

4 September 2018

Complaint reference:
18 006 544

Complaint against:
London Borough of Havering

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint about a Penalty Charge Notice for driving in a bus lane. This is because the complainant could have appealed to the tribunal.

The complaint

1. The complainant, whom I refer to as Mr X, complains that the Council issued a Penalty Charge Notice. He says the Council has bullied and harassed him.

The Ombudsman's role and powers

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
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.

How I considered this complaint

5. I read the complaint and the Council's responses. I spoke to Mr X after he received a draft of this decision.

What I found

Moving traffic offences

6. The Council issues a Penalty Charge Notice if it believes someone has committed a bus lane offence. If the person disputes the fine they can make formal representations to the Council using the Enforcement Notice. If the Council does not accept the challenge it issues a Notice of Rejection. The person can then appeal to the tribunal. If the person neither pays nor appeals the Council will issue a Charge Certificate and register the debt in court. The fine increases as the process progresses.
7. The registered keeper of the vehicle is liable for the Penalty Charge Notice even if they were not driving when the offence occurred.

What happened

8. Council cameras observed Mr X's car in a bus lane in April. The Council sent a Penalty Charge Notice to Mr X. The fine was £130. The Penalty Charge Notice explained Mr X's appeal rights and said he had 14 days to pay a reduced fine of £65. Mr X was not driving the car at the time.
9. Mr X complained. The Council treated his complaint as a challenge to the Penalty Charge Notice. It explained why it would not cancel the Penalty Charge Notice and gave him another chance to pay at the reduced rate. It also explained that he could wait for the Enforcement Notice and appeal to the tribunal.
10. Mr X has not paid the fine. He has continued to send complaints to the Council but he has not followed the statutory process. He said, for example, that a 24 hour bus lane at that location was unnecessary. In response the Council said that operational hours are determined by a Traffic Management Order.
11. The Council sent the Enforcement Notice on 20 July. The Notice said Mr X needed to pay £130 or he had 28 days to make a formal challenge. The Council explained that if his challenge was rejected he would be able to appeal to the tribunal. The Council also explained that if he neither paid nor appealed it would take further action and the fine would increase. Mr X has neither paid nor appealed. The Council has not received any further correspondence from Mr X since it issued the Enforcement Notice.

Assessment

12. I will not start an investigation because Mr X could have made a formal challenge using the Enforcement Notice and then appealed to the tribunal if his challenge was rejected. It is reasonable to expect him to have done this because it is the statutory process, set up by Parliament, to deal with disputes about moving traffic offences. The tribunal has the power to cancel the Penalty Charge Notice – the Ombudsman does not have this power. If Mr X does not pay or appeal the Council will register the debt in court and may instruct bailiffs. Mr X will then be liable for the fine and bailiff fees of at least £75.
13. Mr X says the operational hours of the bus lane are unnecessary. The Ombudsman cannot change the hours and Mr X could have objected during the consultation stage before the bus lane became operational.

Final decision

14. I will not start an investigation because Mr X could have responded to the Enforcement Notice and then appealed to the tribunal.

Investigator's decision on behalf of the Ombudsman