

# Report of Complaint Handling Reviews in relation to Tayside Police

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

## Summary and Key Findings

The applicant is a taxi operator whose taxi is driven by Mr A. Between 2006 and 2009 Constable B issued Mr A with various warnings under the Civic Government (Scotland) Act 1982 in respect of the condition of the taxi. These warnings have resulted in Mr A being referred to the local authority's licensing committee on two occasions. As the conditions imposed under the 1982 Act apply to taxi drivers rather than taxi operators, the warnings issued to Mr A had no direct impact upon the applicant. The applicant nevertheless felt that he was being picked on and singled out by Constable B and he complained to Tayside Police regarding the latter's actions.

The Commissioner found that both complaints were handled by Tayside Police in a reasonable manner. Accordingly, no further action is required of Tayside Police in respect of the complaints.

However, the Commissioner identified as a learning point the need for all statements taken during the course of a complaints investigation to be dated. The Commissioner expects this to be communicated to all officers within Tayside Police who have responsibility for handling complaints.

## 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.

## Preamble

The applicant is a taxi operator whose taxi is driven by Mr A. Under the Civic Government (Scotland) Act 1982, all taxi drivers in the area are subject to local authority licensing conditions. One such condition states:

*"The driver of a taxi shall ensure that the taxi, including all bodywork, upholstery and fittings, is in a safe and serviceable condition and, subject to prevailing road conditions, is in a clean condition."*

On various occasions during 2006 to 2009 Mr A was issued with warnings under the above condition (known as "T/PH 20 notices") by "Cab Enforcement Officer", Constable B. In the event that a taxi driver is issued with 3 warnings within 3 years, he or she is reported to the local authority licensing committee. Based on the information available to the Commissioner, Mr A has been referred to that committee on two occasions.

As the condition imposes obligations on taxi drivers, the warnings and any referral to the licensing committee have no direct impact on taxi operators such as the applicant. The applicant nevertheless believes that he is being harassed by Constable B. The basis for his belief is an alleged incident in 2005 when Constable B accused the applicant of hiring out his taxi plate, contrary to licensing conditions. According to the applicant, this allegation was found to be unsubstantiated. However, the applicant believes that, since that time, Constable B has persecuted him.

The applicant has complained to the police on a number of occasions regarding Constable B's actions. This report deals with two such complaints which were made to Tayside in 2008 and 2009. As these complaints were made separately, and led to two separate complaints investigations, the Commissioner has dealt with them over two reports.

### **The Commissioner's Review**

The applicant first contacted the Commissioner's office by telephone on 10 December 2008. He thereafter submitted an application form on 26 January 2009. The case file was requested from Tayside Police on 28 January and was received on 9 February 2009. This file relates to a complaint made about Tayside Police on 18 January 2008.

On 11 February 2009, during a telephone call with the Commissioner's office, the applicant explained that the complaint he made in January 2008 had been resolved. However, he claimed that the situation had recurred and that he felt "targeted" again. On the same date, the Commissioner's office informed Tayside Police that the applicant appeared to be raising a new complaint and that he had therefore been directed to Tayside Police's Professional Standards Department.

On 15 May 2009, the applicant contacted the Commissioner's office advising that his fresh complaint had been dealt with by Tayside Police, but that he remained dissatisfied. On the same date the Commissioner's office wrote to Tayside Police requesting the case file in relation to this complaint. This was received on 27 May 2009.

## Background

Between 19 January 2006 and 7 September 2007 Constable B issued Mr A with four T/PH 20 warning notices. The reasons for these warnings included Mr A not displaying his taxi badge, a missing wheel trim, and the vehicle being dirty.

On 16 November 2007, Mr A was referred by Tayside Police to the local authority licensing committee.

On 17 January 2008, the applicant's MSP wrote to Tayside Police intimating a complaint of harassment.

## The Complaint

Based on the contents of the application form, the correspondence received from the applicant, and the information obtained from Tayside Police, the Commissioner has identified a single complaint, namely that the applicant is being persecuted by Constable B.

The manner in which this complaint was handled by Tayside Police is set out below and is followed by the Commissioner's consideration of this.

## Internal Handling

Tayside Police obtained an undated statement from the applicant in which he set out the basis of his complaint. The applicant reiterated that Constable B was "picking on" his vehicle and that he was being "singled out". The applicant felt that the most appropriate way of dealing with the complaint was for Inspector D to speak to the "Cabs unit", and Constable B in particular.

Inspector D also obtained a statement from Constable B dated 30 January 2008. In the statement, Constable B explained that his role as Cab Enforcement Officer included stopping taxis in transit or carrying out checks of stationary vehicles at taxi ranks. According to Constable B, three out of the four warnings given to Mr A were issued at taxi ranks. Constable B added that other than Mr A no taxi driver had accrued enough warning notices to be reported to the licensing committee.

On 2 February 2008 Inspector D issued a report on the complaint to Superintendent E. In the report, Inspector D confirmed that Mr A had received four warnings over the period 19 January 2006 to 7 September 2007. Inspector D also provided a list of all the warnings which had been issued to taxi drivers from 17 January to 18 November 2007. This showed that, including the two warnings which had been given to Mr A in March and September 2007, a total of 57 such warnings had been issued.

Because of the period of time over which the four warnings had been issued to Mr A, and because of the number of other taxi drivers who had received similar warnings in 2007, Inspector D did not "feel that [the applicant] or [Mr A] had been singled out in any way that could be construed as harassment." Inspector D explained that the applicant had not himself been the subject of any disciplinary action and that the "offences committed by [Mr A]" had no bearing upon the applicant as a taxi operator.

Inspector D considered that there was nothing to suggest that Constable B's treatment of Mr A had been anything other than even-handed. However, he had spoken with the Cabs Enforcement Unit,

and Constable B in particular, about their responsibilities when dealing with members of the public and the need to provide a service that was fair and “worthy of scrutiny.”

On 3 March 2008 Superintendent E wrote to the applicant and his MSP in response to the complaint. Superintendent E referred to the four warnings that had been issued to Mr A and concluded that in the circumstances he was satisfied there was “no evidence of over-proliferation of inspections by the police or any form of harassment.”

Superintendent E referred to the applicant’s comment in his statement to the effect that he would be satisfied if Inspector D spoke to Constable B about the matter. Superintendent E confirmed that Inspector D had done so and made Constable B fully aware of the applicant’s concerns.

## **Consideration**

In the Commissioner’s view, Inspector D carried out satisfactory enquiries into this complaint and reached a reasonable conclusion based on the available evidence.

In respect of Superintendent E’s response, the Commissioner considers that this might have been fuller and more convincing. For example, he could have referred to the list of warnings issued to taxi drivers between January and November 2007 and highlighted the fact that, in addition to Mr A, a number of drivers had been issued with more than one warning over this period. Superintendent E’s response could also have highlighted the fact that, on any view, the issuing of four warnings over a period of 20 months is not indicative of a concerted campaign against Mr A, or the applicant.

However, overall the Commissioner considers that this complaint was handled in a reasonable manner. Inspector D reminded Constable B of the need to provide a fair service to the public, despite the fact that there was no evidence that the latter had adopted an unfair approach in relation to Mr A. According to his statement the applicant believed that his complaint would be appropriately dealt with by Inspector D speaking to Constable A. Given that this was done, it appears that this complaint was resolved to the applicant’s satisfaction.

## **Conclusions, Recommendations and Learning**

For the reasons given, the Commissioner considers that this complaint was handled in a reasonable manner. Accordingly, no further action is required of Tayside Police in relation to his complaint.

The Commissioner has, however, identified as a learning point the need for all statements taken during the course of a complaints investigation to be dated. The Commissioner expects this to be communicated to all officers within Tayside Police who have responsibility for handling complaints.

## Background

On 9 December 2008, during a routine check, Constable B presented Mr A with a T/PH 20 notice. The notice stated that because Mr A's car was dirty he had breached the conditions of his licence. Due to previous warnings he had received, on 31 December 2008 Mr A was reported to the licensing committee. On 5 March 2009, Mr A was reprimanded by the licensing committee for breaching the terms of his taxi licence.

The following day the applicant made a further complaint to Tayside Police alleging that he was being persecuted and harassed by Constable B. On 10 March 2009, an email was sent to the Cab Enforcement Unit (it is not clear from the email who sent it but it would appear that it was the local authority) stating that the applicant believed the police had lied during the committee proceedings about the road conditions at the time the warning was issued. However, in the statement he provided to the police on 6 March 2009, the applicant made no mention of this allegation.

In his statement, the applicant claimed that on 9 December 2008, due to the amount of salt on the roads, other taxis were also dirty but his "was the only one to be reported to the Licensing Board." The applicant also stated:

*"I had promised (sic) that the situation would be sorted and if there was anything to be reported, it would have been done by another officer and not [Constable B]."*

*"This had been a verbal agreement between myself and Superintendent..."*

*I thought this was over, as it was about a year since I received the closure of my last complaint. This latest incident proves that not to be the case."*

In his statement, Mr A claimed that he had taken the car to a local car wash before he began his shift that day. Mr A also stated that Constable C had informed him that his taxi was not the dirtiest one he had seen at the rank that day.

## The Complaints

Based on the contents of the application form, the correspondence received from the applicant, and the information obtained from Tayside Police, the Commissioner has identified a single complaint, namely that the applicant is being persecuted by Constable B.

The manner in which this complaint was handled by Tayside Police is set out below and is followed by the Commissioner's consideration of this.

## Internal Handling

Inspector G conducted enquiries into this complaint and obtained statements from the applicant, Mr A and Constables B and C. He thereafter submitted a report to Superintendent E.

Details of the applicant's statement are provided above.

According to Inspector G's report, at about 7 am on 9 December 2008 Mr A collected the applicant's taxi from the latter's home. Prior to commencing work, Mr A took the taxi to a "jet wash" where he cleaned the exterior. Mr A also stated that at no time did either of the officers who issued him with the warning make any reference to the applicant. However, Mr A alleged that Constable C told him that his taxi was "not the dirtiest on the rank at the time."

According to Constable B, at the time he issued Mr A with the warning the applicant's taxi was "filthy". As Constable B knew that Mr A had previously been issued warnings, he informed Mr A that he would be reported to the licensing committee. Because he had previously been the subject of a complaint by the applicant, Constable B decided to take photographs of the taxi. Constable B confirmed that Mr A was the only taxi driver who had been issued with a warning that day. He described the weather conditions that day as sunny and the road conditions as wet.

Constable C stated that he checked several drivers and taxis but none was issued with a T/PH 20 notice. He claimed that Constable B had given Mr A the T/PH 20 notice due to the dirty condition of his taxi. Constable B had asked Constable C to be present while the form was issued and photographs were taken. Constable C did not recall speaking to Mr A "in general or specifically with regards to the condition of other taxis."

In his report, Inspector G refers to Mr A's claim that he had been stopped by Constable B five times in the previous four years. In Inspector G's view, this was not surprising. Due to the resourcing of the Cab Enforcement Unit (which consisted only of Constables B and C), Inspector G considered that it was entirely likely that the same officers would frequently stop taxis in the area. Inspector G commented that Mr A having been stopped on five occasions in four years equated to once every 10 months. In the circumstances, Inspector G was unable to find any corroboration of a "vendetta" against the applicant or Mr A.

Inspector G's findings were communicated to the applicant by Superintendent E in a letter dated 8 April 2009. Superintendent E informed the applicant that he was "... fully satisfied that the action taken by the officers on this occasion was entirely appropriate." He explained that photographs were taken for evidential purposes and that the matter was reported to the licensing committee based on the available evidence. Superintendent E added that any decision to take the matter further was a matter for the licensing authority and not Tayside Police.

Superintendent E regretted that the applicant felt persecuted but added that it was Mr A, not the applicant, who was reported for breaching the licensing conditions. In these circumstances, Superintendent E could not accept that the applicant had been the victim of any form of persecution.

## Consideration

In the Commissioner's view, Inspector G carried out appropriate enquiries by obtaining accounts from all the relevant witnesses as well as the photographs of the taxi which Constable B had taken at the time. The only item which was omitted from the investigation was the list of all the warnings given during a specific period, which had formed part of the previous investigation. However, the Commissioner does not consider that this was essential in order to determine the complaint reasonably.

The Commissioner also considers that Superintendent E's letter of response adequately addressed the complaint. The Commissioner has examined the photographs taken of the taxi by Constable B. Although the quality of the copies given to the Commissioner's office is not particularly good, it is apparent from the photographs that the exterior of the applicant's taxi is dirty.

In the Commissioner's view, this complaint was handled in a reasonable manner. Accordingly, no further action is required of Tayside Police in relation to this complaint.

## Conclusions, Recommendations and Learning

For the reasons given, the Commissioner considers that this complaint was handled in a reasonable manner. Accordingly, no further action is required of Tayside Police in relation to his complaint.

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