

The Ombudsman's final decision

Summary: There was no fault in how the Council considered the complainant's application for an additional restrictions grant, as it was entitled to decide the evidence did not support his eligibility. There was also no fault in how the Council decided his other grant applications. The Council was at fault for wrongly telling the complainant his application had been successful, but its quick rectification and apology for this error was an adequate remedy. We have therefore completed our investigation.

The complaint

1. I will refer to the complainant as Mr M.
2. Mr M complains the Council refused his application for a COVID-19 business support grant, under its additional restrictions grant (ARG) scheme.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. We must also consider whether any fault has had an adverse impact on the person making the complaint. I 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*)
5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
6. This complaint involves events that occurred during the COVID-19 pandemic. The Government introduced a range of new and frequently updated rules and guidance during this time. We can consider whether the Council followed the relevant legislation, guidance and our published "Good Administrative Practice during the response to COVID-19".

How I considered this complaint

7. I reviewed Mr M's correspondence with the Council, and the Council's response to enquiries I made with it.
8. I also shared a draft copy of this decision with each party for their comments.

What I found

9. Mr M is a self-employed driving instructor. He received his instructor's licence from the DVSA on 12 October 2020. On 4 January 2021, Mr M applied to the Council for an additional restrictions grant, because he was unable to trade under the national COVID-19 lockdown.
10. On 12 February, while his application was still pending, the Council asked Mr M to provide a copy of his self-assessment tax return, in support of his application. Mr M replied to explain he had not yet submitted a tax return, because he had only been trading since 12 October.
11. On 2 March, the Council sent a general email to a number of ARG applicants, including Mr M. The email said that, as a recipient of a previous ARG, a "further grant payment" was now available for them. Mr M responded to query this email, as he had not previously received an ARG. The following day the Council sent a further general email to several applicants, explaining they had received the previous message in error as their applications were still outstanding.
12. On 16 March, the Council refused Mr M's application, because he had not been trading on or before 1 October 2020, which was a mandatory requirement of the ARG scheme.
13. Mr M replied to the Council, saying that, having checked his records, he had established he had actually begun trading on 23 September, not 12 October as he had previously stated. The Council asked Mr M to provide copies of his bank statements to support this, which Mr M submitted on 18 March. However, the Council maintained its decision to refuse Mr M's application and notified him of this on 7 April.
14. Between March and May, Mr M made four other applications to the Council for grants – three under the local restrictions support grant (LRSG) scheme, and one under the restart grant scheme. The Council refused all four applications because Mr M was not liable to pay business rates, which was a qualifying criterion for both schemes.
15. Mr M made a stage 1 complaint to the Council on 17 May. He complained about the delay in handling his ARG application, the fact the Council had requested a copy of his tax return as evidence, that it had wrongly told him his application was successful, and that it would not now accept he had begun trading before the qualifying date of 1 October. Mr M said he knew of other driving instructors who had received grants, and insisted he was eligible under the ARG scheme criteria.
16. The Council responded on 25 May. It said it had previously addressed Mr M's points of complaint in correspondence with his MP, and had confirmed Mr M had not submitted any additional supporting evidence since then. The Council reiterated that Mr M needed to have been trading on or before 1 October to be eligible for the ARG scheme; and, although he now said he had been trading since "25 September", it considered he could not have formally traded before 12 October because he had not received his instructor's licence until then. The

Council said any payments he had received from customers before 12 October were “transactions ... prior to the commencement of trading”.

17. Mr M submitted a stage 2 complaint on 27 May. He said the date of issue on his instructor’s licence was not evidence of when he started trading, and that the advertising and marketing he had done for his business before 1 October constituted trading. Mr M said he had also provided ‘theory support’ and free introductory lessons to customers before 1 October, neither of which required him to have a licence.
18. Mr M acknowledged he had wrongly given the date of 12 October originally, but said he had not made this mistake his application would likely have been approved. He said the Council had also made a mistake in sending the email of 2 March which said his application had been approved, and considered the Council should now honour this.
19. The Council responded on 15 June. It acknowledged Mr M had now provided a “new declaration” he had been offering non-licensed services to customers before 1 October. It said it had fully considered this information but “[it did] not alter the Council’s position in relation to the decision of eligibility for the [ARG]”. The Council also said it had addressed Mr M’s other concerns in its original response of 25 May.
20. Mr M referred his complaint to the Ombudsman on 16 June.

Legislative background

Additional Restrictions Grant

21. In November 2020 the Government introduced the additional restrictions grant (ARG) scheme to support businesses impacted by COVID-19 restrictions.
22. The Government published guidance to support councils in administering these grants. This encouraged councils to support businesses from all sectors that may have been severely impacted by restrictions but were not eligible for other schemes.

Analysis

23. Mr M complains the Council has refused to accept he was trading before 1 October, which means it refused his application to the ARG scheme.
24. I asked the Council to elaborate on its comments in its response to Mr M’s stage 2 complaint, in which it said it had considered the new information he had submitted but had not changed its position. The Council replied:

“On the basis of his initial application, [Mr M] indicated he was not trading on 1st October 2020, as such, his application was rejected. In addition [Mr M] had supplied a copy of his Driver and Vehicle Standards Agency Trainee Driving Licence to allow him to give instruction which was issued on 12th October 2020.

“The nature of his business was a driving instructor, the licence issued to him on 12th October was considered by the Council to be the document that enabled him to trade, in that it enabled him to give instruction which was the nature of his business. This is not considered to be an unreasonable conclusion combined with [Mr M’s] own assertion initially, that trading began on 12th October. It is also the approach taken by the Council in relation to other similar businesses.

“[Mr M] subsequently indicated it was an error on his part, and that he started driving lessons on 12th October 2020 but took income for lessons prior to this. [Mr M] did submit bank statements, and they were considered by the Council, again demonstrating the willingness of the Council to distribute the grant if at all possible, but the accounts only showed payment in advance of lessons and were not considered sufficient to demonstrate trading from 1st October 2020. A payment in advance, in accounting and tax terms is not considered to amount to provision of a service which would amount to trading and is classed as pre-trading. This is not classed as the business carrying out the activity for which it was set up, that is giving driving instruction in a car.”

25. Then, later in its response, the Council summarised its position:

“[Mr M] provided no additional evidence to support his assertion that he had provided some services which amounted to trading. The Council therefore considered the evidence provided, namely evidence of pre-payment for services (which does not amount to trading), [Mr M’s] original claim that he started trading on 12th October (which is accepted he later indicated was an error) the licence document which enabled him to provide driver instruction (which was his declared business) dated 12th October 2020 and his statement that he had provided some theory support.”

26. The Ombudsman’s role is to review the way councils have made decisions. If a council has followed the appropriate procedure, taken account of all relevant information, and given clear and logical reasons for its decision, we generally cannot criticise it. We do not make operational or policy decisions on councils’ behalf, or provide a route of appeal against their decisions, and we cannot uphold a complaint simply because someone disagrees with what a council has done.

27. In this case, I appreciate why Mr M considers he was eligible under the ARG scheme. Equally, the Council has set out clear reasons why it does not accept he was trading before 12 October, not least that this is what Mr M originally said himself. The Council has also made the point to me that it refused at least one other application from a driving instructor who was only licensed by the DVSA after 1 October, like Mr M.

28. Fundamentally, Mr M’s complaint comes down to a disagreement with the Council over the definition of the term ‘trading’, and whether Mr M’s activities before 12 October should qualify. But this is not a disagreement the Ombudsman can settle; it is not for us to decide the definition of ‘trading’, or direct the Council to work according to a different definition. Disputes of this nature are a matter for the courts instead.

29. Rather, we can only consider whether the Council has taken proper account of the evidence Mr M has submitted, and clearly explained the reasons for its decision. I am satisfied it has done so here, and the fact Mr M disagrees with the Council’s view does not give me grounds to uphold his complaint.

30. Mr M has also raised several other points in the course of his complaint, which I will now address.

31. Mr M complained about the Council’s delay in deciding his ARG application, which took more than two months, instead of the advertised five days. In response to my enquiries, the Council commented it had needed to create a new application process for the various schemes, and redeploy members of staff to administer them, who were often required to undertake manual record checks

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- because there was no specific software for the schemes. Staff members also often needed to seek support from the Council's financial services.
32. Despite this, the Council said it "always aimed to administer grants in a timely manner [and] ensure that customers were kept up to date and advised of any delays".
 33. I acknowledge Mr M's frustration it took longer than he expected to receive a decision on his application, although, in his case, some of the delay appears to have been because the Council needed to seek extra information from him. Ultimately though, I do not consider this a significant matter – there is clearly no reason to think the Council's decision would have been different had it made it more quickly, and so nothing of substance has been lost by the delay.
 34. I note Mr M has also questioned why the Council asked for a copy of his self-assessment tax return, but it is for the Council to decide what evidence it needs to consider as part of an application.
 35. Mr M complained the Council sent him an email in error on 2 March indicating his application had been successful. He considers the Council should now honour this.
 36. It is in fact clear Mr M immediately recognised the Council's email did not make sense, as it referred to a previous grant which Mr M knew he had not received. The Council then confirmed this on 3 March, where it explained the email had wrongly been sent to some people whose applications were still pending.
 37. I am satisfied this error amounts to fault by the Council, and I also accept Mr M was caused some distress by it. However, the Council very quickly rectified its error and apologised for it, and I consider this is an adequate remedy. I do not consider it would be proportionate for the Council to pay grants to people who did not qualify for them, simply for this reason.
 38. Mr M complained the Council had also refused four other applications he made for grants, three under the LRSG scheme and one under the restart grant scheme. However, both of these schemes require applicants to be liable to pay rates for their business premises, which Mr M is not. There is no question of fault in the Council's decision to refuse these applications, therefore. I should add it is not for the Council to decide whether a business premises is 'rateable', but instead the Valuation Office Agency (VOA).
 39. I note, in response to the Council's rejection of his restart grant application, Mr M provided a weblink to Government guidance, which he said did not indicate a business must be liable for rates to qualify. However, this guidance was for the ARG scheme, not the restart grant or LRSG schemes. It is correct an applicant did not need to be liable for business rates for the ARG scheme, but the Council refused Mr M's ARG application for a different reason.
 40. Finally, Mr M complained other driving instructors in the area had received grants from the Council.
 41. Given the number of different schemes, and the different eligibility criteria, it is possible other instructors may have qualified for grants in a way Mr M did not – for example, by being able to show they were trading on or before 1 October. Without being able to verify which schemes other instructors applied to, and why their applications were successful, it is not possible to say whether the Council was at fault in those cases.

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42. Even if I could say that, however, this would not affect my decision here. That another person may have benefitted from a Council error does not mean Mr M should also be allowed to. I am satisfied there is no fault in how the Council considered Mr M's various applications, and so there can be no injustice to him in this respect.

Conclusions

43. There is no fault in how the Council considered Mr M's ARG application, or his various other grant applications. The Council was entitled to decide the evidence did not show he was trading on or before 1 October, and he could not qualify for the LRSG or restart grant schemes because he is not liable for business rates. That other driving instructors may have received grants does not alter this.
44. There was some delay in the Council's decision on Mr M's ARG application, although this is partly attributable to its need to seek additional information from him. But this delay is not a significant point, and it was for the Council to decide what evidence it needed Mr M to submit.
45. The Council was at fault for sending Mr M an email which wrongly implied his ARG application had succeeded, and this fault caused Mr M some distress. However, the Council acted quickly to rectify and apologise for its error, and I consider this is adequate to remedy the injustice to Mr M.

Final decision

46. I have completed my investigation with a finding of fault causing injustice, but which the Council has already remedied.

Investigator's decision on behalf of the Ombudsman