

Case 200502418: Midlothian Council

Summary of Investigation

Category

Local government: Housing; Neighbour disputes and anti-social behaviour

Overview

The complainant (Mr C) claimed that Midlothian Council (the Council) failed to take appropriate action in response to complaints made by him regarding the anti-social behaviour of neighbours and that the Council's policy in relation to anti-social behaviour was flawed.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) there was delay by the Council in responding to correspondence from Mr C and his representatives (*partially upheld*);
- (b) there were flaws in the Council's anti-social behaviour policy/procedures (*not upheld*);
- (c) there was inaction or inappropriate action taken by the Council in response to complaints about anti-social behaviour (*partially upheld*); and
- (d) the Council handled Mr C's complaint poorly (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) provide her with a copy of the current service standards for acknowledging and responding to all modes of contact and correspondence, both for complaints and for general enquiries;
- (ii) consider putting more information into the guidance for staff dealing with anti-social behaviour reports, and into the public domain, on the corroboration standards required before action may be taken against alleged perpetrators;
- (iii) update her on the monitoring and evaluation of the Council's Antisocial Behaviour Strategy (the Strategy) since October 2005;
- (iv) using the benefit of officers' experience since 2005 consider reviewing, possibly with the use of case studies, how they determine when complaints about anti-social behaviour from one or more sources in close

proximity have progressed from intermittent and episodic to an ongoing and consistent anti-social behaviour situation;

- (v) provide her with the information and guidance now issued with the Neighbour Problems Diary sheets as this should indicate how and when they should be used, and in particular should explain how the Council will determine the sheets' validity as evidence. In addition, the Council should develop a fuller statement of what they regard as acceptable corroboration and what they regard as a credible independent witness. It might help to explain this to members of the public by using anonymised/fictionalised case studies on the anti-social behaviour section of the Council's website;
- (vi) provide her with information about the Council's mediation service, both in terms of guidance for officers on how and when it should be offered to the parties involved in an anti-social behaviour situation, as well as how information about the service is made available to the public; and
- (vii) update her on the review of the Strategy, on whether or not the Antisocial Behaviour Order guidance in the Housing Officer's Handbook has been clarified, and on how the Council is currently dealing with noise nuisance.

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

Main Investigation Report

Introduction

1. On 30 November 2005 the Ombudsman received a complaint from a member of the public (Mr C) against Midlothian Council (the Council) alleging that the Council had failed to take appropriate action in response to complaints made by him regarding the anti-social behaviour of neighbours and that the Council's policy in relation to anti-social behaviour was flawed. Mr C was also unhappy with how the Council had handled his complaint.

2. The complaints from Mr C which I have investigated are that:

- (a) there was delay by the Council in responding to correspondence from Mr C and his representatives;
- (b) there were flaws in the Council's anti-social behaviour policy/procedures;
- (c) there was inaction or inappropriate action taken by the Council in response to complaints about anti-social behaviour; and
- (d) the Council handled Mr C's complaint poorly.

Investigation

3. It is important to make clear at the outset that it has not been my role to assess the individual complaints of neighbour nuisance and anti-social behaviour brought by Mr C but to judge whether the Council fulfilled their duties and responsibilities in dealing with the complaints in a reasonable manner. To determine what those duties and responsibilities were at the time of the complaints, I have examined the relationships between the parties involved in the complaints and considered the policies and procedures which the Council were obliged to apply. These were the Midlothian Council Antisocial Behaviour Strategy (the Strategy); Dealing With Neighbour Complaints – Housing Officer's Guidebook (the Guidebook); and the Draft Antisocial Behaviour Protocol For Adults In Midlothian. I have also examined relevant Council committee minutes.

4. As well as my enquiries of the Council in this area, I have also considered relevant legislation and Scottish Executive guidance including the Scottish Executive's¹ Sound Advice On Noise – Don't Suffer In Silence leaflet; the Environmental Protection Act 1990 (as amended); the Antisocial Behaviour etc

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.

(Scotland) Act 2004 and its Explanatory Notes; the Scottish Executive's Guide to the Antisocial Behaviour etc (Scotland) Act 2004; and the Antisocial Behaviour (Noise Control) (Scotland) Regulations 2005.

5. Section 7(1) of the Scottish Public Services Ombudsman Act 2002 states that:

'The Ombudsman is not entitled to question the merits of a decision taken without maladministration by or on behalf of a listed authority in the exercise of a discretion vested in that authority.'

6. 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

7. Paragraphs 8 to 15 are a summary of the key events relating to this complaint and not a detailed or exhaustive list of everything that happened or is alleged to have happened.

8. Mr C and his partner (Ms C) were owner-occupiers in one flat in a four-in-a-block building. They and another neighbour (Neighbour 1) had experienced intermittent and relatively minor anti-social behaviour problems with some of their neighbours in the building since mid-2003. This escalated for a period from November 2004 and on 22 June 2005 Mr C submitted a Housing Officer Visit Request Form to the Council. Mr C also obtained Neighbour Problems Diary sheets from Council offices and used them to record his observations of anti-social behaviour. The anti-social behaviour was typically partying in the shared garden, including loud music, alcohol and once riding a mini motorbike around the exterior of the building. Mr and Ms C also experienced intermittent loud music from inside the neighbouring flats, as well as loud domestic arguments, including aggressive shouting and swearing, which sometimes continued into the street. Mr C called the police on a number of occasions although he was also concerned that involving the police might inflame the situation. Two of his neighbours (Neighbour 2 and Neighbour 3) were issued with a verbal warning by the Council on 29 and 20 July 2005 respectively.

9. Partying and loud music began again on 3 September 2005. Mr C did not call the police as the music was not 'blaring' and because he thought that his neighbours would suspect he had called the police and this would lead to

hostility. There was a similar incident on 23 September 2005. Mr C telephoned Neighbour 1 to confirm that he could also hear the music, but they did not call the police as they did not want to 'cause more problems'. Instead Mr C called the Council's Antisocial Behaviour Team (ASBT). A member of Council staff (Officer 1) visited Mr C a few days later. On 1 and 2 October 2005 there were further incidents of loud music and arguing in the street, and on 2 October Neighbour 1 called the police. Mr C telephoned the ASBT on 3 October and Neighbour 1 telephoned the ASBT on 6 October 2005 asking them to take action against his neighbours and both Mr C and Neighbour 1 wrote to the ASBT on 7 October 2005 with the same request. On 8 October 2005 there was more loud music and partying, and the police were called.

10. On 10 October 2005 Mr C wrote to the Council's Director of Corporate Services requesting a copy of the Council's anti-social behaviour policy/procedures. Mr C also wrote to the ASBT to complain about the incident on 8 October 2005. Mr C had discussed this with a local MSP (MSP 1) and MSP 1's office wrote to the Council's Director of Community Services to highlight the negative impact that anti-social behaviour was having on the street and voicing concern that the issuing of warnings with no further action was not resolving the matter.

11. An officer from the ASBT (Officer 2) visited Neighbour 3 but was told by Neighbour 3 that he was not there when the police called on 8 October 2005. Officer 2 spoke to Mr C on 14 October 2005 and advised him that there was not enough evidence to take action against his neighbours, but that he would arrange a meeting between Mr C and the ASBT to discuss the situation. On 17 October 2005 a person attending a party at Neighbour 3's flat came to Mr C's door and was abusive. Mr C called the police and then reported the incident to another officer at the ASBT (Officer 3) who had called Mr C. Mr C's solicitors (the Solicitors) wrote to him to advise that they had written to the Council asking what action was proposed against Mr C's neighbours. Mr C wrote to the Director of Corporate Services again on 21 October 2005 requesting a copy of the Council's anti-social behaviour policy/procedures and he received a copy of the Strategy on 26 October 2005. On 27 October 2005 a meeting took place between Officer 1, Officer 2, the local Community Police Officer (PC 1) and a local Councillor to discuss the situation.

12. On 28 October 2005 Officer 1 called at Mr C's house but as he was not at home she left a calling card. Mr C wrote to the Council's Chief Executive to

complain about the poor standard of service he felt he had received from the ASBT. Mr C and Neighbour 1 wrote to the ASBT Leader (Officer 4) on 1 November 2005 regarding a domestic incident between Neighbour 3 and his partner. The next day the Council wrote to Mr C to advise that Council officers would visit his home on 10 November 2005 to discuss the ongoing complaints. On 7 November 2005 Mr C requested that the meeting be postponed until 18 November 2005, though the Council say that Mr C 'cancelled' the 10 November meeting. The meeting took place on 18 November 2005 between Mr C and Officer 2 and Officer 3.

13. On 25 November 2005 there was a further incident involving Neighbour 3 playing loud music. On the same day Mr C received a response from the Chief Executive to his complaint letter of 28 October 2005. On 28 November 2005 there was more loud music coming from Neighbour 3's flat and there was a further similar incident on one occasion in December 2005.

14. On 22 April 2006 there was another incident. By this time, Neighbour 2 had moved away and was replaced with a new neighbour (Neighbour 4). The incident involved Neighbour 3 and began with loud music and culminated in Neighbour 3 being threatening and abusive to Mr C. As a result of this incident, which was corroborated by Neighbours 1 and 4, Neighbour 3 was charged with Breach of the Peace in May 2006. Neighbour 3 was issued with a written warning by the Council on 9 May 2006, which made clear that the corroborated complaints constituted a breach of his tenancy conditions. An Acceptable Behaviour Contract (ABC) was raised with Mr C in a letter of 24 May 2006 and he agreed to the ABC on 1 June 2006. Subsequently both Neighbour 3 and Mr C were offered the possibility of entering into a mediation process to try to resolve the situation.

15. Mr C and Ms C moved away from the area in July 2006. Mr C claimed that the prolonged, though intermittent, period of anti-social behaviour which he believed was exacerbated by the lack of action from the Council, as well as what he saw as his fruitless interaction with Council staff, had caused him to suffer stress which required him to visit his doctor.

(a) There was delay by the Council in responding to correspondence from Mr C and his representatives

16. In his complaint to the Ombudsman Mr C said that the Council had been, in his view, unprofessional as they had not responded to communication from

him, the MSPs representing him or the Solicitors. I will deal with the Council's interaction with Mr C in section (c) of this report.

17. Mr C had contacted two MSPs (MSP 1 and MSP 2) to try and assist him in dealing with the anti-social behaviour situation and, from his perspective, to expedite a response to the situation from the Council. MSP 1 wrote to the Council's Director of Community Services on 11 October 2005 about the 'negative impact the behaviour is having' on the street, but there is no record in the evidence provided to me of a response from the Council. MSP 2 emailed a Senior Housing Officer at the Council (Officer 5) on 21 November 2005 for an update on what the Council were doing to deal with the situation and received an email response from Officer 5 on 9 December 2005. In the 9 December email, which outlined the history of the situation since July 2005 and the current actions by the Council in dealing with it, Officer 5 also apologised to MSP 2 for the delay in responding, but offered no explanation.

18. The Solicitors wrote to the Council's Housing Department on 19 October 2005 to ask what action they proposed to take against Mr C's neighbours. Having received no response, they wrote again on 8 November 2005, and followed this up with a fax on 25 November 2005 asking for a response by 28 November 2005. Officer 5 emailed a response on 28 November 2005 which gave a brief response on current Council actions in dealing with the anti-social behaviour, but did not offer an apology or explanation for the lack of responses to previous communication from the Solicitors.

19. In response to my enquiries the Council advised me that, at the time of the correspondence outlined above, the Council did not have standards for acknowledging or responding to emails or letters in relation to complaints, but that they were now in development.

(a) Conclusion

20. In relation to the letter from MSP 1, there is no evidence on whether or how the Council responded. In relation to MSP 2, Officer 5 responded within 14 working days. The Council did not acknowledge the correspondence from the Solicitors, starting with a letter of 19 October 2005, until 28 November 2005. All of this is in the context of the Council, at the time, not having standards for acknowledging or responding to correspondence. I have no evidence for the MSP 1 complaint. The evidence for the MSP 2 complaint shows that the

response was within a reasonable timescale. The evidence for the Solicitors' complaint shows that there was, considering all of the relevant circumstances at the time, an unreasonable delay in responding. Given this mix of response times and delays, mitigated by the fact that the Council was developing response times, I partially uphold this complaint.

(a) Recommendation

21. The Ombudsman recommends that the Council provide her with a copy of the current service standards for acknowledging and responding to all modes of contact and correspondence, both for complaints and for general enquiries.

(b) There were flaws in the Council's anti-social behaviour policy/procedures

22. In his complaint to the Ombudsman Mr C claimed that the Council's policy/procedures for dealing with anti-social behaviour must be flawed as he was of the view that the action taken was inadequate or inappropriate. The Council's actions will be dealt with in section (c) of this report.

23. The Council sent me a copy of the Guidebook. As a Council Housing Unit publication for staff, this focuses on the actions and behaviour of Council tenants and, therefore, applied to how the Council dealt with Neighbour 3 who was a Council tenant and the apparent main source of the anti-social behaviour reported by Mr C. The introduction to the Guidebook states:

' ... the Council requires to be very proactive in the approach to antisocial behaviour in order to ensure that minor problems are not left to fester and escalate into major ones. The emphasis of the Council's policy in this regard is therefore focused upon proactive services → rather than reactive such as visiting complainants at an early stage joint working with other agencies → mediation → interdicts → specific implements → antisocial behaviour orders.'

The Guidebook sets out how a Housing Officer should investigate a complaint upon receipt. For '1st stage investigation' there is a flow chart for officers to follow, as well as guidance notes for complainants, witnesses and alleged perpetrators. The guidance for the remaining stages (2 and 3) has similar flow charts and guidance notes.

24. A key element of the complaint was whether or not Mr C's reports of anti-social behaviour were corroborated. The Council advised me that guidance on corroboration is contained in the Guidebook.

25. The Council also sent me a Draft Antisocial Behaviour Protocol For Adults In Midlothian. This document also sets out, in a flow chart style, the steps to be taken by Council Officers when dealing with complaints about anti-social behaviour. Where the alleged perpetrator is a Council tenant, the protocol states that the complaint should be investigated by a Housing Officer. Where the alleged perpetrator is an owner-occupier or a private tenant, the protocol states that an 'ASBO officer' should investigate.

26. In response to my enquiries the Council advised that the Strategy was submitted to the Scottish Executive in September 2005. A copy of the Strategy document sent to me by Mr C is dated October 2005. The Council also advised me that the Strategy was developed by their Housing, Social Work, Environmental Health, Education and Commercial Services departments in conjunction with the police, registered social landlords and the Reporter to the Children's Panel. This was in line with the provisions of the Antisocial Behaviour etc (Scotland) Act 2004 which placed a responsibility on local authorities to work with relevant agencies. The Strategy set out its aims, the causes of anti-social behaviour, the anti-social behaviour problem in Midlothian and how it would be dealt with, enforcement action that could be taken, how the Council would work with partners and the community, and how the Strategy would be monitored and evaluated.

(b) Conclusion

27. The Guidebook is reasonably clear and thorough in guiding officers through the steps to be taken when dealing with complaints. In particular the guidance on interviewing complainants, witnesses and alleged perpetrators is a useful tool to assist officers with evidence gathering. However, I cannot agree with the Council's advice to me that the sections on interviewing contain guidance on corroboration. My reading of these sections is that there are references to this issue, but there is nothing that clearly explains to officers, which in turn would help officers explain clearly to complainants, what standard of corroboration is expected, for example, are independent witnesses required, how many are required, and what constitutes an independent witness. Given the Council's advice to Mr C that, until April 2006, his complaints were not

corroborated, it would appear that the '1st stage investigation' section is the most relevant.

28. My reading of the Draft Antisocial Behaviour Protocol For Adults In Midlothian was that it is also reasonably clear and thorough. However, the use of the term 'ASBO officer' is unhelpful as complainants could misinterpret this and it might raise their expectations that an Antisocial Behaviour Order (ASBO) would be the logical conclusion of their complaint.

29. The Strategy document was a helpful distillation of why the Strategy was written in the first place, the extent and nature of the anti-social behaviour problem in Midlothian, what the Council intended to do about the problem and how it would work with partner organisations and the local community. Given that this was the Council's first formalised response to the Antisocial Behaviour etc (Scotland) Act 2004, I view it as a comprehensive and useful document. This view is reinforced by the stated need, as expressed in the document, to keep the Strategy under review in light of practical experience during its implementation.

30. On balance, given that I have only minor concerns about these documents, and given the context in which they were written (ie effectively as a 'first response' to the 2004 legislation), I do not uphold this complaint.

(b) Recommendation

31. Although I have not upheld this complaint, the Ombudsman recommends that the Council consider putting more information into the guidance for staff dealing with anti-social behaviour reports, and into the public domain, on the corroboration standards required before action may be taken against alleged perpetrators.

32. The Ombudsman also recommends that the Council update her on the monitoring and evaluation of the Strategy since October 2005.

(c) There was inaction or inappropriate action taken by the Council in response to complaints about anti-social behaviour

33. As noted in paragraph 8, Mr C and Ms C had experienced anti-social behaviour problems as a result of the actions of Neighbour 2 and Neighbour 3 since mid-2003. These problems were of an intermittent nature and were often, given the spectrum of reported anti-social behaviour, of a relatively low level,

mainly noise nuisance. As noted in paragraph 26, the Strategy and related documents were formalised in October 2005. The complaints regarding anti-social behaviour from before these dates could not have been dealt with under this policy and, therefore, I do not have a reliable benchmark against which to judge the Council's actions before October 2005.

34. The introduction to the Strategy paraphrases the interpretation of the phrase 'antisocial behaviour' as used in Section 143 of the Antisocial Behaviour etc (Scotland) Act 2004. Section 143 of the Act states:

'(1) For the purposes of this Act (other than Parts 7 and 8), a person ('A') engages in antisocial behaviour if A –

- (a) acts in a manner that causes or is likely to cause alarm or distress; or
- (b) pursues a course of conduct that causes or is likely to cause alarm or distress'

to at least one person who is not of the same household as (A); and 'antisocial behaviour' shall be construed accordingly.

(2) In this Act, unless the context otherwise requires - 'conduct' includes speech; and a course of conduct must involve conduct on at least two occasions ...'

35. The Strategy, in the section on 'dealing with the problem', states that: 'Pivotal to the strategy are good lines of communication. We will use effective communication methods to promote public confidence and to influence appropriate behaviour ... Tackling antisocial behaviour at the earliest possible stage is essential to reduce the incidence of unacceptable behaviour.'

The Strategy goes on to state that:

'Antisocial behaviour covers a wide range of conduct with differing levels of intensity. Some examples are:

- domestic noise
- amplified noise/noisy parties
- dumping litter and rubbish ...
- neglect of gardens and cleaning responsibilities
- verbal abuse
- threatening or violent behaviour ... '

The Strategy outlines the various support, intervention and rehabilitation measures available to the Council and makes clear that enforcement action, such as an ASBO, is a last resort when all other measures have failed.

36. The Guidebook, in the guidance note on ASBOs, states that there is no legislative requirement for the Council to apply for an ASBO, but that any individual or public or private body can make an application to the Council for an ASBO to be raised. The Council advised me that Mr C was not informed by the Council that he could apply for an ASBO to be raised and that the guidance in the Guidebook is not clear on this point as:

'the intention of this section was to confirm to staff that any individual or body could request the Council to investigate an anti-social behaviour complaint, and if substantiated, this could result in an ASBO. The handbook is being revised as part of a comprehensive review of procedures, and as a result we hope to clarify guidance in this area.'

The Guidebook also states that when interviewing complainants 'It is essential that clear, concise and legible notes are taken' and when interviewing witnesses 'this information is to be clearly and legibly written on the case report'. The information provided to me by the Council does not include such clear notes, though I was provided with hard copies of audit trail records from the Council's computer system.

37. The Strategy states that the role of ASBT, who would work closely with housing officers, the police, and other agencies, is to:

'give advice on remedies (including legal action) to deal with antisocial behaviour and investigate complaints as well as developing strategies and services.'

38. In June 2005 Mr C went to the Council offices to obtain copies of the Neighbour Problems Diary sheets which he used to record details about anti-social behaviour incidents. Mr C has told me that on obtaining these diary sheets he was given no explanation on how and when to use them or how their validity as evidence would be determined. Mr C also told me that the records he made on the Neighbour Problems Diary sheets were dismissed by Officer 2 as inconclusive and not evidence of anti-social behaviour. In their response to my enquiries the Council advised that they use the diary sheets to allow complainants to:

'record incidents which they feel provide evidence of neighbour disputes or antisocial behaviour. These incidents are then investigated and corroboration sought by the Housing or Antisocial Behaviour Officers. The outcome of the investigation will dictate if these complaints are then pursued.'

The Council, in a separate response, went on to say:

'When diary sheets are issued for a complainer to record the details of alleged antisocial behaviour, they are asked to give details of the nature of the incident, if there were any witnesses and if the police were called. These details are then used to get witness statements, and police reports, and allow the investigations to be carried out to find if other neighbours can corroborate the complaint. We had felt that the diary sheets were self-explanatory, but will now revise the sheets to provide further guidance on their use.'

39. In his evidence to me, Mr C alleged that Officer 2 had dismissed the corroboration of anti-social behaviour incidents which had been provided by Neighbour 1, allegedly saying that it could be viewed as collusion rather than corroboration. Officer 2 is also alleged to have advised Mr C that the Council would consider acceptable corroboration as police corroboration or that provided by a Council officer present in Mr C's flat at the time of a disturbance.

40. In his response of 25 November 2005 to Mr C's complaint, the Council's Chief Executive stated that:

'Staff have discussed the situation with several neighbours however, there appears to be little corroboration of the events detailed in your complaints. Police reports have also been sought in this regard and there is some evidence of noise nuisance from one of the addresses.'

The Guidebook and the Draft Antisocial Behaviour Protocol For Adults In Midlothian both contain flow charts that make clear that complaints will only be pursued through and beyond the first stage of the anti-social behaviour complaints process if there is corroboration, however, there is no definition of corroboration in these documents. The local Councillor who was involved in the complaints (see paragraph 11) advised me that Officer 2 briefed him on the situation on 19 October 2005 and told him that there were difficulties, as follows:

- 'the corroboration was not convincing
- no other neighbours were complaining

- the neighbours accused of antisocial behaviour had been spoken to and warned but had not accepted that anything they had done was untoward.'

At the meeting referred to in paragraph 11, all parties agreed that there was little corroboration of the complaints.

41. In the Council's response to my enquiries, they explained that they would normally expect, as acceptable corroboration:

'to have credible independent witness statements, which would be able to be used in Court if required. If this is not available we must weigh the evidence available from various sources, and decide, on balance of probability, the validity of the evidence ... the Council's view on corroboration was drafted after consultation with our Legal Section ... Police Incident Reports act as a source of corroboration that the police attended an incident. The content of the report will detail what the police were actually able to verify.'

42. In both written and verbal evidence to me, Mr C made mention several times of the potential for issuing ASBOs to deal with this situation. However, he also said that his main focus was a solution, ideally amicable, to the situation. Mr C was aware, having been sent a copy of the Strategy by the Council in October 2005, of the escalation steps they could take to deal with a progressively deteriorating anti-social behaviour situation. Mr C also decided in September 2005 not to formally pursue the matter with the Council, having discussed it with Officer 3, as he did not wish to:

'inflame the situation and bring suspicion from our neighbours as to the source of the complaints. But I did ask that my concerns be recorded.'

In relation to the November 2005 incidents (see paragraph 13), the Council advised me that although Mr C complained to them about the incidents, he did not call the police because the music was being played intermittently and it would probably be turned down when the police arrived. I spoke to Mr C and asked him if he thought that he was, in any way, giving mixed messages to the Council by both trying to be tolerant and giving his neighbours another chance, while wanting the Council to take action against them. Mr C said that, in his view, from October 2005 onwards his message to the Council was specific and clear and that he had called the police on four occasions in November 2005. Instead he said that the Council had been inconsistent in applying the Strategy.

43. In their response to my enquiries, the Council advised that:

'Incidents are recorded on the Council's computer system If incidents are intermittent, they will normally be dealt with as individual incidents. If incidents are consistent and persistent, action will be escalated, per the Council's procedures. Previous action in respect of a tenant is taken into account, however in situations where incidents are episodic and some time may have passed, it may not be appropriate to escalate the proposed action. In such cases it may be appropriate to refer for mediation In many instances there may be clashes of lifestyles rather than antisocial behaviour and in such situations the first approach may be to try to mediate between the parties.'

44. Mr C approached Victim Support for assistance in November 2005. In a letter to him of 29 November 2005, Victim Support wrote that they hoped Mr C would consider taking part in any mediation services that were offered. The first record of an offer of mediation (see paragraph 14) from the Council to Mr C was in a letter of 13 June 2006 from the Head of Revenues and Housing Management. Mr C wrote back on 28 June 2006 to accept the offer of mediation between him and Neighbour 3, however, as noted in paragraph 15, Mr C and Ms C moved away from the area in July 2006. The Council subsequently advised me that:

'where a perpetrator is identified through corroboration we would not systematically offer a referral to mediation. This procedure is under review as an in-house mediation service is now available.'

45. Mr C, in discussion with Council officers in October and November 2005 and as also referred to in his complaint letter to the Council's Chief Executive, asked for sound detection equipment to be installed to prove the level of noise or for Council staff, such as Community Wardens, to be present when an incident took place. His intention was to seek corroboration acceptable to the Council and thereby reinforce his complaint against his neighbours. The Council advised me that they explained to Mr C that the Community Wardens had a designated patrol area that did not include his town, and that the noise detection equipment was not yet operational.

46. Several pieces of legislation have given local authorities powers to deal with noise nuisance. Sections 80 and 81 of the Environmental Protection Act 1990 (as amended by the Noise and Statutory Nuisance Act 1993 and the Environmental Act 1995) placed on local authorities a duty to deal with any

noise which they considered to be a statutory nuisance. Section 79 of the Environmental Protection Act 1990 listed various statutory nuisances, including noise. The Antisocial Behaviour etc (Scotland) Act 2004 also amended the Environmental Protection Act 1990. Part 5 of the 2004 Act was devoted to noise nuisance and gave local authorities the power to implement a noise nuisance service in their area and provision was made for fixed penalty notices for noise nuisance and additional powers to seize noise making equipment. The Antisocial Behaviour (Noise Control) (Scotland) Regulations 2005 set down the maximum levels of noise which may be emitted at specified times of the day and approved specified types of device for use in the measurement of noise and contained provisions on the manner in which such devices are to be used and the testing of such devices. The Council, at a meeting of the Environmental Protection Committee on 13 January 2005, agreed to adopt the noise control provisions in the 2004 Act. The Council advised me that, due to staffing issues, there had been problems in rolling out some aspects of their noise control service. A pilot anti-social noise nuisance scheme was run between January and March 2006, with the full service becoming operational from October 2006. The Council also advised me that during the pilot scheme there were no reports arising from or relating to Mr C's property.

47. In evidence to me, Mr C said:

'The Council has the power but is deliberately doing nothing, this is my belief ... they are obviously upset that I have decided to challenge this type of behaviour.'

Elsewhere in his evidence Mr C referred to both the Council corporately and to individual officers in a pejorative manner, which he said was brought on by his stress and frustration. He also said that Council officers were discourteous to him and showed little understanding of the situation he was in. Evidence provided on behalf of the Council said that Officer 1, Officer 2 and PC 1 found Mr C to be confrontational, and a computer record states that Officer 1 found Mr C to be 'economical with the truth'.

(c) Conclusion

48. By its very nature, something that causes alarm or distress (see paragraph 34) to one person might not cause alarm or distress to someone else – there is, inevitably, a subjective element to anti-social behaviour even though an interpretation is laid down in statute. In paragraph 33, based on evidence provided by both Mr C and the Council, I reported that the problems with Mr C's

neighbours were of an intermittent nature and were often of a relatively low level when compared to recorded examples of the most unreasonable anti-social behaviour. This is not to dismiss the significance of the anti-social behaviour to Mr C and Ms C, or to diminish the stress they suffered as a result.

49. Given that Mr C, on occasion, did not wish to pursue complaints against his neighbours, it is understandable why the Council believed that they were getting mixed messages from him. In addition to this, evidence provided by both Mr C and the Council demonstrates that the relationship between them had broken down, although there is no evidence to prove Mr C's allegation that Council officers took no action about the anti-social behaviour because they were unhappy that he was complaining about them or that they were discourteous to him.

50. The Strategy called for effective communication and early intervention. Given the breakdown of the relationship between Mr C and Council officers, communication was not always clear and effective. In terms of deciding what measures to use, each case of anti-social behaviour will be different, therefore, a simplistic 'tick box' approach would not be appropriate and Council officers are expected to use their discretion when applying professional judgement. However, this has to be balanced against the need for guidelines and procedures that are clear to both Council staff and the public - including potential complainants about, witnesses to and perpetrators of anti-social behaviour. Given that the Strategy was relatively new, that noise nuisance provisions were not yet fully implemented, that there was no duty on the Council to apply for an ASBO, and the episodic nature of the anti-social behaviour, I am of the view that the Council officers acted, in the main, in a reasonable manner in applying their professional judgement.

51. However, as noted, there was a lack of clarity regarding how and when to use the Neighbour Problems Diary sheets and in particular a lack of clarity about how the Council would determine their validity as evidence. There was also some confusion, or at least a lack of a consistent message, over what constituted acceptable corroboration of Mr C's allegation. There was also one apparent failure to follow procedures, as there is no evidence that clear and legible notes were taken at interviews with Mr C or with other relevant parties, and that they were written into the case reports.

52. I understand Mr C's frustration at the apparent lack of Council action and I am aware of the personal toll the anti-social behaviour took on Mr C and Ms C. I also understand that, at the time in question, the housing and anti-social behaviour staff were developing into their role under the Strategy and relevant legislation. Therefore, on balance, I partially uphold this complaint.

(c) Recommendations

53. The Ombudsman recommends that the Council:

- (i) using the benefit of officers' experience since 2005, consider reviewing, possibly with the use of case studies, how they determine when complaints about anti-social behaviour from one or more sources in close proximity have progressed from intermittent and episodic to an ongoing and consistent anti-social behaviour situation;
- (ii) provide her with the information and guidance now issued with the Neighbour Problems Diary sheets as this should indicate how and when they should be used, and in particular should explain how the Council will determine the sheets' validity as evidence. In addition, the Council should develop a fuller statement of what they regard as acceptable corroboration and what they regard as a credible independent witness. It might help to explain this to members of the public by using anonymised/fictionalised case studies on the anti-social behaviour section of the Council's website;
- (iii) provide her with information about the Council's mediation service, both in terms of guidance for officers on how and when it should be offered to the parties involved in an anti-social behaviour situation, as well as how information about the service is made available to the public; and
- (iv) update her on the review of the Strategy, on whether or not the ASBO guidance in the Guidebook has been clarified, and on how the Council is currently dealing with noise nuisance.

(d) The Council handled Mr C's complaint poorly

54. As noted in paragraph 10, Mr C wrote to the Council's Director of Corporate Services on 10 October 2005, enclosing a stamped addressed envelope, to request a copy of the Council's anti-social behaviour policy/procedures. On 21 October 2005, having received no acknowledgement of his previous letter, Mr C wrote again to the Director of Corporate Services requesting a copy of the policy/procedures. Mr C was sent a copy of the Strategy by the Council on 26 October 2005.

55. Mr C sent a formal letter of complaint about the Council's response to the anti-social behaviour to the Chief Executive on 28 October 2006 (see paragraph 12). On 2 November 2005 Mr C wrote again to the Chief Executive to amend his original letter of complaint. The Chief Executive responded to Mr C's complaint on 25 November 2005.

(d) Conclusion

56. As the substance of Mr C's complaint has been gone into in some detail elsewhere in this report, I will confine my comments in this section to the timescales involved in responding to Mr C. Mr C was sent a copy of the Strategy 13 working days after his request. Mr C was sent a response to his formal complaint to the Chief Executive in 20 working days. Both of these are reasonable timescales, although it would have been courtesy to acknowledge receipt of Mr C's correspondence. Given the timescales involved, I do not uphold this complaint.

(d) Recommendation

57. The Ombudsman has already made a recommendation relating to this matter (see paragraph 21).

58. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations (ii) and (iv) have been implemented and provide the information and updates requested.

Explanation of abbreviations used

Mr C	The complainant
The Council	Midlothian Council
The Strategy	Midlothian Council Antisocial Behaviour Strategy
The Guidebook	Dealing With Neighbour Complaints – Housing Officer's Guidebook
Ms C	The complainant's partner
Neighbour 1	A neighbour of Mr C's who supported his complaints
Neighbour 2	A neighbour of Mr C's who was a source of anti-social behaviour
Neighbour 3	A neighbour of Mr C's who was a source of anti-social behaviour
ASBT	Midlothian Council's Antisocial Behaviour Team
Officer 1	Housing Officer
MSP 1	A Member of the Scottish Parliament
Officer 2	Housing Officer
Officer 3	Anti-social Behaviour Officer
The Solicitors	Mr C's solicitors

PC 1	The local community police officer
Officer 4	Anti-social Behaviour Team Leader
Neighbour 4	A neighbour of Mr C's, who replaced Neighbour 2, and corroborated Mr C's complaint in April 2006
ABC	Acceptable Behaviour Contract
ASBO	Antisocial Behaviour Order
Officer 5	Senior Housing Officer
MSP 2	A Member of the Scottish Parliament

Glossary of terms

Acceptable Behaviour Contract

An Acceptable Behaviour Contract is a written agreement between a person who has been involved in anti-social behaviour and one or more agencies whose role it is to prevent further anti-social behaviour. It is not legally binding

Antisocial Behaviour Order

An Antisocial Behaviour Order is a legally binding order made by a sheriff. They are preventative orders to protect victims of anti-social behaviour and the wider community from further acts of anti-social behaviour

List of legislation and policies considered

Midlothian Council Antisocial Behaviour Strategy

Dealing With Neighbour Complaints – Housing Officer's Guidebook

Draft Antisocial Behaviour Protocol For Adults In Midlothian

Sound Advice On Noise – Don't Suffer In Silence

Guide to the Antisocial Behaviour etc (Scotland) Act 2004

Environmental Protection Act 1990 (as amended)

Antisocial Behaviour etc (Scotland) Act 2004 and its Explanatory Notes

The Antisocial Behaviour (Noise Control) (Scotland) Regulations 2005.

Scottish Public Services Ombudsman Act 2002 (as amended)