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| Local Authority provided unreasonable advice regarding its investigation process |
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| Legislation Ombudsmen Act 1975  Agency District Council  Ombudsman Ron Paterson  Case number(s) 403150  Date June 2016 |

*Whether the Local Authority (District Council) reasonably provided advice to complainant regarding an investigation it was undertaking into a Code of Conduct complaint—Ombudsman of the view that the Council erred in this respect*

The complainant made a complaint against the District Council regarding the Council’s actions in respect of a Code of Conduct complaint that she made about a Councillor.

The Ombudsman considered that the Council acted unreasonably in failing to prescribe and communicate a process for approaching the complainant’s complaint, and in failing to maintain adequate records of its investigation into the matter.

The Council referred to communications from the complainant in which she confirmed her understanding of what would happen at a Council meeting. However, that email referred only to an understanding of the Council meeting process, and that explanation came some five months after her complaint was made. There were no records of earlier communications or meetings to demonstrate that a process was determined and outlined to the complainant prior to this.

The Ombudsman considered that it was procedurally unsound for the Council not to determine and communicate at the outset the process for addressing a Code of Conduct complaint, and that record keeping in this instance was deficient. Irrespective of whether the complainant can point to a particular detrimental consequence caused by the Council’s failure in this instance, it was unreasonable for the Council to embark on a process of investigation without making the complainant aware of what that process was. The Ombudsman advised that he was suggesting only that a process be determined (this may be a very simple or short process, depending on the complaint), and that this process be communicated to the complainant at an early stage.

The Ombudsman recommend that the Council:

* undertake to ensure that a proper process is determined for each code of conduct complaint, and communicated to the complainant; and
* take immediate steps to ensure staff were complying with record-keeping obligations.

The Council advised the Ombudsman that it was currently in receipt of 15 to 20 Code of Conduct complaints and that it was aware that ensuring a procedurally sound process and adequate record-keeping, particularly in light of that volume of complaints, was essential to ensuring fair process. It would also offer ‘insurance’ for the Council in terms of the robustness of process and the possibility of review.

However the Council noted that there was a much lower level of awareness of the specific obligations under the *Public Records Act* in relation to creating, maintaining, transferring and disposing of public records. The Council told the Ombudsman that it had taken steps to ensure that officers were aware of their obligations. This included its Senior Leadership Team detailing the Council’s obligations and imparting that knowledge to managers and staff.

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