

**Unrestricted**

**TO: COUNCIL**  
**DATE: 26 April 2017**

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**COMPLAINT AGAINST COUNCIL – OMBUDSMAN DECISION (Parking issue)**  
**Monitoring Officer**

**1 PURPOSE OF REPORT**

- 1.1 This report is to appraise the Council of a finding of maladministration with no injustice by the Local Government Ombudsman (“the Ombudsman”) against Bracknell Forest Council in response to a complaint that it failed to use the Standards Committee to investigate a Code of Conduct complaint against a Councillor.

**2 RECOMMENDATION**

**That the Council;**

- 2.1 **Notes the Ombudsman’s report findings (restricted Appendix A)**
- 2.2 **Agrees that no further action needs to be taken in relation to the matter set out in this report**
- 2.3 **Notes that a copy of this report has been circulated to all members of the Council**
- 2.2 **Approves the draft report of the Council attached hereto as (restricted Appendix B) to comply with the requirements of S5 of the Local Government and Housing Act 1989**

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 To comply with the provisions of the Local Government and Housing Act 1989

**4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 In view of the fact that the Ombudsman has categorised the complaint as “Upheld: maladministration with no injustice”, the statutory process for reporting the decision must be followed.

**5 SUPPORTING INFORMATION**

The Statutory Framework

- 5.1 The Ombudsman Service was established by the Local Government Act 1974. Any person who feels aggrieved in the delivery of a local authority service which is not covered by other statutory complaint processes may complain to the Ombudsman. The Ombudsman will almost invariably expect the complainant to exhaust the Council’s own complaints process before considering the complaint. If the Ombudsman does decide to investigate a complaint he/she will determine whether,

in their opinion, the local authority has been guilty of “maladministration” and if so whether the complainant has sustained “injustice” in consequence.

- 5.2 Section 5 of the Local Government and Housing Act 1989 imposes a duty upon the Monitoring Officer to prepare a report to the Council if at any time it appears to him/her that there has been maladministration in the exercise of its functions. The duty does not arise unless the Ombudsman has conducted an investigation. The report is required to be copied to each Member of the Council.
- 5.3 As soon as practicable after the Council has considered the Monitoring Officer’s report it must prepare a report which specifies:-
- (a) What action (if any) the Council has taken in response to the Monitoring Officer’s report,
  - (b) What action (if any) the Council proposes to take in response to the report, and
  - (c) The reasons for taking the action or for taking no action.
- 5.4 The Council has received a decision from the Ombudsman that there was maladministration by the Council in the way it dealt with the complainant’s Code of Conduct complaint against a councillor and that the complainant suffered no injustice

## 6. **Background**

- 6.1 The Ombudsman’s report is self explanatory, but in summary the complainant (“Mr X”) complained to the Council about obstructive parking in his road which was restricting his ability to exit his driveway on to the highway. Initially Mr X was referred to the police as the view of officers was that there was no obstruction. In 2014 Mr X returned to the Council seeking the imposition of parking restrictions as the police had been unable to resolve the issue. Highways officers met with Mr X in June 2014 and thereafter set in motion a consultation process for the imposition of a Traffic Regulation Order (“TRO”). A number of objections were received resulting in a decision in January 2015 to defer the proposed TRO for Mr X’s road to enable the Council to undertake further parking surveys. Upon further enquiries the Council concluded in June 2015 that the imposition of a TRO would be a disproportionate response to the matter as the problems with parking did not constitute a “*regular and material obstruction*” of Mr X’s property access.
- 6.2 Mr X’s complaint to the Ombudsman was about how the matter was dealt with by the Council under its complaints procedure. Initially (August 2015) the Ombudsman determined not to investigate the complaint “*because it was unlikely she would find evidence of fault by the Council.*” However upon receiving further evidence from the complainant the Ombudsman reopened the case leading initially, in November 2015, to a request to the Council for a response to 37 further queries. Despite receiving protestations from the Chief Executive at its approach to a manifestly spurious complaint that was impacting significantly on staff resources, the Ombudsman proceeded with the investigation. Frustratingly, despite a full response to the 37 queries prior to Christmas, the Ombudsman provided no update to the progress of the complaint until May of the following year with the investigator requesting a series of interviews with Council representatives which were subsequently conducted. These led to a draft decision in October 2016 and a final decision in January 2017.

## The Decision

- 6.3 The Ombudsman found no fault in the Council's management of Mr X's initial concerns regarding access issues to and from his driveway or in the way that its complaints procedure was followed. However, in one of his lengthy letters Mr X had raised concerns regarding the purported conduct of a serving councillor, albeit no formal complaint was lodged using the Council's prescribed online process. Nonetheless on this issue the Ombudsman made a finding of fault against the Council in the way that it dealt with Mr X's Code of Conduct complaint against a Councillor. This was notwithstanding the Council's position as endorsed by the Monitoring Officer that the lack of evidence to substantiate the complaint would in any event have led to it being rejected at source. The Ombudsman accepted however that Mr X had suffered no injustice.
- 6.4 It is worthy of consideration that during the process of dealing with Mr X's complaint Council officers spent an inordinate amount of time in correspondence with him notwithstanding the seemingly vexatious and aggressive tone set in some of the communications.
- 6.5 The Council's view, as set out vigorously by the Chief Executive in a number of written communications following receipt of the Ombudsman's draft report in October 2016 was, and remains, that Mr X's complaint was vexatious. Moreover, the fact that the Ombudsman has made an adverse finding against the Council on an issue which is at best incidental to the main thrust of Mr X's complaint (i.e. the Council's decision not to issue a TRO) is in itself of concern. This led the Chief Executive lodging a written complaint against the conduct and outcome of the Ombudsman's investigation. Copies of relevant correspondence are attached to this report (restricted Appendix C).
- 6.6 Notwithstanding the outcome of this Ombudsman investigation, the Council should find comfort in the fact that according to the most recent LGO figures (2014-2015) it was subject to the fewest number of complaints to the LGO in comparison with its Berkshire neighbours. Moreover, during that period it was only subject to a single adverse finding by the Local Government Ombudsman. Alongside West Berkshire Council this represented the lowest number in Berkshire. Whilst officers will not allow such data to give rise to complacency, it is nonetheless indicative of both the Council's robust procedures for dealing with complaints as well as the commitment of officers to ensure that where presented, such complaints are dealt with expeditiously and with a view to achieving complete resolution.

## **7 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

- 7.1 The Borough Solicitor is the author of this report.

### Borough Treasurer

- 7.2 There are no financial implications directly arising from this report.

### Equalities Impact Assessment

- 7.3 Not required.

Strategic Risk Management Issues

7.4 None.

**8 CONSULTATION**

Principal Groups Consulted

8.1 Chief Executive and Borough Treasurer

Method of Consultation

8.2 Not applicable.

Representations Received

8.3 Not applicable.

Background Papers:

Appendix A - LGO final report dated 23 January 2017

Appendix B- Draft report for Council approval pursuant to S5 Local Government & Housing Act 1989

Appendix C- Copies of correspondence between Chief Executive Bracknell Forest Council and LGO

Contact for further information

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