

Report of a Complaint Handling Review in relation to Dumfries and Galloway Constabulary

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

Summary and Key Findings

The applicant's complaint stems from an incident which resulted in the vehicle he was driving being seized and removed by officers of Dumfries and Galloway Constabulary.

The Commissioner found that the complaint was not dealt with reasonably by Dumfries and Galloway Constabulary. A number of recommendations were made 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 5 March 2010, at approximately 9 am, the applicant was taking his daughter to work in his son's vehicle. The applicant drove past Constables A and B who noticed that the applicant was not wearing a seatbelt. Constable A thereafter carried out a check of the vehicle on the Police National Computer, the results of which indicated that there were no insurance details held for it. Constables A and B subsequently followed and stopped the applicant.

Constables A and B then approached the vehicle and asked the applicant to produce a certificate of insurance, which he could not. After calling his wife, the applicant told the officers that the insurance policy had expired a few days previously and he had forgotten to renew it. The applicant was then told that he would be charged with driving without insurance and the vehicle would be seized.

According to the applicant, Constable B gave him the option of insuring his vehicle immediately and advised that, if he did so, it would not be seized, although he would still be charged with driving without insurance. The applicant states that he then phoned his wife who arranged insurance cover for the vehicle starting immediately. A certificate of insurance supplied by the applicant confirms that cover started at 9:38 am on 5 March 2010. The applicant advises that when he informed Constable B that he had now obtained insurance cover for the vehicle, Constable B reneged on his offer and told him that the vehicle would still be seized. According to the applicant he asked Constable B to contact his insurance company to confirm that he was now insured but Constable B refused to do so.

Constables A and B state that the applicant advised them he had another insurance policy in his name that would permit him to drive the vehicle in question. Constable B then contacted his

supervisor, Sergeant C for advice. According to Sergeant C, she told Constable B that if the applicant was able to prove that he was insured to drive the vehicle it would not require to be seized. Constables A and B state that the applicant contacted his wife to obtain further details of the other insurance policy. Once these details were received, Constable B checked them with the Motor Insurance Bureau (MIB) which confirmed that the policy did not cover the applicant to drive the vehicle in question. Constable B then contacted Sergeant C again and was advised that as the applicant was not insured to drive the vehicle, the vehicle should be seized. At approximately 10:05 am Constable B made arrangements to have the vehicle uplifted.

The Complaint

Based on the contents of the correspondence received from the applicant, and the information obtained from Dumfries and Galloway Constabulary, the Commissioner has identified a single complaint, namely that, contrary to Constable B's assurance, the vehicle driven by the applicant was seized.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaint was handled by Dumfries and Galloway Constabulary ("D&G").

The applicant provided the following information in his statement:

"... [Constable B] asked me to sit in the back of the Police car which I did. He then told me the car wasn't insured. I told him it was and he said he had checked the database that it wasn't. I telephoned my wife ... to check. She told me it had run out. I told him that it must have been a genuine mistake that it wasn't insured. I said that I would 'phone and insure it and he said that I would be Attempting to Pervert the Course of Justice by doing that. I then said I would 'phone the wife back and get her to insure it now. He said if I insured it now I could drive it away. I then 'phoned the wife about 9.30 and she contacted the insurance company ... and they insured it straight away. She then 'phoned me back to tell me that.

My complaint is that the Officer has seized the car when it was insured ... I would not have insured it if the Officer had not given me the offer of insuring it as not seizing it."

The applicant states that, given the level of charges accrued by the recovery firm as he waited for his certificate of insurance to arrive, it was not financially viable for him to reclaim the vehicle following its seizure.

Internal Handling

The applicant's complaint was passed to Inspector D for investigation, following which a statement was obtained from the applicant on 8 April 2010. After meeting with the applicant, Inspector D obtained operational statements from Constables A and B and Sergeant C. Inspector D also obtained a copy of D&G's policy in respect of the seizure of vehicles.

After obtaining the above information, Inspector D submitted a report to Divisional Commander E. Inspector D's report made the following comments:

"Despite explaining Police procedures in relation to the seizure of vehicles, I was unable to resolve [the applicant's] complaint with him in relation to the seizure of the vehicle he was driving as he was adamant that Police had informed him that if he could insure the vehicle at that time it would not be seized. The Police officers deny this claiming that they offered [the applicant] the opportunity to prove that he was insured to drive the vehicle prior to it being seized..."

A letter was sent to the applicant on 12 May 2010 from Divisional Commander E with the following explanation:

"I can confirm that Inspector [D] carried out enquiries into your complaint and as he explained to you the Officers concerned denied your claim that they told you if you were to insure the vehicle then it would not be seized. It has been established from the Officers that the opportunity was given to you to prove you were covered by insurance. This followed guidance to the officers from a supervisor who instructed them to carry out further enquiries with the Motor Insurance Bureau after you informed the officers that you were covered by another insurance policy. As a result of this I am informed that these enquiries established that your other insurance policy did not cover you to drive the vehicle. In addition, no trace of any other insurance cover could be found covering you to ... drive the vehicle hence the reason for it then being seized."

Consideration

Section 165A of the Road Traffic Act 1988 empowers a constable to seize and remove a vehicle where he has reasonable grounds to suspect that it is or was being driven without insurance. According to section 165A(6)(b), in such circumstances the constable must warn the person that he will seize the vehicle:

"... if the person does not provide him immediately with evidence that the vehicle is not or was not being driven in contravention of [section 143 of the Act, which makes it a criminal offence to drive without valid insurance]."

The applicant accepts that, at the time the vehicle was pulled over, a policy of insurance covering the vehicle was not in force. Accordingly, in terms of the above provisions the officers were empowered to seize and remove the vehicle.

However, the applicant's complaint is that the vehicle was seized despite Constable B's assurance that this would not be done if insurance cover was arranged immediately.

As noted above, both Inspector D in his report, and Divisional Commander E in his response, state that Constables A and B denied the applicant's claims. Constable B gave the following account of his dealings with the applicant:

"During the initial enquiry with the MIB it was ascertained that [the applicant] did not have a Policy of Insurance covering him to drive the vehicle.

[The applicant] then offered to telephone his wife in order to have the vehicle insured immediately and also try and obtain [sic] details of a further Insurance Policy. I thereafter contacted my Supervisory Officer, Sergeant [C], who advised that if [the applicant] was able to prove that he was insured to drive the vehicle it would not be required to be seized.

[The applicant] thereafter made several telephone calls to his wife during which time he stated that he had a Policy of Insurance relating to another vehicle he apparently owned and that this would cover him to drive the aforementioned vehicle. The details of this Policy were obtained and once again I contacted the MIB however they stated that this particular Policy was for business use only and did not cover him to drive any other vehicles.

... I again contacted Sergeant [C] who informed me that due to the fact the checks revealed that [the applicant] was not insured to drive the aforementioned vehicle and all attempts had been made in fairness to [the applicant] regarding the other alleged Policies, I was to make the relevant arrangements to have the vehicle seized as per Force Guidelines."

Constable A gave the following account of his dealings with the applicant:

“[The applicant] then offered to telephone his wife in order to have the vehicle insured immediately and also to try and obtained [sic] details of a further Insurance Policy. Constable [B] thereafter contacted his Supervisory Officer, Sergeant [C] who advised that if he was able to prove that he was insured to drive the vehicle discretion could be used as to whether the vehicle was to be seized or not.”

As can be seen, whilst reference is made to the applicant offering to insure his vehicle at the scene, neither officer denies the applicant’s allegation that Constable B informed him the vehicle would not be seized if it was immediately insured. Additionally, neither officer makes reference to the conversation which the applicant claims he had with them in the rear of the police vehicle. Given that Inspector D’s conclusion and Divisional Commander E’s response are not supported by the evidence within the complaints file, the Commissioner does not consider this complaint to have been handled reasonably. The Commissioner recommends that D&G seeks further statements from Constables A and B as to whether Constable B made the offer claimed by the applicant. A further response to the complaint should thereafter be issued to the applicant.

The Commissioner also considers it necessary to comment on a further aspect of the handling of this complaint. The operational statements provided by Constables A and B are virtually identical in content and layout. They even include the same error:

“[The applicant] then offered to telephone his wife in order to have the vehicle insured immediately and also to try and obtained details of a further Insurance Policy. [emphasis added]”

It is difficult to avoid the conclusion that Constables A and B prepared their respective statements together. Both the text and layout of the officers’ statements suggest that they have been copied or written together. It is clearly inappropriate for a police officer to simply reproduce the statement of a colleague and present this as his/her own account of an incident. Were civilian witnesses to submit such similar statements during a complaints investigation, it would naturally give rise to a suspicion of collusion. In the Commissioner’s view, the situation is no different for police witnesses. It is surprising that Inspector D made no comment on this issue in his report.

D&G may wish to consider whether the submission of near-identical statements by police witnesses provides the public with confidence in its handling of complaints. The Commissioner recommends that D&G ensures that officers whose accounts are provided as part of a complaints investigation are made aware that these must be prepared independently of other police witnesses in the case. Needless to say, this should apply to any additional statements provided by Constables A and B in connection with the present case.

Conclusions, Recommendations and Learning

In the Commissioner’s view, the manner in which this complaint was dealt with by D&G was not reasonable. The Commissioner makes the following recommendations:

(1) that D&G seeks further statements from Constables A and B as to whether Constable B made the offer claimed by the applicant. A further response to the complaint should thereafter be issued to the applicant; and

(2) that D&G ensures that officers whose accounts are provided as part of a complaints investigation are aware that these must be prepared independently of other police witnesses in the case. Needless to say, this should apply to any additional statements provided by Constables A and B in connection with the present case.

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