



Section D

# Highways

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# D1: Advance payments code

## Failure to serve notice

Three residents complained that a council failed to secure from a developer the payment of a deposit to ensure that works to a private road were carried out to bring the road up to an adequate standard.

### What happened

1. Planning permission was granted for a small number of houses on a greenfield site. The complainants all bought plots of land from the developer and then built their own homes. The development was served by a private road which connected to a nearby public highway. The private road was not built to a satisfactory standard. The developer's company subsequently went into liquidation.

### The law

2. The relevant law in the circumstances was that the council was obliged, within six weeks of passing plans, to serve a notice on the person who deposited the plans requiring the payment of a sum or a surety as specified in the notice. That sum was what would be required to construct a road up to a standard where it could be adopted by the local authority. This arrangement was known as the advance payments code. It did not apply in certain circumstances specified in the relevant statute, and in those circumstances the council was required to serve an exemption notice.

### The Ombudsman's view

3. The Ombudsman said there was no doubt there was serious maladministration by the council. It had a clear duty either to secure a bond or to issue an exemption notice. It did neither.

And the Ombudsman was not persuaded that the matter was ever properly considered.

4. What the outcome might have been if there had been proper consideration could not be known. The council said that it would have issued an exemption notice. But whatever decision the council had taken, the complainants would have known exactly what the position was. Either a deposit would have been secured or the existence of notices (either requiring or exempting a deposit) would have been revealed when pre-purchase enquiries were made.

### Injustice

5. The Ombudsman found that the injustice to the complainants was that they purchased their properties in ignorance of the fact that they would be liable for works to bring the road up to an appropriate standard. Their properties were therefore less valuable than they expected them to be.

### Remedy

6. The Ombudsman recommended that the extent of devaluation of the properties should be determined, at the council's expense, by an independent valuer. The council should then pay to each of the complainants the difference in value.
7. In addition, the Ombudsman recommended that the complainants should be compensated for their time, trouble and anxiety. The complainant who did most of the work should receive £1,000, and the other two £250 each.

*(Report 01/C/6957)*

## D2: Definitive map

### Modification order request – backlog – lack of clear priority system

Mr Walker complained that a council failed to process his request for modification orders to amend the definitive map of rights of way in the council's area.

#### Legal position

1. Mr Walker's applications were to add two bridleways and one footpath to the map. The council as highway authority had a duty to keep, and continuously review, a definitive map showing all footpaths and bridleways.

#### Investigation

2. The investigation showed that the council had a significant backlog of modification orders and that it was processing them at a rate which meant that the backlog would take 65 years to clear.
3. In the case of one of Mr Walker's applications, the council had decided 12 years earlier to make the order but had still not processed it.
4. The Ombudsman said that the council's failure over a long period to seek to reduce its already substantial backlog was maladministration.

#### Priority

5. The Ombudsman also found that the council's system for prioritising modification orders had broken down. It had a formal priority system and, in the light of that, cases classified as urgent would have taken five years to clear. The council's officers were found to be operating an informal system of their own in place of the council's agreed system. The Ombudsman commented:

*"The existence of an unrecorded, unagreed and unpublicised priority system is maladministration."*

6. The result was that applicants, including Mr Walker, had no effective guidance about how applications were being treated and when they might be processed. So they were not in a position to make representations about the priority given to their requests.

#### Outcome

7. The council agreed to:
  - provide additional resources to deal more quickly with the backlog of modification orders;
  - review the way it set priorities;
  - deal with the application from Mr Walker which it regarded as high priority within three months;
  - deal with his other two cases ahead of other cases with similar priority; and
  - pay Mr Walker £300 to reflect the time and trouble he had taken in pursuing his complaint.
8. The Ombudsman commented:

*"The introduction of a properly considered, transparent and consistently applied priority system should enable a more effective approach to be taken on outstanding modification orders."*

*(Report 01/C/2760 et al)*

## D3: Parking

### Car removed and destroyed by council – failure to follow statutory procedure

Ms W complained about the actions of a council in removing and destroying her car and some property of hers which was in it.

#### What happened

1. Ms W parked her car in a street. There were no parking restrictions there. The car was parked next to the kerb and not causing an obstruction.
2. Ms W parked the car temporarily as she found there was a problem with one of the wheels. She asked her father to mend it.
3. The council received a complaint from a member of the public about the car being parked in the street. A council officer visited and inspected the car. The officer formed the view that the car was in a dangerous condition and likely to be vandalised.
4. The council arranged for the car to be removed by its contractors. It was destroyed the same day. That was two weeks after Ms W had parked the car.

#### Statutory requirement

5. The legislation in force at the time set down a procedure which a council had to follow in removing and destroying vehicles that it considered to be abandoned. If the council's view was that the condition of a vehicle was such that it ought to be destroyed, the council had to fix a notice to the vehicle stating that removal for destruction was intended in not less than seven days time.
6. The council did not follow this procedure. And it made no attempt to find out who owned the car.
7. Ms W was in the area often. The Ombudsman considered that if the council had fixed a notice, Ms W would have seen it.

#### Outcome

8. The council agreed to apologise to Ms W and pay her £500 compensation.

*(Local settlement 01/A/14365)*