|  |
| --- |
| Local Authority agrees to pay difference in solicitor fees  |
|  |
| Legislation Ombudsmen Act 1975 Agency Local AuthorityOmbudsman Beverley WakemCase number(s) A12568 (previously unpublished)Date 2008 |

*Local Authority—fees charged to complainant for legal work required in relation to a building consent—not unreasonable to require Council solicitors to carry out the work as long as their fees are no higher than complainant’s own solicitor—failure to inform complainant of liability for legal fees but no material disadvantage caused by this*

The complainant was concerned that the Council required legal work (for the registration of an encumbrance) to be carried out by its own solicitors. The fee charged by the Council’s solicitors had to be paid by the complainant and he was concerned as his own solicitor had provided a lower quote to carry out the work. The requirement over-rode his right to have his own solicitor carry out the work and gave the council’s solicitor a monopoly position.

As a result of the complaint, the Council decided to rebate the additional costs charged by its solicitors over and above those quoted by the complainant’s solicitors. However the Ombudsman of the final opinion that it was not unreasonable for the council to require that the work was carried out by its solicitors, as difficulties had previously been experienced when property owners had instructed their own solicitors to register encumbrances.

The complainant was also concerned that the Council had not informed him that he would be liable for any legal fees incurred by the Council in relation to the building consent. The Ombudsman sustained this part of the complaint. The Council acknowledged that the information originally provided about fees was deficient and had revised the relevant wording in this respect.

However the Ombudsman did not consider it necessary to make any recommendation in this instance because it was not clear that any material disadvantage arose from the deficient information. Furthermore, the Ombudsman noted that if the complainant had been unsure as to who was liable for the fees, then he could have asked the Council. In addition, given that the complainant was required to pay all other costs incurred by the Council, it would be reasonable for him to have assumed that the Council’s legal fees would also be charged.

*This case note is published under the authority of the* [*Ombudsmen Rules 1989*](http://legislation.govt.nz/regulation/public/1989/0064/latest/DLM129834.html?src=qs)*. It sets out an Ombudsman’s view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*