

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint about a Penalty Charge Notice. This is because the complainant could have appealed to the tribunal and because there is insufficient evidence of fault by the Council. In addition, the case has been considered in court.

The complaint

1. The complainant, whom I refer to as Ms X, complains that she received virtually no information about a Penalty Charge Notice before the bailiffs turned up. She paid £397, plus legal costs, and wants a refund.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start an investigation if we believe it is unlikely we would find fault. (*Local Government Act 1974, section 24A(6), as amended*)
3. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)
4. London Tribunals (previously known as the Parking and Traffic Appeals Service) considers parking and moving traffic offence appeals for London.
5. We cannot investigate a complaint about the start of court action or what happened in court. (*Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended*)

How I considered this complaint

6. I read the complaint and got some information from the Council. This includes a copy of the complaint replies, the court decision and all the letters the Council sent to Ms X about the Penalty Charge Notice. I considered comments Ms X made in response to a draft of this decision.

What I found

Penalty Charge Notices

7. If someone does not pay a Penalty Charge Notice the Council sends a Notice to Owner to the registered keeper of the vehicle. If the owner thinks the Council should not have issued the fine they can use the Notice to Owner to make a challenge. If the Council accepts the challenge it cancels the Penalty Charge Notice. If not, then it issues a Notice of Rejection which the person can use to appeal to the tribunal.
8. If the person neither pays nor appeals the Council sends a Charge Certificate and then registers the debt in court. The Council can then instruct bailiffs. If the person does not think the Council has followed the correct process they can send a statutory declaration to the court. If the court grants the declaration the Council takes the fine back to an earlier stage and the person has another chance to pay or appeal.

What happened

9. The Council issued a Penalty Charge Notice because Ms X made a prohibited right turn. Ms X appealed. The Council dismissed her appeal and sent a Notice of Rejection. Ms X did not pay or appeal. The Council issued a Charge Certificate, a warning letter and then registered the debt in court. All the letters were sent to the correct address. The Council started bailiff action but put it on hold when Ms X sent a statutory declaration to the court. On 20 February the Council found out the court had refused the statutory declaration. Bailiff action resumed on 1 March.
10. Ms X tried to challenge the court decision. She paid another court fee. The Council was not involved and did not know about the second court application. Bailiffs visited on 4 April and Ms X paid £397. On 7 April Ms X found out the court had rejected her second application.
11. Ms X says she thought her challenge to the fine had been successful. She also thought the Charge Certificate said she should not pay if she disputed the fine. She says she then received nothing further until the bailiffs arrived. Ms X says the bailiffs should not have visited on 4 April before the court had made the second decision. Ms X wants a full refund.

Assessment

12. I will not start an investigation because there is insufficient evidence of fault by the Council. This is because the Council sent Ms X all the documents it was required to send and used the correct address. In each letter the Council explained that Ms X was required to pay the fine or appeal. It explained her options and deadlines. Because Ms X neither paid nor appealed the case followed the correct statutory process until bailiffs became involved.
13. I also will not start an investigation because Ms X could have appealed to the tribunal. The Notice of Rejection clearly explained how Ms X could appeal. It is reasonable to expect Ms X to have appealed because the tribunal is the appropriate body to consider disputes about Penalty Charge Notices.
14. Finally, the court has considered Ms X's request for a statutory declaration. The Ombudsman cannot intervene in any case that has been considered by the court. The Council did not re-instruct bailiffs until after the court had rejected the statutory declaration and the Council had no knowledge of the second application.

Final decision

15. I will not start an investigation because there is insufficient evidence of fault by the Council and appeal rights Ms X could have used.

Investigator's decision on behalf of the Ombudsman