

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

Summary: Mr X complained about the Council's failure to intervene when he was evicted by an allotment association, acting on the Council's behalf, and its complaint handling. We have found fault with the way the Council handled Mr X's complaint. To remedy the injustice caused by this fault, the Council has agreed to apologise, make a payment to Mr X, assess the allotment association's appeal and review process and share this decision with relevant officers.

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## **The complaint**

1. Mr X complains an allotment association ("the Association"), acting on the Council's behalf, unfairly evicted him following a boundary dispute. He says the Council has not supported him or followed its complaints guidance. Mr X says he is missing out on the physical and mental benefits of his allotment.

## **What I have investigated**

2. Paragraph six (below) applies to this complaint. I have exercised discretion to investigate Mr X's complaint back to 2020, when he first contacted the Council about the issues as it did not progress the matter at this time.

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

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We cannot question whether an organisation's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)

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6. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
  7. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(j), as amended*)

## **How I considered this complaint**

8. I have considered all the information Mr X provided and discussed this complaint with him. I have also asked the Council questions and requested information, and in turn have considered the Council's response.
9. Mr X and the Council had the opportunity to comment on my draft decision. I have taken any comments received into consideration before reaching my final decision.

## **What I found**

### **The relevant law**

10. Under The Smallholdings and Allotments Act 1908, a council must ensure there are allotments in its area if six or more people in the area ask for them.

### **Contractual arrangements**

11. A council can manage allotments in its area or can instead jointly manage allotments with an allotment association. A council can also lease land to an association to delegate the entire management to the Association or similar body.
12. When a council leases out land, the lease will set out the terms under which the council grants use of the land to the association or the trustees. This contract is between the council and the association and does not automatically result in a direct or implied contractual relationship between the council and the individual allotment holder.
13. In this case, while no contract exists between the individual allotment holder and the Council, the Association is acting on behalf of the Council in providing allotments on the land under the 1908 Act. There is an agreement between the Council and the Association that sets out the expectations of how the allotment should be run.

### **What happened**

14. Mr X leased an allotment in the Council's area and had done so for several years. The day to day running of the allotments is carried out by the Association which is run by an allotment committee (the AC). The site became self-managed in January 2018 after its transfer from the Council.
15. The Council sent out named letters to allotment holders before the transfer. These advised that if the individual did not consent to the Council sharing their information with the Association, then their tenancies would be terminated.
16. The agreement between the Council and the Association states that the Association shall be responsible for the complete day to day running of the allotments, shall give notice to allotment holders for breach of agreement and will ensure compliance with the Council-approved tenancy agreement.

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17. In September 2020, the AC wrote to Mr X about alleged boundary disagreements between him and his allotment neighbour. The AC also reminded Mr X about the condition of his tenancy agreement stipulating that plot holders respect the boundaries between their plot and those next to them. The AC had marked out the boundary between Mr X and his neighbour.
  18. Mr X wrote to the Council in November 2020 to ask it to intervene. He felt he had reached deadlock in his negotiations with the AC and he said he wanted to use his right to an appeal to the Council.
  19. Over the coming months, Mr X and the AC communicated on numerous occasions. The AC sent several letters to him about the boundary issue.
  20. At the end of April 2021, Mr X visited the Council offices to seek assistance as he said he had never received a reply to his letter of November 2020. A Council officer (Officer J) then contacted him.
  21. Officer J liaised with the AC and Mr X over the coming months to try and mediate the situation.
  22. The AC wrote to Mr X in the middle of August 2021. Following a committee meeting, it decided to formally terminate his tenancy with immediate effect. The letter cited various actions which it considered as a violation of his tenancy agreement, all of which were related to the boundary dispute.
  23. At the beginning of October 2021, Officer J wrote to Mr X and confirmed he was waiting to obtain a written report from the police about alleged incidents at the allotment. He confirmed, in writing, the Council's previous verbal offer of an alternative allotment plot at a different site.
  24. Mr X wrote to the Council to make a formal complaint later in October 2021. He complained that Officer J had now changed his stance, was asking him to give up his plot and had taken a year to respond to him in writing.
  25. In December 2021, Mr X approached the Ombudsman to raise a complaint. We referred him back to the Council as it had not yet responded to him.
  26. Late in December 2021, the Council wrote to Mr X in response to his complaint letter from October. In this letter, the Council:
    - apologised for the delay in responding;
    - recounted the main points of contact that Council officers had already had with Mr X, including its unsuccessful attempts to telephone him on numerous occasions;
    - advised that the day-to-day running of the allotment was administered by the AC, re-iterating that if the AC makes the decision to terminate a tenancy it was its right to do so;
    - advised the Council could do nothing further; and
    - confirmed the position of the Council to offer Mr X a plot at another allotment site.
  27. Mr X contacted the Ombudsman again in January 2022 to complain about the Council. He was referred back to the Council by us. When we asked the Council if it had completed its complaints process, it said no. We asked it to ensure the procedure was completed and that it remain in contact with Mr X.
  28. In mid-March 2022, the AC again sent Mr X a letter outlining the reasons for the termination of his tenancy.

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29. At the same time, Mr X again approached the Ombudsman to try and log a complaint. We asked the Council if it had completed its complaints process, it said no. We referred Mr X back to the Council again. We again asked it to ensure the procedure was completed and that it remain in contact with Mr X.
  30. Mr X complained to the Council again late in April 2022. The Council treated this as a stage two complaint escalation request.
  31. As part of its subsequent investigation in May 2022, the Council received copies of nine letters the AC sent to Mr X between September 2020 and March 2022. The AC explained the key events surrounding the eviction and explained its justification for doing so.
  32. Later that month, the Council sent its stage two complaint response and directed Mr X to the Ombudsman if he remained dissatisfied.

### **Analysis**

33. Mr X complained the Council has not supported him or followed its complaints guidance and that he was unfairly evicted. In this context, I am investigating both the actions of the Council and the Association who acts on its behalf.

### **The boundary dispute**

34. The Council is the landlord of the Association and should ensure it abides by the terms of its lease.
35. Mr X says the Council did not respond to his original request for help in November 2020. Mr X then waited almost five months before he contacted the Council again. The Council's failure to respond in November is fault. However, I cannot ignore the fact Mr X did not pursue the matter during these five months. For this reason, I cannot therefore say Mr X suffered any significant injustice as a result of this delay.
36. I have considered the Council's actions once it became aware of the ongoing dispute in April 2021. Case records show the Council:
  - went further than it was required by trying to act as a mediator between the two parties;
  - visited the site to view the boundary line established by the AC and was satisfied it was in the correct position; and
  - offered Mr X a plot elsewhere.
37. In May 2022, the Council received the Association's documents and written rationale for evicting Mr X. The Council should have made enquiries in December 2021 following Mr X's complaint about his eviction, rather than wait until May 2022 after he had complained to it further. This is fault. However, there is no injustice to Mr X as when the Council did make enquiries the outcome was the same.
38. When it did view the documents, the Council was satisfied the Association had acted within the terms of the tenancy agreement. This is a decision the Council was entitled to make. There is no fault in its actions here.

### **Right of appeal to the Council**

39. Mr X asked to use his right of appeal when he contacted the Council in November 2020. The tenancy agreement with the Association contains no right of appeal to the Council. Any right that may have been contained in Mr X's previous tenancy agreement ceased when the Association took over. There is no fault on the part

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of the Council here because it was up to the Association, not the Council, to decide what appeal rights should be included within its agreement with its tenants.

### **The eviction process**

40. Mr X complains he was unfairly evicted by the Association. Even though it has overall responsibility for the day-to-day running of the allotments, the Association is still acting on behalf of the Council. As such, the Council should ensure it is satisfied with the processes and procedures the Association uses.
41. Evidence shows that the Association wrote to Mr X on multiple occasions from September 2020 to March 2022. In these letters, the Association:
  - explained its concerns;
  - clarified the consequences of not respecting the boundary imposed; and
  - offered Mr X the chance to appeal the boundary decision.
42. Correspondence sent by the Association to Mr X shows that he did not always engage with it when it wrote to him to advise of his right to an appeal regarding the dispute. However, Mr X's termination letter advises that the boundary was verified on appeal but is unclear when this took place.
43. Letters from the Association show Mr X was not always advised of a timescale by which to lodge appeals, so it sent him subsequent letters to clarify when he should respond by.
44. As part of my enquiries to the Council, I asked it to send me details of any appeals process for tenants of the allotments. No evidence was provided. Additionally, there is no process for appeal mentioned in the tenancy agreement between the Council and the Association or the separate agreement between the Association and the allotment tenants.
45. Whilst it is clear that Mr X was offered the right to an appeal with the Association and that the Association reviewed its decision to evict, it is unclear whether the Association has this process written down and how it might be shared with tenants. Furthermore, 'appeal' is mentioned in some correspondence but the eviction itself was 'reviewed' by the Association. This leads to a lack of clarity on what the processes are.
46. The Council has provided no evidence to show it has viewed any such review or appeal document should it exist. This is a fault. Where a complaint is received, the Council should take steps to ensure that any review or appeal process is written down, is transparent and fit for purpose. I have made a recommendation to remedy this fault below.
47. Despite this lack of clarity regarding reviews and appeals, it remains the case that the Association was entitled to make the decision to evict Mr X. The Association reviewed and confirmed its decision in March 2022. Any fault on the part of the Council in not checking any review or appeal process is mitigated by the fact that the outcome for Mr X would have been the same due to the violation of his tenancy agreement, therefore there is no injustice to Mr X in this regard.

### **Formal complaint process**

48. When Mr X made a formal complaint in writing to the Council in October 2021, it took ten weeks to respond. This was not in accordance with its published complaints process. The Council did not advise Mr X of his right to seek a stage two response from its separate complaints team if he was still unhappy. Instead, it

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said there was nothing more it could do. The delay and miscommunication is fault and would have caused Mr X frustration. I have made recommendations below to remedy this injustice.

### **Agreed action**

49. To remedy the injustice caused by the faults I have identified, the Council has agreed to take the following action by 26 January 2023:
- apologise to Mr X for not correctly handling his complaints;
  - pay Mr X £100 to acknowledge the time and trouble taken to make them;
  - assess any review or appeal process used by the Association and
    - a) consider amending the Association's formal agreements with both the Council and allotment tenants to refer to these processes;
    - b) ensure any review or appeal processes are written down and readily available to share should the need arise; and
  - share this decision with relevant officers to remind them of the proper complaints handling process.

### **Final decision**

50. I have now completed my investigation. I uphold this complaint with a finding of fault causing an injustice.

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