

HIGHLAND COUNCIL

Committee: Audit and Scrutiny Committee

Date: 23 November 2017

Report Title: Annual Report of Scottish Public Service Ombudsman Cases determined in 2016/17

Report By: Chief Executive

Purpose/Executive Summary

1. 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 2016/17 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 2015/16.
 - 1.1 71 cases were referred to the Ombudsman in the period covered by this report. Of those, 2 were fully upheld and 4 partially upheld. This compares with 78 cases considered by the SPSO in the previous year, 4 of which were fully upheld and 1 partially upheld. The number of premature cases has fallen from 36 to 29 in the same period, showing improved performance over the year.

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 and all of the cases have now been closed.

3. Background

3.1 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.

4. Statistical Data

4.1 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 2015/16 and 2016/17 alongside the total of local authority complaints for these years.

4.2 Appendix 1, Table 2, shows the outcomes of complaints about the Highland Council determined by the SPSO. There have been a number of changes made to the reporting categories, reducing from 5 to 3, which means it is not possible to make a direct comparison from one year to the next. However, the new, approach, limiting to three main categories: Advice; Early Resolution; and Investigation is an improvement in terms of simplicity and clarity and should assist in making better comparisons in the future.

4.3 There is also a new sub category introduced this year: Proportionality. This is used in circumstances where the SPSO decides that, even where a complaint meets the general criteria for investigation, it would not be proportionate to do so for the following reasons:

- the organisation being complained about has already carried out a thorough investigation and steps have been taken to remedy the injustice.
- the outcome being sought is not achievable and there is no public interest in investigating further.
- the matter has already been investigated thoroughly by another public scrutiny body and the outcomes are similar to those that SPSO could achieve.
- investigating a complaint would not achieve any practical benefit for the person complaining, the organisation concerned or the public generally, because the injustices suffered are insignificant and have little or no practical consequences for the individual.

Previously the Council has regularly been required to go through time consuming and lengthy investigations by the Ombudsman for complaints that the Council had already investigated, upheld and responded to appropriately. The Council has made representations on this approach to the previous Ombudsman and it had also been taken up by SOLACE, but without success. The new Ombudsman's decision to introduce this additional sub category is therefore very welcome and suggests that the Council has avoided up to 7 complaints that may otherwise have been

taken forward as full investigations with no discernible benefit to the complainant or the organisation.

- 4.4 71 cases were referred to the Ombudsman in the period covered by this report. Of those, 2 were fully upheld and 4 partially upheld and recommendations were made in 4 cases. This compares with 78 cases considered by the SPSO in the previous year, 4 of which were fully upheld and 1 partially upheld. 5 complaints were upheld in full in 2015/16. This suggests a largely steady state in terms of the Council's performance over the past 3 years. Fuller details of the 2016/17 upheld cases are set out in Section 5, below and in Appendix 2.
- 4.5 The number of premature cases has fallen from 46.2% to 40.8% 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.

5. Upheld/Partially Upheld Complaints 2016/17

- 5.1 The SPSO upheld or partially upheld 6 separate complaints about the Highland Council in 2016/17. Full 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 by searching on the reference number.
- 5.2 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.
- 5.3 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.

- 5.4 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 SPSO's recommendations have been implemented and the Ombudsman has closed the case.

- 5.5 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 SPSO's recommendations have been implemented and the Ombudsman has closed the case.

- 5.6 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.

- 5.7 Case 6, ref 201508869 (partially upheld): Additional Support Needs. A parent complained that her daughter's school had not provided her with sufficient assistance and consideration to manage her additional support needs within a mainstream setting.

The Ombudsman partially upheld the complaint and made two recommendations around refreshing schools' policies specific to this case. The SPSO's recommendations have been implemented and the Ombudsman has closed the case.

6. Implications

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

7. Recommendation

7.1 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 and all of the cases have now been closed.

Signature: Steve Barron

Designation: Chief Executive

Date: 13 November 2017

Author: Kate Lackie, Business Manager

Enclosures:

Appendix 1: Tables 1 & 2

Appendix 2: Further detail on individual cases

Case 1: Decision Report 201605070

- 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

- 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

- 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

- 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

- 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.

Case 6, Decision Report 201508869

The Decision Report has not been uploaded on to the SPSO's website to protect the identity of the complainant.

TABLE 1
Complaints Received by Subject 2016-17

Subject Group	The Highland Council	Rank	Complaints as % of total	Sector Total	Rank	Complaints as % of total
Housing	19	1	26.0%	388	1	25.4%
Planning	14	2	19.2%	160	3	10.5%
Social Work	9	3	12.3%	219	2	14.3%
Education	8	4=	11.0%	144	4	9.4%
Roads & Transport	8	4=	11.0%	112	7	7.3%
Legal & Admin	3	6	4.1%	73	8	4.8%
Environmental Health & Cleansing	2	7=	2.7%	124	5	8.1%
Finance	2	7=	2.7%	120	6	7.9%
Building Control	2	7=	2.7%	34	9	2.2%
Welfare Fund - Crisis Grants	2	7=	2.7%	5	16=	0.3%
Land & Property	1	11	1.4%	19	11	1.2%
Recreation & Leisure	0	-	0.0%	29	10	1.9%
Welfare Fund - Community Care Grants	0	-	0.0%	14	12	0.9%
Other	0	-	0.0%	8	13=	0.5%
Valuation Joint Boards	0	-	0.0%	7	13=	0.5%
National Park Authorities	0	-	0.0%	6	15	0.4%
Economic Development	0	-	0.0%	5	16=	0.3%
Personnel	0	-	0.0%	5	16=	0.3%
Consumer Protection	0	-	0.0%	4	16=	0.3%
Fire & Police Boards	0	-	0.0%	4	16=	0.3%
Subject Unknown or Out Of Jurisdiction	3	-	4.1%	48	-	3.1%
Total	73		100.0%	1528		100.0%

Complaints as % of Sector

4.8%

100.0%

TABLE 1
Complaints Received by Subject 2015-16

Subject Group	Highland Council	Rank	Complaints as % of total	Sector Total	Rank	Complaints as % of total
Planning	20	1	25.6%	172	5	10.0%
Housing	16	2	20.5%	423	1	24.6%
Finance	11	3	14.1%	179	3	10.4%
Social Work	7	4	9.0%	231	2	13.4%
Education	6	5	7.7%	173	4	10.0%
Environmental Health & Cleansing	6	5=	7.7%	126	6	7.3%
Roads & Transport	6	5=	7.7%	120	7	7.0%
Legal & Admin	1	7=	1.3%	61	8	3.5%
Other	1	7=	1.3%	17	13	1.0%
Personnel	1	7=	1.3%	9	15=	0.5%
Building Control	0	-	0.0%	54	9	3.1%
Recreation & Leisure	0	-	0.0%	32	10	1.9%
Welfare Fund - Community Care Grants	0	-	0.0%	31	11	1.8%
Land & Property	0	-	0.0%	20	12	1.2%
Economic Development	0	-	0.0%	11	14	0.6%
Welfare Fund - Crisis Grants	0	-	0.0%	9	15=	0.5%
National Park Authorities	0	-	0.0%	6	17=	0.3%
Valuation Joint Boards	0	-	0.0%	6	17=	0.3%
Fire & Police Boards	0	-	0.0%	5	19	0.3%
Consumer Protection	0	-	0.0%	4	20	0.2%
Subject Unknown or Out Of Jurisdiction	3	-	3.8%	33	-	1.9%
Total	78		100.0%	1,722		100.0%

Complaints as % of Sector

4.5%

100.0%

TABLE 2
Local Authority Complaints Determined 2016-17

Stage	Outcome Group	2016-17	
		The Highland Council	Sector Total
Advice	Not duly made or withdrawn	12	279
	Out of jurisdiction (non-discretionary)	0	3
	Outcome not achievable	0	1
	Premature	24	467
	Total	36	750
Early Resolution	Not duly made or withdrawn	0	43
	Out of jurisdiction (discretionary)	2	82
	Out of jurisdiction (non-discretionary)	8	111
	Outcome not achievable	4	115
	Premature	5	57
	Proportionality	7	132
	Resolved	2	20
Total	28	560	
Investigation	Fully upheld	2	52
	Some upheld	4	42
	Not upheld	1	60
	Not duly made or withdrawn	0	1
	Resolved	0	1
Total	7	156	
Total Complaints		71	1,466

Total Premature Complaints	29	524
Premature Rate	40.8%	35.7%
Fit for SPSO Total (Investigations)	7	156
Total Cases Upheld / Some Upheld	6	94
Uphold Rate (total upheld / total fit for SPSO)	85.7%	60.3%

Stage	Outcome Group	2015-16	
		Highland Council	Sector Total
Advice	Not duly made or withdrawn	9	321
	Out of jurisdiction (discretionary)	2	6
	Out of jurisdiction (non-discretionary)	0	5
	Outcome not achievable	0	6
	Premature	35	606
	Resolved	0	0
	Total	46	944
Early Resolution 1	Not duly made or withdrawn	2	54
	Out of jurisdiction (discretionary)	5	104
	Out of jurisdiction (non-discretionary)	8	196
	Outcome not achievable	7	185
	Premature	1	58
	Resolved	1	29
	Total	24	626
Early Resolution 2	Fully upheld	2	27
	Some upheld	1	20
	Not upheld	1	37
	Not duly made or withdrawn	0	1
	Resolved	0	1
Total	4	86	
Investigation 1	Fully upheld	2	23
	Some upheld	0	36
	Not upheld	1	40
	Not duly made or withdrawn	1	4
	Resolved	0	4
	Total	4	107
Investigation 2	Fully upheld	0	1
	Some upheld	0	0
	Not upheld	0	0
	Total	0	1
Total Complaints		78	1,764

Total Premature Complaints	36	664
Premature Rate	46.2%	37.6%
Fit for SPSO Total (ER2, Inv1 & Inv2)	8	194
Total Cases Upheld / Some Upheld	5	107
Uphold Rate (total upheld / total fit for SPSO)	62.5%	55.2%