

# PCCS



Police Complaints Commissioner  
for Scotland

**Request for complaint handling review of a complaint about**

**Lothian & Borders Police**

**under the provisions of  
the Police, Public Order and Criminal Justice (Scotland) Act 2006**

**October 2008**

Case reference: PCCS/0810/00332/PF-L&B

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## **Introduction**

The role of the Police Complaints Commissioner for Scotland was established by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the Act”) to consider and review the way police authorities, police forces and policing agencies handle complaints from the public. I was appointed by the Scottish Ministers as the first Police Complaints Commissioner for Scotland, taking up my powers from 1 April 2007. My office provides a free and independent service, reviewing the handling of complaints fairly, looking at both sides of what has happened and looking at the facts.

I aim to review complaints in an independent, open and fair manner. In line with this aim I will publish the reports of my complaint handling reviews, whilst bearing in mind individuals’ rights to confidentiality. The following report therefore details my consideration, but does not include individual names of complainers, police officers or others affected by the events detailed therein.

## **1. Request for review**

The complainer has requested that I review the handling of his complaint about Lothian & Borders Police.

The complainer is dissatisfied with the force procedures and protocol in respect of the recovery of vehicles, which have been subjected to criminal damage or forced entry by a third party. Specifically, he is unhappy that he had to pay £150 to recover his vehicle when he was the victim of a crime.

## **2. Power to conduct a complaint handling review**

Section 35 of the Act provides me with the authority to examine the manner in which an appropriate authority has handled a complaint about a police officer, member of police staff or the service provided by a relevant authority.

In order to carry out such a complaint handling review I request the complaint case papers from the force in question. I examine the facts of the complaint case, looking at information provided to me by both the complainer and the police force. I consider whether the information available does, or does not, support the complaint, and whether or not the force has responded to the complaint in a reasonable manner. I also consider whether the force communicated with the complainer in a reasonable manner, including whether the police force handled the complaint within a reasonable timescale. I then come to a view whether the conclusions drawn by the force in handling the complaint were reasonable in all the circumstances.

Once I have reached my conclusions I prepare a report which details the findings of my case handling review. This is then forwarded the relevant authority in accordance with section 35(3) of the Act. The complainer will be advised of the conclusions of this review and of what action, if any, I propose to take in consequence of those conclusions. Where the complaint is in respect of an act or omission by an individual police officer that person will also be informed of the conclusions of this review.

### **2.1 Relevant complaint**

Section 34 of the Act provides that I may review the handling of a complaint where the complaint is “a relevant complaint”, defined as

*(1) ... a complaint which is given or sent ... to the appropriate authority in relation to the complaint.*

*(2) .... “complaint” means a written statement expressing dissatisfaction about an act or omission...*

*(3) But “complaint” does not include*

- (a) any statement made by a person serving with, or who has served with, the police, about the terms and conditions of that person's service with the police; or*
- (b) a statement which consists of or includes an allegation of an act or omission which constitutes a crime.*

The complainer has supplied a written statement expressing dissatisfaction about an act or omission by a force. The complaint is therefore a relevant complaint.

## **2.2 Relevant complainer**

The Act further provides that I may review the handling of a complaint where the complainer falls within one of the following categories (section 34(6)):

- (a) a member of the public who claims to be the person in relation to whom the act or omission took place;*
- (b) a member of the public not falling within paragraph (a) who claims to have been adversely affected by the act or omission;*
- (c) a member of the public who claims to have witnessed the act or omission;*
- (d) a person acting on behalf of a person falling within any of paragraphs (a) to (c)*

The complainer is a member of the public who claims to have been adversely affected by an act or omission by the police. The complainer is therefore a relevant complainer under the terms of section 34(6)(a).

## **3. Background**

The complainer parked his vehicle legally on 10 March 2008. On returning to his vehicle later that day he found that it was missing and contacted Lothian & Borders Police. The force confirmed to the complainer that a member of the public had reported that the window of his car had been smashed. Lothian & Borders Police stated that it had deemed the vehicle "unsecure", and following several unsuccessful attempts to contact the complainer, they had arranged for a local garage to uplift the vehicle and impound it.

The complainer visited the garage the following day to retrieve his car and was informed that he would have to pay a non-refundable charge of £150 to recover the vehicle. The complainer paid the fee and contacted the force to express his dissatisfaction about the charge stating that, as a victim of crime, he was unhappy as he was the one being punished.

#### 4. Force internal handling

The complainer contacted Lothian & Borders Police by telephone on 12 March 2008 expressing his dissatisfaction at having to pay the vehicle recovery fee of £150.00. The enquiry note provided in the file supplied to my office, states that Inspector A explained the National Vehicle Recovery Scheme to the complainer during the conversation.

The complainer sent an email on 20 March 2008 to the Chief Constable of Lothian & Borders Police. He stated that he was dissatisfied with the explanation provided by his local police station regarding the procedures and protocol for recovery of vehicles.

Lothian & Borders Police completed a Complaint about the Police form on 24 March 2008 and recorded the complaint as a quality of service complaint about policy and procedure.

Lothian & Borders Complaints and Conduct Department sent a letter of acknowledgement on 27 March 2008 to the complainer, and stated that a senior officer would be appointed and would contact him in due course.

Inspector A contacted the complainer by email on 13 May 2008 and provided a detailed explanation into the circumstances surrounding the policy and process implemented in respect of the recovery of vehicles, which have been subjected to either criminal damage or forced entry. Inspector A explained the Vehicle Recovery Scheme to the complainer, which sets out the practices for common standards of recovery of vehicles, adopted by the eight Scottish police forces. Inspector A advised the complainer that:

*“In order to set out a common standard of recovery, a Vehicle Recovery Scheme (VRS) user group was put in place with representatives from each of the eight forces.”*

*“...the call out arrangements are facilitated through the Automobile Association, who in response to a request from the police, arrange for the nearest available authorised recovery operator to attend.... The call out fee and recovery charges is set independently by these companies but is of parity across the country. The Police receive no part of the fees charged in this process.”*

*“The criteria for utilising the recovery scheme are again of an agreed standard. As in instances such as you have experienced, any vehicle that has been found subject of attack or appears to have possibly been stolen but unreported, the attending officer having taken all reasonable steps to contact the owner without success, can if they are of the opinion that the vehicle due to it's current situation and condition is likely to suffer further attack, will arrange for the vehicle to be removed by the VRS to a secure compound.”*

*“The reason behind this authorisation in absentia by proxy was as a consequence of claims made upon police authorities for compensation to damage sustained or even ...theft of their vehicles after the apparent attention by police officers.”*

*“With regards to the circumstances of your particular case, as your vehicle is registered in..... where it was subsequently broken into, which has been subject of considerable criminal activity and was regarded as a “crime hot spot”, these indicators in conjunction with the fact that you could not be contacted at your home address, gave rise to the officer having your vehicle secured by VRS.”*

*“In conclusion whilst the foregoing explanation does not alleviate your fiscal status as a consequence of the implementation of our policies in this instance, I would hope that you would agree that the actions of the officers on this occasion was carried out with best of intention and in accordance with working practices.”*

The complainer acknowledged this email on 16 May 2008 and thanked the Inspector for his detailed response.

## **5. PCCS review**

An email was received by my office on 14 April 2008. The complainer was asked to complete and sign an application for review form which was received on 13 May 2008 together with other relevant information.

My office asked Lothian & Borders Police to provide the relevant complaint case papers on 14 May 2008. However, the force had not concluded the complaint review at this time. Lothian & Borders Police supplied the required information on 19 June 2008. The force also provided its Vehicle Recovery Scheme (VRS) guidelines with the complaint papers.

My office requested a copy of the “Vehicle Audit Document” (VAD) from the force on 6 October 2008 which was provided on 9 October 2008.

The complainer was updated on the progress of his complaint every 28 days in accordance with the PCCS published standards of service.

## **6. Consideration**

The complainer has asked me to review his complaint about Lothian & Borders Police. The complainer states that he is dissatisfied that he, as a victim of crime, had to pay a charge of £150 to an independent garage to recover his vehicle, following damage to his car by an unknown third party. The complainer’s initial

contact email with the force on 20 March 2008 stated that he was dissatisfied with the explanation provided to him by his local police station. He requested that the force provided justification for the charge levied against him and that it provide a full refund. He also requested confirmation of what measures were taken to contact him prior to the decision by the officers involved to impound the vehicle.

Force records confirm that the vehicle details were matched with the owner and his address details confirmed at the time of the incident. The force incident report detailing the event shows that attempts were made to trace the owner of the vehicle. It also shows an officer was in attendance at the vehicle over a period of approximately two hours. I note within the papers supplied to me that the complainer asked why there was no message left on his home telephone. It is unclear from the information provided to me if attempts were made to obtain telephone contact details for the complainer. As the complainer lived outwith the area in which his car was parked, Lothian & Borders Police would have had to contact another police force to make contact or leave a calling card.

I am satisfied that the response provided to the complainer by Inspector A was thorough and detailed. The complainer accepted the explanation provided and emailed the force on the 16 May 2008 acknowledging that:

*“Your thorough and detailed response is greatly appreciated.”*

The force recorded this complaint on 24 March 2008 and carried out a full and thorough investigation concluding on 13 May 2008. It is my view that the force recorded and concluded this complaint within an acceptable timescale.

It is unfortunate that the complainer, as a victim of crime, was required to pay recovery costs before being able to retrieve his vehicle. I will be writing separately to Her Majesty’s Inspectorate of Constabulary in order that it can consider the application of the Vehicle Recovery Scheme and the relevant legislation.

## **7. Conclusion**

Inspector A provided a thorough and detailed explanation to the circumstance surrounding the incident. In light of this, and the fact that the force carried out a full and timeous enquiry, **I do not uphold this complaint.**

Jim Martin  
Police Complaints Commissioner for Scotland  
October 2008