

**Case 200402344: Perth and Kinross Council**

**Introduction**

1. In March 2005, the Ombudsman received a complaint from a man (referred to in this report as Mr C) about a benefit fraud investigation. Mr C complained that, whilst inviting him to assist in a fraud investigation of one of their own employees (a relative of his wife, Mrs C), Perth and Kinross Council (the Council) refused to inform him of the outcome, although it related to the estate of Mrs C's late mother.

2. The complaints from Mr C which I have investigated concerned:

- g. refusal to inform Mr C of the outcome of a fraud investigation of a Council employee (a relative of Mrs C's), despite being aware that the employee concerned was claiming that Mr C's allegations were false and malicious, causing family friction;
- h. breach of confidentiality, promised by Council staff, to protect his identity.

3. As the investigation progressed, there were problems in the handling of the matter by the Council which had an impact on timescale. This was raised as an additional concern by the complainant. This aspect, therefore, forms part of the report as complaint (c):

- (c) impact on timescale of the investigation because of the Council's handling of the matter.

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

- (a) not upheld, see paragraphs 25 to 29;
- (b) not upheld, see paragraph 32;
- (c) upheld, see paragraph 36.

5. In summary, I was satisfied that the Council investigated Mr C's allegations relating to the handling of an investigation into a suspected benefit fraud and about the decision not to provide him with advice about the outcome. I saw nothing to suggest that these enquiries were not undertaken properly.

6. I was satisfied also that the Council looked properly into Mr C's claim of a breach of confidentiality.

7. Unfortunately, the Council's initial response to my enquiry did not address fully the complaint as put to them. There was delay on more than one occasion in replying, which served to extend the time the complaint was under consideration. I was satisfied that the issues were comprehensively investigated and I saw nothing to suggest that Mr C's enquiries were not considered properly. However, in the light of the problems I experienced in obtaining information, the Ombudsman recommends that the Council takes steps to ensure that its officers are aware of the need for co-operation and to respond to our correspondence promptly.

8. The Council have accepted the recommendation and will act on it accordingly.

#### **Investigation and findings of fact**

9. The investigation of this complaint involved obtaining and reading all the relevant documentation. I have also discussed the complaint with Mr C. I have set out my findings of fact and conclusions and 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) Refusal to inform Mr C of the outcome of a fraud investigation of a Council employee (a relative of Mrs C's), despite being aware that the employee concerned was claiming that Mr C's allegations were false and malicious, causing family friction**

10. What triggered this complaint were events surrounding allegations of fraud which do not feature in this case because they were not the subject of the complaint made to the Ombudsman. The investigation starts after Mr C had been invited by the Council to assist in the internal investigation and the subsequent events surrounding this.

11. In February 2005, Mr C made an enquiry to the Council about their policy on benefit fraud committed or attempted on the Council by members of their own staff. He asked whether, in such circumstances, it was considered that this was a matter of public interest or if it was considered more important to maintain the anonymity of the staff member.

12. The e-mail response to him explained that the position regarding personal privacy in relation to public interest was a 'relatively complex issue' and involved two pieces of legislation: the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002. In the latter, while there was a legal right of access to all information held by the Council, there were exemptions from disclosure relating to personal information. Under Section 38, part 2 of the Act, the Council was permitted to withhold information if the disclosure would breach any of the Data Protection principles or if damage or distress would be likely to be caused. In the case in point, as the 'data subject' had not been informed that the information was to be released to the public and had not consented to that processing, disclosure would breach the first principle (fair and lawful processing) and second principle (specified purpose) of Data Protection.

13. It was explained that it was Council policy to consider the public interest in all cases, balanced against maintaining the privacy of personal information held on staff. Unless the nature of the case was such that there was some significant weight to be given to the disclosure, then the balance of public interest would appear to lie in favour of withholding the information.

14. Mr C responded, asking why he was not informed that disclosure of the outcome would breach the Data Protection Act and stating that he had been promised 'full details by Xmas'. Subsequently, on the Council's suggestion that he could raise a formal complaint, he complained that the Council had used his wife to get information for a fraud investigation and this had resulted in a family fallout because the employee under investigation was protected under the Data Protection Act.

15. On 22 March 2005, the Council's Executive Director of Housing and Community Care (Officer 1) responded to Mr C's complaint about the Benefit Service. He identified Mr C's complaint as (i) an allegation that a member of staff and their line manager had colluded, or otherwise acted in a manner designed to cover up an incident of benefit fraud and (ii) a claim that the responses to his requests for information under the Freedom of Information and

Data Protection Acts had failed to provide him with appropriate information to protect the public interest relating to staff involvement in fraudulent actions.

16. Officer 1 stated that within Housing Services 'cases of benefit fraud are taken very seriously and every action taken to eliminate this abuse of public funding. Within this context I can assure you that the allegations you have made relating to this issue have been thoroughly investigated and not found to have any basis for further action'.

17. Officer 1 continued with the advice that he was not at liberty to disclose the outcome of the investigations. This was due to the constraints within the Data Protection Act and Council policy not to reveal details of any employee disciplinary findings to third parties. He commented that he was satisfied that they had been dealt with in an appropriate manner and 'in accordance with the high standards of probity required when dealing with issues relating to public funds'.

18. Advice was given to Mr C that, if he was not satisfied with the response, it was open to him to refer the matter to the Ombudsman. Mr C responded that he was not satisfied that the matter had been properly dealt with and pointed out that it had started as a result of an officer asking for his co-operation in a benefit fraud investigation. He claimed that the Council's actions in withholding information meant that he was unable to defend himself. He then submitted a complaint to this office, indicating that he wanted to be given details of whether the employee had attempted to defraud the authority and what form of punishment was given in such circumstances.

19. The documentation provided by Mr C on his complaint consisted mainly of e-mails between himself and various Council officers, one of the earliest being an update in December 2004 on the investigation being carried out which informed him:

'All relevant documents have now been submitted for a decision. The result will be sent to those concerned. Within the regulations there are time constraints which also involve appeal rights. This relates to persons involved. As I explained, the same regulations do not allow members of staff to discuss any Housing or Council Tax Benefit claims.'

20. In my discussion at the outset with Mr C about his complaint, he commented that he became aware that the investigation had been concluded because funds had been reinstated into the estate of his late mother-in-law. However, he wished to know the outcome of the investigation against the employee and how this matter was rectified. He believed that there was collusion to cover up the incident, based on advice that he had received that the line manager was a personal friend of the employee.

21. Further, in support of his claim that he was told that he would be informed of the outcome, Mr C provided a copy of an e-mail (16 November 2004) from the Council thanking him for his assistance in the matter and giving advice that 'As discussed, you will be advised of the decision regarding any recovery of money that the Council believes can be made within the regulations'.

22. I made a written enquiry of the Council on 6 May 2005, detailing the complainant's grievance and asking for their comments. The Council were also asked to provide details of any relevant Council procedures/guidance issued to staff and to say whether they were properly followed in this case.

23. In their reply, the Council advised that they were satisfied, from an investigation into the disciplinary procedures relating to the allegations that formed the basis of Mr C's complaint, that the appropriate procedures had been carried out: due consideration had been given to the available evidence and the member of staff was interviewed by appropriate persons not involved in the allegations. The Council provided documentation to support this. It was also confirmed that the interview notes were subsequently reviewed by the Service's Information and Administration Manager (Officer 2). However, issues relating to confidentiality and data protection precluded the Council from providing details to a third party, such as Mr C. A copy of the Council's Corporate Disciplinary Procedures was attached.

24. With regard to the discussions on the disclosure of information (referred to in the e-mail of 16 November 2004 (see paragraph 21)), the Council advised that this related to further council tax demands or refunds to the estate of Mr C's late mother-in-law. In his e-mail of 13 November 2004, Mr C stated that his 'primary concern in the matter was that no further demands for payment would be made' on the estate of his late mother-in-law. The e-mail sent to Mr C in December 2004 (referred to in paragraph 19) confirmed the oral advice given that information relating to Housing or Council Tax Benefit claims could not be

disclosed to him. The Council concluded that the matter had been dealt with in accordance with the instructions within the Code of Conduct Procedures for Fraud/Verification Framework Officers which states:

'Safeguarding Information

Officers must treat all information gathered or received during the course of their investigation as confidential and must not deliberately or negligently:-

- Disclose such information to an unauthorised 3<sup>rd</sup> party'

*(a) Refusal to inform Mr C of the outcome of a fraud investigation of a Council employee (a relative of Mrs C's), despite being aware that the employee concerned was claiming that Mr C's allegations were false and malicious, causing family friction: conclusions*

25. I have concluded from my enquiries into the matter that the advice which Mr C was given by the Council conformed to their Code of Conduct and that he was advised about the statutory restrictions which are placed on the authority by the Freedom of Information and Data Protection Acts in respect of confidentiality. The Council had explained to him that they were required to ensure that details about an employee and any disciplinary findings which may be carried out are not made known to third parties. On this basis, there was a limit to the advice which could be given to him by the Council and, if he had wished to pursue this issue, it would have been a matter for the independent Scottish Information Commissioner to determine on appeal whether he had a right to obtain this information from the Council.

26. I am also satisfied that the Council investigated Mr C's complaint that he was given an assurance that he would be advised of the outcome. Copies of the e-mails between Mr C and the Council provided no evidence to support his claim that he was given such an assurance.

27. The Council clarified that the e-mails which were exchanged with Mr C in November 2004 were not by way of an assurance that he would be notified of the outcome of any benefit fraud investigation being undertaken; rather they were in response to the specific concerns he had raised with regard to the estate of his late mother-in-law. The e-mail response of 16 November 2004 informed him that he would be 'advised of the decision regarding any recovery of money that the Council believes can be made within the regulations' and he

received advice on 9 December 2004 of an overpayment and confirmation that this would be refunded.

28. Officer 1's response of 22 March 2005 addressed Mr C's allegation of collusion by Benefits Service personnel and dissatisfaction with the response to his requests for information under the Freedom of Information and Data Protection Acts (see paragraph 15). Advice was given that his allegation of collusion had been thoroughly investigated and not found to have any basis for further action. I have seen nothing to suggest that these enquiries were not undertaken properly.

29. The Council's comments confirmed that they are subject to restrictions which precluded them from providing Mr C with details of the outcome of the investigation and there is no evidence that such an assurance was given to him. On the contrary, it seems that had such an assurance been given, this would have conflicted with the Council's procedures and the pertinent legislation on confidentiality. In these circumstances, I do not consider that the Council can be held to be at fault for declining to divulge this information to third parties. I do not uphold this complaint.

**(b) Breach of confidentiality, promised by Council staff, to protect his identity**

30. Mr C alleged that the member of staff could only have found out about his involvement through the Council and that the confidentiality to protect his identity which was promised had been breached by Council staff.

31. The Council commented that a thorough review of Mr C's e-mails had been carried out and no accusation had been levelled by him against the Council at any time that there was a breach of confidentiality. A report of the interviews which were conducted was included in the Council's reply. This recorded that the Council were satisfied that at no time during the fraud investigation had the employee been given Mr C's name as a source of the complaint.

*(b) Breach of confidentiality, promised by Council staff, to protect his identity: conclusions*

32. Following my enquiry, the Council investigated Mr C's concern that there was a breach of confidentiality by Council personnel but this allegation proved to be unfounded. On the basis of the evidence provided, I am satisfied that the

Council have looked properly into Mr C's claim of a breach of confidentiality and this complaint is not upheld.

***(c) Impact on timescale of the investigation because of the Council's handling of the matter***

33. In their response on 30 June 2005, the Council apologised for the delay in replying to my enquiry (of 6 May 2005).

34. Further requests – in writing and by telephone - were made to the Council about Mr C's allegation that his confidentiality was breached. Responses to these requests were also subject to delay.

35. With their response on 25 August 2005, the Council apologised for the delay in replying to my written request for further information of 29 July 2005. The Council commented that this issue had been raised first with my enquiry into the complaint and it was suggested that I had not asked the Council to comment on this allegation until a further formal enquiry was made on 29 July 2005; and that this seemed to emanate from further conversations/correspondence between Mr C and this office, resulting in the 'nature of the complaint changing subsequent to (Mr C's) original complaint'. However, I was informed that this had now been dealt with and, as stated in paragraph 31, a report on the interviews which were conducted was included with the Council's reply.

***(c) Impact on timescale of the investigation because of the Council's handling of the matter: conclusions***

36. My enquiry on 6 May 2005 included the complaint of breach of confidentiality and it is unfortunate, therefore, that the Council's initial response did not address fully the complaint as put to them – and that there was delay on more than one occasion in replying, which served to extend the time the complaint was under consideration. In these circumstances, I conclude that this aspect of the complaint is upheld. The Ombudsman recommends that the Council takes steps to ensure that its officers are aware of the need for co-operation and to respond to our correspondence promptly.

**Further Action**

37. Mr C and the Council were given an opportunity to comment on the report.



38. Mr C indicated his disappointment with the outcome and a wish not to continue, on the basis that he had no faith in getting a fair hearing and he had decided to draw a line under the matter. After deliberation, the Ombudsman decided that this was insufficient reason not to continue and report on the matter.

39. The Council had no comments to make on the report, other than to acknowledge and apologise for the delays that occurred in the course of its dealings with the office and to provide an assurance that it will take the necessary steps to ensure that future correspondence with this office is given the highest priority.

28 March 2006

**Explanation of abbreviations used**

Mr C	Complainant
Mrs C	Complainant's wife
Officer 1	Executive Director of Housing and Community Care
Officer 2	Information and Administration Manager