

Agenda Item	11
Report No	AS/13/19

## HIGHLAND COUNCIL

**Committee:** Audit and Scrutiny Committee

**Date:** 13 June 2019

**Report Title:** **Scottish Public Services Ombudsman, Cases Received by the Council – Update Report**

**Report By:** **Chief Executive**

### 1. Purpose/Executive Summary

- 1.1 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 the period September 2018 to May 2019 and the subsequent judgement in the cases where the SPSO's inquiry has concluded.
- 1.2 10 cases have been considered and closed by the Scottish Public Sector Ombudsman in the period covered by this report. 4 cases were found in the Council's favour; 4 were not progressed past the initial investigation stage; and 2 cases were upheld or partially upheld. The following report provides further detail on the upheld and partially upheld cases and the actions taken in response to the Ombudsman's recommendations. The Decision Reports are reproduced in Appendix 1.

### 2. Recommendations

Members are asked to consider the outcomes of the SPSO cases and the actions that have been taken in response to the Ombudsman's recommendations.

### **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. Upheld/Partially Upheld Complaints, October - May 2018**

4.1 10 complaints about the Highland Council were investigated and closed by the SPSO since the beginning of October 2018. Of those, 1 case was upheld and another partially upheld. 8 cases have either not been progressed by the Ombudsman or have been found in the Council's favour.

4.2 Half of the cases investigated by the Ombudsman related to planning matters, three related to education/schools, one to Housing and one to Community Services. The predominance of planning complaints is not unusual and reflects the lack of an alternative route of appeal for members of the public who object to planning applications and developments. The majority of cases are either not upheld or are not progressed to full investigation.

### **5. Upheld Complaints, October 2018 to May 2019**

5.1 Case 1, 201707741, Handling of planning application (partially upheld):

The Ombudsman found that the Council had met its statutory obligations to make information about the application publicly available and had reasonably exercised professional judgement in assessing the application. They found that the Council's actions were reasonable and did not uphold this part of the complaint.

In relation to the handling of the complaint itself, the Ombudsman found that there was an inconsistency in the report on the planning application which had not been identified by the Council's complaint investigation. This part of the complaint was consequently upheld. However, the Ombudsman noted that this error did not make a substantive difference to the outcome of the complaint and no recommendations were made.

## 5.2 Case 2: 20170442, Complaints Handling (Upheld, recommendations)

The Ombudsman found 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.

These recommendations have been implemented to the Ombudsman's satisfaction and case has been closed.

## 6. Implications

- 6.1 The cases considered by the Ombudsman in the period October 2018 to May 2019 do not have legal, equalities; climate change/carbon clever, risk, Gaelic or rural implications for the Council. The recommendations in relation to upheld case 201704421 have been implemented within existing resources.

**Signature: Donna Manson**

**Designation: Chief Executive**

**Date: 3 June 2019**

**Author: Kate Lackie, Business Manager**

### SPSO decision report



**Case:** 201707741, The Highland Council  
**Sector:** local government  
**Subject:** handling of application (complaints by opponents)  
**Decision:** some upheld, no recommendations

#### Summary

Mrs C complained that the council failed to handle a planning application reasonably and failed to handle her complaint appropriately.

We took independent advice from a planning adviser. We found that the council had met their statutory obligations to make information about the application publicly available and had reasonably exercised their professional judgement in assessing the application. We found that the council's actions were reasonable and did not uphold this part of Mrs C's complaint.

In relation to the handling of Mrs C's complaint, we found that there was an inconsistency in the report on the planning application which had not been identified by the council's complaint investigation. We upheld this part of Mrs C's complaint and provided feedback to the council. However, we noted that this error did not make a substantive difference to the outcome of Mrs C's complaint.

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## SPSO decision report



**Case:** 201704421, The Highland Council  
**Sector:** local government  
**Subject:** complaints handling  
**Decision:** upheld, recommendations

### Summary

Mr C complained that the council failed to provide a reasonable response to his correspondence about planning and enforcement and other issues in relation to land near his home.

We took independent advice from a planning adviser. We found that, in general, the council had tried to address the issues Mr C raised in his correspondence. However, we identified a number of failings:

- the council did not provide an adequate explanation to Mr C about their delay in progressing matters in relation to a planning breach
- they did not advise him that he should notify them of a planning breach through their electronic enforcement system
- their response could have been clearer in relation to whether action that was being taken would resolve the enforcement issues
- their response incorrectly stated that the enforcement case must be suspended until planning applications had been determined
- they did not provide an adequate response to his comments about aggregation in relation to procurement
- they should have taken further action in relation to comments made in advertising by one of their contractors
- they failed to keep him updated on the delay in responding to his complaint.

In view of these failings, we upheld Mr C's complaint.