

**Case 200603518: Glasgow City Council**

**Summary of Investigation**

**Category**

Local government: Environmental Health and Cleaning, Control of Pollution

**Overview**

The complainant (Mr C) approached Glasgow City Council (the Council) about problems of dampness he was experiencing in his property. He believed that the source of the dampness was his neighbour (Mr N)'s flat. The Council considered that the water ingress constituted a statutory nuisance and served an Abatement Notice under the Environmental Protection Act 1990, which required Mr N to address the source of the problem. Mr N eventually undertook some work which did not stop the dampness. Mr C believed that the Council unreasonably did not use the powers at their disposal to ensure that Mr N took action that would solve the problem.

**Specific complaints and conclusions**

The complaints which have been investigated are that the Council:

- (a) failed to enforce an Abatement Notice effectively (*upheld*); and
- (b) failed to keep Mr C adequately informed about progress of the enforcement of the Abatement Notice (*no finding*).

**Redress and recommendation**

The Ombudsman recommends that the Council;

- (i) apologise to Mr C and his wife for a lack of clarity and consistency in their approach to addressing the statutory nuisance; and
- (ii) reflect on what can be done to address the gap between their statutory responsibilities and customer expectations in situations like this.

## **Main Investigation Report**

### **Introduction**

1. On 9 October 2006, the complainant (Mr C)'s wife (Mrs C) contacted Glasgow City Council (the Council) to report dampness in their. The Council inspected Mr and Mrs C's neighbour (Mr and Mrs N)'s flat. They concluded that the dampness was caused by a plumbing fault in Mr and Mrs N's bathroom and served an Abatement Notice on Mr N, which required remedial work to be undertaken within a specified timescale. This did not happen by the time the Abatement Notice expired, but the Council kept in contact with Mr N over a period of time and he did have some work done in his bathroom, although this did not stop the dampness. By 10 February 2007, the problems had not been remedied and Mr C referred his complaint to the Ombudsman.

2. The complaints from Mr C which I have investigated are that the Council:
- (a) failed to enforce an Abatement Notice effectively; and
  - (b) failed to keep Mr C adequately informed about progress of the enforcement of the Abatement Notice.

### **Investigation**

3. In order to investigate this complaint, I have considered the relevant statutory provisions and the Council's own internal procedures relating to statutory nuisances. I have also reviewed the correspondence between Mr C and the Council, which included a number of technical reports following inspections of Mr C's and Mr N's properties.

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.

### *Background*

5. Part III of the Environmental Protection Act 1990 gives local authorities powers to serve an Abatement Notice which imposes requirements aimed at stopping or preventing recurrence of a statutory nuisance. A statutory nuisance can be judged to exist where 'any premises [are] in such a state as to be prejudicial to health or a nuisance'. The authority will stipulate a time limit for compliance with the requirements of the Abatement Notice and if, on expiry of this time limit, no action has been taken to mitigate the nuisance, the person on whom the Abatement Notice has been served shall be guilty of an offence. In

addition, an authority may undertake the work necessary to abate the nuisance and recover the costs from the person responsible for that nuisance.

**(a) The Council failed to enforce an Abatement Notice effectively**

6. On 9 October 2006, Mrs C reported dampness in her flat to the Council. The flat was not her primary residence, but she used it regularly when she was in the city on business. She considered that the source of the dampness was the flat of her neighbours, Mr and Mrs N. The Council had a statutory duty to investigate Mrs C's report of a potential nuisance, so an officer (the Officer) from the Council's Environmental Protection Service (the Service) inspected Mr and Mrs N's property and concluded that the source of the dampness was due to a plumbing defect in their bathroom. An Abatement Notice was served on 16 October 2006 giving Mr and Mrs N 21 days to comply with its requirements, which were to 'ensure the abatement of the nuisance by the execution of such works and/or by the taking of such other steps as may be necessary'.

7. Mr and Mrs N commissioned a plumber to investigate the problem and they visited on 24 October 2006 confirming dampness in the bathroom but not identifying a source.

8. By 13 November 2006, the Abatement Notice had expired and the Officer contacted Mr and Mrs N to ask for an update. They reported that some work had been undertaken to seal the shower unit. They also advised that Mr and Mrs C had sent a surveyor to inspect the bathroom on 26 October 2006 and that they had agreed to carry out further work if the sealing of the shower did not abate the problem.

9. On 16 November 2006, the Officer visited Mr and Mrs C's flat and confirmed that the dampness persisted. She advised that Mr and Mrs N would be given a further 14 days to address the problem and that, if this did not happen, the Council would consider undertaking the works by default. This option had also been stated in the original Abatement Notice. In a letter to Mr and Mrs N of 21 November 2006, the Council confirmed this 14 day period and said 'It must be stressed that failure to abate this nuisance will result in the Service carrying out the work on default at your expense and this include the cost of all exploratory work' (emphasis original). The letter further stated that, if the Council did not receive confirmation that the work had been satisfactorily completed, 'we will instigate the necessary proceedings for our Contractors to carry out the repairs'.

10. Following further correspondence from Mrs C, the Council wrote to her on 27 December 2006 saying that Mr and Mrs N had been given until early January to complete works which remedied the problem and would 'consider effecting the works in default' if this had not happened. The Council had written to Mr and Mrs N on 22 December 2006 setting out this deadline. In this letter, they stated, 'In the event of a guaranteed date to fully resolve this matter not being received, I will have no alternative but to instruct repairs in default, in early January 2007'.

11. In their letter of 27 December 2006 to Mrs C, the Council also emphasised that, although they had fulfilled their obligations under the Environmental Protection Act 1990, they would 'continue to pursue this complaint in an attempt to obtain a satisfactory resolution to the matter'.

12. Mr N sought two estimates for the work from plumbers and further action was delayed while he confirmed his insurance position. On 15 February 2007, the Council set out their position to Mr C in a letter responding to his request for an update on their involvement in this matter. The Council explained that they had been advised that the plumbers chosen to carry out the work were revising their estimate and the Council were reluctant to commit to any further action until the estimate was finalised. They again stated that their legal duties had been fulfilled but would continue to try to resolve the matter.

13. Mr and Mrs N eventually had work carried out at the beginning of May 2007. The Council arranged further visits to monitor progress and inspected Mr and Mrs C's property on 14 June 2007, where a slight improvement was noted, and on 18 July 2007, when the dampness had worsened. By this time, Mr C had referred his complaint to the Ombudsman and a formal investigation had been initiated.

14. Over the next year, the damp problem continued. In a letter of 7 September 2007, the Council advised Mr C that Mr and Mrs N had undertaken further work on their bathroom and that they would inspect the property again on 11 October 2007. In this letter, they set out their obligations with respect to this sort of nuisance: 'We are not there to oversee, supervise, or inspect the work of [Mr N]'s private contractor, but are there to assess whether or not the public health nuisance has been abated'.

15. The problem persisted and a surveyor commissioned by the Council inspected both properties on 31 January and 10 April 2008. He concluded that, although it was not possible to identify the source of the water with certainty, there were some effective remedies to the problem. These would require substantial work and disruption.

16. The Council, therefore, wrote to Mr C on 13 May 2008 outlining their position, which was that they would not take any further action in respect of the dampness. The reasons given for this decision were that the surveyor's report had not identified a source for the dampness and that the Council did not have the resources to undertake any further work to mitigate the problem.

17. Mr C considered that the Council had not investigated the problem with sufficient rigour and had not inspected under Mr N's bath, which he thought the most likely source of the leak.

18. At the time of writing this report, the problem has still not been remedied.

*(a) Conclusion*

19. Local authorities have substantial powers in relation to environmental nuisances. In many cases, the serving of an Abatement Notice prompts effective remedial action, but it is also within the Council's power to undertake the necessary work and recover costs from the person on whom the Abatement Notice was served. The Council have stated that they do, on occasion, undertake work to remedy problems such as those encountered by Mr C. They also have the option to refer cases for prosecution where an offence has not been remedied, although this option is used rarely due to its cost and complexity.

20. The Council told Mr C that they had fulfilled their legal obligations when they served the Abatement Notice and followed up to see whether Mr N had taken any action. However, they also said clearly on a number of occasions that they would consider carrying out the work and charging Mr N. Indeed, this option was stated more strongly in correspondence with Mr N.

21. Clearly, the responsibility for remedying problems leading to dampness such as that experienced by Mr C lies with the owners of the property where the problems originate. The Council's decision not to undertake works in default was a discretionary one in terms of the Environmental Protection Act 1990. The

Ombudsman may not question such a decision made without maladministration and it is reasonable for the Council to consider the wise use of limited resources in deciding when to take this sort of action. Furthermore, since January 2008, there was some uncertainty over whether the source of the problem was in Mr N's property.

22. However, in deciding to issue an Abatement Notice, the Council undertook to be satisfied that a health nuisance had been remedied and were sufficiently convinced that the nuisance originated in Mr N's property until January 2008. They also gave Mr C a reasonable expectation that they could address the problem by carrying out work themselves.

23. It is not for me to assess the professional judgement of those involved in attempting to identify and remedy the source of the problem in Mr C's flat, but the evidence suggests that the problem was not a straightforward one. Mr N did make attempts to abate the nuisance and these were not successful. It was reasonable for the Council to allow Mr N to address the problem if they were satisfied about his willingness to do so.

24. Mr and Mrs C's ability to use their property has been reduced substantially as a result of the dampness coming from Mr and Mrs N's property and this problem has persisted for a considerable length of time. From the surveyors' reports, it is clear that there are measures that can be taken to prevent dampness from affecting Mr and Mrs C's flat. The fundamental question is whether it was reasonable to expect the Council to have ensured that these measures were identified and implemented more quickly.

25. On balance, I conclude that the Council did give Mr and Mrs C a reasonable expectation that they could take action to ensure the abatement of the nuisance more effectively than proved possible. While it is not certain that the Council could have taken earlier action that would have solved the underlying problem, they did state that such action would be taken in the event of a failure to abate the nuisance. On some occasions, the Council were careful to tell Mr and Mrs C about the limits of their authority and obligations in relation to the legislation, but I can understand Mr and Mrs C's frustration that the Council appeared not to be using powers available to them to pursue an effective outcome in the earlier stages of the problem. Mr and Mrs C stated that they felt reassured that the Council's involvement in seeking a solution to the problem obviated their own need to seek a legal remedy. I consider that the

Council could have adopted a more consistent approach to the use and threatened use of their legal powers to take action to address the statutory nuisance and to that extent, I uphold this complaint.

26. In their responses to drafts of this report, the Council were not prepared accept this conclusion:

'We do not understand why it is concluded that we did not use 'all the powers available to us', especially as it is not clear who is responsible for the defect or even what is causing it. We would appreciate being provided with the statutory references used to decide upon this conclusion. We can only act on what evidence we have at any given time. Once again we would reiterate that two surveyors, various tradesmen as well as our own Environmental Health Officers were not able to identify the source of the defect. This being the case, we therefore fail to see what legal action could have been taken effectively to address the situation'

I fully accept that the Council could only act on the evidence available to them at the time. In paragraph 15, I also accept that the surveyor's report in January 2008 introduced an uncertainty about the source of the water ingress. However, in the earlier stages of this matter they were satisfied that the source of the water was from Mr N's property. Referring to paragraph 25 of this report, the Council asked why I had concluded that they did not use 'all the powers available' to them. This is not the basis of my conclusion. To be clear, I have upheld this complaint on the basis that there was a lack of consistency in the Council's approach, which raised Mr C's expectations that they would take action to remedy the problem. I do not criticise the Council for not undertaking a repair and do not make any comment on the Council's interpretation of their statutory duties.

*(a) Recommendation*

27. In their submission to the Ombudsman of 20 August 2007, the Council said that they were drawing up guidelines to ensure greater consistency in their approach to undertaking works in default when an Abatement Notice is not complied with. The Ombudsman welcomes this initiative and will seek confirmation from the Council of the completion of this guidance. In addition, the Ombudsman recommends that the Council apologise to Mr and Mrs C for a lack of clarity and consistency in their approach to addressing this problem.

**(b) The Council failed to keep Mr C adequately informed about progress of the enforcement of the Abatement Notice**

28. As noted above in paragraph 13, the Council agreed to conduct regular inspections to monitor the progress of the dampness in Mr and Mrs C's flat. The evidence shows that the Council did carry out such inspections and commissioned a surveyor to inspect the problem in detail when the problem was persisting at the beginning of 2008 (see paragraph 15).

29. There is evidence that the Council maintained regular communication with Mr and Mrs C, with contact by letter, email or meeting at least once a month throughout 2007. Mr and Mrs C reported, however, that there were occasions when it was not clear to them what work had or had not been carried out in Mr and Mrs N's flat, particularly around August and September 2007. This was important to them so that they would know whether it was appropriate to carry out any remedial work in the affected area of their own flat.

30. The Council wrote to Mr C on 7 September 2007 stating that they were not responsible for overseeing any work undertaken by Mr N's contractors, but only to 'assess whether or not the public health nuisance has been abated'. They said that any questions around the quality of work undertaken were a private matter between the neighbours.

*(b) Conclusion*

31. I consider that the amount of contact Mr and Mrs C had from the Council was not unreasonable in the circumstances. Although some updates were only obtained at the request of Mr C, the evidence shows that the Council were generally responsive. In a situation where there is conflict between neighbours, it is understandable that communications can become strained and councils often try to act to mediate between them and their interests. While I can fully understand Mr C's frustration at the lack of clear information about progress with his neighbour's plumbing, I consider that the Council acted in good faith in trying to maintain communication with all parties. However, given that the Council undertook to keep Mr and Mrs C fully updated, I am concerned that there were some occasions when they may not have passed on to Mr and Mrs C information that was in their possession about work that their neighbours were carrying out, as this information was directly related to the question of whether the nuisance was reducing. Although the Council's letter of 7 September 2007 notes that there had been discussions with Mr and Mrs C following visits to their property and that of their neighbours over the previous

three months, Mr C is clear in his recollection that these discussions did not give him an accurate picture of progress with attempts to resolve the problem.

32. From the written evidence available, there is no doubt that the Council were in contact with Mr C. I see no reason to question Mr C's perception that this contact did not yield information which was important to him, but it is not possible to determine this objectively as some of the communication was oral. I consider that the Council acted responsibly in its communications, but also that Mr C's expectations were not met. In these circumstances, therefore, I make no finding in this complaint.

*(b) Recommendation*

33. Although I make no finding in this complaint, I recommend that the Council reflect on what can be done to address the gap between their statutory responsibilities and customer expectations in situations like this.

34. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

**Explanation of abbreviations used**

Mr C	The complainant
Mrs C	Mr C's wife
The Council	Glasgow City Council
Mr and Mrs N	Mr and Mrs C's neighbours
The Officer	An officer from the Council's Environmental Protection Service
The Service	The Council's Environmental Protection Service

**List of legislation and policies considered**

Environmental Protection Act 1990