

## Scottish Parliament Region: Highlands and Islands

### Case 200401727: Shetland Islands Council

#### Summary of Investigation

##### ***Category***

Local government: Policy/administration

##### ***Overview***

The complainant (Mr C) alleged that a senior official (the Senior Official) with Shetland Islands Council (the Council) failed to declare an interest when dealing with certain organisations.

##### ***Specific complaint and conclusion***

The complaint which has been investigated is that the Senior Official failed to declare an interest when dealing with organisations in which his brother was involved (*upheld*).

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

The Ombudsman recommends that the Council emphasise to staff the importance of public perception in relation to their actions.

## **Main Investigation Report**

### **Introduction**

1. In October 2005, the Ombudsman received a formal complaint from Mr C alleging that the Senior Official, as Shetland Islands Council (the Council)'s chief officer, failed to declare an interest when dealing with organisations in which his brother was involved.

2. The complaint from Mr C which I have investigated is that the Senior Official failed to declare an interest when dealing with organisations in which his brother was involved.

### **Investigation**

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council. I have had sight of the Council's Code of Conduct and information relating to the composition of the Shetland Charitable Trust (the Charitable Trust) and its investment arm, Shetland Leasing and Property Ltd (SLAP), Shetland Development Trust (the Trust), and Shetland Aquaculture Trust (the Aquaculture Trust). These are all organisations devolved from the Council but where the Council has representation. I was also made aware of investigations involving the authority conducted by Audit Scotland, the EU Commission and the Standards Commission for Scotland. On 19 June 2006, I made a formal, written enquiry of the Council but they contested the Ombudsman's jurisdiction on the grounds that; similar allegations had already been considered by the bodies mentioned above; the Senior Official's actions in terms of the Council's Code of Conduct, involving as they did, potential disciplinary action, were not subject to investigation by the Ombudsman; and, there was no hardship being suffered by the complainant. A Deputy Ombudsman wrote to the Council responding to these points on 20 July 2006 confirming that the investigation would proceed and, between September and December 2006, I received the Council's reply and documentation in relation to the complaint. It remained the Council's view that the complaint was outwith the Ombudsman's remit. The Council maintained their opinion when commenting on a draft of this report.

4. I have not included in this report every detail investigated, particularly as the amount of information presented to me by the Council was substantial. However, I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this

report.

**Complaint: The Senior Official failed to declare an interest when dealing with organisations in which his brother was involved**

5. Mr C raised numerous matters in his complaint to the Ombudsman, the thrust of which was that when dealing with organisations in which his brother was involved, the Senior Official failed to declare an interest. He contended that this was contrary to the Council's own Code of Conduct for Employees and the Nolan Principles of Public Life (Annex 2). Mr C said that significant sums of money had been involved and he cited, in particular, two companies which he said had benefited and where the Senior Official's brother was the managing director and a major shareholder.

6. Mr C said that through the Shetland Development Trust, SLAP and Shetland Aquaculture Trust up to £7m was invested in one company (Company 1) and that another company, occupied premises owned by the Council which were in the process of being acquired by SLAP, and where, he alleged, they enjoyed low rents. Mr C claimed that periodic rent reviews were completed in-house, rather than by the District Valuer, and that in order to avoid any suggestion of impropriety, this should not have been the case.

7. I understand from information provided by the Council that there is a body, which is separate from, but associated with the Council, known as the Charitable Trust. This was set up with proceeds from the oil industry. The Charitable Trust disburses grants to a number of bodies in Shetland, mainly in relation to social welfare. It invests on the stock market, and locally, in order to make these disbursements. The Charitable Trust wholly owns SLAP, a local investment company principally involved in property investment and leasing. By virtue of his position as chief officer of Shetlands Islands Council, the Senior Official was chief executive of the Charitable Trust and of SLAP.

8. The Aquaculture Trust was established in 1990/1 with the objective of dealing with problems specific to the salmon farming industry. The Aquaculture Trust is administered by the Shetland Salmon Farmers' Association, an independent trade association. The Aquaculture Trust requires that four Shetland Islands Councillors are nominated to that organisation at the first statutory meeting of the Council in a year of an ordinary election. The Senior Official is not a representative of the Council with regard to the Aquaculture Trust, and the Council have told me that he has not attended any of their

meetings since his appointment to the Council.

9. The Trust was set up to be the prime investor in Shetland businesses, sourcing funds from the Council's Reserve Fund and investing them in local ventures, both to assist the development of business and to ensure a return for that investment to the Trust. Surpluses from the Trust are mandated to the Charitable Trust. The person responsible for the co-ordination of the Trust (that is, the chief executive) is the Chief Executive of the Council. He is responsible to the Trust for the overall management of the Trust's business and administration.

10. In responding to my enquiries, the Council have confirmed that the alleged sale to SLAP, as mentioned by Mr C (see paragraph 6) was the subject of an investigation by Audit Scotland. Similarly, the question of rental levels, raised anonymously, were investigated by the EU Commission. Neither case was upheld. It is not for the Ombudsman to duplicate investigations already conducted by other authorities. Accordingly, I have not looked further at these matters as part of my investigation. I have concentrated on the Senior Official's involvement in Company 1, where the Senior Official's brother was a major shareholder and which company benefited from Council investment.

11. Mr C based his allegation that the Senior Official failed to declare an interest when dealing with organisations in which his brother was involved on the existence of an email dated 21 March 2002, a copy of which I have seen. This email was from an employee of the Trust to the Senior Official and concerned the structuring of investment into Company 1. Mr C said that this showed that the Senior Official was issuing direction to the Trust about that investment. In the circumstances, he said that the Senior Official could not deny his role in the decision-making process which led to investment in a company in which his brother was closely involved.

12. Company 1 was incorporated in 2000 with the view to maintain local ownership of a number of fish farming companies, primarily those who were members of the Shetland Salmon Group. The company's main aim was assisting local salmon farmers to remain in business through contract growing arrangements. In this way members of the group had the opportunity to benefit from economies of scale. After a number of years in operation, an opportunity arose for Company 1 to purchase the assets of a company (X Salmon Ltd) which was a member of the Shetland Salmon Group. The investment would

allow Company 1 to acquire 5 fish farming sites. In order to progress the takeover, Company 1 required £1m, which they requested from the Trust.

13. On 19 March 2002 an officer from the Trust (the Officer) emailed the Senior Official about Company 1's proposal to take over X Salmon Ltd and she outlined Company 1's proposals for funding the venture, together with various other options for consideration. She also provided a summary of the legal advice which had been made available to the Trust in advance of their producing their proposals. The Officer asked for the Senior Official's thoughts as to the acceptability of Company 1's funding proposal or on any of the other options.

14. The Senior Official replied on 21 March 2002, he said, 'As we discussed you would now prepare a short report for [the Trust] at its next meeting...'. He detailed how the £1m investment should be structured, how equity would be arranged (referring to a shareholding agreement to be drawn up by the legal advisers) and the requirement for a Trust appointed director to the board of Company 1. He said that a presentation of the project should be made directly to the Trust by the board or board representatives of Company 1.

15. After this there was an emailed exchange between the Officer and a firm of chartered accountants working on behalf of Company 1. The chartered accountant involved said that she had spoken to various named individuals (who were board members, including the Senior Official's brother, who had been one of those identified) and that they were keen for the Trust to reconsider their position with regard to potential shareholding. The Officer submitted this suggestion to the Senior Official on 25 March 2002, saying that she preferred to stick to the terms and conditions previously discussed. The Senior Official replied the next day saying, 'Agreed we stick to the plan as discussed'. The investment request was subsequently considered and approved on 9 April 2002, conditional upon the Chairman of the Trust being appointed as a director of the board of Company 1. The Senior Official was not present at that meeting.

16. It is clear from the available documentation that at the time concerned (early 2002) the Senior Official was chief executive of the Charitable Trust, SLAP and the Trust (see paragraphs 7, 9 and 10). These were not roles he sought, but rather, they fell into his responsibility as a consequence of his position as chief officer of the Council. Information available to me showed that

this was a matter of concern to the Senior Official, particularly in relation to the Trust, and by September 2002 a General Manager had been appointed whose duties largely covered those formerly held by the Senior Official.

17. Mr C was concerned that the Senior Official's position was open to compromise in the Trust's dealings with Company 1's request for assistance to buy X Salmon Ltd. The Senior Official's brother was closely involved in this company (paragraph 15) and so it was suggested, that his business interests benefited.

18. The Council have commented on the matter of the Senior Official's perceived conflict of interest and said that with the passage of time he did not have a close recollection of the events. The Officer involved in emailing the Senior Official (paragraph 13) was 'pretty certain' that no potential interest had been declared, but she felt certain that those involved would have known of the family relationship which existed between the Senior Official and a board member of Company 1.

19. At the draft reporting stage, the Senior Official advised me that, 'I was not aware, nor was I made aware by any others (sic) parties involved in these initial discussions, of any fact or suggestion of my brother's involvement in this company'. As such he said he could not declare an interest of which he had no knowledge.

#### *Conclusion*

20. The Council provided me with voluminous correspondence but I have seen no evidence to suggest that in this particular business transaction the Senior Official declared an interest. The Officer involved in emailed discussions opined that everyone concerned would have known of the family relationship and, to a large degree I accept this, given that the background to events is that of a relatively close island community. I also accept the logic of the Senior Official's position as stated above (paragraph 19), however, the email of 21 March 2002 was not one sent in isolation, it was followed by a further exchange (paragraph 15) which specifically mentions the Senior Official's brother. Although the Senior Official has since told me that he had no recollection of this, and could not confirm whether he had read the email in its entirety and said that he had focussed only on the question posed; it is not in doubt that he received the message referred to. In the circumstances, I cannot conclude that the Senior Official was unaware of his brother's connection.

21. My reading of the Council's Code of Conduct for Employees and the Nolan Principles of Public Life is that they are quite specific about potential conflicts of interest. It is my view that if a conflict of interest could be perceived to exist, then those concerned should act with caution. Nothing in the documentation suggests to me that the Senior Official acted with anything other than proper motives. He could indeed have acceded to Company 1's request to relax the position with regard to shareholding (paragraph 15) but, did not do so preferring to protect the Trust's interests. However, it could have been foreseen that the circumstances described (paragraphs 13 to 15) could lead, as they have, to speculation and concern about the propriety of the Council's position. I take the view that it would have been more prudent for the Senior Official to have his relationship with a member of Company 1's board placed on record, even if this had been done after receipt of the message of 25 March 2002. Whether he then continued his involvement would have been for the parties to decide. I consider that he was at fault not to do so and that that failure constituted maladministration.

22. However, I have seen no evidence to suggest that this failure created an advantage to any of those involved. While Mr C said that up to £7m was invested in Company 1, he has not substantiated his allegations other than by making reference to the email referred to above. He alleged that as a Shetlander he suffered when the money invested in Company 1 was lost when the business later went into liquidation. However, I fail to see a direct relationship between the Senior Official's actions and the disadvantage Mr C claims. Furthermore, the Trust's decision to invest in Company 1 was agreed by members at a meeting on 9 April 2002 at which the Senior Official was not present. Nevertheless, I consider that the Senior Official's failure to place on record his relationship with a member of Company 1's board created a situation whereby concerned Shetland citizens, such as Mr C, had reasonable grounds for doubting whether their Council was behaving with the propriety they could legitimately expect. To that extent I am satisfied that Mr C has suffered injustice as a result of the maladministration I have identified and on that basis I uphold the complaint.

*Recommendation*

23. The Ombudsman recommends to the Council that they emphasise to staff the importance of public perception in relation to their actions.

23 May 2007



**Explanation of abbreviations used**

Mr C	The complainant
The Council	Shetland Islands Council
The Senior Official	A senior official with Shetland Islands Council
The Charitable Trust	Shetland Charitable Trust
SLAP	Shetland Leasing and Property Ltd
The Trust	Shetland Development Trust
The Aquaculture Trust	Shetland Aquaculture Trust
Company 1	A Company in receipt of investment monies
The Officer	Officer from the Trust

## List of legislation and policies considered

### **Nolan Principles of Public Life**

The Committee on Standards in Public Life was established by the then Prime Minister in October 1994, under the Chairmanship of Lord Nolan, to consider standards of conduct in various areas of public life and to make recommendations.

### **The Seven Principles of Public Life**

#### *Selflessness*

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

#### *Integrity*

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

#### *Objectivity*

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

#### *Accountability*

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

#### *Openness*

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### *Honesty*

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### *Leadership*

Holders of public office should promote and support these principles by leadership and example.

## **Shetland Islands Council's Code of Conduct for Employees 1996 (Section 5)**

### **5 CONFLICTS OF INTERESTS AND OUTSIDE COMMITMENTS**

5.1 During the hours of service required by their employment, employees devote their whole time and energies to their Council duties. With regard to their Council employment no employee is permitted to receive any emolument not specified in their contract of employment.

5.2 Employees are not restricted from pursuing social, leisure, recreational or other interest in their own time, unless there is a reasonable likelihood of a conflict arising with their Council employment. The conflict of interest may arise from the commercial/financial benefits deriving from such interests, the nature of any employment outside the Council, or the extent of hours worked in that other employment.

5.3 Employees must not accept employment (including self employment), without first giving written notification to their Head of Department. Chief Officials must seek permission before employment, in addition to their Council employment, is accepted.

In the case of a Depute, permission should be sought from the Head of Department, in the case of a Head of Department from the Chief Executive, and in the case of the Chief Executive from the Policy and Resources Committee. In all cases, such permission will be sought and given in writing. The policy covering employee conduct requires all employees to notify all current interests falling within its terms.

5.4 Employees may not serve as Trustees or in a similar capacity, whether ex-officio or otherwise, on trusts or similar outside bodies with close

connections to the Council where, through their employment with the Council, they are required to provide advice to other officers or the Council in relation to the activities of that trust or body.

- 5.5 In pursuing interests outside their Council employment, employees should conduct themselves in a manner that will not bring their employment or employer into disrepute. Should there be any doubt about the propriety of an arrangement employees should seek advice from their Head of Department or the Chief Executive, as appropriate.
- 5.6 Employees who have other employment(s) or relevant interests must enter these on a 'Register of Interests' include all those furnishing direct or indirect financial benefits. The holding of shares in any business having no direct connection or conflict of interest with the business of the Council will not be considered 'relevant' and need not be registered.
- 5.7 Employees should ensure that where a direct or indirect interest may be, or may become, involved, they declare their interest and withdraw from any subsequent discussion on the issue in question.
- 5.8 Employees must, in writing, declare and record an interest in, or membership of any group or organisation:
  - where, through their employment with the Council, they are required, or are likely to be required, to provide advice to other officers or the Council in relation to the activities of that group or organisation, and through membership of that group or organisation, the employee directly or indirectly benefits financially from the Council;
  - where membership of a group or organisation may reasonably be seen as potentially prejudicial to the performance of their duties.