

**CASE NOT SUSTAINED
NO RECOMMENDATIONS MADE
BUT SERIOUS VIEWS EXPRESSED**

CS/546

**COMPLAINT AGAINST THE DEPARTMENT OF TRANSPORT FOR
REFUSING TO REGISTER THE TRANSFER OF OWNERSHIP OF
THE COMPLAINANT'S VEHICLE**

1. On 22 October 2003 the Complainant sold his car ('the vehicle') to a local purchaser ('the purchaser'). The parties signed a Bill of Sale and they filled in the required transfer of ownership forms given to the Complainant by the Department of Transport the previous day. The Complainant explained that even though the vehicle had just been made roadworthy, it had yet to be taken to the Motor Vehicle Test Centre to be tested and given a roadworthiness certificate. Possession of the vehicle was transferred to the purchaser and it was agreed between the Complainant and the purchaser that the purchaser would take the vehicle to be tested.

2. The following day when the Complainant went to the Department of Transport ('the Department') to register the transfer of ownership he was informed that it was not possible to do so in respect of a motor vehicle which did not have an up to date motor vehicle licence.

(Ombudsman's note: a motor vehicle licence is only given to vehicles holding a valid road worthiness certificate.)

3. The purchaser failed to take the vehicle to be tested as undertaken by him and instead proceeded to drive the car illegally without a motor vehicle licence, committing a series of parking offences in the process. The parking tickets remained unpaid and since the Complainant was still the registered owner of the vehicle, the court summonses in respect of the unpaid fines were sent to him.

4. In his complaint to the Ombudsman the Complainant explained that on 21 October 2003, before he had transferred possession of the vehicle to the purchaser he went to the Department to enquire about the procedure for transferring ownership of a motor vehicle. At the Department he gave the clerk the details of the vehicle who proceeded to insert this information into the departmental computer. The Complainant alleged that the fact that the motor vehicle licence had expired inevitably appeared on the computer screen but the clerk just provided him with the relevant forms and he was asked to pay the required fee. He was not warned that it was impossible for him to transfer ownership in these circumstances. Had he been warned, he complained he would have not transferred possession of the vehicle and would not find himself in the position that he was now in.

5. The Department confirmed that under section 7(1) of the Traffic (Licensing and Registration) Regulations as interpreted by the Attorney General the Department did not have the authority to register a transfer of ownership unless

the seller was able to furnish the Licensing Authority with a Certificate of Registration and a motor vehicle licence. The Department informed the Ombudsman that according to the Attorney General the reference to a motor vehicle licence was a reference to a valid and up to date motor vehicle licence.

6. The Ombudsman pointed out to the Department that when the relevant Regulations were made (1st April 1958), the Motor Vehicles Test Certificates were not a requirement in order to obtain a motor vehicle licence. Thus, whilst the Attorney General was undoubtedly correct in his interpretation of the relevant regulation (7(1)) the consequences were far reaching in that in a given scenario where it was not economically viable for a vehicle owner to make the vehicle road worthy, then if the motor vehicle licence had expired, it would be impossible for the owner thereof to sell it to someone else willing to spend the money to make it roadworthy or for spare parts. The Ombudsman was of the opinion that this state of affairs was untenable.

7. The Department agreed that with the law as it currently stood, title of a vehicle that was not roadworthy could not be transferred and that in certain circumstances this was perhaps not entirely fair however, for this issue to be addressed legislation had to be amended. The Department confirmed that this matter would be forwarded to Government for their consideration.

8. The Ombudsman could not sustain the complaint pointing out that the Department was obliged to apply the law as interpreted by the AG. The Ombudsman was satisfied nevertheless that the Complainant had gone to the Department to enquire about the procedure for transferring ownership of a vehicle as would any body planning to sell his vehicle and indeed as evidenced by the Forms Number 5 and 6, that were filled in by both the Complainant and the purchaser. The Ombudsman declared that the Complainant should have been informed that a motor vehicle licence was an essential prerequisite of such a sale.

9. The Ombudsman went on to accept that legislation had to be amended and he was pleased that the matter would be forwarded to Government however, he pointed out that regulation 7(1) does not specify that the motor vehicle licence has to be valid and in force in order that the Department be able to register a transfer of ownership.

10. The Complainant as any owner of a car that was not roadworthy had a serious problem but the Department had failed to recognise that the law had been superseded by events and it had done nothing to help the Complainant solve his problem. The Ombudsman hoped that the Department would seriously consider giving the Traffic (Licensing and Registration) Regulations the widest possible interpretation pending action by Government.

11. The Ombudsman suggested that the Department should in the face of the need for legislative review endeavour to assist the Complainant and others who found themselves in a similar situation.