

Digest of Cases 2008/09

Section M

Transport and highways

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M1: Footway

Failure to consider the needs of users with disabilities – failure to take action to remove obstructions from footways

Background

Miss F had mobility problems. She used a motorised scooter to access village shops and the post office independently. She made a complaint to the council about the failure to ensure that a local shop owner removed produce displays from the street. Following a meeting of all of the parties concerned, the council decided that the shop owners should be allowed to continue to display produce but allow for a footway width no narrower than that provided further along the footway at a corner 'pinch point'. The council indicated that it would carry out works to widen the footway, but this would take at least two years because of difficulties with allocating funds.

Miss F was dissatisfied with this as it meant, as far as she was concerned, that the hazard of getting her prosthetic leg caught in the crates outside the shop had not been removed.

The investigation

The council at first argued that there was a suitable alternative route that Miss F could use. The Ombudsman's investigator visited the area and concluded that the alternative was not suitable for use by a wheelchair user as it involved, among other things, negotiating a sharp bend with a narrow footway on a busy road used by HGVs. The council then argued that if Miss F could negotiate the pinch point on her preferred route she would be able to negotiate the footway if it were cleared to the same width.

Legal requirements

The Disability Discrimination Acts and accompanying Code of Practice require public authorities to:

- promote equality of opportunity between disabled people and other people;
- encourage participation by disabled people in public life; and
- take account of people's disabilities, even where that involves treating disabled people more favourably than other people.

What happened

A proposal to widen the footway at the pinch point was considered by the council's area committee. The committee decided instead to request a Community Travel Plan for the whole area, which would look at local transport issues and the current and future requirements of people living and working in the area.

Outcome

The Ombudsman informed the council that she was not satisfied that it was complying with its duties. The council reconsidered its decision in the light of the Ombudsman's view and decided to widen the pavement at the pinch point and ensure that the shop's produce display was limited to allow safe passage for wheelchairs and scooters along the footway. This provided an acceptable resolution to the complaint.

(Case reference confidential)



M2: Parking notices

Issue of enforcement notices – action by bailiff – use of wrong address

What happened

Mrs P received a number of parking contravention notices that were sent to her home but addressed to someone she did not know. She returned these to the council, but the council continued to send notices to her address and escalated enforcement action, including instructing bailiffs. The council eventually accepted that the council tax record indicated that Mrs P was the only person living at the address and rescinded all of the notices.

The investigation

There was conflicting information given by the council and by Mrs P. The council said that it had relied on information provided by the DVLA regarding the address of the keeper of the vehicle, that out of 13 notices issued five had been returned marked 'gone away' and it was not feasible or realistic for it to follow up such a large number of notices. It said no bailiff action was directed at the complainant.

Mrs P said she did not write 'gone away' on the notices that she returned. She received so many notices that on a number of occasions she wrote "please, please do not continue to send mail for this gentleman" and on each occasion she signed her full name. Over the period of 2006/07 she received more than 100 notices, and in March 2007 a bailiff company delivered a letter by hand threatening to recover goods. Mrs P said she also received penalty notices from two neighbouring

councils addressed to the same man. She returned them in the same way and she heard nothing more from those councils.

Conclusion

The conclusion was that the council had received sufficient information from Mrs P to instigate an investigation into this case to establish whether the notices were being sent to the correct address. Given the number of penalty charges issued against this driver, many within a very short period, it would have been possible for the council to have clamped the car rather than continue to issue notices to an address it had been informed was incorrect. If the council had investigated sooner it would have established through the council tax record that the address was incorrect and would have suspended enforcement action. As a result of the council's failure to do, this Mrs P was put to unnecessary time, trouble and distress in returning the notices and in corresponding with bailiffs.

Outcome

The council agreed to make a payment to Mrs P of £500 and to introduce a new system for dealing with returned documents to ensure that a similar situation did not arise.

(Case reference confidential)



M3: Penalty charge notices

Failure to implement agreement to withdraw and reissue fixed penalty notice – complainant absent on military service in Afghanistan

Background

The complainant was a serviceman. He was in Afghanistan when a Penalty Charge Notice (PCN) arrived at his home for an alleged infringement while he had been in England. When he returned from Afghanistan in February 2008 and found the penalty had been issued he telephoned the authority and explained the circumstances. The authority agreed to reissue the penalty so that he could either pay at the discounted rate or make representations against its issue.

What happened

He heard nothing more from the authority before he went to Afghanistan again in September 2008. While he was away, his partner contacted him to say she had received a letter from a bailiff threatening to distrain goods because the penalty had not been paid. The complainant spent considerable time on the telephone from Afghanistan trying to resolve the matter.

On his return the authority agreed that he could pay the penalty at the reduced rate and he did so. He complained to the Ombudsman about the unnecessary stress he had been put under by the authority's enforcement of the original penalty when he had been assured that the penalty would be reissued and that he could pay it at the lower rate.

Outcome

Following the commencement of the Ombudsman's investigation, the authority agreed to apologise to the complainant and pay him £200 to reflect the unnecessary stress, time and trouble he was put to. It also agreed to cancel the penalty, and so refunded the £60 payment he had made.

(Case reference confidential)



M4: Penalty charge notices

Penalty charge notices (PCNs) paid by motorists – failure to link cheques to notices – enforcement action wrongly pursued – two motorists paid fines twice

The complaints

Three motorists complained separately that a transport authority took enforcement action against them for motoring offences, when they had already paid the penalties.

The Ombudsman's investigation

The Ombudsman's investigation found the motorists' payment cheques were cashed by the authority, but they were not matched up with the relevant PCNs and so the authority continued enforcement action, even though the motorists contacted it on numerous occasions to explain that they had paid and that their cheques had been cashed.

Miss M's complaint

Miss M incurred a £50 charge for a parking offence. She sent a cheque for £50 to the authority within the 14 days stipulated, and stapled her cheque to the PCN. But when the payment was processed, it was not allocated to the PCN. It was only after further enforcement action had been taken, and Miss M's considerable efforts to sort things out, that the cheque was 'found'. Even, then, it was wrongly entered on the system and Miss M received a bailiff's letter threatening to seize her goods if she did not pay (the amount had now risen to £168.16), and she had to telephone the authority again to get the bailiff's warrant cancelled.

Mr S's complaint

Mr S ran a hire car business. One of his hire cars incurred a PCN for a moving traffic contravention. He sent a cheque for the £100 penalty, with the PCN stapled to it, to the authority. It was cashed, but it was not matched up with the PCN, and so enforcement action continued, although nothing happened for eight months. Then a bailiff visited Mr S's premises and clamped one of his vehicles. He had to pay £556.29 (the fine that he had already paid, plus bailiff's costs) to have it released. Mr S wrote to the authority to reclaim this sum, but received no response. He complained again through the authority's website, and this time received a reply, but it answered none of the points he raised in his letter, and declared the matter closed. Only when the Ombudsman's investigator made enquiries did the authority eventually agree to refund the duplicate fine and the bailiff's costs.

Mr H's complaint

Mr H received a PCN because it was alleged his vehicle was seen stopped on a Red Route at a time prohibited. There was some correspondence with the authority but, as the penalty had not been paid, a charge certificate was issued. The penalty remained unpaid and an order for recovery was sent to Mr H. When no payment was made, the fine was registered as a debt and a warrant of execution was issued and passed to a bailiff for collection of the outstanding penalty.

Mr H's wife paid the penalty (which had now reached £155). However the authority did not inform the bailiff that payment had been received and, more than three months later, a bailiff called at Mr H's home, clamped his car, and demanded payment of £624.91 (the £155 penalty and his costs of £469.91). This visit took place in the early hours of the morning and Mr H tried to prove to the bailiff that payment had been made. He showed the bailiff the cheque stub and his bank statement showing the cheque had been paid by his bank. Mr H contacted the authority and, using an automated system, was able to access the PCN and hear a recording saying that full payment had been made against the PCN and nothing remained outstanding. The bailiff was not prepared to consider any of this evidence or listen to the recorded message. Nor was he prepared to wait until someone could be contacted at the authority when the office opened to confirm that the penalty was no longer outstanding. He threatened to tow Mr H's car away if he did not pay immediately, and said that this would result in additional costs. Mr H paid the bailiff £624.91 and his car was released.

Mr H contacted the authority when the bailiff had left. He established that payment had been made, the authority passed information to the bailiff and he promptly refunded his charges of £469.91 directly to Mr H. But despite several telephone calls, the authority did not refund the duplicated penalty payment of £155.

The Ombudsman's view

The Ombudsman found “serious deficiencies” by the authority’s officers and said:

“It is not acceptable that cheques were cashed by the authority and then little effort was made to contact the drawer or attempt made to reconcile the payments with the relevant penalties.”

Outcome

The Ombudsman found maladministration leading to injustice in all three complaints. He recommended that, to remedy the injustice and avoid further similar incidents, the authority should:

- develop a comprehensive policy for dealing with payments received that cannot immediately be reconciled with outstanding penalties;
- carry out training for staff to help them recognise the difference between representations against the issue of a penalty and representations that payment has been made;
- review its procedures for locating payments that have been ‘lost’ and reconciling them with outstanding penalties;
- review its procedures for refunding payments to motorists where it accepts they have been wrongly charged, so that in the future unreasonable delays do not occur; and
- make compensation payments of £250, £1,050, and £480 respectively.

(Report 07A17576, 17777 and 08 008 328)

M5: Vehicle access consent

Grant of consent for vehicle access – failure to consider legal and safety issues – consent withdrawn

The complaint

Mr and Mrs N complained that a council withdrew consent for a vehicular access to their home after they were already committed to extensive landscaping works to accommodate a vehicle parking and turning area. As a result, they incurred unnecessary costs – and significantly and irreversibly altered their garden – without gaining the benefit of on-site parking that they had expected.

The Ombudsman's investigation

The Ombudsman's investigation found that, after the council gave consent for the vehicular access, Mr and Mrs N undertook some groundwork to prepare the site, obtained quotes for the work necessary to incorporate a parking and turning area within their property, and arranged a loan to cover the cost of the landscaping work. When the preliminary work to construct the access began, a complaint from another local resident alerted the council to the fact that additional safety measures might be necessary.

The council asked Mr and Mrs N to suspend work while it investigated, and they agreed as their contractor was not yet on site. Having agreed suitable safety measures, the council led Mr and Mrs N to believe that work could begin, but then discovered that it did not have the necessary legal authority to allow a vehicular access in this location.

The council withdrew consent for the vehicular access as Mr and Mrs N's contractor was about to start work and after some materials had already been ordered. Mr and Mrs N modified the scheme to replace the planned parking and turning areas with usable garden space, but this scheme was more costly and was not at all how they would have landscaped their property had they known from the outset that they would not have the benefit of a vehicular access.

The Ombudsman's view

The Ombudsman said the scale of the project that Mr and Mrs N had to modify was, to a large extent, determined by the council's original faulty decision. Once they had received the necessary consent to enable them to bring vehicles onto their property, it was entirely reasonable of them to make the most of this and consider the landscaping of their property as a single, inclusive project. So Mr and Mrs N paid £19,500 for work that destroyed a mature garden without bringing the benefit of vehicular access that would have made this loss worthwhile.

If the council had not wrongly granted the consent, Mr and Mrs N might well have tidied things up a little in the garden of their new home, but it was unlikely that they would have carried out £20,000 worth of landscaping work, or taken out a further mortgage to finance landscaping alterations to their property. So the injustice was significant. And in an effort to obtain redress, Mr and Mrs N sought specialist legal advice in the pursuit of their complaint, so their legal costs in pursuing this matter derived directly from the council's maladministration.

Outcome

The Ombudsman recommended that the council should pay Mr and Mrs N a contribution towards the costs of borrowing money to finance the project, the costs incurred in modifying the project, their legal costs in pursuing the complaint, two thirds of the cost of the landscaping, and an additional £1,000 to compensate them for their raised expectations and distress. This amounted to £30,320 in total.

(Report 07B13378)

