



The Commission for
Local Administration in England

Report

on an investigation into
complaint no 06B13743 against
Dudley Metropolitan Council

26 November 2007

Investigation into complaint no 06B13743 against Dudley Metropolitan Council

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Key to names used

Miss Holton - the complainant

Report summary

Subject

Miss Holton (not her real name for legal reasons) complains that the Council's contractor felled ornamental dwarf trees and a rose shrub in her garden whilst replacing fencing on the Council's behalf. The contractor carried out the work without Miss Holton's knowledge or consent.

The Council refused to accept liability for its contractor's actions and told Miss Holton that she should pursue the contractor to remedy her complaint. The contractor did not provide a remedy which Miss Holton considered acceptable but the Council refused to intervene.

The Ombudsman found that the Council is accountable for its contractor's actions whilst carrying out work on its behalf.

Finding

Maladministration causing injustice.

Recommended remedy

The Ombudsman recommends that the Council:

1. either pays Miss Holton £3250 or obtains an independent valuation by an expert to be agreed with Miss Holton, of replacement cost of the trees and rose shrub and pay Miss Holton the value to compensate her for her loss;
2. pays Miss Holton £250 for her time and trouble in pursuing matters;
3. reviews its procedures to ensure that the maladministration I have identified and the failure to remedy a justified complaint caused by the actions of its contractors does not recur.

Complaint

1. Miss Holton complains that the Council's contractor, without her knowledge or consent, felled three ornamental dwarf trees and a rose shrub in her garden whilst erecting fencing on neighbouring land. The contractor's actions caused Miss Holton distress and she would like the Council to compensate her for this and the replacement cost of the trees and shrub.
2. I have not used the complainant's real name in this report.¹
3. I have taken account of all that Miss Holton has said in her complaint and the comments of the Council. All parties have had the opportunity to comment on the draft of this report without conclusions and, where appropriate, their comments have been incorporated into the text.

Legal and administrative background

4. The law says that the Ombudsman may investigate complaints about maladministration in connection with action taken by or on behalf of a council in the exercise of that council's administrative function.²
5. Where a council has engaged contractors to deliver services on its behalf, the actions of the contractors are within my jurisdiction provided that they are carrying out one of the council's functions.
6. I do not usually investigate a complaint where the complainant has an alternative remedy by way of court action³. In this case I have exercised discretion to investigate because the Council denied that it had responsibility for its contractor and so it was unclear to the complainant which party she could take to court.

What happened

7. Miss Holton is the leaseholder of a flat. The garden to the flat borders a public right of way. Miss Holton says that when she moved to the property in 1978 the garden area had been derelict but with the help of her mother she had cultivated the area to form a garden, including three ornamental dwarf trees. The trees had been growing for more than 25 years and Miss Holton thought of one of these as a memorial to her late mother.
8. In June 2006, the Council asked its contractor to replace fencing along the boundary of Miss Holton's garden. In order to erect the new fencing, the Council's contractor felled the three dwarf trees and removed a rose shrub from Miss Holton's garden.

1 The Local Government Act 1974, section 30(3)

2 The 1974 Act, section 26(1)

3 The 1974 Act, section 26(6)(c)

9. Neither the Council nor its contractor had notified Miss Holton that the work would be carried out, or that it would need access to her garden, or that any planting in her garden would be removed. Miss Holton understands that the trees, which were each felled at its base, will not grow back and to date the stumps left by the contractor remain. She describes her reaction to the loss of her trees as one of dismay and distress.
10. Following Miss Holton's complaints to the Council, its Area Operations Manager and its contractor met with Miss Holton on site. The contractor admitted that the trees and shrub had been felled unnecessarily and offered to pay Miss Holton £200 in recognition of her distress. Miss Holton rejected the contractor's offer and made a claim to the Council's insurers to pay her the full cost of replacement. Miss Holton supplied a quote from a garden centre confirming that, given their maturity, the trees would be extremely difficult to replace but it estimated a replacement cost totalling £3,250.
11. The Council rejected Miss Holton's claim. It said that it was not responsible for the actions of its contractor and that as all its contractors are required to hold public liability insurance Miss Holton should pursue a claim with the contractor's insurers.
12. In response to my investigation the Council has said that it:

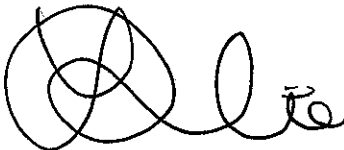
"...can, in law, delegate liability to the contractor and cannot therefore be held vicariously liable for the acts or omissions by the independent contractor."
13. Miss Holton says that the contractor has not responded to her claims for a remedy in excess of the £200 already offered to her and has not provided details of its insurers. And so Miss Holton complained to me.

Conclusions

14. Councils contract out a wide variety of functions but it is clear that a council remains accountable for the actions of its contractors while carrying out an administrative function on its behalf. In this case the contractor admitted that the trees had been felled unnecessarily and inappropriately. The Council and contractor failed properly to plan and implement the fence replacement project and that was maladministration.
15. It was the Council's responsibility to maintain the fence and so I consider that the Council is liable for the effects of the maladministration. It should thus take action to remedy Miss Holton's justified complaint. She has suffered financial loss and considerable outrage and dismay. How it wishes to apportion costs between itself and its contractors in providing a remedy is a matter for the Council: but any lack of clarity here should not prevent Miss Holton getting justice from the Council for the trees and shrub she lost, and for the avoidable aggravation she has been caused. In my view, the Council's buck-passing here is entirely unacceptable.

Finding

16. For the reasons given in paragraph 14, I find maladministration by the Council causing the injustice described in paragraph 15. To remedy the injustice to Miss Holton, I recommend that the Council
- (a) either pay Miss Holton £3250 or obtain an independent valuation, by an expert to be agreed with Miss Holton, of the replacement cost of the three trees and rose shrub and pay Miss Holton the value to compensate her for her loss;
 - (b) pay her a further £250 for her time and trouble in pursuing her complaint with the Council and with me; and
 - (c) review its procedures to ensure that the maladministration I have identified and the failure to remedy a justified complaint caused by the actions of its contractors, does not recur.



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