

## Scottish Parliament Region: Highlands and Islands

### Case 200501817: The Moray Council

#### Introduction

1. On 6 October 2005 the Ombudsman received a complaint against The Moray Council (the Council) from a house owner (Mr C) who was concerned about the Council's actions in respect of the selection of a location for signs indicating a part-time 20 miles per hour (mph) speed restriction zone for two local schools.

2. Mr C alleged that the Council had not properly considered the siting of new traffic regulation signs in connection with their proposal to introduce a part-time 20 mph speed limit outside two local schools and he believed the choice of site was a direct consequence of his neighbour's lobbying that he did not want the signs erected in view of his lounge windows. The investigation found that there had been no maladministration or service failure by the Council causing Mr C injustice or hardship.

#### Background

3. Guidance on the ability of Councils to create 20 mph zones was provided by the former Scottish Office Development Department in SODD Circular 13/1999, and was restated by the Scottish Executive Development Department in Circular 6/2001 of 17 August 2001. More specific information on 20 mph speed limits around schools with roads with speed limits higher than 30 mph was given in Scottish Executive Enterprise, Transport and Lifelong Learning Department (ETLLD) Circular 1/2004 of 26 March 2004.

#### Investigation and Findings of Fact

4. The complainant Mr C resides at 7 X Road, almost opposite the local secondary school whose campus adjoins that of the local primary school both of which are accessed by X Road. Since the time the present secondary school was constructed in 1969, the triangular school warning sign has been located outside 9 X Road.

5. In the summer of 2004 the Council, as part of a Safe Route to Schools and Home Zones programme, decided to introduce a part-time 20 mph speed limit on X Road.

6. On 13 July 2004, a roads officer (Officer 1), visited X Road to explore the siting of new signs for the 20 mph zone. According to Mr C, whilst there, Officer 1 spoke to the complainant's neighbour at 9 X Road (Neighbour 1) outside whose house the existing road traffic hazard sign for the school was located. Mr C went out to speak with Neighbour 1 and found him and Officer 1 in discussion about the location of road signs for the 20 mph zone. Mr C got the impression that Neighbour 1 was suggesting that the new signs should be located outside Mr C's property rather than obstructing his (Neighbour 1's) view from his lounge window. Mr C wrote that day, 13 July 2004, to the Executive Officer, Environmental Services, stating that a road traffic sign on the pavement side would also stop him seeing on-coming traffic when driving from his property on to the service road. He suggested that the best location for the road traffic sign was where the existing hazard sign was located or further out from the school.

7. On the morning of 14 July 2004, Mr C met with Officer 1 in his office and claims Officer 1 had said that he had decided to locate new warning signs at the boundary of 9 and 11 X Road. He had informed Neighbour 1 of his decision that morning and that that decision had been based solely on traffic considerations. He intended to return to the site and to inform the residents of 11 X Road of his decision. Later that day, Mr C observed Neighbour 1 and his wife in conversation with Officer 1 for some 45 minutes. At about 17:30, Officer 1 called on Mr C and stated that he would now be locating the road traffic signs in full view of Mr C's lounge window.

8. Mr C wrote to the Executive Director, Environmental Services, on 15 July 2004 complaining that Officer 1 had changed the location for non-traffic considerations, having been subjected to pressure from Neighbour 1. Mr C stated that he wanted to object to the proposed location of the road traffic signs should they be located where Officer 1 said they must go.

9. Mr C received no reply to his letters of 13 and 15 July 2004 and complained to another senior officer by telephone (Officer 2) but said his representations were ignored.

10. On 1 September 2004, proposals for the new part-time 20 mph zone road traffic order were first considered by the Environmental Services Committee. On 17 September 2004 Mr C, having been notified officially of the proposed Road Traffic Regulation Order, wrote to the Chief Legal Officer stating he wished to complain about the location of the proposed 20 mph road traffic sign between 7 and 9 X Road. He stated that in his view there were no road traffic reasons for the proposed 20 mph road traffic signs to be located from a point 185 metres or thereby west of the projected east kerb line of a road junction to the north west other than to avoid locating them outside either 9 or 11 X Road.

11. Mr C's letter of 17 September 2004 was acknowledged by the Council's Principal Solicitor on 21 September, and treated as an objection to the proposed Traffic Regulation Order. He was informed that, in line with agreed procedures, his correspondence had been passed to the Council's Transportation Section and they would be in touch direct to discuss the terms of Mr C's objection.

12. On 1 December 2004, the Chief Executive responded to Mr C's complaint of 15 July 2004. His letter apologised for the delay in response. The Chief Executive stated that he understood that in the interim Mr C had met with officers of the Transportation Section as part of the statutory procedure for dealing with the objection when fuller reasons had been given for the siting of the signs. In connection with the complaint against Officer 1, the Chief Executive stated that Officer 1 had been interviewed concerning the allegation that he, Officer 1, had been pressurised by Neighbour 1. Officer 1's proposal had been vetted by his superior, and it was his superior's recommendations, based solely on traffic considerations, which had been forwarded to the Environmental Services Committee for approval. The Chief Executive stated that his enquiry did not support the view that Mr C's neighbour had influenced the decision about the location of the signs or that Officer 1's behaviour had been less than professional.

13. Mr C responded to the Chief Executive on 3 December 2004, stating that it was unacceptable that his complaint was ignored from 13 July 2004 to 1 December 2004. He complained that the Chief Executive had continued to ignore the 'corrupt behaviour' of Officer 1 and the indifference that his superiors had shown when Mr C complained to them. He also denied that 'fuller reasons' had been provided to him by other engineers in the department.

14. On 14 January 2005, the Council's Corporate Complaints Officer (Officer 3) responded to Mr C's letter of 3 December 2004. He repeated the Chief Executive's apology for the delay in responding to the initial complaint of July 2004. Officer 3 stated that the proposed location of the road traffic signs would not obscure significantly visibility from anyone's driveway; the signs would be located directly in front of his neighbour's property and would be viewed only at an oblique angle from Mr C's home. In the professional judgement of engineers, this was considered the most effective position. Officer 3 explained the process in arriving at final sign positions. The final objective assessments were made by Officer 1's manager and ultimately by the Environmental Service Committee. Mr C had been visited by two senior roads officials who had outlined the reasons for locating the signs at the proposed positions. The signs had to be conspicuous and the 20 mph zone should not be excessively long. The officials could move the signs only slightly closer to the school but this would place them outside Mr C's (rather than Neighbour 1's) property. It was considered not acceptable on road safety grounds to move the signs further away from the school because the zone (which here involved two schools) should not be excessively long.

15. Mr C responded to this letter on 24 January 2005, stating that he did not consider that Officer 3 had addressed the issues. He maintained that Officer 1 had been pressured by his neighbour, that the existing school sign had been located outside 9 X Road for 35 years, and the decision to relocate the new road traffic signs was to protect the views from Neighbour 1's lounge window and for no other reasons. Mr C claimed that the roads engineers who came to his home had threatened him by stating that the only other place to locate the road traffic signs was directly outside his home.

16. Officer 3 acknowledged this letter on 2 February 2005 and referred it to the Chief Executive. On 15 February 2005 Mr C wrote to the Chief Executive providing photographic images of two 20 mph zones in Dundee, where new 20 mph signs were placed directly beside the old school sign. Mr C repeated his assertion that Officer 1 had been corrupted by his neighbours to locate the proposed 20 mph road traffic signs to protect the view from their home and for no other reasons.

17. A report was prepared by the Director of Environmental Services on the proposed part-time 20 mph speed limits outside schools for presentation to the Environmental Services Committee on 23 February 2005. This report set out the advertisement arrangements and the objections received. The report commented as follows:

‘2.6 The objection relating to X Road was made on several grounds by the one objector.

2.6.1 The objector claims that the site for the sign at this location was originally to be outside 9 X Road but that after alleged discussions by a Council Engineer with a resident the site was moved to its present proposed location 5 metres west of the property boundary of 7 and 9 X Road. It is claimed that this was done solely to protect the views from 9 and 11 X Road. This matter has been fully investigated and there is no evidence to suggest that the proposed location of the sign was in any way influenced by the resident of 9 X Road.

2.6.2 The resident objects to the placing of signs near to his home on the grounds of visual intrusion. He also feels that the signs would be better placed further west near to the school advanced warning sign. As previously it was explained to the objector that the proposed location of part-time 20 mph speed limit signs fell in line with Scottish Executive guidelines that state that the limit should be situated as close as practicable to the school and not too far in advance. It was also explained that this is a regulatory speed limit sign not an advanced warning sign that have different and distinct placing criteria. As far as the issue of visual intrusion is concerned the signs are actually

placed outside the objector's neighbour's property and the objector can only see the back of the signs if stood at the far left of his main window. Every effort has been made to keep visual intrusion to a minimum but Roads authorities cannot give an undertaking to locate road signs out of view from all private houses.

2.6.3 The resident also objects to the placing of a sign on the south side of X Road to face eastbound traffic, again on the grounds of visual intrusion and it not being in the original proposed location. After a reinvestigation of the site it was decided that this extra sign would be required for road safety reasons on the offside to provide greater forward visibility to the speed limit signage on what is a left hand sweeping curve of the road.

2.6.4 The final part of the objection involves the objector's contention that the service road should not be included in the part-time 20 mph speed limit Order. From a practical point of view it was impossible to place signs directly at the junction of the service road with X Road and ensure any sort of forward visibility to vehicles using the service road and exiting onto X Road. Therefore, signs had to be placed to ensure the correct level of forward visibility to the signs was provided. Indeed on three of the entry/exits from the service road the signs would be pointing directly at residential properties rather than to oncoming traffic.'

18. The Committee minute records that the Senior Engineer (Traffic) responded to members' questions, particularly in regard to proposals for X Road. The meeting noted that the locations of the proposed signs were in accordance with Scottish Executive guidance and that the only pavement on the north side of the road was on the service road, therefore, children would walk along the side of the service road. The meeting also noted that as the service road was included in the proposals then, were they to be approved, there would be no requirement for signs to be erected, facing residents' properties, on the exits from the service road on to X Road. Following discussion, the Committee agreed to note the terms of objections received following the consultation period, the response of officers in respect of those objections, and thereafter approved The Moray Council (Various

Schools) (20 mph Speed Limit) Part II Order 2004 and instructed the Chief Legal Officer to make the Order.

19. The Order was subsequently made and three 20 mph road traffic signs were located outside 9 X Road. On 23 May 2005, Mr C e-mailed the Council Convener stating that had the 20 mph zone road traffic sign been located where the existing road school sign is then three signs would not have been necessary. Mr C alleged that the Council's 'road traffic engineers were corrupt'. On 31 May 2005 the Council's Chief Legal Officer asked Mr C to provide in writing by 3 June 2005 the facts upon which Mr C's allegation was based.

20. Mr C telephoned the Chief Legal Officer on 1 June 2005 and confirmed his e-mail. With regard to the allegation of corruption, he repeated that the reason why the 20 mph road traffic signs were not on the most obvious place to be seen by on-coming traffic was to protect the views from the lounge window of 9 X Road.

21. On 3 June 2005, Mr C sent a further e-mail to the Chief Legal Officer complaining about that officer's imposition of an unreasonable deadline of 3 June to provide details of corruption in the Council. He pointed out that the new signs were unnecessary and had not been switched on. He stated that Officer 1 had said to him that he chose the sites of the signs to protect the views from the lounge window of 9 X Road. He also stated that Officer 1's father and Neighbour 1 had been in the navy together and were friends until Officer 1's father died. Mr C alleged that the Chief Legal Officer, in imposing a two day deadline against him, had attempted to bully him in a way that most people would find intimidating.

22. This e-mail and other issues were passed to Officer 3. Officer 3 met with Mr C. At that meeting Mr C alleged that the 20 mph sign had not been located nearer the school because it would then have been sited outside the home of another council officer (Officer 4) who lives at 3 X Road.

23. Officer 3 responded in a letter of 23 September 2005 which dealt also with the hours of operation of the part-time zone. Officer 3 set out the hours when the signs were intended to be active and responded to the allegation of corruption. He

refuted the charge of corruption on grounds of lack of corroborative evidence. Officer 3's letter also dealt with Mr C's formal complaint against the Chief Legal Officer and provided an explanation of why the Chief Legal Officer had sought evidence from Mr C by 3 June 2005. He also asked that Mr C seek to move on from matters that had been dealt with and were now closed. Officer 3 advised that the Council considered the complaint about the location of the signs closed and provided contact details for the Ombudsman.

24. On 28 September 2005, Mr C submitted his complaint to the Ombudsman. He maintained that:

- (a) the location of two 20 mph road traffic signs had been chosen by an officer, Officer 1, to protect the views from his neighbour's lounge. The neighbour was a friend of Officer 1's late father;
- (b) because of the location it had proved necessary to erect a third sign;
- (c) the Council had not chosen a more restricted zone because the signs would then have to be outside the home of one of their officers at 3 X Road;
- (d) when he leaves his home, he does not know whether the 20 mph signs are in operation because he has not entered the zone;
- (e) signs around Moray had been left switched off despite the cost to the public purse;
- (f) he had received a letter from the Chief Legal Officer dated 31 May 2005 that was designed to intimidate him.

### **The Council's response to the Complaint**

25. The Council were asked in a letter of 8 November 2005 to comment on Mr C's complaint. The Council responded by letter of 12 December 2005 to the issues arising from these matters as follows:



*(a) Extent of the 20 mph zone and placing of regulatory signs*

The Council pointed out that in a letter of 28 October 2003 from the Scottish Executive detailing the results of a trial of part-time 20 mph speed limits, local authorities were requested to bear in mind various points including that the length of the part-time limit should be kept as short as possible in front of schools so that drivers would identify the lower limit with the school.

Paragraph 29 of ETLLD Circular 1/2004 on 20 mph speed limits referred to a study carried out by the Society of Chief Officers of Transportation in Scotland (SCOTS) which advised that driver compliance to the limit and a reduction in speed were greatly improved if the reason for the limit is clear and the length of any speed restrictions is kept to a minimum.

The positioning of speed limit signs is not related in any way to the location of school warning signs which are sited a specified distance from the hazard (school access in this case) dependent on vehicle speeds.

The Council rejected as untrue the contention that Officer 1 had striven to protect Neighbour 1's views since the sign had been positioned outside Neighbour 1's house at 9 X Road.

*(b) The unnecessary provision of a third sign*

The Council maintained that only if the speed limit had been located a considerable distance from the proposed location, that is completely clear of a bend in the road, could the use of a third sign have been avoided. Such a location would have been wholly inappropriate for the needs of children at the school.

*(c) Knowledge that a Council officer lived at 3 X Road*

The Council say there were three traffic engineers involved in the part-time 20 mph scheme. Officer 1 had no work related dealings with Officer 4. Officer 2 knew of Officer 4 but did not know where he lived. The Senior Traffic Engineer knew Officer 4 lived near the secondary school but not where. The Council said that 3 X Road would not have been considered at

any time as a possible zone boundary because of its proximity to a pedestrian access to the school which is directly outside the property;

*(d) The hours of operation of the 20 mph part time zone*

The Council said that there was advance publicity in the local press about the periods of the day when the signs would generally be operative. Residents would be aware of the signs flashing. For those who cannot view the sign posts, the times would become familiar. In Mr C's case the specific times of the reduced speed limit were supplied to him at his request before the speed limit came into operation.

*(e) Inoperative signs*

The Council stated that the three traffic signs adjacent to the complainant's house together with those at 15 other schools in Moray were all switched on at the start of the autumn term 2005. The sign installation work had been completed at other sites in the summer of 2005 but as a policy decision were all switched on together once all sites were completed.

*(f) The Chief Legal Officer's deadline*

The Council said that, owing to the seriousness of the allegations made by Mr C, it was deemed reasonable to receive the information at the earliest opportunity in order to assess the allegations against the member of staff and to consider any action which may have been appropriate.

26. Shortly after the Council's comments were sent, two trees were removed by the Council from the grassed area between the service road and X Road outside number 9 (Neighbour 1 and his wife's house). Mr C telephoned and e-mailed the Council on 19 December 2005 about the removal of those trees (which followed the earlier removal of trees from outside 7 X Road and 13 X Road). Officer 3 confirmed by letter of 24 December that the trees outside 9 X Road had been removed by Council workmen during routine maintenance because they represented an obstruction to the part-time 20 mph sign located in the verge. Officer 3 stated that there was no malicious intent and that the timing of the removal of the trees had been coincidental.

## **Conclusions**

27. While Mr C has pursued his representations about the location of the new signs, those representations were considered by the Council as an objection to the Road Traffic Regulation Order and considered in appropriate detail by the relevant committee (paragraph 17). I consider that the Council have fully explained why they settled on the particular location for the signs and I regard that explanation as reasonable. While it is unfortunate that the Chief Executive did not respond within an acceptable time scale to Mr C's formal complaint he has apologised directly to Mr C for his omission.

28. In sum I do not consider that there is evidence that Mr C has suffered injustice or hardship as a result of administrative fault or service failure by the Council. The Council have fully explained the constraints associated with the placing of the signs, which are now installed and are operational. I do not uphold this complaint.

28 March 2006

**Explanation of abbreviations used**

Mr C	The complainant
ETLLD	Scottish Executive Enterprise, Transport and Lifelong Learning Department
Neighbour 1	The complainant's neighbour
Officer 1	The roads officer who visited X Road on 13 July 2004
Officer 2	The senior officer the complainant complained to by telephone
Officer 3	The Council's Corporate Complaints Officer who responded to the complainant's letter of 3 December 2004
Officer 4	The officer whose home the complainant alleged the sign would have been sited outside if located nearer the school
the Council	The Moray Council