

independent and effective investigations and reviews

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Police Investigations &  
Review Commissioner

PIRC/00668/17  
November 2018

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

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# What we do

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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.

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# Executive Summary

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## The Complaints

The complaints in this case arose following the applicant's contact with officers after he attempted to report counter allegations of stalking and harassment.

We have reviewed eight complaints, namely that:

1. the police did not take statements or note evidence from the witnesses the applicant identified in support of his counter allegation of stalking against his accuser;
2. the police dismissed evidence that the applicant provided 7 occasions of alleged stalking by his accuser;
3. police dismissed or ignored evidence of the applicant's accuser posting subliminal messages that the applicant believe were aimed at him;
4. the police dismissed or ignored evidence that the applicant's accuser had contacted a third party by text message in order to find out when he attended college;
5. the police ignored or dismissed email notifications the applicant had received which suggested that his accuser was obsessive and would not leave him alone;
6. the applicant does not accept that his accuser had a legitimate reason to drive past his house when she resided 40 miles from his home;
7. the police failed to properly investigate the applicant's allegation that his accuser loitered in a named supermarket car park waiting for him; and
8. the police discriminated against the applicant because of his gender, in taking an inconsistent approach to the cases against him and his accuser.

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## Police Scotland's Decision

Police Scotland did not provide a determination on whether any of the complaints were upheld/not upheld. However, from the relevant Complaints about the Police Record we can ascertain that Police Scotland did not uphold any of the complaints.

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## Our Findings

We have found that Police Scotland have not handled any of the complaints to a reasonable standard.

Consequently, we have made six recommendations to address the shortcomings that we have identified in Police Scotland's handling of the complaints. We have also identified three learning points.

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

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# Background

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In 2010, the applicant said that Ms A had added him as a friend on social media and sent him messages that he described as being '*constant and needy*'. He said he eventually stopped replying to Ms A's messages; however, in May 2016 he was back in contact with her. They rekindled their friendship and agreed to meet up on two occasions.

The applicant said that after he met Ms A on these two occasions, he received further messages from her that were "*desperate and needy*" and that this continued until August 2016. The applicant said he agreed to meet up with Ms A again, which they did, and that they kept in contact via social media until they had a falling out in November 2016.

On 18 January 2017, Ms A reported to the police that the applicant had been stalking and harassing her. The applicant was arrested on 17 March 2017 for contravention of section 39 of the Criminal Justice and Licensing (Scotland) Act 2010.

On 21 May 2017, after consultation with his solicitor, the applicant attended at a named police office and made a counter allegation of stalking and harassment against Ms A. His reports were allocated to Detective Constable B for enquiry.

The applicant's complaints surround the manner in which his counter allegations were investigated by Detective Constable B.

The applicant made his complaints via Police Scotland's online reporting form on 8 October 2017. Detective Chief Inspector C was appointed as the enquiry officer. The applicant said that he would prefer to be contacted by email and submitted a document that provided further information surrounding his complaints to the police on 19 November 2017. Detective Chief Inspector C sent the applicant a completed 'Heads of Complaint' form on 9 February 2018.

The applicant received a response to his complaints in a letter from Superintendent D dated 14 February 2018.

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# Complaint 1

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The applicant complained that the police did not take statements or note evidence from the witnesses that he had identified in support of his counter allegation of stalking against Ms A.

Within the documentation that the applicant emailed to inform the complaint enquiry, he said he had provided the names of four people whom he believed would be able to support his allegation. He said there was no reason as to why all four witnesses were not contacted nor had a full statement taken from them, even if they could only provide limited information.

In support of his position, the applicant provided an example whereby he said that “[witness E] *had messages received from [Ms A] asking questions such as “wheres [the applicant’s] house”, and a recollection of a time when [Ms A] approached me under strange circumstances but these were not lodged as evidence.”*

The applicant said that the reason for his concern was that he believed full statements were taken from the witnesses in the case against him. His position is that the witnesses in support of Ms A also did not know a great deal.

He said that his parents, who were witnesses to his distress after being followed by Ms A, were not contacted at all.

He also said that he would be satisfied to know that all details from all witnesses he had provided had been noted down in full.

## **Police Scotland’s Handling of Complaint 1** (not upheld by the police)

Superintendent D said the following in response to the complaint:

*“Of the witnesses that you provided, one of my officers attended and obtained a statement from [witness F]. [Witness F] spoke of being privy to potential evidence that could be found on social media, however she could not provide any actual screenshots or evidential material. [Witness F] also commented that you may have been getting harassed by [Ms A] but then conceded to the fact that her opinion was purely based on the information you provided to her. On review it would appear that [witness F] cannot provide any actual evidence of harassing behaviour by [Ms A].*

*Telephone contact was made with two other witnesses who confirmed that they could not provide anything of evidential value to substantiate an allegation of stalking and harassment against [Ms A]. This information was relayed to [Detective Sergeant G] who whilst considering the Police Scotland Domestic Abuse Protocol – Investigating Counter Allegations, considered that it was not proportionate to obtain any negative statements. I cannot argue with the rationale behind this decision”.*

## Our Review of Complaint 1

We have been provided with a copy of the crime report raised in connection with the applicant's counter allegation against Ms A. Having viewed this report, we can confirm that witness F was spoken to on 9 September 2017 and that a statement was obtained from her. This has been accurately reflected in Superintendent D's response. However, despite this being the case, we note that Superintendent D has failed to address the applicant's complaint in full. This is because his response has not provided the details of the other two witnesses that were spoken to via telephone; and he has not addressed whether attempts were made to speak with a fourth witness.

Of note, however, is that having had sight of the relevant crime report, we observed that there is no reference of any other witnesses having been spoken to other than witness F. Accordingly, we are not clear as to the information upon which Superintendent D has based his response. Furthermore, Superintendent D's response has also failed to address why the applicant's parents were not spoken to, despite him having provided their details as witnesses. That said, it is unclear from the paperwork provided by both the applicant and Superintendent D's response as to whether the applicant's parents were identified as witnesses over and above the four witnesses that he had initially provided or if they were included in this number. It is our position that this should have been clarified by the enquiry officer – Detective Chief Inspector C – as part of the complaint enquiry so as to allow for a full and accurate response to have been provided.

Superintendent D also did not clarify, although noting in his response that, '[Witness F] spoke of being privy to potential evidence that could be found on social media', why no enquiries in this regard were pursued by police.

In addition to the above, section 6.9.4 of the Complaints about the Police Standard Operating Procedure ("CAP SOP") provides that:

*"Auditable records will be kept in respect of all complaints detailing all enquiries undertaken and also significant steps taken during the complaints process. All evidence obtained or created as part of the investigation must be retained."*

Despite the provisions of the CAP SOP, we note that there is no auditable trail contained within the paperwork we have been provided by Police Scotland of the conversations that Detective Chief Inspector C had with any of the officers involved as part of his complaint investigation. During our review, we have been provided with a copy of a statement provided by Detective Constable B. In her statement, Detective Constable B has detailed the enquiries she carried out; however noteworthy is that this statement was compiled after the complaint was responded to. We consider that this further supports our position that Superintendent D's response is not supported by the material information available.

We also consider Superintendent D's response to be somewhat contradictory as he said that Detective Sergeant G – who is Detective Constable B's supervisor - determined that it would not be proportionate to obtain negative statements. However, as we have previously mentioned, the crime report records that a statement was obtained from witness F whereby it is noted that she could not provide any evidence and that her opinion was based solely on what the applicant had told her. We have not been provided with an account or statement from Detective Sergeant G that would enable us to understand his rationale in this connection. Furthermore, despite Superintendent D having said that he cannot argue with Detective Sergeant G's rationale, he too has not provided any further explanation to the applicant in this regard.

Furthermore, we note that the Complaint about the Police (“CAP”) Record has been updated to reflect that this complaint was not upheld; despite which Superintendent D’s response has failed to advise the applicant of this determination.

Section 6.14.6 of CAP SOP provides that:

*“The explanation should be clear and impartial and should communicate whether each allegation is upheld or not. It should clearly address the complainer’s allegations and concerns, and the reasoning behind any decision should be apparent. The explanation should also include any action to be taken as a result of the complaint, and any learning identified for Police Scotland.”*

Accordingly, for the aforementioned reasons, we consider that there has been insufficient enquiry into the complaint. Furthermore, Superintendent D’s response has failed to address the complaint in full and has not advised the applicant as to whether the complaint was upheld/not upheld.

We therefore conclude 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:

- clarify with the applicant as to whether the four witnesses he provided included his parents;
- issue the applicant with a further response that is based on the material information available. This further response should confirm to the applicant whether all the witnesses he provided were/were not spoken to and if statements were obtained. In the event that statements were not obtained, the further response should clearly explain to the applicant the rationale behind this;
- issue the applicant with an explanation as to why the police did not pursue enquiries to identify the social media post referred to by a witness; and
- the response should also provide the applicant with a determination on whether his complaint is upheld/not upheld and clearly explain the rationale for the decision.

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## Complaint 2

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The applicant complained that the police dismissed evidence that he provided to them regarding 7 occasions in which he alleged that he was stalked by Ms A.

The applicant's position is that he provided a lot of evidence; however this evidence was dismissed without being answered. He said that *"it seems as though excuses have been made to cancel out certain aspects of my complaint against [Ms A]. He said "I provided evidence of 7 occasions where [Ms A] had followed me by visiting places in photos which I had posted online shortly after, and then took her own photos next to them to post online. Due to the circumstances of this I believe that an unexpected forensic examination of [Ms A's] phone would have strengthened the case that she followed me to these places on purpose with an intention to let me know that she is following me and cause fear and alarm. If this was proven to be the case then it could be said that a victim who continues to gravitate towards the harasser could not have suffered fear and alarm by their previous behaviour. A similar tactic was used to infer that I would not suffer fear or alarm because I allegedly replied to her messages"*.

He further said that *"I would be satisfied to know that a full and unexpected forensic examination of all the electronic devices [Ms A] has access to could be carried out in order to back up my claims which are hard to prove to a third party"*.

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

Superintendent D said the following in response to the complaint:

*"The suggestion that excuses have been made to cancel out certain aspects of your complaint has been strongly refuted by the officers involved in the investigation of this case. In particular you provide an example whereby you provided evidence of 7 occasions where [Ms A] followed you by visiting places in photos which you had posted online and then later she posted them online herself. You may be aware that [Ms A] also made a similar complaint and due to the circumstances and uncertainty as to the authenticity and provenance of the actual photos, the Procurator Fiscal appears to be disregarding the behaviour as criminal. I also note that you feel you were informed by the police that because you replied to [Ms A's] text messages you obviously did not suffer any fear or alarm.*

*[Detective Sergeant G] advises that you misconstrued what was actually said to you, as he advised you that your replies to texts and the volume of them were not indicative of someone suffering fear and alarm"*.

## Our Review of Complaint 2

Superintendent D's response said that both officers had "*strongly refuted*" that excuses had been made to cancel out certain aspects of the applicant's complaint. However, we note that he has failed to elaborate on this and provide any further meaningful response. Our position is that it is not sufficient to simply state that officers "refute" an allegation without providing any further meaningful explanation and information to support this assertion.

As we have previously mentioned we have not been provided with any account or statement from Detective Sergeant G. Consequently, we are unable to come to a determination on whether Superintendent D's response accurately reflects Detective Sergeant G's position with regards to excuses having been made, and the discussion that occurred between Detective Sergeant G and the applicant. Indeed, we have been provided with no auditable trail of any discussions between Detective Sergeant G and the applicant. For this reason, we are unable to confirm that Superintendent D's response is based on accurate information.

Furthermore, as we have mentioned previously, the statement provided by Detective Constable B was prepared after the response letter was issued to the applicant. Having viewed Detective Constable B's statement, we note that she has detailed that she was shown photographs by the applicant from his social media accounts to support his version of events, and she has detailed her position in this regard. This has not been reflected in the response letter from Superintendent D. That said, it would not have been possible for Superintendent D to have reflected the comments contained within Detective Constable B's statement in the response letter to the applicant as it was not available at the time the letter was sent. There is no audit trail to support the information relied upon in responding to this complaint. We are therefore unable to determine whether appropriate enquiries were carried out and indeed whether the complaint has been investigated fully.

We also note that Superintendent D has not addressed the applicant's position that Ms A's phone should be subject to an "*unexpected forensic examination*".

Although Superintendent D has said Ms A had raised a similar report against the applicant and that the procurator fiscal did not regard this behaviour as criminal, we have not been provided with any auditable trail to support his response in this connection.

Additionally, we note that Superintendent D has failed to advise the applicant as to whether his complaint was upheld/not upheld. This is contrary to the provisions of the CAP SOP.

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

## Our Conclusion on Complaint 2

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

We recommend that Police Scotland:

- obtain a statement from Detective Sergeant G that addresses the applicant's concern;
- consider whether the statement from Detective Constable B addresses the applicant's concerns, and whether a further statement is required from her; and
- provide the applicant with a further response. This further response should clearly address all of his concerns; explain the officers positions; and clearly advise on whether his complaint is upheld/not upheld, and provide a clear rationale for their determination.

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## Complaint 3

The applicant complained that the police had dismissed or ignored evidence of Ms A having posted subliminal messages that he believed were aimed at him.

In his correspondence with the police, the applicant said that these subliminal messages were being posted months after he had any contact with Ms A. He added that *"if a forensic examination or interview could prove this to be the case then it could be said that someone going to that effort to get messages to me could not have been bothered by the attention that I gave her in her complaint against me"*.

### Police Scotland's Handling of Complaint 3 (not upheld by the police)

Superintendent D said the following in response to the complaint:

*"I note your concern that [Ms A] was posting subliminal messages. I am aware that there have been Images posted by both you and [Ms A] at different locations however given that Facebook posts can be amended in various manners I am of the opinion this does not amount to criminality. Your beliefs do not provide sufficient grounds to detain [Ms A] for interview or obtain a warrant, however as alluded to elsewhere within my reply, [Ms A's] phone has now been submitted for forensic analysis. I also note that the posts you refer to were actually produced whilst you were on bail."*

*To my knowledge you do not or should not have any direct access to [Ms A's] social media posts. It is possible that you may have viewed them through mutual friends however to opine that the messages were aimed at you is in my view somewhat subjective”.*

### **Our Review of Complaint 3**

Although Superintendent D has said he alluded elsewhere in his response to the applicant about Ms A's phone having been submitted for forensic analysis, we cannot see any other mention and/or further detail about this matter contained within the response letter. Furthermore, from the paperwork we have been provided by Police Scotland, there is no audit trail to indicate as to whether Ms A's phone was sent for examination. Similarly, there is no mention of this having occurred contained in the crime report raised in response to Ms A's allegations against the applicant; nor is it documented in the crime report raised to record his counter-allegations against Ms A. Accordingly, we are unable to determine the information that has been relied upon by Superintendent D when formulating his response to this complaint.

We also do not consider that the applicant's concerns regarding Ms A having posted subliminal messages to have been recorded on the crime report raised to record the applicant's concerns. We are therefore unable to establish if there has been an appropriate level of enquiry – or if any enquiry – was carried out in this regard.

In addition to the above, we note that Superintendent D has failed to confirm to the applicant as to whether this complaint was upheld/not upheld.

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

### **Our Conclusion on Complaint 3**

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

We recommend that Police Scotland:

- ensures that the applicant's concerns surrounding Ms A having posted subliminal messages has been recorded and the appropriate enquiries carried out. Police Scotland should provide us with confirmation in this regard; and
- issue the applicant with a further response. This further response should be based on the material information available and clearly explain to the applicant if and when Ms A's phone was sent for examination and the outcome of this line of enquiry. Additionally, the further response letter should clearly explain to the applicant as to whether his complaint is upheld/not upheld, and the rationale behind this decision.

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## Complaint 4

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The applicant complained that the police had dismissed or ignored evidence that, Ms A had contacted a third party by text message to find out when he attended college.

Within his further documentation to the police, the applicant said that Ms A had sent a text to his friend, witness E, and managed to find out the days that he attended college. He said he then received several email notifications from Ms A saying that she could “see me” and that she had approached him in the college car park. He said that Ms A did not have a legitimate reason to have been waiting in her car at the college path since there was a car park at the university that she attended nearby.

### Police Scotland’s Handling of Complaint 4 (not upheld by the police)

Superintendent D said the following in response to the complaint:

*“The witness you mention, namely [witness E], has been spoken to over the phone by one of my officers. During this call he intimated that he did not have any information to assist the investigation, albeit he did recall getting some messages from [Ms A] several years ago, the content of with [sic] he was not concerned with.*

*The time scales were considered by my officers and due to the fact that there was a period of several years between these messages and your next contact with [Ms A], it was not deemed relevant to the investigation. I can also advise that research of our Incident Management System confirms that no complaints against [Ms A] were made by you at that time”.*

### Our Review of Complaint 4

As aforementioned, no auditable record was kept during the complaint enquiry to document the conversations that the enquiry officer had with the officers subject of the complaint. We also note that the enquiries into this allegation are not detailed in the crime report. Accordingly, we are not clear as to the information relied upon by Superintendent D in his response to the complaint.

As we have detailed throughout our report, the lack of an auditable trail is contrary to the provisions of the CAP SOP.

Notwithstanding this, Detective Constable B’s statement (compiled after the complaint response had been issued to the applicant) states that she spoke with witness E and she recorded his position that he had been contacted by Ms A about 7 years previously. However, Detective Constable B has not provided any rationale as to why she considered that the messages were not relevant to the investigation. We note that Superintendent D has said that the timescales between the messages sent

and the applicant's next contact with Ms A were taken into consideration; however, this is not documented in the statement provided by Detective Constable B. Accordingly, we are unable to determine what information the response is based on.

In addition, although it may be the case that the applicant did not make any reports against Ms A at the material time, it is our position that this should not discredit any report that the applicant made at a later date. For this reason, we consider the comment made by Superintendent D in this connection does not add any value to the complaint response.

We also note that Superintendent D has failed to advise the applicant on whether his complaint was upheld/not upheld.

We therefore 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 statements from the officers involved that addresses the applicant's concerns and details their rationale for any decisions they made; and
- consider the information available and issue the applicant with a further response letter that addresses his concerns and clearly explains the rationale behind their decision to uphold/not uphold his complaint.

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## Complaint 5

The applicant complained that the police had ignored or dismissed email notifications he had received which suggested that Ms A was obsessive and would not leave him alone.

Within his correspondence to the police, the applicant said that *"email notifications were provided over a long period of time, the content of which would suggest that [Ms A] was repeatedly tagging me in her posts with an obsessive nature and would not leave me alone"*.

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

Superintendent D said the following in response to the complaint:

*“I have been advised that you provided my officers with a number of documents which showed that [Ms A] ‘tagged’ you into numerous posts on social media.*

*Without seeing the actual content of these messages this provides little evidence to your allegation of stalking as there is no definitive proof as to who initiated the posts. Therefore your perception of why you were tagged in these messages is purely subjective and from the evidence you have provided there appears to be only 60 tags between December 2013 and August 2016. I struggle to see how 60 tags over such a period of time constitutes stalking behaviour”.*

## **Our Review of Complaint 5**

Superintendent D’s response is correct in so far as there would be a requirement for the content of the messages to be viewed alongside the information pertinent to whom had initiated the posts. This is due to the fact that it is possible that both the applicant and Ms A were tagging each other in the images and in friendly dialogue at the time. However, Superintendent D has failed to provide the applicant with any further information that explains Detective Constable B’s position and her rationale in this regard. As we have mentioned previously, Detective Constable B provided a statement after the complaint response was issued to the applicant. We note that within her statement Detective Constable B has detailed her rationale as to why no further action was taken in respect of this report and the discussion that she had with the applicant in this regard. However, we note that none of this has been explained to the applicant in the response letter. It would appear that this short-coming has arisen because the formal statement compiled by Detective Constable B in response to the complaint was dated after the final response letter was issued to the applicant. It may well be that the information from Detective Constable B was elicited informally to inform the complaint enquiry however, without there being any auditable trail whatsoever to support the response, we are unable to determine what information the complaint response is based on.

Furthermore, Superintendent D’s comment that he struggled to see how 60 tags between December 2013 and August 2016 could constitute stalking does not appear to be in accordance with the legislation<sup>1</sup>. Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 states that a person commits the offence of stalking where they stalk another person by engaging in a “course of conduct” that *“involves conduct on at least two occasions”*. Section 39(6) of the Act defines what is considered as *‘conduct’* and includes contacting, or attempting to contact another person by any means. The response from Superintendent D in this regard is therefore irrelevant and appears to be largely subjective and based on his own personal opinion.

As such we consider 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:

- issue the applicant with a further response. This further response should detail Detective Constable B’s rationale for not taking any further action in this regard.

<sup>1</sup> Section 39 Criminal Justice and Licensing (Scotland) Act 2010

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## Complaint 6

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The applicant complained that he was told that Ms A's car had a legitimate reason to have driven past his house. However, he did not accept this as he knew that she lived forty miles away from him at the time.

He said that it seemed unbelievable that a car belonging to Ms A *"just happened to be driving past"* his house.

### Police Scotland's Handling of Complaint 6 (not upheld by the police)

Superintendent D said the following in response to the complaint:

*"You were advised by one of my officers that [Ms A's] car had a legitimate reason to be driven (sic) past your home address during the time scales involved, however you consider this not to be the case. I cannot disclose the reason why but what I can confirm is that I am satisfied that [Ms A's] car did in fact have a legitimate reason to be driven past your home address on the date's in question".*

### Our Review of Complaint 6

Superintendent D has correctly informed the applicant that he would be unable to disclose the reason as to why Ms A's car had drove past his house. However, given that Superintendent D has gone so far as to state that he was satisfied that there was a legitimate reason for Ms A to have done so, we sought clarification from Police Scotland in this regard. In response, we were provided with a copy of Detective Constable B's statement. Having considered this statement, we can confirm that there does appear to have been a legitimate reason for Ms A to have driven past the applicant's house. That said, as we have mentioned previously, Detective Constable B's statement was compiled after Superintendent D had responded to the applicant's complaint. For this reason, we consider that there has been no auditable trail kept by the enquiry officer – Detective Chief Inspector C - during the complaint enquiry of the conversations that he had with officers that were thereafter used by Superintendent D to inform the final response letter. This evident lack of auditable trail is contrary to the provisions of the CAP SOP.

In addition to the above, we note that Superintendent D has again failed to advise the applicant on whether his complaint was upheld/not upheld.

We therefore conclude that this complaint has not been handled to a reasonable standard.

## Our Conclusion on Complaint 6

We conclude that Police Scotland have not handled this complaint to a reasonable standard. However, as we have been able to satisfy from the statement compiled by Detective Constable B that there appears to have been a legitimate reason for Ms A's car to have been driven past the applicant's home there is no further action required of Police Scotland in this regard.

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## Complaint 7

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The applicant complained that the police had failed to properly investigate his allegation that Ms A had loitered in a named supermarket car park waiting for him.

The applicant said that between 1905 hours and 1930 hours on 1 November 2016, he bumped into Ms A in the carpark of a named supermarket. He said that he did not believe this to have been a coincidence as his place of work was across the road, and that Ms A would have known that he finished work at 1900 hours. He said that when Ms A left the supermarket, she loitered in the car park for between 5 – 10 minutes and had parked her car next to his so as to speak with him again. He said that despite this being the case, the charges against him state that he had caused Ms A fear and alarm from the 1 September 2016. This date range would include this particular incident.

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

Superintendent D said the following in response to the complaint:

*"I have been advised that the reason the 1 September 2016 is the date libelled in charge 1 is because according to the witness [Ms A], it was only after you both returned from your overnight trip to [named town 1] in August that the harassment really started. The Procurator Fiscal may take the decision to change this date range depending on the assessment of the evidence presented. In respect of you bumping into [Ms A] on the 1 November 2016 within [a named supermarket] car park, [named town 2], I have been made aware of several text messages sent by you to [Ms A] after this time and date which clearly contradicts your claims of being stalked by her. Due to the fact that the case against you is pre-trial I cannot document these texts messages on this correspondence."*

### Our Review of Complaint 7

Superintendent D has correctly informed the applicant that the procurator fiscal may decide to change the date of the charge against him, and he has adequately provided a reason as to why this date range

was given. Having had sight of the incident report raised against the applicant, we can confirm that Superintendent D's response is supported by the material information available.

However, as is the case with previous complaints, Superintendent D has failed to advise the applicant on whether his complaint was upheld/not upheld. This is contrary to the provisions of the CAP SOP. In this instance, Superintendent D would have been justified in not upholding the complaint as the response was based on the material information available; however, as the determination was not explicitly explained to the applicant then we conclude 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. However, as we have explained the response is based on the material information available there is no further action required in this connection.

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# Complaint 8

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The applicant complained that the police discriminated against him because of his gender. He said that they took an inconsistent approach to the case against him and his accuser, Ms A.

The applicant said that he was told by his solicitor not to say anything in the initial interview when Ms A's allegations against him were being raised. He said that when he raised his counter allegations on 21 May 2017, he was told that, on 27 May 2017, a thorough investigation would be carried out. He said that Detective Constable B then went on long-term leave, and that he did not hear anything further until 27 July 2017, and that it was not until 5 August 2017 when he got to discuss his reports that the investigation actually began. He said that in the time period between him making his initial counter-allegation and the investigation commencing, he was still being harassed by Ms A.

The applicant said that when he attended at a local police office on 28 August 2017 to "assist in authenticating evidence such as emails", he got the impression that nothing had been done to preserve evidence in support of his allegations. He said that he contacted Detective Constable B on 1 September 2017 regarding his concerns and had provided her with the contact details of more witnesses. He said he was told that the case would be reviewed by senior staff.

He said that his main concern was that there did not appear to have been the same amount of effort into preserving evidence that would help his case as there had been put into the case against him. He said that he was told on more than one occasion that officers were not going to spend hours going through Ms A's devices or social media accounts as it was a waste of time to do so.

He further added *"I do not think it is fair to say that my whole complaint over such a long period of time is cancelled out by allegations such as there were times when I replied to her messages, the same way*

*that my alleged conduct against her has not been cancelled out by her stalking behaviour which still goes on months after her complaint about me”.*

## **Police Scotland’s Handling of Complaint 8** (not upheld by the police)

Within his response letter Superintendent D said the following:

*“I am aware that after the initial investigation into your counter allegation was concluded you were not satisfied with the update and outcome you were provided with, hence the reason for this complaint. You are aware of the Police Scotland Domestic Abuse Protocol for the investigation of counter allegations, and from my review I believe that the reporting officer has followed this protocol and in their opinion the principal person was reported to the Procurator Fiscal in line with the following guidance:*

*‘following thorough investigation, the principal perpetrator will be identified and, where sufficient evidence exists, they will be reported to the PF. In general only the principal perpetrator will be reported but full details of the counter allegation will be contained within the narrative section of the report. If required, the PF can then request a full report in respect of any counter allegation’.*

*I can confirm that the reporting officer has informed the Procurator Fiscal of the existence and content of your counter allegation and as yet a full report has not been requested. However your counter allegation will be discussed again with the Procurator Fiscal to seek further guidance.”*

## **Our Review of Complaint 8**

The applicant has clearly expressed his concern that his reports have been handled differently to those made by Ms A against him, and he has explained his reasons for having formed this opinion. However, we note that this complaint has not been recorded in the CAP Record.

Having reviewed the crime report raised to record the applicant’s allegations against Ms A, we can confirm that it was recorded on 21 May 2017 that the applicant’s reports were counter allegations to those made against him by Ms A that were sent to the procurator fiscal. It is also recorded that Detective Constable B would establish with the procurator fiscal as to whether his reports should be investigated as a separate crime or if they were to be included in the crime report raised recording Ms A’s allegations against him. We note that the record is later updated on 25 May 2017 that a crime report should be raised.

We have also been provided with the crime report raised for Ms A’s allegations against the applicant. This crime report was used to form the basis of the report that was sent to the procurator fiscal; however, we note that it does not appear that this crime report was updated to reflect the information surrounding the applicant’s counter allegations.

There is no audit trail that details the witnesses that were spoken to, and not all of the applicant’s concerns have been recorded onto the crime report.

Furthermore, despite the applicant having said that there was a delay between him making his report to the police and having an opportunity to speak to someone in this regard; that evidence was not being preserved in connection with his reports; and that he was told Ms A's devices and social media accounts would not be looked at, Superintendent D has failed to address these points in his response.

Accordingly, for the aforementioned reasons, we consider that the response provided by Superintendent D is not supported by the available information, and that the complaint enquiry has been insufficient.

We conclude that this complaint has not been handled to a reasonable standard.

## **Our Conclusion on Complaint 8**

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

We recommend that Police Scotland:

- record the applicant's concern as an official complaint;
- obtain further accounts from the officers involved that address the applicant's concerns; and
- issue the applicant with a further response, taking cognisance of the points raised throughout this review. This further response should clearly explain to the applicant what enquiries have been carried out in response to his reports and be based on the material information, and compare this to the investigation that was carried out against him. The response should explain to the applicant as to whether his complaint is upheld/not upheld and their rationale behind this.

## Learning point 1

We note from the paperwork provided that despite the applicant making his complaint on 8 October 2017, and providing a detailed document on 19 November 2017 to inform his complaint, he was not asked to agree and sign a 'Heads of Complaint' form until 9 February 2018.

As part of our review, we sought clarification from Police Scotland as to why Detective Chief Inspector C had waited until he had concluded his enquiries into the complaint before completing the 'Heads of Complaint' form. In response, we have been advised by Police Scotland that this was due to Detective Chief Inspector C not having met with the applicant. Accordingly, he considered that there was no need to have completed this form until 9 February 2018 – the date in which he said the outcome letter was issued to the applicant. However, from the paperwork that we have been provided by Police Scotland, we have determined that the 9 February 2018, was the date in which Detective Chief Inspector C had concluded his enquiries into the complaint and passed the details to Superintendent D for his consideration. The actual final response letter was dated and issued on 14 February 2018.

Section 6.7.5 of the CAP SOP provides:

*“There should be a clear understanding between the person noting the statement and the complainer as to what is being investigated. At the conclusion of the statement there must be a summary of the agreed Heads of Complaint Under Investigation, and the complainer should be asked to complete and sign a 'Heads of Complaint' Form ... which lists the description of each allegation. It also assists greatly in the recording process”*

Accordingly, as per the provisions above, the 'Heads of Complaint' form exists so as to agree what is to be investigated as part of the complaint. It is therefore imperative that this is completed with the applicant at the outset. The fact that Detective Chief Inspector C has completed this at the end of his enquiry serves no purpose to the complaint investigation, and it may have resulted in one of the applicant's complaints not officially being recorded as a complaint about the police – a shortcoming that we have identified as part of our review.

## Learning point 2

Throughout our review, we have identified several short-comings in the overall complaint handling. These shortcomings relate to the lack of an auditable trail in order to support the response issued to the applicant i.e. no auditable account or statement recorded from Detective Sergeant G; and the fact that the statement from Detective Constable B was compiled after the response letter was issued to the applicant. This, alongside the fact that the applicant's 'heads of complaint' form was completed at the end of the complaint enquiry, has lead us to opine that this is a particularly poor example of complaint handling.

We consider that the enquiry officer – Detective Chief Inspector C – should be reminded of the provisions of the Complaints about the Police Standard Operating Procedure to ensure that these shortcomings are not repeated in any future complaint enquiries.

## Learning point 3

As mentioned throughout our review, Superintendent D has failed to clearly advise the applicant as to whether each of his complaints were upheld/not upheld. This is a fundamental element of complaint handling. Accordingly, Superintendent D should be reminded of the relevant provisions of the Complaints about the Police Standard Operating Procedure and this should be borne in mind when responding to any future complaints.

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## What happens next

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We have made six 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**