

Scottish Parliament Region: South of Scotland

Case 200901153: Dumfries and Galloway Council

Summary of Investigation

Category

Local government: Recreation and Leisure; complaint handling

Overview

The complainant (Mr C) complained that Dumfries and Galloway Council (the Council) failed to investigate properly his complaint that he had been unfairly banned from a leisure facility, following an incident involving his child and another member and that member's child in 2008. Mr C stated that he had intervened because his child was being bullied. He was aggrieved at the decision taken to ban him and did not consider that his complaint about this incident was investigated properly. He was also aggrieved because it took account of a similar incident in 2007 when he had received a written warning from the Council. Mr C also complained that, following his allegations, the Council had failed to satisfy themselves properly that they had adequate child protection measures in place.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to investigate properly Mr C's complaint that he had been unfairly banned from a leisure facility (*upheld*); and
- (b) the Council failed to satisfy themselves properly that they have adequate child protection measures in place (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- | | <i>Completion date</i> |
|---|------------------------|
| (i) take appropriate action to ensure that the investigation into a complaint will be conducted properly and efficiently, with due regard to confidentiality; | 22 October 2010 |
| (ii) formally apologise to Mr C for his time and trouble in pursuing his complaint; and | 6 October 2010 |

(iii) issue advice to their staff that non-adherence to good practice guidance, without reasonable explanation, is not an acceptable practice and may result in a critical finding by the Ombudsman.

22 October 2010

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

Main Investigation Report

Introduction

1. In 2006, one of Mr C's children became a member of a sports club which used Council owned leisure facilities. In 2007, Mr C was involved in an argument with one of the members of the sports club while on the premises. Following investigation of the incident by Dumfries and Galloway Council (the Council), Mr C received a letter from the Facility Manager informing him that it had been reported by the Duty Officer, at the time of the incident, that his behaviour whilst in public areas of the facility had been unacceptable. The Facility Manager's letter was formal notice to Mr C that this could not be tolerated and that if there was a re-occurrence of behaviour by him which was found to be unacceptable, further action would be taken which might result in him being banned from the leisure facility. Mr C stated that he did not have any input into the investigation which was conducted by the Council at that time.

2. There was a further incident in 2008 which involved him and his child and the child of another member of the sports club and the parent of the other child. Mr C described his actions in this incident as him standing up for his child. However, he said that he had concerns about his child's wellbeing and safety because of a threat made during the incident which involved his child and the child of the member and he reported this to the appropriate member of staff of the leisure centre, who then referred it to an officer in the Council's Leisure and Sport Section (Officer 1). A letter banning Mr C from the leisure facility (not the sports club, as this would be a decision for the sports club) was issued by Officer 1. Mr C raised a complaint with the Council about the decision to ban him from use of the leisure facility for the remainder of the season, based on his belief that Officer 1's superior (Officer 2), who was a member of the sports club, had been involved in the decisions taken by the Council on the incidents in 2007 and 2008.

3. In October 2008, Mr C wrote to Officer 2's ultimate line manager (Officer 3) who he had been informed, through his local councillor's enquiries to the Council on his behalf, would be conducting the investigation into his complaint about Officer 2's alleged involvement in the Council's decision to impose a ban (see paragraph 2). In his letter, Mr C complained that the investigations into the incidents which occurred in 2007 and 2008 were one sided because he had complained about the actions of other club members but no action had been taken against them.

4. Mr C also complained that a child protection officer was not present during his meeting with Officer 1 to discuss his complaint, although it concerned child protection issues (bullying and the safety of his child) and that no mention was made in Officer 1's letter to him of the threat to his child's safety. Further, he was aggrieved because he believed that the decision on the ban was reached on the basis of flawed information: the statement of the other member involved had been taken as fact, despite the discrepancy with his own account of events; and his witnesses' statements had not been taken up. Mr C considered that to ban him was unfair when no action appeared to have been taken against the other party to the incident in 2008.

5. Initially, Mr C did not object to Officer 3 undertaking the investigation into his complaint. However, in November 2008, Mr C wrote separately to both Officer 3 and a senior officer in the Chief Executive Service (Officer 4) commenting that it would not be appropriate for Officer 3 to investigate his complaint because he was a friend of Officer 2. Mr C was given an assurance in November 2008 by Officer 4 that it was appropriate for Officer 3 to investigate his complaint and Officer 4 informed Mr C that he would review Officer 3's findings prior to reverting to him. In the event, the outcome of the Council's investigation was not notified to Mr C until 8 June 2009, some eight months after he first complained to the Council.

6. In his formal complaint to the Ombudsman's office, Mr C stated that the Council had imposed a ban on him from the use of a leisure facility for the remainder of the season and that, although he received advice to the contrary from the Council, the investigation into his complaint about the matter was not carried out by an independent officer. He was not satisfied that it had been properly undertaken, in line with the Council's process. He complained also that the reporting was delayed. Mr C was aggrieved that he had lost the opportunity to watch his child play sport locally for the time the ban was in place (he had removed him to another sports club at a distance) and wanted to ensure that a similar situation could not arise in the future.

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

- (a) the Council failed to investigate properly Mr C's complaint that he had been unfairly banned from a leisure facility; and
- (b) the Council failed to satisfy themselves properly that they have adequate child protection measures in place.

8. The incident in 2007 was not considered as part of my investigation because Mr C had not made a formal complaint to the Council at the time. However, it has been referred to as background information in relation to the handling of the incident in 2008. Further, Mr C had requested that the investigation should consider issues relating to the day-to-day operations and funding of the sports club but it was explained to him that this was out of my scope and the investigation had to be restricted to the actions of the Council, which was a body under my jurisdiction, and how they investigated his complaint.

Investigation

9. One of my complaints reviewers interviewed the complainant and his wife and discussed with them the background to the complaint. She also interviewed Officer 4 and interrogated the relevant Council files. Further, she obtained from the Council copies of their Complaints Procedure and Guidance (which were drawn up in 2006/07) and their Leisure and Sport Operational procedures.

10. 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 failed to investigate properly Mr C's complaint that he had been unfairly banned from a leisure facility

11. The Council have Good Practice Guidance for Investigation Officers (the Guidance) for the investigation of complaints made against the Council (see Annex 2). Contained in the Guidance is general advice on such issues as being aware of timescale and the importance of providing a thorough investigation. Also that, in getting started with the procedure, the person making the complaint should be contacted to offer a meeting in person, at which time the complaint and all its individual parts should be clarified and a written record made of the agreed points of complaint to be investigated, with a copy for the complainant and one retained with the investigation documents. The person making the complaint should be asked what they want in terms of a solution and outcome.

12. The Guidance deals also with planning the investigation: obtaining relevant documents; producing a chronology; identifying the names of the individuals most directly involved and to be interviewed; and preparing a list of

questioning of each interviewee. Once the draft of the investigation report has been completed (this should include the investigating officer's recommendations and response to the complainant's desired outcomes), the responsible manager should be provided with a copy for their adjudication (independent consideration) and to make a decision on the final response to the complaint.

13. Mr C explained to my complaints reviewer that he had pursued his complaint about the imposition of the ban and how the matter had been handled with the Council because there had been a limited investigation: the letter informing him of the ban was sent on 11 September 2008, the day after he and his wife were interviewed (10 September 2008) by Officer 1 and a representative of the sports club; interviews were not conducted with either his child or the other child involved; and Officer 4 had informed him that the investigation of the matter would be conducted by an 'independent officer'.

14. In his formal complaint, which he submitted to Officer 3 on 8 October 2008, Mr C stated that he believed that Officer 1's superior (Officer 2), who was also a member of the sports club, was 'directly involved' in the ban. He was dissatisfied with the investigation conducted, which had resulted in the ban and also with the handling of his own complaint about the actions of the other member of the sports club who was involved in the recent incident. He concluded his complaint with advice that he looked forward to meeting with the independent investigating officer (see paragraph 13). The response from the Council to Mr C was that Officer 3 was on leave until the end of October 2008 and this prevented a substantive reply to his complaint being made within the 20-day period (a reference to the timescale given in the Council's complaints procedure) but that Officer 3 would conduct an investigation on his return.

15. During November 2008, Mr C was in contact by email with Officer 3 and Officer 4 complaining to both because Officer 3 had not been able to commence his investigation immediately. Mr C questioned appointing someone who was going to be unavailable for three weeks, to conduct an investigation. He also commented to both Officer 3 and Officer 4 that he did not think that it was appropriate for Officer 3 to investigate the complaint because of his friendship with Officer 2. In response, Officer 4 informed Mr C that it was appropriate for Officer 3 to investigate his complaint; that the investigation was ongoing and was being conducted 'in accordance with the Council's policies and procedures'; and that he would be advised of the outcome as soon as possible.

16. At interview, Officer 4 commented to my complaints reviewer that he made the decision to ask Officer 3 to carry out the investigation because Officer 3 was Officer 2's line manager. The investigation was independent and he did not accept that Officer 3 should not be involved. However, he had informed Mr C that he would review the investigation once Officer 3 had completed it. (NB: this complies with the Council's complaints procedure where a complaint is made against a member of staff.)

17. Officer 3 wrote to Mr C on 18 December 2008 informing him that his investigation had been completed and he had forwarded his file to Officer 4, who would inform him of the outcome. On 22 December 2008, Officer 4 informed Mr C that he would consider the file and contact him further in the week commencing 5 January 2009. (Officer 4 confirmed at interview that he had spoken with Officer 3 when he provided him with the file and papers but that he did not keep a note of his discussion with him when the case was transferred.)

18. On 19 January 2009, Mr C wrote to Officer 4 asking for the ban from the facility to be lifted until the Council had reached a decision on the investigation. Officer 4 responded that he hoped to have a response to Mr C by the end of the week. On 30 January 2009, Mr C wrote to Officer 4 about the delay, pointing out that Officer 4 had stated that he would reply in early January. Mr C wrote that he had now 'lost faith in the Council'. (NB: Officer 4's letter of 5 January 2009 did not state that he would provide a decision by the end of the week commencing 5 January 2009 but that he would be in contact – see paragraph 17.) In his response to Mr C on 13 February 2009, Officer 4 explained that he had been fully involved in issues which required to be given priority but he would revert to Mr C in the next week 'without fail'.

19. Mr C continued to press Officer 4 for a decision on the ban, pointing out in March 2009 that it had been five months since he had complained and that he wished to see his child training for the national squad at the facility. (The Council's files record that Officer 4 took action on Mr C's request and Mr C confirmed at interview that arrangements were made for him to attend the leisure facility to watch two training sessions. However, he stated this was a month before the ban ended.) On 24 March 2009, Officer 4 informed Mr C that he would complete his review of Officer 3's files and respond fully by the end of the week.

20. On 6 April 2009, Officer 4 gave a categorical assurance that he would write by 9 April 2009 but on that day he merely confirmed with Mr C that arrangements had been made to meet with him and his councillor on 20 April 2009.

21. During May 2009, Mr C emailed Officer 4 pressing for a decision and on 27 May 2009 complained about the time it was taking to complete the investigation of the complaint. He also commented on his 'utter disappointment' with the handling of the matter. Officer 4 provided a further deadline of 5 June 2009 to respond. In the event, Officer 4 wrote to Mr C on 8 June 2009, informing him of the steps that he had taken to come to a finding (including that he interviewed Officer 2 and Officer 3) and that the outcome of the investigation was as he had outlined during his meeting with Mr C on 20 April 2009 (see paragraph 20). Officer 4 apologised to Mr C for the delay in confirming the outcome.

22. In response to my complaints reviewer's questions about this period in 2009 and the delay in the investigation (given that he had informed Mr C in January 2009 that the investigation had nearly been completed), Officer 4 commented that he had received a folder of documents from Mr C on 4 February 2009 and they became part of his review. Additionally, he was in correspondence with Mr C on a regular basis and met with him in April. He accepted that there was delay and stated that the Council would now endeavour to deal with complaints more efficiently. To this end, the Council had engaged a new Complaints Officer to take over complaints.

23. When asked whether the procedure for dealing with how a complaint was handled required that Mr C should have been interviewed by the investigating officer (Officer 3), Officer 4 advised my complaints reviewer that Officer 3 had left the Council at the end of 2008 but that he himself had met with Mr C and his councillor in April 2009 (see paragraph 20). At interview with my complaints reviewer, Mr C complained that Officer 4 had not been able to answer his questions when they met and had undertaken to respond to them but failed to do so. Officer 4 commented about his interview with Mr C and his councillor that they had had what he considered to be a very constructive discussion and that his decision letter of 8 June 2009 took account of this discussion and his findings. (NB: no note of this meeting is held on file.)

24. In commenting on what steps he had taken to investigate the matter, Officer 4 stated that he had used Officer 3's findings as the basis for his decision and he had concluded that the matter had been properly handled. (NB: the Council's files show that when Officer 3 transferred his file and papers to Officer 4 he set out, in some detail, the steps he had taken to investigate the matter and identified the documents he had referred to and the evidence he had obtained through his investigation. This was in line with the Council's guidance on complaint handling (see paragraph 12). However, Officer 3 did not interview Mr C, as set down in the Guidance, rather he confirmed in his transfer note that he had based his investigation on Mr C's letter to him of 8 October 2008. Officer 3's transfer note recorded that it had been agreed that, because of Mr C's dissatisfaction with Officer 3's involvement, Officer 4 would consider and come to a view on Officer 3's investigation findings and advise Mr C of the outcome.)

25. My complaints reviewer had noted from the Council's files that Officer 4 had had a discussion with Officer 2 in February 2009 about the decision to temporarily lift the ban to enable Mr C to attend some games (see paragraph 19). In response to her questioning about this, Officer 4 commented to my complaints reviewer that he had discussed this with Officer 2 and had also apologised to him for the delay. Officer 4 confirmed subsequently that his discussion with Officer 2 was a 'corridor discussion' which was referred to in an email but which had not been recorded. However, my complaints reviewer had also noted from an email exchange that, in April 2009, Officer 2 was aware that the investigation had found that the complaints against him were unfounded. My complaints reviewer asked Officer 4 at interview whether this was appropriate, given that Mr C had not yet been formally notified. Officer 4 stated that his discussion with Officer 2 was specifically about Mr C's access to the sports club not that he had been exonerated and that Officer 2 was not notified of the outcome of the investigation until June.

26. Officer 4 commented to my complaints reviewer that he was satisfied that the investigation undertaken by Officer 3 was 'proportionate and reasonable'. It found that Mr C had been dealt with appropriately as a member of the public and the Council reserved the right, where people are being abusive to staff and customers, to impose a ban. Where he had found a shortcoming was the lack of a right of appeal in the Leisure and Sport Operational procedures. However, this document had subsequently been amended. Officer 4 confirmed that lessons had been learned and it was recognised that there was a need to

ensure impartiality. It was his considered view that the complaint had been dealt with well by the Council, although he accepted that there was delay on his part. The lesson he had learned from this was to set realistic timescales before telling someone what he would do.

(a) Conclusion

27. The Council have clear, defined guidance for the investigation of a complaint. However, any process can only be judged by how well it works in practice.

28. Mr C had a number of concerns about the way the Council conducted their investigation of his complaint about the imposition of the ban on him from a particular leisure facility. Mr C was concerned that the officer who would be carrying out the investigation was not independent, being the ultimate line manager of the officer against whom Mr C had raised a complaint. He was also concerned when he was informed that the investigation of his complaint would not commence immediately and could not be concluded within the timescale stipulated in the Council's complaints procedure. However, I am satisfied that the Council explained their reasons clearly to Mr C and that this accorded with the advice in their published complaints procedure. This was not the case in the Council's subsequent handling of the matter.

29. The Guidance for investigating officers under the Council's Corporate Complaints Procedure is clear about the steps which should be taken at the outset: to make contact; offer a meeting to the complainant (in which to take the opportunity to clarify the complaint and all its individual parts); and produce a written record of the agreed points of complaint to be investigated; but these steps were not carried out in this case. Mr C was offered a meeting and had the opportunity to discuss his complaint and the issues of concern. However, this was after the investigation had been completed and was arranged to discuss the outcome. By missing out an early stage in the Guidance, the investigation was flawed because, by the time Mr C met with an officer, it was not with the purpose of clarifying the issues as the Council were ready to inform him of their findings. There is evidence, therefore, that the Guidance was adhered to in the planning stage but that the investigation stage was flawed because the complaint was not agreed. With hindsight, it might have been more appropriate, and would have stopped any perception of impartiality or difficulty for the officer carrying out the investigation, if another officer had been asked to conduct it.

30. However, taking into account the email correspondence in April 2009 referred to in paragraph 25, I have serious qualms about the imparting of information about the findings to Council personnel before the investigation was completed. Further, I am concerned at the lack of rigour in note taking at key points (see paragraphs 17, 21, 23 and 25). This has not been satisfactorily explained and leaves me with concern about how efficiently the investigation was conducted in the latter stages. I look to the Council to take appropriate action to ensure that there is no repetition of these incidents and to notify me accordingly.

31. In the end, Mr C had to wait for eight months before he was informed of the outcome of the investigation, by which time the ban was almost over. While the delay has been recognised and an apology was proffered to Mr C by the officer concerned, it is clear that the reasons given for the delay point to the complaint not being given appropriate or adequate priority. Moreover, I have found that the updates to Mr C were in response to his requests and his concern about the time being taken and that he was not updated by the Council on a regular basis. This is something which the Council need to address to ensure that their complaints procedure, with the new complaints officer post which has been created, allows the complaints process to be independent and robust.

32. There was one positive outcome: the Council investigation did result in a change to the Leisure and Sport Operational procedures (the inclusion of a customer appeals process) and I commend the Council for introducing this. However, overall, I have found that there was maladministration by the Council in their handling of the investigation into Mr C's complaint, both in the failure to adhere to, and in the deviation from, the Guidance, as well as in the unjustified delay in coming to a decision on the complaint. I, therefore, uphold the complaint. Mr C was not well served by the Council and as a result of their shortcoming, he was put to time and trouble in pursuing the Council to inform him of the decision about his complaint. The Council should, therefore, make a formal apology to Mr C in recognition of their shortcomings in the handling of his formal complaint.

33. Further, in recognition of what Mr C stated he wanted to achieve as an outcome from his complaint to my office, that is, to ensure that someone else would not have a similar experience, the Council should take steps by

15 October 2010 to issue advice to their staff that non-adherence to their own good practice guidance, without reasonable explanation, is not an acceptable practice and may result in a critical finding by the Ombudsman.

(a) *Recommendations*

	<i>Completion date</i>
34. I recommend that the Council:	
(i) take appropriate action to ensure that the investigation into a complaint will be conducted properly and efficiently, with due regard to confidentiality;	22 October 2010
(ii) formally apologise to Mr C for his time and trouble in pursuing his complaint; and	6 October 2010
(iii) issue advice to their staff that non-adherence to their own good practice guidance, without reasonable explanation, is not an acceptable practice and may result in a critical finding by the Ombudsman.	22 October 2010

(b) The Council failed to satisfy themselves properly that they have adequate child protection measures in place

35. Mr C raised this as an issue for two reasons: 1) the handling of the incident in 2008 involving his child, and 2) because in the letter banning him from the sports facility, it was recorded that this was based on child protection issues but was not specific.

36. The Leisure and Sport Operational procedures are described as being designed to highlight the Council's policy on child protection and the role and responsibilities of all those working within that section, in relation to the welfare and protection of children and young people. The procedures provide clear advice to Leisure and Sport personnel about the referral procedures to follow when concerns arise and they recommend what working practices and codes of conduct should be adopted to minimise situations where the abuse of children may occur. Persistent bullying is recognised as something which may be a child protection matter and staff are advised to be alert to this. The sports club's constitution states that 'Child Protection will be in accordance with the DGC Leisure and Sport Child Protection Policy'.

37. At interview with my complaints reviewer, Mr C explained that he and his wife had reported the incident to the Council because of their concerns for their

child. They were upset because an incident report was not prepared and neither then nor subsequently had anyone checked that their child was alright. They complained that this did not form part of any investigation made by the Council into the matter.

38. The Council's files recorded that Officer 3 considered Mr C's allegations about how his complaint of bullying was dealt with and that he undertook to have appropriate enquiries carried out into the child protection procedures in place in relation to both the Leisure and Sport Section and the sports club.

39. My Complaints Reviewer asked Officer 4 for his understanding of the complaint and his views on the incident in 2008. Officer 4 informed my Complaints Reviewer that he had clarified with Mr C and his wife during his interview with them in April 2009 that their complaint was that a child protection officer was not present when they were interviewed in September about the incident (see paragraph 13). Officer 4 commented that, in his response on 8 June 2009, he had made reference to this. He pointed out that Officer 3 had decided to obtain independent advice from a child protection officer. This was in response to Mr C's concern that there was no in-house child protection officer present and complaint that the way the incident in 2008 involving his child was handled was in breach of the child protection legislation. Officer 4 was satisfied, therefore, that the issues had been investigated by someone who was not directly involved in the complaint and that an independent view had been sought and obtained on whether the sports club had appropriate procedures in place for child protection. This had been confirmed.

40. With regard to Mr C's complaint that an incident report was not prepared, Officer 4 commented that the Leisure and Sport Section were not aware of the incident until later. Since there was no member of staff present, an incident report was not completed and the investigation undertaken was based on the retrospective reporting of the matter.

(b) Conclusion

41. The protection and care of children are of paramount importance for any organisation where children use their facilities and, while they are on their premises, there is both a requirement and a responsibility to have proper procedures in place to ensure a child's welfare and safety. The Council have a child protection policy and the Leisure and Sport Section have operational procedures for implementing this policy.

42. My investigation has not looked at the incident in 2008 from the point of view of how the sports club handled the matter because they do not fall within my remit. However, as the sports club operates from Council premises and there is a requirement to have child protection measures in place, I have looked at whether the Council's own investigation was thorough and accorded with their own procedures; and whether the Council took appropriate action to satisfy themselves that the matter had been properly handled. I am satisfied that this was the case and, having found no fault, I do not uphold this head of complaint.

Explanation of abbreviations used

Mr C	The complainant
the Council	Dumfries and Galloway Council
Officer 1	An officer in the Council's Leisure and Sport Section
Officer 2	A senior officer in the Council's Leisure and Sport Section
Officer 3	Officer 2's line manager
Officer 4	A senior officer in the Chief Executive's Service

Extracts from Dumfries and Galloway Council's Good Practice Guidance for Investigation Officers

The following are relevant extracts from the Guidance:

1. General Points

1.1 Be aware of the timescale and importance of providing a thorough investigation.

1.2 Work closely with the Responsible Manager/Lead Officer for the investigation on all aspects of the investigation and report writing, including keeping the person making complaint informed.

2. Getting Started

21 Contact the person making the complaint, ideally by phone, to offer a meeting in person. This meeting should explain the investigation procedure and:

a. clarify the complaint and all its individual parts, and produce a written record of the agreed Points of Complaint to be investigated. Typed copy of this agreement must be supplied to the person making complaint and a copy retained with the investigation documents;

b. ask what the person making complaint wants in terms of solution and outcome.

3. Planning the Investigation

3.1 Obtain the relevant documents, such as files.

3.2 Produce a chronology from the relevant sequent of events from the files and identify the names of the individuals most directly involved in the content of the complaint.

3.3 Analyse and categorise the complaint into its different elements.

3.4 Identify a list of the interviewees, give them as much notice as possible that the IO wishes to hold interviews and supply them with the relevant information on the complaint.

And

3.8 Prepare the line of questioning of each interviewee.

5. The Investigation Report

5.1 Draft the report and show it to the Responsible Manager and Complaints Co-ordinator. The draft report should include: a. a chronology; b. list of interviewees; c. the Points of Complaint set out in a numbered list; d. the Investigation Officer's analysis and findings for each point of complaint; e. record of relevant policy, procedure, practice and legislation; f. the Investigating Officer's recommendations and response to the person making complaint's desired outcomes; g. any other relevant information; and, h. a separate addendum for any specific practice issues for the Service to consider (this will not be shared with the person making complaint).

And

5.3 Notify the Responsible Manager that the final report is complete and provide him with/her with a copy for his adjudication (that is an independent consideration and decision on what will be the formal response to the complaint). The Responsible Manager, in consultation with the Complaints Co-ordinator, can invite the person making complaint to an adjudication meeting, either before or after writing his/her adjudication letter. The Responsible Manager will advise on how the report and his response will be released.

5.4 All notes of the Investigating Officer must be retained confidentially within the specific complaint file, after the investigation, in case of an Ombudsman's investigation or a judicial review.