

## Scottish Parliament Region: South of Scotland

### Case 200402031: North Ayrshire Council

#### Summary of Investigation

##### **Category**

Local government: Environmental Health & Cleansing; Civic Amenity; Waste

##### **Overview**

The complainant (Mr C) raised a number of concerns on behalf of his elderly mother (Mrs C), regarding a new refuse collection service that was introduced on the Isle of Arran by North Ayrshire Council (the Council). Mr C was concerned that no public consultation occurred prior to the change in service and that his mother's individual needs had not been considered.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that the Council failed to:

- (a) consult prior to changing the refuse collection arrangements (*not upheld*);
- (b) act on Mrs C's needs (*upheld*);
- (c) provide suitable refuse arrangements for Mrs C (*upheld*); and
- (d) act on advice from Mrs C's general practitioner (*upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) carry out a review of their new assisted pull-out policy and consider whether it is appropriate and sufficiently detailed;
- (ii) apologise to Mrs C for their failure to provide her with an appropriate service from the time at which the new arrangements were introduced until her hospitalisation in May 2005;
- (iii) apologise to Mr C for their failure to assess and consider his mother's individual needs, despite his assertions that she could not use the new service;
- (iv) make a payment of £500 to Mrs C, in recognition of the fact that she was not provided with a service to which she should have been entitled from the time at which the new arrangements were introduced until her hospitalisation in

May 2005 and for the time and trouble her son, Mr C, was put to in pursuing a complaint on her behalf; and

- (v) put a system in place to ensure that correspondence received from GPs and other medical professionals on behalf of customers is acknowledged and given due consideration.

The Council have accepted the recommendations and will act on them accordingly.

## **Main Investigation Report**

### **Introduction**

1. On 10 February 2005, the Ombudsman received a complaint from Mr C, made on behalf of his elderly mother Mrs C, concerning recent changes to the refuse collection service on the Isle of Arran. The new service involved the introduction of wheeled bins and replaced the collection of black sacks. Mr C was concerned that the changes had been introduced without public consultation and that Mrs C's needs had not been taken into account. A reminder of all abbreviations used is at Annex 1.

2. The complaints from Mr C which I have investigated are that the Council failed to:

- (a) consult prior to changing the refuse collection arrangements;
- (b) act on Mrs C's needs;
- (c) provide suitable refuse arrangements for Mrs C; and
- (d) act on advice from Mrs C's general practitioner.

### **Investigation**

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council. Specific documents which I had sight of included: Mrs C's application form for a 'pull-out permit' to make use of the Council's assisted pull-out service (where waste is collected from the household, rather than kerbside or collection point); a notification leaflet distributed to island residents on 17 September 2004, which detailed changes to the refuse collection service; minutes of the Council's Property Services Committee (the Committee) meetings of 26 January 2005 and 22 August 2006; two reports put to the Committee on 25 November 2003 and 22 August 2006, respectively; and a copy of the Council's assisted pull-out service policy. In addition, I obtained a copy of sections 45 and 46 of the Environmental Protection Act (1990) (EPA) which details the statutory requirements that must be fulfilled by local authorities when making arrangements for refuse collection.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

## **Background**

5. Mrs C is a woman in her 80's, resident on the Isle of Arran. She lives in an old farm house located approximately 250 metres from the public road, which is accessed by a private road. Mrs C operates a caravan and lettings business on her property between April and September, for which she employs a handyman.

6. Prior to the introduction of the Council's new refuse collection arrangements, Mrs C's rubbish was collected from outside her house; that had been the case for approximately 20 years. The new arrangements, introduced on 1 November 2004, designated the bottom of Mrs C's private road as the collection point for refuse, which was to be placed in wheeled bins. The wheeled bins were located some 250 metres from Mrs C's home.

7. The new refuse collection service was originally agreed by the Committee on 25 November 2003. The introduction of a wheeled bin service was designed to bring the Isle of Arran into line with arrangements that existed throughout the rest of North Ayrshire, to fulfil the Council's duty to achieve Best Value and to reflect demand from island residents.

8. In Mrs C's case, the new refuse collection service meant that wheeled bins would be collected from the bottom of her private road. The decision was taken having regard to the Environmental Protection Act (1990) (EPA), which empowers local authorities to designate, by serving a notice, the location of wheeled bins for the purpose of facilitating the emptying of them.

9. On 17 September 2004, island residents were sent a leaflet detailing the new refuse collection service. Details of four public information sessions were included on the leaflet, as well as information about the Council's assisted pull-out service.

10. The leaflet made clear that the assisted pull-out service applied to people who were unable, due to infirmity, old age or disability to move their rubbish from their home to the kerbside. The assisted pull-out policy in operation at the time of the introduction of the new refuse collection service stated: 'On application a pull-out permit for kerbside collections will be issued where there is no suitable able-bodied person in the household'.

11. Mrs C applied for the assisted pull-out service in October 2004. Her application was refused because the service only applied where there was a kerbside.

12. On 26 January 2005, the Committee agreed a report which reiterated the Council's powers under Sections 45 and 46 of the EPA. In brief, the Act states that local authorities have a duty to collect household waste except in locations that are, in the local authorities' opinion, so isolated or inaccessible that the cost of collecting waste would be unreasonably high; and that local authorities have the right to require that waste is presented for collection at locations and in receptacles determined by them.

13. In response to Mr C's complaint, the Council carried out several reviews of Mrs C's private road to determine whether it was possible for the new refuse collection vehicles to access her property. They determined that the road was not fit for purpose and that the collection point at the bottom of Mrs C's private road was, therefore, suitable.

14. During the course of Mr C's complaint, Mrs C's health deteriorated and she was admitted to hospital for the period May to August 2005. The Council asked their Social Services department to carry out a Community Care Assessment (CCA) in May 2005, although such an assessment would have been carried out as a matter of course before she was discharged from hospital. The purpose of the assessment was to determine the extent of Mrs C's infirmity and its consequent effect on her ability to carry out day-to-day tasks. From August 2005, as a result of the assessment, Mrs C had a home help who, amongst other duties, took Mrs C's rubbish to the collection point.

15. On 22 August 2006, the Committee agreed a new assisted pull-out service policy. The new policy states: 'An assisted pull-out service may be provided for householders who are unable, due to medical infirmity, to present their wheeled container at the kerbside or other designated collection point, and where there is no other able-bodied person available to do so'.

**(a) The Council failed to consult prior to changing the refuse collection arrangements**

16. Section 46 of the EPA empowers local authorities, by serving a notice on householders, to require that waste is placed for collection in wheeled bins and to make provisions to ensure that those bins are placed for the purpose of facilitating the emptying of them. The Council's duty when introducing the new wheeled bin service was, therefore, to notify the public rather than consult it.

17. Although the Council had no statutory duty to consult, they considered that the introduction of a new refuse collection service was a positive response to local demand. The report put to the Committee on 25 November 2003 referred to: the receipt of regular correspondence asking for wheeled bins to be introduced; the view of a voluntary organisation called the Arran Recycling Company who believed, from their regular contact with island residents, that there was demand for the new service; and the view of the local Elected Member, who canvassed the views of the local community and confirmed that the majority of residents wished the introduction of wheeled bins.

18. On 17 September 2004, the Council delivered an information leaflet called 'Working together to provide a Wheeled Bin Refuse Collection Service Commencing 1<sup>st</sup> November 2004' to all properties on the island. The leaflet explained the nature of the changes and gave the dates, times and locations of four information sessions at which the public could view the new wheeled bins and discuss the new system.

*(a) Conclusion*

19. The Council had a duty to notify island residents of the changes to the refuse collection system. They fulfilled their duty by distributing information leaflets to all households on the island and arranging information sessions. Accordingly, I do not uphold this point of complaint.

**(b) The Council failed to act on Mrs C's needs; and**

**(c) The Council failed to provide suitable refuse arrangements for Mrs C**

20. To avoid unnecessary repetition and because of the similarities between points (b) and (c), I am considering both points together.

21. Mr C believed that the Council's change in policy meant that Mrs C's needs were no longer being met. Mr C and Mrs C informed the Council that, due to old age and infirmity, Mrs C could not make use of the new refuse collection arrangements, which required her to take rubbish 250 metres away from her home to place it in a wheeled bin. Mr C believed that the Council failed to take account of Mrs C's infirmity and considered only the Council's needs as a service provider. Overall he believed that, because Mrs C could not make use of the new arrangements and because no suitable alternative was provided, the Council failed to provide Mrs C with a suitable refuse collection service.

22. The Council told me they were aware that, prior to the introduction of the new service, a small number of residents would have difficulty in using the new arrangements. They believed that the assisted pull-out service catered for those who would not be able to use the new wheeled bin system.

23. The Council admitted, however, that the assisted pull-out service policy was ambiguous and potentially excluded those living in rural environments, because it only applied where there was a kerbside. They said that the new policy, introduced on 22 August 2006, had removed that anomaly by deleting the requirement for a kerbside to exist in order for an assisted pull-out application to be competent. They said that, in addition, the policy had been clarified by stating the service was only available where there was no able-bodied person available to take the waste to the collection point, rather than no able-bodied person 'within the household' available to take the waste there.

24. The Council took steps to assess the access to Mrs C's property by carrying out several reviews of the site. They also stated that they offered Mrs C a smaller bin in order to help her use the new system and arranged a one-off uplift from her home when the scheme was first introduced. On 26 May 2005, the Council referred Mrs C for a CCA, which would assess the state of her infirmity and determine whether she could carry out day-to-day tasks and whether she required home help.

*(b) and (c) Conclusion*

25. The Council acted appropriately in introducing the new refuse collection service. The process by which the Committee took its decision and notification

was carried out was sound. The Council were empowered by the EPA to make the changes and to determine where rubbish should be placed for collection. In Mrs C's case, the Council made several assessments of Mrs C's private road and determined that the most suitable location for the wheeled bin was the bottom of the road. The Council carried out a thorough assessment and had discretion to reach conclusions they believed were reasonable. I did not, therefore, find fault with the way the Council introduced their new service.

26. However, in my view, the question of Mrs C's individual needs, the main concern raised by Mr C, was not properly addressed or resolved by the Council. The service envisaged to cater for the elderly, the infirm and the disabled (the assisted pull-out service) did not apply to Mrs C, because she lived in a rural location. Mrs C's application for the pull-out service failed at the first hurdle, because she had no kerbside. Had she not lived in a rural location, her state of health would have been assessed to confirm whether she was able to make use of the new scheme and to determine whether she qualified for help. As things stood, however, I consider the Council's assisted pull-out policy discriminated against Mrs C because she was living in a rural area.

27. Following the Council's rejection of Mrs C's assisted pull-out application, the Council did not take appropriate steps to find a suitable alternative solution to allow Mrs C to make use of the facilities. The Council's assisted pull-out policy did not meet Mrs C's legitimate needs, but no alternative was considered. A one-off uplift was arranged when the changes came into effect, but from that date until Mrs C was admitted to hospital, Mrs C had to arrange for her rubbish to be taken to the collection point with no help from the Council. Had she not been living in a rural location that would not have been the case.

28. The Council did eventually refer Mrs C for a CCA in May 2005, although they point out that an assessment would have been made in any case since Mrs C had been hospitalised. The Council told me they regretted not making a referral sooner, although it was not necessarily their responsibility to make such referrals, which could also have been made by Mrs C's sons or her GP. They said, however, that staff had been instructed to be more proactive in future.



29. I welcomed the Council's assurance that staff would be more proactive, where appropriate, in making CCA referrals in future. However, I was concerned that the Council did not take any steps to assess Mrs C's health and needs sooner. The Council were repeatedly told by Mr C that Mrs C's state of health meant she could not use the new service, but the Council did nothing to assess whether that was the case. It appeared that because Mrs C could not be considered under the Council's discriminatory assisted pull-out policy, they left her without proper assessment and without suitable arrangements for the uplift of her rubbish. The action taken by the Council in making a referral was not only tardy but did not address the real problem: the discriminatory nature of the assisted pull-out policy and the failure to provide a usable refuse collection service to an elderly woman who lived in a rural location.

30. I noted that the Council had recently amended its assisted pull-out policy, so that it now also applied where no kerbside existed. I welcomed this amendment, which removed a serious flaw in the Council's policy.

31. However, I also noted that the new policy would exclude those who could rely on any able-bodied person available to take rubbish out for them. This replaced the previous policy which referred to an able-bodied person 'within the household'. I understand that the policy was changed to apply where, for example, a paid carer, relative or neighbour was available to take the rubbish to a collection point.

32. As it stands, I consider the amended policy is ambiguous and does not provide suitable information about how assessments are made and on what basis the Council will consider someone who is not a member of the household or a paid carer to be 'available' to help with the removal of waste. I am concerned that the Council's new assisted pull-out policy appears to expect that, where an infirm person has relatives, friends or neighbours, those persons should be responsible for taking waste out for collection. Some elderly, infirm or disabled people will have neighbours or family who are willing to help them, but how will the Council judge that this is the case? Indeed, I question whether it is reasonable for the Council to operate a policy that depends on the goodwill of family members or neighbours. I am also concerned about how the Council can apply this policy and believe that, in particular instances, it could lead to service failure.

33. In light of the above, I uphold both points (b) and (c) of the complaint.

*(b) & (c) Recommendations*

34. I recommend that the Council:

- (i) carry out a review of their new assisted pull-out policy in light of my concerns at paragraph 32 and consider whether it is appropriate and sufficiently detailed;
- (ii) apologise to Mrs C for their failure to provide her with a usable service from the time at which the new arrangements were introduced until her hospitalisation in May 2005;
- (iii) apologise to Mr C for their failure to consider his mother's individual needs, despite his assertions that she could not use the new service; and
- (iv) make a payment of £500 to Mrs C, in recognition of the fact that she was not provided with a service to which she should have been entitled from the time at which the new arrangements were introduced until her hospitalisation in May 2005 and for the time and trouble her son, Mr C, was put to in pursuing a complaint on her behalf.

**(d) The Council failed to act on advice from Mrs C's general practitioner**

35. Mrs C's GP wrote to the Council on 7 December 2004, stating that Mrs C suffered from mobility problems due to arthritis. He wrote to the Council again on 17 January 2005, stating that Mrs C had suffered a mini-stroke in December 2004 and that her health continued to deteriorate, with her pre-existing balance problems becoming more pronounced. The GP went on to state that although Mrs C's problems could not be directly linked to the new refuse collection service, in his opinion, the stress caused by the new arrangements was a contributory factor to her decline in health.

36. Mr C was concerned that the Council did not acknowledge the two letters from the GP and failed to take any action as a result of the GP's concerns about Mrs C's health.

37. The Council stated that the officer who received the letters did not feel they merited a response. The Council acknowledged that, as a matter of courtesy, the letters from Mrs C's GP should have been acknowledged.

38. The Council stated that they used a similar approach when dealing with GP letters on behalf of customers or clients, as they used when GP letters were sent on behalf of Council employees in support of sickness absences from work. They said the Council employed an occupational therapist to provide objective advice and that service managers were then responsible for interpreting the advice from all sources, in the context of the particular circumstances, before deciding on a course of action.

39. No evidence was provided by the Council to show that the letters from Mrs C's GP were considered by an occupational therapist, nor that any consideration was given to their contents.

*(d) Conclusion*

40. The Council had no duty to act on advice they received from Mrs C's GP. However, I considered that it would be reasonable to expect that the advice of a medical professional should be given careful consideration by the Council. I saw no evidence that the letters were given due consideration or that the advice of a third party (such as an occupational therapist) was sought or considered. In addition, the Council's failure to acknowledge the letters was indeed discourteous, and added further to Mr C's impression that Mrs C's needs had not been properly assessed or considered. In light of these considerations, I uphold this point of the complaint.

*(d) Recommendation*

41. I recommend that the Council put a system in place to ensure that correspondence received from GPs and other medical professionals on behalf of customers is acknowledged and given due consideration.

42. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

19 December 2006

**Explanation of abbreviations used**

Mr C	The complainant
Mrs C	The aggrieved, Mr C's mother
The Council	North Ayrshire Council
CCA	Community Care Assessment
The Committee	The Property Services Committee
EPA	The Environmental Protection Act (1990)
The GP	Mrs C's general practitioner