

Scottish Parliament Region: South of Scotland

Case 200501353: Dumfries and Galloway Council

Introduction

1. On 17 August 2005 the Ombudsman received a complaint that Dumfries and Galloway Council (the Council) had made false and inaccurate statements in an email about a man (referred to in this report as Mr C) which he felt were malicious and defamatory and which caused him hurt and stress and were a slur on his good name.

2. The complaint from Mr C which I have investigated concerned the statements made in an email and that jokes had been written about him.

3. Following the investigation, I reached a preliminary conclusion that I should uphold Mr C's complaint. In the light of that conclusion I produced a draft report, in which I recommended that the Council act to prevent further complaints. Both Mr C and the Council were given the opportunity to comment on the draft report. Mr C responded to the report but produced no further evidence.

4. The Council produced evidence that, before Mr C brought his complaint to the Ombudsman, they had acted to remedy the problem and tried to ensure that a similar event would not recur.

5. I have upheld Mr C's complaint to the extent that the Council did not apologise to him or fully inform him of all action taken to prevent this happening again.

Investigation and findings of fact

6. Mr C asked the Council for information in terms of the Freedom of Information (Scotland) Act 2002. On 10 January 2005, in dealing with this request, an officer of the Council sent an email to another officer. He said he would be happy to discuss the request but his initial comments were:

'This is routine [C] – so can we claim it is business as usual? DPA [Data Protection Act] so arguably repeat request. Arguably vexatious.'

He continued:

'He [Mr C] is not entitled to the title Honourable, nor is he a Colonel. Should we seek proof of identity? (joke).'

(Note: Mr C said that in some of his communications with the Council he had signed himself Colonel the Honourable ...)

7. Mr C later recovered this email as part of a subject data request and complained to the Council requesting an apology.

8. The Service Manager Committee and Member Services responded to Mr C's complaint by letter of 8 August 2005. She said that the Group Manager Policy and Improvement had met with the officer who wrote the email, who said that in earlier correspondence from Mr C there had never been any reference to a position or title and that Mr C had closed his correspondence by simply quoting his name followed by his address. He, the Group Manager, therefore concluded that Mr C was not due an apology.

9. The style and tenor of the comments made by the officer had been discussed with him but, as the issue related to the performance of an individual, it was not appropriate for the content of that to be communicated to third parties. The Group Manager Policy and Improvement said he was not prepared to enter into further correspondence on the subject and if Mr C was not satisfied he could refer the matter to the Scottish Public Services Ombudsman.

10. In response to Mr C's complaint, I asked the Council for a copy of the email and the background correspondence relating to Mr C's complaint. In addition to copies of the email and Mr C's complaint and the response, I also received an internal memo from the Group Manager Policy and Improvement in similar terms to the response sent to Mr C.

11. I asked Mr C for more information about why he considered the email to be malicious and defamatory. Mr C said that the Council had no information to suggest that he was not an Honourable or a Colonel. He considered that he was

being made out to be a liar. He said he was a council tax payer and he did not think Council officials should be making jokes about him. He said that he had used these titles in previous correspondence with the Council.

Conclusions and recommendations

12. The comments made by the Council's official in the email were unnecessary. I agree with Mr C that the Council's remit is not to speculate or joke about whether or not he may be entitled to courtesy titles.

13. In response to the draft Report, the Council provided evidence that there was an email policy in existence at the time of the email which led to the complaint. One of the email Guidelines says:

'Be courteous and polite'

An email rule contains the following:

'Never send or forward emails containing libelous, defamatory, offensive, racist or obscene remarks'

Users are advised:

'not to criticize third parties or to make personal remarks about people'

14. All users of the Council's email system were notified of the policy in June 2004. An article appeared in the Staff News in the same month. Additionally, on 2 August 2005 – six days before the Council responded to Mr C's complaint - a further email was sent which, among other things, reminded them of the existence of the policy.

15. As I have noted in paragraph 9, the Council told Mr C that the style and tenor of the comments made by the officer had been discussed with him. It was appropriate for the Council to give Mr C that information. However, I agree with the Council that, as the issue related to the performance of an individual, it was not appropriate for the content of the discussion to be communicated to third parties. As well as taking action in relation to that individual, the Council issued a general

reminder to staff about the existence of the policy on the use of emails and staff were asked to read it carefully. That was appropriate action to take. It would also have been appropriate to tell Mr C that that action had been taken and to apologise to him.

16. I note that Mr C said that the email caused him hurt and stress. However, I am not satisfied that Mr C suffered any significant hardship or injustice which would cause the Ombudsman to recommend any further action by the Council.

25 April 2006

Explanation of abbreviations used

Mr C The complainant

The Council Dumfries and Galloway Council