

From: Mike Hill, Cabinet Member for Community and Regulatory Services
Barbara Cooper, Corporate Director, Growth, Environment and Transport

To: Environment and Transport Cabinet Committee – 19th March 2019

Subject: KCC Country Parks – Report of Local Government and Social Care Ombudsman

Classification: Unrestricted

Past Pathway of Paper: N/A

Future Pathway of Paper: N/A

Electoral Division: Canterbury South, Cheriton Sandgate & Hythe East, Gravesend East, Gravesham Rural, Maidstone Rural West, Malling Central, Ramsgate, and Sevenoaks North & Darent Valley

Summary: The Local Government and Social Care Ombudsman (LGO) has issued a Final Report regarding an investigation into a complaint against Kent County Council, specifically KCC Country Parks. The LGO requires that a Final Report be submitted to a relevant committee, with the discussion becoming a public record, and that record being sent to the LGO.

The LGO Final Report is about the penalty charge notice enforcement process that was being deployed in KCC Country Parks. The LGO Report is not about the right of KCC Country Parks to charge for parking (Pay and Display), nor is it about KCC Country Parks' right to enforce against non-payment, both of which the LGO confirms the County Council's right to do. Rather it was about the process KCC used when drivers ignored that Pay and Display parking charge. Most park users understand that all car parking income is invested directly back into the parks. Unfortunately, some visitors choose not to pay their Pay and Display, hence the necessity for enforcement.

The LGO found that there had been fault on the part of the Council in the process, causing injustice that was not significant to the complainant.

Recommendation(s):

The Cabinet Committee is asked to consider the Final Report, attached as Appendix 1, and provide any comments to the Cabinet Member.

1. Introduction

- 1.1 KCC owns nine country parks, seven of which hold a Green Flag award, four of which were Silver, Silver Gilt or Gold award winners in the 2017/18 Keeping Britain Tidy Awards, and one of which (Brockhill Country Park, in Saltwood, Hythe) won the South East England Country Park of the Year in 2017/18. Shorne Woods Country Park in Gravesham has previously won that prestigious award, reflecting the quality of these community assets right across the portfolio. The average customer rating is 9.25/10.
- 1.2 KCC is entitled to charge for Pay and Display at Country Parks under Section 3 of the Local Government Act 2003 (Power to Charge for Discretionary Services) and Section 43 of the Countryside Act 1968.
- 1.3 Kent County Council is entitled to enforce against non-payment of such charges, dependant on appropriate signage being visible to all motorists explaining the Pay and Display and the Enforcement of that Pay and Display. By parking at a KCC Country Park, a visitor to the site is therefore deemed to have agreed to the charge. The LGO has confirmed that site signage is adequate.
- 1.4 In 2017, a member of the public stopped in the car park at Lullingstone Country Park, Eynsford to attend to a puncture. He failed to purchase a Pay and Display ticket or to seek any assistance from site staff. As he exceeded the permitted grace period, Euro Car Parks as the Service's parking agent issued a Penalty Charge Notice. The member of the public initially sought recompense from KCC Highways on the basis he believed the puncture had been caused by branch debris left on Castle Road by KCC Highways' contractors. This approach was unsuccessful and so the complainant contacted the LGO. The LGO dismissed the complainant's concern regarding Highways but determined an interest in the process used for the parking enforcement at the country park.
- 1.5 The LGO began corresponding with KCC in April 2018 regarding the process of enforcement. Legal advice was sought by both the County Council and by the LGO.
- 1.6 In October 2018, the LGO issued a draft report to KCC determining "Fault found causing no significant injustice and recommendations made". Kent County Council confirmed to the LGO at that time that we did not agree that we did not use the correct process to issue a parking penalty to the complainant, or indeed any other park visitor, but we noted that as the LGO could not say that the Council's procedural faults caused the complainant or others significant injustice, then the County Council would not challenge the decision.
- 1.7 In November 2018 the County Council received the Final Report, attached at Appendix A. The recommendations in the Report have been met.
- 1.8 As KCC has chosen to accept the LGO's decision, KCC was additionally obliged to place a Public Notice in two local newspapers and make the Final Report publicly available at County Hall. These requirements have been met.

- 1.9 Within three months of the Final Report being published it must be submitted to full council or a committee with delegated authority. The discussion or submission should be a public record with the minutes sent to LGO. The LGO agreed with KCC that the Environment and Transport Cabinet Committee was an appropriate committee and gave KCC special dispensation as the date of the committee 19 March 2019 falls just outside of the three-month window identified.
- 1.10 The Council is continuing to require visitors to Pay and Display across all nine KCC Country Parks and will now enforce against any non-payment through English contractual law. In other words, as long as there is adequate signage in place explaining the Pay and Display Charges and the Enforcement of the Pay and Display, a visitor to the site is deemed to have contracted with the Council to pay the Pay and Display charge and accepts the enforcement action if they choose not to pay.
- 1.11 As part of the service's approach to enforcement, the service has been advised that historic and unused Traffic Regulation Orders applying to the country parks should be revoked, through the process of a new portfolio wide Traffic Regulation Order. This is being publicly notified through local newspapers and across all nine sites, as is statutorily required. Following this process, the Director for Highways, Transportation and Waste has delegated authority to approve the proposed TRO that revokes the original site-specific orders, but otherwise has no bearing on parking charge enforcement across the KCC Country Parks portfolio.

2. Financial Implications

- 2.1 The LGO required that the complainant receive £100 compensation in recognition of the time and trouble they have taken raising the complaint with the LGO. This has been met.
- 2.2 Pay and Display car park charging raised £395,555 across all nine country parks, in 17/18. This represents 30% of the £1.3m income the service generated in 17/18. It is therefore a vital income stream for a discretionary service. All income raised through Pay and Display is invested directly back into KCC Country Parks.
- 2.3 The nine country parks are extremely popular with the public and welcome 1.5 million visitors every year. The vast majority of park users understand that every penny raised through car parking is invested directly back into the parks. Unfortunately, some visitors choose not to pay their Pay and Display, hence the necessity for enforcement. Enforcement was therefore introduced as a means to ensure collection of Pay and Display Income and represented £27,483 income to the Service in 17/18.

3. Policy Framework

- 3.1 Kent Country Parks' work programme is determined by the Kent Country Parks Strategy 2017 – 2021.

- 3.2 This Strategy helps deliver KCC Strategic Outcome 2 – “Kent communities feel the benefits of economic growth by being in work, healthy and enjoying a good quality of life.” The Strategy particularly contributes to Strategic Supporting Outcome “Kent’s physical and natural environment is protected, enhanced and enjoyed by residents and visitors.”
- 3.3 This Strategy has three strategic aims, one of which is “Ensuring the Service is as financially self-sustainable as possible.”
- 3.4 This Strategy was endorsed by the Environment and Transport Cabinet Committee on 31st January 2018.

4. Legal considerations

- 4.1 KCC Legal Services advised the team on the lawfulness of the original enforcement process. Invicta Law, and two further, but independent, legal opinions were received during the period above, further confirming KCC’s entitlement to enforce through a process utilising the Protection of Freedoms Act 2012.
- 4.2 However, the LGO’s legal advice did not concur with KCC’s. Given the LGO could not say that the Council’s procedural faults caused the complainant or others significant injustice, and that alternative enforcement processes are available to KCC Country Parks, then the County Council has chosen to not challenge the LGO decision.

5. Equality considerations

- 5.1 None. This paper simply provides to Committee the Final Report of the LGO regarding a KCC Country Parks matter.

6. Conclusions

- 6.1 The LGO Final Report is not about the right of KCC Country Parks to charge for parking, rather it is about the process KCC used when drivers ignored the parking charge. Most park users understand that all car parking income is invested directly back into the parks. Unfortunately, some visitors choose not to pay their Pay and Display, hence the necessity for enforcement.
- 6.2 In light of the LGO’s report, the Council is continuing to require visitors to Pay and Display and will enforce against any non-payment, where required, as a Civil Matter using English Contract Law as the basis as outlined in paragraph 1.10.

6. Recommendation(s)

Recommendation(s):

The Cabinet Committee is asked to consider the final report, attached as Appendix 1, and provide any comments to the Cabinet Member.

7. Background Documents

- 7.1 Report of the Local Government and Social Care Ombudsman, 26th November 2018

8. Contact details

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