

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint about a penalty charge notice issued by the Council. This is because it is reasonable to expect the complainant to ask the court to restore her right of appeal to a statutory tribunal.

The complaint

1. The complainant, whom I refer to as Miss B, complains about a penalty charge notice (PCN) issued to her by the Council.

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. And although we provide a free service, we must use public money carefully. We may therefore decide not to start or continue with an investigation if we believe there is another body better placed to consider this complaint. (*Local Government Act 1974, section 24A(6), as amended*)

How I considered this complaint

6. I have considered:
 - Miss B's complaint to the Ombudsman; and,
 - A chronology of the enforcement process provided by the Council, and copies of the associated enforcement documents.
7. I also gave Miss B the opportunity to comment on a draft version of this statement.

What I found

Legal and administrative background

8. There is a set procedure councils must follow when enforcing PCNs for parking contraventions and handling appeals against them.

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9. When a council issues a PCN the motorist has 28 days to pay the penalty charge or appeal; appeals at this stage are known as 'informal representations'.
 10. If the motorist makes informal representations against a PCN and the Council decides not to accept them, it will issue a notice of rejection to the motorist. This sets out the reasons for its refusal and provides a further opportunity for the motorist to pay the penalty charge. If they do not, the council may send a 'notice to owner' (NtO). The motorist must then either pay the charge or make 'formal representations' against the PCN within 28 days. If the council rejects the motorist's formal representations the motorist may appeal to London Tribunals. If the motorist does not pay or make formal representations, the Council may issue a 'charge certificate'.
 11. If a penalty charge remains unpaid after 14 days from the charge certificate, the council can register it as a debt at the Traffic Enforcement Centre (TEC) at Northampton County Court. Within seven days, the council must then send an 'order for recovery' informing the motorist that within a further 21 days from receipt of the order, they must either pay the amount outstanding or make a witness statement to the TEC. The statement explains why the motorist refutes the need to pay the penalty charge and requests that the TEC revokes the registration of the unpaid penalty charge as a debt.

What happened

12. The Council issued Miss B with a PCN for parking with wheels on the pavement. The penalty charge was not paid, so the Council sent Miss B a NtO.
13. Ms B sent representations to the Council, but it rejected them. Miss B did not then pay, or submit an appeal to London Tribunals, so the Council issued a charge certificate and subsequently a pre-debt warning letter.
14. Miss B emailed the Council to ask if she could pay the penalty charge by instalments. The Council explained the options that were open to Miss B.
15. The penalty charge remained unpaid, so the Council sent an order for recovery to Miss B. On the same day, Miss B submitted a late witness statement to the TEC. The TEC ordered the Council to withdraw the order for recovery and the charge certificate.
16. The Council noted Miss B's witness statement referred to an appeal, so it asked her for a copy of this. The Council sent Miss B a notice of rejection of her representations in November 2018, which explained the options available to her.
17. The penalty charge remained unpaid, so the Council sent a second charge certificate, pre-debt letter, and order for recovery. Finally, the Council issued a 'warrant of control' to appoint enforcement agents (bailiffs) to recover the debt.

Assessment

18. If Miss B feels there are reasons why the PCN should not have progressed to the enforcement agent stage, she can submit another late witness statement to the TEC.
19. If the TEC accepts Miss B's witness statement, the restriction detailed in paragraphs 3 and 4 above will apply to her complaint. This is because her right of appeal to London Tribunals will be restored. This appeal process is free and relatively easy to use. It is also the way in which Parliament expects people to challenge a PCN. I therefore consider it reasonable to expect Miss B to use this right of appeal if she wants to challenge the PCN, so this part of his complaint is outside the Ombudsman's jurisdiction.

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20. If the TEC does not accept the late witness statement, we would still not investigate. This is because Miss B could ask a District Judge at the local County Court to review the TEC's decision. We consider the District Judge would be better placed to deal with the matter, so the restriction detailed at paragraph 5 above would apply.

Final decision

21. The Ombudsman will not investigate Miss B's complaint. This is because she had a right of appeal to a statutory tribunal, and can ask the court to restore that right.

Investigator's decision on behalf of the Ombudsman