

Agenda Item	8
Report No	AS/12/17

## HIGHLAND COUNCIL

**Committee:** Audit and Scrutiny Committee

**Date:** 26 June 2017

**Report Title:** Scottish Public Services Ombudsman, Cases Received by the Council – Update Report

**Report By:** Chief Executive

### **Purpose/Executive Summary**

This reports sets out the number and types of complaint against the Council that have been referred to the Office of the Scottish Public Sector Ombudsman (SPSO) in the period January to June 2017 and the subsequent judgement in the cases where the SPSO's inquiry has concluded.

20 cases have been considered in the period covered by this report. 2 cases have been upheld and 3 have been partially upheld. 10 cases were found in the Council's favour and 5 cases are still to be determined. Summary details of the upheld and partially upheld cases are included in Appendix 1.

### **Recommendations**

Members are asked to:

- consider the outcomes of the SPSO cases and the actions that have been taken in response to the Ombudsman's recommendations.

## **1. Background**

- 1.1 The Scottish Public Services Ombudsman (SPSO) was set up in 2002 to investigate complaints about organisations providing public services in Scotland, including local authorities. The SPSO looks into complaints where a member of the public claims to have suffered injustice or hardship as a result of maladministration or service failure and only investigates cases when the complainant has already exhausted the formal complaints procedure of the organisation concerned.

## **2. Upheld/Partially Upheld Complaints, January – June 2017**

- 2.1 20 complaints about the Highland Council were referred to the SPSO since the beginning of January 2017 which the Ombudsman considered had fulfilled their criteria for investigation. Of those, 2 cases were upheld and 3 were partially upheld. 10 cases were found in the Council's favour and 5 cases are still to be determined.
- 2.2 Appendix 1 contains summary details of the complaints that the SPSO received and determined about the Highland Council since January 2017 and include the actions that have been taken to respond to the Ombudsman's recommendations. The full reports can be accessed from the SPSO's website: [www.spsso.org.uk](http://www.spsso.org.uk) by searching on the reference number.

## **3. Upheld/Partially Upheld Complaints, January – June 2017**

- 3.1 Case 1, 201605070, Planning Application (upheld): The SPSO upheld a complaint that the Council had rejected a planning application on the basis of reasons outwith its jurisdiction. The SPSO's recommendations have been implemented and the Ombudsman has closed the case.

3.3 Case 2, 201606311, Bullying allegations at a primary school (partially upheld): A parent complained that the Council failed to take reasonable action in response to reports of bullying and failed to respond reasonably to their subsequent complaint.

The Ombudsman did not uphold the parent's complaint about the response to accusations of bullying because evidence showed that actions taken by the school were in line with the steps set out in the council's policy. However, the SPSO did find that the Council failed to respond to complaints within the corporate timescales.

No recommendations were made.

3.4 Case 3, 201601916, Bullying allegations at a primary school (partially upheld): A parent complained that the Council failed to ensure that the school attended by her daughter had an anti-bullying policy in place and the Council had failed to take reasonable action in response to the bullying of her daughter.

The Ombudsman did not uphold the complaint about the Council's action in relation to the reports of bullying. They found that the Council had taken significant action in line with the requirements of the policy to address the concerns raised. The SPSO did determine that, although the Council's overarching policy was thorough, the school did not have a sufficiently robust policy of its own in place. This aspect of the complaint was consequently upheld.

The Council has since satisfactorily implemented the Ombudsman's recommendations and the case is now closed.

3.5 Case 4, ref 201508079 Handling of planning application (partially upheld): The complaint relates to the handling of a planning application for a domestic wind turbine. The complainants were concerned that the applicant submitted inaccurate plans which were registered under an inaccurate address. They were also concerned that the Council had not fully assessed the impact of noise and that once the turbine was running, it created a noise nuisance.

The SPSO upheld the complaint about the inaccuracies of the plans but did not accept the complaint regarding noise assessment.

The Council is in the process of implementing the Ombudsman's recommendations.

- 3.6 Case 5, ref 201508232 (partially upheld): Handling of planning application. The complainant alleged that the Council had failed to include all objections to a planning application on the e-planning portal; had ignored a planning condition restricting the start of development; and considered the Council's response to his complaint to contain inconsistencies.

Although a summary of the complainant's objection was contained in the planning officer's report, the Ombudsman upheld this aspect of the complaint because the objection itself was not on the e-planning portal at the time the application was being considered. None of the other elements of the complaint were upheld.

No recommendations were made.

#### **4. Implications**

- 4.1 There are no Resource; Legal; Equalities; Climate Change/Carbon Clever; Risk, Gaelic or Rural implications arising from this report.

#### **5. Recommendation**

- 5.1 Members are asked to consider the details of this report.

Signature: Steve Barron

Designation: Chief Executive

Date: 13 June 2017

Author: Kate Lackie, Business Manager

### Case 1: Decision Report 201605070

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- Date: May 2017
- Subject: handling of planning application (complaints by applicants)
- Outcome: Upheld, recommendations

#### Summary

Mr C complained that the council unreasonably rejected his planning application on the basis of reasons which were outwith their jurisdiction. He said that as a result he had to appeal to the local review body, who granted consent, and that this process resulted in additional costs for him.

The SPSO found that the council rejected the application on grounds which did not appear to fall within the remit of the planning authority. The rejection focused on an element of the application which related to the marine environment and which was subject to licensing through Marine Scotland, rather than the planning authority. The SPSO noted that, where there was doubt about jurisdiction, this should be reflected in the planning officer's report and that this did not happen in this case. It was also noted that no reference to the relevant Scottish Government planning circular was made in the officer's report and that the officer failed to fully explain their assessment of the proposals against the planning policy which was used to refuse the application. For these reasons, the complaint was upheld

#### Recommendations

The council:

- write to Mr C to apologise for the decision to refuse planning permission on grounds which fell outwith their jurisdiction; and
- reflect on the handling of Mr C's planning application and consider how best to ensure that officers are clear as to the implications of Circular 1/2015 and their responsibilities to justify decisions detailed in their reports in terms of all relevant planning policies.

## Case 2: Decision Report 201606311

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- Date: May 2017
- Subject: primary school
- Outcome: Some upheld, no recommendations

### Summary

Mr C complained that the council failed to take reasonable action in response to reports of bullying of his daughter at her school. Mr C also complained that the council failed to respond reasonably to his subsequent complaints.

Mr C's concerns about the actions taken concerning the bullying were not upheld because the evidence showed that the actions taken by the school were in line with the steps set out in the council's policy.

The SPSO noted that the council failed to process Mr C's complaint in line with the requirements of the complaints procedure. The complaint was not acknowledged within the required timescale and the council failed to keep Mr C informed about an extension to the complaint investigation, although the actual investigation itself was carried out to a reasonable standard. For this reason, this aspect of Mr C's complaint was upheld.

## Case 3 Decision Report 201601916

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- Date: April 2017
- Subject: primary school
- Outcome: Some upheld, recommendations

### Summary

Miss C complained that the council failed to ensure that the school attended by her daughter (Miss A) had an anti-bullying policy in place. She also complained that the council had failed to take reasonable action in response to the bullying of Miss A at this school.

The SPSO upheld Miss C's complaint about the anti-bullying policy. Although the council's overarching policy was thorough, the SPSO found that the school did not have its own policy in place that sufficiently met the requirements of the council's policy.

The SPSO did not uphold Miss C's complaint about the council's action in relation to reports of Miss A's bullying. The SPSO found that overall the council had taken significant action in line with the requirements of their policy to address the concerns raised and we found this to be reasonable.

### Recommendations

the council:

- apologise to Miss C and Miss A for the failings identified in this case; and
- reflect on the failings identified and advise us of the actions they will take to address these.

## Case 4 Decision Report 201508079

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- Date: March 2017
- Subject: handling of planning application (complaints by opponents)
- Outcome: Some Upheld, recommendations

### Summary

Mr and Mrs C complained about the handling of a planning application for a wind turbine on land next to their property. They were concerned that the applicant had submitted inaccurate plans and that the application was registered under an inaccurate address. They were also concerned that the council had not fully assessed the impact of noise and that once the turbine was running, it created a noise nuisance.

The SPSO took independent advice from a planning adviser. The adviser noted the poor quality of the location plans provided with the application and the inaccurate address. They were, however, satisfied that the noise impact assessment and other information provided to the planners by the environmental health service and the energy company were reasonable.

During the SPSO investigation there was confusion over whether distances related to the curtilage of Mr and Mrs C's property or their house. This was not evident from the council's records, and created confusion as to whether the planning application had been appropriately handled. Mr and Mrs C also raised concerns that there had been a lack of enforcement action in relation to the mast that remained in place, despite conditions on its removal.

Based on the inaccuracies in plans and the lack of evidence of appropriate consideration of the distances involved, the complaint was upheld

### Recommendations

the council:

- apologise to Mr and Mrs C for the failings identified in our investigation;
- share the findings of this investigation with those staff involved in validating planning applications, to ensure that the council's check-list for applications is applied consistently;
- consider whether the planning officer involved would benefit from further training in the application and use of planning conditions; and
- consider the use of the council's planning enforcement powers in relation to the current situation

## Case 5, Decision Report 201508232

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- Date: March 2017
- Subject: handling of planning application (complaints by opponents)
- Outcome: Some upheld, no recommendations

### Summary

Mr C complained that the council had unreasonably failed to include all objections to a planning application on their e-planning portal and that, although they acknowledged they failed to place his objection on the planning portal when considering his initial complaint, he was told it was on the planning portal in the response to him at stage two of their complaints procedure. Mr C was unhappy with this inconsistency.

Mr C was also concerned that the council had ignored a planning condition restricting the start of development and had gone ahead with preparatory works which, Mr C believed, was contrary to the planning condition.

The SPSO reviewed the records and agreed with Mr C that his objection was not on the e-planning portal at the time the application was being considered. This element of Mr C's complaint was upheld.

The SPSO noted, however, that his objections were summarised in full in the planning officer's report to committee and they were, therefore, fully aware of his views. They also noted that the stage two response to his complaint was reasonable as Mr C's comments were on the online planning portal, but they were summarised in the report rather than being presented in full. They also noted that the condition Mr C considered was being breached by the council starting works had in fact been amended to allow works to go ahead at an earlier stage. For this reason, the SPSO did not uphold these aspects of Mr C's complaint.