

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

Tayside Police

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

October 2008

Case reference: PCCS/0810/00436/PF-TP

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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 a complaint about Tayside Police. The complainer's complaint originates from his relative's vehicle being removed from the scene of a road traffic accident in which his relative was involved.

Complaint – That, following a road traffic accident, the force should have informed the complainer's relative of the cost of transporting his car to a local garage.

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 the act or omission. The complainer is therefore a relevant complainer under the terms of section 34(6)(b).

3. Background

On 7 June 2008, the complainer's relative was involved in a road traffic accident. The complainer's letter of complaint to the force stated that when police officers arrived at the scene, they asked his relative what he wanted to do with his car to which his relative, who was shaken up, responded that '*he did not know*'. This letter of complaint also states that one of the officers said the force would '*get it towed away*' with no mention made of any costs that might be incurred.

The complainer's letter stated that it was only after his relative and the vehicle had been transported to a local garage a few miles away that his relative was advised there would be a charge for this service.

The complainer's letter also stated:

'Dealing with this incident would be standard police procedure, and my complaint is that [my relative] should have been made aware of the cost of the transportation before it was organised'.

The complainer's letter concluded by stating that had his relative been made aware of the cost of the transportation of his vehicle, he would have contacted the complainer in order to have the vehicle transported by him.

4. Force internal handling

On 9 July 2008, Tayside Police Road Policing Unit responded to the complainer with its conclusions on the matter. The letter, sent by Sergeant A, explained to the complainer:

'I understand your [relative] was given the opportunity to arrange recovery of his vehicle by the police officers on the scene. As he was unable to do this and the vehicle was insecure and could not remain in situ, they offered to arrange recovery of the vehicle on his behalf, as is normal procedure in such circumstances.

This was arranged with the nearest available recovery operator within the Tayside Police Vehicle Recovery Scheme.....in compliance with the best practice recommendations of the Association of Chief Police Officers Traffic Committee.....The fee charged by them of £150 plus VAT is in accordance with that recommended by the Association of British Insurers and accepted by all insurance companies.

I would advise you that Tayside Police neither receive any monies from such recoveries nor do they set any recovery rates, therefore police officers cannot give any indication of what charges might be.'

5. PCCS review

A telephone call was received by my office from the complainer on 25 July 2008. The complainer was asked to complete and sign an application for review form which was received on 4 August 2008. The complainer also enclosed a letter to my office dated 31 July 2008 commenting on the response he had received from Sergeant A. This letter detailed the following observations:

- The reply from Tayside Police did not address his complaint;
- His relative did not call the police – they were passing on routine patrol;
- His relative was told by the police that his car could remain in situ;
- The reason his relative could not make a decision was that he was still trying to regain his composure after the accident; and
- The removal of the car would be standard police procedure. The garage used was about 2-3 miles away and it was about 3.30 in the afternoon. The officers involved would have known the cost of transportation.

My office asked Tayside Police to provide the relevant complaint case papers by 18 August 2008. On 5 August 2008, the force Professional Standards Department responded that:

'following enquiries it has been ascertained that no complaint or correspondence has ever been received from [the complainer]'.

On 7 August 2008, my office contacted the force to advise that, notwithstanding the above response, the force had been made aware of the complainer's letter of 30 June 2008 and had responded.

On 13 August 2008, my office received a letter from Chief Inspector B in which he stated:

'Following receipt of the letter from [the complainer] the matter was referred directly to our Road Policing Unit (RPU) who deal with all queries regarding the recovery of vehicles anywhere in the force area under the terms of the national Vehicle Recovery Scheme.

Enquiries were conducted into the issues raised by [the complainer] and a response was sent to him by Sergeant A, of our RPU on 9 July 2008 explaining the Force position on the matter.

Unfortunately no one at Road Policing Unit has identified this as a Complaint Against the Police and as such Professional Standards Department were never made aware of the circumstances. The matter was dealt with solely by RPU....We have since logged this matter as a Complaint Against the Police.

To this end I would advise that we consider all relevant enquiries to have been concluded in respect of this matter and that the paperwork already in your possession constitutes all that is available to assist you in your deliberations'.

On 18 September 2008, my office contacted the force requesting the force's guidance on the Vehicle Recovery Scheme, as referred to in Chief Inspector B's letter. My office also asked for policy, guidance or procedure on the seizure, removal and disposal of vehicles. This information was received from the force on 19 September 2008.

6. Consideration

Complaint – That, following a road traffic accident, the force should have informed the complainer's relative of the cost of transporting his car to a local garage.

I note that the complainer's letter to the force stated that he wished to:

'make a formal complaint about the lack of proper police procedure in dealing with the car accident that my [relative]....was involved in'.

The complainer explained that his complaint was that his relative should have been advised not only that there would be a cost but also the actual cost for the transportation of the vehicle to a nearby garage before it occurred.

The force position on the circumstances surrounding the vehicle being transported is contained in Sergeant A's letter of 9 July 2008. I note that Sergeant A explained to the complainer that his relative's vehicle was *'insecure and could not remain in situ'* and that the officers at the scene offered to arrange the recovery on his relative's behalf. I note that the complainer's letter to my office dated 31 July 2008 disputes Sergeant A's explanation that the car *'could not remain in situ'*.

It is not clear from Sergeant A's explanation whether the vehicle could not remain *'in situ'* because it was insecure or whether the vehicle could not remain *'in situ'* for any other reason. As a result of this, it is also unclear whether the vehicle was transported under legislative powers available to the force or whether, as the complainer's relative could not do so himself, the force assisted the complainer's relative in helping to remove the vehicle to a nearby garage.

In relation to the complainer's concern that his relative should have been made aware that not only would there have been a cost incurred, but what that actual cost should have been, I note that Sergeant A advised the complainer that as the force do not charge recovery rates *'police officers cannot give any indication of what charges might be'*. Whilst Sergeant A's response is correct in that the force do not set recovery charges, it fails to address the complainer's concern that his relative should have been advised that a cost of some sort would have been incurred in having his vehicle transported. I note that the Vehicle Recovery Scheme Standard Operating Procedure (SOP) used by the force offers no guidance to officers regarding what information a member of the public should be given in such circumstances.

I note that the Vehicle Recovery Scheme SOP shows that complaints made about the force in this area are divided into two main categories:

- 1) Service delivery issues
- 2) Queries on Police Powers, Costs etc.

The Vehicle Recovery Scheme SOP shows that upon receipt of a complaint, if it concerns police powers or costs, it is 'communicated' to the Chief Inspector at the RPU headquarters. The guidance also shows that:

'The [Vehicle Recovery Scheme] Liaison Officer, on receipt of this information will then inform the [Vehicle Recovery Scheme] Administrator who will communicate with the [Vehicle Recovery Scheme] Manager to arrange for an appropriate response to be forwarded to the complainer'.

The guidance also shows that if the complaint concerns *'service delivery issues'*:

'All service delivery issues will be dealt with in the normal manner as detailed in the Force guidelines/policy'.

It is my view that the complainer's complaint about the police could be divided into two areas. Firstly, the quality of service his relative received from the officers who attended the scene on 7 June 2008 and secondly about the costs involved. However, I note that in this case the force has concentrated on the cost issue and appeared to have followed the guidance contained in the Vehicle Recovery Scheme SOP. It is not clear why a distinction between the handling of such complaints is contained in this guidance. In relation to the first aspect of the complaint I would have expected the force to have handled the complainer's complaint as it would any other service delivery complaint. From the file supplied it appears that the Professional Standards Department (PSD) was not informed of the complaint that was dealt with by the Road Policing Unit until the matter was brought to its attention by my office. Although the PSD did, on becoming aware of the complaint, record it as such, it appears that its lack of involvement may have had an impact on the handling of the complaint, as there are issues which, from the complainer's perspective, appear to remain unresolved.

Given the content of the complainer's letter to my office dated 31 July 2008, and the fact that the PSD did not have the opportunity to consider and respond to this complaint, it is my view that the force should now revisit the complaint according to the procedure laid down in the Vehicle Recovery Scheme SOP and provide a response to the complainer addressing each of the concerns he has raised with my office.

As a consequence of both this and another review of a complaint about a force's application of the Vehicle Removal Scheme¹, and apparent inconsistencies in Vehicle Removal Scheme Standard Operating Procedures, I will be writing separately to the Association of Chief Police Officers Scotland in order that it can consider the application of the Vehicle Recovery Scheme Standard Operating Procedure and the relevant legislation.

7 Conclusion

Complaint – That, following a road traffic accident, the force should have informed the complainer's relative of the cost of transporting his car to a local garage.

It does not appear that the force has fully addressed aspects of the complainer's letter to the force of 30 June 2008. Therefore, it is my view that the force should now **revisit the complaint, taking into account the additional information contained in the complainer's letter to my office dated 31 July 2008 and provide a response to the complainer.**

¹ PCCS/0810/00332/PF-L&B

Given that the Vehicle Removal Scheme Standard Operating Procedure complaint handling section specifies that certain classes of complaint should be treated differently, I have decided in the first instance that the force should satisfy my office that complaints about Tayside Police in this area have been properly recorded.

Jim Martin
Police Complaints Commissioner for Scotland
October 2008