

15 August 2019

Complaint reference:
19 002 892

Complaint against:
London Borough of Havering

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint about the Council refusing to allow the complainant to challenge a penalty charge notice, as he had already paid the fine. This is because the Council has agreed to take action which is a satisfactory way to resolve the complaint.

The complaint

1. The complainant, whom I refer to as Mr B, says the Council has unfairly refused to allow him to appeal against a penalty charge notice (PCN) for a moving traffic contravention, because he has already paid. Mr B says he was unaware that you should not pay the penalty charge if you want to appeal.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

3. I have considered:
 - Mr B's complaint to the Ombudsman, and the supporting information he provided;
 - A chronology of the enforcement process and correspondence between Mr B and the Council, and copies of the associated documents;
 - The London Council's 'Code of Practice on Civil Parking Enforcement' ('the Code').

What I found

Administrative background

4. At paragraph 116, Part 2 of the Code, it says: "*if an owner contacts an authority and says that the Charge Certificate is the first notice received, the authority should consider allowing the owner to make payment of the full PCN charge (without the Charge Certificate increase) or make a challenge.....If the authority chooses not to allow either of these options, for example, where an owner frequently makes this claim, they should explain the procedure for.....the next stage of the process.*"

Summary of what happened

5. The Council posted a PCN to Mr B for driving in a bus lane. Mr B says he did not receive it.
6. He then received a Charge Certificate, which said *“please do not make payment if you want to challenge the PCN”*.
7. Mr B emailed the Council, stating he wanted to appeal. The Council replied, saying:
“as a Charge Certificate was issued....you are no longer able to make representations against the case. Please wait for an Order for Recovery which will enable you to make a Witness Statement against the case should you have grounds to do so. This is the only option available for you outside of payment of the current outstanding balance of £195. This is a Quasi-Judicial process set out by London Councils that must be followed by both the London Borough of Havering and the appellant.”
8. The Council then sent a pre-enforcement warning letter. Mr B decided to pay the £195, as he was worried the amount would increase further, but he also emailed the Council to say he still wanted to appeal.
9. In the subsequent complaint correspondence, the Council said payment of the fine meant Mr B had accepted liability and the case was closed.

Assessment

10. I am mindful that the Charge Certificate said you should not pay if you want to challenge the PCN, and that this was reiterated by the Council before Mr B paid the charge.
11. But I also note that some of the other procedural advice provided by the Council wasn't entirely accurate. Firstly, as this was a moving traffic offence the Council should have referred to a statutory declaration and not a witness statement. Secondly, the submission of a statutory declaration enables the person to highlight an error in the enforcement process, but does not constitute an appeal/representations 'against the case' or the basis of PCN itself. Finally, the Ombudsman has not identified any legislation or case law to support the view that liability is accepted when payment is made.
12. So on balance, and since the Council had referred to the Code in its correspondence with Mr B (even though it applies to parking, and not moving traffic contraventions), I asked the Council if it would consider applying the approach suggested at paragraph 116 of the Code.

Agreed action

13. The Council has offered to refund £130 and re-issue the PCN. This would then give Mr B the opportunity to submit formal representations against the PCN to the Council. If the representations are accepted, the Council would refund the remaining £65. If the representations are not upheld, Mr B would then have two options. He could either decide to not pursue the matter further, and he would therefore have benefitted from the discounted PCN rate (i.e. he would only have paid £65). Or he could lodge an appeal with London Tribunals, but he would then risk having to pay the remainder of the full value of the penalty charge (i.e. he would have to pay an additional £65) if the appeal was unsuccessful.
14. Mr B has confirmed he is satisfied with this proposal as a way to resolve the complaint.

Final decision

15. The Ombudsman will not investigate Mr B's complaint. This is because the Council has agreed to take action which is a satisfactory way to resolve the complaint.

Investigator's final decision on behalf of the Ombudsman