

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint about a Penalty Charge Notice because the complainant could have followed the statutory process and filed a witness statement with the court.

The complaint

1. The complainant, whom I refer to as Mrs X, complains about a Penalty Charge Notice and says the Council did not respond to her appeal.

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.
5. We can decide whether to start or discontinue an investigation into a complaint within our jurisdiction. (*Local Government Act 1974, sections 24A(6) and 34B(8), as amended*)

How I considered this complaint

6. I read the complaint, the Notice of Rejection and the Council's responses to the complaint. I considered comments Mrs X made in response to a draft of this decision.

What I found

Penalty Charge Notice

7. If someone wishes to challenge a Penalty Charge Notice they can use the Notice to Owner to make a formal appeal. If the Council rejects the appeal it sends a Notice of Rejection. The person can then appeal to the tribunal.
8. If the person neither pays nor appeals the Council will send a Charge Certificate, register the debt in court and send an Order for Recovery. If the person had made an appeal, but did not get the Notice of Rejection, they can use the Order for Recovery to lodge a witness statement with the court. The case is then passed to the tribunal for a decision.

What happened

9. The Council issued a Penalty Charge Notice after cameras observed Mrs X's car making a prohibited turn. The fine was £130. The fine was reduced by 50% if paid within 14 days and not formally appealed.
10. Mrs X challenged the fine. She says the sign about the prohibited turn was new and not in her peripheral vision. The Council rejected her appeal and sent a Notice of Rejection on 11 April. I have seen the Notice and the Council used the correct address. The Notice gave Mrs X another 14 days to pay at the discounted rate. The Council did not receive payment from Mrs X or a further appeal. On 18 May it sent a Charge Certificate which explained it was too late to appeal and the fine had increased to £195.
11. Mrs X contacted the Council to say she had not received any response to her appeal. In May and June the Council told Ms X she could pay or wait for the Order for Recovery and file a witness statement. It explained it had sent the Notice of Rejection in April.
12. On 29 June Mrs X paid the fine because she was worried the Council would involve bailiffs. Mrs X says the Council is ignoring the appeals process. Ms X wants a full refund.

Assessment

13. I do not know why Mrs X did not receive the Notice of Rejection because the Council used the correct address. I do not doubt Mrs X did not receive it but there is nothing to suggest this was due to fault by the Council.
14. I will not start an investigation because Mrs X could have followed the statutory process and filed a witness statement with the court. Mrs X could have argued that she made formal representations and did not receive a Notice of Rejection. The tribunal would then have made a decision. It is reasonable to expect Mrs X to have filed a witness statement because this is the process, designed by Parliament, to deal with Penalty Charge Notice disputes. In addition, it gives access to the tribunal. Mrs X has paid the fine which means the process has ended. Instead of paying she could have waited for the Order for Recovery.
15. Mrs X says she should have paid at the reduced rate and then appealed. However, the law does now allow people to do this. If Mrs X had paid £65 then the process would have ended and she would not have been able to appeal.

Final decision

16. I will not start an investigation because Mrs X could have followed the statutory process, filed a witness statement with the court and then had the case considered by the tribunal.

Investigator's decision on behalf of the Ombudsman