

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

**Investigation into a complaint against
Kent County Council
(reference number: 17 004 169)**

26 November 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 X	The complainant
Contractor A	Car park management company

Report summary

Highways and Transport – parking penalties

Mr X complains about the Council's decision to issue him with a Parking Charge Notice, causing him to incur costs.

Finding

Fault found causing no significant injustice and recommendations made.

Recommendations

To remedy the injustice identified in this report the Council has agreed to carry out the following actions:

- pay Mr X £100 for time and trouble within one month; and
- stop issuing parking penalties at Lullingstone Country Park and at its other parks that use the same enforcement process, until it has put in place appropriate arrangements.

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)*

The complaint

1. Mr X complains about the Council's decision to issue him with a Parking Charge Notice. Mr X says he paid the penalty charge of £40 and a further £2.50 for payment by cheque.

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 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*)
4. 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*)

Traffic Management Act 2004

5. When a person parks their car on council owned land covered by a Traffic Regulation Order ("TRO") without paying any required charges, a council can issue a Penalty Charge Notice under the Traffic Management Act 2004 (the "2004 Act").
6. If the penalty charge is not paid, the council can issue a Notice to Owner. This gives the owner the chance to make formal representations to the council to dispute the penalty charge. If the council rejects the representations it must inform the owner of their right of appeal to the Traffic Penalty Tribunal or London Tribunals.
7. Where the land is not covered by a TRO, a council can take action against the car driver in the civil courts under contract law. However, the council cannot transfer liability for any payment to the car owner.

Protection of Freedoms Act 2012

8. When a person parks their car on private land not covered by a TRO without paying any required charges, the car park operator can issue a Parking Charge Notice to the owner under the Protection of Freedoms Act 2012 (the "2012 Act"). This is different to a Penalty Charge Notice under the 2004 Act.
9. The 2012 Act allows car park operators to recover these charges through the civil courts and to transfer liability for any charges to the owner of the car.
10. Schedule 4, section 3 of the 2012 Act says this does not apply where the parking place is provided or controlled by a traffic authority.

Government Guidance on the 2012 Act

11. The Department for Transport publishes non-statutory guidance, “Guidance on Section 56 and Schedule 4 of the Protection of Freedoms Act 2012”. This says the provisions in Schedule 4 are intended to apply only on private land. Public highways are excluded as well as any parking places on public land which are either provided or controlled by a local authority (or other government body).

How we considered this complaint

12. We produced this report after examining relevant files and documents.
13. We gave Mr X and the Council a confidential draft of this report and invited them to comment. We took the comments into account before finalising the report.

What we found

What happened

14. The Council owns and manages Lullingstone Country Park. It engages a third party, Contractor A, to manage the associated pay and display car park (the “Car Park”) on its behalf.
15. Mr X parked his car in the Car Park without paying. Contractor A issued him with a Parking Charge Notice under the 2012 Act.
16. Mr X says Contractor A told him to pay the penalty charge and then appeal. Mr X says he paid the charge and then Contractor A said he had lost his right to appeal in doing so.
17. Mr X contacted the Council. The Council told Mr X it could not help him and he should contact Contractor A.
18. Mr X then contacted the Ombudsman.
19. We asked the Council to comment on its view that Contractor A could not issue a Parking Charge Notice under the 2012 Act due to the exclusion under Schedule 4, section 3.
20. In response to our enquiries the Council explained it did not provide this Car Park as a traffic authority. It provided and charged for parking places under the Countryside Act 1968 and not under the Road Traffic Regulation Act 1984. It therefore considered this was not a parking place provided or controlled by a traffic authority and so the exclusions under the 2012 Act did not apply.
21. We consider the Council did not have to act in its capacity as a traffic authority in providing the parking place. The key issue was whether the Council provided or controlled the parking place.

Conclusions

22. The 2012 Act only applies to land that falls within its definition of “relevant land”. It does not apply to parking places on public land provided or controlled by a traffic authority.
23. The exclusion under Schedule 4, section 3 of the 2012 Act does not say a council must provide the parking place while acting as a traffic authority. The Government guidance also suggests this is not relevant.

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24. The Council owns, provides and controls the parking places in the Car Park. The Council is also a traffic authority. This means Schedule 4, section 3 is relevant and Contractor A could not use the 2012 Act to issue a Parking Charge Notice to Mr X.
 25. The Council did not use the correct process to issue a parking penalty to Mr X. This is significant fault. This affects other members of the public too and we therefore find it appropriate to consider any wider injustice.
 26. We will not make a finding on the lawfulness of the penalty charge issued to Mr X or others, as that is a matter for the courts.
 27. There is nothing to suggest Mr X or the wider public were unaware of the parking charges or the consequences of non-payment. And, the Council could have followed the correct process to issue parking penalties with the same result. We therefore cannot say the Council's procedural faults caused Mr X or others significant injustice. However, Mr X has been put to time and trouble in bringing this matter to our attention.
 28. In response to our draft report, the Council says it does not agree it did not use the correct process to issue a parking penalty to Mr X. It noted we did not make a finding on the lawfulness of the penalty charge issued to Mr X or others, and we cannot say the Council's procedural faults caused Mr X or others significant injustice. On that basis it said it would not challenge our decision.
 29. It confirms it will pay Mr X as recommended. It also says it has stopped issuing parking penalties at Lullingstone Country Park and at its seven other parks that use the same enforcement process.
 30. We have considered the Council's comments. This does not change our findings but we have amended our second recommendation to include the Council's other parks. We welcome that the Council has agreed these recommendations.

Recommendations

31. To remedy the injustice identified in this report the Council has agreed to carry out the following actions:
 - pay Mr X £100 for time and trouble within one month; and
 - stop issuing parking penalties at Lullingstone Country Park and at its other parks that use the same process, until it has put in place appropriate arrangements.
32. 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*)

Decision

33. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr X. The Council should take the action identified in paragraphs 31 and 32 to remedy that injustice.