

Digest of Cases 2008/09

Section H

Leisure and culture

H1-2	Allotments	1
H3	Tourism	3

H1: Allotments

Dispute between allotment holders – failure to handle complaint properly

The complaint

Mrs B complained about a council's biased and unfair treatment of her husband, Mr B, following a long-running and acrimonious dispute amongst some of the allotment holders.

What happened

An exchange took place between Mr B and Mr X on the allotment site. The next day, Mr X went to the council with a tape recording which he said demonstrated that Mr B had abused him during the exchange. Witnesses to the exchange wrote to the council saying that Mr B had not behaved improperly. Mr B later wrote setting out his version of events.

It was clear to the council that the witnesses' letters described the same incident. The council concluded that Mr B had instigated the altercation, but it decided that the incident did not warrant any action other than to write to Mr B and Mr X about the matter. The letter to Mr B said the council was "*minded to caution you to do everything in your powers to prevent another similar incident*". Mr B interpreted this as a caution.

The council had previously written to Mr B, referring to a previous incident, saying he had been formally cautioned by the police. Mrs B had told the council at the time that this was untrue, but a council officer had said he had been given the information by the local police.

The Ombudsman's investigation

The Ombudsman's investigation found that:


- council officers had believed what they had been told by other parties to the dispute on the allotment about Mr B receiving a police caution and had repeated this without checking properly;
- council officers had properly decided not to pursue the complaint made about Mr B;
- the council did not explain why it concluded that Mr B was the person recorded on the tape and stated, without evidence or enquiry, that the other party did not appear to instigate the altercation; and
- the council had written in similar terms to both Mr B and Mr X but had not told Mr B this.

Outcome

The Ombudsman recommended that the council should:

- formally apologise to Mr B for the way it handled Mr X's complaint against him and for failing to explain why it believed that he was one of the parties to the altercation on the tape recording;
- apologise to Mr B and formally retract its suggestion that he had been subject to formal police action;
- have clear and accessible policies for dealing with complaints about the behaviour of residents and service users, and ensure that all its officers are properly trained in how to investigate those complaints fairly; and
- pay Mr and Mrs B £1,000 for the time, trouble and costs of bringing their complaint to the Ombudsman and as compensation for the anguish and distress these allegations caused.

(Report 06C15879)



H2: Allotments

Differences in new allotment tenancy agreement – failure to respond to queries – unreasonable behaviour in locking tenant out of the site

The complaint

Mr C had been an allotment holder for over 22 years. He complained about the way a council treated him over the issue of a tenancy agreement for his allotment.

The Ombudsman's investigation

The new tenancy agreement issued to Mr C by the council looked substantially different to the one it had previously agreed with the Ombudsman to use, which should have included a dispute resolution clause. When Mr C refused to sign it because of the apparent differences, the council:

- failed to respond to the points he made to it;
- failed to explain the position to him;
- failed to have regard to the law on the security given to allotment holders; and
- unreasonably locked him out of the site.

Outcome

The Ombudsman recommended that, to remedy the injustice to Mr C, the council should:

- apologise to Mr C and pay him compensation for being locked out of his allotment. As it was in the early growing season, this should be £25 for each week he was locked out. In addition, the council should pay him £250 for the time and trouble he took in making his complaint to the Ombudsman; and
- ensure that the facts in any dispute about allotments are determined by someone independent of the parties, and seek advice from the National Secretary of Allotment and Leisure Gardens on allotment law.

(Report 06C16558)

H3: Tourism

Bed and breakfast – advertising through council’s tourist office – council took booking and booking fee without agreement

The complaint

Mr D agreed to advertise his bed and breakfast business through the council’s tourism website and its tourist information centres for the period January to December 2008. This involved him having access to a web-based system and keeping room availability information up to date on it. The council, without his prior agreement, began making bookings at tourist information centres for which it charged customers booking fees and took deposits. Mr D complained that he had not agreed to the council making charges and taking bookings. Of particular concern was the council's practice of taking a deposit amounting to 10 per cent of the cost of the first night. His customers expected this to be deducted from their final bill but Mr D was not receiving the 10 per cent payment from the council. He was therefore losing a proportion of his income.

Mr D complained to the council but got no response.

The council’s response to the Ombudsman

In response to the Ombudsman’s enquiries the council accepted that it had taken bookings, with a booking fee and a deposit, without Mr D’s consent. It ceased to take deposits from the end of August 2008.

The outcome

The council agreed to refund unauthorised booking fees and deposits taken during 2008. It also made a payment of £50 to Mr D for the time and trouble he had taken in pursuing the matter.

(Case reference confidential)
