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OPERATIONAL SERVICES

Form 3353



C.O. Ref.: OG1/ /
 Tribune Ref.: PC 3350 / 11
 IPCC Ref. (if any):

Date: 5th November 2012

Investigating Officer's Report

A. Introduction

(1) Complainant(s)

Name: Ms Amy Walker

Name:

Address: Flat 5,
 8 Millennium Drive,
 E14 3GH

Address:

Tel. No.:

Tel. No.:

E-mail: Amy.Walker@morganstanley.com

E-mail:

Date of Birth:

Date of Birth:

SDE:

SDE:

(2) Terms of Reference for the Investigation

(i) Criminal Allegations

(a)

(b)

(c)

(ii) Misconduct Allegations

(a) Orders and Instructions standard 5

(b) Authority Respect and Courtesy standard 2

(c)

(iii) Gross Misconduct Allegations

(a) Orders and Instructions

(b) Duties and Responsibilities standard 6

(c) Duties and Responsibilities

(d) Duties and Responsibilities

(e) Duties and Responsibilities

(f) Discreditable Conduct

(g) Authority Respect and Courtesy

(h) Duties and responsibilities

(3) Person(s) Serving with the Police Subject of Complaint

DC 7579 Karen McGarry (iii)(a)(b)(c)(d)(e)(f)(g)(h)

DS 189978 Ken Ewing (ii)(a)(b)

DI 180795 John Ford (ii)(a)

DS 201717 Paul Callister (ii)(a)

Is the officer subject to a live final written warning?

☐ Yes ☒ No

Has the officer been reduced in rank within 18 months of the severity assessment in this case?

☐ Yes ☒ No

(4) Referral to IPCC

Date referred: 13.06.2011

IPCC decision as to mode of investigation: Local investigation

(5) Investigating Officer / Assistant Investigating Officer

Doc
1-38

DI Graham Rouse

PS 171728 Kevin Luxon / DS Martin Reynolds

History

On 16th April 2010, Ms Walker, an employee of Credit Suisse, attended a drinks gathering with her colleagues at Corney and Barrows Wine Bar, Cabot Square E14. It is acknowledged that at the end of the evening Ms Walker was left in the company of Michael Shillaker, a Managing Director of Credit Suisse. It is apparent then that physical contact took place between the parties which allegedly amounted to Mr Shillaker kissing Ms Walker, touching her breasts and placing his hand between her legs.

On 17th April 2010 Ms Walker attended Limehouse police station and made a criminal allegation that Mr Shillaker had drugged her drinks the previous evening and then subjected her to a sexual assault. The matter was investigated by DC McGarry from Limehouse police station. Mr Shillaker was arrested and questioned about the evening but denied having the opportunity of "spiking" Ms Walker's drinks and insisted that his intimate contact with Ms Walker was consensual. Following an inconclusive forensic report relating to the samples provided by Ms Walker, it is recorded that the case was effectively closed on 30th July 2010.

Ms Walker subsequently made a complaint regarding the quality of the criminal investigation adopted by DC McGarry. In consequence of this complaint Detective Supt Sweeting SCD2 reviewed DC McGarry's investigation. His report highlighted failings within the investigation and he determined to re-allocate the crime for review and reinvestigation.

This reinvestigation was referred to the Crown Prosecution Service (CPS) for advice and a disposal decision. CPS determined that there was insufficient evidence to give rise to a realistic prospect of a conviction. Thereafter Ms Walker met with this reviewing lawyer and a further review was then conducted by Special Casework Lawyer Mr Hadik. He agreed with his colleagues findings and concluded that the matter should not proceed. The investigation into Ms Walker's complaint allegations commenced whilst these matters were being reinvestigated.

Specifically Ms Walker alleged that the officer failed to gather evidence or refer her to specialist personnel, failed to pursue avenues of enquiry, failed to properly present the case to the CPS, treated her inappropriately and sent unacceptable e-mails to her and her colleagues. She also identifies that this case was not supervised properly.

B Details of investigation allegations

Stats
pgs 1-4
Ms Walker provided statements, e-mails and exhibits in support of her allegations.

Stats
pgs 5-11
Ms Walker's partner provided a statement acknowledging the difficult interaction he and Ms Walker had with DC McGarry.

Stats
pgs 12-13
PC Best, who dealt with Ms Walker's initial allegations at Limehouse police station on 17th April 2010, provided a statement confirming her interaction with Ms Walker and the advice she obtained at the time of reporting these matters.

Appe
ndix A
The case papers were obtained.

Docs
pgs 39-43
Detective Superintendent Sweeting's review has been obtained. This in part supports Ms Walker's version of events.

Docs
pgs 44-76
The reviewing lawyers' rationales for not progressing the case criminally have been copied.

Appe
ndix B
The Standard Operating Procedures (SOP) concerning the investigation of rape and serious sexual offences has been copied.

Appe
ndix c
The SOP relating to the secondary investigation of crime has been copied.

Operating procedures for police use of the London Havens has been obtained.

E-mails sent to and from DC McGarry regarding her communication with personnel at Credit Suisse and Ms Walker have been obtained.

Discipline notices were served on four officers, DI Ford, DS Ewing, DS Callister and DC McGarry. Only DC McGarry was restricted from duty in consequence of these allegations. All the officers provided responses to these forms. DC McGarry additionally provided a statement under caution. DC McGarry has endeavoured to defend her actions however she has also effectively admitted some failings.

C. Conclusions and Recommendations

(1) Discussion of the Evidence and Conclusions

Ms Walker identifies some twenty failings in the criminal investigation. She highlights that no input was asked from SCD2 albeit this crime would have fitted this unit's remit. In consequence of this no SOIT officer was appointed. At the time of reporting the incident an Early Evidence kit was used to obtain samples from her. Ms Walker also provided a urine sample. These samples proved inconclusive however they did reveal an alcohol level consistent with being drunk. There were also traces of a sleeping drug, Diphenhydramine, in the same however the scientist was unable to say when this could have entered her body. Ms Walker asserts that she had previously taken sleeping pills but not for two weeks and therefore had hair and blood samples been taken from her this would have established when drugs were introduced into her system. No such samples were requested. Ms Walker also asserts that at the time she reported these matters she was told a photographer would attend her home address to photograph her injuries. Nevertheless a photographer never arrived and she was later informed that she had to take these photographs herself.

Ms Walker asserts that she provided DC McGarry with a list of medication she had taken and which may have been in her system at the time of the assault. This did not include Diphenhydramine. She states that DC McGarry purposely minimised/misled CPS regarding the drugs detected in her urine sample or at best failed to properly comprehend the significance of this or appropriately pursue this line of enquiry. Ms Walker asserts that the officer falsely implied that she had taken a sedative, Nytol (diphenhydramine hydrochloride) when this had not been the case. Thereafter she states that the officer was confused with the list of prescribed drugs she had acknowledged taking prior to the assault and accused her of not mentioning some drugs and lying about her use of others. In consequence of this she states the CPS were led to believe that the forensic report was negative which was cited as a reason for their decision not to pursue the criminal case. Ms Walker makes the point that Diphenhydramine hydrochloride found in her body following the reinvestigation was not ingested by her but had been administered in her drink. She cites the fact that this drug had previously been used in other high profile drug facilitated sexual assaults. She therefore highlights that albeit the CPS concluded that she appeared to have consented to the assault, had they have been properly briefed about the presence of this drug in her body they could have recognised that her ability to defend herself was impaired and would have rendered her consent impossible. Ms Walker states that the officer also failed to seize her clothing, CCTV footage or witness accounts.

Ms Walker alludes to DC McGarry's treatment of her throughout as being aggressive, obstructive, judgmental, and dismissive. She cites telephone calls with the officer and e-mail traffic between her, the officer, and her colleagues as evidence of this. Ms Walker asserts that from the outset the officer had decided that she had not been drugged and this influenced how she investigated or failed to effectively investigate the case. She states that prior to ever meeting the officer when first speaking to her on the telephone the officer told her that she could not dictate the course of the investigation and could not wait for the results of tests but that she had to decide forthwith whether she wanted police to investigate or not. Ms Walker acknowledges that during her interaction with the officer she dismissed her requests to seek other witnesses and accused her of influencing/contaminating witnesses, made damaging remarks and disclosures to her employers which impacted on her credibility with her company and contributed to the manner in which they handled her internal complaint. She also alludes to the officer slamming the phone down on her and effectively excluding her from the investigation to the extent that all communication was made through her partner. Finally Ms Walker believes that DC McGarry was incompetent in her handover of this case to the Sapphire unit causing further delay.

Thereafter Ms Walker evidences having a debrief meeting with DS Ewing, DC McGarry's immediate line manager. She asserts that he was obstructive, refused to show her the toxicology results, despite these already having been provided to her employer, and informed her that if she wanted sight of any documents these would have to be requested via her lawyer. She concludes that it is her perception

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that he was covering up for DC McGarry.

Detective Superintendent Sweeting further identifies during his review that there would have been CCTV from within the venue but that this was not seized. He agrees that Miss Walker had vomited over her clothes at the time and that she had apparently offered these to DC McGarry who declined them. These may have provided analysis of any drug in Ms Walker's system. The officer details that there was a missing period of time for over an hour after witnesses left the bar and before Ms Walker returned to her work place. Nevertheless there appeared to have been no attempt to trace CCTV to identify if Ms Walker appeared on the same. There was apparently CCTV of Ms Walker's condition in the foyer at her work place but no documented evidence to say that the CPS had had sight of this. Finally DS Sweeting evidences a number of inappropriate e-mails sent from DC McGarry to Ms Walker and her colleagues and the lack of supervision this case appeared to have received from DC McGarry's line managers.

The reinvestigation of this matter identified images from CCTV showing Ms Walker in an incapable condition being helped into the Credit Suisse offices between 2100-2200hrs. Further investigation revealed that, contrary to the original submission to the CPS, that the forensic results showed no evidence of drugs other than those prescribed, a drug was identified in Ms Walker's system. There was in fact an indication that Ms Walker had taken a sedative drug without knowing it. It is evident from this reinvestigation that Ms Walker's clothing was later submitted for analysis and this confirmed the digestion of Diphenhydramine, the conclusion being that this drug was present in Ms Walker's stomach contents within hours of her vomiting. The level therein however was unobtainable.

During the reinvestigation the urine sample was also examined for the first time for Diphenhydramine and it was detected and the scientist concluded that it could have arisen from ingestion on the night or within two days or so. This did not correspond with Ms Walker's account of using this drug. She evidenced last using this over a week before the alleged assault. In conclusion Ms Walker may have been given a sedative drug shortly before the alleged assault.

The SOP for the investigation of rape and Serious Sexual Offences states directs that, "SCD2 Sapphire investigates the following rape and serious sexual offences against children and adults", including "Drug induced sexual offences" and "Any other offence of a sexual nature deemed serious by a TP detective supervisor in conjunction with an SCD2-Sapphire supervisor". The SOP also defines a "Serious sexual offence and includes rape and violent sexual assault and "Any offence of a sexual nature deemed especially serious by the investigating officer."

There is no evidence that DC McGarry or her supervisors considered these SOP's and no record on the CRIS system to detail why they were not considered. From the outset it appears that a decision was taken to deal with this as a local investigation. This decision was not challenged during the investigation. In mitigation DC McGarry asserts that she had a great deal of Sapphire SOIT experience and suggests that she was more than capable of dealing with a "Borough based investigation".

Detective Superintendent Sweeting in his review details that, "no input was asked of SCD2" and "although this is a crime that fits within SCD2's remit, this was at a time when our cluster team was extremely stretched and assaults over clothing on adults (were) Borough investigations".

The CRIS report is somewhat scant and gives little if any insight into the decision making process pertaining to the investigation. Similarly the supervision of this CRIS is minimal and does not comply with the SOP. No investigation plan appears to have been prepared and no reviews conducted by either DS Ewing or DI Ford.

Examination of the e-mail traffic between DC McGarry and Tim Rawlins, (Head of Security @ Credit-Suisse), confirms that on 16th June 2010 DC McGarry sent him a copy of Ms Walker's toxicology report, and pictures of Ms Walker detailing her injuries. These clearly show Ms Walker in her underwear. In another e-mail sent by DC McGarry on 29th June 2010 to Mr Rawlins regarding Ms Walker she writes, "Very bitter young lady, I no longer have any dealings with her, I do everything through her boyfriend, as I had to put the phone down on her the other day, as she is now taking to ranting at me". On 11th November 2010 the officer e-mails Mr Rawlins for a copy of CCTV and comments, "one large glass of wine I need more than that with the trauma this woman is causing me".

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Interrogation of the e-mail traffic between DC McGarry and Ms Walker commencing 22nd April 2010 evidences something of the relationship between the two. On 22nd April 2010 Ms Walker e-mails the photographs of her bruises to the officer with a list of six further issues she asks DC McGarry to consider. An extract of DC McGarry's response to Ms Walker on 28th April 2010 directs that, "Can I please ask you to stop talking to other potential witnesses and getting your side of the story across before they are spoken to by police. This is now in their statements and does not reflect well on you". In response Ms Walker e-mails the officer on 28th April 2010 to detail that two witnesses referred to had been told to speak to her by police and that she had not instigated this. DC McGarry's e-mail on 29th April 2010 in reply records, "Amy Hannah and Eily were not told to speak to you, Eily may have contacted you to find out what had happened as I would not discuss it with her or Hannah. You have also sat down with others and discussed the matter before they spoke to police, that has been recorded in their statements. Mr Shillakers solicitor has made an official complaint to me that you are talking to witnesses and I can confirm that you have, having been told by me and your HR that you must not discuss the matter."(sic) On 14th June 2010, Ms Walker sends an e-mail to DC McGarry confirming her use of Nytol sometime previous to the assault. An extract of DC McGarry's responding e-mail on 16th June 2010 records, "You did not tell me about taking Nytol or in fact the new drug you mention below, Seroxat. I have been advised of the e-mail you sent to your HR, intimating that the police have found Nytol as the drug used to subdue you. I have advised you before of jumping in before you have full facts. As yet no one is in possession of the full facts, the lab is still running tests and you are interfering with the course of the investigation. Are you hoping that this will be released to Mr Shillaker? You have been warned before of interfering, this is a serious allegation that you have made and you are not helping your case. You are not to discuss this matter, send e-mails, text messages or any other form of communication while the case is investigated. I hope I have made myself clear."

DC McGarry refutes that her investigation was fundamentally flawed. She asserts that she was allocated the crime and if there had been a breach of the SOP then this was not her responsibility. She denies being aggressive or bullying but acknowledges pointing out to Ms Walker the dangers of carrying out her own investigation and influencing witnesses. She denies being informed of the existence of a coat stained by vomit but does assert that Ms Walker had told her she had taken Nytol during the relevant week. She asserts that she did fail to register the fact that Paroxetine and Seroxat were the same thing but this was since she is not a pharmacist. She acknowledges sending the interim forensic report to Mr Rawlins since she thought it was appropriate and thought he may be able to prevent Ms Walker sending inappropriate e-mails around the company. She denies being made aware of a request to have photographs taken and similarly was not told that Ms Walker had any injuries until being in receipt of the photographs from her via e-mail. She asserts that she took relevant witness statements from those persons present at the bar however states that Ms Walker's allegations that she failed to take a specific one from Mr Baker was irrelevant since his evidence would not have progressed matters. She states at no stage was she asked by the CPS for further clarity re the forensic matters. She agrees that she could have sought further clarity from Ms Walker about her use of Nytol, however in the circumstances she considered that this did not appear to be a major problem. She asserts that Ms Walker was content for her to update her employers and Mr Rawlins. She states that her relationship with Mr Rawlins is not inappropriate however he is a friend. She acknowledges that her CRIS report did not record rationales for certain things or the entire investigative strategy however it was a fair appraisal of the work that she conducted.

DS Ewing refutes failing to properly supervise the CRIS report. He states that he is responsible for supervising between 60/70 crimes at any one time. He asserts that DC McGarry is an extremely capable and experienced detective with expertise in sexual offences since she has previously worked as a SOIT officer and as an investigator within the Sapphire Unit. He states that DC McGarry is his nominated deputy and therefore has A/DS status within the team and requires minimal supervision. He concluded that he has confidence in her ability to compile investigation strategies for both her own investigations and that of other team members. He recalls that the initial reporting officer had discussed the allegation with DC McGarry and he had also discussed this with her and he was content with her action plan. He states that he was not available throughout the whole of the investigation however he had had discussions with the officer and was content with her actions and supervised the CRIS report to that effect. DS Ewing denies ever being obstructive towards the victim or of being selective about the information she was provided with. He denies covering up for a poor investigation. He acknowledges meeting with Ms Walker on 12th August 2010 and being open and frank with her. He agrees that she had asked to see the toxicology report and he had advised her that the Director of Legal Services had informed him that it was not an MPS document and the copyright belonged to FSS. He states that Ms Walker is a qualified chemist and she did ask him some technical questions regarding the forensic analysis which he was not able to answer. No record of this meeting appears in the CRIS report.

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DI Ford refutes failing to supervise DC McGarry's CRIS report. He acknowledges that he is responsible for all crimes within the main CID office and these generally total about 250 live crimes. He states that it is the DS' role to supervise their team's crimes albeit he admits that he has overall responsibility for all crimes within the main office. He agrees that this crime was brought to his attention and he was and still is content with DC McGarry's course of action in relation to the investigation of the same. He concludes that the officer is an extremely capable and experienced officer with a large amount of expertise in sexual offences.

DS Callister acknowledges supervising DC McGarry's MG3 since he was the only officer available. He states that he was sent this and believed that everything appeared in order and he elected to forward it to the CPS. He acknowledges that he is not DC McGarry's line manager.

Criminal Allegations

Nil

Misconduct Allegations

- 1 (ii)(a) Orders and Instructions - DS Ewing, DS Callister and DI Ford failed to properly supervise this investigation.

DS Ewing and DI Ford deny this allegation and assert that DC McGarry was an experienced detective with SOIT and Sapphire experience. Both officers appear to have conducted minimal supervision of this report in consequence of their trust and faith in her abilities. Nevertheless it is clear from the CRIS that SOP's have not been adhered to with regard to this investigation. DS Callister was not DC McGarry's line manager and only had sight of her MG3. He cannot be held responsible for the supervision of this CRIS.

I find however that DS Ewing and DI Ford have a case to answer.

- 2 (ii)(b) Authority Respect and Courtesy - DS Ewing was obstructive and defensive of DC McGarry during a meeting he had with Ms Walker.

Ms Walker identified that DS Ewing was obstructive when challenged about DC McGarry's conflicting evidence to the CPS regarding the drugs found in her urine and refused to provide her with copies of the toxicology report despite this already having been supplied to her employers. This was perceived to be his way of defending the poor investigation conducted by his subordinate.

The officer denies this allegation. Ms Walker attended this meeting on her own and it is apparent that neither DS Ewing nor Ms Walker were aware at the time that the forensic report had previously been disclosed to Ms Walker's employers at Credit Suisse by DC McGarry. The officer acknowledges that he was frank with Ms Walker and had been advised that he was not entitled to disclose the scientists report to her. He does acknowledge reading parts of this out to her however.

Nevertheless without further corroboration I am unable to prove that the officer was deliberately obstructive or defensive in his attitude and I find that there is no case to answer.

Gross Misconduct Allegations

- 3 (iii)(a) Orders and Instructions - DC McGarry, DS Ewing and DI Ford failed to refer this matter to SCD2

The SOP is clear, "SCD2 Sapphire investigates drug facilitated sexual assaults". No referral was made, and no recording for the rationale for not referring this appears to have been documented. The SOP continues, "If a victim presents to police and cannot remember what happened, and the circumstances indicate that an offence may have been committed, the allegation should be treated as a crime until there is evidence to the contrary, even if the victim is unsure what has happened." In these circumstances it is difficult to defend Ms Walker's assertions that had this case been properly referred then proper physical evidence would have been obtained from blood tests which may have proved or negated the offence. Detective Superintendent Sweeting acknowledges that the borough may have felt comfortable with dealing with the case and there would have been no objection for them to have kept this at the outset until all the circumstances were known but any reference to SCD2 would have instantly instigated the provision of a SOIT officer.

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I therefore find that there is a case to answer.

4 (iii)(b) Duties and Responsibilities - DC McGarry failed to refer Ms Walker to the Haven.

DC McGarry acknowledges that she was and is an experienced detective with a great deal, (15 years) of Sapphire and SOIT experience. Nevertheless she appears to have considered that Ms Walker's referral to the Haven was not necessary. She cites in response to her discipline notice that this was since Ms Walker was undecided on how to proceed until the results of the analysis were known. The SOP for, "The investigation of rape and serious sexual offences" under the heading (Drug Facilitated Sexual Assault) directs that a blood sample should be obtained as soon as possible. It is understood that Haven would have arranged for a blood sample as well as providing support/appropriate counselling services to the victim had a referral been set up. DC McGarry appears to have made no record of why this referral was never made on the CRIS record.

The provision of these facilities may have considerably clarified what drugs Ms Walker had in her system at the time of these events. This is significant since even DC McGarry recognised the unreliability of both urine samples. She states that "Both samples were potentially flawed, in terms of the first having no preservative compound in it and the second, having been taken some considerable time after the alleged event". The scientist indicated that whilst urine samples are good for indicating the presence of substances in the body, they cannot provide evidence to show that substances were in the actual bloodstream. Therefore conclusions regarding impairment at the time of the incident/backtracking calculation are more difficult to undertake.

In these circumstances I find that there is a case for the officer to answer.

5 (iii)(c) Duties and Responsibilities - DC McGarry failed to properly investigate this matter.

Ms Walker has identified that the officer did not take statements from police/security officers present in the lobby of Credit Suisse, nor from witnesses in the bar and did not obtain CCTV footage from her work premises. She also asserted that when she invited the officer to take possession of a stained coat she had been wearing the officer declined this and informed her that they had enough samples.

The CRIS report and MG3 completed by DC McGarry identifies that ten statements were obtained in consequence of her investigation. DC McGarry recorded that she visited the scene and there was no CCTV in the bar or in the vicinity. Albeit not mentioned in the CRIS there is evidence from e-mails that CCTV was obtained from Credit Suisse. It is unclear however whether DC McGarry submitted this footage to the CPS the first time. In a further e-mail dated 22.4.2012 Ms Walker provides details of another witness Mr Baker. No statement was taken from him and later efforts by the reviewing team to contact him proved unsuccessful.

Albeit denied by DC McGarry both Ms Walker and her partner evidence offering DC McGarry the stained coat. Ms Walker also mentions in her statement that she had been sick. This coat was submitted for analysis during the second review and clearly identified evidence of a drug on the same which was assumed to have been within Ms Walker's system. There is nothing in the CRIS report to detail whether DC McGarry had a forensic strategy with regard to Ms Walker's clothing. Nevertheless and albeit clear in her response that the coat had never been mentioned to her, as an experienced detective in this field the officer should have given consideration to seizing clothing in these circumstances. It is a moot point whether obtaining further statements from officers or security personnel present at Credit Suisse when Ms Walker was assisted back to the building would have progressed this enquiry further, since other evidence available gave clear indication of Ms Walker's condition.

In these circumstances I find that the officer's failure to consider or record decisions regarding any forensic strategy regarding Ms Walker's clothing did impact on the investigation. I therefore find that she has a case to answer.

6 (iii)(d) Duties and Responsibilities - DC McGarry failed to arrange for photographs to be taken of her injuries.

PC Best recording this allegation identifies that Ms Walker showed her bruising to her knees and a bump behind her right ear but no other injuries. The report details that Ms Walker believed that she

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might have sustained these from falling over. There is no mention on the CRIS report of a photographer being requested. DC McGarry denies knowing of any request for photographs to be taken and states that her injuries were never mentioned to her and she was only aware of them when the photographs arrived by e-mail. Ms Walker is unable to identify who she spoke to regarding this matter only that it was another officer whom she spoke to after recording her complaint. She states that she returned to the station on 17th April 2010 and told a member of staff that she had bruises and this person advised her to take photographs of herself. This is a slightly different version of events that Ms Walker describes in her statement of complaint. In this she recalled that having made her allegations of sexual assault she was advised that a photographer would attend her home address and photograph her. When the photographer failed to arrive she was then told by another officer to go home and take photographs herself.

In these circumstances I cannot prove who or when it was that Ms Walker was told to take her own photographs. Had DC McGarry been made aware that Ms Walker had injuries then I would have expected her to arrange for these photographs to be taken, however I cannot prove or negate the officer's version of events that she was not aware of these injuries. I therefore have to find that the officer has no case to answer.

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(iii)(e) Duties and Responsibilities - DC McGarry failed to properly present this case to the CPS.

Ms Walker asserts that this stemmed from DC McGarry's failure to understand and follow up on the results of the analysis of her urine sample. DC McGarry acknowledges contacting Ms Walker on 14th June 2010 to ask her if she had taken any sleep aids and being told that she had taken Nytol that week. This is not recorded on the CRIS report however and e-mail from Ms Walker on 14th June 2010 states that she was confident that she had not knowingly ingested any Nytol at any point that week. The forensic report did detail that Diphenhydramine Hydrochloride was detected in the urine sample. Nevertheless DC McGarry advised in her documentation to the CPS that the forensic report was negative. (Nytol contains Diphenhydramine.) Ms Walker states that the CPS rationale for advising no further action was therefore flawed since the presence of this drug in her system was not properly communicated to them and their comments that she had consented to the activity and had not said no should have been looked at in the context of her being under the influence of this drug which would have rendered consent irrelevant.

Ms Walker refers to the fact that she has examined a copy of DC McGarry's CRIS investigation log and the CPS advice provided at the time. Whilst Ms Walker's copy was clearly redacted before being provided to her the full original entry makes reference to other apparent weaknesses in the overall case evidence, particularly in relation to the accounts provided by others present during the incident. Ms Walker may therefore have drawn some of her conclusions from incomplete information as it is clear from an examination of the full CPS advice note that there were a number of other issues from which the reviewing lawyer drew conclusions in reaching the decision not to proceed with the case.

Nevertheless a statement from Ms Walker may have clarified the presence of drugs or not in her system however this does not appear to have been considered. DC McGarry asserts that she was not a pharmacist and the forensic report was in the case file and had the CPS requested clarification she would have sought this. She does not allude to why she reported in the first instance that the forensic report was negative when clearly it was not.

In these circumstances I submit that there is a case to answer.

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(iii)(f) Discreditable conduct - DC McGarry inappropriately disclosed information and reports to Ms Walker's employers.

E-mail evidence identifies that DC McGarry forwarded details of Ms Walker's medical treatment and the results of her toxicology report to her employers at Credit Suisse. DC McGarry additionally disclosed photographs of Ms Walker's injuries to Mr Rawlins. These show Ms Walker in a state of undress. DC McGarry justifies these disclosures by asserting that she sent Mr Rawlins the interim forensic report since it was appropriate that he should be aware of how the investigation was progressing and since she felt he could influence Ms Walker and prevent her sending inappropriate e-mails to other members of staff. The officer fails to justify her disclosure of Ms Walker's pictures and only comments that Ms Walker was content for her employers to be kept updated.

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Disclosure of medical details, photographs and forensic reports to persons who have no right to such disclosure is clearly unacceptable, unjustified and potentially damaging both to the reputations of the Metropolitan Police Service and more importantly Ms Walker.

I find that the officer has a case to answer.

- 9 (iii)(g) Authority Respect and Courtesy - DC McGarry sent inappropriate e-mails to Ms Walker, was dismissive of her in phone calls and was unprofessional in the comments she made about her to her employer.

E-mail traffic between DC McGarry and Ms Walker evidences the officer's attitude towards Ms Walker from the outset. The content of these for the most part are curt, rude and entirely unnecessary. It is also apparent that on one occasion the officer put the phone down on Ms Walker. In comments made to Mr Rawlins DC McGarry describes her as "Very bitter young lady" and comments, "One large glass of wine I need more than that with the trauma this woman is causing me". Thereafter DC McGarry informed Mr Rawlins that Ms Walker had made a complaint and commented that, "I would anticipate that a tribunal hearing will be winging its way towards CS". Other e-mails state, "I have just seen the letter from her, you are mentioned", and "we can do lunch".

Ms Walker comments on the tone of the correspondence between Mr Rawlins and DC McGarry which she asserts is overly familiar, and unprofessional. Ms Walker's perception was that this correspondence smacked of collusion with the company and entirely diminished her confidence in the officer's objectivity. The officer does acknowledge being friends with Mr Rawlins and clearly this has influenced her judgement in the nature of the e-mails and disclosures she has made to him. Albeit DC McGarry's justification for her responses to Ms Walker were to prevent her contaminating witnesses the tone and content of these communications were unnecessary.

In these circumstances I find that the officer has a case to answer.

- 10 (iii)(h) Duties and Responsibilities - DC McGarry's handover to the Sapphire unit was incompetent.

Ms Walker refers to the delay in both finding the case file and having to relocate CCTV and statements as being evidence of this. There is evidence that DC McGarry had to e-mail Mr Rawlins for copies of statements from Credit Suisse employees and for CCTV footage since she appeared to have mislaid these. Nevertheless evidence from the reviewing officer DS Dilworth refutes this. He states that no undue delay took place and he received all the necessary material to enable him to review the case appropriately.

In these circumstances I find that the case is not substantiated.

(2) Disposal Considerations

- (ii)(a) Orders and Instructions DS Ewing and DI Ford failed to properly supervise this investigation
- (iii)(a) Orders and Instructions DC McGarry, DS Ewing and DI Ford failed to refer this matter to SCD2
- (iii)(b) Duties and Responsibilities DC McGarry failed to refer Ms Walker to the Haven
- (iii)(c) Duties and Responsibilities DC McGarry failed to properly investigate this matter
- (iii)(e) Duties and Responsibilities DC McGarry failed to properly present this case to the CPS
- (iii)(f) Discreditable Conduct DC McGarry inappropriately disclosed information and reports to Ms Walker's employers
- (iii)(g) Authority and Respect and Courtesy DC McGarry sent inappropriate e-mails to Ms Walker was dismissive of her in phone calls and was unprofessional in the comments she made about her to her employer.

D. Recommendations on Other Issues

(a) Learning Points for the Individual / Service

Nil

(b) **Health and Safety**

Nil

E. Other Matters

This case has been subject to review by the DPS Hearings Unit who identified that DC McGarry should face a Misconduct Hearing for Gross Misconduct. The officer resigned before this Hearing took place. The failures by DI Ford and DS Ewing were assessed as Misconduct and the file was referred to Tower Hamlets Borough Professional Standards Champion (PSC). In the intervening period, DI Ford reported his intention to retire and will not therefore be subject to any intervention.

Tower Hamlets PSC assessed the evidence against DS Ewing and has directed that he will be subject to Management Action.

Management action may include:

- Pointing out how the behaviour fell short of the expectations set out in the Standards of Professional Behaviour
- Identifying expectations for future conduct.
- Establishing an improvement plan.
- Addressing any underlying causes of misconduct.

The officer may in some cases be advised that if the conduct is repeated or if there is further conduct of a different type then this may lead to disciplinary action for misconduct.

Even if the police officer does not agree to the management action it can still be imposed by the manager providing such action is reasonable and proportionate.

The investigative process is now concluded. You have the right to appeal under the Police (Complaints and Misconduct) Regulations 2004 if you wish to challenge the outcome of this investigation. An appeal can be made on any of the following grounds (though not all may apply to your particular case) :

- That the police failed to provide you with information about the investigation once complete.
- That the findings of the investigation are not adequate.
- That the proposed action resulting from the investigation is not adequate.
- That the police will not be referring the investigation of your complaint to the Crown Prosecution Service.

The appeal must be in writing and will need to be made within 28 days from the date of this letter. Appeals received after 28 days may not be allowed, unless there are exceptional circumstances. If you have current access to a computer, an appeal can be submitted on line. Further details about the appeals process and the relevant forms can be found at the IPCC website www.ipcc.gov.uk.

Alternatively, a written appeal can be posted to :

Independent Police Complaints Commission
90 High Holborn
London
WC1V 6BH