

## Scottish Parliament Region: Highlands and Islands

### Case 200503276: The Moray Council

#### Summary of Investigation

##### **Category**

Local government: Complaint handling

##### **Overview**

The complainant (Mrs C), and two others, raised concerns about the way in which their claims for damage to their cars in a school car park during a storm were handled by The Moray Council (the Council).

##### **Specific complaint and conclusion**

The complaint which has been investigated is that the Council did not handle Mrs C's complaint about her car damage appropriately (*not upheld*).

##### **Redress and recommendations**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. Mrs C, a member of staff at a school within The Moray Council (the Council) area, used the school car park to park her car. In November 2005, a storm with high winds caused the roofs of hatted classrooms near to the car park to peel off. This resulted in damage to a number of cars, including Mrs C's. Mrs C and two other staff members complained to the Rector about the damage caused and the cost of repairs. After receiving advice from the Council, the Rector advised the staff concerned that the Council were refusing to cover the costs of the repairs and explained how they could pursue the claim. On 13 January 2006, Mrs C wrote to the Chief Executive of the Council complaining that the Council were negligent and, therefore, should accept responsibility for the damage and meet the full costs of repairs. On 14 February 2006, the Chief Executive responded to the effect that it would be necessary for Mrs C to progress her claim through her own insurance company. He also stated that after settlement with the insurance companies, the Council would consider refunding Mrs C's uninsured loss (which included any claim excess and loss of no claims bonus) as a gesture of goodwill. Mrs C was unsatisfied with this response and complained to the Ombudsman on 24 February 2006.

2. The complaint from Mrs C which I have investigated is that the Council did not handle Mrs C's complaint about her car damage appropriately.

### **Investigation**

3. The investigation of this complaint involved obtaining and reading all the relevant documentation. Mrs C supplied documentary evidence with her initial complaint. The Council supplied commentary and documentary evidence in response to my detailed enquiries. I compared the evidence and accounts provided by both parties and used this to examine the manner in which the Council had dealt with the complaint.

4. It was not the role of the Ombudsman's office to determine the merits, or otherwise, of Mrs C's claim. Rather, it was whether the Council's consideration of Mrs C's claim was assessed in line with the Council's normal processes and procedures.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

**Complaint: The Council did not handle Mrs C's complaint about her car damage appropriately**

6. Mrs C complained to the Ombudsman that she was unhappy with the way in which the Council handled her complaint about her car damage, in particular, because they refused to pay for the cost of repairs to her car.

7. Mrs C claimed that the huts were in a poor state of repair and, therefore, the Council were negligent. In her letter to the Chief Executive, Mrs C stated that:

'these huts were in a poor state of repair considering the age of them and the lack of care and maintenance over the years.'

The poor state of repair of the roofing was also highlighted by the Rector in his email to the Council on 8 December 2005 where the huts were described as being 'in a dangerous condition' and in his memorandum of 15 December 2005 as in 'a bad state'. The interior of the buildings was upgraded during the summer of 2005 and, therefore, Mrs C argued that, in the course of considering Mrs C's claim, the Council were aware of the condition of the roof. As such, Mrs C claimed that the Council had been negligent and should, therefore, be liable for the costs she incurred to repair her car.

8. Although the Council did not confirm or deny to Mrs C whether they felt they were negligent, the Chief Executive directed Mrs C to pursue the matter through her own insurers, as is the normal practice in such cases. I shall deal with this point in more detail at paragraph 10. In response to my enquiries about liability, the Council showed that they provided documentary evidence to their insurers on the state of the building and, in particular, the roofing. Their insurers concluded that the Council had not been negligent and that the damage had been caused by storm damage, which the Council was not liable for.

9. Mrs C also raised concerns that the Council had no insurance for storm damage. The Council have confirmed, in response to my enquiries, that they do not have insurance to cover storm damage. However, where there may be

negligence on their part, they do have public liability insurance. The Council's response to the Rector's e-mail regarding Mrs C's complaint stated that:

'if we knew the roof was in a state of disrepair before the storm and it was reasonably foreseeable that inclement weather would have caused the roof to break up then we could be negligent.'

As Mrs C argued that the Council had been negligent, her claim was dealt with under the Council's public liability insurance.

10. The Chief Executive, in his response to Mrs C, explained that it would be necessary for Mrs C to claim through her own insurance, in the same way as any accident involving a car. The Council, in response to my enquiries about this point, said that this was because claims such as this would be covered by individual vehicle insurance, which all car users must have, and the Council's public liability insurance. The Council also stated that:

'The procedure suggested was for the claim to be dealt with through the insurance companies, liability would be determined on the proof of negligence in terms of determining where the claim would lie. This procedure is fairly standard across the UK and is a matter which requires a certain amount of expertise, which is available through our insurers.'

11. It is notable that the Chief Executive also said, in his response to Mrs C, that the Council would consider refunding any uninsured loss incurred by Mrs C. The Council had previously explained that this offer was a gesture of goodwill. In response to my enquiries on uninsured loss, the Council defined this as 'any verifiable cost that left the individual financially less well off than they were prior to the incident'. This included claim excess and loss of no claims bonus.

12. Mrs C also raised concerns that she and other members of staff who park in the school car park were not informed that they were parked at their own risk. In response to my enquiries about policies for staff working on Council premises using the site car park, the Council responded that they do not have any formal policy or any signs about parking at their own risk. This is because, should accidents happen, these will be resolved on the basis of liability between individual insurers or the Council's public liability insurance (as was the case in Mrs C's claim).

13. Mrs C chose not to make a claim on her own insurance.

*Conclusion*

14. It is not the role of the Ombudsman's office to decide the merits, or otherwise, of Mrs C's claim. However, this office can consider whether the Council processed Mrs C's complaint appropriately.

15. Mrs C raised a number of concerns with the Council regarding damage to her car while parked in the school car park. The Council responded to Mrs C's concerns about negligence and compensation by explaining the process which Mrs C should use to make a claim (i.e. she should progress this through her own insurer). The Council have explained to me why they use this process. The Council have to ensure that claims against their public liability insurance are dealt with appropriately and they have adopted practices to reflect this. This is reasonable and I am satisfied that the Council dealt with Mrs C's claim in line with their normal practices and procedures in such cases.

16. Although the Council did not specifically reply to Mrs C's concerns directly about cars being parked at their own risk, I am satisfied by their response to my enquiries that any accident would be dealt with under their public liability insurance as indicating that there are procedures in place to deal with such cases. In fact, Mrs C's case is evidence of this.

17. I am also satisfied that, despite the fact that the Council maintain they were not negligent, they took steps to try to resolve the situation by making an offer to ensure that Mrs C was not in a financially worse off position as a result of the storm damage.

18. In view of the evidence, therefore, I do not uphold this complaint.

19 December 2007

**Explanation of abbreviations used**

Mrs C

The complainant

The Council

The Moray Council