

Agenda Item	6
Report No	AS/21/19

HIGHLAND COUNCIL

Committee: Audit and Scrutiny Committee

Date: 28 November 2019

Report Title: **Annual Report of Scottish Public Service Ombudsman Cases determined in 2018/19**

Report By: Executive Chief Officer Performance and Governance

Purpose/Executive Summary

- 1.1** This report sets out the number and types of complaint against the Council that have been considered by the Office of the Scottish Public Sector Ombudsman (SPSO) in 2018/19 and the subsequent judgement in the cases where the SPSO's inquiry has concluded. It also provides a comparison with the Council's performance in 2017/18.
- 1.2** 55 cases were determined by the Ombudsman in the period covered by this report. Of those, 2 were upheld and 1 partially upheld. This compares with 60 cases considered by the SPSO in the previous year, 1 of which was upheld. The number of premature cases has fallen from 20 to 15 over the same period showing improved performance over the year and a general trend of improvement over the last 4 years.

2. Recommendations

- 2.1** Members are asked to:
 - Consider the outcomes of the SPSO cases; and
 - Note that actions have been taken in response to the Ombudsman's recommendations.

3. Implications

- 3.1** Resources and Risk: A focus on improving performance in handling customer complaints reduces the Council's risk of public exposure to criticism and reduces the cost to the Council of managing failure demand.
- 3.2** There are no Legal; Equalities; Climate Change/Carbon Clever; Gaelic or Rural implications arising from this report.

4. Background

- 4.1 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.

5. Statistical Data

- 5.1 Attached are summary details of the complaints that the SPSO received and determined about the Highland Council. Appendix 1 details the number and types of complaints (by the SPSO's subject categories) received for 2017/18 and 2018/19 alongside the total of local authority complaints for these years.
- 5.2 Appendix 2 shows the outcomes of complaints about the Highland Council determined by the SPSO. 58 cases were considered by the Ombudsman in the period covered by this report, 1 less than in the previous year. Of those, only 5 were taken forward for full investigation, 2 were fully upheld, and one partially upheld, which constitutes an uphold rate of 60%. The Council is slightly above the sector rate which is 58.8%. This is a decline in performance compared with the previous year's rate of 33% but still represents a downward trend when compared with an upheld rate of 85.7% and 85.7% in the preceding 2 years. Fuller details of the 2018/19 upheld case are set out in Section 6, below.
- 5.3 The number of premature cases has fallen from 40.8% to 33.9% in the same period, showing improved performance over the year and indicates that the Council has improved its signposting to ensure customers know how to make and escalate a complaint if they are dissatisfied with the Council's performance.

6. Upheld/Partially Upheld Complaints 2018/19

- 6.1 The SPSO upheld 2 complaints about the Highland Council in 2018/19 and partially upheld a further complaint. Full details of these cases have already been reported to the Audit and Scrutiny Committee in previous update reports. The Ombudsman's own summary report on this complaint can be found on the website: www.spsso.org.uk by searching on the reference number.
- 6.2 Case 1, 201700941 (upheld): The SPSO upheld a complaint in relation to breaches of planning control and anti-social behaviour at a neighbouring holiday let property. The SPSO found that the Council had been slow to respond to a number of breaches of planning control and that reports were inconsistent in relation to how planning applications had been assessed against relevant policies. However, it was noted that the Council had already identified ways to improve the service going forwards, including stopping the use of operational management plans as a planning approval condition. The SPSO also found that the council had advised Ms C to contact the police about anti-social behaviour but should have passed these

reports to the environmental health department, in line with the Council's planning enforcement charter.

- 6.3 The Council was asked to apologise to the customer for failing to pass on her complaints about anti-social behaviour to the relevant service. It was also asked to make clear from planning reports how applications comply with relevant policies.
- 6.4 The recommendations have been implemented to the Ombudsman's satisfaction and case has been closed.
- 6.5 Case 2, 201704421 (Upheld): The SPSO upheld a complaint that the Council had failed to provide a reasonable response to correspondence about planning and enforcement and other issues in relation to land near to the complainant's home. The following recommendations were made:
- Apologise to the complainant for the failings in relation to the handling of correspondence and investigate and provide a response to queries regarding procurement.
 - Amend the Council's Enforcement Charter to provide a link to the enforcement register so that customers can track progress of any enforcement action themselves.
- 6.6. The recommendations have been implemented to the Ombudsman's satisfaction and case has been closed.
- 6.6 Case 3, 201707741 (Partially Upheld): The SPSO upheld a complaint that the Council had failed to handle a planning application reasonably and failed to handle the complaint appropriately. The SPSO took independent advice from a planning adviser. They found that the Council had met its statutory obligations to make information about the application publicly available and had reasonably exercised its professional judgement in assessing the application. The SPSO found that The Council's actions were reasonable and did not uphold this part of the complaint.
- 6.7 In relation to the handling of the complaint, The SPSO found that there was an inconsistency in the report on the planning application which had not been identified by the Council's complaint investigation. It is worth noting that this inconsistency was also not raised by the complainant as part of her complaint. Nevertheless, the SPSO determined that this constituted a reason to uphold the original complaint in part. The SPSO noted that this error did not make a substantive difference to the outcome of Mrs C's complaint and made no recommendations to the Council.

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Date: 18 November 2019

Appendix 1

Local Authority Complaints Received 2018-19

Subject Group	The Highland Council			Sector Total	Rank	Complaints as % of total
	The Highland Council	Rank	Complaints as % of total			
Planning	17	1	30.91%	130	4	9.99%
Housing	7	2	12.73%	251	1	19.29%
Social Work	6	3	10.91%	206	2	15.83%
Education	5	4=	9.09%	143	3	10.99%
Roads & Transport	5	4=	9.09%	111	5	8.53%
Legal & Admin	4	6	7.27%	67	8	5.15%
Finance	2	7=	3.64%	98	7	7.53%
Other	2	7=	3.64%	6	13	0.46%
Environmental Health & Cleansing	1	9=	1.82%	101	6	7.76%
Building Control	1	9=	1.82%	15	11	1.15%
Welfare Fund - Crisis Grants	1	9=	1.82%	1	18	0.08%
Recreation & Leisure	0	-	0.00%	26	9	2.00%
Land & Property	0	-	0.00%	16	10	1.23%
Personnel	0	-	0.00%	7	12	0.54%
Economic Development	0	-	0.00%	5	14	0.38%
Valuation Joint Boards	0	-	0.00%	3	15=	0.23%
Welfare Fund - Community Care Grants	0	-	0.00%	3	15=	0.23%
National Park Authorities	0	-	0.00%	2	17	0.15%
Subject unknown or Out of Jurisdiction	4	-	7.27%	110	-	8.46%
Total	55		100.00%	1,301		100.00%
Complaints as % of Sector	4.2%			100.0%		

Local Authority Complaints Received 2017-18

Subject Group	The Highland Council			Sector Total	Rank	Complaints as % of total
	The Highland Council	Rank	Complaints as % of total			
Planning	20	1	33.33%	134	4	9.09%
Housing	11	2	18.33%	316	1	21.44%
Social Work	8	3	13.33%	254	2	17.23%
Finance	7	4=	11.67%	112	6	7.60%
Roads & Transport	7	4=	11.67%	104	7	7.06%
Education	3	6	5.00%	151	3	10.24%
Environmental Health & Cleansing	1	7=	1.67%	116	5	7.87%
Legal & Admin	1	7=	1.67%	71	8	4.82%
Recreation & Leisure	0	-	0.00%	24	9	1.63%
Land & Property	0	-	0.00%	17	10	1.15%
Building Control	0	-	0.00%	16	11	1.09%
Personnel	0	-	0.00%	12	12	0.81%
Welfare Fund - Community Care Grants	0	-	0.00%	7	13	0.47%
Other	0	-	0.00%	6	14	0.41%
Consumer Protection	0	-	0.00%	4	15=	0.27%
National Park Authorities	0	-	0.00%	4	15=	0.27%
Fire & Police Boards	0	-	0.00%	3	17	0.20%
Economic Development	0	-	0.00%	2	18=	0.14%
Welfare Fund - Crisis Grants	0	-	0.00%	2	18=	0.14%
Subject Unknown or Out Of Jurisdiction	2	-	3.33%	119	-	8.07%
Total	60		100.00%	1,474		100.00%
Complaints as % of Sector	4.1%			100.0%		

Appendix 2

Local Authority Complaints Determined 2018-19				Local Authority Complaints Determined 2017-18			
		2018-19				2017-18	
Stage	Outcome Group	The Highland Council	Sector Total	Stage	Outcome Group	The Highland Council	Sector Total
Advice	Not duly made or withdrawn	7	255	Advice	Not duly made or withdrawn	6	253
	Out of jurisdiction (non-discretionary)	1	2		Out of jurisdiction (discretionary)	0	3
	Premature	13	244		Out of jurisdiction (non-discretionary)	0	5
	Total	21	501		Premature	19	381
Early Resolution	Not duly made or withdrawn	1	45	Total	25	642	
	Out of jurisdiction (discretionary)	5	70	Early	Not duly made or withdrawn	1	38
	Out of jurisdiction (non-discretionary)	4	47	Resolution	Out of jurisdiction (discretionary)	4	99
	Outcome not achievable	3	71		Out of jurisdiction (non-discretionary)	6	113
	Premature	2	55		Outcome not achievable	4	85
	Proportionality	17	358		Premature	1	53
	Resolved	0	26		Proportionality	15	314
	Total	32	672		Resolved	0	29
Investigation	Fully upheld	2	34		Total	31	731
	Some upheld	1	23		Investigation	Fully upheld	1
	Not upheld	2	40	Some upheld	0	49	
	Resolved	0	1	Not upheld	2	69	
	Total	5	98	Not duly made or withdrawn	0	1	
Total Complaints	58	1,271	Resolved	0	3		
				Total	3	169	
<i>Total Premature Complaints</i>		15	299	Total Complaints	59	1,542	
<i>Premature Rate</i>		25.9%	23.5%				
				<i>Total Premature Complaints</i>		20	434
<i>Total Investigation Decisions</i>		5	97	<i>Premature Rate</i>		33.9%	28.1%
<i>Total Upholds</i>		3	57				
<i>Uphold Rate</i>		60.0%	58.8%	<i>Total Investigation Decisions</i>		3	165
				<i>Total Upholds</i>		1	96
				<i>Uphold Rate</i>		33.3%	58.2%
				<i>Old Uphold Rate Calculation</i>			
				<i>Total Cases 'Fit for SPSO'</i>		3	169
				<i>Total Upholds</i>		1	96
				<i>Uphold Rate</i>		33.3%	56.8%