

Section C: Highways

C1: Highway status

Erroneous advice – later correction – extent of injustice considered

1. Mr and Mrs Diamond complained that a council delayed unreasonably before carrying out research into the extent of the highway leading up to their farm; and that it gave contradictory advice. They alleged that, as a result, the council wrongly granted vehicular rights of access across their land to the owner of the adjacent property. They said that as a consequence they lost the opportunity to sell those rights to him. They said they incurred fees of some £18,000 in challenging the council's decision.

What happened

2. The council was asked on two occasions to confirm the highway status of the road. On both occasions the council gave information about the status of the land which, it later concluded, was incorrect. The Ombudsman said it was clear from subsequent events that the council's failure to research the matter with due care was maladministration.
3. Later the council carried out investigations which led it to a conclusion less favourable to Mr and Mrs Diamond. It concluded that the occupiers of the neighbouring property were entitled to vehicular access to it. The council at that time carried out what seemed to the Ombudsman to be reasonably exhaustive research and the Ombudsman saw no evidence that the council's revised view was

unreasonably held. The Ombudsman found no maladministration in the way the council arrived at its revised view of the status of the land.

Injustice

4. The Ombudsman said that Mr and Mrs Diamond did not lose the opportunity to sell access rights to the neighbouring property because, unless a court were to decide differently, the effect of the council's revised view of the status of the land was that those rights were not theirs to sell. But it was clear that the original advice from the council, twice confirmed in writing, bolstered the complainants' view that they could gain profit from asserting rights over the access to the neighbouring property. The council's original view had raised their expectations unrealistically and contributed to their frustration when their expectations were eventually dashed. The Ombudsman considered that Mr and Mrs Diamond were due some compensation for this, but concluded that, once the council had revised its view and explained it clearly, it should not be held responsible for Mr and Mrs Diamond's costs spent in pursuing their argument with the council.
5. The Ombudsman recommended that Mr and Mrs Diamond should be paid £500.

(Report 97/B/1693)

C2: Parking

Obstruction of premises – delays in effecting agreed remedy – failure to register or deal with complaint

1. Mr Smith complained that a council failed to deal promptly or properly with issues of unauthorised parking and inadequate parking provision for residents close to his home. He also complained that the council did not deal with his complaint about these issues.

What happened

2. Mr Smith wrote to the council expressing concern about the lack of car parking in the vicinity of his home, exacerbated by the presence nearby of a doctors' practice. His letter complained about the obstruction of the entrance to his garage and he suggested that double yellow lines should be painted opposite the practice or that there should be a residents only parking scheme.
3. A traffic engineer told Mr Smith that the issue would be investigated during his annual review of traffic regulation matters and that in the meantime he would arrange for a driveway 'keep clear' marking to be painted on the road in front of Mr Smith's garage. Subsequently, Mr Smith told the council that the carriageway marking had not made any difference and that he wanted double yellow lines painted on the length of the road opposite the doctors' surgery. The council undertook to paint a second, single line, road marking, which would be on the surgery side of the road. The council believed that the problems identified by Mr Smith did not provide sufficient grounds for a residents parking scheme, as the parking by patients near the doctors' surgery did not create all-day problems.

Communication

4. The Ombudsman considered that the council's response to Mr Smith was characterised by a lack of effective communication. For example:
 - when the traffic engineer told Mr Smith that he would visit the site, Mr Smith pointed out that the day proposed fell in a period when many people would traditionally be on holiday and therefore it would be unrepresentative of the usual situation. This point was not addressed by the council in subsequent correspondence with Mr Smith;
 - the council never told Mr Smith how many visits to the site had been made – the traffic engineer said that there were at least six – which might have demonstrated to Mr Smith that his concerns were being taken seriously;
 - although there were good reasons why the possible solutions suggested by Mr Smith should not be pursued, these were never properly explained to him;
 - the council reached a judgement based on the competing needs of residents and users of the doctors' surgery, but no such factors were mentioned anywhere in the council's files or in letters to Mr Smith; and
 - the council failed to respond to some of Mr Smith's letters.

Delays

5. The Ombudsman also highlighted the council's delays:
 - the first road marking was not installed until six months after it was promised;

- the second road marking was not installed until a year after it was approved; and
- the annual review of traffic regulation matters was carried out later than Mr Smith was led to expect and the process of the review and the timescales involved were not explained to him.

Formal complaints

6. The Ombudsman was concerned that the council had never acknowledged that Mr Smith was making a formal complaint. The council's own corporate complaints procedure defined a formal complaint as an expression of dissatisfaction with the action or lack of action taken by the council on a matter which was the responsibility of the council, and which had been previously raised by the customer and where he or she remained dissatisfied with the council's response.
7. The traffic engineer said that he had never regarded Mr Smith's concerns as being a complaint which needed to go through the council's complaints procedure. He explained that his section did not get complaints but only requests for a service. In the seven years since he had joined the council no complaints about the services for which he was responsible had gone into the council's formal complaints procedure.

8. The Ombudsman considered that the criteria for entry to the council's complaints procedure were unclear or not understood by officers of the council, or both. It seemed that citizens were being denied the opportunity to make a complaint.

Injustice

9. The Ombudsman concluded that, because of the council's maladministration, Mr Smith suffered the frustration of believing that his concerns were not being treated seriously, when in fact they were. He was not kept fully informed of progress. And he incurred unnecessary time and trouble pursuing a complaint that had not been acknowledged as such.

Outcome

10. The Ombudsman recommended that the council should:
 - pay Mr Smith £250 compensation;
 - consider whether further action would be appropriate if the second road marking was not effective; and
 - review the council's criteria for registering formal complaints and consider the provision of training for key officers in complaints handling.

(Report 97/C/2679)

C3: Pavement crossing

Complainant made to pay in advance – complainant charged for items which were the council's responsibility – failure to comply with council's own policy – inadequate performance

1. Mr Hall complained about a council's response to his proposal for a pavement crossing.

The crossing proposal

2. Mr Hall's house fronted on to a residential cul-de-sac. A pavement crossing was already in existence on one side of his frontage. He wanted to add a new crossing which would make it possible to drive in through one entrance and out through the other.
3. A highways supervisor visited the site. He told Mr Hall that a lamp post would have to be moved because the crossing would need to be 12ft wide. There were other crossings in the road which were only 10ft wide, but the supervisor said that the council's standards had changed and the width at the kerb had to be 12ft. He said that payment for the crossing would have to be made in advance. He later provided an estimate of some £950, which included £600 (plus £120 administration fee) for a new lamp post.

Delay

4. The crossing was constructed but the council's contractor accepted that the work was substandard in December 1996. A satisfactory crossing was not laid until 14 April 1997. The trench to the new lamp post was not completed until 11 August 1997, a year after Mr Hall had paid for the work to be done.
5. The Ombudsman said that the council's failure to complete the work to a satisfactory standard within a reasonable time was maladministration. He accepted that the council was not

accountable for failure by the electricity company to ensure that the old street light was replaced without delay by a new working street light. But in his view the council's contractors were responsible for the bulk of the delay and the failure to complete the work.

6. As a result of the council's maladministration, Mr Hall and his family experienced nine months of inconvenience. And Mr Hall was put to considerable time and trouble in getting the council to put things right.

Standards

7. The council was unable to produce evidence that its minimum width standard at the time was 12ft or to explain how that standard had been adopted. Information given by officers as to the standard applicable at that time was contradictory. The Ombudsman considered that it was maladministration for the council to rely on a standard width of a crossing that was not properly documented for the use of staff and the public.

Advance payment

8. The council's procedures allowed for payment by deposit plus instalments. The council's failure to offer Mr Hall the option of payment by instalment was maladministration. This maladministration caused injustice to Mr Hall who had to pay a large sum of money to the council 12 months before the work was satisfactorily completed. He not only lost the use of the money and any interest during that period, but was unable to withhold payment for work he considered substandard.

Choice of contractor

9. The council's procedures also allowed householders to arrange work themselves. The council's failure to tell Mr Hall that he could find his own contractor was maladministration. Mr Hall was confident that he would have been able to organise the work himself using contractors known to him and that he would have been able to achieve a better result more cheaply, more quickly and without the problems encountered using the council's appointed contractors. The Ombudsman concluded that Mr Hall was denied the opportunity to seek alternative means of carrying out the work that might have given him greater control over the process.

Street furniture

10. The council's procedures stated that if moving street furniture could not be avoided, the cost of moving it had to be borne by the council's basic maintenance budget. The council charged Mr Hall for the cost of moving the lamp post. In this case that involved destroying the old lamp post and purchasing and installing a new one. Officers' justification for this was that Mr Hall already had one crossing to his property and should therefore pay all the costs involved in providing a second. Yet the procedures made no mention of different payment arrangements for a second crossing. Furthermore, the council's policy said that every effort should be made not to move street furniture. And it was not clear to the Ombudsman that the lamp post needed to be moved at all. In these circumstances, requiring Mr Hall to pay for the lamp post was

maladministration. As a result, Mr Hall suffered the injustice that he was charged £600 (plus £120 for administration) which should have been borne by the council's maintenance budget.

Specification

11. The council failed to provide Mr Hall with a proper specification of the work to be done, before requiring him to pay almost £1,000 in advance for the work. This failure also amounted to maladministration. As a result, Mr Hall suffered the injustice that he did not know what to expect for his money.

The gas company's work

12. Mr Hall complained that within a month of satisfactory completion of the crossing it was dug up by the gas company and that the council failed to tell him that this would happen. The Ombudsman did not uphold this part of the complaint as he accepted that the council was unaware until some days after the completion of the crossing that the gas company intended to carry out operations in the area.

Outcome

13. The Ombudsman recommended that the council should reimburse Mr Hall £720 for the cost of moving the lamp post, and pay him a further £400 to compensate him for the various ways in which he was inconvenienced, including his time and trouble spent pursuing his complaint.

(Report 98/B/195)