

18 January 2001

Ombudsman's report : Rights of way

Report of the Chief Executive & Director of Arts Countryside and Community

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1. Purpose of report

- 1.1. The Local Government Ombudsman has investigated a complaint made against the County Council and East Hampshire District Council about rights of way.
- 1.2. The Ombudsman published his report on his investigation on 31 October 2000. Local newspapers reported publication of the report and the issues it covers. The report has been on public deposit and a copy is available in the Members' Room. The County Council has a duty to consider the report, including its conclusions and recommendation, and to tell the Ombudsman what action it has taken and proposes to take.
- 1.3. This report sets out concerns about the Ombudsman's report and recommendations of the action the County Council should take in response to it. If the Ombudsman is not satisfied with the action the County Council tells him it has decided to take he will make a further report, with recommendations.

2. The complaint against the County Council

- 2.1. East Hampshire is the only district council in Hampshire to claim, under section 42 of the Highways Act, the right to exercise the highway authority's responsibilities for maintenance of rights of way in the whole of its area. The first complaint was that the two Councils failed clearly to agree, formalise and allocate responsibility for that work.
- 2.2. The second complaint was that the County Council and District Council failed to take action on the complainant's reports of unauthorised obstruction and diversion of specific footpaths.

- 2.3. The third complaint was that the County Council failed to respond adequately to a complaint about availability of the definitive map.
- 2.4. As a result, the complainant claimed 'he has been deprived of the right to enjoy these paths in their entirety, has been obliged to expend an unreasonable amount of money, time and trouble pursuing his complaints and has suffered considerable frustration.'

3. Investigation by the Ombudsman

3.1. There has been protracted investigation by the Ombudsman of this complaint, made to him in March 1999, and of another complaint covering some of the same issues. The Ombudsman used his discretion to decide to discontinue his investigation of the other complaint in May 2000 without finding maladministration by the Councils.

3.2. The Ombudsman consulted the Chief Executive on a draft of his report which omitted, as is usual practice, the conclusions, findings and recommendation. Suggestions were made for inclusion of additional information: an important suggested change has not been made.

4. The Ombudsman's conclusions, findings and recommendation on complaints against the County Council

4.1. The Ombudsman concludes that it was maladministration that there was no detailed written statement setting out the respective responsibilities of the two Councils for rights of way work. He acknowledges that for 25 years (1974 until mid 1998) the Councils held a common view and lack of written statement caused no confusion. He records that, between April 1998 and April 1999, the District Council was in correspondence and discussion with the County Council about its concerns that it would be unable to pursue legal proceedings, should that prove necessary, to secure removal of obstructions and resolution of an unauthorised diversion on the footpaths the subject of the complaint. In May 1999 the County Council's Rights of Way Manager took over responsibility from the District Council and resolved problems on these footpaths.

4.2. The Ombudsman has concluded:

4.2.1. 'the challenge and resulting period of some uncertainty might have been avoided if there had been a clearer agreement between the two Councils about the division of responsibilities between them.'

4.2.2. 'the lack of written statement 'led to some injustice to (the complainant) from frustration and avoidable time and trouble'

4.3. The Ombudsman then reaches conclusions on the complaint that the County Council failed to take action on reported unauthorised obstructions on a particular footpath. His report records the County Council's action and conclusions on the unauthorised obstructions, and concludes 'it does not appear to me that its decision amounts to maladministration' and (in relation to the reported alleged obstructions) 'it is my view that these structures do not result in injustice to (the complainant) because they do not prevent him from using the footpath.' He records a finding of no maladministration.

4.4. In relation to obstruction/diversion of another specific footpath he records that in November 1996 an Inspector decided not to approve a diversion order - which left unauthorised obstructions on the line of the footpath on the definitive map. He says 'neither (Council) took any action to progress a resolution of this matter until May 1997 following a complaint.' 'In my view this delay was maladministration.' However, he again concludes that 'The delays in resolving the problems on the path did not cause (the complainant) injustice insofar as he was able to use a route close to the line of the footpath.'

4.5. Lastly, the Ombudsman's report dismisses the complaint that the County Council failed to respond adequately to enquiries and complaints about local availability of the definitive map. 'It seems to me that the County Council has tried to ensure that copies of the definitive map, statement and modifying orders are available in every District Council. In addition, following the complaint it has arranged for these to be available at Havant public library. I see no maladministration here.'

4.6. In summary, the Ombudsman's only findings of maladministration relate to the lack of detailed written statement setting out respective responsibilities of the two Councils and the failure to take action to resolve problems on a particular footpath following the Inspector's decision not to approve a diversion order. He dismisses the claim that the complainant was deprived of the right to enjoy use of the paths and the complaint about availability of the definitive map. The Ombudsman finds no fault with the action taken by the County Council to resolve problems of unauthorised obstruction and diversion on the paths the subject of the complaint.

4.7. The Ombudsman's recommendation is that:

4.7.1. both Councils undertake a review of arrangements for the inspection of footpaths, including the adequacy of resources

4.7.2. each Council should pay the complainant £125 'as some contribution to his out-of-pocket expenses.'