

independent and effective investigations and reviews

pirc

Police Investigations &
Review Commissioner

PIRC/00455/17
November 2018

Report of a Complaint Handling Review in relation to Police Scotland

What we do

We obtain all the material information from Police Scotland and the applicant. We then use this to review how the complaint was dealt with and conclude whether the complaint was handled to a reasonable standard*. In doing so, we consider factors such as:

- whether Police Scotland carried out sufficient enquiries into the complaint;
- whether Police Scotland's response to the complaint was supported by the material information available;
- whether Police Scotland adhered to the relevant policies, procedures and legal provisions in dealing with the complaint;
- whether Police Scotland's response was adequately reasoned; and
- where the complaint resulted in Police Scotland identifying measures necessary to improve its service, that these measures were adequate and have been implemented.

Finally, where we consider appropriate, we can make recommendations, issue reconsideration directions and identify learning points for Police Scotland.

*Sections 34 and 35 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 as amended ("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.

Executive Summary

The Complaints

The complaints in this case arose following the applicant's contact with officers when he attempted to report a number of alleged crimes.

We have reviewed seven complaints, namely that:

1. on 31 August 2012, an officer failed to conduct a full and proper investigation into a domestic abuse incident whereby the applicant said that he was pushed down the stairs and assaulted by his wife and step-son;
2. between 12 May and 13 December 2013, an officer failed to conduct a full and proper investigation after the applicant reported that someone had written a number of his bank cheques to remove money from his account without his permission;
3. on 19 June 2013, an officer failed to conduct a full and proper investigation after the applicant reported his wife as having used his bank card to order shoes online without his permission;
4. on 31 December 2013, and another date, an officer failed to conduct a full and proper investigation after the applicant had reported his wife as having used his bank card to withdraw money from his account without his permission;
5. on 5 August 2015, an officer failed to conduct a full and proper investigation after the applicant reported having been assaulted;
6. between 24 August and 30 August 2015, an officer failed to conduct a full and proper investigation after the applicant reported property as having been stolen from his home address; and
7. staff within the Domestic Abuse Unit at a named police office did not properly investigate the applicant's complaint about his estranged wife, and did not speak to anyone about this abuse.

Police Scotland's Decision

Police Scotland did not uphold complaints 1, 2, 5, 6 and 7, and did not provide a determination on whether complaints 3 and 4 were upheld/not upheld.

Our Findings

We have found that Police Scotland have handled complaints 2, 3, and 6 to a reasonable standard; but not complaints 1, 4, 5 and 7.

Consequently, we have made four recommendations to address the shortcomings that we have identified in Police Scotland's handling of complaints 1, 4, 5, and 7.

We expect our recommendations to be implemented by Police Scotland within two months of the date of this report.

Background

The applicant reported a number of incidents involving his estranged wife [Mrs A], his step children [Mr B and Ms C], and his daughter [Ms D] to Police Scotland.

The applicant's complaints surround the manner in which the incidents he reported were investigated by Sergeant E.

The applicant further complained that officers in the Domestic Abuse Unit (DAU) namely, Detective Constable F and Detective Sergeant G, had failed to investigate his report of domestic abuse that he made against Mrs A.

The applicant made his complaints on 4 August 2016. Inspector H was appointed as the enquiry officer. The applicant provided a statement of complaint on 25 August 2016; and agreed and signed a 'Heads of Complaint' form on the same date.

The applicant received a response to his complaints in a letter from Chief Inspector I dated 12 September 2017.

Complaint 1

The applicant complained that, on 31 August 2012, Sergeant E failed to conduct a full and proper investigation into a domestic abuse incident whereby he said that he was pushed down the stairs and assaulted by Mrs A and Mr B.

Police Scotland's Handling of Complaint 1 (not upheld by the police)

Chief Inspector I's response summarised the applicant's position as per the domestic abuse online reporting form that he submitted on 31 August 2015. In this report, the applicant said that he had been beaten up by Mrs A and Mr B on 31 August 2012.

Chief Inspector I said that the officers that attended the applicant's home on 31 August 2012 – Constables J and K - provided statements to inform the complaint enquiry. He said that Constables J and K spoke to the applicant, his wife, and his son separately. He said that the applicant had requested advice surrounding the legalities of his wife driving his car, and at no point did he mention that he had been assaulted. The applicant was informed that the issue surrounding the car was a civil matter.

Chief Inspector I said that the applicant reported the matter three years after the incident. He said that Sergeant E provided a detailed statement in response to the complaint. Chief Inspector I summarised the content of Sergeant E's statement and the enquiries that he carried out.

Chief Inspector I concluded his response as follows:

"In coming to a determination in respect of this element of your complaint I find that there are conflicting accounts in respect of the reported information around the domestic incident on 31 August 2012. Whilst you now present an account of having been assaulted at that time there is no evidence from your previous involvement to support that account, whilst the evidence from all the aforementioned police and other witnesses supports that you made no disclosure of an assault taking place.

Therefore based on the fact that the incident you reported at the time was regarding a vehicle being taken and having reviewed the information from those involved along with the recorded details on our police systems I am satisfied that the enquiry into the domestic incident at the time was appropriate and the subsequent investigation undertaken by [Sergeant E] in response to your online report was also appropriate.

I am therefore unable to uphold this part of your complaint."

A copy of Chief Inspector I's detailed response is attached at appendix I¹.

¹ Paragraphs 1 – 25 refer.

Our Review of Complaint 1

We have been provided with a copy of the incident report that was raised by Police Scotland on 31 August 2012. This incident report was raised in response to the applicant having reported that Mrs A was going to take his car. We have also been provided with the audio recordings of the calls between the applicant and Police Scotland in this regard. Having listened to these recordings, we can confirm that the applicant did not mention having been assaulted. From the paperwork that the applicant has provided to us, he has conceded to this being the case. Furthermore, we can confirm the applicant was not advised at any point by the call handler that he *“would be okay in the ambulance”* as per his position.

The statements compiled by Constables J and K to inform the complaint enquiry have also been provided to us. Both Constables J and K said that they attended at the applicant's home in response to a dispute over who was lawfully entitled to drive the applicant's vehicle. Both Constables J and K said that they informed the applicant that it was a civil matter and that he should seek legal advice. The applicant's position is that he was spoken to in front of Mrs A and Mr B and he was in fear as he was being blackmailed not to mention the alleged assault. The applicant said that this was the reason he never mentioned the alleged assault. Despite both Constables J and K having said that there was no admission of assault or any other crime we note that only Constable J has addressed as to whether the applicant was spoken to separately from Mrs A and Mr B. Constable K has not addressed this aspect of the complaint.

Constable J and K's supervisor – Sergeant L – also provided a statement. In his statement, Sergeant L said that he was contacted by Constable J at the time of the incident. Having viewed the incident report to refresh his memory, Sergeant L confirmed that the officers were in attendance at the applicant's house to provide advice regarding Mrs A wishing access to his vehicle, and that he was satisfied with Constable J and K's course of conduct.

Having had sight of the statements provided by Constables J and K and Sergeant L, the relevant incident report, and the telephone calls in this connection, we can confirm that the applicant made no mention of having been assaulted by Mrs A and Mr B. We therefore agree with Chief Inspector I's position that the officers carried out appropriate enquiries given that they were responding to a dispute over a vehicle at the time of incident being initially reported by the applicant on 31 August 2012.

Notwithstanding this, on 31 August 2015, the applicant did report that he had been assaulted on 31 August 2012 via the domestic abuse online reporting form. A copy of this online report has been provided to us. We can confirm that Chief Inspector I's response has accurately captured the applicant's position concerning the alleged incident.

Sergeant E has provided a statement to address his involvement. Within his statement, he listed the enquiries that were carried out. These enquiries included speaking to the applicant, speaking to witnesses, and speaking with the medical staff. However of note is that, although the enquiries carried out by Sergeant E are documented in his statement to inform the complaint investigation, there is no auditable trail of these enquiries having been carried out by him contained anywhere else, nor has he recorded the responses that he was provided by the medical staff.

Within his statement, Sergeant E said that he asked another officer – Constable M - to make initial contact with the applicant, and that Constable M had spoken to two witnesses. Although the statement provided by Constable M has detailed that he spoke with two witnesses, his statement only provides the response provided by one of the witnesses, who said that the applicant was not assaulted. There is no mention of the response provided by the other witness in this regard. Furthermore, the statement provided by Constable M was prepared in response to the complaint enquiry and as such it would not appear that any auditable trail was recorded in respect of the enquiries he carried out at the time.

During our review, we have been informed by Police Scotland that Sergeant E did not record any details in his notebook of the enquiries he carried out. Furthermore, we note that no incident report or crime report was raised to record the enquiries he carried out following the applicant's report on 31 August 2015.

We have clarified with Police Scotland as to why no incident report or crime report was raised. Sergeant E's reason for this - amongst other factors - was the passage of time between the incident and the report being formally made, the lack of corroborative evidence, his own judgement, and the applicant having provided conflicting statements in this regard.

Although Sergeant E has provided his rationale for not raising a crime report, we consider that an incident report should have been raised in response to the applicant having reported on 31 August 2015 that he had been assaulted. Section A of the Scottish Crime Recording Standards (SCRS) provides that *"all reports of incidents, whether crime related or not, will result in the creation of an incident report which is auditable"*. Accordingly, in line with SCRS provisions, an incident report should have been raised and updated with the enquiries carried out by Sergeant E.

Given that there is no auditable trail of the enquiries carried out by Sergeant E following the applicant's report of assault on 31 August 2015, it would appear that Chief Inspector I's response is based solely on Sergeant E's statement. It is our position that without any auditable trail, it cannot be said with any great certainty as to whether *'a full and proper'* investigation was carried out. Chief Inspector I does not appear to have considered these shortcomings when he made his determination that *'appropriate'* enquiries had been carried out and the complaint was not upheld.

Accordingly, we consider that the complaint has not been handled to a reasonable standard.

Our Conclusion on Complaint 1

We conclude that Police Scotland have not handled this complaint to a reasonable standard.

We recommend that Police Scotland:

- record an incident report in connection with the alleged assault against the applicant. The incident report should be updated to reflect the enquiries that were carried out; and
- issue the applicant with a further response, taking cognisance of the shortcomings raised within this complaint handling review. The further response should clearly explain to the applicant whether his complaint is now upheld/not upheld and provide a detailed rationale for the determination made.

Complaint 2

The applicant complained that, between 12 May and 13 December 2013, Sergeant E failed to conduct a full and proper investigation after he reported that someone had written a number of his bank cheques to remove money from his account without his permission.

Police Scotland's Handling of Complaint 2 (not upheld by the police)

Chief Inspector I said the following in respect of this complaint:

"...between 12 May and 13 December 2013 you state a number of bank cheques were written by someone with the associated money removed from your bank account without your knowledge.

From the information presented to me I understand you reported this matter on 09 December 2015 to [Sergeant E] and supplied a number of cheques to him which you categorically denied writing. [Sergeant E] recorded this matter as a crime and took responsibility for the investigation.

As part of his investigation, [Sergeant E] requested forensic analysis to be undertaken on the cheques to include expert handwriting examination. He also obtained handwriting samples from you and your wife for comparison purposes as you suspected she was responsible.

On 7 March 2016 your wife was detained in connection with this investigation and was interviewed regarding the allegation. At that time she made no admission of being responsible and with no corroborative evidence against her she was released without charge pending further enquiry.

On 31 August 2016, [Sergeant E] states he received the laboratory report in respect of the handwriting examination of the disputed cheques which advised him that it was unlikely that a person other than your wife had written the cheques but was inconclusive as to whether the signatures on the cheques were genuine or a simulation of a genuine signature.

With this information coming to light, [Sergeant E] immediately prepared a report outlining the circumstances to the Procurator Fiscal for consideration of prosecution.

In considering this element of your complaint it is your position that [Sergeant E] did not undertake a thorough enquiry into the investigation but you do not provide any specific reason for holding that view.

On the other hand [Sergeant E] presents a position whereby he followed an investigative strategy to include forensic examination of the cheques and the detention and interview of the suspect in relation to the crime. Whilst there appears to be limited evidence against your wife, a report nonetheless was submitted to the Procurator Fiscal for consideration of prosecution. I would confirm that the decision to proceed with any prosecution is a matter for the Procurator Fiscal and not the police.

In conclusion, having reviewed both positions, it is unclear to me what more [Sergeant E] would have been able to do in relation to this matter and I am therefore unable to uphold ... your complaint”.

Our Review of Complaint 2

In his statement, Sergeant E said that he attended at the applicant’s home on 11 December 2015. At this time, the applicant showed him copies of cheques that he alleged to have no knowledge of writing or signing. Sergeant E said that he raised a crime report; a vulnerable person incident report; obtained copies of the cheques in question; and obtained a statement from the applicant to inform the criminal enquiry. A statement was also noted by an officer in another division from the applicant’s step daughter – Ms C - who was the person named on two of the cheques. Sergeant E said that Mrs A was detained on 7 March 2016 in relation to the allegation, and she made a ‘*no comment interview*’; however, she did provide handwriting samples to be examined. Sergeant E said that he updated the applicant with the enquiries that he had undertaken and obtained a handwriting sample from him for comparison. This handwriting sample, alongside the sample provided by Mrs A, was sent for forensic analysis. Sergeant E said that he informed the applicant that these enquiries could take up to 20 weeks. When the forensic analysis was completed, Sergeant E said that he completed a Standard Prosecution Report (SPR) to be sent to the Crown Office and Procurator Fiscal Service (COPFS).

As part of our review, we have been provided with copies of the corresponding crime report and the SPR. We can confirm that both the crime report and SPR have been updated with the enquiries undertaken, and have been accurately detailed in Sergeant E’s statement. The crime report and SPR confirms that Mrs A was spoken to in this regard, and also contains the details of the statements that were obtained from the applicant and Ms C.

Accordingly, Chief Inspector I’s response in relation to the enquiries carried out by Sergeant E is based on the material information available.

We agree with Chief Inspector I’s position that there would have been no further action available to Sergeant E in order to investigate the applicant’s report. For this reason, we consider that Chief Inspector I is justified in his decision to not uphold the complaint.

Accordingly, we conclude that this complaint has been handled to a reasonable standard.

Our Conclusion on Complaint 2

We conclude that Police Scotland have handled this complaint to a reasonable standard.

No further action is required of Police Scotland in this connection.

Complaint 3

The applicant complained that, on 19 June 2013, Sergeant E failed to conduct a full and proper investigation after he reported his wife as having used his bank card to order shoes online without his permission.

Police Scotland's Handling of Complaint 3 (no determination given)

Chief Inspector I said that, having examined the applicant's statement, he found no reference to this matter. However whilst undertaking his review of the complaint, Chief Inspector I had discovered a record of the applicant having reported this to the police. From this record, Chief Inspector I was able to ascertain that the applicant reported this matter to Sergeant E on 19 May 2016.

Chief Inspector I advised that Sergeant E conducted an investigation into this matter and had interviewed Mrs A in connection with the allegation. Mrs A's position was that she had moved back into the matrimonial home in 2013. This was to assist with looking after the applicant due to his health. Chief Inspector I explained that Mrs A said that the applicant had agreed to look after her as a result of her having given up her work to care for him. Sergeant E received confirmation from her that she regularly used the applicant's bank account, but it was only with his full permission.

Chief Inspector I said that Sergeant E's determination was that this was a civil matter between a married couple and there was no criminal intent on behalf of Mrs A. Chief Inspector I said that notwithstanding this, the applicant had reported monies as having been removed from his bank account without his permission, and there was an admission from Mrs A with regards to her regularly using the applicant's bank account for such types of purchases. For this reason, Sergeant E had included the details of this allegation within the overall police report that was sent to the Procurator Fiscal for consideration.

Chief Inspector I concluded that he was satisfied that Sergeant E obtained all relevant information available in respect of the position and reported the facts to the Procurator Fiscal for consideration.

Our Review of Complaint 3

Within his statement to inform the complaint enquiry, Sergeant E said that he conducted enquiries with the online shoe provider and confirmed that the order was placed in the name of Mrs A. Sergeant E said that he spoke to Mrs A regarding the allegation made by the applicant. She confirmed that she had purchased the shoes, but that she had done so in the presence of the applicant and that he had read his card details to her as she did not have access to his bank account. A copy of the corresponding crime report that was raised has been provided to us. We can confirm that the enquiries detailed as having been carried out are as per sergeant E's statement. Accordingly, Chief Inspector I has accurately reflected Mrs A's position in his response letter.

We have also been provided with a copy of the Standard Prosecution Report (SPR) in this regard. We can confirm that, as per Chief Inspector I's response, the details of this allegation are included within.

Accordingly, we agree with Chief Inspector I's determination that Sergeant E had gathered all relevant information, and that the matter was reported to the Procurator Fiscal. Accordingly, for this reason, we consider that Chief Inspector I would have been justified in not upholding the complaint. However, whilst it is reasonable to infer from the wording of Chief Inspector I's response that this complaint was not upheld, we note that he has not explicitly advised the applicant of his determination in this regard. We consider that Chief Inspector I should be reminded of section 6.14.7 of the Complaints about the Police Standard Operating Procedure which states that:

"The final letter of response should:

...Address each allegation contained within the Heads of Complaint Form and state clearly whether each allegation is upheld/not upheld."

Nonetheless, despite this short-coming, we conclude that this complaint has been handled to a reasonable standard.

Our Conclusion on Complaint 3

We conclude that Police Scotland have handled this complaint to a reasonable standard.

No further action required of Police Scotland in this connection.

Complaint 4

The applicant complained that, on 31 December 2013, and on another date, an officer failed to conduct a full and proper investigation after he had reported Mrs A as having used his bank card to withdraw money from his account without his permission.

Within his statement of complaint, the applicant said that on 31 December 2013, when he was an in-patient at a named hospital, a sum of £300 was withdrawn from his bank account through an automatic teller machine (ATM) in the hospital. The applicant suspected that this transaction was carried out by Mrs A.

The applicant also said that on another date, £3,000 was *'chip and pinned'* out of his bank account without his permission and given to his brother in law – Mr N. The applicant said that Sergeant E did not seek to obtain the CCTV in this regard.

Police Scotland's Handling of Complaint 4 (no determination given)

Chief Inspector I said that the applicant reported to the police on 4 August 2016 that Mrs A had withdrawn £300 from his account on 31 December 2013 without his permission. Following the applicant's report, Constable O attended at his home to speak to him.

Constable O said that the applicant provided the names of his sister and nephew – Ms P and Mr Q - as witnesses. Constable O said that he spoke with both Ms P and Mr Q; neither of whom had witnessed any person being in possession of the applicant's bank card, pin number, or withdrawing any money from his account.

Chief Inspector I said that there was no other evidence presented by the applicant or established by Constable O to support his allegation. Chief Inspector I said that notwithstanding this, Sergeant E included the details of this allegation in the overall police report that was sent to the Procurator Fiscal, and as such, he was content that the enquiry was completed appropriately.

Chief Inspector I said that having reviewed the applicant's statement and the statement provided by Sergeant E, he noted another allegation that £3,000 was removed from his bank account through '*chip and pin*' by Mrs A.

Chief Inspector I said that Sergeant E spoke to the bank manager in this regard. Chief Inspector I explained the bank managers position that "*nobody could access another persons account as the chip & pin machine on the counter displays the persons bank details to the bank employee and that staff are trained to scrutinise the data before issuing any cash*". Chief Inspector I said that the bank manager informed Sergeant E that the applicant had made several complaints to the bank's fraud department; however, they had not taken any action as the applicant's version of events and the dates he provided for withdrawals did not coincide with the dates that he had reported being in hospital.

Chief Inspector I said that in order to address the applicant's concern that CCTV was not seized, the bank manager informed Sergeant E that their CCTV was only retained for 28 days. Given the delay in the applicant reporting the matter, he was satisfied that no CCTV was available.

Chief Inspector I acknowledged that the applicant believed that the CCTV would be stored in a '*digital cloud for 7 years*'; however he said that the information presented by the bank manager indicated this would not be the case.

Chief Inspector I said that the information surrounding this allegation was outlined in the police report submitted to the Procurator Fiscal for consideration.

Our Review of Complaint 4

As mentioned previously within this review, we have been provided with a statement compiled by Sergeant E to inform the complaint enquiries. Sergeant E said that the applicant contacted him by telephone on 27 July 2016 and informed him that Mrs A had withdrawn £3000 from his bank account at a local branch without his permission. Sergeant E said that he received an email from the applicant later that same day that contradicted the account that he had provided by telephone. Sergeant E explained that the following week, he attended at the local branch and spoke to the bank manager. We note that there is no mention within Sergeant E's statement that he asked the applicant to provide a statement to inform the criminal enquiry.

The bank managers statement is noted within the SPR, alongside the applicant's allegations. Although the bank manager had said that the applicant was in the bank in 2013, and that staff are trained so that withdrawals from an account are only given to the account holder, we consider that this information is not specific enough to inform Sergeant E's enquiries. We note that there is no mention as to whether the applicant was in the bank on the date the transaction occurred, and whether it was him that the money was given to. The bank manager has not addressed whether she was the one that carried out this transaction, nor has she provided the details of any other person who may have carried out this transaction. It is our position that enquiries should have been carried out by Sergeant E to establish the date of the transaction in question; who carried out the transaction; and to obtain a statement from them in this regard.

Furthermore, we note that although Chief Inspector I has said that Sergeant E had queried the existence of CCTV with the bank manager, there is no mention of this within the bank managers statement contained within the SPR. Indeed the only place this is noted is in Sergeant E's statement to inform the complaint enquiry. Without there being an auditable trail of the conversation that Sergeant E had with the bank manager regarding CCTV, it is not possible to determine that a *'full and proper'* investigation was carried out in respect of this aspect of the complaint.

In relation to the allegation that £300 was withdrawn from the applicant's bank account on 31 December 2013 whilst he was in hospital, we note that Chief Inspector I said that Constable O spoke with the two witnesses whose details were provided by the applicant. However, we have not been provided with any auditable trail to confirm that these witnesses were spoken to, nor the specific information that they provided. We note that although Constable O provided a statement, his statement covers the points relating to a different complaint in our review; he has not provided any information to address this complaint. In addition, it does not appear that a statement was obtained from the applicant to inform the criminal enquiry.

We also note that Chief Inspector I has failed to clearly advise the applicant as to whether his complaint was upheld/not upheld. As previously mentioned in our report, this is contrary to section 6.14.7 of the CAP SOP.

Accordingly, for the reasons we have given, we conclude that this complaint has not been handled to a reasonable standard.

Our Conclusion on Complaint 4

We conclude that Police Scotland have not handled this complaint to a reasonable standard.

We recommend that Police Scotland:

- obtain a statement from Constable O that addresses this complaint;
- re – assess the applicant's complaint based on the material information available; and
- issue the applicant with a further response letter. This further response should be based on the material information available, explain the enquiries carried out, the information obtained, and clearly explain to the applicant whether his complaint is upheld/not upheld and provide a clear rationale behind the determination reached.

Complaint 5

The applicant complained that, on 5 August 2015, Sergeant E failed to conduct a full and proper investigation after he reported having been assaulted.

Police Scotland's Handling of Complaint 5 (not upheld by the police)

Chief Inspector I said that the applicant reported to Constable O on 23 March 2016 that he had been assaulted on 5 August 2015 by Mr R within his home address. The report was made 7 months after the event.

Constable O said that he attended at the applicant's home and was informed by him that Mr R had been doing gardening work at his home. Constable O said that the applicant asked Mr R to provide a statement to the police confirming that he had had sex with his wife. Mr R refused to provide a statement and he and the applicant began to argue. The applicant told Constable O that he was punched several times by Mr R.

Chief Inspector I said that in support of his allegation, the applicant provided Constable O with the names of several persons who were witnesses. Through his investigation, Constable O spoke to all persons whose details the applicant supplied (Mrs A, Mr N, Mr S, and Ms T) - none of whom were able to provide evidence in support of the applicant's allegation.

Constable O also interviewed Mr R in respect of the assault and he made no admissions. Chief Inspector I said that all lines of enquiry were exhausted and due to insufficient evidence against Mr R, he was not charged with the offence.

Chief Inspector I concluded that he was satisfied that Constable O had undertaken all possible lines of enquiry and that, at the conclusion of Constable O's investigation, there was an obvious lack of corroborative evidence against Mr R. Chief Inspector I said that he was unable to uphold this aspect of the applicant's complaint and in turn found no supervisory failure on the part of Sergeant E.

Our Review of Complaint 5

The statement compiled by Constable O to inform the complaint enquiry has been provided and considered as part of our review. In his statement, Constable O said that when he attended at the applicant's home on 23 March 2016, he was told by the applicant that he had been assaulted by Mr R on an unknown date in August/September 2015. Constable O said that Mr R was subsequently detained and interviewed in respect of the assault allegation; however provided a '*no comment interview*' and was released without charge. Constable O said that when he updated the applicant, he provided him with the names of two further witnesses. Constable O said that he spoke to both of them and they had not witnessed the assault. Constable O said that he spoke with Sergeant E and they both agreed that there was no evidence to corroborate the assault.

Although Constable O has said that he spoke with two further witnesses that were named by the applicant, he has not detailed all of the witnesses that he spoke to. Furthermore, having had sight of the

corresponding crime report, we note that Mr N is noted as a “*non witness*” - there is no mention of him having been spoken to. This is in contrast to Chief Inspector I’s response to the complaint. It is not clear from the paperwork we have been provided as to whether Police Scotland discredited Mr N as a potential witness given the applicant’s own admission that Mr N did not witness the assault. However, given that the response letter advised that Mr N had in fact been spoken to and there being no auditable trail to confirm the conversation that occurred, we are unable to determine as to whether the response in this regard is supported by the material information.

We also note from Constable O’s notebook that a separate witness, named by the applicant, and detailed in Constable O’s statement was spoken to. This was not mentioned within Chief Inspector I’s letter.

Accordingly, as there appears to be a discrepancy in the police paperwork between the witnesses that were/were not spoken to as part of the assault investigation, we conclude that this complaint has not been handled to a reasonable standard.

Our Conclusion on Complaint 5

We conclude that Police Scotland have not handled this complaint to a reasonable standard.

We recommend that Police Scotland:

- Consider whether it would have been appropriate to have interviewed Mr N as part of the criminal enquiry, and if so carry out this further enquiry;
- re-consider the applicant’s complaint based on the aforementioned; and
- issue the applicant with a further response. The further response should be based on the material information and the determination should be clear and based on the ‘Balance of Probabilities’.

Complaint 6

The applicant complained that, between 24 August and 30 August 2015, Sergeant E failed to conduct a full and proper investigation after he reported property having been stolen from a named address.

Within his statement to inform the complaint, the applicant said that the stolen property belonged to him and his sister – Ms P.

Police Scotland's Handling of Complaint 6

(not upheld by the police)

Chief Inspector I said that, between 24 August and 30 August 2015, the applicant reported to Constable M that a carpet, 3-piece suite, washing machine, and a vacuum cleaner was stolen from a named address.

Constable M said that he spoke with the applicant's daughter, Ms D, regarding this. She informed him that she had taken the carpet as she had bought it. This was confirmed by staff at a named store following enquiries. In addition, Constable M said that Ms D confirmed that she had taken the washing machine as it had been gifted to her by her grandfather.

Chief Inspector I said that it was the applicant's position that he had power of attorney over his father's property, and as such it was his property and that Ms D had no right to have taken it without his permission.

Constable M said that through his questioning of Ms D, she had no knowledge of the 3-piece suite or vacuum cleaner.

Constable M believed that there was no criminal intent and that the situation was a civil matter. However he sought advice from Sergeant E in this respect, and after having given the situation due consideration, Sergeant E instructed Constable M to submit a report to the Procurator Fiscal in respect of the matter.

Chief Inspector I said that it is for the Procurator Fiscal to determine what action, if any, would be taken in respect of subsequent prosecution and not the police.

Chief Inspector I concluded that he was satisfied that Constable M, supervised by Sergeant E, had gathered all available information and evidence and reported the circumstances to the Procurator Fiscal.

Chief Inspector I said that he was unable to uphold this part of his complaint.

Our Review of Complaint 6

Constable M provided a statement to inform the complaint enquiry, a copy of which has been provided to us. Within his statement, Constable M said that he attended at a named address in response to the applicant having called the police requesting assistance.

Constable M said that he told the applicant that he had conducted door to door enquiries and that this had not revealed any information. Constable M said that as the property had been the applicant's father's, and that Ms D had been staying at the address since his father had been taken into a nursing home, the matter appeared to be civil. Constable M further added that the applicant had no tenancy agreement nor inventory for the items that were in the house. Constable M said that he explained at length to the applicant that due to him having no tenancy agreement, no inventory or receipts he would be unable to prove ownership.

Constable M said he spoke with Ms D regarding the alleged stolen items. Ms D told him that she had purchased the carpet from a named store, and that her grandfather had gifted the washing machine to her when he went into a nursing home. Constable M said that in order to confirm Ms D's position, he

spoke with a member of staff at the named store who confirmed that it was Ms D who paid for the carpet.

Constable M said that Sergeant E informed him at a later date that the applicant had provided details of a power of attorney over his father and a receipt for the washing machine. He agreed with Sergeant E that a Standard Prosecution Report (SPR) would be submitted and a further subject report would be sent should the applicant be forthcoming with the receipts.

We have been provided with a copy of the corresponding crime report. The crime report details the items that the applicant alleged were stolen as per his statement. The crime report was updated to reflect the enquiries carried out by Constable M. We can confirm that these enquiries have been accurately reflected in Constable M's statement. A copy of the corresponding Standard Prosecution Report (SPR) has also been provided to us. We can confirm that Constable M has updated the SPR to reflect that the applicant had produced a power of attorney for his father.

We also note from the paperwork that we have been provided that the property remained insecure for seven days following Ms D having vacated the property. We consider that the response from Chief Inspector I would have been strengthened had he made mention of this to the applicant and the fact that property belonging to him may have been removed by someone other than Ms D.

Although the applicant's complaint is against Sergeant E, we can confirm that Constable M was the officer instructed to carry out enquiries in this regard. We have been provided with the SPR relative to this allegation, and we can confirm that it contains the enquiries that were carried out by Constable M as per his statement. We consider that the enquiries carried out by Constable M to be appropriate. Ms D was spoken to, door to door enquiries were conducted, potential witnesses were spoken to at a named store, an incident report and crime report were raised recording the enquiries carried out, and the matter was submitted to the procurator fiscal by way of an SPR for their consideration.

Accordingly, we consider that the response provided by Chief Inspector I is supported by the material information available. We therefore conclude that this complaint has been handled to a reasonable standard.

Our Conclusion on Complaint 6

We conclude that Police Scotland have handled this complaint to a reasonable standard.

No further action required of Police Scotland in this connection.

Complaint 7

The applicant complained that, Detective Constable F and Detective Sergeant G within the Domestic Abuse Unit (DAU) at a named police office, did not properly investigate his report about his estranged wife, and did not speak to anyone about this abuse.

In the further documentation provided to the police at the time of making his statement of complaint, the applicant said that he attended at a named police office. This was to speak to someone about his domestic abuse; however no one came down to see him. He said that he managed to obtain an email address for Detective Constable F, but that Detective Constable F did not respond to his emails. He said that when he managed to speak with Detective Sergeant G, who was sympathetic during his first call but that she never got back in touch with him. He alleged that when he called to ask why Detective Constable F or Detective Sergeant G were not replying to his emails, Detective Sergeant G said “*your just wasting police time [Sergeant E] is handling this*”.

Police Scotland’s Handling of Complaint 7 (not upheld by the police)

Chief Inspector I said that he had covered most of the issues within the previous complaint responses.

Chief Inspector I said that following the applicant’s domestic abuse report submitted via Police Scotland’s online reporting form on 31 August 2015, the report was allocated to Sergeant E. Sergeant E was then instructed to contact the applicant to ascertain what investigation was required.

Chief Inspector I said that Sergeant E contacted the applicant on 16 September 2015. Sergeant E informed the applicant that he would be investigating the matters raised within his online report.

Chief Inspector I advised the applicant that at no point was Detective Sergeant G, who took up her position 3 months after the applicant’s report was allocated to Sergeant E, ever instructed to investigate his complaint. He said that the same position is true with regards to Detective Constable F. Chief Inspector I said that he was content that neither officer was ever given responsibility to investigate the matter, and as such, he concluded that he was unable to uphold the complaint against them.

Our Review of Complaint 7

This complaint is closely linked to complaint 1 in this review, and Chief Inspectors response to complaint 1 also covers aspects of this complaint.

As part of the complaint enquiry, both Detective Constable F and Detective Sergeant G provided statements, copies of which have been provided to us. We can confirm that both officers said that they were never allocated any of the applicant’s reports of domestic abuse for investigation. As mentioned within our consideration of complaint 1, Sergeant E confirmed that he had been allocated the applicant’s report and was asked to investigate it accordingly.

For this reason, Chief Inspector I's response that neither Detective Constable F nor Detective Sergeant G were allocated the applicant's report of domestic abuse for investigation is accurate and is based on the information available. It would therefore seem reasonable to infer that this is the reason as to why neither Detective Constable F and Detective Sergeant G replied to the applicant's emails as he has alleged. However we note that the applicant's concerns have not been fully addressed in the officers statements, nor in Chief Inspector I's response.

In the further documentation provided by the applicant alongside his complaint statement, he said that when he obtained an email address for Detective Constable F he sent him details of the domestic abuse. However, Detective Constable F did not respond to his email. The applicant said that it was only after he had managed to speak to Detective Constable F over the telephone after he made many calls that he received an email in response that simply said "test". This does not appear to have been addressed by Detective Constable F. We are therefore unable to determine whether Detective Constable F received any emails from the applicant and what, if anything, he chose to do with them upon receipt. This does not appear to have been considered by Chief Inspector I.

Furthermore, we note that the further documentation provided by the applicant provides that when he spoke with Detective Sergeant G, she said to him "*your just wasting police time [Sergeant E] is handling this*". Although Detective Sergeant G confirmed in her statement that she spoke with the applicant over the telephone and that she was "*both courteous and respectful*", we note that she has not addressed whether she said the comment the applicant has alleged. We note that whilst she said she refutes any complaint that the applicant made against her, our position is that it is not sufficient to simply state that she refutes the allegations without expanding and providing further information to both support her position and address the specific complaint.

We also note that the response from Chief Inspector I has not addressed the applicant's concern that when he attended the Domestic Abuse Unit no one came to see him.

Accordingly, for the aforementioned reasons, we consider that this complaint has not been handled to a reasonable standard.

Our Conclusion on Complaint 7

We conclude that Police Scotland have not handled this complaint to a reasonable standard.

We recommend that Police Scotland:

- obtain further statements from Detective Constable F and Detective Sergeant G that addresses the applicant's concerns. In particular, they should be asked to account for the action they had taken in response to the applicant's email correspondence;
- re-assess the applicant's complaint based on the further information provided; and
- provide the applicant with a further response. The further response should detail the information available, make a determination as to whether the applicant's complaint is upheld/not upheld and clearly explain any rationale behind the decision made.

What happens next

We have made four recommendations. We expect these to be implemented within two months of the date of this report. We will continue to liaise with Police Scotland until such time as we consider that the recommendations have been implemented to our satisfaction.

Nicola Mayes
Review Officer

Jacqui Jeffrey
Senior Review Officer

Appendix

Copy of Police Scotland's response letter dated 12 September 2017

(Redacted and paragraphs numbered)

1. *"... I have reviewed your statement relating to this matter and it is your position that about 0708 hours on 31 August 012, you called police after being pushed downstairs and beaten up by your wife [Mrs A] and [Mr B].*
2. *You state that the phone was forcibly removed from you and the call was disconnected. You further state that the police telephoned back at which point your wife answered, sniggered and said everything was fine, thereafter hanging up.*
3. *You say you were being threatened by them not to say anything to the police as the phone rang a second time from the police whereupon she handed you the phone.*
4. *At this point you informed the police that your car was being taken by your wife and that you were waiting on an ambulance to take you to hospital for dialysis. You advise that the police controller said you would be ok in the ambulance and that he would get officers to attend in the evening when you got back from dialysis.*
5. *About 1900hrs that evening [Constables J and K] attended at your home in relation to this matter. It is the position of both officers that you asked them for advice in relation to the legalities of whether [Mrs A] was entitled to drive the car which was registered to you as she was intent on leaving the marital home as you were going through a separation.*
6. *These officers state that they advised you that this was a civil matter over property and that you should obtain legal advice from your lawyer.*
7. *[Constables J and K] also state that they spoke to you, your wife and your adult son separately during their visit and say that at no time did you make any complaint of being the victim of an assault or any other crime.*
8. *These officers thereafter, as part of our internal processes when dealing with domestic incidents related the circumstances to their supervisor, [Sergeant L] who concurred that there was no crime committed. A record of the matter was recorded on our Vulnerable Person Database as per protocol.*
9. *I have been able to retrieve the voice recordings of your phone calls to and from the police. Having listened to these, I have confirmed that at no time during these calls did you allege to have been the victim of an assault. The calls only refer to you stating your wife was leaving and that she was taking your car.*
10. *In furtherance of this aspect, it is your position is that once you were well enough to report this matter online (31/08/2015), 3 years after the incident, you heard nothing from the Domestic Abuse Unit.*

11. *You state that you tried to contact them on many occasions, and once going to [named police office] to speak to someone but after a long time you were informed that nobody was available. You left your number but nobody got in touch.*

12. *You eventually obtained an email address for [Detective Constable F] to which you sent a number of emails to but you were frustrated as you did not receive any reply. You also spoke to [Detective Sergeant G] on 04 March 2016 and whilst she was sympathetic during your first call she never got back in touch with you. You further state that you spoke to [Detective Sergeant G] again and asked why she or [Detective Constable F] weren't answering your emails and she informed you that [Sergeant G] was dealing with the matter.*

13. *It is your position that shortly after this call and months after raising the online form, that [Sergeant E] eventually phoned you.*

14. *[Detective Constable F] states that he was made aware of your online report but was never allocated it for enquiry and was aware that officers from [named town] were dealing with the matter. He confirms speaking to you on the telephone and providing you with support and advice, treating you with respect and dignity.*

15. *[Detective Sergeant G] advises that she was not in the Domestic Abuse Unit at the time you submitted your online form (31/08/2015) and only became aware of you when she spoke with you in early 2016 on the phone. She states that she is also aware that the matter was being investigated by [Sergeant E].*

16. *[Sergeant E] has provided a very detailed version of events from his perspective and in respect of this aspect of your complaint he states that he was informed on 4 September 2015 that he was to investigate the matters raised by you in your online report. That day he asked [Constable M] to visit you and inform you that he had received your online form and that he would be undertaking a thorough investigation.*

17. *[Constable M] advises that he attended at your home that day and phoned you but there was no reply on both occasions.*

18. *[Sergeant E] further states that he visited you at your home on 16 September 2015 and discussed the information in your online report. He recalls you saying that were very confused as to why the attending officers from the original incident on 31 August 2012 had spoken to you in the presence of your family when you had reported a domestic assault.*

19. *[Sergeant E] states he informed you that the incident made no mention of any assault but referred to a report of your vehicle being stolen. [Sergeant E] also states that he asked you if you had escorted the officers from your house to which you confirmed you had. He further states that he asked you if you had mentioned the assault at that juncture and he says you said no but that it should have been clear to the officers as your eyes were showing fear and you were in an emotional state. [Sergeant E] further states that you said to him that you had told the police call centre that you had been assaulted and made no reference to the dispute over the vehicle.*

20. *[Sergeant E] further advises that he discussed the exact contents of your online form and confirmed with you that you had never mentioned to the officers that you had been assaulted. He states that you informed him that you had been conveyed to Hospital by ambulance and that you said you had informed the ambulance staff and staff at hospital that you had been assaulted.*

21. [Sergeant E] states the he spoke with the paramedics who took you to hospital and they confirmed to him that you never mentioned any assault. They could not recall you having any injuries or visible marks either.

22. [Sergeant E] undertook similar enquiries at hospital and again there was no records of you making any disclosure of having been assaulted.

23. In coming to a determination in respect of this element of your complaint I find that there are conflicting accounts in respect of the reported information around the domestic incident on 31 August 2012. Whilst you now present an account of having been assaulted at that time there is no evidence from your previous involvement to support that account, whilst the evidence from all the aforementioned police and other witnesses supports that you made no disclosure of an assault taking place.

24. Therefore based on the fact that the incident you reported at the time was regarding a vehicle being taken and having reviewed the information from those involved along with the recorded details on our police systems I am satisfied that the enquiry into the domestic incident at the time was appropriate and the subsequent investigation undertaken by [Sergeant E] in response to your online report was also appropriate.

25. I am therefore unable to uphold this part of your complaint.”