

Scottish Parliament Region: West of Scotland

Case 200501461: Inverclyde Council

Summary

Category

Local government: Environmental health; Complaints handling

Overview

The complainant raised a number of concerns about the handling of his complaints regarding an alleged noise nuisance from dog kennels in the vicinity of his property.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to undertake a proper noise nuisance assessment (*not upheld*);
- (b) wrote to his MSP without permission (*not upheld*);
- (c) breached his confidentiality with the kennel owners (*not upheld*);
- (d) failed to respond properly to his written representations (*not upheld*); and
- (e) failed to notify him of the site visit (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) as a matter of good practice, record any site visits undertaken; and
- (ii) produce clear guidelines to ensure consistency in the practice of writing to/copying in third parties.

The Council have accepted the Ombudsman's recommendations and:

- (i) in relation to the noise protocol, the Council have advised that this will be amended to ensure that, as a matter of good practice, a record is kept of all site visits undertaken; and
- (ii) it will be a priority for the new post of Head of Corporate Communications and Public Affairs to develop a communication strategy for the Council which will include clear guidelines to ensure consistency in the practice of writing to/copying in third parties.

Main Investigation Report

Introduction

1. In August 2005 the Ombudsman received a complaint from Mr C about Inverclyde Council (the Council) concerning his dissatisfaction with the Council's handling of his allegation of a noise nuisance from dog kennels. (Mr C made a previous complaint to this office in 2004 on similar issues but the complaint was not upheld.) Mr C complained again that his family's amenity was being affected by the noise nuisance and he alleged that the Council had failed to investigate the matter properly.

2. The complaints from Mr C which I have investigated are that the Council:
- (a) failed to undertake a proper noise nuisance assessment;
 - (b) wrote to his MSP without his permission;
 - (c) allegedly breached his confidentiality with the kennel owners;
 - (d) failed to respond properly to his written representations; and
 - (e) failed to notify him of the site visit.

Investigation

3. I made enquiries on the complaint to both Mr C and the Council and obtained copies of the relevant correspondence. I sought clarification from the Council on the relevant legislation for them (Environment Protection Act 1990¹ and the Antisocial Behaviour, etc, [Scotland] Act 2004) and for the complainant (Civic Government [Scotland] Act 1982 which allows an individual, not a Council, to seek a legal remedy against anyone in charge of annoying creatures, such as barking dogs). I asked the Council also to comment on their handling of Mr C's correspondence and their view of whether or not this was dealt with properly.

4. The Council provided a copy of their Quality Procedures Manual on Noise Complaint Protocol (the Protocol) which sets out that Environmental Health

¹ Source: PAN 56 Planning and Advice. Since April 1st 1996, by virtue of the Environment Act 1995, the Environmental Protection Act 1990 has given Scottish Local Authorities considerable and wide-ranging powers to tackle noise nuisance. S. 79 of the 1990 Act imposes a duty on local authorities to inspect their area from time to time to detect statutory noise nuisances. Where a local authority is satisfied that the noise emitted from any premises is prejudicial to health or constitutes a 'nuisance', it must serve an abatement notice on the person responsible for the noise. This notice may require the abatement of the nuisance or prohibit or restrict its occurrence or recurrence, and may also require the execution of such works and the taking of such steps as are necessary for this purpose. Local Authorities can exercise these controls at any time if satisfied there is a statutory nuisance regardless of the terms of any planning permission.

discharges the Council's statutory duty to administer complaints of noise. The Protocol states that its purpose is to ensure that members of the public who complain about noise have their complaint dealt with efficiently, professionally and within a reasonable period of time; these are dealt with in a fair, consistent and effective approach; they are recorded (to comply with the requirements of performance indicator information); and that:

'Environmental Health must investigate the complaint and where it is satisfied that a statutory nuisance exists or is likely to recur or occur it must serve notice on the person responsible for the nuisance.'

The Protocol requires that complainants must be advised of the Council's method of dealing with noise complaints.

5. Although I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on the draft report.

(a) The Council failed to undertake a proper noise nuisance assessment

6. Mr C complained about the investigation carried out by an Environmental Health Officer (Officer 1) in July 2005. In particular, he said that the officer visited by himself (which was inconsistent with previous visits), that it was not thorough and, the investigative process which was used was not explained. Mr C was not satisfied that his complaint was assessed properly.

7. Officer 1 had responded to the complaint on 15 July 2005 with confirmation that, as requested, he had visited the site on 14 July 2005 (and some new properties closer to the kennels than Mr C's). He commented that, while the sound of dogs barking could be heard at Mr C's premises, it was only faintly and in the distance. Also that, despite the fact that there were houses in closer proximity than Mr C's, his complaint remained the only complaint about the kennels. Officer 1 concluded that:

'...the material facts of this case have not changed in the past two years and there is no justification for renewing an investigation. There is no evidence of noise nuisance or animal welfare problems associated with the operation of the kennels.'

8. In their response to my enquiry on the complaint, the Council stated that the visit had been carried out at Mr C's request and had been undertaken by a fully qualified Environmental Health Officer (Officer 1). Mr C had been advised at the time of his original complaint that it was highly unlikely that the Council would be able to establish statutory nuisance, given 'the nature of the noise and the distance between the two properties', and it appeared that he had written again because he thought stricter standards now applied. This was not the case.

9. The Council also indicated that Mr C had been consistently advised that he should take legal advice on his rights in civil law as regards the question of loss of amenity and of the provision in the Civic Government (Scotland) Act 1982 which allows an individual, not a Council, to seek a remedy against anyone in charge of annoying creatures, such as barking dogs.

10. In a statement in response to my enquiry, Officer 1 commented that the primary purpose of his visit was to ascertain whether or not there had been any material change:

'which would require a further assessment, e.g. had any alterations been made to the kennels, had there been a significant change in natural or other barriers to the transmission of sound from the source to the complaint site?'

I requested a copy of the site visit form but was informed by the Council that the visit was not recorded because Officer 1 did not regard the matter as a new complaint, rather he called to check whether or not there had been any change in circumstances from the previous (initial) complaint (Mr C stated that, since the visit, the owner has cut down large trees, bushes and shrubs around the kennel which has greatly exacerbated the noise problem).

(a) Conclusion

11. When Mr C wrote to the Council in July 2005, he was continuing a correspondence with them which had commenced some two years previously about an alleged noise nuisance from dog kennels. Officer 1 was familiar with the case and had carried out previous visits. In responding to Mr C's complaint, he used his judgement and experience and presumably, if he believed the situation warranted it, he would have recorded the visit under the Protocol and taken appropriate action.

12. I am satisfied that Officer 1's response to Mr C's letter the day after his visit showed that he had investigated whether or not the new legislation had an impact on the situation and that he provided clear advice why he did not consider that formal action by the Council was justified. He explained the reasons for his visits (to ascertain if there had been any change in the kennels) and informed Mr C of his findings.

13. Where an authority has a Protocol in place, care should be taken when there is a departure from it. In this Protocol, it states that all complaints must be recorded and logged. The reason Mr C's representations were not treated as a complaint of noise have been explained to him and, in the circumstances, I accept that a reasoned explanation was given for the perceived difference in the way the matter was assessed from Mr C's previous complaints. I do not, therefore, uphold this head of complaint.

14. However, the Ombudsman recommends that the Council should consider their methods of handling repeat complaints and, as a matter of good practice, record any site visits undertaken. Although the visits in July 2005 did not establish a change, Mr C has stated that there has been a change subsequently (see paragraph 10). Recording the position at the time would help in addressing any further complaints and stand the Council in good stead should legal action be taken in the future.

(b) The Council wrote to his MSP without his permission

15. Mr C complained that Officer 1 wrote to his MSP without his request or permission and he presumed that this was to prevent the MSP from becoming involved. He commented that he had hoped to seek his MSP's support and that Officer 1's 'unilateral decision' effectively prevented him from doing this. He was upset because he considered that he was portrayed in a less than positive light. Mr C stated that this was an attempt to bring his complaint to an end and deny him the representations of his MSP.

16. Officer 1 had explained to Mr C the reasons for his decision to copy in his MSP:

'...In the meantime, as you have referred several times to your correspondence with him, I have copied this letter to (your) MSP for his information.'

17. In his response to Mr C's complaint, Officer 1 informed him that:

'Where correspondents refer specifically to advice from an MSP, MP or councillor, it is standard practice to copy that individual into correspondence for information. As I clearly stated that this is what I had done, I can see no justification for your allegation that I contacted the MSP 'behind your back'.'

18. I asked the Council to comment on whether or not Officer 1's actions were proper and accorded with usual practice. In response, the Council commented that Mr C had referred specifically to communications between his MSP and himself in earlier correspondence and that the MSP had given him advice on, and provided him with a copy of, the Antisocial Behaviour etc, (Scotland) Act 2004. Mr C informed the Council that the MSP had advised him that this legislation applied to his circumstances and, on that basis, his complaint should be re-investigated. As Mr C referred to his correspondence with the MSP several times in the letter, Officer 1 considered it appropriate to copy his reply to Mr C to the MSP for his information.

19. In response to my request for further clarification, the Council have commented that they do not have a policy on corresponding with third parties. Officers would decide in each individual case whether or not it was appropriate to send a copy of a reply to a third party who had been either copied in or mentioned in the correspondence from the enquirer. They commented further that it is not unusual for elected representatives to be recipients of letters sent by officers, without a request having been made by the enquirer for such a course of action to be taken.

(b) Conclusion

20. Officer 1's actions accorded with the Council's practice and he provided reasons for copying in the MSP. It was not unreasonable to write to the MSP without Mr C's permission because he had copied in the MSP in his correspondence with the Council and it was reasonable to want to keep the MSP updated. In all the circumstances, I do not uphold the complaint. However, it has

highlighted a practice which the Council might wish to review, as there should be clear guidelines to staff to ensure consistency.

(c) The Council allegedly breached his confidentiality with the kennel owners

21. Mr C complained that every time he wrote to the Council the behaviour of the kennel owner 'suddenly and inexplicably worsens'. He had received assurances from the Council that no details of his complaints had ever been released but he found this 'impossible to believe' because some months after the Council's decision not to take formal action on the complaint of noise nuisance, it was clear that the kennel owner was aware that someone was continuing to complain. As no-one outside his close family was aware of the complaint, Mr C deduced that the source of the information must have come from the Council and his correspondence was not being kept confidential. He considered that there were too many coincidences and this pointed to his confidentiality being breached.

22. The Protocol stipulates that: 'The confidentiality of complainants should be respected at all times.'

23. In his response to Mr C on this aspect of his complaint, Officer 1 informed him that his details had never been revealed to the owner of the kennels by any officer of the Environmental and Consumer Services. In his statement responding to my enquiry, Officer 1 commented that it was clear when speaking to the kennel owner that there was a suspicion about who was allegedly making the complaint but when asked to comment by the owner, staff had consistently refused to reveal Mr C's identity. The only advice given was that there had been one complainer and the Council considered that they were required to provide this under Freedom of Information legislation.

(c) Conclusion

24. It is understandable that the owner of the dog kennels would wish to know who was making a complaint about noise nuisance. However, there is no evidence to support Mr C's claim that the Council breached his confidentiality. I, therefore, do not uphold this aspect of the complaint.

(d) The Council failed to respond properly to his written representations

25. The nub of Mr C's complaint was that one of his letters (1 May 2005 to Officer 1) was not replied to or acknowledged.

26. When he complained about the failure to respond, Officer 1 apologised for not replying but commented that 'Frankly, this letter did not raise any issues on which I had not commented previously'. Mr C complained that the letter was dismissed as irrelevant and adding nothing and he was aggrieved because he had put a great deal of thought into it and it had been extremely unpleasant to have it so described.

27. I have seen the letter of 1 May 2005 and the apology sent by Officer 1 on 15 July 2005 in which he gives advice that only one aspect had changed since his previous complaints (new powers to the authority under the Antisocial Behaviour, etc, [Scotland] Act 2004 to deal with noise complaints). The powers were due to come into force on 1 October 2005. However, he informed Mr C that he did not consider that these would be relevant to his complaint as they were 'specifically aimed at complementing existing legislation where noise is generated from domestic premises'. He informed Mr C that he had discussed his complaint with the Council's Legal Services and The Scottish Executive and it had been confirmed that the Environmental Protection Act 1990 was still the pertinent legislation in this case. In his opinion, the criteria for assessing noise were broadly similar under both Acts and, even if the new legislation had applied, the complaint would not justify formal action by the Council.

(d) Conclusion

28. When Mr C complained that his letter had not received a reply, Officer 1 accepted that he should have acknowledged it. He also explained the reasons for his decision that a detailed reply was not necessary when he wrote to Mr C on 15 July 2005. I consider that Officer 1 acted appropriately on Mr C's complaint before he made formal representations to this office and, therefore, do not uphold this complaint.

(e) The Council failed to notify him of the site visit

29. In his letter of 11 July 2005, Mr C asked if a site visit had been undertaken to check whether the premises were being left unattended for periods of the

day/evening (as he had indicated in his letter of 1 May 2005) and for details of when these visits had taken place.

30. In Officer 1's reply to Mr C on 15 July 2005, he provided details of his visit on 14 July 2005 to the kennels, Mr C's property and newly occupied houses in the vicinity. Officer 1 concluded that there was no justification to renew an investigation and the Council have informed me that there is no record of the visit because it was not carried out under the Protocol.

(e) Conclusion

31. I have considered the circumstances surrounding the site visit and the response given to Mr C under this head of complaint. The Council explained to Mr C the reason that visits were made to various locations. I have seen no fault in their action and I do not uphold this complaint. However, as referred to in paragraph 14, the Ombudsman has recommended that when the Council decide to make site visits in future, these are recorded.

Redress and recommendations

32. Specific recommendations the Ombudsman is making resulting from this investigation are that the Council should:

- (i) as a matter of good practice, record any site visits undertaken; and
- (ii) produce clear guidelines to ensure consistency in the practice of writing to/copying in third parties.

26 September 2006

Explanation of abbreviations used

Mr C	The complainant
The Council	Inverclyde Council
Officer 1	Environmental Health Officer
The Protocol	Quality Procedures Manual on Noise Complaint Protocol