

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

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## 1. Role of the PIRC

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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

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The complaints in this case arose from a police enquiry into the theft of the applicant’s scaffolding. Eight complaints were reviewed, namely:

- 1) That on 5 July 2016 the applicant received conflicting advice from officers at two different police stations;
- 2) That on 5 July 2016 the applicant was informed by an officer at a named police office that he would be arrested if he removed the scaffolding;
- 3) That between 5 July 2017 and 28 October 2017, officers took an excessive amount of time to investigate the alleged theft;

- 4) That between 5 July 2016 and 28 October 2016, an officer failed to keep the applicant up to date with the progress of the enquiry;
- 5) That between 13 July 2016 and 29 September 2016, officers took an excessive amount of time to send a sample of the scaffolding for forensic analysis;
- 6) That throughout the enquiry, officers failed to make enquiries with Gumtree as quickly or as thoroughly as expected;
- 7) That an officer from the Professional Standards Department closed down his complaint without his approval;
- 8) That officer believed the story of the new owner of the scaffolding when he alleged that it had been stolen.

The review found that five of the complaints were handled to a reasonable standard and three were not. Four recommendations have been made.

### 3. Background

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On the morning of 5 July 2016, the applicant noticed scaffolding erected on a site which had red paint markings on it. Although he had not previously reported the scaffolding as stolen, the applicant believed this scaffolding belonged to his company, who use the same red paint to mark their scaffolding as a theft protection measure.

Shortly afterward, the applicant attended at police office P and spoke with Constable A. He informed Constable A of his intentions to attend at the site and remove the scaffolding. Constable A advised the applicant to attend at police office Q and officers from there would accompany him to the site whilst he removed the scaffolding accordingly. The applicant thereafter attended at police office Q as advised by Constable A, where he spoke with Constable B. She advised him that he could not attend the site and remove the scaffolding without first proving ownership. Consequently, the scaffolding was not removed at the time and remained in situ.

On the afternoon of 5 July 2016, Constables B and C attended at the site and spoke with the owner, Mr D. At this time, Mr D was told that the scaffolding was suspected stolen. A statement was taken from Mr D, who told officers he had purchased the scaffolding on Gumtree. According to Mr D, an agreement was reached with the officers whereby he was to leave the scaffolding poles marked with the red paint on the site once his work was completed.

Constable C then assumed responsibility for the enquiry.

On 9 August 2016, the applicant attended at police office Q and made several complaints connected with the on-going enquiry into the alleged theft.

The applicant's various complaints were originally treated as resolved by Frontline Resolution (FLR) on the understanding that Constable C progressed the enquiry and kept the applicant updated.

On 13 September 2016, Constable C forwarded a sample of the scaffolding for analysis by a private company. On 19 September 2016, Constable C was contacted by the private company, who confirmed that the sample of paint matched that used by the applicant to mark scaffolding belonging to his company. However during this time, the scaffolding allegedly left on site by Mr D was removed without the applicant or Police Scotland's knowledge.

Constable C thereafter contacted the applicant to inform him that the sample had returned a positive result but that the scaffolding left on site had been removed without police knowledge.

On 4 October 2016, the applicant attended at police office Q and made further complaints.

Sergeant E was appointed as the enquiry officer and the applicant received a response to his complaints in writing from Chief Inspector F in a letter dated 23 March 2017.

## 4. The Review

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### Complaint 1: Provided with conflicting advice

The applicant complains that on 5 July 2016 he was provided with conflicting advice from officers at Police Offices P and Q.

#### *Police Handling of Complaint 1*

Chief Inspector F responded to the applicant's complaint as follows:

*"I note that that you own your own scaffolding company, namely [Company R]. As a result of having items stolen in the past you invested in theft protection paint, which you painted onto your scaffolding.*

*I understand that on 5th July 2016 you were travelling near to [named area], when you observed scaffolding erected around a property on that street. You observed the scaffolding was painted with theft protection paint, which looked like the paint which you had treated all your scaffolding with. On seeing this you suspected that this was scaffolding, which had been stolen from you several years earlier.*

*After observing the scaffolding, you attended at [Police Office P] where you spoke with an officer, [Constable A]. You explained the circumstances and at this time stated that you were intending on attending at the location of the scaffolding and removing it. [Constable A] then informed you to attend at [Police Office Q], where a [Police Office Q] officer would accompany you to the location of the scaffolding in order to remove it. The officer stated that the presence of the officers, would prevent any problems with any person who may be there.*

*I note that you state that when you arrived at [Police Office Q] you met with another officer, [Constable B], who gave you conflicting advice. At this time [Constable B] explained that you would not be able to take the scaffolding and you would need to prove the scaffolding belonged to you.*

*[Sergeant E] has carried out a full and thorough investigation into the circumstances surrounding your complaint and has obtained operational statements from the officers involved. On reviewing the circumstances and each comment made by the officers, I can advise that the [Constable A] provided you incorrect advice, [Constable B] provided the correct advice.*

*In light of the above findings, I uphold this part of your complaint. [Constable A] has been given corrective advice regarding the advice he provided. I would take this opportunity to apologise for any inconvenience caused by the conflicting advice provided by the officers."*

## **Consideration of Complaint 1**

The response accurately reflects the statements of both officers and acknowledges that the applicant received conflicting advice. Chief Inspector F thereafter upholds the applicant's complaint, offers an apology, and explains that corrective guidance has been given to the officer who provided the applicant with the incorrect advice.

However, in his application to the PIRC, it is the applicant's submission that part of this response is factually incorrect. These inconsistencies relate to the fact that the response states that the applicant invested in theft protection paint because of previous thefts. However, the applicant has advised that the use of security paint is a requirement of his trade association, and that he has been using it on his scaffolding for over 20 years. Whilst this may be the case, the PIRC considers these alleged inaccuracies to be immaterial to the current complaint.

It is therefore considered that this complaint was handled to a reasonable standard.

No further action is required.

## **Complaint 2: Threatened with arrest**

The applicant complains that on 5 July 2016, he was informed by a police officer at police office Q that he would be arrested if he removed the scaffolding he found.

## **Police Handling of Complaint 2**

Chief Inspector F responded to the applicant's complaint as follows:

*"You state that on attending at [Police Office Q] on 5th July 2017, you spoke with and were given advice from a Police Constable and a Sergeant. During the conversation with the officers you state that the Sergeant advised you that if you removed the scaffolding from [named area] then you would be arrested.*

*[Sergeant E] has reviewed the statements provided by both officers in this regard.*

*Police [Sergeant G] states that he advised you against your intended course of action as you would need to prove ownership. He states he also informed you that you could not just remove the scaffold from the third parties property as any damage caused could be libelled against you, coupled with the fact that any disturbance at the property caused by you being there to remove the scaffolding could leave you open for a criminal complaint. [Sergeant G]*

*informed you that the matter would be fully investigated and that a crime report would be created and that any paperwork surrounding the paint identification should be provided to the reporting officer and that line of enquiry would be followed up. [Sergeant G] denies stating that you would be arrested if you removed the scaffolding.*

*[Constable B] was the other officer present and confirms that [Sergeant G] did not inform you that you would be arrested, she confirms that [Sergeant G] explained what would happen if you were to continue with your course of action.*

*Whilst I appreciate that your assertion is that you were informed that you would be arrested, both officers deny this. In the absence of any evidence to support your position I find this part of the complaint not upheld.”*

## Consideration of Complaint 2

The response to this complaint accurately reflects the account provided by Sergeant G. Sergeant G states he did not tell the applicant he would be arrested if he removed the scaffolding; rather, he states that he told the applicant he might leave himself open for a criminal complaint if he continued in his course of action.

The response in this connection states that Sergeant G’s account is supported by the account provided by Constable B, who allegedly confirmed that Sergeant G did not inform the applicant he would be arrested.

However, having reviewed the statement provided by Constable B, it is noted that she has recorded that the applicant was told by Sergeant G of the consequences should he pursue his course of action and remove the scaffolding. However, she does not provide any detail in relation to what was said; nor does she explicitly state that Sergeant G did not tell the applicant he would be arrested. Accordingly, in the absence of any specific detail as to what was said by Sergeant G to the applicant in Constable B’s account, the assertion that her account corroborates Sergeant G’s is not supported by the material evidence available. It is therefore considered that the response is inadequately reasoned.

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

It is recommended that Police Scotland:

- a) obtain a further account from Constable B in which she is asked to address the applicant’s specific complaint that Sergeant G informed the applicant he would be arrested if he removed the scaffolding;
- b) based on this account reconsider the evidence as a whole on the balance of probabilities; and
- c) issue the applicant with a fresh response.

## Complaint 3: Excessive time to investigate

The applicant complains that between 5 July 2016 and 28 October 2016, officers took an excessive amount of time to investigate the theft of his property.

### *Police Handling of Complaint 3*

Chief Inspector F responded to the applicant's complaint as follows:

*"I have carried out an investigation into the length of time taken and note that on 5th July 2016, an officer, [Constable C] was allocated this enquiry and thereafter attended at [named area] and viewed the scaffolding, which was fully erected. He then noted a statement from [Mr D], the person in possession of the scaffolding, who stated he bought the scaffolding in good faith, which cost him £1000. He was instructed by [Sergeant G] to obtain a sample of said scaffolding to be analysed. He also advised [Constable C] to secure the receipt from [Mr D] and carry out relevant enquiries with Gumtree.*

*[Constable C] contacted you a few days later when you provided him with the companies details, who could identify the paint used on your scaffolding board, before he went off on rest days.*

*On 11th July 2016, officers attended at [named area] and they made contact with [Mr D], who claimed ownership of this scaffolding. The officers confirmed with [Mr D] that another party was making a claim to the ownership of the scaffolding.*

*The officers noted at this time that 24 of the 32 scaffolding poles had some form of red paint on them. The officers were informed by [Mr D] that he had a receipt that would prove that he bought the scaffolding in good faith.*

*As the scaffolding was erected and being used in on-going work, an agreement was made with [Mr D] and officers to seize the scaffolding once it was dismantled, which was due to take place on 19th July 2016.*

*Officers state that they thereafter contacted and advised you of the proposed course of action and that you were in agreement with this.*

*On 13th July 2016, the same officers attended at [named area] and seized a single wooden section, measuring about 2 foot in length, with a metal bracket attached. The remainder of the scaffolding was left in situ, within the driveway of the property, where it was erected as it was not proportionate due to logistical constraints with storage and transport, to remove the remainder of the scaffolding.*

*On 13th September 2016 the scaffolding was sent recorded delivery, after deliberation from numerous departments as to the best method of sending it. The officer received confirmation on the 23rd of that month that the scaffolding sample positively identified as [Company R]'s property.*

*After this point, [Constable C] was informed that the scaffolding was missing from its original site outside [named area]. Contact was made with [Mr D], who stated did not know the whereabouts of the scaffolding. He stated he left 17 individual pieces of scaffolding at the address before returning on 4th September 2016 to notice the scaffolding was no longer at the site. At this time [Constable C] seized the receipt from [Mr D].*

*[Constable C] also carried out enquiry with Gumtree, which has not identified anyone who sold the scaffolding to the witness. Enquiry was also carried out with the owner of [named address] who could not provide any information regarding the person who had taken the scaffolding. Door to door enquiry was carried out in the street, which did not furnish any other information.*

*On 23/01/17, [Mr D] was interviewed under caution in relation to reset. He stated he bought the scaffolding from someone in Dundee in May 2015. He stated he bought it in good faith and only realised it was stolen when he was approached by the officers. He denied knowing where the scaffolding was and last seen it when he left it at the site. There is no way to disprove this.*

*I agree that the enquiry has taken an unacceptable length of time. I therefore uphold this aspect of your complaint. [Constable C] has been spoken to about this and corrective advice given.”*

### **Consideration of Complaint 3**

The response to this complaint explains the alleged timeline of events. From the evidence available, the applicant reported the alleged theft on 5 July 2016. Various enquiries were thereafter carried out and are reflected in the response, including forensic analysis of the scaffolding.

However, although the applicant reported the alleged theft on 5 July 2016, the sample was not sent for analysis until 13 September 2016. By this time, the scaffolding had already been removed from the site, allegedly without anyone’s knowledge or permission.

Accordingly, it appears that the delay in sending the sample for analysis provided opportunity for the unauthorised removal of the scaffolding from the site. This resulted in the police having to raise a second crime report for another alleged theft.

From the evidence available, the delay in sending the sample for analysis can reasonably be attributed to complications arising from the sample having to be sent to a private company. According to the evidence provided, these complications were explained to the applicant. Nevertheless, it remains clear from the response that various other lines of enquiry were also not followed timeously.

For this reason, Chief Inspector F upholds the applicant’s complaint and explains that corrective advice has been given to the investigating officer. The response to the complaints also offers a general apology in relation to the level of service the applicant has received.

However, within his application to the PIRC, the applicant has again highlighted discrepancies within the response to this complaint. In particular, the applicant refers to the alleged agreement on 19 July 2016 to seize the scaffolding. The response in this connection states that proposed course of action was relayed to, and agreed by, the applicant.

Having reviewed the evidence available, Constable H was also tasked to help Constable C with the enquiry. As such, Constable H attended and spoke with Mr D. Within his account, Constable H records that he informed Mr D that he would seize a sample of the scaffolding to be sent for analysis. He thereafter states that he contacted the applicant and informed him of this proposed course of action. There is no suggestion in the officer's account that he had agreed to seize the scaffolding in full on this date; nor to suggest that this information was relayed to the applicant. Accordingly, it is considered that this part of the response is not supported by the material evidence available.

Nevertheless, it is considered that the review has addressed this particular factual discrepancy. Furthermore, it is considered that this inaccuracy does not impact upon the outcome of the complaint.

Therefore, given that Chief Inspector F upholds the complaint, offers an apology, and explains that corrective advice was offered to the investigating officer, it is considered that this complaint was handled to a reasonable standard.

No further action is required.

## Complaint 4: Not updated

The applicant complains that between 5 July 2016 and 28 October 2016, an officer failed to keep him updated about the progress of his complaint.

### *Police Handling of Complaint 4*

Chief Inspector F responded to the applicant's complaint as follows:

*"The reporting officer states that he endeavoured to keep you updated with the progress of this enquiry. On 26th July 2016, the officer attended at [Company R] with the board of scaffolding seized from [named address] to see if there was an alternative identification on this section, however all serial numbers were not recorded.*

*I note that from 31st July until 14th August 2016, the reporting officer was on annual leave and unable to provide any updates.*

*On 26th August 2016 the reporting officer states that he updated you with the progress of the enquiry and at this time ensured that sufficient efforts were being made to progress this. You were informed that there was confusion over the costs and who would send the scaffolding, which was the reason for the delay.*

*On 08th and 26th September 2016 the reporting officer states that they updated you with the enquiries carried out.*

*I understand that you were anxious to obtain news of how the enquiry was progressing and if you were being handed back the stolen property. Police Scotland aim to update complainers at least once every 14 days and this has clearly not occurred. I therefore uphold this aspect of your complaint and the enquiry officer has been given corrective advice.”*

### **Consideration of Complaint 4**

The response in this connection acknowledges that the applicant was not provided with adequate updates throughout the enquiry and upholds the applicant’s complaint.

The response also explains that the officer involved in the enquiry was provided with corrective advice for this failing.

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

No further action is required.

### **Complaint 5: Excessive time**

The applicant complains that between 13 July 2016 and 23 September 2016, the police took an excessive amount of time to have part of the scaffolding sent for forensic analysis

### **Police Handling of Complaint 5**

Chief Inspector F responded to the applicant’s complaint as follows:

*“I understand your frustrations and that you are dissatisfied with the length of time taken between when you provided the specialist company details to the officer and the time the actual sample was analysed.*

*As stated previously. On 13th July 2016, officers attended at [named address] and seized a single wooden section, measuring about 2 foot in length, with a metal bracket attached. The remainder of the scaffolding was left in situ.*

*From that date, the reporting officer thereafter sought advice from a variety of different departments within [named] Division on how the scaffolding would be delivered to the company and although you offered to pay for this, Police Scotland agreed to pay for this item to be sent.*

*On 13th September 2016 the scaffolding was sent recorded delivery. The officer received confirmation on the 23rd that the scaffolding sample positively identified as [Company R]'s property. After this point, the officer was informed that the scaffolding was missing from its original site outside [named address]. Contact was made with [Mr D], who claimed that he did not know the whereabouts of the scaffolding.*

*In my opinion the length of time it took for the board to be sent off for analysis was unacceptable. I therefore uphold this aspect of your complaint. [Constable C] has been spoken to about this and corrective advice given."*

### **Consideration of Complaint 5**

As with complaint 3, the response to this complaint explains the respective timeline of events and articulates the reason for the delay. However, Chief Inspector F does acknowledge that the time delay in the circumstances was excessive, upholds the applicant's complaint, and explains that corrective advice was provided to Constable C.

It is therefore considered that this complaint was handled to a reasonable standard.

No further action is required

### **Complaint 6: Failed to investigate**

The applicant complains that throughout the enquiry, officers failed to make enquiries with Gumtree as quickly as possible or as thoroughly as expected.

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

Chief Inspector F responded to the applicant's complaint as follows:

*"From the witness statement noted from [Mr D], he has not provided a name or username for the Gumtree account that he purchased the scaffolding from. Without this username or name there were no enquiries that could be conducted with Gumtree, to establish who has sold [Mr D] the Scaffolding. [Mr D] stated that he bought the scaffolding in May 2015, which is shown on the receipt. Due to the time between [Mr D] purchasing the scaffolding and you reporting the scaffolding stolen, any advert showing the scaffolding for sale had been removed from Gumtree.*

*The officer has conducted open source enquiries to see if he can identify the advert posted, however this proved negative and no advert could be found. There are no further enquiries that can be conducted with Gumtree.*

*I therefore do not uphold this aspect of your complaint."*

## **Consideration of Complaint 6**

In her decision not to uphold the applicant's complaint, Chief Inspector F reasons that enquiries would have been limited on Gumtree because Mr D was unable to provide any details of the alleged vendor. She further states that, given the time lapse, the relevant advert would no longer appear on the site.

However, within his account, Mr D confirms that he was provided with a receipt for the purchase that contained the vendors signature. This receipt was seized by officers during the course of the enquiry. Accordingly, the response fails to consider if officers could discern the vendors name or any other details from the receipt which might have assisted with their enquiries in this respect.

In addition Chief Inspector F does not outline what other options were available to investigating officers in respect of undertaking enquiries to identify the original advert with Gumtree. While it is accepted that the original advert was no longer 'publicly' available for viewing on the Gumtree website, enquiries should have been undertaken with Gumtree to determine whether the advert had been archived, a common practice by such Internet sellers.

Furthermore, the response also fails to address or consider why these enquiries were not carried out until November 2016 when the alleged theft was reported in July 2016.

Accordingly, it is considered that the response is inadequately reasoned and has failed to fully address the applicant's complaint.

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

It is recommended that Police Scotland consider the points highlighted above and issue the applicant with a fresh response. The response should consider if vendor details could be obtained from the receipt, and should specifically address if these lines of enquiry could and should have been considered by the enquiry officer before November 2016.

## **Complaint 7: Failed to take complaint**

The applicant complains that an officer from the Professional Standards Department closed down a complaint he made without his approval.

### **Police Handling of Complaint 7**

Chief Inspector F responded to the applicant's complaint as follows:

*"On 11th August 2016, Professional Standards Department (PSD) received an initial complaint capture form, which had been completed and submitted by the Enquiry Office Staff, based at [Police Office Q]."*

*A Sergeant at PSD was responsible for initially reviewing this form and determined that you were unsatisfied with the level of investigation carried out by officers. The Sergeant carried out enquiry into this report and a letter was emailed to your personal email address... asking for you to make contact upon your return from holiday. Upon sending this e-mail an 'undeliverable' receipt was received. Consequently this letter was sent by postal mail to your home address.*

*On 25 August 2016, you made contact with the Sergeant at PSD and during this conversation the allegation was discussed as well as the circumstances of the original incident and the subsequent investigation. A conclusion was reached and you agreed to your complaint being resolved through Front Line Resolution (FLR), on the understanding that the reporting officer progressed the enquiry forthwith and made contact with you during their next run of shifts to provide an update.*

*The reporting officer made contact with PSD and confirmed that he had spoken with you, apologised for the lack of updates and had reassured him that the enquiry into the stolen scaffolding was ongoing and that he would be kept up to date with future progress. In light of this, PSD were satisfied that the resolution which had been agreed with you had been achieved.*

*A letter was drafted outlining the agreed resolution had been achieved and that as such your complaint was considered to be resolved. This letter further informed you that if you were unsatisfied with how your complaint had been handled, you should make further contact with Professional Standards. The complaint was finalised and closed.*

*On 5th September 2016, you recontacted PSD via letter which indicated that you had received a final letter from the Investigating Officer at Professional Standards,[Sergeant J].*

*On this date, a telephone conversation occurred between you and PSD. During the course of this conversation, the Sergeant informed you that he would make contact with the reporting officers supervisor, to ensure he would make further contact with yourself, in order to manage your expectations.*

*You stated that you were satisfied with this course of action and as such the matter was still deemed FLR, on the proviso that the reporting officer and his supervisor were contacted.*

*PSD have confirmed that this complaint was then closed and deemed FLR, concluded by explanation. PSD have only resulted the complaint after you have agreed with the course of action, which is all documented on the complaint recording system used by PSD.*

*FLR is a means of dealing with issues, which as suggested by the title can easily be addressed. The letter sent to confirm this with the complainer, contains advice on how to 'reopen' the complaint if dissatisfaction remains. This has occurred on this occasion and this is in accordance with the correct procedures."*

In light of this I do not uphold this aspect of your complaint.

### *Consideration of Complaint 7*

The response in this connection appears to focus on the status of the complaint on 25 August 2016. However, from the applicant's statement and the relevant recorded 'Heads of Complaint' form, the applicant's concern is more general in that he does not specify the date on which this occurred.

The response to this complaint explains that, after the applicant submitted his complaint, he spoke with a sergeant at PSD on 25 August 2016. According to the response, a conclusion was reached at the end of this discussion whereby the applicant agreed to the complaint being resolved by Frontline Resolution (FLR) on the understanding the officer investigating the alleged theft progressed his enquiry and made contact with the applicant.

The response then explains that the investigating officer contacted PSD and confirmed that he had made contact with the applicant and assured him he would progress the enquiry and keep him up to date.

The response in this connection is supported by the relevant FLR documentation and email trail between the PSD and enquiry officer provided to the PIRC and examined during the course of the review.

As further explained in the response, based on this conversation and agreement, a letter was drafted and sent to the applicant outlining the agreed resolution and the complaint was considered closed.

However, as explained in the response, the FLR letter contains a final paragraph that invites an individual to re-contact the PSD if they are not satisfied with the manner in which the complaint was handled. In this case, the applicant submitted a letter to the PSD dated 5 September 2016 in which he clearly stated that he did not feel that the complaints were resolved and asked that the PSD proceed with his original complaints.

The response acknowledges that the applicant submitted further correspondence, following which the applicant had further conversation with a Sergeant from the PSD who again stated that contact would be made with the reporting officer to ensure that he re-contact the applicant. The response then states that, as the applicant again indicated he was happy with this course of action, the matter was still considered resolved by FLR.

The response in this connection is supported by the statement of Sergeant K, the officer who spoke with the applicant following the further correspondence. Sergeant K states that the applicant appeared satisfied with the prospective course of action and the case remained closed as FLR.

The response is also somewhat supported by an email trail from Sergeant K to the enquiry officer dated 8 September 2016 in which Sergeant K urges the enquiry officer to again make contact with the applicant.

Nevertheless, a successful FLR is dependent on the complainer being satisfied that the issue has been resolved and they have no expectation that the matter will be progressed any further.

In this case, the applicant clearly stated in his correspondence that he was not satisfied and that he wished for the PSD to proceed with his complaints. In addition, the only evidence available to suggest that the applicant stated he was satisfied the matter had been dealt with is the statement of Sergeant K. The email trail in this case referred to above only serves to prove that Sergeant K engaged in a further conversation with the applicant following this correspondence and re-contacted the enquiry officer to urge him to make further contact with the applicant.

In addition, it is noted that the response suggests that the PSD only concluded that the matter was dealt with by FLR when the applicant indicated he was happy with the complaint being resolved in this manner. However, the recording form used by the PSD is updated to the effect that the complaint was closed as FLR on 31 August 2016 when the final letter was sent to the applicant. There is nothing recorded on this form or within any of the other information provided to document that the applicant submitted further correspondence dated 5 September 2016 that stated he did not consider the complaint to be resolved. There is also nothing documented to evidence the further conversation that Sergeant K had with the applicant in which the applicant allegedly told Sergeant K that he remained satisfied with the proposed course of action.

Accordingly, although there is an account from Sergeant K, there is no other documented evidence to support the assertion that the applicant remained happy with the matter being dealt with as FLR following his correspondence dated 5 September 2016. The PIRC considers that the available substantive evidence would, on balance, be weighted in favour of the applicant.

For this reason it is considered that the response is inadequately reasoned and is not supported by the material evidence available.

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

It is recommended that Police Scotland consider the points outlined above and issue the applicant with a fresh response that considers, on balance, all the material evidence available.

## Complaint 8: Accepted story

The applicant complains that Police Scotland accepted the story from the new owner of the scaffolding that it had been stolen.

## *Police Handling of Complaint 8*

Chief Inspector F responded to the applicant's complaint as follows:

*"[Sergeant E] has reviewed the circumstances of this investigation and has deemed that the police have not investigated this matter to the best of their ability and that there are various aspects of the investigation, which should have been carried out quicker than they have been.*

*On 23/01/17, [Mr D] was interviewed under caution in relation to reset. He stated that he bought the scaffolding from someone...in May 2015. He stated he bought it in good faith and only realised it was stolen when he was approached by the officers. He denied knowing where the scaffolding was and calimed(sic) that he last saw it when he left it at the site. We have been unable to obtain any evidence to disprove this.*

*I note that [Mr D] has been formally interviewed, in which case it appears to me that the officers have not merely taken [Mr D]'s account at face value, but have cautioned him and interviewed him regarding reset.*

*As such I do not uphold this aspect of your complaint.*

*I would like to add my personal apology and confirm that the officers concerned have been spoken to by a senior officer. I can assure you that this standard of service delivery is not what I expect from my officers. Can I take this opportunity to thank you personally for bringing it to my attention. I further hope that any future dealings you have with Police Scotland will not fall short of your expectations."*

## *Consideration of Complaint 8*

The response explains that Mr D was interviewed under caution in connection with the missing scaffolding and reasons that there is nothing in the evidence as a whole to cast doubt on his version of events.

The response is supported by a copy of the relevant crime file provided to the PIRC and examined during the course of the review. The crime file confirms that Mr D was interviewed and questioned both in relation to how he originally acquired the scaffolding, and with regards to what happened to the scaffolding following police intervention.

According to Mr D, he left the pieces of scaffolding that were marked with the red paint at the site as instructed to do so by the police. He states that he then returned to the site a couple of weeks later and noticed that the scaffolding had been removed. A further statement was noted from Mr D on 24

September 2016 in which he stated that he assumed the police had removed the scaffolding from the site.

Accordingly, without any evidence to discredit Mr D's version of events, it is considered that Chief Inspector F is justified in her decision not to uphold the applicant's complaint.

However, although there is no information or line of enquiry to discredit this version of events, the applicant has highlighted in his application to the PIRC the fact that Mr D only allegedly left behind 17 pieces of scaffolding. In his application to the PIRC, the applicant contends that there were around 100 pieces of scaffolding on the site marked with the red paint. The PIRC also notes that one of the officers who attended and spoke with Mr D records within his account that 24 pieces had red paint on them.

Accordingly, although it is considered that this complaint was handled to a reasonable standard, it is recommended that Police Scotland issue the applicant with a further response which addresses this discrepancy and explains why a proper inventory of the number of scaffolding poles with red paint was not taken. If the evidence available suggests that Mr D was advised to leave behind 24 pieces of scaffolding, the response should consider why he was not thereafter asked to account for the balance.

### *Learning Point*

It is noted that one of the main identified issues during the review was the fact that Police Scotland North does not appear to have in place any protocol or process for seizing large productions. In this case, failure to seize the scaffolding as suspected stolen property resulted in it being misappropriated for the second time. It is therefore suggested that Police Scotland identify and implement appropriate measures for seizing larger items of property and update their standard operating procedures and guidance accordingly.

## 5. Conclusions

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### Complaints 1, 3, 4 and 5

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

### Complaint 2: Threatened with arrest

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

It is recommended that Police Scotland:

- a) obtain a further account from Constable B in which she is asked to address the applicant's specific complaint that Sergeant G informed the applicant he would be arrested if he removed the scaffolding;
- b) based on this account reconsider the evidence as a whole on the balance of probabilities; and
- c) issue the applicant with a fresh response.

### Complaint 6: Failed to investigate

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

It is recommended that Police Scotland consider the points highlighted above and issue the applicant with a fresh response. The response should consider if vendor details could be obtained from the receipt, and should specifically address if this line of enquiry should have been considered by the enquiry officer before November 2016.

### Complaint 7: Closed down complaint

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

It is recommended that Police Scotland consider the points outlined above and issues the applicant with a fresh response which considers, on balance, all the material evidence available.

### Complaint 8: Accepted story

Accordingly, although it is considered that this complaint was handled to a reasonable standard, it is recommended that Police Scotland issue the applicant with a further response which addresses this discrepancy. If the evidence available suggests that Mr D was advised to leave behind 24 pieces of

scaffolding, the response should consider why he was not asked to account for the balance when he was spoken to by officers.

**Kirstin McPhee**  
Review Officer

**Jacqui Jeffrey**  
Senior Review Officer