

**Report by the Local Government and Social Care  
Ombudsman**

**Investigation into a complaint against  
London Borough of Barnet  
(reference number: 18 009 897)**

**9 May 2019**

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## The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr X            The complainant

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## Report summary

### Environmental services, public protection and regulation

Mr X complains the Council wrongly removed and destroyed his fast food trailer. He says it did not make efforts to contact him to give him the opportunity to claim the trailer and stop the enforcement action.

#### Finding

Fault found causing injustice and recommendations made.

#### Recommendations

To put Mr X back into the same position he would have been without the fault, within three months of this final report, the Council should arrange for an independent assessor to establish the cost of providing Mr X with a trailer of similar age, quality and fittings as the one it wrongly destroyed. The Council should then pay this sum to Mr X within one month of the independent value assessment.

Within three months of the date of this report it should also:

- write to Mr X to apologise to him for the failures identified;
- pay Mr X £500 for the distress and uncertainty caused by the loss of the trailer and for the time and trouble taken to bring his complaint;
- carry out training to remind staff of the law, regulations, government guidance and its own policy when making decisions about abandoned vehicles;
- review its policy as set out on its website, to clarify its duty to try and find the vehicle owner;
- consider the report to identify if any procedural change is required to prevent a similar situation happening in the future and confirm with us the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The Council has agreed to our recommendations.

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## The complaint

1. Mr X complains the Council wrongly removed and destroyed his fast food trailer. He says it did not make efforts to contact him to give him the opportunity to claim the trailer and stop the enforcement action. He wants the Council to compensate him for the cost of the trailer and subsequent loss of earnings.

## Legal and administrative background

### The Ombudsman's role

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this report, we 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. We 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. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)

### The law and legal guidance on the removal and disposal of abandoned vehicles

5. The Refuse Disposal (Amenity) Act 1978 and the Removal and Disposal of Vehicles (England) Regulations 1986 (as amended) set out the legal framework for the removal and disposal of abandoned vehicles.
6. The Act defines a vehicle as:  
*"a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for use, and includes any trailer intended or adapted for use as an attachment to a vehicle"*.
7. The Act says councils have a duty to remove abandoned vehicles from land or roads in their area.
8. Government guidance lists the following factors to consider when a council is deciding if vehicles are abandoned:
  - there is no keeper on the DVLA's database and they are not taxed;
  - they are stationary for a significant amount of time;
  - they are significantly damaged, run down or unroadworthy;
  - they are burnt out;
  - they have number plates missing.

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9. If a council decides a vehicle has been abandoned, the council can dispose of a vehicle immediately if either:
    - it is only fit to be destroyed;
    - it has no number plates or tax disc.In all other cases, the council must try to find the owner.
  10. If the council proposes to remove a vehicle, it must fix a notice to the vehicle saying the council intends to remove the vehicle after the stated time period ends.
  11. If the council cannot find the owner, or the owner fails to comply with the notice to collect the vehicle, the council can remove the vehicle.
  12. After the council has removed a vehicle it may dispose of it as it sees fit. The law says if a vehicle to which a notice is fixed has current road tax, it can be destroyed any time after the road tax expires.
  13. If a vehicle does not have current road tax or a registration mark, it can destroy it at any time after its removal.

### **The Council's policies and procedures**

14. The Council's website sets out its policy for the reporting, removal and disposal of abandoned vehicles.
15. The website lists the likely indicators for it to decide a vehicle has been abandoned:
  - stationary for a long period (more than four weeks);
  - missing number plates;
  - two or more flat tyres;
  - a broken windscreen, windows or mirrors;
  - presence of weeds or litter under the vehicle suggesting it has not been moved for some time;
  - build-up of debris inside the vehicle;
  - general poor state of repair and subject to ongoing acts of vandalism;
  - vehicle is not taxed or has no MOT.
16. It says that if a person reports a vehicle as abandoned, a member of the team will undertake a site visit within 24 hours. They will assess if the vehicle meets the criteria for abandonment.
17. If the Council decides the vehicle has been abandoned and believes it to have a value of more than £500, the Council will fix a 7-day notice to the vehicle.
18. If the owner does not collect the vehicle within seven days, the Council will decide what further action to take.
19. The Council's website says motorists have the right to leave a legally parked vehicle on the public highway for as long as they consider necessary. A vehicle left in a stationary position for a period of time does not usually mean the owner has abandoned the vehicle.
20. The Council has contracts with an enforcement company and a vehicle removal company to carry out vehicle enforcement action within its area on its behalf.

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## How we considered this complaint

21. We produced this report after examining relevant documents and interviewing the complainant's representative.
22. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were considered before the report was finalised.

## What we found

### What happened

23. In 2016, Mr X bought a mobile catering trailer to make and sell food at street markets and events. He paid £20,000 for the trailer.
24. In May 2018, Mr X was working elsewhere, but was employing a chef to run the food trailer preparing and selling food at a local market. Mr X was parking the trailer on private land overnight.
25. During May 2018, due to unforeseen circumstances, the chef working the trailer became unable to work. Mr X could not continue parking the trailer on the private land.
26. Mr X says on 26 May, he moved the trailer and parked it on a road near his house. He chose the road as it was a wide road and had no parking restrictions.
27. On 3 June, a member of the public emailed a councillor. The email said the trailer had been parked in the road for over three weeks and was not taxed. It said the trailer was taking up space and was an eyesore, and asked if anything could be done to remove the trailer.
28. The councillor emailed another councillor (Councillor B) asking for advice about what could be done.
29. The next day Councillor B asked a Council manager to look at the case. The manager emailed the Council's enforcement company. They asked the enforcement company to carry out a site visit, provide a full report and photographs, attach a 7-day removal notice to the vehicle and set a task for further review in seven days.
30. On 5 June, the enforcement officer carried out a site visit. They took eight photographs which we have seen. The photographs all showed the trailer to be in a good state of repair, there was a number plate attached to the trailer and Mr X's mobile phone number was prominently displayed as part of the advertising on the trailer.
31. On 7 June, the enforcement officer emailed their report to the Council. The report said, *"unattached trailer, clean exterior, spider webs are on the trailer"*. It said the officer had attached a 7-day enforcement warning notice to the trailer. The officer asked the Council to confirm if it wanted the enforcement company to enforce the trailer.
32. The Council replied with *"full enforcement please with the intent of removing on Day 8 from today"*.
33. On 15 June, the enforcement officer emailed the Council again. They asked if the Council wanted them to remove the trailer as a Category A removal (a term used for vehicles so badly damaged they should be destroyed), or removal for storage.

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34. Later that day the Council replied to the enforcement officer. The email simply said, *“Class A removal”*.
  35. On 16 June, Mr X visited the trailer. The door into the trailer was on the pavement side, but the enforcement officer had fixed the 7-day enforcement notice to the road side of the trailer. Mr X did not see the notice.
  36. On 18 June, the Council’s vehicle removal contractor removed the trailer and destroyed it soon after.
  37. On 22 June, Mr X went to visit the trailer again, but found it was not there. He presumed someone had stolen the trailer and went to the Police. The Police told him to contact the Council to check if the Council had removed it, before reporting the trailer as stolen. By the time the Police told him this, the Council offices were closed.
  38. On 25 June, Mr X rang the Council. He says the Council were not helpful and would not tell him what had happened to his trailer. The Council gave him the number of their vehicle removal contractor, but he says they would also not confirm what had happened to his trailer.
  39. On 26 June, Mr X visited the Council’s vehicle removal contractor in person. The contractor told him it had collected his trailer between 18 and 20 June and following instruction from the Council, it had destroyed his trailer.
  40. Mr X complained to the Council. He was not satisfied with its response and asked the Council to escalate his complaint.
  41. In September 2018, the Council responded. It said it inspected the vehicle on 5 June. It decided the trailer met the legal criteria (as defined in the Refuse Disposal (Amenity) Act 1978) to be classified as abandoned (as it was not attached to a vehicle). It said it had placed a warning notice on the trailer, but Mr X did not contact the Council to claim the trailer and prevent enforcement action. Because it did not receive any contact, it removed and disposed of the trailer.
  42. Mr X was not happy with the Council’s response and complained to us. He said the trailer was in a good state of repair and he did not understand how the Council had classified it as abandoned. He said the Council had not made reasonable efforts to contact him. He said his mobile telephone number, company website and email address were sign written on the trailer, but he had had no contact. He said the trailer had valid number plates which related to a taxed and insured vehicle and the Council could also have used this information to contact him. The officer fixed the enforcement notice to the road side of the trailer, which he could not see from the pavement. He said he had suffered significant financial loss, both from the loss of the trailer and its contents, and resulting loss of earnings, as he has not been able to run his street food business since June 2018.

## **Conclusions**

43. When the Council first emailed the enforcement company to request a site visit, it told the company to fix a 7-day enforcement notice to the trailer. In making this request, the Council showed it had already made the decision to take enforcement action to remove the trailer, before it had considered the photographic evidence and information in the enforcement officer’s site visit report.

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44. The Council said its reason for deciding the trailer had been abandoned was that it was not attached to a vehicle. This reason is not in the legal guidance or in its own policy as a factor to consider when making the decision. There is no evidence it considered the factors set out in the government guidance or in its own policy when making its decision.
45. If it had considered the enforcement officer's report, photographic evidence and the factors set out in government guidance and its own policy, it would have realised that:
- the trailer displayed a number plate which related to a vehicle. A check on the DVLA database would have shown the vehicle had a registered keeper and was taxed;
  - apart from the word of the person reporting the vehicle, the Council had no evidence it had been stationary for a long period;
  - it was not significantly damaged or unroadworthy;
  - it did not have flat tyres;
  - it was not burnt out, in a poor state of repair or subject to acts of vandalism.
46. The Council failed to follow the law, government guidance and its own policy and therefore its decision to classify the trailer as abandoned was fault.
47. If a council decides a vehicle is abandoned (and the vehicle has valid number plates or is not in such poor condition it is only fit to be destroyed), the Removal and Disposal of Vehicle Regulations 1986 (amended in 2002) and government guidance say the council should try and find the owner. If a vehicle displays a number plate, it should check with the DVLA to try and find the name and address of the registered keeper. The photographs taken on the site visit and other photographs provided by Mr X as part of this investigation show the trailer was in good condition, displayed his mobile phone number and had a valid number plate.
48. Although the enforcement officer fixed an enforcement notice to the trailer, they fixed it to the road side of the trailer, not the pavement side. The Council says this gave anyone approaching the trailer the best chance of seeing it, and the law is not specific as to where notices should be placed. However, the only access door to the trailer was on the pavement side. The owner would have been more likely to see the notice had it been placed on the pavement side of the trailer. Placing the notice on the road side was another opportunity the Council missed to appropriately notify Mr X that it considered the trailer was an abandoned vehicle.
49. The Council did not make any efforts to find the owner. The photographic evidence shows Mr X's mobile telephone number, website and email address were sign written on the trailer. The enforcement notice was placed adjacent to his mobile phone number which was prominently displayed on the trailer in sign writing. It did not use these details to try and contact him. It did not use the number plate to check the DVLA database for details of the registered keeper. The Council could have used this information to try to contact Mr X, to give him the opportunity to claim the trailer and stop the enforcement action. The failure to take appropriate and proportionate action to contact Mr X is fault.
50. After it had removed the trailer, the Council had to decide what to do with it.

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51. The enforcement company emailed the Council for guidance on whether it should store the trailer or destroy it. The Council replied advising the company to destroy the trailer. It did not search the DVLA database to check if the number plates on the trailer related to a vehicle with valid road tax. The number plates did relate to a vehicle and the road tax did not expire until the end of July 2018. The Council failed to follow the law and the Regulations which says it should have stored the trailer until either it found the owner or until after the road tax expired. If it had followed the correct procedure the trailer would have been stored and not destroyed.
52. There was fault in:
- the procedure the Council followed when deciding to classify the trailer as abandoned;
  - its failure to contact the DVLA to trace the owner in line with the Regulations and government guidance;
  - its failure to make appropriate and proportionate efforts to contact Mr X using the information displayed on the trailer; and
  - its decision to immediately destroy, rather than store the trailer, contrary to the legislation and Regulations.
53. Mr X has suffered significant financial loss from the value of the trailer and its contents. He says he has also suffered a loss of earnings. We cannot quantify the loss of earnings with any certainty. The trailer was not in use at the time and we cannot know if or when Mr X would have next earned money from its use. However, the destruction of his trailer has caused him considerable distress and he has taken time and trouble to bring his complaint firstly to the Council and then to us.

## Recommendations

54. To put Mr X back into the same position he would have been without the fault, within three months of the final report, the Council should arrange for an independent assessor to establish the cost of providing Mr X with a trailer of similar age, quality and fittings as the one it wrongly destroyed. The Council should then pay this sum to Mr X within one month of the outcome of the independent value assessment.
55. Within three months of the date of this report it should also:
- write to Mr X to apologise to him for the failures identified;
  - pay Mr X £500 for the distress and uncertainty caused by the loss of the trailer and for the time and trouble taken to bring his complaint;
  - carry out training to remind staff of the law, regulations, government guidance and its own policy when making decisions about abandoned vehicles;
  - review its policy as set out on its website, to clarify its duty to try and find the vehicle owner;
  - consider the report to identify if any procedural change is required to prevent a similar situation happening in the future and confirm with us the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

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56. The Council has agreed to our recommendations.

### **Decision**

57. There was fault by the Council which caused injustice to Mr X. The Council should take the actions identified in paragraphs 54 to 55 to remedy the injustice.