

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

**Investigation into a complaint against
London Borough of Lambeth
(reference number: 17 019 196)**

12 June 2019

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 X The complainant

Report summary

Highways and Transport – Parking penalties

Mr X complains the Council failed to make reasonable adjustments when he tried to challenge a penalty charge notice (PCN) it issued to him for a parking contravention. Mr X says he was not able to challenge the PCN as a result of this. Mr X says the Council sent enforcement agents to his home to recover the money he owed. He says he asked the enforcement agents to make reasonable adjustments but they refused and he had to pay a significant amount of money to prevent his car from being taken away.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

In addition to the requirements set out above, to remedy the injustice caused to Mr X, the Council has agreed to take the following action.

- Pay Mr X £750 to acknowledge the distress caused and time and trouble he has been put to pursuing his complaint. This takes account of the fact Mr X had to deal with enforcement agents and the prospect of losing his car as well as his difficulties communicating with the Council.
- A senior officer should telephone Mr X to apologise for the Council's failure to make reasonable adjustments for him when challenging the PCNs.

The Council should take this action within three months of the date of this report.

The Council should also take the following action to ensure it is meeting its legal duties under the Equality Act 2010.

- Arrange relevant training on the Equality Act 2010 for customer service staff and appeals officers in its parking department. Although the Council has reminded staff of the need to provide reasonable adjustments and what adjustments are available this has not prevented mistakes being repeated. Therefore, a deeper understanding of the relevant legislation is needed.
- Review its systems and procedures to ensure any reasonable adjustments are agreed with customers and properly recorded.
- Review its systems and procedures to ensure customers records are routinely checked for records of reasonable adjustments whenever contact is initiated by either the Council or the customer.
- Review the wording of PCNs to ensure they comply with the Equality Act 2010 and provide details of how to request reasonable adjustments and make contact other than in writing.
- Review information on the Council's website and any other literature regarding challenging PCNs to ensure information given complies with the Equality Act 2010 and provides details of how to request reasonable adjustments and make contact other than in writing.

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- Review hand over arrangements with its enforcement agents to ensure details of any agreed reasonable adjustments are passed over and that its enforcement agents are aware of the need to make reasonable adjustments.

The Council should take this action within six months of the date of this report.

The complaint

1. Mr X complains the Council failed to make reasonable adjustments when he tried to challenge a PCN it issued to him for a parking contravention. Mr X says he was not able to challenge the PCN as a result of this. Mr X says the Council sent enforcement agents to his home to recover the money he owed. He says he asked the enforcement agents to make reasonable adjustments but they refused and he had to pay a significant amount of money to prevent his car from being taken away.

Legal and administrative background

The Ombudsman's role and powers

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. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)
4. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)

Parking penalties

5. The Council enforces parking restriction and takes recovery action using procedures set out in the Traffic Management Act 2004 and associated Regulations.
6. In law, the owner of a vehicle is responsible for any penalty charges regardless of who was driving at the time of the contravention. This is most often the person registered with the Driver and Vehicle Licensing Agency (DVLA) as the keeper of the vehicle. Councils will initially send any formal documents using details provided by the DVLA.
7. Someone receiving a PCN has 28 days to pay the penalty charge, although the council can accept a payment of 50% of the penalty charge within 14 days. A person can also make an "informal challenge" to the council explaining why they disagree with the PCN. If the council accepts the challenge, it will cancel the PCN.
8. If the council does not receive payment within 28 days, it may send a Notice to Owner (NtO) to the registered keeper. The keeper can then either pay the full charge or make formal representations against it.
9. If the council rejects any formal representations, it must send the keeper a 'notice of rejection of representations'. This explains they can either pay the penalty charge or appeal to an independent parking adjudicator within 28 days. If the

keeper does neither, the council can issue a charge certificate which increases the penalty charge by 50%.

10. If the charge is not paid after 14 days the council can register the unpaid penalty charge as a debt at the Traffic Enforcement Centre (TEC) at Northampton County Court. Within seven days the council must send an order informing the keeper that within a further 21 days from receiving the order, (a total of 28 days after registration), they must either pay the amount outstanding or make a witness statement to the TEC. The TEC can issue an order of recovery allowing the council to collect the debt.
11. The council can then instruct enforcement agents to collect the debt on its behalf. The enforcement agents can add their costs to the debt. The amounts that can be charged are set out in the Taking Control of Goods (Fees) Regulations 2014.

The Equality Act 2010

12. The Equality Act 2010 says an individual or organisation that provides a service to the public, such as councils, must not treat someone worse just because of one or more “protected characteristics”. Protected characteristics include people with disabilities including learning difficulties.
13. The law says an organisation must not do something to someone in a way that has a worse impact on them and other people who share a particular protected characteristic than it has on people who do not share that characteristic.
14. Service providers must not treat disabled people unfavourably because of something connected to their disability where they cannot show that what they are doing is objectively justified.
15. To make sure that a disabled person can use the service as far as is reasonable to the same standard as a non-disabled person the service provider must make reasonable adjustments.
16. A service provider is not allowed to wait until a disabled person wants to use its services, but must think in advance about what people with a range of impairments might reasonably need. They should consider the needs of people who have a visual impairment, a hearing impairment, a mobility impairment, a learning disability, for example.
17. Government guidance *“Equality Act 2010: Summary Guidance on Services, Public Functions and Associations”* says:

“Where a person has used the service provider’s services before, it will be unlawful to discriminate against them... if the actions of the service provider arise out of and are closely connected to the relationship that used to exist between them”.
18. If a person believes they have been discriminated against as a result of the actions of a service provider, they may make a claim for damages in county court. However, government guidance says:

“Defending or taking a claim in court can be lengthy, expensive and draining. It can also have a damaging impact on the reputation of an organisation. It is likely to be in everyone’s interest to try to put things right before a claim is made to a court”.

How we considered this complaint

19. We produced this report following the examination of relevant documents.

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20. Specifically, we have considered:
- Mr X's complaint and discussed it with him on the telephone; and
 - information the Council sent in response to our initial enquiries and the further enquiries we made.
21. We gave Mr X and the Council an opportunity to comment on a draft report and considered their comments before producing this final report.

What we found

22. Mr X is dyslexic. He says this means that he struggles to comprehend written information and struggles to put his thoughts in writing. Mr X says he will usually ask to deal with organisations by telephone and asks for more time to respond to correspondence.
23. Mr X says due to his job he travels all over London and receives PCNs from different councils. He says he has received PCNs from London Borough of Lambeth in the past and has struggled to get it to agree to make reasonable adjustments for him.
24. In its response to our enquiries the Council said:
- "When a customer contacts us via telephone relating to a PCN our systems are designed so that records are held for each PCN rather than each customer. Agents can record any reasonable adjustments required for each individual PCN, however where a customer has more than one PCN, they may need to advise us as to any reasonable adjustments required for each individual PCN".*
25. On 22 September 2017 Mr X received a PCN for *"parking in a residents' or shared use parking place without clearly displaying either a permit or voucher or pay and display ticket issued for that place."*
26. Mr X says he was moving out of a property on the street and as he was loading his car he was entitled to park on the street.
27. Mr X phoned the Council on 4 October 2017 when he received the PCN. He asked to make an informal challenge by phone as he had been able to do so in the past. The Council asked Mr X for evidence of his disability and said it would not take his challenge by telephone until he provided this evidence.
28. Mr X made an informal challenge against the PCN online on 4 October 2017. He said:
- "Property proceger wasn't follow. When issue the PCN by traffic warden. I believe there erroe in the ticket as well. And eroor with pay a displace. I was loading a car a the point of PCN being had. I am dyslexic as with to give a much fuller account in details over the phone".*
29. On 9 October 2017 Mr X complained to the Council about the way it had dealt with his request for reasonable adjustments.
30. The Council wrote to Mr X on 18 October 2017 in response to his informal challenge against the PCN. The Council said:
- "I understand from your letter that you were engaged in loading/unloading, however no proof has been provided. There are no notes made by the Civil Enforcement Officer to suggest seeing either of these activities taking place at the time of the contravention. Therefore we believe the Penalty Charge Notice was issued correctly".*

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31. The Council provided photographs of Mr X's car taken at the time the PCN was issued. It said there was a charge of £130 outstanding on the PCN but this would be reduced to £65 if Mr X paid by 2 November 2017. The Council provided details of how Mr X could pay.
32. The Council responded to Mr X's complaint on 25 October 2017. It said there *"was some confusion regarding the policy of reasonable adjustments for those with disabilities, and we have now made clear this policy with the call centre and the Representations and Appeals team"*. The Council said if Mr X felt he had *"a disability that does restrict you from making a representation in writing you can call our call centre... and request to make a representation over the phone due to your disability, you will need to provide your Penalty Charge Notice reference number, so that the representation can be recorded"*. The Council said Mr X could request a review of its response if he remained unhappy.
33. Mr X phoned the Council on the same day to say he was not happy with the Council's response to his complaint. Mr X asked the Council to review its response.
34. Mr X phoned the Council on 13 November 2017 to ask what evidence he could provide to show he was moving out of his property. Mr X was told he could upload a tenancy agreement to the Council's systems but this would not guarantee the PCN would be waived.
35. Mr X submitted further evidence to the Council via its online systems on 20 November 2017. Mr X provided an e-mail from a letting agent confirming he was due to move into his new property on 22 September 2017. Mr X also provided photographs of the Enforcement Officer. Mr X said:
"At the time I am supposed to have been in contravention the restriction did not apply. I as said that i was moving. The eveidence is in the picture that lambeth provided. As when see the photo. It is apparent that my car is beening loading. Also i've attached a copy of emai confirming date of moving. And on top this the ticket was issue correctly and the officer can be seen hindng behind a car whilst issue the ticket. Which is a breach of T&C and code of conduct".
36. The Council responded to Mr X's request to have his complaint reviewed on 30 November 2017. The Council said it had failed to make reasonable adjustments for Mr X when he contacted it on 4 October 2017. The Council said a reasonable adjustment would have allowed him to make *"a verbal challenge to your PCN and you should not have been asked to provide evidence of your dyslexia"*. The Council apologised for its *"inadequate response"* to Mr X's *"request for a reasonable adjustment to be made which would have allowed you to access a council service in the most appropriate way for your needs"*. The Council said it would use the experience from Mr X's complaint as part of a review of accessibility policies and procedures which were being put to its Cabinet in March 2018.
37. The Council replied to Mr X's further informal challenge against the PCN on 6 December 2017. It said:
"The concerns raised in your letter were dealt with in our previous letter dated 18 October 2017, which clearly advised you of the next course of action you may take. It is necessary for you to follow the process as explained".
38. The Council issued a Notice to Owner (NtO) on the same day.

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39. Mr X did not make formal representations to the NtO and so the Council sent Mr X a charge certificate on 11 January 2018. This resulted in a charge of £65 increasing the amount he owed the Council to £195.
 40. Mr X did not pay the outstanding amount and so the Council applied to County Court for an Order for Recovery. This resulted in a further £8 being added to the amount Mr X owed the Council. The Council wrote to Mr X to say he should pay £203 by 27 February 2018 or file a defence in court if he believed he had grounds for not paying.
 41. The Council obtained an Order for Recovery and passed the case to its enforcement agents on 9 April 2018. The Council did not advise its enforcement agents that Mr X was dyslexic and had previously requested reasonable adjustments.
 42. The enforcement agents issued Mr X with a Notice of Enforcement at his address on 10 April 2018. This resulted in a charge of £75 meaning the total amount owed by Mr X was £278. The Notice said Mr X should pay within 14 days or further recovery action may take place resulting in further fees being charged.
 43. On 24 April 2018 an enforcement agent attended Mr X's property and clamped his car resulting in a further charge of £235 being added to the total amount owed. This brought the outstanding balance to £513. Mr X paid the amount when the enforcement agent attended as he needed access to his car for work. Mr X said he wanted to complain about the actions of the enforcement agents. He said the Council never notified him it was passing the case to its enforcement agents to take recovery action.
 44. Later the same day Mr X telephoned the enforcement agents to make his complaint and to ask for footage from the enforcement agent's body camera. The enforcement agents said he had to make his request in writing. Mr X said this was a breach of the Equality Act 2010.
 45. The enforcement agents responded to Mr X's complaint on 9 May 2018. They said Mr X had to make a request for the camera footage in writing and he should approach his local Citizens Advice Bureau for help if he was not able to do so.
 46. Mr X complained to the Civil Enforcement Association (CIVEA) which is the trade association which represents enforcement agents. CIVEA passed details of Mr X's complaint back to the enforcement agents and asked them to respond further.
 47. The Council's enforcement agents wrote to Mr X on 21 June 2018 after discussing his complaint with him by telephone. The enforcement agents accepted they provided Mr X with wrong information about needing to make a written request for body camera footage. However, the enforcement agents said there was no evidence they had acted incorrectly in the way they had collected the debt owed.
 48. Mr X received a further PCN from the Council in July 2018 as a result of allegedly driving in a bus lane. Mr X wrote to the Council on 12 July and asked for an opportunity to make an informal challenge verbally. The Council wrote to Mr X on 21 August 2018 rejecting his challenge.
 49. Mr X complained to the Council and it arranged to take an informal challenge over the telephone. Mr X has since paid the outstanding PCN.

Findings

50. Mr X has a right to go to court if he believes the Council has discriminated against him by not making reasonable adjustments or breaching the reasonable adjustments put in place. However, we must consider if it is reasonable for Mr X to go to court.
51. Government guidance says taking court action in relation to discrimination can be *“lengthy, expensive and draining”*. Given Mr X’s communication difficulties we do not consider it reasonable to expect him to take action in court. Only the courts can determine whether the Council has discriminated against Mr X but we can decide if the Council has acted with fault in dealing with Mr X and his requests for reasonable adjustments.
52. The Equality Act 2010 requires the Council to make reasonable adjustments for disabled persons where they are put at a substantial disadvantage compared with a non-disabled person. The Council did not make reasonable adjustments for Mr X when he requested them by telephone and online on 4 October 2017. This is fault.
53. In its response to our enquiries the Council said, *“measures were... put in place well in time for [Mr X] to appeal via the statutory process and prevent the case from escalating to the enforcement stage”*. However, despite accepting that it failed to make reasonable adjustments for Mr X the Council then failed to take steps to allow him to make his informal challenge verbally. There was no reason why the Council could not have put further action on hold whilst it did so. Failure to do so was fault.
54. The Council says it advised Mr X he could challenge by telephone when it responded to his complaint on 25 October 2017. However, the Council was aware that Mr X had an outstanding PCN he wished to make an informal challenge and that it had failed to make reasonable adjustments to allow him to do so. Therefore, the Council should have arranged to take the informal challenge to the PCN over the telephone instead of giving Mr X vague advice, in writing, about how he could do so himself.
55. The Council issued the NtO to Mr X on the same day as it rejected his informal challenge. We would have expected the Council to contact Mr X to advise him verbally that he could still make formal representations against the PCN given his request for reasonable adjustments. Failure to do so was fault and Mr X was denied an opportunity to challenge the PCN.
56. The Council failed to pass details of Mr X’s disability and agreed reasonable adjustments to its enforcement agents. The enforcement agents were acting on the Council’s behalf and the Council should have shared this information. As a result of the Council’s failure to share this information Mr X had to make a further request for reasonable adjustments about the same issue.
57. The Council’s systems record agreed reasonable adjustments against individual PCNs. This means disabled people must request reasonable adjustments each time they receive a PCN from the Council.
58. The Equality Act 2010 requires the Council to anticipate the needs of people who may need to access its services. The Council’s PCNs provide information about how to challenge but only give details of how this can be done in writing. The Council’s website does not give alternative ways of submitting a challenge other than by post or online. The Council’s website says:

“Please note you will no longer be able to discuss a parking fine with a member of our team at our customer service centre. This change has been made as all challenges must be made in writing by using our online web form or submitting a challenge by post”.

59. The Council is at fault for failing to publicise alternative ways of challenging a PCN for people who may need to request reasonable adjustments.
60. The Council’s website says:

*“If you do want to appeal your PCN, it is a legal requirement that all challenges are **made in writing**, which can be by email or by sending a letter in the post.”*
61. However, this is not the case. The law gives the Council discretion to decide what form representations might take. The law also requires London based councils to *“act through the joint committee”* when *“determining the form for making representations”*. (*The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations (regulations 3 & 4)*)
62. As of 7 February 2018 the London Councils’ Code of Practice on Civil Parking Enforcement says:

“Representations against parking and traffic enforcement should be made in writing, either by responding and signing the relevant section of the NtO, by signed letter, email, online form or in any other written form. Where a vehicle keeper’s disability prevents them from providing written representations, the authority should accept oral representations provided that an appropriate audit trail giving an irrefutable record of the representations is kept.”
63. Therefore, the Council is at fault for failing to publicise the fact that representations can be made orally if a person would encounter difficulties making representations in writing.
64. PCNs are issued against the registered keepers of vehicles based on registration details held by the DVLA. It would be difficult for the Council to identify previously agreed reasonable adjustments each time a person received a PCN. However, the Council should anticipate the needs of people who may need to access the service and so it should provide and publicise a means of requesting reasonable adjustments when challenging a PCN by means other than in writing. This information should be made clear on PCNs, the Council’s website and any other literature it may produce about PCNs.
65. Failure to do so puts Mr X and disabled people dealing with the Council’s parking services at a substantial disadvantage compared to non-disabled people as there is no publicised way for them to access the service and submit an informal challenge.
66. This has recently impacted Mr X when he received a further PCN from the Council as a result of driving in a designated bus lane. The Council says Mr X has not made a specific request for reasonable adjustments in relation to that PCN. However, Mr X requested an opportunity to make representations verbally but the Council failed to consider that request. This is fault.
67. We would usually recommend the Council restart the appeals process for the outstanding PCN, including reinstating any initial discount. However Mr X has now paid the PCN so there is no need to recommend a further appeal.
68. The Council’s failure to properly record agreed reasonable adjustments has caused Mr X distress and unnecessary time and trouble. He has had to make

repeated phone calls and has been forced to set out his position in writing despite having difficulties doing so as a result of his disability. Mr X was caused further significant distress dealing with enforcement agents who had not been made aware of the need to make reasonable adjustments. He also faced the prospect of having his car removed which would impact on his ability to work and earn money.

69. Mr X has been clear that his complaint relates to the Council's failure to make reasonable adjustments for him because of his disability. Mr X has not sought to cancel the PCNs.

Recommended action

70. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
71. The Council has agreed to take the following action to remedy the injustice caused to Mr X as a result of the fault we have identified.
- Pay Mr X £750 to acknowledge the distress caused and time and trouble he has been put to pursuing his complaint. This takes account of the fact Mr X had to deal with enforcement agents and the prospect of losing his car as well as his difficulties communicating with the Council.
 - A senior officer should telephone Mr X to apologise for the Council's failure to make reasonable adjustments for him when challenging the PCNs.
72. The Council should take this action within three months of the date of this report.
73. The Council should also take the following action to ensure it is meeting its legal duties under the Equality Act 2010.
- Arrange relevant training on the Equality Act 2010 for customer service staff and appeals officers in its parking department. Although the Council has reminded staff of the need to provide reasonable adjustments and what adjustments are available this has not prevented mistakes being repeated. Therefore, a deeper understanding of the relevant legislation is needed.
 - Review its systems and procedures to ensure any reasonable adjustments are agreed with customers and properly recorded.
 - Review its systems and procedures to ensure customers records are routinely checked for records of reasonable adjustments whenever contact is initiated by either the Council or the customer.
 - Review the wording of PCNs to ensure they comply with the Equality Act 2010 and provide details of how to request reasonable adjustments and make contact other than in writing.
 - Review information on the Council's website and any other literature regarding challenging PCNs to ensure the information given complies with the Equality Act 2010 and provides details of how to request reasonable adjustments and make contact other than in writing.
 - Review hand over arrangements with its enforcement agents to ensure details of any agreed reasonable adjustments are passed over and that its enforcement agents are aware of the need to make reasonable adjustments.

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74. The Council should take this action within six months of our final report.
 75. The Council has agreed to the recommendations and engaged positively with us to make sure it is able to comply with the above actions.

Final decision

76. We have completed our investigation as we have found fault causing injustice. The action we have recommended is a suitable way of remedying this.