

The Ombudsman's final decision

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.

The complaint

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.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

-
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. I have:
 - Considered the complaint and the information provided by Ms X;
 - Made enquiries of the Council and considered the information provided;
 - Invited Ms X and the Council to comment on the draft decision.

What I found

5. 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. So the person who has been on the waiting list the longest will be the person offered the next available licence.
6. 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.
7. In 2017 the Council reviewed its mooring policy. In doing so it carried out an equality impact assessment. The Council consulted a number of 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 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 on the basis of housing need. The Council's position was that moorings were not managed to provide or considered to be social housing. The Council's Executive Councillor approved the policy.
8. The Council notified Ms X she was breaching its mooring policy as she was moored without a licence.
9. 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. This is because she is Roma and she and her children have disabilities. In later correspondence Ms X also said she is the carer for the owner of a neighbouring boat. Ms X also complained the Council granted a licence to another boat owner outside the waiting list and that it would not transfer a narrowboat licence issued to Mr Y to her as joint licensee.
10. The Council considered Ms X's complaint through its complaints procedure. This included consideration by an independent investigator. The independent investigator did not consider the Council's mooring's policy to be discriminatory. He said the Council would consider Ms X's circumstances by carrying out a welfare assessment before considering if enforcement action is appropriate.
11. 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.

Ms X identified a number of people who she considered were moored without permission or were breaching their licence.

12. The Council's independent investigator considered the complaints. In his letter to Ms X the independent investigator said he had investigated Ms X allegations by:
- carrying out a site visit of boats moored on the Council's land,
 - discussing each owner's circumstances and the Council assessment of their mooring status with officers;
 - obtained witness statements and assessed evidence which demonstrates the Council is initiating enforcement action against some people named by Ms X. Others had provided proof they were not breaching the mooring policy.

The independent investigator 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.

13. The Council has asked Ms X to complete a welfare assessment. It 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.
14. In response to my enquiries the Council has said:
- The purpose of its moorings policy is to ensure the river is used in a balanced way. The Council seeks to manage moorings sustainably, balancing the needs of boat owners with recreational and residential needs of others. It limits the moorings available to ensure this balance. The Council's moorings policy is not part of the Council's housing function and it cannot allocate moorings according to housing need.
 - It has considered Ms X's personal circumstances and does not consider they are exceptional to warrant a departure from its policy. This is because the Council could be disadvantaging against others on the moorings policy waiting list who may have greater need.
 - It will consider Ms X's circumstances further when it carries out its welfare assessment to determine if it should take enforcement action.
 - It will not transfer a narrow boat mooring licence to a wide beam licence as it is unfair to people on the wide beam licence waiting list. The Council would only transfer a narrow boat licence to a wide beam licence if the applicant was first on the waiting list for a wide beam licence. It has also said Ms X was not a joint applicant for a narrow boat licence with Mr Y.
 - The Council has also said that it engaged a private investigator to look at Ms X's allegations that other boat owners were breaching the moorings policy. This appears to have been the Council's independent investigator who considered Ms X's complaint. The Council has said the investigator did not find evidence to support Ms X's allegations. The Council has not provided the investigator's records of his investigation as requested.
15. The Council has provided details to show it is taking enforcement action against a number of boat owners it considers are breaching the moorings policy. I cannot disclose these details to Ms X as they are confidential.

My assessment

Moorings policy

16. The Council is entitled to set its own moorings policy and it not the Ombudsman's role to decide what that policy should be and how it should allocate moorings. I can only examiner if there was fault in how the Council reviewed its policy in 2017.
17. There is 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. I am 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. So I do not have grounds to question its decision.

Consideration of Ms X's circumstances and eviction

18. The Council has said 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. It has said 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. The Council has discretion to depart from its policies if there are good reasons to do so. The Council is at risk of fettering its discretion if it does not 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.
19. In response to my draft decision the Council said it considers it is not at fault for not considering Ms X's circumstances as it had held the matter in abeyance pending the outcome of my investigation. It always intended to consider Ms X's circumstances. This is in conflict with the Council's response to my enquiries saying it had considered Ms X's circumstances. I remain of the view the Council is at fault as it should have considered whether Ms X's personal circumstances were exceptional enough to warrant a departure from its moorings policy when she first raised the matter in her complaint. The Council can consider if a departure from its moorings policy is warranted at any time. It not limited to considering personal circumstances only when deciding if it should take enforcement action.
20. Ms X cannot be certain the Council has given proper consideration to her personal circumstances. But the Council will consider Ms X's individual circumstances as part of its welfare assessment in order to inform its decision as to whether it should take enforcement action. If the Council considers Ms X's circumstances to be exceptional enough not to take enforcement action, it should go on to consider if her circumstances warrant a departure from its moorings policy to issue a licence to her. This would remedy the injustice to Ms X caused by the Council not properly considering if her circumstances are exceptional to warrant a departure from its moorings policy.

Investigation into Ms X's allegation about other boat owners breaching the moorings policy

21. The Council has provided evidence to show it is taking enforcement action against boat owners who it has found to be breaching the moorings policy. So, I am satisfied it is taking action when it becomes aware of breaches of the mooring policy. However, it has not provided evidence to show how the investigator examined Ms X's allegations against specific boat owners, such as records of site visits, interviews, witness statements and his detailed findings on each boat owner. I therefore cannot say whether or not there is fault in the investigation into Ms X's specific allegations.
22. But I will not pursue this matter further as any fault in the investigation into Ms X's allegations against specific boat owners would not cause significant injustice to her. Ms X is not high enough on the waiting list so would not be denied a licence by any fault in the investigation.

Transfer of narrow boat licence to Ms X

23. There is no evidence of fault in how the Council made its decision not to transfer Mr Y's narrow boat licence to Ms X. The Council has 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. But I will not pursue these matters any further as I do not consider that the Council would have offered a wide beam licence to Ms X even if she was a joint applicant. Narrow boat and wide beam waiting lists are separate and the Council will not generally transfer a licence unless the applicant is also top of the waiting list for a wide beam mooring. Ms X was not at the top of the wide beam waiting list.

Agreed action

24. That the Council considers Ms X's personal circumstances during its welfare assessment. In the event the Council decides Ms X's circumstances are exceptional enough not to take enforcement action it should go on to consider if her circumstances warrant a departure from its moorings policy and offer her a licence. The Council should provide detailed reasons for its decision to Ms X and the Ombudsman. It will also take this action within three months of my final decision.

Final decision

25. 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's 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 her circumstances warrant a departure from its moorings policy and offer a licence to her. This is an appropriate and proportionate remedy for Ms X's injustice so I have completed my investigation.

Parts of the complaint I did not investigate

26. During the course of my investigation Ms X raised new complaints about the Council disclosing her personal information and delays in sending a welfare

assessment to her. She has also raised new complaints about the Council accusing her of noise pollution and about her council tax. I have not investigated these complaints. This is because we cannot investigate new complaints raised during an investigation. The Council must be given the opportunity to investigate the complaints before the Ombudsman can consider them. Ms X may also be able to make a complaint to the Information Commissioner about the Council disclosing her personal information.

Investigator's decision on behalf of the Ombudsman