

Summaries of Selected Cases Investigated (1995/96)

TRANSPORT DEPARTMENT (TD)

Case No. OCAC 452/94

Complaint against TD - reneging on written advice and failure to give satisfactory explanation

After taking his road driving test, Mr A was given a form by TD to the effect that he had passed the test. However, when he called on one of the Department's licensing offices to apply for a Driving Licence, his application was refused. This was on the ground that he did not pass the road test.

2. It was subsequently revealed that while Mr A's driving test score sheet recorded a failure, he was given a form, for issue of a driving licence, signed by the supervisor of the Driving Test Centre where he attended the test, to the effect that he passed the test. The Department admitted that this was a "clerical error".

3. Notwithstanding the mistake and the discrepancy between the two documents issued by the Department, the licensing office offered no positive help to Mr A to have his query resolved or concern addressed. Instead, he was simply told to approach the Road Test Section located in another Office for clarification. Mr A then took up his complaint with the Road Test Section but without any success. He eventually complained to this Office.

4. Investigation by this Office revealed that the Department was remiss in issuing a document of such importance by mistake. Obviously there is no question of issuing a licence to Mr A as he had actually failed the test. His joy was short-lived and this obviously caused him frustration and embarrassment. It might have been easier for him to come to term with reality had the Department accepted its error readily, and given him a prompt and full explanation at the first opportunity. However, he was instead referred from one office to another. This seemed to have complicated matters particularly when the Department insisted initially that he could not be issued a licence because he failed the test. This was contrary to the document possessed by him. He should have been told from the outset that the document was wrongly issued. Failing to admit the mistake in the first place, it would serve no useful purpose to go into the details as to how and why he failed the test. On this basis, the complaint is considered **substantiated**.

5. TD felt that the complaint should not be substantiated on the following grounds -

- (a) the inconsistencies in the documents presented were due to a "clerical error". No unequivocal advice was given as the score sheet showed he failed the test. Therefore proof beyond doubt cannot be established against the Department;
 - (b) instead of seeking clarification from the Department on the contradicting advice given to him, Mr A selectively deployed evidence favourable to his cause; and
 - (c) an adequate explanation was in fact given to Mr A, albeit belatedly. This was due to a misunderstanding between staff involved as to the exact nature of grievance during the first two encounters with Mr A.
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6. After careful consideration of TD's reasoning, this Office is of the view that the conclusion of the investigation should remain unchanged because -

- (a) Although there was good reason to refuse issuing Mr A a driving licence subsequently, the Department did give him misleading and wrong advice in the first place that he was entitled to one.
- (b) Honest and unintentional as the mistake might be, it was more than euphemism to describe it as a "clerical error". It was gross carelessness, if not negligence, on the part of the Driving Test Centre Supervisor, whose duty was to verify the test results before issuing the documents. The Administration should be open and responsible for its errors. There is no use to be unnecessarily defensive which will only aggravate the difference and conflict with the public it serves.
- (c) This Office is not a court of law. The argument of proof beyond reasonable doubt does not apply in the Commissioner's determination of complaints. All ombudsmen adopt the balance of probabilities approach. In any event there is no probability to be balanced in this case as the facts are abundantly clear.
- (d) To argue that the complainant was not given an unequivocal advice is splitting hair. This shifts the onus to the complainant to detect and verify a mistake which was indisputably made by the Department.
- (e) There should have been no misunderstanding by the Department's staff about the nature of grievance right from the beginning when Mr A appeared in person to collect the driver's licence. He should have been tactfully and sympathetically handled.

7. This Office notes that TD had introduced changes to the internal procedures to avoid possible recurrence of similar problems. This Office advises the Commissioner for Transport to continue to monitor the situation to ensure that the internal checking system is functioning properly.
