

**Bolsover District Council**

**Executive**

**11<sup>th</sup> July 2016**

**Local Government Ombudsman decision in the case of Mr X**

**Report of the Monitoring Officer**

This report is public

**Purpose of the Report**

To provide information to Council in relation to the Ombudsman's decision.

**1 Report details**

The Local Government Ombudsman (LGO) investigated a complaint from Mr X and as a result, the Council was at fault which caused Mr X injustice. He was awarded £100 compensation. The LGO, when referring to service failure has used the word 'fault' to refer to it.

The Monitoring Officer is statutorily required to report to members any finding of maladministration or injustice to Executive, and is required to present a report to all Councillors.

The full decision notice is appended, however for background information, the site in question is maintained by Bolsover District Council's Streetscene Services (grounds maintenance), but responsibility sits within Leisure Service's portfolio of sites. The matter is further complicated because one of the paths that the LGO refers to is in the ownership of Derbyshire County Council.

The LGO found that the Council's delay in installing replacement benches and clearing overgrown paths during the winter of 2014/15 as agreed amounts to fault causing Mr X an injustice.

**2 Conclusions and Reasons for Recommendations**

It should be noted that, whilst accepting there was a delay in carrying out the works, this case was particularly complex due to dual ownership of the site, multiple department and multiple agency involvement. The decision was based around the failure to keep Mr X updated. The Council rarely attracts decisions of maladministration or injustice, the last one being in 2013 (£250 compensation awarded).

We are confident that the matter has now been rectified and there will be no recurrence.

**3 Consultation and Equality Impact**

Mr X felt the lack of action indicated the Council was failing to comply with disability discrimination laws although he has not pursued this element of his complaint with the Equality and Human Rights Commission to the best of our knowledge.

#### 4 **Alternative Options and Reasons for Rejection**

None.

#### 5 **Implications**

##### 5.1 **Finance and Risk Implications**

The Council has already paid Mr X the sum of £100.

##### 5.2 **Legal Implications including Data Protection**

No further risks identified.

##### 5.3 **Human Resources Implications**

None.

#### 6 **Recommendations**

That Executive note the findings of the LGO.

#### 7 **Decision Information**

<b>Is the decision a Key Decision?</b> (A Key Decision is an executive decision which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
<b>District Wards Affected</b>	South Normanton
<b>Links to Corporate Plan priorities or Policy Framework</b>	

#### 8 **Document Information**

<b>Appendix No</b>	<b>Title</b>
Appendix 1	Local Government Ombudsman decision notice and covering letter
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
<b>Report Author</b>	<b>Contact Number</b>

Monitoring Officer	BDC: 2414/ NEDDC: 7057
Customer Standards & Complaints Officer	BDC: 2353

Report Reference –

Local Government  
**OMBUDSMAN**

7 April 2016

Mr Daniel Swaine  
Chief Executive  
Bolsover District Council  
Sherwood Lodge  
Bolsover  
S44 6NF

Your ref:

Our ref: 15 014 152/IT6/GE

(Please quote our reference when contacting us and,  
if using email, please put the number in the email subject line)

**If telephoning please contact: 0330 403 4005**  
**email address: G.Earles@coinweb.lgo.org.uk**

Dear Mr Swaine

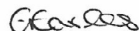
**Complaint by** \_\_\_\_\_ **of** \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Thank you for your email of 21 March 2016. I note the Council's comments and the agreement to my recommendation and thank you for your assistance.

I have now made my final decision on this complaint. I enclose a copy of the statement that explains my reasons. Please send a copy of this decision notice to those contractors or employees (or ex-contractors or ex-employees) who were consulted as part of my written enquiries. Please remind them that the law says that investigations must be conducted in private, and the complaint and information about it must not be disclosed to third parties.

Please let me know when you have completed the agreed remedy as detailed in the attached decision statement.

Yours sincerely



Gillian Earles  
Investigator

Enc: Statement of my final decision

PO Box 4771 www.lgo.org.uk  
Coventry  
CV4 0EH **0300 061 0614**

*The Commission will include this complaint in the published figures for the year ending 31 March 2017. We will record the category as: Corporate & Other Services and the decision as: Upheld: maladministration and injustice.*

7 April 2016

**Complaint reference:**  
15 014 152

**Complaint against:**  
Bolsover District Council

Local Government  
**OMBUDSMAN**

### **The Ombudsman's decision**

Summary: The Council's delay in installing replacement benches and clearing overgrown paths during the winter of 2014/15 as agreed amounts to fault causing Mr X an injustice.

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### **The complaint**

1. The complainant, whom I shall refer to as Mr X complains the Council has failed to repair and maintain the open space near to his home. Mr X complained about the disrepair and inaccessibility of the area in 2014 and the Council has delayed in taking action.

### **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints of injustice caused by administrative fault. She can consider the way an authority makes its decisions, but it is not her role to comment on them unless they have been taken with fault. (*Local Government Act 1974, section 34(3)*). If the Ombudsman finds fault but no injustice, she will not ask a council to provide a remedy. If she finds both fault and injustice, she may ask for a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*).

### **How I considered this complaint**

3. As part of the investigation, I have:
  - considered the complaint and the documents provided by Mr X;
  - made enquiries of the Council and considered the comments and documents the Council provided;
  - discussed the issues with Mr X;
  - sent a statement setting out my draft decision to Mr X and the Council and considered their responses.

### **What I found**

4. In September 2014 Mr X complained to the Council that the paths leading to and around a local recreational area and cricket ground were overgrown. Mr X was particularly concerned as he is disabled and often uses a mobility scooter. The lack of maintenance meant many of the paths were only just wide enough for people to walk along, but were impassable on his mobility scooter. He asked the Council to review access to the area and confirm whether it would replace the wooden benches around the cricket pitch.

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5. The Council acknowledged Mr X's complaint and confirmed work had been ordered but did not give a timeframe. Mr X felt the lack of action indicated the Council was failing to comply with disability discrimination laws.
  6. In its formal response to Mr X's complaint the Council confirmed an officer had been out to inspect the site and confirmed a path owned by the county council was severely overgrown. The Council has cleared, rebuilt and resurfaced this path to a width of 2m as part of a 'Safer Spaces' project in 2005. But lack of maintenance meant there was only 30cm of surface available to walk on.
  7. The officer also noticed significant encroachment on to the tarmac paths as well as significant overhanging vegetation. This made using the paths difficult for people using a mobility scooter or pushing a pram or pushchair.
  8. In addition the officer had noted there was one bench next to the cricket pitch which was damaged but useable. There were also the remains of three other benches near the paths to the north and east of the cricket pitch.
  9. The Council agreed to replace the three benches that had been removed. It also confirmed it would ensure all pathways owned by the Council were restored to their original width and free from obstructions. This would allow free passage for all users of the park.
  10. As the Council does not own all of the paths it confirmed it would liaise with the county council with a view to reclaiming the path at the bottom of the site.
  11. The Council aimed to complete these works during the winter of 2014/15. But could not give a timeframe for work within the county council's control. Mr X states the Council cleared some paths a few weeks later but did not complete the works.
  12. Mr X complained to the Council again in July 2015. The Council confirmed it would install the benches within the next few weeks and that officers were meeting to discuss how to deal with the overgrown paths. The Council apologised it had taken so long to resolve the issue.
  13. In August 2015 the Council cleared the footpaths around the cricket pitch and the path owned by the county council. It confirmed it would order the new benches in a couple of weeks and remove the fencing next to the cricket pitch. The Council had been unable to remove the fence post earlier as it had discovered a wasp nest next to it.
  14. As the Council had not completed the works Mr X complained again in November 2015. The Council's response apologised for the delay in fitting the benches. Although the Council bought the benches in August, it had to purchase the fixings separately. This had caused a delay but the Council intended to install the benches in the next few weeks. The Council confirmed it would also remove the remaining fences posts as soon as possible.
  15. In terms of the paths the Council said it would cut back overgrown trees and hedges and edge the paths over the winter.
  16. Mr X was concerned about further delay so asked the Ombudsman to investigate his complaint. In its response to my enquiries the Council has confirmed the open space and cricket pitch are subject to a regular mowing regime throughout the season. The Council states the issues Mr X has raised are over and above the regular maintenance programme and have required additional staff and financial resources.

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17. The Council installed six new benches in November 2015. It also began cutting back vegetation along the path at the bottom of the site and edging the paths around the whole site. The Council carried out the initial phase of work in December 2015 and the second phase in February 2016.
  18. The Council confirmed it had intended to carry out these works over the winter of 2014/15. It had to delay these works as staff who would normally carry out these works were already committed to another project.
  19. In addition the Council states it has informally adopted the path owned by the county council and opened it up so that it is now passable on foot. The Council intends to clear it further over the next few months so that it is passable by all users. As the Council does not own the path it cannot guarantee it will maintain it indefinitely.

#### **Analysis**

20. The Council acknowledged in October 2014 that the paths around the open space were significantly over grown and that the encroachment would make it difficult for people using mobility scooters to use them. It advised Mr X is would replace the benches and carry out work between November 2014 and March 2015 to restore the paths to their original width and ensure they were free from obstruction. But the Council failed to do so.
21. The failure to carry out this work and to advise Mr X of the delay amounts to fault. The Council should have been aware that officers were committed elsewhere and could not carry out this work, and should have advised Mr X accordingly.
22. The Council has now cleared the paths around the open space as agreed. This is an appropriate response but will inevitably need to be repeated as the vegetation grows and encroaches on the paths again.
23. The Council has provided details of its maintenance of the open space. This does not include any inspection or scheduled maintenance of the paths around the park. I would expect the Council monitor the paths and ensure they continue to be accessible for all users.

#### **Agreed action**

24. The Council has agreed to pay Mr X £100 in recognition of the time and trouble he has been put to in pursuing this matter as a result of the Council's delay in carrying out the works.

#### **Decision**

25. The Council's delay in installing replacement benches and clearing overgrown paths during the winter of 2014/15 as agreed amounts to fault causing Mr X an injustice.

#### **Investigator's decision on behalf of the Ombudsman**