

**Case 200904955: Argyll and Bute Council**

**Summary of Investigation**

**Category**

Local government: roads and flood prevention; flooding alleviation works

**Overview**

The complainant (Mr C) complained about the failure of Argyll and Bute Council (the Council) to deal satisfactorily with nearby flooding problems and to repair the damage caused to the adopted road which serves his home.

**Specific complaint and conclusion**

The complaint which has been investigated is that the Council have delayed unduly in taking action to reduce flood risk to Mr C's property and to effect repairs on the adopted road (*upheld*).

**Redress and recommendations**

	<i>Completion date</i>
The Ombudsman recommends that the Council:	
(i) consider whether there is a need, following the identification of projects in their capital plan, to provide periodic updates on their website of progress in implementation;	22 March 2011
(ii) provide a suitable expression of regret to Mr and Mrs C for the worry and concern which they have endured through the delay in implementing the project; and	21 January 2011
(iii) as a matter of urgency, ensure that the works identified under the project are carried out without further delay.	22 June 2011

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

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mr C) has resided since 2006 in his present home. It is one of two properties served by an unclassified adopted road (the Road). During the period of his residence, the Road has been subject to a number of flooding incidents which have emanated from a point above the north end of the Road. Mr C complained that these incidents contributed to the de-stabilisation of one of his boundary walls, causing it to collapse, and that the surface of the Road had been severely damaged, rendering it virtually impassable for vehicles.

2. The complaint from Mr C which I have investigated is that Argyll and Bute Council (the Council) have delayed unduly in taking action to reduce flood risk to Mr C's property and to effect repairs on the adopted road.

### **Investigation**

3. My investigation was based on correspondence supplied by Mr C, documents obtained directly from the Council and from their website, and the Council's response to my complaints reviewer's enquiry. 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 Council have delayed unduly in taking action to reduce flood risk to Mr C's property and to effect repairs on the adopted road**

4. Mr C and his wife (Mrs C) reside in a new house on the Road. The house was constructed in 2006. His home and one other property, owned by Mr D, are the only two properties directly served by the Road, which is unclassified but is on the Council's list of adopted roads. The Road connects with A Road to the north and B Road to the south. Subsequent to the building of Mr C's home, another house was constructed on A Road to the east of its junction with the north end of the Road. That house is owned by Mr E.

5. The Council are required to publish biennial reports under the Flood Prevention and Land Drainage (Scotland) Act 1997. Scrutiny of these disclosed that both the Road and A Road have been the subject of various flooding incidents since 2003. The flood water has generally emanated from a field

between A Road and a parallel but higher road to the north, which has not been intercepted by the local drainage system.

6. The first letter from Mr C on the Council's file was dated 3 January 2007 and was to the Roads Department. It referred to damage caused to the Road by recent flooding and queried whether an open drain constructed by Mr E was contributing to floodwater in the Road. Further letters were sent by Mrs C on 14 October 2007 and on 14 January 2008. In the latter, Mrs C acknowledged that some work had been done on the Road but this had been washed away. She accepted that fixing the problem of flooding was the main issue. She suggested that a grid be constructed at the junction of the Road with A Road to intercept water and to carry it through the drains down to the nearby shore. Her neighbour, Mr D, also emailed the Council's Network and Environment Manager (Officer 1) about the condition of the Road. In his reply of 16 January 2008 to Mr D, Officer 1 acknowledged that the problem resulted from drainage problems to the west of the junction of the Road with A Road. A further flooding incident on 29 February 2008 was brought to the attention of a local councillor (Councillor 1) on 3 March 2008 and he raised it at the local Area Committee on 4 March 2008.

7. In late October 2008 there were two further flooding incidents. Mr D emailed Officer 1 on 23 October 2008 about the first and Officer 1 responded immediately. After the second flooding incident on 25 October 2008, Mrs C emailed her Member of Parliament (the MP) expressing fears about the stability of her boundary wall. The MP then took the matter up with the Council.

8. On 19 December 2008, following a meeting of the Council's Executive Committee held the previous day, Officer 1 advised the MP that a project costing at £80,000 for flood alleviation at the locus had been included in the Council's Minor Flood Prevention Scheme Programme from 1 April 2009 to 31 March 2012 and had been given Priority 1 status.

9. The Council's file included contemporary digital images of drains and roads etc taken on 22 December 2008. It also recorded that, on 30 December 2008, an instruction was issued by the Council's Roads Operations to increase gully capacity at the junction of the Road and A Road to improve surface water flow capture. The Council's Flood Alleviation Officer (Officer 2) in an internal email of 26 February 2009 to the Head of Roads and Amenity Services (Officer 3) stated that the north side ditch in A Road had

overflowed, due to heavy rain and overland flow from an adjacent field. This had resulted in surface water flowing from A Road between two other properties on A Road to the east and then flowing down through an open field to another property on B Road. To alleviate this, the north ditch on A Road was cleaned over a length to the east of Mr E's house and increased in depth over a length to the west of the Road in February 2009.

10. On 23 August 2009, a further flooding incident occurred. Mr D emailed the Council on 24 August 2009 providing digital images. Mr C also emailed the Council at 10:24 the next day, fearful that her boundary wall would collapse. The wall, of dry stone construction, collapsed the next day. In his response to Mr C of 2 September 2009, Officer 1 indicated that the Council lacked the internal capacity to design the necessary flood alleviation works and that the Council were at that time in the process of tendering for an external consultant. Mr C responded on 3 September 2009 expressing surprise at the lack of capacity within the Council to design the project.

11. By September 2009, a further flood incident affected the property on B Road. The problem was identified as emanating from a burst surface water drain (SWD). Scottish Water, however, denied this was their responsibility. By 10 November 2009, Officer 2 took the view that it should be repaired, without admission of liability, to allow A Road to reopen. The SWD was not repaired as a temporary expedient until some time after 17 November 2009. A permanent solution, however, had repercussions for the detailed design of the flood alleviation project (see paragraph 8).

12. Mr C's complaint to the Council on 24 November 2009, raised four issues: 1) the poor state of the adopted southern section of the Road; 2) the lack of action to permanently alleviate flooding; 3) that street lighting in the Road had not worked for years; and 4) he also expressed his grievance that his boundary wall would cost £3600 to repair.

13. Officer 3 responded to Mr C on 21 December 2009. He stated (with regard to issue 2) that in the past year the Council had upgraded drainage inlets in the road above A Road to avoid water over running; a collapse in the surface water carrier pipe had been repaired; a manhole was installed for maintenance purposes; three new gullies had been installed in A Road to increase surface water capture; the existing gully at the junction of the Road and A Road had had the waterway area increased to improve efficiency; and the surface water pipe

in A Road had been jetted and proved clear. Officer 3 pointed out that, as further improvements were required to the surface water network, the Council were appointing a consultant to prepare a drainage improvement scheme with a view to construction works being carried out in the current financial year. The letter went on to detail the procedure for making a compensation claim but made no specific reference to the state of the road or to inoperative street lights.

14. Mr C responded on 10 January 2010 stating that, while he was encouraged by the recent and anticipated work to alleviate flooding, he wanted the other issues addressed. He indicated that he would not be pursuing a claim at that time with regard to the cost of repairing his wall. On 8 February 2010 the Chief Executive replied, informing Mr C that street lighting repairs could be reported through a telephone reporting system, of which she provided details. She assured Mr C that the street lighting fittings would be replaced by 15 February 2010. The condition of the road and priority for works thereto would be reviewed by the Council on completion of the flood alleviation works.

15. Mr C submitted his letter of complaint to me on 15 March 2010. He stated that, in the four years he had lived in his home, his family had had to endure severe flooding problems, destruction of the road surface, no street lighting and eventually the collapse of his boundary wall. He referred specifically to the issues of the flooding and the state of disrepair of the Road. In a subsequent telephone discussion with one of my complaints reviewers, he stated that the outcomes he was seeking were; an apology for the time taken; assurances that remedies would be put in place; and the problem to be fixed permanently, as a matter of urgency.

16. The Council informed one of my complaints reviewers on 9 June 2010 that it was anticipated that by the end of June the consultants would have completed the detailed design, that this work would have been costed, and that a report would go to a project board in July 2010. In the event, the detailed design work was not completed, therefore this did not happen.

17. In response to my complaints reviewer's subsequent letter of enquiry, the Council stated that the problem at the Road had been highlighted to Roads and Amenity Services in December 2003 and the flooding incidents between then and March 2005 were dealt with by reactive responses and also proactively by ditch and pipe clearance. The Council stated that the issues at the Road were included in the Council's biennial report to the then Scottish Executive in

November 2005. That report confirmed the number of flooding incidents over the previous two years and highlighted the need to replace a pipe as the reason for the flooding. A section of pipe was subsequently replaced in the field between A Road and the road to the north. After the submission of this report, a programme of flooding schemes was compiled for 2006 to 2009 but this did not include the Road, as the appropriate technical officer had rated other schemes to be of higher priority. The Council informed me that no record exists of how this assessment was made.

18. In the light of the absence of further incidents being reported from March 2005 until January 2007, the Council considered that the problem had resolved itself. The six incidents reported in 2007 and 2008 (see paragraphs 6 and 7) had led to further reactive works and the Council had decided to include work at the Road in their capital plan as part of the 2009-2012 flood management programme. The Priority 1 status indicated that the flooding was causing hold-ups requiring diversions and affecting business.

19. In response to my complaints reviewer's enquiry, the Council's Chief Executive informed him that she did not consider that there had been an undue delay in the project for the Road being assessed as an appropriate scheme for inclusion in the flood management programme but that, rather, professional officers of the Council assessed the situation and when they considered that works were required, they made arrangements, at the first available opportunity, for the allocation of capital resources.

20. With regard to the delay in implementing the project given Priority 1 status, the Council's Chief Executive explained that, traditionally, flood alleviation scheme design was handled by an in-house team. In this instance, the then Director of Development Services had taken the view, due to a lack of specialist staff resources, that tenders for the design should be sought and this was done on 10 September 2009. The tender for the design work was awarded to a large engineering consultancy (the Consultants) on 30 November 2009 and work commenced on 15 December 2009. The indicative programme supplied at the award of the contract anticipated completion of the design work by 15 March 2010 but delay in appointing a drainage investigation sub-contractor prevented this. A revised programme was submitted by the Consultants but the need to provide additional contracts required a further revision to the end of June 2010 of the expected date of completion of the design work. The finalised contract documents were eventually submitted on 22 September 2010.

21. In early October 2010, in light of the slippage in project delivery dates, a high level project review was undertaken by the Council's Executive Director for Development and Infrastructure. The project manager had been remitted to bring forward the detailed business case and project implementation plan for consideration by the departmental strategic project board on 11 November 2010. The Chief Executive confirmed that the flood alleviation scheme, once approved, would include repairs to the tracking in the Road and consideration of any repairs required to the damaged sections would be undertaken once the flood alleviation works were completed.

22. In conclusion, the Council's Chief Executive confirmed that the Council accepted that there had been an unacceptable delay in progressing the scheme to tender, following its inclusion in the 2009-2012 flood management programme, and she had asked the Executive Director of Development and Infrastructure to revert to her and to Mr C following the meeting of the departmental strategic project board on 11 November 2010.

23. The Council informed me that a design review undertaken in October 2010 and presented to the strategic project board on 11 November 2010 identified that the preferred design solution required an increase in the scope of works over that originally envisaged during the initial design phase. The pre-tender cost estimate was £250,000 and the timescale for completion was estimated at six months from conclusion of all property permissions and agreements with appropriate landowners. The Council's estates section was working towards concluding all permissions and agreements by the end of January 2011. The tender and contractor appointment process would take two to three months and construction works were programmed to complete within three months from the award of contract.

#### *Conclusion*

24. I have considerable sympathy for Mr and Mrs C, whose enjoyment of their home has been adversely affected by many incidents of nearby flooding. It is not for me to ascertain or adjudicate whether the collapse of Mr and Mrs C's boundary wall was attributable to the flooding. If they are not covered by their buildings insurance and believe the Council to be responsible, then they should submit a third party claim to the Council in that regard as explained by Officer 3 (see paragraph 13).

25. Problems have been experienced at the locus for many years. I accept that, in the period prior to December 2008, the Council responded to reported incidents. They also considered that the alleviation of problems elsewhere carried a greater priority. However, I would have expected this to be documented (see paragraph 17). When the reactive measures carried out in the vicinity of Mr and Mrs C's home failed to remedy the problem, a potential scheme was put forward to the Council's Executive Committee in December 2008; was included in a 2009-2012 capital programme; and was then awarded a Priority 1 status.

26. The delay in implementing a project considered nearly two years ago to be a top priority (Priority 1) is regrettable. Section 8 and Schedule 4 Paragraph 7(1) of the Scottish Public Services Ombudsman Act 2002 prevent me, however, from investigating 'action taken in matters relating to contractual or other commercial actions of a listed authority'. I trust, however, that the Council will implement any sanctions that they might have against the Consultants for the design work taking over nine months rather than three months.

27. Mr and Mrs C anticipated that Priority 1 status would have resulted in an expeditious permanent resolution of the problems they were experiencing but, in the interim period, they have suffered from further flooding incidents. They are clearly anxious that the alleviation works be commissioned without further delay. The Council have acknowledged that there were unacceptable delays and, in all the circumstances, I uphold the complaint. I make the following recommendations.

#### *Recommendations*

- |   | <i>Completion date</i> |
|---|------------------------|
| 28. I recommend that the Council:   |                        |
| (i) consider whether there is a need, following the identification of projects in their capital plan, to provide periodic updates on their website of progress in implementation; | 22 March 2011          |
| (ii) provide a suitable expression of regret to Mr and Mrs C for the worry and concern which they have endured through the delay in implementing the project; and                 | 21 January 2011        |



(iii) as a matter of urgency, ensure the works identified under the project are carried out without further delay.

22 June 2011

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

**Explanation of abbreviations used**

Mr C	The complainant
The Road	The adopted unclassified road providing access to Mr and Mrs C's house and one other property
The Council	Argyll and Bute Council
Mrs C	Mr C's wife
Mr D	The other owner whose house is accessed by the Road
A Road	The adopted road onto which the Road emerges to the north
B Road	The adopted road onto which the Road emerges to the south
Mr E	The owner of a property on A Road immediately to the east of its junction with the Road
Officer 1	The Council's Network and Environment Manager
Councillor 1	An Argyll and Bute councillor
The MP	The Member of Parliament for the local constituency
Officer 2	The Council's Flood Alleviation Officer

Officer 3

The Council's Head of Roads and  
Amenity Services

SWD

Surface water drain

The Consultants

A large engineering consultancy