

## **Local Government Ombudsman Annual Review 2017**

### **Upheld Complaints against the Council**

Six decisions were upheld following investigation by the Local Government Ombudsman and were completed by 31 March 2017 for inclusion in the Annual Review. The investigations are detailed below showing the required actions and whether these have been complied with.

#### **Complaint reference: 15 015 103**

The complainant complained that the Council failed to carry out a child protection investigation properly or work with the family sufficiently before starting care proceedings in relation to a child in her care. The complainant says that if the Council had followed proper procedures it would not have taken legal action.

#### **Remedy**

The Council to:

- make a payment of £500 to the complainant and £500 to the complainant's family to recognise the unnecessary distress and anxiety they experienced;
- cover their reasonable expenses in connection with the court process if they produce the necessary evidence;
- place a copy of the Ombudsman's final decision on this complaint on B's case records along with any statement the complainant wishes to make;
- Review its procedures to ensure it fully considers taking pre-proceedings action under the Public Law Outline in similar cases in future.

#### **Remedy has been complied with**

#### **Complaint reference: 16 004 997**

The complainant complains about the way in which the Council acted on a flawed assessment of their family which led to a Child Protection Plan. The complainant complains particularly about the actions of Inspire, an agency commissioned by the Council to support his family. The complainant also complains that the Council has failed to follow up recommendations after the complaint was upheld.

#### **Remedy**

In response to the draft decision, the Council agreed to make a payment of £500 in acknowledgement of the distress caused to the family by the actions of the Inspire worker;

The Council says that "*actions following the recommendations of the Independent Panel have been taken by the Team Manager of the Safeguarding Unit; the work carried out has been reported back to the Assistant Director of Social Care*"; it has also separately explained to Mr and Mrs X in a number of responses the actions it has taken. The Council's response to the Ombudsman's draft decision included a consolidated account of its actions.

#### **Remedy has been complied with**

#### **Complaint reference: 16 001 103(**

The complainant complained the Council refused to refund bailiff fees incurred in enforcing a Penalty Charge Notice (PCN). The court revoked the Order of Recovery and complainant believes the Council should reimburse her all associated fees and charges.

**Remedy:**

The Council agreed to refund the increased element of the PCN fee of £25, the administration fee of £7 and bailiff fees of £75 (£107).

**Remedy has been complied with**

**Complaint reference: 15 019 126 (associated with complaint reference 15 001 123 below)**

The complainant complains about:

- The way the Council responded to requests by her late mother's neighbour to close a public right of way over the access to her mother's home; and
- The Council's failure to safeguard her late mother. She says the Council delayed starting a safeguarding investigation into the alleged harassment of her vulnerable, elderly mother by her neighbour and failed to carry out the eventual investigation properly.

**Remedy:**

The Council agreed to apologise to the complainant for the faults the LGO found in the way it handled the safeguarding alert and for the fact that its own complaints procedure failed to identify those faults.

**Remedy has been complied with**

**Complaint reference: 15017156**

The complainant complains the Council failed to refund bailiff costs and the parking fine following the decision of the Traffic Enforcement Centre (TEC).

In response to enquiries, the Council reissued the Notice to Owner to The complainant. This will give her the opportunity to challenge the original PCN. If it is found the PCN was not correctly issued the Council should make a further refund.

**Remedy:**

The LGO decision is the complaint will not be pursued further. The return of the bailiff fees has provided a remedy for most of complainant's complaint. When the LGO spoke on the telephone previously, she said this is what she was seeking. In addition the Council will now reissue the Notice to Owner which gives the complainant the right to appeal the PCN if she considers it was wrongly issued.

**Remedy has been complied with**

**Complaint reference: 15014189**

**The complaint**

The complainant complained on behalf of his mother that the Council took too long to act after a breach of a planning condition had been reported that was meant to ensure proper drainage of a new house and its garden.

The complainant was concerned that because the condition was not enforced, a public footpath on land they own was impassable.

**Remedy:**

The Council has agreed to take the following action to remedy the complaint: the Chief Executive will apologise to the complainant for the time it took to begin enforcement action and how it dealt with the complaint. It will pay the complainant £500 for the time and trouble in bringing her complaint to the Ombudsman.

The Council will consider its practice and procedures in light of this complaint to ensure it deals with planning enforcement complaints promptly in future.

**Remedy has been complied with in part with two issues outstanding:**

The Council will consider its arrangements for dealing with and responding to Ombudsman enquiries. ***This part of the remedy is being implemented***

The Council will inform the Ombudsman of any changes it makes in light of the complaint within 3 months from the date of the final decision. ***This part of the remedy has yet to be implemented***

**Complaint reference: 15 001 123 (associated with complaint reference 15019126 above)**

**The complaint**

The complainant lives in a rural part of the Council's area. He bought his house in March 2012, one of two semi-detached cottages. In front of the cottages runs a watercourse running under a culvert. Over the top of the culvert and passing alongside and behind the cottages runs a right of way.

This also provides a vehicular access for the neighbouring cottage. In August 2012 a section of the culvert collapsed. The complainant had concerns his neighbour (the late 'Mrs X') continued to cross the culvert by car. The complaint about the Council encompasses the following issues:

- that it would not share details of inspections it commissioned to check the condition of the culvert both before and after its partial collapse;
- that it gave Mrs X planning permission to construct a metal bridge over the culvert that the complainant considers undermines its stability;
- that it failed to provide sufficient support to the complainant and his family when they became the targets of harassment and nuisance from Mrs X; in particular and that it failed to prosecute Mrs X for a statutory nuisance;
- that it wrongly labelled the complainant 'unreasonably persistent' in pursuing complaints about these matters; unfairly restricting his access to its services, officers and elected Councillors.

**Agreed action**

In its response to the Ombudsman's draft findings the Council has indicated it does not agree with the analysis above. However, it has indicated that it is prepared to take action to remedy the complaint and has agreed to the following. Within the next 20 working days it will:

- a) Provide a written apology at a senior level to Mr C and Ms D for the faults found during this investigation;

- b) Provide a financial remedy to the complainant of £500 in recognition of the uncertainty and time and trouble arising from the Council's handling of the planning enforcement matter; £250 for the uncertainty and time and trouble arising from the noise nuisance investigation and £100 for any distress arising from its handling of his communications; making £850 in total;
- c) Liaise with the complainant to commission a suitably qualified independent person to re-examine the cross-section drawing upon which planning permission was given for the bridge to check its accuracy; in the event the independent person finds inaccuracies in the cross-section drawing then the Council should ask that independent person to re-consider if the bridge will impact the integrity of the culvert and the right of way passing over it remains safe to use; The complainant should give his prior consent for that independent person to have whatever access is required to the culvert for that purpose; the cost of that survey will be split 50/50 between the Council and The complainant;
- d) In the event in the event the bridge is found unsafe the Council should consider whether to close the right of way and advise The complainant if it has any scope to take further action in respect of this matter bearing in mind the bridge sits on land in his ownership;
- e) The Council will note in its records that the ownership of the culvert is The complainant and it should seek his permission should it need to enter the culvert and any point in the future.

The Council was not recommended to take any further action in respect of any reports of nuisance or harassment made by the complainant. This is because the investigator understands that at this time there are no ongoing reports and the complainant does not seek the Council's help in these matters. But in the event the complainant approaches the Council for more help with such matters then I would expect the Council to provide him with clear information about its potential ability to intervene in disputes involving owner occupiers. It should also consider if there is any help it can provide in terms of gathering evidence useful to the determination of what action it could take.

The Council was also not recommended to take any further action in respect of any restrictions in communications with the complainant. This was in the light of the facts set out at paragraph 71 and its comments at paragraph 75. These indicated that no further restrictions were in place on the complainant communications. In comments received on the draft report the Council suggested this might not be the case and that it only intended to communicate with the complainant in future by writing. I do not endorse this approach as I have no evidence to think it justified (as far as I am aware there have been no direct communications between the complainant and the Council or over 18 months now). Should the Council consider that at the present time the complainant's communications should remain restricted then it should write to him explaining the rationale for that decision. It was suggested it explain how long that restriction will apply; in respect of what matters and at what point its decision will be reviewed. It should also explain what right of appeal the complainant has to that decision or else signpost him to this organisation to consider a fresh complaint about any such restrictions.

**Remedy has been complied with**