

Report of a Complaint Handling Review in relation to British Transport Police

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

Summary and Key Findings

The applicant complained that an officer of British Transport Police, Constable A, carried out paid work for the Fire and Rescue Service whilst on sick leave from the police.

The Commissioner found that the complaint was not been handled in a reasonable manner and made a single recommendation 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

As well as being employed by British Transport Police ("BTP"), Constable A worked on a part time basis for the Fire and Rescue Service ("the rescue service"). The applicant was a colleague of Constable A within the Fire and Rescue Service.

Constable A states that, on 15 September 2008, he sustained an injury to his knee for which he was issued with a medical certificate allowing him to carry out "light duties" in both of his jobs. According to Constable A, his knee injury deteriorated and he was signed off work on 10 October 2008. Constable A states that he was unable to work in either job for the remainder of October 2008.

According to Constable A he obtained a further medical certificate on 10 November 2008 stating that he could resume light duties in both jobs. Constable A contacted his supervising officer at this time to confirm his return to work with BTP, but could not return to work without first being examined by the police doctor. Having been examined by the police doctor, Constable A returned to work with BTP on 16 November 2008. He continued to carry out light duties until 6 March 2009 following which he returned to full duties.

The Complaint

Based on the contents of the application form, the correspondence received from the applicant and the information obtained from British Transport Police, the Commissioner has identified a single complaint, namely that Constable A carried out paid work for the Fire and Rescue Service while on sick leave from the police.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaint was handled by BTP.

On 2 September 2009 the applicant complained to BTP in the following terms:

"Whilst [Constable A] was supposedly off sick from his duties as a police officer from which I am sure he would have been paid sick leave, he carried out home fire safety visits which is climbing stairs and a good amount of walking for a period of eleven and a half hours. So not only has he received sick pay for this time off but he also received eleven and a half hours work from [the rescue service]."

Internal Handling

The enquiry into this complaint was allocated to Detective Inspector B who obtained statements from Constable A, as well as staff within the rescue service. According to Detective Inspector B the applicant was abroad at the time of the investigation and could not be seen. Various records relating to Constable A's employment with the rescue service and his application for employment with BTP were also obtained.

On 15 January 2010, Detective Inspector B submitted a report to Detective Superintendent C detailing his findings in respect of the complaint. Detective Inspector B's conclusion was as follows:

"There is no doubt that [Constable A] worked as a retained Fire Fighter with [the rescue service] whilst serving with [BTP] for approximately 32 months. This included a period of six months whilst serving with [the rescue service] when on restricted duties with the [BTP] due to his recovery from a knee injury. The Force Standard Operating procedure on Secondary/Employment interests clearly states that any secondary business/employment must be declared and authorised. Whilst there is evidence that he made enquiries with HR when this was brought to his attention, he did not seek confirmation or authorisation before continuing with his Fire Fighter duties for almost all of this period. This complaint is therefore substantiated."

In an undated letter to the applicant, Detective Superintendent C enclosed a copy of Detective Inspector B's report. In the letter Detective Superintendent C stated:

"... Having reviewed all of the evidence I would advise you I regard your allegation to be substantiated and I propose to give the Officer concerned written words of advice in this matter."

Consideration

The applicant's complaint is that, whilst on sick leave from BTP, Constable A continued to carry out health and safety visits in his capacity as an employee of the rescue service. However, the complaint investigation by BTP focused on a different issue, namely Constable A's failure to await authorisation for his taking up secondary employment.

According to Constable A, the only time he was unable to attend his employment with BTP was between 10 October 2008 until 1 November 2008. In the Commissioner's view, in order properly to address the applicant's complaint Detective Inspector B should therefore have sought to establish whether Constable A worked for the rescue service between 10 October and 1 November 2008. Given that this has not been done, the Commissioner does not consider that the complaint was dealt with in a reasonable manner.

Accordingly, the Commissioner recommends that BTP now seeks to establish whether Constable A worked for the rescue service during the relevant period (10 October – 1 November 2008) and issues the applicant with a further response to the complaint in light of its findings.

Conclusions, Recommendations and Learning

In the Commissioner's view, the manner in which this complaint was dealt with by British Transport Police was not reasonable. The Commissioner recommends that BTP now seeks to establish whether Constable A worked for the Fire and Rescue Service during the relevant period (10 October – 1 November 2008) and issues the applicant with a further response to the complaint in light of its findings.

John McNeill
Police Complaints Commissioner for Scotland

Hamilton House
Caird Park
Hamilton
ML3 0QA