

Report

on an investigation into
complaint no 12 005 084 against
London Borough of Redbridge

12 March 2013

Investigation into complaint no 12005084 against London Borough of Redbridge

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Key to names used

Ms Young The complainant

The law requires me to report without naming or indentifying the complainant or other individuals.

Report summary

Subject

Ms Young received a parking contravention notice (PCN) after the Council's CCTV saw her committing an offence. As she moved shortly afterwards she received none of the notices the Council sent. When the Council's bailiffs found her car, even though they knew the address on their warrant was not the same as her address, they clamped it. She had to pay £741 to have the car released. The court accepted her late witness statement and cancelled the warrant. The Council refunded her the £172 parking penalty but refused to refund the bailiffs costs.

In dealing with her complaint the Council –

- Quoted repealed legislation as its justification for not refunding the bailiff's fees;
- Did not consider the actions of its bailiff which were in contravention of Government guidance;
- Insisted she was at fault for not notifying the DVLA of her new address when she had done so.

Finding

Maladministration causing injustice, remedy agreed.

Recommended remedy

The Council has agreed to refund Ms Young £569 she paid to the bailiffs. It is also paying her £80 for the court fees and £224 for the consultation fees which she incurred unnecessarily and an additional £150 in recognition of her additional time and trouble in pursuing the complaint.

It has put in place procedures with its bailiffs ensure that such a situation does not occur again. It will also let me know within two months of the date of this report how it will deal with cases where bailiff fees have been paid, but the warrant is then cancelled by the court.

I have suggested the Council reflects on what lessons it can learn about how it manages its complaint procedure for parking cases.

Introduction

1. Ms Young's car was seen by the Council's CCTV committing a parking offence. She moved the day after this. The Council got her address from the DVLA, but this was her old address. As a result Ms Young did not receive any of the notices the Council sent and the case was sent to the bailiffs. The bailiffs found Ms Young's car and clamped it. She paid £741 to have it released. After making a witness statement to the court the warrant was cancelled.
2. Ms Young asked the Council to refund the bailiff fees. It said it had no legal duty to do so. So Ms Young complained to me.

The Ombudsman's role

3. The Ombudsman investigates complaints of fault where someone says it has caused them injustice. If the Ombudsman finds fault but no injustice, she will not ask a council to provide a remedy. If she finds both fault and injustice, she may ask for a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
4. The Ombudsman normally expects someone to appeal to a court, tribunal or government minister if they have a right to do so. This is often called using an 'alternative remedy'. However, the Ombudsman may decide to investigate if she thinks there are good reasons. (*Local Government Act 1974, section 26(6)a*)
5. Section 25 of the 1974 Act defines the authorities subject to LGO investigations. Subsections six and seven are relevant to private bailiffs acting for a local authority -

“(6) Subsection (7) has effect where an authority to which this Part of this Act applies exercise a function entirely or partly by means of an arrangement with another person

(7) For the purposes of this Part of this Act, action taken by or on behalf of the other person in carrying out the arrangement shall be treated as action taken

(a) on behalf of the authority, and

(b) in the exercise of the authority's function”

6. Local authorities use bailiffs to recover local taxation or parking debts. The individual bailiff may be directly employed by the local authority, or may work for a firm which the authority uses to exercise its statutory function. In either case the law says the bailiff is in LGO jurisdiction as a contractor.
7. When a bailiff acts on a liability order issued by a Magistrates Court or on a Warrant of Execution issued by the Traffic Enforcement Centre then they are acting as officers of the local authority, not the court, and so they are also in LGO jurisdiction.

8. Local authorities have certain responsibilities to their residents and in the same way as they have to get best value out of contracts for the provision of other services, they also have to have regard to their wider responsibilities when agreeing the extent of the powers they are delegating to private bailiffs. So when LGO is critical of the actions of a bailiff it is effectively a criticism of the failure of the local authority to manage its contractors.
9. Private bailiffs acting for other bodies not in LGO jurisdiction are similarly outside LGO jurisdiction. County Court bailiffs are officers of and employed by the court, not the local authority. In these circumstances they act on behalf of their employer and not the local authority.
10. Ms Young could have taken court action against the bailiffs for the costs. Strictly speaking this is not an alternative remedy, as the legal action would be against the bailiffs, not the Council. But it could be a reason for me to exercise my general discretion not to investigate. But given the various issues raised by this complaint I consider an investigation is justified.

Legal and administrative background

11. The Traffic Management Act 2006 is the legislation that governs parking enforcement. When a parking contravention notice (PCN) is issued the registered keeper of the vehicle is a Notice to Owner (NtO). The owner may make formal representations as to why the PCN should be cancelled. If not accepted a Notice of Rejection of Representations is sent, which gives rise to a right to appeal to a Parking Tribunal. If the registered keeper does not appeal, or appeals unsuccessfully, and still does not pay the penalty charge, an enforcement authority can issue a Charge Certificate. If the penalty is not paid after 14 days the debt is registered at the Traffic Enforcement Centre (TEC) at Northampton County Court and an Order for Recovery issued. A warrant of execution may then be issued and passed to bailiffs to enforce.
12. The motorist may make a witness statement to the court to say that they did not receive the NtO. If the court accepts the witness statement the Charge Certificate is cancelled. This also cancels the warrant of execution. The Council can then decide if it wishes to continue with the enforcement process by issuing a new NtO.
13. Bailiffs recovering parking penalties are acting under the Distress for Rent Rules 1988. The fees they charge are laid out in Schedule 1 of the Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations 1993 (See appendix). The Department for Transport has issued Operational Guidance which gives details of how the law makes these Rules and Regulations relevant to Road Traffic Enforcement.

Investigation

14. One of my investigators has corresponded with the Council and Ms Young. Both parties were sent a provisional view and a draft copy of this report. I have taken the comments they made into account.

Key facts

15. At the end of May 2011 the Council's CCTV saw Ms Young's car committing a parking offence. The next day she moved from address X to address Z. Then, or shortly afterwards she wrote to the DVLA to tell them her new address. It seems the DVLA updated its records in mid June 2011.
16. At the start of June the Council obtained address X from the DVLA. This was before the DVLA had changed Ms Young's address on its records. The Council sent the Notice to Owner and the Charge Certificate to address X. As there was no response the Traffic Enforcement Centre granted a warrant. The Council passed this to its bailiffs, still with address X as Ms Young's address.
17. In mid September 2011 the bailiffs wrote to address X. At the end of September a bailiff visited an address. As the bailiff's records do not note a change of address I assume this was address X. There was no contact with Ms Young. The bailiffs made a charge for attending to levy and for attending to remove goods where no goods were removed.
18. In early October 2011 the bailiffs spotted Ms Young's car, using automatic number plate recognition software. They clamped the car and Ms Young paid £741 for its release.
19. Ms Young made an application to court for an out of time witness statement as she said she had not received any notice of the offence until the bailiffs clamped her car. In January 2012 the court cancelled the warrant. The application to court cost her £80.00.
20. Ms Young took professional advice, which cost her £224 in consultation fees, and complained to the Council asking for her £741 back. The Council refunded her £172, being the parking penalty, but refused to refund the bailiffs fees. In correspondence it quoted the law in support of its position, and it also refused to write to her at her new address without evidence from the DVLA.

Refund of bailiff costs after a warrant is cancelled

21. The Council told Ms Young that Paragraph 8(5a) of Schedule 6 of the London Local Authorities and Transport for London Act 2003 said that it did not have refund the bailiff's costs.

22. There is no Schedule 6 to the 2003 Act. But there is a Paragraph 8(5a) in Schedule 6 of the Road Traffic Act 1991 and a Paragraph 7(10) in Schedule 1 to the London Local Authorities and Transport for London Act 2003. Both cover refunds after a warrant is cancelled following a late witness statement. Both paragraphs say, in effect, that a council is not liable to refund of costs paid to the bailiff when a warrant has been cancelled after a late witness statement.
23. However both of these schedules were repealed by part 1 of Schedule 12 of the Traffic Management Act 2004. So the Council was using repealed legislation as a reason to refuse to refund bailiffs fees after a warrant had been cancelled by the court.
24. The exact legal position on repayment of bailiff fees paid when a warrant is cancelled is unclear. One view is that the warrant is void from the date of service of the statutory declaration, and so fees incurred before then are still payable. Another view is that it is the local authority that is liable to pay the bailiffs fees, not the bailiff. I am aware that one large London authority requires its bailiffs to refund the fees in these circumstances.
25. As there is some dispute over the when and if fees should be refunded in these circumstances I asked the Council to let me know, within two months of the date of this report, how it will deal with cases where bailiff fees have been paid, but the warrant is then cancelled by the court. I have also asked it to give reasons for its decision. The Council has agreed to do this.

Incorrect address on the warrant

26. The warrant issued to the bailiffs had address X on it. Before the first visit by the bailiff its records show it carried out a DVLA check on the car. By this time the DVLA records would have showed address Z for Ms Young. I do not know what this check confirmed. But the bailiff's records do not seem to record a new address.
27. Ms Young says that when the bailiffs clamped her car they had her new address. The handwritten receipt the bailiffs gave her has the first part of address X written in; this is crossed out and address Z is then written down. So it seems that at the very least during the levy the bailiffs were told of Ms Young's new address, which was not that on the warrant.
28. Civil Procedure Rules 75.7(7) outline the procedure that must be followed if a bailiff identifies a new address. The relevant part of this rule is that if a local authority wishes to continue to enforce the warrant it must apply to the Traffic Enforcement Centre to have the warrant reissued to the new address.

29. The Department for Transport's Operational Guidance to Local Authorities under the Traffic Management Act 2004 says that –

“10.68 . However, if the name and address on the warrant is incorrect, this would suggest that the order for recovery also gave the incorrect name and address. If so, the order must be re-served before the authority can ask for permission to prepare a warrant. However, if the debtor has moved since the issue of the warrant the bailiff should return the warrant to the local authority for them to apply for a reissue.”

“10.69 Authorities should instruct their bailiffs to liaise with them before taking this action. If the name or address on the county court order Warrant was incorrect the name or address on the Notice to Owner and the Charge 87 Certificate may also have been incorrect, and neither have been served on the motorist. If the NtO and/or the Charge Certificate were never served the Warrant of Execution should not be served. An NtO (or Charge Certificate) should be served to the name or the address established by the bailiff.”

30. In Ms Young's case it is clear the address on the warrant was not the address she lived at when the bailiffs came to clamp her car. It is also clear that Ms Young had told the DVLA of her change of address and so cannot be blamed for the difference in address.
31. The law has designed the parking enforcement process not to penalise those who, for genuine reasons, do not receive a council's notices. As CCTV spotted Ms Young's contravention there was no notice placed on her car to tell her of the offence. The DVLA told the Council the address it had on its records, but unknown to the Council or the DVLA Ms Young had moved. The bailiff's use of automatic number plate recognition software meant that they did not have to know her current address before being able to clamp her car. There is nothing wrong with using CCTV and ANPR technology. But the consequences are that the first a person who genuinely is not aware of the contravention knows about it is when their car has been clamped.
32. In these circumstances it seems clear that when a bailiff knows the address on the warrant is different from the defaulter's current address they should stop action, unclamp the car, not charge any costs and return the warrant to the Council. In Ms Young's case they did not do this. This was administrative fault. It led to the injustice that she paid £569 in bailiff's fees, which she has not been refunded. If the Council had looked more carefully at her complaint it should have realised this and taken appropriate action itself.
33. The Council now admits that the comments made by Ms Young and the exact actions of the bailiffs were misinterpreted during previous investigations.

The Council's attitude to the complainant

34. The Council's response to my investigator's enquiries said it was-

“.... the responsibility of the motorist to ensure that address details held by the DVLA are correct at all times.”

It also said –

“In this instance the fees were incurred as a result of what can best be described as an oversight by Ms Young in failing to advise the DVLA of her change of address.”

35. It presented no evidence of this “oversight”. I also think the refusal to write to the new address Ms Young gave without evidence from the DVLA was unreasonable. When I wrote to the Council with a proposal to settle the complaint part of its response was to continue to blame Ms Young by suggesting she should have had her post forwarded. This is irrelevant and does not shift the blame for the Council's actions onto her.

36. The evidence I have is that Ms Young did tell the DVLA of her change of address when she moved. When the Council asked the DVLA the address had not been changed. It should have noticed, at the latest when I made my enquiries, that the address on the warrant was not her current address. It seems to me the Council closed its mind to the possibility that it, rather than Ms Young, was at fault.

37. Councils should ensure that they have sound evidence based reasons for coming to a view that a motorist is at fault in their contact with the DVLA.

The Council's initial failure to accept it was at fault

38. In its response to earlier correspondence the Council disagreed that it was at fault. It said –

“Whilst we appreciate that [the bailiffs] acted as our agents in this matter we cannot be held responsible for their oversight in failing to advise us of the change of address when they became aware of it.”

39. As I said in paragraphs 5 to 8 the Ombudsman holds authorities responsible for the actions of those who act on its behalf.. When Ms Young complained to the Council about what had happened it should have recognised the fault, apologised, instructed the bailiffs to refund the fees and costs, and ensured that they acted correctly in future. It did none of this. Instead it quoted repealed legislation in defence of its position, and did not look properly what the bailiffs had done.

40. In response to a draft of this report the Council said that the response to the earlier correspondence from my Investigator came from a new member of the parking team who was not aware of the review that such an important matter would normally receive at a senior level. It has said that there are lessons to be learnt from this. I hope the Council will consider carefully how complaints are dealt with, both those made directly to it, and those made via the Ombudsman.

41. **Conclusion**

Maladministration and injustice

42. I find the Council to be at fault in that -

- (a) The bailiffs acted incorrectly on behalf of the Council when they found that the address on the warrant they held was different from the address Ms Young lived at;
- (b) It relied on repealed legislation to reject Ms Young's request for a refund;
- (c) It did not consider her complaint carefully and constantly placed the blame on her for what had happened;
- (d) It was not willing to accept it was at fault when my investigator initially corresponded with it about this case.

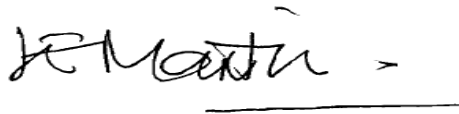
43. These faults have caused injustice to Ms Young in that she had to pay the bailiff's costs, spent further money on pursuing her complaint, and has been put to unnecessary time and trouble by the intransigent attitude of the Council's parking services.

Remedy

44. My recommendation to remedy this injustice was that the Council refunds Ms Young the £569 she paid to the bailiffs. If the bailiffs had not acted as they did she would not have had to make a statutory declaration and would not have incurred costs getting advice before she made her complaint. She has also been put to unnecessary time and trouble in pursuing the complaint. In addition to refunding the fees I recommended the Council pay Ms Young £80 for the court fees, £224 for the consultation fees and an additional £150 in recognition of her time and trouble. This makes a total payment to Ms Young of £1,023.

45. In responding to a draft of this report the Council said that my recommendations were fair, balanced and proportionate and it acknowledged my findings. It has agreed to pay the £1,023 to Ms Young. I am pleased to acknowledge this ready acceptance of my findings.

46. The Council will let me know within two months of the date of this report how it will deal with cases where bailiff fees have been paid, but the warrant is then cancelled by the court.
47. The Council says it has met with its bailiffs and procedures have been put in place to ensure that such a situation does not occur again. I hope the Council will also reflect on what lessons it can learn about how it manages its complaint procedure for parking cases.



JEMartin

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12 March 2013

Appendix - The Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations 1993 SI 2072 (as amended)

SCHEDULE 1 TABLE OF FEES CHARGES AND EXPENSES (excluding Value Added Tax)

- 1 For preparing and sending a letter advising the debtor that a warrant is with the bailiff and requesting the total sum due £11.20

Note: The fee under paragraph 1 can only be recovered if the letter is sent before a first visit is made to the debtor's premises.

- 2 For levying distress—

(i)Where the sum demanded and due does not exceed £100	£28.00
(ii)Where the sum demanded and exceeds £100	28% on the first £200; due 5.5% on any additional sum over £200

- 3 For attending to levy distress but where the levy is not made, the reasonable costs and charges for attending to levy. The costs and charges are not to exceed the fees and charges which would have been due under paragraph 2 above if the distress had been levied. The costs and charges are subject to detailed assessment under rule 11.

Note: The aggregate costs and charges payable under paragraphs 2 and 3 are not to exceed the costs and charges allowed for three attendances to levy distress.

- 4 For taking possession—

(i)Where a person is left in physical possession (close possession)	£5.60 each day.
(ii)Where walking possession is agreed	55p each day for the first 14 days; 5p each day thereafter.

Notes: The charge for walking possession is payable only if a walking possession agreement has been made using Form 8.

A person left in physical possession (close possession) must provide his or her own board in every case.

The possession fee is payable in respect of the day on which distress is levied, but a fee for physical possession must not be charged where a walking possession agreement is signed at the time when distress is levied.

- 5 For appraising (valuing) goods, the reasonable fees, charges, and expenses of the broker. The fees, charges and expenses are subject to detailed assessment under rule 11.

Note: An appraisal (valuation) shall take place only on the written request of the debtor.

- 6 For removing goods, or attending to remove goods where no goods are removed, reasonable costs and charges. The costs and charges are subject to detailed assessment under rule 11.

7 For sale—

(i) Where the sale is held on the auctioneer's premises, 15% of the sum realised to cover the auctioneer's commission and out-of-pocket expenses, plus the reasonable cost of advertising, removal and storage.

(ii) Where the sale is held on the debtor's premises, 7½% of the sum realised for the auctioneer's commission, plus out-of-pocket expenses actually and reasonably incurred.

The fees, expenses, charges and costs to be subject to detailed assessment under rule 11.

- 8 Where distress is withdrawn or where no sale takes place, reasonable fees, charges and expenses, subject to detailed assessment under rule 11.
- 9 For the purpose of calculating any percentage charges, the fraction of £1 is to be reckoned as £1. Any fraction of a penny is to be disregarded.
- 10 In addition to any amount authorised by this Table, the amount of value added tax payable may be passed on to the debtor by adding an equivalent amount to the sum due.