

Scottish Parliament Region: Mid Scotland and Fife

Case 200604086: Perth and Kinross Council

Summary of Investigation

Category

Local government: Environmental Health; dog fouling

Overview

The complainant (Mr C) complained about the response of Perth and Kinross Council (the Council) to his reports of dog fouling in a public area immediately adjoining his property and at the way the Council responded to his complaint.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) did not take effective action to prevent dog fouling on an area adjoining Mr C's home (*not upheld*); and
- (b) mishandled Mr C's formal complaint (*partially upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) continue to carry out appropriate surveillance of the area in question; and
- (ii) review their complaint handling in this instance with a view to clarifying to complainants at the outset the distinction between a request for a service and a complaint of dissatisfaction about delivery of a service.

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

Main Investigation Report

Introduction

1. The complainant (Mr C) lives in a small town in Perthshire. He stated that for years, there had been a problem of dog fouling on a grassed area adjoining his property but when this got worse in August 2006, he contacted Perth and Kinross Council (the Council). Despite the Council's intervention the problem continued. Mr C then submitted a complaint to the Council about their lack of an effective response. When he received no written reply he contacted the Ombudsman.

2. The complaints from Mr C which I have investigated are that the Council:
- (a) did not take effective action to prevent dog fouling on an area adjoining Mr C's home; and
 - (b) mishandled Mr C's formal complaint.

Investigation

3. The investigation is based on information supplied by Mr C and the Council's response to my enquiries. 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.

(a) The Council did not take effective action to prevent dog fouling on an area adjoining Mr C's home; and (b) The Council mishandled Mr C's formal complaint

4. Mr C's rear garden adjoins a grassed area in the ownership of the Council. Mr C stated that for years this had been used as a dog's toilet. He had experienced obnoxious smells and on occasions, when he had accessed the area to cut his hedge, he had trodden in dogs' excrement.

5. When the problem of fouling intensified in August 2006, Mr C submitted a complaint to the Chief Executive. The matter was passed to a Principal Environmental Health Officer (Officer 1) who thereafter met with Mr C. According to Mr C, Officer 1 agreed that the situation was unacceptable and promised to act.

6. On 8 September 2006 a warning notice was erected at the edge of the grassed area. Mr C stated that soon after the sign was erected, he and his wife

were subjected to a vicious verbal attack by a neighbour who owns a dog. A subsequent attempt a day or so later to discuss the matter in a reasonable manner with the neighbour was rejected with further aggression.

7. Mr C then discussed the matter further with Officer 1 and the Council's Anti-Social Behaviour Team but he and his wife decided to take no further action. The dog fouling continued.

8. On 12 February 2007, Mr C hand delivered a complaint form dated 10 February 2007 to the Council's offices. He set out the history of his grievance and emphasised that the grassed area was used by children as a play area and that they were at risk from infection.

9. Mr C stated that he felt aggrieved that at his advanced age the onus of collecting evidence had been placed on him. While he had contacted Officer 1 again in early February 2007 he had had no contact from the Anti-Social Behaviour Team. He stated that he intended to identify the main culprit by catching the dog 'in the act'. He maintained that the dog owner had broken the law frequently and deliberately and that he expected officers to take DNA samples and to fine the owner with maximum publicity in order to serve as a warning to other offenders.

10. Mr C also wrote to his Member of the Scottish Parliament (the MSP) on 17 February 2007. The MSP confirmed by letter of 21 February 2007 that he had written to the Council to press Mr C's concerns. He suggested that Mr C might wish to consider contacting a mediation service to attempt to seek a resolution with the neighbour who was causing the dog fouling problem.

11. Mr C then spoke again with Officer 1. Officer 1 confirmed by letter of 27 February 2007 that he understood that the situation had resolved itself and that the dog fouling had stopped. Mr C was invited to contact Officer 1 should the fouling recur and Officer 1 would arrange for surveillance of the area at an appropriate time.

12. The Head of Environmental and Consumer Services (Officer 2) responded to the MSP on 1 March 2007. Officer 2 stated that Environmental and Consumer Services had contacted Mr C, had confirmed their intention to carry out a surveillance operation, and had asked Mr C for information on the times

the offence was taking place. Mr C had not been asked to name the dog owner. The MSP forwarded this letter to Mr C on 6 March 2007.

13. Meanwhile, Mr C followed up the MSP's suggestion and contacted a local mediation service. Mr C's neighbour was, however, unwilling to engage with the mediation service and the mediation service wrote to Mr C to confirm that they had no option but to close the case.

14. Mr C then wrote again to Officer 1 to inform him that the dog fouling had ceased and that other neighbours to whom he had spoken had connected this with a visit by a council dog warden. Mr C updated his local councillor with whom he had been in telephone contact and pointed out to him that neither of his two complaints to the Council had elicited a written reply.

15. The Council's Environmental Health Manager (Officer 3) and Officer 1 met with Mr C in his home on 14 March 2007. That visit was followed up in a letter sent to Mr C by the Council's Environment Services Complaints Coordinator (Officer 4) on 20 March 2007. Officer 4 stated that she had been unable to trace a copy of Mr C's complaint form of 10 February 2007 and it had not been entered onto the Council's formal complaints procedure. A copy had, however, been received by Officer 1 as a result of the MSP's letter. Officer 4 stated that she understood Mr C had agreed that his concerns would be addressed as an ongoing service matter. She apologised for the misunderstanding on her part. She enclosed a copy of the Council's complaints procedure leaflet, which explained how Mr C could pursue his concerns if he remained dissatisfied with the Council's response.

16. Officer 4's letter crossed with a letter of 17 March 2007 from Mr C to her, which outlined his understanding of what had been agreed at the meeting in his home (use of Anti-Social Behaviour Team, contact with Community Police representative, out of hours' surveillance and discussion about the possibility of a direct approach to the offender). Mr C confirmed that the dog fouling had recurred. He viewed this as a deliberate act.

17. Mr C visited his MSP's office on 26 March 2007, and the MSP wrote again on Mr C's behalf to Officer 2.

18. After visiting the Ombudsman's office, when he was advised of the general requirement that a listed body's complaints procedure should be exhausted,

Mr C wrote to the Council's Chief Executive by recorded delivery on 30 March 2007. He complained that he had not had a response in writing to previous complaints (in August 2006 and 10 February 2007) and that he had been given poor advice by the Anti-Social Behaviour Team that he should take no action. He stated that the fouling continued and that he and his wife had been left exhausted, depressed, and insecure.

19. This letter was acknowledged on 4 April 2007 by the Council's Complaints Officer (Officer 5) who stated that it had been noted by the Chief Executive and passed to Officer 4 in Environment and Consumer Services. Mr C telephoned and stated that in the circumstances it should be dealt with under the final stage (stage 3) of the Council's procedures. Mr C received no written reply to his letter of 30 March 2007.

20. In the meantime, Officer 2 replied to the MSP on 3 April 2007. He confirmed that at his meeting on 14 March 2007 with Environmental Services officers Mr C had, with reluctance, identified the dog owner whose dog he considered was responsible for the fouling. The officers had thereafter liaised with Tayside Police. With regard to surveillance, Officer 2 stated that the location where the fouling occurred would be difficult to manage covertly. Further, since the fouling happened after 21:30 and not necessarily every night, surveillance was not foolproof. A copy of this letter was forwarded by the MSP to Mr C on 6 April 2007.

21. On 11 April 2007 Officer 1 emailed Officer 3 to say that he and one of the Council's dog wardens had visited the neighbour to advise him of the complaints. The neighbour denied that it was his dog that was fouling. The neighbour was informed that the area would be monitored on a regular basis and the dog warden had been asked to do this. Officer 1 had telephoned Mr C to inform him and intended to update the Community Police officer on the latter's return from holiday.

22. On 30 April 2007 Mr C submitted his complaint to the Ombudsman's office. He stated that he had complained three times to the Council but they had not responded within their published timescale. He considered the Council had handled all aspects slowly and badly and had passed responsibility for surveillance onto him. He confirmed that on 11 April 2007 an Environmental Services officer and dog warden had called to see the perpetrator. While the fouling had stopped at that time, Mr C subsequently telephoned on

10 May 2007 and again on 22 August 2007 to inform me that there had been a recurrence of fouling. On 6 September 2007 Mr C was contacted by an officer of the Council to discuss how surveillance might be accomplished.

(c) Conclusion

23. I fully understand why Mr C finds dog fouling unacceptable but also why he found it difficult and inappropriate to approach the neighbour whom he believes to be in charge of the dog causing the problem adjacent to his home. Dog fouling without the excrement being cleared up is an offence under the Dog Fouling (Scotland) Act 2003, introduced on 22 October 2003 and fixed penalty notices of £40 can be issued if a person in control of a dog which has fouled fails to take action (see Annex 2). The ability to apprehend perpetrators in the act, is clearly dependent on having reliable prior information about when an offence is likely to occur.

24. Although Mr C is frustrated that the problem continues, I do not consider that he has suffered injustice as a result of maladministration or service failure by the Council. Council officers have considered and followed up Mr C's concerns. A warning notice has been erected, visits have been paid to the locus and officers have spoken to Mr C's neighbour. I do not uphold the complaint.

(d) Conclusion

25. Mr C's recent contact with the Council started with him complaining to the Chief Executive in August 2006. The matter was passed to Officer 1 and he liaised with Mr C. Had the outcome resulted in a resolution of the complaint, then it is unlikely that Mr C would have had cause to complain. I consider that despite his complaint to the Chief Executive, officers in Environment Services strove to pursue a resolution of the problem of dog fouling. I consider it would have been helpful had the Council at an early stage clarified to Mr C their distinction between his request for a service and a complaint about administrative fault or service failure by the department in delivery of the service. The failure to make this distinction at an early stage was in my view a fault. I partially uphold this complaint.

(b) Recommendations

26. The Ombudsman recommended that the Council:

- (i) continue to carry out appropriate surveillance of the area in question; and

- (ii) review their complaint handling in this instance with a view to clarifying to complainants at the outset the distinction between a request for a service and a complaint of dissatisfaction in the delivery of a service.

27. The Council have informed the Ombudsman that they accept the findings and recommendations.

24 October 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	Perth and Kinross Council
Officer 1	Principal Environmental Health Officer
The MSP	Mr C's Member of the Scottish Parliament
Officer 2	Head of Environmental and Consumer Services
Officer 3	Environmental Health Manager
Officer 4	Environmental Services Complaints Coordinator
Officer 5	Council Complaints and Governance Officer

The Council's dog patrol service

The Council's predecessor, Perth and Kinross District Council, first appointed a dog control officer in 1989 initially to tackle problems of stray dogs and dog fouling. The latter was an offence under section 48 of the Civic Government (Scotland) Act 1982.

In subsequent years dog fouling of streets and parks continued but at a reduced level. The Council put this down to education and awareness of owners of the existence of the dog control service which made routine visits to public places on a 'see and be seen basis'. By 2002 in addition to the erection of numerous advisory/warning signs the Council had installed 192 dog waste bins in parks and a further 58 on streets. In 2003 there was a change in emphasis in dog patrols to an intelligence gathering model with intensive patrols of problem areas. Additionally the Council ran courses on responsible dog ownership, provided 'worthy bags' and issued information leaflets.

On 22 October 2003, section 48 of the Civic Government (Scotland) Act 1982 was repealed when the Dog Fouling (Scotland) Act 2003 came into force. The 2003 Act changed the emphasis of the offence from allowing a dog to foul to failing to clean up afterwards. It also introduced a fixed penalty notice.

In the 17 months after the introduction of the 2003 Act the Council issued 23 fixed penalty notices. The number of complaints received about dog fouling increased by over 30% but the Council considered that this was probably due to less tolerance of this anti-social behaviour than an increase in incidence of dog fouling. The Council continue to erect new signs and new dog waste bins. The bins currently cost over £200 to install and take £40 per year to service. In April 2005 the Council appointed an additional part time dog patrol officer bringing the establishment to 2.5 FTE officers and are able to offer limited 'out of hours' patrols. This is, however, targeted and utilises information from the public to best utilise resources.