

Digest of Cases 2008/09

Section E

Environmental health

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E1: Waste management

Failure to collect all waste from five-adult household – response to request for second wheeled bin

The complaint

Mr H lived in a five-adult household in a rural location. He complained that a council did not collect all his non-recyclable household waste and refused to supply him with a second wheeled bin.

The Ombudsman's investigation

The council collects various recyclable materials fortnightly and residual household waste weekly. It does not charge for the wheeled bins and various receptacles for recyclable materials that it supplies to occupiers. Its standard provision is to supply single-occupant households with one 140-litre wheeled bin and households with between one and five occupants with one 240-litre wheeled bin. For households with six or more occupants or with special requirements, the council will supply two bins – one 240 litre and the other 140 litre.

Mr H had problems with the council not collecting all his black bags of non-recyclable waste, and complained to the council. He did not receive a reply, so he complained to the Ombudsman. The Ombudsman referred the complaint back to the council, which extended its recycling scheme to include Mr H's home. It also served a notice under Section 46 of the Environmental Protection Act 1990 setting out how Mr H should put out waste for collection.

Mr H told the council that he welcomed the opportunity to participate in the recycling scheme but that the family's ordinary household refuse could not fit into the single 240-litre bin and he did not want to have to continue to make regular 12 mile round trips to the nearest tip. He asked for another wheeled bin and said he was prepared to pay for it.

Although it was clear that Mr H did not qualify for a second wheeled bin under the council's policy, it required him to complete a form and then took six months before refusing his request – having made no proper assessment of the volume of waste generated by his household.

The council failed to respond to the Ombudsman's enquiries about the legal basis for its actions, and gave a materially misleading account of specific advice it had received from the Department of Food and Rural Affairs (DEFRA).

The Ombudsman's view

The Ombudsman said:

“Parliament has expressly included in legislation the means for councils to enforce Section 46 notices. I have reservations about whether, therefore, a council can legitimately refuse to remove household waste as an alternative means of securing compliance.”

She found maladministration by the council in:


- failing to collect Mr H's household waste;
- failing to respond effectively to his complaints;
- failing to make any proper assessment of the volume of waste generated by his household before deciding whether to provide a second wheeled bin.

Outcome

The council apologised to Mr H and supplied him with a second bin for as long as he needed it. In addition, the Ombudsman recommended the council to:

- pay Mr H £250 for his time, trouble and costs in taking to the tip his household waste that would not fit into his bin;
- ensure that all its employees who deal with waste collection are aware of the law and the importance of acting within the law; and
- review its waste collection policies and practices and train its employees to avoid any recurrence of the problems that Mr H experienced.

(Report 06C10554)



E2: Waste management

Failure to resolve dispute over provision of replacement domestic bin

Background

In November 2007 Mr K's bin was apparently stolen after he had left it out for the council's waste collection. He informed the council and was advised that he would have to pay for a replacement bin. He disputed this, arguing that he was not responsible for the removal of the bin. He made a complaint to the council. Because his bin was not replaced, and the council would not collect

refuse that was not placed in a bin, he had to make his own arrangements to dispose of his domestic refuse.

The council's response

The council informed Mr K that its policy did not allow for the provision of replacement bins without charging householders. Although Mr K called at the council's offices and produced a crime number, having reported the theft of the bin to the police, the council had no record of this.

Legal provisions

The Environment Protection Act makes provision for councils to serve a notice requiring the provision of bins to facilitate the collection household waste. Householders who fail to comply with a notice without good reason may be liable to pay a fine. There is a right of appeal on specific grounds against the notice.

The investigation

By the time the complaint reached the Ombudsman in March 2008 it appeared that the relationship between the council and Mr K had broken down and each was re-stating their position without making progress.

The council was unable to provide a copy of the policy and said it had not served a formal notice on Mr K because it preferred to negotiate. Mr K said the council had failed to provide a proper explanation as to why he should pay for a replacement and had not served a notice explaining what he should provide.

Conclusion

Because the council was unable to find its policy, it was not possible to check whether it had been properly adopted and applied. The council agreed to ensure that a properly adopted policy was made available to staff and members of the public.

In addition, in recognition of the failure to take positive action, either by serving a notice against which Mr K could appeal, or exercising discretion and providing a bin, the council agreed to provide a bin and to make a payment to Mr K of £75 for the time and trouble he had taken in pursuing the matter.

(Case reference confidential)

