

## Scottish Parliament Region: North East Scotland

### Case 200501102: Aberdeen City Council

#### Summary of Investigation

##### **Category**

Local government: Roads and Transportation: Council's approval of bus route and subsidy

##### **Overview**

The complaint was made on behalf of an Aberdeen resident (Mrs C) by her Member of the Scottish Parliament (the MSP) about the Council's continued support for an amended subsidised service which had been introduced in early 1997. Mrs C, who has a sensitivity to diesel fumes, had sought to have that service re-routed, an alternative turning point found, or the service and another contract service for a school withdrawn.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Council, in dealing with her representations and representations made on her behalf, had not properly taken Mrs C's health into account (*not upheld*); and
- (b) the Council had not acted appropriately to re-route or withdraw the services having an adverse effect on Mrs C's health (*not upheld*).

##### **Redress and recommendation**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. In terms of section 8 and paragraph 7 of schedule 4 of the Scottish Public Services Ombudsman Act 2002, the Ombudsman must not investigate matters relating to contractual or commercial matters of a listed body, including actions relating to the operation of public passenger transport. It was held, following consideration, that Mrs C's grievance was not covered by this exclusion. Her concerns were with the route chosen for the amended service in 1997 being extended into her street and terminating there.
  
2. The complaints from the MSP on behalf of Mrs C which I have investigated are that:
  - (a) the Council, in dealing with Mrs C's representations and representations made on her behalf, had not properly taken Mrs C's health into account; and
  - (b) the Council had not acted appropriately to re-route or withdraw the services having an adverse effect on Mrs C's health.
  
3. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. The MSP, Mrs C and the Council were given an opportunity to comment on a draft of this report.

### **Investigation**

4. Mrs C lives in a house on the X Estate in Aberdeen. She states that she suffers from a particular sensitivity to diesel fumes which bring on a condition of anaphylaxis.
  
5. Following the intervention of a local City Councillor (Councillor A) who was concerned about the adequacy of bus routes serving the X Estate, a local service operated by a private operator (the Bus Operator) was extended in early 1997 for a trial period with subsidy from Aberdeen City Council (the Council). The extended service terminates outside Mrs C's home and provides a direct service to two supermarkets and to Aberdeen city centre.
  
6. Mrs C and others were opposed to the extension of the bus route and at the end of the trial period she voiced her opposition to the service continuing in a letter

to the Bus Operator of 30 May 1997. In the letter she expressed her concern about road safety and noise and pollution from buses idling outside her home. She asked that the service be withdrawn. She copied her letter to the Council's Director of Finance.

7. The Bus Operator responded on 9 June 1997 to say that his company were relatively satisfied with the service which operated during the day on weekdays and Saturdays but not in the evenings or on Sundays. They would continue to monitor performance but had no immediate plans to withdraw the service from the X Estate. Mrs C wrote again on 17 August 1997 to the Bus Operator saying she had no plans to cease canvassing for the removal of the service from the X Estate.

8. The MSP provided me with an extensive file of correspondence relating to Mrs C's pursuit of the matter before he was approached by her in October 2002. In May 1998 Mrs C wrote to the Vehicle Inspectorate, but they as an enforcement agency could not be involved and passed her correspondence to the Bus Operator. She herself wrote directly to the Bus Operator in August 1999 and January 2000 about stationary buses allowing their engines to idle for up to six minutes. The Bus Operator apologised, maintained that this was against company instructions, and repeated those instructions to drivers. Mrs C also suggested an alternative turning point which was, however, regarded by the Bus Operator as impractical.

9. By March 2000 a second service sub-contracted to another firm was providing a pick up service in the X Estate on behalf of a local private school. Mrs C's consultant at a local hospital wrote on Mrs C's behalf to the Bus Operator on 9 March 2000, detailing her condition, and asking that the service be withdrawn. The Bus Operator did not regard that as an acceptable solution and directed Mrs C to the Council with regard to providing a mini roundabout elsewhere in the X Estate.

10. In May 2002 the frequency of the bus service operated by the Bus Operator increased. Mrs C wrote to the Bus Operator on 9 May 2002 in protest and copied this letter to the Council's Public Transport Unit. A technical officer in that Unit (Officer 1) confirmed to the Bus Operator that it was not Council policy to reduce coverage of the public transport network. He was unwilling to promote a traffic regulation order since other heavy vehicles including refuse disposal vehicles

accessed the street. Further discussion between the Unit and the Bus Operator culminated with Officer 1 writing to Mrs C on 11 September 2002 saying that the route would not be changed. Mrs C was informed that she should make direct contact with the head of the private school to ascertain when the non-scheduled school bus would be in her area. Following further letters from Mrs C about stationary buses with engines running, Officer 1 advised Mrs C that this was an operational matter for her to pursue with the Bus Operator without the Council's intervention. He considered he had exhaustively put forward the Council's position.

11. Mrs C approached the MSP on 25 October 2002 and he wrote on several occasions to the Bus Operator on her behalf. He was informed that between 10:55 and 14:45 the bus went in and out of the Estate on six occasions (three return journeys) and that alternative turning points for the service had been ruled out on safety or usage grounds. The Bus Operator confirmed at that time that the service was not fully commercial but that it benefited others including the elderly who used the service.

12. The MSP, after attempting unsuccessfully to arrange a meeting with Councillor A and contacting the head of the private school, wrote on 23 July 2003 to the Head of the Council's Transport Department. He received a detailed response on 31 July 2003 from Officer 1.

13. Officer 1's reply set out the history of the bus route, and highlighted the benefits of the service it provided. He stated that the service was operated commercially, but the route was not considered to be profit making. The Council did not have any budget provision for the subsidy of bus services and were concerned at the effect loss of the service would have on the community. He stated that timetable changes had been agreed with the Bus Operator to minimise layover/waiting times. He understood that the Operator had sought to impress on drivers the importance of minimum waiting periods. Officer 1 set out the powers available to the Council under road traffic legislation, but suggested that to impose a traffic regulation order on Mrs C's street as an air quality management issue might also require the removal of for example, gritting lorries, refuse vehicles, older cars and taxis. Officer 1 said that he had looked into the issue of an alternative turning area but had found no suitable alternative. Officer 1 expressed his concern

that should the Council seek to impose restrictions on the service route the Bus Operator might re-evaluate the provision of the service in its entirety.

14. The MSP then wrote to the Leader of the Council on three occasions on behalf of Mrs C on 6 October 2003, 12 October 2003 and 29 March 2004. On 14 May 2004 the Leader of the Council wrote direct to Mrs C providing a map of the existing bus service route showing the single possible diversion route. This would, however, entail a walk of 800 metres to 1000 metres for prospective passengers to reach the service. She concluded that there was no viable alternative route and regretted that she was unable to offer further assistance. Her reply was copied to the MSP.

15. The MSP wrote further to Mrs C on 12 August 2004. On 5 October 2004 he received her authorisation to take the matter to the Ombudsman. The complaint was received in this office on 22 July 2005. It was scrutinised but was deemed not to have completed the Council's complaints procedures. Following contact with the Council, the Chief Executive confirmed that the matter had been fully addressed by them some time previously. A decision was taken on 20 April 2006 to investigate and the Council's further comments were sought on the complaints at paragraph 2.

16. Meanwhile, in May 2005, the Council decided to award subsidy to the Bus Operator for an additional afternoon journey leaving from the X Estate at 16:50, bringing the total to four journeys leaving from the estate (at 10:55, 12:50, 14:45 and 16:50)

**(a) The Council, in dealing with Mrs C's representations and representations made on her behalf, had not properly taken Mrs C's health into account**

17. The Council's Chief Executive, in his reply of 23 May 2006, stated that the Council did take Mrs C's medical condition into account when considering her complaint. They considered that simply removing buses from the location would not provide a solution from Mrs C's perspective as other diesel vehicles such as refuse collection or commercial vehicles used the same section of carriageway. The Council said that when complaints were received they carried out surveys of bus movements outside Mrs C's house to ensure that drivers were turning off their

engines and they were aware that the Bus Operator had undertaken similar surveys to ensure driver compliance.

*(a) Conclusion*

18. While I understand why Mrs C considers the likelihood of anaphylactic attack is increased because of buses idling outside her home, noise and emission from stationary vehicles are matters subject to Regulations 97, 98 and 107 of the Road Vehicles (Construction and Use) Regulations 1998 and it is a legal requirement in terms of Rule 214 of the Highway Code that the driver of a parked vehicle must switch off the engine, headlights and fog lights. Enforcement of the 1998 regulations and the Highway Code is a matter for the police. I consider that the Council have had appropriate regard to Mrs C's health and have adequately explained their position. In all the circumstances, I do not uphold this complaint

**(b) The Council have not acted appropriately to re-route or withdraw the services having an adverse effect Mrs C's health**

19. The Chief Executive maintained that an investigation into the possibility of re-routing the service was undertaken, however, this was not possible without removing all public transport provision from a significant number of residents in the area. The Bus Operator and local councillor were involved in the process and were supportive of the status quo remaining. There is clear evidence in the papers I have seen that other routes were considered. This includes maps showing possible alternative routes and a statement that an alternative turning point suggested by Mrs C is some distance away.

*(b) Conclusion*

20. I consider that the Council have adequately investigated the issue of re-routing. Had the scheduled service not been supported by other residents since its introduction over nine years ago, then commercial decisions might have seen its withdrawal. I do not consider that the Council have a significant locus with regard to the operation of the non-scheduled school service. I do not uphold this complaint.

28 November 2006

**Explanation of abbreviations used**

Mrs C	The aggrieved
the MSP	The Member of the Scottish Parliament who brought the complaint to the Ombudsman
Officer 1	Technical Officer, Public Transport Unit
Councillor A	City Councillor
the X Estate	The estate where Mrs C resides
the Bus Operator	The private bus company operating the bus service to Mrs C's estate
the Council	Aberdeen City Council

**Glossary of terms**

Anaphylaxis

Hypersensitivity resulting from sensitisation following prior contact with a causative agent (in Mrs C's case diesel fumes). In extreme cases can result in anaphylactic shock.