

The Ombudsman's final decision

Summary: Mr X complains the Council failed to properly deal with an order issued by the Traffic Enforcement Centre (TEC). The Council were at fault for declining to refund recovery costs following the court order. To remedy the complaint the Council agreed refund all the recovery costs added to Mr X's penalty charge after the Notice to Owner stage of the process.

The complaint

1. Mr X complains the Council failed to properly deal with his complaint about a Penalty Charge Notice (PCN) which was originally issued in November 2012. He sent the Council an order from the Traffic Enforcement Centre (TEC) dated July 2018 revoking the Order for Recovery of the unpaid Penalty Charge Notice and Charge Certificate. He complains the Council failed take appropriate action on receipt of the court order.

The Ombudsman's role and powers

2. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
3. 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*)
4. 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

5. I considered the correspondence Mr X provided and the orders issued by the courts in his case. I also considered the Ombudsman's guidance about parking fines.

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6. I sent a draft decision to Mr X and to the Council to enable both parties to comment. I considered comments from both parties before I reached a final decision.
 7. Although the original PCN was issued in 2012, Mr X's complaint to the Ombudsman concerns the Council's recent decision to dismiss the TEC court order. So, the complaint Mr X makes to the Ombudsman is not out of time.

What I found

8. Mr X was issued with a Penalty Charge Notice (PCN) in 2012. The original PCN was for £50. After recovery costs were added the outstanding amount became £291.27. Mr X paid £291.27 to clear the debt in July 2013.
9. Since that time Mr X has approached the courts. In 2017 the County Court granted Mr X extra time to submit an 'out of time witness statement'. In July 2018, the Traffic Enforcement Centre (TEC) issued an order which revoked the order for recovery of the unpaid penalty charge and revoked the charge notice.
10. Mr X sent the TEC order to the Council in July 2018. On receipt the Council wrote to Mr X to state that because it did not cancel the original PCN, no further action could be taken because Mr X had paid the PCN in 2013.
11. The Ombudsman issued a Focus Report in February 2017 concerning parking and traffic penalties. On Page 9, it sets out the Ombudsman's view on the actions a council should take when the TEC issues an order which revokes the order for recovery. In such situations, the Ombudsman expects councils to take the matter back to the 'Notice to Owner' stage of the process. As the TEC order removes the basis for bailiffs costs and recovery fees, we expect councils to refund everything paid except the original penalty charge. This action should be taken regardless of whether someone has paid the PCN.
12. When Mr X produced the court order in July 2018, the Council failed to do this. This was fault as the TEC decision removed the basis for the recovery charges.

Agreed action

13. To comply with the TEC order dated July 2018, the Council agreed to refund the £241.27 recovery costs Mr X paid after the 'Notice to Owner' stage of the process.
14. To recognise the time and trouble Mr X was put to when pursuing his complaint, the Council agreed to pay Mr X £100.

Final decision

15. There was fault by the Council.

Investigator's decision on behalf of the Ombudsman