

The Ombudsman's final decision

Summary: The Council wrongly advised Mr X he could appeal after paying a penalty charge notice. The Council has apologised to Mr X and Mr X does not wish to pursue a fresh appeal about the issue. My draft decision is the Council has provided a suitable remedy for the injustice caused to Mr X.

The complaint

1. Mr X complains the Council failed to advise him that he would lose his right to appeal a penalty charge notice (PCN) if he paid the fine. Mr X says another motorist won a successful appeal against the Council when issues with a PCN in similar circumstances due to inadequate signage.

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'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. 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

4. An Investigator has spoken to Mr X about his complaint. I have considered notes of that phone call and evidence Mr X has provided to the Ombudsman. This includes photographs of a local highway and his comments on the complaint.
5. I have also considered the Council's response to Mr X's complaint.
6. I have written to Mr X and the Council with my draft decision and given them an opportunity to comment.

What I found

London Local Authorities and Transport for London Act 2003

7. London councils can issue penalty charge notices (PCNs) for moving traffic violations. This is where a vehicle “*acts in contravention of a prescribed [road traffic order]*” or “*fails to comply with an indication given by [certain traffic signs]*”.
8. When a council issues a PCN the owner of the vehicle has 14 days to pay the fine at a reduced rate. If a PCN is not paid within 28 days, then the fine will increase.
9. The law says councils must provide details of how to appeal a PCN.

What happened

10. Mr X says he was following local signposts to a hospital. He says he accessed the hospital site and drove on a road which was for buses only. Mr X says it was not clear how to access the hospital site and signage regarding bus access was unclear.
11. The Council issued a PCN to Mr X. Mr X paid the reduced rate and then appealed.
12. The Council advised Mr X he could not appeal as he had paid the fine. The Council later accepted Mr X had been told there was “*a period of grace beyond your payment during which a challenge could be lodged*”. The Council apologised for this.
13. Mr X says the London Tribunals Service which considers appeals against PCNs has found that another PCN issued for “*the same offence in the same area*” was not served correctly.
14. The Council says it has reviewed the signage and “*confirmed it is adequate*”.

My initial findings

15. Where the Ombudsman finds fault we try to put the person back in the position they would have been had the fault not occurred. In this case that would involve reinstating Mr X’s appeal rights.
16. An Investigator spoke to Mr X about the possibility of recommending this to the Council. It was explained to Mr X that this may result in an increased fine should his appeal be unsuccessful. Mr X said he would have appealed at the time but he no longer wanted to pursue an appeal.
17. The Council has accepted it gave Mr X wrong advice about his ability to appeal after paying the PCN. This was fault. The appropriate way to remedy this would be to restore Mr X’s appeal rights. However, he does not wish to pursue an appeal.
18. Taking this into account the Council’s apology provides a suitable remedy to injustice caused to Mr X. The issues Mr X has raised regarding the way the PCN was issued and signage in the area around the hospital are matters for the Tribunal. I understand the reasons why Mr X does not wish to appeal and I cannot impose this on him.

Mr X’s comments on my findings

19. Mr X provided comments on my draft decision. Mr X asked that these be included in any final decision. Mr X says:
 - The Council got the date of the alleged offence wrong in its response to his complaint.

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- Photographic evidence shows road signs were updated after the alleged offence took place. He says one of the signs had been damaged and tampered with.
 - The use of offence code “JJ3 or similar” in a PCN has been found to be “illegal” by the London Tribunals Service.
 - He was given misleading advice by Council officers about his right to appeal.
 - The Council received money from the NHS to put traffic cameras in place.
 - The Council has failed to inform “online satnav companies” that the former entrance to the hospital has changed.

My final decision

20. I have taken account of Mr X’s comments however this does not change my view on the complaint set out in paragraphs 15 to 18.
21. Mr X could have raised issues regarding signage and wording of the PCN as part of an appeal. The issues Mr X has raised regarding the way the PCN was issued and signage in the area around the hospital are matters for the Tribunal. I understand the reasons why Mr X does not wish to appeal and I cannot impose this on him.

Final decision

22. I have completed my investigation. This is because I have found fault causing injustice and the action the Council has already taken suitable action to remedy this.

Investigator’s draft decision on behalf of the Ombudsman