

**THE HIGHLAND COUNCIL**  
**AUDIT AND SCRUTINY COMMITTEE**

**17 November 2015**

Agenda Item	8
Report No	AS/30/15

**Annual Report of Scottish Public Service Ombudsman Cases received by the Council 2014/15**

**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 2014/15.

**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 2013/14 and 2014/15 alongside the total of local authority complaints for these years. In 2014/15 the SPSO recorded 76 complaints about the Council, compared to 79 in the previous year. This is the first time that the number of complaints about the Highland Council referred to the Ombudsman has fallen since the Ombudsman started to record the statistics in this way in 2011.

2.2 Appendix 2, Table 2, shows the outcomes of complaints about the Highland Council determined by the SPSO. Out of the 76 cases recorded in 2014/15, 3 cases were fully upheld and 3 were partly upheld. This is an increase on the preceding year when a total of 4 out of 79 cases were fully or partially upheld. Fuller details of the 2014/15 upheld cases are set out in Section 3, below.

- 2.3 The decrease in the number of premature cases complaints being considered by the SPSO, from 39.2% last year compared with 32.9% this year, demonstrates that the Council's 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, prior to taking their case to the Ombudsman.
- 2.4 The Highland Council is performing ahead of the sector average with an uphold rate of 42.9% compared with 46.8% average for all 32 Councils and a premature rate of 32.9% compared with the local authority average of 41%. This suggests that the increase in the number of upheld or partially upheld cases for the Highland Council was replicated across all local authorities and in some authorities, the increase will have been greater.

### **3. Upheld/Partially Upheld Complaints 2014/15**

- 3.1 The SPSO upheld or partially upheld 6 separate complaints about the Highland Council in 2014/15. The details of each of these cases have already been reported to the Audit and Scrutiny Committee in regular update reports. The Ombudsman's own summary reports on these complaints can be found on the website: [www.spsos.org.uk](http://www.spsos.org.uk). They are also attached at Appendix 3, for ease of reference.
- 3.2 Case 1 (partially upheld) complaint about an elected member. The complaint was that the Council had inappropriately handled a number of elements of the complaint correspondence. Two of the three issues were not upheld and the substance of the complaint was not upheld. However, the Ombudsman did uphold a complaint that in one piece of correspondence, reference had been made to a 'community council' when it should have been a 'community councillor'.
- 3.3 The Council had already acknowledged and apologised for this error when the customer had originally complained using the Council's formal complaints procedure. Consequently, the Ombudsman did not consider it necessary to make any recommendations.
- 3.4 Case 2 (upheld): handling of a crisis grant enquiry. The Ombudsman determined that the council had pre-judged a situation and should have agreed to process a crisis grant application for the complainant. By doing so, the customer would have had access to a formal review process after being advised by the SWF team that his claim was not eligible for a grant.
- 3.5 In making this determination the SPSO noted that the council did not need to amend any procedures. However, it was recommended that the council apologise to the customer for not handling his enquiry appropriately and to remind staff administering the Scottish Welfare Fund that if a person clearly wants to apply then they should process that application.
- 3.6 The Council has implemented the recommendations to the Ombudsman's satisfaction and the case has been closed.

- 3.7 Case 3: (upheld): Secondary School pupil policy/administration The Ombudsman upheld a complaint that the Council had failed to follow Scottish Qualifications Authority (SQA) guidance in investigating a case of examination malpractice.
- 3.8 The Ombudsman recommended that the Council provide the complainant with a letter of apology for the failures identified; make their secondary schools aware of the outcome of this complaint and of the importance of following available guidance; and liaise with SQA about the means by which they should document their procedures for dealing with such matters.
- 3.9 The Council has implemented the recommendations to the Ombudsman's satisfaction and the case has been closed.
- 3.10 Case 4: (upheld) Primary School The Ombudsman upheld a complaint that the Council had not provided adequate support for a pupil with undiagnosed additional support needs and that the Council had not responded to the parent's concerns reasonably.
- 3.11 The Ombudsman recommended that the council issue a written apology to the complainant for the failings identified; ensure that all relevant staff were made aware of the alternative dispute resolution avenue available for complaints about schools failing to meet additional support needs; ensure that all relevant staff were made aware of the council's Management of Exclusion on Schools policy and what constitutes an 'exclusion' from school; and ensure that all relevant staff were made aware of the requirement to complete incident report forms, where appropriate.
- 3.12 The Council has implemented the recommendations to the Ombudsman's satisfaction and the case has been closed.
- 3.13 Case 5: (partially upheld) Housing allowance/council tax investigation 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.
- 3.14 As the Council had already upheld these complaints and apologised to the customer, the Ombudsman made no recommendations.
- 3.15 Case 6 (partially upheld) Refusal of Grant The Ombudsman upheld a complaint that there was an unreasonable delay in processing the grant application and failures in communication. The Ombudsman did not uphold the customer's complaint of discrimination in the decision not to award a grant.
- 3.16 As the Council had already upheld these complaints and apologised to the customer, the Ombudsman made no recommendations.

#### **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: 6 November 2015

Author: Kate Lackie, Business Manager

**TABLE 1**  
Complaints Received by Subject 2014-15

Subject Group	Highland Council	Rank	Complaints as % of total	Sector Total	Rank	Complaints as % of total
Planning	21	1	29.2%	217	3	11.5%
Social Work	12	2	16.7%	253	2	13.5%
Education	9	3	12.5%	174	4=	9.3%
Housing	7	4	9.7%	468	1	24.9%
Finance	6	5=	8.3%	174	4=	9.3%
Land & Property	6	5=	8.3%	29	10	1.5%
Environmental Health & Cleansing	4	7	5.6%	148	6	7.9%
Legal & Admin	3	8	4.2%	76	8	4.0%
Economic Development	2	9	2.8%	8	16=	0.4%
Roads & Transport	0	-	0.0%	119	7	6.3%
Building Control	0	-	0.0%	61	9	3.2%
Recreation & Leisure	0	-	0.0%	24	11	1.3%
Other	0	-	0.0%	21	12	1.1%
Welfare Fund - Community Care Grants	0	-	0.0%	14	13	0.7%
Welfare Fund - Crisis Grants	0	-	0.0%	12	14	0.6%
Personnel	0	-	0.0%	10	15	0.5%
Consumer Protection	0	-	0.0%	8	16=	0.4%
Valuation Joint Boards	0	-	0.0%	6	18	0.3%
Fire & Police Boards	0	-	0.0%	4	19	0.2%
National Park Authorities	0	-	0.0%	3	20	0.2%
Subject Unknown or Out Of Jurisdiction	2	-	2.8%	51	-	2.7%
<b>Total</b>	<b>72</b>	<b>-</b>	<b>100.0%</b>	<b>1,880</b>	<b>-</b>	<b>100.0%</b>

Complaints as % of Sector

3.8%

100.0%

**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>

Complaints as % of Sector

4.6%

100.0%

**TABLE 2**  
**Complaints Determined by Outcome**

Stage	Outcome Group	2014-15		2013-14	
		Highland Council	Sector Total	Highland Council	Sector Total
Advice	Not duly made or withdrawn	12	380	12	328
	Out of jurisdiction (discretionary)	2	29	2	56
	Out of jurisdiction (non-discretionary)	0	25	0	42
	Outcome not achievable	1	42	7	129
	Premature	23	713	28	659
	Resolved	0	4	0	6
	<b>Total</b>	<b>38</b>	<b>1,193</b>	<b>49</b>	<b>1,220</b>
Early Resolution 1	Not duly made or withdrawn	4	36	3	36
	Out of jurisdiction (discretionary)	2	56	4	57
	Out of jurisdiction (non-discretionary)	12	140	7	110
	Outcome not achievable	4	107	3	40
	Premature	2	42	3	33
	Resolved	0	35	1	18
	<b>Total</b>	<b>24</b>	<b>416</b>	<b>21</b>	<b>294</b>
Early Resolution 2	Fully upheld	1	33	1	31
	Some upheld	1	18	1	25
	Not upheld	1	56	2	50
	Not duly made or withdrawn	0	0	0	1
	Resolved	0	3	0	4
	<b>Total</b>	<b>3</b>	<b>110</b>	<b>4</b>	<b>111</b>
Investigation 1	Fully upheld	1	28	1	20
	Some upheld	2	26	1	39
	Not upheld	7	63	3	60
	Not duly made or withdrawn	0	1	0	2
	Resolved	0	1	0	1
	<b>Total</b>	<b>10</b>	<b>119</b>	<b>5</b>	<b>122</b>
Investigation 2	Fully upheld	1	3	0	0
	Some upheld	0	1	0	0
	Not upheld	0	0	0	0
	<b>Total</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>0</b>
<b>Total Complaints</b>	<b>76</b>	<b>1,842</b>	<b>79</b>	<b>1,747</b>	
Total Premature Complaints		25	755	31	692
Premature Rate		32.9%	41.0%	39.2%	39.6%
Fit for SPSO Total (ER2, Inv1 & Inv2)		14	233	9	233
Total Cases Upheld / Some Upheld		6	109	4	115
Uphold Rate (total upheld / total fit for SPSO)		42.9%	46.8%	44.4%	49.4%

### **Case 1:**

- Case ref: 201304892
- Date published: October 2014
- Subject: policy/administration
- Outcome: Some upheld, no recommendations

### **Summary**

Mr C contacted the council to complain about an elected member. He was dissatisfied with the council's response, and complained about this to them. Mr C remained dissatisfied. He complained to us that the council had not dealt reasonably with his phone contact, had not reasonably responded to his complaints and had deliberately included errors in contact details that they supplied to him.

We found that the phone contact had been reasonable and that there was no evidence that the errors in contact details provided were deliberate. We upheld Mr C's complaint that the council's response to his complaint was not reasonable, but did not consider that they needed to take any further action in relation to this.

[Download case 201304892 as a PDF \(10.87 KB\)](#)

## **Case 2:**

- Case ref: 201303140
- Date published: September 2014
- Subject: Crisis grant/failure to follow government guidance
- Outcome: Upheld, recommendations

### **Summary**

Mr C phoned the council's Scottish Welfare Fund team to ask about applying for a crisis grant. The call handler said that he was not eligible because he was not in receipt of a qualifying benefit. Mr C then complained because he felt the call handler did not deal with his enquiries properly. In responding to the complaint, the council said they were sorry that Mr C was unhappy with the service, but confirmed that because he was not in receipt of an appropriate qualifying benefit, he was not eligible.

In response to our enquiries, the council told us that they did not process a claim for Mr C because it was clear he did not meet the relevant criteria for a crisis grant. They also said that, since then, the Scottish Government had relaxed the eligibility criteria and if he was now to apply with similar circumstances, they might be able to consider his application. We checked the Scottish Government guidance that was in place when Mr C contacted the council. This confirmed that those applying for a crisis grant should normally be in receipt of certain benefits. However, the guidance also said that the key test of eligibility for a crisis grant was the severity of the applicant's circumstances and the likely impact on them and their family. It also said that if an applicant was not in receipt of qualifying benefits, the council could make an exception to the requirement for this if they were satisfied that the person had no other means of support, and an award would avoid serious damage or risk to the health or safety of them or their family.

We found that in saying that Mr C was not eligible for a crisis grant the council effectively made a decision on his request. In addition, when the Scottish Government clarified the guidance, they did not relax the criteria. The guidance in place when Mr C contacted the council clearly said that the key test of eligibility was the need of the individual, not whether they were in receipt of a qualifying benefit, and that the authority had discretion to make an exception to that requirement. In light of this, we upheld Mr C's complaint and found that the council should have processed his application. Had they done so, Mr C could have accessed the review process after being told that he did not meet the criteria, which might have changed the outcome of his application.



## **Recommendations**

We recommended that the council:

- apologise to Mr C for failing to handle his enquiries about a crisis grant appropriately; and
- remind staff administering the Scottish Welfare Fund that, if a person clearly wants to apply, they should process an application appropriately even if success is unlikely.

[Download case 201303140 as a PDF \(13.48 KB\)](#)

### **Case 3:**

- Report number: 201303999
- Date published: December 2014
- Subject: Education: secondary school pupil; policy/administration
- Outcome: Upheld, recommendations

#### ***Overview***

The complainant (Mr C) raised a number of concerns about the way in which The Highland Council (the Council) dealt with an allegation of examination malpractice against his son (Mr A). In particular, he said that they failed to follow Scottish Qualifications Authority (SQA) guidance.

#### ***Specific complaint and conclusions***

The complaint which has been investigated is that the Council failed unreasonably to follow SQA guidance on candidate malpractice when dealing with an allegation involving Mr A (*upheld*).

#### ***Redress and recommendations***

The Ombudsman recommends that the Council:

- provide Mr A with a letter of apology for the failures identified;
- make their secondary schools aware of the outcome of this complaint and of the importance of following available guidance; and
- liaise with SQA about the means by which they should document their procedures for dealing with such matters.

The Council have accepted the recommendations and will act on them accordingly.

[Download report number 201303999 as a PDF \(73.84 KB\)](#)

## **Case 4**

- Case ref: 201302996
- Date published: March 2015
- Subject: primary school
- Outcome: Upheld, recommendations

### **Summary**

Mrs C complained that the council did not meet her child's additional support needs at school. She was also unhappy about how they handled her complaint.

Our investigation found that while the school recognised that Mrs C's child had additional support needs and that support was provided, there had been a complete breakdown in the relationship between Mrs C and the school. Because of this, the issue of whether appropriate support was being provided was never going to be resolved. Mrs C had clearly lost confidence in the service and support provided by the school, and had a genuine belief that it was failing to meet her child's needs.

Mrs C, therefore, had a right to be made aware of the alternative dispute resolution provision available under the Education (Additional Support for Learning) (Scotland) Act 2004, where there is a complaint that a school is not meeting a pupil's additional support needs. This includes access to independent mediation and adjudication, and an appeal to the Additional Support Needs Tribunal for Scotland. The council did eventually offer Mrs C access to mediation (which they should have offered sooner) but we found no evidence that they made her aware of her rights under the legislation as they should have done.

We also found that there were occasions when Mrs C's child went home from school during the day but these were not recorded as an exclusion from school as they should have been (in accordance with the council's school exclusion policy). Accounts of incidents at the school involving Mrs C's child were also not recorded at the time they occurred.

The council had acknowledged delay in responding to Mrs C's complaint, for which they had apologised and advised her what they had done as a result of this. We were satisfied that they had taken appropriate action to address this part of the complaint. However, Mrs C had also raised concerns about her child being bullied. Given the seriousness of Mrs C's allegations, in particular that her child had been assaulted, we considered that the council had not carried out appropriate investigations to address the allegations of bullying.

## **Recommendations**

We recommended that the council:

- issue a written apology to Mrs C for the failings identified;
- ensure that all relevant staff are made aware of the alternative dispute resolution avenue available for complaints about schools failing to meet additional support needs;
- ensure that all relevant staff are made aware of the council's Management of Exclusion on Schools policy and what constitutes an 'exclusion' from school; and
- ensure that all relevant staff are made aware of the requirement to complete incident report forms, where appropriate.

[Download case 201302996 as a PDF \(13.83 KB\)](#)

## **Case 5:**

- Case ref: 201305427
- Date published: 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 and had attended interviews with an officer from the DWP 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 our investigation the council confirmed that their officer should not have been involved in the interviews as Mr A was not in receipt of council tax or housing benefit, and that they had apologised to Mr A for their handling of this. 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 we upheld this complaint. The council had also 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 we also upheld this complaint. Because the council had already taken action on the issues, however, we did not make any recommendations.

We did not uphold Mr A's other complaints. We were 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. We also found that they had considered Mr A's representations and provided reasonable responses to the issues he had raised.

[Download case 201305427 as a PDF \(11.39 KB\)](#)

## **Case 6**

- Case ref: 201400115
- Date published: June 2015
- Subject: other
- 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. After discussing this with him, we found it appeared that the council had not fully explained how they had reached their decision. We, 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 his complaints. The council and Mr C agreed to meet and we closed his complaint to allow this to happen.

Mr C subsequently complained, however, that he was unhappy with the council's explanation. We investigated and upheld two of his complaints, as we found that there was unreasonable delay in processing the tenants and residents association's application for a grant, and there were failures in communication. We 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. We did not uphold Mr C's complaint of discrimination in the decision not to award a grant.

[Download case 201400115 as a PDF \(11.07 KB\)](#)