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

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

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

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

- whether sufficient enquiries into the complaint have been carried out by the policing body;
- whether the policing body’s response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- whether the policing body’s response to the complaint is adequately reasoned; and
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented.

2. **Key findings**

The complaints in this case arose from the police enquiry into a road accident and subsequent allegation of rape made by the applicant. Four complaints were reviewed, namely:

1) that Police Scotland’s initial response to an incident was inappropriate and insufficient;
2) that the applicant’s Sexual Offences Liaison Officer made inappropriate and offensive comments to her;
3) that a detective sergeant pre-judged the applicant, making assumptions about her lifestyle, mental health and use of prescribed medication; and
4) that a detective constable left a voicemail on the applicant’s telephone that was intended for another person.

The review found that two of the complaints were dealt with to a reasonable standard and two were not. Three recommendations have been made.
3. Background

On 30 April 2016, the applicant and her friend (Ms A) attended a nightclub in a nearby town. When the nightclub closed in the early hours of the following morning, they took what they thought was a taxi home. According to the applicant and Ms A, the male driver stopped to pick up a male passenger. The car was later involved in an accident and overturned into a field at the side of a country road.

Ms A was in contact with her partner (Mr B), who is also the applicant’s brother. She told him what had happened and at 04:34 hours on 1 May 2016, Mr B telephoned Police Scotland to report the accident.

At 4.44 hours, Ms A also called the police to report that she and the applicant had been involved in an accident. She explained that she had left the car and had walked back towards the road, accompanied by one of the men. She did not know where they were, and tried to highlight landmarks to assist the police in locating them. The call handler asked if the man had made any threats or advances towards her. Ms A stated that he had made a couple of advances and that she had fought him off.

A passing taxi driver stopped to offer assistance and provided the police with the location of the accident. Two officers and an ambulance crew attended a short time later.

The applicant and Ms A were assessed by the ambulance staff who found them to have superficial injuries. They were taken to a nearby hospital. However, this was to allow them to arrange a lift home from a safe location, and not because their injuries required treatment.

On 3 May 2016, the applicant telephoned the police to provide further information about the circumstances of the accident. She also stated that she had been raped by the two men.

The enquiry was allocated to the Divisional Rape Investigation Unit. A Sexual Offences Liaison Officer (SOLO) was appointed and she recorded a statement from the applicant over the course of two days. A further statement was taken on 9 May 2016 to clarify a number of points from the applicant’s original statement. The applicant also underwent a medical examination and her clothing was seized during the enquiry.

An entry on the relevant incident log dated 12 May 2016 provides that there was reason to believe that “any contact between the complainer and the males [was] consensual”. No further action was taken as no crime was established.

The applicant submitted her complaints about the police by letter on 16 June 2016. Detective Inspector C was appointed to investigate her concerns. He met with the applicant on 25 June 2016 when the Police Scotland Heads of Complaint form was completed. Detective Chief Inspector D responded to the applicant’s complaints by letter of 9 August 2016.

As part of the review process, the PIRC Review Officer requested Police Scotland to provide copies of all of the documents that informed the complaint response. Whilst some material was provided, Police Scotland advised that a pack of original documents sent from Detective Inspector C to Police Scotland had not been returned.
Scotland’s Professional Standards Department could not be found and, whilst copies of some of the documents contained in the pack were available, this was not the case for all of the items. Accordingly, Police Scotland could not provide some materials, including statements from officers involved in the investigation of the applicant’s rape allegation.

4. The Review

Complaint 1: inappropriate and insufficient response to incident

The applicant complained that Police Scotland’s initial response on the night of the incident was inappropriate and insufficient. She further stated that minimal enquiry was carried out despite her having reported being raped and/or having been the victim of some form of sexual assault.

Police Handling of Complaint 1

Detective Inspector D provided the following response:

“You state that you feel that the initial police response to the incident on the night of the incident was inappropriate and insufficient and that the enquiry carried out at the material time was minimal. You further indicate that you are of the opinion that there was not enough follow up enquiry carried out given that you had reported having been raped or having been the victim of some form of sexual assault. You also state that the only details that the officers obtained from yourself and [Ms A] that night was your mobile number and house number, however they did not take a statement.

Detective Inspector [C] has received statements from the two uniformed officers who attended at the initial incident and has reviewed the detail of their involvement on the day in question. Both officers confirm attending the incident and to speaking with yourself and they are of the position that they were dealing with a Road Traffic Collision at the time and confirm that at no point were they informed by any person that any crimes of a sexual nature had been committed. Detective Inspector [C] has also reviewed the calls made to the Police from both [Ms A] and [Mr B] and again none of these calls make reference to either you or anyone else having been raped or sexually assaulted. Detective Inspector [C] has further received information and confirmation from the witness [Ms A] that no such information was passed to the Police that night. Statements were noted from the Scottish Ambulance Service personnel present on the night and they have also stated that neither you nor [Ms A] made reference or alluded to any sexual crime having occurred. Given that you and [Ms A] had been involved in a road traffic accident and both had been consuming alcohol on the lead up to the accident it was totally reasonable and appropriate that statements were not noted at that time. In addition the main focus for the officers at that time, based on that the matter was being reported as a road accident would be ensuring that all parties involved received a medical assessment from the ambulance staff and this was carried out.

Having carefully considered all the information and evidence available from the witnesses concerned, the attending police officers, and from the content of the phone calls received and
recorded by police I am satisfied that the initial response and investigation was proportionate to the circumstances reported to the police at the material time, this being a road traffic accident, and do not uphold this area of your complaint”.

Consideration of Complaint 1

The complaint response focused on the statements provided by the attending officers (Constables E and F) and the two ambulance personnel who attended at the scene of the road accident. The statements confirmed that no report of rape or sexual assault was made to either the officers or the ambulance staff by the applicant or Ms A on the morning of the accident. The response also clearly explained why no statements were taken from the applicant or Ms A at the scene.

On 4 May 2016, Ms A was interviewed as part of the investigation into the allegation of rape made by the applicant. During this interview Ms A stated that she did not tell the police that the applicant had been raped or sexually assaulted.

It is therefore considered that Police Scotland was warranted in not upholding the applicant’s specific complaint about the response provided by the attending officers in respect of the rape allegation. This is because there is no reason to suggest that Constables E and F would have known that they were potentially dealing with a rape allegation.

The complaint response stated that, having listened to the calls made by Ms A and Mr B, there is no reference to rape or sexual assault. While this is correct, Mr B stated during his call that the applicant and Ms A had been “abducted”. Ms A referred to travelling with the applicant in a car that was not a taxi as they had originally thought. She also stated that one of the males had made advances towards her and that she had fought him off. The response failed to consider whether this information was (or should have been) relayed to the attending officers and, if it had, whether the information would have altered their approach to the incident.

It is considered that the complaint investigation should have established whether the information reported by Ms A and Mr B in their telephone calls was provided to Constables E and F by control room staff. This would have allowed Police Scotland to fully assess the response to the incident and the level of enquiry undertaken by the attending officers.

As already stated, the PIRC considers that Police Scotland was warranted in not upholding the specific allegation made. However, without considering the above points in relation to the content of the calls made by Ms A and Mr B, Police Scotland’s position that the “initial response and investigation was proportionate to the circumstances reported, this being a road traffic accident” is not adequately reasoned. It is therefore concluded that the complaint was not handled to a reasonable standard.

It is recommended that Police Scotland carries out further enquiry into this complaint. The level of information provided to Constables E and F by control room staff should be established. Police Scotland should consider whether the level of information provided was appropriate/sufficient and
whether sufficient enquiry was carried out into the circumstances of the incident. A further response should then be issued to the applicant that clearly explains any decision reached.

Complaint 2: Officer made inappropriate and offensive comments

The applicant complained that Detective Constable G, her appointed Sexual Offences Liaison Officer (SOLO), continually made inappropriate and offensive comments and constantly spoke over her.

Police Handling of Complaint 2

Detective Inspector D provided the following response:

“. In your statement you allege that … Detective Constable [G] made a number of inappropriate and offensive comments to you including ‘if you’ve got it flaunt it eh’, ‘we’ve all done it, woke up in the morning with regret’ and ‘having a liking for the driver’. You further indicate that during further dealings with Detective Constable [G] you (sic) told you to ‘stop talking’ and to ‘be quiet’. You also state that she asked you ‘hello…are you in there?’ and she informed you that you ‘shouldn’t switch off’. You also indicate Detective Constable [G] spoke over the top of you on a number of occasions...

Detective Constable [G] has been made aware of the allegations made against her and totally refutes your allegation. She states that her position is that at all times in her dealings with you she has been professional and appropriate and acted in accordance with her training as a Sexual Offences Liaison Officer. She has been made aware of the issues you have raised in respect of specific phrases she has used including the ones referred to above. She has indicated that she engaged in conversation with you and although she does not agree with the specific wording she does concur that conversations took place where similar wording may have formed part of a wider conversations (sic) and should be viewed in the context of the conversations that were ongoing at the time between you rather than isolated comments. She is of the opinion selecting these phrases in isolation the way you have does (sic) provide an accurate, fair and true reflection of the content and tone of the discussions that were ongoing at the material time. More specifically, Detective Constable [G’s] position is that her language and choice of phrases were all designed to establish rapport and display empathy and this view has been mirrored in statements provided by [Constables J and K] who were each present on separate occasions when these conversations took place.

Detective Constable [G] states that the comment ‘if you’ve got it flaunt it eh’ was part of a wider conversation that she had with you whilst you were within a police vehicle. She indicates that you implied that you had been wearing a short black dress and felt it was partly to blame for you being sexually assaulted. Detective Constable [G] states that she had tried to provide you with some reassurance that what a woman wears should not have an impact on whether or not she becomes a victim of sexual assault. She indicates that during this conversation she said ‘Don’t be silly, you can wear what you like, you’re a young attractive girl on a night out, if you’ve got it flaunt it’. This comment was witnessed by Constable [J] who was the other police officer within the vehicle at that time.
Detective Constable [G] has commented that she believes the comments you have mentioned ‘hello...are you there?’ and ‘you shouldn’t switch off’ relate to contact she had with you on the 4 May 2014 at [the police office]. Again Detective Constable [G] states that these comments were part of wider conversations and circumstances that were ongoing. She states that on this occasion you appeared to be showing erratic behaviour which was causing her some concern. She indicates that you were talking about rape and started rocking back and forward on your seat staring at the floor and continually repeating yourself. Concern (sic) for your welfare Detective Constable [G] had indicated that she used comforting words such as ‘calm down, take your time, calm down and try not to think about the past, let’s try and focus on what’s happened this weekend’. She has indicated that these comments were used to try and bring you out of the agitated state she found you in. Constable [J] has provided a statement which mirrors the events as described by Detective Constable [G].

In relation to your allegation regarding Detective Constable [G] telling you to ‘be quiet’ and ‘stop talking’. She states that she believes that these allegations stem from a conversation she had with you on 24 May 2016 during a telephone conversation she had with you after you phoned her. She indicates that from the outset in this telephone call you were irate and verbally abusive to her. She indicates that you asked ‘have you arrested that pair yet’ and thereafter stated ‘why the fuck not’ and ‘what the fuck is happening then’. Detective Constable [G] indicates that she continually tried to answer you however you continued the verbally abusive language resulting in her informing you to stop swearing and speaking to her in the manner you were. Detective Sergeant [H] has indicated that she was present at the time of this phone call and indicates that your conduct was as described by Detective Constable [G].

Detective Constable [G] states that she did not make the comments of ‘we’ve all done it, woke up in the morning with regret’ and ‘having a liking for the driver’. During her dealing with you she has been with a number of other police officers who have been spoken to, none of whom have indicated that these comments were made.

I have considered the comments which you appear to find offensive and am of the opinion that they were appropriate in the context of the wider conversation (sic) that were taking place and believe they were made with the intention of building some rapport. The comments made by Detective Constable [G] regarding your allegations that the words ‘be quiet’ and ‘stop talking’ were used also has been considered and I am of the opinion that your conduct on the phone, witnessed (sic) by the two officers, required intervention and believe that Detective Constable [G’s] action of telling you to stop swearing and stop speaking to her in the manner you did were was (sic) justified and proportionate.

I have fully considered the allegations you have made regarding incivility… and on the evidence available I do not uphold this area of complaint.
Consideration of Complaint 2

The applicant explained in her letter of complaint, that her concerns about Detective Constable G’s manner towards her related to 3 and 4 May 2016, when she met with the officer to provide a statement about her rape allegation.

Detective Constable G provided a statement to the subsequent complaint enquiry. However, that statement was contained in the pack of documents that was subsequently lost. Detective Constable G had retained a partial copy for her own records and this was provided to the PIRC Review Officer. It primarily covered her meeting with the applicant on 4 May 2016. Constable J was also in attendance at the meeting and her statement was provided to the PIRC Review Officer.

The information contained in Detective Constable G’s partial statement has been accurately explained in the complaint response. There is no reason to believe that the portion of the statement that was not provided, which would relate to her meeting with the applicant on 3 May 2016, has been misrepresented.

The complaint response confirmed that Detective Constable G had made some of the comments attributed to her and explained that she considered that they had been taken out of context by the applicant. In that respect, an adequate explanation was given in relation to the comment “if you’ve got it flaunt it”. However, it is considered that the complaint response did not adequately address the other comments mentioned by the applicant as follows:

(a) In relation to the comments “be quiet” and “stop talking”, the complaint response stated that Detective Constable G thought these related to a telephone conversation of 24 May 2016. The response focused on the content of that conversation and stated that Detective Constable G’s comments were appropriate given the applicant’s manner during the call. However, the applicant clearly explained in her letter of complaint that the comments were made during the meeting of 4 May 2016 when she was giving her statement. Neither Detective Constable G nor Constable J recorded in their statements whether the applicant was asked to stop talking during the meeting.

(b) In respect of the comments “hello…are you there” and “you shouldn’t switch off”, the complaint response suggested that these were made in an effort to calm the applicant during the meeting of 4 May 2016. However, from the information available, neither officer present referred to the specific comments within their statements. Instead they mentioned the use of phrases such as “calm down” and “take your time”. It is considered that these comments are very different in tone to those which the applicant recorded in her complaint. Accordingly, during the complaint enquiry, both officers should have been asked to confirm whether the specific comments recorded by the applicant were made.

(c) According to the complaint response, Detective Constable G denied saying “we’ve all done it, woke up in the morning with regret” and ‘having a liking for the driver’. However, her position on this point was not contained within the partial statement provided to the PIRC Review Officer. Furthermore, as the applicant alleged that Detective Constable G made the comments during
the meeting of 4 May, it is considered that Constable J should have been asked during the complaint enquiry whether she recalled the comments being made.

The Complaints SOP states at Section 6.9.2. that the information gathered during a complaint enquiry should be of a “suitable quality and quantity to enable a full and informed response to be provided”. Section 6.11.6 then states that “the decision whether to uphold a complaint must be taken based on the ‘balance of probabilities’. That is, the enquiry officer must use their own professional judgement to decide, based on all available evidence, whether one account is more probable than the other”.

For the reasons noted at points (a) to (c) above, it is considered that insufficient enquiry was carried out to allow an informed response to be provided to all aspects of the complaint in accordance with the provisions of the Complaints SOP. Accordingly, it is concluded that the complaint was not handled to a reasonable standard.

It is recommended that Detective Constable G is asked to provide a further statement that specifically addresses whether she made the comments highlighted by the applicant or used similar wording during their meeting of 4th May 2016. A further statement should also be recorded from Constable J that specifically addresses whether she recalls Detective Constable G making any of the comments as alleged by the applicant.

A further response should then be issued to the applicant that assesses ‘on balance’ whether it is likely that the comments as alleged by the applicant were made during the meeting. The further response should also assess whether any comments made were appropriate under the circumstances. It should also clearly explain any decision reached about the outcome of the complaint.

Complaint 3: Officer pre-judged the applicant

The applicant complained that Detective Sergeant H (who accompanied Detective Constable G when she was taking the applicant’s second statement on 9 May 2016) pre-judged her and appeared to have made assumptions about her lifestyle, mental health and use of prescribed medication. The applicant stated that she was asked:

“How is your mental health?”, “Do you take prescription sedatives?” and, “are you sure, you look a bit dopey.”

Police Handling of Complaint 3

Detective Inspector D provided the following response:

“Detective Sergeant [H] also refutes your allegation and she states that she was professional in her dealings with you and endeavoured to treat you fairly and respectfully at all times. This officer confirms that she did enquire as to whether you were currently on any form of medication or had any mental health issues. She states that this was done as she felt that some of your answers to the questions being asked were unusual and you appeared drowsy or sedated and that she wanted to
be clear that you fully understood the process of the investigation and did not need any additional assistance or support. She states that she believes that your allegation relates to her dealings with you on the 9 May 2016. She states that your presentation on this day had caused her some concerns and refers to your answers to some questions she put to you as being ‘unusual’ resulting in her enquiring as to whether you suffered from any mental health related issues. Detective Sergeant \[H\] indicates that she also stated to you that you appeared sedated and drowsy. Detective Sergeant \[H\] confirms that you confirmed that you were on medication of strong painkillers which were indeed causing drowsiness. She further indicates that here(sic) reasons for these questions was explained to you with the reasons cited as to get assurance you understood the process and to ensure that you did not require an Appropriate Adult to be present…

The questions relating to your medication and mental health posed to you by Detective Sergeant \[H\] were proportionate in the circumstances, as their (sic) was a requirement for the officer to identify that you were sufficiently mentally fit for the purposes of providing a statement regarding the incidents you were reporting. I do not believe that these comments were a pre-judgement of you and deem that they were essential to assess your fitness to continue providing a statement to the police.

I have fully considered the allegations you have made regarding incivility… and on the evidence available I do not uphold this area of complaint.

**Consideration of Complaint 3**

Detective Sergeant H’s statement in response to the applicant’s complaint could not be provided to the PIRC Review Officer as it was contained in the missing pack. Detective Constable G referred to the meeting of 9 May 2016 within her partial statement. However, she recorded only that the applicant was re-interviewed on that date. She did not refer to Detective Sergeant H asking the applicant about her mental health during the meeting.

The applicant’s statement of 9 May 2016 recorded only the questions asked of her in relation to her allegation of rape and her responses to those questions. It did not contain details of any conversation between the applicant and the attending officers, or record her responses to any questions about her mental health or medication.

Nevertheless, the complaint response stated that the applicant was indeed asked questions about her mental health to establish whether she required the support of an Appropriate Adult given her presentation at the meeting. The position that the officers were concerned about the applicant’s manner during the meeting is documented in the SOLO Contact Log. An entry dated 9 May 2016 states that the applicant “appeared very subdued and drowsy” during the meeting and that this was due to her taking Co-codamol.

Police Scotland’s Appropriate Adult Standard Operating Procedure (“the Appropriate Adult SOP”) states that an Appropriate Adult is a person with “experience of working with adults who have a mental
health issue”. Their role is to “facilitate communication and understanding when a statement is being taken or other police procedure has to be undertaken”

“There is no formal assessment process for identifying the need for an Appropriate Adult so the decision to contact one is based largely on information available about, or behaviours displayed by, a person”.

The complaint response would have been strengthened had it explained the guidance provided to officers in relation to Appropriate Adults. It would also have been beneficial had the complaint enquiry established whether Detective Sergeant H described the applicant as “looking a bit dopy” when asking if she had taken any medication. Consideration could then have been given as to how such a comment may be perceived and whether the use of such terminology would be appropriate. Nevertheless, it is considered that the complaint response adequately explained the justification for asking the applicant about her mental health and medication during the meeting. Accordingly it is concluded that the complaint was handled to a reasonable standard. No further action is required in this connection.

Complaints 2 and 3 were recorded by Police Scotland as a single allegation of incivility. However, the applicant made different complaints about each officer which were capable of being upheld or not upheld independently. It is therefore recommended that Police Scotland now records the complaint as two distinct allegations and separately records the outcome of each.

Complaint 4: Voicemail left for another person

The applicant complained that Detective Constable L was unprofessional as he left a voicemail on her mobile phone that was intended for Ms A.

Police Handling of Complaint 4

Detective Inspector D provided the following response:

“You state that during the enquiry you found a voicemail on your mobile phone which had been left by Detective Constable [L] who appeared to be under the misapprehension that he was leaving a voicemail for [Ms A] on her phone.

Detective Inspector [C] has received and read the operational statement of Detective Constable [L] in respect of this allegation. He states that he was not aware he had made a call to a phone number attributed personally to you, however he does recall that on the 3rd of May he telephoned a mobile phone number provided to him for the witness [Ms A] and on that occasion he left a voicemail for her on the number he had been provided with. On discussion, Detective Constable [L] concedes that it is possible that he may have been inadvertently provided with the wrong telephone number for the witness [Ms A] resulting in a voicemail accidentally being left on your mobile phone, however he does not specifically recall this. Detective Inspector [C] has reinforced with Detective Constable [L] the importance of professionalism and accuracy when dealing with members of the public and both Detective Constable [L] and Detective Inspector [C] would like to apologise for any distress you feel that this has caused you.
Having carefully considered all the information and evidence available from the witnesses concerned I am of the opinion that in (sic) the balance of probability there was more than likely and (sic) error made in relation to the phone call being made to your phone. Based on this I uphold this area of your complaint.

Consideration of Complaint 4

Detective Constable L’s statement was one of those included in the pack of information that was subsequently lost. Accordingly, it could not be viewed by the PIRC Review Officer.

Nevertheless, Police Scotland accepted that it was probable that an error was made on this occasion. Therefore, in accordance with the provisions of the Complaints SOP, the applicant’s complaint was upheld and an apology was provided. Furthermore, the applicant was informed of the action taken as a result of her complaint. This is also recorded in Police Scotland’s complaint file which states that Detective Constable L was provided with corrective advice by his line manager. This demonstrates good complaint handling practice and appropriate action in respect of shortcomings identified by the complaint enquiry.

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

5. Conclusions

Complaint 1: inappropriate and insufficient response to incident

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

It is recommended that Police Scotland carries out further enquiry into this complaint. The level of information provided to Constables E and F by control room staff should be established. Police Scotland should consider whether the level of information provided was appropriate/sufficient and whether sufficient enquiry was carried out into the circumstances of the incident. A further response should then be issued to the applicant that clearly explains any decision reached.

Complaint 2: Officer made inappropriate and offensive comments

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

It is recommended that Detective Constable G is asked to provide a further statement that specifically addresses whether she made the comments highlighted by the applicant or used similar wording during their meeting of 4th May 2016. A further statement should also be recorded from Constable J that
specifically addresses whether she recalls Detective Constable G making any of the comments as alleged by the applicant.

A further response should then be issued to the applicant that assesses ‘on balance’ whether the comments as alleged by the applicant were made during the meeting. The further response should also assess whether any comments made were appropriate under the circumstances. It should also clearly explain any decision reached about the outcome of the complaint.

Complaint 3: Officer pre-judged the applicant

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

Complaints 2 and 3 were recorded by Police Scotland as a single allegation of incivility. However, the applicant made different complaints about each officer which were capable of being upheld or not upheld independently. It is therefore recommended that Police Scotland now records the complaint as two distinct allegations and separately records the outcome of each.

Complaint 4: Voicemail left for another person

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

Kate Frame
Police Investigations & Review Commissioner