

EVIDENCE TO THE REVIEW OF SPCB SUPPORTED BODIES COMMITTEE FROM ARTHUR MCFARLANE

9th, January, 2009.

The Members of the RSSB Committee,
T2. 60,
Scottish Parliament,
Holyrood,
Edinburgh.

Dear Ladies and Gentlemen,

I wish to present to you, as briefly as possible, the following evidence and recommendations on the workings of the Scottish Public Services Ombudsman :

1) I first complained to the SPSO soon after that post was created over the conduct of officers of Argyll & Bute Council in dealing with a planning application for a development within the Tarbert Conservation Area .

My first complaint was that planning officers had produced a report on a planning application by my neighbours, and his partner which contained false claims and demonstrable bias towards the recommendation to approve the application but which failed to mention the damage which the proposed development would do to the character and appearance of the Conservation Area .

The planners report was clearly so far removed from what is normally considered good ethical practice that I suspected that they had begun with their recommendation for approval, then added anything which could possibly be presented as acceptable planning and finally supported their case with several demonstrably false statements favouring approval .

[When I requested a site meeting at which I would be able to point out to councillors the discrepancies between the report and the actual situation on the ground my request was refused and the application was subsequently granted on the basis of the planners' recommendation .]

Being appalled by the planning officers' flagrant corruption of the planning process, after pursuing the matter through Argyll & Bute Council's complaints procedures without a scrap of satisfaction I lodged a complaint on the matter to the Scottish Public Services Ombudsman . With my complaint I included the request that an investigating member of the SPSO's staff come to Tarbert to see at first hand just how badly the planning officers had misrepresented the situation in their report .

My request that an investigator come to Tarbert was not acknowledged and the SPSO investigator assigned to the case eventually wrote to me advising of his "findings" of his investigation . Essentially, his "findings" - formed without leaving his desk in Edinburgh - was a bland defence of Argyll & Bute Council's actions without any attempt to critically engage with the specifics of my complaints .

I duly wrote to the investigator pointing out that the standard of his "investigation" was neither thorough nor acceptable to me and requesting that he then gave my complaints the thorough investigation which SPSO publicity literature had led me to expect they would be given.

The investigator replied, insisting that he had given all the complaints a full and thorough consideration and that he was completely satisfied that Argyll & Bute Council had not been guilty of maladministration on any count. He also informed me that he would be advising the Council that, contrary to my allegations, he had found them not to be guilty of maladministration.

I subsequently complained over the investigator's failure to properly investigate my complaint to his immediate superior and then to Professor Alice Brown, the appointed Scottish Public Services Ombudsman. Neither of those two people were prepared to address the specifics of my complaint, simply to reiterate the glaringly false claim that my complaint had been fully and thoroughly investigated by a member of their staff in whose ability they had complete confidence.

2) My next experience of the SPSO arose following my neighbours' second application to Argyll & Bute Council - which was to change the planning condition that their access road should not have a gradient steeper than 1 in 7 to one of not steeper than 1 in 5.

[I should state that the access road had been built without planning consent and in contravention of planning legislation some years earlier but although it was in a highly conspicuous part of the Conservation Area and has a gradient in parts steeper than 1 in 3.5 the Council took no enforcement action against it.]

I objected to the application on the grounds that our neighbours' access presented a hazard to users of our pre-existing access since on its steepest stretch it was considerably above and pointed directly at our access.

When the Council came to decide the application rather than making a decision on whether or not to grant permission for a gradient of no steeper than 1 in 5 - as applied for - they decided just to grant permission for the access as it was (with a gradient in places as steep as 1 in 3.25 - more than twice as steep as their standard safety recommendation of no more than 1 in 7).

In the planners' report to the councillors they stated that the Roads Department (which makes the safety recommendations on access conditions and) raised no objection to the application. However, when I demanded of the Area Roads Manager if they had either recommended or approved the granting of consent to the access with its gradient of more than twice their usual safety recommendation he informed me in writing that they had not.

After it met the customary evasive response from the Council's senior officials I made the complaint to the SPSO that the planners had again been guilty of maladministration by:

- 1) advertising the application as an application for permission for an access road with a gradient of no steeper than 1 in 5 but then deciding the application as one for permission for a gradient as steep as 1 in 3.25 and
- 2) presenting to the councillors the Roads Department's agreement to changing the 1 in 7 gradient condition to one of 1 in 5 as if it were their agreement to approving an access road with a gradient of 1 in 3.25 - more than twice as steep as their standard safety recommendation.

The SPSO blankly refused to address this complaint claiming, quite bizarrely, that they considered that they had already dealt with the matter .

Despite my repeated requests for an explanation as to why the SPSO considered that they had already dealt with the matter none was ever given and eventually I was informed that as far as the SPSO was concerned the case was closed and no further communications from me would be answered .

3) My latest experience of the SPSO came as a result of Argyll & Bute Council's breaching Section 65 of the Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in its handling of a planning application with which I was assisting .

Essentially, Section 65 stipulates that a planning authority will not decide an application for development within a conservation area until 21 days after the application has been advertised. In the case of the application 06/01558/OUT () Argyll & Bute Council insists that it has decided the application despite the fact that it has not advertised it .

When I first advised the Council that I was aware that their claim to have decided the application was illegal they insisted that it was, in fact legal, because they had advertised the application . When they were confronted with the evidence that the application had never been published in the local newspapers, as required, the Council claimed that although the advert had not been placed they thought that it had . The Council supported that claim with the story that their computer system told them that the advert had been placed when it had not - and "apologised" for their "mistake" . However, that fabrication was shown to be false by the planners' earlier report on the application to councillors which revealed that they were fully aware at the time of "decision" that the application had not been advertised .

[The injustice suffered by as a result of the planners not advertising his application arises from the public's being denied the opportunity to make representations on the application, some of which would have been made by supporters of the application and would have brought to the councillors' attention factors favouring the granting of consent which the planners omitted from their report and which could well have led the councillors to grant consent.]

After much urging of the Council to advertise the application and decide it in compliance with the law of the land, I was persuaded by my MSP that the best way to resolve the matter was to lodge another complaint with the SPSO, which I reluctantly did . In due course I was advised by the investigator who had been assigned to the complaint that once again Argyll & Bute Council had acted properly . When I asked for an explanation as to how the Council could have acted either professionally or ethically when it knowingly breached current planning legislation I received no explanation, only another bland refusal to condemn any aspect of the Council's conduct .

I subsequently put the same question to both a Depute Ombudsman and the Ombudsman herself. The Depute Ombudsman avoided answering the specific question but simply repeated the investigator's shamelessly vague defence of the Council's actions . The Ombudsman, despite being asked directly if she considers that Argyll & Bute Council's attempting to decide a planning application in breach of Section 65 of the relevant Act does not amount to

maladministration has chosen not to fulfill her duty to answer the final appeal available to me against her staff's refusal to diligently investigate and answer my complaint .

I should advise that I hold on record the full detailed correspondence between myself and the other parties and I will gladly make any portion of it available to you on request .

[I also made a fourth complaint to the SPSO against Argyll & Bute Council planners which involved them breaking a verbal agreement and otherwise allowing their personal prejudices to interfere with their professional obligations as Council officials . That complaint is too complicated and involved to describe adequately in this letter .]

However, I hope that you will recognise from the evidence which I have provided that my complaining to the SPSO against the conduct of officers of Argyll & Bute Council has been a complete and utter waste of my time . Rather than seeing an improvement in the ethical conduct of Council officials I have seen their conduct deteriorate to the point where they are clearly prepared to break the law of the land when it suits them - with apparent confidence that the SPSO will "clear" them of any allegations of maladministration which I may bring against them .

I doubt if I am alone but my personal experience of the SPSO has shown beyond the slightest shadow of a doubt that the Ombudsman and her staff a) fail to provide the kind of diligent, ethical investigation of complaints which they lead the public to believe they will provide; and b) even when confronted with irrefutable proof of their failure, are not prepared to admit that they are failing to provide the required level of service .

This is a completely outrageous and unacceptable situation . Also, it is one which only the Scottish Parliament can set to right .

Clearly, the result of the Scottish Parliament's setting up the SPSO is that it has merely provided a "false beacon" which attracts and frustrates the complaints of people hoping for justice against our big public bodies. It is in no-one's interest that the SPSO basically treats complaints and complainers with contempt by ignoring everything which shows that officials are guilty of maladministration, then informing complainers that in every instance they have been wrong to accuse officials of misconduct and finally writing to the bodies complained about telling them that they have done nothing wrong and to carry on in the same old way .

This is institutional cheating and a sure recipe for social disaster . And I simply cannot understand why the SPSO has been allowed to function so disgracefully badly for so long . [Also, the thought that the role of the SPSO could be enlarged to the extent that prisoners locked in their cells could be forced to make complaints against their treatment to the SPSO absolutely horrifies me .]

Scotland, if it is to become a country in which its people can have pride, needs to put justice right at the very heart of its life . The unwelcome but, nonetheless, very clearly emerged truth is that the office of SPSO has shown itself to be an enemy of justice . If we are interested in justice we can no longer allow the SPSO to function as it has done .

Professor Alice Brown may have been a disastrous choice as Ombudsman . But it also has to be admitted that the machinery which put and kept Professor Brown into office has now been shown to be faulty and if the same machinery is employed to produce a successor for

Professor Brown there exists the real possibility that another unsuitable individual will occupy the post of Ombudsman for the next four years - perhaps longer . That would be a disaster for the cause of justice in Scotland . And I hope that the Scottish Parliament will ensure that that does not happen .

I realise that the failure of the SPSO is a huge problem for Parliament . However, I would also remind MSPs that justice in Scotland is the peoples' justice and too important a matter not to invite the people to take their full natural part in upholding .

I, therefore, respectfully propose that rather than widening the role of the SPSO under the direction of another Ombudsman appointed under the appointments system which has already failed us we replace the Ombudsman by a panel of the Scottish people directly elected by the Scottish people themselves and who will take responsibility for the genuine investigation of the complaints of the Scottish people against their public servants .

By replacing the Ombudsman by an elected panel of the people we would solve the presently grave problem of having a person who is, in reality, unaccountable for her decisions having the final say on the peoples' complaints against their public servants . [I know that the Ombudsman is unaccountable because I have repeatedly tried and failed to have her taken to account .]

Also, at a local level, I would submit that rather than lodging complaints against council officers with a national Ombudsman people in, for example, Argyll & Bute would be much better served if their complaints were dealt with by a panel of, perhaps, eight elected people - with two elected in each of the four council "Areas" . Not only would such an arrangement almost certainly be more effective in dealing with peoples' complaints but it would also serve to return democratic power closer to the people .

To conclude, I consider that to make any complaints handling system work we need to make sure that we man that system with the right people i.e. those with a passion for justice . In Scotland, to date, we have failed to get the right people into position and consequently people like myself who have sought justice through the present system have found that justice was not there . The people we complained to turned out to be the protectors of those against whom we sought justice . This has to change and the power to make the change rests not with the people who have seen their rights being trampled but with the members of the Scottish Parliament . I urge you to use that power wisely on our behalf .

If I can be of any further assistance to you in your mission to deliver better justice in Scotland through improved complaints handling I shall consider it an honour .

Arthur Mc Farlane.