

Complaint reference:
15 002 420

Complaint against:
Cambridge City Council

The Ombudsman's decision

Summary: The Council was not at fault in refusing to grant Mr Y a second sole residential license permitting him to use its riverside moorings after he separated from his partner. It was at fault through delay in considering his representations about the matter. But, he was able to continue living on the river during this period. So, he did not suffer significant injustice.

The complaint

1. The complainant, to whom I shall refer as Mr Y, complained that the Council:
 - a) has wrongly denied advising him that a residential mooring license held jointly by a married/cohabiting couple could be split into two separate licenses if they separated;
 - b) failed to properly consider his appeal against the Council's refusal to grant him a sole license for the boat on which he now lives; and
 - c) has failed to take effective enforcement action against widespread non-compliance by other license holders with the terms of their agreements.

What I have investigated

2. The Ombudsman considered a previous complaint from Mr Y about the same issues in 2014. The information Mr Y provided in re-submitting his complaint has persuaded me that I should reconsider parts a) and b) of this.
3. I comment in my paragraph 36 below on part c) of Mr Y's complaint, which I have not considered.

The Ombudsman's role and powers

4. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
5. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

How I considered this complaint

6. I have read all the documents submitted by both Mr Y and the Council. The history and correspondence associated with this case is clearly extensive and detailed, but I have only found it necessary to include a summary of the main events below.
7. I have written to Mr Y and the Council with my draft decision and considered their comments.

What I found

Joint and Sole License Holder policy

8. With regard to moving from a joint to a sole license, the policy says only that: “where one of the tenants may wish to remain in the property, the request for a sole tenancy should be considered by the Head of Streets and Open Spaces before the remaining tenant is required to give Notice to Quit.”

Residential mooring license terms and conditions

9. At paragraph 7.3 the terms and conditions accompanying the residential mooring license agreement say only that: “the boat must be the Licensee’s only permanent residence, and the Licensee must notify the Council as soon as the boat ceases to be his only permanent residence.”

Background

10. The Council granted Mr Y and his then partner a narrow beam residential mooring licence in mid-February 2013. This ran to the end of March 2014. (The normal renewal date was 1 April each year.)
11. Mr Y said that when he and his former partner first signed up as license holders officers said they could convert their joint license to two sole licenses if they separated. There is no evidence that officers said this.
12. Mr Y said he first asked the Council for a separate residential mooring license in November 2013, when he and his partner split up.
13. Periodically, Mr Y telephoned the Council asking to convert the joint license to two sole licenses. When the officer he spoke to told him he could not do this, Mr Y asked to speak to her manager. The officer passed on his request, together with an account of the telephone conversation. I have not seen evidence that the manager did telephone Mr Y back.
14. Shortly afterwards Mr Y and his former partner renewed their joint license. Mr Y has always remained a joint residential license holder.

August 2014

15. In August Mr W told the Council in writing that he and his partner had split up. He asked for the residential mooring license to be split. He also:
 - complained that officers had not responded to his previous request to have the license split; and
 - asked about the Council’s decision to issue an additional narrow beam license to a named third party.

September 2014

16. Early in September the manager concerned responded to Mr Y’s complaints. He said officers had not told Mr Y that he and his former partner could split their joint

license into two separate ones. License holders could surrender a joint license in exchange for a sole license if they separated. But, it was a private matter for the licensees concerned as to which of them should remain on the boat. The Council could not adjudicate on such matters.

17. Mr Y remained dissatisfied and continued to pursue his complaint. So the Council appointed an independent Investigating officer to consider matters.

The Independent Investigating Officer's investigation

Findings

18. The Independent Investigating Officer said in early October:
- the Council's position that it should not adjudicate in what was essentially a private matter was a reasonable one. It was for the joint licensees involved to decide who should become the sole license holder;
 - if the Council issued sole licenses to both parties when a couple separated, this would disadvantage applicants on the waiting list, given that the Council had closed the waiting list due to over-subscription;
 - in the absence of recordings or independent witness evidence, she considered that Mr Y had misunderstood what his position would be in the event of a separation from his partner. On the balance of probabilities she thought it unlikely that officers would have told him something that contradicted all previous policy; and
 - on a previous occasion the Executive Councillor for the service area concerned had allowed a separating couple to have a second temporary sole residential license. This was to allow them time to resolve a child care issue. The Executive Councillor had considered that the circumstances were exceptional enough to justify this.

Recommendations

19. The Independent Investigating Officer recommended that:
- the Council should review its Residential Mooring License policy and agreement to clarify the position of separating couples. It should make clear that it would not grant a second license, and would only grant a sole license to one of the parties on surrender of their joint license;
 - the Council should also introduce a right of appeal for separating couples who considered their circumstances exceptional enough to justify the grant of two sole licenses;
 - the Executive Councillor should now consider Mr Y's personal circumstances; and
 - as the manager concerned had said he was willing to meet Mr Y, this meeting should take place as soon as possible.

The appeal against the refusal of a license

October - November 2014

20. Mr Y emailed the manager in late October to arrange a meeting with him. But, the manager was away from the office. So, the meeting could not take place until his return in early November.
21. Following the meeting, the manager wrote to Mr Y in late November. He said he had discussed matters with the Council's Chief Executive. She considered that Mr Y should write to the Executive Councillor setting out his request for a residential

mooring license. He said he would be happy to arrange a meeting between Mr Y and the Executive Councillor.

January - March 2015

22. In late January 2015 Mr Y emailed the manager asking him to arrange a meeting with the Executive Councillor. At the manager's request he provided a written statement early in February setting out the salient points of his case. These were that:
- the Council had previously granted an additional license to a separating couple;
 - he had previously waited for three years to obtain a license as part of a couple. He should not now have to re-apply and wait again;
 - in fact, he could not re-apply as the Council had closed the waiting list for narrow beam licenses; and
 - the Council was promoting an unfair system which made one half of a couple homeless when they only wished to continue with their chosen lifestyle.
23. The manager emailed Mr Y in late February to let him know he was pursuing matters. A month later, he emailed the Executive Councillor asking for a meeting with her to discuss Mr Y's appeal.

April 2015

24. Two weeks later, in early April, Mr Y asked the Lead Officer to move matters forward. The manager responded that he would try to arrange a meeting with the Executive Councillor during that week.
25. In mid-April, the manager emailed Mr Y's written appeal to the Executive Councillor, together with his draft response to the points Mr Y had made. The Executive Councillor confirmed that she was happy for the manager to send this to Mr Y.
26. The manager's letter:
- explained the circumstances in which the Council had previously issued a second sole license. He said that the Council was now taking enforcement action against the third party concerned, who no longer had a license;
 - repeated that the Council could not make the decision about who was to be the sole license holder when a couple no longer wished to hold a joint license;
 - said that the Council's Scrutiny Committee had approved the way in which the waiting list for residential moorings licenses operated; ie officers issued these in chronological order;
 - said that the Council had closed the narrow beam waiting list. It would re-open this when it considered it could offer existing applicants a license within 18 months;
 - Mr Y was currently 40th on the Council's wide beam waiting list;
 - in living on another boat moored on council land, Mr Y was in breach of the terms and conditions that applied to waiting list applicants. So, he could be removed from the waiting list.
27. The manager's letter also said that the Executive Councillor had instructed him:
- not to issue Mr Y with a (permanent) residential mooring license outside the Council's current policy;

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- to issue Mr Y with a temporary license for eight weeks to allow him time to resolve matters with his former partner with regard to the change from a joint to a sole license. But, after this time, his current boat should be removed from the Council's moorings;
 - to offer assistance and advice with regard to the change from a joint to a sole license; and
 - to remove Mr Y from the wide beam waiting list, if he failed to move his boat from the Council's moorings. The Council would also take enforcement action in the County Court.

November 2015

28. The Council confirmed to Mr Y that as his former partner was giving up her boat and leaving the river, officers were willing to convert their joint residential mooring license to a sole license in his name.

Was there fault and, if so, did this cause injustice requiring a remedy?

29. As I have set out in my paragraph 6 above, it is not open to the Ombudsman to question the merits of the Council's decisions simply because a complainant disagrees with these. The Council was entitled to take the view that it would not convert a separating couple's joint license to two sole ones. I also share the Council's view that it is a private matter for the separating couple as to who should retain the license.
30. I have not seen evidence that the Council told Mr Y it would grant him a second sole license if he separated from his partner. So, I cannot conclude that the Council was at fault in relation to this point.
31. I have not seen evidence that the manager contacted Mr Y when he was asked to do so in April 2014. I share the Independent Investigating Officer's view that if he had done this, there would be a written record. So, on balance I consider this failure to reply was fault, But, I do not consider that Mr Y suffered significant injustice. If the manager had called Mr Y, the likely outcome would have been that events would have played out sooner, including the refusal of Mr Y's appeal and the prospect of enforcement action.
32. I have carefully considered the way in which the Council considered Mr Y's appeal. The information that the manager concerned put to the Executive Councillor consisted of Mr Y's written appeal case, together with the manager's draft letter refusing the appeal and giving reasons for the refusal. He asked the Executive Councillor to approve the draft. On balance, I accept that this way of considering appeals is adequate. Councillors frequently make decisions based on officers' reports either recommending approval or refusal. I consider that the key point was that the Executive Councillor had Mr Wright's written submission available to her.
33. It took almost six months for the Council to decide Mr Y's appeal. There was delay by both Mr Y and the Council. While I consider that the Council's delay amounted to fault, I do not consider that this caused Mr Y significant injustice. The Council left him in a position of uncertainty for longer than it should have done. But, I consider the fact that he was been able to continue living on the river, albeit without a license, outweighed this uncertainty.
34. I note that the Council has amended its residential mooring license and mooring agreement documents as the Independent Investigating Officer recommended.

Decision

35. As I do not consider that Mr Y suffered significant injustice through the Council's fault, I have completed my investigation.

Parts of the complaint that I did not investigate

36. I have not considered part c) of Mr Y's complaint because:
- Mr Y raised this issue in an earlier complaint to the Ombudsman;
 - she decided she would not pursue this issue in the absence of injustice to Mr Y; and
 - the Ombudsman will not reconsider a complaint about which she has already made a decision in the absence of new evidence.

Investigator's decision on behalf of the Ombudsman