

**Case 200700283: The City of Edinburgh Council**

**Summary of Investigation**

***Category***

Local government: Investigation of complaint

***Overview***

The complainant (Mr C) claimed that the City of Edinburgh Council (the Council) had not properly investigated his complaint regarding the circumstances in which he was asked to leave Bed and Breakfast accommodation. Specifically, he considered that the Council's investigation had been ineffective in the taking of witness statements.

***Specific complaint and conclusion***

The complaint which has been investigated is that the way in which the Council investigated Mr C's complaint was ineffective (*partially upheld*).

***Redress and recommendations***

The Ombudsman recommends that the Council:

- (i) issue Mr C with a full formal apology for the failures identified in this report; and
- (ii) review the handling of this case; and inform her of the action taken to ensure that a similar failing does not reoccur.

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

## **Main Investigation Report**

### **Introduction**

1. Mr C was a homeless man, living in temporary Bed and Breakfast accommodation (the B and B) provided by the City of Edinburgh Council (the Council), while he was awaiting the offer of a Council tenancy. On two occasions Mr C broke the rules of the B and B by staying out beyond the curfew time. On 10 April 2007 he was, therefore, asked to leave the accommodation by the B and B manager. Mr C alleged that, in telling him to leave, the B and B manager was verbally abusive towards him and threatened him with physical violence. Mr C accepted that he had broken the rules, however, he felt that the B and B manager's conduct was unacceptable and so he complained to the Council.

1. The outcome of the Council's investigation was that there was no evidence to support Mr C's complaint. He was also advised that the Council monitor the guest houses they use, and the staff they employ, rigorously and following his complaint there would be a period of increased monitoring. Mr C was concerned that the Council had not fully investigated his complaint and so asked the Ombudsman to investigate.

2. The complaint from Mr C which I have investigated is that the way in which the Council investigated Mr C's complaint was ineffective.

### **Investigation**

3. To understand how Mr C's complaint was investigated and to clarify the action taken by the Council to monitor the guest houses they use, I asked the Council to provide me with a copy of their complaints file, detailing the investigation conducted together with copies of any witness statements taken. I also asked for copies of the Council's guidance in relation to monitoring guest houses and the staff employed there. Finally, I asked the Council to provide me with confirmation of the monitoring activity undertaken at the B and B.

4. 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.

**Complaint: The way in which the Council investigated Mr C's complaint was ineffective**

5. The conditions of living at the B and B included the necessity to comply with a curfew, requiring residents to return to the accommodation by a certain time. Mr C broke the curfew on two occasions and accepted that he would be asked to leave, however, he considered that in asking him to leave, the B and B manager was abusive and threatened him with physical violence.

6. On 12 April 2007, Mr C complained to the Council about the way in which he was asked to leave the accommodation. His complaint was investigated by a housing officer, who responded to him on 19 April 2007.

7. In their response the Council advised Mr C that the owner/manager of the B and B had been advised of the complaint and had denied the allegations in relation to his conduct. The letter also advised Mr C that the Council had spoken with other residents of the B and B who had confirmed that Mr C had been 'loud and abusive' towards the B and B manager in relation to the incident in question.

8. The Council concluded that 'the staff at [B and B]= had acted professionally in dealing with this matter, and due to other residents information, therefore I am unable to take this matter further'. The letter concluded by advising Mr C that he should contact the Ombudsman if he was not satisfied with the outcome of the complaint.

9. Mr C did contact the Ombudsman (in April 2007), however, as he had not completed the Council's complaints process, he was advised that it was premature for the Ombudsman to become involved. He was informed of the Council's full complaints procedure and advised to contact the Ombudsman again if, at the conclusion of the Council's complaints procedure, he remained dissatisfied.

10. Mr C escalated his complaint with the Council and following further enquiries he was advised that the complaint had been investigated, with all the parties, including witnesses, having been spoken to. The outcome of this further investigation, communicated to Mr C by letter dated 1 June 2007, was that no evidence was found to support his complaint.

11. In responding to my request for the complaint file, the Council advised me that 'the statements taken from witnesses were obtained by telephone interview, at the request of the witnesses. The witnesses did however confirm that they would be willing to be contacted again if the matter was taken further'.

12. I found nothing in the complaint investigation file provided by the Council to verify that contact had been made with either the B and B owners, or any witnesses, during the first stage of the Council's consideration of Mr C's complaint.

13. While the letter issued on 19 April 2007 stated 'I have made the owners of the bed and breakfast aware of your complaint' and 'I have spoken with other residents who advised me that they were present during this alleged incident', there was no record in the complaint file to indicate that this had happened.

14. Examination of the complaint investigation file confirmed that, at the second stage of the Council's investigation, contact was made with the B and B owners on 17 May 2007. They stated that when Mr C was asked to leave he became abusive and caused a disturbance in the B and B.

15. Three witness statements were also recorded in the file. The first witness (Witness 1) was contacted on 17 May 2007, however, he stated that he was unaware of the disturbance and heard no raised voices.

16. A further two witnesses (Witness 2 and Witness 3) were contacted on 31 May 2007. Witness 2 said that the only person who had become aggressive was Mr C and that, in his opinion, Mr C had caused the situation. Witness 3 also said that Mr C was shouting aggressively and continued to do so even as he left the B and B.

17. The Council also provided me with a record of the monitoring visits which had been made to the B and B. I found that regular visits had been made between January 2005 and June 2007 with eight '[B and B] Management' or 'Community Liaison' visits being made between May 2005 and June 2006.

18. While I was impressed with the range of issues which were discussed at these visits, from the maintenance of the B and B to the behaviour of the residents and the effect their behaviour may have on the neighbours of the B and B, I was, however, surprised to find that the officer who had visited the

B and B on 30 May 2007 and on 14 June 2007 had made no reference to the incident on 10 April 2007 involving Mr C in the record of these visits, despite this officer having conducted the initial investigation into Mr C's complaint.

### *Conclusion*

19. It is clear that the incidents of the morning of 10 April 2007 would have been stressful for both the B and B manager and Mr C. In such a situation, it is perhaps understandable that tensions were raised.

20. It is not for me to come to a view on what may or may not have been said by either party, rather, I have been asked to consider whether or not the investigation conducted by the Council was effective.

21. From the evidence provided, I found failings in the way that Mr C's complaint was initially investigated. In their first response, the Council advised Mr C that they had made the B and B owners aware of the issue and had spoken with other residents regarding the matter. However, in the paperwork provided by the Council, I could find no record of contact with the B and B owners or other residents in connection with the enquiry, prior to the Council's first response being issued.

22. It was not until Mr C escalated his complaint that the Council documented their contact with the B and B owners and other residents and I note that this occurred after the first response on his complaint had been issued to Mr C.

23. The Council's record of monitoring visits to the B and B included comments about a wide range of issues and I would, perhaps, have expected to see a reference to this incident in relation to the visit of 30 May 2007. Accurate record-keeping and intelligence is important in any event and, in this particular case, such an entry would have helped to assure an accurate audit trail of significant events at the B and B. This would have been especially helpful in the event that a monitoring visit was conducted by an officer who was not aware of the history of this particular case.

24. Based on the evidence provided, I have to conclude that the Council's initial investigation of Mr C's complaint was ineffective, in that there is no record of any contact with the B and B owners or any of the witnesses. The Council did, however, make contact with the interested parties when Mr C asked for his complaint to be reviewed. In terms of the final outcome of the Council's enquiry,

I have found no injustice to Mr C, nevertheless, the failings in the first investigation lead me to hold Mr C's complaint as partially upheld.

25. Finally, I noted at paragraph 9 that Mr C had been advised to come to our office before the conclusion of the Council's complaints process. During the course of this investigation, the Council advised me that they are taking measures to ensure that the staff involved are made fully aware of the escalation procedure for complaints before referring any customers to the Ombudsman's office.

#### *Recommendations*

26. The Ombudsman recommends that the Council issue Mr C with a full formal apology for the failures identified in this report.

27. The Ombudsman further recommends that the Council take action to review the handling of this case; and inform her of the action taken to ensure that a similar failing does not reoccur.

28. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

**Explanation of abbreviations used**

Mr C	The complainant
The B and B	The Bed and Breakfast
The Council	The City of Edinburgh Council
Witness 1	Independent witness to incident on 10 April 2007
Witness 2	Independent witness to incident on 10 April 2007
Witness 3	Independent witness to incident on 10 April 2007

