

Special Report issued under s28 of the
Public Services Ombudsman (Wales) Act 2019
following a complaint made by Mr N against
Brecon Beacons National Park Authority

A report by the
Public Services Ombudsman for Wales
Case: 202104092

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Introduction

This report is issued under s28 of the Public Services Ombudsman (Wales) Act 2019 (“the Act”).

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as Mr N.

Summary

In 2019 Mr N complained to the Ombudsman about the Brecon Beacons National Park Authority's ("the NPA") delay in its response to his complaint, which had taken almost 3½ years to determine, and the actions taken by the NPA to implement the recommendations contained in the Monitoring Officer's report of the investigation of the complaint. These included carrying out work to resurface a track and move/replace a cattle grid, as well as fencing on common land (which required the consent of the Welsh Government). The Ombudsman upheld Mr N's complaint, and in the resulting report of 16 September 2019 made a number of recommendations intended to ensure that the actions were completed "as soon as reasonably practicable", which the NPA agreed to implement.

In September 2021 Mr N complained to the Ombudsman again about the lack of progress. The complaint was settled on the basis of the NPA agreeing to complete the work on the track and cattle grid by the end of March 2022, and to complete the fencing within 3 months of the Welsh Government's consent for the work. By the end of October 2022, although work had been carried out, it had not been completed, and the application to the Welsh Government had "timed out" and needed to be re-submitted.

Being dissatisfied that the NPA had not complied with the recommendations of the 2019 report or the terms of the settlement, the Ombudsman invoked her powers under section 28 to issue a Special Report. Although the Ombudsman understood that the NPA had at times found itself in a difficult position, the situation had been allowed to drift for far too long and it was wholly unacceptable that the matter had not been concluded. She recommended that the NPA, within 1 month:

- a) Issues a written apology to Mr N from the Chief Executive for the way in which the NPA has handled this matter.
- b) Pays Mr N the sum of £1000 in recognition of the time and trouble to which he has been put in pursuing his complaint.

The Ombudsman also recommended that the NPA:

- c) Expedites as a matter of urgency the works included in the tender (the construction of the track and the re-siting of the cattle grid). Such works should be completed as soon as possible, and, at the latest, by the **end of March 2023**.
- d) Does everything within its power to expedite the determination by the Welsh Government of the common land consent application; the fencing should be completed within 3 months of the Welsh Government granting consent for the work.
- e) Formally reports this report to the next meeting of the Audit & Governance Committee of the NPA. Thereafter, the matter should be a standing item on the agenda of that Committee until the Committee is satisfied that the work has been completed, whereupon the NPA should confirm to me that it has been and provide appropriate documentary/photographic evidence of this.
- f) Within **4 months** of the issue of the report, undertakes a review of its handling of Mr N's complaint and its subsequent actions to identify lessons which can be learned, with a view to ensuring that such errors and delays do not re-occur in future. It should ensure that there is sufficient oversight to ensure any future recommendations made are complied with.

The NPA agreed to implement the recommendations.

My Jurisdiction

1. Under Section 6 of the Act, I am able to take any action I consider appropriate to resolve a complaint as an alternative to investigating it. This can include agreeing with a public body that it will take certain actions within a stipulated time. Where I am not satisfied that the relevant body has carried out the actions it explicitly agreed to undertake within the time stipulated, I may issue a special report and make further recommendations to remedy injustice to the person who made the complaint and also to prevent similar injustice being caused to any person in the future.

The Background

Mr N's First Complaint

2. Mr N and his wife own property, access to which is over an unmade track linked to a road maintained by the local authority; the track in part runs over registered common land. In **2011/2012** there were discussions between Mr N and the Brecon Beacons National Park Authority ("the NPA") over the condition of the track and water emanating from NPA land onto the public highway. A further dispute arose when Mr N erected fencing (alleged by the NPA to be on common land) to protect a ditch he agreed to open up alongside the boundary of his land to complement the drainage works the NPA agreed to carry out.

3. Mr N complained to the NPA in May **2015**. The then Monitoring Officer of the NPA investigated the complaint and, after a number of drafts of his report ("the MO report"), the final version was sent to Mr N on or about 1 October **2018**. The MO report found that there had been "maladministration in how the events of 2012 were handled by [the NPA]" and referred to confusion, lack of internal communication and a general sense of drift. It made a number of recommendations, including that the NPA should carry out work dealing with the condition of the track and make an application to the Welsh Government to regularise its own breach of regulations regarding common land. At its meeting in November the NPA accepted the MO report's findings and approved steps to:

- Regularise/remove fences.

- Re-site a cattle grid.
- Undertake improvements to the surface of the track, and thereafter to advise the local Graziers Association that future maintenance thereof would be their responsibility.

The fences and cattle grid had been installed by the NPA many years previously.

4. Mr N complained to my predecessor Ombudsman (“the Ombudsman”) in January **2019**, partly about the delay in the NPA’s response to his complaint, and the actions taken by the NPA to implement the recommendations of the MO report.

5. The Ombudsman issued a report on his investigation of Mr N’s complaint on 16 September (“the Ombudsman’s report”). He upheld Mr N’s complaint. The Ombudsman noted the NPA’s explanation that some of the work which it had agreed to carry out required planning permission (the track and cattle grid), and common land consent from the Welsh Government (fencing); he also noted that a report presented to the NPA meeting in June showed that slow progress was being made in respect of the action plan presented to the November 2018 meeting. He urged the NPA to “make every effort to ensure that the actions are completed as soon as reasonably practicable” and recommended that update reports should be presented to NPA meetings on a 3-monthly basis “so that Members can ensure that the matter is progressed in a timely manner”. He also recommended that Mr N be kept updated with the same regularity. The NPA agreed to implement the recommendations.

6. Following the issue of the report, the Ombudsman’s Investigation Officer contacted the NPA on several occasions to enquire as to the progress of the work. In April **2021** the NPA said that the planning application was to be considered on 6 July (the NPA is the local planning authority for the area, so itself considers applications for planning consent), and that the application to the Welsh Government and necessary advertisements “would be rolled out soon”.

Mr N's Second Complaint

7. Mr N complained to the Ombudsman again in September **2021**. He said the planning application had not been granted until July, and that, despite the delay, "nothing has been done".

8. The Investigation Officer asked the NPA for an update on the progress of the outstanding works. The NPA explained that the plan for the works had been contentious, with various local parties objecting to different elements of the plan. It also said that the NPA had experienced issues with governance and decision-making, which were highlighted in a Welsh Government Audit Report. It detailed the changes which had taken place in personnel in the NPA over the preceding 2 years, together with the disruption caused by the COVID-19 pandemic. The NPA said that tenders for the surfacing of the track and re-siting of the cattle grid were to be submitted by the beginning of December, in the hope that work would start early in the new year; it said the common land application (for the fencing) was in the hands of the Welsh Government, and it could not comment on the timescale for the outcome of the application. In January **2022** the NPA told the Ombudsman that the common land application was still with the Welsh Government, but that it had instructed a company to do the other work, which would be starting "very soon".

9. In view of the information which the NPA had provided, the Investigation Officer contacted the NPA to propose a settlement of Mr N's complaint. The NPA agreed the following:

- That it would complete the works included in the tender (the construction of the track and the re-siting of the cattle grid) by the end of March 2022.
- That it would complete the fencing (the subject of an application to the Welsh Government) within 3 months of the Welsh Government issuing its consent for the work.

Mr N's complaint was settled on this basis on 14 February. The letter from the Ombudsman to the NPA indicated that the "only proviso is that these timescales are subject to weather conditions allowing and providing there are no delays with the supply of materials".

Implementing the Recommendations/Settlement

10. The following is a summary of the information provided to my office by the NPA between March and August 2022:

- 8 March: work to begin 21 March, should take around 2 weeks to complete.
- 24 March: work to begin Monday [28 March].
- 6 May: work going well, but waiting for a cattlegrid (as wanted a noise-free one), 2-3 week delay with the manufacturing company.
- 31 May: cattle grid not acceptable to a local Association, different type ordered, if not in stock may take about 3 weeks to obtain.
- 19 July: drainage pipes fitted have been damaged by heavy vehicles, replacement materials ordered, will ask contractor to return when available; arranging meeting with engineer "to review the work and discuss the siting of the cattle grid".
- 5 August: meeting to be held 9 August to resolve technical issues raised by farmers; contractors can return within about 2 weeks of issues being resolved.

11. On 25 August my Chief Legal Officer & Director of Investigations and the Investigation Officer had a meeting with the NPA's Monitoring Officer to discuss the position. It was agreed that the NPA would provide information regarding the following matters by 5 September:

- An update on when all the works to the site (the cattle grid and track) would be completed.

- An explanation of the issue with the cattle grid, and why the further works the NPA said were required were needed.
- An update on the consent from the Welsh Government, and details of the steps the NPA had taken to follow this up.
- The actions the NPA had taken concerning a claim Mr N had made that contractors had damaged his fencing.

12. On 5 September the NPA provided its update. It said the damage to the drainage pipes was now being seen as vandalism “by people intent on stalling, or stopping the project”; it explained the difficulties it had experienced regarding the position and design of the cattle grid, that the new position of the cattle grid had been settled, and that work should begin on the track and cattle grid during the week commencing 5 September and should be completed within 2 weeks. When prompted for information on the remaining items, the NPA said that the damage to Mr N’s fence would be made good at the end of the road construction phase; it said the common land application was being dealt with by agents, and referred to having asked a local Association for minutes of a meeting. It also said it was chasing another Association as part of the process [both Associations have an interest in the use of common land].

13. On 13 September the Investigation Officer asked for clarification of her understanding of what the NPA had said – that the common land application seemed to be being held up by the Associations referred to above and that there was no definitive timescale for the other works to be completed. When prompted on 22 September for a response to this request, the NPA apologised for overlooking it and promised the information that day. By 4 October nothing further had been received by the Investigation Officer.

14. I met the Chief Executive of the NPA on 5 October and expressed my concerns about the situation. On 7 October I received an email from the Chief Executive informing me that tarmac had been laid over the whole length of the track (although not sufficiently deep) and the cattle grid had been installed; the fencing was to be completed “over the next couple of

weeks”, and officers were to meet the contractor on site to review snagging issues. The work was to be completed by the end of October, subject to any issues with the contractor or inclement weather.

15. The Chief Executive provided a brief update on 19 October. Snagging issues had been recorded by officers at a site visit and were to be discussed with the contractor, but the fencing work had not begun; she said she would send a more detailed report “once the photographs and notes of the visit have been compiled”. Having heard nothing further, the Investigation Officer emailed the Chief Executive on 3 November requesting the more detailed report promised. The Chief Executive’s Personal Assistant acknowledged the email on 8 November indicating that the Chief Executive would be in touch as soon as possible. On 18 November I emailed the Chief Executive asking her to give the matter her urgent attention.

16. On 24 November I received an email from the Chief Executive. She apologised for the frustration and inconvenience caused to Mr N and other local people, and for the fact that the scheme had not been completed. She said that “substantial progress” had been made, but that there were “still some elements to complete”. She provided an update which showed that:

- The track had been surfaced, and a snagging list was to be agreed with a contractor at an imminent meeting.
- The cattle grid had been installed, but there were snagging issues.
- The common land consent application to the Welsh Government would, for technical reasons, “have to be repeated”.

17. On 30 November I emailed the Chief Executive indicating that I was minded to issue a special report under s28 of the Public Services (Wales) Act 2019, due to the NPA’s continued failure to meet agreed deadlines and to fully implement the recommendations originally agreed in the Ombudsman’s September 2019 report and in the settlement agreed in February 2022.

18. The Investigation Officer requested final information and updates, which the NPA provided on 1 December. In summary:

- A snagging report had been compiled, and largely agreed with the contractors; the NPA was to discuss with the scheme designer those issues (the depth at which the tarmac surface was laid, and the damaged and pitted surface itself) which were not agreed.
- Fencing contractors had been sought but could not do the work until January at the earliest; the NPA was exploring other options.
- The common land consent application (made in September 2021) had “timed out” in October 2022 (seemingly because of issues relating to the NPA failing to comply with the requirements for consultation and the posting of notices).

No timescale was provided by the NPA for completion of any of the work which was agreed to be carried out, either following my predecessor’s report in September 2019 or the settlement agreed in February 2022.

The NPA’s comments on a draft of this report

19. The NPA acknowledged the significant delays which had occurred. It said that the biggest issue had been that the road works were outside the expertise and general scope of work usually undertaken, and that this had seriously impacted its ability to deliver the scheme in a timely manner. It apologised to Mr M for the delays and accepted the recommendations. In addition, it said it was re-assessing how it commissioned services and monitored them and was tightening its complaints procedures.

20. The NPA said that the fencing works would be undertaken “by the week ending 29 January 2023”, the snagging works were being managed and specialist external advice had been sought to address the outstanding issues. It confirmed the common land consent application to the Welsh Government had been made on 1 December 2022.

Mr N's comments on a draft of this report

21. Mr N said that the NPA's contractors had destroyed his fence, had removed a substantial length of an ancient dry-stone wall on his land, as well as removing a large number of shrubs. He said that they had scattered subsoil and shale onto the sward there, which he said was unlikely to recover. He said that the stress caused by the NPA's actions was likely to have contributed to his serious ill-health.

Analysis and Conclusions

22. I have included above the background to this special report, so that the delays to which I will refer in this section can be understood in context.

23. Mr N first complained to the NPA in May 2015. It took the NPA 3½ years to conclude that complaint, and to accept the Monitoring Officer's findings and recommendations. The Ombudsman's report was issued in September 2019, containing recommendations intended to ensure that the NPA complete the outstanding work as quickly as possible; the NPA agreed to implement the recommendations. The Investigation Officer "chased" the NPA for progress over the course of the following 2 years, but it was not until July 2021 that the NPA granted planning permission for some of the work, and, by that time, the application to the Welsh Government for consent to carry out work on common land had not even been made. The NPA has not provided evidence that NPA members were formally updated at appropriate governance fora as it had agreed to do.

24. Mr N complained to my office again in September 2021. Following further enquiries with the NPA about the progress achieved towards completing the outstanding work, Mr N's complaint was settled in February 2022 on the basis of the agreement made by the NPA to complete the work on the track and cattle grid by the end of March; in addition, the fencing was to be completed within 3 months of the Welsh Government's consent.

25. Despite regular reminders by the Investigation Officer, the NPA has not completed any element of the works it formally agreed with my predecessor on 2 occasions. Neither has it been able to provide a

timescale by which the works will be completed. The list of snagging issues in respect of the work which has been carried out is long and has not been completely agreed with the contractors. The common land application to the Welsh Government now has to be made afresh as a result of what appears to have been further maladministration in the NPA's handling of this application, and I suspect it will now take many months to be determined.

26. I understand that the NPA has at times found itself in a difficult position, trying to balance the interests of Mr N and other local parties, including the local Association. It has also had internal governance issues to deal with, which are on the public record, and several changes of key personnel, including the Chief Executive. In addition, the NPA's activities generally have been greatly affected by the COVID-19 pandemic over the last 2 years. However, it seems to me that the situation has been allowed to drift for far too long, seemingly with no one officer taking overall control to ensure the works are completed within a reasonable timescale. Mr N has been waiting for action to be taken to resolve his complaint for over 7 years, and it is over 3 years since the NPA first agreed the recommendations in the Ombudsman's report. It is wholly unacceptable that the matter has not been concluded by now.

27. I have to express my disappointment at the way in which the NPA has engaged with this office. Whilst I have been understanding of some difficulties which have arisen which have been outside the NPA's control, in the main, it has taken constant promptings by the Investigation Officer to obtain information and promises to provide information by certain dates have not always been kept. I consider it unacceptable for a public body to fail to take prompt and effective actions to ensure that agreed recommendations are implemented, and to fail to live up to what are, in effect, binding promises to my predecessor or, more recently, to myself as Ombudsman. I am also concerned that the way in which the NPA has handled this matter and the delays involved will have increased the cost to the public purse of completing the agreed works.

28. This special report is a public report, which will be published on my office's website. I am aware that the NPA has had long-standing governance issues, which have been the subject of more than one report by

the Auditor General. In view of this, I consider it appropriate to share this report with the Auditor General for Wales, and with the Welsh Government Minister for Climate Change, whose responsibilities include the National Parks.

29. I make the following further recommendations to ensure that there is good governance in relation to the oversight of the outstanding recommendations on this complaint and also future cases when my office makes recommendations to the NPA.

Further Recommendations

30. I **recommend** that, within 1 month of the issue of the report, the NPA:

a) Issues a written apology to Mr N from the Chief Executive for the way in which the NPA has handled this matter.

b) Pays Mr N the sum of £1000 in recognition of the time and trouble to which he has been put in pursuing his complaint.

31. I also **recommend** that the NPA expedite as a matter of urgency the works included in the tender (the construction of the track and the re-siting of the cattle grid). Such works should be completed as soon as possible, and, at the latest, by the **end of March 2023**.

32. Further, I **recommend** that the NPA do everything within its power to expedite the determination by the Welsh Government of the common land consent application; the fencing should be completed within 3 months of the Welsh Government granting consent for the work.

33. I also **recommend** that this report be reported formally to the next meeting of the Audit & Governance Committee of the NPA. Thereafter, the matter should be a standing item on the agenda of that Committee until the Committee is satisfied that the work has been completed, whereupon the NPA should confirm to me that it has been and provide appropriate documentary/photographic evidence of this.

34. I also **recommend** that, within **4 months** of the issue of the report, the NPA undertakes a review of its handling of Mr N's complaint and its subsequent actions to identify lessons which can be learned, with a view to ensuring that such errors and delays do not re-occur in future. It should ensure that there is sufficient oversight to ensure any future recommendations made are complied with.

35. I am pleased to note that in commenting on the draft of this report Brecon Beacons National Park Authority accepted the report and has agreed to implement these recommendations.

MM. Morris.

Michelle Morris

30 January 2023

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