



PE1076

# The Scottish Parliament

## Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

### Details of principal petitioner:

*Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available*

Mr D.W.R. Whittet QPM

### Text of petition:

*The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.*

*The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS*

" The petitioner requests the Scottish Parliament to set up an Appeal Tribunal to review final decisions by the Public Services Ombudsman where any complainer so requests.

### Additional information:

*Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition.*

(Please see enclosed Petition.)

**Action taken to resolve issues of concern before submitting the petition:**

*Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.*

1. Wrote to Chief Executive of Perth & Kinross Council requesting an informal meeting to resolve complaint. NO REPLY RECEIVED resulting in additional complaints.
2. Spoke to Monitoring Officer. Advised to go to Ombudsman.
3. Referred to Ombudsman who referred me back to local Council.
4. Referred back to local Council & then back to Ombudsman again.
5. Discussed with MURDO FRASER MSP who advised this Petition which he supports.

**Petitioners appearing before the Committee**

*The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee's consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.*

*Please indicate below whether you request to make a brief statement before the Committee when it comes to consider your petition.*

**I DO request to make a brief statement before the Committee**

**I DO NOT request to make a brief statement before the Committee**

**Signature of principal petitioner:**

*When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.*

**Signature** .....

**Date** 24/9/2007 .....

**Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:**

The Clerk to the Public Petitions Committee,  
The Scottish Parliament,

Edinburgh

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# **Petition to the Scottish Government (Part 1)**

**by**

**Mr D.W.R. Whittet QPM**

**“The petitioner requests the Scottish Government to set up an Appeal Tribunal to review final decisions by the Public Services Ombudsman where any complainer so requests.”**

24 Sep 2007

## 1. Introduction

- 1.1 In 2003 Perth & Kinross Council introduced a minor traffic management scheme in Coupar Angus based on the specious "Safer Routes to School" initiative then being promoted by the Scottish Executive. None of the streets primarily involved had any history of traffic accidents and in one street there had never been an accident since the road was constructed in 1938 – some 65 years previously. In another case a small "stick-out" was constructed at an already hazardous crossroads and 6 accidents occurred during the first two weeks after construction. It simply constituted an obstruction in the road. Roads Officials gave an assurance that the scheme would be monitored after completion and changed as necessary.
- 1.2 About 18 months later I learned that the promised monitoring had consisted of a few hours on one morning. By comparison, as a concerned resident in the area, I had monitored the scheme at various times and in particular at times when the local primary school was going in or coming out. As a retired senior officer in charge of Tayside Police Traffic Department I have extensive knowledge and experience of these issues. The monitoring by roads officials was superficial and statistically irrelevant.
- 1.3 I wrote to the Director of Transportation on these issues but, regrettably, my letter was ignored. Further letters ensued leading to even greater dissatisfaction with Perth & Kinross Council, culminating in formal complaints against roads officials and the Chief Executive. It then transpired that the Council had no procedures for dealing with complaints against the Chief Executive – a serious management omission. At this point I discussed the matter with the Council's Monitoring Officer who advised me to refer my complaints to the Ombudsman in view of this serious omission.
- 1.4 I took this advice and submitted full details of my complaints to the Ombudsman but that office declined to accept them at that time and referred me back to the Council – deficient as they were in procedures to deal with these matters. The Monitoring Officer eventually investigated my complaints and advised me that no action was to be taken and offered a belated apology for the numerous bungles which had been made. I declined the apology as "too little too late" and referred matters back to the Ombudsman little realising then the utter futility of that move.
- 1.5 An Ombudsman should always demonstrate the highest standards of administration and competence but sadly this proved not to be the case. Specific examples of their incompetence are as follows. The initial enquiry official had to be taken off the case due to excessive delays in dealing with routine matters. Recorded delivery mail was lost at the Ombudsman's office and denial was voiced that it had not been received despite a signature to the contrary. **None of this inspired confidence in the office of Ombudsman.**

## 2. COMPLAINTS TO OMBUDSMAN

2.1 Given the severely restricted submissions allowed for Petitions it has not been possible to present this case in a thorough and detailed manner. I have, therefore, added the briefest of notes below each of my complaints as to the manner in which all **NINE** were ruthlessly dismissed by the Ombudsman despite compelling evidence adduced to the contrary.

2.2. In addition, I have transcribed and attached hereto a full copy of her Final Report with my detailed comments thereon appended immediately after each paragraph. It is of the utmost importance to note that **NOT ONE OF MY COMMENTS WAS INCLUDED IN HER FINAL REPORT** thus presenting an unfair and biased perspective of the case. The sole exception was her reference to my complaints being against **FIFE COUNCIL** with whom I have never had contact. Clearly this would have been a serious error had I not told them about it and it had been published. The Report contains a number of other errors and misleading statements all of which were deplorable and to my detriment. None of these would be apparent to the reader unless read in conjunction with my detailed comments.

### 2.3 Summary of Complaints

#### A - Director of Transport

- (a) Failure to answer letter in timeous and proper manner.  
**Evidence here is absolute. NO reply was sent.  
Ignored by Ombudsman**
- (b) Failure to address all issues raised therein.  
**Evidence here absolute as well. No changes have been made.  
Ignored by Ombudsman.**
- (c) Failure to undertake risk assesment regarding two additional accesses from a private dwelling house to public roads.  
**Evidence absolute.  
Ignored by Ombudsman.**
- (d) Provision of false and misleading information to a Councillor.  
**No steps whatsoever were taken to remedy this and again the documentary evidence was absolute and also ignored by Ombudsman.**
- (e) Provision of false and misleading information about another official.  
**As with (d) above. Ignored by Ombudsman.**

#### B - Chief Executive

- (f) Failure to answer correspondence in a proper and timeous manner and failure to take remedial action to correct false and misleading information attributed to her. **No reply was received. Ignored by Ombudsman.**

(g) Failure to take action to prevent a recurrence. **Same as at (e) above**

(h) Failure to have in place procedures for dealing with complaints against the Chief Executive.

**Procedures since introduced as a direct result of my complaints.**

(i) Failure to offer apology for the situation which occurred.

**Only ONE apology was ever forthcoming and that came belatedly from the Monitoring Officer long after I had raised these issues.**

**Senior officials should have apologised individually at the time not hiding behind the Monitoring Officer or the generic term "the Council".**

**3. Conclusions**

3.1 The Final Report of the Ombudsman on this sad affair presents a distorted view of the case and my detailed appeal to them for truth, accuracy and clarity was simply ignored. Whilst ample evidence was produced, mainly documentary which carries a high level of credibility, this was also completely ignored, **presumably as they know that no independent appellate procedure exists regarding their arbitrary decisions made in direct contradiction to the evidence.** Undue importance has been given to the single belated apology offered by the Monitoring Officer of the Council at a late stage. He was quite indifferent to my representations saying at the time:- **"these things happen in big organisations"**. A pitiful excuse, to say the least, for serious and repeated maladministration on the part of officials.

3.2 Given the proclivity of the Council to rebut all representations, it is extremely difficult to achieve fair treatment in the event of complaint. **In this instance the appointment of the Monitoring Officer to undertake an enquiry involving his immediate superior, was never likely to produce a balanced result.** Similar comments apply to the Ombudsman. Irrefutable evidence was provided to that office but it was simply ignored and a flawed and misleading Report subsequently produced and published. In 35 years police service – 15 at senior supervisory level – writing, reading, editing and submitting reports to the Courts and other major public bodies, I never read such a biased report, in this case in favour of the Perth & Kinross Council. I consider dismissal of my complaints to be both wholly unjust and a shocking mockery of the principles of justice. Maladministration did occur, including maladministration on the part of the Ombudsman and her staff and the belated apology from the Council for the numerous examples quoted was simply in mitigation of past failures but does not excuse them. **Regrettably, there is no current Appeal against the Ombudsman's ruling, taken in effect by a single civil servant whose misjudgement in this case resulted in seriously flawed decisions.** Formerly complainers were interviewed to allow testing of the veracity and accuracy of their complaint. This practice, regrettably, has been discontinued in favour of investigation by document which is vastly inferior and open to manipulation by omission or default.

3.3 It has been shown that the Ombudsman's office has failed to display the necessary independence of mind and experience to act as the final adjudicator in cases which come before it. All efforts to obtain fair play and justice have demonstrably failed. It is, therefore, evident that a form of Independent Appeal Tribunal is required to meet the needs of justice and democratic accountability. The Committee is, therefore, asked to take the necessary steps to bridge this gap in civil appeal procedures.

**SUMMARY OF COMPLAINTS / ACTIONS – re: Perth & Kinross Council**

<u>Date</u>	<u>Event</u>
No 1 - 2.8.04	Letter sent to Director of Planning - <b>IGNORED.</b>
No 2 - 18.12.04	Letter (unrelated subject) sent to Director of Planning with reminder that no reply received to No1 letter above.
No 3 - 22.12.04	Complainer received letter from Councillor Livingstone intimating the <b>"no more response from her, (Ch Executive's), officers to your letters."</b> A disgraceful slur on my reputation.
No 4 - 8.1.05	Complainer wrote to Ch.Executive expressing extreme disquiet over the <b>"no more letters" allegation</b> and suggesting informal discussion with officials to resolve matters. In view of previous failures to answer mail - acknowledgement by return requested - <b>IGNORED IN TOTAL.</b>
No 5 - 17.1.05	Complainer received letter from Roads Engineer, Blairgowrie, (not connected with complaints), in answer to No 2 letter. Only unrelated subject answered. Suggested that letter No 3 - Convenor's private letter - should suffice for me. (Councillors not responsible for work of officials.)
No 6 - 20 .1.05	Complainer wrote to Roads Engineer, Blairgowrie, pointing out inadequacy of Letter No 4, with copy to Director of Planning.
No 7 - 4.2.05	Letter of reply from Council FOI Unit to Complainer <b>confirming no letter containing the dreadful "no more letters" allegation, existed.</b>
No 8 - 9.2.05	Complainer received letter from Head of Roads, Perth, belatedly answering No 1 letter - <b>sent 5 months previously.</b>
No 9 - 19 3.05	Complainer submitted comprehensive Complaint to Ombudsman following confirmation by Monitoring Officer that Council had <b>no procedures to deal with complaints against Ch.Executive.</b>
No 10 - 4.6.05	Complainer submitted Complaint to Council having had it referred back to him from Ombudsman who declined to accept it at that point.
No 11 - 8.8.05	Monitoring Officer dismissed complaints by letter offering apology for initial failures - a sop. which I declined. Advised of <b>NEW</b>

**Council procedures all produced subsequent to events and stemming from my complaints.** (Door closed after horse bolts.)

No 12 - 22.8.05      Complaints re-submitted to Ombudsman. (See Comments on Final Report in Part 2 of this Petition)

## PETITION

(Part 2)

Important

### SUPPLEMENTARY INFORMATION

#### COMMENTS SENT TO OMBUDSMAN ON THE FINAL REPORT

("OMB" = Ombudsman abbreviation)

#### 1. Introduction

**N.B. (General comments - not on specified paragraphs.)**

**1.1.** With reference to your Draft Report regarding my complaints initially lodged with you on 19 Mar 2005 and re-submitted 22 Aug 2006 against Perth & Kinross Council. This Report has an adverse and direct effect on my character and standing as a law-abiding citizen who has upheld the principles of justice and democracy throughout a lifetime of service to King, Queen and Country. A carefully prepared document was submitted to you detailing these complaints. They were not made lightly nor were they malicious or unjustified.

**1.2** Considerable delay arose at your office, resulting in a complaint being made about that and only after numerous representations was an apology offered and which I accepted with good grace. This experience, however, did not inspire great confidence in an office whose *raison d'etre* is to uphold and demonstrate the highest standards of efficiency and administration. (Sadly compounded by further bad experiences.)

**1.3** The Draft Report of 14 Feb 06 left me stunned with disbelief. Every one of my nine complaints had been ruthlessly dismissed. I have now considered said Report in some detail and it is a matter of immense regret



that I find the conclusions to be contrary to the evidence and consequently unacceptable. There are factual errors within the Report and important documentary evidence has been disgracefully ignored. The concluding paragraph in particular is seriously inaccurate and misleading. Detailed comments are as follows.

**2. The Ombudsman's Final Report  
(References to "Mr C" relate to the Complainer)**

**OMB Report . Para 4 - Investigation and findings of fact**

" The investigation of this complaint involved obtaining and reading all the relevant documentation including the correspondence between Mr C and the Council. I have also had a sight of the Council's Policy on Unacceptable Actions by Complainants dated Aug 2005. I made a detailed written enquiry of the Council on 22 November 2005 and received the Chief Executive's response on 22 December 2005. I have set out my findings and conclusions for each of the nine heads of complaint and, where appropriate, recommendations are set out at the end of each section. Although I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Mr C and the Council have been given an opportunity to comment on a draft of this report. "

**Complainer's Comments**

**Para 4 - Investigation and findings of fact**

(i) There is a pointed reference to ".....the Council's policy on Unacceptable Actions by Complainants dated August 2005". No reason was given for this reference. It is wholly unexplained and irrelevant to my complaints having been devised and introduced over a year after events. It was, however, disparaging by implication and deeply resented. Significantly, there is no mention of UNACCEPTABLE ACTIONS BY THE COUNCIL, SUCH AS THOSE DESCRIBED HEREIN.

(ii) Lines 8-9 It was claimed that "*no matter of significance has been overlooked*". This is simply an opinion unsupported by the evidence.

(iii) Lines 10-11. While an opportunity was give to me to comment on the draft Report and I did so in some detail – not one single comment was included in the final Report. My detailed comments should have been lodged alongside the Ombudsman's as a dissenting Report. Deliberate stifling of factual evidence was dreadful. This now begs more questions, e.g. why were appendices not produced, including copies of relevant documentary evidence, etc. ?.

**OMB Report. (a) Paras 5 - 8 Failure on behalf of the Director of Transport & Planning to reply to his (my) letter of 2 Aug 2004 in a proper and timely manner.**

- 8
5. " Mr C said that about three years ago the Council introduced a number of traffic management changes in Coupar Angus which, he said, they undertook to monitor and change if necessary. He said that no apparent monitoring took place so he wrote to the Director of Transport and Planning on 2 August 2004 expressing concern and alleging that problems had been overlooked. As he did not receive a reply, he raised this matter again when corresponding on another matter on 18 December 2004. The Area Roads Engineer sent a response to this letter on 17 January 2005 and in the final *paragraph* said, " I trust that the matters raised in your letter of 2 August have been covered by the reply from our Convenor, ..., in his letter to you of 22 December 2004". Mr C did not find this acceptable and wrote saying so on 20 January 2005. He considered that the Director of Transport should provide him with a reply as to do so would be courteous and proper. "
  6. " The Head of Roads replied on 9 February 2005. He expressed his view that the Convenor's letter of 22 December 2004 covered the issues raised but, for the record, he offered some further comment. Mr C considered this reply insufficiently detailed and remained aggrieved that the Director of Transportation and Planning had failed to respond to him. In the circumstances, when he made a specified complaint to the Council on 19 March 2005, this formed one of the heads of complaint. "
  7. " In her reply to me of 21 December 2005, the Chief Executive pointed out that on conclusion of their investigations into the complaint, the Head of Legal Services wrote to Mr C on 8 August 2005 agreeing that there had been an unacceptable delay in replying. He made an unreserved apology. She said this apology had been issued with the explicit approval of the Director of Planning and Transportation. "
  8. " He wrote to the Director of Planning and Transportation on 2 August 2004. He did not receive a reply from the department concerned until 17 January 2005 when reference was made to correspondence from the Convener. This was unsatisfactory. Mr C had properly addressed his letter of 2 August 2004, and therefore, could expect a timely reply from an official in the appropriate department. It is not always possible for departmental directors to deal with all items of correspondence addressed to them but it is a simple task to delegate responses, making clear that the reply is being sent with the authority of the Director. This did not happen and there was a delay. Accordingly, this was maladministration. However, I consider that the unreserved apology proffered on 8 August 2005, prior to involvement by this office, offers a satisfactory remedy to this aspect of the matter. In the circumstances, I do not uphold the complaint."

#### **Complainer's Comments**

**(a) Paras 5 - 8 Failure on behalf of the Director of Transport & Planning to reply to his (my) letter of 2 Aug 2004 in a proper and timely manner.**

(a) The evidence is clear. No reply was received. This is absolute and had one been received I would not have been provoked into making complaint. Almost FIVE months later, (18 Dec 04), I wrote to the Director of Transport on an unrelated matter and added a postscript reminding them that I had not received any response to my letter of 2 Aug 04.

(b) This reminder provoked a response from the local Roads engineer at Blairgowrie who had nothing to do with my complaints and was wholly unfamiliar with them. This letter, (17 Jan 05), dealt exclusively with the subject of my letter of 18 Dec 04, (road surface neglected by them), and almost as an afterthought the writer had added a final peremptory note, viz:-

*"I trust that the matters raised in your letter of 2 August, (2004), have been covered by the reply from our Convenor, Councillor Livingstone in his letter of 22 December 2004."*

(c) This letter arrived some 5½ months after my original letter thus confirming their failure to respond *"in a proper and timely manner"*. This is factual evidence of maladministration confirmed by documentary evidence of which copies were sent to the Ombudman.

(d) This letter was significant on four principal counts, viz:-

(i) It had been sent only AFTER receipt of second,(unrelated), letter;

(ii) The single sentence quoted was couched in the briefest of terms and dismissive in tone;

(iii) No apology - or explanation - was offered for the failure to respond to my initial letter;

(iv) An experienced official should have known that a single sentence response was inadequate.

(e) The Chief Executive made much of the belated apology offered by the Head of Legal Services dated 8 Aug 2005 - a year after events. This was made *"on behalf of the Council"* and no mention was made of any approval coming from herself or the Director of Planning. Notwithstanding, it is they who are vicariously responsible for this farcical situation which need never have arisen had they done their jobs properly in the first place. They are experienced public servants who should know how to deal with routine correspondence in a competent manner particularly when said correspondence directly involved themselves. It is unacceptable for apologies to be tendered by an innocent senior official on behalf of anonymous colleagues sheltering behind bureaucratic barriers a year after my initial letter was ignored.

- (f) Moreover, how can it be argued, as the Report does in Para 8, that although admitting that maladministration occurred, an overall apology is deemed sufficient to make amends?. Had an apology come at a much earlier stage then this argument might have been more plausible. It can certainly be argued very strongly that, had I not pursued the matter no apology would have been forthcoming. The evidence confirms that this was the ONLY apology offered throughout this sorry affair. (\*\* NB see also important comments re Para 24 herein.)

**OMB Report. (b) Para 9-10 Failure to reply to the issues raised in his, (my), letter of 2 August 2004**

9. " Mr C's letter of 2 August 2004 addressed to the Director of Planning and Transportation raised a number of issues. The Convenor in his letter of 22 December 2004 replied to some of them and a letter from the Head of Roads dated 9 February 2005 went into greater detail. Mr C was dissatisfied with the depth of the response he received but, in her reply to me of 21 December 2005, the Chief Executive said that the replies were appropriate and that her Council had acted correctly with regard to the specific decisions made in what were relatively minor road issues. She said the traffic measures were widely consulted on and appropriately monitored and had the support of the majority of the local community and Tayside Police. She acknowledged Mr C's previous experience in road traffic matters but said that, while his views would always be considered, they would not be given more weight than those from others equally well qualified to comment."
10. " I have seen Mr C's letters and those sent to him in reply and, while the correspondence from the Council may not go into the detail Mr C would have preferred, he was given information to address his queries. He may not have agreed with the information given to him or the views expressed by the Council's professional officers, it may not have been sent to him by the person to whom his enquiries were addressed, but these are different matters. Essentially, Mr C appears to be disputing the merits of decisions which are within the Council's discretion to make. There is no evidence to suggest that there was maladministration in the way these decisions were reached. I do not uphold this aspect of the complaint. "

**Complainer's Comments**

**(b) Paras 9-10 Failure to reply to the issues raised in his, (my), letter of 2 August 2004**

**PARA 9**

- (i) The references here relate to a subsequent letter from the Roads department which was received only after persistent efforts and a reminder on my part. It was certainly not of their own volition and was in effect a face-saving exercise by them.

(ii) Although there is some acknowledgement of my own experiences, it is patronising to suggest that my views would always be considered when my correspondence was ignored - far less considered.

(iii) The letter received from the Convenor was a personal letter to me and in no way absolves officials from answering correspondence addressed to them. It is not the responsibility of elected representatives to do the work of paid officials.

(iv) The claim by the Chief Executive alleging the support of "the majority of the local community and Tayside Police", (for the traffic measures introduced), is misleading and again bereft of any evidential support. The monitoring exercise of less than half a day in almost 3 years can hardly be described as "appropriate"- the Chief Executive's claim - nor were any follow-up surveys of local shopkeepers and businesses undertaken. In relation to Tayside Police, their support must be by tacit agreement for no representative of the Force attended any of the meetings held with officials and the local community nor did they attend any of the site visits.

#### Para 10

The conclusions herein regarding my views of the efficacy - or otherwise - of the traffic measures introduced were based on daily monitoring over a period in excess of 2 years and continue to this day. They are, therefore, soundly based in comparison to those of paid officials whose monitoring of a few hours in three years was superficial in the extreme and statistically irrelevant. Traffic management is widely recognised as an imprecise science and invariably subject to review - this has simply not been the case here in Coupar Angus. Even the one concession officials made to subsequent representations regarding a dangerous footway projection which results in large lorries mounting it to the danger of pedestrians, remains ignored 3 years later. It says little for their professionalism or judgement. Over a long professional career, I attended, investigated and reported to the Courts countless traffic accidents, incidents, remedial measures etc., along with many much more serious matters. I have neither said - nor implied - that "maladministration" occurred in the way that officials made their decisions, simply that they failed to consider legitimate views subsequently expressed to them after lengthy observations and submitted in detail in the proper manner. It is beyond dispute that they do not welcome comments from the public, well-informed or otherwise.

#### OMB Report. (c) Paras 11-12

Failure to take action on the creation of two unauthorised accesses to and from a private dwelling to a public road.

" In his letter of 2 August 2004 Mr C raised the question of the creation of a parking place in what was the front garden of of a cottage. He said that, as a

consequence, two unauthorised accesses were created. However in her reply to me of 22 December 2005, the Chief Executive took the view that there was no requirement for the accesses to have planning permission as they did not require any alteration to the kerb heights. She said that the kerbs were already set at a low level which was maintained when the alterations described in this aspect of the complaint were made and, therefore, no further action was required. "

12. Undoubtedly, it would have been preferable for Mr C to have received this information when he first made his query on the matter. He did not but I am hesitant to call this omission maladministration or service failure, particularly as I do not consider that he suffered injustice or hardship as a consequence. Nevertheless I would ask the Council to more circumspect when framing responses to ensure that all queries are addressed.

#### **Complainer's Comments**

#### **(c) Paras 11-12 Failure to take action on the creation of two unauthorised accesses to and from a private dwelling to a public road.**

Since these matters were first raised the position regarding these two accesses has changed significantly and subsequent development issues are now under enforcement action by the Council. In view of this, I have no further comment to offer at this time.

However, I must point out that the Chief Executive's claims regarding "kerb heights" are not only false but completely misleading. There is no kerb height in relation to the access in Bogside Road because none exists as there is no footway there. The kerb height in Beech Hill Road, (i.e. just round the corner), was reduced by Council workmen when working at that particular corner as part of the overall changes. Clearly the woman had no knowledge of the locus or the works carried out therein when making these claims. So much for accuracy.

#### **OMB Report. (d) Paras 13 -16 Provision of false and misleading information to a Councillor**

#### **Para 13**

13 "In his letter of 22 December 2004 addressed to Mr C, the Convenor incorrectly said that the Chief Executive had already written to him saying that his, (Mr C's) letters would no longer receive replies. Mr C, therefore, wrote to the Chief Executive on 8 January 2005 denying receipt of such a decision and on 4 Feb 2005 the Council's Freedom of Information Officer confirmed that he had been unable to trace such a piece of correspondence."

#### **Complainer's Comments**

#### **Para 13**

The provision of false information was initially made to Councillor Livingstone by a senior official of the Council. Councillor Livingstone conveyed it me by letter of 22 Dec 2004. It is clear that this information came from Mr J. Irons the Director of Planning who is named in the

letter. Subsequently confirmation was obtained by me that the alleged letter from the Chief Executive to me stating " *that there would be no more response from her officers to your letters*", ( "letters" plural should be singular), did not exist. The statement was a downright lie. ( It must also be noted that at that time I had written only ONE LETTER to the Director of Planning.) This allegation was confirmed in writing as false by the Council's Freedom of Information unit following a written request from me. This is absolute in evidential terms. NO such letter existed, thus my complaint regarding this aspect was proved beyond ALL doubt.

#### OMB Report. Para 14-16

14. " In reply to my enquiry, the Chief Executive's letter of 21 December 2005 stated that she was unclear how the misunderstanding which caused the Convenor to write this had come about. She said that at the time there was no corporate policy in place for managing correspondence that was felt to be unacceptably demanding. However, she said the matter was under active consideration. She believed that the officer in the Planning and Transportation Service who had been dealing with Mr C's complaint had, following discussion with the Corporate Complaints Officer, wrongly thought the new procedure had been agreed and implemented. The situation was also compounded by the fact that in his capacity as a Community Councillor, Mr C had raised the matter of the traffic management alterations which appeared on the Council's data base as a matter under investigation by the Ombudsman. The Council do not enter into correspondence about ongoing investigations but Mr C was not told of this. This omission became apparent when Mr C raised his complaint with the authority and on 8 August 2005 the Head of Legal Services apologised to him."

15. "The Chief Executive said that Mr C's correspondence was placing disproportionate demands on the service and the Convenor's letter reflected this. However, the letter was written on the Convenor's own initiative and without her knowledge."

16. "Mr C was given information which was untrue and there is no doubt that the matter caused him concern and upset. However, the Council have already apologised and, while this was maladministration, they did so prior to Mr C submitting his complaint to this office. Furthermore, the Council now have a policy in place which allows for the management of unacceptably demanding levels of correspondence about a complaint. This requires that the Council communicates their decision clearly to the complainant and allows for the review of that decision if circumstances change. In the circumstances, the Ombudsman does not make any further recommendations on this aspect of the complaint."

#### Complainer's Comments Para 14-16

(i) The following Chief Executive's statement is a matter of extreme concern, viz:-

*"...at the time there was no corporate policy in place for managing correspondence that was felt to be unacceptably demanding."*

This inferred that my correspondence was "unacceptably demanding". It was an unjustified insult. Even if such a policy had been in place it would have been unacceptable to deny legitimate access to the democratic system by any law-abiding citizen on unspecified and specious grounds. Furthermore the public would be entitled to be told of such a policy in full detail, including authority to create such a policy. Based on the facts summarised below it was simply absurd as far as my complaints were concerned. I was certainly never told of any such allegation which would have been vigorously challenged had this been so.

(ii) The facts of the matter are that I wrote only ONE LETTER to the Director of Planning & Transportation on 2 Aug 04 and the blatant failure of this man to respond to this one simple letter resulted in all subsequent correspondence and actions.

(iii) It is absurd beyond belief for a major public body with a staff of around 5000 people to suggest that three simple letters from a member of the public - TWO OF WHICH STEMMED DIRECTLY FROM THEIR ABJECT FAILURE TO REPLY TO THE FIRST - was in any way "unacceptably demanding." The further attempts by the Chief Executive to explain how this false information was given to Convenor Livingstone are wholly implausible. The claim that my correspondence had become - in their minds - confused with my period of office with the local Community Council is ludicrous. When the Ombudsman's Report was written I should have been referred to as a "former" Community Councillor. The matter in question had been concluded many months before and this was well known to the Chief Executive who wrote to me on 25 Feb 2004 confirming this fact. (Copy already supplied to Ombudsman's office.) The matter therefore should NOT have appeared in the Council's data base as "*a matter under investigation*" and responsibility for this failure lies wholly with them - further evidence of maladministration. There was never any suggestion - or requirement - on my part to enter into "*correspondence about ongoing investigations*" long since completed. This statement is misleading, irrelevant and smacks of a "red herring" excuse for their gross inefficiency.

Complainer's Comments - Para 15

(iv) The claim in this paragraph by the Chief Executive that my "*correspondence was placing disproportionate demands on the service and the Convenor's letter reflected this*" raises further serious questions as outlined above. In relation to the Convenor's private letter to me this could have had no reflexive effect on spurious excuses now put forward



by the Chief Executive concerning the "*disproportionate demands*" allegation. The facts again require reiteration, viz:-

- At this time only ONE letter had been sent to the Planning Director;
- As no policy on the "*disproportionate demands*" allegation existed at that time the Convenor could not have known of any views held by the Chief Executive who admits that his ,(the Convenor's), letter was written without her knowledge;  
(\*NB There is no requirement for elected representatives to seek implied authority from paid officials to write private letters.)
- The Convenor's letter to me simply recounted what he had been told by a senior official, (the Director of Planning) and which proved to be false.
- The Convenor could not have known of any personal views held by the Chief Executive regarding the allegation that my correspondence, (one simple unanswered letter), "*was placing disproportionate demands on the service.*" Consequently his letter could not possibly have reflected favourably or otherwise on her views. Thus the Chief Executive's claim was not only factually incorrect but fatuous.

#### Complainer's Comments - Para 16

- (a) It was more than disappointing that I was given false and derogatory information and that "*the Ombudsman makes no recommendations on this aspect of the complaint*", whilst admitting, in the same breath, that this was "maladministration" – a completely inconsistent statement.
- (b) The claim that the Council "apologised" before I complained to the Ombudsman is wholly untrue and seriously misleading. It required unremitting time and effort by me to reach the stage at which an indirect and belated apology was offered over a year after events. I must also point out that my initial complaint to the Ombudsman was submitted on 19 Mar 05 and referred back to me to send it to the Council!. This "run around" had been caused solely by the Council's failure to have procedures to deal with complaints against their Chief Executive. Yet more "maladministration".
- (c) Accordingly, I do not accept that that apology absolved the Council in any way. It was simply a convenient means of trying to ameliorate their position and escape censure. They were negligent beyond belief. The subsequent creation of a policy by the Council "*which allows for the management of unacceptably demanding levels of correspondence*" is irrelevant to my complaints being a further example of *ex post facto* conduct bordering on the devious. With a staff of around 5000 people, if they cannot deal competently with simple correspondence on this minuscule level there is something fundamentally wrong with their administration. They have proved to be singularly inefficient.

**OMB Report. (e) Para 17 Provision of false and misleading information about a public official**

**OMB Report. (e) Para 17 Provision of false and misleading information about a public official**

17. "As described in paragraphs 13 to 16 above, as a consequence of some confusion and during a period when new policy was being discussed, the Convenor and an officer in the Planning and Transport Service came to an incorrect conclusion about correspondence with Mr C. It is not clear how such a misunderstanding came about but it was probably a combination of circumstances. Mr C was treated incorrectly but I cannot say definitively whether the misinformation came from the officer or the Convenor. Complaints against \***ELECTED** , (my caps), officials do not come within the Ombudsman's jurisdiction and, therefore, I am unable to make a finding with regard to this aspect of the complaint. Nevertheless, I am pleased to note that Mr C has since received an apology and, therefore, no further action is required. "

*\* NB Members of the Petitions Committee will be well aware that only Councillors are **ELECTED** and that officials are appointed. This is but a further example of the poor standard of this Report.*

**Complainer's Comments**

**(e) Para 17 Provision of false and misleading information about a public official**

(a) The reference to "*a consequence of some confusion*" is in itself an admission of maladministration and as this was being put forward as an excuse it can only be described as vapid.

(b) This claim that "*the Convenor and an officer in the Planning and Transportation Service came to an incorrect conclusion*", (about correspondence sent to me), remains unexplained and open only to conjecture. Although it is admitted that no explanation has been provided for this failure, there is certainly no "confusion" about the letter which I received from the Convenor. It is quite explicit, viz:-

*" I have spoken to Mr Jim Irons, The Executive Director of Planning and Transportation .....*

*I am in receipt of an explanation that the Chief Executive wrote to you stating that there would be no more response from her officers to you letters."*

What could be clearer than that?.

(c) There is no doubt in my mind that any "misunderstanding" as to the facts could only be attributed to some nameless official.

(d) The further reference to an apology is also misleading . This infers a separate apology when in fact the ONLY apology offered came about a year after events. Even this would never have been forthcoming without persistent efforts on my part to secure justice. The fact remains that this allegation concerning a letter to me was a downright lie which was confirmed conclusively by the Freedom of Information unit of the Council following a written request from me. The responsibility for this rests with the man who provided the false information, not with the Convenor who acted honourably throughout.

**OMB Report. (f) Paras 18 - 19 Failure of the Chief Executive to reply to his, (my), letter of 8 January 2005 in a proper and timely manner and failure to take action to correct false and misleading information which had been attributed to her.**

18. "Mr C complained that the Chief Executive did not reply to his letter of 8 January 2005 and I have established that, as this was principally considered to be a request under the Freedom of information Act. It was passed immediately to the Freedom of Information (FOI) team and dealt with accordingly. The Chief Executive pointed out that she never sees correspondence in relation to such requests and that, in order to protect anonymity, the FOI team deal with all acknowledgements and responses."

19. "I am aware of the content of the letter of 8 Jan 2005 and can see how the situation occurred. However, Mr C had suggested that a meeting may resolve matters and I take the view that such an offer should have received a direct reply. While I hesitate to call this maladministration, I would ask that the FOI team exert more care in differentiating FOI requests from other requests. I do not uphold Mr C's complaint on this score."

#### **Complainer's Comments**

**Paras 18 - 19 Failure of the Chief Executive to reply to his, (my), letter of 8 January 2005 in a proper and timely manner and failure to take action to correct false and misleading information which had been attributed to her.**

(a) The details and purpose of this letter were clear, viz:-

(i) The letter was properly **ADDRESSED TO THE CHIEF EXECUTIVE.**  
(Copy sent to Ombudsman)

(ii) the subject of the letter was to :-

- Voice my grave concern about the allegation that she had written the dreadful "no more letters" letter to me apparently on the basis of my single letter of 2 Aug 04;

To indicate that before making a formal complaint I would be prepared to meet with the officials concerned and hopefully resolve the matter.

- To request a copy of the alleged letter, if one existed, along with supporting documentation relative thereto.

(b) I DID NOT MAKE THIS A FORMAL REQUEST UNDER THE FREEDOM OF INFORMATION ACT and had I done so the letter would have been addressed to that Unit. The information request was a follow up to the principal component of the letter, i.e matters affecting the Chief Executive. This was, therefore, another fatuous excuse by the Chief Executive to claim otherwise. If this was her defence, coupled with her claim not to see any letters under the FOI statute then it says very little for whoever read my letter - if anyone. I subsequently obtained independent opinion on this point from a well-qualified former college lecturer who has confirmed that my letter was explicit and could not possibly be misunderstood by a person of average intelligence. I would also point out that all my correspondence is correctly addressed to the person for whom it is intended, including the office of the Ombudsman.

(c) The point at issue is that as well as the misreading and misdirection of my letter the Chief Executive failed to reply to it, despite my specific request in Paragraph 4 for an acknowledgement by return post. Furthermore, ignoring my offer of an "olive branch" in the form of an informal meeting of conciliation was particularly reprehensible. Hardly what one would expect from a senior public servant who had, on taking office, expressed her intention and desire *"for the public to have confidence in her" and that she wanted to "develop communication and consultation mechanisms in talking to the public"*. Such neglect was a direct contradiction of those sentiments and further evidence of maladministration.

#### OMB Report. Para 20

20." Mr C said that the Chief Executive did not take steps to correct the information which he was given although it is confirmed that the Convenor's letter was sent to Mr C without her knowledge, Furthermore, she did not see his letter of 8 January 2005 which appeared principally to concern a, (my correction - an), FOI request. The Head of Legal Services' letter to Mr C of 8 August 2005 went some way to offering an explanation and also gave an update on the new corporate complaints procedure about to be implemented. It is true that the Chief Executive did not write to Mr C withdrawing the incorrect information but it is also true that the Council apologised for it. In the circumstances, I do not uphold this aspect of the complaint.

#### Complainer's Comments

##### Para 20

As no response was received to my letter of 8 Jan 05, it is evident that no remedial action was taken by the Chief Executive to refute the lie which had been put out in her name and equally no apology was offered

to me AT THAT TIME for involvement of my name in a derogatory and untrue manner in writing. Further evidence of maladministration and neglect.

**OMB Report. Paras 21 - 22 (g) The Chief Executive's failure to take steps to prevent a recurrence of (f) above.**

" I have explained the reasons why the Chief Executive did not reply directly to Mr C in paragraphs 8-20 above. I am satisfied with the Council's provision for response times to FOI requests and that Mr C's request WERE, ( my correction - was).dealt with properly. In her letter to me of 21 December 2005 the Chief Executive said that the Council does not yet have a single universal standard for response times to all correspondence but standards exist for dealing with FOI requests and complaints. A Council-wide corporate data base has also been introduced (agreed on 31 August 2005) and this sets demanding response times and ensures that complaints are more easily tracked."

22. "Taking the foregoing into account I do not hold this aspect of Mr C's complaint."

**Complainer's Comments**

**(g) Paras 21 - 22 The Chief Executive's failure to take steps to prevent a recurrence of (f) above.**

(a) The claim that an explanation has been given for the failure by the Chief Executive to reply to my letter at (g) above is unacceptable and factually inaccurate. I had described the clarity of my letter of 8 January 2005 to the Chief Executive and she was then simply trying to create a further excuse for her incompetence by introducing the "red herring" of the Freedom of Information Act. I have never complained about the FOI Unit which deals with formal requests under statutory time limits. This long-winded statement is, therefore, COMPLETELY IRRELEVANT TO ANY ASPECT OF MY COMPLAINT.

(b) The remainder of this paragraph simply recounts face-saving actions subsequently taken by the Council after I had lodged complaint and in consequence are also irrelevant. Furthermore, it is more likely than unlikely that the changes would never have been made had I not drawn attention to these deficiencies amounting to serious maladministration by a major public body.

**OMB Report. (h) Para 23 - Failure to have procedures in place to deal with complaints against the Chief Executive**

23." At the time of his complaint (24 August 2005) ( **My note:- second complaint to Ombudsman after complaining originally on 19 Mar 2005.**) Mr C was aggrieved that the Council did not have specific procedures in place to deal with complaints against the Chief Executive. At that time it was left to the Monitoring Officer to determine how such a complaint should be handled.

The Chief Executive confirmed to me in her letter of 21 December 2005 that the **NEW**, ( my caps),corporate complaints procedure is quite specific about the method of handling complaints made against the Chief Executive.This reiterates the role of the Monitoring Officer as the appropriate person to deal with such matters and allows the use of an external investigator if necessary. I understand that copies of this new procedure were sent to Mr C for information and comment on 22 August 2005. This being the case I do not uphold this aspect of the complaint."

#### **Complainer's Comments**

##### **(h) Para 23 - Failure to have procedures in place to deal with complaints against the Chief Executive**

(a) This paragraph fails entirely to provide an accurate description of the situation prevailing at the time of my complaints and consequently is misleading in the extreme and bordering on the devious. The reference to **THE TIME OF MY COMPLAINT AS BEING 22 AUG 2005 IS COMPLETELY WRONG**. The following summary reflects the **TRUTH** of the matter.

(b) I had initially lodged detailed complaint with Ombudsman's office, on 19 Mar 05 for the following reason. Prior to this, the Monitoring Officer of Perth & Kinross Council had confirmed that they had no procedure for dealing with complaints against their Chief Executive. He took the view that as no Council procedures existed the only alternative was to go direct to the office of the Ombudsman .**THIS IS PRECISELY WHAT HE ADVISED ME TO DO AND I DID IT**. In consequence, I submitted said complaints to that office under cover of letter of 19 Mar 05. This was acknowledged by letter from your staff dated 14 Apr 05, referring me back to Perth & Kinross Council. This whole episode was simply a bad experience of a bureaucatic morass. I duly submitted all documents to said Council which failed to resolve my complaints which **were subsequently re-submitted for the second time to your office on 22 Aug 05.** None of this appeared to me to represent sound administration by the Council. On the contrary it was further evidence of maladministration.

The description in the latter part of this paragraph related to **NEW COMPLAINTS PROCEDURES DEVISED AND IMPLEMENTED MANY MONTHS AFTER MY COMPLAINTS WERE LODGED**. They were, therefore, completely irrelevant.

##### **OMB Report. (i) Para 24 Failure to offer an apology to Mr C, (me), for the situation which occurred.**

24. " My report above makes mention in paragraphs 7, 14 and 16 of those occasions when the Council apologised to Mr C. I also understand that the same apologies were expressed to him when he met with the monitoring Officer and the Governance Scrutiny Officer on 17 August 2005. In the circumstances, I do not uphold this aspect of the complaint.

## Complainer's Comments/

### Complainer's Comments

#### (i) Para 24 Failure to offer an apology to Mr C, (me), for the situation which occurred.

This paragraph was a downright lie and seriously misleading in respect of the reference to Paras 7, 14, and 16 of the report as being:-  
**"occasions, when the Council apologised to Mr C" (me), plus a further apology in person at a meeting with the Monitoring Officer of the Council on 17 Aug 2005. THE INCORRECT USE OF THE PLURAL INFERS THAT I HAD DECLINED NO LESS THAN FOUR APOLOGIES THEREBY MAKING ME SEEM OBDURATE. The truth of the matter is that these references relate to one and the same apology. It was the ONLY apology proffered by the Monitoring Officer on 8 Aug. 2005.**

#### OMB Report. Para 25 Conclusion

"While there were aspects of maladministration in the way the Council dealt with Mr C's concerns, these had been acknowledged and addressed prior to him coming to the Ombudman. Apologies, (there was only ever ONE), had been made and action had been taken to improve procedures. In these circumstances, I do not uphold the complaint."

23 April 2006

### Complainers Comments / Conclusions

#### Para 25 CONCLUSIONS

- (a) It is a matter of the utmost concern that not one of my complaints was upheld despite irrefutable documentary evidence adduced.
- (b) The numerous errors and misleading statements in the Report are of equal concern and cast me in bad light. I particularly resent the reference in Para 14 to the *"managing of correspondence that was felt to be unacceptably demanding"* followed by a statement that the Council had such a system *"under active consideration"*. The implication being that had such a policy been in place it would have been applied to me. This I consider to be a downright insult. Every citizen has the democratic right to question both Councils and paid officials as to their actions or failures. I refute entirely any suggestion that a single letter - unanswered at that and which resulted in further correspondence - could be considered *"unacceptably demanding"*. Even the making of such an allegation, wholly lacking in substance or justification, was shocking.

- (c) The many excuses put forward by the Chief Executive and repeated by the Ombudsman's official are vapid and unconvincing having all been made up some considerable time after events.
- (d) The failure to even acknowledge - far less respond - to a letter seeking conciliation was simply deplorable. It says little for the Chief Executive's appreciation of the spirit in which the offer was made. It is evident that my letter was not read correctly by anyone.
- (e) The attached Summary of Complaints/Actions proves that the failures complained of did occur. They are absolute in terms of documentary evidence adduced. Far too much stress has been attached to the SINGLE BELATED APOLOGY MADE BY THE MONITORING OFFICER. If this were to be accepted it would absolve all staff involved whose numerous failures led to compounded complaints being lodged. Undue importance was also given to actions taken by Council officials subsequent to events. These are of importance in the longer term but none of them excuse the repeated failures by officials and the LACK OF PROMPT REMEDIAL ACTION AND APOLOGY AT THE TIME. Much more should have been done to resolve my initial complaint rather than ignore it with the result that compounded failures occurred thereafter.
- (f) Had no complaint been made it is more likely than unlikely that no response whatsoever would have been forthcoming to my initial letter and the sloppy administration would have simply continued unabated.
- (g) It is clear that the Council officials involved have acted as a law unto themselves, confirmed by their stubborn obstinacy to admit their failures. They have placed themselves beyond reproach. Their position of strength will be measurably increased by their new policy of dealing with people who have the temerity to complain in future. The *"managing of correspondence felt, (by whom?), to be unacceptably demanding"* has a chilling ring about it and will, in effect, deter all but the strong in heart from complaining. It is all demonstrably undemocratic.
- (f) Based on these submissions and documentary evidence already provided, I therefore ask that the Report be independently reviewed, that its conclusions be annulled and my Complaints upheld. It is fair play and justice which are sought.
- (h) It has been clearly shown that the Ombudsman's office has failed to display the necessary independence of mind and experience to act as the final adjudicator in cases which come before it. All efforts to obtain fair play and justice have failed. It is, therefore, evident that a structured form of Independent Appeal Tribunal is required to meet the needs of justice and democratic accountability