

Complaint reference:
11014818

The Ombudsman's final decision:

1. is that I should not initiate an investigation into the way Council handled Mrs Z's attempts to register a bridleway on land near her home because:
 - Complaints a) and b) about registration of the application and the contents of the report to the regulatory committee about it, are too old for the Ombudsman to consider now,
 - Complaint c) about the process the Council followed in objecting to the secretary of state's instruction to make the modification order is too old to consider now, and the Council's objection was one of a number so the outcome, a further public inquiry, would not have been different for Mrs Z,
 - Complaint d) about the Council's evidence to the planning inspector, did not cause injustice to Mrs Z because the inspector was aware of the changes before reaching a decision.
 - Complaint e) about the provision of information about policy is in part too old to consider now and in part that the copy provided was given when requested without administrative fault,
 - Complaint f) about the creation of the bridleway across land leased by the Council is outside the Ombudsman's jurisdiction because the route formed part of the claimed bridleway subject to the public inquiry determined by the planning inspector,
 - Complaint g) about the Council's objection to the last public inquiry I could not achieve a remedy for Mrs Z as the Ombudsman has no power to change the outcome in relation to the bridleway or the costs awards made as part of the Planning Inspector's decision,
 - Complaint h) about the obstruction of the claimed bridleway, was a matter of evidence for the planning inspector and further investigation could not alter the outcome. The new issue related to fencing is too old to consider now.
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The complaint

2. Mrs Z complained that Hampshire County Council:
 - a) Delayed in bringing a claim for the registration of a bridleway to its Regulatory Committee for seven years between 2000 and 2007;

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- b) Through its Regulatory Committee reached a flawed decision in 2007 to reject the bridleway registration because the officer's report was flawed in a number of material respects,
 - c) Following an appeal to the Secretary of State and an order to make the claimed bridleway, it unreasonably failed to return the matter to its Regulatory Committee with the new evidence available but decided under delegated powers to object to the registration of the Order in December 2008;
 - d) At the first public inquiry put an altered plan in its information to the planning inspector;
 - e) Delayed in responding correctly to Mrs Z's complaint about process until January 2011;
 - f) Failed to implement the spirit of the court decision in relation to Mrs Z's judicial review of the Council's actions as leaseholder for part of the land over which the bridleway sought passed;
 - g) Unreasonably argued against the bridleway at the second public inquiry in July 2011 contrary to the public interest;
 - h) Failed to ensure the path was not obstructed and overgrown so its use was unarguable.
3. Mrs Z lives near to and wishes to use the bridleway. She is one of the parties that originally applied for the modification order. She considers the Council's actions have put her to a lot of expense and time and trouble."

The Ombudsman's role and powers

4. The Ombudsman's role is to consider complaints of service failure and maladministration causing injustice. The Ombudsman must consider whether the council has acted reasonably in accordance with the law, its own policies and generally accepted standards of local administration. Where a council has acted with maladministration, the Ombudsman considers whether injustice has arisen, and any appropriate remedy for that injustice.

How I considered this complaint

5. As part of the investigation, I have considered the complaint and the documents provided by the complainant and discussed the issues with her. I have considered some publicly available information.

What I found

Complaints a) and b)

6. These relate to the Council's consideration of the registration of the bridleway up to 2007.
7. Mrs Z considers the Council should have put the matter to members much sooner than 2007. When members of the regulatory committee were asked to reach a view, Mrs Z says the officer report about the matter was significantly flawed. Mrs Z put her views to the committee then. When the Council's decision was referred to the secretary of state (the Planning Inspectorate) the Secretary of State took a different view to members and said the definitive map should be

modified to register the bridleway so the flaws in the officer report Mrs Z alleges did not affect the outcome.

8. There are a number of reasons why I have not investigated complaints a) and b). First, the Local Government Act provides that normally the Ombudsman may not investigate a complaint unless it was made in writing to her within 12 months from the day when a complainant first knew something had happened which affected her: the “twelve month rule”. Second, the Ombudsman usually considers that to pursue a complaint someone must have suffered a significant level of injustice as a result of the Council’s administrative error. The Ombudsman assesses injustice by considering how the Council’s administrative fault has altered the complainant’s position.
9. Mrs Z could have complained about the Council’s actions to the Ombudsman much sooner and I have seen no exceptional reasons why she could not have done so. Mrs Z had the opportunity to have her view considered by members and the Secretary of State, who reversed the members’ decision so I do not consider she was caused a significant injustice from any alleged flaws in the report.
10. In response to my provisional view Mrs Z said that the Council accepted it had a six year backlog for applications to be determined, contrary to the statutory 12 month requirement. Mrs Z said she could not complain sooner as she had been told by the Ombudsman in relation to other matters that the Ombudsman was too busy or that the matter was under the jurisdiction of the Planning Inspectorate and could not be investigated. When the Council informed Mrs Z it had such a backlog it was open to her to complain then. Our records indicate another complaint by Mrs Z earlier this year about a separate matter did not reach either of the decisions Mrs Z suggests. The Ombudsman does expect applicants to use rights of appeal to the Planning Inspector where available as the Ombudsman cannot determine the merits of an application. But I have seen no evidence that Mrs Z’s complaint of delay or that the report to the regulatory committee was flawed was referred to the Ombudsman sooner to enable her to rely on having raised the matter before.

Complaint c)

11. The Council made the modification order as directed by the secretary of state then objected to it in November 2008. The objection was made by an officer, Mrs Z says without delegated powers. Mrs Z raised this with the Council when she first heard about it and in February 2009 the member with responsibility for the department replied. He said the officer had objected in line with the original decision of the regulatory committee so there was no need for further ratification from members, that other objections had been made so the matter would need to be determined by the planning inspector at a public inquiry anyway which was in itself in the public interest.
12. In March 2009 the head of department submitted a report to the regulatory committee because there had been two recent cases where officers had objected to modification orders after the secretary of state had required them to be made and these had been the subject of complaint. The head explained that the officers had acted using the delegated powers of the head of department to implement decisions of the regulatory committee, but the head sought members’ views in relation to this.
13. The regulatory committee ratified the procedure proposed in the report. This proposed that the decision as to whether a matter should be referred back to the regulatory committee following an order by the secretary of state depended on

whether officers, exercising their professional opinion, considered that the further evidence to the secretary of state during the appeal might have altered the decision of the regulatory committee to refuse the modification application. Where officers considered the evidence would not have altered the decision by the regulatory committee officers would continue to object or take a neutral stance as they thought appropriate using the delegated powers of the head of department to implement decisions of the regulatory committee.

14. It would appear that here the officer's decision to object was made before this process was ratified. But how the officer acted was effectively approved by the regulatory committee. Mrs Z and the Council agree that when the officer objected he did so using delegated powers, but Mrs Z considered this was an inappropriate use of such powers.
15. Mrs Z should have complained to the Ombudsman when she was dissatisfied in 2009. I do not consider there are exceptional reasons why this complaint about events in early 2009 should be investigated now.
16. Even if the decision was made without the appropriate delegated authority, which I have not confirmed, the matter would have been subject to a public inquiry or a hearing due to other objections, (this decision being made by the planning inspectorate) and the planning inspector would have had to consider the evidence afresh, as indeed happened. The Council officer's decision did not alter significantly what subsequently happened so I do not consider Mrs Z was caused a significant injustice as a result.
17. In response to my provisional view Mrs Z questioned the "12 month rule". The Ombudsman has discretion to investigate older events but does so exceptionally where injustice or administrative fault are significant, and then would rarely reach a finding about events that had occurred over two years ago. I do not consider Mrs Z's injustice for this complaint meets that threshold.
18. Mrs Z also considered the ratification process which had come to her attention in January 2011. As other objectors put the matter to the planning inspector, and the Council continued to object to the application at later inquiries I do not consider it is likely that the outcome of the matter going to the planning inspectorate with a Council objection would have changed despite Mrs Z's concerns about policy. So Mrs Z was not caused a significant injustice by the way the Council reached its decision to object. Mrs Z considers the planning inspector could have decided other objections did not justify a public inquiry. That decision was for the planning inspector to make based on the requests for method that he received.
19. Mrs Z only found out about the process approved by the regulatory committee in January 2011. She said the head of department's report was confusing and in continuing conflict with the Council's constitution, amounting to an ongoing service failure. But the decision in 2009 did not rely on the report ratification, and Mrs Z has not indicated that she has suffered personally as a result of this alleged service failure subsequently. So I do not consider I should investigate the allegation of conflict as part of this complaint. I will ask the Council to consider the position and to explain it to Mrs Z.

Complaint d)

20. This relates to the evidence the Council submitted to the Planning Inspector at the public inquiry in November 2009. Mrs Z says that the Council's researching officer changed the lettering on the subsequent plans (the letters represented various significant points along the route including the start and finish) from that shown on

the plan subject to the Order. She said this was mentioned in the planning inspector's report, subsequent to the public inquiry. As the planning inspector commented on the alteration, so his or her decision was not flawed by virtue of lack of knowledge of the Council's alteration. I do not consider I should investigate complaint d) because the planning inspector effectively remedied any injustice that could have been caused to Mrs Z.

Complaint e)

21. This relates to complaint c). Mrs Z considers the Council misinformed her about the process the officer was following in objecting to the modification order in early 2009, compared to the copy of the process she received in 2011.
22. Mrs Z sent me the letter from the member responsible for the department making the decision, dated 6 February 2009. He stated the officer was merely implementing the decision of the regulatory committee and that there was no need for further ratification of the committee's decision. In March 2009 the Council adopted a process that was more definitive than that described by the member, but in the circumstances here the outcome would not have changed. So the member's view at the time he gave it was not a proven mis-description of written policy but a description of practice until policy was confirmed.
23. I do not consider I should pursue a complaint about what the member said about policy in February 2009. Mrs Z had asked for clarification of policy from the compliance officer in 2009 presumably to pursue this issue but did not receive or pursue it until January 2011. If Mrs Z was dissatisfied she could have pursued the issue in 2009. Mrs Z was aware of the Ombudsman's service and how to get information using Freedom of Information legislation.
24. In response to my provisional view Mrs Z said that she had needed to pursue other officers for a reply and she referred to pursuit of a judicial review in 2010. I remain of the view that if she wanted to know policy in 2009 she could have made a formal complaint, or a Freedom of Information Act request then without waiting for other decisions to be made by other bodies. Mrs Z received her response to a request for information in January 2011 without fault.

Complaint f)

25. Mrs Z complained that the Council failed to implement the spirit of the court decision in relation to Mrs Z's judicial review of the Council's actions as leaseholder for part of the land over which the bridleway sought passed;
26. Mrs Z said she issued judicial review proceedings in 1997 in relation to the safety of the road near the rifle range and that she hoped the Council would instead open a section of disused former highway to provide safer passage for horses, or expedite the creation of a section of the bridleway that was in dispute.
27. In March 1998 the chief executive replied to Mrs Z that the strip of land opposite the rifle range was privately owned and it was too narrow for the accommodation of horse riders. So the Council would not create a bridleway there. Mrs Z subsequently found out that the ownership of the land was unknown. In January 2001 the Council said it should not expedite the consideration of the registration of the bridleway on highway safety grounds, but it should take its turn. These Council decisions are very old and I consider the twelve month rule applies here.
28. Mrs Z has established that the Council leases a portion of land over which the disputed bridleway runs and she considers that in the public interest the Council should at least open the disputed bridleway over it. Disputes about public rights of

way have an appeal process which has been used here, namely the application for a modification order which has been considered by the Secretary of State.

29. The Local Government Act 1974 as amended says that the Ombudsman shall not investigate a complaint if a right to go to appeal to a government minister has been used. For this reason, the Ombudsman has no jurisdiction to investigate Mrs Z's complaint about the part of the bridleway over the leased land. Due to the age of events in 1998 and 2001, and the appeal that has been raised over the leased land, I do not consider I should investigate complaint f).

Complaint g)

30. The Council continued to object to the registration of the bridleway at the most recent public inquiry in July 2011. Mrs Z says this objection was contrary to the public interest. She says the Council informed her that its objection was based on fact not policy. She considers the final public inquiry was not needed as written representations or a hearing would have been sufficient.
31. As I understand it, the planning inspector reached a decision that the claimed bridleway should not be registered having considered much evidence. The merits of the decision were a matter for the planning inspector. I do not consider it would be appropriate to examine the Council's statement of case against Council policy. Here applicants including Mrs Z sought to register rights across land belonging to others. Mrs Z pointed out in response to my provisional view that the start and finish of the proposed route were across common land. Even if the Council has policies to seek to improve rights of way (which I have not examined) the Council would need to reach a view in relation to the facts it considered it could support as the land owners would have an equal claim to fair play from the Council.
32. To examine the merits of the Council's case, and indeed to determine the method by which arguments should be heard is the role of the Planning Inspector. It would serve no useful purpose to revisit parts of a matter that were considered part of a public inquiry as the Ombudsman has no power to change the outcome in relation to the bridleway or the costs awards made as part of the Planning Inspector's decision.
33. Mrs Z questioned the Ombudsman's jurisdiction in response to my provisional view. She considered there was no time limit applicable to when injustice was suffered. But a complainant must bring a complaint to the Ombudsman's attention within 12 months of knowing about it and although continuing and older injustice is relevant it must be considered with other jurisdictional considerations, and I consider the key considerations are those described in paragraph 32.

Complaint h)

34. This concerns the obstruction of the claimed bridleway. Mrs Z indicated there were obstructions which prevented the long user needed to establish the right of way. This would have been a matter of evidence for the Planning Inspector in reaching his decision in September 2011, and therefore not within the Ombudsman's jurisdiction to consider now because a right of appeal in relation to the route has been used.
35. Mrs Z said in response to my provisional view that the Council acted criminally in excluding 80 acres of common land from the Register of Common Land. If Mrs Z considers a criminal offence has occurred this is a matter for the police: the Ombudsman cannot investigate criminal matters. Mrs Z said the Council colluded with the land owner for the fencing of the 80 acres without application to the secretary of state and against the wishes of the commoners. Mrs Z did not

complaint about the fencing to the Ombudsman when she first complained. Mrs Z has subsequently shown that the 80 acres have been subject to legal action about registration as common land and appear to have been fenced since the 1970's. She raised her concerns at the final public inquiry. I consider the fencing issue to be one that is too old for the Ombudsman to consider now.

Decision

36. I conclude that I should not initiate an investigation into the way Council handled Mrs Z's attempts to register a bridleway on land near her home because:
- Complaints a) and b) about registration of the application and the contents of the report to the regulatory committee about it, are too old for the Ombudsman to consider now,
 - Complaint c) about the process the Council followed in objecting to the secretary of state's instruction to make the modification order is too old to consider now, and the Council's objection was one of a number so the outcome, a further public inquiry, would not have been different for Mrs Z,
 - Complaint d) about the Council's evidence to the planning inspector, did not cause injustice to Mrs Z because the inspector was aware of the changes before reaching a decision.
 - Complaint e) about the provision of information about policy is in part too old to consider now and in part that the copy provided was given when requested without administrative fault,
 - Complaint f) about the creation of the bridleway across land leased by the Council is outside the Ombudsman's jurisdiction because the route formed part of the claimed bridleway subject to the public inquiry determined by the planning inspector,
 - Complaint g) about the Council's objection to the last public inquiry I could not achieve a remedy for Mrs Z as the Ombudsman has no power to change the outcome in relation to the bridleway or the costs awards made as part of the Planning Inspector's decision,
 - Complaint h) about the obstruction of the claimed bridleway, this was a matter of evidence for the planning inspector and further investigation could not alter the outcome. The new issue related to fencing is too old to consider now.