

**Subject:** Local Government Ombudsman Investigation and Finding of Maladministration  
**Status:** For Publication

**Report to:** Performance Scrutiny Council  
**Date:** 8<sup>th</sup> March 2010  
24<sup>th</sup> March 2010

**Report of:** Director of Business

**Portfolio**

**Holder:** Regeneration/Finance and Resources

**Key Decision:** No

**1. PURPOSE OF REPORT**

1.1 To inform Members of the outcome of the Local Government Ombudsman joint investigation with the Parliamentary and Health Service Ombudsman into a complaint of maladministration on the part of Rossendale Borough Council, Lancashire County Council and the Environment Agency.

**2. CORPORATE PRIORITIES**

2.1 The matters discussed in this report impact directly on the following corporate priorities:-

- Delivering quality Services to our customers
- Encouraging healthy and respectful communities
- Keeping our Borough clean, green and safe
- Providing value for money services

**3. RISK ASSESSMENT IMPLICATIONS**

3.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

- Finding of maladministration by the Local Government Ombudsman

## 4. BACKGROUND AND OPTIONS

- 4.1 There is an obligation under Section 30 of the Local Government Act 1974, which requires the Council to publicise and give consideration to the findings of the Local Government Ombudsman in cases where evidence of maladministration is determined on the part of the authority.
- 4.2 A full copy of the joint investigation report is attached as Appendix A.
- 4.3 The Local Government Ombudsman has jointly investigated a complaint with the Parliamentary Ombudsman. The Local Government Ombudsman investigated the complaint against Rossendale Borough Council and Lancashire County Council. The Parliamentary Ombudsman investigated the complaint against the Environment Agency. The report can be summarised as follows:
- 4.3.1 The Complainant and her son complained that the Environment Agency, Lancashire County Council and Rossendale Borough Council had failed to take appropriate action against their neighbour, who was tipping, burying and burning large quantities of waste illegally, blocking public footpaths and intimidating anyone trying to use them. The Complainant said that the activities of the neighbour had made the landscape, which had been a local beauty spot, unrecognisable; made it impossible for her and her son to live peacefully in their family home; and may well have caused long-term damage by polluting the land and local water supplies.
- 4.4 Both the Local Government Ombudsman and Parliamentary Ombudsman fully upheld the complaint and found that maladministration by all three bodies has caused the Complainants considerable injustice over a very lengthy period. An extract from the joint report states:-
- 4.4.1 *'Our investigation has clearly shown that throughout the early period the Borough Council were the most active in trying to use their powers to tackle Mr R's activities. By November 2003 when the Development Control Committee was eventually asked to approve proceedings including seeking an injunction, much of the damage on the site had already been done. The Borough Council's powers were limited and, as confirmed in Counsel's advice of 23 February 2004, unlikely to succeed without the engagement of the County Council and Agency. That does not, however, mean that the Borough Council were without fault.'*

### Remedy and Compensation

- 4.5 The Local Government Ombudsman has made the following recommendations:
- a) The bodies in question should all individually write to the complainants and apologise to them for the failings identified in the report.
  - b) The bodies should make good any financial loss resulting from the frustration of the complainants' plan to sell their property in 2005. The

financial loss will be the difference between the value of the complainants' property when it was put on the market (in late 2005) and the value when the current buyer's offer has been accepted. An independent valuation by the District Valuer put the difference of value at £35,000 and the bodies should pay the complainants this amount.

- c) The bodies should pay financial compensation for the considerable distress and inconvenience caused to the complainants. The Ombudsman considered that the bodies should have been able to resolve the issues within about two years, but instead the disruption for the complainants went on for at least another five years. We consider that an appropriate sum would be £60,000.
- d) In order to prevent a recurrence of such events in the future, the County Council and the Agency should put in place a joint agreement on how they will work together to respond to illegal waste activities (as required by national protocol – paragraph 27).
- e) The bodies should each determine whether any other action, individually or jointly, is required to prevent a recurrence of such events.

#### 4.6 Rossendale Borough Councils Level of Responsibility

- 4.6.1 In recognition of the fact that the bodies have different levels of responsibility in these matters, and of the fact that Rossendale Borough Council did far more than the Environment Agency or County Council to try and fulfill its responsibilities, the following financial split was recommended:

In respect of recommendations b) and c) the Environment Agency and Lancashire County Council should each contribute 45% of the overall sum of financial compensation and **Rossendale Borough Council should meet the remaining 10%.**

- 4.6.2 Rossendale Borough Council's contribution is therefore £9,500.

#### **COMMENTS FROM STATUTORY OFFICERS:**

##### **5. SECTION 151 OFFICER**

- 5.1 The Council's liability is noted in the report as £9,500.
- 5.2 Officers will seek to recover this cost through its insurance cover, otherwise the liability can be funded from existing budget resources and in year net budget under-spends.

##### **6. MONITORING OFFICER**

- 6.1 Appropriate action has been taken in response to the Local Government Ombudsman's Report and effective controls are now in place to ensure that this situation does not arise again.

**7. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)**

7.1 No HR implications.

**8. CONCLUSION**

8.1 This is a complaint which dates back to 1999 in many aspects, and the Council has undergone radical transformation and improvement since this date. However, it is recognised that the failures outlined in the Local Government Ombudsman's report have caused a significant injustice to the complainants.

8.2 Over the past 10 years the Council has taken the following actions to improve the Planning, Enforcement and Legal Service areas:-

- Improved file management to ensure chronological case notes
- Improved multi-agency groups to ensure joined up working
- The Borough Council has requested that it be included within the joint agreement at recommendation (d) above with the Environment Agency and Lancashire County Council to ensure effective engagement of those bodies best placed to deal with illegal waste activities and continued communication
- Recruitment of Planning Enforcement Team
- Improved procedures for responding to the abuse and obstruction of officers whilst carrying out their duties

**9. RECOMMENDATION(S)**

9.1 That Members note the findings and recommendations of the joint report of the Local Government Ombudsman and Parliamentary Ombudsman.

9.2 That the service improvements identified in paragraph 8.2 be noted.

**10. CONSULTATION CARRIED OUT**

10.1 None.

**11. COMMUNITY IMPACT ASSESSMENT**

Is a Community Impact Assessment required No

Is a Community Impact Assessment attached No

**12. BIODIVERSITY IMPACT ASSESSMENT**

Is a Biodiversity Impact Assessment required No

Is a Biodiversity Impact Assessment attached No

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Appendices	
Joint Report of the Local Government Ombudsman and Parliamentary Ombudsman	Appendix A