



Northern Ireland

Public Services

Ombudsman

Investigation of a complaint against Causeway Coast and Glens Borough Council

Report Reference:

201915457

The Northern Ireland Public Services Ombudsman

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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Case Reference: 200915457

Listed Authority: Causeway Coast and Glens Borough Council

SUMMARY

I received a complaint concerning the Causeway Coast and Glens Borough Council's handling of a complaint relating to a planning application. The complainant had brought his concerns to the Council regarding the actions of senior Council officials, including the Chief Executive, in relation to the processing of the planning application. An independent firm was engaged by the Council to carry out an investigation and the resulting investigation report upheld the vast majority of the concerns raised. However, when presented to a Council committee, Councillors decided that as the independent investigation report had been leaked to the public, no further action should be taken on the grounds that this was a breach of Article 6 of the European Convention of Human Rights. This decision was confirmed at a full Council meeting and the complaints process terminated.

Following my detailed investigation of this complaint, I made findings of maladministration in relation to:

- A failure to give full and careful consideration to an independent investigation report into the complainant's concerns,
- A failure to seek legal advice on the content of the resolution adopted at a full council meeting on 6 October 2020 and reconsidered on 1 December 2020.
- A failure to apologise to the complainant or to acknowledge the seriousness of the adverse findings or learning/changes which should be made as a result his complaint,
- A failure to have in place a policy to deal with the potential of disciplinary action following a complaint against its Chief Executive at the time of this complaint.

I recommended that the Council should:

1. Provide a written apology to the complainant for the failures identified in this report within one month of the date of my final report.
2. Revisit the content of the independent investigation report and give consideration to seeking legal advice specifically on the veracity and validity of the resolution passed at the full Council meeting on 6 October 2020 and reconsidered on 1 December 2020. Based on the advice received the Council should give consideration to revisiting the course of action taken at that time.
3. Provide me with documentation to evidence learning and improvements which have been derived from its handling of this complaint.

THE COMPLAINT

1. I received a complaint concerning the Causeway Coast and Glens Borough Council's (the Council) management of a planning application and how it managed a subsequent complaint regarding the actions of council staff. NIPSO have a wide discretion to consider complaints of maladministration in the provision of public services including how a council manages planning applications. However, the statutory framework which informs the role of Public Services Ombudsman requires in the exercise of that discretion that certain matters be considered before an investigation is commenced. One of the factors which requires to be considered is whether an alternative legal remedy exists and whether it is reasonable for that remedy to be pursued. As the processing of the planning application that led to this complaint was judicially reviewed on two occasions, I determined that it was not appropriate for me consider issues relating to the council's actions in processing the planning application.

My investigation has therefore focused on how the Council managed the complaint about the planning application and whether the Council followed its complaints policy, guidelines and best practice. I am aware that this application has, among other things, been included in investigation and consideration by various other bodies, one of which has been an Extraordinary Audit of the Council by the Northern Ireland Audit Office which produced a report on 7 July 2022. Prior to this the application had been subject to Judicial Review and had been the subject of a BBC Spotlight television programme along with various other newspaper publications.

Background

2. By way of background and context, the initial planning application was for a hotel and spa complex. Planning permission was first granted on 29 June 2017, but the High Court quashed this on 6 September 2017. It was again granted on 5 March 2019 and quashed again in September 2019. The complainant brought his concerns over the handling of the planning application and the actions of Council officials, including the Chief Executive, to the Council on 18 November

2019. As the complaint concerned the actions of the Council's Chief Executive, it was decided to appoint an independent investigation firm, (Company A) to investigate the concerns raised. The report into the investigation conducted by Company A upheld 15 of 18 allegations made against the Chief Executive and all of the allegations made against another member of staff.

3. When presented to the Council's Corporate Policy and Resources Committee¹(CPRC), Councillors decided that as the report provided by Company A had been leaked to the public, no further action should be taken, and the complaints process terminated. The full Council meetings of 6 October 2020 and 1 December 2020 confirmed this decision. The complainant contended the Council's decision to abort the complaints process meant that it failed to follow its complaints policy and failed to afford him his rights as a complainant.

Issue(s) of complaint

4. I accepted the following issues of complaint for investigation:

Issue 1: Did the Council follow its complaints policy, guidelines, standards and best practice in its handling of the complaint received of 18 November 2019.

Issue 2: Did the Council fail to have in place a policy to deal with a complaint against its Chief Executive

INVESTIGATION METHODOLOGY

5. In order to investigate this complaint, the Investigating Officer obtained from the Council all relevant documentation together with its comments on the issues the complainant raised. This documentation included information relating to the Council's complaints process. The complainant also supplied a detailed rationale for his complaint against the Council together with supporting documentation.

¹ This Committee recommends to Council the resolution of any associated issues.

6. The information and advice which informed the findings and conclusions are included within the body of this report.

Relevant Standards and Guidance

7. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those specific to the circumstances of the case. I also refer to relevant regulatory, professional, and statutory guidance.

The general standards are the Ombudsman's Principles²:

- The Principles of Good Administration
- The Principles of Good Complaints Handling

8. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of the authority whose actions are the subject of this complaint.

The specific standard and guidance relevant to this complaint is

- Causeway Coast and Glens Borough Council – Comments, Compliments and Complaints Policy (the Complaints Policy)

I have also considered:

- Causeway Coast and Glens Borough Council – Council Constitution
- The Code of Good Governance.
- Northern Ireland Audit Office – Extraordinary Audit of Causeway Coast and Glens Borough Council (7 July 2022).
- Investigation Report into Potential Data Breaches, Causeway Coast and Glens Borough Council.
- Company A report on complaint to Causeway Coast and Glens Borough Council.
- Report by the Independent Commission on Good Governance Standards for Public Services (Jan 2005)

² These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

9. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the Council's administrative actions. It is not my role to question the merits of a discretionary decision unless my investigation identifies maladministration in the Council's process of making that decision.
10. I did not include all information obtained during the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.
11. A draft copy of this report was shared with the complainant and the Council for comment on factual accuracy and the reasonableness of the findings and recommendations. The complainant had no objections to my findings and conclusions. A special meeting of the Council was held on 21 August 2023 at which it was resolved '*That Council accept the recommendations within the report and make sure those recommendations either have already been implemented, as in through the audit process, or are speedily implemented*'. The Council also provided clarification on the complaints policy in place at the time of the complaint.

THE INVESTIGATION

Detail of Complaint

12. The complaint related to the processing of a planning application and the conduct of various Council officials, including that of the Chief Executive. In raising his concerns, the complainant relied heavily on and quoted extensively from a judgement dated 9 August 2019 in the matter of a Judicial Review against the Council. The complainant contended the findings made in the judgement, which included irregularities of 'unmistakable significance', revealed failings on the part of the Council about the processing of the planning application. He also complained about the conduct of named members of staff of the Council (the Chief Executive, Person A, and two other council staff) and their role in the processing of the planning application. As indicated previously my investigation has focused primarily on how the complaint was handled by the Council.

13. The complainant also said the Council did not have in place a policy to deal with a complaint about its Chief Executive.

The Council's response to investigation enquiries

14. Among other things, the Council confirmed it appointed Company A to investigate the complainant's concerns. The report from Company A upheld the majority of the complaints about the Chief Executive, upheld all of the complaints about Person A, but did not uphold the complaints against the other council staff. The report of the investigation conducted by Company A was considered at the Council's Corporate Policy and Resources Committee (CPRC) on 22 September 2020. It was further considered at the full Council meetings of 6 October 2020 and 1 December 2020. The Council stated that *'the Councillors had an opportunity to review a redacted [Company A] report..... The report was redacted as personal information was contained within the report and the process was confidential'*.
15. The Council stated it *'has met all its obligations to the complainant under the Council's Comments Compliments and Complaints Policy. A copy of the findings pertaining to each allegation against the 4 named individuals was provided to the complainant'*. It also stated that the *'Council now has in place the Agreement on Discipline, Capability and Redundancy for Clerks/Chief Executives'*. (Agreement on Discipline)
16. In relation to any learning or improvements which have been made as a result of this complaint, the Council stated:
- Work is ongoing within the Planning Department section of the Department to review processes and strategies, identifying improvements and the implementation of same;
 - Planning staff have received a corporate induction and an induction provided by their Line managers; Staff training has also been provided, for example, staff have attended CPD Training through the RTPI on issues such as Rural Design and Urban Design;

- Planning Staff have undergone specific training in relation to Data protection and EIA Development;
- Guidance has been issued to Planning staff for the recording of internal discussions/meetings and templates have been developed and implemented; and
- Guidance has been issued for internal meetings, telephone meetings and reception queries.

Extracts from relevant documentation

(i) CPRC Meeting Tuesday 22 September 2020

'Investigation report into complaint

Legal advice was provided to members in relation to the investigation into a complaint', (related to the availability of a policy concerning a complaint against the Chief Executive)

Proposed, seconded and carried unanimously 'to recommend that Council adopts the Agreement on Discipline, Capability and Redundancy, Joint Negotiating Committee to Local Authorities in NI (formerly concluded on 17 December 1996) (the Agreement on Discipline) and further recommends that the Council's Comments and Complaints Policy is reviewed with legal input to the review.'

(ii) Full Council Meeting Tuesday 6 October 2020

Proposed and seconded 'That after a full and careful consideration of the [Company A] Report and its findings, that we cannot proceed any further; The report has been leaked on social media and subsequently leaked to the media. This has led to a frenzied trial of the Chief Executive on social media before the Chief Executive has had the opportunity to see the report. Furthermore, this is a fundamental breach of Article 6 of the European Convention of Human Rights, the right to a fair trial; The process is now irrevocably flawed, given the comments which have been made both on the media and social media.'

Members requested a legal opinion on the motion.... The Solicitor advised that he could not provide advice to the Council in terms of its Standing Orders³. The Mayor confirmed that no other legal representative was in attendance at the meeting’.

The proposal was voted on and carried.

(iii) Letter to Complainant from the Council dated 23 October 2020

The letter outlined the findings of the report by Company A. The letter stated ‘*Given the complex and serious nature of your complaint, and the number of senior officers involved, your complaint was dealt with at Stage 2 of the "Complaints Procedure in relation to the Service provided/actions of the Chief Executive" (Page 14) of the Comments, Compliments and Complaints Policy. In accordance with the procedure an Independent Investigator....[Company A] was appointed to conduct this investigation. The report and findings have now been received and considered.... The Council believes the internal processes in relation to this matter have now been concluded.*’

(iv) Full Council Meeting Tuesday 1 December 2020

Legal opinions in the matter of 2 no call in ⁴requests in respect of a decision of the Council dated 6 October 2020

(1) Legal opinion (No1) in the matter of a Call in Notice dated 8 October 2020 in respect of a Council Motion on 6 October 2020, relating to the [Company A] Report into a complaint

*(2) Legal opinion (No2) in the matter of a Call in Notice in respect of a Council Motion on 6 October 2020, relating to the [Company A] Report into a complaint
Confidential legal opinion, previously circulated, presented by the Director of Environmental Services*

The decision of Council in relation to the matter taken on 6 October 2020 was ‘That after a full and careful consideration of the [Company A] Report and its findings, that we cannot proceed any further; The report has been leaked on social media and subsequently leaked to the media. This has led to a frenzied trial of the

³ Orders or rulings governing the procedures of the Council

⁴ Calling in a decision by Councilors means that the decision is paused until considered again

Chief Executive on social media before the Chief Executive has had the opportunity to see the report. Furthermore, this is a fundamental breach of Article 6 of the European Convention of Human Rights, the right to a fair trial; The process is now irrevocably flawed, given the comments which have been made both on the media and social media.'

A re-vote was held, and the decision of Council was upheld

(v) Email dated 21 December 2020 to the complainant from the Council

'...I can confirm that the Council have met all their obligations to you as the complainant, under the Councils Comments, Compliments and Complaints Policy.The Council believes the internal process in relation to this matter have been concluded...'

Analysis and Findings

17. At this juncture I should once again emphasise that my primary examination of this complaint is on how the Council followed its complaints policy in the handling of the complaint. My consideration of the complaint has not focused on the processing of the planning application which ultimately was the genesis of all that followed.
18. When the complaint was received on 18 November 2019, the Council's response to the complainant confirmed that it would be considered at stage 2 of the Council's Comments, Compliments and Complaints Policy (the Complaints Policy) and therefore an independent firm, Company A, would be appointed to investigate. The Council wrote to the complainant on 1 July 2020 confirming receipt of the report from Company A which was to be referred to the Mayor and then to the CPRC.
19. A major issue of the complaint to this Office is that there was no proper '*Full and careful consideration*' of the content of the Company A report by the Council and that therefore it was not dealt with properly. The complainant said that at its full meeting on 6 October 2020, the Council '*peremptorily resolved to*

abort the process on the 'fatuous grounds of alleged, but unsubstantiated, breach of the Chief Executive's Article 6 rights' without any legal advice having been obtained to substantiate any such view.

20. My examination of the documentation confirms that the only records which refer to the Council's 'consideration' of the Company A Report are contained within the minutes of the CPRC meeting held on 22 September 2020 and the full Council meetings held on 6 October 2020 and 1 December 2010. These records indicate that prior to the CPRC meeting of 22 September 2020, Council members were invited to view a redacted copy of the Company A Report under supervision and by appointment. They did not have an opportunity to view a full unredacted copy of the Company A report itself. The Council informed me the Company A report available to councillors was redacted as '*personal information was contained within the report and the process was confidential*'.
21. I make no criticism of the Council for its decision to provide a redacted version of the Company A report to Councillors. I am satisfied that the Council description of the Company A report as containing personal information of individual persons not complained against within a confidential process is accurate and that this was the reasoning behind any redaction. I also consider that a reading of the redacted report supplied to Councillors provided a detailed narrative of Company A's consideration of the complaints against the named individuals subject to the complaint. The detail of the complaints made and of the reasoning as to why 15 of the 18 issues against the Chief Executive were upheld and all 14 of those against Person A were upheld, though in parts redacted, remained comprehensible. Similarly, the reasoning behind the decision not to uphold the complaints against the planning staff named in the complaint was also explained and comprehensible.
22. However, regarding the actual consideration of the complaint made by the complainant and of the content of the Company A report, I note that the CPRC meeting of 22 September 2020 limited itself to recommending that the Council

adopts the Agreement on Discipline and that it be reviewed with legal input. No discussion of the content of the Company A report occurred at this time.

23. I noted and considered the content of a subsequent investigation carried out by an Independent Senior HR Consultant commissioned by the Council, and which reported on potential data breaches. This report, dated 21 February 2021, concluded that there had been a data breach in that information contained within the Company A report was leaked to a Facebook Group called 'Causeway Coast and Glens Debtwatch' during a CPRC meeting on 25 August 2020 and that subsequently further information from the Company A report was reported by the BBC on 5 October 2020 and by other media outlets in the following days.

24. The minutes of the full Council meeting held on 6 October 2020 reveal that the proposed Agreement on Discipline, was discussed and voted on and stated that the Company A report would be presented at the next full Council meeting. However a resolution '*That after a full and careful consideration of the[Company A] Report and its findings, that we cannot proceed any further; The report has been leaked on social media and subsequently leaked to the media. This has led to a frenzied trial of the Chief Executive on social media before the Chief Executive has had the opportunity to see the report. Furthermore this is a fundamental breach of Article 6 of the European Convention of Human Rights, the right to a fair trial; The process is now irrevocably flawed, given the comments which have been made both on the media and social media.*' was proposed and voted on. It was carried by members, 22 voting for and 15 against with 1 abstention. I am therefore satisfied that the Council's purported rationale for the resolution was that a 'fundamental' breach of Article 6 of the European Convention of Human rights had occurred.

25. On 8 October 2020 a number of Councillors requested a call-in of the resolution passed on 6 October 2020 on the grounds that the Company A '*report and its contents were never 'considered or evaluated in full Council..'*' When the matter came before the full Council again on 1 December 2020, the

resolution deeming the process *'irrevocably flawed'* was put before the Council for reconsideration. It was again passed, with 22 members voting for and 15 members against. The Mayor then declared reconsideration of the decision was carried and no further debate on the matter occurred.

26. In my examination of how the complaint was dealt with under the Council's complaints policy, I am of the view that, initially, appropriate action was taken. That is, an independent investigator was sourced and appointed to investigate the complaint against named individuals. The subsequent Company A report was then redacted and shared with Councillors, albeit under supervision and by appointment. I make no criticism of the Council for this. There is no indication that there was any restriction or limitation on any Councillor who wished having access to the Company A report.

27. It is clear to me that the complainant had a reasonable expectation that his complaint would be dealt with under the Council's policy for complaints and I consider that up to the stage described above, that the action taken by the Council was appropriate and within its complaints policy. However, I am also satisfied that the complainant would have had a reasonable expectation that the next stage of this process would involve 'careful' consideration of the Company A report and its contents, which after all had upheld the vast majority of the issues of complaint against the Council's Chief Executive and Person A and that some further action would flow from this consideration.

28. Having examined the documentation available to me and having given this matter serious consideration, I am satisfied that such full and careful consideration of the content of the Company A report did not take place, not at the CPRC meeting on 22 September 2022, nor at the full Council meetings of 6 October 2020 and 1 December 2020. The records available to me are brief and indicate that any discussions which did take place related to the issue that elements of the Company A report had been leaked and whether the complaints process should continue. It is evident to me that the leaking of the Company A report and subsequent comments on social media was the focus of

debate and not the reports contents, nor of how the contents impacted upon the Council and importantly how the Council would deal with the report's serious adverse findings.

29. As a result of the failure to give due consideration to the content of the Company A report which the Council commissioned and the adoption of the resolution first passed on 6 October 2020 and passed again on 1 December 2020, the Council took no further action about the complaint or the independent investigation findings, as referenced by the email dated 21 December 2020. The ultimate outcome of this was that no consideration was given by the council to what further action was necessary to deal with the findings in the Company A report relating to the Chief Executive, on the basis that his interests had been prejudiced. Nor was any consideration given by the Council as to what further action should be taken to deal with the findings in relation to Person A as ultimately it was deemed that the complaint issues relating to him were intrinsically linked to those of the Chief Executive.
30. The only reason for this was expressed in the resolution which stated that the leak of details of the Company A report was a 'fundamental breach of Article 6 of the European Convention of Human Rights....' and that '*The process is now irrevocably flawed, given the comments which have been made both on the media and social media.*'
31. I note that no legal opinion was sought between the Council meetings held on 6 October 2020 and 1 December 2020 on the validity of the resolution despite members requests. The minutes of the Council Meeting of 6 October 2020 record that after members requested legal opinion on the motion '*The solicitor advised that he could not provide advice to Council in terms of its Standing Orders. The Mayor confirmed that no other legal representative was in attendance at the meeting.*'
32. I note that legal opinion was provided to the Council meeting of 1 December 2020 but this was in relation to the validity of the call in notice dated 8 October 2020, and not to provide an opinion on a potential breach of Article 6 of the

European Convention of Human Rights and what options were open to the council in terms of their consideration of the Company A report given the breach of confidentiality. I would have expected that once the breach of confidentiality occurred the Council would have sought advice as to how this would affect the options open to them. As far as I can determine no such report was provided to the Council nor did the Council seek any further advice. Having raised the issue of legal advice at the meeting on 6 October 2020 with the solicitor in attendance at the meeting it is not clear why the solicitor was unable to provide advice, why the matter was not deferred to enable advice to be obtained. A further opportunity to rectify the error of the decision made on the 6 October was available when the matter came back before the council meeting on 1 December 2020. There was no report presented to this meeting on the impact of the breach of confidentiality which occurred and how this would impact the options open to the council. The only legal advice provided to the council was in relation to the call-in process. Given the lapse of time I consider there was ample opportunity following the call in request on the 8 October 2020 for the deficiency of the decision making process at the council meeting on 6 October 2020 to be rectified.

33. Additionally, irrespective of the decision not to consider the findings of Company A's report further, first taken on 6 October 2020, I note that the complainant received no apology or acknowledgement from the Council recognising the seriousness of the adverse findings made because of his complaint nor of any learning or changes which the Council proposed making as a result. Instead, he simply received a bland email on 21 December 2020 stating that '*The Council believes the internal process in relation to this matter have been concluded...*' I note the Council Constitution, Article 1.3 – '*The purpose of the Constitution is to (d) enable decisions to be taken efficiently and effectively (e) create a powerful and effective means of holding decision makers to public account*' and Article 10.2 - principles of decision making, which states. '*All decisions of the Council will be made in accordance with the following principles (b) due consultation and the taking of professional advice from officers (d) a presumption in favour of openness*'. I do not consider

the Council's actions regarding this complaint to have been compliant with these articles of its constitution, which are quite explicit.

34. Overall following my consideration of this complaint, I consider there to have been a failure by the Council to give full and careful consideration to the Company A investigation report into the complainant's concerns and this to be contrary to the expectations raised under the Council's complaints policy which states that the Council will *'fully and effectively respond to any comments or complaints received from the public relating to its services or the actions of its workforce....'* I consider there to have been a failure to seek legal advice on the content of the resolution adopted on 6 October 2020 and passed again on 1 December 2020. Furthermore, I consider there to have been a failure to apologise to the complainant or to acknowledge the seriousness of the adverse findings or learning/changes which should be made as a result of his complaint which was almost totally upheld and was judged to be wholly justified from the findings of the independent Company A investigation report. The Council's consideration of the Company A report should have enabled them to consider what further steps needed to be taken given the findings of the report. The Council meeting and its consideration of the report was not a hearing to which Article 6 of the ECHR would apply. The decision of the Council does not appear to have been based on a proper consideration of the Company A report and the options open to it. The decision of the Council taken at the meeting on 6 October 2020 therefore appears to me not to be based on any information which would enable it to make a rational decision and therefore constitutes maladministration. Similarly, without any further proper consideration other than whether the call followed appropriate procedure the decision taken at the Council meeting on 1 December 2020 also appears irrational given that no further consideration was given to the issue.
35. I refer to the following Principles of Good Administration,
- **Principal 1**, Getting it Right, Taking proper account of established good practice and taking reasonable decisions based on all relevant considerations. This principle applies to the failure to give proper

consideration to the content of the Company A report and to seek legal advice;

- **Principle 2**, Being Customer focused, keeping to its commitments, relates to the failure to fully and effectively respond to the complainant;
- **Principle 3**, Being Open and accountable, taking responsibility for its actions relates to a failure to apologise to the complainant or to acknowledge the seriousness of the adverse findings or learning/changes which should be made as a result his complaint;
- **Principle 4**, Acting fairly and proportionately, ensuring that decisions and actions are proportionate, appropriate and fair also relates to the failure to give proper consideration to the content of the Company A report and to seek legal advice;
- **Principle 5**, Putting things right, operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld also relates to a failure to apologise to the complainant or to acknowledge the seriousness of the adverse findings made by Company A;
- **Principle 6**, Seeking continuous improvement, reviewing policies and procedures regularly and ensuring that lessons are learnt from complaints relates to the failure to have in place a policy to deal with the potential of disciplinary action following a complaint against its Chief Executive and the failure to acknowledge the seriousness of the adverse findings of the Company A report or its consequences.

I consider there to have been a failure by the Council to adhere to these principles in relation to its consideration of the complaint made to it by the complainant and for these failures to constitute maladministration.

Issue 2: Did the Council fail to have in place a policy to deal with a complaint against its Chief Executive

36. The complainant contended the Council failed to have in place a policy to deal with a complaint against its Chief Executive at the time of his complaint and the failure to apply such a policy to this complaint. My investigation has revealed

that the Council's Complaints Policy in place at the time (adopted by the Council on 24 January 2017), did contain a section titled 'Complaint procedure in relation to the Service provided/actions of the Chief Executive of the Council'. What was not in place was a policy to deal with the potential of disciplinary action following a complaint against the Chief Executive.

37. The CPRC meeting on 22 September 2020 received legal advice, sought after receipt of the Company A report, advising Councillors of potential next steps. It was recognised the possibility of disciplinary action against the Chief Executive might arise and that such action was not covered by the Council's Comments, Compliments and Complaints policy. The advice received noted that the relevant policy was the Agreement on Discipline, and that this policy had not been adopted by the Council. A recommendation was made that it should be adopted as soon as possible.
38. As noted in paragraph 22 of this report, the CPRC meeting of 22 September 2020 recommended that the Council adopts the Agreement on Discipline and that this was subsequently confirmed by the Full Council meeting on 6 October 2020.
39. The Council's response to my investigation enquiries stated that the relevant disciplinary procedure is now in place, however the response does not provide any detail as to why this had not previously been adopted. This had been concluded in 1996 and it was only on the basis of this particular complaint and the legal advice received that led to the adoption of the procedure by the Council. Therefore, I am satisfied that at the time of this complaint, the Council did not have in place the requisite policy to consider the potential disciplining of a Chief Executive following a complaint.
40. I consider the failure to have in place such a procedure to constitute a further example of maladministration and to be contrary to the First Principle of Good Administration, Getting it Right. Taking proper account of established good practice and acting in accordance with the law and with regard for the rights of those concerned. Also, the sixth principle, Seeking continuous improvement – reviewing policies and procedures regularly to ensure they are effective. I

consider that this failure led to an injustice to the complainant of a potential impact on the processing of his complaint. This is because the appropriate procedure was not in place before his complaint was received and was only adopted when the Council first considered the findings of the Company A report. I consider this to represent a loss of opportunity to have the complaint properly considered. I am aware that the Council subsequently decided that disciplinary action against the Chief Executive was not appropriate in this case, however the fact that the requisite policy was only put in place in the days before this decision was taken has led to the additional injustice of uncertainty in the complainant as to what may have happened should the appropriate policy have been in place at an earlier date.

CONCLUSION

41. I investigated a complaint on how the Council followed its complaints policy in the handling of a complaint. I made findings of maladministration in relation to:
- A failure to give full and careful consideration to an independent investigation report into the complainant's concerns.
 - A failure to seek legal advice on the content of the resolution adopted at a full council meeting on 6 October 2020 and reconsidered on 1 December 2020.
 - A failure to apologise to the complainant or to acknowledge the seriousness of the adverse findings or learning/changes which should be made as a result his complaint.
 - A failure to have in place a policy to deal with the potential of disciplinary action following a complaint against the Chief Executive.
42. My investigation of this complaint has revealed a particularly egregious example of poor administration by the Council. I acknowledge that appropriate action was taken initially to investigate the complaint, in the commissioning of the Company A report and that its content was made available to Councillors. However, once the serious adverse findings of this report regarding the actions of senior officials were disclosed to the Council, no proper discussion of its

content took place, and the investigation was in effect closed off and concluded with no further action being proposed.

43. The grounds upon which this decision was taken, quoting a specific section of Human Rights legislation, appears to have been arbitrary and not based on any discussion, legal opinion or advice. No documentation exists as to how, why or from whom the proposal originated or why the decision on such a specific, defined question of law was not backed up by a robust legal opinion, which at least would be defensible in some shape or form, should questions be subsequently asked. Documentation showing the consideration given to such matters is fundamental to a public organisations' good administration. If nothing else, the ability to evidence a paper trail of the reasoning behind decisions acts as a shield against accusations that public officials have made arbitrary decisions or that decisions have been made for ulterior motives. Dealing with such a serious and ultimately justified complaint in such a way is not conducive to enhancing the public's confidence of good governance in local government. It is only through the complainant's perseverance and tenacity that this matter has come so far. I consider that the proper examination and reflection on complaints received is a fundamental tenant of good governance, most especially in cases where the bodies own investigation has found there to have been substance to that complaint. The Councils actions, following its own investigation of this complaint, has led to the inexplicable situation whereby serious, justifiable concerns raised by the complainant concerning senior Council officers, were found to have substance, yet no consequence or action by the Council flowed from this. No discussion on the investigation findings took place as to the Council's responsibilities or regarding any action which should flow from the investigation findings, with the result being the serious adverse findings of the investigation report have been to all accounts and purposes closed down and ignored. I consider this to be an unacceptable situation. It is for this reason that I have made my findings of maladministration and I am most critical of the Council.

Recommendations

44. I recommend that the Mayor of the Council in accordance with NIPSO guidance on issuing an apology (July 2019), provides a written apology to the complainant for the failures identified in this report. The Council should provide the apology to the complainant within **one month** of the date of my final report.

45. The Council should revisit the content of the Company A report and give consideration to seeking legal advice specifically on the veracity and validity of the resolution passed at the full Council meeting on 6 October 2020 and reconsidered on 1 December 2010. Based on the advice received the Council should give consideration to revisiting the options open to it.

46. At paragraph 16 of this report the Council has detailed learning and improvements which it states have been derived from this complaint. The Council should provide me with documentation to evidence learning and improvements detailed.

MARGARET KELLY

Ombudsman

2 October 2023

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.

- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

Being customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.

- Providing honest, evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.