

## Scottish Parliament Region: West of Scotland

### Case 200600463: East Dunbartonshire Council

#### Summary of Investigation

##### **Category**

Local government: Policy/Administration

##### **Overview**

The complainant (Mr C) complained that two Council officers pursued a personal vendetta against him and his family. He said as a consequence, he has been incorrectly pursued for nearly £7,000 in Council Tax arrears which he felt obliged to pay.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) Council officers pursued a vendetta against Mr C by treating his neighbour more favourably and not enforcing her tenancy conditions (*not upheld*);  
and
- (b) Mr C was incorrectly pursued for Council Tax arrears and that affected his right to buy his Council house (*not upheld*).

##### **Redress and recommendations**

The Ombudsman has no recommendations to make.

## Main Investigation Report

### Introduction

1. On 26 July 2006 the Ombudsman received a complaint from Mr C that Council officers had pursued a personal vendetta against him and his family. He said that as a consequence, he was incorrectly pursued for nearly £7,000 in Council Tax arrears which he felt obliged to pay. In connection with his complaint Mr C mentioned a number of incidents; for example the differential treatment received by his neighbour in comparison to that received by his own family; East Dunbartonshire Council (the Council)'s failure to enforce the terms of his neighbour's tenancy conditions; matters relating to his request to buy his Council house; and the Council's decision to pursue him for Council Tax arrears although they had not previously raised this matter with him.

2. The complaints from Mr C which I have investigated are that:
- (a) Council officers pursued a vendetta against Mr C by treating his neighbour more favourably and not enforcing her tenancy conditions; and
  - (b) Mr C was incorrectly pursued for Council Tax arrears and that affected his right to buy his Council house.

### Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and his partner (Ms C) and the Council. I have also had sight of an investigation report (the Report) prepared by the Council's Head of Protective Services and of print-outs of the Council's data based records of Council Tax reminders. On 21 September 2006, I made a written enquiry to the Council and their formal response to me was dated 24 October 2006.

4. While 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 a draft of this report.

#### **(a) Council officers pursued a vendetta against Mr C by treating his neighbour more favourably and not enforcing her tenancy conditions**

5. At the time he made his complaint (July 2006) Mr C and his family lived in a mid-terraced house. The complainant's mid-terraced house had no exclusive rear access and the Council's policy in relation to this situation was that:

'The tenant of the outside houses in each block shall be required to give

access to the tenants of the centre houses for the removal and delivery of material such as cleansing, coal etc., garden implements and machinery, prams, children's bicycles etc., when the use of the front door is not considered reasonable. The back paths are not to be used purely for gaining access to back doors and full use should be made, whenever possible, of the ordinary front door.'

6. Tenants concerned were advised that where extra security measures were taken, for instance, padlocks, neighbours must be given keys for access.

7. From the information available to me, it appeared that the neighbour referred to in this complaint, took occupancy of the end terraced property in March 2002 and, in August 2002, she built a fence. Ms C complained to the Council about this as she said that the fence was erected with the help of Council workmen and prevented her from taking access to empty her dustbins. Ms C said that although the fence had a gate, the neighbour kept it padlocked. In response to Ms C's complaint, on 12 September 2002, the Council sent letters to both Ms C and the neighbour explaining the access rights for tenants of mid-terraced properties (see paragraph 5).

8. In their response to me of 24 October 2006, the Council said that in May 2003 the police were involved in an incident involving Mr C, his son and the neighbour's son. On 12 May 2003, a Housing Officer wrote to Ms C saying that as the Council had received a complaint she would like to meet to discuss it with her. The Housing Officer met with Ms C in her home on 2 June 2003.

9. In the meantime, the Council appeared to have suggested that a possible solution to the access problem, and the disputes and complaints which arose from this, would be if they constructed a separate path for the C's sole use, thus removing the necessity for them to seek access through the neighbour's garden.

10. On 27 June 2003, Mr C telephoned the Housing Officer complaining of an incident between the neighbour and his son which, he said, had occurred as consequence of a letter sent to the neighbour (although the Housing Officer said that no such letter had been sent). The contemporaneous note recording this conversation said that Mr C then expressed his unhappiness with the way in which the Council were dealing with his complaints about the fence. He said that it appeared to him that the neighbour could do what she liked. He said he

intended to make a complaint about the Housing Officer and on 30 June 2003, Ms C wrote to the Housing Services Manager complaining that the Council had not investigated properly her complaints about her son being assaulted, or about her neighbour; that the neighbour had been allowed to breach her tenancy conditions with no action being taken against her; and that the Council's offer to build a new path confirmed this. She said that, in comparison, the Council were discriminating against her and treating her unfairly by not enforcing their rules (particularly with regard to access).

11. The Housing Services Manager replied to Ms C on 9 July 2003. He said that their enquiries of the police had revealed no record of an assault on Ms C's son and that despite her contention, the Council had not sent any letter to her neighbour that could have triggered such action. He emphasised that the neighbour had been told that she was in breach of her tenancy by prohibiting Ms C access when required and that he had directly informed her of this. However, he said that the offer to create a new path seemed to him to be a viable solution to the problem of access and he denied that either he, or the Housing Officer, had acted unprofessionally.

12. The dispute between the neighbours continued and Ms C involved her local Councillor who made representations on her behalf. Then, on 5 September 2003 the Housing Services Manager visited Ms C to discuss her views about the proposed path. He wrote on the same day confirming the Council's offer to create a path for the family's sole use. He said the benefit of this would be to remove the source of conflict between Ms C and her neighbour over access issues. He asked that Ms C advise him of her views but that in the absence of a response from her within 14 days, he would presume that she was in agreement. Ms C's response of 9 September 2003 said that she considered the Council's solution 'ludicrous' and 'inconvenient'. She said it was to her neighbour's advantage and that her views had not been taken into account.

13. The Housing Services Manager sought to discuss the Council's offer to create a pathway with Ms C again by letter of 22 September 2003 suggesting a further meeting. It is unclear whether or not this went ahead but in October 2003 Ms C involved the Citizen's Advice Bureau (CAB) to act on her behalf and restate her opposition to the Council's creation of a new path. In view of this, and the C's own complaints about the proposal, on 2 December 2003 the Council wrote to Ms C and her neighbour restating the position about access over the existing path (paragraph 5 refers). They said they had given

the matter consideration and looked at other options 'which we thought may have been beneficial to all parties' (that is, the creation of a pathway) but that this was their final position on the matter and they viewed it as closed.

14. In their letter to me of 24 October 2006, the Council said that the thinking behind their offer to lay a new path was that it would be best if the two parties ceased sharing the same garden ground which only created the potential for more disputes and complaints. They said that if an alternative solution to access and bin collection was offered there would be no need 'for the individuals to become embroiled in any further dispute'.

15. Nevertheless, the complaints continued and on 26 February 2004 Mr C wrote to the Chief Executive about the way in which the Council handled the neighbour dispute. On 24 March 2004, the Acting Chief Executive replied saying that it was his view that the core of the dispute was the question of access. He said further, that the neighbour had been advised that reasonable access must be given and that court action may be taken against her if she refused to allow this, but, if Mr C thought that he had been treated unfairly by housing officers, he should raise the matter with the Head of Housing and Support Services. Mr C appeared to have done so and on 30 April 2004, the Head of Housing and Support Services asked him to provide details of the alleged vendetta which he said the Housing Officer and the Housing Services Manager were conducting against him. Mr C replied on 16 May 2004 (although I have not had sight of this letter) and the Head of Housing and Support responded on 14 June 2004 reiterating the Council's view of the situation. In reply to the allegation that Council tradesmen had built the fence which created the access problems in the first place (see paragraph 6), the Head of Housing and Support Services said that the Council did not build the fence nor had they issued a job order as Mr C alleged. The Council confirmed this in their response to me of 24 October 2006 saying that they did not erect the 6ft divisional fence and that the job number which Mr C believed he had uncovered related to a separate chespale fence on another part of the boundary.

16. Mr C made further complaints throughout the remainder of the year and while the Council suggested mediation to remedy the ongoing problem, this appeared to have failed. Then, on 23 November 2004, Mr C provided photographs in support of his complaints about access, and as they clearly showed an obstruction, the Housing Services Manager said on

7 December 2004 that he would discuss the situation with the neighbour. However, in an attempt to bring the matter to a conclusion, he said he also wanted to discuss the matter with the Council's Community Safety Team who dealt with anti-social behaviour. A letter was sent to the neighbour on 31 January 2005 telling her that her actions were unreasonable and contrary to her missive of let. She was advised that failure to provide reasonable access would leave the Council no alternative but to seek legal action against her for breach of tenancy conditions. The neighbour was advised to seek independent legal advice.

17. I have not had sight of any other correspondence on this matter until that of 13 July 2005 when the Corporate Director - Community wrote to Mr C referring to their recent meeting. He said he was arranging an independent investigation of the situation which the Head of Protective Services was to conduct. The investigation was concluded in September 2005 and a meeting took place between Mr C and the Corporate Director – Community at the end of October 2005 to discuss this. Amongst other things, the Report concluded that the Council's offer to create a new path was, in the circumstances, reasonable; the Council had consistently informed the neighbour of the potential outcome of her breach of tenancy agreement and that in January 2005 she was advised that her actions in refusing reasonable access may result in the Council seeking a court order against her; complaints made by Mr and Ms C did not always fall within their remit, for instance if there was lack of evidence; and there was no evidence of the Council's policy being breached. The Corporate Director - Community confirmed that Housing Services would continue to investigate complaints from the parties involved and would keep the matter under review. The offer of an alternative path was still available but the Council felt that should Mr C remain unhappy, he could complain to the Ombudsman.

*(a) Conclusion*

18. Mr C took the view that in dealing with complaints, the Council treated his neighbour and her family more favourably than they treated him and his family. He said that the Council did not enforce his neighbour's tenancy conditions by taking legal action against her. Ms C viewed their offer to create another path (and thus removing the cause for dispute), as ludicrous and inconvenient (see paragraph 11). In dealing with the complaint in its entirety (see paragraph 2), Mr C believed the Housing Officer's and the Housing Services Manager's actions demonstrated a vendetta against him.

19. Neighbour disputes are extremely unpleasant, and can often involve allegations and counter allegations as in this case. There were instances when the neighbour certainly breached the terms of her tenancy, and the Council challenged her and warned her of the possible consequences (see for example paragraphs 14 and 15). Similarly, the Council acted when the neighbour complained about Mr C and his family (paragraph 7). However, I agree with the Council, the crux to this dispute lay with the path and access to it. Not unreasonably, the Council sought to remove this cause for complaint and provide a path for Mr C's sole use. However, Mr C saw this as a demonstration of the Council's preference for the neighbour and, therefore, as their discrimination against him. I do not agree. Nor have I seen evidence of a vendetta being pursued against Mr C by the officers mentioned (see also paragraph 25 below) who appear to me to have acted reasonably in the circumstances. Accordingly I do not uphold this aspect of the complaint.

**(b) Mr C was incorrectly pursued for Council Tax arrears and that affected his right to buy his Council house**

20. In the summer of 2003, around the time of the alleged assaults on the children of Mr C and the neighbour (see paragraphs 7 to 10), Ms C applied to buy her Council house. I am aware from an internal memo dated 29 July 2003 between the Revenue and the Housing Services departments that there was then a request for any relevant information which may affect the sale. It was noted in the memo that if there was a current Notice of Proceedings or rent arrears in excess of £300, this would lead to a refusal of the application to buy. Shortly afterwards, on 5 September 2003, Ms C was advised that she had rent arrears of £29.40 for which the Council requested payment as soon as possible. On 25 September 2003, the Council's Benefits Section advised Ms C that there was a discrepancy in her Housing and Council Tax benefit claim and, until the matter was resolved, all benefit was suspended.

21. In October 2003 Ms C had involved the CAB in the family's dispute with the Council (see also paragraph 13) and they wrote to the Benefit's Section on her behalf complaining about the suspension. The response received by the CAB (sent on 14 November 2003) from the Senior Benefit Officer said that the change of circumstances had been caused as Ms C had since confirmed to them that Mr C had been living with her.

22. Mr and Ms C were sent a formal offer to sell on 18 November 2003, this allowed two months for acceptance. The offer letter also pointed out in bold

that, '... any arrears of rent, Council Tax and Community Tax must be paid in full before the date of entry,...'. On 5 December 2003 Mr and Ms C were advised of arrears in Council Tax of £538.44 and that they had been overpaid benefit of £312.15.

23. With regard to Ms C's application to buy her Council house, on 24 February 2004, conveyancers advised her solicitors that there were £6,957.05 in Community Charge and Council Tax arrears. Soon afterwards, on 26 February 2004, Mr C wrote to the Council Tax section of the Council saying that he was unaware of any alleged debt and asked why was he only being told about this now, days before the conclusion of the sale of the house. The next day, the Revenues Manager replied to Mr C. He said that each year, from 1993 until 2003, the Council had sent Mr and Ms C (in her maiden name), a bill, final notice and summary warrant for arrears. He said that since 1993 only £419.26 had been paid. On 5 March 2004 a reminder was sent to the C's for 2003's Council Tax. Later in the year (on 10 October 2004) the Council Benefit's Section said that, with regard to Mr and Ms C's Council Tax and Housing Benefit claim, they needed further information to allow the claim to proceed. Then on 15 October 2004, a summary warrant was sent for outstanding Council Tax.

24. Throughout early 2005 Mr and Ms C's claim for benefit was assessed and recalculated on a number of occasions due to changing circumstances. The final correspondence of which I am aware is dated 31 May 2005 asking for further information from Mr C about his business in order for the Council to deal with the complainant's Housing and Council Tax benefit claim. Mr C's Council Tax liability was resolved (with his agreement) on 30 August 2006.

*(b) Conclusion*

25. Mr C believes that the Housing Officer and Housing Services Manager manipulated the system internally to his extreme disadvantage. He said that he was unaware of any debt until February 2004 (see paragraph 22) and that information was sought to frustrate his efforts to buy his Council house. He said that he was incorrectly pursued for nearly £7,000 which he was obliged to pay because he wanted to purchase his home. He feels he is entitled to this money back.

26. When a tenant makes an application to buy, or claims Housing and Council Tax benefit, the Council are entitled to make appropriate and necessary



enquiries. Mr C was clearly advised of the situation with regard to his application to purchase by letter of 18 November 2003 (paragraph 21). He was also fully apprised of his Council Tax situation (paragraph 22); similarly with regard to claims for Council Tax and Housing benefit. He was, therefore, aware of the situation. I do not consider that he can reasonably conclude that the difficulties he faced in trying to regularise the situation or buy his council house were as the result of a vendetta on the part of Council officers. For these reasons, I do not uphold the complaint.

23 May 2007

**Explanation of abbreviations used**

Mr C	The complainant
The Council	East Dunbartonshire Council
Ms C	The complainant's partner
The Report	An investigation report prepared by the Council's Head of Protective Services
CAB	Citizen's Advice Bureau