



Section E

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# E1: Cycle route

## Promenade – legal failings – consultation

Mr Ramsey complained that a council did not carry out proper consultation before creating a cycle route on the town's promenade.

Mr Ramsey said that the promenade was no longer a safe or pleasant place for pedestrians, particularly those who were blind or partially sighted or who had mobility impairments. He and his wife represented a local group for blind and partially sighted people. Mrs Ramsey herself was registered as blind.

### Problems

1. The promenade was a pedestrian only facility. The council converted it to a shared cyclist and pedestrian facility. But the Ombudsman found the council did not go through the proper legal process.
2. First, the council did not repeal or amend the bye-law which prohibited cycling on the promenade. A proposal to repeal or amend a bye-law required public consultation and, in some cases, confirmation by the Secretary of State.
3. The council's failure denied the public the opportunity of commenting on the proposal.
4. The second problem was that the council failed to establish whether or not the promenade had highway status. The conversion of a highway from a pedestrian facility to a shared use facility legally required public consultation.
5. The council's faults deprived the public of the right to comment on the proposals and to have their representations taken into account before a decision was made.

### Remedy

6. The Ombudsman recommended that the council should:
  - pay Mr Ramsey £500;
  - review the safety aspects of the scheme in consultation with Mr Ramsey and others who represented the interests of mobility impaired people, the county council and other safety advisers if necessary;
  - make any improvements which the council deemed advisable; and
  - pursue steps advised by counsel to make the cycle track lawful.

*(Report 00/B/756)*

# E2: Footpaths

## Request for diversion – delay

Mr Lace complained that a council delayed unreasonably in proceeding with footpath diversions.

### Delay

1. Mr Lace was the local footpath secretary of the Ramblers Association. In 1989 he asked the council to effect the diversion of several footpaths in the council's area. The intention was to re-route footpaths to unobstructed routes which were better for ramblers to use.
2. In 1993 the council gave approval for the making of diversion orders. But nothing had been achieved when Mr Lace complained to the Ombudsman. That was 10 years after his request for the diversions. The council said that effecting a diversion would normally take about seven months.

### The Ombudsman's view

3. The Ombudsman noted that the council had a statutory power to ensure that footpaths remained accessible to the public and were properly described in the definitive map and statement. In this case, the lie of the original footpaths on the ground had been impeded and altered over the years. The council accepted that it should undertake a proper process to divert footpaths.

4. The Ombudsman commented:

*"This may be tedious and time consuming, but it is a necessary task of good public administration and stewardship. If it is not done, the council's default is likely eventually to cause confusion for the public and for public authorities alike."*

5. Eight years after the council's expression of its intention, the diversion orders were only at first draft stage. The delay in progressing the making of the orders was both unacceptable and maladministration.
6. The Ombudsman said this caused Mr Lace an injustice in that he spent unnecessary time and trouble in pursuing his concerns.
7. The Ombudsman recommended that the council should:
  - make Mr Lace an *ex gratia* payment of £250;
  - urgently progress the relevant diversion orders; and
  - conduct a review of its policies, procedures and resources for footpath administration so as to put in place arrangements that ensured, as far as possible, that the maladministration did not recur.

*(Report 00/B/9123)*

# E3: Footpaths

## Obstruction – complaints procedure

Mr Ash complained that a council delayed unreasonably in dealing with obstructions to two public footpaths and that it did not properly deal with his complaints.

4. The Ombudsman also identified a catalogue of maladministration in the way that Mr Ash's formal complaints were processed.

### Faults

1. The Ombudsman concluded that the council had failed miserably to assert and protect the rights of the public to use and enjoy the footpaths.
2. She concluded that the primary cause of this maladministration was a lack of planning by members and senior officers about how to deal with the council's new responsibilities when it became a highway authority, and their failure to resource rights of way work properly.
3. The Ombudsman also identified:
  - the lack of a proper filing system, which contributed to a rights of way officer not being aware of relevant information and wrongly identifying the line of a footpath;
  - lack of any policy, procedure or guidance for officers about dealing with obstructions; and
  - failure to set up a monitoring and recording system to track action on outstanding complaints, so that managers could ensure there would not be extensive periods of time when nothing was done.

### Outcome

5. The council agreed to:
  - pay Mr Ash £200 for the time and trouble to which he had been put in pursuing his complaint, and for his frustration;
  - make the footpaths walkable as soon as possible;
  - give priority to considering, consulting on and adopting a new policy for dealing with obstructions;
  - carry out a corporate review of the way it planned to deal with its new duties; and
  - start a review of its corporate complaints procedure.

*(Report 00/C/14163)*