

Report of a Complaint Handling Review in relation to Dumfries and Galloway Constabulary

under section 35(1) of the Police Public Order
and Criminal Justice (Scotland) Act 2006

Summary and Key Findings

The applicant was convicted in 2004 of failing to stop at a red traffic sign. He made a number of complaints to Dumfries and Galloway Constabulary (D&G) in relation to the incident, following which the applicant applied to the Commissioner's office seeking a review of the way in which these were handled. Only one of those complaints is dealt with in this report, namely that D&G failed to provide the applicant access to a police vehicle in order that a reconstruction of the incident could be carried out.

The Commissioner found that although D&G responded reasonably to the applicant's complaint about the decision not to hold a reconstruction, it did not specifically address the complaint regarding access to a police vehicle. Accordingly, the Commissioner recommends that D&G sends a further letter to the applicant informing him of the reasons for its decision not to supply the car.

The Commissioner's role

Section 35 of the Police Public Order and Criminal Justice (Scotland) Act ("the Act") gives the Commissioner the power to examine the manner in which a policing body has dealt with a "relevant" complaint, as defined in the Act.

The Commissioner is independent of the police service and performs his functions in a fair and impartial manner. Before considering a complaint, the Commissioner's office obtains all papers held by the policing body against which the complaint has been made. These papers are considered alongside information provided by the applicant. The Commissioner then assesses whether the policing body's handling of the complaint was reasonable in all the circumstances. The Commissioner will look at the entire handling process, from the initial investigation by the policing body to the final response issued to the applicant. Among the factors which the Commissioner takes into account are the following:

- whether the policing body's response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented;
- whether the policing body's response to the complaint is adequately reasoned; and
- whether the policing body has communicated with the applicant in a reasonable manner.

Background

On 9 January 2004 the applicant was stopped by Constables A and B whilst driving his car in Location X and issued a fixed penalty notice for failing to comply with a "stop" sign.

The applicant elected not to pay the fixed penalty within the stipulated period and the matter was subsequently reported to the Procurator Fiscal. On 19 August 2004 the applicant appeared for trial at a local District Court where he was found guilty of the offence. The applicant disputed the evidence which Constables A and B gave at the trial.

The applicant later appealed against the conviction but this was rejected.

The Complaint

Based on the contents of the application form and the information obtained from D&G the Commissioner identified two complaints, one of which the Commissioner has dealt with separately. The complaint dealt with in this report is that D&G refused to provide the applicant with a police vehicle for a "reconstruction" of the incident.

The Commissioner's Review

The applicant wrote to the Commissioner's office via his local Councillor on 29 October 2008 and, following further correspondence, an application form was received on 5 December 2008.

The remainder of this section sets out the Commissioner's views on the manner in which the applicant's complaint was handled by D&G. The complaint is described below and is followed by details of D&G's handling of it and the Commissioner's views on this.

Complaint: D&G's refusal of access to a police car

This complaint relates to a request by the applicant to be provided with access to a Volvo police car so that he could "reconstruct" the circumstances relating to his offence.

Internal Handling

On 26 January 2007 the applicant met Chief Inspector C and requested that a "reconstruction" of the scene of the incident take place to demonstrate that Constable B could not have seen what he claimed in evidence, if he had been the driver. Following various other correspondence, on 30 May 2007 the applicant wrote to Chief Inspector C requesting that he "supply a Volvo Police vehicle for a period of ten minutes... thereafter to give your findings in writing (sic)."

Chief inspector C wrote to the applicant on 4 June 2007 advising that a reconstruction of events would not be possible as any reconstruction could not "accurately replay the circumstances on the particular day in question with any degree of accuracy."

Consideration

In the Commissioner's view, there are two closely related aspects to this complaint. The first is the applicant's request for a reconstruction of the incident; the second is his request for supply of a Volvo police car. It seems that the intention behind the latter request is to facilitate a reconstruction by D&G but it is possible that access to the car was required in order that the applicant or someone instructed by him could carry out a reconstruction. The applicant's letter is not clear on this point.

With regard to the first element of the complaint, the Commissioner considers that D&G was reasonable in refusing to conduct a reconstruction. In the Commissioner's view, if the applicant believed that a reconstruction would be of value he ought to have arranged this at the time he was preparing his defence to the charge. In those circumstances, the applicant could have relied on the findings of any reconstruction in evidence at his trial. However, given that the trial took place some years ago, and that D&G has clear doubts as to what could be achieved by such a reconstruction, the Commissioner considers D&G's response to have been reasonable.

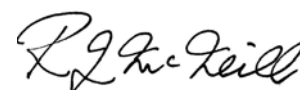
The applicant attached to his application form an undated press report concerning a presentation Chief Inspector C made to members of the public some time ago. It is unclear whether he supplied a copy of this to D&G at the time of his complaint. According to the applicant, the presentation emphasised the high level of importance the police attach to reconstructions. However, according to the press report the presentation concerned the importance of thorough investigations at the scenes of road traffic collisions. Accordingly on the face of the report, the presentation did not relate to incidents such as the present one.

As to the second element of the complaint, D&G has not explained to the applicant why it is not prepared to supply the vehicle. As noted above, it is not clear whether the applicant sought access to the car in order for someone other than the police to carry out an examination or reconstruction. If that was applicant's motive, then in the Commissioner's view he is entitled to be informed why access to the car is being denied. There may well be very good reasons for any refusal to supply the vehicle but until D&G responds to the request the applicant is no clearer as to its position.

Accordingly, the Commissioner recommends that D&G send a further letter to the applicant informing him of the reasons for its decision not to supply the car.

Conclusions, Recommendations and Learning

In the Commissioner's view, the manner in which this complaint was dealt with by D&G was not reasonable in that D&G did not explain to the applicant why it was not prepared to supply him with a police vehicle. Accordingly, the Commissioner recommends that D&G sends a further letter to the applicant informing him of the reasons for its decision not to supply the car.



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