

**Case 200402112: Falkirk Council**

**Summary of Investigation**

**Category**

Local government: Planning, complaints handling

**Overview**

The complaint concerned the way in which the Council handled a complaint concerning the actions of an elected official in relation to a planning application which the complainant had submitted to the Council.

**Specific complaint and conclusion**

Failure to deal with the complaint (*upheld*)

**Redress and recommendations**

The Ombudsman recommends that Falkirk Council (the Council) should:

- (i) make to C Limited a redress payment of £500, in view of the time and trouble they have been put to in pursuing the complaint;
- (ii) reimburse C Limited for any legal fees, reasonably incurred by them, in pursuing the complaint through the Solicitors;
- (iii) on account of the Solicitors not receiving Officer 2's letter of apology of 30 October 2005, the Council should issue a full formal apology to the Solicitors and C Limited for the manner in which they dealt with the complaint;
- (iv) issue to the Solicitors, as a matter of urgency, a full and detailed response to their letter of 14 December 2004; and
- (v) report to the Ombudsman the outcome of the review of the Council's internal procedures, referred to in the Chief Executive's letter to this office dated 26 October 2005.

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**Introduction**

1. In February 2005, the Ombudsman received a complaint from a firm of solicitors (the Solicitors) on behalf of their clients, C Limited, about Falkirk Council

(the Council).

2. In August 2004 a complaint on behalf of C Limited had been submitted to the Council. The complaint concerned the actions of an elected official in relation to a planning application which C Limited had submitted to the Council in February 2004. The complaint to this office concerned the Council's handling of that complaint.

3. The complaint which I have investigated concerned the manner in which the Council dealt with C Limited's complaint.

### **Investigation**

4. The investigation of this complaint involved obtaining and reading all of the information and documents submitted to this office by the Solicitors and the Council. Enquires were made of the Solicitors and of the Council.

5. I have set out my findings of fact and conclusions. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. The Council, the Solicitors and their clients, C Limited, have had an opportunity to comment on this report.

### **The manner in which the Council dealt with C Limited's complaint**

6. On 18 August 2004, a firm of solicitors who previously acted for C Limited complained on their behalf to the Council's former Director of Law and Administration (Officer 1). The complaint concerned the alleged conduct of an elected official in relation to a planning application which C Limited had submitted to the Council in February 2004.

7. In a letter dated 5 October 2004, C Limited's former solicitors wrote to the Council stating they had received no substantive reply to their letter of 18 August 2004 and correcting an erroneous point of fact contained in the original complaint. As no response had been received from the Council, a further reminder letter was sent by the former solicitors on 25 October 2004.

8. On 12 November 2004, the Council's Head of Legal Services wrote to the former solicitors rejecting the complaint. In terms of the Council's complaints

procedure, applicable at the time, C Limited could ask for their complaint to be reviewed by the Council's Chief Executive, if they were dissatisfied with the Head of Legal Services' response.

9. On 14 December 2004, the Solicitors, who were now acting for C Limited, wrote to the Chief Executive (Officer 2). In that letter, they set out their reasons why they were dissatisfied with the Head of Legal Services' response to the complaint and requested that Officer 2 carry out a further investigation of the complaint. Despite sending reminder letters to Officer 2 on 21 January and 7 February 2005, the Solicitors received no response to their complaint to Officer 2. The Solicitors then complained to this office on 21 February 2005.

10. I first made a written enquiry of Officer 2 on 15 March 2005, setting out the complaint against the Council and asking for a response. In particular, Officer 2 was asked to provide an explanation for the delay in responding to C Limited's complaint; when she expected to issue a response to the Solicitors' letter of 14 December 2004; and to comment on the time taken to process the complaint through the Council's complaints process.

11. The Council sent an acknowledgement on 17 March 2005. On 23 March 2005, the Council's Acting Head of Law and Administration (Officer 3) replied, stating that the Council's comments on the complaint would be sent within 28 days and 'in the meantime [she] had requested the appropriate officials try to resolve the complaint'.

12. I wrote again on 31 March 2005, 9 May 2005, 14 and 29 June 2005, seeking a response to my written enquiry of 15 March 2005. A written response was eventually received from Officer 3 on 30 June 2005.

13. After considering the response, I wrote to Officer 3 on 2 August 2005, stating that the Council had neither addressed the matters raised in my written enquiry of 15 March 2005 nor provided an explanation for the delay in responding to the enquiry.

14. Officer 3 replied on 11 August 2005. In her response she stated that the failure to reply to the Solicitors had been 'as a result of an oversight' for which she

apologised and she would 'ensure' that a formal response was now issued to the Solicitors.

15. The Council failed to issue a response to the Solicitors. Therefore, I wrote to Officer 2 on 6 October 2005, expressing concern about undue delay by the Council in dealing with the complaint. On 26 October 2005, a response was received from Officer 2. In her reply, she accepted that the complaint had 'not been dealt with within an acceptable timescale and that the Council [had] fallen far short of the standards of service it would wish to deliver.' She, therefore, offered her 'unreserved apologies' to the Solicitors and C Limited for any inconvenience caused to them by the Council and stated she would be writing to them under separate cover to advise them of this.

16. In the letter, she further stated that the original delay in responding to the Solicitors had 'now been compounded by the Council's subsequent delay in providing [this] office with the information' it had requested, for which she offered her 'most sincere apologies for this omission'. She explained that pressure on staffing and resources and a request concerning a related complaint to another body by C Limited had been partially responsible for the way the Council had dealt with the complaint. Having accepted that there were 'deficiencies' in the way the complaint was dealt with, she was 'asking Chief Officers to review the internal procedure in place within their services to ensure that they are robust'.

17. Officer 2 said that she sent a letter of apology to the Solicitors on 30 October 2005, a copy of which was supplied to this office. In this letter, she offered her 'unreserved apologies' to the Solicitors and C Limited for the 'unacceptable delay' in responding to the complaint. She concluded that she 'would fully accept that there were deficiencies in the way the Council handled [the] complaint...'

18. Following the intervention of the Ombudsman in November 2005, Officer 2 wrote to her on 13 December 2005. In her letter, Officer 2 stated '...when we met in November you expressed concerns about the Council's handling of the complaint made by the [Solicitors] on behalf of [C Limited]. I indicated that I shared your concerns about the situation which had arisen and that I had written to [the Solicitors] to apologise to them and their clients. I enclose a copy of this letter for your files.'

19. However, the Solicitors have informed me that neither they nor C Limited have received a letter of apology from the Council nor a response to their letter of 14 December 2004 to Officer 2. Further, the Council have still not addressed the matters I raised with them in my written enquiry of 15 March 2005 and subsequent correspondence.

### *Conclusions*

20. I wrote to the Solicitors on 14 November 2005 and again on 19 January 2006, to ascertain if the Council had issued a letter of apology to them and their clients. The Solicitors wrote to me on 15 November 2005 and 24 January 2006, informing me that no letter had been received from the Council. The Council, in response to this, said that their letter of apology of 30 October 2005 was sent by standard mail service and so they have no formal record of the letter being sent other than their standard file copy. If the Solicitors had received this letter, I would have expected them to have written to the Council acknowledging receipt. There is no evidence of the Council receiving such an acknowledgement. Accordingly, on the balance of probability, I accept that the Solicitors did not receive this letter.

21. Notwithstanding Officer 2's assertion that she issued a letter of apology to the Solicitors on 30 October 2005, she accepted that there had been 'unacceptable delay' by the Council in responding to the complaint and that the Council had 'fallen short of the standards of service it would wish to provide'. Therefore, in my view, there is very clear evidence of maladministration on the part of the Council in the way they dealt with the complaint. However, more significantly, despite assurances from the Council, the original complaint by the Solicitors to the Council has still not been addressed by them. This requires to be remedied.

22. The Council's lack of action has caused inconvenience and frustration to both the Solicitors and C Limited. Therefore, I uphold the complaint.

### *Recommendations*

23. The Ombudsman recommends that the Council should:

- (i) make to C Limited a redress payment of £500 in view of the time and trouble they have been put to in pursuing the complaint;

- (ii) reimburse C Limited for any legal fees, reasonably incurred by them, in pursuing the complaint through the Solicitors;
- (iii) on account of the Solicitors not receiving Officer 2's letter of apology of 30 October 2005, the Council should issue a full formal apology to the Solicitors and C Limited for the manner in which they dealt with the complaint;
- (iv) issue to the Solicitors, as a matter of urgency, a full and detailed response to their letter of 14 December 2004; and
- (v) report to the Ombudsman the outcome of the review of the Council's internal procedures, referred to in the Chief Executive's letter to this office dated 26 October 2005.

## **Summary**

### **Specific complaint and conclusion**

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### **Redress and recommendations**

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25 July 2006

**Explanation of abbreviations used**

C Limited	The complainants
The Council	Falkirk Council
The Solicitors	The firm of solicitors acting on behalf of C Limited
Officer 1	The Council's former Director of Law and Administration
Officer 2	The Council's Chief Executive
Officer 3	The Council's Acting Head of Law and Administration