

# Report of a Complaint Handling Review in relation to Police Scotland

## Index

---

1. **Role of the PIRC**
2. **Key findings**
3. **Background**
4. **The Review**
5. **Conclusions**

## 1. Role of the PIRC

---

Sections 34 and 35 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the Act”) provide that the Police Investigations and Review Commissioner (“the PIRC”) may examine the manner in which particular kinds of complaints are dealt with by Police Scotland and the Scottish Police Authority. Through agreements with UK police bodies operating in Scotland, the PIRC may also examine the manner in which these bodies deal with complaints. The PIRC cannot review complaints of criminal behaviour against police officers or police staff, or complaints made by persons serving, or who have served with the police, about the terms and conditions of their service.

In performing this review function, the PIRC obtains information from the police body which dealt with the complaint. This information is considered together with information provided by the person who made the complaint (“the applicant”). An assessment is then made as to whether in all the circumstances the complaint was dealt with to a reasonable standard. Among the factors taken into account when making this assessment are the following:

- whether sufficient enquiries into the complaint have been carried out by the policing body;
- 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;
- whether the policing body’s response to the complaint is adequately reasoned; and
- 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.

## 2. Key findings

---

The complaints in this case arose from an allegation made by the applicant of a potential fraud.

Eighteen complaints were considered:

1. that the applicant’s complex fraud allegation was allocated to an officer who was on sick leave and was not then reallocated;
2. that the investigating officer advised the applicant he had “*no time*” to investigate her allegations however attended to personal activities whilst on duty;
3. that the investigating officer was rude to the applicant during a meeting in her home;

4. that the investigating officer took sick leave to recover from a shoulder injury, however the applicant did not perceive him to be suffering from such an injury;
5. that the applicant requested the investigation to be reallocated to another officer, but was told this would take too long;
6. that, during a telephone call, the investigating officer commented that another officer may have thrown documentary evidence "*in the bin*";
7. that during the same phone call the investigating officer was rude to the applicant;
8. that Police Scotland's investigation into the applicant's allegation of fraud had not progressed following her initial complaints about the investigation;
9. that during a second telephone call the investigating officer was rude to the applicant, would not listen to her and was dismissive;
10. that Police Scotland made no contact with the Police Service of Northern Ireland (PSNI) however told the applicant that they had done so;
11. that officers had "*not prepared*" for a pre-arranged meeting with the applicant at a Police Office, and failed to take any notes or record any details during the meeting;
12. that during the same meeting, inappropriate behaviour attributed to a junior officer was not addressed by a more senior officer;
13. that officers of Police Scotland failed to act on lines of enquiry suggested by the applicant;
14. that officers advised the applicant they would liaise with a Procurator Fiscal to discuss the investigation, however the applicant considered this unnecessary as a different Procurator Fiscal had already provided the police with the advice being sought;
15. that officers of Police Scotland failed to grasp that the applicant's allegations constituted a crime;
16. that officers of Police Scotland still refuse to investigate the applicant's missing money;
17. that two Inspectors refused to meet with the applicant or become involved in her case; and
18. that the investigating officer made arithmetical errors during the investigation.

The review found that twelve complaints were dealt with to a reasonable standard while the remaining six complaints were not. Six recommendations were made in this connection. A learning point was also issued.

### 3. Background

---

On 23 October 2015, the applicant attended at a Police Office to report a fraud and theft allegedly committed by her sister, Ms A, and her sister's partner, Mr B. Following assessment, it was concluded by Police Scotland that the allegations were not criminal in nature and should be pursued as a civil matter.

The applicant thereafter made a complaint to Police Scotland about the outcome of this assessment. The applicant was subsequently contacted by Police Scotland to advise that, following advice from the Criminal Investigations Department (CID) and the Crown Office and Procurator Fiscal Service

(COPFS), her allegations had been reassessed as containing evidence of criminality and would therefore be investigated.

On 25 April 2016, the applicant submitted a formal complaint to Police Scotland concerning the attitudes and abilities of various officers involved in the investigation and the lack of progress made by the most recent investigating officer, Constable C. Enquiries into the applicant's complaints were made by Police Scotland and a letter dated 2 June 2016 was issued addressing her concerns.

On 29 June 2016 the applicant attended a meeting with two Police Scotland sergeants to discuss her allegations against Ms A and Mr B. Following this meeting, advice was sought by Police Scotland from the Procurator Fiscal's Office. On 18 July 2016 a letter was sent to the applicant explaining that, as before, there was no criminality to be investigated by Police Scotland and confirming that the matter should be progressed through the civil courts by her solicitor.

In August 2016 the applicant submitted an application for a review of Police Scotland's handling of her complaints to the PIRC (PIRC/00276/16). During the PIRC review it was identified that in addition to her original concerns, the applicant had numerous other complaints about the progress of the Police Scotland investigation which she had not yet intimated to Police Scotland.

As a result, the applicant submitted a further complaint to Police Scotland on 18 November 2016. On 13 December 2016 Inspector D obtained a statement from the applicant and agreed the terms of a 'Heads of Complaint' form in which the applicant confirmed the complaints which she wished investigated.

A letter dated 3 February 2017 addressing the applicant's complaints was thereafter issued by Chief Inspector E.

## 4. The Review

---

### Complaint 1: Enquiry allocated to absent officer

In her statement dated 13 December 2016, the applicant complained that the enquiry into her allegations of fraud was allocated to an officer – Constable C – who, at the time of allocation, was absent from duty on sick leave, stating *“My complaint is why he was given this when he was off sick and why was it not allocated to someone else”*.

In her application to the PIRC, the applicant argued that these circumstances had resulted in a delay before Constable C could contact her and thus had a detrimental impact on the progress of the investigation.

### Police Handling of Complaint 1

In his letter dated 3 February 2017 addressing the applicant's complaints, Chief Inspector E explained that a Crime Report – which *“records a summary of all information, evidence and decisions made”*

during an investigation – was raised in October 2015 by Constable F, the first officer allocated to progress the enquiry into the applicant’s allegations. Chief Inspector E also explained to the applicant that as Constable F was “*a relatively inexperienced officer*” and the applicant’s allegations were complex, a decision was made to reallocate the enquiry to Constable C in December 2015, stating that “*At that time [Constable C] was in good health and no absences could be foreseen*”.

Chief Inspector E further wrote that:

*“In March 2016, [Constable C] sustained a shoulder injury which led to a number of absences from work and modified duties for some weeks at a time. Throughout his period of absence the Crime Report was subjected to supervision and it was determined that [Constable C] could continue the enquiry, without detriment to it, upon his return to duty.*

*A vast number of incidents are reported to Police Scotland each day. In order to provide the most efficient and effective service we can for our public, it is important that each incident is graded to ensure we provide the most appropriate response. Officers are deployed in terms of priority in order to minimise the risk to the public. This means that our ability to respond to or progress a potential fraud enquiry, such as that which you reported, may be affected due to other ongoing incidents or enquiries where there may be a danger to the safety of others. While we endeavour to progress enquiries as quickly as we can, there is no set timescale within which they must be completed.*

*While I appreciate that you may have sustained financial loss, the enquiry into the circumstances which you reported was not time critical... I am satisfied that it was appropriate for the enquiry to be allocated to [Constable C], who was able to conduct any additional enquiry necessary with you, and that, despite his short term absences, he retained responsibility for the enquiry. Therefore this aspect of your complaint is not upheld.”*

## Consideration of Complaint 1

In her statement of complaint the applicant asserted that she had contacted Inspector G in December 2015 to raise concerns about the ability of Constable F to investigate her case, and was informed by Inspector G at this time that the enquiry would thereafter be progressed by Constable C. The applicant states that Inspector G told her “*You’ve not met him yet but you will, when he returns from sick leave*”.

Constable C has provided a statement confirming that he was made aware of the enquiry on 22 December 2015 and attended at the applicant’s home alongside Constable F on the same day. However there is no indication that any enquiries were made with Inspector G to clarify if his decision to reallocate the enquiry to Constable C was made whilst Constable C was absent or furthermore if he advised the applicant of this as she claims. Indeed there is no information within the paperwork provided by Police Scotland to support Chief Inspector E’s assertion that, at the time he was given the enquiry to progress, Constable C “*was in good health and no absences could be foreseen*”.

Although Chief Inspector E has provided a justification as to why he does not consider that Constable C's absences were detrimental to the progress of the enquiry, it is considered that he has not addressed the crux of the applicant's complaint e.g. that the enquiry was allocated to Constable C initially when he was not on duty to progress it.

As insufficient enquiry was conducted and the applicant's complaint has not been fully addressed, it is concluded that this complaint was not handled to a reasonable standard. It is recommended that further enquiry is made with Inspector G to ascertain if he told the applicant that the enquiry had been allocated to an officer who was at that time on sick leave. A further response should thereafter be issued to the applicant detailing the result of this enquiry and explaining whether or not, on the basis of the information obtained, her complaint is upheld.

## Complaint 2: Officer attending daughter's play whilst on duty

In her statement dated 13 December 2016, the applicant complained that Constable C had continually adopted the position that he "was a response officer and simply didn't have time" to progress the investigation into her allegations, however had also "boasted" to her that he had attended his daughter's nativity play whilst on duty.

In her application to the PIRC, the applicant stated that Constable C should not have been "allowed" to attend to personal matters whilst on duty if he was subject to time pressures and argued that his actions had a detrimental impact on the progress of her enquiry.

## Police Handling of Complaint 2

In his letter addressing the applicant's complaints, Chief Inspector E wrote:

*"An account has been sought from your husband who was present when the officer made the remarks and concurs with you.*

*Accounts have been sought from [Constable C] and his supervisor. [Constable C] stated his belief that he did not advise you that he "did not have time" to attend to this enquiry. He reports that when making enquiry with you he explained his role as a Response Officer. He acknowledges that this was a complex enquiry and explained that his opportunities to progress the enquiry, due to his role as a Response Officer, may often be limited due to his requirement to respond to other ongoing incidents. [Constable C] also acknowledges that, while on duty, he very briefly attended his child's nativity play at nursery. When doing so the officer remained on his patrol area, in radio contact, and still available to respond to any incident. This was with the authorisation of his supervisor and the officer extended his duty that day to ensure no time of his was lost to the public.*

*I am satisfied that [Constable C]'s attendance at his child's play had no detrimental impact on the policing provision for [the division] or led to any delay in progressing your enquiry however, given your frustration with the perceived lack of progress with your enquiry, I feel it was insensitive and inappropriate for [Constable C] to advise you of this.*

*This aspect of your complaint has been upheld and [Constable C] has been provided with guidance in relation to this.”*

## Consideration of Complaint 2

Constable C states that he did attend his daughter’s play as the applicant has asserted, explaining that he had worked without a meal break and extended the end of his shift time to compensate for the time spent at the play which he asserts was “5 minutes at the very most”.

In her application to the PIRC, the applicant has argued that Chief Inspector E:

*“... failed to answer my concerns that [Constable C] should be able to attend to personal matters when on duty, yet at the same time tell me he didn't have time to conduct my enquiry. I disagree that there would not have been any detrimental impact on the progress of my enquiry as a result of this”.*

It is however considered that Chief Inspector E has addressed the applicant’s concerns: he has explained that the decision was authorised by Constable C’s supervisor and that Constable C was still available to work should he be required.

In his statement, Constable C also disputes claiming he “*did not have time*” to progress the applicant’s case however did explain that his role would made it difficult to complete enquiries expeditiously. Furthermore, it does not follow that the time spent by Constable C at the play was time which he otherwise would have utilised to progress the applicant’s enquiry to the exclusion of his other commitments. This is notwithstanding that Constable C asserts that he made up the lost time at the end his shift. It is acknowledged by the PIRC that such circumstances are exceptions: the applicant has not raised any other incidences of Constable C neglecting her enquiry in order to attend to “*personal matters*”.

Nevertheless despite providing a sufficient explanation to the client as to why her complaint is not considered to be justified, Chief Inspector E has elected to uphold the applicant’s complaint on the basis that Constable C “*boasting*” about his personal life to the alleged victim of a crime could be considered insensitive. This is assessed to be good complaint handling.

For these reasons it is concluded that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

## Complaint 3: Officer was uncivil

In her statement dated 13 December 2016, the applicant complained that during his first visit to her home to discuss the investigation, Constable C had told her to “*shut up, I’m talking*” in “*a particularly aggressive tone*” when she had questioned him about part of his investigative strategy.

## Police Handling of Complaint 3

In his letter addressing the applicant's complaints, Chief Inspector E wrote:

*"In his account your husband advise that he heard this remark and that you were visibly upset by it.*

*[Constable F] is no longer a serving police officer with Police Scotland. He has been contacted by [Inspector D] and asked to provide an account in relation to a number of aspects of this complaint however he has declined to become involved which is within his rights. He is under no obligation to provide a statement.*

*An account has been obtained from [Constable C]. He states that he explained the purpose of his visit to you and apologised that he needed to obtain further clarification despite other officers having attended previously. [Constable C] states that he asked you and [your husband] a number of questions and in return you also had a number of questions for him. [Constable C]'s position is that he responded to your questions but his replies led you to query more. He feels that the repeated questioning of his responses merited him asking you to stop interrupting him so he may offer a full response and some clarity. He refutes that he used the term "shut up" and does not feel that his comments or manner towards you was uncivil.*

*It appears that the discussion between you and [Constable C] may have become tense. I appreciate the position of both you and your husband but, as I can find no independent evidence to substantiate that [Constable C] was rude or incivil [sic], I do not uphold this aspect of your complaint. "*

## Consideration of Complaint 3

Paragraph 6.12.6 of Police Scotland's standard operating procedure in relation to Complaints About the Police (the "Complaints SOP") provides that:

*"The decision whether to uphold a complaint must be taken on the "balance of probabilities". That is, the enquiry officer must use their own professional judgment to decide, based on all available evidence, whether one account is more [probable] than the other."*

It is considered that Chief Inspector E's application of the balance of probabilities in his response is fundamentally flawed. This is because Chief Inspector E has concluded that he cannot uphold the applicant's complaint as there is no "*independent evidence*". While independent witnesses may lend credibility to an account or make an account more probable, they are not required in order to determine a complaint.

In this case, the applicant and her husband have both provided statements asserting that during a discussion with regarding her case, Constable C told the applicant to "*shut up*". The applicant states that this upset her to the extent that she had to leave the room to compose herself; her husband

confirms this and further states *“I said to him ‘you’re going to get chucked out of this house speaking to her like that’. He was aggressive and he was a bully and he did not apologise.”*

Constable C has also acknowledged that on some occasions when dealing with the applicant, he found it necessary to ask her to stop interrupting him so he could respond to her questions and explain himself. He has thus acknowledged imparting the sentiment of the expression *“shut up”* to the applicant, even if he disputes the actual words used.

There is thus more weight on the side of the applicant than that of Constable C and Chief Inspector E has provided no reason to consider that the applicant’s account, or that of her husband, may not be credible. On this basis it is not clear why the applicant’s complaint has not been upheld.

As a result, it is concluded that Chief Inspector E’s conclusion is not well-reasoned and does not reflect the available information, therefore this complaint was not handled to a reasonable standard. It is recommended that the information available from the accounts of the applicant, her husband and Constable C be revisited, taking the points made in this report into account. A further letter should thereafter be sent to the applicant explaining whether or not, following this reassessment, her complaint is upheld.

#### **Complaint 4: Officer did not appear injured**

In her statement dated 13 December 2016, the applicant complained that Constable C was absent from work for a protracted period due to a shoulder injury, however on one occasion during his time of absence she and her husband met Constable C walking three of his dogs, one of which was straining on its lead and pulling at his arm, yet Constable C did not appear to be experiencing any discomfort from this or suffering from an injury.

#### **Police Handling of Complaint 4**

In his letter addressing the applicant’s complaints, Chief Inspector E wrote:

*“[Constable C] had a period of absence from duty due to a shoulder injury but it would be inappropriate for me to comment further upon what was a personal matter to him other than to advise that I am completely satisfied that his absence was valid.*

*[Constable C] has agreed that he met you while absent from duty and while walking three of his dogs. He reports that one of his dogs necessitates control on a lead but he has no difficulties doing so.*

*I am sure you will appreciate that there is a significant difference and risk between walking a dog and carrying out the operational duties of a police officer. I am satisfied that [Constable C]’s absence from duty was legitimate therefore this aspect of your complaint is not upheld.”*

## Consideration of Complaint 4

The applicant's husband describes that he saw Constable C walking his three dogs and states that *"the dog on the lead was pulling him off his feet and I remember he swapped hands at one point"*.

Constable C asserts that he did meet the applicant and her husband whilst out walking his dogs and states that the dog in question is *"a small terrier about 10kg in weight"* and *"there is obviously a significant difference between being able to walk dogs and complete full operational duties"*.

The applicant's husband stated that he was concerned *"about the fact [Constable C] was off sick with a serious shoulder injury but was out walking his dogs and meanwhile our investigation was not being looked at"*. The thrust of the applicant's complaint therefore seems to be that Constable C's injury was not serious enough to require him to be absent for a sustained length of time.

However it does not follow that someone who is unable to complete work duties and has thus been granted a legitimate leave of absence, will also be incapable of performing personal tasks. Furthermore questioning the legitimacy of Constable C's injury also calls into question the medical diagnosis provided to Police Scotland allowing Constable C to be signed off from duty; the PIRC considers that it is not the place of a complaint enquiry officer to make such an assessment of an injury and absence granted in accordance with Police Scotland's attendance management policy.

For these reasons it is concluded that Chief Inspector E's response to the applicant is sufficient and that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

## Complaint 5: Enquiry not reallocated

In her statement dated 13 December 2016, the applicant complained that the enquiry into her allegations of fraud was not reallocated to another officer when Constable C took a further absence from duty on sick leave. The applicant states that she was told *"it would take too long to bring an officer up to speed"*, however believes that this delay hampered the investigation.

## Police Handling of Complaint 5

In his letter addressing the applicant's complaints, Chief Inspector E wrote:

*"Please be aware that the profile of policing demand changes depending on the time of day or day of week. Officers shifts [sic] are slightly amended to meet these demands however, due to the limited number of officers available, it is not an insignificant decision to remove an officer from later shifts and amend them to day shifts. This leaves a gap in policing provision later that day.*

*... in the absence of [Constable C] the enquiry was still considered and monitored by supervisory officer. The enquiry was not considered time critical and, given the number of*

*other incidents and enquiries taking place, it was not deemed efficient or necessary to reallocate the enquiry to another officer.*

*While I completely understand your frustration, I am satisfied that there was no threat of harm which would prompt any urgency in this enquiry. Nor did the refusal to allocate the enquiry or amend an officer's shifts have any detrimental effect on the end result therefore this aspect of your complaint is not upheld."*

### Consideration of Complaint 5

In an internal email dated 3 January 2017 Inspector D describes that he has spoken to Inspector G, who explained that to pass on such a complex enquiry to another officer "*would be inefficient*" as it would take another officer too much time "*to get up to speed*".

It is considered that this explanation as to why the enquiry was not reallocated – asserted in Chief Inspector E's letter to the applicant – is justified in the context of an enquiry which had already been reallocated after a number of months from Constable F to Constable C, and which was essentially restarted "*from scratch*" at that stage.

However Chief Inspector E has not explained why it was not considered necessary for other officers to make enquiries during Constable C's extended period of absence, even if ultimately the investigation was not re-allocated. This is particularly relevant as the Crime Report indicates that whilst Constable C was on sick leave he received calls from witnesses whom he had contacted to provide statements, furthermore a number of enquiries were identified in a review conducted by Sergeant J in April 2016 following complaints made by the applicant about the progress of the enquiry.

It is therefore considered that in order to address the applicant's complaint that the progress of the investigation suffered as a result of Constable C's extended period of absence, Chief Inspector E would be required to address why it was not considered suitable to request other officers to attend to these matters on Constable C's behalf during his prolonged absence.

As Chief Inspector E's response to the applicant provides an insufficient explanation of these points, it is concluded that this complaint was not handled to a reasonable standard. It is recommended that the applicant's complaint be reassessed and a further response be sent to the applicant explaining why – with reference to the Crime Report – it was not considered suitable for other officers to attend to some of the lines of enquiries identified whilst Constable C was absent from duty in order to progress the investigation. It should also be confirmed to the applicant whether or not – taking the points raised in this report into account – her complaint is now upheld.

### Complaint 6: Documentation lost

The applicant complained that Police Scotland had lost documentation which she had provided to them. The applicant stated that during a telephone call with Constable C, he discussed a piece of documentation which had been handed in to police by a tenant. When the applicant queried why this

letter had not been considered before as she had provided it to Police Scotland at the outset of the investigation, Constable C told her that Constable F had probably “*thrown it in the bin*”.

### **Police Handling of Complaint 6**

In his letter addressing the applicant’s complaints, Chief Inspector E wrote:

*“Further to the update provided at point 6 above, [Constable C] reports that during telephone calls the letter from the tenant and other letters from solicitors were discussed. [Constable C] does not recall making comment that “[Constable F] had probably thrown it in the bin” however he does recall advising you he had no knowledge of the whereabouts of the letters and had never seen them. With this being the case he states that he asked if you were able to provide any copies of the letters.*

*Following your queries regarding missing letters, all relevant places where productions should be stored were checked and the letters could not be located. You are clear that the letters were provided to Police Scotland as evidence in this case. There is no information available as to the whereabouts of these letters and they remain unaccounted for. I have no reason to doubt that the letters were provided to Police Scotland therefore this aspect of your complaint is upheld. If these letters have been disposed of wrongly or stored by officers then I offer my fullest apologies.”*

### **Consideration of Complaint 6**

In his account, Constable C acknowledges that during conversation with the applicant she referred to “*some solicitor’s letters*” which he had not seen and so he requested she submit copies of these. This position has therefore been explained to the applicant in Chief Inspector E’s response.

In her application to the PIRC the applicant has disputed this, stating that it was Constable C who raised the subject of the documents with her and asked her if she was aware of them. The applicant states that she was “*confused*” by this question as she had provided copies of the documentation to Constable F at the beginning of the enquiry and thus expected Constable C to have been familiar with it already. The applicant states that at no point did Constable C request copies of the paperwork from her.

It is however considered that the precise content of the conversation between Constable C and the applicant is irrelevant to the outcome of this complaint. This is because in her statement of 13 December 2016, the applicant explicitly states her complaint as being “*that the police have lost a copy of a letter from a solicitor... that we handed to Police*”. Chief Inspector E has clearly explained that the paperwork is unaccounted for and that as he has no reason to doubt that the applicant provided it at the time she states, her complaint is upheld.

On this basis, it is concluded that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

## Complaint 7: Officer was rude

In her statement, the applicant said that during a telephone call with Constable C she asked if he had read the documentation which she had provided to Police Scotland at the outset of the investigation; to which Constable C replied that he had “*seen them*”. The applicant complained that when she pressed him on whether or not he had read the documents, Constable C “*threatened to terminate the phone call telling me he wasn't prepared to talk about things that had happened in the past*”.

### Police Handling of Complaint 7

In his letter addressing the applicant’s complaints, Chief Inspector E wrote:

*“[Constable C] was asked to provide an account. He reports that he had a number of telephone conversations with you. He recalls one of the conversations involved a letter which you advised you had given to [Constable F]. He reports that he had seen a number of documents but he advised that he had not seen the letter you referred to he [sic] reports you voiced your frustrations and your views as to the competence of the police, based on your recent experiences.*

*[Constable C] agrees that the conversation was a little heated and I appreciate that this was an emotive subject however I can find no evidence to substantiate that [Constable C] was rude towards you therefore this aspect of your complaint is not upheld.”*

### Consideration of Complaint 7

When taken in the context of Complaint 6 above, it is apparent that the paperwork which the applicant provided at the commencement of the enquiry subsequently went missing, and that this paperwork most likely included documents that later significantly affected the outcome of the enquiries.

The applicant has asserted that this conversation with Constable C took place towards the end of the enquiry when the relevant documentation was provided to Police Scotland by another source, therefore it would seem that the applicant was querying with Constable C why he had not identified this earlier from the paperwork she submitted if he was indeed familiar with it. Although Chief Inspector E has acknowledged to the applicant elsewhere in his letter that documentation did indeed go missing, he does not appear to have taken this point into account when assessing the circumstances of applicant’s complaint that Constable C was rude to her when she questioned him about this.

In Constable C’s account addressing the applicant’s complaint he asserts that on the occasion referred to he had maintained to the applicant his opinion that “*the paperwork was not of great relevance*”, which caused the applicant to become angry and thereafter to hang up on him. However Constable C has not addressed the applicant’s complaints that he refused to confirm to her whether or not he had “*familiarised*” himself with the paperwork she provided, or that he “*threatened to terminate the phone call*” on this occasion as the applicant has alleged.

On the basis of the foregoing, Chief Inspector E's assertion that he "*can find no evidence to substantiate that [Constable C] was rude*" is not well-reasoned.

It is also considered that, particularly where an absence of evidence exists, Police Scotland should address the complaint by taking a position on whether or not the circumstances described by the applicant would amount to rudeness should they have taken place.

For these reasons, it is concluded that this complaint was not handled to a reasonable standard. It is recommended that a further account be obtained from Constable C directly addressing whether or not he threatened to terminate the call with the applicant and refused to confirm to her whether or not he had read all of the paperwork she submitted. A further response should thereafter be sent to the applicant explaining the outcome of these enquiries and further confirming whether or not – on the balance of probabilities – her complaint that Constable C was rude to her is upheld.

## Complaint 8: Investigation stalled following complaint

In her statement dated 13 December 2016, the applicant complained that after Sergeant H had visited her to follow up on his enquiry into her previous complaints about the Police, the investigation into her allegations of fraud stalled and did not progress any further.

### Police Handling of Complaint 8

In his letter addressing the applicant's complaints, Chief Inspector E wrote:

*"[Sergeant H] has provided an account. [Inspector D] has also examined a copy of the letter you received at the conclusion of your initial complaint about the police.*

*It is clear from [Sergeant H]'s account that at the time of his visit, 22 May 2016, he considered that a fraud enquiry was still progressing and he imparted this information to you. You were sent a letter, dated 2 June 2016, which could be construed as a little ambiguous in that it advises of supervisors' opinions that this was no longer a criminal enquiry and, instead, was a civil matter. However, latterly in the letter, it advises that [Constable C] would progress the fraud enquiry more timeously.*

*That said, on 29 June 2016, you met with [Sergeants J and L]. Each of them advise that they informed you of their opinion that the circumstances you reported were a civil matter however they informed you they would consult a Procurator Fiscal.*

*The police act as agents of the Procurator Fiscal. The police make preliminary investigation of all crimes and offences discovered by or reported to them. Particulars of each case are reported to the Procurator Fiscal who may instigate proceedings or otherwise direct the police.*

*It is apparent that there have been differing views offered to you and the letter would cause you to expect the police to progress this enquiry promptly. However it is also clear you have been informed that a supervisor would consult the Procurator Fiscal. Given the uncertainty over this, I would not have expected rapid progress and believe it is only*

*proper that fully informed direction was received from the Procurator Fiscal. This being the case I believe that delay could be expected and therefore do not uphold this aspect of your complaint.”*

### **Consideration of Complaint 8**

The applicant has stated that from her perspective, the investigation was not concluded until July 2016 when Sergeant L clarified that her allegations were a civil matter with the Procurator Fiscal. The applicant’s concern therefore is that no progress was made in relation to the enquiry between Sergeant H’s visit on 22 May 2016 and the effective closure of the enquiry on 18 July 2016.

It is evident from the Crime Report that enquiries into the applicant’s allegations were made by Constable C until 20 June 2016. At this point the content of the Writ and the Court Order supplied to Police Scotland were referred to Police Scotland’s Case Management Unit for an opinion on whether the matter was criminal or civil. The applicant was thereafter updated that the case had been deemed to be civil on 21 June 2016 and subsequently attended a meeting with Sergeants J and L on 29 June 2016 to discuss this outcome. At this meeting, it was agreed that a Procurator Fiscal would be contacted to confirm this outcome was correct. Following this consultation, the enquiry was closed on 18 July 2017.

It is acknowledged that the applicant was advised her enquiry would be progressed more timeously, however it is considered this response was provided to her in good faith at the time, and the later decision not to proceed with the enquiry was based on information which had not been available to Sergeant H.

The material information available supports that enquiries continued to be made until clarification was received that the matter was indeed civil in nature and Police Scotland had no further locus to continue investigation, therefore Chief inspector E’s conclusion is well-reasoned. Although Chief Inspector E could have made his position clearer by referring to the enquiries recorded in the Crime Report, it is not considered that this omission negatively affects the outcome of this complaint.

It is therefore concluded that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

### **Complaint 9: Officer was dismissive**

In her statement dated 13 December 2016, the applicant complained that during a telephone conversation with her, Constable C “*would not listen, was dismissive and rude*”. The applicant states that Constable C’s attitude made her so upset that she “*ended up in tears*” however Constable C continued the call, disregarded her feelings and “*kept going on about what he would not be doing*”.

### **Police Handling of Complaint 9**

In his letter addressing the applicant’s complaints, Chief Inspector E wrote:

*“[Constable C] acknowledges that you had a number of telephone conversations during which you suggested lines of enquiry you believed may assist. He agrees you requested audits be carried out of [Ms A and Mr B]’s bank accounts and states he did not believe that particular line of enquiry was proportionate at that time.*

*[Constable C] advises that he did not wish to come across as dismissive but states he tried to manage your expectations. Given your contrary views to him, a degree of conflict could be expected. There is not [sic] evidence to substantiate that [Constable C] was rude and non-agreement or non-compliance does not amount to incivility or dismissiveness from an officer therefore this aspect of your complaint is not upheld.”*

### **Consideration of Complaint 9**

In her application to the PIRC, the applicant has asserted that Chief Inspector E has “*described a totally different complaint in his report*” as “*this phone call had absolutely nothing to do with bank accounts*”. However in the statement she provided to Inspector D on 13 December 2016, each page of which has been signed and dated by the applicant, the applicant describes her complaint as being that Constable C “*contacted me by telephone to provide me with an update and he was incredibly rude*” and clarifies that “*the conversation related to identified bank accounts*”.

It is therefore considered reasonable that Inspector D made enquiries on the basis of the specific complaint made by the applicant in her statement, and that it is this which has been addressed by Chief Inspector E in his response.

There is no reference made to this particular telephone conversation in the applicant’s husband’s statement, nor is there reference to this subject matter in any of the notes taken by the applicant following her calls with Constable C, which she submitted to the PIRC in support of her application.

Furthermore contrary to Complaint 7 above, Chief Inspector E has acknowledged Constable C’s position that he found the applicant “*difficult*” and “*on several occasions I had to be forceful in the way I spoke to [the applicant]*”, and has formed a view on whether or not he considered this to amount to incivility.

For these reason, it is concluded that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

### **Complaint 10: Failure to contact PSNI**

In her statement dated 13 December 2016, the applicant complained that officers of Police Scotland failed to contact an officer from the Police Service of Northern Ireland (PSNI) – Detective Sergeant K – who was familiar with the background to the applicant’s allegations and would provide Police Scotland with information in relation to her case. The applicant complained that Police Scotland told her they would get in touch with Detective Sergeant K however failed to contact him and subsequently lied to her about having done so.

## Police Handling of Complaint 10

In his letter addressing the applicant's complaints, Chief Inspector E wrote:

*"Accounts have been obtained from your husband, [Sergeant J] and [Sergeant L]. [Sergeants J and L] agree they advised you they would consult [Detective Sergeant K] of the PSNI. [Sergeant L] states that he took responsibility for doing so and on 12 July 2016, he made a telephone call to [Detective Sergeant K] however [Detective Sergeant K] was not on duty.*

*Later that day [Sergeant L] contacted a Procurator Fiscal Depute and briefed her of the circumstances of this case. The Procurator Fiscal advised that there was no evidence of criminality and the circumstances amounted to a civil matter. The police have no locus in investigating civil matters therefore enquiries ceased. There was no longer a need to communicate with [Detective Sergeant K] so no further efforts were made to contact him.*

*I am satisfied that an effort was made to contact [Detective Sergeant K] as the officers said they would and I am also satisfied that they ceased to do so following instruction from the Procurator Fiscal therefore this aspect of your complaint is not upheld."*

## Consideration of Complaint 10

The applicant states that during the meeting with Sergeants J and L to discuss her allegations, she requested they contact Detective Sergeant K to obtain information. The applicant states that Sergeant J confirmed he would contact Detective Sergeant K, however shortly after this it was determined that the applicant's allegations were civil and thus no further investigation would be conducted. The applicant queried if Sergeant J had contacted Detective Sergeant K and was told that he had left messages with Detective Sergeant K which had not been returned. The applicant stated she then contacted Detective Sergeant K herself, and was told that he had not received any contact from Police Scotland.

Sergeants J and L were both asked to address this complaint by Inspector D. Sergeant J states that the matter was to be "actioned" by Sergeant L and he believes that a message was left for Detective Sergeant K. Sergeant L states that he contacted Detective Sergeant K by telephone "which I believe was on 12 July 2016" but Detective Sergeant K was not on duty at the time. Sergeant L states that he intended to call back, however as it was subsequently decided that there was no criminal element to the applicant's allegations, no further call to Detective Sergeant K was made.

Enquiries were also made with Detective Sergeant K by Inspector D as part of the complaint enquiry. Inspector D established from Detective Sergeant K the information which would have been provided to Sergeant L: this demonstrates good complaint handling practice. Inspector D ultimately determined that this information would have had no bearing on the outcome of the enquiry.

Taking this into account, and on the basis that Police Scotland were subsequently advised by the Procurator Fiscal that no criminality was identified and thus Police Scotland had no locus to further investigate, Chief Inspector E's conclusion is well-reasoned and reflects the information available.

The applicant has disputed that any contact was made at all, citing that she had been told by Detective Sergeant K that he was on duty from 7am to 7pm on the date Sergeant L claimed to have telephoned him. However it is not considered that this argument affects the outcome of the complaint. This is because the fact that Detective Sergeant K was not aware of Sergeant L trying to contact him does not necessarily confirm that no contact was attempted. Furthermore Sergeant L was not completely certain of the exact date on which this was done.

For these reasons it is concluded that this complaint was handled to reasonable standard. No further action is required of Police Scotland in this connection.

### Complaint 11: Failure to take notes

In her statement dated 13 December 2016, the applicant complained that she attended a meeting to discuss her case with Sergeants J and L however, despite the length of the meeting and the complexities of the issues discussed, neither officer took any notes and “*could not possibly remember everything*”. The applicant states that she found this lack of record-keeping “*incredible*”.

### Police Handling of Complaint 11

In his letter addressing the applicant’s complaints, Chief Inspector E wrote:

*“[Sergeants J and L] agree that they met with you for a prolonged period. They felt that they were fully familiar with the circumstances as [Sergeant J] had been involved in the supervision of the enquiry and officers involved from the outset. Both officers state that they were aware of the content of the Crime Report, which they had with them at the meeting, and at the meeting you did not present any information that was not already recorded therefore they did not feel the need to take notes.*

*There is no absolute need for officers to take notes at meetings and you have not demonstrated any pertinent information which you feel they have omitted to take cognisance of therefore this aspect of your complaint is not upheld.”*

### Consideration of Complaint 11

Sergeants J and L were both asked to address this complaint by Inspector D. Sergeant J states that he did not need to take any notes as he had “*a good working knowledge of many of the issues*” to be discussed as he had been involved in the enquiry in a supervisory capacity from the outset; he had prepared for the meeting by reviewing the relevant documents and furthermore had copies of these documents “*to hand*”. Sergeant J further states that he sent a letter to the applicant that same day clarifying what had been discussed and the action to be taken which was not disputed by the applicant.

Sergeant L states that he also had previous knowledge of the enquiry and that he “*did not feel the need to take notes as the meeting was a conversation whereby [Sergeant J] explained the actions of the police using the crime report*”, however he did have his daybook with him to use if required.

The applicant and her husband both dispute that either officer came prepared to take notes, with both stating that they believed the meeting was held purely to pay them “lip service”. Sergeant J and Sergeant L have not denied that the purpose of the meeting was to explain the rationale behind their conclusion that the applicant’s allegations were a civil matter and confirm they did not believe there was any information to be provided by the applicant which would affect this conclusion or needed to be recorded.

Chief Inspector E has assessed that there “*is no absolute need for officers to take notes at meetings*” and has thus concluded that since the applicant did not provide any new information which needed to be noted, her complaint is not upheld. Taking into account the variances in the available information, it is considered that adopting such a view was the correct outcome to this complaint. Consequently, it is concluded that this complaint was handled to a reasonable standard, and no further action is required of Police Scotland in this connection.

Notwithstanding this conclusion, it should be noted that it is best practice for a record to be kept of *all* contact with applicants, including face to face meetings and particularly where the content of a complaint and any possible outcomes are discussed. This ensures that a comprehensive record is kept which may subsequently be subject to review.

Although Sergeants J and L were not subject of a complaint from the applicant at the time of this meeting, she had previously made complaints regarding the progress of her enquiry and the meeting in question was held to discuss the outcome of those enquiries and allow Police Scotland to explain their conclusions. The PIRC therefore reminds Police Scotland that it is best practice to keep minutes of all meetings with applicants or complainers: this is a learning point for Sergeants J and L.

## Complaint 12: Failure to act on lost documents

In her statement dated 13 December 2016, the applicant complained that during the meeting with Sergeants J and L she raised Constable C’s comment about Constable F probably having thrown her documentation in the bin, to which Sergeant J replied that he “*wouldn’t be surprised*”.

The applicant argues that she found this response inappropriate because it suggested to her that officers’ carelessness with evidence was a common occurrence, and because no one thereafter made any attempt to clarify with her what evidence had been lost or if it could be replaced.

## Police Handling of Complaint 12

In his letter addressing the applicant’s complaints, Chief Inspector E wrote:

*“[Constable F] is no longer a serving officer with Police Scotland. A number of performance issues were discovered which led to him leaving the organisation earlier in June 2016. [Sergeant J] was aware of this and the issues which led to the officer leaving the force. [Sergeant J] was conscious of letters you had referred to during the enquiry and had previously taken steps to locate them without success. At the meeting you voiced your concerns regarding missing documents and a suggestion that former*

*[Constable F] may have disposed of them. [Sergeant J] agrees he made this comment and, taken in context, it does not appear inappropriate.*

*Please be assured that all relevant areas where documentary evidence should be stored were checked but there was no record of the letters you referred to. As [Constable F] was no longer a member of the Force there were little options available to [Sergeant J] as to action he could take.*

*I am satisfied that [Sergeant J]'s comment and actions were not inappropriate therefore this aspect of your complaint is not upheld."*

### **Consideration of Complaint 12**

It is considered that Chief Inspector E's response to the applicant is insufficient as it does not address the extent of her complaint.

Chief Inspector E has acknowledged that both Sergeants J and L confirm Sergeant J made the comment in question. Chief Inspector E has also taken a view on the appropriateness of this comment in the circumstances: this is considered to be good complaint handling practice.

However Chief Inspector E has not addressed if it was appropriate that neither Sergeant J or L clarified with the applicant which documents were missing or "offered help" to replace them, and neither Sergeant J or L has addressed this matter in his respective account.

For this reason, it is concluded that this complaint was not handled to a reasonable standard. It is recommended that further accounts be obtained from Sergeants J and L specifically addressing why they did not ask the applicant or her husband which documents they believed had gone missing or establish if these could be replaced. A further letter should thereafter be sent to the applicant explaining the outcome of these enquiries and addressing whether or not, on the basis of the information obtained, her complaint is upheld.

### **Complaint 13: Failure to question suspects**

In her statement dated 13 December 2016, the applicant complained that her sister and brother-in-law should have been asked to address the allegations against them, however Police Scotland made no enquiries with them, and when the applicant suggested this course of action to Sergeant J he replied that "they'll tell us to go away", thereby dismissing this line of enquiry .

### **Police Handling of Complaint 13**

In his letter addressing the applicant's complaints, Chief Inspector E wrote:

*"Both [Sergeants J and L] were each asked to provide an account. [Sergeant L] agrees that you raised this suggestion at the meeting. He states that he explained to you that, prior to attending at [Ms A and Mr B's business premises], officers would need to be in possession of a search warrant before they could seize any documents which could be*

*used as evidence. However, given the existence of the writ, it appeared this enquiry was a civil matter which the police have no locus to investigate.*

*During criminal enquiries the police may caution and question any suspects at a police office. Again, due to the enquiry appearing to be of a civil nature, it would not be appropriate for officers to caution and question any potential suspects.*

*With this in mind, [Sergeant J] states he advised you that, in the absence of a search warrant, any officers attending [Ms A and Mr B's business premises] "could" simply be told to go away which would be within the rights of members of the business. [Sergeant J] stressed that the line of enquiry you wished pursued was a consideration of the police but would only be followed at an appropriate time ie, if the Procurator Fiscal wished the police to carry out a criminal investigation.*

*I am satisfied that the line of enquiry was not dismissed and that it was appropriately taken into account, but there were wider considerations, therefore this aspect of your complaint is not upheld."*

### Consideration of Complaint 13

As asserted by Chief Inspector E, both Sergeants J and L were asked to address the applicant's allegation. Sergeant J confirms in his account that it was deemed "*prudent*" to gather a sufficiency of evidence to conclusively support that a criminal offence had occurred before approaching a Sheriff for a warrant or questioning Ms A and Mr B. Both Sergeants J and L state that during the meeting they explained to the applicant that searching of property and seizure of documentation would require a search warrant to be issued by a Sheriff; and both state that as the matter had at this time been concluded as civil, there was therefore no possibility of obtaining such a warrant.

It is evident from the Crime Report that the enquiries undertaken by Constable C were conducted in order to establish whether or not a crime had been committed. It is also accepted that any decision taken utilising the evidence available at the beginning of an enquiry – in this case a decision as to whether the allegations were criminal in nature – may need to be revised on the basis of evidence obtained at a later date. In this case the evidence available at the outset of the enquiry suggested that a criminal offence *may* have been committed, however further enquiries were considered necessary to confirm this. The additional evidence obtained as a result of these enquiries then effectively overturned the earlier assessment.

It is therefore evident from the material information that although consideration was given to obtaining a warrant and questioning Ms A and Mr B a decision was made not to pursue these lines of enquiry. Specifically, the decision was made that it would not be appropriate to question "*suspects*" until there was a sufficiency of information to confirm that a crime had in fact occurred.

It is considered that Chief Inspector E has provided a sufficient explanation of this to the applicant and on this basis it is concluded that this complaint has been handled to a reasonable standard. No further action is required of Police Scotland in this connection.

## Complaint 14: Procurator Fiscal contacted unnecessarily

The applicant states that following their meeting with her, Sergeants J and L told her they would contact a Procurator Fiscal to obtain “*clear instruction*” as to whether or not the circumstances of the applicant’s allegations were criminal or were a civil matter. The applicant complained that this action was unnecessary as confirmation of the criminality of the matter had already been obtained from a different Procurator Fiscal at the outset of the investigation.

The applicant argued that, as she believed she had already been lied to by Sergeant J regarding him making contact with the PSNI, she “*cannot trust*” that Sergeant L did in fact obtain advice from a Procurator Fiscal and did not simply use this as a reason to cease her investigation.

### *Police Handling of Complaint 14*

In his letter addressing the applicant’s complaints, Chief Inspector E wrote:

*“[Sergeant M] has been asked to provide an account. He explained that, on 6 November 2015, you attended at [the police office] where you spoke with him in relation to the incident and your concerns about police involvement. [Sergeant M] acknowledged that you provided a vast amount of information regarding what was a complex matter, at an early stage in the enquiry. He subsequently contacted a Procurator Fiscal who advised him that the circumstances could potentially amount to a fraud, i.e. a crime, but that further enquiry would be necessary by the police.*

*As a result of this, [Sergeant M] discussed the circumstances with [Constable F] and a Crime Report was raised to co-ordinate the enquiry. At that time, [Sergeant M] and other officers were not aware of the existence of the writ.*

*[Sergeants J and L] advise that as the enquiry progressed, police learned that a writ had been issued regarding the circumstances and that there had been a civil court finding. The existence of the writ was extremely pertinent to the enquiry and it was essential that the Procurator Fiscal was aware of this when considering any criminal investigation. [Sergeant L] informed the Procurator Fiscal accordingly and the police were advised to conclude enquiries.*

*I believe that the existence of the writ is an extremely important consideration in this case therefore [Sergeants J and L] were correct to raise this with the Procurator Fiscal therefore this aspect of your case is not upheld.”*

### *Consideration of Complaint 14*

The Crime Report created and updated in respect of Police Scotland’s enquiries into the applicant’s allegations confirms that in December 2015, Sergeant M contacted an unnamed Procurator Fiscal who confirmed to him that “*further enquiry was required into this matter*” to confirm that a fraud had occurred. The Crime Report further indicates that a copy of the writ was only obtained by Constable C

on 19 June 2016 (notwithstanding whether or not this document had previously been provided to Constable F and subsequently gone missing).

Chief Inspector E is therefore justified in concluding that, at that stage in the enquiry, the writ was considered to be new information which may alter the assessment of whether or not the applicant's allegations were a civil matter or a criminal one, and it was correct to obtain a further opinion from the Procurator Fiscal's office.

Furthermore, Sergeant J asserts that the existence of the writ and the terms contained therein raised "*reasonable doubt*" regarding which of the parties involved had the rights to the income from the properties disputed. It was subsequently clarified by a named Procurator Fiscal that whilst this doubt existed and could not be resolved, it could not be established that fraud had taken place.

As the paperwork provided by Police Scotland supports that there was a legitimate reason to contact the Procurator Fiscal for further guidance on the basis that information not previously available had come to light, and further supports that this contact did indeed take place, it is considered that Chief Inspector E's response to the applicant is well-reasoned and reflects the material information available.

Consequently, it is concluded that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

### Complaint 15: Failure to "grasp" criminality

In her statement dated 13 December 2016, the applicant complained that Police Scotland had "*failed to grasp*" that the circumstances she had reported amounted to a crime and as a result had failed to make any progress in their investigation, instead having "*concentrated their efforts to determine this as a Civil matter*".

In her application to the PIRC, the applicant argued that Police Scotland had "*missed the point*" of her allegations: that although there existed a writ stating that all rent monies would be deposited into a named bank account, not all monies were in fact being deposited into that account and substantial sums were still unaccounted for. The applicant argued that although Police Scotland determined the circumstances amounted to a civil matter due to the existence of the writ itself, the terms of the writ were not being followed by Ms A and Mr B and her money was still going missing.

### Police Handling of Complaint 15

In his letter addressing the applicant's complaints, Chief Inspector E explained that incidents are recorded by Police Scotland on a Crime Report when "*the circumstances may amount to a crime defined by Scots Law and there is no credible evidence to the contrary.*" Chief Inspector E further explained that:

*"There is no succinct definition of a fraud however certain elements must be present to constitute the crime:*

- *falsehood ie false representations by word of mouth or writing*
- *an intention to deceive*
- *a practical result ie the cheat caused another to act in a way they would otherwise not have.*

*The incident you reported involved your business partners providing tenants of properties the business owned, with different bank account details for rent to be paid to. You feel this was deceptive and with the intention of withholding money from you. However, it is also known that your business partners, [Ms A and Mr B], submitted a writ to the civil courts which in effect seized control of the rent money going into the business. There was no falsehood or deception involved with the writ. It was submitted to the civil court and you had the opportunity to contest this.*

*The information you provided to the police and the details of the writ were considered by the Procurator Fiscal who determined that this was not a criminal matter. Ultimately there was no ‘falsehood’ or ‘intention to deceive’. The Procurator Fiscal did not wish any further police investigation and did not wish any report for consideration of prosecution. The Procurator Fiscal’s Office is an independent body of the police. Should you wish any review of this decision you may write to The Procurator Fiscals Office...*

*I am satisfied that the police took cognisance of your complaint, that it was recorded and investigated appropriately and that guidance was obtained from the Procurator Fiscal’s Office that the circumstances did not amount to criminality therefore this aspect of your complaint is not upheld...”*

### Complaint 16: Failure to investigate missing money

In her statement dated 13 December 2016, the applicant acknowledged that “*there is a civil aspect*” to her allegations however complained that Police Scotland still refused to investigate money which they could clearly see had gone missing, citing that Sergeant J told her “*I can see he is stealing your money*”.

#### Police Handling of Complaint 16

In his letter addressing the applicant’s complaints, Chief Inspector E wrote:

*“... the circumstances of the case have been determined as a civil matter and the police have no locus in investigating civil matters, therefore the police cannot investigate your missing money. This aspect of your complaint is not upheld. I appreciate you may be at a financial loss therefore I would advise you to seek consultation with a solicitor who may investigate the circumstances further for you with a view to recovering any money.”*

#### Consideration of Complaints 15 & 16

It is necessary to review the handling of Complaints 15 and 16 together as it considered that the determination of both complaints hinges on the same issue, i.e. whether or not Police Scotland’s

conclusion that the applicant's allegations amounted to a civil matter and not a criminal one was correct on the basis of the information they held.

In a letter to the applicant dated 29 June 2016, Sergeant J advised "*the initial Writ presented in 2012 creates an area of doubt regarding who has legitimate claim to the rental incomes at this stage*" and stated that he would contact the Procurator Fiscal's office to obtain instruction "*as to whether this matter should be further dealt with by the civil court to eliminate the area of uncertainty*" or whether there still existed an element of criminality that could be pursued by Police Scotland. In a follow up letter dated 18 July 2017, Sergeant J confirms that the Procurator Fiscal has instructed to conclude the criminal investigation "*due to uncertainty around the partnerships financial management*" it was not possible, at that stage, "*to prove beyond all reasonable doubt that they have acted illegally, taking monies to which they were not entitled*".

A copy of the Writ and the findings of the court have been provided to the PIRC during this review. It is the opinion of the PIRC that these documents support Sergeant J's position as provided in his statement addressing the complaint and as asserted in the two letters to the applicant referred to above. It is therefore considered that as it could not be determined that a crime had occurred, the decision by Police Scotland not to further investigate this matter was correct.

Notwithstanding this, it is considered that Chief Inspector E's response to the applicant is not well explained. This is because Chief Inspector E has stated that the crime of fraud could not be established as "*there was no 'falsehood' or 'intention to deceive'*", however does not explain to the applicant that a substantial aspect of the determination lay in the fact that as there was an ongoing dispute over the rental income, it could not be established that Ms A and Mr B appropriated funds which they would not be entitled to.

It is however considered that the applicant has been provided with a sufficient explanation as to why it was determined by Police Scotland that the matters reported by her were not a criminal matter to be pursued by Police Scotland, and furthermore that this decision is supported by the material information available. On this basis it is concluded that these complaints were handled to a reasonable standard. No further action is required of Police Scotland in this connection.

### Complaint 17: Officers' refusal to assist

In her statement dated 13 December 2016, the applicant complained that she had requested meetings with Inspectors G and N, however both of these officers had refused to meet with her or become involved in the investigation.

### Police Handling of Complaint 17

In his letter addressing the applicant's complaints, Chief Inspector E wrote:

*"Accounts have been provided by both [Inspectors G and N]. At the time of your contact, each officer was performing the role of police Incident Officer (PIO). PIO's are in place to attend and supervise any high risk or critical incidents coming to the attention of the*

*police. They must be available at all times to provide immediate supervision and manage any risk. In the main, PIO's are not involved in the investigation of enquiries such as the incident you reported.*

*[Inspector N] acknowledges that your husband spoke with him and that he advised he could not become involved in the enquiry as it was not his role to do so.*

*[Inspector G] acknowledges that you spoke with him by telephone and that he declined to meet with you as it was not his role to do so, he was satisfied that the incident was being supervised appropriately albeit not to your satisfaction and that he did not feel there was anything positive to be gained, in relation to the enquiry, by meeting with you.*

*I am satisfied there was no absolute need for [Inspectors N and G] to meet with you and that the enquiry was receiving appropriate supervision therefore this aspect of your complaint is not upheld."*

## **Consideration of Complaint 17**

Inspector D made enquiries with both Inspector G and Inspector N to address this allegation.

Inspector N states that he received a telephone call from the applicant's husband asking for advice about the incident, however as he knew the family personally Inspector N had explained to the applicant's husband that it would be inappropriate for him to become involved.

Inspector G states that he spoke with the applicant on the telephone several times and explained to her that he did not believe there would be any benefit to meeting her in person, and that any matters of concern would be dealt with by Sergeant J who had supervisory responsibility for Constable C.

It is considered that the response provided to the applicant by Chief Inspector E accurately reflects the information collected by Inspector D and is sufficiently detailed and well-reasoned.

In her application to the PIRC the applicant has disputed Chief Inspector E's response on the basis that she was not told by either Inspector that it was "*not their role*" to become involved in her investigation. However it is not considered that this argument undermines Chief Inspector E's response to the complaint as the fact that the applicant had not been previously informed of this assessment does not automatically make it incorrect.

For the reasons provided above, it is concluded that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

## **Complaint 18: Officer's errors in calculation**

In her statement dated 13 December 2016, the applicant complained that she did not believe Constable C had sufficient abilities or experience in accounting and fraud to conduct an investigation such as hers.

The applicant argues that Constable C made several errors in calculation when assessing her “figures” and that these miscalculations both hindered the progress of the investigation and directly contributed to his failure to identify that the applicant had been the victim of a crime.

### *Police Handling of Complaint 18*

In his letter addressing the applicant’s complaints, Chief Inspector E wrote:

*“In his account, [Constable C] agrees that he made errors when calculating the profit/loss of the properties involved however he explains that the sums involved had no bearing on his determination as to whether a crime had been committed. While there must be a ‘practical result’ involved to constitute a fraud, the value of this result is not relevant. Even if a suspect makes no monetary gain, a crime could still have been committed if there was an attempt to cause monetary gain.*

*I am satisfied that the error in calculations by [Constable C] had no bearing on his decision as to whether a crime had been committed and that he did have sufficient grasp of the situation therefore this aspect of your complaint is not upheld.”*

### *Consideration of Complaint 18*

Constable C was asked to address this allegation by Inspector D. Constable C states that he had requested the applicant provide him with a list of income and expenditure relating to the properties involved in the dispute and after examining these figures had calculated that each property was running at a loss. Constable C acknowledges that he had requested a meeting with the applicant to discuss this matter, however prior to the meeting had recognised his mistake with the figures used which he subsequently admitted to the applicant.

Constable C also however states that this mistake had no impact on the enquiries carried out as the purpose of the enquiry was to determine if the matter reported by the applicant was a civil matter or amounted to a criminal offence. Constable C asserts that if the matter was a fraud “*then the fact that the properties were actually running at a loss would not have altered this [as] the suspects would have still been responsible for fraudulently obtaining the rent monies*”.

However, Chief Inspector E does not appear to have outlined or addressed the first part of the applicant’s complaint, i.e. that Constable C had insufficient abilities or experience in accounting and fraud to conduct an investigation such as hers, merely stating that Constable C did have sufficient grasp of the situation. To properly address this specific point, Chief Inspector E should have outlined Constable C’s experience in conducting investigation into such matters.

For this reason, it is concluded that this complaint was not handled to a reasonable standard. It is recommended that Chief Inspector E issue a further letter to the applicant which addresses this specific point and explains why it is considered that Constable C had the relevant skills and experience to conduct the investigation into the applicant’s allegation.

## 5. Conclusions

### Complaint 1: Enquiry allocated to absent officer

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended further enquiry be made with Inspector G to ascertain if he told the applicant the enquiry had been allocated to an officer who was at that time on sick leave. A further response should thereafter be issued to the applicant detailing the result of this enquiry and explaining whether or not, on the basis of the information obtained, her complaint is upheld.

### Complaint 3: Officer told applicant to “shut up”

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that the information available from the accounts of the applicant, her husband and Constable C be revisited, taking the points made in this report into account. A further letter should thereafter be sent to the applicant with a detailed explanation of how the balance of probabilities test has been applied in this case and explaining whether or not, following this reassessment, her complaint is upheld.

### Complaint 5: Enquiry not reallocated

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that the applicant’s complaint be reassessed and a further response be sent to the applicant explaining why – with reference to the Crime Report – it was not considered suitable for other officers to attend to some of the lines of enquiries identified whilst Constable C was absent from duty. It should also be confirmed to the applicant whether or not – taking the points raised in this report into account – her complaint is now upheld.

### Complaint 7: Officer was rude

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that a further account be obtained from Constable C directly addressing whether or not he threatened to terminate the call with the applicant and refused to confirm to her whether or not he had read all of the paperwork she submitted. A further response should thereafter be sent to the applicant explaining the outcome of these enquiries and further confirming whether or not – on the balance of probabilities – her complaint that Constable C was rude to her is upheld.

### Complaint 12: Failure to act on lost documents

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that further accounts be obtained from Sergeants J and L specifically addressing why they did not ask the applicant or her husband which documents they believed had had gone missing or establish if these could be replaced. A further letter should thereafter be sent to the applicant explaining the outcome of these enquiries and addressing whether or not, on the basis of the information obtained, her complaint is upheld.

## Complaint 18: Officer's errors in calculation

It is concluded that this complaint was not handled to a reasonable standard. It is recommended that Chief Inspector E issue a further letter to the applicant which addresses this specific point and explains why it is considered that Constable C had the relevant skills and experience to conduct the investigation into the applicant's allegation.

## Complaints 2, 4, 6, 8-11, 13-17

It is concluded that these complaints were dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

## Learning Point

It should be noted that it is best practice for a record to be kept of all contact with applicants, including face to face meetings and particularly where the content of a complaint and any possible outcomes are discussed. This ensures that a comprehensive record is kept which may subsequently be subject to review.

Although Sergeants J and L were not subject of a complaint from the applicant at the time of this meeting, she had previously made complaints regarding the progress of her enquiry and the meeting in question was held to discuss the outcome of those enquiries and allow Police Scotland to explain their conclusions. The PIRC therefore reminds Police Scotland that it is best practice to keep minutes of all meetings with applicants or complainers: this is a learning point for Sergeants J and L.

**Jennifer Millar**  
Review Officer

**Ilya Zharov**  
Head of Reviews & Policy