

Scottish Parliament Region: Mid Scotland and Fife

Case 200501865: Angus Council

Summary of Investigation

Category

Local government: Neighbour disputes and anti-social behaviour; housing transfer

Overview

The complainant (Mr C) raised a complaint against Angus Council (the Council) concerning the Council's handling of his complaint about the anti-social behaviour of his neighbours and his housing transfer request.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) inadequately handled Mr C's complaint about his neighbour's anti-social behaviour (*not upheld*); and
- (b) inadequately handled Mr C's housing transfer application (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 17 January 2006 the Ombudsman received a complaint from Mr C, who alleged that Angus Council (the Council) had failed to take effective action against his neighbour at 57X, whose behaviour, ongoing from 2003, he considered to be anti-social. The alleged anti-social behaviour included unacceptable levels of noise emanating day and night from 57X, alleged incidents of drink and drug taking and damage to Mr C's garden, car and workshop. Mr C stated he had also reported incidents to the police, when they occurred. Mr C further complained that the Council had not satisfactorily dealt with his housing transfer application.

2. The complaints from Mr C which I have investigated are that the Council:
- (a) inadequately handled Mr C's complaint about his neighbour's anti-social behaviour; and
 - (b) inadequately handled Mr C's housing transfer application.

Investigation

3. The investigation of this complaint involved obtaining and reading all relevant documentation, including correspondence between Mr C and the Council. I have had sight of correspondence between Mr C and the First Minister, MPs and MSPs, a Councillor, Angus Community Mediation, The Scottish Executive Justice Department¹ and the Department of Work and Pensions Ministerial Correspondence Team. I have also considered Anti-Social Behaviour Order (ASBO) incident sheets and correspondence between Mr C and Tayside Police (the Police). I reviewed the Council's ASBO strategy and procedures for dealing with ASBO complaints and their policy on the allocation of council housing (the Policy). As part of this investigation, enquiries were also made of the Council and I have reviewed their responses.

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.

¹ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

(a) The Council inadequately handled Mr C's complaint about his neighbour's anti-social behaviour

5. Mr C lives in a block comprising four flats numbered 53, 55, 57 and 59X (Mr C's home). According to Mr C, the family at 57X, who have lived directly above him since 2003, 'deal in drugs from the house ... play loud music and computer games until the early hours of the morning. Their children ... run through everyone's gardens, trample your plants into the ground or pull them up and throw them on the path, demolish the fences and I have had my shed damaged'.

6. Mr C stated that he reported these incidents to the Council but the Council's action, by advising him to contact the Police and fill out incident sheets, was unsatisfactory. Furthermore, Mr C stated that on one occasion he telephoned the Council and the Council officer 'told me to go and deal with it myself'.

7. Mr C had made a significant amount of contacts with the Council since 2003 and during this time his complaint was passed to the Council's ASBO Investigations Department (the Department). Thereafter, according to Mr C, a Council officer from the Department and a police officer visited his neighbour at 57X and 'informed him just to forget these complaints as they were not important; that he would receive another two warnings before they applied for an ASBO; and he would then receive another two to three warnings before they served it. When I asked how long this was going to take, he said at least 2 years'.

8. From 2003 onwards, Mr C also complained directly about his neighbour at 57X to various bodies (see paragraph 3). He considered that the Council should evict the family residing at 57X.

9. In the Council's response to this office, dated 4 July 2006, they stated that since 2003, the Housing Department had received complaints from Mr C about his neighbours at 57X. According to the Council, as part of their actions in addressing Mr C's allegations, they interviewed the occupants of 53X, who stated they had not been affected by any anti-social behaviour. Likewise, the occupants of 55X advised that they were not disturbed by the family. Furthermore, the Council pointed out that, other than Mr C's complaints, they had received no other neighbour complaints in the vicinity about the family at 57X.

10. In the Council's view, as no other neighbours had complained to them about the family at 57X, this suggested that this dispute arose between Mr C and the family and was not a situation of anti-social behaviour being perpetrated by one particular family against a community. Furthermore, the Council responded that other neighbours had stated that any noise was entirely reasonable for a family with children and as there was a lack of corroborative evidence against the family, it would be unlikely for a sheriff to grant an ASBO against them. The Council considered it would also be unreasonable for them to evict the family.

11. The Council also confirmed that they had utilised the complementary powers available to them under the Anti-Social Behaviour etc (Scotland) Act 2004 with the family at 57X as follows:

- (a) a verbal warning was given to them by a Housing Visitor on 4 November 2004;
- (b) a joint visit by a Housing Visitor and the Police took place on 5 May 2005;
- (c) a final written warning from a Housing Visitor was given on 14 June 2005;
- (d) a warning letter from the Community Safety Team (CST) was issued on 23 June 2005;
- (e) a joint interview by an Investigation Officer and the Police took place on 23 September 2005; and
- (f) they were interviewed by an Investigation Officer and a Housing Visitor on 18 November 2005 and signed an Acceptable Behaviour Agreement (ABA). Thereafter, their neighbour's solicitor wrote to the Community Safety Team and advised that although their clients had signed up to the ABA, this did not amount to an admission that they or any member of their household had engaged in anti-social behaviour.

12. Regarding the legislation (see paragraph 11), the Council also explained to me that they had set up a CST which investigated complaints of anti-social behaviour and neighbour nuisance behaviour. The Council said they had also introduced mediation and used ABAs with many of their tenants. In addition to this, the Council had a close working relationship with the Police and referred any allegations of crime to them (for example, a seconded police constable was a permanent member of the CST).

13. With reference to Police involvement (see paragraph 11e), the Council stated they understood that the Police 'found little evidence to substantiate the complaints'.

14. With reference to signing of the ABA (see paragraph 11f), the Council stated that the ABA had been entered into although no anti-social behaviour evidence had been obtained. Furthermore, since the signing of the ABA, the CST recorded that no complaints had been received from Mr C for a period of over six months. They explained that the last incident they had noted took place on 6 November 2005, when there was allegedly loud banging on the floor of 57X. Thereafter, the next complaint received by the CST against 57X was related to loud music and children playing football outside the flat on 22 May and 23 May 2006. In the Council's view, this demonstrated that the ABA had a 'positive effect and had removed the need for further action at that stage'.

15. The Council advised that Mr C's family and the family at 57X had undertaken mediation (see paragraph 12) through the Council's referral system; however, this had not resolved the disputes between Mr C and his neighbour.

16. The Council also explained they have a Noise Nuisances Team (NNT) which investigates complaints of excessive noise, issues warning notices and fixed penalty notices and can seize and remove equipment found to be the source of unlawful noise. The Council called in the NNT to investigate, although no evidence of anti-social behaviour of this nature had been brought to their attention (see paragraph 14).

17. Due to a lack of corroboration from other neighbours regarding instances of noise nuisance, the Council suggested to Mr C that he should telephone the NNT when there was loud music or noise emanating from 57X and they would attend and measure 'real-time' noise levels. CST referred the case to the NNT on 12 September 2005 and, thereafter, the NNT offered Mr C a contact number and advice to follow should he require their assistance.

18. The Council stated 'it appears that Mr C has never contacted the NNT to report any ongoing noise and the absence of any independent evidence is prejudicing further investigation'.

(a) Conclusion

19. In Mr C's view, the Council did not adequately handle his complaint of

alleged anti-social behaviour against his neighbour at 57X. I have carefully considered all the information available to me (see paragraph 3) and I do not agree. In my view the Council have investigated this complaint and correctly followed their ASBO policy and strategy and the legislation, to ensure that they have appropriately dealt with Mr C's concerns. Furthermore, no other neighbours have complained about the alleged behaviour of the family at 57X (see paragraphs 10, 11 and 18) and, although the Police have also been involved, they do not appear to have found any evidence to substantiate Mr C's complaints. Although I do not dispute that, in Mr C's view, he feels that the alleged behaviour of the family at 57X is unacceptable; I can find no evidence within all the documentation I have seen to support his view. I am also satisfied that the Council took appropriate and proportional action about this matter. The fact that the Council have decided not to take enforcement action against the family at 57X is not confirmation that they have failed properly to deal with this matter. Accordingly, I do not uphold this complaint.

(a) Recommendation

20. The Ombudsman has no recommendations to make.

(b) The Council inadequately handled Mr C's housing transfer application

21. Mr C alleged that the Council told him that he had been put on a priority housing list but later found out this had not happened. He alleged that the Council had misled him. Furthermore, Mr C stated that the first house the Council offered him was unsuitable for his family needs. Mr C explained this house was too small as it was a two bedroomed house (and the rent was more expensive) and Mr C wished a three bedroomed house. The second house he viewed was also a two bedroomed house. Again, in Mr C's view, this was also too small and according to Mr C, he then asked the Housing Officer to remove him from the housing list.

22. In the Council's response to me dated 4 July 2006, they stated that Mr C's application was initially submitted onto the Aspiration List for housing on 31 January 2003, as Mr C currently occupied a three bedroomed flat and only wished to be considered for a four apartment cottage. Mr C's application was transferred onto the General Needs List on 3 September 2004, following housing advice and assistance given to him by the Area Housing Visitor. The advice indicated that Mr C would be better placed on this overall list, as points were awarded for under occupancy of his current accommodation and the

General Needs List received consideration before the Aspiration List.

23. Thereafter, Mr C was offered a two bedroomed cottage, on 18 February 2005. Mr C refused this other cottage on the grounds that it was too small. On 17 August 2005 another two bedroomed cottage was offered to Mr C at 72X but again was refused by Mr C as being too small (see paragraph 21).

24. Following these two refusals, Mr C's application was transferred back on to the Aspiration List, in accordance with Mr C's wish for a three bedroomed cottage. Thereafter, no further offers were made to Mr C due to the 'lack of turnover and the continuing depletion of this type of housing stock'. The Council explained that, between April 2005 and May 2006, only nine three bedroomed cottages were available to let in Angus and this meant they were unable to advise Mr C when such a property may become available.

(b) Conclusion

25. In Mr C's view, the Council misled him and told him lies when they handled his housing transfer application. Within my review of all the submitted paperwork (see paragraph 3), I have not had sight of any document which supports Mr C's opinion that the Council incorrectly dealt with his housing transfer request or that the Council misled him. In my view, the Council considered Mr C's housing transfer request and made attempts to try to meet his wishes, within the housing stock they had available at that time. Furthermore, the Council transferred Mr C's application between their housing lists to try to expedite his transfer request and advised him throughout this process (see paragraph 22). I acknowledge Mr C's frustration that, when he sought a housing transfer, the type of housing he wished had a limited supply and, therefore, the Council were unable to state when such a property could become available. However, this does not mean that the Council inadequately handled Mr C's housing transfer application. In my view, the Council made efforts to try to advise and assist Mr C with his housing transfer request, within the scope and restrictions of the housing stock that was available at the time. Accordingly I do not uphold this complaint.

(b) Recommendation

26. The Ombudsman has no recommendations to make.

19 December 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	Angus Council
59X	Mr C's home
57X	Mr C's neighbour's home
ASBO	Anti-Social Behaviour Order
The Police	Tayside Police
The Policy	The Allocation of Council Housing Policy
The Department	The Anti-Social Behaviour Order Investigation Department
CST	Community Safety Team
ABA	Acceptable Behaviour Agreement – a voluntary agreement
NNT	Noise Nuisance Team

List of legislation and policies considered

Angus Antisocial Behaviour Strategy 2005 - 2008

A Guide To the Allocation of Council Housing In Angus

Procedures for dealing with Complaints of Anti-Social Behaviour

The Anti-Social Behaviour etc (Scotland) Act 2004