

City Council not required to consider legal costs regarding enforcement order

Legislation	Ombudsmen Act 1975
Agency	Local authority
Ombudsman	Sir Brian Elwood
Case number(s)	C5317
Date	1999

Claim for reimbursement of legal costs incurred obtaining an Enforcement Order—Court awarded costs—insufficient to cover full costs—co-operation between complainant and City Council prior to proceedings—costs not covered in agreement—claim not upheld

The complainant sought reimbursement of legal costs from a City Council in respect of his obtaining an enforcement order. He believed the Council should have sought the order to uphold its District Plan when his neighbour formed a road by means of an easement through the complainant's land to access his property. When the Council declined his request for costs, he asked that the decision be investigated.

It was noted that the complainant had been awarded costs when the Court issued the enforcement order. The issue of the complainant's costs and who should pay them did not form part of discussions between the complainant's solicitor and the Council's solicitors when it was agreed that the best approach would be for the complainant to take the proceedings, supported by affidavits from Council officers. Examination of the files also confirmed an absence of any correspondence from the complainant's solicitors to the Council prior to their client issuing proceedings, advising the Council their client would be seeking costs from the Council.

The complaint against the Council was not sustained and the complainant was advised to discuss the matter further with his solicitors.

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