

AGENDA ITEM: 11.2.2 Page nos. 85 - 89

Meeting	Council
Date	1 March 2005
Subject	OMBUDSMAN'S REPORT – "MR BARKER"
Report of	Monitoring Officer
Summary	This is a further report to the Council concerning a finding of maladministration against the Council

Officer Contributors	Monitoring Officer
Status (public or exempt)	Public
Wards affected	Not applicable
Enclosures	None
For decision by	Council
Function of	Council
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

Contact for further information: Hema Parmar (020 8359 2515)

1. RECOMMENDATIONS

- 1.1 That, having previously noted the contents of the Ombudsman's report dated 4 February 2003 and 3 previous reports from the Monitoring Officer, the Council note the action taken as referred to in paragraph 7 of this report.**
- 1.2 That the Council note the Ombudsman's intention to issue a further report if the Council does not pay compensation without conditions.**
- 1.3 That having taken account of these reports and the factors set out in paragraph 7, the Council make a decision to accept the Ombudsman's recommendation that "the Council pay the complainant £136,166 to account for any losses to the child and his family, and to compensate the complainant for his time and trouble in pursuing his complaints".**
- 1.4 That the Borough Solicitor be instructed to inform the Local Government Ombudsman of the Council's response to his recommendations.**
- 1.5 That the Borough Solicitor be instructed to notify the solicitor acting for Mr and Mrs Barker and their son of the Council's decision.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Council 4.3.03 – Noted the Monitoring Officer's Report informing the Council of the finding of maladministration.
- 2.2 Council 18.11.03 – Instructed the Borough Solicitor, working in consultation with the Borough Treasurer and the Council's external insurers, to approach and open negotiations with Mr Barker and/or the family's solicitors or other advisors on a "without prejudice" basis seeking to achieve a complete and final settlement of the recommended compensation award for maladministration and all other claims arising out of the same events.
- 2.3 Council 26.10.04 – Decision to accept the Ombudsman's recommendation that "the Council pay the complainants £136,166 to account for any losses to the child and his family, and to compensate the complainant for his time and trouble in pursuing his complaints" on the following basis:
 - That this payment is in full and final settlement incorporating all antecedent claims and complaints made by Mr and Mrs Barker and or by their son against the Council whether yet made or not arising from the delivery of special educational and social care provision during the period from January 1998 to the date on which these terms are incorporated into an agreement signed by the Council and or on behalf of Mr and Mrs Barker and their son.
 - That Mr and Mrs Barker use all reasonable endeavours to co-operate with the Council and facilitate the carrying out of a community care assessment of their son by 31 December 2004 to properly plan future provision and that any payment in full and final settlement be delayed until the satisfactory completion of the community care assessment;
 - That the judicial review proceedings be discontinued;
 - That the costs of the judicial review proceedings form part of this full and final settlement.
- 2.4 The Borough Solicitor was also instructed on each occasion to inform the Ombudsman of the Council's decision.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1 None.

4. RISK MANAGEMENT ISSUES

4.1 As referred to in the body of the report.

5. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

5.1 The Council's external insurers have been provided with a copy of the Ombudsman's report. The excess under the policy is £50,000 and the insurance department has confirmed that the first £50,000 of any settlement reached will be payable from the Insurance policy pursuant to the internal arrangements as agreed. Any payment over and above £50,000 would require further consideration by the Council's external insurer, however, if this is not payable from the Insurance policy, the excess which represents an uninsured loss will have to be funded from balances.

6. LEGAL ISSUES

6.1 My earlier report dated 18 November 2003 concluded that the finding of maladministration and the Council's response to the Ombudsman's recommendations falls to be reported to and decided by the Council.

6.2 Where the Ombudsman has made a finding that injustice has been caused to a person aggrieved in consequence of maladministration the Council must consider the report and notify the Ombudsman of the action which the Council has taken or proposes to take.

6.3 If the Ombudsman
(a) does not receive the notification required within the specified time, or
(b) is not satisfied with the action which the Council has taken or proposes to take, or
(c) does not receive confirmation from the Council that it has taken action as proposed within the specified time to the Ombudsman's satisfaction, he may make a further report setting out those facts and making recommendations.

6.4 In the circumstances referred to in paragraph 6.3, the Ombudsman may require the Council to publish a statement in a local newspaper for two consecutive weeks. The statement shall give details of any action recommended by the Ombudsman, such supporting material as the Ombudsman may require and, if the Council so requires, a statement of the reasons for having taken no action on, or not the action recommended in the report.

7. CONSTITUTIONAL POWERS

7.1 Constitution: Article 4.02 (l)

8. BACKGROUND INFORMATION

8.1 At its meeting on 26 October 2004, the Council noted my report which recommended that the Council accept the Ombudsman's recommendation on a conditional basis as set out in paragraph 2.3 above. The Council's decision was confirmed in writing to both Mr and Mrs Barker's solicitor and the Ombudsman on 27 October 2004. The offer of payment of compensation on the conditions stated above was rejected and a further claim for judicial review challenging the Council's decision dated 26 October 2004 was

issued in the High Court on 25 January 2005. The Ombudsman has subsequently indicated that he would issue a further report unless the Council agreed to make an unconditional payment. In addition, the Ombudsman indicated on 22 February 2005 that he intends to make an application to be joined as a party to the new court proceedings to enable him to file evidence in respect of his recommendation, which was accepted subject to conditions by the Council on 26 October 2004. It is the Ombudsman's involvement and the new court proceedings which has led Officers to urgently review this case and undertake a further "best interest" analysis at this juncture.

- 8.2 The recommendation and subsequent Council decision on 26 October 2004 to make a conditional payment was genuinely intended to bring closure to these longstanding complaints and legal proceedings and thereby avoid further costs being incurred by the Council. This offer, which in Leading Counsel's opinion was a very generous offer, was surprisingly rejected and has not brought closure.
- 8.3 The Council's Community Care Service have worked unremittingly to engage Mr and Mrs Barker in the carrying out of the community care assessment, which is now complete. The Council's Officers have also worked conscientiously on the establishment of the User Independent Trust, a mechanism for the delivery of the complex care package which is due to be effective before Mr and Mrs Barker son reaches 19 years of age in July 2005.
- 8.4 The Council's Officers continue to believe that it is in the best interests of the parties to bring closure to all of the existing legal proceedings and complaint with the Ombudsman to enable both the Council and the family to move forward in dealing with future provision for Mr and Mrs Barker's son. Closure of all existing matters will enable both parties to make a fresh start, which will be essential to the effective establishment, operation and management of the User Independent Trust. Although in Leading Counsel's opinion, there is a 70% chance that the Council can successfully defend the new court claim, the need to bring closure and move forward with Mr and Mrs Barker coupled with the inherent risks of the further litigation, inevitable costs, and the further Ombudsman report which could leave the Council exposed to further criticism from the Ombudsman and elsewhere outweigh the reasons (which are still valid) for sustaining the previous decision dated 26 October 2004 and continuing to defend the court proceedings. In the circumstances, and given the nature of the findings of maladministration that have been accepted by the Council, the case for defending the new court claim as well as the existing ongoing claim and Ombudsman complaint is outweighed by the reasons to settle and bring closure.

9. LIST OF BACKGROUND PAPERS

- 9.1 Local Government Ombudsman's Report dated 4 February 2003.
- 9.2 Any person wishing to inspect this document should telephone 020 8359 2515

10. AUTHOR

- 10.1 Jeff Lustig – Borough Solicitor and Monitoring Officer

BS: HP