

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
Halton Borough Council
(reference number: 18 004 872)**

17 December 2018

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr B The complainant

Report summary

Highways and Transport – Moving traffic penalties

Mr B complains the Council refused to refund sums paid in respect of two Penalty Charge Notices issued for failure to pay toll charges at the Mersey Gateway Bridge, despite a finding by the Traffic Penalty Tribunal (TPT) that the making of the relevant charging order was procedurally flawed.

Finding

No injustice.

Recommendations

We make no recommendations.

The complaint

1. Mr B complained the Council refused to refund sums paid in respect of two Penalty Charge Notices (PCNs) issued to his partner for failing to pay toll charges at the Mersey Gateway Bridge. He considers it should do so because the Traffic Penalty Tribunal (TPT) upheld appeals from other people on grounds of procedural impropriety by the Council in the making of the relevant charging order.

Legal and administrative background

The Ombudsman's role

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we 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. We 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. We may investigate complaints made on behalf of someone else if they have given their consent. (*Local Government Act 1974, section 26A(1), as amended*)
4. 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*)
5. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)

The Transport Act 2000

6. The Transport Act 2000, as amended by The Local Transport Act 2008, provides the legal basis for road user charging. The relevant associated regulations are the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 as amended by the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement)(England)(Amendment) Regulations 2014.

How we considered this complaint

7. We produced this report after examining relevant documents from the Council.
8. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

Background

9. Using its powers under the relevant legislation the Council issued the Mersey Gateway Road User Charging Scheme Order 2017 to seek to impose charges for crossing the Mersey Gateway Bridge ('the bridge'). If a car crosses the bridge and the charge (sometimes referred to as a toll) is not paid by midnight the following day then the Council may issue a penalty charge notice (PCN) to the registered

keeper of the vehicle. The person receiving such a PCN has a right to challenge it on specified grounds, set out in the relevant regulations. If having considered the challenge the Council rejects it, the vehicle owner has the right to appeal to the TPT. It is then for the Adjudicator to decide at appeal whether the penalty should be cancelled.

What happened in this case

10. Mr B's partner received two PCNs for failing to pay the charge for crossing the bridge. Mr B's partner did not exercise their right of appeal to the TPT. Mr B paid the penalty charges totalling £40.
11. Although Mr B's partner did not do so, other motorists did appeal to the TPT about the PCNs received in respect of failure to pay the toll for the bridge. A TPT Adjudicator found that one of a group of five appellants was not liable to pay the toll charge because the Council had not specified the sum of the charge in the Mersey Gateway Road Charging Order 2017. The Council applied for that finding to be reviewed, and subsequently an Adjudicator confirmed the TPT's original decision to allow all five appeals in that group. The Adjudicator found the failure to specify the charges in the Mersey Gateway Road User Charging Scheme 2017 amounted to a procedural error on the part of the Council. The TPT also concluded that several other technical and legal points meant that the Charging Scheme employed by the Council was not enforceable under the Transport Act 2000. The TPT directed the Council to cancel the PCNs issued to the five appellants.
12. In light of the TPT's decision Mr B asked the Council to refund the £40 he had paid in respect of the PCNs issued to his partner. The Council replied immediately saying it was taking legal advice in respect of the Adjudicator's decision and at this stage was making no refunds.
13. The Council subsequently published a statement on its website, sending a copy to Mr B the same day. It said, in summary:
 - The Council had in place a valid and legal power to charge and enforce tolls on the bridge from 14 October 2017 and all vehicles that used it on or after that date were required to pay a toll and liable to enforcement of a toll if no toll was paid, (unless they were exempt or benefitted from a local user discount scheme).
 - Adjudication by the TPT could not in law invalidate or remove the powers in place from the 14 October 2017 to toll and enforce tolls on the bridge. Any decision of a TPT Adjudicator only relates to that particular case; it does not have general effect and cannot remove the validity of the order or the obligation to pay.
 - For these reasons, the Council was under no legal obligation to repay any toll or penalty paid on failing to pay a toll, and would not be repaying any such sums paid.
14. Following a consultation, the Council revoked the 2017 Road Charging Order for the bridge, replacing it with a new order which came into effect from 19 April 2018.

Conclusions

15. As set out at paragraph 4 above, we generally take the view that it is reasonable to expect people to use the alternative remedy of appealing to the tribunal.

However, we decided to exercise discretion to investigate this case because of the wider public administration issues that it raises, which go beyond the remit of the TPT's Adjudicator. We are also formally exercising the powers described in paragraph 5 to look at apparent injustice to the much larger group of people potentially affected. That group is made up of those motorists who paid the toll, or who were penalised for not doing so, between 14 October 2017 and 18 April 2018 when the 2017 order was in force.

16. On the matter of fault, we are clear that it is not for us to determine the lawfulness of the 2017 Road Charging Order: that is a matter for the courts. We are applying a fundamentally different test, and simply need to come to a view on whether there was administrative fault in the way that the Council made the order underpinning the charges in dispute. On the face of the Adjudicator's findings, there is apparent maladministration in that defects were identified in the order, including a failure to set out the specific charge, rather than a range of charges.
17. However, we do not need to make a formal finding on that point and do not do so. This is because in our view any procedural errors there may have been in the original order did not lead to injustice. We have concluded therefore that there are no good grounds to investigate further.
18. In this case we know what would have happened if the apparent errors in the order had not occurred. The Council successfully implemented a replacement order in the same terms as originally intended. There is no suggestion here that the original order was defective because it was fundamentally unfair or unworkable. The new order gives effect to exactly what the Council always sought to achieve, which is a charge for crossing the bridge.
19. We are satisfied therefore that if the apparent fault had not occurred, there would in any case have been a valid order in place, and everyone passing over the bridge would have been liable to pay the toll in exactly the way that was envisaged. The bridge was clearly operating as a toll bridge, the charge was on display for motorists to see, and people chose to use this route in the full knowledge that a charge was payable. They paid that charge, or were subject to penalties for not paying the charge, in line with everyone's expectations about how the system was intended to work.
20. Our finding might seem at odds in the public eye with the individual decisions already made by the Adjudicator. However, the Adjudicator is looking at individual cases of appeal against a particular PCN. Our role is quite different in that we seek to remedy injustice arising from administrative fault. In the circumstances of this case, we do not think that it would be appropriate or proportionate for us to recommend that the Council repay a significant total sum to motorists because of possible administrative errors that did not cause anyone to be misled or be treated unfairly.
21. In summary, the question for us is whether Mr B and other people potentially affected (either because they paid the toll or because they received financial penalties for not having done so) would have been in a different position had the apparent fault not occurred. We are satisfied that they would not, and have therefore been caused no injustice.

Decision

22. We have completed our investigation into this complaint. Any fault by the Council in this matter did not lead to injustice.