

Report of a Complaint Handling Review in relation to Central Scotland Police

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

Summary and Key Findings

The applicant's complaint arose from his being stopped for allegedly driving without insurance.

The Commissioner found that Central Scotland Police dealt with the complaint in a reasonable manner and made no recommendations 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

On 28 March 2010 the applicant was stopped by two police officers, Constables A and B, on suspicion of driving without insurance. The officers had been alerted to the possibility that the vehicle may not have been insured by the police vehicle's automatic number plate recognition system.

The applicant told the officers that his vehicle was insured. Constable A then contacted the applicant's insurance company who stated that his insurance policy had been cancelled on 8 February 2010 due to non-payment of premiums. Constable A thereafter informed the applicant that as it was uninsured his vehicle would be seized. The applicant was provided with information as to how to secure the return of his vehicle.

On returning home later that day, the applicant telephoned a local police station and made a complaint to Sergeant C about the seizure of his vehicle. The applicant thereafter wrote to Central Scotland Police on 30 March 2010 complaining that the police had acted excessively in seizing his vehicle. During the investigation of the complaint, it transpired that the applicant's insurance company had in fact made an error regarding his policy and that the absence of cover was through no fault of his own.

The Complaint

Based on the contents of the correspondence received from the applicant, and the information obtained from Central Scotland Police, the Commissioner has identified a single complaint, namely that the police acted disproportionately in seizing the applicant's vehicle.

The Commissioner's Review

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

Internal Handling

The complaint was investigated by Inspector D who obtained statements from Constables A and B and Sergeant C, before attending the applicant's home to discuss the matter.

Constable A stated that on checking with the applicant's insurance company, he was informed:

"... that [the applicant's] insurance policy for the said vehicle had been cancelled by [the insurance company] on 8th February 2010 for non-payment of direct debit."

Sergeant C stated the following regarding the applicant's telephone call of 28 March 2010:

"[The applicant's] complaint was that his car had been seized even although he had insurance cover for the vehicle. I explained the procedure for this to him which he seemed to accept."

On 16 April 2010 Inspector D visited the applicant at home to discuss his complaint. According to Inspector D, the applicant was of the opinion that the legislation and policy relating to the seizure of vehicles was contrary to human rights legislation. Inspector D states that he then provided the applicant with a full explanation of the legislation and policy, advising that both were applied similarly throughout the UK. According to Inspector D, while the applicant accepted this explanation his opinion on the matter remained unaltered. Inspector D concluded that, "As such we had to agree to having different opinions."

On 23 April 2010, Superintendent E wrote to the applicant in response to his complaint, stating:

"This [the legitimacy of the seizure of the applicant's vehicle] is an area where we cannot reach agreement, however it may be that should your incident be progressed through the courts then it may be a matter for your solicitor to raise at that juncture for a decision in law to be made by the appropriate authority."

Consideration

Section 143 of the Road Traffic Act 1988 provides that it is an offence to drive a motor vehicle without insurance. Section 165 of the same Act empowers police constables to request the relevant certificate of insurance to prove the vehicle is not being driven in contravention to section 143. Under section 152(6)(b) of the Serious Organised Crime and Police Act 2005, the police have the power to seize a vehicle if the driver cannot provide a constable with immediate evidence that the vehicle is not or was not being driven in contravention to section 143.

Central Scotland Police's standard operating procedures in relation to this area provide:

"The power to seize a vehicle will only be used if it is believed that the driver does not hold and cannot immediately produce a valid driving licence and counterpart or there is no valid certificate of insurance in force and one cannot be immediately produced."

It is clear that at the time the applicant was stopped by Constables A and B there was no valid insurance policy in place in respect of his vehicle. While it is regrettable that the absence of insurance cover was due to an error on the part of the applicant's insurance company rather than through any fault of his own, the fact remains that the seizure of the vehicle was justified both by

law and Central Scotland Police's own procedures. With regard to the applicant's claim that the seizure of his vehicle breached human rights legislation, the Commissioner is not aware of any case law in support of this position. In the Commissioner's view, Superintendent E's comment in this connection – that the applicant might wish to seek clarification of the issue through the courts – was appropriate in the circumstances.

For these reasons, the Commissioner considers that Central Scotland Police dealt with this complaint in a reasonable manner.

Conclusions, Recommendations and Learning

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly no further action is required in this connection.

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