that "should he prove not to have insurance a report would be submitted to the procurator fiscal". Constable F stated that he then informed Relative A that his vehicle was to be seized under the terms of Section 165A of the Road Traffic Act 1988. He asserted that there was reasonable cause to suspect that the vehicle was uninsured and Relative A had been unable to provide any evidence that he was insured to drive it.

Relative A maintained in his statement that he informed the officers that the vehicle was owned by the complainer and that Relative A was on the complainer's company fleet insurance policy. Relative A stated that because he was told by Constables E and F that he was uninsured, he entertained the possibility that he was not covered as the complainer had advised.

The statements of both Constables E and F asserted that Sergeant J was contacted and authorised the seizure of the vehicle after being advised of the circumstances. Constable F stated that he made a radio request to have the vehicle uplifted before contacting an unknown road policing officer who was appraised of the circumstances. He confirmed that the correct course of action had been followed. During the time that he was in the police car, Relative A stated that Constable E criticised his attitude, repeatedly made inappropriate personal comments about him and advised that he, Mr C and Mr D were close to being arrested.

Whilst Relative A remained in the police car, he stated that Mr C and Mr D were putting their heads out of his vehicle window and looking back at the police car. Constables E and F both stated that Mr C and Mr D were gesturing at them from Relative A's vehicle. Mr C's statement asserted that he rolled down the front passenger window and put his head out at which time Constable E opened his car door and swore while he issued an instruction to him. Constable E maintained that he left the police car and warned Mr C and Mr D about their behaviour. Constable E asserted that he then returned to the police car before asking Relative A to join him to secure his vehicle and remove any belongings. Mr C and Mr D were asked to leave Relative A's vehicle and Constable E returned to the police car. Mr C maintained that an officer swore at him when he asked to retrieve a bag from Relative A's vehicle.

The statements of Constables E and F asserted that Relative A, Mr C and Mr D then approached the police car and demanded that the officers produce warrant cards as they had watched a recent television documentary about bogus police officers. Both officers stated that they explained that they were constables in uniform and did not

believe that the request for identification was genuine. They stated that Relative A, Mr C and Mr D continued to approach the police car and repeat their request at which time both Constables got out of the police car telling them that they were wasting police time and risked arrest for obstructing a police officer before re-entering their police car. Constable F maintained that Mr D then knocked on the car window and handed him a mobile telephone advising that he had called 999 to report that he had been stopped by bogus police officers. Constable F stated that he spoke with the emergency call handler and confirmed the police car call sign along with the collar numbers of both officers and asked for a summary of what Mr D had said. Constable F then detained Mr D under the terms of Section 14 of the Criminal Procedure (Scotland) Act, 1995 on suspicion of the Misuse of the Telecommunications Act before taking him to a local police office.

Relative A asserted that after leaving the police car he realised that he did not have a receipt for his vehicle. He stated that he stood at the window of the police car trying to attract the officers' attention for several minutes until they both got out of the car. Relative A maintained that he requested a receipt and was told that this would not be provided. He then stated that he asked the police officers for identification which they refused to provide. Relative A maintained that Constable E behaved aggressively towards him and that Constable F shouted at Mr C and Mr D. His statement also asserted that after making other calls in an attempt to ascertain whether the officers were required to produce identification, Mr D called 999.

Mr C also referred to requesting identification from the officers in his statement and stated that Constable F acted in an aggressive manner and swore when asking Mr C and Mr D to move away from the scene. Mr C confirmed that in addition to Relative A and Mr D, he was also suspicious of the police officers' actions and noted: *"If he'd shown us some ID our suspicions would have been lessened"*. He stated that Mr D called 999 after they failed to get a non-emergency police number from directory enquiries. Whilst Mr D was on the phone to the emergency operator, Mr C noted that he walked up to the officers, advised them that the emergency operator had said that that he had the right to ask for identification. He maintained that Mr D then passed the mobile telephone to Constable F to talk to the operator but that the police officer ended the call without speaking. Mr C stated that Mr D was then arrested and handcuffed by Constable E. He asserted that neither officer would advise where Mr D was being taken and that once he was taken away by the officers, Mr C called a local police office and was advised where he had been taken.

Mr D confirmed that he shared suspicions about the police officers with Relative A and Mr C and that he believed that they might be bogus. He asserted that he called 999 as he did not know the number for any police stations and was acting under the belief that the officers were not genuine as they had not shown any identification. On speaking with the emergency operator he recalled that she asked to be passed to one of the police officers. In retrospect, Mr D stated that he was of the opinion that Constables E and F were clearly real police officers.

Following Mr D's detention by Constable F, Relative A and Mr C decided to go to the local police office where he had been taken. Relative A stated that once they arrived at the local police office, he was told by Constable E that his vehicle had been taken to a local town where the vehicle pound was situated. Relative A maintained that he

asked again for an incident number but that this was refused and that thereafter, the officers refused to speak to Mr C and him. Mr C stated that a further police officer, Constable K, advised that Relative A and Mr C could wait for Mr D. Mr C maintained that while they were waiting, he pressed the buzzer at the charge bar on one occasion and Constable E threatened him with arrest if he pressed the buzzer again. He asserted that whilst waiting at the police office, Constable E accused him of behaving aggressively when he had put his head out of the vehicle window while Relative A was being questioned earlier in the evening. Mr C stated that he explained their concerns about the authenticity of the officers and maintained that Constable E said that they were stupid to ask for identification.

Relative A contacted the complainer by telephone, explaining that the police had taken his vehicle and that Mr D had been taken into custody. Constable K, who was on duty as station custody officer, noted that on arrival at the local police office the complainer appeared to be under the influence of alcohol and was aggressive in attitude. He stated the complainer was advised that Constables E and F were busy but that they would speak to him when they became available. Constable K maintained that the complainer did not accept this and on several occasions pressed the buzzer on the counter. As a result of this Constable K stated that he warned the complainer about his behaviour and advised him that if he continued to press the buzzer without reason, he would be arrested.

Constables E and F subsequently spoke with the complainer at the front counter and maintained that he was shouting and swearing. Due to the complainer's conduct the officers asserted that they asked him if he would like to discuss the matter in private. The complainer agreed and was taken to the public counter room with Ms L. Constable F stated that he asked the complainer if he could provide evidence that either he or Relative A were the registered owners of the vehicle or produce a valid certificate of insurance. The statements of both Constables E and F asserted that the complainer continued to shout and swear and threw a business card at them. The officers maintained that the complainer stated that he did not have any documents available and to call the number on the card. Constables E and F stated that as the complainer was unable to provide any of the documents required he was advised on the procedures to uplift the vehicle. Constable F stated that he then issued Relative A with a form HO/RT 1 to produce a valid certificate of insurance for the vehicle within seven days.

The complainer stated that he went to the local police office with Ms L where he spoke with Constables D, E and K. The complainer was advised that there was a problem as they were unable to establish if Relative A was insured to drive the vehicle. The complainer maintained that he advised he was the owner of the vehicle and offered to provide them with insurance details. He asserted that the officers said that they were too busy to look at these and that he should return on Monday. The complainer also maintained that they threatened him with arrest on a number of occasions if he did not leave the building. The complainer asserted that he argued with Constable K regarding an incident number which was eventually given to Relative A and that he and Ms L then left the local police office. The complainer is of the opinion that his attitude towards the officers was commensurate to the circumstances and the officers' own behaviour.

In his statement the complainer stated that he attended at police office X the following day where he spoke to Police Security Officers M and N at the front desk. He explained the events of the previous evening and advised that he wanted to recover the vehicle. The complainer maintained he was advised that they were unable to assist and that he should return to the local police office on Monday. The complainer stated that after leaving police office X, he drove a short distance before his vehicle was stopped by a police car. He was informed by an officer that there was reason to suspect that he had been driving whilst under the influence of alcohol and asked to participate in a breathalyser test. The test was negative and the complainer was allowed on his way.

Police Security Officer M stated that the complainer attended at police office X regarding the return of the vehicle that had been seized the previous evening. He stated that the complainer did not appear to be happy when he was directed back to the local police office in charge of the case. Police Security Officer M mentioned to Police Security Officer N that he was of the opinion that the complainer had been drinking and was concerned that he may have been driving. After watching the complainer get into a vehicle and drive off, Police Security Officer N contacted a nearby police car and advised them of their suspicions. Constables P and Q received the call and subsequently stopped the complainer's vehicle to carry out the roadside breath test which was negative.

The complainer stated that he returned to the local police office on 30 July 2007 and provided proof of his identity, DVLA documents and an email from his insurance company confirming that the vehicle had been insured since 23 July 2007. The complainer asserted that he was advised he would have to collect the vehicle from a pound some distance away and pay £141. The complainer maintained that Constable R, who he dealt with at the local police office, tried to have this fee waived but that this was overruled by her supervisor.

4. Force internal handling

4.1 Complaints Raised

The complainer first contacted Lothian and Borders Police to make a complaint in a letter dated 31 July 2007. The complainer raised Complaints 1, 2, 3, 4, 7, 8, 9, 11 and 13 at this time. The complaints were noted as on duty allegations of incivility and neglect of duty on 7 August 2007. A file note dated 7 August 2007 indicated that a local resolution was to be attempted in the first instance and a local inspector appointed at divisional level. A Complaint Against the Police (CAP) form, which did not individually specify the complaints, was completed on 7 August 2007 by the Complaints and Conduct Department.

The force received a letter from the complainer's MSP dated 9 August 2007 expressing his concern at the events as detailed in the complainer's letter to the force of 31 July 2007. On 16 August 2007, Superintendent S wrote to the complainer in response to his letter advising that she would arrange for a senior officer to see him and that the Deputy Chief Constable would write to him once this

officer's report was completed. The complainer responded to this letter on 22 August 2007 in which he advised that he had no interest in meeting with a senior officer as he was of the opinion that their agenda would be to coerce him to drop his complaints about the police. He stated that he wanted a full explanation and an apology in relation to the events of 27 July 2007 in addition to reimbursement for the costs incurred.

Inspector T was instructed to attempt a local resolution. On 7 September 2007, Inspector T reported in a memorandum to Superintendent S that complainer refused to meet with him as he wanted a full enquiry to be conducted. The memorandum provided a short summary of the events in particular:

"The driver....claimed [the complainer] had purchased this vehicle and that there was valid insurance."

It was noted that the supervisor of Constables E and F authorised the seizure of the vehicle as the insurance details could not be verified. Inspector T concluded his report by stating;

"It is the opinion of [Inspector T] that this incident could have been dealt with by way of HORT/1 and it is recommended that [the complainer] be reimbursed the £141.00."

This resolution was put to [the complainer] but he refused to conciliate on these terms."

There were no recommendations made in relation to any other complaints at this time.

The CAP form indicated that Inspector U was appointed as the Investigating Officer on 12 September 2007 and on 20 September 2007 Superintendent S noted that a full enquiry was to be carried out. The complainer was advised of this by letter on the same date and Superintendent S provided a leaflet for further information on the formal police complaints procedures.

On 8 October 2007, Sergeant V requested a copy of the CCTV footage from the local police office relating to these complaints. On 10 October 2007, Officer W advised that the tape would have been recorded over after a period of 31 days.

A statement was taken from the complainer by Sergeant V on 8 October 2007 detailing Complaints 2, 3, 4, 7, 9, 10, 11 and 13. Statements were also obtained by Sergeant V from Security Officers M and N on 8 October 2007; Ms L on 9 October 2007; Relative A on 11 October 2007 and Mr B on 15 October 2007. Constables E and F provided operational statements for the complaint investigation on 22 October 2007. Internal emails from Sergeant V to Constables E and F dated 26 October 2007 indicated that there was a delay in the case as Mr C and Mr D were out of the UK for one month. Sergeant V obtained statements from Mr C and Mr D on 5 November 2007. Constable K provided an operational statement on 9 November 2007.

Inspector U compiled a report dated 20 November 2007 which was submitted to the Deputy Chief Constable.

4.2 Force Action and Response

Complaint 1 – That Relative A was stopped by the police without reasonable cause.

The complainer first brought this matter to the attention of the force in his letter dated 31 July 2007. In this correspondence the complainer maintained that Relative A was stopped by two police officers at about 9.15pm when it was not yet dark and told that he was driving without his vehicle lights on.

In his statement of 11 October 2007, Relative A stated:

“I think it was about 10pm that I was stopped in [a local street]. It was just starting to get dark with some street lights on, some off, though I probably should have had my side lights on, although I could still see perfectly well.”

In their statements, both Mr C and Mr D made reference to the fact that they were aware that Relative A's vehicle was stopped as he was driving without any vehicle lights on. Both Constables E and F referred in their statements to stopping the vehicle because it had no lights on at around 10.00pm.

This complaint was not identified independently in Inspector U's report of 20 November 2007. However, reference is made in the background of the report to Relative A's vehicle being stopped at 10.00pm for failing to display lights during darkness.

The Deputy Chief Constable did not address this complaint in his letter of response to the complainer on 30 November 2007.

In a letter to the force dated 17 December 2007, the complainer questioned why Relative A had been stopped as there were no allegations that his driving would have given the officers reasonable cause to stop his vehicle. The Deputy Chief Constable wrote to the complainer again on 25 January 2008 and stated:

“You asked why [Relative A] was stopped by the police officers and I can confirm that he was driving the vehicle without displaying lights during the hours of darkness. [Relative A] and his friends acknowledged this at the time.”

Complaint 2 – That the police officers that stopped Relative A's vehicle were aggressive and used foul language.

The complainer first brought this complaint to the attention of the force in his letter of 31 July 2007 and reiterated his dissatisfaction in his statement of 8 October 2007 and further correspondence dated 17 December 2007.

Sergeant V noted statements from Relative A on 11 October 2007 and from Mr C and Mr D on 5 November 2007. Operational statements were obtained from Constables E and F dated 22 October 2007.

Relative A asserted that during the incident, Constable E warned him that both he and his passengers were in danger of being arrested due to Relative A's attitude. Relative A also stated that Constable E made reference to "*obstructing police*" and said that Relative A was "*as wide as the Clyde*". Relative A maintained that Constable E "*squared up*" to him and stated that "*he would not be talked down to by a 17 year old school boy*". Relative A also stated that Constable F was speaking loudly to Mr C and Mr D.

In his statement, Mr C asserted that Constable E spoke aggressively to him and that both Constables E and F repeatedly swore at him and Mr D. Mr C also stated:

"... [Relative A] rejoined us.... and said the smaller officer had threatened him".

In his statement, Mr D stated: "*they might have sworn at us, I can't really remember it all.*"

Both Constables E and F asserted in their statements that Relative A was dealt with in a professional manner and made no reference to any aggression or use of foul language. Both police officers stated that Mr C put his head out of Relative A's vehicle window and that Constable E approached the vehicle and warned both Mr C and Mr D about their actions.

In the investigating officer's final report dated 20 November 2007, Inspector U stated that the allegation of incivility to Relative A was unsubstantiated because the officers denied it and neither Mr C nor Mr D heard anything. In relation to Mr C and Mr D, Inspector U noted:

"The manner in which the officers dealt with these witnesses does however appear to have fallen short of what would be expected and they appear to have reacted inappropriately to the way the witnesses have spoken to them.

Although Mr C and Mr D do not wish to make a complaint, the Investigating Officer has discussed with PCs [E and F] the comments made by these witnesses in relation to their attitude."

In the force response to the complainer dated 30 November 2007 the Deputy Chief Constable stated:

"Neither Mr [D] nor Mr [C] can corroborate the comments allegedly made by the officers towards [Relative A]. I am therefore unable to rule in your favour and, accordingly, find this allegation unsubstantiated.

The Investigation did, however, reveal that the officers concerned were uncivil towards Mr [D] and Mr [C].....Officers are, however, trained not to respond inappropriately in such circumstances.....I have dealt with the officers in this regard accordingly."

In his response on 17 December 2007, the complainer stated:

“The fact that one of your officers was shouting and swearing out of the window at [Relative A’s] friends,...while [Relative A] was still in the police car was in my view, intimidating and bullying towards [Relative A].”

The complainer expressed dissatisfaction that the allegation about the officers behaviour towards his relative was unsubstantiated. On 25 January 2008 the Deputy Chief Constable responded stating:

“I have reviewed the circumstances once again and I am still of the view that a thorough investigation was carried out and the allegations you made properly addressed.”

Complaint 3 – That the police officers that stopped Relative A’s vehicle refused to provide identification when requested to do so.

This complaint was originally raised by the complainer in his letter to the force of 31 July 2007 and reiterated in both his statement of 8 October 2007 and letter of 17 December 2007.

Sergeant V noted statements from Relative A on 11 October 2007 and from Mr C and Mr D on 5 November 2007. Operational statements were obtained from Constables E and F dated 22 October 2007.

Relative A, Mr C and Mr D stated that because of the behaviour of the officers toward them during the incident on 27 July 2007, they formed the opinion that Constables E and F were not real police officers. Relative A maintained that he requested that the officers provide identification as they had refused to supply him with a receipt to acknowledge that his vehicle was being seized. Relative A was also concerned as he asserted that the officers did not have numbers on their shoulders and were wearing T-shirts and protective vests. Relative A maintained that the officers refused to provide any identification and that Constable E stated *“that he had a uniform and a police car and that meant he was a police officer”*.

Mr C asserted in his statement that he asked Constable E to show him identification as he was concerned for Relative A but that the officer refused. Mr C also referred to the officers not displaying shoulder numbers and wearing T-shirts with waistcoats which in conjunction with their behaviour, raised his suspicions that they were not genuine police officers. Mr C maintained that both he and Mr D explained their concerns to Constable E and advised him that they would leave the scene once they had seen identification. Mr C asserted that Constable E refused again and returned to the police vehicle where he remarked through the open window to Constable F *“Do you believe that these clowns want to see some I.D.?”*

Mr D asserted in his statement that he had asked Constables E and F if they were real police officers and that they advised him that they were. Mr D stated that there were some further exchanges about whether the police officers were genuine but that he was unable to remember the incident clearly.

In their statements, both Constables E and F stated that they were asked to provide Relative A, Mr C and Mr D with their warrant cards as they had seen a television programme about bogus police officers. Both officers asserted that they had explained that they were constables in uniform and neither Constables E nor F believed that the request was genuine. Both officers stated that they interpreted the request as an opportunity to make a joke. The officers maintained that Relative A, Mr C and Mr D approached them on several occasions making the same request and that Constables E and F warned them that they risked arrest for obstructing a constable in the execution of his duty.

The single incident log print out of the 999 call records that Mr D provided his name address and telephone number in addition to raising his concern about the officers. In his statement, Constable F confirmed:

"I spoke with the call taker and confirmed the police vehicles call sign and the occupants collar numbers and asked for a brief summary of what [Mr D] had said."

In the final report dated 20 November 2007, Inspector U noted that Mr C's statement described the efforts made to establish whether he and his friends could properly request identification from the officers. Additionally, it was noted that the 999 call was only made after they were unable to obtain the required information elsewhere. In conclusion, Inspector U acknowledged that it was not known whether Mr C and Mr D were initially genuine in their concern about the officers. However, she stated that as Relative A was present in the car when PNC checks were being made it was almost inconceivable that at that stage, the witnesses could have believed that the officers were not genuine. It was noted that the Force Procedures Manual makes no reference to officers in uniform having to produce their warrant card when requested by the public which had been confirmed with the Policy Branch.

In response to Complaint 3 the Deputy Chief Constable asserted that the officers did not believe that the request for identification made by Relative A, Mr C and Mr D to be genuine. He stated:

"In most circumstances, officers would comply with a reasonable request to produce identification, however, based on [Relative A] and his friend's previous behaviour, the officers did not interpret this as a genuine request, rather another opportunity to make a joke."

The complainer responded in a letter dated 17 December 2007, stating that in the circumstances a 999 call was in order.

In his letter of 25 January 2008 the Deputy Chief Constable did not specifically respond to this point but did confirm his view that all allegations had been properly addressed.

Complaint 4 – That the keys for Relative A’s vehicle were taken by the police officers without provision of an incident report form.

The complainer first made the force aware of this complaint in his letter dated 31 July 2007. This was reiterated in his statement of 8 October 2007 and in subsequent correspondence dated 17 December 2007.

Relative A asserted in his statement that after he had been advised that his vehicle was to be seized, he asked for a receipt and was told that this would not be provided. Relative A maintained that he was given an incident report number at the local police office some time later. In his statement of 8 October 2007, the complainer also stated that Relative A was supplied with an incident slip at the local police office.

Neither police officer made reference to being asked for any paperwork at the scene in their operational statements. Both Constables E and F stated that:

“[Relative A] was not issued with an IIF [Incident Information Form] as he was not a victim of a crime, as per the Force Procedures manual.”

The police officers’ statements show that at the local police office, Relative A was issued with a HO/RT 1 form which required him to produce a valid certificate of insurance for the vehicle within 7 days.

In the final report, Inspector U stated that the Force Procedures Manual indicates that IIFs are issued to people reporting crimes to the police. Inspector U also noted that in normal circumstances a Seizure Notice would be issued by registered post to the owner of a seized vehicle but that on this occasion the HO/RT 1 form was supplied to Relative A at the local police office. Inspector U maintained that the incident report number/slip referred to by the complainer and Relative A in their statements was in fact the HO/RT 1 form.

This information was explained to the complainer by the Deputy Chief Constable in the force response dated 30 November 2007.

“These forms are designed to be issued to persons reporting crimes and there was no requirement to provide [Relative A] with such a form in relation to the seizure of his vehicle.”

The Deputy Chief Constable advised the complainer that there were procedures in place to make owners of seized vehicles aware of the circumstances and provide details of how to recover their vehicles. It is stated that this would normally be in the form of a seizure notice issued by registered post but that on this occasion, a form HO/RT 1 was issued to Relative A at the local police office that night.

Complaint 5 – That there were no grounds to believe that Relative A was driving the vehicle without insurance.

Although this matter was not initially brought to the attention of the force by the complainer, it was considered and responded to in the course of the investigation into Complaint 11.

In his statement, Relative A asserted that while he was in the police car the officers carried out a number of checks on the radio before asking him who the vehicle belonged to and advising him that he was not insured to drive it. Relative A stated that he advised them it was the complainer's vehicle and that he thought he was insured to drive it. However, Relative A also stated that as he only had the complainer's word for this, he did entertain the possibility that he was uninsured.

Relative A then asserted that when he was cautioned by the officers he recalled advising them that the vehicle was owned by the complainer, that he was insured on his company fleet insurance and that the car had been recently acquired.

Constables E and F's operational statements indicated that a Police National Computer check was carried out on Relative A's vehicle which revealed that it was insured and owned by Mr B. Constable F requested that Constables G and H visit Mr B's home address where they were able to confirm that the vehicle had recently been sold to the complainer, his employer. There are no statements available from the officers who obtained the information from Mr B. In his statement dated 15 October 2007, Mr B confirmed that the complainer was his employer and that during the sale of the vehicle the complainer had confirmed to him that Relative A was insured by the business policy.

Constable E maintained that he unsuccessfully attempted to contact the complainer via his radio to confirm the insurance status of the vehicle. Constable F stated that he then questioned Relative A about the insurance on the vehicle. Constable F asserted that Relative A advised that the complainer organised the insurance and was unable to confirm whether he was insured to drive the vehicle or not.

In the final report dated 20 November 2007, Inspector U noted that although Constable F initially cautioned and charged Relative A with an offence of driving with no insurance, due to some "dubiety" the charge was not deemed appropriate. Additionally, Relative A was advised that "*should it be ascertained that he did not have insurance, a report would be submitted to the Procurator Fiscal*".

Inspector U concluded in her report that the Constables E and F had made clear efforts at the scene to attempt to determine whether Relative A was insured to drive the vehicle and had reasonable cause to suspect that the vehicle was not insured. In conclusion, Inspector U stated:

"The seizure of this vehicle would not have taken place had [Relative A] been more knowledgeable, or at least more assertive about the fact that the car was indeed insured for him."

Complaint 5 was addressed in the Deputy Chief Constable's letter of 30 November 2007, in the course of responding to Complaint 11. The Deputy Chief Constable stated:

“When formally interviewed under caution by the officers, as recorded in their notebooks, your [Relative A] was unable to categorically confirm whether or not he was insured to drive the vehicle. This provided the officers with reasonable cause to suspect that he was driving the vehicle whilst uninsured.....”

The complainer then formally brought the matter to the attention of the force in his letter of 17 December 2007. Along with this correspondence, the complainer provided the force with a copy of the credit card style certificate of motor insurance which he stated was shown to officers at the local police office on 27 July 2007. It is not clear whether this was the business card referred to by Constables E and F in their statements. He also stated:

“When the subject of insurance came up [Relative A] explained that the car he was driving was owned and insured by me and that I had told [Relative A] he was insured to drive the car. Your officers categorically stated to [Relative A] that their computer records showed that [Relative A] was not insured to drive the car. This was not true but [Relative A] on being told this by the two officers had no option but to concede that it was possible that I had made an error and failed to insure the car. For you to interpret this as reasonable doubt that [Relative A] was not insured to drive the car in question is grossly unfair.”

In his response dated 25 January 2008 the Deputy Chief Constable did not specifically address this point but stated:

“I have reviewed the circumstances once again and I am still of the view that a thorough investigation was carried out and the allegations you made properly addressed.”

Complaint 6 – That the force did not apply the Road Traffic Act 1988 correctly in relation to impounding the vehicle.

The complainer first made this complaint to the force in his letter of 17 December 2007. The complainer is of the view that the police officers did not adhere to the law when Relative A's vehicle was seized on 27 July 2007. The complainer stated in his letter of 17 December 2007:

“As [Relative A] was unable to provide documentary proof at the time he was stopped that he was insured to drive my car you have interpreted this as providing reasonable cause in the terms of section 165 of the Road Traffic Act 1988 to reasonably impound the vehicle. This is a gross misinterpretation of the law and I am sure that you are aware of it.

Section 165 part 4 parts A, B & C would have allowed [Relative A] to provide the required documentation within seven days, instead, your officers decided to impound the car...Why was [Relative A] not allowed the normal time to provide the car insurance details?”

Although this issue was not formally brought to the attention of the force until 17 December 2007, the force has considered this matter in the course of the complaints investigation. Constables E and F noted in their statements that Relative A was

informed that his vehicle was to be seized after the officers decided that there was sufficient “*dubiety*” not to charge Relative A with driving with no insurance. The officers stated that they explained that under the terms of Section 165 of the Road Traffic Act 1988 they had reasonable cause to suspect that there was no valid insurance for the vehicle and because Relative A could not provide evidence that he was insured, the vehicle was to be seized.

Relative A asserted in his statement that when he was cautioned by the officers he recalled advising them that the vehicle, which had been recently acquired, was owned by the complainer and that he was insured on the complainer’s company fleet insurance.

Constables E and F referred to contacting Sergeant J who authorised the uplift of the vehicle. They stated that they subsequently contacted an unknown road policing officer who concurred with their course of action.

The initial report by Inspector T dated 7 September 2007 stated that:

“The driver [Relative A]...claimed [the complainer] had purchased this vehicle and that there was valid insurance.”

It was noted that the officers’ supervisor had authorised the seizure of the vehicle because the insurance details could not be verified. Inspector T concluded his report by stating:

“It is the opinion of [Inspector T] that this incident could have been dealt with by way of HORT/1 and it is recommended that [the complainer] be reimbursed the £141.00.”

In the final report dated 20 November 2007 Inspector U noted:

“When interviewed under caution, [Relative A] stated that he should have insurance, arranged by [the complainer] but did not know this for a fact himself. This therefore provided the officers reasonable cause to suspect that the vehicle was not insured and allowed its seizure in the terms of Section 165A of the road Traffic Act 1988..

The seizure of this vehicle would not have taken place had [Relative A] been more knowledgeable, or at least more assertive about the fact that the car was indeed insured for him to drive.”

Complaint 6 was formally brought to the attention of the force in the complainer’s letter of 17 December 2007. The Deputy Chief Constable advised the complainer in his letter of 25 January 2008 that:

“The officers acted under the terms of Section 165A [of the Road Traffic Act 1988], which quite clearly gives them the power to seize a vehicle if the driver does not immediately provide them with the evidence that the vehicle was not being driven without insurance. The officers were quite justified in impounding the vehicle at that time.”

Complaint 7 – That a passenger in the vehicle was arrested without reasonable cause.

The complainer brought this complaint to the force's attention in his initial letter of 31 July 2007 and reiterated his concerns in his statement of 8 October 2007 and in his letters dated 17 December 2007. This complaint arose from circumstances related to Complaint 3.

Constable F's statement shows that, as Mr D called the emergency services on 999 to find out whether Constables E and F were genuine police officers, he detained Mr D under the terms of Section 14 of the Criminal Procedure (Scotland) Act 1995 on suspicion of a contravention of the Misuse of Telecommunications Act. Both officers' statements showed that attempts were made to retrieve a copy of Mr D's call but that this was not possible due to a computer error. Mr D was cautioned, interviewed and detained by Constable F at a local police office on 28 July 2007 but due to insufficient evidence he was then released.

The statements taken from Relative A, Mr C and Mr D all referred to their concern about the way that the officers were behaving. They also made reference to their efforts to establish whether the officers were genuine and their right to request identification prior to Mr D phoning 999.

In his statement dated 5 November 2007, Mr D stated:

"In my opinion, they acted just like cops and did their job and I was just being a bit of a fool."

In the final report dated 20 November 2007 investigating officer Inspector U noted the efforts made by Mr C and D to establish whether they were entitled to request identification from the officers, before concluding that Mr D had been detained and that the officers' actions *"cannot be criticised"*.

The Deputy Chief Constable advised the complainer of the force's findings in his letter of 30 November 2007.

"...Mr [D] himself, who spent several hours in custody, makes no complaint and believes the officers acted correctly.

The officers themselves, based on the group's collective disrespectful behaviour towards them, suspected the request to produce identification was an extension of this behaviour and detained Mr [D] on suspicion of misuse of the emergency telecommunications system. "

The complainer again raised this complaint in his letter of 17 December 2007, in which he stated:

"..[Mr D] phoned the police to confirm that the officers were obliged to provide identification when asked. The operator confirmed this was the case so [Mr

D] asked the operator to hold on and talk to the officers in question....This resulted in [Mr D] being taken into custody ...”

In his response dated 25 January 2008, the Deputy Chief Constable did not specifically address this point but stated:

“I have reviewed the circumstances once again and I am still of the view that a thorough investigation was carried out and the allegations you made properly addressed.”

Complaint 8 – That the police officers left the scene with Relative A’s passenger without advising their destination.

The complainer stated in his letter to the force of 31 July 2007 that Constables E and F drove away from the scene with Mr D without informing Relative A and Mr C where they were going. From the information provided to my office by the complainer and Lothian and Borders Police, it does not appear that the force has responded to this complaint.

Complaint 9 – That police officers at a local police office refused to acknowledge the complainer as the owner of the vehicle or look at the insurance documentation that he provided.

This complaint was initially raised in the complainer’s letter to the force dated 31 July 2007. The complainer raised this matter again with the force in his statement of 8 October 2007 and in correspondence dated 17 December 2007.

The complainer attended at the local police office where Mr D had been taken and where Relative A and Mr C were waiting for him to be released. In his statement the complainer asserted:

“I confirmed that it was my car and that I had recently purchased it from [Mr B] and offered to provide them with insurance details. They said they were too busy to look at these details and that I was to come back on Monday. I also told them that they should speak to [Mr B],... but they said they didn’t have the time...they just wouldn’t even look at the insurance details I had with me, the whole thing seemed to hinge on the ownership of the car, as well as whether it was insured or not.”

During the investigation, Inspector U arranged for statements to be obtained from the police officers and other witnesses involved. In their operational statements both Constables E and F stated that they talked to the complainer when he arrived at the local police office. Constable F asked the complainer to provide any evidence that he or Relative A were the registered owners or had a valid certificate of insurance for the vehicle. Constable E stated that the complainer provided a business card and advised them to call the number on the card as he did not have any of the documents available.

The officers' statements indicated that by the time they had spoken to the complainer, it had already been confirmed with Mr B that he had sold the vehicle on to the complainer.

In his statement of 15 October 2007, Mr B maintained that he informed the officers who attended his home on 27 July 2007 that he had sold the vehicle to the complainer. He also stated that he had sent the paperwork for this change in ownership to the DVLA on the day that he had sold the car, a few days before the incident occurred.

In response to this complaint both officers stated that they informed the complainer of their enquires into the registered owner of the vehicle and did not withhold any information from him. When Constables E and F spoke to the complainer at the local police office, there was an independent witness Ms L present, who confirmed in her statement of 9 October 2007 that the complainer had supplied the officers with a plastic card and said, *"that's the insurance details there"* but that the officers had explained that they needed to see the proper documents. Ms L stated that when the complainer suggested that the officers call the insurance company, Constables E and F advised that they would not do that. Ms L also stated:

"[The complainer] asked the officer why they couldn't have gone to... the registered keepers address to confirm that he had sold the car to him (complainer) and the officers said that that had now been done, but at the time on the road it wasn't."

In the report dated 20 November 2007, Inspector U referred to the statements from Mr B and Constables E and F. These individuals stated that the complainer's ownership of the vehicle had been confirmed prior to the officers return to the local police office. Inspector U concluded that the allegation in relation to the ownership of the vehicle was unsubstantiated.

The Deputy Chief Constable responded to the complainer regarding this issue on 30 November 2007 and provided the following explanation:

"Both officers confirm that Mr [B] had been spoken to on their behalf prior to their return to [the local police office], and state that, on your attendance, they fully apprised you of this. Independent evidence also confirms this to be the case....All three officers, who you spoke to on the night in question, state that you did not have a certificate of insurance in your possession confirming that [Relative A] was insured to drive the car..."

In his letter of 17 December 2007, the complainer reiterated the allegation that the officers did not advise him that they had confirmed the ownership of the vehicle.

In his response dated 25 January 2008, the Deputy Chief Constable did not specifically address this point but stated:

"I have reviewed the circumstances once again and I am still of the view that a thorough investigation was carried out and the allegations you made properly addressed."

Complaint 10 – That the complainer was threatened with arrest at a local police office without due cause.

In his statement of 8 October 2007, the complainer maintained that he was threatened with arrest on several occasions while at the local police office. The complainer asserted that the police officers were aggressive, unhelpful and intimidating:

“My attitude towards the officers was commensurate to the circumstances and the officer’s attitude towards me.”

Constable K was on duty as custody officer at the local police office on 27 July 2007. Constable K provided an operational statement as part of Inspector U’s investigation on 9 November 2007. In this statement, Constable K stated that the complainer arrived at the local police office under the influence of alcohol and was aggressive in manner. The officer asserted that when the complainer enquired about the incident involving Relative A, he advised the complainer that Constables E and F were busy but that they would speak to him when they became available. Constable K maintained that the complainer did not accept this advice and proceeded to press the buzzer on the public counter several times. Constable K spoke with the complainer again and warned him about his conduct, explaining that he would be arrested if he persisted. The officer maintained that he was not aggressive, rude or uncivil to the complainer at any time.

Constable E noted in his statement that due to the complainer’s behaviour at the public counter, it was suggested that they discuss the matter in private. The complainer, Ms L and Constables E and F were all present during this discussion. Constable F stated that despite attempts by both officers and Ms L to calm him down, the complainer shouted and swore at both the police officers and threw a business card at them. In response to the complaint Constables E and F both stated that the complainer was warned about his behaviour and was advised that if it continued, he would be arrested.

Relative A and Mr C’s statements both indicated that they were in the waiting area in the local police office when the complainer arrived. Relative A stated that the complainer was angry but that he could not remember any details of the conversation that the complainer had with Constable K at the front counter.

Mr C asserted in his statement that the complainer was heavily under the influence of alcohol and was loud, rude and aggressive. Mr C maintained that Constable K was polite and respectful during his conversation with the complainer. Mr C stated that Constables E and F came out to meet the complainer and were polite although the complainer was aggressive and continued to swear. Once the complainer had entered the private room with Ms L and Constables E and F, Mr C maintained that he could hear the complainer shouting and that he continued to swear at the police officers when they came out of the room into the public area.

Relative A maintained that he could hear raised voices from the private room but not shouting. Mr C also stated that the complainer was warned that if he continued to press the buzzer at the public counter he would be arrested.

In the final report of 20 November 2007, Inspector U considered the information collated in the statements obtained from the police officers, the complainer and other witnesses. Inspector U noted that all the officers confirmed that the complainer had been warned that he may be arrested due to his conduct and concluded that the warning had been warranted.

In his letter of 30 November 2007, the Deputy Chief Constable stated:

“All of the officers admit that you were informed that you might be arrested....From the evidence available to me, it appears there would have been sufficient evidence to report you to the Procurator Fiscal for a breach of the peace and the officers were correct in asking you to desist or risk being arrested.”

In his response dated 17 December 2007 the complainer denied being heavily intoxicated or shouting and swearing. He also stated that had he behaved this way then the officers *“would have taken great delight in arresting me”*.

In his response dated 25 January 2008, the Deputy Chief Constable did not specifically address this point but stated:

“I have reviewed the circumstances once again and I am still of the view that a thorough investigation was carried out and the allegations you made properly addressed.”

Complaint 11 – That the complainer was inconvenienced by having to attend the premises where the vehicle had been impounded and suffered financial loss.

This complaint was made to the force initially in his letter of 31 July 2007. In this correspondence the complainer stated:

“...I have been denied the use of my car for the best part of three days, had to pay [a local company] to have it released...This has also cost myself and [Relative A] a days wage to sort this out, as well as the expense of recovering the vehicle...”

Superintendent S wrote to the complainer on 16 August 2007 and advised him that a senior police officer would call to see him regarding his complaint. The complainer responded to this correspondence on 22 August 2007 and stated:

“I am not interested in meeting with a senior officer whose sole agenda is to coerce me into dropping the complaints I have made against officers of your force.

What I would appreciate is a full explanation and apology...and your proposal as to when you intend to reimburse me for the costs I have incurred...”

Inspector T was appointed to attempt to conciliate with the complainer and submitted his initial report to Superintendent S on 7 September 2007. In this report, Inspector T stated that he had attempted to meet with the complainer on several occasions but that he refused to discuss the incident and wanted a full enquiry to be conducted. Inspector T recommended that the complainer should be reimbursed the £141.00 paid to have the vehicle released. However, Inspector T stated that when this resolution was suggested to the complainer, he refused to conciliate on those terms.

In the final report dated 20 November 2007, Inspector U made no reference to Inspector T's report. Inspector U concluded that as there had been no evidence available that Relative A was insured to drive the vehicle, it had been correctly seized.

In his letter dated 30 November 2007 the Deputy Chief Constable stated:

"When formally interviewed under caution by the officers, as recorded in their notebooks, your [Relative A] was unable to categorically confirm whether or not he was insured to drive the vehicle. This provided the officers with reasonable cause to suspect that he was driving the vehicle whilst uninsured and, in the terms of Section 165A of the Road Traffic Act 1988, the officers acted quite correctly by having the vehicle impounded.....accordingly, I am unwilling to compensate you for the £141 paid to recover the vehicle."

In his letter of 17 December 2007 the complainer once again raised a number of issues related to the impounding of his vehicle.

The Deputy Chief Constable in his letter of response dated 25 January 2008 stated:

"The officers acted under the terms of Section 165A, [of the Road Traffic Act 1988]The officers were quite justified in impounding the vehicle at that time."

Complaint 12 – That police security officers at police office X were rude and unhelpful.

The complainer raised this complaint with the force in his letter of 17 December 2007 which stated:

"The two civilian police security officers who I spoke to were not the slightest bit interested in talking to me. I felt they were rude and unhelpful towards me..."

From the information provided to my office by the complainer and Lothian and Borders Police it does not appear that this matter has been considered by the force.

Complaint 13 – That the complainer was breathalysed by Lothian and Borders Police in an attempt to intimidate him.

This complaint was first raised in the complainer's letter to the force of 31 July 2007 and reiterated in both his statement of 8 October 2007 and letter of 17 December 2007. In his initial letter of complaint the complainer stated:

“...why was I pulled over and breathalysed after my visit to [police office X]? This strikes me as a straightforward attempt to intimidate me.”

In the course of the investigation into this complaint statements were noted from Police Security Officers M and N on 8 October 2007. In his statement, Police Security Officer M asserted that he believed that the complainer had been drinking and was concerned that he may have been driving. Police Security Officer N stated that on observing the complainer getting into a vehicle and driving away, he contacted a nearby police vehicle that was entering the police office car park via an intercom system and advised them of their concerns. Both Police Security Officers maintained that they had alerted the officers as they genuinely believed that the complainer may have been under the influence of alcohol. Constables P and Q stopped the complainer's vehicle. A statement from Constable P was noted by Inspector U on 14 November 2007 and Constable Q provided a statement on 6 November 2007. Both officers confirmed the circumstances surrounding the incident and stated that the complainer had provided a negative breath specimen.

Inspector U concluded in her report of 20 November 2007 that the Police Security Officers and Constables had acted in good faith.

In his letter dated 30 November 2007, the Deputy Chief Constable stated:

“...you spoke to two civilian Police Security Officers, one of whom had a genuine belief that he could smell alcohol on your breath....The officers who stopped you acted in good faith and having been provided with information giving them reasonable cause to suspect that you had been drinking, made a lawful request....for you to participate in a roadside breath-test.”

In his letter of 17 December 2007, the complainer stated that the road side breath test did not confirm the suspicion that he was driving whilst under the influence of alcohol and stated:

“...I can only conclude that the civilian officers asked the ...officers to give me a breath-test either for a lark or out of malicious mischief. Either way, I found the coincidence of these events intimidating and took it as a warning not to pursue my complaint against the police.”

In his response dated 25 January 2008 the Deputy Chief Constable did not specifically address this point but stated:

“I have reviewed the circumstances once again and I am still of the view that a thorough investigation was carried out and the allegations you made properly addressed.”

4.3 Subsequent Force Action

Internal memos dated 26 November 2007 from the Deputy Chief Constable to Constables E, F and K advised that the allegations against them were unsubstantiated. The Deputy Chief Constable also wrote to the complainer's MSP

on this date to advise that the investigation was complete. A copy of the response to the complainer was enclosed.

The complaint file for this case was reviewed by the sub-committee dealing with complaints issues at Lothian and Borders Joint Police Board at a meeting on 8 February 2008.

5. PCCS review

A letter of complaint was received at my office on 13 February 2008. The complainer was asked to complete and sign an application for review form which was received on 19 February 2008 together with copies of correspondence between the complainer and the force.

My office asked Lothian and Borders Police to provide the relevant complaint case papers on 20 February 2008 to be received by 3 March 2008. The force supplied the required information on 10 March 2008. Additional information was requested from the force which was supplied on 12 November 2008 and 10 February 2009

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

6. Consideration

There are 13 distinct issues raised by the complainer:

Complaint 1 – That Relative A was stopped by the police without reasonable cause.

In his correspondence to the force, the complainer stated that Relative A was stopped by two police officers when it was not yet dark and told that he was driving a vehicle without lights on. The complainer maintained that the officers therefore had no reasonable cause to stop the vehicle.

This complaint was not addressed in Inspector U's report of 20 November 2007 nor in the Deputy Chief Constable's letter to the complainer dated 30 November 2007. In response to the complainer's letter of 17 December 2007, the force addressed the complaint on 25 January 2008. In this letter, the force advised that Relative A had been stopped by police officers as he was driving a vehicle without displaying lights during the hours of darkness. The force maintained that Relative A, Mr C and Mr D all acknowledged this at the time.

I note that the complainer's letter to the force of 31 July 2007 asserted that Relative A's vehicle was stopped at approximately 9.15pm. However, both police officers and Relative A have stated that it was at approximately 10.00pm. It may have been helpful had the force highlighted this in the response to the complainer.

Complaint 2 – That the police officers that stopped the Relative A’s vehicle were aggressive and used foul language.

In the report dated 20 November 2007, the investigating officer concluded that although the complaint against Relative A was unsubstantiated, the manner in which Constables E and F had dealt with Mr C and Mr D had been inappropriate. I note that Inspector U stated in her report that she had discussed the matter with both officers prior to submitting the final report to the Deputy Chief Constable.

In the response to the complainer of 30 November 2007, the Deputy Chief Constable stated that while the complaint regarding Relative A was found to be unsubstantiated, the investigation had revealed that Constables E and F had been uncivil towards Mr C and Mr D. The Deputy Chief Constable stated that the officers had been dealt with accordingly.

Complaint 3 – That the police officers that stopped Relative A’s vehicle refused to provide identification when requested to do so.

It is clear that Relative A, Mr C and Mr D all expressed concern about the officers refusing to provide identification and that there were attempts made to find out whether they could request identification. The incident log of the 999 call, which is not referred to in Inspector U’s report, shows that Mr D provided his details and stated that the officers had refused to provide identification. I note that Constable F provided identification details to the call handler when he was using Mr D’s phone.

In their statements, both Constables E and F stated that they explained that they were constables in uniform and neither Constables E nor F believed that the request was genuine. Both officers stated that they interpreted the request as an opportunity to make a joke.

Inspector U stated in the final report dated 20 November 2007 that the Force Procedures Manual makes no reference to an officer in uniform having to produce their warrant card when requested by the public and that this had been confirmed with the Policy Branch.

In the force response of 30 November 2007, the Deputy Chief Constable stated that in most circumstances, officers would comply with this request but that due to the disrespectful behaviour of Relative A, Mr C and Mr D, they had not done so on this occasion.

I note that no consideration appears to have been given, in either Inspector U’s report or the Deputy Chief Constable’s response to the complainer, to the possibility that had the officers provided identification when first requested, the issue may not have escalated.

Complaint 4 – That the keys for Relative A’s vehicle were taken by the police officers without provision of an incident report form.

The police officers' statements show that Relative A was subsequently issued with a HO/RT 1 form at a local police office requiring him to produce a valid certificate of insurance within 7 days.

In the final report dated 20 November 2007, Inspector U stated that the Force Procedures Manual indicates that IIFs are issued to persons reporting crimes to the police. Inspector U also noted that in normal circumstances, a Seizure Notice would be issued to the owner of a seized vehicle by registered post but that on this occasion a HO/RT 1 form was issued to Relative A at the local police office. Inspector U maintained that the incident report number and incident slip referred to by the complainer and Relative A in their statements was in fact the HO/RT 1 form.

This information was explained to the complainer by the Deputy Chief Constable in his letter dated 30 November 2007.

Complaint 5 – That there were no grounds to believe that Relative A was driving the vehicle without insurance.

Inspector U's final report dated 20 November 2007 concluded that Constables E and F had made clear efforts at the scene to attempt to determine whether Relative A was insured to drive the vehicle.

Following the submission of Inspector U's report, the Deputy Chief Constable communicated the force's findings to the complainer in his letter of 30 November 2007.

Complaint 6 – That the force did not apply the Road Traffic Act 1988 correctly in relation to impounding the vehicle.

I note that in his initial report dated 7 September 2007, Inspector T stated that this incident could have been dealt with by way of a HO/RT 1 form and that the complainer was offered but rejected reimbursement of the money paid to recover his vehicle from the pound. However, Inspector U concluded in her report that the officers were justified in their actions when seizing the vehicle.

I also note that within the police file provided to my office there is a copy of The Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005. This states that seizure powers contained within Section 165A of the Road Traffic Act 1988 (RTA 1988) are available to a constable in uniform who has reasonable grounds to believe that a motor vehicle is or was being driven in contravention of Section 143 RTA 1988 (no insurance) and the driver fails to produce evidence to the contrary when required to do so.

The force guidance advocates a common sense approach to deciding on the seizure of a vehicle:

“A vehicle should NOT be seized on the strength of a PNC entry alone, and other supporting facts, such as a driver not holding a driving licence, for example, must be considered. The best evidence may be where the driver admits that he/she does not hold the required documents.”

Additionally, the guidance makes reference to an appeals procedure where an owner can appeal in order to have the charges reimbursed.

In his letter of 25 January 2008, the Deputy Chief Constable advised the complainer that the terms of Section 165A of the Road Traffic Act 1988 empower an officer to seize a vehicle where the driver is unable to provide evidence of insurance. The Deputy Chief Constable maintained that he was unwilling to compensate the complainer for the £141 paid to recover the vehicle as the officers' actions were justified.

The correspondence sent to the complainer by the Deputy Chief Constable does not make any reference to the initial offer by Inspector T and the decision not to repeat the offer to reimburse the complainer. Similarly, I note that there appears to be no record of the complainer being directed toward any appeals procedure.

Complaint 7 – That a passenger in the vehicle was arrested without reasonable cause.

In the final report, Inspector U noted the information provided by Relative A, Mr C and Mr D. In her conclusion she appears to accept that it is not known whether Mr C and Mr D did genuinely believe that the officers may have been bogus. Her report made no reference to the incident log where Mr D's call was noted. There is no statement from the call handler and it is stated that due to a technical error the recording of the call cannot be retrieved. It is unfortunate that this information was not available.

This complaint was considered by the force in conjunction with Complaint 3 as they are closely linked. In the final report dated 20 November 2007 investigating officer Inspector U stated:

“The officers did not arrest [Mr D] as contained within the allegation, but detained him in the terms of Section 14 of The Criminal Procedure (Scotland) Act 1995, on suspicion of misuse of the telecommunications system, a course of action for which the officers cannot be criticised.”

The Deputy Chief Constable advised the complainer of the force's findings in his letter of 30 November 2007.

Complaint 8 – That the police officers left the scene with Relative A's passenger without advising their destination.

The complainer stated in his letter to the force of 31 July 2007 that Constables E and F drove away from the scene with Mr D without informing Relative A and Mr C where they were going. From the information provided to my office by the complainer and Lothian and Borders Police, it does not appear that the force has responded to this complaint.

Complaint 9 – That police officers at a local police office refused to acknowledge the complainer as the owner of the vehicle or look at the insurance documentation that he provided.

In their operational statements both Constables E and F stated that they spoke with the complainer at the local police office following his arrival. Constable F asked the complainer to provide evidence that he or Relative A were the registered owners or had a valid certificate of insurance for the vehicle. Constable E stated that the complainer provided a business card and advised them to call the number on the card as he did not have any of the documents available.

The officers' statements indicated that at the time they had spoken to the complainer, they had already arranged for other officers to contact Mr B to determine if he had sold the vehicle on to the complainer or Relative A. I note that there are no statements from the officers that spoke with Mr B on 27 July 2007.

Following the submission of Inspector U's final report, the Deputy Chief Constable responded to the complainer regarding this issue on 30 November 2008 and provided a detailed explanation.

Complaint 10 – That the complainer was threatened with arrest at a local police office without due cause.

In the final report dated 20 November 2007, Inspector U considered the information collated in the statements obtained from the police officers, the complainer and other witnesses. Inspector U noted that all the officers confirmed that the complainer had been warned he may be arrested due to his conduct and concluded that the warning had been warranted.

The Deputy Chief Constable provided the complainer with a concise response to this complaint in his letter of 30 November 2007.

Complaint 11 – That the complainer was inconvenienced by having to attend the premises where the vehicle had been impounded and suffered financial loss.

I note that Inspector T attempted to conciliate by recommending that the complainer should be reimbursed the £141.00 that he had to pay to have the vehicle released. However, it would appear that at this time no recommendation was made in relation to the other complaints raised and that the complainer refused to conciliate on the terms offered. It is not clear how Inspector T decided that a reimbursement was appropriate in this case.

In her final report dated 20 November 2007, Inspector U made no reference to Inspector T's offer to reimburse the complainer for cost incurred. Inspector U is of the opinion that the vehicle had been correctly seized.

The Deputy Chief Constable's letters to the complainer do not make any reference to the initial offer by Inspector T or to the decision not to repeat the offer to reimburse

him. Similarly, I note that there is no record of the complainer being directed toward any appeals procedure.

Complaint 12 – That police security officers at police office X were rude and unhelpful.

The complainer raised this complaint with the force in his letter of 17 December 2007 which stated:

“The two civilian police security officers who I spoke to were not the slightest bit interested in talking to me. I felt they were rude and unhelpful towards me...”

From the information provided to my office by the complainer and Lothian and Borders Police, it does not appear that this matter has been considered by the force.

Complaint 13 – That the complainer was breathalysed by Lothian and Borders Police in an attempt to intimidate him.

I note that Inspector U concluded in her report of 20 November 2007 that the Police Security Officers and Constables had acted in good faith. The circumstances of the road side stop was explained to the complainer in clear terms by the Deputy Chief Constable in his letter of 30 November 2007.

7. Conclusion

Complaint 1 – That Relative A was stopped by the police without reasonable cause.

In his letter dated 25 January 2008, the Deputy Chief Constable advised the complainer why Relative A was stopped by the force. I am satisfied that the force has provided an adequate response to the complainer. As such, **I do not uphold this complaint.**

Complaint 2 – That the police officers that stopped Relative A’s vehicle were aggressive and used foul language.

I am of the view that this matter has been investigated and explained to the complainer by the Deputy Chief Constable. As such, **I do not uphold this complaint.**

Complaint 3 – That the police officers that stopped Relative A’s vehicle refused to provide identification.

As the force have stated, in most circumstances, officers would comply with a reasonable request to produce identification from a member of the public. On this occasion, it is possible that further complaints may have been avoided had Constables E and F complied with the request for identification. In my opinion, the response by the force to this complaint was not reasonable therefore **I uphold this**

complaint. I will address the issue regarding the apparent lack of guidance on this matter later in this report.

Complaint 4 – That the keys for Relative A’s vehicle were taken by the police officers without provision of an incident report form.

I am of the view that this matter has been investigated and explained to the complainer in detail by the Deputy Chief Constable. As such, **I do not uphold this complaint.**

Complaint 5 – That there were no grounds to believe that Relative A was driving the vehicle without insurance.

The officers acted within a strict application of the available guidance. It would appear that at the time the vehicle was seized it may not have been possible to determine whether Relative A was an insured driver. This matter has been investigated and the force’s findings have been communicated to the complainer. Therefore, **I do not uphold this complaint.**

Complaint 6 – That the force did not apply the Road Traffic Act 1988 correctly in relation to impounding the vehicle.

The force has investigated this complaint and determined that the officers were acting within the terms of the Road Traffic Act 1988 in seizing the vehicle. The Deputy Chief Constable advised that complainer of the force’s findings in his letter of 30 November 2007 and as such, **I do not uphold this complaint.**

Complaint 7 – That a passenger in the vehicle was arrested without reasonable cause.

This matter has been investigated and the force’s findings have been communicated to the complainer. **Therefore, I do not uphold this complaint.** However, there are issues which remain unclear and I am of the view that this matter could have been better resolved had additional information been sought and considered. The force may wish to consider this as a learning point.

Complaint 8 – That the police officers left the scene with Relative A’s passenger without advising their destination.

From the information provided to my office by the complainer and the force, it does not appear that this matter has been considered by the force to date. **I recommend that Lothian and Borders Police now record this as a complaint about the police and respond to the complainer.**

Complaint 9 – That police officers at a local police office refused to acknowledge the complainer as the owner of the vehicle or look at the insurance documentation that he provided.

An investigation has been conducted in respect of this complaint and a reasonable explanation has been provided to the complainer. As such, **I do not uphold this complaint.**

Complaint 10 – That the complainer was threatened with arrest at a local police office without due cause.

This complaint has been thoroughly investigated by Lothian and Borders Police and a concise response provided to the complainer. As such, **I do not uphold this complaint.**

Complaint 11 – That the complainer was inconvenienced by having to attend the premises where the vehicle had been impounded and suffered financial loss.

In an initial attempt by the force to conciliate this complaint, the complainer was originally offered a refund of the cost incurred to recover the vehicle. The complainer refused to accept this offer. Following a subsequent investigation into the matter, the force did not repeat the offer to reimburse the complainer and has advised the complainer of the reasons why it is of the opinion that the officers' actions in seizing the vehicle were justified. Therefore, **I do not uphold this complaint.** However, I am of the view that it would have been helpful if the force had provided some explanation for the decision not to repeat the offer to reimburse the complainer for the money paid to recover his vehicle. I can find no record of the complainer being directed toward an existing appeals procedure. Similarly, a more comprehensive explanation regarding the application of the Act, which resulted in the seizure of the vehicle, could have been provided. The force may wish to consider this as a learning point.

Complaint 12 – That police security officers at police office X were rude and unhelpful.

From the information provided to me by Lothian and Borders Police and the complainer, it does not appear that this matter has been considered by the force. As such, **I recommend that this matter is now recorded as a complaint about the police and a response provided to the complainer.**

Complaint 13 – That the complainer was breathalysed by Lothian and Borders Police in an attempt to intimidate him.

This complaint has been investigated by Lothian and Borders Police and a detailed response provided to the complainer. As such, **I do not uphold this complaint.**

Other matters arising from this review:

While the final investigation into the complaint about Lothian and Borders Police by the force has in general addressed the complaints raised, I am of the view that there have been instances where consideration of additional information may have been of

benefit. In the course of conducting this review I have identified matters which have given me cause for concern.

CCTV

Despite the complainer intimating his complaint on 31 July 2007, there appears to be have been no attempt to retain a copy of the CCTV recording from the local police office until 10 October 2007. It would have been of benefit to the handling of this complaint had the footage been retained. As it was clear from the complainer's letter of 31 July 2007 that he was dissatisfied with the treatment that he had received from the officers at the local police office, I would expect this recording to have been copied within the 31 day period and retained as part of the complaint file in line with the Association of Chief Police Officers Scotland policy. I am pleased to note that in its draft Standard Operating Procedures in relation to Complaints about the Police the force has included a recommendation that where there is a possibility of conciliation or resolution, CCTV footage should be viewed. I would, however, recommend that the force amends its Standard Operating Procedures to include viewing and retaining the CCTV footage where mediation or conciliation is being attempted.

Statements

Much of this complaint hinged upon the statements provided by those involved. The letter sent to the complainer dated 30 November 2007 stated:

"Neither Mr D nor Mr C can corroborate the comments allegedly made by the officers towards [Relative A]."

It is therefore with concern I note that although the operational statements provided by Constable E and F state that each individual officer prepared his statement alone at 14:00 hrs on 22 October 2007, the contents and layout of both statements are remarkably similar, including on occasion the same mistake, for example:

"Road Traffic Act, 1988 he had reasonably cause to suspect that there was not a valid certificate"

Given that the statements each extend to five pages it is difficult to understand how both officers were able to achieve such similar statements in the absence of each other. I am surprised that Inspector U did not make any comment on this in her report.

It would seem reasonable to query whether they were written independently and I am concerned that one officer's statement may have been "overwritten" from his colleague. Both the text and layout of the officers' statements suggests to me that they have been copied or written together. I am of the view that this is inappropriate.

While it is unlikely that this would affect the outcome of the complaints, Lothian and Borders Police may wish to consider whether the practice of police officers copying one another's statements provides the public with confidence in the force.

Provision of Identification

From the information available to me I can find no guidance relating to officers in uniform in Scotland providing identification when challenged. I have written separately to ACPOS in this regard.

Learning Points

Complaint handling within a force should, in my opinion, be used as a valuable tool to review and where necessary improve existing practices. There are a number of opportunities in the matters raised which represent learning opportunities for the force.

Jim Martin
Police Complaints Commissioner for Scotland
February 2009