

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

Strathclyde Police

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

October 2009

Case reference: PCCS/0910/00683/PF-SP

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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 bodies handle complaints from the public. The Commissioner 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.

The Commissioner aims to review complaints in an independent, open and fair manner. In line with this aim the Commissioner will publish the reports of his complaint handling reviews, whilst bearing in mind individuals’ rights to confidentiality. The following report therefore details the Commissioner’s 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 the Commissioner to review the handling of his complaint about Strathclyde Police. The complaint involves a number of issues, all originating from action which two Strathclyde Police officers took on 29 November 2008. The complaint is that Constables A and B failed to use their discretion, which resulted in the complainer being issued with a fixed penalty notice for speeding;

The complainer has also expressed his dissatisfaction that the responses he was given to the above complaint were not adequate and did not address the specific issues raised.

2. Power to conduct a complaint handling review

Section 35 of the Act provides the Commissioner 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 the Commissioner's office requests the complaint case papers from the police body in question. The Commissioner examines the facts of the case, looking at information provided by both the complainer and the police body. The Commissioner considers whether the information available does, or does not, support the complaint, and whether or not the police body has responded to the complaint in a reasonable manner. The Commissioner also considers whether the police body communicated with the complainer in a reasonable manner, including whether the police body handled the complaint within a reasonable timescale. The Commissioner then comes to a view on whether the conclusions drawn by the police body in handling the complaint were reasonable in all the circumstances.

Once the Commissioner has reached his conclusions he prepares a report which details his findings. This is then forwarded to 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, the Commissioner proposes 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 the Commissioner 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 police body. The complaint is therefore a relevant complaint.

2.2 Relevant complainer

The Act further provides that the Commissioner 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

According to the statement he gave to Strathclyde Police in relation to his complaint, on 29 November 2009 the complainer was driving his vehicle with his wife and two children at 30 miles per hour (mph) in a 30 mph zone. The complainer states that, as the speed limit for that particular stretch of road was about to change to 60 mph, he began accelerating. The complainer was then stopped by Constables A and B for travelling at 44 mph in a 30 mph zone and issued with a fixed penalty notice. Although the complainer accepted he was speeding, he stated that he was “within a stone’s throw of being entirely legal at 60 mph” when the officers waved him down. He asserts that when pulled over he was told by the two officers that he was breaking the law and in this instance it was important that he was stopped as he was approaching a blind summit. The complainer believes that, given the short distance

he was from the 60 mph zone, the officers should have used their discretion, spoken with him and issued him with a warning rather than a fixed penalty notice.

Constable A and B's statements show that they had been undertaking speed-checks in the area using a hand-held device. According to their statements, the complainer was monitored travelling at 44 mph in a 30 mph zone from a distance of 320.06 feet from where they were positioned. Constable B stated that the point at which the complainer was caught speeding was at least 390 feet from the national speed limit sign, which was situated behind Constable B. He added that the complainer was signalled to stop where he and Constable A were positioned.

Both Constables confirm that the complainer was advised of the reasons he was stopped and why both officers were in the area. The officers' statements also show that the complainer was then cautioned and charged and issued with a notice of conditional offer of fixed penalty.

4. Internal handling

The complainer made his complaint to Strathclyde Police in a letter dated 30 November 2008. In the letter, the complainer gave some background details and stated that he believed some of the policies and actions of Strathclyde Police were "misplaced". The letter also detailed the complainer's belief that he was unreasonably penalised and that the action taken by Constables A and B was akin to:

"...easy picking and cowardly action, which smacks of bullying".

The complainer's letter also conveyed his belief that, because he was "distracted by the injustice" of what had occurred, the officers' actions actually increased the chances of him and his family being involved in an accident later in their journey.

Following receipt of the letter, Inspector C was given the responsibility of making enquiries into the complaint. Inspector C obtained a statement from the complainer on 9 December 2008 which confirmed his position that he believed the officers should have used their discretion before issuing a fixed penalty notice. According to his statement, the complainer's desired outcome was that:

"...the officers should be warned and be provided with additional training on the use of discretion."

Inspector C also obtained statements from Constables A and Constable B in which they set out their own positions on the events. Both officers stated that although the complainer had been obstructive, they had remained professional throughout the incident. Constable A's statement concluded:

"A great deal of restraint was shown to [the complainer] on my behalf and he was dealt with in the professional manner that Strathclyde Police would expect from its officers. It's disappointing that a more common sense

approach was not taken initially when this supposed complaint was taken and I fail to see any grounds for a complaint in this case”.

Acting Inspector D prepared a report into the complaint on 5 January 2009. This report was submitted to Chief Inspector E of Strathclyde Police’s Road Policing department on 27 January 2009.

Acting Inspector D’s report noted the complaint in the following terms:

“The complainer alleges that on Saturday 29th November on the A82 at Tarbert, the officers concerned should have listened to his explanation before issuing him with Endorseable Conditional Offer of Fixed Penalty E1023888 for speeding.”

Acting Inspector D’s report detailed the accounts given by the complainer and the officers, and concluded:

“...other than the evidence of the police witnesses involved and [the complainer] there is no further evidence available from any other source which can corroborate the complainer’s version of events. The complainer’s wife was in the front seat passenger but remained in the car throughout the entire incident.”

Acting Inspector D also commented;

“The complainer and his wife have been contacted by phone by Chief Inspector E. He is remaining with his initial complaint that the officers showed no discretion by issuing him with a ticket without taking into account his explanation as to why he was speeding. An explanation was given to him and the options available to him and that the matter regarding Fixed Penalty was his decision meantime.”

Superintendent F provided Strathclyde Police’s formal response to the complaint in a letter to the complainer dated 2 February 2009. Superintendent F stated:

“I note from your statement that you believe that it would have been more appropriate for the police officers involved to have taken some time to speak with you prior to issuing the fixed penalty notice. Indeed, I understand that it is your opinion that had they done so they may have considered using their discretion and may have issued a warning as opposed to the ‘ticket’. Unfortunately, given that the ticket was issued, I cannot comment further regarding these particular circumstances...”

I fully expect my officers to take robust action in relation to all instances of speeding that they detect as, in my view, there is simply no excuse for failing to obey a speed limit...

Unfortunately, any person who fails to obey a speed limit runs the risk of detection and prosecution...

Having considered the contents of [Acting Inspector D's] report in full, I am satisfied that the officers concerned took appropriate action in the circumstances.'

The complainer responded to Superintendent F on 28 February 2008, stating that his letter neglected to comment on:

"...the tactics used by the officers placing themselves virtually beside the end of maximum speed limit signs...and your officers took "a snapshot" literally within a few feet of a 60 mph speed area...In their rush to issue the ticket they failed to take account of all the factors and jumped to false conclusions e.g that the hired car vehicle speed only seconds before they lasered it was less than 30 mph and that I was in all respects driving safely, fully alert and with due consideration for all other road users."

The complainer also stated that Superintendent F's response did not address his belief that the actions of Constables A and B made it more likely for him to have an accident later that day. The complainer requested that Strathclyde police consider changing its policies to "catch those who really do pose a threat to road safety" and stated that Strathclyde Police was unable to do this he would pass his complaint to the Commissioner's office.

Superintendent F responded to the complainer in his letter 28 February 2009, stating:

"My position in respect of this matter is clearly detailed in my previous response. I regret I can be of no further assistance to you."

5. PCCS review

On 13 March 2009, the Commissioner's office received by email a letter of complaint from the complainer. The complainer was asked to complete an application form which, together with other relevant information, was received on 31 March 2009.

The Commissioner's office asked Strathclyde Police to provide the case papers on 8 April 2009 and again on 5 May 2009. Strathclyde Police supplied this information on 13 May 2009.

6. Consideration

It is clear from the complainer's correspondence to the Commissioner's office and Strathclyde Police that, upon being caught speeding, he was unhappy that the officers involved failed to use their discretion and that he was issued with a fixed penalty notice. There appear to be several reasons for his dissatisfaction:

- that he was only a few feet away from the 60 mph limit when "lasered";
- that Constable A and B's actions made him more of a danger on the road; and

- that Constables A and B did not let him explain that he had been in a serious road accident 2 weeks previously.

The complainer believes that had the officers taken the above factors into account, they could have exercised their discretion in favour of issuing a warning rather than a fixed penalty notice.

In relation to the first reason, the complainer raised this issue in his statement and in his letters to Strathclyde Police dated 30 November 2008 and 28 February 2009. It appears to be the complainer's belief that, in using the hand-held device so close to the change in speed limit, Constables A and B were acting in an underhand manner.

It is clear that the complainer believes he was driving at 44 mph only a few feet away from the change in limit. However, Constables A and B state that the complainer was caught speeding more than 320 feet from where they were positioned. Constable B stated that this would have been at least 390 feet away from (ie before) the 60 mph speed limit section of the road.

The complainer has consistently communicated his belief that he was caught only a few feet away from the 60 mph speed limit. However, it does not appear that Strathclyde Police isolated this particular area of concern or conveyed to him Constable A and B's accounts as to the precise distance he was from the national speed limit sign when he was detected speeding. In the Commissioner's view, had they done so it might well have assisted in resolving this aspect of the complaint.

In relation to the second reason, it is clear that the complainer does not dispute that he was speeding. However, he believes that because of his sense of injustice at being stopped at what he thought was a few feet from the change in the speed limit, he became more, not less, of a risk on the road.

In the Commissioner's view, the officers cannot be held responsible for any sense of injustice felt by the complainer as a result of his receiving the fixed penalty. As noted above, there is no dispute that the complainer was speeding at the material time. He alone is responsible for the consequences which arose from that. However, it is clear that the complainer's concern relates not to the fact that he was speeding but to *where* he was doing so. If Strathclyde Police had informed the complainer that he was caught speeding, not a few feet, but hundreds of feet away from the change in speed limit, he might have been more inclined to accept the action taken by Constables A and B.

In relation to the third reason, although the complainer admits he was speeding, his position is that he was not a danger to other road users. He appears to believe that, if Constables A and B had allowed him to explain that he had been involved in a serious road traffic accident two weeks previously, it would have allowed them to appreciate that he would not drive dangerously and that a warning would have sufficed.

Both the complainer and Strathclyde Police acknowledge that the particular section of road on which the complainer was travelling has been the subject of numerous complaints from local residents over a number of years. Strathclyde Police has

explained to the complainer that it regularly receives reports from local residents and elected officials about their fears regarding speeding vehicles in the area. Taking this into account, the Commissioner has great difficulty seeing how the complainer's involvement in a road traffic accident two weeks previously could possibly have altered the officer's exercise of discretion on this occasion. In the Commissioner's view, Superintendent F's response to this issue in his letter of 2 February 2009 was entirely reasonable.

It is clear that the present complaint focuses upon the application and limits of a police officer's discretion to issue a warning as opposed to a fixed penalty notice in speeding cases. This was communicated to Strathclyde Police in the complainer's statement of 9 December 2008. However, at no stage in its response to the complaint does Strathclyde Police address this issue. The Lord Advocate has issued guidelines to the police on the issuing of fixed penalties in such cases and the Commissioner would expect Strathclyde Police to have made some reference to these guidelines in explaining the manner in which discretion was exercised in the present case.

7. Conclusion

In the Commissioner's view, although it is clear that the complainer was speeding on the occasion in question, Strathclyde Police's response to his complaint was not sufficiently detailed and did not address the key issue of the use of discretion by officers in such cases. The Commissioner therefore recommends that Strathclyde Police sends a further letter to the complainer explaining the officers' exercise of discretion, taking into account the Lord Advocate's guidelines on this issue.

John McNeill
Police Complaints Commissioner for Scotland
October 2009