

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200402324: Perth and Kinross Council

#### Introduction

1. On 24 August 2005 the Ombudsman received a complaint from Mr C against Perth and Kinross Council (the Council) concerning traffic management changes which were introduced in Coupar Angus about three years ago. He was aggrieved at the way in which the Council handled his representations.

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

- (a) failure on behalf of the Director of Transport and Planning to reply to his letter of 2 August 2004 in a proper and timely manner;
- (b) failure to reply to the issues raised in his letter of 2 August 2004;
- (c) failure to take action on the creation of two unauthorised accesses from a private dwelling to a public road;
- (d) provision of false and misleading information to a councillor;
- (e) provision of false and misleading information about a public official;
- (f) failure of the Chief Executive to reply to his letter of 8 January 2005 in a proper and timely manner and failure to take action to correct false and misleading information which had been attributed to her;
- (g) the Chief Executive's failure to take steps to prevent a recurrence of (f) above;
- (h) failure to have procedures in place to deal with complaints against the Chief Executive; and
- (i) failure to offer an apology to Mr C for the situation which occurred.

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

- (a) not upheld, see paragraphs 5 to 8;
- (b) not upheld, see paragraphs 9 to 10;
- (c) not upheld , see paragraphs 11 to 12;
- (d) not upheld, see paragraph 13 to 16;
- (e) no finding, paragraph 17;
- (f) not upheld, paragraphs 18 to 20;
- (g) not upheld, paragraphs 21 to 22;
- (h) not upheld, paragraph 23;
- (i) not upheld, paragraph 24.

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

4. The investigation of this complaint involved obtaining and reading all the relevant documentation including the correspondence between Mr C and the Council. I have also had sight of the Council's Policy on Unacceptable Actions by Complainants dated August 2005. I made a detailed written enquiry of the Council on 22 November 2005 and received the Chief Executive's response on 22 December 2005. I have set out my findings and conclusions for each of the nine heads of complaint and, where appropriate, recommendations are set out at the end of each section. Although I have not included every detail investigated in this report, 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) Failure on behalf of the Director of Transport and Planning to reply to his letter of 2 August 2004 in a proper and timely manner**

5. Mr C said that about three years ago the Council introduced a number of traffic management changes in Coupar Angus which, he said, they undertook to monitor and change if necessary. He said that no apparent monitoring took place so he wrote to the Director of Transport and Planning on 2 August 2004 expressing concern and alleging that problems had been overlooked. As he did not receive a reply, he raised this matter again when corresponding on another matter on 18 December 2004. The Area Roads Engineer sent a response to this letter on 17 January 2005 and in the final paragraph said, 'I trust that the matters raised in your letter of 2 August have been covered by the reply from our Convener, ..., in his letter to you of 22 December 2004'. Mr C did not find this acceptable and wrote saying so on 20 January 2005. He considered the Director of Transport should provide him with a reply as to do so would be courteous and proper.

6. The Head of Roads replied on 9 February 2005. He expressed his view that the Convener's letter of 22 December 2004 covered the issues raised but, for the record, he offered some further comment. Mr C considered this reply insufficiently detailed and remained aggrieved that the Director of Transportation and Planning had failed to respond to him. In the circumstances, when he made a specified complaint to the Council dated 19 March 2005, this formed one of the heads of complaint.

7. In her reply to me of 21 December 2005, the Chief Executive pointed out that on conclusion of their investigations into the complaint, the Head of Legal Services wrote to Mr C on 8 August 2005 agreeing that there had been an unacceptable delay in replying. He made an unreserved apology. She said this apology had been issued with the explicit approval of the Director of Planning and Transportation.

8. Mr C wrote to the Director of Planning and Transportation on 2 August 2004. He did not receive a reply from the department concerned until 17 January 2005 when reference was made to correspondence from the Convener. This was unsatisfactory. Mr C had properly addressed his letter of 2 August 2004 and, therefore, could expect a timely reply from an official in the appropriate department. It is not always possible for departmental directors to deal with all items of

correspondence addressed to them but it is a simple task to delegate responses, making clear that the reply is being sent with the authority of the Director. This did not happen and there was a delay. Accordingly, this was maladministration. However, I consider that the unreserved apology proffered on 8 August 2005, prior to involvement by this office, offers a satisfactory remedy to this aspect of the matter. In the circumstances, I do not uphold the complaint.

**(b) Failure to reply to the issues raised in his letter of 2 August 2004**

9. Mr C's letter of 2 August 2004 addressed to the Director of Planning and Transportation raised a number of issues. The Convenor in his letter of 22 December 2004 replied to some of them and a letter from the Head of Roads dated 9 February 2005 went into greater detail. Mr C was dissatisfied with the depth of the response he received but, in her reply to me of 21 December 2005, the Chief Executive said that the replies were appropriate and that her Council had acted correctly with regard to the specific decisions made, in what were relatively minor roads issues. She said the traffic measures were widely consulted on and appropriately monitored and had the support of the majority of the local community and Tayside Police. She acknowledged Mr C's previous experience in road traffic matters but said that, while his views would always be considered, they would not be given more weight than those from others equally well qualified to comment.

10. I have seen Mr C's letters and those sent to him in reply and, while the correspondence from the Council may not go into the detail Mr C would have preferred, he was given information to address his queries. He may not have agreed with the information given to him or the views expressed by the Council's professional officers, it may not have been sent to him by the person to whom his enquiries were addressed, but these are different matters. Essentially, Mr C appears to be disputing the merits of decisions which are within the Council's discretion to make. There is no evidence to suggest that there was maladministration in the way these decisions were reached. I do not uphold this aspect of the complaint.

**(c) Failure to take action on the creation of two unauthorised accesses from a private dwelling to a public road**

11. In his letter of 2 August 2004 Mr C raised the question of the creation of a parking place in what was the front garden of a cottage. He said that, as a

consequence, two unauthorised accesses were created. However, in her reply to me of 21 December 2005, the Chief Executive took the view that there was no requirement for the accesses to have planning permission as they did not require any alteration to the kerb heights. She said that the kerbs were already set at a low level which was maintained when the alterations described in this aspect of the complaint were made and, therefore, no further action was required.

12. Undoubtedly, it would have been preferable for Mr C to have received this information when he first made his query on the matter. He did not but I am hesitant to call this omission maladministration or service failure, particularly as I do not consider that he suffered injustice or hardship as a consequence. Nevertheless, I would ask the Council to be more circumspect when framing responses to ensure that all queries are addressed.

**(d) Provision of false and misleading information to a councillor**

13. In his letter of 22 December 2004 addressed to Mr C, the Convener incorrectly said that the Chief Executive had already written to him saying that his letters would no longer receive replies. Mr C, therefore, wrote to the Chief Executive on 8 January 2005 denying receipt of such a decision and on 4 February 2005 the Council's Freedom of Information Officer confirmed that he had been unable to trace such a piece of correspondence.

14. In reply to my enquiry, the Chief Executive's letter of 21 December 2005 stated that she was unclear how the misunderstanding which caused the Convenor to write this had come about. She said that at the time there was no corporate policy in place for managing correspondence that was felt to be unacceptably demanding. However, she said the matter was under active consideration. She believed that the officer in the Planning and Transportation Service who had been dealing with Mr C's complaint had, following discussion with the Corporate Complaints Officer, wrongly thought the new procedure had been agreed and implemented. The situation was also compounded by the fact that in his capacity as a Community Councillor, Mr C had raised the matter of the traffic management alterations which appeared on the Council's data base as a matter under investigation by the Ombudsman. The Council do not enter into correspondence about ongoing investigations but Mr C was not told this. This omission became apparent when Mr C raised his complaint with the authority and on 8 August 2005

the Head of Legal Services apologised to him.

15. The Chief Executive said that Mr C's correspondence was placing disproportionate demands on the service and the Convenor's letter reflected this. However, the letter was written on the Convenor's own initiative and without her knowledge.

16. Mr C was given information which was untrue and there is no doubt that the matter caused him concern and upset. However, the Council have already apologised and, while this was maladministration, they did so prior to Mr C submitting his complaint to this office. Furthermore, the Council now have a policy in place which allows for the management of unacceptably demanding levels of correspondence about a complaint. This requires that the Council communicate their decision clearly to the complainant and allows for the review of that decision if circumstances change. In the circumstances, the Ombudsman does not make any further recommendations on this aspect of the complaint.

**(e) Provision of false and misleading information about a public official**

17. As described in paragraphs 13 to 16 above, as a consequence of some confusion and during a period when new policy was being discussed, the Convenor and an officer in the Planning and Transportation Service came to an incorrect conclusion about correspondence with Mr C. It is not at clear how such a misunderstanding came about but it was probably a combination of circumstances. Mr C was treated incorrectly but I cannot say definitively whether the misinformation came from the officer or the Convenor. Complaints against elected officials do not come within the Ombudsman's jurisdiction and, therefore, I am unable to make a finding with regard to this aspect of the complaint. Nevertheless, I am pleased to note that Mr C has since received an apology and, therefore, no further action is required.

**(f) Failure of the Chief Executive to reply to his letter of 8 January 2005 in a proper and timely manner and failure to take action to correct false and misleading information which had been attributed to her**

18. Mr C complained that the Chief Executive did not reply to his letter of 8 January 2005 and I have established that, as this was principally considered to be a request under the Freedom of Information Act, it was passed immediately to

the Freedom of Information (FOI) team and dealt with accordingly. The Chief Executive pointed out that she never sees correspondence in relation to such requests and that, in order to protect anonymity, the FOI team deal with all acknowledgements and responses.

19. I am aware of the content of the letter of 8 January 2005 and can see how this situation occurred. However, Mr C had suggested that a meeting may resolve matters and I take the view that such an offer should have received a direct reply. While I hesitate to call this maladministration, I would ask that the FOI team exert more care in differentiating FOI requests from other requests. I do not uphold Mr C's complaint on this score.

20. Mr C also said that the Chief Executive did not take steps to correct the information which he was given although it is confirmed that the Convenor's letter was sent to Mr C without her knowledge. Furthermore, she did not see his letter of 8 January 2005 which appeared principally to concern a FOI request. The Head of Legal Services' letter to Mr C of 8 August 2005 went some way to offering an explanation and also gave an update on the new corporate complaints procedure about to be implemented. It is true that the Chief Executive did not write to Mr C withdrawing the incorrect information but it is also true that the Council apologised for it. In the circumstances, I do not uphold this aspect of the complaint.

**(g) The Chief Executive's failure to take steps to prevent a recurrence of (f) above**

21. I have explained the reasons why the Chief Executive did not reply directly to Mr C in paragraphs 8 to 20 above. I am satisfied with the Council's provision for response times to FOI requests and that Mr C's request were dealt with properly. In her letter to me of 21 December 2005 the Chief Executive said that the Council does not yet have a single universal standard for response times to all correspondence but standards exist for dealing with FOI requests and complaints. A Council-wide corporate data base has also been introduced (agreed on 31 August 2005) and this sets demanding response times and ensures that complaints are more easily tracked.

22. Taking the foregoing into account I do not uphold this aspect of Mr C's complaint.

**(h) Failure to have procedures in place to deal with complaints against the Chief Executive**

23. At the time of his complaint (24 August 2005) Mr C was aggrieved that the Council did not have specific procedures in place to deal with complaints against the Chief Executive. At that time it was left to the Monitoring Officer to determine how such a complaint should be handled. The Chief Executive confirmed to me in her letter of 21 December 2005 that the new corporate complaints procedure is quite specific about the method of handling complaints made against the Chief Executive. This reiterates the role of the Monitoring Officer as the appropriate person to deal with such matters and allows the use of an external investigator if necessary. I understand that copies of this new procedure were sent to Mr C for information and comment on 22 August 2005. This being the case I do not uphold this aspect of the complaint.

**(i) Failure to offer an apology to Mr C for the situation which occurred**

24. My report above makes mention in paragraphs 7, 14 and 16 of those occasions when the Council apologised to Mr C. I also understand that the same apologies were expressed to him when he met with the Monitoring Officer and the Governance Scrutiny Officer on 17 August 2005. In the circumstances, I do not uphold this aspect of the complaint.

**Conclusion**

25. While there were aspects of maladministration in the way the Council dealt with Mr C's concerns, these had been acknowledged and addressed prior to him coming to the Ombudsman. Apologies had been made and action had been taken to improve procedures. In these circumstances, I do not uphold the complaint.

25 April 2006



**Explanation of abbreviations used**

Mr C

The complainant

The Council

Perth and Kinross Council