

Scottish Parliament Region: Highlands and Islands

Case 200602375: The Highland Council

Summary of Investigation

Category

Local government: Neighbour disputes and anti-social behaviour

Overview

The complainant (Mr C) complained to the Ombudsman's office that the Highland Council (the Council) had failed to respond appropriately to complaints he had made against his neighbours regarding their alleged behaviour.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to provide appropriate responses to Mr C's representations about his neighbours' alleged anti-social behaviour between October 2005 and October 2007 (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. The complainant (Mr C) originally complained to the Ombudsman's office in 2003 about the Council's failure to take effective action in response to his complaints of alleged anti-social behaviour by his neighbours. At that time the then Ombudsman advised Mr C that, having carefully considered the matter and having made enquiries of the Council, she was satisfied that the Council had taken Mr C's complaints seriously and had taken action they were able to take and which they considered appropriate. Mr C subsequently contacted the Ombudsman's office again concerning his continuing dissatisfaction with the Council's handling of his most recent complaints of alleged anti-social behaviour by his neighbours. We confirmed with Mr C, in September 2008, that our investigation would cover the period October 2005 to October 2007.

2. The complaint from Mr C which I have investigated is that the Council failed to provide appropriate responses to Mr C's representations about his neighbours' alleged anti-social behaviour between October 2005 and October 2007.

Background

3. Mr C originally complained to the Council on 22 February 1999, the date on which his neighbour (Mrs D) was allocated the adjoining property. Mrs D's son (Mr D) lived with her at that time. The Council have explained that, in this case, they felt that there were two vulnerable people involved, Mr C's wife (Mrs C) and Mrs D. Mr C strongly expressed his disagreement with the Council's position in relation to their assessment of Mrs D, however, the Council were equally clear about their position and provided me with relevant information to support it.

4. Mr C began to record alleged incidents of anti-social behaviour by Mrs D and Mr D around April 1999. Mr C explained that he had no direct contact with his neighbours since they had moved into the property. Mrs C purchased her Council house in December 2000. On 11 July 2001 Mrs C advised the Council that she had decided to decline their offer of sheltered housing. The offer had been made to Mrs C as a result of her disability. I have been provided with a copy of Mrs C's letter refusing the Council's offer in which she refers to two years of anti-social behaviour by her neighbours. The letter goes on to say '... for me to move now when it is not absolutely necessary might give them some

sense of victory in that they have driven me away ...'. Mr C continued to complain about the behaviour of Mrs D and Mr D and the Council's failure to take effective action against them. Mr C explained the severe adverse effect that the alleged behaviour had on his wife's health, which he stated had deteriorated as a result of the alleged anti-social behaviour.

5. While outwith the period of my investigation it is important, by way of background, to explain the action previously taken by the Council in an attempt to resolve the problems being reported by Mr C. In November 2004, following an internal review of the matter, an application for an Anti-Social Behaviour Order (ASBO) was lodged with reference to the reported behaviour of Mr D. An interim ASBO was granted in May 2005 and was converted to a full ASBO in March 2006, for two years duration. The order prohibited Mr D from 'shouting, swearing, issuing threats of violence or creating a breach of peace for Mr and Mrs C ...'.

6. The Council have explained that the interim ASBO was breached on two occasions (shouting and swearing) which led to a meeting being held involving a number of Council officials in March 2006 to discuss what further action was available to the Council and what further action was appropriate. The officers at the meeting considered a number of possible options including the conversion of Mrs D's tenancy to a Short Scottish Secure Tenancy or voluntary or compulsory transfer of the tenancy, or eviction. Having considered a copy of the note of the meeting, I am satisfied that it demonstrates that each of the options were discussed and the reasons for not pursuing a particular option given. At that meeting it was agreed that Mrs D and Mr D should be made aware of the implications which the ASBO had for them. Both Mrs D and Mr D were visited by Council officers.

Investigation

7. In investigating this complaint, it has not been my role to determine or investigate the numerous incidents of alleged anti-social behaviour made by Mr C to the Council. That is appropriately the role of the Council. Instead, what I have focussed on is the Council's administrative handling of those complaints. That is, to determine whether, in responding to the complaints, the Council considered all relevant information, sought appropriate evidence, dealt with matters proportionately and in line with their normal processes and practices and responded appropriately to Mr C.

8. Before I started the investigation the Council, in responding to my previous written enquiries, had already outlined the steps they had taken to respond to Mr C's complaints. Therefore, my investigation focussed on obtaining evidence to support the Council's chronology of events.

9. The investigation of this complaint involved obtaining and reading all relevant documents, including the extensive correspondence between Mr C and the Council. I visited the Council offices to inspect the various files they held on the matter and discussed the case with appropriate officers.

10. I have not included in this report the huge volume of detailed information I have seen or 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.

Complaint: The Council failed to provide appropriate responses to Mr C's representations about his neighbours' alleged anti-social behaviour between October 2005 and October 2007

11. It is clear from the level of correspondence between Mr C and the Council how seriously Mr C felt about the alleged anti-social behaviour of Mrs D and Mr D and his dissatisfaction with the investigations carried out by the Council into the complaints he had made, also the action taken or proposed by the Council. He described the behaviour of his neighbours as appalling and said that it was criminal behaviour. In some cases, Mr C described the incidents '... as of the most violent nature ...', involving what Mr C described as a ferocious verbal exchange (screaming and shouting) between his neighbours. Mr C believed that the Council had concealed the true extent of the anti-social behaviour and the effect it had on his wife. Mr C believed that the Council had failed to take effective action to resolve the problems and maintained throughout that a very simple and totally justified remedy was available. Mr C considered that the problem could only be resolved by removing his neighbours by eviction or transfer. He stated that the Council had discriminated against both him and his wife and that they had victimised his wife in order to protect the 'criminals' responsible for the anti-social behaviour. He alleged that senior officers had lied and had taken '... positive delight ... in taking no action ...'.

12. In response to continuing complaints from Mr C the Council allocated Mr D a temporary tenancy of his own, away from his mother's property. The transfer took place from 10 July 2006. The Council wrote to Mr C explaining the action

to be taken and that the tenancy was to be monitored. The Council confirmed that they felt the best way of trying to resolve the problem was to move Mr D away.

13. Mr C continued to express his dissatisfaction with the action taken by the Council and continued to report sightings of Mr D in the vicinity of his mother's property and made several more specific complaints of noise, shouting and swearing and alleged incidents of intimidation by staring, gestures, facial expressions and mouthing obscenities. Many of these complaints also implicated Mrs D and another member of her family.

14. The Council explained that many of the incidents noted involved sightings of Mr D in the area which was not prohibited by the ASBO. The Council stressed that the order did not prevent Mr D from visiting his mother or from being in the area. However, it should be noted that Mr C stated that the presence of Mr D caused his wife fear and alarm. However, the Council explained that they were satisfied that by December 2006 Mr D was an infrequent visitor to his mother's property.

15. The Council explained to me that, in response to the continuing complaints from Mr C concerning his dissatisfaction with the investigation carried out by them into the alleged incidents of anti-social behaviour, the Council's Chief Executive referred the case to their Anti Social Behaviour Investigations Team (the Team) which is a specialist team set up by the Council in 2005 to carry out investigations into cases of anti-social behaviour. The Team were given a remit to review complaints of anti-social behaviour made by Mr C since June 2005, to ensure that they had all been fully investigated and to investigate recent (and future) complaints of anti-social behaviour received from Mr C or Mrs C. The case was transferred to the Team on 1 February 2007.

16. I have carefully examined the extensive correspondence, file notes, notes of meetings and other documents held by the Council. However, much of the information provided during discussions with Council officers and in paper copy contained personal, sensitive information which I considered would be wholly inappropriate to detail here. I am also mindful that, although Mr C has brought his complaint to the Ombudsman's office, as in all cases of alleged anti-social behaviour there are two sides to the story and detailing the Council's individual responses to incidents would necessarily involve potentially identifying other parties who have not consented to having their complaint examined by this

office. So, for all those reasons, I am not setting out all the details of the Council's responses and evidence here. What I will say is that I have been provided with a considerable amount of documentary evidence, including a 32 page diary of events. The diary detailed, on an almost daily basis, the action taken by the Team between 1 February 2007 and 29 February 2008 to investigate the complaints made by Mr C. I was advised that the Team had taken a deliberate decision to conduct their enquiries over a protracted period of time in order to gain a realistic opinion of the frequency, seriousness and credibility of complaints made.

17. The investigation involved a number of discussions and meetings with relevant Council officers, police officers and a number of telephone discussions and meetings with Mr C. These amounted to over 13 telephone conversations and approximately six meetings with Mr C either at Council offices or at his home. There were also approximately six meetings with Mrs D, Mr D and another family member.

18. I have also carefully considered the minutes of the Anti-Social Behaviour Partnership Group (the Group). This group comprised representatives from the Council's Housing and Property Service, the Housing Associations in the area and the Police. The Group regularly monitored the case between October 2005 and October 2007, to ensure appropriate information was exchanged between member agencies and a collective opinion of appropriate available courses of action. The Council explained that the Group consistently supported the proposed action in this case. In addition, I have considered the report prepared by the Team following the conclusion of their investigation (see paragraph 30).

19. It is clear that Mr C remained dissatisfied with the action taken by the Team to investigate his complaints, however, I am satisfied that the evidence shows that the complaints made by Mr C were fully considered by the Team. This included the specific complaints made by Mr C about incidents which had occurred in August 2006, in particular, an incident which occurred on 20 August 2006. Mr C complained to the Council about the doorbell ringing constantly at Mrs D's property. Mr C had insisted this had been deliberate. While the Council had responded to Mr C prior to the involvement of the Team, explaining the action taken, Mr C remained dissatisfied and maintained that the Council had failed to properly investigate this incident. In his letter to the Ombudsman's office Mr C indicated that the Council's handling of this alleged incident '... really strikes at the heart of our complaints ...'. Mr C disagreed with

the explanation offered by Mrs D and her family that the constant ringing had been caused by rain water entering the doorbell box. An officer from the Team, having discussed the incident with Mrs D and another member of her family, accepted the explanation given as to the possible cause of the doorbell ringing. Mr C stated that, having checked with the Met Office, no rainfall had been recorded on that night. Mr C provided me with a copy of the report by the Met Office. While the report indicated that there had been no rainfall on the night of 20 August 2006 it did record that rainfall had occurred the day before, which would seem to support Mrs D and her family's position.

20. In response to another incident reported in August 2006, which related to an alleged argument between Mrs D and Mr D in her property, the Team discussed this matter with Mrs D who denied the incident. The Council explained that, as with many of the incidents reported by Mr C there had been no independent witnesses to the alleged incident. The Council explained that many of the incidents reported were witnessed only by Mrs C and reported to the Council by Mr C. The Council explained to me that it would have been helpful when investigating the incidents to have discussed the matter directly with Mrs C. Despite requesting this, the Team were unable to do so and instead were only able to discuss the incidents with Mr C. In commenting on a draft of the report the Council explained to me that they had spoken directly to Mrs C when she had confirmed that her neighbours' anti-social behaviour was as described in the incident report forms submitted by Mr C.

21. In commenting on a draft of the report Mr C stressed that he had also witnessed many of the incidents reported to the Council.

22. The Team continued to receive complaints during their investigation relating to allegations that a member of Mrs D's family would glare and point at Mrs C and that Mrs D had banged on her window and 'mouthed' at Mrs C. These alleged incidents were investigated by the Team. Members of the Team visited Mrs D and discussed the incidents with her and her family who strongly denied that these incidents had taken place. In addition, in relation to the allegation of banging on the window etc, members of the Team visited Mr C's property at the time these incidents allegedly took place but the officers, although visiting on two separate occasions, did not witness any incident. The third visit was cancelled by Mr C as he believed Mrs D was not at home. The Council have explained to me that they were satisfied that there was no

evidence of persistent anti-social behaviour as nothing had occurred for three consecutive weeks.

23. A further complaint made in May 2007 related to two trees which Mrs D had placed in her garden. Mr C complained that the trees were intrusive and had been positioned to cause the maximum impact on his property. The Team decided to refer this matter to Housing Management as it was considered that this was a Housing Management issue. A Housing Management officer (the Officer) interviewed Mrs D in connection with the complaint. Thereafter, members from the Team visited Mr C at his property to update him on the Council's enquiries into this matter. The Team also explained that the Council did not intend to instruct Mrs D to remove what were two Lawson Cypress plants and the reasons for their decision. It was explained to Mr C that Council tenants were permitted to plant trees and shrubs in their gardens and that Mrs D was not in breach of her tenancy conditions. Mr C remained dissatisfied with the Council's decision. The Council explained to me that Mr C himself had planted Leylandii trees in his back garden which had grown to a considerable height and had overgrown into Mrs D's garden.

24. Although outwith the time line of this investigation, a further complaint was made by Mr C in January 2008 which related to alleged damage to a tree in his back garden. Mr C also complained that a huge amount of cuttings had been thrown over his hedge which had damaged his shrubs. This had occurred while a member of Mrs D's family had been cutting the hedge between the two properties. Again this complaint had been passed to Housing Management. The Team confirmed that they did not consider this incident merited the involvement or a full investigation by the Team at that stage. Mr C strongly disagreed. The Officer wrote to Mr C on 25 January 2008 explaining the Council's position, that they did not intend to take any further action and referring to earlier advice given that Mr C's hedge had encroached to a significant degree into Mrs D's garden and that he may want to cut the hedge. The Council's Chief Executive wrote to Mr C on 15 February 2008 confirming their position in relation to this incident.

25. The Council explained that the complaints made against Mrs D and another member of her family were not judged to fall into the category of serious and persistent ant-social behaviour. Although Mr C accepted that the alleged reported incidents were not in themselves serious he insisted that, as a result of

the history of the alleged anti-social behaviour committed by Mrs D and Mr D, any such described incident caused him and his wife alarm and distress.

26. The Council explained to me that, during an interview with Mrs D and another member of her family they indicated that they felt they were being harassed by Mr C and his wife who they complained appeared to be constantly monitoring their movements.

27. I noted from the background documents that some of the reports of activity provided by Mr C to the Council recorded the time when Mrs D left her property. They also related to incidents such as the raking of the fire and drawers being pulled out. Mr C also referred to listening very carefully for activity next door.

28. The Council have explained to me that the alleged incidents reported by Mr C were not corroborated by other witnesses, and that, in fact, other neighbours had reported that they had never had cause to complain about Mr D. On one occasion the Council had been informed that it was surprising that Mr D had pled guilty to a particular incident as it was believed that Mr D had not behaved in the manner towards Mr and Mrs C to which he had been accused.

29. The Council have confirmed that there have been no complaints of anti-social behaviour against Mr D at his new address. In addition, the Council reported in August 2007 that there had been no substantiated or corroborated incidents in the past six months to justify any formal action. The majority of the correspondence from Mr C during 2007 related to his dissatisfaction with the Council's handling of his previous complaints and, in October 2007, it was reported to the Group that no new complaints had been received about Mrs D or her family.

30. The Team's investigation report concluded that, while acknowledging the conduct of Mr D in the past justified complaints (there had been successful criminal convictions, and an ASBO granted against Mr D), there had been no incident of serious or persistent anti-social behaviour from Mrs D or Mr D in about a year and definitely not since January 2007 which would justify action by the Council against Mrs D or Mr D either by use of the Housing Legislation or the Anti-Social Behaviour Legislation.

31. It is clear that Mr C believed that Mrs D was responsible for the actions of Mr D and this issue was considered by the Council. I have been advised that there was discussion about how much Mrs D could do to prevent the actions of Mr D. The Council felt it was appropriate to take action against Mr D rather than seeking action against Mrs D but that if the ASBO had not worked the Council would have considered the possibility of taking action against Mrs D.

32. The Council explained that, while Mr C remained of the view that action should be taken against Mrs D, having discussed the matter, they had decided that the complaints made against Mrs D only were not serious enough to take action, however, as detailed above, the Team had carried out visits to Mrs D in response to the complaints.

Conclusion

33. I understand that Mr C remains dissatisfied with the Council's investigation and the action taken by them, however, the Council have confirmed that they are satisfied that the action taken by them which included an ASBO along with the allocation of an alternative property for Mr D had been successful. There have been no complaints made against Mr D at his new property and, while I accept that Mr C continued, during the early part of 2007, to report incidents to the Council concerning Mrs D and another member of her family, I am satisfied, having examined all the evidence I have been provided with, that the Council, in responding to the incidents which Mr C complained about and which are the subject of the time covered in this report, responded appropriately, and proportionately. I am satisfied that the Council made appropriate enquiries, sought witnesses where possible, liaised with the Police, contacted relevant parties and took appropriate action.

34. My conclusion is that there is no evidence of maladministration on the part of the Council in their handling of the complaints brought by Mr C and accordingly, I do not uphold his complaint.

35. I know that Mr C remains very unhappy about the position and told me, in bringing his complaint, that the outcome he was seeking was for his neighbour to be evicted. However, the Council had the discretion to take the action that they felt was appropriate and proportionate in all the circumstances and I am satisfied that, in doing so, the Council followed their policies and procedures properly and appropriately.

Explanation of abbreviations used

Mr C	The complainant
Mrs D	Mr C's neighbour
Mr D	Mrs D's son
Mrs C	The complainant's wife
ASBO	Anti-Social Behaviour Order
The Team	Anti-Social Behaviour Investigations Team
The Group	Anti-Social Behaviour Partnership Group
The Officer	A Housing Management officer

