

**TYNWALD COMMISSIONER FOR ADMINISTRATION
REPORT ON CASE TCA 1823**

Background

1. Mr S lives on a main thoroughfare in Douglas with double yellow lines on the road, preventing any parking outside the front of his terraced house. To the rear there is a back lane with access at each end of it and a third exit down another lane which runs at right-angles from a point in the lane. The back lane has been adopted and as such it is maintained by the Department of Infrastructure. Like some other back lanes which have been adopted, it had yellow lines painted down it but following the resurfacing of the lane the Department did not repaint them. The back lane is used for loading and unloading, but it is narrow and parked vehicles cause an obstruction to all but the smallest cars.

2. In July 2018 a neighbour some three doors down the road from Mr S commenced building works. The works were extensive involving a number of contractors and some, instead of using the back lane solely for loading and unloading, parked there for substantial periods. Mr S became increasingly concerned about this. There were occasions when his partner was unable to drive down the lane and had to reverse her vehicle onto a busy road, sometimes with her young son as a passenger. Mr S did attempt to find the driver, but knocking on the back door of the house where the tradesman was working produced no response because the tradesman was working upstairs with music playing and Mr S had to enter the property in order to attract his attention. He was sometimes subjected to abuse when he requested that a vehicle be moved. On one occasion, Mr S observed a coal wagon reversing on the same road at a time when children were leaving school and walking on the pavements. The driver of the wagon had attempted to attract the attention of the tradesmen by shouting and sounding his horn, to no avail. On 24 August 2018 he wrote to the Minister for Infrastructure having, as he explained, contacted the parking control team many times requesting that action be taken to prevent the back lane being obstructed. The letter was passed to officers for action and throughout September Mr S communicated with officers, supplying them with photographs of vehicles causing an obstruction. In one response an official stated that “the Department had invested a lot of time in trying to resolve this particular issue. The team has attended the area on many occasions, including regular visits each day”. Mr S thought that reinstating the double yellow lines would be a deterrent, but the Department considered that “their maintenance is onerous whereas the powers of enforcement already exist in relation to obstruction. If double yellow lines were present, it would still not alter our balanced and reasonable approach to this issue so as not to prevent the work taking place”. The Department proposed to continue to monitor the situation and if they encountered any vehicle using it as a more permanent parking place, fixed penalty notices (“FPNs”) would be issued. However, Mr S continued to complain throughout October about parking and the failure to issue parking tickets to serial offenders. Mr S suggested that FPNs be issued because it was clear to him that talking to the tradesmen was not effective and they should not be given further warnings as these

were being routinely ignored. By this time, he had purchased CCTV equipment which was trained on the back lane outside his neighbour's house in order to provide evidence of prolonged parking.

3. Mr S wrote to the Minister again on 25 October requesting information about making complaints and also about the Department's legal obligations. He received an official reply from the Highway Services Division, in which he was told that the Department "prioritised safety over amenity" which meant that back lanes were unlikely to have yellow lines reinstated or repainted. The Department's only obligation (according to the response) was to maintain speed limit signs, and there were no traffic regulation order provisions relating to the double yellow lines in the area other than 7 metres on either side of a junction. The Department had 8 Parking Controllers, who patrolled the entire Island but their powers in relation to obstruction were limited. There was also one Traffic Warden who supported the Parking Controllers and who had additional powers to address issues such as obstruction. The Traffic Warden and Parking Controllers¹ had attended the location on numerous occasions and had issued FPNs. The police also had powers to enforce compliance. The Department considered that it had done all it could to assist, but it had to act in a balanced way and not prevent work taking place.

The Complaint

4. On 7 December 2018 Mr S complained to my predecessor. He expressed concern as to the risks which arose from having to reverse onto a busy road and that only 1 person in the Department could issue a Fixed Penalty Notice ("an FPN") for obstruction; he wanted double yellow lines reinstated since that would enable Parking Controllers to take enforcement action. He repeated those concerns when my predecessor and I subsequently met him together.
5. In response to my request for information from the Department of Infrastructure, it confirmed that the back lane to Mr S's property was classified as a highway, being an adopted road. It confirmed that a number of these back lanes in Douglas did have yellow lines painted, but since an obstruction caused by a vehicle could result in the issue of a fixed penalty notice whether or not there were yellow lines painted on the road, the expenditure on their maintenance was not justified. If the Department had wished to control parking by the creation double yellow lines it would have done this via a Traffic Regulation Order. However, orders of this sort would have to include exemptions to allow for loading or unloading and building or maintenance work; such exemptions are a normal feature of such orders. Therefore, even if double yellow lines had been provided for in a Traffic Regulation Order for the lane in question, a traffic officer would have been unable to issue a Fixed Penalty Notice if the usual exemptions had been applied in the making of such an order.

¹ I refer below to the Traffic Warden and Parking Controllers collectively as "traffic officers".

6. The Department subcontracts parking control to G4S, who employ 7 Parking Controllers. As mentioned above, the Department employs 1 officer as a Traffic Warden. Douglas Borough Council has no responsibility for traffic control. Under the Road Traffic Regulation Act 1985 as it applied at the time, Traffic Wardens had significantly greater powers than traffic controllers, although both had power to issue FPNs in relation to the contravention of traffic regulations by vehicles causing obstructions. In subsequent correspondence, the Department clarified the position as set out in the following paragraphs.
7. A traffic officer can issue a Fixed Penalty Notice for a contravention of a Traffic Regulation Order but only a Traffic Warden can issue a Fixed Penalty Notice in relation to an offence of obstruction as provided for in the Road Traffic Act 1985. An offence of obstruction is not covered in a Traffic Regulation Order as this would duplicate what is already there in the Act. As there is no order in force in respect of the lane in question, any offence of obstruction would have required the involvement of a traffic warden if a fixed penalty notice were to be issued.
8. The legislation was in force at the time of the matters forming the subject matter of this complaint, but the 1985 Act was due to be amended by legislation before Tynwald, which would, if enacted, confer greater powers on parking controllers in relation to specific offences. However, the Department originally informed me that an FPN could be issued only where a traffic officer witnessed an offence and was satisfied that the surrounding circumstances warranted the issue of an FPN. For that reason the Department could not accept third party CCTV footage or photographs as evidence of an offence being committed. I deal below with the proposals to amend the legislation.
9. The Department's records reveal that traffic officers attended the back lane on in excess of 50 times over a six-week period. On occasions when random visits were made the back lane was not obstructed. On others the vehicle was moved at the request of the officer or on a couple of occasions an FPN was issued. In addition, if they received a contemporaneous complaint from Mr S that the van was obstructing the back lane and no officer was available to attend, they telephoned the contractor and asked him to move his vehicle. This in turn led to the Department receiving complaints of harassment from the contractor. The Department considered it had acted proportionately and fairly, believing that there needed to be flexibility by other householders whilst the building work was being undertaken. Having spoken to the contractors, its officers were satisfied that if any vehicle was obstructing the back lane so that another vehicle could not pass, the contractor would move the vehicle. Their location was clear and the driver of the other vehicle could simply ask them to move the van.

10. I did have concerns about Mr S's use of CCTV, having encountered a couple of other instances of the Information Commissioner concluding that its use was in breach of the legislation so I requested advice from the Commissioner, without giving him details specific to the case. Mr S was using his CCTV to record activity on a public highway, which use was in the Commissioner's view lawful. The situation would be different if Mr S had positioned his camera to observe private property, such as someone else's garden. Moreover, had the back lane not been adopted by the Department, the use of the equipment in this way would not have been lawful, because it was likely that each householder owned a portion of the back lane adjacent to his or her property, over which other residents had an easement permitting them to pass over the land.
11. In earlier correspondence the Department had presented a rather muddled account of its attempts to have the legislation amended to clarify the powers of traffic officers, conflating the history of the Road Traffic Legislation (Amendment) Bill 2016 with that of the Road Traffic Legislation (Amendment) Bill 2020. Although there was a significant overlap between the content of the two Bills, they are strictly two separate legislative proposals and the Department's original explanation of the apparent 3½ year gap in progressing the changes was confusing and confused. As the Department now concedes the provisions to clarify the position of Traffic Wardens and Parking Controllers were initially included in the Road Traffic Legislation (Amendment) Bill 2016. Given the timing and the proximity to the House of Keys General Election the Department determined that the safest way to ensure that the Bill did not fall when Keys was dissolved in preparation for the Election was to introduce the Bill into the Legislative Council rather than the House of Keys.
12. The Bill received its first reading in Legislative Council on the 26th April 2016 and was then referred to a Committee. The Committee did report back in June 2017 and there were numerous recommendations made. Each of these recommendations needed to be considered by the Department, often in conjunction with other parts of Government. Some of these recommendations were accepted by the Department and others were not. Since receiving that report the Department has been in the process of making amendments to the Bill to reflect the Committee findings and to reflect other matters which were not apparent when the Bill was first drafted – for instance there were some BREXIT- and equality- related issues needing to be addressed. These changes took time in terms of ensuring that the drafting instructions were correct and agreed by the Department, the drafting of the amendments and the agreement of those amendments with the Department. The Department did not accept that it was not doing anything to progress the content. It was, but this was not in the public domain and so from an external perspective gave the impression that the Department was doing little to progress the legislation.

13. The Bill that is now making its way through the Branches is entitled the Road Traffic Legislation (Amendment) Bill 2020 but is essentially the same Bill, albeit with the limited changes made as detailed above, as the 2016 Bill. The journey of this Bill has been further hampered by the Coronavirus pandemic, meaning that subsequent readings have been delayed.

Conclusion

14. I understand Mr S's frustration and anxiety about the obstruction of the back lane but I have concluded that the Department acted reasonably in difficult circumstances. Over a 6 week period, visits to the back lane were made by traffic controllers or the Traffic Warden on 50 occasions. Before issuing an FPN, the vehicle had to be watched for between 5 and 10 minutes to determine whether it was there for the purpose of loading or unloading. If a FPN was issued prematurely and the vehicle was parked for the purpose of loading or unloading, it had to be set aside. Many, but not all, of the visits were in response to emails or telephone calls from Mr S. On occasions, when no Parking Controller was immediately available, a telephone call was made to the contractor asking him to move his vehicle. Mr S considered that the contractor should not receive warnings and that FPNs should have been issued. Some such notices were issued, which led the contractor and the householder to complain to the Department of victimisation.
15. The Department tried to be even handed. The van was not parked in the back lane except when the contractor was in the property. If another vehicle's access was being impeded, he could have been asked to move his vehicle. Mr S did not limit his reports to occasions when the van was causing an actual rather than potential obstruction, although he did not complain if it was actually being loaded or unloaded. Otherwise, its presence in the back lane was sufficient ground for complaint.
16. I remind myself that I am tasked with identifying maladministration. The test of what constitutes maladministration was defined at the time that the Bill for the Parliamentary and Health Service Commissioners Act 1967 was being considered at Westminster. At the time the office was established, Richard Crossman, the then Leader of the House of Commons, defined maladministration as including "bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness and so on". He explained that "Discretionary decision, properly exercised, which the complainant dislikes but cannot fault the manner in which it was taken" was excluded by the legislation."²
17. I accept that in the present case a level of discretion and balancing was appropriate and that the Department's decision not to issue FPNs in respect of each perceived obstruction does not amount to maladministration. I also accept that the Department

² See House of Commons Debates, 18 October 1966 volume 734 at column 51.

had to balance its priorities and deploy its limited traffic officer resources sensibly and proportionately.

18. I did have concerns about the delay between the Report of the Committee of the Legislative Council on the Bill and the introduction of the revised Bill but, having received a comprehensive explanation from the Department, I understand and accept the reasons for the delay.

19. I therefore reject Mr S's complaint.

Angela Main Thompson OBE
Tynwald Commissioner for Administration
1 May 2020