

Scottish Parliament Region: North East Scotland

Case 200600707: Angus Council

Summary of Investigation

Category

Local government: Complaints handling

Overview

The complainant (Mr C) complained about Angus Council (the Council)'s alleged failure to take action on his complaints about noise nuisance and anti-social behaviour at a hotel close to his home. Furthermore, he contended that the Council failed to adhere to their customer care policy when dealing with his complaint.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to take action on his complaints about noise nuisance and anti-social behaviour at a hotel close to his home (*not upheld*); and
- (b) failed to adhere to their customer care policy when dealing with his complaint (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 5 June 2006, the Ombudsman received a complaint from Mr C concerning the problems he said he was experiencing at a hotel close to his home. He said that since 2004 he had been making representations to the Council, but that they had failed to take action on his complaints about noise nuisance and anti-social behaviour. Furthermore, he contended that the Council failed to adhere to their customer care policy when dealing with his complaint.

2. The complaints from Mr C which I have investigated are that the Council:
- (a) failed to take action on his complaints about noise nuisance and anti-social behaviour at a hotel close to his home; and
 - (b) failed to adhere to their customer care policy when dealing with his complaint.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council's Chief Executive. I have also had sight of two letters of objection from Mr C and others addressed to the Licensing Board dated 10 June 2004 and 1 June 2005; the Council's Customer Care Policy; a technical report on the 'Assessment of Breakout Noise from Amplified Music Activities' prepared by consultants on behalf of the hotel concerned and emails copied to the Council from the consultants. On 25 September 2006 I made a written enquiry of the Council and their formal response was received in two parts dated 26 October and 17 November 2006.

4. While I have not included in this report every detail investigated, 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.

(a) The Council failed to take action on his complaints about noise nuisance and anti-social behaviour at a hotel close to his home

5. On 5 January 2004 Mr C raised his concerns about the noise emanating from the hotel with his local Councillor, who undertook to bring the matter to the appropriate Council officers' attention. Mr C said that the matter was investigated by environmental health officers who agreed that the noise was

unacceptable and that this was as a result of a problem with the fabric of the hotel building. Later, on 10 June 2004, Mr C wrote to the Licensing Board (the Board) on his own behalf and that of two of his neighbours making a formal objection to the hotel's request for an extended licence. He made reference to the nature of his complaints about the hotel and copied the letter to a Council officer in the Environment and Consumer Protection Department (the Department). The letter was unsigned.

6. Works to improve the noise insulation of the hotel were carried out in February 2005 but Mr C remained unhappy and, when the hotel again requested an extended licence, he made formal objections to the Board on 1 June 2005 on the grounds of anti-social behaviour and that the associated noise levels were unacceptable. The letter was unsigned and sent by Mr C on his own behalf, and that of five other neighbours who lived close to the hotel. The letter was acknowledged on 9 June 2005 by the Depute Clerk who said that the objections would be placed before the Board at their meeting on 15 June 2005. She also advised Mr C of his entitlement to attend or be represented at the meeting when he would be given the opportunity to be heard.

7. Mr C continued to be unhappy with the situation and involved his local MP and, on 29 August 2005, the Council's Chief Executive wrote to him (the MP) saying that Mr C's complaints about noise were the subject of an ongoing investigation by the Department and that in February noise insulation works had been carried out at the hotel but that they had only marginal effects. The hotel had, therefore, appointed a Noise Consultant and the Department were awaiting his report.

8. As the complainant felt that matters were not progressing he wrote to the Chief Executive on 19 October 2005. He said he had still to receive any official correspondence from the Council concerning his complaint since he raised it in January 2004, nor had he been advised of the outcome of the June 2005 Licensing Board's decision. He wanted action. The Chief Executive replied on 26 October 2005 saying that it was the Council's view that the hotel were sympathetic to the problem and co-operating to find a solution but, meanwhile, he would consult with appropriate departments to obtain an update and would advise Mr C of the outcome.

9. The Chief Executive wrote again to Mr C on 11 November 2005. He said

the Noise Consultant's report (paragraph 7) had been received on 24 August 2005 and that this had identified deficiencies relating to poor acoustic insulation. More work had been agreed and this was being monitored by the Department. Once it had been completed the Department would arrange a follow-up visit to the hotel. The Chief Executive also advised Mr C that as his letter of 1 June 2005 had been unsigned, and as no one had attended the Board meeting, Mr C and his neighbour's objections were found to be incompetent. However, while he acknowledged that Mr C had not been advised in writing of the outcome of this application (which was granted) he was aware that he had been informed during a telephone conversation. He said that it was his view that the Department were continuing to seek the most appropriate means to try to resolve matters to Mr C's satisfaction, but that it may not be possible to do so and, he reminded him that there was always the option for him to seek to take legal action against the hotel's owners.

10. Mr C's response to this was sent on 17 March 2006, rehearsing the progress of his representations about the hotel as he saw it and saying that the Council had been 'strung along' by its owners. The Chief Executive responded on 23 May 2006, apologising for his delay in getting back to Mr C but restating his view that the hotel were co-operating with the Council to seek to find a solution; that comprehensive works had been agreed but that despite this, it may not be possible to achieve noise levels that were acceptable to him; further testing work had been carried out on 23 March 2006 and the results were still being processed but, in the meantime, the hotel had asked for a renewal of its regular extension. The Chief Executive advised Mr C of the deadline for objections and, in connection with this, that advice and assistance was available from the Licensing department. Mr C did object to this application, but in June 2006 the extension was granted until 18 October 2006.

11. I am aware from the Council's response to me of 26 October 2006 that further work to reduce noise was carried out at the hotel in August 2006 but as the hotel was closed on, or around, 26 September 2006 as the company owning it had gone into administration, the Council had not been able to test the works.

12. The Council's further response of 17 November 2006 also made the point that they had originally considered that a statutory nuisance may have existed and spoke to hotel management who then arranged for work to be carried out (in February 2005). This resulted in some noise reduction although the Council said that a change in hotel managers resulted in varying degrees of success in

the implementation of such noise control measures. Nevertheless, the company did appoint their own Noise Consultant and agreed to carry out works recommended (paragraph 7). At that stage, the Council said that it was not clear whether a statutory nuisance was being committed and, in addition, it was not their policy to serve an abatement notice unless they were convinced that those responsible were not making satisfactory efforts to resolve the situation. It was the Council's repeated view that the hotel owners were co-operating with them. Furthermore, they explained that progress may have appeared slow because the hotel's initial measures (February 2005) were not particularly effective, thereafter Noise Consultants had required time to report and works then required to be completed. The Council again made the point that they had been unable to determine whether all the required works have been carried out as the hotel is now closed.

(a) Conclusion

13. While Mr C and his neighbours objected to the hotel's regular requests to extend their licence (in June 2004, 2005 and 2006) I am not aware of a formal complaint from him to the Council about noise and anti-social behaviour until 19 October 2005. Although, prior to that, he had made representations to both his councillor and MP.

14. However, it had been established in January 2004 that the main problem lay with the fabric of the building (paragraph 5) and in February 2005 and August 2006 works were carried out at the hotel in an attempt to resolve the situation. The Council considered that the hotel were co-operating by taking this action and, by seeking professional advice by appointing a Noise Consultant (paragraph 7). The Council had agreed works to be carried out with the hotel's owners and the Department kept the hotel's actions under review. They were satisfied with the action taken. However, more recently, the Council has been unable to test the work undertaken in August 2006 as the hotel was later closed (paragraph 11). The Council considered, but decided against, issuing an abatement notice as they were satisfied with the hotel owners' actions.

15. While I can sympathise with the situation in which Mr C found himself, after considering all the foregoing information, I am not of the view that the Council failed to take action on his complaints. Accordingly, I do not uphold his complaint. Nevertheless, should the hotel re-open, I would ask that the Council maintain its approach of keeping the noise (and anti-social behaviour) at the

hotel under review and, taking whatever action they consider necessary to keep it to reasonable levels.

(b) The Council failed to adhere to their customer care policy when dealing with his complaint

16. The Council's Customer Care Policy confirms their commitment to customers in terms of responding to enquiries and dealing with complaints. Amongst other things they said they will respond to letters within 15 working days (or alternatively give a target date for a reply) and to give formal responses to complaints within 10 days.

(b) Conclusion

17. As detailed above (paragraph 13), I am not aware of Mr C making a formal complaint until 19 October 2005. This letter received an interim response on 26 October 2005 with an undertaking to get back once further information became available. A reply was then sent on 11 November 2005. A further letter from Mr C of 17 March 2006 received replies on 22 March and 23 May 2006 (see paragraphs 10 and 12). Given that detailed responses were dependent upon information being received, and an apology was given for the delay in responding, I do not consider that the Council's failure to reply more quickly amounts to maladministration.

18. With regard to Mr C and his neighbours unsigned letters of 10 June 2004 and 1 June 2005; these were letters of objection (and not letters of complaint and, therefore, not dealt with as such) which in terms of the Act were considered to be incompetent (see paragraphs 5,6 and 9). I do not criticise the Licensing Board's decision on these objections, particularly as it would normally be expected for authors of correspondence to sign it. Nonetheless, the Council acknowledged the 1 June 2005 objection on 9 June 2005 (neither party has produced an acknowledgement to the June 2004 objection) and it would have been a simple exercise, at that stage, to make Mr C aware of the fact that his letter required a signature before being placed in front of the Board. Mr C also complained that he was not advised in writing of the outcome of the Licensing Board's decisions, although he appeared to be aware of them and certainly, with respect to that made in June 2006, he was advised by telephone (paragraph 9). However, in their response to me of 17 November 2006, the Council recognised that although Mr C's objections were deemed to be incompetent, he would still have a keen interest in learning the outcome of hotel's licence applications. Furthermore, they acknowledged that their

Customer Care Policy expected customers to be kept informed. Accordingly, the Council apologised to Mr C (and a letter was sent to him that day, 17 November 2006) and they undertook in the future to ensure that objectors are kept advised. Although I am critical of the Council's failure to keep Mr C informed, given that he knew of the outcome of the 2005 application and that he was advised by telephone of the decision, I do not consider that the Council's failure to advise him in writing amounts to maladministration. In all the circumstances, I do not uphold this aspect of the complaint.

23 May 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	Angus Council
The Department	The Council's Environment and Consumer Protection Department
The Board	The Licensing Board