

Council

Consideration of Council Response to Ombudsman Report

27 February 2012

Report of Head of Law and Governance

PURPOSE OF REPORT

To enable Council to consider its response to an Ombudsman report finding maladministration with injustice following an investigation into complaints relating to the imposition of car parking Excess Charge Notices (ECN's) in April and May 2011.

This report is public

Recommendations

Council is recommended to:

- (1) Note the contents, findings and recommendations contained in the appended Ombudsman report.
- (2) Instruct officers to take steps to reimburse all persons who incurred and paid excess charges in the Council's car parks between 4 and 13 April 2011 in respect of failing to pay parking charges applicable for "blue badge" holders and/or evening parking.
- (3) Instruct officers to cancel all outstanding unpaid ECN's relating to excess charges incurred in the Council's car parks between 4 and 13 April 2011 in respect of failing to pay parking charges applicable for "blue badge" holders and/or evening parking.
- (4) Notify the Ombudsman of the action that it proposes to take as set out in (2) and (3) above.

Details

- 1.1 With effect from 4 April 2011 the Council introduced car park charges for disabled "blue badge" holders and for evening parking. Prior to doing so it complied with the statutory notification requirements imposed by the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996 and indeed took many additional steps with a view to raising awareness of the new charges.

- 1.2 Notwithstanding this five of the individuals who received ECNs in April and May 2011 and were unsuccessful in appealing against them complained to the Local Government Ombudsman alleging that the Council was guilty of maladministration in failing to take sufficient steps to make drivers aware of the newly imposed charges. Four of the complainants lived outside the Council's area but one lived in Cherwell.
- 1.3 After a lengthy investigation which included a meeting between the investigating officer and relevant Council officers where it was emphasised that the Council had in its view not only complied with all statutory notification requirements but actually exceeded them, the Ombudsman has now produced a final report and this is at Appendix 1.
- 1.4 Members will note that the Ombudsman has made a finding of maladministration with injustice in respect of four of the five complaints (including the one who lived in Cherwell) and recommended that the excess charges be repaid or cancelled as appropriate in each case. However the adverse finding is limited to the period between 4 and 13 April 2011 on the basis that addition signage to publicise the new charges was erected by the Council where practicable on 14 April 2011. Other complaints that the Ombudsman has received in relation to the period after 14 April 2011 have not been pursued by him on the basis that he is satisfied with the level of publicity of the charging policy after that date.
- 1.5 Pursuant to section 31 of the Local Government Act 1974 the Council is required to consider the contents of the report within three months of its publication and notify the Ombudsman of the action that it intends to take in response. Should the Ombudsman be dissatisfied with the Council's response he can require the Council to publish a statement in the local media setting out details of his recommendations and any other supporting material that he requires plus, if the Council so requires, a statement of the Council's reasons for its response.
- 1.6 Upon the assumption that the Council accepts the Ombudsman's findings it is clear that the recommendation to reimburse or cancel excess charges incurred by blue badge holders and evening parkers between 4 and 13 April 2011 should extend to all relevant recipients of ECNs. It is therefore recommended that Council instructs officers to proceed accordingly as set out in recommendations (2) and (3) above. This will result in excess charges in the total sum of approximately £11,600 being reimbursed or cancelled.

Conclusion

- 1.7 While the report's findings are obviously disappointing to the Council's officers and the Ombudsman appears to be setting a very high benchmark for the notification of car park charges that goes over and above what is statutorily necessary and makes it difficult for local authorities to assess how far they need to go in future in this regard, it is considered that the recommended

response is the most sensible and pragmatic way forward limited as it is to a finite and short period.

Key Issues for Consideration/Reasons for Decision and Options

2.1 The following options have been identified.

- Option One** To accept the recommendations.
- Option Two** To reject the recommendations and notify the Ombudsman that the Council does not intend to reimburse or cancel the four ECNs that are the subject of the complaint. This would result in the local media statement referred to in paragraph 1.5 being published with consequential reputational damage and would potentially strain the Council's on-going working relationship with the Ombudsman.
- Option Three** To seek a judicial review of the Ombudsman's findings on the basis that they are flawed in effectively imposing on the Council notification obligations that exceed statutory requirements. Although such a course of action is not wholly without merit, and an initial Counsel's Opinion could be sought, success could not be guaranteed and, given the potential adverse costs risk of such a course of action, it is not recommended.

Consultations

- Financial** These are set out in paragraph 1.6 above in the terms of direct costs although indirect administrative costs will also be incurred in arranging the repayments due.
Comments checked by Martin Henry Director of Resources – 0300 0030102
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- Legal** These are fully outlined in the report.
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- Risk Management** Although there is some risk of reputational damage to the Council arising from this matter, that risk would be likely to increase if either of the alternative options indicated above was pursued.
Comments checked by Claire Taylor Corporate Performance Manager – 0300 0030113

Document Information

Appendix No	Title
1	Report of Ombudsman on an investigation into complaints 11 002 630, 11 003 513, 11 003 455, 11 004 866 and 11 003 634 (14 February 2012)
Background Papers	
None	
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