

Agenda Item	12
Report No	AS/14/21

THE HIGHLAND COUNCIL

Committee: Audit and Scrutiny Committee

Date: 17 June 2021

Report Title: **Scottish Public Services Ombudsman Cases Upheld**

Report By: Executive Chief Officer Performance and Governance

1. Purpose/Executive Summary

- 1.1 This report provides information on the cases that have been upheld by the Office of the Scottish Public Sector Ombudsman (SPSO) since this was last reported to the Audit and Scrutiny Committee on 19th September 2019.
- 1.2 Since that report, 5 cases have been determined by the Ombudsman. Of those, 3 were not upheld, 1 was partially upheld and 1 was upheld.

2. Recommendations

- 2.1 Members are asked to:
- i. Consider the outcomes of the upheld and partially upheld cases; and
 - ii. Note that the SPSO's recommendations have now been carried out

3. Implications

- 3.1 Resources and Risk: A focus on improving performance in handling customer complaints reduces the Council's risk of public exposure to criticism and reduces the cost to the Council of managing failure demand.
- 3.2 There are no Legal; Community (Equality, Poverty, Rural and Island); Climate Change / Carbon Clever; or Gaelic implications arising from this report.

4. Background

- 4.1 The Scottish Public Services Ombudsman (SPSO) was set up in 2002 to investigate complaints about organisations providing public services in Scotland, including local authorities. The SPSO investigates complaints where a member of the public claims to have suffered injustice or hardship as a result of maladministration or service failure and only investigates cases when the complainant has already exhausted the formal complaints procedure of the organisation concerned.
- 4.2 Since 19th September 2019, 5 cases have been determined by the SPSO. 3 of these were not upheld. 1 related to a welfare guardianship order, 1 to a planning application and the other to school bullying. The SPSO did not make any recommendations in relation to these cases.
- 4.3 1 case was partially upheld and 1 was upheld and these are detailed below and the SPSO's decision reports are included in Appendix 1.

5. Upheld / Partially Upheld Complaints

5.1 Case 1, 201708630, Childs Plan (partially upheld):

This complaint related to a failure to provide adequate support for a child in a school. The SPSO upheld 3 aspects of this complaint relating to insufficient information being available to new staff, the Child's Plan being out of date and failure to investigate and take action in relation to the complaint. They did not uphold a complaint that the child's teacher had failed to support them in class.

The following recommendations were made:

- Apologise to the complainant for the failings identified.
- Ensure that there is clear guidance in place for staff in relation to the relationship between a Child's Plan and co-ordinated support plan.
- Where appropriate under the Highland Practice Model, there should be an up-to-date Child's Plan in place.

These recommendations have been implemented to the Ombudsman's satisfaction and the case has been closed.

5.2 Case 2, 201909583, Child protection procedures (upheld):

The SPSO found that the Council did not follow its own child protection procedures when investigating child protection concerns.

The following recommendations were made:

- Apologise to the complainant for failing to correctly follow the Council's child protection procedures.
- The Council should undertake further reflection on the findings of the investigation, taking into account in particular the summary of points provided and implement relevant learning and improvement.

These recommendations have now been implemented. A thorough and detailed action plan which details the progress that has been made to date has been submitted to the SPSO. The SPSO has indicated their satisfaction with this and the case has been closed.

Designation: Executive Chief Officer, Performance and Governance

Date: 28 May 2021

Author: Miles Watters

Background Papers:

SPSO decision report

Case: 201708630, The Highland Council
Sector: Local Government
Subject: primary school
Decision: some upheld, recommendations

Summary

Ms C complained that the council failed to ensure that there was adequate support in place for her child (Child A) at school. The council had accepted that there were occasions when information about Child A was not taken into account and there were occasions when it was not fully shared. There was also insufficient up-to-date information for new staff at the school and there should have been more proactive partnership working with mental health services. In view of these failings, we upheld the complaint.

Ms C also complained that Child A's teacher had unreasonably failed to support them in class. We did not find any clear evidence of failings in relation to this and we did not uphold the complaint.

Ms C complained that the head teacher at the school unreasonably failed to fulfil their role as named person and lead professional under the Highland Practice Model. We found that the child's plan in place at the start of the school year had been out-of-date and there were then delays in updating this. We upheld this complaint.

Finally, Ms C complained that the council had failed to carry out a reasonable investigation into her complaints. We found that the council had carried out a thorough investigation, but that the response did not provide adequate information about the action the council would take to put things right or to ensure that the failings were not repeated. It also failed to adequately apologise for the failings identified. For these reasons, we upheld this complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to Ms C for the failings identified. The apology should meet the standards set out in the SPSO guidelines on apology available at [HYPERLINK "http://www.spsso.org.uk/leaflets-and-guidance"](http://www.spsso.org.uk/leaflets-and-guidance) www.spsso.org.uk/leaflets-and-guidance .

What we said should change to put things right in future:

- Ensure that there is clear guidance in place for staff in relation to the relationship between a child's plan and co-ordinated support plan.
- Where appropriate under the Highland Practice Model, there should be an up-to-date child's plan in place.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.

SPSO decision report

Case: 201909583, The Highland Council
Sector: Local Government
Subject: Child protection
Decision: upheld, recommendations

Summary

C complained about the council's social work department's handling of child protection concerns that were raised about their children and their subsequent removal from the family home. C was not at home at the time and said that they objected to the decision. C complained that their spouse also did not give consent to the children being removed and, therefore, the appropriate powers were not used to remove the children.

The council said that they understood that C's spouse had given their verbal consent to the children's removal; however, they acknowledged there was a failure to prepare the necessary paperwork prior to visiting the children's home.

As part of our investigation, we reviewed the relevant case records and took independent social work advice. We found that there were failings to properly obtain consent, that there was confusion over the legislation being used to remove the children and that there was a failure to explain to either C or their spouse what the legislative framework was. We found that the council failed to follow their child protection procedures and, therefore, upheld the complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to C for failing to correctly follow their child protection procedures. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/information-leaflets.

What we said should change to put things right in future:

- The council should undertake further reflection on the findings of this investigation, taking into account in particular the summary of points we provided and implement relevant learning and improvement. This could involve a review of internal procedures and/or additional training for staff.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.