

Cabinet – 13th February, 2008

**Joint Report of the Director of Law and Property, Director of Finance and
Director of Adult, Community and Housing Services**

Complaint to the Local Government Ombudsman – Housing Matter

Purpose Of Report

1. To consider the conclusions and finding of the Local Government Ombudsman into a complaint made in respect of a housing matter as set out in the attached report.

Background

2. In January, 2007, the Council received details of a formal complaint from a complainant that the Council's contractor had felled ornamental dwarf trees and a rose shrub in her garden whilst replacing fencing on the Council's behalf. The Council has refused to accept liability for its contractor's actions and told the complainant that she should pursue the contractor to remedy her complaint. The contractor did not provide a remedy which the complainant considered acceptable and the Council refused to intervene.

It is the finding of the Ombudsman that the Council is accountable for its contractor's actions whilst carrying out work on its behalf.

3. Arising from his finding, for the reasons given in paragraphs 14 and 15 of the attached report submitted, the Ombudsman considers that there has been maladministration by the Council causing injustice and, at paragraph 16 of the attached report he sets out terms to remedy the injustice.
4. A copy of the report of the Ombudsman is also available in the Member's Room.
5. The views of the Director of Finance and of the Director of Adult, Community and Housing Services, on the conclusions and finding, set out in paragraphs 14 to 16 of the report, are as follows:-
6. When originally received by the Council, this matter was treated as a legal liability claim and was investigated in the Risk Management and Insurance Section. In keeping with all claims of this nature, the Council's liability position was established. In this instance the Council has the legal right to delegate Duty of Care to its contractor and it is not vicariously liable. The matter was therefore legitimately referred to Council's contractor.

7. The Council's contractor did indeed admit liability and it is understood offered the sum of £200 as settlement, which was refused by the complainant. Hence it is understood that the contractor's liability is not in dispute but quantum is.
8. The Ombudsman decided to investigate this complaint even though the complainant had a clear legal remedy through the courts. The reason for this decision is that, since the Council denied legal liability, the complainant was unclear about whether she should take the Council or the contractor to court. However, this is a curious conclusion because the contractor has not denied liability and the only issue in dispute is the amount of damages which could be determined by a court.
9. Even though there is no legal liability on the part of the Council, the view of the Ombudsman is that the Council remains accountable for the actions of its contractors. It was the Council's responsibility to maintain the fence and so the Council is liable for the effects of its maladministration.
10. The reasoning of the Ombudsman is somewhat confused for the following reasons:-
 - the complainant's insurance claim was correctly rejected by the Council and its insurers because the Council had no legal liability
 - the contractor accepted liability but disputed the level of damages to be paid
 - this dispute on damages could and should have been determined by a court
 - the Council did not wash its hands of this complaint but facilitated a meeting on site between the contractor and the complainant.
11. For the above reasons the Council should not agree with the findings of the Ombudsman. However, it is open to the Council to disagree with the Ombudsman but agree to pay compensation on a without prejudice basis. This course of action is recommended in this particular case principally because the Council will then seek to be reimbursed by the contractor.
12. If Cabinet agree with this proposal, it is recommended that the amount of compensation be determined by an independent valuer to be appointed in consultation with the complainant and the contractor.
13. In addition, in view of the concerns outlined in this report it is recommended that the Director of Law and Property write to the Ombudsman.

Finance

14. It is important to note that because this matter is one of maladministration, it falls outside the auspices of the Council's liability insurance arrangements. Accordingly, budget provision may need to be found, if the Council is unable to recover all or any of the compensation payable to the complainant.

Law

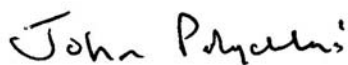
15. Section 31(2) of the Local Government Act, 1974 requires the Council to consider the Ombudsman's report.
16. Section 31(3) of the Act enables the Council to incur expenditure in making a payment and providing a benefit to a person who has suffered injustice.
17. In accordance with Sections 31(2A)(b) and (2B) to (2H) of the Local Government Act, 1974 should the Local Commissioner not be satisfied with the action the authority have taken or proposes to take he shall make a further report setting out those facts and make recommendations and if he is still not satisfied with the authority's response require a statement to be published.

Equality Impact

18. This report has no direct equality implications.

Recommendations

19. It is recommended:-
 - That consideration be given to the content of the Ombudsman's report, attached as Appendix 1 to the report submitted.
 - That the finding of maladministration be not accepted for the reasons set out in the report.
 - That, on a without prejudice basis, compensation be paid to the complainant as recommended by the Ombudsman.
 - That the level of compensation for the replacement cost of the vegetation be determined by an independent valuer to be appointed in consultation with the complainant and the contractor.
 - That the Council seek to recover the compensation payable from the contractor.
 - That the Director of Law and Property write to the Ombudsman to explain this decision.



DIRECTOR OF LAW AND PROPERTY



DIRECTOR OF FINANCE



DIRECTOR OF ADULT, COMMUNITY AND HOUSING SERVICES

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List of Background Papers

Report on the investigation into complaint number 06B13743 against Dudley Metropolitan Borough Council dated 26th November, 2007.