



Epping Forest District Council

COMPLAINTS PANEL **Monday, 23rd January, 2012**

Place:	Civic Offices, High Street, Epping
Room:	Committee Room 1
Time:	4.30 pm
Democratic Services Officer	Graham Lunnun – The Office of the Chief Executive Tel: 01992 564244 Email: democraticservices@eppingforestdc.gov.uk

Members:

Councillors R Cohen (Chairman), H Ulkun (Vice-Chairman), B Rolfe, P Spencer and D Wixley

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 5 - 18)

To approve the minutes of the meeting held on 29 November 2010 (attached).

3. DECLARATIONS OF INTEREST

To disclose interests in any item on the agenda.

4. EXCLUSION OF PUBLIC AND PRESS

Exclusion: To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

<i>Agenda Item No</i>	<i>Subject</i>	<i>Exempt Information Paragraph Number</i>
5	Waste Transfer Station at "Greenacres" – Claim for Compensation	1 and 3

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Confidential Items Commencement: Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

**5. WASTE TRANSFER STATION AT "GREENACRES" - CLAIM FOR
COMPENSATION (Pages 19 - 38)**

To consider the attached restricted report.

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EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Complaints Panel **Date:** Monday, 29 November 2010

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 4.30 - 7.35 pm

Members Present: Councillors D Wixley (Chairman), P Gode, B Judd, G Mohindra and B Sandler

Other Councillors:

Apologies:

Officers Present: J Gilbert (Director of Environment and Street Scene), A Mitchell (Assistant Director (Legal)), J Nolan (Assistant Director (Environment & Neighbourhoods)) and G Lunnun (Assistant Director (Democratic Services))

1. APOLOGIES FOR ABSENCE

The Panel noted apologies for absence from Ms J Filby, Complaints Officer, who had been unable to attend the Civic Offices due to the inclement weather. The Panel was advised that in Ms Filby's absence Mr J Gilbert would present the Council's case.

2. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 2 July 2007 be taken as read and signed by the Chairman as a correct record.

3. DECLARATIONS OF INTEREST

No declarations of interest were made by members of the Panel pursuant to the Council's Code of Member Conduct.

4. COMPLAINT NO. 1/2010

Introduction

The Panel considered a complaint by a resident that the Council had failed to respond appropriately to his request for the Pest Control Service to deal with rats at his property and had refused to pay him the amount of compensation he was demanding (£1,500).

The complainant attended the meeting to present the complaint accompanied by his wife. Mr J Gilbert, Director of Environment and Street Scene, attended the meeting to present the Council's case. Mr J Nolan, Assistant Director, Environment and

Street Scene, and Ms A Mitchell, Assistant Director (Legal) attended the meeting to advise the Panel as required on any technical and legal issues. Also in attendance was Mr G Lunnun (Assistant Director Democratic Services) as Secretary to the Panel.

The Chairman, members of the Panel and officers introduced themselves to the complainant. The Chairman outlined the procedure to be followed in order to ensure that proper consideration was given to the complaint.

The Panel had before them the following documentation in connection with the complaint:

- (a) the order of proceedings forming part of the agenda for the meeting;
- (b) a statement submitted by the Complaints Officer;
- (c) a statement submitted by the complainant;
- (d) appendices referred to in the statements of the Complaints Officer and the complainant.

Complainant's Case

The Panel considered the following submissions in support of the complainant's case:

- (a) the issue had taken a long time to reach this stage; it had been a trivial matter which could have been determined by officers much earlier if they had addressed the problem rather than sought to discriminate against the complainant;
- (b) on 10 June 2010 the complainant had telephoned the Council to report sighting of rats in his garden and a rustling noise coming from the loft of his property; on 21 June 2010 having received no response he had visited the Civic Offices to enquire about progress; an officer in the Environment and Street Scene Directorate had taken a note of the complainant's details to pass onto the appropriate member of staff who had not been present at the time; on 29 June 2010 the complainant had visited the Civic Offices again and had met another Council officer in the Environment and Street Scene Directorate who had expressed regret about the lack of any action and had promised to arrange for a visit from the Pest Control Service; on 29 June 2010 the Council's Pest Control Service had telephoned the complainant and arranged a visit for 2 July 2010; on 30 June 2010 a Council officer had telephoned the complainant to confirm the appointment with the Pest Control Service on 2 July 2010; on 2 July 2010 having waited from 8.00 a.m. until 1.00 p.m. the complainant had telephoned the Council's Pest Control Service and had been told that there was no booking for him that day but that he would be the first visit at 8.00 a.m. on 6 July 2010; on 6 July 2010 at 10.00 a.m. the complainant had telephoned the Civic Offices and had spoken to an officer who had claimed to be in charge of the Council's Pest Control Service – that officer had denied having seen any record of the complainant's complaint, and had suggested that the complainant should arrange for a visit from the Pest Control Service himself and had stated that the Council was under no obligation to provide such a service; on 6 July 2010 the complainant had attended the Civic Offices and had spoken to the officer who had claimed to be in charge of the Service – the complainant had been advised that rats were not a health hazard and that the Council would only meet the costs of its own contractor and not one engaged by the complainant – the complainant had been prevented from speaking to any other officer – the officer claiming to be in charge of the Service had

been unwilling to put his views in writing but when pressed had reluctantly produced a part-typed/part-handwritten note on plain paper;

(c) the officer claiming to be in charge of the Pest Control Service had stated he was a qualified Environmental Health Officer with years of experience; the complainant doubted this statement in view of the views expressed by that officer, published expert opinions about the spread of disease by rats and recent publicity about the death of an Olympic rower as a result of contracting Weil's disease;

(d) the complainant's health had been put at risk and urgent preventative action had been required but had not been forthcoming; there had been an exchange of 66 e-mails between the complainant and the Council in relation to this matter when all that had been required had been a 20 minute visit by the contractor to lay bait at the property;

(e) the complainant had emailed a complaint on 7 July 2010 as he had been unhappy with the views expressed to him by a Council officer on 6 July 2010; there had been an unreasonable delay in dealing with that complaint;

(f) on 16 July 2010 the complainant had advised the Council that he would refer the matter to the Local Government Ombudsman and the national press; he had also sought disciplinary action for dismissal against the officer claiming to be in charge of the Pest Control Service;

(g) on 29 July 2010 the Director of Environment and Street Scene had sent a letter to the complainant following his review of the events surrounding his complaint; the Director had concluded that there had been service shortcomings in that the complainant's request for service had not been referred to the Pest Control Service contractor following the complainant's visit to the Civic Offices on 21 June 2010; that the contractor had not recorded the booking of an appointment for 2 July 2010 and consequently had not made the visit on that day; and that the contractor had not kept the morning appointment arranged for 6 July 2010; whilst regretting these shortcomings the Director had stated he had been satisfied that all reasonable steps had been taken to deal with the complaint and that appropriate steps had been taken to prevent the shortcomings arising again;

(h) on 5 August 2010 the complainant had sent an e-mail to a Council officer requesting a review at Step 3 of the Council's Complaints Procedure (consideration by the Deputy Chief Executive); the complainant had not received a response to that e-mail until 19 August 2010 when he had been contacted by the Council's Complaints Officer who had stated that she dealt with complaints at Step 3 on behalf of the Deputy Chief Executive (currently Acting Chief Executive);

(i) the complainant had been requested by the Complaints Officer to provide the telephone number from which he had made his original complaint on 10 June 2010; the complainant had declined to provide that number as the number constituted personal information and he did not consider it necessary as the Council had other evidence at its disposal to show that the complainant had made a telephone call on that day;

(j) on 2 September 2010 the Complaints Officer had sent the complainant her provisional view on the complaint at Step 3; the outcome had been one sided and had not provided any proof of the qualifications of the officer in charge of the Pest Control Service; neither had the review addressed the complainant's request for that officer to be demoted or penalised; the review had not suggested that any action should be taken against the Council's contractor who had clearly been in breach of

contract; the complainant had responded to the provisional report by stating that he would be prepared to conclude the complaint if the outstanding issues were re-addressed and resolved amicably; if the Council arranged for its contractor to make a visit to solve the problem; and if the Council compensated the complainant by waiving one year's Council Tax;

(k) too much emphasis had been put on trying to establish the complainant's telephone call on 10 June 2010 to the detriment of the other issues;

(l) as the Complaint Officer's response to the complainant had been unsatisfactory the complainant had found it necessary to proceed to Step 4 of the Council's Complaints Procedure (the Complaints Panel);

(m) the complainant had been disadvantaged as he had sought to make a PowerPoint presentation to the Panel but had been denied this opportunity by Council officers;

(n) the complainant had not been aggressive or abusive to Council officers;

(o) the officers had lied to the complainant and had discriminated against him;

(p) the Complaints Officer had offered the complainant a goodwill sum of £150 in view of the delays which had occurred but this had been nowhere near the amount of Council Tax which the complainant paid for one year;

(q) it had been alleged that the Council's contractor had attended the complainant's premises on 6 July 2010; this was disputed because although the complainant had not been present other members of his family had been at the property and had stated that no-one had called;

(r) the Council had stated that hundreds of residents had expressed satisfaction with the Council's Pest Control Service; as this had not been the complainant's experience he had concluded that he had been discriminated against;

(s) it had been suggested that the complainant had been offered an appointment at a time and on a day of his choice but this was disputed by the complainant;

(t) if the Panel wished to hear more information about Health and Safety issues in relation to rats, the complainant's wife was qualified to provide that advice.

In response to the complainant's last comment, the Chairman indicated that he did not think this would be necessary having regard to the nature of the complaints and the evidence already before the Panel.

The complainant answered the following questions of the Council's representative:-

(a) In your opening remarks you stated that this was a relatively trivial issue; what part of the issue do you consider to be trivial? Attempting to arrange a visit by the Council's Contractor not the consequences of non-attendance which could be grave.

(b) You have referred to discrimination; can you clarify what you mean? The matters which I have raised point towards discrimination; I was not served in the way that others have been served by the service.

(c) Are you suggesting racial discrimination rather than a failure of the service? My problems were drawn to the attention of Council officers and in view of the facts I have concluded discrimination.

(d) You have claimed that an offer of a timed appointment at your convenience was never made; is this correct? Such an offer was not made.

(e) Did the Council's contractor attend your property? No, when they claimed to have attended I was not present but other members of my family were present and no one called at the property at the time suggested by the contractor.

(f) You have stated that you have attempted to resolve the problem yourself; what steps have you taken? I laid bait and set traps; I caught rats on almost a daily basis; my loft was infested with rats' faeces; I witnessed rats in my garden during the day.

(g) Do you accept that the Council's Complaints Officer offered to arrange for the Council's contractor to attend your property to resolve the issue? Yes, but there was no guarantee that the Contractor would attend my property in view of their previous record.

(h) Did the Council's Complaints Officer offer you an appointment with the Council's contractor which you refused? – Yes, but that was five months after the commencement of the problem.

(i) Do you agree that if you had accepted that offer the rat infestation would have been dealt with and there would have been no need for you to pursue your complaint to this Panel? No, the request was made too late at a time when I had already taken by own actions to resolve the problem; it was not my wish to go through all the various stages of the Council's Complaints process.

(j) Is the basis of your complaint that the rat infestation has not been dealt with or that the Council has discriminated against you? A combination of both.

(k) Are you clear of the definition of a discretionary service? Yes, officers have the power to provide a service to some residents but not to others.

The complainant answered the following questions of the Panel:

(a) The Council's Complaints Officer requested that you provide her with the telephone number from which you alleged to have made your first contact with the Council on 10 June 2010 so that she could check the Council's telephone records; why did you refuse to give her this number? – My telephone numbers are private and ex-directory; the call could have been made from the landline or from one of several mobile phones and I did not want the Council to have these numbers.

(b) When you made your complaint did you not realise that it would need to be investigated fully and that without evidence it could not be assumed you made a call on 10 June 2010? There was no need to provide a telephone number as the issues were clear.

(c) You have referred to a tremendous waste of time and to an exchange of 66 e-mails; do you accept that many of those e-mails were in answer to an e-mail which you sent? The e-mails were a combination but they did not deal with the problem.

(d) Why did you not accept the offer made by the Complaints Officer for an appointment with the Council's contractor at short notice at a weekend? I did not feel the situation would be any different from the earlier attempts.

(e) What outcome do you want to achieve? I want to ensure the Council is efficient in its treatment of rat infestation problems; I want compensation in recognition of the time and effort and trauma I have suffered during the past six months; I want the services of the Council to be improved so that no-one else suffers in the same way as myself – my case has been a waste of time for everyone; I want a suitable penalty imposed on officers in relation to the discrimination against me;

(f) What do you mean by discrimination? I was not treated in the same way as other residents in the locality.

(g) Do you not accept it was a failure of the service which has caused the problem? No one else has had the same problem; I moved to Epping 30 years ago; my Council Tax has increased during the years but I have always paid it; on the one occasion I sought help from the Council this has been the outcome; I have not been playing for time in an attempt to secure more money from the Council.

(h) Can you clarify what you have done in an attempt to resolve the problem yourself? I laid bait and set traps which I bought from shops; I caught rats and the problem is starting to disappear.

(i) How did you deal with the rats in the roof space of your property? I laid poison; some of my possessions in the loft were chewed by the rats but fortunately they did not create any problem with cables.

(j) Just to confirm you have dealt with the problem yourself? Yes, because I had no choice.

(k) Did the Council's contractor have a telephone number for you so that they could contact you? Yes.

(l) Do you accept that a contractor may experience problems with their transport? – I can accept that situation on one occasion but the contractor let me down three times; I had to take time off work and I never received a proper explanation of why the contractor failed to attend;

(m) References are made in the papers to appointments on 2 July and 6 July 2010 – when was the third time? I did not know the date.

The Council's Case

The Panel considered the following submissions in support of the case of the Council's Complaints Officer presented by the Director of Environment and Street Scene:

(a) although the complainant had stated that he had telephoned the Council on 10 June 2010, officers believed his most likely first contact with the Council had not been until 21 June 2010 when he had visited the Civic Offices; there was no record of a telephone call having been received from the complainant on 10 June 2010; when the complainant had visited the Civic Offices on 21 June 2010 he had made no mention of having previously telephoned the Council; despite explaining to the complainant why it had been important to try to trace his alleged call of 10 June 2010

and given him an assurance that his telephone number would be treated in the strictest confidence and would then be deleted from the Council's records, he had declined to provide the telephone number from which he said he made the call on 10 June 2010;

(b) the complainant's complaint on 21 June 2010 was about both his neighbour's dogs barking and about the amount of dog faeces in his neighbour's garden which he stated were attracting rats into his property; no mention had been made of rats being inside the complainant's house;

(c) there had been an unfortunate misunderstanding between two Council officers as to which of them was to deal with the complainant's request for the Pest Control Service and as a result neither had done so; this had resulted in a delay of eight days before action had been taken; procedures had immediately been reviewed in order to ensure that such a misunderstanding between officers could not arise again;

(d) the Complainant had visited the Civic Offices again on 29 June 2010; at that time his complaint had been logged, the Council's Pest Control Contractor had been contacted; the Pest Control Contractor in turn had contacted the complainant and had arranged for a visit on 2 July 2010; the Council's Animal Warden had written to the complainant's neighbour about his dogs and asked the complainant to keep a diary of any further noise nuisance caused by his neighbour's dogs;

(e) the Council's Pest Control contractor had failed to attend the complainant's property on 2 July 2010; the contractor had admitted that they made the booking in their office but had failed to instruct an operative to attend; the contractor had apologised to the complainant and had offered him the next available appointment which had been for the following Tuesday (6 July 2010);

(f) the complainant had been expecting the contractor to attend at 8.00 a.m. on 6 July 2010 but when they had not arrived by 10.00 a.m. he had telephoned the Civic Offices; an officer then had contacted the contractor who had advised that their operative had been held up due to problems with his vehicle; when the operative had still not arrived at the complainant's property by early afternoon, the complainant had visited the Civic Offices; an officer had contacted the contractor again who had advised that their operative was still having problems with his vehicle which was why he had not yet been able to attend the complainant's property;

(g) The contractor immediately had offered the complainant another timed appointment on a day of his choice, including a weekend but the complainant had refused this offer as he had stated that he wanted to appoint his own contractor and for the Council to meet the cost of doing so;

(h) The complainant had expressed dissatisfaction with the response he had received from a Council officer when he had visited the Civic Offices on 6 July 2010; the complainant had alleged that the officer had advised him that rats were not a health hazard; in fact the officer had stated, in writing, that the public health significance of rats outside was relatively small in most cases; the officer had not said there was no health risk, rather that the risk was low; the complainant had been angry, threatening and abusive in his conversation with officers on 6 July 2010;

(i) the complainant had also complained that the officer had advised him that no Council member would help arrange a visit by the Council's contractor; it had clearly been more sensible for the complainant to contact the contractor direct to take up their offer of a timed appointment on a day of the complainant's choice because

otherwise there would have been a three way conversation between the complainant, the Council and the contractor to make these arrangements and this would have resulted in some delay;

(j) the Council officer had advised the complainant that the Council would not pay for him to use his own contractor; the Director of Environment and Street Scene had decided not to authorise the complainant to appoint his own contractor as the Council's contractor had already confirmed that they would offer the complainant a timed appointment on a mutually convenient date including a weekend;

(k) the complainant had been dissatisfied with the Director's response he had received at Step 2 of the Council's Compliments and Complaints Procedure and had submitted a complaint to the Deputy Chief Executive on 5 August 2010; there had been a delay before the Council's Complaints Officer had been advised of the receipt of the complaint and as a result her investigation on behalf of the Acting Chief Executive (Deputy Chief Executive) at Step 3 had not formally commenced until 23 August 2010;

(l) the Council's Complaints Officer had not upheld the following complaints:

(i) that the responses the complainant had received from a Council officer and the Director of Environment and Street Scene had been inappropriate; and

(ii) that it had been unreasonable of the Director not to allow the complainant to appoint his own contractor;

(m) the Complaints Officer had upheld the following complaints:

(i) that there had initially been an avoidable delay in dealing with the complainant's request for the Pest Control Service due to a misunderstanding between officers as to which one was arranging attendance by the Council's contractor; and

(ii) there had been an avoidable failure by the Council's contractor to attend on 2 July 2010;

(n) the Complaints Officer had concluded that the complainant had suffered inconvenience, worry and frustration in trying to get the rat problem dealt with and in securing responses to his complaints; the Complaints Officer had offered the complainant a formal apology for the delays, a £100 goodwill payment and for the Council's contractor to again offer the complainant a timed appointment on a mutually convenient date, including a weekend;

(o) The complainant had disagreed with many of the Complaints Officer's views and had rejected the proposed financial remedy; he had asked for the Council to arrange for its contractor to make visits within two days' notice until the problem had been eradicated and for his Council Tax to be waived; in response the Complaints Officer had explained that the number of visits the contractor might need to make and the interval between each subsequent visit would depend upon the scale and location of the problem and could not be determined until the contractor had undertaken an initial assessment; the complainant had been given two options as to how the first visit could be arranged; the Complaints Officer had also subsequently increased the amount of the goodwill payment offered from £100 to £150; this amount had been a little more than the amount of Council Tax the complainant had been required to pay for District Council Services (£148.77); in response the

complainant had implied that he was seeking a refund of his full Council Tax for the year which amounted to £1,485.34; the complainant had asked the Panel to reward him with the maximum amount possible although he had not stated what amount he hoped to receive;

(p) the complainant had complained that the Council officers had not facilitated his request to make a PowerPoint presentation to the Panel; whilst such a presentation would certainly be permissible, those wishing to do so needed to provide their own equipment in order to avoid compatibility problems with the Council's equipment; this had been explained to the complainant; the complainant had not been disadvantaged by not being able to make a PowerPoint presentation as he had instead submitted the information to the Panel in paper format;

(q) The Council had no statutory duty to provide a Pest Control Treatment Service; it did so entirely by choice; as it was a discretionary service, the Council was entitled to determine the scale and terms of the service that would be offered; if a resident felt that the service could not meet their needs, they could appoint their own contractor instead but the Council would not reimburse them for the costs that they would incur in doing so;

(r) Council Tax bills comprised a charge from the District Council, and precepts from Essex County Council, from the local Parish or Town Council and from the Police; it would be totally unjustifiable for the other three organisations to be expected to refund the complainant with the Council Tax amounts he had paid them as they had no responsibility for the provision of the Council's Pest Control Service and therefore no responsibility to remedy any complaint about this Service; a payment equivalent to the complainant's full Council Tax would be excessive;

(s) officers maintained that the delay to date in dealing with the rats at the complainant's property had been primarily due to the complainant's own actions; the problem could have been resolved in mid-July 2010 had the complainant been willing to accept the offer made by the Council's contractor on 6 July 2010 to attend his property; the only avoidable delay therefore had been between 21 June 2010 and 6 July 2010, a period of just over two weeks;

(t) the Pest Control Service described by the complainant was not recognised by officers; in their experience the contractor provided a very good service;

(u) the complainant had not appeared to understand the difference between a statutory service and a discretionary service;

(v) the complainant had suggested that officers had lied; this was not accepted; there had been a fault with the system and the failure of the Council's contractor to keep appointments was regretted; this had been acknowledged, an apology offered and a payment suggested;

(w) the complainant had questioned the qualifications of the officer who had given him advice on 6 July 2010; that officer was a qualified Environmental Health professional and in all the circumstances the advice that officer had given was considered reasonable;

(x) the complainant had suggested that the errors made by the Council's contractor had justified the cessation of their contract; the Council had a good working relationship with the contractor who had provided a good service and there was no justification for ceasing the contract;

(y) in attempting to resolve the problem himself it was surprising in view of his comments about the health effects of rats that the complainant had not taken any professional advice.

The Director of Environment and Street Scene answered the following question from the complainant:-

(a) Why did you refuse to disclose the qualifications of the officer prior to this meeting? Personal details are protected under Data Protection but in order to assist the Panel the officer agreed to make known his qualifications which were a qualified Environmental Health Officer registered with the Environmental Health Officer Registration Board.

The Director of Environment and Street Scene answered the following questions of the Panel:-

(a) What steps have you taken to ensure that the delays suffered by the complainant are not repeated? It was considered that customers received a good service; it was accepted that in this case things had gone wrong; the two officers who had each felt the other was dealing with the issue had been spoken to in order to avoid a similar misunderstanding in the future; that kind of mistake was very rare.

(b) Part of the delay seems to have arisen due to an e-mail sent by the complainant resting in the in-box of an officer who had been on leave; does the Council's system not allow for an out of office message to be relayed to the sender of an e-mail? Such a message can be sent internally within the Council but not in response to external e-mails.

(c) What is the Council's policy in relation to the use of qualifications by officers? there is no policy; some officers put their qualifications after their name but others choose not to do so.

(d) Is it normal practice for the Council's Pest Control Service contractor to inform Council officers when appointments are made? No, information is passed to the contractor and is only followed up in terms of payment.

Summing Up

The Chairman invited both parties to sum up their cases. The Director of Environment and Street Scene said he had nothing further to add. The complainant advised that the whole episode had been really stressful for him and had wasted a lot of time and effort for no good reason. He stated that he believed he had been discriminated against and that this needed to be addressed in monetary terms. He was asking for the maximum amount possible. He stated that he hoped the outcome of his complaint would benefit others. He stated that he regretted that the Panel did not have the power to discipline officers whom he considered to have been at fault.

Decision

The Chairman indicated that the Panel would consider the complaint in the absence of the parties. The Chairman asked the parties if they wished to be called back for the announcement of the Panel's decision or whether they would prefer to leave the building and be advised of the decision in writing. The parties indicated that they would prefer to be called back to the meeting.

In private session the Panel considered the issues of the complaint. The Panel reviewed all of the evidence which had been presented. The Panel focused on the following allegations:

- (a) that the Environment and Street Scene Directorate had failed to record the complainant's reports about, and taken prompt action over rats at his property;
- (b) that the Council's Pest Control contractor had failed to keep appointments;
- (c) that the responses by officers in the Environment and Street Scene Directorate to the complaint which had been made by the complainant about (a) and (b) were inappropriate;
- (d) that it had been unreasonable of officers to refuse to allow the complainant to appoint his own Pest Control contractor;
- (e) that there had been an unreasonable delay in responding to the complainant's complaint;
- (f) that inadequate advice had been provided to the complainant about the Council's Complaints Procedure;
- (g) that the provision of the Pest Control Service was inequitable and discriminatory; and
- (h) that the remedy offered to those parts of the complainant's complaint already upheld by officers had been inadequate.

The Panel concluded that there were certain procedural/policy changes required in order to improve the Pest Control Service to the public and overcome the shortcomings which had been identified in this case.

The Panel concluded that the complaint should be partly upheld, due to the delays suffered by the complainant, and that a goodwill payment of £200 should be offered to the complainant.

The parties were called back to the meeting and advised of the Panel's decision. They were also advised that the decision would be confirmed in writing within seven working days and that the minutes of the Panel meeting would be circulated at the latest, 14 working days after the Panel meeting.

RESOLVED:

(1) That having taken into consideration the information presented by the complainant and Council officers in writing and orally, the complaint be partially upheld as indicated for the following reasons:

(a) That the Environment and Street Scene Directorate failed to record the complainant's reports about, and to take prompt action over rats at his property

(i) in view of the lack of any record of the complainant contacting officers regarding his complaint prior to 21 June 2010; and taking into account the fact that the complainant declined to provide the telephone number from which he alleges he made a call on 10 June 2010 in response to a request for that

number to enable a trace to be made by Council officers; on the balance of probabilities it is concluded that the first contact was on 21 June 2010;

(ii) after lodging the complaint on 21 June 2010, there was a misunderstanding between Environmental Health Officers and as a result no action was taken on the complaint for 8 days;

(iii) there was an unwanted and avoidable delay in dealing with the problem and this part of the complaint is upheld;

(b) That the Council's contractor failed to keep appointments

(i) the Council's contractor contacted the complainant and arranged to visit his property on 2 July 2010; the contractor failed to attend on that day as they did not instruct an operative to attend; the contractor apologised to the complainant and offered another appointment for 6 July 2010 (2 working days later);

(ii) the complainant telephoned a Council officer and subsequently visited the Civic Offices on 6 July 2010 after the contractor had failed to attend at the appointed time or shortly thereafter; the complainant was advised that the contractor's operative was having problems with his vehicle; there is conflicting evidence as to whether the operative attended the complainant's property later that date but could not get a reply; the contractor then offered the complainant a timed appointment on a day of the complainant's choice, including a weekend, but the complainant refused this offer as he wished to appoint his own contractor and for the Council to meet the cost of that contractor;

(iii) it is concluded that the contractor did fail to provide the expected service but that their subsequent efforts to visit the complainant's property were reasonable; this part of the complaint partly upheld;

(c) That the responses by officers in the Environment and Street Scene to the complaints made under (a) and (b) above were inappropriate

on the evidence available it is concluded that the officer who spoke to the complainant when he attended the Civic Offices on 6 July 2010 was trying to be helpful but that the complainant was shouting at him making it very difficult for the officer to assist; it is concluded that the advice given to the complainant by the officer at that time was correct and that the response of the Director of Environment and Street Scene in a letter dated 29 July 2010 was an appropriate response; accordingly this part of the complaint is not upheld;

(d) That it was unreasonable not to allow the complainant to appoint his own Pest Control contractor at the Council's expense

(i) the Council is not required by law to provide a Pest Control Treatment Service; it does so by choice; accordingly, the Council has the right to determine the level of service it will provide to residents;

(ii) it is not the Council's policy to allow people to appoint their own contractor, and for the Council to meet the costs of that unless there are

exceptional reasons why the Council's policy should be relaxed in a particular case;

(iii) it is not considered there are exceptional circumstances in this case and consequently this part of the complaint is not upheld;

(e) That there was unreasonable delay in responding to the complainant's complaints

(i) the complainant sent an email to a Council officer on 7 July 2010 as he had been unhappy with the response he had received from another officer on 6 July 2010; there was a delay in the complaint being received by the Director of Environment and Street Scene and the three weeks it took for him to send a response exceeded the Council's target timescale for dealing with complaints (5 working days to acknowledge receipt and, at steps 1 and 2 in the Complaints Procedure, a further 8 working days to send a full reply);

(ii) the complainant emailed a further complaint to a Council officer on 5 August 2010 as he had been unhappy with the views expressed by the Director of Environment and Street Scene; that email was not actioned until 19 August 2010 as the officer to whom the email had been addressed had been on holiday;

(iii) it is concluded that there was an avoidable delay in dealing with this aspect and this part of the complaint is upheld;

(f) That inadequate advice was provided on the Council's Complainants Procedure

(i) the evidence indicates that the complainant was offered a copy of the Council's Compliments and Complaints Booklet on 6 July 2010; when appropriate, officers throughout the Council are asked to use standardised wording to open and close their written responses to complaints; the name or job title of the officer the complainant should contact next if they wish to pursue matters further should be provided but not necessarily the details of how to contact that officer as those are contained in the Council's booklet;

(ii) because the Council's Deputy Chief Executive is currently also the Acting Chief Executive it would not have been clear to the complainant that these two officers were currently one of the same person; however if the complainant had wanted to check the name of the Acting Chief Executive or how to contact him he could simply have called the Council and sought that information;

(iii) this part of the complaint is upheld but it is not considered that any further action is required other than to advise officers about providing additional information that might need to be included in their letters;

(g) That the provision of the Pest Control Service is inequitable and discriminatory

(i) the Pest Control Service is a discretionary service in that it is one the Council chooses to provide rather than being one which must be provided by law; it is not a service which the Council chooses to provide to some residents but not to others; the Pest Control Service is therefore available to all residents who want to use it;

(ii) no evidence was submitted to support the claims of the claimant that he had been discriminated against and as the service is provided equitably this part of the complaint is not upheld;

(h) Proposed remedy to upheld complaints

(i) in recognition of the inconvenience and frustration suffered by the complainant in trying to get the rat problem dealt with and in securing responses to his complaints he had been offered a goodwill payment of £150 at Stage 3 of the Complaints Procedure;

(ii) having regard to the extra time and inconvenience necessitated in order to pursue his complaint to Stage 4 (the Panel) the goodwill payment be increased to £200;

(2) That the relevant Portfolio Holder and/or officers be asked to consider the following procedural/policy changes to improve the service to the public and overcome the perceived shortcomings identified by the Panel;

(a) the facility currently available to officers to notify the senders of internal emails of their absence from the Offices should be extended to enable all officers to notify the senders of external emails of such absence;

(b) a uniform policy should be adopted in relation to the use of qualifications after an officer's name when signing letters etc especially officers in a post which requires a particular qualification;

(c) officers should be reminded that when providing information in the form of a letter the correct Council headed notepaper should always be used;

(d) that the Council's Pest Control Service contractor instruct their operatives to leave a calling card at a property when they cannot get a reply;

(e) that the Council's Pest Control Service contractor's operatives telephone a customer in advance if they are delayed and will be late for an appointment;

(f) that the Council's Pest Control Service contractor provide the Council with regular lists of (i) properties visited where they receive no reply and (ii) un-kept appointments and the reasons; and

(3) That members of the Panel be advised of the responses of the Portfolio Holder and officers to the matters raised in resolution (2) above.

CHAIRMAN

By virtue of paragraph(s) 1, 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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