

Complaint reference:
15 008 648

Complaint against:
Sandwell Metropolitan Borough Council

The Ombudsman's final decision

Summary: The Council has accepted that it misled Mr B about culling geese at a local park. It should apologise to him and pay £150 in recognition of the extra trouble he was put to trying to find out the truth. The Council was not at fault in how it decided to go ahead with the cull or how it carried it out. It should however record the reasons for its decisions.

The complaint

1. Mr B complains that the Council:
 - Did not consult the public, take account of a petition, or give due consideration to its decision to cull Canada Geese at Sandwell Parks;
 - Told him that it was relocating the geese when in fact it was culling these; and
 - Failed to properly explain how it has complied with the law or Natural England licence.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
3. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
4. The Ombudsman cannot investigate a complaint if it is about a personnel issue. (*Local Government Act 1974, Schedule 5/5a, paragraph 4*)

How I considered this complaint

5. I have considered the information provided by Mr B and discussed the complaint with him. I have viewed Mr B's video recording of the scrutiny board meeting. I have also considered the Council's response to my enquiries including the correspondence between the parties and the Council's file records. Both parties have had the opportunity to comment on a draft of this statement.

What I found

Law and policy

6. The Canada Goose is protected by law and it is an offence to capture, kill or injure the geese, or to damage or take their nests or eggs. (*The Wildlife and Countryside Act 1981, as amended*). It is also an offence to relocate Canada geese. However Natural England can licence councils to kill the geese in order to preserve public health or safety, or prevent the spread of disease, but only when non-lethal means are ineffective.
7. Natural England has produced a best practice note for councils about how to manage problems caused by Canada Geese. It sets out means to control the population including treating the eggs so they do not hatch and culling. Natural England's technical guidance suggests how councils should go about a cull.

What happened

8. Mr B uses a public park and has an interest in wildlife. In 1997, the Council considered how to manage Canada Geese at its parks. It had been pricking eggs so they do not hatch, but only in a limited area. The Council decided to extend this to all the sites and to continue over a number of years. The Council also decided to consider culling geese if treating the eggs did not control the population.
9. In 2013, it reviewed the situation. Officer Y was responsible for managing the wildlife population and he discussed the possibility of another cull with officers before preparing a briefing note for the Council's Cabinet Member with political responsibility for countryside management. Other cabinet members were also consulted.
10. The Council approved the culling as an ongoing measure until it could control the population by other means. Officer Y's briefing paper says:
 - The Canada Geese population across the Council's parks is large with up to 700 birds at any one time and large flocks graze on public spaces.
 - The geese droppings may be harmful if swallowed, and make grassed areas unattractive and paths slippery. They may also impact on fish stocks if passed into water.
 - The Council has tried to reduce the population by pricking and oiling eggs and installing fencing around pools, but this has not worked.
 - He recommended that the Council cull in two locations and monitor whether this has been effective and gauge public reaction. It should also continue to prick and oil eggs so they do not hatch and when possible seek to redesign the parks so as to make the habitat unsuitable for large numbers of geese to thrive.
11. Mr B was at that park in 2013 and saw a council contractor rounding up the geese. Officer Y and the contractors told Mr B that the Council had relocated the geese. Mr B knew that relocation is illegal and so he questioned the Council about this. Another officer sent him some photographs of geese telling him these were the geese being released.
12. In 2014, Mr B noticed a large number of the geese had gone. Officer Y again told him that it had relocated the geese. Mr B challenged the Council about this and it later admitted that Officer Y had misled Mr B and the Council had in fact culled the geese in 2013 and 2014, using a licensed contractor.

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13. The relationship between Mr B and the officer had become fraught. Officer Y threatened Mr B and Mr B complained to the Council.
 14. The Council found that:
 - Officer Y had misled Mr B, twice telling him the Council had relocated the geese when it had in fact culled them.
 - The Council had acted within the law when it culled the geese.
 - The Council could have asked the Cabinet Member to review the situation and confirm the decision to cull in 2014, but it was not wrong for the Council to act in accordance with the approval given in 2013.
 - It could not conclude whether Officer Y had breached the Council's officer code of conduct because there was no independent witness to their conversations.
 - Although Officer Y lives in a house in the park he did not take the decision to cull the geese for personal gain.
 - Officer Y had threatened Mr B.
 15. At this time Mr B also submitted a petition to the Council against the culling of the geese and calling for the Council to continue with non lethal means. Under the Council's petition scheme, if it receives 1500 signatures the organiser may call a senior officer to give evidence at a public meeting of the relevant scrutiny board. Mr B attended the board meeting and made his case. The Council asked the board to consider a 'statement of purpose'; essentially a summary of its geese-management policy for further consultation, in light of the controversy the cull had created.
 16. The board decided not to take any action on the petition itself but did endorse the statement of purpose and asked officers to report to the committee on how it proposed to consult on this.
 17. The Council's policy allows a petitioner to ask for a review of the board's decision if he believes the Council has not followed the correct procedure. It will not hear the petition itself. Mr B asked for a review. He said the Council had not followed the process and he did not get a response to his formal complaint until after the hearing and would like to have shared the findings with the board. The Council decided that Mr B had not identified which parts of the process the Council had not followed and so the matter did not progress further. The Council did however respond to Mr B's later complaint about how the board conducted the meeting. It did not uphold his complaint.
 18. The Council has apologised to Mr B for misleading him about culling the geese. It has reminded officers about the code of conduct to which they must work.
 19. The Council has since consulted the public about the geese and whether these cause problems for park users.
 20. Mr B complained to the Ombudsman. In summary he says:
 - The Council has not given its decision to cull Canada geese due consideration. Mainly because it has not produced evidence that the geese population is too large, or has increased and crucially it has not proved that the geese are a risk to public health or safety, as required by the Natural England's licence. Also the Council did not properly record its decision when the Cabinet Member approved the cull in 2013.

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- The Council either did not carry out egg pricking properly or if it did, it did not properly record its actions.
 - The Council and its contractor lied to him, telling him it was relocating and not culling the geese.
 - The Council did not check that its contractor acted properly. Mr B says the contractor asked him to help round up the geese because it did not have enough people, and the holding pen appeared to have been erected that day contrary to the technical guidance issued by Natural England. Mr B also says the Council was not present when the birds were killed and so cannot be sure its contractors used the correct methods.
 - The Council did not send him its investigation report before the committee heard his petition. The Council knew this had findings Mr B could have used, such as that officers misled him.
 - The Council has consulted the public and interested organisations on the new draft policy, but its questionnaire was biased and it gave two different versions of the draft policy.

Was there fault by the Council causing injustice?

The Council's decision to cull the geese

21. I appreciate that Mr B has very strong concerns about animal and wildlife welfare. The geese do not have a voice of their own and rely on Mr B to speak in their interest. However, the Council did give the matter due consideration before culling geese in 2013, and there is no fault in how it reached its decision.
22. The briefing paper sets out the reasons why the Council thinks a cull necessary. The Council has given some information about how it treated eggs to stop them from hatching in an attempt to control the population before deciding to cull. The Council says it conducted a count in 2013. I agree that the evidence of this is not clear and I have taken into account that Mr B disputes the Council's figures. However it is clear that there remained around 20 geese on that site as well as goslings. It is for the Council to decide what population is manageable in the interests of public health and safety, and if there is any doubt about the size of the population before the cull, the outcome would have been the same: the Council would have culled the geese to the same or a similar number, deciding that any more than this is too many.
23. The Council must consider the risk to public health and safety, or it cannot use lethal methods to control the geese population. It is sufficient for it to do this by considering published information against its observations on site. I would not expect the Council to carry out laboratory investigations. The Council and its contractor are liable for prosecution if it cannot show that it had to cull the geese to protect public health and safety. Prosecution is outside the Ombudsman's remit.
24. Overall, this is a decision taken by the Council's Members and Director with authority to do so, after due consideration. It is open to the Council to make this decision having considered the merits of the issue. The Ombudsman would expect the Council to record the reasons for a decision and it should note this in future, even if it is only to verify the reasons set out by the officer's report.

The contractor's actions and Natural England Guidance

25. There is no evidence of fault by the contractor in how it carried out the cull itself. The contractor acts on behalf of the Council and so Council officers do not need to be present when the contractor rounds up the geese or when it kills them. I have looked at the technical guidance. This suggests good practice. The contractor is not bound by it, but should take it into account. Although the contractor should clearly not have asked the public for help, there is no evidence of fault by it in how it rounded up the geese. The Council has not produced records of how the geese were killed or if this met the technical guidance. Although there is no evidence that the contractor did not use the accepted methods and the Council does not need to be present, it must monitor its contractors and in this case its monitoring was not sufficient. The Council should consider further how it does this so that it can be satisfied the contractor acts properly on the Council's behalf.

That officers misled Mr B

26. The Council has upheld this complaint. It has apologised to Mr B and has considered its officers actions against its Code of Conduct. The Ombudsman cannot investigate personnel issues and so I have not made a finding as to whether officers breached the code or whether the Council took appropriate disciplinary action.
27. The Council is responsible for the contractor as this acts on the Council's behalf. The Council's contractor also misled Mr B when it told him it was not going to cull the geese.

How the Council handled the petition

28. Mr B's video recording of the Scrutiny Board meeting makes clear that the Council followed its published process. Mr B was given an opportunity to put his case and that the Board considered this and the petition. The Board did not endorse the petition but it is clear it understood the issues presented and reached a decision having considered these.
29. Mr B is understandably frustrated that the Council did not send him the response to his formal complaint until after the Board considered his petition. The Council's findings may have added some context to the Board's consideration, but it is unlikely to have altered the outcome, particularly as the cull had already happened. The Board asked the Council to consult on its 'statement of purpose' and present its findings and this is a reasonable means to address the concerns raised by the petition.
30. Mr B had the opportunity to ask the Council to review the Board's decision if he thought it had not followed the process. He did do this when he got the Council's response to his formal complaint. But the Council did not accept that new information that officer's had misled him was relevant to the process the Board followed when dealing with his petition and so it did not consider this as a formal review. This is not unreasonable and the Council did respond to process issues Mr B raised when he later complained again. In addition, none of these issues (such as a member of an organisation aligned with the Council sitting with officers) would have fatally flawed the hearing of his petition.

The Council's consultation

31. I have read the Council's questionnaire and Mr B's comments on this. The purpose is to gauge the public opinion about if or how the Council should manage the geese. The Council has also sought views on its draft 'statement of purpose'

which is essentially sets out its policy. Mr B may not agree with the wording of the questions but taken together, these are sufficient to gauge public opinion. Officers have referred to the draft statement as a new policy and a draft policy when it is neither of these. The Council should be clearer about this but it does not impact on the consultation significantly.

Agreed action

- 32. The Council and its contractor misled Mr B about the geese and although it has investigated the matter and apologised, this does not remedy the additional time and trouble the Council put him to as he tried to find out the truth. The Council has agreed to pay Mr B £150 in recognition of this. Mr B has refused to accept this payment because he did not expect or wish to receive any personal advantage from making the complaint.
- 33. The Council will review how it records its decisions so its reasons are clear.

Final decision

- 34. The Council was at fault when it misled Mr B about culling Canada geese. It has investigated this and apologised to him, but it should also pay him £150 in recognition of the extra time and trouble this put him to. There was no fault in how the Council reached its decision to cull the geese or how the contractors operated. The Council should however record the reasons for its decisions.

Investigator's decision on behalf of the Ombudsman