

Report On Case No OMB-24-4740

This Office is in receipt of a complaint lodged by [omissis] in connection with the towing of his vehicle by LESA. Briefly the facts of the case are as follows:

1. *The complaint*

1.1 [omissis] (complainant) is the ‘appointed driver’ of the vehicle. On the 7 February 2024 at 15.00 hrs, complainant parked his vehicle bearing registration number [omissis] on Triq it-Tabib Chetcuti, Mosta. Complainant claimed that no temporary ‘tow zone’ notices were on site at the time. On 8 February he returned to the parking spot only to find that his vehicle had been towed away earlier in the day at around 8.47 hrs by LESA officials. That same day, complainant paid the €200 penalty to have his car released. He then proceeded to appeal the towing action using LESA’s internal appeal mechanism. In his appeal he explained that when he presented himself to the LESA offices he asked to see the evidence showing that notices were put up 48 hrs prior to the towing action. The photo he was shown did not show the ‘tow zone’ notice affixed to a wall or similar but was a picture of the metadata of a .jpg file. He also argued that his telephone number was clearly visible above the licence disk but no one tried to get in touch with him prior to the towing action. Complainant’s appeal was rejected by means of a letter dated 8 March 2024, wherein it was explained that the signs were duly affixed and the towing, “... *was justified and in*

accordance to law”. Complainant was dissatisfied with the outcome and filed a complaint with this Office arguing that the towing was unjust and unfair as no evidence showing that the appropriate ‘tow zone’ notices were put up and a temporary ‘no parking’ zone created. Moreover, no attempts were made to contact him prior to his car being towed despite his contact number being displayed above the road licence disc.

2. *Facts and findings*

2.1 As part of its investigation this Office requested that it be provided with evidence that notices designating the particular area as a tow zone were affixed on site 48 hours prior to the coming into effect of the said designation. It was provided with three photographs. The first was the photo of a mobile screen showing the metadata of .jpg file dated 5 February 2024 and timed at 9.50 hrs. This Office observes that this could refer to any photo taken on that date at that time. There is no link between the said metadata and an image of a ‘tow zone’ notice affixed in the required area. The second photo showed a ‘tow zone’ notice affixed to a cream wall the details of which could not be discerned. The third photo presumably showed the same ‘tow zone’ notice in higher resolution such that its details could be clearly read out. It indicated that on the 8 February between 07.00 hrs and 16.00 hrs that the area (4 spaces) in front of a named block of apartments on Triq Kurat Schembri and Triq it-Tabib Chetcuti would be designated as a ‘tow zone’. This Office further notes the following on the last two photos:

1) no time stamp is visible; and

2) the notices are attached to a white/cream wall without any further indication as to their surroundings, in other words, they do not show that said notices were affixed on the particular stretch of Triq it-Tabib Chetcuti.

2.2 In his complaint, complainant argued that given his contact number was clearly displayed over the road licence disc, he should have been contacted to remove the vehicle before it was towed away. This Office notes that there is no legal obligation by LESA officials to contact the vehicle owner/appointed driver prior to the vehicle being towed. Moreover, having a phone number displayed above the road licence disc does not create an obligation on enforcement officials or indeed, any individual to make use of said number in the event that the vehicle in question causes an obstruction.

3. *Conclusion and recommendations*

3.1 This Office observes that the photographic evidence provided does not show in any way that appropriate notices were affixed in: a) a clearly visible location; b) in the area concerned; and c) 48 hours prior to the towing action. The photos provided are simply not fit for purpose and in particular the metadata photo of a .jpg file should never have been deemed as acceptable 'evidence'. This Office, therefore, recommends that complainant be reimbursed the €200 penalty.

3.2 This Office had already raised the question on the quality of evidence used to determine whether appropriate notices were put up in the right place and 48 hours prior to the towing action in connection with another complaint. Appropriate recommendations were made and accepted by the authorities concerned after the events of this complaint.

Judge Joseph Zammit McKeon
Ombudsman

30 July 2024