

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

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## 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 the seizure of the applicant’s vehicle following a fatal road traffic collision. Seven complaints were reviewed, namely:

- 1) That there was a lack of information, support, and liaison with the applicant following the collision;
- 2) That the driver of the vehicle was not provided with any support, information, or liaison from the police following the collision;
- 3) That the applicant was provided with different versions of police procedures relating to the time the vehicle was retained and the costs involved;
- 4) That it took five days before the vehicle was examined and a further three days to release the vehicle;

- 5) That the applicant was not able to speak with an officer over the rank of Inspector regarding her concerns;
- 6) That the procedures regarding the release of the vehicle were unclear and the applicant felt pressure to sign a waiver related to the process; and
- 7) That an Inspector provided inaccurate information regarding how she should proceed with a civil claim.

The review found that four of the complaints were dealt with to a reasonable standard and three were not. Four recommendations were made.

### 3. Background

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The applicant owns vehicle X which operates as a taxi and is driven by Mr A.

At approximately 04:00 pm on 22 December 2016, Mr A was driving the vehicle which was involved in a fatal collision with a pedestrian.

The vehicle was seized as a production and retained by the police so that it could be mechanically examined. On 30 December 2016, and following consultation with the Crown Office and Procurator Fiscal Service (COPFS), the applicant's vehicle was released.

The applicant submitted her complaints in writing in a letter dated 3 January 2017 which listed various concerns regarding the process and Police Scotland's handling of the incident.

Inspector B was appointed as the enquiry officer. The applicant received a response to her complaints from Chief Superintendent C in writing in a letter dated 27 March 2017

### 4. The Review

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#### Complaint 1: Lack of information, support and liaison

The applicant complains that there was a lack of information, support and liaison from the police following the collision.

#### *Police Handling of Complaint 1*

Chief Superintendent C responded to the applicant's complaint as follows:

*"In assessing this allegation I have considered the information you have provided in your correspondence and statement, along with responses from the officers involved. I have also referred to the relevant police procedures....."*

*Inspector [D], who was the Senior Investigating Officer, in relation to this enquiry states:*

*'As the SIO I did not take over the enquiry until the morning of Friday 23<sup>rd</sup> December. I have spoken with the officers that attended the incident, [Constable E] and [Constable F], both state that Mr [A] was given a full explanation as to the procedures that would follow depending on the medical condition of the injured party.'*

[Constable E] also advised me that he provided Mr [A] with his name and that he could contact the Road Policing Department at [named] Police Office on 101 should he have any questions.

On Friday 23<sup>rd</sup> December the medical update was still that the injured party was still in a critical condition and as such there was no new information to update the complainer or Mr [A], enquiries were being progressed to capture all investigative opportunities and record all necessary statements. I had briefed the officers on duty on the days whilst I was off duty to keep me informed of any significant updates. That afternoon I received a phone call from [the applicant] who told me she was the owner of vehicle number 1 and wanted to know what was happening with that vehicle. I advised her that the vehicle was seized as a production in line with procedures for all serious and fatal road crashes and it would require to be mechanically examined. I advised that I could not give her any definitive time scales, as I required to make a full investigation into the circumstances and at that time it was unclear whether the injured party would survive or not. [The applicant] understood this.

I returned to duty on the Wednesday 28<sup>th</sup> December, I was updated regarding (the) road death and spent the day allocating tasks and actions in relation to that incident. I did not have any contact with [the applicant] or the driver that day as I had no news for them and was aware that [the applicant] had been in touch with [Sergeant G] the previous day, so saw no requirement to make contact.

[The applicant] contacted me several times over the 29<sup>th</sup> and 30<sup>th</sup> December. She was given information that was appropriate to provide and the fact that she called me so regularly there was no reason to contact her as I had given her all relevant information as to procedures, and assured that I would do what I could to ensure the Procurator Fiscal was aware of the circumstances and request consideration of the vehicle being released.

...[The applicant] was updated with what information myself and my officers could provide on each occasion she called and due to her frequent calls she had the latest information available..'

[Constable F] who was the Investigating Officer in relation to this enquiry states:

' I explained the circumstances as fully as I could to Mr [A] and [Mr Q and the applicant] on the evening of the incident. I explained that the decision regarding her vehicle rested with the outcome of the IP's (injured party) injuries and ultimately may rest with the fiscal (Procurator Fiscal).'

Having assessed all the available evidence it is clear that you had regular contact with the officers investigating the road crash and were provided with relevant information as the enquiry progressed.

I am content that that[sic] you were provided with the necessary support, liaison and information following the road crash.

*I therefore find this allegation not upheld.”*

## *Consideration of Complaint 1*

From the evidence available, the applicant and her husband approached the scene of the collision of their own volition and spoke with the officers in attendance, one of whom was Constable F. As reflected within the response, Constable F has provided an account in which he records that he explained the circumstances surrounding the seizure of the vehicle to the applicant and her husband.

Although not reflected in the response, the account provided by Constable F is supported in a statement provided by Constable E. Constable E was present at the scene, and stated that:

*“I explained to [the applicant] that the incident was at this stage classed as a serious road traffic collision...and as such, the Divisional Road Policing Unit...would be dealing with the matter. I also fully explained the protocols in relation to any vehicle(s) involved in such serious road traffic collisions, required to be seized for examination.”*

Accordingly, the evidence in this respect suggests that the applicant and her husband were provided with information following the collision regarding the circumstances of the collision, the seizure of the vehicle, and the protocols that required to be followed.

In relation to the police contact in the days following the collision; although not reflected in the response, the applicant contacted the police the day following the collision (23 December 2016) and spoke with Sergeant H. At this time, Sergeant H advised the applicant that he did not believe the vehicle would be released in the coming days given the time of year. In addition, he also provided the applicant with a direct number for the sergeant’s office and the relevant traffic department so that they could assist with any future queries on behalf of the applicant. He thereafter advised her to contact the office on 27 December 2017 for an update.

The applicant also contacted and spoke with Inspector D on 23 December 2016. According to Inspector D’s account - and as reflected in the response - Inspector D fully explained to the applicant the reason for seizure of her vehicle and the procedures that had to be followed. Notably, Inspector D informed the applicant at that time that she could not provide definitive time scales as she was required to undertake a full investigation into the circumstances of the incident and that the pedestrian’s condition at that time was not known.

According to the applicant, at 09:30 am on 27 December 2016, she contacted the police to again query when her vehicle could be returned to her. From the applicant’s account, she spoke with Inspector D who provided her with an update regarding the pedestrian’s injuries and advised her that the vehicle was in the process of being examined. The applicant states that Inspector D then advised that she would contact her later on in the same day or on the following day (28 December 2016).

However, it is noted that there is potentially some discrepancy in the applicant’s timeline of events as Inspector D does not mention speaking with the applicant on 27 December 2016, and records within her account that she did not return to duty until 28 December 2016. Furthermore, there is a statement

from Sergeant G contained within the police file in which he records that he spoke with the applicant on Tuesday 27 December 2016 and provided her with the update that the vehicle was being examined and the pedestrian was still in a critical condition.

Notwithstanding the above, Inspector D records within her account that she did not find out that the pedestrian had succumbed to her injuries until the evening of 28 December 2016. Following this new development, Inspector D comments that after commencing duty in the morning of 29 December 2016, she began allocating tasks to officers to help progress the investigation. Notably, one such task was for an officer to attend and speak with the driver of the vehicle, Mr A, and notify him that the pedestrian had succumbed to her injuries. Although not reflected or explained in the response, Inspector D records within her account that until Mr A had been informed, she did not feel it was appropriate to inform or update the applicant.

However, notwithstanding this, the applicant again contacted the police at roughly 09:30 am on 29 December 2016 and spoke with Inspector D. At this time, Inspector D provided the applicant with as much information as she deemed appropriate to the circumstances at that time.

From the evidence available, it is clear that the applicant then re-contacted Inspector D early in the morning on 30 December 2016 to again query when her vehicle would be returned to her. As reflected in the response, Inspector D informed the applicant that she would be updated when she received notification from the Procurator Fiscal that the vehicle could be released. The applicant was thereafter contacted later on that day and informed that the vehicle could be returned to her.

Accordingly, although the applicant alleges within her application to the PIRC that Inspector D failed to honour several promises she had made to contact the applicant and keep her informed, the evidence available would tend to suggest that Inspector D saw no requirement to be in constant contact with the applicant and her husband if she did not have any new information to provide to them. In addition, the information provided would also suggest that Inspector D was not on duty in the days immediately following the incident, during which time the applicant spoke with Sergeant G.

It is also clear that the applicant contacted the police almost daily to query the return of her vehicle. This arguably negated the need for officers to proactively contact her. In addition, the statements of the officers involved suggests that the applicant was furnished with the appropriate information as and when it became available.

Taken as a collective, it is considered that the response is adequately reasoned and supported by the material evidence available.

It is therefore considered that this complaint was handled with to a reasonable standard. No further action is required.

## Complaint 2: lack of support and liaison

The applicant complains that the driver of the vehicle, Mr A, was not given any support, information or liaison following the crash.

## *Police Handling of Complaint 2*

Chief Superintendent C responded to the applicant's complaint as follows:

*"While this may be your perception of the situation based upon your interaction with Mr [A] following the incident both the officers involved, who deny the allegation and Mr [A] himself have a different position.*

*In his statement Mr [A] was asked to address your allegation and he stated:*

*'At the time of the crash I was satisfied with the information I had been provided with by the police. Following the crash the officers informed me that they were satisfied with the information that I had given them and that this was in line with the circumstances of the crash. I wasn't expecting them to need to contact me again. I also didn't expect to be provided with further support by the police following the crash.'*

[Constable F] states:

*'I fully supported the driver immediately after the incident. I sensed he deeply regretted being involved in the incident however he displayed no other emotions other than what would be expected from a decent and worthy person following an involvement in an incident of this nature.'*

*In addition Inspector [D] states:*

*'I did not attend the locus at the time of the incident as I was off duty. I was contacted at home by [Constable F] to make me aware of the incident. I spoke to both [Constable F] and [Constable E] when they returned to duty and am satisfied they dealt with the driver [Mr A] correctly in terms of the procedures that required to be undertaken at the locus at the time, Sec 172 Road Traffic Act 1988, Section 6 Road Traffic Act 1988 and then advised him what would happen next. [Constable F] and [Constable E] are both experienced Road Patrol officers and I have every confidence they would have dealt with Mr [A] compassionately and professionally.'*

[Constable F] advised me that he gave Mr [A] his contact details and advised him to contact Road Policing at [named] Police Office on 101 should he have any questions.

*Following the death of [named person] I ensured that [Constable E] attended at the home address of Mr [A] to advise him that she had died, [Constable E] again ensured that Mr [A] understood the procedures that would then follow in terms of a report to the Procurator Fiscal and potential subsequent legal procedures*

*Taking the above information into consideration I believe it is crucial to consider if Mr [A] felt that he was not given support, information or liaison following the road crash.*

*It is clear from his statement that Mr [A] did not feel this and his position is supported by the information provided by Inspector [D] and Constable [F].*

*I consider that the level of support given to Mr [A] by the investigating officers was appropriate.*

*I therefore find this allegation not upheld.”*

## **Consideration of Complaint 2**

From the evidence available there is nothing to suggest that the driver of the vehicle, Mr A, was treated as anything other than a witness throughout the investigation.

The Police Scotland Road Death Investigation Manual (“the Investigation Manual”) outlines how officers should treat witnesses during the process.

According to paragraph 11.9.2 of the Investigation Manual:

*‘Witnessing or being involved in a fatal or serious collision can be extremely traumatic...From the perspective of the witness, being updated with the progress of the investigation is key to satisfaction with the police and the criminal justice system as a whole.’*

Paragraph 11.9.3 further states:

*‘When a witness reports an incident or is identified at the scene, they should be provided with the incident or other reference number, the details of the officer investigating and a contact number.’*

Although not reflected in the response, the above demonstrates that there are procedures in place suggesting the minimum level of support that a witness to a fatal collision should receive. In particular, the relevant manual dictates that the witness should be provided with the details of the officers investigating the collision, and should be updated as to the progress of the investigation.

As reflected in the response, Mr A, has provided an account in which he records that he was happy with the level of support offered at the time of the collision.

As further reflected in the response, Constable F also records within his respective account that he fully supported Mr A immediately following the collision, and provided him with information regarding the subsequent process.

Although not reflected in the response, Constable F’s account is supported by the statement provided by Constable E who states:

*“At this time, police witness [F]...covered and explained all the procedures and issues regarding what had been happening at the locus and specifically what was going to happen with the Taxi vehicle, namely the recovery and also provided him with the 101 contact number and both my details and police witness [F’s] details, as we were dealing with the incident.”*

Inspector D also provided a statement (referred to in the response) stating that:

*“[Constable F] advised me that he gave Mr [A] his contact details and advised him to contact Road Policing at [named] Police Office on 101 should he have any questions.”*

To this end, although Mr A states in his account that he did not remember being provided with the specific contact details of the officers involved, the accounts of the three officers above supports the police position that he was indeed given these details at the time and was offered an appropriate level of support and information in the immediate aftermath of the incident.

However it has been noted from the investigation manual that a witness should also be updated with the progress of an investigation. From the evidence available, a period of 6 days passed before Mr A had any further contact with the police following the incident. Notably, this further contact took place on 29 December 2016, and was to inform Mr A that the pedestrian had succumbed to her injuries.

As reflected in the response, Mr A states within his account that he did not expect to be given any further contact or support following the collision. However, notwithstanding Mr A’s subjective opinion regarding the level of support he received in the days following the collision, the investigation manual does suggest that he should have been updated as the investigation progressed. Given that Mr A was involved in a subsequently fatal collision, and was aware that the pedestrian involved was in a critical condition, the response fails to consider whether the level of contact and support offered to Mr A in the days following the collision were both proportionate and appropriate in the circumstances.

For this reason, it is considered that the response is inadequately reasoned. It has been concluded that the complaint was not handled to a reasonable standard.

It is therefore recommended that Police Scotland provide a further response to the applicant which considers if the level of support given to Mr A in the days following the collision was appropriate and in line with the relevant police procedures as identified within the investigation manual.

### Complaint 3: Differing information

The applicant complains that she was provided with different versions of police procedures relating to the time her car was retained and the costs involved.

#### *Police Handling of Complaint 3*

Chief Superintendent C responded to the applicant's complaint as follows:

*"In your correspondence and statement you have highlighted concerns regarding the information provided to you by several police officers in respect of the costs associated with your vehicle being retained for examination by the police. Specifically Inspector [D], Sergeant [H] and Constable [E], all of whom you allege told you that the owner of the vehicle would be liable for the costs associated with the retention of your vehicle.*

*In response to your allegation Inspector [D] states:*

*'I am not aware what information [the applicant] was given by other persons either within Police Scotland or elsewhere. I advised her when she telephoned that the vehicle had been seized as a production...I advised her that that the vehicle had been seized and taken to the recovery contractor's yard. I advised her that costs are a matter for the Contractual Vehicle Recovery Scheme service but that she would not be liable as the vehicle had been seized by the police as a production on this occasion.'*

*In response to your allegation Sergeant [H] states:*

*[The applicant] continued to tell me in no uncertain terms of the serious financial implication having her taxi off the road at this time of year would incur and continually questioned me on who would "pay for it".*

*I told her at this time the Procurator Fiscal had the authority over the release of her vehicle and it would be for her to consult with the Fiscal's Office in relation to any possible financial recourse.*

*[The applicant] again asked if the police were going to reimburse her for her financial loss and I again replied that only with speaking with the fiscal's office would be find out if she could recoup any of her loss whether this be from the public purse or otherwise but reiterated it was for the Procurator Fiscals Office to advise her on any other details of her enquiry.'*

*In response to your allegation Constable [E] states:*

*'I explained to [the applicant] that this was early stages of investigation onto [sic] the incident and no decision at that stage had been arrived at regarding any issues of blame. [The applicant] was constantly expecting me to provide her with definitive answers to specific questions, such as what would charges be against Mr [A], and when specifically the vehicle would be examined, and when the vehicle was to be returned to them as it was losing money being off the road and not out taxiing. Also specifically what charges then would [A] be facing, if it had still to be decided. [The applicant] asked me who would be liable for the recovery fees for the vehicle, but I did not discuss this with her as I did not deem that appropriate for me to comment on as I was not entirely sure of recovery fees under such circumstances. I did explain the fact I could not comment on that aspect.'*

*In reviewing this allegation I have considered the information given by the officer concerned and also the Police Scotland Standard Operating Procedures (SOP) relevant to the retention of your car in these circumstances.*

*In the first instance it is important to clarify that having been involved in a serious (subsequently fatal) road crash any vehicle has intrinsic evidential value to the investigation and is defined as a production. The Police Scotland Productions SOP defines a production as ‘any article, document or anything (including animal) which is connected with a crime or offence or other matter under review.’*

*Once seized the administration of the vehicle retention is managed under the Contractual Vehicle Recovery Scheme (CVRS) with procedures set out in the Police Scotland Seizure of Vehicles SOP. This SOP states:*

*...on no account are officers to discuss potential removal fees, it is sufficient to inform vehicle owners/drivers there is a cost involved. In addition, officers are not to discuss specific charges with vehicle owners or drivers. It is a matter for the Vehicle Recovery Operator (VRO) to deal with any related payments.’*

*From the officers’ account there is no indication that you were told you would be liable for the costs in relation to your vehicle being retained for examination and I also understand that no fees were ever requested from you. Inspector [D] and Constable [E] have stated that they did not discuss recovery fees with you and this meets the criteria of the seizure of Vehicles SOP. Sergeant [H’s] comments appear to me to cover your general concern regarding your loss of earning while your car was not available to you as a taxi and this does not contradict the information provided by Inspector [D] or Constable [E]. From the evidence available I am of the opinion that you were provided with consistent details regarding the recovery fees for your vehicle.*

*I therefore find this allegation not upheld.”*

### **Consideration of Complaint 3**

According to the response, the applicant alleges she was told by Constable E, Sergeant H and Inspector D that she would be liable for the costs associated with the retention of the vehicle.

However, having reviewed the applicant’s statement and letter of complaint, the crux of her concern is not that she was informed by the officers she would be liable for the costs. Rather, her complaint relates to the fact that she received different advice from the officers she spoke with in relation to her queries

The statements from the officers concerned do, on the face of it, confirm the applicant's assertion that she did receive different responses from each of the officers. However, it is important to point out that the police response to this complaint does not clearly differentiate between the advice provided by officers to the applicant in relation to liability for the costs associated with the retention/storage of her vehicle, and that provided to address queries regarding recompense for the financial loss incurred by the applicant.

The accounts offered by Inspector D and Constable E referred to in the response focus on the advice offered in relation to the costs associated with the storage and retention of her vehicle. Conversely, the account provided by Sergeant H and the advice allegedly offered by him focusses on the applicant's more general concerns about recouping her loss of earnings.

In relation to the cost of storage and retention of the vehicle, Constable E has provided an account in which he states that, he did not discuss the costs of the vehicle's seizure and retention with the applicant. As reflected in the response, this approach is consistent with paragraph 2.9 of the Police Scotland Seizure of Vehicle Standard Operating Procedure which states:

*'On no account are officers to discuss potential removal fees, it is sufficient to inform vehicle owner/drivers there is a cost involved.'*

From reviewing the account of Inspector D, she also states that she declined to discuss specific costs but did inform the applicant that the vehicle was seized under the Contractual Vehicle Recovery Scheme meaning that the applicant would not be liable for the costs.

Accordingly, the advice provided by Inspector D appears to be the correct advice, and the response allegedly provided by Constable E is also in line with relevant standard operating procedure.

At this juncture it is important to address the crux of the applicant's complaint, namely the applicant's claims that she was provided with different versions of police procedures relating to the time her car was retained and the costs involved. Accordingly, although the advice allegedly offered by Sergeant H differs from that given by the other two officers, it is noted that this appears to have been offered as a practical solution to the applicant relating to her loss of earnings as opposed to the cost of the storage and retention of the vehicle. It is therefore considered that Sergeant H's response in this connection is immaterial.

In addition, whilst it is acknowledged by the PIRC that the advice provided by both Sergeant H and Inspector D may have differed slightly, the matter of financial compensation is ultimately a civil matter. It is therefore not considered that either officer was deliberately attempting to frustrate or mislead the applicant in this regard.

Accordingly, although the response from Police Scotland has potentially confused matters by failing to make a clear distinction between issues associated with the cost of storage and retention of the applicant's vehicle, and those associated with the applicant's financial loss, the PIRC supports Police Scotland's decision not to uphold the complaint.

As such, it is considered that the response to the applicant is adequately reasoned and is based on the material evidence available.

No further action is required in this connection.

## Complaint 4: Retention of vehicle

The applicant complains that it took five days to conduct the vehicle examination and a further three days to release the vehicle.

### Police Handling of Complaint 4

Chief Superintendent C responded to the applicant's complaint as follows:

*"About 1611 hours, Thursday 22<sup>nd</sup> December 2016 police received a report of a serious road crash in [named area]. Ambulance and Police resources attended. The incident involved a vehicle and a pedestrian, who had suffered serious injuries. A subsequent hospital update indicated that the pedestrian's injuries were life threatening.*

*Police action thereafter should follow the procedures and practices outlined in Police Scotland's Road Death Investigation Manual...*

*...Standard practice within this process is to seize any vehicles that are involved in the crash. The purpose of this is to establish the pre-collision mechanical condition of the vehicle, in so far as the consequences of the collision allow. This enables the Road Policing Senior Investigating Officer (RP SIO) to consider the likelihood of a vehicle-related factor having cause or contributed to the collision....*

*...The Road Death Investigation Manual also advises that it is essential that the RP SIO liaise with the Procurator Fiscal on the issue of vehicle seizure and retention during a fatal collision investigation. Vehicle may have to be retained as productions until the conclusion of any prosecution and any period for appeal.*

*The Police Scotland Seizure of Vehicles SOP then clarifies what should occur before the release of a vehicle involved in a Serious/Fatal Road Crash:*

*'The release of 'crime vehicles' and 'Serious/Fatal Road Crash vehicles will only be authorised by CVRS Staff to VROs following consultation with the SIO in the case. The SIO must also consult with the Procurator Fiscal/Crown Office before granting approval for release.*

*It is imperative that Defence Counsel be given the opportunity to examine vehicles prior to release. Where the Crown investigation has concluded and the Defence intimate a desire to*

*have a vehicle examined, liability for storage costs transfer to the Defence until such examination is complete. It is the responsibility of the SIO for notify CVRS of any Defence interest in a vehicle.'*

*As RP SIO Inspector [D] provided the following statement regarding your allegation:*

*'The road crash occurred on the afternoon of Thursday 22<sup>nd</sup> December, the vehicle was taken to [Company Y] Contractors Yard, [named area].*

*On the Friday 23<sup>rd</sup> December I tasked the crew on duty to carry out enquiries following the crash that were critical to establish the injured parties movements and investigative opportunities ...I did not want the examination to be rushed and knew that I would not get a decision following completion of the vehicle examination from the Procurator Fiscal at that time on Friday 23<sup>rd</sup> December.*

*The premises were shut Saturday 24<sup>th</sup>, Sunday 25<sup>th</sup> and Monday 26<sup>th</sup> due to the Christmas holiday. The first opportunity to examine the vehicle was on Tuesday 27<sup>th</sup> and that was when the vehicle examination was carried out by [Constable F] and [Constable M]. The injured party died on evening of 28<sup>th</sup> and as such a death report was submitted to the Procurator Fiscal on Thursday 29<sup>th</sup> December.*

*On Friday 30<sup>th</sup> December I specifically submitted a subject sheet to the PF requesting consideration be given to release the vehicle. My officers and I worked hard and I believe beyond expectations, to have the vehicle returned to the complainer on the Friday afternoon, despite competing demands we singularly tried to assist [the applicant]. The vehicle was returned on the Friday afternoon which I do not accept is unreasonable, on the contrary this is a very quick turnaround. '*

*Having considered the available evidence I am satisfied that the criteria in relation to the seizure of your vehicle was met and that it had intrinsic evidential value in relation to the investigation into the road crash. It would therefore require examination as per the Road Death Investigation Manual guidance. I am also satisfied that, given the comments of Inspector [D], your vehicle was examined at the earliest opportunity and that it was released to you as soon as was practicable.*

*I therefore find this allegation not upheld."*

## **Consideration of Complaint 4**

There are two aspects to the applicant's complaint. Firstly she complains that it took five days for the vehicle examination to take place; and, secondly, she complains that it took a further three days to return the vehicle.

### (i) time taken for vehicle examination

The police have a duty to attend and investigate serious and fatal road traffic collisions.

The response in this connection explains to the applicant the reason her vehicle was seized. It also explains that this follows the standard practice in any fatal (or potentially fatal) collision to seize the vehicle and is in line with the relevant standard operating procedure. This approach is outlined in paragraph 16.1 of the Police Scotland Road Traffic Collisions Standard Operating Procedure which states:

*'All vehicles involved will be seized from the outset as productions and...will be stored under secure conditions...until examined for any defects which may have been a contributory factor.'*

In her application to the PIRC, the applicant contends that there was no driver culpability as the pedestrian ran into the side of the vehicle while it was conducting a legal manoeuvre. Consequently the applicant considers there was no need for the vehicle to be seized in the first instance. However, it is clear from all relevant standard operating procedures and guidance that in any collision where a person sustains life threatening injuries, the police are required to seize all vehicles from the outset so as to ensure all lines of enquiry and avenues of investigation are properly explored.

In this case, and in line with the relevant police procedures and guidance, the applicant's vehicle was seized immediately following the collision on 22 December 2016 and examined on 27 December 2016.

In relation to the timescale taken for the examination to be carried out, the response in this connection refers to the comments made by Inspector D which allegedly supports the position that the vehicle was examined at the earliest opportunity.

Inspector D's account is that on 23 December 2016 - the day following the collision - she allocated officers various enquiries connected with the on-going investigation so as to establish the injured party's movements and any other investigative opportunities. According to Inspector D, the vehicle testing premises were then closed on the 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> of December 2016 and the vehicle was then examined in the morning of 27 December 2017. This has been relayed verbatim in the response issued by Police Scotland to the applicant.

Accordingly, as reflected in the response and based on the evidence available, there does not appear to be an unreasonable delay in the examination being carried out. Rather, the vehicle was not examined the day immediately following the collision as Inspector D was trying to establish the circumstances surrounding the collision and any other investigative opportunities. Instead, the examination was carried out as soon as the premises re-opened after the festive period on the morning of 27 December 2016.

It is therefore considered that this aspect of the complaint is adequately reasoned and is supported by the material evidence available.

## (ii) Time to return the vehicle

From the evidence available, the pedestrian involved in the collision sustained life threatening injuries and was in a critical condition in the days following the incident, succumbing to her injuries on 28 December 2016. As such, and as reflected in the response, a sudden death report was then completed and forwarded to the COPFS for their consideration.

As explained in the response, in the case of all serious and/or fatal road collisions, the release of any vehicle is dependent on the approval of the senior investigating officer who is required to consult with the COPFS before granting release. This obligation is contained within paragraph 19.10 of the 'Seizure of Vehicles SOP' and is explained to the applicant in the response.

According to Inspector D's account, she made efforts to consult with the COPFS the day after the sudden death report was submitted requesting that consideration be given to returning the vehicle. Her account in this respect is supported by a copy of the relevant subject report provided to the PIRC and examined during the course of the review.

The evidence available suggests that the examination was carried out on the morning of 27 December 2017, with the vehicle being released on 30 December 2017. However, taking cognisance of the relevant standard operating procedures, it makes it clear that in any serious road traffic collision, the vehicle would not be released without prior consultation with the COPFS.

Furthermore, it is clear that the pedestrian had life threatening injuries from which she succumbed on the day following the collision. This resulted in a full sudden death report being submitted to the COPFS for their consideration.

As highlighted in Inspector D's account, the return of the vehicle on the day following the report being submitted to the COPFS does not suggest any unreasonable delay. Instead, the evidence available and the comments made by Inspector D supports the police position that every effort was made to return the vehicle to the applicant as soon as was practicably possible, particularly in cognisance of the time of year in which the incident occurred.

It is therefore considered that this aspect of the complaint is adequately reasoned and is supported by the material evidence available.

It is concluded that this complaint, overall, was handled to a reasonable standard.

No further action is required in this connection.

## **Complaint 5: Not able to speak with Senior Officer**

The applicant complains that she was not able to speak with an officer above the rank of Inspector regarding her concerns.

## Police Handling of Complaint 5

Chief Superintendent C responded to the applicant's complaint as follows:

*"From your correspondence and statement your allegation stems from a conversation you had with Inspector [D] on Friday 30th December 2016 where you queried certain matters regarding the examination of your vehicle and asked if Inspector [D's] Chief Inspector would tell you the same things.*

*You allege that Inspector [D] told you that the Chief Inspector was not available and you then asked if Chief Inspector [N] (named Area Commander) was off. You allege that Inspector [D] told you that he was there but there was no use talking to him and that you would need to talk to someone like her traffic superintendent (Superintendent [P]). You felt this conversation was going nowhere so you asked for the Superintendent's number and were advised to call 101. When you called 101 you allege that Superintendent [P] refused to speak to you.*

*Inspector [D] has provided a response to your allegation which is as follows:*

*[The applicant] spoke to me on the Friday afternoon about 1400hrs, it was apparent that she was not satisfied with the explanation I was giving her relating to due procedures to have opportunity to have her vehicle examined and that I could not have foreseen when and what the Procurator Fiscal would direct in terms of whether the vehicle could be released. [The applicant] wanted to speak to an officer more senior to myself and I advised her that my Chief Inspector... was on leave, I advised that she could speak to Superintendent [P] and to contact 101. She asked if Chief Inspector [N] was available and I advised her I did not know, but that as her concerns were in relation to Road Policing procedures I advised she spoke to a Road Policing senior officer. I refute this allegation as I advised her how to contact a senior Road Policing Officer and there was no reason she could not have attempted to contact Chief Inspector [N] should she wish."*

*Superintendent [P] has also provided a response to this allegation which, in summary, is as follows:*

*'In relation to the specific allegation mentioned above, I can fully understand why members of the public would wish to raise their issues direct with members of a Divisional Command Team. However, when the Call Centre phoned me on Friday 30 December 2016 I was not in a position to take the call.*

*Therefore, at that time, I provided alternative options to ensure [the applicant] had the opportunity to raise her issues. She chose to perceive this as me refusing to speak to her, but this is not the case. In addition, she did manage to speak to me the following week, so she did manage to speak to an officer above the rank of Inspector about her concerns albeit it was not at a time of her choosing. '*

*Having considered the available evidence Inspector [D] has stated that she provided you with explanations as to why her own Chief Inspector was not available and that a Road Policing Senior officer would be the best person for you to speak to. In addition, Superintendent [P] has stated that he did not refuse to speak to you and that he provided options for you to raise your concerns. He also states that he did speak to you on 3<sup>rd</sup> January 2017. It is therefore clear that while you may not have spoken to an officer above the rank of Inspector initially you did have the opportunity to speak to Superintendent [P] on 3rd January 2017 regarding your concerns.*

*I therefore find this allegation not upheld.”*

### **Consideration of Complaint 5**

As reflected in the response, the applicant informed Inspector D that she wished to speak with a more senior officer to voice her various concerns regarding the seizure of her vehicle. Inspector D thereafter explained to the applicant that she would be better placed to speak with a traffic supervisor and advised her to contact 101 to speak with Superintendent P.

Superintendent P has provided an account in which he acknowledges that the applicant made attempts to speak with him via the contact centre, however denies refusing to speak with her. Instead, Superintendent P states he was not in a position to take the call and directed the call handler to provide her with alternative options in which to raise her concerns.

Notwithstanding the above, it is noted that the applicant was afforded the opportunity to speak with Superintendent P to raise her concerns at a later date. This was explained in the response to the applicant and is supported by Superintendent P's account.

For these reasons, Chief Superintendent C does not uphold the applicant's complaint. That said, it is noted that the response in this connection relies purely on the account provided by Superintendent P and appears to be the sole basis for not upholding the applicant's complaint. However during the course of the review, the PIRC was provided with a recording of the telephone conversation between the applicant, the call handler, and Superintendent P and it has been noted that these recorded conversations were not taken into account during the complaint investigation.

Accordingly, it is considered that the complaint enquiry was insufficient, from which it has been concluded that this complaint was not handled to a reasonable standard.

It is recommended that Police Scotland listen to the recordings and issue the applicant with a fresh response taking into account all of the available evidence. This further response should specifically address if Superintendent P refused to speak with the applicant and whether the applicant was provided with suitable alternative options to raise her concerns.

### **Complaint 6: Procedures unclear and undue pressure**

The applicant complains that procedures regarding the release of her vehicle were unclear and she felt pressure to sign a waiver relating to the process.

### *Police Handling of Complaint 6*

Chief Superintendent C responded to the applicant's complaint as follows:

*"In your correspondence and statement it is clear that you wished your vehicle to be returned to you as soon as possible and you have emphasized the financial issues it caused you while your car was not available. You state that on 30th December 2016 you called Inspector [D] and told her that the issue regarding the return of your vehicle was now urgent. You state that she informed you that she had not received any word from the PF regarding the release of your vehicle but that she had emailed the PF requesting its release.*

*You also state that you contacted [Company Y] and that you were informed that their premises would be closing at 4.45pm that day for the New Year holiday.*

*You state that later that day you were contacted by Sergeant [G] and he informed you that he had fixed it with the PF's Office and that you could collect your car just as soon as you signed the waiver. You also allege that Sergeant [G] told you that if the car wasn't picked up that day you would be liable for any future costs.*

*You state that your husband contacted [Company Y] and they informed you that they would not allow an independent examination to be carried out on their premises. Your husband states that he arranged for another company, [Company XX], to carry out the examination and that it was all very rushed and you both felt under pressure to get the car back. Both you and your husband indicated that you would not have taken the car back without it being examined independently.*

*Mr [A] has also provided comments in his statement regarding the release of your vehicle. He states:*

*'On Friday 30 December, I received a phone call from a police officer who told me that if I signed a waiver I could get the taxi back. I don't recall it being explained to me what the conditions were around the waiver other than if I signed it I would get the car back. I told the officer I would need to check with the [applicant] as it was their car. I went to the [applicant's] house and they told me there could be implications if I signed this and they told me not to do it. They made further enquiries and they were concerned that if anything further came up with the car they could be libelled if they hadn't had it tested themselves.*

*I stayed with the [applicant] while they made arrangements to get the car MOTd by [Company XX]. I drove with [Mr Q] to [Company Y's] premises where we met the police. The car was taken with a police escort to [Company XX's] premises where they did an MOT in the presence of the police. No faults were found and the car was given back to us. I drove the car away and later that day the car was back on the road being used by me as a taxi .....*

..... With regard to the waiver I was not content to sign anything without speaking to the [applicant]. I was aware that the purpose of the waiver was to absolve the police of responsibility once the car had been returned. The [applicant and Mr Q] were cautious and wanted to check the car was one hundred percent okay before they got it back.'

Sergeant [G] dealt with the release of your vehicle and he states:

'On Friday 30th December I commenced duty as above at [named] Police office at 1400hrs. On my arrival around 1330hrs I became aware there had been discussions regarding [the applicant] having been on the phone that day looking to have her vehicle returned to her.

I was aware from Inspector [D] that the casualty had succumbed to her injuries on the evening of Wednesday 28th December 2016 and the report of the death had been completed and sent to the PF ..... [Constable F] had been involved with ongoing discussions with the PF ..... The PF, [Ms R], had OK'd the release of the vehicle but had advised the owner/driver be given an opportunity to have their vehicle examined prior to release, or sign a notebook waiving their rights when the vehicle is uplifted. About 1445hrs that afternoon I answered a call from [the applicant]. She asked for [Inspector D] who was unavailable. I spoke to her reiterating the advice from the PF. I explained that in these circumstances the PF was responsible for deciding when the vehicle can be released and in this instance the PF had agreed to do so, but had asked that we ensure the owner and driver were aware if they take the vehicle they would be asked to sign a waiver stating they did not wish to conduct an independent mechanical examination. If they agreed to this the vehicle could be released that afternoon. However, if they did wish to have the vehicle examined it would require to be done before the vehicle was released. [The applicant] was not happy to sign such a waiver and our conversation continued along the lines of her being able to arrange a mechanical examination in the time available to her that day and her opinion was that [Company Y] did not have suitable facilities to examine the vehicle.

I explained I would re-contact the PF regarding clarification on the format of the independent mechanical examination and would phone her back.

I phoned [Ms R] who told me the vehicle owners could have anyone they wished examine their vehicle, prior to release, but credibility would be down to the credentials of the person conducting the examination and the content of any subsequent report should they later wish to rely on it in court.

I then immediately phoned [the applicant] advising her she could arrange to have the vehicle examined. She said she had contacted [Company XX] and it was their intention to take the vehicle to [Company XX] as it had suitable facilities and one of [Company XX's] mechanics would examine it on their behalf. I advised that the vehicle would require to be recovered from [Company Y's] premises and taken to [Company XX], rather than being driven & I would arrange for the police to attend at [Company Y] and accompany the vehicle where following the independent mechanical examination it would be immediately released to her.

*Around 1600hrs that day (Friday 30<sup>th</sup>) I attended at [Company Y] with [Constable F] where I completed the release paperwork in respect of the vehicle. Adding the notation "police to pay" to ensure there would be no charge to the owner.*

*The taxi was loaded onto an [Company XX] recovery vehicle and transported the short distance to [Company XX's] premises under escort by myself and [Constable F]. [Mr Q] had attended in his own car along with another male whom I now know to be Mr [A]. They were both present during the examination. [Constable F] noted the details of the technician who conducted an MOT test on the taxi. I remained at the garage but took no part in the mechanical examination. On the completion of the examination I asked the examiner if there was anything he wish to bring to my attention. He said there wasn't and the car was in good condition. The car was thereafter returned to the owner and I had no further involvement in this incident. '*

*Having reviewed the available evidence it is important to also consider the information I have already provided when addressing Allegation 4 of your complaint which is as follows:*

*'The Road Death Investigation Manual advises that it is essential that the RP SIO liaise with the Procurator Fiscal on the issue of vehicle seizure and retention during a fatal collision investigation. Vehicles may have to be retained as productions until the conclusion of any prosecution and any period for appeal.'*

*If I may re-iterate what the Police Scotland Seizure of Vehicles SOP specifies regarding what is necessary before the release of a vehicle involved in a Serious/Fatal Road Crash:*

*'The release of 'crime vehicles' and 'Serious/Fatal Road Crash vehicles will only be authorised by CVRS Staff to VROs following consultation with the SIO in the case. The SIO must also consult with the Procurator Fiscal/Crown Office before granting approval for release.'*

*It is imperative that Defence Counsel be given the opportunity to examine vehicles prior to release. Where the Crown investigation has concluded and the Defence intimate a desire to have a vehicle examined, liability for storage costs transfer to the Defence until such examination is complete. It is the responsibility of the SIO to notify CVRS of any Defence interest in a vehicle.'*

*It is therefore clear that Sergeant [G] was following the correct procedures by liaising with the Procurator Fiscal and informing you of your right to have your own examination of your vehicle prior to its release. He has explained the reason why the Procurator Fiscal has applied this condition to the vehicle release and I can find no evidence that he has applied any pressure to you in order to sign a waiver.*

*Taking into consideration the exact terms of your complaint I find your allegation to be not upheld."*

## *Consideration of Complaint 6*

There appear to be two aspects to the applicants complaint. Firstly she complains that the procedures surrounding the release of her car were unclear; and secondly, she complains that she felt pressured into signing a waiver to release the vehicle.

### (i) Procedures unclear

As stated above in response previous complaints, it was made clear to the applicant that her vehicle could not be released without prior consultation with the Procurator Fiscal. As outlined in the response, this position is consistent with the Investigation Manual and the Seizure of Vehicles SOP.

Furthermore, it was also made clear to the applicant that although the Procurator Fiscal agreed to release the vehicle, this could not be done without her first signing a waiver. However, the accounts of the applicant, Mr Q, and Sergeant G suggests that the applicant did not wish to sign the waiver and instead wanted an independent examination of the vehicle to be carried out before the vehicle was released.

According to the account of Sergeant G , and at the request of the applicant, he re-contacted the COPFS to confirm the format of an independent examination. This information was subsequently relayed to the applicant. Arrangements were then made to have the vehicle moved to the elected site where the vehicle was examined and subsequently released. This is reflected in the response to the applicant.

Accordingly, the evidence available suggests that it was the COPFS who specified that the vehicle could not be released without the applicant first signing a waiver, and that Police Scotland communicated this information to the applicant. Furthermore, the evidence also suggests that, when the applicant made clear that she did not wish to sign the waiver and wished for her vehicle to be independently examined, Sergeant G re contacted the COPFS to clarify the procedure for examination and again thereafter relayed this information to the applicant. The evidence available further suggests that Sergeant G helped to facilitate the examination by making arrangements to have the vehicle moved and offered to be present when the vehicle was examined.

For these reasons, it is considered that the response to this aspect of the complaint is adequately reasoned and is supported by the material evidence available.

### (ii) Undue pressure

From the applicant's letter of complaint and the accounts provided by her and her husband, the complaint in this respect appears to be that they felt pressured into signing the waiver. They attribute this to information provided by Sergeant G, who told them that it would be difficult to get the inspection carried out before the premises closed for the holidays. The applicant further alleges that Sergeant G stated that they would incur the future costs of storage.

The response to this aspect of the complaint again refers to the account provided by Sergeant G and states that there is no evidence contained therein that Sergeant G applied any undue pressure on the applicant to sign the waiver. However, whilst there is nothing within Sergeant G's account to suggest that he did place any undue pressure on the applicant to sign the waiver, he does not specifically address if he informed the applicant or Mr Q that it would be difficult to have the inspection carried out before the premises shut for the holidays or that they would be liable for any future storage costs.

As these comments made by Sergeant G appear to be the crux of the applicant's concern, it is considered that the response has failed to fully address her complaint.

For the reasons outlined above, it is concluded that the first aspect of this complaint was handled to a reasonable standard but the second aspect was not.

In relation to the second aspect of the complaint, it is recommended that Police Scotland:

- (a) obtain a further account from Sergeant G in which he is asked to address if he made the comments above;
- (b) re-visit the complaint based on the evidence as a whole; and
- (c) issue the applicant with a fresh response which addresses the applicant's specific allegation that the above comments allegedly made by Sergeant G made her feel undue pressure to sign the waiver.

In addition, as each aspect of the complaint is capable of being upheld or not upheld independently of the other, it is recommended that Police Scotland records (i) and (ii) as two separate complaints.

## Complaint 7: Inaccurate information

The applicant complains that an officer gave her inaccurate information regarding how she should proceed with a civil claim. The applicant alleges she was told to use a solicitor and that she needed a solicitor to speak with the Procurator Fiscal.

### Police Handling of Complaint 7

Chief Superintendent C responded to the applicant's complaint as follows:

*"In your statement you allege:*

*'On Friday 30 December 2016, I called Inspector [D] ..... I asked Inspector [D] about compensation for loss of earnings and she told me to engage a solicitor to instigate a civil claim against the police. I asked her if I could call the PF myself and she told me I would have to get a solicitor to take action on my behalf. '*

*Inspector D was asked to address this allegation and she states:*

*‘..... [The applicant] asked me about 1000hrs on Friday 30th December how she could sue Police Scotland and the Procurator Fiscal for loss of earnings in relation to her vehicle being seized and the consequential fact it was not on the road over the Christmas weekend and potentially if she did not get it back the following weekend over New Year, both being busy times of the year as she explained to me. I told her I did not know, and as her question was regarding legal procedures and potentially insurance I advised her to speak to a solicitor in first instance. I never advised [the applicant] to speak with the Procurator Fiscal, she asked if she could phone the PF and I said it was up to her. I told her I did not know how she would be able to sue the Procurator Fiscal. I confirm I advised her to speak to a solicitor, this was not meant to mislead or provide inaccurate information, it was what I said I would do, and was intended as a practical suggestion in the first instance.’*

*Having considered the evidence available I am unclear as to why you consider the information provided by Inspector [D] to be inaccurate. In your correspondence you have indicated that you have been involved in previous civil claims where you have represented yourself. I would therefore conclude that you would have been aware of the action you could take.*

*Police officers deal with criminal law and are not expected to be aware of detailed aspects of civil law. Inspector [D] has given you general advice which I consider to be appropriate and is in essence that if you have a legal query a solicitor would be the appropriate person to consult. Inspector [D] has also outlined the context of her advice regarding a solicitor and this does not include advice that you would need a solicitor to contact the Procurator Fiscal.*

*Taking all this into consideration I find your allegation not upheld.”*

## **Consideration of Complaint 7**

The response in this connection again relays verbatim the account of Inspector D in which she acknowledges that she advised the applicant to contact a solicitor in the first instance although denies that she informed the applicant she would require a solicitor to speak with the Procurator Fiscal.

The response then states that officers are not expected to have detailed knowledge regarding how to instigate civil claims and advises that the advice given was offered as a practical suggestion to the applicant's legal query.

Accordingly, and as reflected in the response, although there is no requirement for the applicant to consult a solicitor as her claim could be made directly to the Police Scotland legal services department, the advice she received was not necessarily incorrect. Rather, Inspector D makes clear in her account that she was unsure how the applicant could proceed with a claim and merely intended to offer practical advice.

As the response acknowledges this and explains the reasons surrounding why his advice was offered, it is considered that the response is adequately reasoned and is supported by the material evidence available. It is therefore concluded that this complaint was handled to a reasonable standard.

No further action is required in this connection.

## Delay

Within her correspondence to the PIRC, the applicant highlighted the fact that she did not receive a response to her complaints within guidelines of 56 days as outlined in the Police Scotland Complaints about the Police Standard Operating Procedure.

From the evidence available, the applicant submitted her complaint in writing on 3 January 2017. The complaint was thereafter allocated to Inspector B for enquiry, and statements were noted from the applicant and her husband on 19 January 2017. The applicant received a response to her complaints in writing in a letter dated 27 March 2017 which is roughly four weeks over the 56 day target.

However, although the response was issued out-with the target timescale, given the number of complaints and the level of enquiry required to complete the complaint investigation, it is considered that this delay is not excessive in the circumstances.

## 5. Conclusions

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### Complaints 1, 3, 4 and 7

It is concluded that these complaints were dealt with to a reasonable standard. No further action is required.

### Complaint 2: Lack of support and liaison

For this reason, it is considered that the response is inadequately reasoned. It is therefore considered that the complaint was handled to a reasonable standard.

It is recommended that Police Scotland provide a further response to the applicant which considers if the level of support given to Mr A in the days following the collision was appropriate and in line with the relevant police procedures identified in the investigation manual.

### Complaint 5: Not able to speak to senior officer

It is concluded that this complaint was not handled to a reasonable standard.

It is recommended that Police Scotland listen to the recordings and issue the applicant with a fresh response which takes into account all the available evidence. The further response should address if Superintendent P refused to speak with the applicant and whether the applicant was provided with suitable alternative options to raise her concerns.

### Complaint 6: Procedures unclear and undue pressure

For the reasons outlined above, it is concluded that the first aspect of this complaint was handled to a reasonable standard but the second aspect was not.

In relation to the second aspect of the complaint, it is recommended that Police Scotland:

- (a) obtain a further account from Sergeant G in which he is asked to address if he made the comments above;
- (b) revisit the complaint based on the evidence as a whole; and
- (c) issue the applicant with a fresh response which addresses the applicant's specific allegation that the above comments allegedly made by Sergeant G made her feel undue pressure to sign the waiver.

In addition, as each aspect of the complaint is capable of being upheld or not upheld independently of the other, it is recommended that Police Scotland records (i) and (ii) as two separate complaints.

**Kirstin McPhee**  
**Review Officer**

**Jacqui Jeffrey**  
**Senior Review Officer**