

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200501688: Stirling Council

#### Introduction

1. On 28 September 2005 the Ombudsman received a complaint from a man (referred to in this report as Mr C) against Stirling Council (the Council). He complained that the Council refused to repair or replace the fence at his Council property that separated his garden from the pavement.

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

(a) the Council's refusal to repair or replace his fence;

(b) the Council's decision to remove the fence instead of repairing or replacing it.

3. Following the investigation of all aspects of this complaint I came to the following conclusions:

(a) not upheld, see paragraph 15;

(b) not upheld, see paragraph 16.

#### Investigation and findings of fact

4. My investigation involved obtaining and reading all the relevant documentation provided by both the Council and Mr C. I also made written enquiries of the Council. Mr C and the Council were given an opportunity to comment on a draft of this report.

5. Mr C complained about the Council's refusal to repair his fence. The Council wrote to Mr C on 24 March 2005 in response to his complaint and told him that they would only carry out repairs in accordance with their Fencing Policy which stated that repairs would only be carried out on fencing where the fence formed a boundary with a public open space; a play area; a garage/lock up site/public footpath; a major road, or farm/agricultural land. As the Council did not consider that Mr C's fence formed a boundary with any of these, they

refused to carry out repairs to his fence.

6. Mr C appealed against the Council's decision. He claimed that his fence came within the Council's Fencing Policy as he said it formed a boundary with a public footpath and a public open space. The Council responded in a letter dated 20 April 2005, and wrote that, having viewed the location of his property in relation to the surrounding area, they were satisfied that the fence did not form a boundary with either a public open space or a public footpath. In their opinion, the footway, which ran adjacent to the access road outside his garden, was not a public footpath. They explained that under the Fencing Policy they defined a footpath as one that provided pedestrian access only between streets or other areas of ground rather than the 'normal' street pavement with which his fence formed a boundary. The Council also advised him that, although they appreciated he may be disappointed with their response, they had limited money available for work of this kind and priority was subsequently given to the repair or replacement of fencing which met the criteria.

7. Mr C complained under the last stage of the Council's complaints procedure by email on 26 April 2005. He included an allegation that the fence constituted a danger to the public because the netting was sharp and rusty, and that it should be repaired for this reason. After examining the fence again and taking further technical advice, the Council replied to Mr C in a letter dated 17 August 2005. They apologised for the length of time it had taken to give him a final response, and said they had commissioned an independent fencing contractor to look at the fence. The contractor had advised that in view of its construction, the fence could not be repaired. The Council reminded Mr C of their Fencing Policy, and that they used the available fencing budget to carry out work on fencing which met the criteria in the Policy. They explained to him that, because his fence did not meet the Council's criteria for repair or replacement and he had raised concerns about the safety of the fencing, they had decided that the fence should be removed. They said they would issue instructions to have the fence removed shortly, and confirmed they would not be providing replacement fencing.

8. Mr C rang the Council on 18 August 2005, and sent an email to them on 21 August, to say that if the Council supplied him with new netting, he would attach it. The Council replied by email on 22 August to say that it was not

appropriate to provide him with netting.

9. Mr C referred his complaint to his local MP, who wrote to the Council on his behalf on 1 September. The Council replied to Mr C's MP on 12 September reiterating what they had already advised Mr C.

10. I examined the Council's repairs policy and relevant sections of the 'Council's Tenants' Handbook', dated November 2004 (the Handbook).

11. The Council's Fencing Policy states:

'The Council will only carry out repairs to or replacement of fencing where the fence forms a boundary with:

- A public open space
- Play area
- Garage/Lock up site
- Public footpath
- Major Road
- Farm/Agricultural Land

No fencing works will be carried out to boundaries between gardens irrespective of the presence of existing fencing and the ownership or condition of same, except under specific fencing programmes'.

12. Section 15 of the Handbook states, 'Fencing: We will only carry out repair or replacement of fencing where the fence forms a boundary with a through road or a public space. Your local office can give you further information on fencing issues'.

13. I asked the Council to provide definitions of the terms used in their Fencing Policy, and for details of how these were determined. They told me the definition for 'public footpath' was that employed by the Council's Environment Services – Roads and Transportation, in accordance with the guidelines and specifications adopted from the former Central Regional Council. I was provided with the relevant extract, which stated that 'a footway is adjacent to a carriageway whilst a footpath is remote from any carriageway'. I was further

advised that the term 'major road' was defined by a bus route.

14. I asked the Council why they had asked an independent contractor to inspect the fence when they told Mr C in their earlier correspondence that they would not repair his fence. They explained that they thought it was appropriate to assess whether it was possible to repair the fence in order to address Mr C's concerns regarding health and safety. It was determined that it was not feasible to repair the fence and the Council proposed to remove the fence to avoid any further concerns in respect to this.

## **Conclusions**

### *(a) The Council's refusal to repair or replace his fence*

15. At the time Mr C requested the Council to repair or replace his fence, the Council had a Fencing Policy in place. I am satisfied that when the Council considered Mr C's request, they took into account all the relevant factors, and applied their Fencing Policy properly. I find no evidence of maladministration or service failure on the part of the Council. I do not uphold this aspect of the complaint.

### *(b) The Council's decision to remove the fence instead of repairing or replacing it*

16. Mr C was aggrieved that the Council decided to issue instructions to have his fence removed instead of repairing or replacing it. However, I am satisfied that the Council decided to remove the fence after they had investigated the alternative option of repairing the fence and had decided that this was not possible. They did this in response to Mr C's complaint that it constituted a safety hazard. Although Mr C disagreed with the Council's decision, I consider the Council acted reasonably under the circumstances, and do not find any evidence of service failure or maladministration in the way that they reached their decision. I do not uphold this aspect of the complaint.

17. I accept that the Handbook is only intended to give an indication of what the Council will repair and the Handbook does advise tenants to contact their local office for further details. However, the Council may wish to consider revising the wording used in any future edition of the Handbook to ensure that the terms used reflect the more restrictive definitions contained in the Fencing Policy. This is a suggestion for consideration by the Council only and not a formal

recommendation carrying with it an expectation of compliance.

30 May 2006

**Explanation of abbreviations used**

Mr C	The Complainant
The Council	Stirling Council
The Handbook	Council's Tenants' Handbook, dated November 2004