

Report of a Complaint Handling Review in relation to Fife Constabulary

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

Summary and Key Findings

Over the past three years, the applicant has complained to the police regarding traffic wardens in his area taking extended tea breaks which he claims are neither authorised nor within their contractual entitlement.

The Commissioner identified three complaints relating to this issue, all of which he considered had been dealt with in a reasonable manner. The Commissioner considered that, despite the continuous and repetitive nature of his complaints, Fife Constabulary dealt with the applicant in a fair, reasonable and courteous manner. The applicant has been informed on numerous occasions that the working practices of traffic wardens in the area are monitored by the officers and staff who manage Fife Constabulary.

In the Commissioner's view, the applicant has been afforded ample time and effort in attempt to resolve matters to his satisfaction. Accordingly, no further action is required by Fife Constabulary.

The Commissioner has, however, identified as a learning point the need for Fife Constabulary, and other police forces, to adopt a coherent plan for dealing with similar situations in future. An element of this may involve referring such cases to the Commissioner's office as soon as it is perceived that the force has taken reasonable steps to deal with the complaint.

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

The applicant has previously complained to Fife Constabulary about alleged breaches of road traffic regulations in his local area and alleged lack of enforcement of these regulations by Fife Constabulary. That complaint was investigated by Fife Constabulary, but its response was not to the applicant's satisfaction. He therefore asked the Commissioner to review the handling of the complaint. The Commissioner issued his report in that case in August 2008. In the report the Commissioner found that Fife Constabulary had provided a detailed and satisfactory response to the complaint.

During the same period the applicant made further complaints to Fife Constabulary, this time concerning what he considered to be lengthy and "unauthorised" tea breaks being taken by local traffic wardens. He also complained that Chief Superintendent A was complicit in allowing these working practices. In support of his complaints, the applicant has made regular observations of traffic wardens' activities and has included in his letters specific dates and times of their alleged movements while on duty. The applicant believes that these allegedly lengthy tea breaks mean that traffic wardens are not doing enough to alleviate the risk posed to pedestrians by illegally parked vehicles.

On 17 October 2008, Assistant Chief Constable J of Fife Constabulary wrote to the applicant in response to his complaint. Assistant Chief Constable J also met with the applicant to discuss his concerns. Nothing further appears to have occurred until 14 February 2009 when the applicant

wrote again to Fife Constabulary regarding “traffic warden staff taking extended unmerited extra tea breaks.”

On 19 February 2009 Chief Superintendent B responded to the applicant’s complaint, essentially assuring him that the performance of traffic wardens was, and would continue to be, closely monitored.

The applicant thereafter made a complaint about Chief Superintendent B, on the basis that she was approving “out of contract extended tea breaks.”

On 4 March 2009, Superintendent K wrote to the applicant advising him that his complaints about Chief Superintendents A and B simply repeated his previous complaint about the management of traffic wardens’ refreshment breaks. Superintendent K explained that this previous complaint had been recorded, investigated and found to be unsubstantiated following the applicant’s discussions with Assistant Chief Constable J. In these circumstances, Superintendent K considered the matter as closed.

On 19 March 2009, Superintendent K referred the applicant’s case to the Commissioner under section 35(1)(b) of the Act. On 2 June 2009 the applicant wrote to the Commissioner’s office regarding his complaint about Chief Superintendent B. On 7 July 2009 he submitted an application form.

Accordingly the basis for the Commissioner’s review is a referral by Fife Constabulary under section 35(1)(b) of the Act and also an application submitted by the applicant under section 35(1)(a). For the purposes of section 35(2), the Commissioner considers that Fife Constabulary have taken reasonable steps to deal with the applicant’s complaints.

The Complaints

Based on the contents of the application form, and the information obtained from Fife Constabulary, the Commissioner has identified the following complaints:

- (1) that traffic wardens in the applicant’s locality take unauthorised extended tea breaks;
- (2) that Chief Superintendent A did not prevent the extended tea breaks; and
- (3) that Chief Superintendent B did not prevent the extended tea breaks.

The Commissioner’s Review

This section sets out the Commissioner’s views on the manner in which the complaints were handled by Fife Constabulary. Each complaint is set out in turn and is followed by details of the police handling of it. Normally the Commissioner considers the handling of each complaint in turn; however, in this case the Commissioner has considered the handling of all three complaints together.

Complaint 1: Alleged extended tea breaks of traffic wardens

According to the applicant’s letter of 11 January 2007 to Fife Constabulary, he had observed traffic wardens looking in shops and taking extended breaks (from 3.15 pm to 4.35 pm) when they should

have been working. The applicant subsequently wrote to the police again on 19 and 20 January 2007 reiterating this complaint.

On 17 January 2007, the traffic warden supervisor sent a memo to Superintendent C stating that the applicant was harassing and persecuting traffic wardens. In his memo, the supervisor provided a detailed account of the movements of his staff on 11 January 2007. The supervisor explained that traffic wardens regularly used particular premises in the area as these contained a cafeteria and toilet facility. However, the applicant's allegation that traffic wardens remained at those premises for 1 hour and 20 minutes was "vehemently denied." The supervisor suggested that the applicant might have seen one warden arrive at 3.15 pm and another leave at 4.35 pm. The supervisor added that the recognised break time during the morning patrol and the afternoon session was 15 minutes.

On 25 January 2007 Chief Superintendent D wrote to the applicant informing him that the contents of his letters had been drawn to the attention of the traffic wardens concerned. Chief Superintendent D explained in his letter that during the course of 2006, 2381 fixed penalty notices were issued by traffic wardens in the applicant's locality. On 26 January 2007, Chief Inspector E reiterated to the applicant that the contents of his letters had been brought to the attention of the traffic wardens.

The applicant wrote again to Fife Constabulary on 30 January and 10 February 2007 restating his complaint and questioning whether half-hour breaks in late afternoon were part of traffic wardens' service entitlement. In a further letter of 10 March 2007 he claimed that CCTV footage from the premises where the breaks were taken would support his complaint.

On 13 March 2007 Sergeant F provided a report on the applicant's complaint. In the report, Sergeant F commented that although he had initially attempted to make an appointment with the applicant to speak to him about his complaint, the latter had refused to meet, stating that his preferred method of communication was by letter. However, the applicant later wrote advising that he wished to make an appointment. Sergeant F duly met with the applicant on 6 March 2007 and discussed three of his letters of complaint. The applicant denied at this time that he had followed traffic wardens and explained that he "merely kept a look out whilst shopping..."

According to his report, Sergeant F viewed the CCTV footage of the premises where the applicant alleged the extended breaks had taken place. However, he did not find the footage to be conclusive either way. He then contacted Ms X, who worked at the premises in question. Ms X confirmed that traffic wardens used the premises for tea breaks and toilet facilities and that they were normally there for between 20-30 minutes. She stated that there had been instances in the past where the traffic wardens had stayed longer, but believed that this was probably due to inclement weather. Ms X stated that recently the traffic wardens had kept their visits to under half an hour "but she was aware that they [were] being watched by someone..."

Subsequently, Sergeant F spoke to Ms Y who also worked at the premises in question. Ms Y stated she was aware that traffic wardens visited regularly for a hot drink and to use the toilet facilities. According to Ms Y there were usually two traffic wardens in at a time in the morning and "the odd one" in the afternoon. They were normally there for about 20 minutes. In the past they had been "in and out of the premises or left in a hurry." According to Ms Y, the wardens had on occasions stayed longer than 30 minutes but added that "again the weather is usually inclement."

Sergeant F noted that the traffic warden supervisor had refuted the allegations made by the applicant and the time periods his staff had allegedly spent in shops. Sergeant F also explained to

the applicant that traffic wardens carried out other duties during the day; however, the applicant was of the opinion that the wardens lacked supervision and were free to do whatever they liked. According to the report, the applicant informed Sergeant F that “[a]s a taxpayer he is entitled to see that his money is being used correctly to police the areas he sees as problematic.”

Sergeant F concluded that in spite of all of the explanations given to him, the applicant remained “Habitually Dissatisfied”.

Sergeant F ended his report by stating:

“...no amount of explanation will stop [the applicant] corresponding in a similar vein despite explanations given to him. There is no evidence to confirm that Traffic Wardens spend periods of time within [the premises] of over 1 hour. They do use the premises for toilet breaks and refreshment. The only other option would be to return to the station which would take more time.”

On 22 March 2007, Superintendent C wrote to the applicant stating that Sergeant F had investigated the matter and offered to the applicant an explanation for the traffic wardens’ activities. Superintendent C noted that Sergeant F had also explained that wardens had taken enforcement action in the areas highlighted by the applicant and against some of the vehicles the applicant had photographed. Superintendent C understood, however, that the applicant was unwilling to accept these explanations.

Superintendent C explained to the applicant that Sergeant F had spent considerable time and effort investigating his claims but had been unable to find any evidence to support them. Superintendent C added that he had advised the traffic wardens of the applicant’s observations and stated that he would review their activities on a periodic basis.

The applicant replied to Superintendent C stating that he had accepted several explanations given by Sergeant F but did not accept that the problem was solved. The applicant observed that there had been an improvement in the situation over the previous three weeks. He pointed out, however, that although Fife Constabulary would monitor the traffic wardens’ activities periodically, he intended to do so on a weekly basis.

The applicant wrote again to Fife Constabulary on 5 April and 20 April 2007 detailing dates and times when he had observed traffic wardens taking what he regarded as extended tea breaks. He alleged that the matter was being “swept under the carpet” and wanted the traffic wardens warned that they were not entitled to these breaks. Details of the applicant’s observations were also included in his letter of 23 April 2007 to Superintendent C and to Chief Superintendent D.

On 27 April 2007 Chief Inspector E wrote to the applicant advising that the contents of his letters had been drawn to the attention of the traffic warden supervisor. Chief Inspector E explained that he had discussed the timing and length of authorised breaks and given direct instruction in relation to these.

Between 30 April 2007 and 25 May 2007 the applicant wrote to Fife Constabulary a further four times complaining that the extended breaks were ongoing, and listing dates, times and places when he had observed this.

On 11 June 2007 the applicant met with Inspector G and expressed his concerns regarding the cost to the taxpayer of the alleged extended breaks. Inspector G highlighted to the applicant the cost to the public of investigating and replying to his weekly letters on the subject. He explained to

the applicant that the issues of meal breaks and working practices of traffic wardens were management ones for Fife Constabulary. The applicant was advised that further correspondence would be passed to the traffic warden supervisor, but that he could no longer expect to receive detailed replies to each of his numerous letters.

The applicant wrote again to Fife Constabulary on 18 June 2007 requesting confirmation that the extended breaks allegedly taken by traffic wardens were “unofficial”. He claimed that Fife Constabulary seemed to have no control over its officers’ breaks which, he said, were costing over £5000.

The applicant requested and received a copy of the traffic wardens’ contract of employment. On 30 June and 22 August 2007 he wrote to Fife Constabulary stating that afternoon breaks were not included in the contract and asking who had sanctioned them. Inspector G responded on 7 September 2007 referring to their previous discussion and informing the applicant that his comments would be forwarded to the traffic wardens’ supervisor.

Complaint 2: Chief Superintendent A did not prevent the extended tea breaks

On 26 May 2008, the applicant wrote to Fife Constabulary stating that traffic wardens were taking extended tea breaks and asking it to “remind [it’s] staff that removing themselves from active duty to take unauthorised breaks while accepting payment for not being at their place of work is a serious offence.” The applicant wrote to Fife Constabulary again on 9 June 2008 making a request under the Freedom of Information (Scotland) Act 2002 for information as to who had sanctioned the tea breaks and what exceptional circumstances existed to allow the breaks.

Chief Superintendent A replied on 13 June 2008 informing the applicant that he had ultimate responsibility for all decisions taken by his staff. Chief Superintendent A explained that he had therefore sanctioned the breaks, which he believed to be appropriate and “within the contract of employment”.

On 30 July 2008, the applicant wrote making a complaint that Chief Superintendent A was allowing extended tea breaks.

As a result of this complaint, Assistant Chief Constable J instructed Chief Inspector H to obtain a statement from the applicant and also re-investigate the matter in a bid to resolve the applicant’s complaints. Chief Inspector H thereafter obtained a statement in which the applicant reiterated his complaints. Chief Inspector H also submitted a statement of his own.

On 17 October 2008, Assistant Chief Constable J met with the applicant to discuss his complaints. Later that day, Assistant Chief Constable J wrote to the applicant in response to complaint 2. Assistant Chief Constable J explained that he took responsibility for the enquiries which had been made into the complaint but that he had drawn on the assistance of Chief Inspector H to examine and report to him on the detail.

With regard to traffic wardens’ breaks, Assistant Chief Constable J stated the following:

“Whilst there may be exceptional cases where I would expect a line manager to exercise a level of flexibility, that certainly would not stretch to extended or unofficial breaks as a norm...”

Having spoken to [Chief Superintendent A] on this matter, I am satisfied that he holds a strong position on the effective management of his staff and their time management and continues to

manage that with appropriate vigour. In his previous correspondence to you, his referral to 'sanctioning' breaks related to his vicarious responsibility.

Notwithstanding, Chief Superintendent [A] continues to emphasise to his staff the need for professionalism and adherence to sound working practices. These messages have been relayed directly to the traffic wardens' line managers and the wardens themselves. As would reasonably be expected, these working practices continue to be monitored and reviewed."

Complaint 3: Chief Superintendent B did not prevent the extended tea breaks

On 14 February 2009, the applicant again wrote to Fife Constabulary stating that he had observed traffic wardens taking tea breaks of 40-45 minutes. He requested to know which senior officer was approving such breaks.

Chief Superintendent B, who had taken over from Chief Superintendent A as Divisional Commander for the area concerned, responded to the applicant on 19 February 2009. She informed the applicant that the traffic warden supervisor was monitoring the breaks being taken and that she had an assurance from the supervisor that no abuse was occurring. Chief Superintendent B explained that the role of traffic warden was often stressful and that they were on many occasions the subject of abuse. Chief Superintendent B considered that traffic wardens were part of the "policing family" and she therefore encouraged community engagement. This, she explained, included comfort breaks which provided an opportunity for wardens to engage with others in a non-confrontational environment and negated the need for them to return to the police office. Chief Superintendent B advised that she would therefore "not be taking any steps to discourage wardens from taking what [the applicant saw] as time out and which [she saw] as their entitlement to engage with members of the public." Chief Superintendent B concluded that she was "confident in [her] staff to do the roles they are employed to do".

On 4 March 2009 Superintendent K wrote to the applicant in relation to this complaint. After reviewing previous correspondence, Superintendent K took the view that the complaint was not a new one, but rather a reiteration of matters already investigated. He noted that the applicant had been given the opportunity to discuss the matter in person with Assistant Chief Constable J; he also reiterated Assistant Chief Constable J's assurance that Fife Constabulary was conducting a review of the role of traffic wardens with a view to exploring options to improve the level of service to the public.

According to the applicant's letter of response dated 14 March 2009, his complaint was not the same as before, as it involved a different officer (the new divisional commander, Chief Superintendent B). The applicant also stated that he had previously been told that the approval of extended breaks would not happen on a daily basis, yet Chief Superintendent B had given approval to breaks that were in addition to traffic wardens' contractual entitlement.

As noted above, Fife Constabulary thereafter referred the applicant's case to the Commissioner's office.

Consideration

In respect of complaint 1, the Commissioner considers that Sergeant F conducted reasonable enquiries into the applicant's complaint. As noted above, Sergeant F found nothing to support the applicant's allegation that breaks of over an hour were regularly being taken. This was communicated clearly to the applicant by Superintendent C.

In respect of complaint 2, the Commissioner considers that the applicant received a detailed and reasonable response from Assistant Chief Constable J, who also met with the applicant to discuss his concerns.

In respect of complaint 3, the Commissioner considers that Fife Constabulary was correct not to conduct further enquiries into the applicant's concerns. The Commissioner agrees that complaint 3 is essentially the same as complaints 1 and 2. At the root of all of them is the applicant's concern that traffic wardens are not doing their jobs properly. He seeks to demonstrate this by attempting to show that the rest breaks taken by traffic wardens are too lengthy. Although the applicant is entitled to raise these concerns, he has been informed on numerous occasions that the situation is being monitored by the officers and staff who manage Fife Constabulary. Clearly, such monitoring cannot involve day to day physical surveillance of the members of staff concerned, as the applicant would appear to be advocating. The Commissioner considers that Fife Constabulary is best placed to measure the performance of traffic wardens taking into account factors over and above the length of the breaks they might take.

Generally, the Commissioner considers that, despite his continuous and persistent complaints, Fife Constabulary has dealt with the applicant fairly, reasonably and courteously. Although none of the officers involved believed that their explanations would satisfy the applicant, this did not prevent them from making every effort to resolve the complaints.

The applicant appears to believe that as a tax payer he is entitled to see that his money is spent on policing the areas he sees as problematic. In the Commissioner's view, however, given the scale and diversity of policing activity, it is not feasible for police forces to reflect the personal priorities of one member of the public. In the Commissioner's view, the appropriate way for the applicant to influence how tax payers' money is spent is through the political process.

The applicant has voiced concern on more than one occasion about the cost of the alleged extended tea breaks to the taxpayer. However, even if one assumes that the performance of the traffic wardens concerned is capable of improvement, it is equally important to consider the amount of resources which Fife Constabulary has expended on attempting to resolve the applicant's complaints. The Commissioner notes that the applicant's case has required the involvement of a Sergeant, an Inspector, two Chief Inspectors, four Superintendents, two Chief Superintendents and an Assistant Chief Constable. The Commissioner does not criticise Fife Constabulary for this: it demonstrates how far the force has been prepared to go in seeking to resolve the applicant's complaints. With the benefit of hindsight, however, the direct involvement of so many officers of senior rank was perhaps disproportionate to the issues raised by the applicant. The Commissioner considers that if such a situation were to arise in future it would be more efficient and effective to refer the complaint to the Commissioner's office at an earlier stage. In the present case, a referral to the Commissioner's office following the determination of complaint 1 might have avoided further resources being expended by Fife Constabulary. Before accepting such a referral the Commissioner would clearly require to be satisfied that the force had taken reasonable steps to deal with the complaint. In the Commissioner's view, that is something that must be determined on a case by case basis.

Conclusions, Recommendations and Learning

In the Commissioner's view, these complaints have been dealt with in a reasonable manner. The applicant has been afforded ample time and effort in attempt to resolve matters to his satisfaction. Accordingly, no further action is required by Fife Constabulary.

The Commissioner has, however, identified as a learning point the need for Fife Constabulary, and other police forces, to adopt a coherent plan for dealing with similar situations in future. As noted above, an element of this may involve referring such cases to the Commissioner's office as soon as it is perceived by the force that reasonable steps have been taken to deal with the complaint.

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