

Further Report
on an investigation into
complaint nos 06/C/15879 & 06/C/16558
against Sefton Metropolitan Borough Council

25 February 2010

Investigation into complaint nos 06/C/15879 & 06/C/16558 against Sefton Metropolitan Borough Council

1. Section 31(2A) of the Local Government Act 1974 (as amended) says that if, after issuing a report, the Local Government Ombudsman is not satisfied with the action that an authority has taken or proposes to take, a further report shall be issued setting out those facts and making recommendations.
2. In April 2008 I issued reports following investigations into two separate complaints that related to the Council's management of an allotment site. A long and acrimonious dispute between a number of the allotment holders had been exacerbated by the way that the Council had leased the site to individuals acting on behalf of an unincorporated association; the absence of tenancy agreements; and the actions it took when the unincorporated association was without elected representatives. As a result of the way parties to the dispute conducted themselves, Council officers had been drawn into spending a disproportionate amount of time and effort on issues raised and on previous complaints to the Ombudsman. Investigation of those previous complaints had been discontinued when the Council agreed to take various actions including issuing tenancy agreements on the model used by the National Society of Leisure & Allotment Gardeners (NSALG).
3. My finding on complaint 06/C/15879 was that the Council acted with maladministration causing injustice when it locked Mr C out of the allotment site because he would not sign a tenancy agreement that appeared different to the NSLAG model but was materially the same. I found that the Council had locked Mr C out without regard to his status and rights under allotment law. I did not consider that the Council's desire to bring order to the site could justify it ignoring the law. I recommended that the Council should apologise to Mr C and pay him £25 for each week that he was prevented from working his allotment together with £250 for his time and trouble in pursuing his complaint.
4. Complaint 06/C/16558 concerned the Council's handling of an allegation made against Mr B by another allotment holder and its suggestion that Mr B had received a police caution. I found that, although the Council decided to take no action on the allegation, it had acted with maladministration in forming a view (which it expressed to Mr B in writing) without giving him an opportunity to respond. My investigation established that the police had never cautioned Mr B and therefore a Council statement to me was false. I found that the Council had acted with maladministration in making a claim that was false and recommended that it should: apologise to Mr B, formally retract its statement that he had been cautioned; and pay him £1,000 in recognition of his time, trouble and cost in making his complaint and his distress.

5. After issuing my reports, I was surprised and disappointed to learn of local newspaper reports of comments made on them by Council officers. I wrote to the then Chief Executive on 19 May 2008 setting out the case law on how local authorities should consider an Ombudsman's report. I drew attention to case law about local authority consideration of Local Government Ombudsmen's findings in the case of *Bradley v Secretary of State for Pensions* which dealt, in part, with whether a Minister or Government Department had to accept the findings of the Parliamentary Ombudsman. This confirmed and restated the position established in earlier cases as summarised by Lord Justice Wall:


In cases involving the Local Government Ombudsman (LGO), the citizen who has invoked his assistance has - in law - no substantive remedy against the local authority concerned if that authority rejects the LGO's conclusion. It is true that the citizen could apply for judicial review of the local authority's decision not to implement the LGO's findings, but the system, as I understand it, depends upon the convention that local authorities will be bound by the findings of the LGO. It must follow inexorably that if a local authority wishes to avoid findings of maladministration made by a LGO, it must apply for judicial review to quash the decision.

This, in my judgment was what the Eastleigh case was about and why, with respect, Lord Donaldson of Lynton MR was right to hold that in the context of the 1974 Act, the Parliamentary intention was that "reports by ombudsmen should be loyally accepted by the local authorities concerned": - see [1988] 1 QB 855 at 867A-C.

6. The Council's Cabinet considered the matter at meetings on 15 May and 12 June. The Cabinet resolved not to accept my recommendations as it was '*... concerned that in all the circumstances to accept the recommendations was unlikely to resolve the conflict on the site.*'
7. My reports were appended to a covering report of Council officers. On seeing a copy of that report I wrote again to the then Chief Executive to express my grave concern about: the introduction of irrelevant considerations by the officers' report and allotment holders attending the meetings; the influence that irrelevant considerations clearly had on the Cabinet's decision; the disrespectful and discourteous comments about my office made in the officers' report; an apparent misapprehension about the content of one of my reports and of the most basic principles of public law. I stressed that my investigations and reports were into the Council's discharge of an administrative function and that I had no interest in the disputatious relationships between allotment holders.

8. In response, information was provided to me in relation to 06/C/16558 that I pursued with Merseyside Police. The Police again confirmed that no formal caution was ever issued to Mr B but also explained how Council officers could have come to believe that one had. In light of that explanation I am prepared to accept that, although entirely erroneous, Council officers believed that a caution had been issued. This does not, however, obviate my finding that the Council acted with maladministration in claiming that Mr B had been cautioned by the Police when enquiries made through the proper channels would have established that he had not.
9. In the time since I issued my reports there have been significant changes within the Council and further communications with officers. Regrettably, I understand that the Council remains unwilling to apologise to Mr C and Mr B and maintains its view that it would be inappropriate to make the payments I recommended because to do so would perpetuate and inflame the continuing ill-feeling at the allotment site.
10. I am not satisfied with the action taken by Sefton Metropolitan Borough Council since I issued my two reports. I am particularly concerned that the officers ignored the established common law relating to Ombudsman's reports and recommended that the Council should not comply with my recommendations because of their unhappiness with the investigation and my conclusions.
11. The Council should have addressed its mind to the remedies that I recommended for the maladministration that I found i.e.:
 - a. that it had locked Mr C out of his allotment without regard to his status and rights under allotment law, which could not be ignored simply because it wished to restore order to the site;
 - b. that it had formed and expressed in writing a view about Mr B's involvement in an altercation without giving him an opportunity to respond;
 - c. that it falsely claimed that Mr B had been cautioned by the Police;and that it should:
 - retract its suggestion that Mr B had been subject to formal police caution and apologise to him for that and the way it handled a complaint against him;
 - pay Mr B £1,000 for their time, trouble and costs of bringing their complaints to me and for the anguish and distress the allegation of a police caution caused to them;

- apologise to Mr C and compensate him with £25 for every week that he was locked out of his allotment and £250 for his time and trouble in bringing his complaint which could have been avoided by an explanation of the tenancy agreement;
 - ensure that the facts in any dispute about allotments are determined by an independent person and with advice from the National Society of Allotment and Leisure Gardens on allotment law;
 - have clear and accessible policies for dealing with complaints about the behaviour of residents and ensure that officers are properly trained in how to investigate those complaints fairly.
12. I trust that the Council will now give proper consideration to this Further Report.


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25 February 2010