

Ombudsman's Commentary

FEBRUARY 2010 REPORTS

The SPSO laid three investigation reports before the Scottish Parliament today, all relating to the local government sector. Our investigation reports form only one part of our work. In January, we determined 275 complaints, including 44 resolved after detailed consideration.

Each investigation may contain several complaints, and overall the three reports laid today:

- **Upheld 6 complaints**
- **Did not uphold 1 complaint**
- **Made 12 recommendations**

Ombudsman's Overview

The three investigation reports published today are about a diverse range of subjects. I expect councils across Scotland will find much to reflect and learn from in the reports, which cover a variety of complex issues.

One investigation (Ref: 200703201) found that a Council had made procedural errors in handling planning applications. They had put a proposal to the complainant to remedy this. I agreed with the complainant that the Council had failed to fulfil that proposal and that there had been a failure to resolve further planning issues. I made several recommendations including that the Council arrange to pay the balance of the complainant's outstanding legal costs and for his bills to be independently audited; and that they take steps to address issues to solve problems of overlooking.

Another investigation (Ref: 200802232) concerned street traders' licenses. Mr and Mrs C operate a movable food unit and complained that the Council had changed the street trading policy without consulting them. They also complained that they had been charged non-domestic rates as well as street traders' licences, contrary to street trading legislation, and that the handling of the temporary licence applications was inadequate. They were also unhappy about the time the Council took to deal with their complaint. I upheld all the complaints, and made a number of recommendations to the Council as a result.

The third report laid today (Ref: 200700596), where I did not uphold the complaint, is an emotive one. The complainant, Ms C, is the mother of and the primary carer for her daughter, Miss A, who is currently aged 17 and has complex special needs. Ms C's dispute

with the Council is in relation to the number of nights of respite care that the Council should fund and where that overnight respite should be. Ms C sought two additional nights respite at the School, in addition to the two nights at the School which the Council already funded. The Council were prepared to fund additional respite care but at an alternative Centre which was unacceptable to Ms C.

My investigation satisfied me that the Council had adequately addressed the concerns raised by Ms C about the Centre, in particular in relation to accommodation and the competency of staff. I found the respite care offered by the Council reasonably met the assessed needs of Miss A and in my conclusion I state:

'This was a very emotive complaint to investigate. I fully recognise the very difficult, demanding and stressful circumstances that Ms C must find herself in caring for and meeting the needs of her daughter. I also recognise that she too has to meet the needs of her son and has her own ongoing health problems. I can, therefore, understand the reasons why Ms C sought and continues to seek the increase in overnight respite care.

... I consider the decision to stop using the School for additional respite care was a decision that the Council were reasonably entitled to take given their finite budget and that they had to meet the needs of all of the young people with disabilities and their families who require care and support. There is no evidence that the Council were treating Ms C and her daughter differently from any other young person with a similar disability and their carers.'

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case reports

Local Government

Handling of planning application

Aberdeenshire Council
(200703201)

Mr C was unhappy with the Council's handling of planning issues relating to the building of two houses on plots (A and B) adjacent to his property. The Council investigated Mr C's complaint, found that they had made procedural errors in handling the planning applications and put a proposal to Mr C to remedy this. Mr C complained to me that the Council failed to fulfil that proposal. He also complained about the Council's handling of a further planning application for changes to the house on Plot B. I upheld Mr C's complaints in full as I found that a remedy for the original errors made by the Council was outstanding, and that there had been a failure to resolve the further planning issues over Plot B. I recommended that, without delay, the Council take steps to arrange to pay the balance of Mr C's outstanding legal costs and for his bills to be independently audited. I also recommended that they arrange for specific greenery to be planted to more effectively screen Mr C's property from overlooking, and that they take immediate steps to secure planning agreement that addresses the problem of overlooking from windows in the conservatory of the house on Plot B. Finally, I recommended that the Council formally apologise to Mr C in writing for these further shortcomings.

Licensing

The City Of Edinburgh Council
(200802232)

Mr and Ms C operate a movable food unit in an area where the Council issue street traders' licences. When they applied to renew their annual licence, the Council told them that policy for the area had changed and that only temporary licences could be issued. Mr and Ms C complained that the Council had changed the street trading policy without consulting them. They also complained that they had been charged non-domestic rates as well as street traders' licences, contrary to street trading legislation, and that the handling of the temporary licence applications was inadequate. Mr and Ms C were also unhappy about the time the Council took to deal with their complaint. I upheld all of Mr and Ms C's complaints, and made a number of recommendations to the Council as a result. These include ensuring full written consultation in future; the importance of presenting accurate information to Council Committees; improving the clarity of information to licence applicants; and providing clear explanations for the refusal of licences. I also recommended that the Council remind licensing staff of the importance of keeping complainants updated and responding to complaints within stated timescales, and that they reimburse Mr and Ms C the cost of two temporary licence applications. Finally, I recommended that the Council apologise to Mr and Ms C for the failings identified in my report.

I did not uphold a complaint about the following:

Social work: care in the community

The City of Edinburgh Council
(200700596)

Ms C complained that the respite care that was offered by the Council for her teenage daughter, who has complex special needs, did not meet her daughter's assessed needs. I did not uphold the complaint and made no recommendations.

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case summaries

Compliance & Follow-up

In line with SPSO practice, my Office will follow up with the organisations to ensure that they implement the actions to which they have agreed.

Jim Martin, Ombudsman
17 February 2010

The compendium of reports can be found on our website, www.spsso.org.uk

For further information please contact:
SPSO, 4 Melville Street,
Edinburgh EH3 7NS

Communications Manager: **Emma Gray**
Tel: **0131 240 2974**
Email: egray@spsso.org.uk



The Scottish Public Services Ombudsman (SPSO) provides a 'one-stop-shop' for individuals making complaints about organisations providing public services in Scotland. Our service is **independent, impartial** and **free**.

We are the final stage in handling complaints about councils, housing associations, the National Health Service, the Scottish Government and its agencies and departments, the Scottish Parliamentary Corporate Body, colleges and universities and most Scottish public authorities.

We normally consider complaints only after they have been through the formal complaints process of the organisation concerned. Members of the public can then bring a complaint to us by visiting our office, calling or texting us, writing to us, or filling out our online complaint form.

The Scottish Public Services Ombudsman was set up in 2002, replacing three previous offices – the Scottish Parliamentary and Health Service Ombudsman, the Local Government Ombudsman for Scotland and the Housing Association Ombudsman for Scotland. Our role was also extended to include other bodies delivering public services.

We aim not only to provide justice for the individual, but also to share the learning from our work in order to improve the delivery of public services in Scotland. We have a programme of outreach activities that raise awareness of our service among the general public and promote good complaint handling in bodies under our jurisdiction.

Further details on our website at: www.spsso.org.uk

Contact us at:

SPSO Tel: **0800 377 7330**
4 Melville Street Fax: **0800 377 7331**
Edinburgh EH3 7NS Text: **0790 049 4372**

E-mail us at: ask@spsso.org.uk