



# Ryedale District Council

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**REPORT TO:** POLICY & RESOURCES COMMITTEE

**DATE:** 28 June 2007

**REPORTING OFFICER:** Council Solicitor  
Anthony Winship

**SUBJECT:** OMBUDSMAN'S REPORT

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## 1.0 PURPOSE OF REPORT

- 1.1 To receive the Ombudsman's report dated 31 May 2007;
- 1.2 To consider approving the recommendations contained in the Ombudsman's report dated 31 May 2007.

## 2.0 RECOMMENDATIONS

- a That the recommendation in the Ombudsman's report dated 31 May 2007 be approved;
- b That a report be put to a future meeting of the Community Services & Licensing Committee outlining the measures to be taken by Officers to comply with the recommendation of the Ombudsman's report and to adopt proposals for monitoring compliance with the Ombudsman's recommendation.

## 3.0 REASONS SUPPORTING DECISION

Compliance with the recommendation in the Ombudsman's report dated 31 May 2007 will ensure that informal inspections are recorded in a manner advised by that recommendation when such inspections are conducted under the Zoo Licensing Act 1981 as amended and other legislation.

## 4.0 BACKGROUND

The terms of reference of the Policy & Resources Committee includes the consideration, resolution and monitoring compliance with the recommendations of Ombudsman's reports. The Committee may also coordinate activities of the Council.

The Ombudsman's report dated 31 May 2007 is the culmination of serial complaints made by a complainant relating to the administration of the Council's Zoo Licensing function over the last three years in relation to a particular Zoo. A copy of the Ombudsman's report is attached.

The report has been anonymised and the name of the complainant should not be disclosed.

In a letter of complaint to the Local Government Ombudsman dated 24 August 2005, the complainant raised a substantial number of complaints, which amounted to seventeen pages in length. That letter was accompanied by 53 separate documents.

The complaints were distilled to the following two by the Ombudsman's office:

“that the Council had not fulfilled its responsibilities under the Zoo Licensing Act because it had:

- not introduced conditions into the existing licence to require the zoo to take conservation measures;
- not carried out ‘informal’ inspections or had not kept records.”

Therefore all but two of the substantial numbers of complaints made were considered not to be worthy of investigation.

The context of the findings of maladministration in the Ombudsman’s report is as follows :

- (i) the Ombudsman’s report stated there was no evidence to suggest that there was any reason to be concerned about animal welfare or other standards at the zoo. On the contrary the evidence from the routine formal periodic inspections in 2003 and 2006 involving specialist vets approved by Defra suggest the management of the zoo was appropriate and effective;
- (ii) the finding of maladministration identified by the investigation has not caused injustice to the complainant.
- (iii) the Ombudsman found that all the evidence suggests that if the Council had complied with the requirement to consider, before May 2003, amending the licence by introducing conditions about conservation measures they would have decided not to do so. Conditions about conservation measures have been introduced when the licence was renewed recently.

## **5.0 INTRODUCTION**

The Ombudsman has however made two findings of maladministration against the Council which essentially relate to record keeping.

The Ombudsman’s report dated 31 May 2007 makes the following two findings of maladministration against the Council:

- (i) there was no documentary evidence that the Council had considered imposing conditions in the licence requiring conservation measure following the introduction of the 2002 regulations;

- (ii) not keeping a systematic record of the informal inspections, although it was accepted that evidence that informal inspections had taken place is contained in correspondence;

The Ombudsman accepts that inspections are undertaken thoroughly and conscientiously and has no criticism of the attitude of the officers involved. The Zoo is visited more often than the one informal inspection that is required in any year that does not include a routine formal periodic inspection.

Members are asked to note the following two categories of maladministration:-

- (i) maladministration with a finding of injustice;
- (ii) maladministration with no finding of injustice.

The first type of case, maladministration with a finding of injustice is the most serious category of maladministration. The Ombudsman's report dated 31 May 2007 makes a finding of the second category namely maladministration with no finding of injustice.

In cases of maladministration with a finding of injustice the local authority is legally obliged to consider the Ombudsman's report within three months and notify the Ombudsman of the action which the authority has taken or propose to take. That obligation does not apply in this case. Notwithstanding that, it was considered appropriate to report the Ombudsman's report to the Policy & Resources Committee.

Members are advised that there is no right of appeal against an Ombudsman's report. The report of an Ombudsman may be challenged by judicial review if for example it contains an error of law.

The focus of this report is to consider the recommendation of the Ombudsman in her report dated 31 May 2007 and to consider whether or not the recommendation should be supported by the Council.

## **6.0 POLICY CONTEXT**

The recommendations in this report seek to ensure that informal inspections required under the Zoo Licensing Act 1981 as amended are undertaken in accordance with the recommendation in the Ombudsman's report and the principles of good administration. It also seeks to secure continuous improvement in the delivery of the service.

## **7.0 REPORT**

The two key paragraphs in the Ombudsman's report dealing with the finding of maladministration against the Council are paragraphs 34 and 35 which are worth quoting as follows :

*34 I also found maladministration in not keeping a systematic record of the informal inspections which are part of a statutory system of*

*monitoring and control. The Guidance encourages councils to combine inspections for the Zoo Licensing Act and the Health & Safety at Work etc Act. The health and safety of people living near by the zoo and the welfare of animals are crucial considerations for councils in discharging their licensing responsibilities. The Council has an important role in inspecting the regime operated by the zoo to protect the health and safety of workers and visitors as well as the welfare of animals. I have no reason to doubt that it does this thoroughly and conscientiously and I have no criticism of the attitude of the officers involved. However, In the event of a serious incident the Council's failure to record the observations made and judgements reached during its informal inspections would be damaging to its reputation and may have other consequences.*

35. *There is also an issue of public confidence - someone who raises concerns, as Ms Campbell has done is entitled to expect that the Council can demonstrate that it has properly implemented the system of inspection which the law requires. This includes a record, drawn up prior to the event of what is to be inspected and why and the results of such an inspection.*

In reading paragraph 34 which refers to health and safety, Members are particularly asked to note paragraph 10 of the Ombudsman's report which is in the following terms :

*"10 Government guidance draws attention to the Health & Safety at Work etc Act 1974 and encourages Councils to arrange to inspect for both Acts at the same time. Guidance issued by the Health and Safety Executive provides that the frequency of health and safety inspections should be determined by reference to a risk rating assessment of premises having regard to a number of factors including confidence in management. The Council's risk rating of the zoo has concluded that risk is 'low'."*

The Ombudsman makes the following recommendation at Paragraph 37 of her report :

*"37 I recommend that the Council develops a systematic approach to the issues to be considered during an informal inspection and records the results of those inspections. The system should be in place for the next informal inspection following the renewal of the licence. It is for the Council to decide whether the results of the inspections should be reported to Councillors at all, by exception or routinely."*

In making her recommendation the Ombudsman is supported by guidance issued by the Commission for Local Administration in England in a document called "Good Administrative Practice" which was first published in 1993 and reprinted in May 2001. That guidance document lists 42 principles or axioms of good administration .

Axiom 28 is as follows :

*"28. Compile and Maintain adequate records*

*Compiling and maintaining proper records is a basic necessity, but one which the Ombudsmen have observed is sometimes neglected. It is prudent to make a record of anything which is not trivial or transitory. Meetings, site visits, telephone calls and conversations with callers at the office will normally merit a note being made unless it is quite clear that this is not necessary. Care too should be taken about the maintenance of records and councils are well advised to have systems for tracking files so as to ensure they are always available when needed, and are not mislaid. Records need to be retained for a reasonable period."*

It is accepted that Officers need to keep more systematic records of its informal inspections and will continue to follow Defra guidelines that are presently under review. It is however worth noting in this particular case that there was clear evidence in correspondence that informal inspections had taken place.

Against this background Members are recommended to support the recommendation of the Ombudsman contained in Paragraph 37 of her report.

The recommendation to Members is that a report be put to a future meeting of the Community Services & Licensing Committee outlining the measures to be taken by Officers to comply with the recommendation of the Ombudsman's report and to adopt proposals for monitoring compliance with the Ombudsman's recommendation.

Officers will take into account all relevant legislation and guidance including both the Zoo Licensing Act 1981 as amended and the Health and Safety at Work etc Act 1974, and where practicable all informal inspections will cover both the 1974 and 1981 Acts at the same time.

## **8.0 OPTIONS**

Since the Ombudsman's recommendation on record keeping is grounded on one of the principles of good administration, the only reasonable option is considered to be to endorse the Ombudsman's recommendation.

## **9.0 RESULT OF OPTION APPRAISAL**

Endorsing the Ombudsman's recommendation is the course of action recommended in this report.

## **10.0 FINANCIAL IMPLICATIONS**

There are no material financial implications in endorsing and implementing the Ombudsman's recommendation.

## 11.0 LEGAL IMPLICATIONS

If the recommendations in this report are adopted the risk of a legal challenge with respect to informal inspections undertaken in accordance with the discharge of the Councils Zoo licensing function and inspections under the Council's health and safety functions will be minimized. No other significant legal issues have been identified.

## 12.0 RISK ASSESSMENT

The recommendations in this report seek to:

- (a) Eliminate the risk to the reputation of the Council which would be caused in the event of a failure to comply with the recommendation of the Ombudsman.
- (b) minimise the risk associated with a failure to maintain adequate records of informal inspections in line with the Good Administration Practice guidance mentioned previously under paragraph 7.0 above

Against the background of the Ombudsman's report it is worth mentioning that the Environmental Health service year on year inspects many hundreds of premises under a range of legislation and is subject to regular internal and external audit. The subsequent compliance reports present a picture of a responsible and thorough service operating in line with legislation and guidance. The food safety service for example was awarded and has maintained accreditation to ISO 900: 2000 since 2002. This rare achievement among Environmental Health services nationwide demonstrates an on going commitment to continuous improvement and quality.

## 13.0 CONCLUSION

The recommendations in this report are considered to be appropriate based on the issues raised in this report

### Background Papers:

Good Administrative Practice – Guidance issued by the Commission for Local Administration in England first published in 1993 and reprinted in May 2001.

### OFFICER CONTACT:

Please contact Anthony Winship, Council Solicitor, if you require any further information on the contents of this Report. The Officer can be contacted at Ryedale House, Telephone 01653 600666 ext. 267 or e-mail: [anthony.winship@ryedale.gov.uk](mailto:anthony.winship@ryedale.gov.uk)



The Commission for  
Local Administration in England

# Report

on an Investigation into  
Complaint No 05/C/09026 against  
Ryedale District Council

3i May 2007

# Investigation into Complaint No 05/C/09026 Against Ryedale District Council

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## **Report Summary**

### **Subject**

The report is about conditions to be attached to a licence to operate a zoo and the regime of informal inspections by Council officers.

### **Finding**

The Ombudsman found maladministration by the Council with regard to its record keeping but no evidence that this had caused harm to animal welfare.

### **Recommended remedy**

The Council should develop a systematic approach to its inspections, the results of which should be recorded.

## Introduction

1. Ms Campbell complained that the Council had not fulfilled its responsibilities under the Zoo Licensing Act because it had:
  - not introduced conditions into the existing licence to require conservation measures;
  - not carried out 'informal' inspections or had not kept records.
2. Ms Campbell also complained that the Council had not given proper consideration to her representations about what she saw as shortcomings in the care and welfare of animals at the Zoo. The Council's response was that it relied heavily on expert assessment by officials appointed by the Department for the Environment, Food and Rural Affairs (DEFRA) and others. Previous official inspections involving specialist vets approved by DEFRA had not identified any concerns about animal welfare or standards at the Zoo. Another DEFRA inspection was imminent at which the inspectors would be made aware of Ms Campbell's concerns. The Council's approach was pragmatic and sensible and this aspect of the complaint was not investigated.
3. For legal reasons<sup>1</sup>, the names used in this report are not the real names of the people and places concerned.
4. An officer of the Commission has spoken with Ms Campbell, examined the Council's files and interviewed Councillors and officers of the Council. Both Ms Campbell and the Council have had the opportunity to comment on a draft of this report.

## Summary of the legislation

5. The Zoo Licensing Act 1981 says that zoos that are open to the public for more than 7 days a year must have a licence from their council. The council can put conditions in the licence.
6. A licence lasts for 6 years. During the life of a licence the council can alter the terms if it thinks it necessary to ensure the proper conduct of the zoo.
7. If a council is satisfied either that the licence conditions are not being met or that the conduct of the zoo is unsatisfactory it can order the zoo to close. The steps that a council must take before ordering a zoo to close are set out in the Act.
8. The Act requires zoos to be inspected. There are four types of inspection:
  - licence inspections that must be made before a licence is granted, renewed or altered and, in some cases, involving inspectors nominated by the Secretary of State;

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<sup>1</sup> Local Government Act 1974, section 30 (3)

- periodical inspections that should take place about every 3 years jointly between inspectors employed by the council and inspectors nominated by the Secretary of State;
  - special inspections that the council can do whenever it thinks it necessary that must involve a suitably experienced vet when animal health is concerned;
  - informal inspections by a single inspector employed by the council in any calendar year when there has been no other type of inspection.
9. Periodical inspections and certain licence inspections are undertaken by a team of local authority nominee(s) and the Secretary of State's inspectors. Special, informal and certain licence inspections are conducted by people whom the licence authority considers competent. The Secretary of State's inspectors are specialist vets who are subject to a professional code of conduct. The Council can charge the zoo operator fees for licences and reasonable costs incurred in making inspections.
10. Government guidance draws attention to the Health & Safety at Work etc. Act 1974 and encourages Councils to arrange to inspect for both Acts at the same time. Guidance issued by the Health and Safety Executive provides that the frequency of health and safety inspections should be determined by reference to a risk rating assessment of premises having regard to a number of factors including confidence in management. The Council's risk rating of the zoo has concluded that risk is 'low'.
11. In January 2003 Regulations<sup>2</sup> came into effect and amended the Act. A new Section 1A was introduced that requires conditions about conservation measures to be included in every licence. The conservation measures include:
- participation in research or training or exchange of information or breeding or the repopulation of an area or the reintroduction of animals to the wild ; and
  - promoting public education and awareness;
  - accommodating animals under conditions that aim to satisfy the biological and conservation requirements of the species;
  - preventing escape of animals and the intrusion of vermin;
  - keeping up-to-date records.
12. The Regulations say:
- 'Existing licences*  
 27 (1) *This regulation applies to all zoos [for] which a licence is in force ... on 8 January 2003....*  
 (2) *The local authority shall before 1 May 2003 secure that each licence granted by them under the Act contains such conditions as the authority think necessary or desirable to secure that the conservation measures referred to in section 1A of the Act are implemented at the zoo and may alter the licence for that purpose.'*

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<sup>2</sup> The Zoo Licensing Act 1981 (Amendment) (England and Wales) Regulations 2002

13. Guidance produced by DEFRA in October 2003 says:
- 'Local authorities must implement these requirements by attaching appropriate conditions in respect of each requirement to the licences of all zoos. Guidance for existing licences is set out below ...'*
- 'Local authorities are required in accordance with regulation 27 to ensure that, for all zoos other than ones which close before 1 May 2003, the licence has before that date conditions attached to it to secure implementation of the conservation measures set out in section 1A of the Act.'*
14. The 'model' condition, provided as an annex to the Guidance, is attached at the end of this report.
15. When Councils are considering conditions about conservation measures they are encouraged by the Guidance to look at the Secretary of State's Standards of Modern Zoo Practice and the Zoos Forum Handbook.
16. The Guidance says that Councils can decide on the arrangements for informal inspections but that a written record should be kept and the inspector may wish to examine:
- whether management appears to be satisfactory;
  - whether conditions are being met;
  - whether recommendations from previous inspections are being implemented and the changes that have taken place.
17. The Guidance says that it should not be taken as an authoritative statement of the legal effect of the Act.

## Events

18. The Zoo about which Ms Campbell complains had a licence issued by the Council in 2001 i.e. before the conditions on conservation measures had to be included. There are five standard conditions in the licence.
19. There is no documentary evidence that after the Regulations came into effect, the Council considered whether it was necessary or desirable to alter the licence to include conditions on the conservation measures then introduced into the Act.
20. A periodical inspection took place in October 2003. The report of the inspections says that conservation is 'satisfactory' with a need for a plan to detail '*...a continuing active approach to conservation*'. Of the 65 questions about whether aspects of the operation and management of the Zoo was satisfactory, only two -- about the adequacy of conservation and research efforts -- were not. The inspectors made a number of recommendations, most were about specific exhibits and none were about conservation.

21. Since then an officer of the Council has made a number of informal inspections. The officer does not have specialist knowledge of the conservation needs of the various species at the Zoo but he has attended two approved DEFRA zoo licensing courses and is considered by the Council competent to undertake informal inspections. The Zoo is informed in advance of the inspections and a member of staff accompanies the officer. The officer has not kept systematic records of the inspections and has not reported the results to a Committee. Evidence that the informal inspections have taken place is contained in correspondence.
22. The Council has argued at length that it should not be criticised for not systematically recording or reporting informal inspections because neither the law, nor the Council's own policy and procedures require it to do so. It has expressed confidence in the ability of the Zoo's management and says that its inspections have raised few or no concerns to do with health and safety issues.
23. Special Inspections took place in April 2003 when new species were introduced to the Zoo and in February 2006 after a chimpanzee had escaped from its enclosure and had to be shot. The result of the 2006 special inspection was reported to the Community Services and Licensing Committee with a recommendation that the licence should be amended to include a condition that the Zoo should apply to be a member of the European Association of Zoos and Aquaria (which promotes wildlife conservation and environmental education). The Committee did not accept the recommendation.
24. Ms Campbell visited the Zoo and complained to the Council in spring 2005 that some of the animals were being kept in unsatisfactory conditions. She began writing to the Council and asked questions at meetings of the Council. She has detailed many instances where she feels that the practice at the Zoo does not comply with the Secretary of State's Standards for Modern Zoo Practice. The Community Services and Licensing Committee considered her complaint. The Committee decided not to take any further action but did agree, as requested by the Zoo, to bring the next periodical inspection forward by about six months to mid-2006.
25. The Council's Overview and Scrutiny Committee also considered the matter and referred the Community Services and Licensing Committee's decision back for reconsideration.
26. The Zoo's vet (who is approved by DEFRA to make periodical inspections of other zoos) was invited to and attended the second meeting of the Community Services and Licensing Committee to respond to Ms Campbell's concerns. The Committee resolved to draw the concerns to the inspectors at the periodical inspection and not to pursue any further investigative or enforcement action.

27. In the course of long and acrimonious correspondence with the Council Ms Campbell formed the view that there was maladministration by the Council:
- in not fulfilling its responsibilities under the Zoo Licensing Act,
  - relying too much on the input of DEFRA nominees at periodical inspections;
  - failing to include conservation conditions in the licence;
  - being overly influenced by the Zoo's management; and
  - failing to accept the recommendation from the 2006 Special Inspection.
28. The Council's senior legal officer says that the Council has complied with the law, regulations and guidance because:
- the licensing control regime is of three year periodical inspections supported by special inspections as a council finds necessary and informal inspections do not need to be done by someone with specialist knowledge;
  - a council can fulfil the requirement of regulation 27 to impose 'such conditions' as it thinks fit by deciding to impose no conditions and the language is permissive (may) rather than mandatory (shall).
29. An application to renew the Zoo's licence was considered in November 2006. A new licence has been issued, incorporating the required conservation conditions.

### **Ombudsman's finding and decision**

30. I did not find maladministration by the Council in relation to the complaints that it failed to include conservation measures and failed to include conditions recommended by the 2006 Special Inspection. The wording of Regulation 27 gives the Council discretion about whether to impose conditions and the content of any such conditions. In considering Ms Campbell's complaints and its powers under the Zoo Licensing Act the Council applied its discretion and decided not to impose conditions. It also decided not to accept the recommendation from the 2006 Special Inspection. It is entitled to make those decisions I do not find that it has acted with maladministration. Ms Campbell disagrees with the decisions and she is entitled to promote her view of the situation. However, decisions taken at discretion must finally rest with the elected Councillors who have been appointed by the Council to take decisions on licensing the Zoo.
31. I did not find maladministration by the Council in relation to the complaint that it relies too heavily on the input of specialist vets approved by DEFRA to undertake zoo licensing. It seems both inevitable and reasonable that a council officer with responsibility for zoo licensing should rely heavily on the expertise of the specialist inspectors approved by DEFRA when undertaking licence, special and periodical inspections

32. As recorded above, there was no evidence to suggest that there was any reason to be concerned about animal welfare or other standards at the Zoo. On the contrary, the evidence from the periodical inspections involving specialist vets approved by DEFRA suggested that the management of the Zoo was appropriate and effective.
33. However, I did find maladministration by the Council in relation to the 2002 Regulations that mandate the Council to consider imposing conditions in the licence requiring conservation measures. There is no evidence that the Council fulfilled this mandatory requirement and this is maladministration.
34. I also found maladministration in not keeping a systematic record of the informal inspections which are part of a statutory system of monitoring and control. The Guidance encourages councils to combine inspections for the Zoo Licensing Act and the Health & Safety at Work etc. Act. The health and safety of people living near by the zoo and the welfare of animals are crucial considerations for councils in discharging their licensing responsibilities. The Council has an important role in inspecting the regime operated by the zoo to protect the health and safety of workers and visitors as well as the welfare of animals. I have no reason to doubt that it does this thoroughly and conscientiously and I have no criticism of the attitude of the officers involved. However, In the event of a serious incident the Council's failure to record the observations made and judgements reached during its informal inspections would be damaging to its reputation and may have other consequences.
35. There is also an issue of public confidence - someone who raises concerns, as Ms Campbell has done is entitled to expect that the Council can demonstrate that it has properly implemented the system of inspection which the law requires. This includes a record, drawn up prior to the event of what is to be inspected and why and the results of such an inspection.
36. The maladministration identified by this investigation has not caused injustice to Ms Campbell nor jeopardised the welfare of animals at the Zoo. All the evidence suggests that if the Council had complied with the requirement to consider, before May 2003, amending the licence by introducing conditions about conservation measures they would have decided not to do so. Conditions about conservation measures have been introduced when the licence was renewed recently. Ms Campbell is not affected to any greater extent than any other person living in the area by the Council's maladministration in failing to keep records of its informal inspections.
37. However, I consider that the issue of recording informal inspections affects the public interest and is of sufficient importance to warrant publication of this report.

38. I recommend that the Council develops a systematic approach to the issues to be considered during an informal inspection and records the results of those inspections. The system should be in place for the next informal inspection following the renewal of the licence. It is for the Council to decide whether the results of the inspections should be reported to Councillors at all, by exception or routinely.



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31 May 2007



## DEFRA GUIDANCE      MODEL CONSERVATION CONDITION

**Please Note:** In some cases the suggested model condition may need to be adapted for the circumstances of the zoo in question. The breeding of wild animals in captivity, or the re-population and/or re-introduction activities should be applied only where it is appropriate to the zoo. Where it is appropriate, more tailored or specific text might be more suitable.

Local authorities may, of course, vary and adapt the text of any part of the model condition, or design their own condition, but the condition must in all cases meet the requirements of new section 1A of the Act.

Authorities are reminded that under section 16(2) of the Act they are required to give licence holders an opportunity to make representations before altering a zoo licence.

### Example condition

[Name of zoo] must:

- promote public education and awareness about biodiversity conservation. In particular, provide information about the species of wild animals kept in the zoo and their natural habitats.
- accommodate and keep the animals in a manner consistent with the standards set out in the Secretary of State's Standards of Modern Zoo Practice.
- prevent escapes and put in place measures to be taken in the event of any escape or unauthorised release of animals.
- participate in at least one of the following:
  - research which benefits the conservation of wild animals
  - training in relevant conservation skills
  - exchanging information about the conservation of wild animals

[zoo] must keep information to show how it has complied with this condition and supply it to the local authority upon request.