

Council offers ex gratia payment to complainant following its failure to provide correct information about dispute between neighbours

Legislation	Ombudsmen Act 1975
Agency	Local authority
Ombudsman	Anand Satyanand
Case number(s)	A8418
Date	2001

Abatement notice issued in respect of non-complying structure—verbal agreement brokered by Council regarding acceptable modifications—modifications undertaken as agreed—other party to agreement disputed terms of agreement and withdrew—Council provided incorrect calculations regarding non-compliance—owner of non-complying structure incurred nugatory expenses—Council agreed to make ex-gratia payment to resolve matter

The complainant had built a non-complying conservatory about which the Council received a complaint from a neighbour. As a result the Council issued an abatement notice. After discussions between the neighbour and the complainant, a verbal agreement was brokered by the Council which identified how the conservatory was to be modified. In reliance upon this agreement, the complainant had various components constructed at some cost. However the neighbour subsequently withdrew from the 'agreement' disputing what had allegedly been verbally agreed upon. The Council had also provided incorrect calculations as to the degree of non-compliance which further complicated matters. The complainant was left in the position of having expended money on materials which could not be used but was still required to rectify the original infringement.

The Council confirmed it had provided incorrect information to the complainant (albeit in good faith) and that it had not insisted on there being a written agreement of the required modifications to the conservatory which would have avoided any dispute between the neighbour and complainant over what had been agreed. The Council offered an ex-gratia payment of \$5,000 towards the costs incurred by the complainant. The complainant was satisfied with this outcome.

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