

Section G: Leisure and recreation

G1: Tourist publication

Promotional brochure – exclusion of organisation – unfair discrimination

1. Mr Martin was the managing director of a family theme park, Myton Grange. He complained that the council excluded his organisation from a tourist publication published by, and part funded by, the council. He also complained he was excluded from advertising in the brochure despite being prepared to pay for this at the council's set rates. He complained that through its action the council discriminated against his business and this could have caused him financial loss.

The campaign

2. The council was involved in a campaign to promote tourism in the area in partnership with the local training and enterprise council and a consortium of businesses. The council made a financial contribution to the production of a promotional brochure.
3. The principal private sector sponsor involved was Highbridge, which was also a theme park and the only direct commercial competitor to Myton Grange in the county. Highbridge made it a condition of its sponsorship that Myton Grange should be excluded from the brochure. The council agreed to this.

Government advice

4. Government advice was contained in a *Code of recommended practice on local authority publicity*. This advised that local authorities should not discriminate in favour of, or against, persons or groups in the compilation and distribution of material for reasons not connected with the efficiency and effectiveness of issuing the publicity.

The council's view

5. The council argued that, if Highbridge had withdrawn its sponsorship, the campaign could not have continued. By agreeing to the exclusion of Myton Grange it was acting for the greater good because other tourist attractions in the county, including Myton Grange, would benefit to some extent from the success of the campaign. The decision was not one made by the council alone but was agreed by all members of the consortium set up to oversee the campaign.

The Ombudsman's view

6. The Ombudsman accepted that the council was in a difficult position. It wanted to develop tourism in the county and could not afford to ignore the views of Highbridge, a major tourist attraction prepared to subsidise the campaign in partnership with others. But the Ombudsman commented:

"But the council is a publicly accountable body and it has to act fairly and reasonably. That requirement is emphasised by government advice."

7. The Ombudsman believed that, in all the circumstances, the council acted unfairly. The council should have explained to Highbridge that it could not be put in the position of discriminating unreasonably against tourist attractions in the county. It should have set out to all tourist attractions the basis (through financial contribution, purchase of advertising space, or other means) by which inclusion in the campaign was to be secured; and then implemented the campaign on a basis that was open and clear to all contributors. The Ombudsman added:

“If, in the final analysis, the campaign could not have been organised fairly, it should not have been organised at all.”

9. The Ombudsman recommended that the council should also pay Mr Martin £5,000 in recognition of the injustice he had been caused.

Outcome

8. The council secured a proper basis for including Myton Grange in the campaign for the future.

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