

The Ombudsman's final decision

Summary: Mr X complained the Council was wrong to refuse him a discretionary grant and handled his complaints poorly causing financial hardship and stress. We found no fault in the Council's decision making on the grant but found fault in its complaint handling, causing injustice. We recommended the Council pay Mr X £100 for uncertainty and £100 for time and trouble.

The complaint

1. Mr X complains the Council did not follow a proper decision-making process in refusing his request for a discretionary grant and handled his complaints poorly. He says the Council's actions contributed to financial hardship and emotional distress.
2. Mr X also complains about how the Mayor's office dealt with his concerns and he complains the Council breached data protection and freedom of information laws.

What I have investigated

3. I have investigated the complaint at paragraph 1. At the end of this decision I have explained why I have not investigated other matters.

The Ombudsman's role and powers

4. 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*)
5. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
6. This complaint involves events that occurred during the COVID-19 pandemic. The Government introduced a range of new and frequently updated rules and guidance during this time. We can consider whether the council followed the relevant legislation, guidance and our published "Good Administrative Practice during the response to COVID-19".

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7. The law says we cannot normally investigate a complaint unless we are satisfied the council knows about the complaint and has had an opportunity to investigate and reply. However, we may decide to investigate if we consider it would be unreasonable to notify the council of the complaint and give it an opportunity to investigate and reply (*Local Government Act 1974, section 26(5)*)
 8. We provide a free service, but must use public money carefully. We do not start or may decide not to continue with an investigation if we decide there is another body better placed to consider this complaint (*Local Government Act 1974, section 24A(6)*)
 9. 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

10. I spoke to Mr X and I reviewed documents provided by Mr X and the Council.
11. I gave Mr X and the Council an opportunity to comment on my draft decision. I considered their comments before making a final decision.

What I found

Principles of good administrative practice

12. The Ombudsman publishes a guidance document setting out the standards we expect from bodies in jurisdiction. We issued an addendum in response to the COVID-19 pandemic; "Good Administrative Practice during the response to Covid-19". The following points are relevant in this case.
 - Basic record keeping is vital during crisis working. There should always be a clear audit trail of how and why decisions were made.
 - The basis on which decisions are made and resources allocated, even under emergency conditions, should be open and transparent.
 - Decision reasons should be clear, evidence based and where necessary explained in the particular context and circumstances of that decision.

Discretionary grants

13. In response to the COVID-19 pandemic the Government introduced support for businesses, including a discretionary grant fund.
14. In May 2020 it published "Local Authorities Discretionary Grants Fund- guidance for local authorities".
15. Councils could give a discretionary grant of £25,000, £10,000 or any sum under £10,000 to businesses which could not access other grant funding (other than the Job Retention Scheme). The value of the payment was at the council's discretion.
16. The Government wanted councils to exercise their local knowledge and discretion and recognised that economic need would vary across the country. So it set some national criteria for the funds but allowed councils to decide which cases to support within those criteria.
17. The funding was aimed at:
 - small and micro businesses.
 - businesses with relatively high fixed property costs.

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- businesses that suffered a significant fall in income due to COVID-19.
 - businesses which occupy a property, or part of a property, with a rateable value or mortgage payments of under £51,000.
18. It considered the following types of business should be a priority for funding but this was a guide only. Councils should decide themselves if a business was similar and, if so, whether it should be eligible for grants. These businesses were:
- small businesses in shared offices or other flexible workspaces, who did not have their own business rates assessment;
 - regular market traders with fixed building costs, such as rent, who did not have their own business rates assessment;
 - bed and breakfasts which paid Council Tax instead of business rates;
 - charity properties, which received charitable rates relief.
19. Where limits to funding available for this scheme required councils to prioritise which types of businesses would receive funding, it would be at their discretion as to which types of business were most relevant to their local economy. There would be no penalty for councils because of their use of discretion to prioritise some business types.
20. In taking decisions on the appropriate level of grant, councils could take into account:
- the level of fixed costs faced by the business
 - the number of employees
 - whether businesses had to close completely and could not trade online and
 - the consequent scale of impact of COVID-19 losses.
21. Councils were to set out their discretionary grant scheme on their website, providing clear guidance on which types of business were prioritised, and how they would decide on the level of grant.

Council's decision making on its discretionary grant policy

22. The Council has provided copy of a report prepared in May 2020 ahead of a meeting with the Mayor and other officials. This sets out its draft discretionary grant policy and the areas where the Council needed to decide on its approach. Of relevance to this case, this included whether to link payments to rental or mortgage costs, because grants were aimed at fixed costs.
23. The Council has also provided brief minutes of the meeting. Of relevance these say the Council would follow the Government guidance.

Council's discretionary grant policy

24. The Council has provided a copy of its discretionary grant policy published in May 2020. The Council says this was published on its website, though this has since been removed. However, it has referred to an online news article of 3 June 2020 which refers to the scheme and provides a link for further details.
25. Grants were payable to:
- small businesses in shared offices or other flexible workspaces, who did not have their own business rates assessment;
 - regular market traders with fixed building costs, such as rent, who did not have their own business rates assessment;

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- bed and breakfasts which paid Council Tax instead of business rates;
 - charity properties, which received charitable rates relief.
 - businesses which occupy a property, or part of a property, with a rateable value or mortgage payments of under £51,000.
26. All businesses were required to demonstrate a significant drop in income as a result of COVID-19.
27. The grants were aimed at fixed costs so the Council would allocate these based on rental/mortgage costs.
28. It would allocate grants based on 25% of the annual fixed rental or mortgage payments demonstrated by the business up to a maximum of £5,000. The final award would depend upon the number of businesses applying for grants.

Council complaints process

29. The Council has provided me with a copy of its complaint policy at the relevant time. This sets out a two stage process.
- Stage 1 – the relevant department will reply within 10 days or explain why it may need longer to reply.
 - Stage 2 – a manager will respond within 10 days or explain any delay.
 - If a person remains unhappy they can contact the Ombudsman.

What happened

30. In June 2020 Mr X applied for a discretionary grant. The application form asked for details and evidence of ongoing fixed building relating costs, for example, a lease or mortgage agreement. Mr X said he used his home as his office and so paid council tax and other costs. He provided a council tax document in support.
31. The Council asked Mr X for evidence of rental or mortgage costs and Mr X confirmed he had none. The Council then refused a grant as Mr X had not met its criteria.
32. Upon Mr X's request for an explanation the Council said he did not qualify as he had no annual rent or mortgage costs.
33. Mr X complained that other councils paid grants to people in his circumstances.
34. On 7 August a Council officer told Mr X they would discuss the matter with the head of the department to see if there was anything they could do.
35. Mr X chased a response in September. When he chased again in October his email bounced back as the address was no longer in use.
36. On 3 October Mr X complained the Council had closed its department while his case was still open. He asked it to explain its lack of response to him and why it would not pay a grant when other councils did.
37. Mr X chased the Council again in November.
38. The Council has provided a note of a call with Mr X on 17 December. It reports that Mr X expected a call from the head of the department. The officer explained he did not qualify for a grant under the Council's policy.
39. The Council provided a complaint response to Mr X on 21 December 2020. It explained:

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- Once it processed all applications the discretionary grant fund team returned to their previous roles within the Council. As it had already issued a response to Mr X's request it closed his case.
 - It could not locate where his emails were sent.
 - It accepts the email address provided to him should have been rerouted to a monitored email account. It was not and that is why he received no reply.
 - Each council could decide on its own policy. It refused him a grant based on its agreed policy as he had no fixed rent or mortgage costs.
40. On 23 December Mr X asked to go to stage 2. He expressed concern the Council could not find some of his emails as this raised data protection issues.
41. Mr X also asked the Mayor to look into this matter. He gave details of his complaint and repeated this in correspondence to the Council in February 2021. In summary:
- He asked why the Council did not give reasons for its refusal alongside its initial rejection.
 - He questioned why the Council did not take account of other fixed costs such as council tax, utility bills and a car lease.
 - He asked why it could not find his emails.
 - He asked why it did not respond to his complaint of 3 October within 10 days.
 - He said the Council had still not addressed why he had not heard from the head of the department as promised on 7 August. When he phoned the Council staff also told him they would pass his complaint to the head of department.
42. The Council responded on 4 February 2021. In summary:
- It accepted the content of its initial decision letter was below standard.
 - It acknowledged no-one spoke to him further to the email of 7 August. Staff did not tell him the Council had committed to look into the application further. However, had they done so, the decision would have been the same as it was made correctly in line with policy.
 - It agreed the email of 7 August should have prompted further action. It would take this into account when creating temporary teams in future.
 - It deactivated the email account once it had issued decisions issued on all applications, including his.
 - It could only consider the fixed costs listed in its policy and it could not now change its policy.
 - It accepted it should have located the emails and now asked him for copies.
 - It accepted its responses and follow ups were below its standards.
 - It apologised for the issues Mr X faced.
43. Mr X then complained to the Ombudsman. He was unhappy the Council had refused him a grant in circumstances where other councils paid it. And he was unhappy with its handling of the matter.
44. In response to enquiries the Council provided relevant documents, outlined above. It also said:

- It acknowledged the revenues manager failed to communicate with Mr X earlier in the process. But as he was the relevant manager he was suitably placed to respond to Mr X's complaint at stage 2 of the process.
- This was its first business discretionary grant scheme. It was an extremely busy time and demand on the service was huge. Mr X's requests for further information were lost in the process.
- Following the closure of the scheme it changed the automated decision notice sent out following a refusal of an application to insert a reason for refusal.
- It accepted there was a delay responding to emails and the service could have managed customers' expectations better by explaining that it was very busy and consequently there would likely be a delay in responding. The service could also have provided an escalation route should the need arise and have provided officer names and contact details. Once a matter is escalated it should be logged in the system as a complaint and progress monitored to ensure a response.
- It acknowledged that when the email address for the scheme was deactivated it could have put on an automated response to advise customers of an alternative email address should they still have a query in relation to the closed scheme.
- The service now quality checks a random sample of work to ensure it is thorough when making decisions and referring to all correspondence involved.

Findings

45. The Council had wide discretion in creating its discretionary grant policy. However, it had to follow a proper decision-making process in doing so. We would expect it to take account of the Government guidance and have recorded reasons to support its decision making.
46. The Council has provided records of its decision-making and a copy of its policy. These show it considered the Government guidance and its policy closely mirrors the guidance. Of relevance to this case, the guidance said councils should support those with high fixed property costs. The Council interpreted this as including rent and mortgage costs. While other councils may have decided to take into account other costs, it was for each council to apply the guidance as they saw fit. I find no fault in how the Council decided on its policy.
47. I am satisfied on the evidence the Council published its policy on its website. This made clear the qualifying criteria for the grant. I also note the criteria was detailed within the application form.
48. The Council refused Mr X a grant as he had no rental or mortgage costs as required under its policy. I find no fault in how the Council reached this decision.
49. The Council did not immediately give reasons for its refusal, however it did so upon Mr X's request for an explanation. I therefore do not find fault. However, I am pleased the Council has since taken steps to include reasons in future.
50. The Council offered to raise Mr X's case with its head of department then did not do so. This amounts to fault. Mr X was left uncertain whether the Council would change its decision from August to December. The Council has since accepted and apologised for this shortfall. However, I consider it should provide a further remedy to Mr X in recognition of the uncertainty he faced and the time and trouble he was put to chasing a response. I am satisfied with the actions outlined by the Council to prevent recurrence.

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51. The Council did not reply to Mr X's emails, it did not progress calls and it delayed responding to his complaint. This amounts to fault. The Council has since accepted and apologised for this shortfall. It also explained why it closed the email account. However, I consider it should provide a further remedy to Mr X in recognition of the uncertainty he faced and the time and trouble he was put to chasing a response, as above. I am satisfied with the actions outlined by the Council to prevent recurrence and to better manage customer expectations.
52. I am satisfied the Council's final response addressed Mr X's queries, including an explanation as to why it deactivated the email account. This response was provided by a manager in line with the Council's complaints policy, although this was the same head of department Mr X had expected to hear from. While it would have been good practice to have an independent person provide the stage 2 response this is not part of the Council's policy and in the circumstances of this case, this does not meet our threshold for a finding of fault.

Agreed action

53. To remedy the injustice set out above I recommend the Council carry out the following actions within one month of the date of my decision:
- Pay Mr X £100 for uncertainty and
 - Pay Mr X £100 for time and trouble.
54. The Council has accepted my recommendations.

Final decision

55. I find no fault in the Council's decision making but I find fault in its complaint handling. The Council has accepted my recommendations and I have completed my investigation.

Parts of the complaint that I did not investigate

56. Mr X is unhappy with how the Mayor's office dealt with his concerns. However, he had not complained to the Council about the conduct of the elected Mayor at the time of contacting the Ombudsman. I did not investigate this complaint as it is premature; it is right to first give the Council the opportunity to investigate and reply. If Mr X remains unhappy after the Council's consideration, he can contact the Ombudsman and we will consider whether we can and should investigate.
57. I did not investigate Mr X's complaints that the Council breached data protection and freedom of information laws. This is because the Information Commissioner's Office is the appropriate body to consider such complaints.

Investigator's final decision on behalf of the Ombudsman