

Scottish Parliament Region: South of Scotland

Case 200602645: East Lothian Council

Summary of Investigation

Category

Local government: Recreation and Leisure; Policy; Administration

Overview

The complainant (Mr C) raised concerns that East Lothian Council (the Council) had not responded adequately to the requests of a sporting organisation (the Sporting Organisation) and that, when the Sporting Organisation complained about this, the Council did not respond within the stated timescales.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) unreasonably failed to take action to obtain Anti Social Behaviour Orders against named persons (*not upheld*); and
- (b) did not respond to the Sporting Organisation within stated timescales (*upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 25 November 2006 the Secretary of a sporting organisation (the Sporting Organisation), referred to in this report as Mr C, complained to the Ombudsman that East Lothian Council (the Council) had unreasonably failed to take action to obtain Anti Social Behaviour Orders (ASBOs) against named persons. The Sporting Organisation had provided the Council with details of witnesses to support their request for the Council to obtain the ASBOs, and did not believe that the Council had attempted to contact these witnesses. Mr C had written to the Council asking why contact had not been made and the Council had not responded to him. Following this, Mr C made a complaint to the Council and this was not dealt with within the stated timescales.

2. The complaints from Mr C which I have investigated are that the Council:
- (a) unreasonably failed to take action to obtain ASBOs against named persons; and
 - (b) did not respond to the Sporting Organisation within stated timescales.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including communication between Mr C and the Council and correspondence between the Ombudsman's office and the Council. 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 have had an opportunity to comment on a draft of this report.

(a) The Council unreasonably failed to take action to obtain ASBOs against named persons

4. In April 2006 two members of the Sporting Organisation had a meeting with the Corporate Legal Adviser of East Lothian Council (the Corporate Legal Adviser) and a Police Constable to discuss illegal activities and anti-social behaviour being carried out by named persons, the effect this was having on the members of the Sporting Organisation enjoying their sport and what action the Council could take to limit this. Mr C was not present at this meeting.

5. Mr C believes that the Corporate Legal Adviser told the members of the Sporting Organisation that ASBOs could be obtained against the named persons, but that further evidence, such as logs of illegal activities would be

required. The members of the Sporting Organisation told the Corporate Legal Adviser that other members of the Sporting Organisation already had such logs and submitted their contact details for use in the Council's actions.

6. The Corporate Legal Adviser subsequently told Mr C in a letter of 20 December 2006 (see paragraph 19) that a police disclosure report on the named persons did not reveal any recent convictions or reports of illegal activities and that proceedings to secure ASBOs based on incidents of illegal activity alone would not be possible. Mr C has told me that he does not believe that the named persons did not have any recent convictions or that they were not the subject of reports of illegal behaviour. The Council continued to consider the possibility of ASBOs to address the anti-social behaviour, rather than the illegal activities.

7. The Corporate Legal Adviser's assistant (the Assistant) was allocated responsibility for dealing with this issue. She spoke to several potential witnesses regarding the issue, some of whom were not willing to give their evidence in court. She attempted to contact by telephone one of the witnesses whose details had been submitted at the meeting in April, however, she was unsuccessful. The Police Constable who had been present at the meeting in April met with this witness in October 2006 and obtained a statement from him.

8. The Council considered all the witness statements that they had received and decided that there was insufficient evidence to proceed with a court action seeking an ASBO against the named persons.

(a) Conclusion

9. The Council considered the possibility of securing ASBOs based on the alleged illegal activities of the named persons, but did not find the necessary evidence to do so. The Council then turned to the possibility of securing ASBOs based on evidence of anti-social behaviour. They gathered witness statements related to this but decided that there was insufficient evidence to proceed with any court action. It is, therefore, clear from the evidence I have seen that the Council took reasonable action to secure ASBOs against the named persons but ultimately decided that there was not sufficient evidence to achieve this. Therefore, I do not uphold the complaint.

(b) The Council did not respond to the Sporting Organisation within stated timescales

10. As the Sporting Organisation had received no communication from the Council after the meeting in April 2006, Mr C, in his capacity as Secretary of the Sporting Organisation, wrote to the Council expressing dissatisfaction at this on 5 September 2006.

11. Mr C did not receive a response to this letter, and wrote again to the Council on 30 September 2006 asking why there had been no response to his earlier letter.

12. Mr C did not receive a response to this letter, and on 28 October 2006 he made a complaint to the Council that actions had not been taken to obtain ASBOs against named individuals and that his letters of 5 and 28 September 2006 had not been responded to.

13. East Lothian Council's complaints procedure states that all complaints will be acknowledged within five days in a letter which will inform the complainant of the name of the person who will deal with their complaint and that the Council aim to provide complainants with a full response within 28 days.

14. Mr C did not receive a response to this letter, and on 25 November 2006 he made his complaint to the Ombudsman. A Complaints Investigator from the Ombudsman's office contacted the Council about this complaint. The Corporate Legal Adviser told the Complaints Investigator that the Assistant had left the Council and she was now dealing with the issue herself. She said that she would respond to Mr C's letters shortly.

15. On 7 December 2006, the Corporate Legal Adviser wrote to Mr C. She apologised for the delay in responding to his letters, outlined the actions that the Council had taken and explained the reasons why the Council had decided not to pursue the ASBOs.

16. Mr C was not satisfied with this response and wrote to the Chief Executive of the Council on 12 December 2006. In his letter he restated his complaints and his belief that he would not have received a response at all had he not contacted the Ombudsman.

17. The Chief Executive wrote to Mr C on 15 December 2006. He reiterated the Corporate Legal Adviser's apologies for not having responded to Mr C's letters within stated time limits, and restated the response given in the letter of 7 December 2006 about the actions the Council had taken and the reasons why the Council had decided not to pursue the ASBOs.

18. On 19 December 2006 Mr C wrote to the Corporate Legal Adviser asking why there had been a delay in responding to his earlier letters as well as other questions related to the actions of the Council in obtaining witness statements.

19. The Corporate Legal Adviser responded to Mr C's letter on 20 December 2006. As well as responding to his other questions, she said that the reason that his letters had not been responded to within the stated timescales was the 'pressure of business'.

20. Mr C wrote to the Chief Executive on 30 December 2006 expressing dissatisfaction that the Chief Executive's letter of 15 December 2006 had not addressed what action would be taken as a result of the failure of the Council to respond to his complaints within the stated times. Mr C told me that he did not reply further to the letter because he intended to refer the matter to the Ombudsman and he believed that further comment would not be appropriate.

21. Mr C referred his complaint back to the Ombudsman on 17 January 2007.

22. On 13 March 2007 I asked the Council if they had responded to Mr C's letter of 30 December 2006 and what had been done to ensure that there would be no repeat of the failure to acknowledge or answer letters that Mr C had experienced. The Council told me that they had not felt that Mr C's letter had required a response, as he had said in the last paragraph that the Sporting Organisation was 'far from satisfied over the way that this whole matter had been dealt with and is considering its next move.' The Council felt that this indicated that further correspondence would be forthcoming from Mr C on the subject. On 14 March 2007 the Chief Executive wrote to Mr C explaining that the importance of adhering to the timescales in the Council's feedback procedures had been emphasised to the departments concerned.

(b) Conclusion

23. The Council has explained that pressure of business meant that Mr C's letters of 5 September, 30 September and 28 October 2006 were not

acknowledged or responded to within the timescales stated by East Lothian Council. The Council have explained that they did not feel Mr C's letter of 30 December 2006 had required a response due to its content. Nevertheless, the Council have stated guidelines for response to letters and these were not met. Therefore, I uphold the complaint.

(b) Recommendations

24. Following the Ombudsman's involvement the Council have apologised for these failures and indicated that action has been taken to ensure that this situation does not occur again (see paragraph 22). The Ombudsman commends this action and has no recommendations to make.

19 September 2007

Explanation of abbreviations used

The Sporting Organisation	The Sporting Organisation Mr C was the Secretary of
Mr C	The complainant, Secretary of the Sporting Organisation
The Council	East Lothian Council
ASBOs	Anti Social Behaviour Orders
The Corporate Legal Adviser	The Corporate Legal Adviser of East Lothian Council
The Assistant	The assistant to the Corporate Legal Adviser