

Scottish Parliament Region: Highlands and Islands

Case 200601959: Argyll and Bute Council

Summary of Investigation

Category

Local government: Policy / Administration

Overview

The complainant (Mr C) raised concerns about the way Argyll and Bute Council (the Council) had consulted on a proposed Traffic Order which restricted waiting and loading on the street where he lived. He complained that the notification of the proposed Traffic Order was insufficiently clear and that this prejudiced his ability to raise objections.

Specific complaint and conclusion

The complaint which has been investigated is that the notification of a proposed Traffic Order was inadequate and this led to a reduced opportunity for Mr C, as an affected resident, to participate in the consultation on the proposals (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) apologise to Mr C for shortcomings in the notification of the proposed Traffic Order; and
- (ii) undertake a review of the way it notifies proposed Traffic Orders to reflect the concerns raised in this report, giving particular attention to the wording of advertisements and the notification of residents considered likely to be affected by proposed changes.

Main Investigation Report

Introduction

1. Mr C first approached the Ombudsman on 27 September 2006 to complain that Argyll and Bute Council (the Council) had not consulted properly with residents who would be affected by a Traffic Order. The proposed Traffic Order was first advertised in the local press on 20 February 2006 and concerned new and amended waiting and loading restrictions on various streets in the town where Mr C lived. After a period of consultation, the Traffic Order was adopted by the Council on 17 July 2006 and this decision was advertised publicly and made effective from 4 September 2006. Residents living on affected streets were notified in August 2006 that they should move parked vehicles to allow yellow lining to take place.

2. The complaint from Mr C which I have investigated is that the notification of a proposed Traffic Order was inadequate and this led to a reduced opportunity for Mr C, as an affected resident, to participate in the consultation on the proposals.

Investigation

3. In order to investigate this complaint, I considered the correspondence between Mr C and the Council and examined the legislation relevant to the making of Traffic Orders. I also made inquiry of the Council on 10 January 2007 and received their detailed response on 6 February 2007. The Council's submission included details of the consultation process such as the availability of documents for inspection, information about other public notices of the proposals, copies of notifications in the press and letters to statutory consultees.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

Background

5. In June 2005, the Council undertook preliminary consultations with a number of relevant organisations over proposals to extend waiting and loading restrictions (single and double yellow lines) in a town in the Council's area. The primary reason given for this initiative was to enhance road safety by reducing on-street parking in a number of roads.

6. The legislation governing the notification of proposed alterations such as these is The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 (hereafter referred to as the Statutory Instrument). The section of the Statutory Instrument which covers the notification of proposals said that authorities shall:

'(a) publish at least once in a local newspaper circulating in the area in which any road or other place to which the order relates is situated a notice of proposals containing the particulars specified in Part I of Schedule 1;

(b) take such other steps as they may consider appropriate for ensuring that adequate publicity about the order is given to persons likely to be affected by its provisions and, without prejudice to the generality of this sub-paragraph, such other steps may include:

(i) publication of a notice in the Edinburgh Gazette;

(ii) the display of notices in accordance with Schedule 2 in roads or other places affected by the order; or

(iii) the delivery of notices or letters to premises, or premises occupied by persons, appearing to the authority to be likely to be affected by any provision in the order;

(c) make available for inspection in accordance with Schedule 3 the documents mentioned in that Schedule.'

7. In accordance with these provisions, the finalised proposals were advertised in the local newspaper on 20 February 2006. This advertisement listed locations where the proposals could be inspected in detail and gave information about how to raise objections. At the same time, notices carrying the same information were posted on lampposts on the affected streets.

8. This process elicited four objections and, as a result, a report was submitted to the relevant Area Committee of the Council recommending that Members consider holding an informal hearing with the objectors. The purpose of the informal hearing was to consider whether to hold a formal hearing under the provisions of the Statutory Instrument. The Members agreed and the informal hearing was held on 20 June 2006 with all four objectors present. The Traffic Order was unanimously approved with the suggested addition of some small modifications.

9. Once ratified by the Council, this Traffic Order was made on 17 July 2006 and advertised in the press. It became effective on 4 September 2006.

Complaint: The notification of a proposed Traffic Order was inadequate and this led to a reduced opportunity for Mr C, as an affected resident, to participate in the consultation on the proposals

10. Mr C lived on one of the streets affected by the Traffic Order (X Street) and wrote to the Council on 27 August 2006 to object to the way the proposals were advertised. He had been made aware of the forthcoming changes by a neighbour after the consultation period had ended. He also raised concerns about the detail of the proposals as they affected X Street.

11. Mr C complained that the notification was inadequate because the advertisements did not mention the specific streets affected, local residents did not receive letters advising them of the proposals and the notices attached to lampposts were insufficient (see paragraph 7). In response, the Council said that there was no legal requirement to name the affected streets, that it would not be appropriate to send a letter to all residents and that a notice was displayed on all lampposts on affected streets. In addition, the Council drew attention to the public hearing that had been held and to the fact that local Councillors and Community Councils had been formally notified in the initial consultation in February 2006.

12. Evidence supplied by the Council (see paragraph 15) confirms that press notifications, availability of documents and notices on lampposts were carried out as advised, although the posting of notices on lampposts was restricted to those located on junctions on the streets concerned.

13. The part of the Statutory Instrument which covers the notification of proposals states that 'The authority shall ... publish at least once in a local newspaper circulating in the area in which any road or other place to which the order relates is situated a notice of proposals containing the particulars specified in Part 1 of Schedule 1'. These particulars include 'the name or other brief description of the road' affected by the Traffic Order.

14. When the Traffic Order in question was advertised, the affected area was described as 'various streets' within the town. Mr C complained that this was not specific enough to alert residents to the fact that proposals may affect the

streets where they lived. In response, the Council argued that the description complied with the Statutory Instrument's provisions and that it would be unreasonable to list all 56 streets affected.

15. The Council placed notices as suggested in section (b)(ii) and fulfilled its obligations under (c) of the Statutory Instrument (see paragraphs 6 and 7). They said that the form of consultation used was well-established and effective. A signed document supplied by the Council certifies that the lamppost signs were maintained in situ between 24 February and 17 March 2006 and maps showed their locations. Further documentary evidence records the display of the proposals in the advertised places and the names of residents who requested to view them.

16. Mr C complained about the failure to deliver letters to residents. He noted that the Council did use this method when alerting residents to temporary closures and that notices were also sent to all households telling them to remove vehicles to enable the lines to be painted. The Council responded that this is not required by the Statutory Instrument and that a different part of the legislation is used when notifying of a temporary closure. In the latter case, no consultation is undertaken.

17. The Council further noted that three residents from X Street had viewed the documents when they were made available for inspection and that this had not resulted in objections being lodged by them. The documents on deposit at the places advertised for inspection clearly indicated the extent, reasons for and locations of the proposed restrictions.

Conclusion

18. From the evidence outlined above, I believe that the Council had regard to the Statutory Instrument when undertaking the required notification and consultation. The question that remains is whether the way this notification was made was reasonable, given the statutory provisions as detailed in paragraph 6 and the extent and impact of the proposals. In relation to the decision not to send letters to households likely to be affected, while a full mailing to all residents likely to be affected, such as is permitted by the Statutory Instrument, would almost certainly have elicited more responses to the proposals, the Council made a decision which it was entitled to make.

19. In relation to the wording of the notification in the press, it is a requirement of the Statutory Instrument that the authority shall publish details of the proposals including the name or other brief description of the affected roads (paragraph 13). I have given this careful consideration, however, I do not consider that the description of the affected roads was reasonable, nor do I believe that it gave sufficient indication of the geographical extent of the proposed alterations. It is probable that a fuller description of the affected roads would also have alerted more residents to proposals that would have an impact on the streets where they lived. The Council uses complete lists of relevant addresses when making notifications in the press for other purposes and it would not have been unreasonable for them to do the same for this notification. Similarly, a small adjustment to the notices placed on lampposts confirming that the proposals related to the street in which they were placed may have given additional clarity to the consultation process.

20. In their response to Mr C's complaints, the Council said that it is the responsibility of residents to take note of proposals that have been properly advertised. Although I fully appreciate this position, I conclude that the Council restricted the opportunities for Mr C to find out about the proposed Traffic Order by the way it gave notice of the proposals. Mr C was, therefore, given less opportunity to raise his concerns about the way the proposals affected his street. I, therefore, uphold this complaint.

Recommendations

21. The Ombudsman recommends that the Council:

- (i) apologise to Mr C for shortcomings in the notification of the proposed Traffic Order; and
- (ii) undertake a review of the way it notifies proposed Traffic Orders to reflect the concerns raised in this report, giving particular attention to the wording of advertisements and the notification of residents considered likely to be affected by proposed changes.

22. I note that, in a letter from the Chief Executive on 28 September 2006, the Council had already informed Mr C that they were considering placing all traffic regulation orders on their website and I commend them for this initiative.

24 October 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	Argyll and Bute Council
The Statutory Instrument	The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999
X Street	The street in which Mr C lives

List of legislation and policies considered

The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999

The Road Traffic Regulation Act 1984