

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint about
Birmingham City Council**

**(reference numbers: 22 001 880; 22 002 457 and
21 015 723)**

13 September 2022

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mrs X	The complainant
Mrs Y	The complainant
Ms Z	The complainant

Report summary

Refuse and recycling

The complainants are registered for assisted collections. They all complained the Council has repeatedly failed to correctly return their bins to the storage points after emptying them. We have previously investigated complaints from all three complainants. The Council failed to demonstrate the action it was taking in response to the recommendations we made was effective in resolving the issues identified. There remains evidence of significant systemic issues within the Council's waste department. These have been ongoing for several years. All these factors helped inform our decision to issue this report to further highlight the problems being experienced by these three complainants and many other residents in the city.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

To remedy the injustice caused by the faults identified in this report, we recommend the Council should:

- apologise to each of the complainants for the ongoing failings in service;
- pay Mrs X £200 to recognise the frustration and difficulties the fault identified has caused her;
- pay Mrs Y £200 to recognise the frustration and difficulties the fault identified has caused her;
- pay Ms Z £200 to recognise the frustration and difficulties the fault identified has caused her;
- review its waste collection monitoring arrangements to ensure they are robust and effective in identifying and resolving any problems and in improving service levels. This review and its findings should be reported directly to the Chief Executive and Leader of the Council and should be considered by the most appropriate committee of elected members; and
- produce an action plan to identify ways of improving its staff performance. This should include a timeframe for any action. This action plan should be reported directly to the Chief Executive and Leader of the Council and should be considered by the most appropriate committee of elected members.

The Council has accepted our recommendations to remedy these complaints.

The complaint

1. The complainants are registered for assisted collections. They all complained the Council has repeatedly failed to correctly return their bins to the storage points after emptying them.

Legal and administrative background

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

How we considered this complaint

3. We produced this report after examining relevant documents and speaking with the complainants.
4. We gave the complainants and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

Refuse and recycling collections

5. Councils have a duty under the Environmental Protection Act 1990 to collect household waste and recycling from properties in its area. The Council's service specification sets out its arrangements for collecting recycling and refuse. This states that residents are required to place their wheelie bins out for collection on the pavement at the edge of their property nearest to the road, unless there is a designated collection and return point. Wheelie bins must not be left in the middle of a pavement (where they cause an obstruction to pedestrians) or at the kerbside of the pavement (where they may cause an obstruction to people getting out of parked cars).
6. The service specification also states that once wheelie bins have been emptied the Council will return them to the point from where they were collected.
7. The Council provides an assisted collection service for people who are unable to move their bins and boxes due to a disability or age. The Council should collect the bins from the storage point and return them to the same point.

What happened here

8. This is the second time Mrs X, Mrs Y and Ms Z have complained to us about failings in the waste collection service. We upheld each of their complaints and made recommendations to improve the service, but the issues have continued. The complainants all live in different areas of the city and their waste is collected by two different depots.

Mrs X's complaint

9. Mrs X complained that the collection crews had routinely failed to return her bin and left her neighbours' bins blocking her drive after emptying them since October 2020. On one occasion Mrs X reports more than 20 bins were left in front

of her gate. On another occasion she reported that only one of her three bins was among the many left in front of her gate, so having moved her neighbours' bins away from her property she then had to search for her own bins.

10. We upheld Mrs X's complaint and highlighted our disappointment with the Council's failure to resolve an issue it had been aware of for over a year. The Council apologised to Mrs X and paid her £200 to recognise the frustration and difficulties the repeated failure to return her own and her neighbours' bins to their respective properties has caused. The Council had set up formal monitoring to ensure Mrs X and her neighbours' bins were returned correctly to the collection points for their respective properties. As there were further issues within the monitoring period, we recommended the monitoring be extended for a further eight weeks.
11. During this extended period of monitoring there were further occasions when Mrs X and her neighbours' bins were not returned properly. We asked the Council to extend the monitoring again for a further four week period. Unfortunately, there were further problems with Mrs X's bins not being returned properly and her neighbours' bins being left in her driveway. The Council suggested the problem was getting worse and offered to extend the monitoring again.
12. We registered a new complaint as although the Council has carried out the monitoring we recommended, this has not resolved the problem. Mrs X and her neighbours' bins are still not routinely returned to the correct positions.
13. Mrs X says she has seen officers visit her street to monitor collections and notes they take different approaches. One of the officers will return her bins to her property when the crews have failed to do so. But another officer remained in his vehicle and did not move the bins the collection crew had left in front of her driveway.
14. When Mrs X recently spoke to the collection crew about the bins left blocking her drive she says the crew were rude and accused her of lying and always moaning. Mrs X says the crew members refused to move the bins as it was not their job to return them to their respective properties and denied being told not to leave the bins in front of her driveway.
15. The Council states the monitoring involved an Assistant Service Manager (ASM) attending the property on the scheduled collection day to check and verify crew compliance. It considers the only possible explanation for the repeated failure to return Mrs X and her neighbours' bins correctly is poor staff performance and a continued failure to adhere to clear management instructions. It states a service manager will now need to take a more proactive role in ensuring the bins are returned correctly. This may include taking further action against the crew concerned in line with the Council's procedures. Such action is a matter for the Council to consider and take. But it is extremely concerning that despite being aware active monitoring is being conducted, the crew continues to act in this way.

Mrs Y's complaint

16. As there is no space for Mrs Y to leave her bins at the front door, she has always left her bins on the side access to her property, next to the pavement. Mrs Y says the Council had routinely collected her bins from and returned them to this point without problem for years. She complained that since February 2021 the Council had failed to collect her bins, which meant they did not get emptied, and when they were collected, it did not return the bins to her property.

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17. We upheld Mrs Y's complaint. While it is more usual for the Council to collect and return bins to the front of a resident's property, we expect it to have regard to the individual circumstances. The Council had previously completed Mrs Y's assisted collections with the bins stored to the side, rather than the front of her property for many years and we recommended it continue to do so.
 18. The Council apologised to Mrs Y and paid her £100 to recognise the frustration and difficulties the repeated failure to return her bins to her property as part of the assisted collection service has caused.
 19. In addition, the Council agreed to monitor Mrs Y's collections for eight weeks to ensure the assisted collections were carried out properly and the bins were returned to the collection point at the side of her property. This monitoring took place between 31 March and 19 May 2022.
 20. According to the Council's records Mrs Y's bins were collected, emptied, and returned to her property correctly on each scheduled collection. The Council states the monitoring was carried out by an ASM visiting the road on the scheduled day to check and verify the bins had been emptied and returned to the agreed storage point. It states the crews now understand and accept Mrs Y's preference to present her bins at the side of the property and for them to be put back there once empty. It considers the problem resolved.
 21. Mrs Y is concerned about the accuracy of the Council's records. She complained her bins were not returned correctly on 2, 12 and 19 May 2022. Mrs Y has also reported further problems in June 2022 and questions whether the crews deliberately do not return her bins correctly as she has made a complaint. She says she has not seen anyone monitoring her collections or position of the bins and questions how the problem could continue if there was effective monitoring.

Ms Z's complaint

22. In 2021 we upheld Ms Z's complaint about repeated failures to return her bin to the front of her property with the pod correctly inserted and the lid closed. The Council apologised and agreed to arrange formal monitoring of Ms Z's collections between August and November 2021 to try and resolve the problem.
23. Ms Z complained that despite the monitoring the collection service had not improved. She has made further formal complaints to the Council and each time the Council confirmed her complaint had been passed to the depot manager who would remind the collection crews of their obligations. The Council also arranged a further period of monitoring from January to April 2022. In addition, in January 2022 the Council agreed to provide Ms Z with an assisted collection service.
24. This did not resolve the problems and Ms Z has continued to complain about failings in the assisted collection service. She is disappointed the Council sends her the same standard responses and gives the same assurances the crew will be spoken to and service will improve, but nothing changes. Ms Z does not consider it sufficient to apologise for the ongoing failings without addressing the problem. She asserts there are no repercussions for the collection crew members as the Council does not take the complaint seriously.
25. Ms Z is also concerned about the dismissive remarks made about her complaints in the Council's internal communication with the depot. When asked by the Council to speak to the crews and ensure the service improved, an officer from the depot responded:

“With everything that is going on in the world with death and slavery and starvation, they are bothered about a lid being left open, it is pathetic, I will put a note in the pigeon hole”

26. The Council’s response to our enquiries states there is no definitive explanation for the ongoing failure other than what appears to be poor crew performance. It states the officer’s comments in the internal communication were “off the cuff” personal comments and do not represent the Council’s policy. The Council suggests it is likely the officer believed their comments would only be seen internally and apologises for the remark and any distress caused to Ms Z.
27. It states it reactivated monitoring in May 2022 and will be in close contact with a depot service manager to check the progress. The Council states this latest monitoring will endeavour to resolve the issue more successfully than the previous.

Conclusions

28. It is extremely disappointing that despite extensive periods of monitoring and assurances the service would improve the Council is still not routinely returning Mrs X, Mrs Y or Ms Z’s bins in line with its assisted collection service. In the circumstances it is not surprising the complainants all perceive they are being targeted by the collection crews and that the failure to return their bins correctly is a deliberate act.
29. We are however concerned that these issues affect not only Mrs X, Mrs Y and Ms Z, but are indicative of the service being provided to many residents registered for assisted collections across the city. Our [last report](#) on failings in the Council’s waste collection service also concerned a failure to return bins to the designated storage points and a delay in resolving issues of staff performance. We have received assurances that issues within the service would be robustly tackled, but the problems persist.
30. It is clear that monitoring in its current format has been ineffective in identifying and resolving the issues and that more needs to be done to improve the service. It is not sufficient to simply record failings in service and extend monitoring. There are also concerns about the accuracy of the Council’s records, particularly as monitoring visits can take place after the complainants’ neighbours have returned their bins for them.
31. It is concerning that collection crews appear to continue to ignore instructions despite knowing they are being monitored. This suggests either the instructions from service managers were not effectively conveyed or explicit enough. Or more worryingly, that collection crews are not concerned about what, if any, the consequences of disregarding these instructions would be. In either case, we would expect the Council to take action to ensure it retains the ability to control the provision of its waste collection service.
32. Given the Council’s acknowledgement there are issues of poor staff performance, we would expect the Council to actively seek to raise performance standards. It is not an adequate response for the Council to simply blame its staff. The senior management team of the Council is ultimately responsible for the leadership and motivation of its employees and for the culture it creates. As such, the continued failure to address public concerns effectively is as much a matter of corporate leadership as it is of day-to-day service delivery.

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33. Having identified fault we must consider whether this has caused an injustice to the complainants. All of the complainants have experienced further frustration and disappointment with the ongoing failure to return their bins and the Council's inability to resolve the problem.

Recommendations

To remedy the injustice caused by the faults identified above, we recommend the Council should:

- apologise to each of the complainants for the ongoing failings in service;
 - pay Mrs X £200 to recognise the frustration and difficulties the fault identified above has caused her;
 - pay Mrs Y £200 to recognise the frustration and difficulties the fault identified above has caused her;
 - pay Ms Z £200 to recognise the frustration and difficulties the fault identified above has caused her;
 - review its waste collection monitoring arrangements to ensure they are robust and effective in identifying and resolving any problems and in improving service levels. This review and its findings should be reported directly to the Chief Executive and Leader of the Council and should be considered by the most appropriate committee of elected members; and
 - produce an action plan to identify ways of improving its staff performance. This should include a timeframe for any action. This action plan should be reported directly to the Chief Executive and Leader of the Council and should be considered by the most appropriate committee of elected members.
34. The Council has accepted our recommendations to remedy these complaints.
35. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

36. The Council's repeated failure to return Mrs X, Mrs Y and Ms Z's bins to their collection points as part of the assisted collection service is fault. This fault has caused Mrs X, Mrs Y and Ms Z an injustice.