

Report of a Complaint Handling Review in relation to Police Scotland

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1. Role of the PIRC

Sections 34 and 35 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the Act”) provide that the Police Investigations and Review Commissioner (“the PIRC”) may examine the manner in which particular kinds of complaints are dealt with by Police Scotland and the Scottish Police Authority. Through agreements with UK police bodies operating in Scotland, the PIRC may also examine the manner in which these bodies deal with complaints. The PIRC cannot review complaints of criminal behaviour against police officers or police staff, or complaints made by persons serving, or who have served with the police, about the terms and conditions of their service.

In performing this review function, the PIRC obtains information from the police body which dealt with the complaint. This information is considered together with information provided by the person who made the complaint (“the applicant”). An assessment is then made as to whether in all the circumstances the complaint was dealt with to a reasonable standard. Among the factors taken into account when making this assessment are the following:

- whether sufficient enquiries into the complaint have been carried out by the policing body;
- 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;
- whether the policing body’s response to the complaint is adequately reasoned; and
- 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.

2. Key findings

The complaints in this case arose from the applicant being stopped by police officers in connection with an alleged road traffic offence. Three complaints were reviewed, namely:

- 1) That officers invented the reason for stopping the applicant and had no legal right to do so;
- 2) That one of the officers, when provided with the name of an insurance broker stated “that’s your broker, no your insurer”; and
- 3) That an officer expected the applicant to do his work for him by providing documents at the police station.

The review found that all of the complaints were dealt with to a reasonable standard. No further action is required.

3. Background

In the morning of 29 November 2015, the applicant was driving his friend's (Mr A) motor vehicle. At the time of the alleged incident Mr A was in the passenger seat.

The applicant was directed to stop by Constables B and C who were in a marked police vehicle.

The applicant was informed by the officers that the reason he was stopped was because he was driving without wearing his seatbelt. In order to establish whether the applicant was insured to drive the vehicle, the officers also issued him with a HORT/1 form which required him to produce his insurance documents at a police station within seven days.

The applicant failed to comply with the HORT/1 form and he was reported to the Crown Office and Procurator Fiscal's Office (COPFS) for the original alleged offence of driving without wearing his seatbelt and for the further alleged offence of driving without valid insurance.

The applicant submitted his complaint online on 9 December 2015. Inspector D was appointed as the enquiry officer and a statement was noted from the applicant on 15 January 2016. However, as the applicant's case was still live, Police Scotland deferred issuing the final response to the applicant until after his criminal case was concluded. The applicant received a final response to his complaints from Chief Inspector E in a letter dated 14 June 2017.

4. The Review

Complaint 1: No legal right to stop

The applicant complains that the officer who stopped him invented the reason for pulling him over and had no legal right to stop him.

In an email dated 14 October 2016, the applicant highlighted other concerns associated with the above complaint. He states:

“They are traffic officers, they have the right to stop any vehicle on the road. However, what they did after stopping us did not comply with the lawful stop procedure in that neither officer felt the need to identify themselves, state the station the (sic) work out of and their purpose for stopping us. Both witness statements confirm that to be true.”

Police Handling of Complaint 1

Chief Inspector E responded to the applicant’s complaint as follows:

“The legislation relative to a Police Officers power to stop vehicles on a road is contained within Section 163 of The Road Traffic Act 1988. I have not replicated it in full, but in essence, a Police Officer in uniform is empowered to stop any mechanically propelled vehicle or pedal cycle being driven or ridden on a road. The driver or rider commits an offence if they fail to do so. The legislation does not provide that the Police Officer requires any specific reason for stopping the vehicle. If the Officer claimed you were stopped for a specific reason, I must assume this was an honestly held belief. The Officer is empowered to stop any vehicle for any reason, so there is no need to invent one. If you wish to contest the commission of an offence, the court is / was the place to do this....In view of the aforementioned I do not uphold this element of your complaint.”

In response to the concerns raised by the applicant in his email dated 14 October 2016, Chief Inspector E states:

“Whilst perhaps a common courtesy, there is no legal requirement for the Officers to identify themselves or the station from which they work. I am also satisfied, from the Officers’ statements, as well as your own, that the reason for stopping you was made clear.”

Consideration of Complaint 1

The applicant contends that, as he was allegedly wearing his seatbelt, the officers invented the reason for the stop and had no legal power to stop him.

The response to this complaint explains that under Section 163 of the Road Traffic Act 1988, officers are empowered to stop any vehicle. The response then explains that, under the legislation, an officer does not require a specific reason to stop a vehicle therefore there would be no reason to invent one. In addition, Chief Inspector E further states that if the officers did offer a reason for the stop, he would assume this was an honestly held belief.

The response in this connection is supported by the accounts of Constables B and C, both of whom record within their accounts that they observed the applicant to be driving the vehicle while not wearing his seatbelt and this was the reason he was stopped.

Accordingly, it is considered that the accounts of the officers support the position that there was a genuine reason the applicant was stopped. Further, notwithstanding this explanation, the relevant legislation empowers officers to stop any vehicle without there being any specific reason to do so.

For these reasons, the PIRC supports Police Scotland's decision not to uphold the applicant's complaint.

It is noted that Chief Inspector E also addresses the concerns raised by the applicant in his email of 14 October 2016. As explained by Chief Inspector E, there is no legal requirement for officers to identify themselves, or the station from which they work. In addition, although the applicant also contends in the email that the officers did not inform him of the purpose of the stop, the accounts of both officers and the applicant himself, confirm that the applicant was informed that the reason for the stop was because he was allegedly not wearing a seatbelt.

Accordingly, it is considered that this complaint is adequately reasoned and supported by the material evidence available. It is therefore concluded this complaint was handled to a reasonable standard.

No further action is required in this connection.

Complaint 2: Officer's comments

The applicant complains that when offered the name of an insurance broker as the possible insurer, the officer replied *"that's your broker, not your insurer"*.

In an email dated 14 October 2016, the applicant highlighted other concerns associated with the above complaint. He states:

"I did not at any time provide the name [named broker] as being my insurer or broker. The officer responded by BELLOWING at my companion after I had suggested [named broker] to him (my companion) after he said "Oh I don't know, the one in [named area]" in response to the constable's question to him as to who his insurer was."

Police Handling of Complaint 2

Chief Inspector E responded to the applicant's complaint as follows:

*"You complain that the Officer, when provided with the name [named broker] as an insurer, replied "That's the Broker, not the insurer".
I can offer very little by way of comment in relation to this component of your complaint other than to say the Officer is correct; [named broker] is an insurance Broker, not an insurance company. When making enquiries with the Motor Insurers Database (MID), having the Insurers details rather than the Broker's, speeds up the search process.
Having considered the circumstances relative to the aforementioned, and having reviewed relevant statements, I do not uphold this element of your complaint."*

In response to the concerns raised by the applicant in his email dated 14 October 2016, Chief Inspector E states:

"I have enclosed a copy of the "heads of complaint" form completed by Inspector D...and signed by both yourself and Inspector D.

The exact wording does not specify which stated [named broker] or whether it was suggested as being your insurer, or that of your front seat passenger. Either way, it would not, and indeed has not, altered my response to the allegation detailed earlier in this letter."

Consideration of Complaint 2

As acknowledged in the response, it is unclear if the name of the broker was offered as the potential insurer for the applicant or his passenger, Mr A.

Notwithstanding this fact, as explained in the response, the officer has merely pointed out that the company name offered operates as a broker and not an insurer. The matter of whether or not this was offered as a potential insurer for the applicant or Mr A is therefore considered immaterial.

Accordingly, it is considered that this complaint was reasonably handled. No further action is required.

Complaint 3: Provide documents at station

The applicant complains that an officer expected the applicant to do his work for him by producing documents at the police station.

In an email dated 14 October 2016, the applicant highlighted other concerns associated with the above complaint. He states:

“My contention is that the HORT/1 was placed on the dashboard of a vehicle not belonging to me. I wasn’t offered a ticket to accept one. Both Constable’s (sic) witness statements clearly state that Mr [A] was given the HORT/1”.

Police Handling of Complaint 3

Chief Inspector E responded to the applicant’s complaint as follows:

“The legislation relative to a Police Officers power to require production of insurance and test certificates is contained within Section 165 of The Road Traffic Act 1988. Again, I have not reproduced this legislation in full but in essence, any person driving a motor vehicle on a road, or who has been involved in an accident, or who is suspected of committing an offence relative to his use of that vehicle on a road, must produce for inspection, valid insurance and test certificates. He must also provide his own name and address, and that of the vehicle's owner. Anyone who fails to do any of the above commits an offence.

The legislation also provides that a person shall not be convicted if they produce the relevant certificates at a Police station specified by them within seven days, or where they produced it as soon as reasonably practical thereafter, or where it wasn't reasonably practicable to do so prior to the commencement of legal proceedings.

The legislation places the responsibility firmly with the driver to produce those documents. In doing so you would not have been doing the Officers job for him, but merely complying with your legal obligations.

As you failed to produce your insurance within seven days, the matter was reported to the Procurator Fiscal....In view of the aforementioned, I do not uphold this element of your complaint.”

In response to the concerns raised by the applicant in his email dated 14 October 2016, Chief Inspector E states:

“Your third point concerns the question of whether a ticket (HORT/1 form) had in fact been offered/accepted and ownership relative to same which had been placed on the dashboard of the vehicle. Having reviewed the Officers’ statements they appear to have treated you with fairness and acted reasonably and responsibly under the circumstances. The fact they did not seize the vehicle, and have afforded you the benefit of the doubt by placing the HORT/1 form on the dashboard, giving you the opportunity to avoid the prosecution which could potentially follow, is in my view proportionate and reasonable.”

Consideration of Complaint 3

The response to the applicant explains that, under Section 165 of the Road Traffic Act 1988, officers have the power to require the production of a certificate of insurance from any person who is driving a motor vehicle on a public road.

As further explained, the legislation provides that a person will not be convicted of an offence if they produce the relevant documentation at a police station within seven days. However, as highlighted by

Chief Inspector E in his response to the applicant, the onus to produce the documentation is placed firmly on the driver.

Chief Inspector E also advises the applicant that as he failed to produce the required documentation within the specified period, he was reported to the COPFS for the offence of driving without insurance.

Accordingly, as the response explains to the applicant the relevant legislation, and as the onus to prove that he was insured to drive the motor vehicle was placed on the applicant by statute, it is considered that Chief Inspector E is justified in his decision not to uphold the applicant's complaint.

It is also noted that Chief Inspector E also addresses the concerns raised by the applicant in his email of 14 October 2016 in his response. The applicant's main concern in this respect appears to be that the officers handed the HORT/1 to Mr A who placed it on the dashboard. Accordingly, the applicant contends that he was not offered the HORT/1.

However, Chief Inspector E explains that the option to seize the applicant's vehicle under the relevant legislation was available to the officers but they elected to afford the applicant the opportunity to prove that he was insured for the vehicle by issuing a HORT/1 form. In addition, the fact that the form was passed to Mr A and placed on the dashboard of the vehicle is also acknowledged in the response and confirmed by both officers in their statements. However, the evidence would suggest that the form was handed to Mr A in the first instance to pass to the applicant simply because the officers were speaking to the applicant through Mr A's window. In addition, the evidence would also suggest that the form was placed on the dashboard to dry it out as it had been soaked in the weather.

For these reasons, it is considered that the response is adequately reasoned and is supported by the relevant legislation and material evidence available.

It is therefore concluded that this complaint was handled to a reasonable standard.

No further action is required in this connection.

5. Conclusions

Complaints 1,2 and 3

It is concluded that the complaints were handled to a reasonable standard. No further action is required.

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