



To: Councillor Richard Robertson,
Executive Councillor for Finance and Resources

Report by: Head of Environmental Services

Relevant scrutiny committee: Strategy & Resources Scrutiny
Committee 07/10/2019

Wards affected: Abbey, Castle, East Chesterton, Market, Newnham, and
West Chesterton.

Local Government Ombudsman (LGO) COMPLAINT 18/005/464

Key Decision

1. Executive summary

1.1 The LGO has upheld a complaint relating to the Council referencing the Moorings Policy. A copy of the LGO decision is attached at Appendix A.

1.2 In summary the Ombudsman's final decision was as follows: -

Ms X complains the Council will not offer a moorings licence for her boat. The Council is at fault as it has not properly considered if Ms X's circumstances are exceptional enough to warrant a departure from its moorings policy and offer her a licence. The Council will consider Ms X circumstances in its welfare assessment. If the Council decides Ms X's circumstances are exceptional enough not to take enforcement action it should then consider if it they warrant a departure from its moorings policy and offer a licence to her. This is an appropriate remedy for Ms X's injustice.

- 1.3 The Council has completed an assessment of Ms X exceptional circumstances and in doing so has completed a proportionality checklist. The LGO were notified of our decision and they wrote on the 19th June 2019 that *we are satisfied you have now carried out the agreed actions and we have ended our involvement with this case.*
- 1.4 In response to the findings and decision, the Council has amended its procedures to, in future it will now complete a proportionality checklist using the welfare information it requires at the assessment stage prior to legal action. If occupiers fail to respond to enquiries and/ or to provide information requested, the Council may proceed immediately to issue claims against them.
- 1.5 If occupiers have provided information which is relevant to the Council's duties under section 11 of the Children Act 2004, Article 8 of the European Convention on Human Rights or the Public Sector Equality Duty, then further consideration is given to making reasonable adjustments.

2. Recommendations

The Executive Councillor is recommended:

- a) To note that LGO has upheld a complaint relating to an unauthorised mooring;
- b) To note that in these circumstances that the Head of Legal Services as the Council's Monitoring Officer has an obligation to report the findings to the Council and
- c) that Committee is satisfied with the action that has been taken (set out in Section 6 of the report);

3. The complaint and the LGO investigation

- 3.1 Ms X complains that:
- a) The Council's mooring policy is discriminatory as it does not take account of a person's circumstances and needs;
 - b) The Council failed to take account of her family's exceptional circumstances by not offering a licence above others on the waiting list. Ms X considers the Council is acting unfairly as it has offered licences to others who are not at the top of the waiting list because of their circumstances but it will not offer a licence to her;

- c) The Council failed to take action against existing licence holders who are breaching the terms of the licence. Had the Council done so licences would become available;
- d) The Council failed to transfer the narrow boat licence offered to Mr Y and Ms X to a widebeam narrow boat licence as Ms X requested;
- e) The Council is unreasonably seeking to evict Ms X and her family from her mooring as she does not have a licence.

4 Background to the complaint

- 4.1 Ms X lives on a riverboat which she moors on a residential mooring managed by the Council. The Council's policy is to require people wanting to use its moorings to have a licence and for their boat to be their sole residence. There is a lengthy waiting list for a licence and the Council operates the list in chronological order.
- 4.2 Ms X has applied for a licence but the Council has not offered a licence to her as she is currently 25th on the list. The Council considers her to be breaching its mooring policy by using a residential mooring without a licence.
- 4.3 In 2017 the Council reviewed its mooring policy. In doing so it carried out an equality impact assessment. The Council consulted several groups and rivers users including Ms X. The Council set out the results of the consultation in a report which was considered by the Council's Strategy and Resources Scrutiny committee. The report addressed some of the comments made during the consultation. This included that the allocation of licences should be based on housing need rather than on chronological order. Ms X also attended the meeting and spoke in favour of licences being allocated based on housing need. The Council's position was that moorings were not managed to provide or considered to be social housing.
- 4.4 The Executive Councillor for Strategy and Finance approved the policy.
- 4.5 The Council notified Ms X she was breaching its mooring policy as she was moored without a licence.
- 4.6 Ms X made a number of complaints to the Council. These included that its moorings policy was discriminatory as it did not take account of housing need. Ms X considered the Council should

allocate a licence to her outside of its policy as she had exceptional circumstances.

- 4.7 The Council considered Ms X's complaint through its complaints procedure. This included consideration by an independent investigator. The independent investigator (ICI) did not consider the Council's mooring's policy to be discriminatory.
- 4.8 The ICI said the Council would consider Ms X's circumstances by carrying out a welfare assessment before considering if enforcement action is appropriate.
- 4.9 Ms X made further complaints that the Council was failing to take enforcement action against other boat owners who were breaching the terms of their licence.
- 4.10 The ICI considered the Council's action against Ms X for mooring without authorisation was in accordance with its moorings policy. Ms X has said she did not receive this letter and disputes the Council investigated her allegations.
- 4.11 The Council has asked Ms X to complete a welfare assessment. And stated that the Council will consider this assessment before deciding if it should evict Ms X from the mooring. Ms X disputes the Council has asked her to complete a welfare assessment.

5 LGO assessment and findings

5.1 The LGO investigated and consider the complaint, a summary of their findings is set out below.

5.1.1 The Council is entitled to set its own moorings policy and it is not the Ombudsman's role to decide what that policy should be and how it should allocate moorings. They can only examine if there was fault in how the Council reviewed its policy in 2017.

5.2 Review of the Moorings Policy

5.2.1 The LGO found no evidence of fault in how the Council reviewed its mooring policy. The Council consulted river user groups. Ms X also had the opportunity to comment on the policy. The report to the Executive Councillor sets out a summary of the comments received, including comments that the allocation of moorings should be based on housing need. It explains why the Council does not consider it to be appropriate and why it should allocate by

chronological order. The LGO are therefore satisfied the Council considered if it should allocate according to housing need and there is no fault in how it reached its decision that it should allocate by chronological order.

5.3 Consideration of Ms X's circumstances and eviction

5.3.1 The Council stated it does not consider Ms X's circumstances to warrant a departure from its moorings policy and allocate her a licence despite not being at the top of the waiting list. The key reasons for this decision are that it would be potentially discriminating against others on the waiting list who also may have exceptional circumstances and that the moorings policy is not intended to address housing need. But this is not consideration of whether Ms X's individual, personal circumstances warrant a departure from the moorings policy.

5.3.2 The Council has discretion to depart from its policies if there are good reasons to do so. The Council must give proper consideration to Ms X's personal circumstances and consider if they are exceptional enough to warrant a departure from its moorings policy. This decision should be based on Ms X's individual circumstances, not the potential circumstances of others.

5.4 Transfer of narrow boat licence to Ms X

5.4.1 The LGO was content that there was no evidence of fault in how the Council made its decision not to transfer Mr Y's narrow boat licence to Ms X.

5.4.2 The Council explained it could not do this as Ms X was not at the top of the waiting list and she was not a joint applicant. Ms X has said she was a joint applicant and other applicants have transferred between the lists.

5.5 LGO agreed action and final decision

In summary Ms X complains the Council will not offer a moorings licence for her boat. The Council is at fault as it has not properly considered if Ms X's circumstances are exceptional enough to warrant a departure from its moorings policy and offer her a licence. The Council will consider Ms X circumstances in its welfare assessment. If the Council decides Ms X's circumstances are exceptional enough not to take enforcement action it should then consider if they warrant a departure from its moorings policy

and offer a licence to her. This is an appropriate remedy for Ms X's injustice.

6 Summary of actions taken by the Council

- 6.1 The Council considered Ms X exceptional circumstances and made a decision in June '19 as follows:-

We have now considered your circumstances, in doing so, we referred back to previous correspondence we have had with you, and the information you supplied in the welfare assessment dated 5th June, 2018, and the information you supplied in reply to our letter of the 22nd May, 2019, which sought additional information.

Having considered all the available information, we have concluded that your circumstances do not warrant a departure from our moorings policy in that we cannot offer reasonable adjustment....

- 6.2 The Council also took further legal advice on a range of matters relating to the enforcement of its Moorings Policy. The Council now completes a proportionality checklist using the welfare information it requires and seeks to collect at the assessment stage prior to legal action. If occupiers have failed to respond to enquiries and requested, we are advised that there is no reason why the Council cannot proceed immediately to issue claims against them.
- 6.3 If occupiers have provided information which is relevant to the Council's duties under section 11 of the Children Act 2004, Article 8 of the European Convention on Human Rights or the Public Sector Equality Duty, then further consideration is given to making reasonable adjustments
- 6.4 We sought additional information from Ms X relating to her stated circumstances before reaching a final decision.
- 6.5 The Head of Environmental Services considered and reviewed the complaint before making a final decision.

7 Implications

(a) Financial Implications

The are no financial implications associated with this complaint

(b) Staffing Implications

Officers have been briefed about the outcome of the investigations by the ICI and LGO.

(c) Equality and Poverty Implications

Any EQIA was completed to accompany the proportionality checklist relating to the Council's final decision following the recommendation of the LGO.

(d) Environmental Implications

This report has no climate change impact

(e) Procurement

There are no current procurement related issues associated with the recommendation in this report.

(f) Consultation and communication

No consultations were necessary to prepare this report

(g) Community Safety

No direct or indirect community safety implications

8. Background papers

These background papers were used in the preparation of this report:

River Moorings Policy 2017 -2023, Technical Document
River Moorings Policy Consultation Summary report
EQIA for proposed changes

9. Appendices

Appendix A - LGO decision letter dated 19th March 2019
Appendix B - Proportionality checklist

10. Inspection of papers

To inspect the background papers or if you have a query on the report please contact:

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Appendix A - LGO decision letter dated 19th March 2019

Appendix B – Proportionality Checklist

UNLICENSED BOATS, CAMBRIDGE PROPORTIONALITY CHECKLIST

| | |
|--|--|
| Name and position of person completing this assessment: | |
| Name of boat owner: Date of birth of boat owner: | |
| Names and dates of birth of any household members living on board: | |
| Name and location of boat: | |
| Right to possession: | |
| Why does the Council need possession of the land? | |
| What right, if any, does the owner have to occupy Riverside? | |
| What evidence have you considered in completing this checklist? | |
| What has been done to assist the owner to find an alternative location for mooring the boat or alternative accommodation? <i>(please give details)</i> | |
| Has the owner been informed of their right to seek assistance from the Council's Housing Advice service or Children's Services? <i>(please give details, including of the outcome of</i> | |

| | |
|---|--|
| <i>any application for assistance)</i> | |
| Does the owner or a member of their household living on board have a disability under the Equality Act 2010? <i>(please give details)</i> | |
| Does the household include any children? <i>(please give details)</i> | |
| What would be the impact of a possession order on the occupier and their household – including any children? <i>(please give details)</i> | |
| Has the owner/household member faced any difficulties in finding alternative accommodation as a result of their protected characteristics? <i>(please give details, including of any adjustments made by the Council to assist)</i> | |
| What is your final decision? <i>(please explain why any decision to seek possession is justified)</i> | |