

Case 200600152: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Finance; Policy and Administration

Overview

The complainant (Mr C) was concerned that he had been unfairly excluded from The City of Edinburgh Council (the Council)'s offices and that his council tax file had been sent out to him without his permission and in inadequate packaging.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) unfairly excluded Mr C from their offices (*upheld*); and
- (b) sent Mr C his council tax file in the post against his express wishes and in inadequate packaging (*no finding*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) adopt a detailed policy for dealing with alleged instances of inappropriate behaviour on the part of customers and ensure that decisions to restrict access to Council offices or otherwise restrict contact with an individual are: properly documented; preceded, where appropriate, by a warning; well justified and communicated clearly to the individual concerned; and subject to internal review and appeal mechanisms; and
- (ii) apologise to Mr C for the unfair way in which he was excluded from their offices and for failing to provide him with an adequate and detailed explanation regarding the grounds of his exclusion.

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

Main Investigation Report

Introduction

1. On 2 June 2006, the Ombudsman received a complaint from a man, referred to in this report as Mr C, alleging that he had been unfairly excluded from The City of Edinburgh Council (the Council)'s offices and that his council tax file had been sent out to him without his permission and in inadequate packaging.

2. The complaints from Mr C which I have investigated are that the Council:

- (a) unfairly excluded Mr C from their offices; and
- (b) sent Mr C his council tax file in the post against his express wishes and in inadequate packaging.

3. Mr C, in making his complaint to the Ombudsman, raised a further concern regarding the administration of his and his late father's council tax accounts. However, during the course of the investigation, Mr C met with the Council and a final settlement was reached between the parties. While Mr C continued to have some concern regarding the way his and his late father's account had been administered, I was satisfied that there were no grounds to pursue further investigation. Consequently, I discontinued that point of investigation and both parties were notified of the decision.

Investigation

4. The investigation of this complaint involved obtaining and reading copies of all the correspondence between Mr C and the Council. In addition I obtained: a full copy of Mr C's council tax file; a copy of the envelope in which Mr C received his council tax file; copies of several Council documents that related to dealing with violent and inappropriate behaviour; and a note from a member of Royal Mail staff submitted by Mr C.

5. 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.

Background

6. On 10 March 2006, Mr C visited the Council's offices to raise concerns regarding his council tax account. Mr C and the Council disagree regarding what happened during his visit to the public counter on that day. Mr C stated

that the Council Officer who he was dealing with (Officer 1) was stressed, could not cope with his enquiries and left the interview room 'in a tantrum'. The Council's view of events is that Mr C was being unreasonable during the interview and that Officer 1, who was an experienced member of their staff, was considerably upset by the experience. Both parties agree that, at one point, a supervisor (Officer 2) was called in, first to advise Officer 1, and then again to take over the interview.

7. On 17 March 2006, the Council's Benefits Manager (Officer 3) wrote to Mr C stating:

'... I should advise you that I have instructed staff that you will not be dealt with either at the public counter or on the telephone due to your unreasonable behaviour. This decision has not been taken lightly, but I cannot subject staff to that type of aggressive behaviour. If you wish to contact us in future you should do so in writing.'

8. Also on 17 March 2006, Mr C visited the Council's offices. The Case Report recording his visit stated:

'[Mr C] saw a case report on system complaining about his behaviour. [Mr C] is absolutely furious about this and will be taking this further.'

Mr C now insists that all correspondence relating to [Mr C's properties] going back all years is copied and passed to him and review with Senior Council Tax Manager.'

The words 'is copied and passed to him' were scored out.

9. The Council provided me with a copy of a Case Report dated 17 March 2006 which stated:

'Due to behaviour towards staff [Mr C] is only to be dealt with in writing as per [Officer 3]'s letter of 17.03.06.'

10. On 21 March 2006, Mr C hand-delivered a letter dated 18 March 2006 to the Council. The letter stated that, during a visit to the Council's offices on 17 March 2006, he had become aware that an allegation of abuse was present on his computer files. Mr C demanded that the nature of the allegation be explained to him. The letter also stated:

'I demand an implicit account of the allegation by a named party immediately in writing to raise a counter claim. I hereby require that my

entire files concerning both properties are immediately closed to your Department and made available for my review and that of a legal representative in this regard. I do not permit any future access to my personal records unless within my presence.'

11. On 13 April 2006, the Council's Revenues Manager (Officer 4) wrote to Mr C stating:

'[Officer 3] has reviewed the allegation of your aggressive behaviour and stands by his original decision. When you were at [Council's offices] you initially spoke to an officer. She then had to get a supervisor and both of them stated that you were aggressive. Indeed you completed the case report that had been started by them. This is not normal procedure but both members of staff felt compelled to allow you to do this.

Therefore, I would confirm that you should only contact the department in writing as you will not be dealt with at the public counter or on the telephone.'

I explain the Council's 'Case Report' system in more detail at paragraph 18 below.

12. On 19 April 2006, Mr C replied to Officer 4 stating:

'I require an urgent update into your ongoing investigation of my prior concerns about belligerent conduct by your junior member of counter staff raised unofficially with [Director of Finance's secretary] and officially received by [Corporate Services Officer] on 21 March 2006. In this regard please expand on the series of events presented by [Officer 3]. Also provide original explicit and guaranteed non-collusive statements signed by both parties that you mention, which states exactly what the actual alleged aggression litigious to me was. Include in your statement the fact your junior operative initially sought the momentary assistance of a supervisor to make a spot decision, the supervisor left immediately. Minutes later after failing to access the necessary data from the computer screen to enable proper completion of the Statement the junior operative threw a tantrum and stormed out, leaving me in shock to complete the Report myself. Thankfully the same supervisor reappeared minutes later and amicably assisted me with a representation for [the Director of Finance].'

13. On 3 May 2006, the Director of Finance (Officer 5) wrote to Mr C stating:
'At this time I do not consider it necessary to provide you with the names of the parties involved in the allegation surrounding your visit to our Public counter. Should your complaint regarding this matter continue, I can confirm that the parties involved are willing to provide statements supporting their version of events. A thorough investigation has taken place into the events of the day you visited [Council's offices] and [Officer 3] maintains his position that appropriate action has been taken in this matter.'

14. On 17 May 2006, Mr C wrote to the Council's Chief Executive expressing dissatisfaction with the way Officer 5 had dealt with his complaint. Mr C asked for statements from the officers who made allegations against him to be provided and stated that he believed he had been unjustifiably excluded from the Council's offices so that proper dialogue with him could be avoided because no one wanted to address his complaints.

15. On 25 May 2006, the Council's Chief Executive responded, stating:
'I have received information from the Director of Finance who states that the matter of your aggression towards members of his staff has been covered in previous letters sent to you. He further advises that your complaint has not been ignored, that a decision has been taken on the matter and that you have been advised accordingly ...

The Director's letter [of 9 May 2006] also made reference to the willingness of those members of staff involved in your allegation surrounding your visit to the Public counter to provide written statements supporting their version of events and you asked that these statements be provided to you. These statements would, however, form part of a formal investigation and it would, therefore, be inappropriate to release them to you.'

16. Although the letter from the Chief Executive represented the final stage of the Council's complaints procedure, the issue was further commented on in a letter from Officer 4 to Mr C dated 12 July 2006. This letter was drafted after Officer 4 and Mr C met on 29 June 2006 to discuss Mr C's concerns. It stated:

'You expressed concern regarding the decision to deal with your enquiries in writing rather than at the public counter following an earlier incident at [the Council's offices] ...

Turning to the incident itself, you will not be surprised to hear that the member of staff's view of how the interview unfolded is quite different to your own. As explained at our meeting, there is no recording of interviews so it is very difficult to come to a judgement as to what exactly transpired that day. What is undoubtedly true is that an experienced member of staff, used to dealing with the public, was considerably upset by the experience. Subsequently, on investigating the matter, [Officer 3] took the decision that while there was no threat of physical aggression on your part during the meeting, the upset caused to the member of staff was sufficient to warrant a decision that further enquiries be carried out in writing.'

(a) The Council unfairly excluded Mr C from their offices

17. In responding to my enquiries, the Council told me that they had the same right as any other organisation to control access to their premises. The Council repeated the position they had stated to Mr C in the course of responding to his complaint. They said that, in their view, Mr C's actions at the public counter of their offices warranted exclusion from their premises.

18. I asked the Council to provide me with any records held on file regarding the incident. They submitted a copy of a Case Report sheet dated 10 March 2006. The Case Report sheet is routinely filled out when customers visit the public counter to record the nature of the enquiry made and any advice given. In this instance, the Case Report had been finished by Mr C. They also provided me with a copy of an email from Officer 2 dated 3 July 2006 and an undated handwritten statement from Officer 1, which recorded their respective versions of events. The Council told me that, although undated, the statement from Officer 1 was provided at around the same time as the email provided by Officer 2. The Council confirmed that the Case Report dated 10 March 2006 was the only contemporary evidence relating to the incident.

19. I asked the Council whether they had any policy or procedure which set out what should happen when customers were alleged to have behaved unacceptably and when a decision to restrict their access to premises was being considered. The Council provided copies of documents entitled 'Guidance for staff in dealing with abusive or threatening customers' (the Guidance document), 'Occupational Stress' (the Stress document) and 'Violence at Work' (the Violence document).

20. The Guidance document provides advice on how to deal with a person being abusive on the phone or at a public counter at the time the incident is occurring. However, it does not set out any guidance for recording and investigating an alleged incident or for managing a customer's behaviour after an incident. The Stress document states that appropriate steps should be taken to identify, assess and control the causes of occupational stress to employees. It suggests that control of a problem can be done by eliminating the cause of the stress in the first instance or reducing the amount of stress employees are exposed to. The Violence document states that in providing services to the community it is expected that members of the public will treat members of staff with respect and courtesy. It states that minor injuries and verbal abuse could cause fear, anxiety and stress and that employees should be encouraged to report incidents of violent behaviour. The Violence document states that a supervisor should ensure that a Report Form is filled out when incidents of violent behaviour occur.

21. I asked the Council whether there was any mechanism by which a customer who had been excluded from the Council's premises could appeal the decision or any mechanism by which the decision to exclude a person would be reviewed (eg if the problem behaviour appeared to have ceased or after a given period of time). The Council said that there was no appeal procedure, except for writing to the Head of the Department, which they said had been done in this case. They said that there was no procedure in place to review the decision.

(a) Conclusion

22. Following comments received from the Council on a draft of this report, I must clarify that, in considering whether Mr C was 'unfairly excluded' from the Council's offices, the Ombudsman is only able to look at the manner in which the decision to exclude Mr C was taken. The question for me in this report is, therefore: does the evidence show that the decision was taken fairly, after a proper process of investigation and consideration? The fairness of the decision itself is a matter that the Ombudsman may put in question, if there is maladministration in the way it was reached, but it is not for me to say that the decision was, ultimately, right or wrong. It is, therefore, the case that in considering whether Mr C was unfairly excluded from the Council's offices my concern is only with the manner in which the decision was reached.

23. The Council's decision to exclude a customer from their premises or to otherwise restrict contact with a member of the public is a discretionary one for

the Council to take. I accept the Council's statement that they have the same right as any other organisation to control access to their premises.

24. However, in providing a public service, the Council must ensure that any decision they take which restricts a person's access to a service is carefully documented, properly taken and effectively communicated. Failure to do so will, in my view, constitute maladministration.

25. In this case, I note that no statements were taken from Officer 1 and Officer 2 regarding the incident until approximately two and half months after it occurred. I consider that, in taking a decision which restricted Mr C's access to a service and incurred him costs in postage and inconvenience, the Council should have ensured that the alleged incident was fully documented. I also consider that Officer 5's statement in his letter of 3 May 2007 (see paragraph 13 above) that the incident had been 'fully investigated' is put into serious doubt by the lack of contemporary written statements from the officers involved.

26. I note that the Violence document specifically calls for a Report Form to be filled out by a supervisor when incidents of violent behaviour occur. The Violence document does not define what an incident of violent behaviour is and it is, therefore, not straightforwardly clear that the guidance applies to Mr C's case. However, given that the Violence document describes incidents from non-physical abuse and verbal abuse to violent incidents leading to death, I consider that the type of unreasonable and aggressive behaviour Mr C is alleged to have displayed falls under the sort of behaviour described in the document. I, therefore, consider that a Report Form should have been filled out in this case, and that, by not doing so, the Council failed to follow their own guidance.

27. I also have serious concerns regarding the way the Council communicated their decision to Mr C. The letter described at paragraph 7 above does not provide any details regarding the behaviour Mr C had allegedly displayed. Similarly, while further letters from the Council provide some additional details, I share Mr C's view that the nature of the allegations against him were never properly explained. The fullest explanation provided by the Council probably came in their letter of 12 July 2006, but even then the explanation focused on the upset felt by Officer 1 rather than on the behaviour on Mr C's part that allegedly caused the upset. I would have expected, rather than making vague statements regarding alleged unreasonable or aggressive behaviour, for the

Council to make specific reference to the behaviour they had found objectionable.

28. For example, the Council might have said something like (the following examples are for the purpose of illustration and do not relate to Mr C's case): 'You were reported to have: raised your voice at Officer X, constantly interrupted him, not allowed him to explain the situation, acted in an agitated fashion that was intimidating, used foul language, etc'. The Council's failure to provide a detailed explanation of the behaviour Mr C was alleged to have exhibited was maladministrative, particularly when Mr C asked for clarification on a number of occasions. I also consider that it goes against the principles of natural justice for a person not to be provided with an adequate explanation of the allegations made against them. This is especially so when, as already stated, a decision is made which restricts a person's ability to make full use of a public service.

29. I must also express concern regarding the guidance which the Council currently has in place to cover instances of violent and inappropriate behaviour directed at their staff. In my view, the guidance is not detailed enough to be useful to staff when dealing with instances of inappropriate behaviour and does not include appropriate procedures to ensure that customers are dealt with fairly. For example, I am concerned that the Council have no procedure setting out how a decision to exclude a person from their premises should be taken, how it should be communicated to that person and how the decision should be reviewed and can be appealed.

30. In this case, the lack of such a procedure meant that Mr C's challenge to the Council's decision was dealt with in a way that was manifestly unfair, given that Officer 3 (who initially took the decision to exclude Mr C) reviewed his own decision rather than that review being carried out by another officer (see paragraph 11 above). Although the letter Mr C received was from Officer 4, there is clear evidence that he did not carry out the review from what is stated in the letter and from the following text, which appears at the bottom of a draft of the letter sent to me by the Council:

'[Officer 3] did the letter but as [Mr C] does not want to deal with him [Officer 4] checked it and [another officer] signed it.'

The subsequent letter Mr C received from Officer 5 (see paragraph 13 above) seems to confirm that no review of the decision was carried out by an officer

who had not been involved in the original decision as it states 'Officer 3 maintains his position that appropriate action has been taken in this matter'. The fact that no third party review of the decision can be shown to have occurred shows, in my view, a failure to apply basic principles of good complaint handling.

31. In commenting on a draft of this report the Council said that, in fact, Officer 4 had reviewed Officer 3's decision. The Council said that Officer 4 had asked Officer 3 for information and questioned him on several points but that, unfortunately, no notes were taken of these discussions. The Council explained that due to Officer 4's personal situation, which involved a member of his family being seriously ill, he asked Officer 3 to write the letter on his behalf. I note the Council's comments and consider that it is unfortunate that no records exist to show that the decision was reviewed by Officer 4. The only documentary evidence available gives the impression that Officer 3 reviewed his own decision. On that basis, while I note the Council's comments, they do not change my conclusion that the way in which the decision to exclude Mr C was reviewed was inadequate.

32. As stated at paragraph 21 above, the Council told me they had no appeal procedure except that a customer could write to the Head of Revenues and Benefits. The Council told me Mr C had already done so and that the decision had been confirmed, however, I see no evidence on file that Mr C was informed that he should write to the Head of Revenues and Benefits to appeal the decision nor that Mr C did in fact write to the Head of Revenues and Benefits. The correspondence described at paragraphs 6 to 16 above does not show the Head of Revenues and Benefits being involved in any review of the decision following Mr C's complaints. While the Director of Finance comments on the incident in his letter to Mr C, there is no indication that he reviewed the merits of the decision given that he simply repeated that Officer 3 was satisfied with the decision.

33. I also have concerns regarding the proportionality of the decision in relation to the accounts provided by Officer 1 and Officer 2. The paperwork I have considered shows no evidence that Mr C's alleged behaviour on the day formed part of a history of inappropriate behaviour and I note that the Council seem to be considering the incident as an isolated one. While it is entirely for the Council to decide what action to take when a member of their staff has suffered upset following an interaction with a customer who is alleged to have

been behaving inappropriately, I consider that excluding a person from their premises and denying them full access to a service should generally take place as a last resort. I would have expected that, prior to such a decision being taken, attempts would have been made to modify the customer's alleged inappropriate behaviour through discussion, formal warnings or some other measures designed to ensure that the alleged behaviour is not repeated. In my view the Council should at least have considered other ways of managing Mr C's alleged behaviour prior to taking the decision to exclude him from their offices.

34. In conclusion, I find that the Council failed to follow their own guidance by not appropriately recording and investigating the alleged incident and failed to adequately communicate and explain their decision to Mr C. I also have concerns that the Council did not carry out an appropriate review (by an officer not involved in the original decision) following Mr C's complaint and that there were no procedures in place to ensure that a range of methods were available to manage a customer's alleged inappropriate behaviour and to ensure that decisions were proportionate to the alleged incidents.

35. In light of the concerns set out above, I consider that the Council have not been able to demonstrate that the process used to exclude Mr C from their offices was fair. The evidence shows that: no investigation was carried out into the alleged incident; no record giving detailed reasons for the decision was held on file; and that Mr C was not given an adequate explanation of the decision. I, therefore, consider that the Council's decision to exclude Mr C from their offices was taken in an unfair fashion. The Ombudsman is entitled to question the merits of a decision where there has been maladministration in the reaching of it and, in my view, that is clearly the case here.

36. I note that the Council have now reviewed the situation. Had the Council not already undertaken this review, it would have formed part of my recommendations below.

37. In commenting on a draft of this report, the Council emphasised that, even if they had the sort of detailed procedures in place that are recommended in this report, they may still have come to the same decision to exclude Mr C.

38. I accept the Council's comment. As stated at paragraph 22 above, my only concern is whether the decision was reached fairly rather than whether the

decision itself was fair. I maintain that, as stated at paragraph 35 above, the fairness of the decision is called into question by the fact that the Council could not demonstrate that it was taken properly, although I do not conclude that the decision was unfair as a result. I accept the Council's point that they may have reached the same decision regardless of the process followed in reaching it.

39. I should also clarify that, had I asked the Council to review their decision to exclude Mr C, they would have been at liberty to reach the same conclusion. The purpose of asking for a review would have been to ensure that the maladministration identified in this report did not adversely impact on the decision; it would not have implied that the decision itself was flawed. Indeed, it may well be that Mr C deserved to be excluded from the Council's offices, but that is not a matter for me to decide. What is certain and what I conclude in this report, is that Mr C deserved to expect that, whatever decision the Council came to, it should only have been taken after a proper and fair process had been followed.

(a) Recommendation

40. I recommend that the Council:

- (i) adopt a detailed policy for dealing with alleged instances of inappropriate behaviour on the part of customers and ensure that decisions to restrict access to Council offices or otherwise restrict contact with an individual are: properly documented; preceded, where appropriate, by a warning; well justified and communicated clearly to the individual concerned; and subject to internal review and appeal mechanisms; and
- (ii) apologise to Mr C for the unfair way in which he was excluded from their offices and failing to provide him with an adequate and detailed explanation regarding the grounds of his exclusion.

(b) The Council sent Mr C his council tax file in the post against his express wishes and in inadequate packaging

41. Mr C told me that he did not consent to his files being sent out to him in the post and that, in fact, he had expressly asked that this did not happen. He cited as evidence the Case Report described at paragraph 8 above where the words 'be copied and passed to him' were scored out. Mr C says that the words were scored out following his specific request. He told me that the officer with whom he had spoken that day (Officer 6) would confirm that this was the case.

42. The Council told me that they had posted Mr C his files following what they reasonably interpreted as a request that they do so contained in Mr C's letter dated 18 March 2006 (see paragraph 10 above). The Council told me they had spoken to Officer 6, who believed that Mr C had made a request for a copy of his file to be sent to him. However, due to the passage of time and the number of people he saw each week, Officer 6 was unable to say with any certainty what happened regarding the request and the amendment to the Case Report. The Council said, however, that Officer 6 was an experienced member of staff, well used to dealing with customer enquiries, and that he acted in accordance with what he believed were Mr C's wishes at the time.

43. Mr C, in commenting on the response provided by the Council, maintained his position and believed that, in order to avoid confusion, the Council should have a form which customers could fill out when requesting that their personal information be released. Mr C said he believed the Council did have a form and he provided me with a copy, although I noted that the form submitted related to Freedom of Information requests rather than Data Protection requests.

44. Mr C showed me the envelope in which he said he had received his files. The envelope appeared badly damaged and had been reinforced in places with brown tape. The package had been sent by recorded delivery. Mr C believed that the package was overfilled and that contempt for him was shown in the way his files were posted out. Mr C pointed to a handwritten note on the envelope, which he said had been from a postman, which stated 'this packet was badly damaged through being overfilled'. Mr C later provided me with a copy of a handwritten note on Royal Mail headed paper signed by a Royal Mail Delivery Office Manager, which stated 'This packet was badly damaged through being overfilled'. Mr C said that he had suffered inconvenience as a result of the way his files had been sent to him and that he had to change his bank accounts as his bank details had been on public view due to the damaged envelope.

45. The Council explained that, when sending papers out to customers, they used ordinary office stationery. They pointed out that most of the letters they sent out contained confidential information personal to the recipient. They said they had spoken to the officer who had packed the papers and were satisfied that reasonable steps were taken to ensure the documents were securely enclosed. The Council said that if the package had become damaged in transit the responsibility for that would lie with the Royal Mail. The Council said that, in recognition of Mr C's concerns about a potential breach in security of his bank

details, and while not believing that the Council had acted unreasonably, Officer 4 agreed to pay any bank charges incurred by Mr C resulting from the delivery of the damaged package.

(b) Conclusion

46. On the issue of whether consent was given for Mr C's files to be posted out to him, the evidence is inconclusive. I note that, in the Case Report dated 17 March 2006 the words 'is copied and passed to him' are scored out. However, I do not consider that this represents the explicit statement that Mr C believes it to be. Rather, it is ambiguous, particularly when taken in conjunction with Mr C's letter dated 18 March 2006 which also contains a request regarding Mr C's files. The Council say that they interpreted Mr C's statement as a request for his files to be sent out to him and I consider their interpretation to be reasonable in the circumstances. It is possible that Mr C did expressly state that he did not want his files to be posted to him during his visit to the Council on 17 March 2006, however, the evidence is not strong enough to confirm that possibility. Due to the paucity of the evidence available, I make no finding on this issue.

47. Similarly, it is not possible for me to reach a finding regarding the damage to the envelope in which Mr C's files were sent out. It cannot be known whether the package was overfilled or what state it was in when it left the Council's offices. It is possible that the package was already damaged or was overfilled, but it is equally possible that the package was damaged in transit through no fault of the Council's. While I note the views of Royal Mail staff regarding the reason the package was damaged, I do not accept their opinions as conclusive or reliable particularly when they might have an interest in denying liability. Consequently, I make no finding on this point of complaint.

48. While I cannot reach a finding, I do see some merit in Mr C's view that the availability of a form for the purpose of requesting personal information might help to avoid similar situations in future. Although I make no formal recommendation, I have suggested to the Council that they may wish to consider introducing such a form.

22 August 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	The City of Edinburgh Council
Officer 1	The officer who saw Mr C at the Council's public counter on 10 March 2006
Officer 2	Officer 1's supervisor
Officer 3	The Council's Benefits Manager
Officer 4	The Council's Revenues Manager
Officer 5	The Council's Director of Finance
Officer 6	The officer who saw Mr C at the public counter on 17 March 2006
The Guidance document	A document entitled 'Guidance for staff in dealing with abusive or threatening customers'
The Stress document	A document headed 'Occupational Stress'
The Violence document	A document headed 'Violence at Work'