

The Ombudsman's decision

Summary: The Council provided Mr and Mrs B with incorrect information about a Tree Preservation Order on their land. The Council has agreed to pay them £820 to cover the cost of their unnecessary expenses and £500 in recognition of the significant inconvenience they experienced.

The complaint

1. Mr and Mrs B say the Council gave them incorrect information about the type of Tree Preservation Order on their land.
2. They want the Council to pay £1290 for the unnecessary expenses they incurred and £1350 for their time dealing with the matter.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
5. We cannot investigate a complaint if someone has appealed to a government minister. The Planning Inspector acts on behalf of a government minister. (*Local Government Act 1974, section 26(6)(b), as amended*)
6. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

7. I have:
 - considered the complaint and the documents provided by Mr and Mrs B;
 - discussed the issues with Mr B;

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- considered information on the Council's website;
 - considered the Council's responses to the complaint; and
 - given the Council and Mr and Mrs B the opportunity to comment on my draft decision and considered all comments made.

What I found

Tree Preservation Orders

8. A Tree Preservation Order (TPO), in general, makes it an offence to cut down, top, lop, uproot or wilfully damage a tree without the Local Planning Authority's permission.
9. There are different types of TPO, including the following:
 - Woodland TPO: covers all trees within a woodland area regardless of how old they are. It includes trees which are planted and/or grow naturally on the site after the date the order was made.
 - Area TPO: covers all trees in a defined area at the time the order was made. It does not include trees which are planted and/or grow naturally on the site after the order was made.
10. Someone seeking permission to carry out works to a protected tree must apply to the Local Planning Authority. An applicant aggrieved by a refusal to grant permission can appeal to the Planning Inspectorate.

What happened

11. Mr and Mrs B decided to carry out work to trees on their land. The Council told them there was a Woodland TPO covering their property.
12. Mr and Mrs B applied to the Council for permission to remove several trees. The Council granted permission on the condition that new trees were planted to replace those removed.
13. Mr and Mrs B then submitted a second application to remove more trees. Again, the Council granted permission.
14. The Council refused a third application to fell 3 more trees. Mr and Mrs B appealed to the Planning Inspectorate against the Council's refusal.
15. During the hearing, the Planning Inspector established that the TPO covering the area was an Area TPO, not a Woodland TPO. It was agreed that the trees Mr and Mrs B wanted to remove had been planted since the order was made in 1958, and so they were not protected and Mr and Mrs B did not need permission to fell them.
16. A year after discovering the TPO was an Area Order, Mr and Mrs B complained to the Council. They said the previous applications and associated surveys and replacement trees were unnecessary and they asked for £2640 to cover their costs. The Council apologised for the error and offered to pay £600 for the expert surveys Mr and Mrs B had commissioned.

Analysis

17. The law says that the Ombudsman should not investigate a matter that a complainant has been aware of for more than 12 months. In this case, Mr and Mrs B discovered the Council's error in July 2018. They did not complain to the

Council until the following July and did not complain to the Ombudsman until February 2020. Their complaint is therefore late.

18. We can exercise discretion to investigate late complaints if we consider there are good reasons. I have decided to do so for two reasons. Firstly, there is sufficient evidence available to make a sound and fair decision. And secondly, Mr and Mrs B complained to the Ombudsman shortly after they received the Council's final response to their complaint.
19. The Council accepts that it gave Mr and Mrs B incorrect information and that because of this, they made three unnecessary applications to remove trees from their land.
20. Mr and Mrs B want the Council to pay:
 - £600 for two professional surveys;
 - £120 for two replacement trees;
 - £320 for repairs to a fence;
 - £42 for mileage;
 - £28 for administrative costs; and
 - £1350 for their time dealing with the matter.
21. The Council has already offered to pay £600 for the surveys. I consider it should also pay for the replacement trees because Mr and Mrs B would not have replaced them if there had been no fault by the Council.
22. I do not consider the Council should pay the full cost to repair a gap in the fence which was created when a tree was removed. It is likely that Mr and Mrs B would have removed the tree along the boundary before erecting the fence if they had not been given incorrect information by the Council. However, Mr and Mrs B decided to erect the fence before applying for permission to remove the tree. If they had applied first, the Council may have granted permission and there would have been no need to repair the fence. I consider Mr and Mrs B contributed to their own injustice here.
23. The Ombudsman does not recommend compensation or damages and does not recommend repayment of costs such as postage or telephone calls. However, I recommended the Council pay an additional £500 to Mr and Mrs B to recognise the significant and unnecessary inconvenience they experienced as a result of the Council providing incorrect information. It has agreed to make this payment.

Agreed action

24. Within four weeks, the Council will make a payment of £1320 to Mr and Mrs B. This includes £600 for the surveys, £120 for the replacement trees, £100 towards the fence repairs and £500 for their inconvenience.

Decision

25. I have completed my investigation and uphold Mr and Mrs B's complaint. There was fault by the Council which caused Mr and Mrs B injustice. The action the Council has agreed to take is sufficient to remedy that injustice.

Parts of the complaint that I did not investigate

26. The law says the Ombudsman cannot investigate a complaint about a matter which has a right of appeal, and the complainant has exercised that right. We cannot investigate the Council's decision to refuse the third application because Mr and Mrs B appealed this decision to the Planning Inspectorate.

Investigator's decision on behalf of the Ombudsman