

## PCO COMPLAINTS PROCEDURE *by Alan Fleming*

Back in 1998, when I was Chair of the London Cab Drivers Club, I had a meeting with the Deputy Head of the PCO to discuss the Complaints Procedure. I have always had a bee in my bonnet about this because it is unlawful. I was promised at that meeting that the system was under review. It was shortly after this that there was a change in as much that the driver was sent a copy of the letter of complaint. However that is all that has changed and things are still the same. Until recently, complaints had to be made within seven days before a Magistrate, not that it mattered to the PCO this has now changed to twenty eight. The argument put forward by the PCO for their procedure is always the following. Seven days is inadequate time for a complainant to make a complaint to a magistrate under Sect.38 of the 1843 Act.

Since July 2008 the law has been changed and the complainant now has 28 days to lay a complaint before a magistrate. That is more than enough time for the correct and lawful procedure to be followed. So I have to ask what is the PCO doing to revert to the due process of law? The likely answer to that question is they are almost certainly doing nothing as usual. A driver's livelihood should not be placed in jeopardy on an aggregation of unsubstantiated complaints. "Each complaint must be specified" so said Lord Justice Taylor (Philips v Met Police 1987). An aggregation of complaints is the totting up process that the PCO use. Lord Taylor spelt it out: "This procedure is unlawful".

I can assure all readers that there is no statute that gives the PCO the right to carry on with this unlawful practice. As I have said before we cannot object to complaints being recorded if they have been proved in court first. Under section 39 of the 1843 London Hackney Act it states the following. All complaints under this act or any other act to be determined by a magistrate. The present system will always be open to criticism and the PCO leaves itself open to the charge, of abuse of legal process. This system has got to be changed and the trade cannot allow it to continue. So I have to ask which one of the trade organisations will take up the challenge? The straight answer to that is probably not at all.

Perhaps the new boy on the block the RMT may like to look into this for their new cab driver members. I would be very happy to discuss this with their General Secretary Bob Crow. The PCO cannot be allowed to place in jeopardy the future of cab drivers in this way.

The vast majority of complaints received by the PCO do not have any corroborative evidence to substantiate the complaint; it is the word of the complainant against the driver. Were these complaints to be taken to court they would fail to gain a conviction, purely on the basis that the complainant did not have the testimony of an independent witness. The rule that applies to corroborative evidence is as follows. Any evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the alleged offence. In other words it must be evidence which

implicates him. That is which in some material particular not only the evidence, that the offence has been committed, but that the accused committed it.

The test applicable to determine the nature and extent of the corroboration is the same whether the case falls within the rules of practice of Common Law, or within the class of offence for which the corroboration is required by statute. This was the judgment of Lord Chief Justice Reading. I am of the firm belief that there is no one at the PCO who deals with complaints who has the legal qualification, to distinguish between Common Law and statute.

Unless the PCO have applied the above rules then all complaints that have not been taken to court must be regarded as unsafe, and are open to be challenged. Because of the unlawful nature of the complaints procedure, many drivers have had their license suspended or revoked, and may have cause to seek compensation for being unfairly treated. If any driver feels that he has been unfairly treated he should seek the advice of a solicitor.

It makes no difference if the offence falls within the procedure of criminal or civil jurisdiction, the legal terminology is as follows. The legal maxim has always been and quite rightly so, He who asserts must prove. Therefore how does a complainant prove his case without an independent witness? The simple answer is they cannot. Its all very well for the PCO to work on the balance of probability but what happens if a complaint has never been made against you and one arrives suddenly. The PCO cannot then work on the balance of probability as you have had no previous complaints. So here is the flaw in this unlawful process when a driver receives his first complaint. For at this stage the PCO have nothing on which to base their conclusions. The driver then becomes another victim of the totting up process.

Hundreds, possibly thousands, of unsubstantiated complaints have gone on record and many drivers have lost their license due to this. The cost of a challenge to an individual driver has been the reason why the PCO has not been challenged. Their have been three judicial reviews which are a lot of money. But this has been when a driver's license has been revoked. However, there is another way to make a challenge which is not so expensive.

All cases involving the suspension or revocation of a driver's license are heard at a Magistrates Court. What has not been established is when a driver has an unsubstantiated complaint placed on his record, can he appeal to the court. I am currently checking if this procedure could be put into effect. If this can be done then the PCO would have to come to Court to prove the complaint. The only way that the PCO could prove their case is for the complainant to give evidence. If the complainant is unwilling to do so the likely outcome of the hearing is that the complaint would have to be removed. Remember that old legal maxim He Who Asserts Must Prove.

Alan Fleming is now working with Taxi Drivers & Owners Legal Protection Ltd. So if you are looking for the best legal representation in the trade perhaps you may consider joining our new legal insurance scheme, which is run by Alan and Dave Cohen.

Dave can be contacted on 07956 894 701, Alan can be contacted on 07831 092 123.

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