

# Digest of Cases 2007/08

## Section J

## Transport and Highways

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### Introduction

These cases illustrate injustice caused by council's failure to carry out their statutory duties correctly. The first case in particular highlights the importance of councils ensuring people are aware of their rights of appeal, which applies in many areas. There is little point in someone having a right of appeal unless they are able to use it.



## J1: Parking appeals

### Penalty charge notice – council ignored request to appeal

#### What happened

Where someone parks in contravention of parking restrictions and receives a penalty charge notice they may choose to pay the fine or make representations to the issuing authority. If these are rejected, they may then appeal to the Independent Parking Adjudicator (or, in London, to the Parking and Traffic Appeals Service). If they pay within 14 days they are entitled to a 50 per cent discount, but if they choose to appeal they lose the right to pay at the reduced rate.

In this case, Mr A sent his payment but also told the council he wanted to appeal. The council accepted payment at the reduced rate and ignored the fact that he also sought to appeal. The council's correspondence with Mr A did not explain that if he took the opportunity to pay at the reduced rate he would lose the right to appeal.

#### Outcome

As a result of the Ombudsman's intervention, the council agreed to refund payment and allow Mr A to decide whether he wanted to appeal, and therefore lose the right to pay at the reduced rate, or would prefer to pay the reduced amount. It also agreed to review its procedures for dealing with attempts to both pay and appeal.

This case illustrates the importance of councils providing accurate information to individuals and ensuring they understand, and can use, rights of appeal – not just in relation to parking complaints, but to any council service where individuals have appeal rights.

*(Case reference confidential)*



## J2: Highway management

### Responsibility for repairs to fence beside the highway

#### The complaint

Mr B asked the council to carry out repairs to a fence beside the highway, as he was concerned that its poor condition presented a possible health and safety hazard. The council initially denied that it owned the fence and said it was not, therefore, responsible for maintaining it.

## Outcome

After pursuing the matter with the council for nine months Mr B complained to the Ombudsman. Within a month of receiving the Ombudsman's enquiries the council had accepted it was responsible and a few weeks later the repair work was carried out.

Although the council did resolve the problem following the Ombudsman's intervention, Mr B should not have had to wait almost 12 months, nor go to the trouble of complaining to the Ombudsman, for the council to resolve what was essentially a simple query.

*(Case reference confidential)*



## J3: Rights of way

### Delay in making footpath modification orders after Secretary of State's direction

#### The complaint

Mr C, a member and former access officer of the Ramblers Association, complained that the council delayed unreasonably in making modification orders to footpaths not far from his home, following a direction from the Secretary of State.

#### What happened

Mr C had been trying for some years to get the council to make modification orders for several footpaths not far from his home. He said that at first the council refused to make a decision on his claimed footpaths for several years. But, once the council reached a decision not to make the orders, he was able to appeal against the council's decision to the Secretary of State for the Environment (via the Planning Inspectorate). The council lost the appeal and in 2005 the Planning Inspectorate directed the council to make the relevant orders.

Mr C said that the council's unreasonable delay meant that he would be unlikely to be able to use the footpaths in his lifetime (he was then 80 years old). He said the council's delays have deprived him of the use of paths that he would have expected to use every few weeks.

## The Ombudsman's view

The Ombudsman found that the council's delays and broken promises of action caused Mr C frustration, inconvenience, aggravation and uncertainty, and he was also put to some unnecessary expense in pursuing the matter.

## Outcome

To remedy the injustice, the council agreed to:

- apologise for the delays:
- fund £500 of new footpath work in the area in recognition of the delays, uncertainty and inconvenience in pursuing this matter; the work to be agreed with Mr C;
- ensure that there was no further unreasonable delay and that the orders were properly made; and
- review its procedures to ensure that the failings identified here were unlikely to recur.

*(Report 06B02820)*