

Local Authority unreasonably issued Trespass Notice without warning or opportunity to comment

Legislation	Ombudsmen Act 1975, Trespass Act 1980
Agency	Local Authority
Ombudsman	David McGee
Case number(s)	313104 (previously unpublished)
Date	2013

Local Authority issued a 2-year trespass notice on complainant immediately in response to disruptive behaviour at a meeting—Ombudsman of opinion that this was unreasonable—no prior warning given first

A Council announced at a meeting that it would be issuing a Trespass Notice to the complainant, for his disruptive behaviour at a meeting. The complainant left the meeting before the notice was served. The Notice was not issued until 6 days later.

The Ombudsman considered that given the Notice was not served until 6 days after the meeting, there was an opportunity to have given the complainant warning of the proposed action and to have allowed him to make a submission about the proposed notice and its length or extent of operation. The Ombudsman did not consider that it was impracticable or otherwise undesirable for the Council to have given the complainant the opportunity to comment. The Ombudsman considered the Council's actions were unreasonable and unjust action within the meaning of section 22(1)(b) of the Ombudsmen Act.

The Ombudsman noted that the complainant's misconduct was 'real' and that the complainant had a previous history of objectionable conduct towards the Council. Furthermore, it was noted that the Council genuinely believed that it had good reason to utilise its powers under the Trespass Act.

However, the issuance of a two-year Notice, effectively banning the complainant from a public building for a considerable period without first giving him the opportunity to comment was unreasonable. The Ombudsman considered that the Council should reconsider its decision to

serve the Notice, and give the complainant an opportunity to make any submissions to it before it decided whether there was any need to continue it in effect.

The Ombudsman considered as a matter of principle, that it did not seem to have been a reasonable (even if it were legal) exercise of power by a public authority to exclude someone from a public building for two years, without first giving that person an opportunity to persuade the authority why that power should not be used (or should be confined or limited in its application). The Ombudsman saw this issue as part of a much wider principle: that it is desirable that as far as possible any exercise of public power directed at an individual occurs after consulting with that person first.

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