

SPSO decision report

Case: 201507681, Scottish Government
Sector: Scottish Government and devolved administration
Subject: policy/administration
Decision: upheld, recommendations

Summary

Ms C complained on behalf of Mrs A, who is the director of a company. Ms C complained about the way the Scottish Government had handled a complaint about wages from a former employee of the company. Whilst working for the company, the former employee had contacted the Government in relation to the underpayment of agricultural wages. As part of their statutory investigation function in relation to agricultural wages, the Government inspected the employee's payslips and calculated that there had been underpayments of wages relative to the legislation that fixed the minimum rates of pay. The company disputed this finding and corresponded with the Government over the following months. In concluding their consideration of the case, the Government maintained that the former employee had been underpaid, but decided it was not in the public interest to take enforcement action in this case.

Ms C identified arithmetical errors in some of the calculations, and noted that the method the Government had used to calculate the underpayment of overtime pay in this case was not consistent with the method they had used in a previous case. Ms C complained that the Government had not explained the inconsistency in the handling of the two cases, or why the method they now adopted was correct. In response to Ms C's complaint, the Government apologised for the inconsistency and also identified a number of service improvements to ensure that calculations were correct in the future. In response to our enquiries, the Government provided us with further comments on the inconsistency and an explanation in relation to the legislation that they had taken into account when reaching their decision. We were satisfied with the explanation provided to us. However, we were critical that the Government did not provide this explanation to the company in the course of their handling of the former employee's case. We upheld this aspect of the complaint.

Ms C also complained that the Government had not provided an explanation in relation to the method they had used to calculate the holiday pay in the former employee's case. We did not find evidence that the Government had provided a reasonable explanation to the company. We considered that they should have explained what legislation they had taken into account in reaching their method of calculation. We upheld this aspect of the complaint.

In the course of our investigation, we found a number of instances where the Government did not follow their complaints procedure. In view of this, we made a recommendation for learning and improvement.

Recommendations

What we asked the organisation to do in this case:

- Apologise to Ms C and Mrs A for failing to provide reasonable explanations in relation to their calculations. This apology should comply with the SPSO guidelines on making an apology, available at www.spsso.org.uk/leaflets-and-guidance.
- Provide Ms C with an explanation of the legislation that was taken into account when the decision was made that, for the purposes of calculating overtime, hours taken as holiday count towards total hours

worked.

What we said should change to put things right in future:

- Officers should provide full and informative explanations of their decisions, including, as appropriate, details of the legislation under which they have calculated underpayments.

In relation to complaints handling, we recommended:

- Complaints should be recognised effectively. They should be logged, acknowledged and responded to appropriately, and in accordance with the Government's complaints handling procedure.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.