

SPSO decision report

Case: 201302051, Commissioner for Ethical Standards in Public Life in Scotland
Sector: Scottish Government and devolved administration
Subject: complaints handling
Outcome: some upheld, recommendations

Summary

Organisation C complained to the Commissioner about the actions of a councillor who chaired a public design competition initiated by the council. Two members of the organisation were council employees at the time of the competition, and the organisation said that there had been attempts to coerce them to inappropriately influence the competition process. The organisation also alleged the councillor had acted inappropriately in relation to the competition. The Commissioner investigated and made a finding that there had been no breach of the code of conduct for councillors (the code).

Organisation C complained to us that the decision was wrong because the Commissioner's view that there was a gap in the evidence for the first allegation and that the second allegation was out of jurisdiction did not justify the conclusions made. They were also concerned about how the evidence of whistleblowers was treated.

We did not uphold the first complaint, as the decisions outlined in the Commissioner's letter were sufficient to justify his view that there had been no breach of the code. However, we were concerned that the note of the decision contained significant additional comments that seemed to make judgements on the actions of the councillor, and on the actions of the council itself. It was not clear what standards the Commissioner was using to judge this, as the actions of the council were clearly not covered by the code and, in the case of the actions of the councillor, the Commissioner had said they were not. We explained that this was confusing and made a recommendation on this point.

On the complaint about the way whistleblowing evidence had been handled, we found no evidence that the Commissioner had made errors in his assessment of what weight to put on the evidence or fact-finding. However, we were concerned that staff were named in a public report. This appeared to have been out of line with the Commissioner's standard practice and we were not persuaded by the explanations he gave us about this. The naming of witnesses in such an unusual way led to a perception that the witnesses had not been dealt with appropriately and, on this basis, we upheld this complaint and made a further recommendation.

Recommendations

We recommended that the Commissioner:

- reflects on the note on the Commissioner's decision, and the difficulties that the confusion and lack of clarity about the status of statements within it has caused; and
- develops a policy for the naming of individuals in future cases, to ensure consistency, which should take particular account of the position of individuals being asked to give evidence about their employers.