

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200601848: Angus Council

#### Summary of Investigation

##### **Category**

Local government: Policy/administration

##### **Overview**

The complainant (Mr C) raised concerns regarding Angus Council (the Council)'s handling of a complaint which he raised with them regarding their selection process for a vacant post within the Council. He believed that it was inappropriate for the Chief Executive to have handled the complaint, given his involvement in the said selection process.

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

The complaint which has been investigated is that the Chief Executive should not have investigated Mr C's complaint to the Council due to his involvement with the selection process, which was the subject of the said complaint (*upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) remind their staff to act with caution where any conflict of interest could be reasonably perceived to exist; and
- (ii) introduce a procedure for complaints against the Chief Executive. This could also be utilised where the Chief Executive is unable to investigate a complaint due to a conflict of interest, thus ensuring complainants have the right to an investigation by a party not previously involved in the process.

The Council have accepted the recommendations and will act on them accordingly.

## **Main Investigation Report**

### **Introduction**

1. In September 2006, the Ombudsman received a complaint from a gentleman (referred to in this report as Mr C) regarding Angus Council (the Council)'s handling of his complaint. His complaint was in connection with the selection process for a vacant post he had applied for within the Council. Mr C felt that the Chief Executive should not have handled his complaint as he was involved in the selection process.

2. The complaint from Mr C which I have investigated is that the Chief Executive should not have investigated Mr C's complaint due to his involvement with the selection process, which was the subject of the said complaint.

### *Background*

3. Mr C applied for a senior post within the Council and was unsuccessful in obtaining an interview. He subsequently complained to the Council and the Chief Executive responded on 20 June 2006. In his response he explained the reasons why Mr C was not selected for interview and he concluded that the selection process followed by the Council was entirely reasonable and appropriate and did not unfairly, or unlawfully, discriminate against Mr C or any of the other applicants.

4. Mr C subsequently submitted a Freedom of Information request and received a response from one of the Council's senior solicitors, dated 26 June 2006. In the response, it was advised that a panel made up of four senior staff, including the Chief Executive, had considered the job application forms along with the Person Specification and produced two lists of candidates. One of these lists included 'details of the candidates being suggested as not suitable for shortleeting' and the other being a 'suggested longleet of candidates for interview'. These lists were then passed for consideration by elected members of a Special Structural Review Committee.

5. As all matters relating to the selection process are now the subject of an employment tribunal, they are outwith the scope of my investigation and this report will focus solely on the Council's handling of Mr C's complaint.

## **Investigation**

6. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council. On 9 July 2007, I made a formal written enquiry of the Council and received their response on 3 August 2007. I have had sight of the Council's Employee Code of Conduct and their Equal Opportunities Policy as well as their Procedure For Investigating Complaints Of Unfair Discrimination Or Treatment During The Recruitment And Selection Process (the Procedure) (as appended to their Recruitment and Selection Manual).

7. I have not included in this report every detail investigated but 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 Chief Executive should not have investigated Mr C's complaint to the Council due to his involvement with the selection process, which was the subject of the said complaint**

8. Upon raising his concerns with the Ombudsman, Mr C referred to the Council's Equal Opportunities in Employment Policy which stated that:

'A complaints procedure will be available for employees and members of the community to raise any claims of discrimination or unfair treatment and through which they will have a right to have such a claim investigated thoroughly.'

Mr C advised that the Chief Executive personally answered his complaint to the Council and that at no stage did he declare his membership of the selection panel, which was the subject of the complaint. Mr C, therefore, contended that his complaint was not dealt with thoroughly, as per the Equal Opportunities in Employment Policy, and that the Chief Executive's failure to declare his interest in the selection panel had led him to believe that an independent investigation had been carried out.

9. In further relation to the Chief Executive's failure to declare his interest in the selection process, Mr C was unhappy with the wording of the Chief Executive's response to his complaint. The response stated 'I, and the selection panel ...' and Mr C felt that this was misleading and suggestive of the Chief Executive not being part of the selection panel.

10. In response to my enquiries, the Council stated that the Chief Executive did not make the decision on short-listing for interview. They advised that this decision, along with the decision on an appointment, rested solely with elected members (of the Special Structural Review Committee) and that the Chief Executive and other officers merely acted as advisers to the members. The Council, therefore, were of the belief that it was appropriate for the Chief Executive to have handled Mr C's complaint and they did not feel that the wording of his response letter was misleading.

11. The Council advised that the Chief Executive considered the terms of Mr C's complaint along with the Director of Neighbourhood Services, the Personnel Services Manager and the then Director of Law and Administration. They stated that the terms of Mr C's complaint were clear from both the wording of the complaint and from a previous discussion that Mr C had with the Personnel Services Manager. They, therefore, did not consider it necessary to speak further or meet with Mr C to clarify the complaint. They also advised that, through their involvement as advisers in the selection process, the officers were clear on the criteria used and the decisions made in the said process. The Council concluded, therefore, that the procedure followed in handling Mr C's complaint complied with the Procedure.

12. The Council also provided me with a copy of their Employee Code of Conduct (the Code) which includes the expected standards from employees in relation to conflicts of interest. The Code prompted employees to declare any conflict of interest 'which a member of the public might reasonably think could influence [their] judgement'.

13. During the course of my investigation, it came to my attention that the Council did not have a procedure in place for handling complaints against the Chief Executive. I have located an example of such a procedure within the complaints procedures of another authority and it is worded as follows:

'Any complaint against the Chief Executive would be referred to the Council's Monitoring Officer. The Council's Monitoring Officer would determine the most appropriate means of investigation and resolution based on the type and content of the complaint. The procedures and timescales for any such complaint would be determined by the Monitoring Officer.'

### *Conclusion*

14. Whilst there is no evidence to indicate that the Council did not follow the relevant complaints procedures when handling Mr C's complaint, the Chief Executive did not openly communicate his interest in the selection process to Mr C. I note the Council's comments regarding the Chief Executive merely being an adviser to the elected members of the selection panel rather being on the panel himself and I, therefore, deem the wording in his response ('I, and the selection panel') to have been appropriate. However, notwithstanding this, the Chief Executive still clearly had an involvement in the selection process and a conflict of interest could have been perceived to exist when investigating Mr C's complaint. Although the conflict of interest guidance within the Code refers more specifically to conflicts between employees' personal/private interests and their work interests, adherence to this could reasonably be deemed appropriate in relation to conflicts arising from differing roles employees are required to carry out within the course of their duties. It is my view that, if a conflict of interest could be reasonably perceived to exist, then those concerned should act with caution. There is no evidence to suggest that the Chief Executive acted with anything other than proper motives, however, as he played a part in the selection process, and as Mr C was given cause to believe that his judgement may have been influenced by his involvement in the same, I believe that it would have been more prudent for the Chief Executive to have clearly communicated his involvement to Mr C.

15. With regards to the appropriateness of the Chief Executive personally handling the complaint, it is my opinion that this was appropriate as a first line of response, given his involvement and familiarity with the process. However, given this said involvement in the process and the perceived conflict of interest, I am in agreement with Mr C that the Chief Executive's handling of his complaint as a final line of response was not appropriate and it would have been more suitable for his concerns to have been passed to a senior person who was entirely independent of the selection process.

16. In summary, I believe that it was inappropriate that the Chief Executive failed to communicate his involvement in the selection process to Mr C, and it was inappropriate for the Chief Executive to have dealt with Mr C's complaint as a final line of response, without offering Mr C the option to have his concerns addressed by a party not previously involved in the selection process. I, therefore, uphold this complaint.

*Recommendation*

17. The Ombudsman recommends that Council:

- (i) remind their staff to act with caution where any conflict of interest could be reasonably perceived to exist; and
- (ii) introduce a procedure for complaints against the Chief Executive. This could also be utilised where the Chief Executive is unable to investigate a complaint due a conflict of interest, thus ensuring complainants have the right to an investigation by a party not previously involved in the process.

18. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

**Explanation of abbreviations used**

Mr C	The complainant
The Council	Angus Council
The Procedure	The Council's Procedure For Investigating Complaints Of Unfair Discrimination Or Treatment During The Recruitment And Selection Process
The Code	The Council's Employee Code of Conduct

**List of legislation and policies considered**

Angus Council's Employee Code of Conduct

Angus Council's Equal Opportunities Policy

Angus Council's Procedure For Investigating Complaints Of Unfair  
Discrimination Or Treatment During The Recruitment And Selection Process

Perth & Kinross Council's Complaints Procedure, section 13.1