

Report of a Complaint Handling Review 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, who is a member of a taxi association, sought a review of the manner in which Tayside Police had dealt with a complaint concerning allegations of criminality against local private hire vehicles.

The Commissioner found that the complaint was dealt with by Tayside Police in a reasonable manner and accordingly required no action to be taken in this connection.

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

A taxi association's solicitor wrote to Tayside Police on 12 February 2008 expressing concern that a private hire company, Company A, was arranging for a number of its drivers to pick up members of the public without having a "pre-booked" fare.

The solicitor's letter states that a number of Company A's drivers operate from a "yard" adjacent to a local nightclub and that patrons of this nightclub, along with other, non patrons, enter this yard and hire the vehicles for fee paying journeys.

The letter also states that such activity has a serious impact on the "livelihoods of law abiding taxi operators" and that the actions of certain private hire operators amount to a criminal offence under section 21 of the Civic Government (Scotland) Act 1982.

The letter concludes:

"Our clients are incensed that this clear and flagrant flouting of the law is being repeated on a weekly basis with no attempt on the part of either the Council or Tayside Police to address this. We trust you will take immediate steps to look into the matter and await hearing from you further in this regard in due course."

On 27 March 2008, Chief Inspector C wrote to the solicitor explaining that Company A had applied for, and been granted, planning permission to operate the yard as a passenger collection area. Chief Inspector C also suggested that the fact this area was located close to the nightclub was the principal motivation for seeking this permission.

Chief Inspector C explained that a written agreement existed between officials of the nightclub and Company A for the latter to provide a service to the patrons of the nightclub. However, Chief Inspector C agreed that this did not mean that Company A could legally provide a service to non-patrons of the nightclub. According to Chief Inspector C, if it could be established that Company A was providing a service to non-patrons then “action would be taken.”

However, Chief Inspector C also explained that most of the passenger pick-ups occurred when the nightclubs in the area emptied and that policing priorities at that time were directed towards incidents of anti-social behaviour that frequently occurred. This meant that attention might not always be given to “the passenger collection area”. Chief Inspector C concluded her letter as follows:

“I can assure both you and your members that their concerns have not been, and will not be dismissed. I am keen to see that all parties operate within the law...whilst many of [Company A's] activities are much more overt than has been seen with previous private hire companies, in the main, their activities are not illegal. We will continue to monitor the working of the passenger pick-up area as discussed, when possible, and action will be taken if any illegal activity is identified.”

On 3 December 2008, the solicitor wrote to Tayside Police again explaining that the taxi association remained concerned that Company A was continuing to engage in picking up passengers who had not pre-booked a private hire car. This letter also stated that Company A appeared to be doing so without “the matter being properly investigated.”

The letter explained that the association had engaged a firm of investigators in order to ascertain whether Company A and its drivers were continuing to engaged in unlawful activity. The investigators found that drivers of Company A had picked up individuals who had not pre-booked the fare. The letter gave a brief account of the investigators’ findings and enclosed a copy of their full report.

On 12 January 2009, Chief Inspector D responded by stating that two police operations had been mounted in 2007 and 2008 to test the “compliance” of private hire vehicles. Chief Inspector D also stated that, as a result of these operations, five private hire vehicle drivers were reported to the local licensing committee for accepting passengers who had not pre-booked.

Chief Inspector D stated that the investigators’ report supplied by the solicitor provided “supporting evidence to add to our own findings that a small minority of drivers will operate outwith the terms of their licence.”

Chief Inspector D’s letter concluded that Tayside Police would continue to monitor taxi operations across the area and that appropriate action would be taken if any “illegal activity” was identified.

On 2 February 2009 the solicitor wrote to Tayside Police stating that Chief Inspector D’s response did not address the association’s concerns and failed to indicate any willingness on the part of Tayside Police to investigate the allegations. The letter concluded:

“My clients expect their complaint to be treated seriously and for Tayside Police to carry out its duty and investigate the complaint with a view to determining whether criminal charges should be brought against the individuals in question. This is not a matter for the Licensing Committee of [the local authority] but rests with Tayside Police which is responsible for investigating complaints of this nature.”

On 10 February 2009, Chief Inspector D responded, advising that the investigators’ report had been referred to the local authority and that a response had been received from them on 6 February 2009. Chief Inspector D also advised that, following this response, it had been decided

that Tayside Police Cabs Enforcement Office would undertake further enquiry into the “potential offences committed by the drivers as detailed in your report”. The letter concluded by stating:

“However, I would advise that it is normal for Tayside Police to report such matters to the Licensing Committee not because we consider these cases less serious, but because it is felt that they have greater sanctions available to them.”

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 a single complaint, namely that Tayside Police has failed properly to investigate complaints of criminal conduct by private hire drivers and operators.

The Commissioner’s Review

This section sets out the Commissioner’s views on the manner in which the above complaint was handled by Tayside Police. Each complaint is set out in turn and is followed by details of its handling by Tayside Police and the Commissioner’s views on this.

On 10 February 2009, the association’s solicitors wrote to Tayside Police expressing dissatisfaction with the responses the association had thus far received from Tayside Police. Tayside Police received this letter on 13 February 2009. The letter stated:

“Our clients are at a loss to understand why Tayside Police consider it acceptable to disregard a legitimate complaint made by a representative body about criminal conduct which is having an adverse impact upon the livelihood of law abiding taxi drivers.”

According to the taxi association, by accepting fares from members of the public who have not pre-booked, private hire operators are committing a criminal offence under the Civic Government (Scotland) Act 1982. Despite this, the association considers that Tayside Police are viewing the matter as a civil dispute. The association’s solicitor states that, despite available evidence of criminality, Tayside Police appear to be “washing their hands” of responsibility for dealing with the matter.

Internal Handling

Following receipt of the formal complaint, a complaint about the police (CAP) form was completed by Tayside Police which detailed the complaint as follows:

“[the association] unhappy with the response of Tayside Police in regard to complaints made by them in respect of the alleged illegal activities of private hire drivers plying for trade [and] failure to properly report these matters.”

Chief Inspector E wrote to the association’s solicitor advising that he had passed the complaint to the officer in command of policing in the relevant area and that a senior officer would be in contact. On 11 March 2009, Superintendent F met with members of the association in order to discuss their concerns. Whilst a statement was not noted from any member of the association, members made clear their feelings that if any offences by private hire drivers were detected then Tayside Police had a duty to report these to the Procurator Fiscal. During this meeting, Superintendent F confirmed that he would consult with the Procurator Fiscal “regarding the position in respect of the reporting mechanism for such offences.”

On 13 March 2009, Superintendent F e-mailed the president of the association explaining that Tayside Police would, where appropriate report any offences or breaches of licensing conditions either to the Procurator Fiscal or the local licensing authority for consideration. Superintendent F

added that the cases which had been identified by the private investigators had been referred to the licensing authority.

On 25 March 2009, the association's solicitor wrote to Tayside Police stating:

"The matter which falls to be considered is whether the complaints against the specific individuals amount to a contravention of Section 21(1)(a) so justifying the issuing of summary proceedings. This is as I am sure you will appreciate a matter for the Procurator Fiscal and in this regard, my clients would wish a formal report submitted by Tayside Police to the Procurator Fiscal for a decision to be made by the Procurator Fiscal for a decision on whether criminal proceedings should be issued."

On 27 March 2009, Superintendent F and Chief Inspector D met with the Area Procurator Fiscal to seek his views on the matters raised by the association. Superintendent F's report states:

"In connection with individual private hire drivers, unless there were repeat offenders or there were other associated significant offences, the Procurator Fiscal is entirely content that these matters are reported to the Licensing Authority for decision on what action should be taken, and feels that they have sufficient powers to competently deal with these matters."

On 16 April 2009, Superintendent F sent a letter to the association's solicitor detailing Tayside Police's response to the complaint. Superintendent F's letter stated:

"In respect of private hire drivers who are found to be illegally plying for passengers who have not come from one of the night-clubs with whom a 'block booking' arrangement exists, I can assure you that the police have and will continue to take enforcement action against such persons. I would point out however that although these persons are committing an offence under terms of Section 21(1)(a) of the [Civic Government (Scotland) Act 1982] I cannot provide you with a guarantee that all such offences will be reported to the Procurator Fiscal. All such offences will be considered on their own merits and if appropriate the drivers may be reported to the Local Licensing Authority for them to consider the matter and take what action they deem necessary. I have also spoken to the Procurator Fiscal regarding this approach and it is one he is entirely comfortable with ... I can also give you an assurance that if a driver who has already been reported to the Licensing Authority offends again in the same manner, or in instances where there is some other significant criminality or associated offence then these instances will be reported to the Procurator Fiscal for consideration."

On 7 May 2009, the association's solicitor responded to Superintendent F expressing the association's concern that a report may not be sent to the Procurator Fiscal even where officers encounter private hire drivers illegally "plying for hire". The letter also explained that the prohibition on such drivers illegally plying for hire was to protect "the legitimate interests of those licensed to operate and drive taxis, and to protect the public who are entitled to expect that vehicles which they hire are operating lawfully and with insurance which covers the activity for which that vehicle has been hired". The letter concluded that the position being adopted by Tayside Police would be unlikely to act as a deterrent to the drivers who may be tempted to illegally "ply for hire". The solicitor added that a formal complaint would be made to the Commissioner's office.

On 11 May 2009, Superintendent F wrote to the association's solicitor acknowledging their intention to refer the matter to the Commissioner's office. Superintendent F also advised:

"Please be assured that the concerns raised by your clients are being, and will continue to be, treated seriously and the decision not to report every breach of licensing conditions on the part of a taxi driver or private hire driver is one that has been taken in consultation with, and with the full support of, the Procurator Fiscal. Each case, quite correctly, is considered

on its own merits and cases which have been reported to the local Licensing Authority have been treated seriously by them, with penalties imposed on offenders, which in some cases have been more severe than could have been imposed, had the matter proceeded to court.”

Consideration

During Superintendent F's investigation into the complaint, he met with members of the association and informed them that he would consult with the Procurator Fiscal to establish the latter's position on the reporting of offences of the kind alleged by the association. Superintendent F established that the Procurator Fiscal felt that the local licensing committee had sufficient powers to deal with such offences and was "entirely content" for the police to report these to the committee. A qualification was, however, made to this arrangement whereby repeat offenders or other associated significant offences would be reported to the Procurator Fiscal.

Whilst the Commissioner acknowledges that the association remains dissatisfied with Superintendent F's letters of 16 April and 11 May 2009, given the position of the Procurator Fiscal he finds the conclusions arrived at by Superintendent F, and the responses given by him, to be reasonable. Essentially, the Procurator Fiscal considers that alleged offences of this kind should be reported only in particular circumstances and that other cases can competently be dealt with by the local licensing committee.

In addition to the complaint reviewed above, the Commissioner is aware that the association has also raised concerns surrounding the legality of the "passenger pick-up area" situated outside the nightclub and the block booking arrangement between the nightclub and Company A. Having considered the paperwork supplied by the association and Tayside Police, the Commissioner notes that the local authority has considered these issues and believes that a definitive view can only be reached through the association resorting to legal action. The Commissioner agrees with this assessment and is satisfied that the association has been informed of the proper way in which to progress any future action.

Conclusions, Recommendations and Learning

For the reasons given the Commissioner considers that this complaint was dealt with in a reasonable manner. Accordingly no further action is required in this connection.

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