



Northern Ireland

Public Services
Ombudsman

Investigation of a complaint against the Department for Infrastructure

Report Reference: 202004331

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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Case Reference: 202004331

Listed Authority: Department for Infrastructure

SUMMARY

This complaint is about how the Department for Infrastructure (DFI) handled a review of the complainant's application under the Bus Operator (Coronavirus, Financial Assistance) Regulations (Northern Ireland) 2022. The complainant raised concerns about DFI's decision to reject the review request because it was received outside of the stated 21-day timeframe for appeal.

The investigation found DFI handled the review request appropriately and in accordance with the Bus Operator (Coronavirus, Financial Assistance) Regulations (Northern Ireland) 2022. Therefore I did not uphold the complaint.

THE COMPLAINT

1. This complaint was about how the Department for Infrastructure (DFI) handled a request for review of an application under the Bus Operator (Coronavirus, Financial Assistance) Regulations (Northern Ireland) 2022.

Background

2. The complainant submitted an initial application under the Bus Operator Scheme on 1 March 2022 to DFI. The Bus Operator Scheme was introduced to provide financial aid to those operating transport services that had been impacted by the coronavirus pandemic. In March 2022 there was contact between DFI, the complainant and her accountant about information required for the application.
3. DFI rejected the initial application, via email on 27 June 2022, citing insufficient evidence. On Thursday 14 July 2022 the complainant sought a review of this decision, and her accountant posted the review request to DFI later that day. My investigation relates to DFI's handling of this review request. DFI received the request on Thursday 21 July 2022. DFI rejected the request on the grounds it received it outside the allocated time period to lodge a review. The allocated time period given by DFI to make a review request was 21 days which began on the date the complainant received her initial application rejection (27 June 2022). This meant the final date to lodge the appeal with DFI was Monday 18 July 2022.

Issue of Complaint

4. I accepted the following issue of complaint for investigation:
Whether the Department for Infrastructure (DFI) have acted appropriately in relation to the complainant's application under The Bus Operator (Coronavirus, Financial Assistance) Regulations (Northern Ireland) 2022.

INVESTIGATION METHODOLOGY

5. To investigate this complaint, the Investigating Officer obtained from the DFI all relevant documentation together with its comments on the issues the

complainant raised. This documentation included information relating to the DFI's application process and its handling of the complaint.

Relevant Standards and Guidance

6. To investigate complaints, I must establish a clear understanding of the standards, both of general application and those specific to the circumstances of the case. I also refer to relevant regulatory, professional, and statutory guidance.

The general standards are the Ombudsman's Principles¹:

- The Principles of Good Administration

I enclose relevant sections of the guidance considered at Appendix One to this report.

7. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- Bus Operator (Coronavirus, Financial Assistance) Regulations (Northern Ireland) 2022 (Bus Operator Regulations 2022);
- Bus Operator Financial Assistance Scheme 2022 Northern Ireland Guidance and FAQ's, 14 February 2022 (Bus Operator Scheme Guidance); and
- S 24 Interpretation Act (Northern Ireland) 1954 (Interpretation Act).
- High Court Direction pursuant to section 48 of the Leasehold Reform, housing and Urban Development Act 1993

8. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the DFI's administrative actions. It is not my role to question the merits of a discretionary decision. That is unless my investigation identifies maladministration in the DFI's process of making that decision.

¹ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

9. I did not include all information obtained in the course of the investigation in this report. However, I am satisfied I took into account everything I considered to be relevant and important in reaching my findings.
10. A draft copy of this report was shared with the complainant and the DFI for comment on factual accuracy and the reasonableness of the findings and recommendations. I gave careful consideration to the comments I received before I finalised this report.

THE INVESTIGATION

Whether the Department for Infrastructure (DFI) have acted appropriately in relation to the complainant's application under The Bus Operator (Coronavirus, Financial Assistance) Regulations (Northern Ireland) 2022.

Detail of Complaint

11. The complainant said she applied for the DFI '*Bus Operator Financial Assistance Support Scheme*'. On 27 June 2022 the complainant received an email from DFI advising her '*application had been unsuccessful and advised that (the complainant) could request a review of the decision within 21 days of the notification decision*'.

The complainant said her accountant '*posted the request for review on the 14 July 2022 directly to DFI*'. The complainant said the DFI refused the review request due to not receiving the letter before the 21-day deadline. The complainant explained how the pandemic affected her and her business and the financial hardship it has caused. She explained losing out on the opportunity to obtain support from this Scheme exacerbated these difficulties.

The DFI's response to investigation enquiries

12. The DFI stated the review request was to be received in writing within the 21-day period. It stated the legislation provided for a review request '*in writing*' and that '*most would understand a letter and an email to both be a form of writing in this context*.' The DFI stated if the appeal had been received via email before

the posted letter arrived at the DFI office then it would not have rejected the review request because it would have been received within the allocated time period. In the Bus Operator Scheme Guidance Pack and FAQ's, within the appeal section, an email address BusCoachFundingScheme@infrastructure-ni.gov.uk was provided as a means of sending an appeal request by email.

13. The DFI stated it received the review request on 21 July 2022 from the complainant's accountant. The DFI stated '*the time period elapsed at the end of the 18th July*' and that the '*Department has the letter and has stamped when the letter arrived. The letter arrived on the 21st July 2022. The appeal was accordingly received out of time.*'
14. DFI did not accept, therefore, its actions were unreasonable or inappropriate.

Relevant records

15. A summary of the chronology of events relating to the complaint is enclosed at Appendix two to this report.

Analysis and Findings

16. The complainant raised concerns with my office regarding the decision to reject the request for review of her application under the Bus Operator Regulations 2022. Having reviewed all relevant evidence, I note the complainant emailed her initial application for the scheme on 1 March 2022. I considered the DFI's subsequent decision letter dated 27 June 2022 which was issued via email to the complainant on the same date. I note this letter explained the application had been rejected due to '*insufficient evidence provided*'. This decision letter is at Appendix 3 to this report.
17. I note this letter clearly set out how a review request should be made. Specifically, this letter stated that '*a request for a review should be made to the Department no later than 21 days from the date of the decision notification*'. The letter went on to clearly state '*A request for a review should be submitted to BusCoachFundingScheme@infrastructure-ni.gov.uk*'. I am satisfied therefore that it was the Department's direction to anyone wishing to submit an

appeal that they should do via email.

18. I note the complainant's accountant submitted a review request on her behalf, via post, to the DFI on Thursday 14 July 2022. I note this hard copy letter was posted in Coleraine, after the last evening post collection and as a result was not collected until Friday 15 July 2022. The letter was then stamped by Royal Mail on Monday 18 July 2022 (the deadline for the appeal) and DFI received that written request on 21 July 2022.
19. Paragraph 9(2) of the Bus Operator Regulations 2022 states '*a request for a review shall be made to the Department no later than 21 days from the date of the notification under paragraph 7(2) of the decision.*' The Interpretation Act (Northern Ireland) 1954 section s39(2) '*Time*' subsection 4 states '*where the time limited by an enactment for the doing of anything expires or falls upon a Sunday or a public holiday, the time so limited shall extend to and the thing may be done on the first following day that is not a Sunday or a public holiday.*' It is clear therefore that the 21-day timeframe for appeal began on, and included, Monday 27 June 2022 – the day the complainant received the decision on her initial application. I am satisfied, therefore, that the deadline for DFI to receive the complainant's review request was on or before Monday 18 July 2022.
20. Upon reviewing the Bus Operator Scheme Guidance Pack, within the appeals section I note it states, '*you must request a review in writing no more than 21 days from the date of notification*'. I note the pack also provides an email address for applicants to send review requests via email. I am satisfied, therefore, that the legislation, DFI's decision notification and the supporting guidance were all sufficiently clear about the time period to submit a review request, and that the preferential means to do so was via email.
21. On that basis, I am satisfied the date DFI received the complainant's review request was outside the time period defined both within the legislation, and in the supporting guidance the complainant and her accountant had access to. I am further satisfied, therefore, DFI's decision not to accept the complainant's review request was in line with the parameters of the Scheme.

22. I appreciate the impact this process had on the complainant, missing out on the opportunity to receive financial assistance in what was a very difficult time for business owners within the travel and tourism industry. I also note her review request missed the deadline by a narrow margin and I acknowledge the frustration this would have caused her. However, having reviewed all relevant evidence, I have not identified maladministration by DFI in the handling of this review request. As such, I do not uphold the complaint.

CONCLUSION

23. The investigation established DFI acted in accordance with the Bus Operator (Coronavirus, Financial Assistance) Regulations (Northern Ireland) 2022. I therefore did not uphold the complaint for the reasons outlined in this report.

Margaret Kelly
Ombudsman

March 2025

Appendix 1

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and relevant guidance, with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.

- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

