

**THE HIGHLAND COUNCIL**  
**AUDIT AND SCRUTINY COMMITTEE**  
**20 November 2014**

Agenda Item	9
Report No	AS/31/14

**Annual Report of Scottish Public Service Ombudsman Cases received by the Council 2013/14**

**Report by the Chief 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 preceding year and the subsequent judgement in the cases where the SPSO has concluded his inquiry. It also provides a comparison with the Council's performance in 2012/13.

**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. Statistical Data**

2.1 Attached are summary details of the complaints that the SPSO received and determined about the Highland Council. Appendix 1, Table 1 details the number of complaints (by the SPSO's subject categories) received for 2012/13 and 2013/14 alongside the total of local authority complaints for these years. In 2013/14 the SPSO recorded 81 complaints about the Council, compared to 61 in the previous year. This continues an upward trend in the number of complaints about the Highland Council being referred to the Ombudsman.

2.2 The volume of complaints being taken to the SPSO is less relevant to the Council's complaints handling performance than the number of complaints upheld. Appendix 2, Table 2 shows the outcomes of complaints about the Highland Council determined by the SPSO and in 2013/14 the SPSO determined 79 cases. Out of these, 2 cases were fully upheld and 2 were partly upheld. This is an improvement on the preceding year when 6 out of 61 cases were fully or partially upheld. Fuller details of the 2013/14 upheld cases are set out in paragraph 3.

- 2.3 The increase in the number of complaints being considered by the SPSO, combined with the reduction in the number of premature cases, demonstrates that the Council's 2 stage complaints process is working well with customers being clearly signposted to the next stage for escalating their complaint at both Stage 1 and at Stage 2.

### **3. Upheld/Partially Upheld Complaints 2013/14**

- 3.1 The SPSO upheld 4 separate complaints about the Highland Council in 2013/14. The details of each of these cases have already been reported to the Audit and Scrutiny Committee in the regular update reports. The Ombudsman's own summary reports on these complaints can be found on the website: [www.spsso.org.uk](http://www.spsso.org.uk). They are also attached at Appendix 3, for ease of reference.
- 3.2 Case 1: Building Warrants: Certificate of Completion - Upheld. The complaint centred on the issue of a completion certificate for a property. The complainant had not had commissioned a survey of a new property prior to purchase and, on occupation, identified a number of defects. Whilst the majority of the defects were not relevant to the issuing of a completion certificate, the Council had accepted that there had been two matters that should have been identified by the Inspecting Officer and remedied by the builder, prior to the completion certificate being issued.
- 3.3 The Ombudsman's Decision Letter accepted that the Council had already upheld the customer's complaint, with qualifications, before the customer had referred it to the SPSO. It also acknowledged that the Council had apologised to the customer. The Ombudsman upheld the complaint as the Council had already admitted errors. The Ombudsman did not uphold a request for compensation.
- 3.4 The Ombudsman had one recommendation to make, which was for the Council to review its procedures for undertaking external inspections in winter months. The Building Standards Team has done this and issued revised guidance to all staff on this matter. The Ombudsman has confirmed the Council has discharged the recommendation appropriately and has closed the case.
- 3.5 Case 2: Handling of a Planning Application – Partially Upheld. The Ombudsman did not uphold the substantive complaint regarding the planning process and the planning decision with regard to a school planning application, which included a biomass boiler.
- 3.5 The Ombudsman did uphold the complaint about complaints handling as there were delays and a failure to signpost the customers to the next stage. The Ombudsman acknowledged the complaint had come in at a time when the Council was transitioning between the old complaints handling procedure and the new 2 stage process. The Ombudsman also acknowledged that the Council had already apologised for these issues and taken steps to remedy them. Consequently, no recommendations were made.
- 3.6 Case 3: Handling of Planning Application – Partially Upheld. The Ombudsman accepted that the Council had taken the complainant's objections into account and there was no evidence of fault in the processing of an application for the extension

of a waste water treatment plant. The Ombudsman noted that the Council had accepted it had not provided reasons for the decision to grant the application when the decision notice was issued. However, the Ombudsman did not consider the Council's decision to subsequently attach the officer's planning report was reasonable as it required an interested party to read a number of pages in order to determine the reasons for granting the application. This aspect of the complaint was therefore upheld.

- 3.7 One recommendation was made, which was to attach the reasons for granting the decision to the relevant section on the e-planning site. This has been done and the case has been closed.
- 3.8 Case 4: Complaints Handling – Partially Upheld. The Ombudsman did not uphold the customer's complaint regarding the decision not to approve her application for a new dwelling house to be built in the grounds of her existing property. However, her complaint that the Council did not respond fully enough to all of the issues she had raised, was upheld.
- 3.9 The Ombudsman recommended that the Council provide full responses to the customer's concerns and apologise for not having done so previously. This has been done and the case has been closed.

#### 4. Implications

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:

Designation: Chief Executive

Date: 11 November 2014

Author: Kate Lackie, Business Manager

**Table 1**  
**Complaints Received by Subject 2013-14**

Subject Group	Highland Council	Rank	Complaints as % of total	Sector Total	Rank	Complaints as % of total
Housing	18	1	22.2%	446	1	25.5%
Planning	13	2	16.0%	223	3	12.7%
Social Work	12	3	14.8%	229	2	13.1%
Education	9	4	11.1%	171	5	9.8%
Finance	7	5	8.6%	173	4	9.9%
Building Control	4	6	4.9%	62	9	3.5%
Roads & Transport	3	7=	3.7%	119	6	6.8%
Other	3	7=	3.7%	9	14	0.5%
Welfare Fund - Crisis Grants	2	9	2.5%	6	17	0.3%
Environmental Health & Cleansing	1	10=	1.2%	98	7	5.6%
Legal & Admin	1	10=	1.2%	75	8	4.3%
Recreation & Leisure	1	10=	1.2%	30	10	1.7%
Land & Property	1	10=	1.2%	28	11	1.6%
Welfare Fund - Community Care Grants	1	10=	1.2%	10	12=	0.6%
Valuation Joint Boards	0	-	0.0%	10	12=	0.6%
Consumer Protection	0	-	0.0%	8	15	0.5%
Personnel	0	-	0.0%	7	16	0.4%
Economic Development	0	-	0.0%	3	18=	0.2%
Fire & Police Boards	0	-	0.0%	3	18=	0.2%
National Park Authorities	0	-	0.0%	2	20	0.1%
Subject Unknown or Out Of Jurisdiction	5	-	6.2%	38	-	2.2%
<b>Total</b>	<b>81</b>	<b>-</b>	<b>100.0%</b>	<b>1,750</b>	<b>-</b>	<b>100.0%</b>
<i>Complaints as % of Sector</i>		4.6%		100.0%		

**Complaints Received by Subject 2012-13**

Subject Group	Highland Council	Rank	Complaints as % of total	Sector Total	Rank	Complaints as % of total
Planning	16	1	26%	197	2	13%
Housing	8	2	13%	361	1	24%
Social Work	4	3=	7%	183	3	12%
Education	4	3=	7%	76	5	5%
Environmental Health & Cleansing	4	3=	7%	60	7	4%
Finance	3	6=	5%	85	4	6%
Roads & Transport	3	6=	5%	73	6	5%
Legal & Admin	3	6=	5%	48	8	3%
Other	2	9	3%	10	12	1%
Building Control	1	10=	2%	26	10	2%
Recreation & Leisure	1	10=	2%	20	11	1%
Land & Property	0	-	0%	28	9	2%
Consumer Protection	0	-	0%	9	13	1%
Personnel	0	-	0%	7	14	0%
Valuation Joint Boards	0	-	0%	6	15	0%
Fire & Police Boards	0	-	0%	2	16	0%
Economic Development	0	-	0%	1	17	0%
Out Of Jurisdiction	0	-	0%	20	-	1%
Subject Unknown	12	-	20%	293	-	19%
<b>Total</b>	<b>61</b>		<b>100%</b>	<b>1,505</b>		<b>100%</b>
<i>Complaints as % of Sector</i>		4.1%		100%		

TABLE 2  
Complaints Determined by Outcome 2012-13

Stage	Outcome Group	Highland Council	Sector Total
Advice	Matter out of jurisdiction (discretionary)	1	19
	Matter out of jurisdiction (non-discretionary)	1	40
	No decision reached	6	239
	Outcome not achievable	0	13
	Premature	32	704
<b>Total</b>		<b>40</b>	<b>1,015</b>
Early Resolution 1	Matter out of jurisdiction (discretionary)	1	40
	Matter out of jurisdiction (non-discretionary)	1	99
	No decision reached	0	38
	Outcome not achievable	2	26
	Premature	5	46
<b>Total</b>		<b>9</b>	<b>249</b>
Early Resolution 2	Fully upheld	0	10
	Partly upheld	1	19
	Not upheld	0	48
	No decision reached	0	4
<b>Total</b>		<b>1</b>	<b>81</b>
Investigation 1	Fully upheld	1	16
	Partly upheld	3	63
	Not upheld	6	75
	No decision reached	0	2
	<b>Total</b>		<b>10</b>
Investigation 2	Fully upheld	1	3
	Partly upheld	0	3
	<b>Total</b>		<b>1</b>
<b>Total Complaints</b>		<b>61</b>	<b>1,507</b>
Total Premature Complaints		37	750
Premature Rate		60.7%	49.8%
Fit for SPSO Total (ER2, Inv1 & Inv2)		12	243
Total Cases Upheld / Partly Upheld		6	114
Uphold Rate (total upheld / total fit for SPSO)		50.0%	46.9%

NOTE: 'No decision reached' includes complaints not duly made, withdrawn and resolved

TABLE 2  
Complaints Determined by Outcome 2013-14

Stage	Outcome Group	Highland Council	Sector Total
Advice	Not duly made or withdrawn	12	328
	Out of jurisdiction (discretionary)	2	56
	Out of jurisdiction (non-discretionary)	0	42
	Outcome not achievable	7	129
	Premature	28	659
<b>Total</b>		<b>49</b>	<b>1,220</b>
Early Resolution 1	Not duly made or withdrawn	3	36
	Out of jurisdiction (discretionary)	4	57
	Out of jurisdiction (non-discretionary)	7	110
	Outcome not achievable	3	40
	Premature	3	33
<b>Total</b>		<b>21</b>	<b>294</b>
Early Resolution 2	Fully upheld	1	31
	Some upheld	1	25
	Not upheld	2	50
	Not duly made or withdrawn	0	1
	Resolved	0	4
<b>Total</b>		<b>4</b>	<b>111</b>
Investigation 1	Fully upheld	1	20
	Some upheld	1	39
	Not upheld	3	60
	Not duly made or withdrawn	0	2
	Resolved	0	1
<b>Total</b>		<b>5</b>	<b>122</b>
Investigation 2	Fully upheld	0	0
	Some upheld	0	0
	Not upheld	0	0
<b>Total</b>		<b>0</b>	<b>0</b>
<b>Total Complaints</b>		<b>79</b>	<b>1,747</b>
Total Premature Complaints		31	692
Premature Rate		39.2%	39.6%
Fit for SPSO Total (ER2, Inv1 & Inv2)		9	233
Total Cases Upheld / Some Upheld		4	115
Uphold Rate (total upheld / total fit for SPSO)		44.4%	49.4%

2013-14 Highland V1.0 / DETERMINED Highland

## SPSO decision report



**Case:** 201202359, The Highland Council  
**Sector:** local government  
**Subject:** building warrants: certificates of completion/habitation  
**Outcome:** upheld, recommendations

### Summary

Mrs C viewed a newly built rural property and, after the vendor (who was also the builder) presented a certificate of completion and a home report, Mrs C bought the house. On entry, she found numerous defects. Her solicitors and, later, two Members of the Scottish Parliament got in touch with the council about these on her behalf. Mrs C then decided to sell the property for much less than she had paid. A financial claim was made to the council on her behalf, but their loss adjusters refused it.

Mrs C complained to us that the council inappropriately failed to follow relevant legislation and procedures when they issued the certificate of completion. The council accepted, with qualification, that the officer responsible for inspecting the building and issuing the certificate had been at fault in doing so. Specifically, two matters were overlooked when the building standards officer carried out an inspection in January 2010, when there was a significant amount of snow lying on the ground. The council had apologised to Mrs C for this, but said that the vast majority of the defects about which she was unhappy related to the quality of the workmanship, which is not relevant to the issuing of a completion certificate. We noted this, but as the council had admitted errors, we upheld Mrs C's complaint, and made a recommendation.

### Recommendations

We recommended that the council:

- review the adequacy of their current procedures for carrying out the external elements of inspections in winter months.

## SPSO decision report

**Case:** 201202740, The Highland Council  
**Sector:** local government  
**Subject:** handling of application (complaints by opponents)  
**Outcome:** some upheld, recommendations

### Summary

Mr C, who is a solicitor, complained to us on behalf of his client (Mr A), about a planning application for an extension to an existing waste water treatment plant. Mr A lives close to the treatment plant, for which the council granted planning consent. He complained that the council failed to handle the application properly or effectively and had not taken steps to address his concerns or remedy defects that he had identified.

After taking independent advice from one of our planning advisers we did not uphold most of Mr C's complaints as we were satisfied that, based on the available evidence, the council had taken Mr A's objections into account when processing the application. We were also satisfied that there was no evidence of any fault in the handling of the application. However, we noted that the council had accepted that they failed to provide reasons for their decision to grant the application when they issued their decision notice, and had issued an amended notice attaching a copy of the planning report to explain the reasons for the decision. We were concerned that this meant that an interested party would have to read a number of pages to try to and elicit the specific reasons for the decision. We did not consider that this was a reasonable remedy to the original error in the decision notice, and upheld this complaint. As we were, however, generally satisfied that the council's revised procedures have addressed these failings, we made one recommendation to clarify the information on this decision.

### Recommendations

We recommended that the council:

- consider adding to the website a paragraph paraphrasing the handling report's arguments, to ensure clarity in this case.

## SPSO decision report



**Case:** 201203684, The Highland Council  
**Sector:** local government  
**Subject:** handling of application (complaints by opponents)  
**Outcome:** some upheld, no recommendations

### Summary

Mr and Mrs C complained that the council did not follow the correct procedure when making their decision on a school planning application, which included a biomass boiler. They had concerns about the health implications, and said that the council did not appropriately take account of relevant guidance and material planning considerations. They also complained about the handling of their complaint.

There were environmental issues relating to this planning application, and the council explained that assessment of the application involved two key material considerations – the impact on the amenity of the area and local residents, in particular the visual impact, and the extent to which the facility complied with the guidance and regulations governing the operation and function of biomass boilers and associated emissions. The council also took into account the impact on residential amenity by reason of noise. The council explained that appropriate conditions were included on the planning permission and separate legislation is available to monitor emissions and noise.

In investigating this complaint we took independent advice from one of our planning advisers. He was satisfied that there were no procedural irregularities, with the exception of an oversight over the stack height. He pointed out, however, that a further assessment makes it clear the proposal falls well within the tolerances for control of emissions from such a stack. He confirmed that there are no grounds under planning policy and procedure for rejecting the biomass plant and stack application on health grounds. Health protection is not a material planning consideration unless there is specific planning guidance on the matter, especially where there are other regulatory frameworks in place to deal with the health impacts. He also noted that the council have policies for the use of biomass as a heating source for schools and that it is clear that the health consequences are not something they would take lightly.

We did not uphold the complaint about the planning decision as we were satisfied that the council took account of relevant guidance and material planning considerations in making their decision, and that they considered the concerns raised. We saw no evidence of anything wrong in the process, and we were satisfied they provided a detailed response to the complaint. However, while we noted that the council were moving between complaint processes at the time, we upheld the complaint about complaints handling as there were delays, a lack of information about what was happening, and a failure to signpost Mr and Mrs C to the next stage. As the council had already recognised these failings, apologised and taken steps to address them, we made no recommendations.



## SPSO decision report



**Case:** 201304192, The Highland Council  
**Sector:** local government  
**Subject:** complaints handling  
**Outcome:** upheld, recommendations

### Summary

Ms C complained to the council about the actions of council planning officers during consideration of an application she had submitted for permission in principle to build a new dwelling house on her property. She complained that an officer had invented a requirement about the distance the proposed development required to be from her neighbour's boundary, that the reasons given for refusal had not been mentioned in pre-application advice that she had received and that the reasons were not relevant to an application for 'in principle' planning permission.

She was dissatisfied with the responses she received and complained to us. Our investigation found that some of the issues she raised were not addressed. We took the view that the council had not provided full responses to her concerns, and upheld the complaint.

### Recommendations

We recommended that the council:

- apologise to Ms C that their responses to her complaints were not as full as they could be; and
- provide Ms C with full responses to her concerns.