

THE HIGHLAND COUNCIL
AUDIT AND SCRUTINY COMMITTEE
30 September 2015

Agenda Item	8
Report No	AS/21/15

Scottish Public Service Ombudsman Cases received by the Council
Report by the Chief Executive

Summary

This report sets out the number and types of complaint about the Council that have been determined and upheld by the Office of the Scottish Public Services Ombudsman (SPSO) in the period since the last report to Audit and Scrutiny Committee.

1. Background

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 exhausted the formal complaints procedure of the organisation concerned.

2. Period Covered by the report.

The period covered by this report is from February 2015 to September 2015.

3. Statistics February 2015 – August 2015

- 3.1 There were 22 cases initiated by the Ombudsman in the period covered by this report and a further 7 that were initiated prior to February 2015 and have subsequently been resolved. 17 Cases were closed by the SPSO as either 'not competent' or where there was no formal investigation. The decision to not investigate can be made for a variety of reasons some of which include insufficient evidence to substantiate a complaint or where the Ombudsman is unable to deliver a different or better outcome than the Council has already achieved.
- 3.2 There is one case, initiated by the Ombudsman in July 2015, where The Council is still awaiting a decision. All other cases have been resolved.
- 3.2 A total of 11 cases have been formally investigated and determined by the SPSO since February 2015. Of these, 6 complaints were not upheld; 3 were upheld and 2 cases were partially upheld. The upheld and partially upheld cases are summarised in section 4, below.

4. Summary of cases

4.1 The following paragraphs provide a very brief description of each of the upheld and partially upheld complaints. A fuller summary of each of these complaints can be found at Annex 1.

4.2 Complaint 1: Complaints handling re damage to fence - upheld

Whilst the Ombudsman decided it was not possible to assess whether the customer's fence had been damaged as claimed, the SPSO did find that the Council had failed to deal appropriately with the complaint itself.

The Council has given an apology and actioned all of the SPSO's recommendations, including the payment of compensation.

4.3 Complaint 2 : Primary school bullying allegation –upheld

Whilst the Ombudsman accepted the Council's view that bullying had not occurred, the SPSO did find that the school had not adequately addressed the implications, including anxiety and stress, experienced by the child.

The Council has given an apology, as recommended.

4.4 Complaint 3: Housing allowance/council tax investigation – partially upheld

The Ombudsman upheld a complaint that the Council had wrongly become involved in a DWP investigation when the subject of the investigation was not in receipt of council tax or housing benefit. The Ombudsman also upheld a complaint about the behaviour of a member of Council staff towards the complainant.

As the Council had already upheld these complaints and apologised to the customer, the Ombudsman made no recommendations.

4.5 Complaint 4: Refusal of Grant – partially upheld

The Ombudsman upheld a complaint that there was unreasonable delay in processing the grant application and failures in communication.

As the Council had already upheld these complaints and apologised to the customer, the Ombudsman made no recommendations.

4.6 Complaint 5: Primary school bullying allegation –upheld

The Ombudsman upheld a complaint that a school failed to undertake a proper investigation of bullying allegations and failed to follow its own anti-bullying guidelines.

The council has apologised unreservedly to the family; and fulfilled all of the other recommendations.

5. Implications

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

Resources: The Ombudsman's determination the first complaint (ref:201407208) led to the Council making a compensation payment of £500 to the complainant, half of which was covered by the contractor. The SPSO has no powers to require Councils to pay compensation. However, there have been a number of cases recently where the Ombudsman has recommended that Councils "consider" making financial recompense following a determination in favour of the complainant. So far, Councils have decided to follow the SPSO recommendation rather than challenge or ignore it. COSLA is aware of this development and is keeping the situation under review.

Risk: the risks arising from the Ombudsman's rulings have been considered and appropriate action is being taken to ensure similar issues do not arise in future.

6. Recommendation

Members are asked to consider the details of this report.

Signature: Steve Barron

Designation: Chief Executive

Date: 16 September 2015

Author: Kate Lackie, Business Manager

Complaint 1

Case ref: 201407208

Determination Date: August 2015

complaints handling

Outcome: Upheld, recommendations

Summary

Mrs C had been raising issues with the Council about damage caused to her boundary fence by the Council's grass-cutting contractor for a number of years. Although her complaints were referred directly to the contractor, she received no response. In 2014, Mrs C escalated her complaint to the Council and an investigation was undertaken, but the complaint was not upheld.

The SPSO investigation considered communication between Mrs C and the Council, the Council's records of contact with Mrs C, and the complaints handling procedure. The SPSO found that, although it was not possible to assess whether the fence had actually been damaged by the contractor, the Council had not ensured that the contractor had provided an adequate level of service and had not dealt reasonably with Mrs C's complaints.

Recommendations

The SPSO recommended the council:

- apologise for the handling of Mrs C's complaints about the contractor;
- review how complaints referred to contractors are logged and recorded on the Council's system;
- consider what steps to take to ensure that complaints to contractors working on the Council's behalf are reasonably handled; and
- consider whether some form of financial redress is appropriate to reflect the failings identified.

N.B All of these actions have been completed

A full transcript of the Decision Report can be accessed from the SPSO website www.spsa.org.uk by searching on Decision Reports, case reference **201407208**

Complaint 2

Case ref: 201304678

Determination Date: August 2015

Subject: primary school

Outcome: Upheld, recommendations

Summary

Mrs C complained to the council that her child's school had not reasonably addressed reports of bullying or provided support to her child. The council investigated and found that there was no evidence that bullying had taken place.

Mrs C did not agree with the Council's findings and she took her complaint to the Ombudsman. The SPSO accepted the Council's view that the incidents were not bullying as the other pupil involved had significant additional support needs which caused their behaviour towards Mrs C's child. The Ombudsman considered that this was in line with the anti-bullying policy in place at the time. The SPSO also found that the school was small and that, although it was clear that steps had been taken to keep the children apart, this was difficult to achieve. There was evidence that support had been provided to Mrs C's child for his specific needs, including the difficult relationship with the other pupil.

However, SPSO decided to uphold Mrs C's complaint because it considered the Council had placed too much emphasis in their complaint report on Mrs C's relationship with the school, rather than centering on her child. The SPSO also decided that an alleged and un-witnessed incident between the children should have been referenced in the Council's report. The SPSO said there was no evidence the school had assessed the potential impact on Mrs C's child before proposing a strategy to inform visiting staff of the difficulties in the class; and it was found that the Council had not fully considered the impact of the situation at the school on Mrs C's child in terms of their anxiety and stress. On balance, Mrs C's complaint was upheld.

Recommendations

The SPSO recommended that the council:

- apologise to Mrs C for the failings identified.

N.B. The recommendation has been completed.

A full transcript of the Decision Report can be accessed from the SPSO website www.spsso.org.uk by searching on Decision Reports, case reference **201304678**

Complaint 3

Case ref: 201305427

Determination Date: June 2015

Subject: local housing allowance and council tax benefit

Outcome: Some upheld, no recommendations

Summary

Mr C, who is an MP, complained on behalf of his constituent (Mr A) about the council's involvement in a investigation by the Department of Work and Pensions (DWP) into possible benefit fraud. Mr A was unhappy that the council had been involved in the investigation when he was not in receipt of council tax or housing benefit. He was also unhappy about how council staff had spoken to him when he attended for an interview at council offices, and with the accuracy of two sets of notes from one of the interviews and about the handling of his complaint.

During The SPSO investigation the Council confirmed that their officer had become involved in the interviews initially because he had been incorrectly informed that Mr A was in receipt of council tax and housing benefit. When it became clear that he should not have been involved, the Council apologised to Mr A. They had also explained to him what they had done to try to ensure a similar situation did not occur in the future. As it was clear that the officer should not have attended the interviews with Mr A The SPSO upheld this complaint. The Council had also already apologised for the service Mr A received when he attended their offices, and again explained the action taken as a result of his complaint. Given the poor level of service Mr A had received the SPSO also upheld this complaint. Because the council had already taken action on the issues, the SPSO did not make any recommendations.

The Ombudsman did not uphold Mr A's other complaints. The SPSO was satisfied that, based on the available evidence, the Council had addressed his concern about the accuracy of the minutes and had explained why two sets of notes for the same meeting had some differences. The SPSO also found that the Council had considered Mr A's representations and provided reasonable responses to the issues he had raised.

A full transcript of the Decision Report can be accessed from the SPSO website www.spsos.org.uk by searching on Decision Reports, case reference **201305427**

Complaint 4

Case ref: 201400115

Date Determined: June 2015

Subject: Grant application

Outcome: Some upheld, no recommendations

Summary

Mr C complained that The Council had acted unreasonably by refusing grant funding and registration for a tenants and residents association.

The SPSO found that The Council had not fully explained how the decision to reject the funding request had been made. The SPSO therefore decided that in the first instance it would be appropriate for Mr C and The Council to meet in an effort to resolve some of the complaints. The Council and Mr C agreed to meet and the SPSO closed the complaint to allow this to happen.

Mr C subsequently complained that he was still unhappy with The Council's explanation. The SPSO investigated and upheld two of his complaints, as it was found that there was unreasonable delay in processing the association's application for a grant, and there were failures in communication. The SPSO did not find it necessary to make recommendations, as the council had already apologised to Mr C and taken action to try to avoid this happening again. The SPSO did not uphold Mr C's complaint of discrimination in the decision not to award a grant.

A full transcript of the Decision Report can be accessed from the SPSO website www.spsso.org.uk by searching on Decision Reports, case reference **201400115**

Complaint 5

Case ref: 201403087

Determination Date: August 2015

Subject: primary school

Outcome: Upheld, recommendations

Summary

Mrs C complained that her daughter's primary school had failed to undertake a proper investigation of alleged bullying of her daughter which led to her missing significant periods of school and, ultimately moving to a different school in order to continue with her education.

The Ombudsman upheld the complaint in full, finding that the school had incomplete records, had not undertaken proper investigations when the allegations were made and had failed to follow the Council's own policies with regard to bullying in schools. The Ombudsman was also critical of the lack of a thorough review when the complaint was escalated to the then Director of Education to investigate.

The Ombudsman noted in the determination that there is a new head teacher at the school and an updated bullying policy and procedures has been produced. He is satisfied that had these been followed in this case, a full and proper investigation would have been carried out.

Recommendations

The SPSO recommended the council:

Apologise unreservedly to the family

Provides evidence that an anti-bullying assessment tool has been completed for the school in question

Provides evidence that staff in the school have been reminded of the importance of adhering to appropriate guidance when investigating allegations of bullying.

N.B. These recommendations have been completed

A transcript of the Decision Report has not yet been made available on the SPSO website.