

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200500422: Fife Council

#### Introduction

1. On 10 May 2005 the Ombudsman received a complaint from a man (Mr C) who had complained to Fife Council (the Council) about the condition of the kerb on a footpath leading to a new housing development near his home.

2. The complaints from Mr C which I have investigated concern his allegations that:

(a) the Council failed to carry out adequate inspections of the kerb during construction and that the work to the kerb had not been completed to an acceptable standard for adoption;

(b) the Council failed to deal with his representations in line with their corporate complaints procedure.

3. Following the investigation of all aspects of this complaint I came to the following conclusions:

(a) not upheld, see paragraph 21;

(b) not upheld, see paragraph 24;

#### Background

4. The Roads (Scotland) Act 1984 (as amended) allows for an application to be made for a private road, where it meets the required standards, to be added to the Local Authority's list of public roads which are thereafter maintained by the Local Authority.

#### Investigation and findings of fact

5. On 14 December 2004 Mr C complained to the Council about the condition of the footpath and kerb leading to a new housing development near his home. A response was sent from the Transportation Services Department on 22 December

2004, inviting Mr C to attend a meeting with the officer responsible for the arrangements for the final inspection and adoption of the road and footpath. Mr C did not take up the offer of a meeting. Further letters were sent by the Head of Transportation (Officer 1) on 7 January and 4 April 2005, indicating that the roads and footpaths had been inspected during the construction of the housing development. Officer 1 explained that defects which had been identified during that inspection had been reported to the developer and had been rectified.

6. Officer 1 confirmed that, in response to Mr C's complaint, a further inspection had been carried out, during which no serious defects had been noted.

7. Mr C complained to this office on 10 May 2005. I explained to Mr C the need to exhaust the Council's complaint procedure. In line with Fife Council complaint's procedure, the final stage was to appeal to the Chief Executive.

8. Mr C advised me that he felt he had complained to the Chief Executive as he had completed the Council's comment/complaints/compliments form addressed to the Chief Executive's Services. As such, he had expected to receive a reply from the Chief Executive. He was aggrieved that instead he had received a further response from Officer 1. However, Mr C wrote directly to the Chief Executive on 13 September 2005 and received a response on 26 September 2005. Mr C approached our office on 9 October indicating that he would like us to proceed with an investigation of his complaint.

9. On 2 December 2005, I wrote to the Council setting out the complaint as put by Mr C and inviting comments on it. In particular, I asked the council to provide:

- copies of site inspection notes;
- details of the remedial work carried out to the kerb;
- confirmation that the footpath had been adopted;
- details of how the council had handled Mr C's complaint.

10. I also obtained and examined copies of all correspondence between Mr C and the Council. As part of my investigation I also discussed the complaint with the complainant and the Council.

11. I have set out below, for each of the two heads of Mr C's complaint and my findings of fact. While I have not included every detail investigated, I am satisfied that no matter of significance has been overlooked. Mr C and the Council have been given an opportunity to comment on a draft of this report.

**(a) The Council failed to carry out adequate inspections of the kerb during construction and that the work to the kerb had not been completed to an acceptable standard for adoption**

12. In relation to Mr C's allegation that adequate inspections of the kerb had not been carried out, and that the work was not to an acceptable standard, I examined site inspection notes provided by the Council. The notes showed that the area had been inspected on a number of occasions between April 2003 and October 2004. On 14 May 2004 various kerbs constructed by the developer of the new housing development were identified as needing replaced/repaired. A further site inspection carried out 20 May 2004 indicated that the damaged kerbs had been replaced and asphalt reinstated. Following Mr C's complaint, the Council explained that a further inspection of the area was carried out which did not identify any major defects at the new section of footpath constructed by the developer.

13. In response to my further enquiry I obtained copies of inspection reports covering the area since October 2004. The council explained that the area continues to be inspected on a monthly basis.

14. An Engineer from the Transportation Services contacted Mr C by telephone following receipt of his complaint of 14 December 2004 to arrange a site visit. The Engineer reported that Mr C had indicated that the area had been covered up and was no longer visible. I requested a copy of the note of the telephone conversation but was advised that this had not been prepared.

15. It is clear that Mr C has strong feelings over the issue of the quality of work carried out to the footpath and kerb. However, I am satisfied that the Council took steps to ensure that the roadworks, including the footpath and kerb, were completed to what they considered was a satisfactory standard. On 3 December 2004 the Council wrote to the developer confirming that the works had been completed in accordance with the details of the Road Construction Consent and to a standard required by the Council. As a result the roadworks had been adopted

by the Council and had been added to the list of public Roads in terms of section 16(2) of the Roads (Scotland) Act 1984.

**(b) The Council failed to deal with Mr C's representations in line with their corporate complaints procedure**

16. Mr C also raised his concern about the handling of his representations on the matter. He indicated that he had complained about the condition of the footpath and kerb initially in 2003. However, Officer 1 explained to Mr C on 7 January 2005 that the authority did not have a record of his earlier complaint. They apologised for any lack of response.

17. I am satisfied that Mr C's complaint was handled in accordance with their corporate complaints procedure. Mr C's complaint was initially considered by the appropriate department, and when he remained aggrieved, it was passed to the Chief Executive who subsequently responded to him.

18. I can see why Mr C, having used the Council's comments/complaints/compliments form which was addressed to the Chief Executive's Services, expected his complaint to be considered by the Chief Executive. The Council have explained that completed comments/complaints/compliments forms are received in a central location where they are passed to the appropriate department for response. In this case, Mr C's complaint was passed to the Transportation Department. The Council have explained that, if it was clear from the form that the complaint being raised was against a senior officer of the Council, it would be passed to the Chief Executive for a response. While Mr C indicated that he had complained about the Head of Transportation, the Council have explained that the form submitted by Mr C did not refer to a senior officer, but about the quality of workmanship of the footpath and kerb.

19. I have obtained a copy of Mr C's form, which does raise his continuing concerns about the poor workmanship of the footpath and kerb, but does not specifically refer to a complaint about the Head of Transportation.

20. The Council have accepted that, because the form was addressed to the Chief Executive's Services, this could be misleading. I am pleased to note that the

Council have now amended the form to prevent a similar situation arising in the future. I have been provided with a copy of their amended form.

### **Conclusions and recommendations**

21. Mr C maintains that the kerb was not inspected and has not been completed to an acceptable standard. My investigation has shown that site inspections were carried out on a number of occasions between 2003 and 2004. I am satisfied that the Council took steps to ensure that the roadworks, including the footpath and kerb, were completed to what they considered was a satisfactory standard. Given that the footpath was adopted prior to Mr C's complaint to this office, he clearly remains of the view that the footpath and kerb have not been completed to a satisfactory standard. However, the Council have explained that, in response to Mr C's complaint in December 2004, the site was again inspected. In addition an Engineer from the Transportation Services invited Mr C to inspect the site. It seems to me that the substance of this complaint relates more to a dispute about the Council's officers' professional view of what is acceptable, than it does to maladministration. Accordingly, I do not uphold this aspect of the complaint.

22. However, it is unfortunate that the Council were unable to provide a note of the telephone conversation inviting Mr C to inspect the site and I suggest that, as a matter of good administrative practice, the Council ensure that notes of telephone conversations where action has been taken or proposed are prepared in future.

23. The Council have accepted the suggestion in this report.

24. I accept that, having used the Council's complaint form, Mr C expected a reply from the Chief Executive and I recognise the reasons for his concern when this did not happen. However, his form did not refer to a specific complaint about a senior officer and I am satisfied that, in these circumstances, his complaint was handled in the correct way. Accordingly, I do not uphold this aspect of the complaint. Notwithstanding this, I am pleased that the Council have made amendments to their form.

27 June 2006

**Explanation of abbreviations used**

Mr C	The complainant
The Council	Fife Council
Officer 1	The Head of Transportation