

Scottish Parliament Region: South of Scotland

Case 200702097: North Ayrshire Council

Summary of Investigation

Category

Local government: Confidentiality, complaint handling

Overview

The complainant (Mr C) raised a number of concerns that North Ayrshire Council (the Council) Trading Standards officers had provided incorrect information to two newspapers about their involvement in a dispute he had with one of his customers. He considered that any discussion on the matter between Council officials and the press also amounted to a breach of his confidentiality. He further complained that Council officials had repeatedly and deliberately misled him and provided incorrect and incomplete answers to his questions and complaints to cover-up certain actions of the Trading Standards officer who had discussed the complaint about his building firm with the press.

Specific complaints and conclusion

The complaint which has been investigated is that;

- (a) Council officials did not respond adequately to Mr C's representation to them about alleged breaches of confidentiality by one of their officers (*upheld*); and
- (b) Council staff lied to Mr C about staff contacts with journalists. Mr C considers that there has been an abuse of power (*not upheld*).

Redress and recommendations

The Ombudsman had already made informal recommendations to the Council which were accepted and acted on by them. Consequently, the Ombudsman has no further recommendations to make.

Main Investigation Report

Introduction

1. On 19 November 2007 the Ombudsman's office received a complaint from the complainant (Mr C). Mr C raised a number of concerns that North Ayrshire Council (the Council)'s Trading Standards Department (TSD) officers had provided incorrect information to two newspapers (Newspaper 1 and Newspaper 2) about TSD involvement in a dispute he had with one of his customers. He considered that any discussion on the matter between Council officials and the press also amounted to a breach of his confidentiality. He further complained that when he raised his concerns with the Council, officials had repeatedly and deliberately misled him and provided incorrect and incomplete answers to his questions and complaints to cover-up certain actions of a senior TSD officer (Officer 1) who had discussed the complaint about his building firm with the press.

2. Mr C's original complaint was of maladministration through denial of rights, refusal to answer reasonable questions, offering no redress, faulty procedures, abuse of office and partiality. During the course of our consideration of this complaint Mr C has raised further concerns, in particular, in light of information he has obtained from the Council through Freedom of Information (FOI) requests. Mr C considered that these documents showed evidence of a deliberate misrepresentation by Council officials who he believed were trying to cover-up the actions of Officer 1.

3. The complaint from Mr C which I have investigated is that:

- (a) Council officials did not respond adequately to Mr C's representation to them about alleged breaches of confidentiality by one of their officers; and
- (b) Council staff lied to Mr C about staff contacts with journalists. Mr C considers that there has been an abuse of power.

Investigation

4. Investigation of this complaint involved reviewing copies of correspondence and other documentation submitted by Mr C and making a number of written enquiries of the Council. There have also been a number of telephone interviews with Mr C and Council staff.

5. An informal draft report was first issued on this case in November 2008 but following an appeal by Mr C, the Ombudsman decide that there should be a

formal investigation of this case to include further information supplied by Mr C and that this, public, report should be issued. 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.

(a) Council officials did not respond adequately to Mr C's representation to them about alleged breaches of confidentiality by one of their officers; and (b) Council staff lied to Mr C about staff contacts with journalists. Mr C considers that there has been an abuse of power

Background

6. Mr C was a builder whose firm was the subject of a complaint to TSD from a consumer (C1) on 27 August 2007. The complaint was investigated by two officials from TSD (Officer 2 and Officer 3) and closed shortly thereafter with all parties being advised it was a civil matter that TSD would not be pursuing. On 16 and 19 September 2007 Newspaper 1 and Newspaper 2 respectively printed articles stating that TSD were in fact pursuing action against Mr C and containing quotes to this effect from Officer 1 also decrying the quality of Mr C's work. Prior to the publication of these articles Newspaper 1 contacted Mr C who then immediately tried to raise his concerns about this apparent change of heart by telephone with TSD staff (specifically Officer 1) but was unsuccessful in making contact. He then raised his concerns in writing but was dissatisfied with both the outcome and the quality of the Council's investigation of his concerns and brought his complaint to the Ombudsman's office. Mr C later became aware that Officer 1 had nominated the journalist from Newspaper 1 for Consumer Journalist of the Year (an award judged shortly after these events on 12 November 2007) and became suspicious that both Officer 1 and other Council officials were implicated in a deliberate act to discredit him because of this. Mr C only became aware of this in February 2008 and met with the Council's Assistant Chief Executive (ACE) later in February 2008 to discuss his concerns. Mr C then added these and other concerns to his complaint. I have provided a brief chronology and correspondence summary in Annex 3 as there are a number of key events over a lengthy time period.

Events up to 15 November 2007 (the date of Mr C's first complaint to this office)

7. Mr C's concerns were that the Council did not respond appropriately to his attempts to obtain further information and clarification from them. He was concerned that they had (i) not followed the correct complaints process in dealing with his complaints and (ii) lacked the necessary policies and

procedures to properly manage case work and (iii) properly manage press contacts with staff. He was also concerned that TSD staff had failed to complete paperwork etc to the required standard in their investigation of the original complaints against him.

(i) Complaints Procedure

8. Mr C was understandably concerned by the views expressed in the newspaper article that TSD were planning to take action against him. Mr C spoke with Officer 2 by telephone on 17 September 2007. Officer 2 considered Mr C's concerns were about the comments of C1 and not about possible Council action against him. At this point Officer 2 had just returned from holiday and wanted to discuss the matter with Officer 1 (who had made the alleged comments) before commenting further. However, no further contact was made by any TSD officers to advise Mr C that the article was incorrect in stating that they were planning to take action against him. Officer 1 later advised the ACE that he did not think it would be helpful to respond to the press article which he avers misquoted him as it would only prolong the story. I would note here that had he been clear with the second newspaper that the first article was materially incorrect (which in his view it was) then this would also have served to prevent the story being prolonged.

9. Throughout his initial complaints correspondence with the Council Mr C was of the view that Officer 1 and Officer 2 visited him on 28 August 2007 in relation to the complaint from C1. The Council's documentation shows it was Officer 2 and Officer 3 who visited. Consequently Mr C (understandably) directed a number of questions at Officer 1's actions which were entirely misdirected. Mr C was also initially of the view (again understandably) that he was the subject of legal action by the Council following the publication of the newspaper articles. There is nothing in the evidence to suggest that this was ever in fact the case but it was several weeks into the process of pursuing a complaint on this matter that Mr C was given the necessary reassurance on this point. These misunderstandings are of considerable significance to the responses from the Council to Mr C's concerns. Thereafter Mr C's own misunderstandings about who had originally visited him and another about who he later saw close to his home (Officer 3 not Officer 2 as he believed) were never corrected by the Council who in fact allowed further confusions to arise. The Council continued to mix-up the identity of Officer 2 and Officer 3 at their meeting with Mr C in February 2008 and in their responses to this office in

October 2008. The statements obtained from Officer 2 and Officer 3 are clear and the error in response was made by the ACE.

10. The Council's complaints process is a three step process of informal review by the staff member concerned, review by the service involved and review by the Corporate Director. Unfortunately the TSD Detailed Enforcement Policy refers to the previous Council complaints scheme which included a further, fourth, review by the Chief Executive. In this instance Mr C's letter of 21 September 2007 was addressed to Officer 1 but actually referred to interactions with Officer 2. Officer 1 regarded this as a Data Protection (DPA) request rather than a complaint. Mr C asked for a reply to his letter as well as sight of documents. The letter was not clearly a letter of complaint as it did not ask any questions but rather made a number of statements about the events surrounding the complaint from C1. Thereafter Mr C's second letter was treated appropriately as a step 2 complaint and his final letter as a step 3 complaint. Mr C was not advised of either the complaints process or how he could progress the complaint until he received the final response advising he could approach this office.

11. TSD Service Standards and Enforcement Policies set standards for helpfulness and quality of communication both generally and in relation to complaints.

(ii) Case Work Management

12. The Council provided two computer generated sheets for the two complaints made against Mr C by C1 and a second consumer (C2). The sheets do not contain details of all the relevant contacts etc some of which are on a handwritten sheet which accompanies the complaint from C1. The first complaint gives no detail of the outcome while the second contains only the word 'justified' with no further explanation. I also note that the closure date on the complaint from C1 is incorrect.

13. Mr C was concerned that the complaint from C2 had been investigated without his ever being aware of it and that the Council had retained the photographs taken during the investigation of complaint C1 after the case was closed. The Council have explained that it is their normal policy to visit both parties in a dispute but that in the later case (C2) as they were already aware of Mr C's ill-health and current situation, and as no action was being actively considered on their part they simply closed the file without contacting Mr C.

(iii) Management of press contacts

14. Mr C requested a copy of the Council's policy on press contacts as he was concerned that there had been an inappropriate breach of his confidentiality by Officer 1 in discussing the complaint from C1. The Council advised me that they do not have a specific policy on dealing with the press but there is a Communications Policy which I have reviewed. This policy covers press contacts although it does not specifically refer to contacts with members of TSD staff. In this case the policy was not followed as it requires formal contact by the press be referred to the Communications Team in the first instance. The Council have told me though that Officer 1 is considered a senior and experienced member of staff with authority to speak directly to the press. The Council do have a policy of Breach of Confidentiality. In response to my enquiries the ACE advised that when he had reviewed Mr C's concerns about a breach of confidentiality he had considered whether Officer 1 had discussed any information with either newspaper that was not already known to them. He was of the view that as C1 had already given all her details and Mr C's details to the newspapers, Officer 1 had not given any confidential information and the policy did not, therefore, apply.

15. Officer 1's statement (taken during the Council's complaints process) stated that he talked to the Newspaper 1 journalist 'late' on Friday 14 September 2007. Officer 1 stated that he agreed with the journalist that Mr C's work was 'the worst he had ever seen' but advised that C1 had been informed she should take the matter up with her solicitor. He then discussed the operation of the Enterprise Act with the journalist who had enquired why the Council weren't using it to act against Mr C. Mr C only learned of Officer 1's statement in my informal report on this case and has subsequently complained that this statement is in direct contradiction of Officer 1's earlier statement in response to his letters of complaint and our enquiries, where Officer 1 denied making any statement to the press. I have reviewed Mr C's complaint letters and the responses we received. In his letters Mr C challenged why Officer 1 had stated that the Council were taking action against him when he had been told otherwise. The Council response denied having said to Newspaper 1 or Newspaper 2 that they were planning such action. At no point in any of their correspondence with Mr C or this office did the Council or Officer 1 state that the quote regarding the quality of Mr C's work was inaccurate as that question was never put to them.

Concerns raised after 15 November 2007

16. Mr C became aware in February 2008 that Officer 1 had nominated the journalist responsible for the first article in Newspaper 1 as Consumer Journalist of the Year. He raised a concern about this with the ACE when he met with him in February 2008. The ACE advised Mr C that he was not previously aware of this nomination. Mr C subsequently formed the opinion that as someone within the Council signed Officer 1's expenses for attending the final of this competition the Council must, therefore, have been aware of his nomination. Mr C also became concerned that Officer 1 denied writing the 500 word written submission that accompanied the award nomination and that Officer 1's travel expenses to the award ceremony had been paid for by Newspaper 1. Mr C applied for further information regarding this via the Scottish Information Commissioner (SIC). The Council were asked by SIC to provide Mr C with certain further information.

17. The FOI appeal revealed that Officer 1 had visited the premises of Newspaper 1 on 29 August 2007 and that the Council had paid the expenses for this visit. The expense sheet was signed by another Council official who had also been present at his meeting with the ACE in February 2008. The ACE has always denied being aware of the nomination until that meeting and has subsequently repeated his view that he was not aware of the nomination until the meeting. Mr C considered the new information to be evidence that the Council had corporate knowledge of Officer 1's nomination of the journalist from Newspaper 1.

18. In response to my enquiries the ACE told me that he did not make further enquiries into this nomination once he was advised of it in February 2008 as there was a) nothing intrinsically wrong with Officer 1 making such a nomination in his private capacity and b) Mr C had indicated at the end of the meeting he was intending to pursue legal action rather than a complaint.

(a) and (b) Conclusion

19. Operating as I am with the benefit of hind-sight it is clear to me that a considerable amount of confusion and irreconcilable difference of recall have materially and detrimentally impacted on the handling of this complaint. I have noted a number of these in the chronology and while I have sought to clarify the discrepancies I am aware that on a number of issues it is simply not possible for me to say what actually occurred and nor is there any independent source of information to corroborate with either side's views. Mr C has asked me to

consider that on the balance of probabilities, the number of discrepancies add up to likelihood that his view of events is correct. I have considered this but do not agree with his conclusions as I am aware that there are errors in his account of events - none of which I attribute to any sinister motive on his part but purely to the many misunderstandings that the failures I have identified in the handling of this complaint have allowed to go uncorrected.

20. I consider that the Council failed to meet their standards in Mr C's case because they failed to appreciate the impact of the articles on Mr C and to correct and clarify the misunderstandings about events as they considered they had happened. There was also a failure to provide adequate details of the complaints process and to deal with Mr C's complaints with care and to ensure that the facts they provided as evidence both to Mr C and to this office were correct.

21. I consider that the record-keeping in both these cases was sub-standard as the computer generated sheets (see paragraph 12) do not provide the reader with all the relevant data and are incomplete. Of course it would not be reasonable to expect busy members of staff to provide detailed descriptions of their actions but there must be a minimum level of detail which permits any reviewer to understand the nature of the complaint, the actions taken and the outcome. I accept that there was a reason to deviate from normal practice for case C2 (because of the previous but recent complaint from C1), however, given that the complaint has been noted as justified I believe it would have been better practice to advise Mr C of the matter and allow him to express his own views on the matter before reaching any conclusion.

22. The Council do expect staff to routinely note press contacts and I consider it good practice to not only have such a policy but to review compliance with it.

23. I do not consider that the further information revealed by Mr C's FOI appeal or my enquiries are suggestive of a breach of power or evidence that Council officials lied to him or to me as I do not share Mr C's interpretation of these events. I acknowledge that Mr C does not share my views.

In summary

(a) Conclusion

24. I do consider that there was a serious failure to properly, adequately and accurately respond to Mr C's concerns about a breach of confidentiality by Council officials and, therefore, I uphold this aspect of the complaint.

(a) Recommendations

25. Following an initial informal report on this case I made a number of recommendations to the Council as follows:

- (i) apologise to Mr C for a failure to adequately communicate with him following the publication of the newspaper articles on the 16 and 19 September 2007 and during the subsequent handling of his complaints;
- (ii) give consideration to issuing guidance to staff having contact with the press where details of a specific complaint are being discussed;
- (iii) introduce a policy of record-keeping for press contacts as described above;
- (iv) discuss the original events of this complaint at a TSD team meeting and consider how the difficulties which have arisen from confusion and lack of communication could be avoided in the future. The importance of good record-keeping should also be discussed at this meeting; and
- (v) review current policies (in particular the current detailed Enforcement Policy) and remove any reference to the old complaints process.

(b) Conclusion

26. I do not consider that Council officials deliberately lied to Mr C or that there was an abuse of power and I do not uphold that aspect of the complaint

27. The Council accepted all these recommendations and acted on them at that earlier informal report stage and the Ombudsman has no further recommendations to make.

Explanation of abbreviations used

Mr C	The complainant
The Council	North Ayrshire Council
TSD	Trading Standards Department
Newspaper 1	Newspaper that first published an article about Mr C's business and whose journalist was nominated by Officer 1
Newspaper 2	Newspaper that published the second article about Mr C's business
Officer 1	The senior TSD officer who discussed complaints against Mr C with Newspaper 1 and Newspaper 2 and who nominated the journalist from Newspaper 1
FOI	Freedom of Information - a request under the Freedom of Information (Scotland) Act 2002
C1	The member of the public who complained to TSD about Mr C's work
Officer 2	A TSD officer who visited Mr C to discuss C1's complaint
Officer 3	A TSD officer who visited Mr C to discuss C1's complaint
DPA	Data Protection Act

ACE	Assistant Chief Executive of the Council who responded to Mr C's complaint and met with him in February 2008
C2	The member of the public who complained to TSD about Mr C's work following the press reports
SIC	Scottish Information Commissioner

List of legislation and policies considered

North Ayrshire Council, Trading Standards, Detailed Enforcement Policy

North Ayrshire Council, Trading Standards, Summary Policies

North Ayrshire Council Listening and Learning Scheme

North Ayrshire Council, Trading Standards, Customer Charter

North Ayrshire Council, Communications Policy and Practice document

Chronology of Events

<i>Date</i>	<i>Event</i>
27 August 2007	C1 complains to the Council by telephone (marked as closed 2 September 2007 which was a Sunday)
27 August 2007	Visit to C1 by Officer 2 and Officer 3
27 August 2007	Mr C avers he was visited by and talked to Officer 2 and another officer on this date. The Council say a visit was made but no discussion took place as Mr C was not at home
28 August 2007	Visit to Mr C by Officer 2 and Officer 3 – Mr C is advised the matter is a civil one and C1 advised of same – no further action to be taken
2 September 2007	Date complaint from C1 is marked as closed – this is a Sunday. The Council advise this date was entered in error and file was actually closed on 28 August 2007
Week of 10 September 2007	Mr C was contacted by Newspaper 1 as C1 had contacted them – advised they had already spoken with TSD and that the Council were investigating him. Mr C tried to contact the Council but is told Officer 2 is on holiday and no one else, including specifically Officer 1 could speak to him about this – Mr C says he tried a number of times The Council say Mr C only asked to speak with Officer 2 and was not refused a chance to talk to Officer 1. They can only recall one call on 13 September 2007
16 September 2007	Newspaper 1 article published Mentions Mr C and Officer 1 by name and suggests there may be criminal proceedings against Mr C by the

Council

17 September 2007 Mr C says he spoke with Officer 2 (back from holiday) who would not discuss the matter until he had spoken with Officer 1. Mr C says he mentioned the Press Complaints Commission and Officer 2 were threatening towards him. Mr C received no further call from Officer 2 or Officer 1 re the quotes

Officer 2's statement indicates he believed Mr C was upset about the comments from C1 as quoted in the paper and that he mentioned the Press Complaints Commission to Mr C as a source of possible assistance

17 September 2007 Newspaper 2 called Officer 1

18 September 2007 Mr C avers Newspaper 2 called him as C1 had contacted them – they had also just spoken with Officer 1 – the article gave further quotes from Officer 1

19 September 2007 Newspaper 2 article

21 September 2007 Mr C wrote to Officer 1 (believing himself to be the subject of criminal proceedings)

(Friday) Received by the Council 25

September 2007

(Tuesday)

Mr C considers that this letter was a complaint and FOI request. Officer 1 only considered it a FOI request at this time (but see 4 October entry)

Mr C appears to think at this point that Officer 1 was one of the officers who visited him on 28 August 2007 and made a number of statements about the issues they had discussed that day

25 September 2007 Mr C noticed one of the TSD officers who had visited him previously was parked in his close – he believed they were coming to visit him but when they later drove away he became suspicious of their intentions. Mr C

believed the officer was Officer 2

It was Officer 3 (with another colleague) who was in Mr C's close on another matter involving bogus workers operating in Mr C's area and this is not relevant to any of Mr C's issues – this point is not clarified by the Council who repeat the mistake

26 September 2007 DPA form sent to Mr C by Officer 1 – received back on 3 October 2007

1 October 2007 C2 complaint made by telephone – received and closed the same day and noted as JUSTIFIED

The Council later explain that 'justified' indicates that C2 had offered a basis for a complaint but was not a comment on the actual work undertaken. It is there for internal categorisation only. They also do not routinely notify the party complained against of a complaint unless they decide to follow-up on the matter in some way. In this case they informed C2 that she should approach her solicitor if she wished to pursue the matter as it was a civil issue

4 October 2007 (Thursday) Mr C complained to the Chief Executive (encloses copy of letter of 21 Sept 2007). Letter passed on to the ACE as head of service for TSD and to Officer 1 for comments. Mr C asks for explanation of why he now appears to be under investigation when he was told otherwise, complains about lack of response to previous letter and makes other allegations about Officer 1

Officer 1 sent two letters to Mr C acknowledging the DPA form and with relevant documents

16 October 2007 Response from the ACE – explains complaints response timescales

Denies Officer 1 spoke to the press about penalties etc and confirmed that this was a civil matter with no locus for TSD – states that press have misrepresented the actions taken by TSD. Denies Officer 1 told the press they were seeking a formal assurance from Mr C and any vendetta against Mr C

20 October 2007

Letter from Mr C to the ACE (copied to the Chief Executive) – questions whether the papers are lying or not and asks for clarification about the press contact issue – questions value of investigation so far

- Notes there are no records of Officer 1's conversation with press
- Notes there is no press policy
- Notes there is no Enterprise Act policy
- Mentions visit on 25 September 2007 to his home – needs an explanation
- Asks why Council have not corrected story if it's wrong
- Asks a number of questions about how TSD deal with consumer complaints

20 October 2007

Letter from Mr C to the Chief Executive – rejects the ACE's explanation

13 November 2007

Reply from the ACE

- Officer 1 has permission to talk to the press
- There is no press policy
- They have supplied everything and he knows how to appeal if he thinks that is wrong
- Provides copy of Enterprise Act information (not Enforcement Policy as previously requested)
- Says 3 September reference was an error in previous letter but does not explain how file was closed on 2 September 2007
- Gives details of the Ombudsman's office

15 November 2007

First Complaint to SPSO – denial of rights, refusal to

answer reasonable questions, offering no redress, faulty procedures, abuse of office and partiality

February 2008

Mr C learns of nomination of journalist at Newspaper 1 by Officer 1 and meets with the ACE to discuss. The ACE denies any previous knowledge of this nomination

Ongoing to
March 2009

Mr C makes a number of FOI requests of the Council and appeals to the SIC about information withheld and is successful in obtaining further information about expense claims and other matters