

# Report of a Complaint Handling Review in relation to Northern Constabulary

under section 35(1) of the Police Public Order  
and Criminal Justice (Scotland) Act 2006

## **Summary and Key Findings**

The complaints dealt with in this report arose from the applicant's involvement with officers from Northern Constabulary at her home on 18 and 19 June 2007.

Of the five complaints considered, the Commissioner found that three were dealt with in a reasonable manner, while two were not. The Commissioner made a number of recommendations in this connection.

## The Commissioner's role

Section 35 of the Police Public Order and Criminal Justice (Scotland) Act ("the Act") gives the Commissioner the power to examine the manner in which a policing body has dealt with a "relevant" complaint, as defined in the Act.

The Commissioner is independent of the police service and performs his functions in a fair and impartial manner. Before considering a complaint, the Commissioner's office obtains all papers held by the policing body against which the complaint has been made. These papers are considered alongside information provided by the applicant. The Commissioner then assesses whether the policing body's handling of the complaint was reasonable in all the circumstances. The Commissioner will look at the entire handling process, from the initial investigation by the policing body to the final response issued to the applicant. Among the factors which the Commissioner takes into account are the following:

- whether the policing body's response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented;
- whether the policing body's response to the complaint is adequately reasoned; and
- whether the policing body has communicated with the applicant in a reasonable manner.

## Background

On 18 June 2007 the applicant attended her family doctor, Doctor B, complaining that she had been assaulted by her son, Mr A, on 15 June 2007. She alleged that Mr A had tied a rope around her neck and dragged her across the floor of her house. She also told Doctor B that about one week prior to the incident she had been assaulted by Mr A who had allegedly struck her with a knife. Doctor B examined the applicant and found a number of injuries consistent with the circumstances she had reported to him. The applicant told Doctor B that she did not want the police informed.

Historically the applicant has experienced a number of difficulties with Mr A, some of these relating to violent and abusive behaviour towards her. The applicant has reported a number of incidents to third parties who in turn have informed the police. For a variety of reasons, attempts by a number of agencies to find a long term solution appear to have failed.

Doctor B, concerned for the safety of the applicant, consulted colleagues and decided to report the circumstances to the police. Doctor B attended personally at the police office where a statement was noted by Sergeant C.

On the same date (18 June 2007) Sergeant C attended at the applicant's home, accompanied by Constables D, E and F, with the intention of detaining Mr A in respect of the alleged assault upon the applicant. Sergeant C also wanted to check on the applicant's welfare and obtain further information from her in relation to the alleged assaults. According to the officers in attendance, Mr A was within the applicant's home but the applicant refused to allow entry to the officers.

The officers then left the scene and returned to the police office. Following consultation with her supervisors Sergeant C returned to the applicant's home a short time later accompanied by Sergeant G and Constables D and H. Upon attendance, they found Mr A sitting outside the applicant's home and subsequently detained him for the alleged assaults on the applicant.

The officers' position is that, as Mr A was being detained, the applicant appeared and took hold of him in order to pull him away. According to the officers the applicant was warned to move away but she refused and was subsequently arrested. The applicant's position is that she simply asked Mr A to come inside and that she was immediately grabbed by the police.

The applicant was then taken to a police office where she was detained overnight and released the following morning.

On 19 June 2007 a warrant was granted by a sheriff to search the applicant's home for evidence in connection with the alleged assaults by Mr A. The warrant gave the police the following powers:

*"... to enter the [applicant's home], including any outhouses within the curtilage, if necessary by force, and search for and seize any knives or other edged implement, any lengths of rope, any blood stained items and any items of clothing which from their appearance suggests they were worn by the victim or the accused at the time of the commission of the crime."*

Sergeant C re-attended at the applicant's home accompanied by Detective Sergeant J and Detective Constables K and L to execute the warrant. By arrangement, a local social worker, Ms M, also agreed to attend to ensure the welfare of the applicant. Ms M did not, however, arrive until after the police had entered the applicant's home.

The officers state that the applicant refused to allow the police into her home and entry had to be forced. According to Sergeant C and Detective Sergeant J, they found the applicant lying on her bed covered with a duvet. Ms M states that she arrived at the applicant's home to find police officers in the bedroom. According to Ms M, the applicant refused to respond to the efforts which were made to speak to her.

Both Sergeant C and Detective Sergeant J state that the applicant was wearing a body-warmer which appeared to have cut marks, and that they explained to her this would need to be seized as evidence. According to both officers, as a result of the applicant's failure to cooperate the body-warmer had to be forcibly removed from her.

Following this, the applicant ran from her home into the street and entered a nearby house. Sergeant C and Detective Constable L followed the applicant and, after a few minutes, persuaded her to come outside. Both Sergeant C and Detective Constable L state that, despite being asked to "desist", the applicant continued to shout and scream. The applicant was then arrested by Sergeant C for a breach of the peace.

Sergeant C states that she was successful in applying one handcuff to the applicant's wrist and that the applicant then "dropped her entire body weight to the ground". According to both Sergeant C and Detective Constable L, the applicant then managed to drag herself into a nearby ditch. The applicant was pulled from the ditch by all four officers and taken to the local police office where she was detained in custody pending a court appearance the following day.

The Procurator Fiscal decided to take no proceedings against the applicant in respect of her alleged actions on 18 and 19 June 2007.

## The Complaints

Based on the contents of the application form, the correspondence received from the applicant and the information obtained from Northern Constabulary, the Commissioner has identified the following complaints:

- (1) that, on 18 June 2007, the applicant was arrested unlawfully and unnecessarily;
- (2) that, on 18 June 2007, the applicant was treated with excessive force;
- (3) that during her arrest on 18 June 2007 a police officer was uncivil towards the applicant;
- (4) that, on 19 June 2007, the applicant was arrested unlawfully and unnecessarily; and
- (5) that Sergeant C used excessive force against the applicant;

## The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Northern Constabulary. Each complaint is set out in turn and is followed by details of Northern Constabulary's handling of it and the Commissioner's views on this.

### Complaint 1: Alleged unlawful arrest

In her statement the applicant states in respect of the second visit by the police to her home on 18 June 2007 that she saw officers surrounding Mr A and that she said to him that he should come inside. The applicant gave the following account of what happened next:

*"... As I walked to approach, the male sergeant, Sergeant [G], turned and grabbed me by my right wrist."*

The applicant complains about the fact that she was arrested. The complaint was dealt with by Northern Constabulary as one of "unnecessary/unlawful arrest".

### Internal Handling

On receipt of the applicant's complaints Chief Inspector N was instructed to conduct a preliminary investigation. He obtained a statement from the applicant and operational statements from all the officers who were present at the applicant's home on 18 and 19 June 2007. Chief Inspector N submitted his preliminary report to the Deputy Chief Constable on 7 February 2008. It was considered that the applicant was making a criminal complaint and Chief Inspector N recommended that his report be sent to the Area Procurator Fiscal along with the evidence he had gathered. On 11 February 2008, the Deputy Chief Constable forwarded the documentation to the Area Procurator Fiscal.

On 8 May 2008 the Area Procurator Fiscal requested a full report, following which Inspector P was appointed as the investigating officer. Inspector P investigated all of the applicant's complaints simultaneously, including the non-criminal ones detailed above, and arranged for a statement to be obtained from Mr A. Sergeants G and C were also interviewed under caution. Mr A provided no information in support of either the applicant or the police.

In his report Inspector P commented that the officers' accounts of the applicant's arrest on 18 June 2007 were very similar. According to the report, Sergeants C and G both warned the applicant to desist from interfering in the arrest of Mr A. The applicant responded by saying "get away" and

continued to physically intervene by trying to pull Mr A away from the police. Inspector P reached the following conclusions:

*“... The officers present all give very similar accounts of the complainer’s conduct. She shouted at officers to ‘get away’, told [Mr A] to come inside and then proceeded to try to pull [Mr A] away from the officers as well as pull officers away from [Mr A]. There is no evidence that she first sought explanation for the officers’ actions or sought to enter into reasonable discussion on the matter.*

*Sergeants [C] and [G] both speak to physically intervening and to warning the complainer to desist from interfering. Despite warning, the complainer continued to make efforts to physically intervene in a manner which was obstructing the officers from effecting [Mr A]’s detention. The statements of Sergeants [G], [C] and [Constable H] are in agreement on this point.*

*... In this current matter it is abundantly clear from the account of the complainer and the officers that the complainer was not of a mind to cooperate with the lawful detention of her son and was intent on preventing the officers carrying out their duty. She resorted to physical means in doing so, clearly obstructed officers and it might be considered that her conduct was also likely to provoke a greater level of violence or resistance from her son.*

*The complainer continued to obstruct officers despite clear warnings to desist. All this whilst officers were engaged in the legitimate execution of their duty.*

*In respect of this aspect of the complaint, I conclude that the arrest of the complainer in these circumstances was lawful and that the charge subsequently libelled was competent.”*

Chief Inspector Q responded to the applicant’s complaints on 19 August 2008, explaining:

*“... I am aware of the extensive history of difficulties that you have experienced in terms of your relationship with your son, [Mr A]. I have also noted the strong degree of loyalty that you have demonstrated in the past towards [Mr A], despite these difficulties. In these terms, I must acknowledge the stress and mixed emotions that these circumstances must have brought about over a significant period of time. I have no difficulty in accepting that your experiences prior to police involvement on these particular dates must have been very traumatic and will have had a lasting impact on you”*

Addressing complaint 1 Chief Inspector Q stated

*“... On their arrival the officers approached and detained [Mr A] as was their duty in the circumstances. It was at this time that you came out of the house. You yourself admit that you told [Mr A] to come into the house and I can only interpret from this that you, as before, did not intend for him to co-operate with the officers.*

*You alleged that Sergeant [G] grabbed you for no apparent reason. The officers contend that you not only tried to pull [Mr A] away from them but that following warnings not to interfere in this manner, you again tried to push past them to physically intervene. The officers engaged in their lawful duty by detaining [Mr A] were justified in their attempts to prevent your physical intervention which they considered was obstructive and hindering them in their duties.*

*The officers therefore assert that you continued to ignore their requests to desist and that this left them no alternative than to arrest you ... I have examined the accounts of the officers present and find them coherent and reasonable. There is no evidence available to support your view that your arrest was unnecessary and unjustified. Your conduct, as described by the officers present, was such that it constituted a criminal offence. I*

*therefore conclude that your arrest was both reasonable and justified in these circumstances.”*

### **Consideration**

During his investigation, Inspector P obtained statements from the officers who were present at the scene, all of whom have a different recollection of events from those described by the applicant. All officers state that the applicant attempted to drag Mr A away from the officers and that, having been warned to stop, did not do so. Consequently, the applicant was arrested for obstruction.

Having had regard to the evidence, the Commissioner considers it reasonable to conclude that the applicant was obstructing the officers in the execution of their duty. Accordingly, based on the evidence it was reasonable to conclude that the applicant's arrest was technically lawful.

However, in the Commissioner's view, despite there being a lawful basis for the arrest, the decision whether or not to do so remained a discretionary one. Such decisions often have to be made quickly and in the heat of the moment and it is therefore important not to assess them in too fine a balance. Equally important, however, is that the police reflect on their decision-making and assess whether the action taken was justified in all the circumstances. It does not appear to the Commissioner that such an opportunity was taken in the present case.

The issue of most concern to the Commissioner is that the officers involved consider there to have been “no alternative” but to arrest the applicant. A similar point is made by Chief Inspector Q in his response where he commented that there was “no evidence” to support the applicant's view that her arrest was unnecessary. The Commissioner does not share these views. At the time of her arrest the applicant was 67 years old. She was the alleged victim of a serious assault by her son, and is clearly a vulnerable individual. In the Commissioner's view, these factors alone ought to have influenced the officers in exercising their discretion against arresting the applicant, even though there was lawful basis for doing so. In addition, four officers had attended the applicant's home in order to detain Mr A. In such circumstances, it is not difficult to envisage an effective alternative to the applicant's arrest. Officers could, for example, have physically prevented the applicant from interfering with Mr A's detention until such time as he was safely in their custody.

It does not appear to the Commissioner that Northern Constabulary has considered any of these issues in dealing with this complaint. In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary reconsiders this complaint, taking the above comments into account, and issues a further response to the applicant explaining clearly and comprehensively why it considers there to have been no alternative but to arrest her. The Commissioner may make further recommendations depending on the response provided in this connection.

### **Complaint 2: Alleged excessive force**

The applicant's statement contains the following complaint:

*“... Sergeant [G] turned and grabbed me by my right wrist ... The man then twisted my arm behind my back and I was bent double with him locking me in a position like that ... He then put handcuffs behind my back, holding me, like that causing more pain.*

*The female Sergeant [Sergeant C] then said ‘put the handcuffs to the front.’ Then Sergeant [G] undid the handcuffs from both hands and then tied my hands in the handcuffs to my front. I was then tied to the other female Sergeant by the handcuffs. I don't know how they did it but I definitely had both my hands handcuffed and handcuffed to Sergeant [C].*

*Suddenly Sergeant [C] pulled me away and I stumbled off the pavement at the side of the house and fell onto the grass at the edge of the pavement. I couldn't get up quickly so she*

*started pulling me. She pulled me along the ground with handcuffs on; it was pretty sore. She didn't pull me very far, I couldn't say what distance."*

### *Internal Handling*

During his investigation into this complaint, Inspector P made reference to the statements obtained from the applicant and the attending officers. Inspector P also made reference to the national officer safety training manual in respect of the handcuffing of members of the public.

In relation to the handcuffing of the applicant, Inspector P's report commented:

*"... The statements of Sergeant [C] and [G] both indicate that it had already proved necessary, prior to her actual arrest, to lay hands on the complainer in order to keep her away from her son and the detaining officers. At the point of arrest, Sergeant [G] took hold of the complainer and drew his handcuffs. He proceeded to apply the cuffs to the complainer, trying to apply the cuffs with her hands to the front in the palm-to-palm position. This is the technique most commonly used by officers, is a legitimate and taught technique and is normally deemed suitable for compliant or semi compliant prisoners.*

*... Sergeant [C] clearly states that the complainer started to struggle whilst Sergeant [G] was trying to apply the handcuffs. She states that this resistance amounted to twisting and jostling her body from side to side and doing what she could with her arms to prevent Sergeant [G] applying the cuffs ... Sergeant [C] went to the assistance of Sergeant [G] and together they managed to successfully handcuff the complainer, as previously described with the handcuffs to the front.*

*... the handcuffs were applied to the front, were not subsequently removed or adjusted and at no point was the complainer handcuffed to any officer."*

In relation to the complaint that Sergeant C pulled the applicant causing her to fall, Inspector P's report states the following:

*"... The statements of Sergeants [G], [C] and [Constable H] are all in agreement that without apparent warning, the complainer slumped down allowing her body to go to the ground and that she lay on the ground on her back. All three officers formed the clear opinion that this action on the part of the complainer was deliberate ... Sergeants [G] and [C] left the complainer lying on the ground and went to assist Constables [D] and [H]. On returning to the complainer, they both asked the complainer several times to get to her feet. [Constable H] corroborates this and states that the complainer refused to do so.*

*Sergeants [C], [G] and [Constable H] are clear in their statements that it required the efforts of all three and [Constable D] to eventually lift the complainer off the ground. They add that the complainer did not co-operate and it required the four officers to get the complainer from the ground to her feet. None of the officers state that the complainer was pulled along the ground. They are in agreement that the complainer slumped to the ground of her own accord, did not move thereafter even when left briefly unattended and failed to co-operate with officers when they tried to lift her."*

Inspector P, himself a qualified Officer Safety Instructor, quoted the following excerpts from the national officer safety training manual:

*"The use of handcuffs will be at the discretion of the individual officer, based on his/her judgement, in often volatile and rapidly evolving circumstances. It is not possible to give instructions to cover every eventuality, but remember, there must be some objective basis for the decision by the officer."*

*“Only in exceptional circumstances should handcuffs be used on elderly or infirm persons or very young persons.”*

*“Do not handcuff yourself or another officer to as suspect.”*

Inspector P’s report concluded that the version of events provided by the applicant differed from that provided by the officers present and, whilst there was no support for the applicant’s position, the officers were supportive of one another.

In the response to the applicant on 19 August 2008 Chief Inspector Q said:

*“... When a person is arrested, a Police Officer is encouraged to lay hands on that person to physically emphasise the act of arrest. Further to this, officers are entitled to apply the minimum, reasonable force necessary to restrain a person who is either unco-operative or resists arrest. In your case, it is the position of the officers present that you were not compliant at the time of your arrest and that you tried to pull away from Sergeant [G]. There is insufficient evidence available to lead me to dispute the officer’s evidence in this respect.*

*In addition, officers are entitled to consider the use of handcuffs on every occasion on which they make an arrest. When arresting a person who is non compliant or resisting there is an expectation that officers will use handcuffs, unless special circumstances dictate otherwise. The use of handcuffs is primarily for the protection of the officers themselves and the safety of the subject.*

*That said, the application of handcuffs is on the basis of necessary restraint. Handcuffs are not intended to be used as an implement for the deliberate purpose of inflicting pain or injury. However, the rigid handcuffs that are issued to officers are of such a design that discomfort, pain and potential injury are likely if the subject resists or struggles in any way during application or once they are applied.*

*Both Sergeant [G] and Sergeant [C] are fully trained in the use of force and handcuffs and are aware of the appropriate techniques.*

*The officers present have described how you were handcuffed, which was with your hands to the front ... The officers all agree that the cuffs were applied with your hands to the front, that they were not then removed and that you were not handcuffed to Sergeant [C] or any other officer. Again, the officers have given a very reasonable account of their actions. There would be no good reason to remove and reapply cuffs unless they had been incorrectly applied in the first instance. There is no evidence that this was the case.*

*In terms of your assertion that you were handcuffed to another officer, I do not accept that this was the case. Such an action is clearly against instructions, largely due to a risk of injury to both the officer and subject. This is understood by all officers and I do not accept that any officer would place themselves at risk of serious injury through such an action.*

*You go on to assert that you stumbled and fell to the ground and that Sergeant [C] pulled you along the ground by the handcuffs. I would suggest that [if] you had been handcuffed to Sergeant [C], she too would have been pulled to the ground and would have probably suffered injury. Neither was apparently the case. Rather, the officers all state that you deliberately slumped to the ground, lay on the grass and refused to get up requiring several of the officers to manually lift you off the ground.*

*It is my opinion that the officers’ account is coherent and consistent with your general stance of non-co-operation. I can find no evidence that supports your position that any of the officers present used excessive or inappropriate force on that date.”*

### Consideration

The question of whether the force used to effect the applicant's arrest is clearly related to the question of whether the arrest itself was lawful and necessary. Where an arrest is found to be unlawful or unnecessary, any force used to effect it would be considered excessive.

The Commissioner has already stated his view that there was a lawful basis for the applicant's arrest. Although based on the information presently available the Commissioner has doubts about the necessity of the applicant's arrest, this may alter following the further response which Northern Constabulary is to issue in light of the recommendation in complaint 1. The Commissioner therefore does not make any formal finding in respect of this complaint, but will do so once Northern Constabulary implements that recommendation.

### Complaint 3: Alleged incivility

The applicant states that while being restrained by Sergeant G the applicant shouted because her "arm was in agony". The applicant claims that Sergeant G replied, "Shut up you stupid b\*\*ch."

The applicant also alleges that Sergeant G shouted that she was "full of drink" and that she would not "even get into [a local] Amateur Dramatics club." The applicant's position is that she had not consumed alcohol at all and objected to the suggestion that she had.

### Internal Handling

In his report Inspector P noted Sergeant G's denial that he had made any derogatory comments to the applicant. This was to some extent supported by Sergeant C who said that she had not heard any derogatory comments being made. Inspector P reached the following conclusion:

*"... there is no independent evidence to support the complainer's allegations in this regard. In all the circumstances, the police evidence points towards the officers' conduct being reasonable and professional. I submit that there is no evidence to support the assertion that Sergeant [G] was oppressive, uncivil or unprofessional."*

In his response to the complaint Chief Inspector Q stated

*"... In your statement, you claim that Sergeant [G] made several remarks which you considered inaccurate or inappropriate. Firstly, I have to say that all the officers present deny that such unprofessional conduct took place and there is nothing besides your own account to confirm your version. With regard to your objection that you were under the influence of alcohol, the police custody record indicates that you were affected by alcohol."*

### Consideration

In the Commissioner's view there are two aspects to this complaint. As Inspector P recognises in his report, the alleged comment by Sergeant B "Shut up you stupid b\*\*ch would, on any reasonable interpretation, be classed as uncivil. The other alleged comments about the applicant having been drinking are perhaps not so clear. While it might be understandable for the applicant to have been annoyed by them, the context of the comments would have to be explored further before they could be definitively classed as uncivil. The context of these alleged comments could be properly understood only if all those present provided some clarity about the situation.

The only people recorded as being present when the alleged comments were made were the applicant, Mr A and the police officers. The applicant's position on whether the comments were made is clear. Mr A was unable to provide any information in relation to this complaint.

It is not clear from the papers if the exact details of this complaint were made known to Constables H and D; neither officer specifically address the complaint in their statements. These officers therefore provide no support either for the applicant's account or that of Sergeant G. In the Commissioner's view, as both officers were present when the alleged comments were made, Inspector P should have taken steps to ensure that they addressed this complaint.

The interviews of Sergeants G and C conducted by Inspector P were clearly an important aspect of the investigation. In terms of the transcript of the interview with Sergeant G the only question put was the following:

*"Did you at any point make any derogatory comments towards [the applicant]?"*

The only question put to Sergeant C at interview was:

*"On the event of her arrest the day before, did any officer make unprofessional or derogatory comments towards [the applicant]?"*

In the Commissioner's view, these questions do not demonstrate a sufficiently thorough attempt to establish an accurate account of the whole circumstances. Indeed, in respect of this specific complaint the interviews appear almost perfunctory in nature. At the very least the Commissioner would have expected the applicant's specific allegations to have been put to the officers.

In the Commissioner's view, Inspector P's conclusion that the evidence pointed towards the Sergeant B's conduct being reasonable and professional is not an accurate reflection of the evidence. One officer denied the allegation and two officers did not address it at all. The one other officer who addressed the complaint (Sergeant C) stated simply that she did not hear any unprofessional or derogatory comments being made. To use that as a basis for describing Sergeant B's conduct as "reasonable and professional" is, in the Commissioner's view, unwarranted. Furthermore, the comment by Chief Inspector Q that "all the officers present deny that such unprofessional conduct took place" is not an accurate reflection of the evidence gathered by Inspector P. The Commissioner has commented in previous reviews that responses sent to complainers must accurately reflect the evidence obtained during an investigation. On this occasion that standard was not met.

For the reasons given the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary obtains accounts from Constables D and H in relation to the complaint and provides the applicant with a further response in light of the evidence as a whole.

#### **Complaint 4: Alleged unlawful arrest**

In her statement the applicant complains that her arrest on 19 June 2007 was unlawful. In her correspondence with the Commissioner's office the applicant also states that her home was broken into by the police on this date.

As with complaint 1, the applicant complains about the fact that she was arrested. Northern Constabulary dealt with the complaint as one of "unnecessary/unlawful arrest".

#### *Internal Handling*

Inspector P established that prior to attending at the applicant's home the officers obtained a warrant from a sheriff empowering them to enter the applicant's home, by force if necessary, and search for evidence associated with the alleged assaults on the applicant.

Inspector P also established that prior to attending the applicant's home Sergeant C arranged for a local social worker, Ms M, also to attend. The purpose of this was to provide a calming influence

on the applicant. Ms M did not, however, arrive at the applicant's home until after the police had gained entry. In his report Inspector P commented that by making this arrangement the officers were:

*"... mindful of the complainer's un-cooperative and erratic conduct on 18<sup>th</sup> June and that they wished to minimise the possibility of another confrontational situation with the complainer."*

In his report Inspector P noted that Detective Sergeant J, Sergeant C and Detective Constable K had all seen the applicant within her home. Sergeant C and Detective Constable K stated specifically that they had seen the applicant within the kitchen area. According to Inspector P's report all the officers had been knocking and calling out to the applicant but she refused to respond or acknowledge their presence. Inspector P noted that after about 15 minutes Detective Sergeant J made the decision to force entry to the property in terms of the warrant.

According to Inspector P's report, the doctor who examined the applicant during her time in custody (Doctor R) recalled that she had told him she was aware of the police presence outside her home and that she "shut the curtains and went to her bed".

In respect of the decision to arrest the applicant the officers present all recall that the applicant left her home and ran into the house next door. As she did so she was screaming "help" and "help me". Ms M was present when this occurred. The applicant was followed into the next door house by Sergeant C and Detective Constable L. According to Sergeant C she warned the applicant to calm down and stop screaming. A short time later the applicant left the house and emerged on the roadway outside, again shouting and screaming. Inspector P quoted Ms M as saying that the applicant was "... using bad language, f-ing and blinding."

According to Inspector P's report, despite further warnings, the applicant's conduct continued and she was then arrested for a breach of the peace. Inspector P concluded

*"... There is a convincing body of evidence that the officers had already exercised a great deal of patience with the complainer, tried to keep her calm and had tried to engage her in reasonable exchange. All such efforts failed ... I consider that the complainer left the officers no other option in the circumstances but to arrest her, in the interests of public order and the complainer's own safety."*

In his response to the complaint Chief Inspector Q stated the following:

*"... The police returned to your house on the afternoon of the 19<sup>th</sup> June 2007 in possession of a valid search warrant empowering them to search for items of evidence which were relevant to the reports that your son [Mr A] had assaulted you ... The search warrant also empowered the officers to force entry to the house, if necessary.*

*... the police officers state that they banged on the doors and windows, saw you standing inside the house and attempted to verbally persuade you to open the door.*

*The doctor who examined you later that day at the police station states that you told him that you saw a policewoman at the window, shut the curtains and then went to bed. Your friend [Mr S] states that you later told him that the police had banged on the door before coming into the house. These latter accounts are entirely consistent with those of the police officers; that you knew the police were present, that you were aware that they wished access to speak with you and that you deliberately ignored them and retired to your bedroom.*

*The officers then made the decision to force entry, which was entirely within the powers conferred on them by the terms of the search warrant in their possession."*

In relation to her arrest Chief Inspector Q reminded the applicant that she had left her own house and made her way to the house next door. According to the officers and Ms M, as she did so she “shouting loudly and screaming”. Chief Inspector Q stated:

*“... the officers and witnesses state that you continued to shout, swear and scream despite their best efforts to calm you down. You were in the roadway, at least one vehicle approached and Sergeant [C] was rightly concerned for your safety. She also decided that in the light of your erratic conduct which was creating a public disturbance that she was going to arrest you for a breach of the peace ... There exists a sufficiency of evidence that your behaviour amounted to a breach of the peace and that Sergeant [C] was justified in arresting you at the time she did.”*

In a further letter to the applicant’s advocacy worker on 6 October 2008 Chief Inspector Q wrote:

*“... There is a convincing body of evidence that they [police officers] spent a significant period of time (in the region of 15 to 30 minutes) going around the house, calling to [the applicant] and knocking on doors and windows ... Had they found an open door, they would certainly have used it. My position remains that the officers acted appropriately and within their powers.”*

### Consideration

As with complaint 1, the Commissioner is satisfied that Northern Constabulary was correct to conclude that the arrest was lawful. According to the evidence of the officers and Ms M, the applicant was shouting and screaming in a public place and the officers were therefore entitled in law to arrest her for a breach of the peace.

The Commissioner also considers that the applicant’s arrest was necessary in the circumstances. In the Commissioner’s view, the factor which distinguishes this arrest from that which gave rise to complaint 1 is that, as well as committing a breach of the peace, the applicant was also posing a risk to her own safety. Specifically, there is evidence that the applicant was acting in a highly agitated and erratic state while on a roadway and that at least one vehicle had approached during this time. In the Commissioner’s view, this factor was sufficient to justify the use of discretion in favour of arresting the applicant.

In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner.

### Complaint 5: Alleged excessive force

There are two aspects to this complaint, both of which relate to the alleged actions of Sergeant C. The first concerns the force used to remove an item of clothing from the applicant whilst within her home. The applicant’s statement contains the following complaint:

*“... Sergeant [C] began pulling at my bedclothes and my jacket off me. I can’t remember what they said, it was all jumbled up, but Sergeant [C] never asked me anything before attacking me and taking the jacket off me. She pulled my arm whilst taking the jacket off me. She never asked me to remove it; all she did was pull.”*

The second aspect concerns the force used during the course of the applicant’s subsequent arrest near to her home. The applicant’s statement contains the following:

*“... I managed to move off the road and I made my way into the ditch. I didn’t think [Sergeant C] would come in after me. She then grabbed my right arm again and [Detective Sergeant J] grabbed my other arm and pulled me out of the ditch. In doing this my right*

*arm was hurt and I was afterwards full of bruises. [Detective Sergeant J] had taken my left arm and he wasn't so vicious."*

### *Internal Handling*

#### (a) alleged force used to remove clothing

As noted above the police attended at the applicant's home to execute a warrant to search for property believed to be associated with the alleged assaults upon her by Mr A. Inspector P obtained a copy of the search warrant and established that it had entitled officers to search for and seize, amongst other things, "any items of clothing which from their appearance suggests they were worn by the victim or the accused at the time of the commission of the crime."

According to Inspector P's report, on entering the applicant's bedroom the officers noted that the applicant was wearing a "body warmer top" which bore evidence of cut marks. The officers considered the item to be of evidential value and decided to seize it. Inspector P noted the following:

*"... Sergeant [C] and [Detective Sergeant J] both state that they explained the requirement to seize the top, asking the complainer repeatedly to remove it. They maintain that the complainer did not do so. The officers then removed the jacket from the complainer, who by their account, passively resisted."*

Inspector P also noted:

*"... The complainer's statement indicates that the seizure of the top occurred very quickly after the police entered the room. Circumstances and the timing of events would tend to suggest that this was not the case. [Detective Constable K] recorded the time of entry to the house as 1600 hours. He recorded the time of seizure of the top as 1635 hours.*

*[Ms M], who arrived at the house following police entry, was in the house for about 5 to 10 minutes at least before the top was seized.*

*All of the above give credence to the police version that Sergeant [C] and [Detective Sergeant J] had already spent considerable time trying to gain the complainer's co-operation.*

*... Sergeant [C] states that she and [Detective Sergeant J] spent several minutes removing the top, due to passive non-compliance by the complainer. She states that they tried to remove one arm at a time to minimise the risk of injury to the complainer."*

In his response to the complaint Chief Inspector Q stated:

*"Sergeant [C] and the other officer present both state that they tried to persuade you to take the jacket off yourself but you would not. They also claim that they told you it would have to be removed if you did not do so yourself ... I am satisfied that the officers had to resort to removing the jacket from you. Sergeant [C] states that they did so with care and I can find no evidence that would support your assertion that the officers acted excessively."*

#### (b) that the applicant was allegedly "grabbed" from a ditch

In his report Inspector P summarised the evidence of the police officers who were present when the applicant was arrested. He noted that all the witnesses present gave similar accounts to the effect that the applicant was struggling with the officers after one handcuff had been applied to her wrist. Inspector P went on:

*“Once Sergeant [C] had applied one cuff to the complainer’s right wrist, the complainer began struggling and pulled away from Sergeant [C]. [Detective Constable L] and [Ms M] corroborate this.*

*... All witnesses then give very similar accounts of what occurred next. The complainer was struggling to prevent the second cuff being applied. She managed to wriggle over the edge of the verge and began to slide down into the drainage culvert immediately adjacent to the roadway.*

*... Sergeant [C] states that she was forced to release her hold on the handcuff. [Acting Detective Constable L] still had hold of the complainer who had by then managed to get low enough into the ditch as to have her legs inside the culvert which contains water.*

*[Detective Constable K] and [Detective Sergeant J] had by then arrived to assist and all the officers state that it took the efforts of all of them to pull the complainer back up out of the ditch.”*

Inspector P also noted that in her statement the applicant stated that she had made her way into the ditch. According to Inspector P, the applicant had confirmed this to him on 3 July 2008 when she stated that she entered the culvert in order to flee from the police.

In his response to the complaint Chief Inspector Q stated:

*“... Sergeant [C] took hold of you and attempted to handcuff you, having informed you that you were arrested ... The officers and witness confirm your own account that you tried to clamber into the ditch by the side of the road. I am led to believe from Inspector [P] that you told him on his visit of 3 July 2008 that it was your intention to try and get away from the police officers. You had already been informed that you were arrested and it would therefore be entirely reasonable to expect that you would thereafter comply with the police officers. However, by your own admission, you attempted to go down into the culvert despite one wrist being handcuffed and officers trying to prevent you for your own safety. By this time, two other officers arrived and it apparently took the efforts of all four to lift you from the ditch. You do not suggest that you assisted the officers in any way.”*

### *Consideration*

So far as the removal of the item of her clothing is concerned, the applicant’s account is again at odds with those of the police officers in attendance, as well as with that given by Ms M, who was present immediately before and after the item was removed. In the Commissioner’s view, Inspector P’s conclusion was therefore reasonable and the response sent to the applicant provided an accurate account of the evidence gathered.

In respect of the force used to remove the applicant from the ditch there is broad similarity between the applicant’s position and those of the other witnesses. The only difference is that the applicant believes that the force used was excessive while the police believe that the force used was reasonable. Having arrested the applicant there was a requirement on the police to ensure that she was taken into custody. The evidence suggests that the applicant was not compliant, resulting in officers having to use more force than was perhaps originally intended. The Commissioner notes the following opinion expressed by Ms M:

*“... On that day, [the applicant] was determined to be non-cooperative. Once she set out on that path, it escalated from there. In the circumstances, I think the officers acted appropriately. I do not consider that the officers were excessive in a physical way, in the circumstances.”*

In the Commissioner's view the applicant must accept some responsibility for the actions of the police officers who pulled her from the ditch. Had she complied with the arresting officers the sequence of events that followed could have been avoided. On the other hand, if the officers present had exercised more control over the applicant during the initial course of the arrest the applicant would not have been able to make her way to the drainage ditch as described. In making this observation the Commissioner is aware that the situation no doubt developed quickly and that the officers may well have been taken by surprise. Nevertheless, the officers were aware from the conduct displayed by the applicant immediately prior to her arrest that she was unlikely to have been compliant. With that in mind, the officers present should have been alert to the potential for the applicant to resist attempts to detain her. Had the officers taken sufficient steps to deal with that possibility perhaps the situation that unfolded could have been avoided.

Notwithstanding this observation, the Commissioner considers that Inspector P conducted an exhaustive enquiry into this complaint and reached reasonable conclusions based on the available evidence. In the Commissioner's view, Chief Inspector Q's response communicated effectively the findings of Inspector P. Accordingly, the Commissioner considers that these complaints were dealt with in a reasonable manner.

## Conclusions, Recommendations and Learning

The Commissioner wishes to raise one further issue regarding the handling of the incident on 19 June 2007. Having made the arrangement to have a social worker, Ms M, attend at the applicant's home it is difficult to understand why the officers did not wait for her to arrive before forcing entry to the applicant's home. It would be conjecture to suggest that the circumstances would have changed had Ms M been present from the outset. Nevertheless, it is clear that the police recognised at an early stage the potential for the applicant to object to their presence and to be uncooperative. The arrangement to have a social worker present at the applicant's home reflected this concern. In the Commissioner's view, however, any benefit which might have been gained from the arrangement was lost by the decision to force entry prior to Ms M's arrival. If there was a concern that entry required to be made in order to prevent the destruction of evidence, this is not evident from the papers.

### Complaint 1: Alleged unlawful arrest

In the Commissioner's view, this complaint was not dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary reconsiders this complaint, taking the Commissioner's comments into account, and issues a further response to the applicant explaining clearly and comprehensively why it considers there to have been no alternative but to arrest her.

### Complaint 2: Alleged heavy handedness

The Commissioner makes no formal finding in respect of this complaint, but will do so once Northern Constabulary implements his recommendation in complaint 1.

### Complaint 3: Alleged incivility

In the Commissioner's view, the manner in which this complaint was dealt with by Northern Constabulary was not reasonable. The Commissioner recommends that Northern Constabulary obtains accounts from Constables D and H in relation to the complaint and provides the applicant with a further response in light of the evidence as a whole.

### Complaint 4: Alleged unlawful arrest

In the Commissioner's view, this complaint was dealt with in a reasonable manner. No further action is required in this connection.

### **Complaint 5: Alleged excessive force**

In the Commissioner's view, this complaint was dealt with in a reasonable manner. No further action is required in this connection.

**John McNeill**  
**Police Complaints Commissioner for Scotland**

Hamilton House  
Caird Park  
Hamilton