

Governance Risk and Best Value Committee

10.00 am, Tuesday, 1 August 2017

Monitoring Officer Investigation

Item number 7.7

Report number

Executive/routine

Wards

Executive Summary

The Council's Monitoring Officer submitted a report to Council on 29 June 2017 in relation to:

- the Council's management of certain outdoor advertising projects;
 - (i) the Council's handling of an individual's complaints and requests for information in relation to such projects; and
 - (ii) the findings of a report by the Scottish Public Services Ombudsman (SPSO) into these matters.

The report outlined new arrangements which have been put in place to prevent a recurrence of the issues identified. Council remitted the report to the Governance, Risk and Best Value Committee to consider whether the new arrangements proposed were sufficiently robust to mitigate against future risks.

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Monitoring Officer

1. Recommendations

- 1.1 It is recommended that Committee notes the robust measures which have been put in place to prevent a recurrence of the issues identified in the Monitoring Officer report.

2. Background

- 2.1 As reported to Council, the SPSO made several recommendations in its report in relation to this matter, namely for the Council to:
 - 2.1.1 Carry out full review of the complaints handling in the case to establish the lessons to be learnt for handling future complex complaints;
 - 2.1.2 Provide evidence that all the officers involved in responding to this complaint have undergone complaints handling training;
 - 2.1.3 Conduct a full review of the management of all the various advertising projects from their inception as proposed in 2012 and provide the findings to the Ombudsman;
 - 2.1.4 Provide evidence of the actions taken to improve internal communication in view of the acknowledged failings in this case; and
 - 2.1.5 Apologies to the complainant for the failures identified.

3. Main report

- 3.1 The Monitoring Officer report submitted to Council advised how the Council had complied with these recommendations.
- 3.2 In relation to lessons learned in relation to complaints handling and internal communication (see 2.1.1 and 2.1.4 above), a new strategic complaints function is being set up as part of the Information Governance Unit (IGU). Under the new framework, the IGU will provide a single point of reference for advice on the complaints process and will assist service areas in co-ordinating and escalating complex complaints.
- 3.3 In terms of senior responsibility for complaints handling, if responsiveness issues arise in the future in relation to treatment of a complex complaint, the IGU will

escalate the matter to the relevant Director or the Council's Corporate Leadership Team. The appropriate Head of Service will then be directly tasked with dealing with the matter.

- 3.4 In relation to reviewing the management of all the various advertising projects within the scope of the SPSO's report, direct responsibility for the projects now belongs to the Cultural Services team within the Place Directorate. The team is responsible for ensuring robust contract management and clear channels of communication. Procurement and Legal colleagues are currently working with the team to finalise the procurement process for the new project to put in place appropriate contractual arrangements.

4. Measures of success

- 4.1 The actions taken by the Council after a thorough investigation demonstrates that it has taken steps to prevent a recurrence.

5. Financial impact

- 5.1 No direct impact.

6. Risk, policy, compliance and governance impact

- 6.1 There is a risk that by not following the appropriate legislative and policy requirements, the Council is open to unnecessary external scrutiny and potentially legal action.

7. Equalities impact

- 7.1 No direct impact.

8. Sustainability impact

- 8.1 No direct impact.

9. Consultation and engagement

- 9.1 None.

10. Background reading/external references

10.1 The SPSO report can be found using the following link:

https://www.spsso.org.uk/sites/spsso/files/investigation_reports/2017.03.22%20201508737%20201508738%20201508193%20201508082%20The%20City%20of%20Edinburgh%20Council.pdf

Nick Smith

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11. Links

Coalition Pledges

Council Priorities

**Single Outcome
Agreement**

Appendices

Appendix 1 – Monitoring Officer Investigation report

Appendix 2 – SPSO report

10.00am, Thursday, 29 June 2017

Monitoring Officer Investigation

Item number
Report number
Executive/routine
Wards

Executive summary

This report sets out the findings of an investigation carried out on behalf of the Monitoring Officer in relation to:

- (i) the Council's management of certain outdoor advertising projects;
- (ii) the Council's handling of an individual's complaints and requests for information in relation to such projects; and
- (iii) the findings of a report by the Scottish Public Services Ombudsman (the "SPSO") into these matters.

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Monitoring Officer Investigation

1. Recommendations

- 1.1 To note that the Council's Monitoring Officer is required, under s.5 of the Local Government and Housing Act 1989, to report to Council if he considers that in the course of the discharge of the Council's functions any proposal, decision or omission has resulted in maladministration. In this context, maladministration means unreasonableness in the delivery of Council services, or failure to apply the law or rules properly;
- 1.2 To note that a report by the Scottish Public Services Ombudsman ("SPSO") into the Council's management of certain outdoor advertising contracts and related complaints resulted in a finding of maladministration;
- 1.3 To note the outcome of investigation reports into the matter undertaken by Brodies LLP ("Brodies") on behalf of the Monitoring Officer (the "Reports");
- 1.4 To note that the Chief Executive has sent a written apology to the complainant on behalf of the Council in relation to this matter; and
- 1.5 To note that the Council has complied with all recommendations of the SPSO's report and has taken further action to prevent recurrence of the issues identified.

2. Background

- 2.1 In 2003, advertising drums were installed in the Grassmarket area as part of a trial project instructed through Economic Development, with temporary advertising consent granted for a year. The purpose of the drums was to provide an allocated space for events flyers, thereby reducing illegal fly-posting. The management and removal of illegal fly-posting was an ongoing problem for the Council at the time, taking up significant resource. The trial was managed by City Centre Posters Ltd ("CCP") and was not competitively procured. Over the next 12 years, the Council permitted CCP to operate further drums around the city.
- 2.2 In November 2014, a complaint was made by a member of the public ("Mr C") that there had not been a proper procurement process for CCP's use of the drums and that they did not have proper consent.

- 2.3 In October 2015, the Council informed CCP that, following review, the drums were to be removed. The Council's contract with CCP will terminate on 30 September 2017. The intervening period allowed for a reasonable notice period to be given to CCP in accordance with the current contractual arrangements and to allow consultation with the cultural sector around the commencement of the new contract (i.e. after the Summer festivals).
- 2.4 Mr C submitted a large volume of detailed information requests and complex complaints to the Council, which often spanned several service areas.
- 2.5 Ultimately, Mr C's complaints were referred to the SPSO. Overall, the SPSO was highly critical of the Council's handling of the outdoor advertising projects and Mr C's complaints in relation thereto.
- 2.6 Given the long history and complexity of the matter, Brodies were appointed to undertake a thorough and independent review of what had gone wrong and what improvements could be made to minimise the risk of recurrence.

3. Main report

- 3.1 Brodies were appointed to investigate and report on the Council's management of the advertising drums and on its handling of Mr C's questions and complaints. Brodies provided two reports dealing with each element. I summarise each of the reports below:

Outdoor Advertising Contracts Review

- 3.2 Brodies were satisfied that there was a reasonable rationale for initially introducing advertising drums into the city centre due to significant problems with flyposting. It was costing the Council around £300,000 annually to clean up affected areas.
- 3.3 However, Brodies found that there were very limited records of decision-making in relation to the project. The Council's record-keeping and overall monitoring of project performance was inadequate. In the absence of monitoring arrangements, the project could not be properly assessed in terms of providing value for money.
- 3.4 The Council accepts that there was no proper procurement process originally carried out in relation to the advertising drums. The arrangements with CCP were described as an informal management agreement. The contract should have been formalised and tendered to ensure best value. Brodies highlighted a lack of evidence of Council officers paying regard to the principle of best value in the early stages of decision-making and in the ongoing decisions to maintain the arrangements with CCP.

- 3.5 Brodies found that there was no effective oversight of the drums project from 2004 to 2014. Overall, there was also a lack of clarity in relation to who had overall responsibility for outdoor advertising drums. There was an overlap between the role of the Neighbourhood Office and other teams, such as Planning, Economic Development and Culture and Sport. Latterly, the confusion was exacerbated by the major service and structural reorganisation that was taking place within the Council. Officers in the Information Governance Unit (“IGU”) state that they advised the Acting Director of Services for Communities in June 2015, that the issue of contract management for advertising drums should be thoroughly investigated. This does not appear to have happened.
- 3.6 The lack of clarity over responsibility for the various contracts was compounded by poor lines of communication between the different Council service areas and teams involved in advertising projects.
- 3.7 In terms of mitigating factors, Brodies recognised that a significant barrier to addressing the management of advertising contracts was a lack of resources within the Council and competing pressures on officers’ time. A substantial amount of resources had to be directed towards dealing with Mr C’s lengthy and numerous complaints and requests. However, overall Brodies did not excuse the inaction on this basis – over the long history of the matter there was sufficient time and scope to resolve the relevant issues.

Maladministration

- 3.8 The SPSO concluded that the failure to procure the advertising drums contract, compounded by its repeated expansion, amounted to maladministration.
- 3.9 The definition of maladministration is wide and can include incorrect action or failure to take action in addition to failure to follow procedure or the law.
- 3.10 Whilst recognising the resourcing pressures on the Council, Brodies agreed with the SPSO that the Council’s management of the advertising contracts amounted to maladministration.

Improvement actions

- 3.11 Overall responsibility for the project now belongs to the Cultural Services team within the Place Directorate. The team is responsible for ensuring robust contract management and clear channels of communication. Procurement and Legal colleagues are currently working with the team to finalise the procurement process for the new project to put in place appropriate contractual arrangements.

Complaints Handling Review

- 3.12 Brodies identified that officers involved in the matter had not been consistently trained on complaints handling. There was varied experience of using the Council's Complaints Procedure and some officers were not clear when they had last had training.
- 3.13 Had all officers been fully trained on complaints handling, a more appropriate and effective strategy could have been employed to deal with Mr C's complaints and information requests. The main element of his complaint (that the arrangement had not been openly procured) may have been more properly categorised as the basis of a legal challenge against the Council. In terms of lengthy, repeated communications from Mr C, it may have also been appropriate to consider invoking the Council's Managing Customer Contact Policy. However, Brodies noted that seeking to treat communications under this policy would have had to have been considered in the light of whether the fundamental issues of Mr C's complaints were being addressed.
- 3.14 Brodies saw no evidence of Council officers intentionally withholding information from Mr C or not taking his complaints seriously enough. Council officer workloads and priorities, lack of clarity on both sides as to timescales for responses, and the complexity and volume of Mr C's complaints appear to all have played a part in delayed response times.
- 3.15 In terms of information handling, there were also various issues with the accuracy of information being provided within the Council. Not all FOI requests are routed through the FOI team. Some are dealt with directly by service areas which, in this instance, led to contradictory responses being issued (Mr C had addressed very similar complaints to different teams within the Council). Officers in the Procurement team also rely heavily on information from service areas to answer questions from disappointed or potential bidders. Procurement officers do not necessarily have the technical knowledge to realise when poor or incorrect information is being provided by a service area and nor should they be expected to do so. However, this again led to inaccurate information being issued to Mr C.
- 3.16 There was no collective awareness of Mr C's varied complaints, with different service areas not being aware of the bigger picture surrounding Mr C until matters had escalated.

Maladministration

- 3.17 The SPSO concluded that the Council did not respond accurately to Mr C's questions and complaints and provided a series of inaccurate and confusing responses over a period of time. The SPSO considered that the delays and

inaccuracies in the Council's response were sufficient to constitute maladministration.

- 3.18 Brodies concluded that, on balance, the circumstances did appear to have met the threshold for maladministration. They considered that there was clear evidence of inadequate internal communication leading to delays in investigation and action and inaccurate and contradictory information being issued to Mr C. The Council also demonstrably neglected to follow or properly apply its own Complaints Procedure on a number of occasions.

Improvement Actions

- 3.19 All officers involved in dealing with Mr C's complaints have undertaken complaints handling training.
- 3.20 Since the Council's Transformation programme in 2016, a new strategic complaints function is proposed to be set up as part of the IGU. This development responds to the need for a more coherent and streamlined approach to the management of complaints throughout the Council, including significantly enhanced support, oversight and management of complex complaints. A review of the complaints management procedure is currently underway and there have been several workshops and a Council-wide consultation to identify issues, challenges and potential opportunities. The findings are currently being collated into a report for the Council's Corporate Leadership Team and will include a series of recommendations, including the development of a more robust complaints framework and overarching policy that clearly defines staff roles and responsibilities and the escalation process.
- 3.21 Under the new framework, the IGU will provide a single point of reference for advice on the complaints process and will assist service areas in co-ordinating and escalating complex complaints.
- 3.22 In terms of senior responsibility, if responsiveness issues arise in the future in relation to treatment of a complex complaint, the IGU will escalate the matter to the relevant Director or the Council's Corporate Leadership Team. The appropriate Head of Service will be tasked with dealing with the matter.

4. Measures of success

- 4.1 The actions taken by the Council after a thorough investigation by an independent law firm demonstrates that it has taken this matter seriously and has taken steps to prevent a reoccurrence.

5. Financial impact

- 5.1 No direct impact.

6. Risk, policy, compliance and governance impact

- 6.1 There is a risk that by not following the appropriate legislative and policy requirements, the Council is open to unnecessary external scrutiny and potentially legal action.

7. Equalities impact

- 7.1 No direct impact.

8. Sustainability impact

- 8.1 No direct impact.

9. Consultation and engagement

- 9.1 None.

10. Background reading/external references

- 10.1 The SPSO report can be found using the following link:
<https://www.spsso.org.uk/investigation-reports/2017/march/city-edinburgh-council>

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Links

Coalition pledges

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**Single Outcome
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Appendix

The Scottish Public Services Ombudsman Act 2002

Investigation Report

UNDER SECTION 15(1)(a)

SPSO

4 Melville Street
Edinburgh
EH3 7NS

Tel **0800 377 7330**

SPSO Information **www.spsso.org.uk**

SPSO Complaints Standards **www.valuingcomplaints.org.uk**

Case ref: 201508737, 201508738, 201508193 and 201508082, The City of Edinburgh Council

Sector: Local Government

Subject: Economic Development / Complaints handling

Summary

Mr C complained about the City of Edinburgh Council (the council's) handling of a series of complaints about their management of projects to control small poster advertising within the city. Mr C also complained about the tendering process for an advertising contract.

Mr C said multi-sided drums for sticking posters to had been put in place as a trial project in 2003. Although the project had meant to be reviewed after a year, this had not happened. Over the following twelve years, more drums had been added throughout the city. Mr C had complained the project was not properly managed and that the council had no control over it. He said the council had taken an unreasonable length of time to respond to his complaint and had provided an inaccurate response.

Mr C said the council had not responded at all to his complaint about tendering for advertising contracts. He considered this unreasonable given the length of time the council had taken.

Mr C said he had complained about a specific site where advertising was being placed without the appropriate permission being given by the council. When permission was requested, it was denied, but the council failed to take enforcement action.

Mr C also complained the council had provided inaccurate responses to his complaints. He said he had proved this using information he had obtained from the council.

Mr C said none of his complaints had been handled reasonably by the council. He also suggested the council's responses had been inaccurate and confusing.

The council accepted they had taken too long to respond to Mr C's complaints and that in one case, they had not responded at all. They said they had

received a significant amount of correspondence from Mr C about the same issues. The council did not accept their complaint responses were inaccurate, confusing or misleading.

We found the council's handling of Mr C's complaints was unreasonable and failed to follow their own complaints procedure. The council had not responded at all to one of Mr C's complaints. Although the council had accepted there were delays in responding, we did not find evidence they recognised the length of these delays, and they had not provided an explanation for the failure to respond at all to one of Mr C's complaints.

We found the council's response to Mr C's complaint about advertising drums was inaccurate and that they had failed to keep appropriate records about the project. The council were unable to provide evidence of any project management or assessment and it was unclear how the project could have been assessed for success or failure. Although the council's internal correspondence accepted Mr C's complaint had identified areas of risk to the council they did not indicate to Mr C whether his complaints had been upheld.

We found the council had generally failed to handle Mr C's complaints reasonably. He had been able to demonstrate that their responses were inaccurate with information he had obtained from them following their responses to his complaints. We found the council had failed to follow their complaints handling procedures when dealing with any of his complaints and that staff appeared unaware of their responsibilities in this regard.

We found there were significant concerns about the failure to keep proper records about the advertising projects and the continual postponement by the council of a full assessment of them. This was despite repeated statements by the council to Mr C that the projects had been reviewed.

Redress and recommendations

The Ombudsman recommends that the Council:	<i>Completion date</i>
(i) provide a full response to Mr C's complaint 201508737 addressing each of the points raised by him;	8 May 2017
(ii) carry out a full review of the complaints handling in these cases to establish the lessons to be learnt for	18 May 2017

- handling future complex complaints;
- (iii) provide evidence that all the officers involved in responding to these complaints have undergone complaints handling training; 8 May 2017
 - (iv) conduct a full review of their management of all the various advertising projects from their inception as proposed in 2012 and provide their findings to the Ombudsman; 18 May 2017
 - (v) provide evidence of the actions taken to improve internal communication in view of the acknowledged failings in this case; and 18 May 2017
 - (vi) apologise to Mr C for the failings identified in this report. 8 May 2017

Who we are

The Scottish Public Services Ombudsman (SPSO) investigates complaints about organisations providing public services in Scotland. We are the final stage for handling complaints about the National Health Service, councils, housing associations, prisons, the Scottish Government and its agencies and departments, the Scottish Parliamentary Corporate Body, water and sewerage providers, colleges and universities and most Scottish public authorities. We normally consider complaints only after they have been through the complaints procedure of the organisation concerned. Our service is independent, impartial and free. We aim not only to provide justice for the individual, but also to share the learning from our work in order to improve the delivery of public services in Scotland.

The role of the SPSO is set out in the Scottish Public Services Ombudsman Act 2002, and this report is published in terms of section 15(1) of the Act. The Act says that, generally, reports of investigations should not name or identify individuals, so in the report the complainant is referred to as Mr C. The terms used to describe other people in the report are explained as they arise and in Annex 1.

Introduction

1. Mr C complained about the City of Edinburgh Council (the Council)'s handling of a series of related complaints he made about the Council's management of advertising projects within the city. These projects related to a temporary advertising arrangements for the Edinburgh Festival, the Edinburgh Festival Fringe and the Authorised Advertising Project (AAP), which covered management and control of street advertising within the city, intended to reduce flyposting.

2. The type of advertising covered by the projects is described as 'small format' advertising. In this context, it refers to the Council using an external organisation to manage flyposting and illegal advertising on specific sites. The external organisation provides opportunities for legitimate advertising to be placed, whilst monitoring and removing any illegal advertising within a specified radius of the site. This is achieved through the provision of controlled hoardings designed and installed by the external organisation, intended to improve the visual appearance of the area. In this instance, this included the installation of free standing multi-sided advertising drums. The external organisation retained the revenues generated from selling the advertising space. The Council did not receive any direct financial benefit, although it no longer incurred the costs of removing illegal posters and maintaining the sites.

3. One of Mr C's complaints regarded the tendering process for the Edinburgh Festival Fringe advertising contract. The tendering process allowed for interest to be registered by companies considering participating in the tender. It was also possible, once interest had been registered, to pose questions to the Council about the tendering process and the contract. The Council would respond to these questions, providing further detail to interested parties to allow them to improve the quality of their submission.

4. Although the cases are set out separately and were dealt with separately by the Council, the subject matter and complaints are closely related. For this reason, I consider it appropriate to issue a joint report for all four complaints to highlight concerning issues apparent across all the cases.

201508082

5. Mr C complained about advertising drums (the drums), which were freestanding installations placed on the street to allow small format posters to be attached. They could also be used to carry information about the city,

including maps as required by the Council. Mr C said a small number of drums had originally been introduced in 2003 in one location on a trial basis. Mr C complained that the trial had never been subject to review and the drums had simply been left in place. Over the following twelve year period, additional drums had been added throughout the city. Mr C said the project had not been properly managed and the Council had no control over it. The Council had failed to respond reasonably to Mr C's complaint. In particular, Mr C said there had been unreasonable delays and that the final response he had received had been inaccurate. Mr C said that the Council had been unable to explain how they had managed the project, why it had developed the way it had, or provide accurate information about it.

201508737

6. This complaint concerns the tendering process for advertising contracts related to the Edinburgh Festival Fringe. Mr C complained to the Council on 11 April 2014 that the processes followed were not appropriate or transparent. Mr C complained to my office that the Council had failed to respond to his complaint and that a series of questions he had put to the Council about the tendering process remained unanswered. Mr C considered this to be unreasonable, given the length of time the Council had taken to investigate his complaint.

201508193

7. Mr C complained about to the Council about a site on X Street, which was being used for small format advertising. Mr C said that the site was owned by the Council; the Council logo was displayed on site and support was provided for the site by Council officers. The site did not have planning consent for advertising and when this was applied for, consent was refused. Mr C said that, despite this refusal, inadequate enforcement action had been taken by the Council. Mr C said the Council had failed to handle his complaint about this reasonably. He said the Council had taken too long to provide a response; had failed to communicate with him during the complaint investigation; and their decision was not supported by the evidence.

201508738

8. This complaint was made following receipt of Council responses to a number of Freedom of Information (FOI) requests by Mr C. Mr C said these responses showed that the Council had provided inaccurate information about his complaint. Mr C believed that the Council had not handled his complaint

reasonably and they had failed to address the issues he had raised on the basis of the new information he had received.

9. The complaints from Mr C which I have investigated for 201508082 are that:

- (a) the Council did not handle Mr C's complaint reasonably (*upheld*); and
- (b) the Council's responses to Mr C's complaints were unreasonable on the basis that the complaint responses contained information which was confusing, contradictory, misleading and untrue. Additionally the decision not to uphold these complaints was not reasonably supported by the evidence (*upheld*).

10. The complaint from Mr C which I have investigated are for 201508737 is that:

- (c) the Council did not handle Mr C's complaint of 11 April 2014 (Council ref 730592) reasonably (*upheld*).

11. The complaints from Mr C which I have investigated for 201508193 are that:

- (d) the Council did not handle Mr C's complaint reasonably (*upheld*); and
- (e) the Council's responses to Mr C's complaints were unreasonable on the basis that the complaint responses contained information which was confusing, contradictory, misleading and untrue. Additionally the decision not to uphold these complaints was not reasonably supported by the evidence (*upheld*).

12. The complaints which I have investigated for 201508738 are that:

- (f) the Council did not handle Mr C's complaint reasonably (*upheld*); and
- (g) the Council's responses to Mr C's complaints were unreasonable on the basis that the complaint responses contained information which was confusing, contradictory, misleading and untrue. Additionally the decision not to uphold these complaints was not reasonably supported by the evidence (*upheld*).

Investigation

13. In order to investigate Mr C's complaint, my complaints reviewer considered all the documentation submitted by Mr C and the Council. In this case, we have decided to issue a public report on Mr C's complaint due to significant failings on the part of the Council.

14. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

(a) The Council did not handle Mr C's complaint reasonably; and (b) The Council's responses to Mr C's complaints were unreasonable on the basis that the complaint responses contained information which was confusing, contradictory, misleading and untrue. Additionally the decision not to uphold these complaints was not reasonably supported by the evidence

15. This complaint relates to the presence of the drums throughout the city. I note that Mr C had correspondence with various Council officers prior to making his formal complaint. I summarise this first, since it provides a useful context to the complaint process.

16. In June 2014 Mr C asked about the management of advertising contracts and advertising throughout the city. He was directed to Local Planning and Delivery. Mr C was told that advertising on bus shelters and Council owned land and buildings was subject to contract and that this contract came to an end in August 2014.

17. Mr C also asked about the way the drums placed at various locations throughout the city were managed. The Council told him that the drums were controlled through the streetscape delivery groups. These groups were chaired by senior planning and transport officers from the Council. The existence of the groups did not, however, remove the requirement for advertising consent for the drums, as set out under The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, and participation in them did not guarantee consent would be granted.

18. In response to further questions from Mr C, the Council said the drums were introduced 'a few years ago' as part of a contract to control flyposting during the Edinburgh Festival and Edinburgh Festival Fringe. Some drums had been retained year round by Essential Edinburgh for their use. Ensuring that they had the appropriate planning consent was the responsibility of the Planning and Building Services departments.

19. On 25 September 2014, Mr C was informed that the drums would transfer to the Council's new advertising partner as part of the new Advertising and

Street Furniture contract. Advertising consent would be required and commercial advertising would be introduced to the sites. The remainder of the AAP would be reviewed to bring it under the new contract.

20. Mr C asked further questions on 2 October 2014 and was told he would receive a response the following week. On 22 October 2014, Mr C sent a more detailed email, expressing concern over the time the investigation was taking. He did not receive a response.

21. Mr C complained to the Council on 12 November 2014. He said advertising drums were positioned throughout the city, on Council property, and that a sole operator had been allowed to generate significant revenue, without competition, or any financial benefit to the Council. Mr C said the Council had not followed the correct procedures when allowing their land to be used for commercial purposes, which had resulted in a monopoly to be obtained without any tendering process being followed.

22. Mr C added the drums did not have the correct planning consents for operation and were in use all year round. Two drums had originally been installed as part of a trial scheme in 2003, with limited permission to operate and more drums had been introduced for the period covered by the Edinburgh Festival Fringe and the Edinburgh Festival. Mr C noted that the number of drums in operation had increased and they were now located in a number of positions not approved by the original trial scheme.

23. Mr C complained that no tendering process had been undertaken by the Council and no planning applications had been made for advertising consent, other than the original time limited permission. He said that, although the Council had told him the drums original contract had been awarded for the duration of the Edinburgh Festival and Edinburgh Festival Fringe, no indication had been given of when the drums might be subject to the correct processes, or removed. Mr C also noted that the drums were, in fact, in use all year round for commercial purposes. Mr C considered it unfair that other advertising companies, like his, were being denied access to this opportunity. Mr C also suggested that the Council was failing in its duties to obtain best value for money from the commercial opportunity available.

24. Mr C said some of the drums appeared to have been introduced despite opposition from the local community. Drums had been introduced in Area A of

the city, even though local stakeholders appeared to object to them. Mr C suggested that the Council had not followed any formal process when introducing these drums, nor was it able to evidence the rationale for their introduction or any form of review of their positioning.

25. Mr C chased this complaint on 8 December 2014. Internal correspondence shows his email was forwarded to the Council officer dealing with his complaint. Mr C chased it again on 14 January 2015 and again the record shows the email was forwarded to the Council officer dealing with the complaint. The Council were also sent a reminder by my office of the need to respond to Mr C's complaint. The Council gave an undertaking via my office that Mr C would receive a response to his complaint by 13 February 2015.

26. On 13 February 2015, the Council officer dealing with his complaint made contact with various Council departments, requesting information on the planning consents for the drums, as well as information on the history of their installation and any plans for enforcement. I note that this was the day the Council had promised a response would be provided to Mr C. The investigation established that the Planning department was not aware of the issues around the advertising drums. Although there was a contract in place for large format advertising, this did not apply to the drums. They said that if a specific enforcement enquiry was raised about a drum, then the planning enforcement team would look into it. Where a drum was placed on Council property, then the Roads Department should look into it.

27. It was subsequently confirmed internally that the drums did not have advertising or planning consent. A small number (three) were installed in Area C in 2003 as part of a trial project. They had been granted a temporary consent for one year but this had never been reassessed or renewed and the drums had never been removed.

28. Subsequently advertising drums on Y Street and Z Street were installed at the Council's request during the tram works, providing local information and maps for public use. No formal consent was sought, on the basis that they would be temporary and in place for the duration of the tram works only. The Planning department had subsequently agreed to additional drums being brought on site in other locations for temporary use as advertising during the period of the Edinburgh Festival and Edinburgh Festival Fringe, but not for long-term general advertising. The Planning department said it was not clear who

managed the project, but it appeared to be the Area B neighbourhood office, with the drums remaining under control of their commercial owners.

29. A further internal response said the Council did not have any information on the revenue being generated by the drums for their owners. The Council did own the land on which the drums were located. The drums were being used all year round to promote art and cultural events. This response said it was unaware of any intention to use the drums for a temporary period only. The drums were introduced as part of the Edinburgh Festival and Edinburgh Festival Fringe arrangements and were currently used out with that period for a similar purpose, promoting artistic and cultural events.

30. There were no restrictions on the number of drums to be used. The drums were to be included within the partnership arrangements which had been concluded with another company as part of the outdoor advertising contract tendered for by the Council in April 2014.

31. On 26 March 2015, my office contacted the Council directly to enquire why Mr C's complaint had not been responded to. The Council provided their final response on 2 April 2015.

The Council's formal response of 2 April 2015

32. The Council confirmed that they owned the land on which the drums were situated and that the drums remained the property of their commercial owner. The Council said they did not accept there had ever been a sole partner in relation to advertising in the city and that Mr C's company had been involved in part of the advertising trial in early 2010. He had, however, indicated that he was not prepared to work on projects with another company which was involved and had withdrawn. The contracts for poster sites during the summer of 2014 had subsequently been awarded to a different company, as had the contract for large format advertising and street furniture. The Council said this proved they had a number of partner organisations.

33. The Council confirmed that some drums were introduced in 2003 as part of a one year trial. Temporary consent had been granted for this purpose, however, the drums had then continued to be used in this trial context. Other drums within Area B were later installed as part of the tram works. This was to allow maps and public information to be prominently displayed. These were placed on Y Street and Z Street. This was co-ordinated by Economic

Development and Planning and Building Standards. Planning and Building Standards had subsequently agreed to other drums in other locations being used as part of Edinburgh Festival and Edinburgh Festival Fringe advertising and throughout the year to promote art and cultural events.

34. The Council said Mr C had been part of a pilot scheme for advertising in the city but they said there had been 'a degree of fluidity in this regard'. It was also accepted that better communication between Council departments would have reduced confusion and made the Council's position clearer.

35. The Council listed the contract holders for 2014 for both the summer Edinburgh Festival and large format advertising. Both contracts included scope to extend them and the large scale format contract could be expanded to include the advertising drums if needed. The Council said that the findings of the investigation would be forwarded to Planning and Building Services, in order that appropriate action could be taken including, if appropriate, enforcement action.

36. On 9 April 2015, an internal email was sent by the investigating officer to the various Council departments involved. It noted that issues remained around the advertising drums, as Mr C had identified areas of risk. The concern was expressed that the advertising drums would continue to take up significant amount of Council resources unless the issues were addressed.

37. The email set out various possible courses of action: consent might be obtained for the drums; or they might be removed; as well as consideration being needed on the appropriate procurement method for managing them.

38. The Council informed the sole operator who owned the drums on 15 October 2015 that the outcome of their review of the advertising drums was that they had to be removed. The Council said they appreciated the background to the drums being placed on the public highway under the AAP, but they could no longer see the benefit to the Council and the drums needed to be taken away by 12 November 2015.

39. On 21 October 2015 the Council circulated a briefing note to elected members. The briefing note said that the decision had been made to withdraw the drums from the public highway. The drums provided no financial benefit to the Council and no immediate benefit to businesses or local residents. The

Council said they had received 120 FOI requests in relation to the drums. Their removal would allow the Council to explore other advertising opportunities in a fair accessible and transparent way, rather than the informal 'singular' arrangement which was in place. Notice of removal appeared to have prompted the drums' owners to request their advertising clients to lobby officers and elected members to allow the drums to remain under their current terms.

40. The briefing note stated that the drums had been introduced in 2009 as part of the AAP, which had been a community safety initiative to tackle an increase in fly posting in Area B. There were currently 18 drums located in Area A and Area B which had commercial advertising on them promoting arts and commercial events.

41. The sole operator was emailed by the Council on 3 November 2015. This email stated that the drums had been under review for some time. The timetable for removal was negotiable, due to the Christmas calendar, but the decision to remove them was final. The Council noted that any future advertising provision would have to be equitably tendered. Should this be the outcome chosen, then it would be taken forward through the Council procurement process.

Mr C's complaint about the Council to SPSO

42. Mr C highlighted the length of time taken by the Council to respond to his complaint. It took four months for the Council to make contact, with the complaint lodged on 12 November 2014 and the Council's first contact being made on 26 March 2015. Mr C added that, following the intervention of my office, the Council had promised a response by 13 February 2015. Mr C said he felt that the Council's justification that Mr C had made multiple complaints was misleading since these were all about separate issues.

43. Mr C said it was unreasonable of the Council not to have upheld any of his complaints. Mr C said he felt the Council had accepted that he had not received an appropriate level of service, that the advertising drums required the 'appropriate' action to be taken about them and that the project required review. Mr C said that, despite this, the Council did not appear to have taken any action over the advertising drums and he believed more drums had in fact been introduced in the intervening period. Nor did Mr C believe that any tender or procurement had taken place.

44. Mr C said none of the advertising drums had the necessary consents in place. The Council did not appear to have received any financial benefit from the drums, despite their positioning on Council property, and Mr C believed the owner of the drums was generating revenue from them. Additionally, the Council had failed to provide any evidence of a review being carried out of the drums.

45. Mr C said that his FOI requests had shown the Council's statement that they had more than one partner in the AAP was inaccurate and misleading. Mr C said that, following the FOI request, the Council had stated that only one company was involved in the year round AAP.

46. Mr C also disputed that he had withdrawn willingly from the AAP and declined further involvement. Mr C said he had withdrawn due to concerns over the way the project was being run. He said he had always retained an interest, particularly in the advertising drum aspect of the project, and had attempted to pursue this subsequently with the Council. Mr C said since the introduction of the first set of advertising drums in 2003, there had never been an opportunity for him or any other interested party to tender for the advertising drum opportunity.

47. Mr C said he was able to demonstrate that Council officers from Area B Neighbourhood team had repeatedly ignored his questions about the drums and the possibility of future involvement. He provided emails in which he repeatedly asked the Council how his organisation might become involved in this commercial opportunity.

48. Mr C gave a specific example of inaccurate information from the Council. He cited an email sent on 28 May 2014, in which the Council stated that the owners of the drums were working in partnership with Essential Edinburgh and the Area C Business Improvement District. Mr C said that the Council had stated that the drums in various locations were 'introduced by Essential Edinburgh'. Mr C said this was clearly untrue and Essential Edinburgh had only a very limited role in the introduction of the drums.

49. Mr C provided an email from Essential Edinburgh, which denied any involvement beyond some discussion on the placing of the drums and that they had no involvement in the management of the drums, nor any contractual

relationship with the owner. Mr C added that the same email from the Council said the drums had all necessary consents, but this was also untrue.

50. Mr C noted that the Council's complaint response referred to the need to review the AAP, particularly with reference to the advertising drums. He said this ignored the fact that he had been repeatedly told that the advertising drums were being subjected to a review. Mr C provided email correspondence from 2012 and 2014, all of which said an internal review of the advertising drums was underway. This was supported by the Council's responses to several FOI requests, all of which referred to a review of the advertising projects. The most recent review was meant to have commenced in April 2015, with an envisaged conclusion in September 2015. Mr C pointed out the Council had not produced any evidence of a review having been carried out, despite repeated references to it.

51. Mr C said the Council insisted he direct his questions to Council officers, who had already failed to respond. Mr C felt this was unreasonable, since this approach had, to date, been ineffective.

52. Mr C noted the Council had stated who the contract for poster sites during the Edinburgh Festival and Edinburgh Festival Fringe had been awarded to. He said, however, that the advertising drums had been removed from the contract after the tender opportunity was published. His complaint about this issue had never been responded to but he suggested that it was, therefore, irrelevant who the contract for poster sites had been awarded to, as this did not include the drums. Mr C believed the Council was including irrelevant information in its complaint response in order to obfuscate the issues he was raising.

53. Mr C said the Council decision to include information about the award of the large format advertising contract was also irrelevant as this contract had nothing to do with the drums. He noted an FOI response from the Council confirmed large format poster advertising had never fallen under the remit of the Services for Communities department, unlike the small scale advertising projects.

54. Mr C noted the Council was now proposing that the drums would transfer to their new advertising partners. It was suggested by the Council that advertising consent would now be sought, since this would introduce commercial advertising to the sites for the first time. Mr C felt this response was

misleading; the drums had always been intended to carry commercial advertising and, in any case, the drums did not transfer to the new advertising partner as they did not form part of the advertising contract.

55. Mr C said the Council had denied holding any information on revenue generated by the advertising drums. Mr C did not believe this was accurate as he had established, through an appeal to the Scottish Information Commissioner (SIC), that the Council did hold information regarding the Council's own expenditure on the drums. The response he had received confirmed that the Council had spent over £90,000 purchasing advertising space from the drum owners.

56. Mr C said the Council did not appear to know when the first drums were installed. Mr C emphasised that the Council held no information on the effect of the drums on either fly-posting or graffiti, nor had they any information on the savings made for the Council through the introductions of the drums. Mr C noted that these were the primary reasons given to him to justify introducing and then expanding the advertising drum project.

57. Mr C believed that the Council's explanation of the drums' introduction and expansion was contradictory. He said the Council accepted the drums had no formal consents, but had not explained adequately how a temporary project had been expanded into a permanent fixture lasting at least eleven years. Mr C suggested the Council was allowing commercial utilisation of their assets (the land the drums were placed on) without any due process being followed.

58. Mr C alleged the Council had not been able to provide Mr C with the correct number of drums in place in the city despite repeated requests. Mr C said the first attempt by the Council on 8 April 2015 had been almost fifty percent below the actual number of drums in situ. Mr C had asked for a review of this response and was told the Council did not hold any more information. Mr C said the SIC had then elicited from the Council confirmation that they did hold more information on this subject. Even then, the Council had not provided a comprehensive list of all the advertising drums in the city, something which was confirmed by further FOI requests.

59. Mr C added that this lack of control was further emphasised by the Council's lack of awareness of the addition or removal of advertising drums. He noted that the Council had initially stated that a drum in Area D was removed to

avoid conflict with temporary drums being used as part of the Edinburgh Festival Fringe in summer 2014. The Council later said the drums had been removed as part of the city's Christmas celebrations.

60. Mr C highlighted the introduction of three drums into Area A. He noted that the local community had not been consulted and stakeholders had indicated at the South Central Neighbourhood Partnership meeting that they did not consider the drums appropriate.

61. Mr C said the Council had confirmed to him that these drums had been introduced 'informally' by the Local Environment Manager. The Council had no records of the process by which the installation of the drums was arranged; nor were there any records of the agreement between the Council and the drum owners. The Council accepted that keeping a record might have been prudent, but stated they were satisfied there were no legal risks to the Council.

62. Mr C added the Council again justified the installation of the drums in Area A on the grounds that they measurably reduced graffiti and flyposting. He noted that, as previously, the Council then said they had no records on the performance of the drums in reducing these.

63. Mr C also noted that drums had appeared in other locations, with similar objections being raised by residents. In some cases the Council had indicated that a drum could be removed. In others they had referred to the drums as 'established', even though they later confirmed the project had only ever been run on a trial basis.

64. The Council had informed Mr C that the drums remained the property of the owner, but had been procured by the Area B Neighbourhood Partnership. The Council had also said, however, in response to an FOI request, that no procurement process had been carried out for the advertising drums. Mr C said that again, the Council's responses appeared to be contradictory.

65. Mr C said the Council had first suggested in 2012 that the reason for the lack of information was due to the trial nature of the project. Mr C said that little, if anything, had changed in the intervening period. Mr C added that the Council accepted their communication internally had been poor but had not upheld his complaint.

66. Mr C said the Council should acknowledge the administrative failings in their handling of the complaint. They should also acknowledge these to him and be required to address every example of inaccurate, untrue or confusing information that Mr C had identified in his complaints. Mr C said the Council should review the handling of the complaint and their inability to provide accurate information about the advertising project. Mr C asked for an apology from the Council and an acknowledgement that the failure to handle his complaint properly had caused him to expend a significant amount of time and effort to ensure it was addressed properly.

The Council's response to SPSO

67. The Council maintained that they had handled Mr C's complaint reasonably. They said they had taken time to consider Mr C's complaints and their response letter of 2 April 2015 explained this. The Council said Mr C's complaints were detailed, repeated issues raised in previous complaints and were all extremely lengthy.

68. The Council were asked to respond to the ruling on one of Mr C's FOI requests, which appeared to indicate that the Council did hold information on revenue generated by the advertising drums. The Council had previously stated that they did not hold any such information.

69. The Council said they regretted that the response provided to Mr C did not accurately reflect the information held by the Council. The Council said they accepted that there had been a number of issues identified during the investigations conducted by the office of the SIC which reflected poor records management by the Council and information had been identified on appeal which should have been provided to Mr C at an earlier stage.

70. The Council said they had apologised for these failings and addressed the issues with the service area concerned. They said that the service area managing the project were unaware that another Council department was purchasing advertising space from the company who owned the drums. Consequently the Council had failed to provide information relating to the expenditure on the drums by the Council themselves.

71. The Council said they were satisfied that, following an audit in December 2015, they were aware of all the advertising drums located in the city.

72. The introduction of advertising drums into Area A in 2014 had been taken by an individual Council officer. The arrangements were made entirely over the telephone and no paper or digital records were kept. The decision was based on an increase in fly posting and graffiti in the area and the drums were installed to address these issues. There was no formal arrangement between the parties, however, there was an undertaking by the drum owners to undertake minor graffiti removal and cleansing within a fifty meter radius of the drums. The Council said this arrangement had no cost implication for them.

73. The Council have subsequently confirmed that removal of all the drums across the city was delayed following a meeting on 20 November 2015 with various stakeholders. This had agreed that the removal of the drums would be delayed until there were further discussions involving all users, to allow the arts and cultural sector to promote their winter performances in Edinburgh. No evidence was provided of a final decision.

74. The Council said that the arts and cultural sector was of central importance to the city and its economy and that the removal of the drums would significantly affect this. A plan was under development to remove the drums and ensure a similar service was in place. The Council were working to develop the essential procurement process and associated planning requirements. The Council would seek to ensure the process was completed by the end of March 2017.

(a) Decision

75. Mr C submitted his complaint on 12 November 2014. The Council did not begin their investigation until 13 February 2015, the date which they had informed both Mr C and my office was the deadline for its response. The Council has stated that the delay was due to the volume of correspondence generated by Mr C around his various complaints and the number of FOI requests he was making.

76. Given the available evidence, I do not consider the Council's explanation to be reasonable. There is no evidence that Mr C's case was being actively considered, nor have the Council explained why Mr C was not communicated with, despite evidence that Mr C's requests for updates were passed to the investigating officer. Additionally, the Council provided a misleading impression of the progress of their investigation, by not commencing their investigation until

after the deadline for responding to Mr C had passed, and after they had informed both Mr C and this office that the investigation was in progress.

77. I am particularly concerned that the Council, despite significant delays, were unable to provide an accurate response to Mr C. Mr C's involvement of the SIC resulted in the production of information relevant to his case, which the Council's internal investigation had been unable to identify. I am critical of the Council for this failure, as the reason given for delaying the response to Mr C was to ensure that it was accurate and the need to ensure all responses were consistent with the information being provided in response to Mr C's FOI requests.

78. I uphold this complaint. In view of the related nature of Mr C's complaints, I have made a general comment and recommendations at the end of this report.

(b) Decision

79. Mr C said the Council's response to his complaint was confusing and contradictory. He provided a detailed list of objections, supported by a series of FOI requests and other information. There is a concerning lack of clarity, both in the Council's original responses to Mr C, their responses to his FOI requests and their responses to this office on the introduction and management of the advertising drums.

80. What is clear is that a trial of advertising drums began around 2003 and that, in various forms, this continued without any formal decision on its success or failure. During that period, advertising drums were added in various other locations throughout the city, as part of other advertising projects, and these drums were all supplied by the same owner. The Council have acknowledged that there are no records of the performance of the drums in reducing graffiti or flyposting.

81. It is also accepted by the Council that their departments did not communicate effectively with one another and that the advertising project to use the drums to reduce flyposting and graffiti and reduce costs to the Council would require review. Although the failure to communicate and the lack of assessment or review was acknowledged in 2012 after Mr C's involvement, there is no evidence that the Council carried out any review of the project until 2015. I am critical of this failure, not least because the Council stated on more

than one occasion to Mr C that a review was underway. In the absence of any evidence of such a review, these remarks have to be seen as misleading.

82. The Council's response to Mr C does not indicate whether or not his complaints were upheld. Whilst they acknowledge failings on the part of the Council, these are minimised. The Council response says that other service areas will be provided with a copy of their correspondence, however, there is no evidence of a comprehensive review of the entirety of the advertising drum project. I accept that the Council had already corresponded with Mr C on this matter, however, at no time did they inform him that they would limit the scope of their investigation into his complaint and he could reasonably have had the expectation that the Council would, therefore, take into account the full scope of the project.

83. Mr C has been able to demonstrate through his FOI requests that the Council did not provide accurate responses to all of the issues that he raised. From the information supplied, I have seen no evidence that information was deliberately withheld by the Council. Rather, this appears to reflect the confused nature of the project and the lack of oversight within the Council. Again, although the Council have stated that these issues have been addressed by the relevant service areas, there is no indication of what action the Council have taken to ensure that the same issues do not arise in future.

84. Overall, I do not consider the Council's response to Mr C's complaint to be of a reasonable standard. Whilst accepting the complex nature of the complaint, the Council have not provided a response which accurately reflects the information they held. Additionally, they have not explained the contradictory statements made to Mr C throughout his correspondence with them about the advertising drums trial project and the Council's management of it. I note, for example, that the Council state that it is a requirement of the drums introduction that their owner clears graffiti and flyposting from the surrounding area. It is unclear how this would have been enforceable in the absence of any records of the arrangement between the drums owner and the Council.

85. Additionally, there is clear confusion within the Council over the date the project started, with Mr C being provided with a variety of dates depending on which department he contacted. He was told the drums were the responsibility of an arm's length agency, which that agency denied. He was also given

conflicting responses on whether the drums came under the Council's Advertising contract tendered in 2014. The final position would appear to be that the drums did not come under the contract tendered in 2014, given the Council's subsequent correspondence with the drum owners, but the Council appears to have been entirely unclear how this project was operated and managed.

86. The Council accept in internal correspondence that Mr C's complaint has identified issues which pose a risk to the Council, although the risks are not set out in any detail. This internal response also indicates that consideration should be given to tendering. This approach was first considered by the Council at the Flyposting Working Group, which met on 26 October 2004. It was noted then that information should be sought on companies providing similar services to the advertising drums to allow the Council to tender the trial if they wished to proceed. It is clear from the evidence that, despite it being considered necessary to tender this contract in 2004, it has never been properly tendered by the Council, despite being repeatedly expanded. I consider that this constitutes maladministration.

87. Additionally, the Council have been unable to respond accurately to Mr C's questions and complaints. The available evidence shows a series of inaccurate and confusing responses. It is a significant concern that Mr C has been able to demonstrate this through FOI requests, although these have required the SIC's intervention. I consider the delays and inaccuracies in the Council's response to be sufficient to constitute maladministration.

88. In the circumstances, I consider that the Council's investigation of the complaint was inadequate and their findings do not accurately reflect the information held by the departments involved. The Council have not provided evidence that a comprehensive review has or will be undertaken, to avoid a repeat of the confusion and maladministration which has taken place.

89. I uphold this complaint. In view of the related nature of the complaints, I have made general recommendations at the end of this report.

(c) The Council did not handle Mr C's complaint of 11 April 2014 (Council ref 730592) reasonably

Background

90. On 11 April 2014, Mr C lodged a complaint with the Council. Mr C said he was unhappy with the way the Edinburgh Festival Fringe advertising contract was handled. The tender was intended to allow the Council to appoint a single contractor to manage the advertising for the performances taking place in the Edinburgh Festival Fringe. He said the tender was not transparent and contained obvious anomalies. The tendering process had failed to address these through the question and answer (Q&A) process that formed part of it. As a result it did not offer potential tenderers a genuine opportunity to evaluate and submit tenders, as critical commercial information could not be obtained from the Council.

91. The Council responded on 23 April 2014. They said they would address any issues raised appropriately. They asked for specific details of Mr C's concerns, as well as details of the information he felt had not been provided as part of the tender process.

92. The Council said that a high level review of the procurement process had been undertaken and that the Council were satisfied that the process was fair, open and transparent. The Council also said that the contract was advertised on Public Contracts Scotland, as a non-EU tender, with the documents available to all parties.

93. Mr C responded on 25 April 2014 expressing concern over the Council's review and asking for details of what the review had involved. Mr C also asked if the contract had been awarded, noting that this would affect the amount of time that Mr C would be prepared to spend on the issue. Mr C also asked what would happen if he demonstrated that the process had not been open and fair.

94. The Council attempted to speak to Mr C by telephone about his complaint, however Mr C declined, indicating he wished the matter to be dealt with in writing.

95. On 12 May 2014 Mr C emailed the Council asking if they had any answers to his complaint. Mr C noted they had been keen to discuss the case and Mr C felt some progress must have been made in the meantime. The Council responded on 14 May 2014, explaining that they had thought it would have

been helpful to discuss the complaint since Mr C had not identified specific issues of concern about the tendering process.

96. The Council responded saying their high-level review had looked at whether the processes followed were in line with the EU Regulations, Scottish Government guidance and Council Standing Orders. The Council were satisfied the staff involved had the appropriate expertise but, should Mr C have specific concerns about the team involved, he was invited to set them out. The Council said the contract had been awarded on 1 May 2014.

97. Mr C responded with further questions, asking which department in the Council was responsible for the tender. Mr C also asked whether he should have been notified about the awarding of the contract, given that he was registered as an interested party. Mr C asked if the Council's tender processes had been found inadequate previously and, if so, what the Council's response had been.

98. Mr C chased for a response on 23 May 2014, before receiving answers on 30 May 2014. Mr C was told that the responsible department was Services for Communities and that notification of contract award was not provided to suppliers who had only provided a 'note of interest'. The Council said that should a supplier be concerned that a tender was not fair, open or transparent, or that they had suffered loss, then the individual's recourse was to the courts, which could result in the contract being set aside, or payment of damages, or both. The Council said they had never been successfully challenged over a breach of the procurement process.

99. Following a further exchange of emails, Mr C was informed on 25 June 2014 that the matter was considered closed. The Council said they had asked Mr C to provide more specific information and believed they had responded to all the questions Mr C had posed so far.

100. On 26 June, Mr C wrote again to the Council indicating that he disagreed with their position. Mr C said the response times from the Council had been protracted and he felt he had only obtained responses by chasing the matter himself. Mr C did not, therefore, accept the matter was closed and asked for the matter to be dealt with by a more senior officer, which would allow for Mr C to deal with specific anomalies in the tendering process.

101. On 22 August 2014, Mr C contacted the Council asking why communication had ceased. The Council responded on 24 August 2014, stating that his correspondence was now being dealt with by Legal Services.

102. On 28 August 2014 Mr C responded in detail to the Council, noting that he had not been informed of the change in who was dealing with his complaint. Mr C expressed surprise that Legal Services were now dealing with the complaint.

103. Mr C said he could clearly demonstrate why the contract tender process was not transparent. Mr C said this was shown by the Q&A section of the tender, which was visible to the public. Mr C said the answers provided by the Council were at times contradictory and confusing and that, at other times, key questions had been ignored and discarded.

104. Mr C said the list of sites to be used by the successful tender was not clear and it was particularly unclear if all the sites were on Council assets. Mr C added that the tender documents repeatedly stated that all sites to be used would be on Council assets, although Mr C knew this not to be the case. Mr C had submitted a question to try and clarify this but it had been discarded by the Council as 'not relevant'.

105. Mr C said he knew that the list of available sites also contained at least one site which had been refused advertising consent and which the Council were meant to be taking enforcement action over. Mr C noted that his question trying to clarify this issue had been discarded as 'not relevant'. Mr C said he found this disturbing, since it prevented potential tenderers from gaining an accurate picture of the contract.

106. Mr C noted that the Council's response to question 37 in the tendering Q&A stated:

'The Contract is for the use of Council assets, if the successful applicant or any other individual wishes to approach the owner of a private asset then they can pursue this but will require Council's approval for the type of advertising placed on these sites.'

107. Mr C said he was unsure if this meant that the Council required all sites under the contract to be Council assets, however, he said his attempts to clarify this had been ignored.

108. Mr C also noted the advertising drums referred to in the contract were the subject of some questions. They were included in the list, but operated out with the Edinburgh Festival and Edinburgh Festival Fringe period as well as during it. Mr C said the Council made a series of contradictory statements about them in the Q&A.

109. The Council had said in response to the further submission from Mr C that no assets remained in use outwith the period covered by the Edinburgh Festival and Edinburgh Festival Fringe. Their answer to question 1 of the Q&A, however, stated that the advertising drums did not form part of the contract, as they were used throughout the year by local arts organisations. Mr C said that repeatedly (and confusingly) there were sites on the list which were part of the contract but also part of other initiatives, in use all year round and managed by a previously selected contractor.

110. Mr C said the tender Q&A never resolved this apparent problem. If the drums were not included that meant the contract did not provide exclusivity of advertising, which affected the contract's value. Mr C said a series of questions trying to establish whether the drums' owners would be using them during the Edinburgh Festival and Edinburgh Festival Fringe; whether the year round access for local arts groups would be maintained; and the current arrangements for access / pricing, were all either deemed not relevant, or referred to another service area.

111. Mr C noted he had been attempting to contact both the Services for Communities and Legal Services departments for some time in an effort to establish how the advertising drum scheme worked, but had been unsuccessful in obtaining a clear answer.

112. Mr C was responded to by Legal Services on 4 September 2014. They confirmed his complaint would be investigated and provided the email they had sent to his company (albeit to a different email address), informing him they were taking over the investigation. A read receipt had been generated on 7 July 2014 and the Council said they considered it was clear Mr C had been aware his complaint had been passed to Legal Services. The Council said that, as Mr C had now provided specific queries, they would be able to respond to the issues he had raised.

113. On 23 October 2014 Mr C chased the Council for a response. Mr C noted that seven weeks had passed since his last correspondence and two months since he had detailed his complaint extensively.

114. On 12 November 2014, Mr C asked for a formal complaint to be lodged about the handling of his complaint. Mr C followed this up on 8 December 2014, asking why he had not received any response to this complaint.

115. On 6 January 2015, Mr C was emailed by the Commercial and Procurement Services Directorate. They said they were sorry if Mr C felt the tender process lacked transparency. They identified the lack of clarity over the locations available for advertising as Mr C's primary concern. They said the Council took its obligations in terms of transparency and fairness in the tender process very seriously but, as the contract was in place for 2014, they suggested Mr C assist the Council in improving their tender documents for 2015.

116. Mr C replied to this on 12 January 2015. Mr C noted it was ten months since the initial complaint was lodged. Mr C said he had provided a detailed list of concerns but not a single one had been responded to. Mr C said the issue was no longer just about how he 'felt' or future tender processes.

117. Mr C said the Council had not addressed the failure to respond to key questions about the tender process. Mr C said that, although he had been directed to Services for Communities, they had been unable to provide the required information prior to the tender deadline, resulting in his complaint. Mr C said he had not been provided with a satisfactory explanation for the initial inclusion of the advertising drums in the list of sites for advertising, despite the Council stating they were not part of the contract. The drums then appeared to have been removed from the 2014 contract without explanation or notice.

118. Mr C set out again his questions about the advertising drums and a site on X Street, which was included as a location for advertising, despite having been refused the appropriate advertising consent. There was also a question over the competition from the advertising drums which would be in place over the same period, if they were not included in the contract. Mr C also questioned why sites were retrospectively removed from the contract without any notice. Mr C asked for a formal explanation of why the site list was inaccurate and what

account had been taken of the difficulty this caused in evaluating the contract properly.

119. Mr C noted the last correspondence from the Council had been on 4 September 2014, before receiving the Council's email on 6 January 2015, some four months later. Mr C asked why there had been so many serious delays and for confirmation of where he was in the complaints process. The Council responded on 12 January 2015. They said the Client Department had been asked to respond within a week with answers to Mr C's outstanding questions.

120. On 3 February 2015 Mr C contacted the Council asking why a further three weeks had elapsed without a response from the Council. Mr C added his last questions about why it had taken so long to provide a response also remained unanswered.

121. Mr C contacted the Council again on 20 February 2015, re-sending the previous email and asking why he had been ignored for a further five weeks. The Council responded that day, denying Mr C was being ignored. They said his complaint was complex and that they were aware Mr C was corresponding with a number of Council departments. They were, therefore, trying to avoid duplication of responses. Mr C replied the same day, noting he had been promised a response within a week on 12 January 2015. Mr C said there was a pattern of broken promises and failures to respond, unless prompted by him. Mr C said he was asking for the third time for answers to his questions about the reasons for the delay in responding to the complaint.

122. On 11 March 2015, Mr C wrote to the Council again, asking for an update on his complaint. Mr C pointed out he had now waited eleven months from the original complaint for a response. Mr C regarded this as unacceptable and asked again for an answer to his questions about the cause of the delay and the Council's approach to it. The Council replied on 11 March 2015, stating they were aware Mr C was corresponding with a number of departments and that Mr C would receive a single response.

123. On 13 March 2015, Mr C asked for confirmation of where he was in the complaints process. Mr C acknowledged he was communicating with other Council departments, but he regarded these as stand-alone complaints and Mr C was concerned a single unified response would not provide sufficient

detail to address the complaints he had raised. Mr C wrote further on 18 March 2015, setting out in bullet points the issues the Council had failed to address satisfactorily. Mr C noted he had not agreed or discussed any extensions to the Council's twenty day time limit for a response.

124. At this point, Mr C was in correspondence with my office. My office wrote to Mr C on 26 March 2015, explaining that there was now a revised date for response from the Council of 3 April 2015.

125. Mr C contacted my office again on 3 April 2015. Mr C said he had received a response from the Council, but it dealt only with two of his complaints references (798393 and 798395). Mr C said it had not dealt with 730592, which remained outstanding. This was despite it being repeatedly highlighted to the Council that this complaint had not been responded to and their promise that this would be covered in their most recent response.

126. On 17 April 2015, Mr C contacted the Council again, stating he had not received a response.

The Council's response to SPSO

127. The Council said they had received Mr C's initial complaint on 11 April 2014. A response had been provided on 14 May 2014, which appeared to be the stage one response on behalf of the service complained about.

128. The Council said it was unfortunate that this was issued more than five working days after receipt of the complaint. They acknowledged the response did not properly advise Mr C that if he remained unhappy he could progress matters to stage two of the Council's complaints procedure. The Council said they had addressed this issue with the service area and the necessity of using the correct complaint response templates had been stressed.

129. The Council said there was no record of any stage two response having been issued to the complainant. The Council said there had been an on-going correspondence with Mr C, including a number of additional queries and new questions being raised. The Council said they accepted this did not excuse the failure to provide a stage two response.

130. The Council said Mr C's dissatisfaction with stage one should have generated a written acknowledgement within three working days. The Council

also accepted there was a general pattern of delay in responding to his correspondence. They said there was scope within the Council complaint process for extensions to be agreed in cases where the complexity or detail required made it impossible to provide a response within the normal twenty working day period. The Council acknowledged that there was, however, no evidence that the Council had attempted to agree any extensions with Mr C, or that Council managers had authorised the delays in providing a response.

131. The Council said they clearly expressed their regret for these unreasonable failures, although they noted they occurred during a period of significant volumes of correspondence from Mr C.

132. The Council said that, although a stage two response had not been issued, they believed the substantive issues in Mr C's complaint had been considered. If Mr C considered that a tender process had not been fair, open, or transparent or where Mr C considered he had suffered a loss through a breach of duty under the Public Contracts (Scotland) Regulations 2012, Mr C could bring proceedings in the Sheriff Court or the Court of Session.

(c) Decision

133. Mr C's original complaint was submitted on 11 April 2014. This was responded to, although outside the five working days allocated for front line resolution. The Council's response was, however, reasonable, since he had not at that stage provided detailed grounds of complaint. Whilst I note Mr C preferred to establish correspondence first, before proceeding with the detailed complaint, this meant the first response from the Council responded to the questions posed to them. Subsequently, Mr C provided detailed concerns on 28 August 2014.

134. Although it was not unreasonable of the Council to inform Mr C that they required more details from him, I note there is no evidence on the file supplied by the Council of the 'high level review' the Council said they carried out in April 2014.

135. From 28 August 2014 onwards, the Council had been provided with a clear and detailed account of Mr C's concerns. There is no contact with Mr C by the Council requiring clarification or expansion on his concerns. It was, therefore, reasonable for Mr C to assume the Council was progressing the

complaint. No evidence has, however, been provided to show an investigation took place.

136. The Council have accepted that there were failings throughout the handling of Mr C's complaint. They have suggested that, regardless of these, Mr C's substantive issues were addressed. I do not agree with this assessment. Mr C asked legitimate questions about the accuracy of the information provided as part of the tender process. It is not unreasonable to expect the Council to be able to provide a response to these, given that they accepted a formal complaint from Mr C and continued to correspond with him about them.

137. Overall I am highly critical of the Council's failure to provide a substantive response, despite protracted delays to allow the investigation to take place and repeated reminders from the Mr C. The Council have not provided an explanation for this failure, although they have acknowledged it represents an unacceptable standard of service.

138. Instead, in an email to Mr C on 6 January 2015, the Council suggested they would be willing to discuss future tendering arrangements with Mr C, in order to improve the transparency of future processes. Whilst not addressing the specific points Mr C raised, this suggestion implies the tendering process could have been improved.

139. I uphold this complaint. Due to the combined nature of the report, I will address wider complaints handling issues at the end of the report. In respect of this complaint, however, I make one specific recommendation.

(c) Recommendation

140. I recommend that the Council:

Completion date

- (i) provide a full response to Mr C's complaint, addressing each of the points raised by him.

8 May 2017

(d) The Council did not handle Mr C's complaint reasonably; and (e) The Council's responses to Mr C's complaints were unreasonable on the basis that the complaint responses contained information which was confusing, contradictory, misleading and untrue. Additionally the decision not to uphold these complaints was not reasonably supported by the evidence

141. Mr C's complaint related to a site for small format posters on X Street. The site consisted of advertising space for posters along a series of wooden hoardings, along the boundary of the site with pavement. He said this site had never had advertising consent and when this had been retrospectively applied for, it had been refused. It had, however, been allowed to continue operating. Mr C first raised this issue through his solicitors in 2014. The Council did respond to that complaint; however, in order to provide context to the subsequent correspondence, in which both parties refer to that complaint, I have included a summary of it here.

27 June 2014 letter from Mr C's solicitors to the Council

142. Mr C's solicitors wrote to the Council. They referred to correspondence earlier that year with the Council. They said that a former Council officer with responsibility for small format advertising was now employed by the company which was the Council's sole partner for the provision of small format advertising.

143. Mr C's solicitors said the Council had failed to act impartially in respect of the site at X Street. They said that, through the actions of the former employee, the Council had effectively acted to protect the business interest of Mr C's competitor. The Council had failed to provide Mr C with necessary information and had ignored questions and requests for information.

144. Mr C's solicitors also said that the Council had allowed the site at X Street to operate illegally. This was despite the Council's planning report of handling (12/04236/ADV) recommending that an application for advertising consent be refused.

25 September 2014 Council response to Mr C's solicitors

145. The Council said that it accepted advertising consent had been refused for the site at X Street. It was also accepted that the Council's approach to this site fell short of expectations; however, the Council's planning enforcement team was now dealing with the issue. They said there was no evidence of dishonesty on the part of Council employees in this regard.

146. The Council said this matter had been the subject of a number of complaints from Mr C. They had conducted several reviews and now considered the matter closed.

147. Mr C complained to the Council on 12 November 2014 saying that a poster site had been allowed to operate on Council land for a number of years, despite advertising consent being refused by the Council. The site not only lacked the appropriate consent, but also carried Council and Police Scotland logos, giving the impression it was officially sanctioned, even though the Council knew the site had not received planning permission.

148. Mr C said Council officers with responsibility for the advertising schemes running in Edinburgh had supported a retrospective application for consent, even after planning officers had recommended it for refusal. This was in keeping with the support given to the site by Council officers when the site had been set up without the appropriate planning consents.

149. Mr C said this was an example of the way a sole operator had been allowed to control the small format street poster schemes in Edinburgh and that, although he had attempted to engage with the Council, it had been very difficult to get reliable information from them, or timeous responses. Mr C said there appeared to be a total disconnect between the various Council departments involved. Additionally, Mr C said that Council staff involved seemed to be unaware of the correct processes to follow, or of the Council's requirements in terms of access to information and transparency.

150. Mr C chased his complaint on 8 December 2014 without response and, on 5 January 2014, he called my office. The Council were reminded of the need to reply to Mr C on 14 January 2015 but although he received an automated acknowledgement, Mr C did not receive any further communication from the Council directly. On 5 February Mr C again contacted the Council and following further contact from my office they said he would receive a response by 13 February 2015.

151. The evidence provided by the Council shows their complaint investigation began on 13 February 2015. There is no evidence of any investigation of the issues raised by Mr C prior to this.

152. On 23 February 2015 Mr C again contacted my office, as he was concerned by the lack of response from the Council.

153. On 26 March 2015 the Council were again contacted by my office, after Mr C continued to complain about the Council's lack of response. The Council apologised for this and said that Mr C's correspondence with a number of Council officers overlapped and he had submitted 16 Freedom of Information requests since 10 March 2015. The Council apologised for not informing Mr C that his response had been delayed by the need to provide a co-ordinated and accurate response.

154. The Council's final response was provided on 2 April 2015. The Council provided Mr C with a further update on 9 April 2015 in relation to the site at X Street, stating that the site had been cleared and no further advertising was taking place.

The Council's response of 2 April 2015

155. The Council said they believed Mr C's complaint was almost identical to the issues raised by his solicitors in June 2014, to which the Council had responded in September 2014. The Council noted that the previous letter of complaint had mentioned both the report of handling relating to advertising consent and the actions of a specific Council officer with relation to posters being allowed on the site, even though advertising consent had been refused.

156. The Council said they had addressed these issues. They accepted that they had failed to take the appropriate enforcement action when advertising consent was refused but this was now in progress. The Council said they accepted that 'the approach regarding this site fell short of expectations' but they did not accept any Council officer had acted dishonestly.

157. The Council confirmed they were the owners of the site at X Street at the time the advertising was installed and when the retrospective application for advertising consent was made. The Council said the officer responsible for the retrospective application was not aware of the Council's ownership of the site and this had not come to light until the Planning Enforcement Team had investigated further. The Council said that communication between directorates could have been better.

158. The Council said that they did not hold any information about the level of advertising revenue that the site had generated. The Council disputed that the site should be categorised as one where 'illegal flyposting' had occurred, noting that it was possible to seek and obtain retrospective permission for a site like this one. The Council said they had already responded to the issue of consent on the site in September 2014. The Council accepted that the application was received in November 2012 and determination refusing the application was made in August 2013; however, this was not communicated to the Planning Enforcement Team until June 2014. The Council said this was due to an administrative error.

159. During the enforcement investigation it became apparent that the Council owned the site. The Council, as planning authority, could not serve enforcement notices on itself. The matter would instead be resolved through discussion with the department responsible for managing the land. The Council confirmed that meetings had recently been held with the relevant department and that the site would still be subject to action by the enforcement team.

160. The Council acknowledged that the site received support from Council officers prior to the retrospective application being lodged. They said the site was part of a trial project, in which Mr C's company had participated. The Council had been reviewing sites like this to see how the advertising project worked in practice.

161. The report of handling had been produced by officers from Planning and Building Services; they had not been approached by officers from any other department until after the retrospective application had been lodged. The Council said they accepted that communication could have been better in this area.

162. The Council acknowledged there had been support from other departments for the site. They said, in particular, Economic Development and Estates had provided support for the site.

163. The Council also accepted that both Police and Council logos were displayed on the site. They said the Police had been involved in initiatives to combat fly posting, but they could not comment on the use of their logo. The use of the Council logo was now under consideration.

164. The Council said in response to Mr C's accusation of a 'total disconnect' across the Council that a number of departments had been involved in the advertising project. This included the Area B Neighbourhood Team, Economic Development, Planning and Building Services and Estates. There were also a number of employees and consultants who were no longer with the Council.

165. The Council said this was acknowledged in their letter to Mr C. They accepted that these were circumstances which potentially gave rise to failure to communicate, or to miscommunicate, internally.

166. The Council did not accept their approach to flyposting had failed. The Council also did not accept that there was evidence of corruption or any other form of misconduct among any of their staff.

Mr C's response

167. Mr C said he believed the Council had repeatedly failed to follow the correct procedures in handling his complaint. He said that a sole operator had been allowed to use a site illegally for three years, benefiting from the advertising revenue that the site generated. Mr C said that the Council officers responsible for the AAP could be seen showing support for the site in the planning file notes, well after its introduction and in response to the findings of the Planning determination, which refused retrospective consent.

168. Mr C said he felt this was concerning, noting that the same sole operator had been in control of all the small format poster advertising in Edinburgh for over four years.

169. Mr C complained it had taken over four months to receive a response to his complaint. He highlighted that he had been obliged to repeatedly pursue the Council and noted that, although a promise was made to provide a response by 13 February 2015 following the intervention of my office, the Council failed to meet this deadline without explanation. The Council did not in fact contact him until 26 March 2015, which Mr C said was the first point they had contacted him directly since his original complaint in April 2014. Mr C did not consider the Council's explanation that the delay was due to the volume of correspondence he had produced reasonable.

170. Mr C said that his complaint did not appear to be upheld and said he considered the Council's complaint response to contain inaccurate, confusing,

untrue and misleading statements. Mr C said the site at X Street was ultimately subject to planning enforcement and removal, on the grounds that he had previously brought to the Council's attention. Mr C emphasised the site had never had advertising consent and he considered its operation illegal.

171. Mr C also noted the Council had accepted there were failings in many key areas, both in the introduction and support of the advertising on the site and their dealings with him. Mr C also highlighted that he had been informed over a number of years, starting in August 2012, that the AAP and associated advertising projects were under review by the Council. The Economic Development Department had stated the project review would be completed by October 2014. Contradicting this was the Council's response to FOI requests, where they stated the review 'commenced in April 2015 has no set timeframe, but it is envisaged it will be concluded by September 2015'. Mr C added the Council had been unable to provide evidence of any previous reviews, despite repeatedly stating they were being carried out over a four year period.

172. Mr C pointed out that the Council had stated officers were unaware the site was owned by the Council. In response to his FOI request, however, the Council had said authorisation to use the site was given following discussions between officers from the Services for Communities and Planning departments. The Council had also confirmed that all proposals for advertising sites were discussed prior to installation when located on Council assets.

173. Mr C said the Council had confirmed the site was installed in 2010. He questioned why, if the site was approved following discussions between several departments, including the Planning Department, the ownership of it did not become apparent until an enforcement investigation began.

174. Mr C said if the Council's position was correct, then it raised questions about the management of the AAP project. In particular, given the number of departments involved, including Estates, he suggested it was not credible that no-one was aware of the ownership of the site.

175. Mr C said the Council's statement in their complaint response, that there had been no Planning and Building Services involvement until the retrospective application was lodged, was also inaccurate. Mr C pointed out that FOI requests showed this specific site was discussed prior to installation, as

were all proposals for advertising sites. Mr C said the Council's statements were not reconcilable.

176. Mr C said the failure of the many departments involved in providing support for the site to recognise that it might not be suitable for a conservation area showed the disconnect between the various Council departments. Mr C said the Council's response often raised irrelevant points, or made general statements he considered obfuscatory. He noted that although he had made related complaints, the Council's response was similarly unsatisfactory and in one case, the Council had not actually responded at all. Additionally, Mr C said the Council was, by describing his complaint as 'generic', attempting to minimise its importance and ignoring the fact that it was about the specific problems at a specific location at X Street.

177. Mr C added the Council had admitted they had no way of measuring the success of the project, or the performance of the organisation they were working with. There did not appear to be any collected data, or any defined aims and objectives for the project.

178. Mr C did not accept the Council had adequately addressed his fears that corruption was partly or wholly responsible for the failings he had identified. Mr C said that revenue generating advertising opportunities should be consulted about, tendered properly and be restricted to sites with properly obtained advertising consent. Mr C said he did not believe the Council had explained why one organisation had been allowed to benefit for an extended period, to the exclusion of other interested parties.

179. Mr C said the Council had ignored information which had come to light since his solicitor had complained to them. He noted the Council seemed unclear on when the sole operator had first become involved with the Council, as they had been supplying advertising drums since 2003, well before the AAP apparently commenced in 2009. Mr C also noted that the Council had accepted in August 2012 that information had not been properly recorded and that his requests for information had not been adequately dealt with.

180. Mr C added the Council's statement that the site at X Street had been cleared at the time of their letter of 9 April 2015 was inaccurate. He provided photographic evidence that the site was still in use and had not been cleared. Mr C suggested this showed the Council had no control of the project.

181. Mr C asked for the Council to review the handling of his complaint and formally acknowledge their failings. He also asked for an acknowledgement of the inaccuracies in the complaint response sent on 2 April 2015 and for the Council to provide an explanation for this and accept that his complaint should have been upheld.

The Council's response to this office

182. The Council said that the site was not approved by Planning and Building Services and that advertising consent did not require submission of a landownership certificate. The application had stated the applicant had permission from the owner of the land to display advertisements. The Council said the planning officer would not have been aware the Council owned the site.

183. I note this response does not address the issue my complaints reviewer raised with the Council. The Council were asked how, if all advertising sites were authorised by Planning and Building Services staff prior to advertising installation and prior to the retrospective application, they could have been unaware of the site's existence. They were also asked why the fact it was apparently inappropriate for a conservation area had not been considered at this stage. The fact that the individual planning officer dealing with the retrospective application was unaware of the ownership of the site at the time was not disputed.

184. The Council said they did not dispute there was an unacceptable delay in instigating enforcement action. They attributed this to human error in failing to advise the Enforcement section of the need to take action. The Council said the Planning Service had since been reorganised and they did not believe this error would reoccur.

185. The Council said they could not explain the use of the Council lgo on the site. There were no records of any formal decision to allow its use, or of any action taken in this regard. The Council's view was that as the site had been cleared on 9 April 2015, this was no longer a consideration.

186. My complaints reviewer asked the Council to expand on the actions taken to resolve the communications difficulties experienced by Mr C. The Council said there was now a single point of contact for all temporary advertising queries in Area B. This would ensure all Council departments were aware of

who was responsible for coordinating responses and ensuring they complied with the appropriate processes and legislation.

187. The Planning and Building Services departments had been included in a structural review which had included all Council services. Their structure was now more closely aligned with the neighbourhood team structure under which community safety operated. Planning enforcement was handled by two separate teams, one covering the west and Area B and one covering the east. The Council said the new structure would enable more effective communication between various Council departments.

(d) Decision

188. The Council have accepted that their response to Mr C was delayed. The explanation provided for this was that Mr C's complaint was complex and submitted at a time when he had provided significant volumes of correspondence to the Council. In addition, he had made a large number of FOI requests and the Council required time to co-ordinate the responses and ensure their accuracy.

189. I note from the available evidence that, beyond an automated acknowledgement of his complaint, the Council did not respond to Mr C within the appropriate timescale set in their complaint procedure. Mr C complained on 12 November 2014, but did not receive any substantive correspondence from the Council until 26 March 2015. I am critical of the Council, as they promised to respond by 13 February 2015 following the intervention of my office but failed to do so. The available records show the Council did not in fact commence their investigation into the complaint until this date. The Council have not provided any further explanation for this, nor is it recorded on the complaint file how this delay was caused by Mr C's other correspondence with the Council.

190. I consider, therefore, that the Council's handling of this complaint was unreasonable. I will consider the substance of the Council's complaint response later in the report, but I am highly critical of the failure of the Council to comply with their complaints handling process. In particular, the failure to provide any meaningful contact at all for two months is unacceptable, particularly when the complainant's correspondence is recorded as being forwarded to the investigating officer and specifically requests an update.

191. I am concerned that the Council's response does not recognise the extent of these failings in complaints handling. The fact that the Council considered the complaint complex is not justification for a failure to communicate at all with Mr C for an extended period. Additionally, no explanation has been offered for the failure to commence the investigation until the deadline for response given to my office. Staff appear to have either been ignorant of, or have ignored, the Council's own complaints handling policy, without explanation.

192. I uphold this complaint.

(e) Decision

193. Mr C has provided a detailed rebuttal of the Council's initial complaint response. I am particularly concerned that Mr C has provided details from FOI requests which appear to contradict some of the information provided by the Council. As the need to respond to these requests and manage Mr C's correspondence with the Council was the primary reason given to justify exceeding the Council's timescales, I am critical of the failure by the Council to ensure that the information provided to Mr C was consistent with that released to him in response to his FOI requests.

194. The Council's complaint response does not make it clear whether Mr C's complaint was in fact upheld or not. It acknowledges a series of failings on the part of the Council and provides explanations for them. The Council have, however, provided only limited detail of the process changes they have made in order to resolve these issues.

195. In this case, the Council's position is in part that the issues around the use of the site are no longer a consideration, since it has been dismantled. It remains unclear, however, why the Council allowed this situation to develop. The Council's original response to Mr C of 2 April 2015 said there were no discussions with Planning and Building Services about the site prior to the retrospective application being lodged. The Council accepts that there could have been better communication between departments and that there was support for the site from other Council departments. The Council is clear, however, that the site was not known to Planning and Building Services and there was no way that Planning and Building Services would have known the Council owned the site.

196. I note, in the FOI responses given to Mr C, that the Council stated all proposals for advertising sites were discussed between the Council departments involved (including the Panning department) prior to installation when located on Council owned assets and that this particular site was installed and approved in 2010. The Council have not explained this contradiction with their original complaint response adequately.

197. Additionally the language used in the Council's response is opaque. The Council seem to accept there were communication difficulties between the teams involved with the AAP and other associated projects: 'I understand that these are circumstances that potentially give rise to a failure to communicate or miscommunication internally.' They do not, however, state this clearly or unambiguously. I am uncertain whether the Council have genuinely accepted there were internal communication issues, which resulted in the Council being in the awkward and administratively complex situation of having to address an enforcement issue against themselves.

198. I uphold this complaint. I do not make any specific recommendations in respect of this complaint, on the basis that action has now been taken by the Council in order to address the advertising site in question.

(f) The Council did not handle Mr C's complaint reasonably; and (g) The Council's responses to Mr C's complaints were unreasonable on the basis that the complaint responses contained information which was confusing, contradictory, misleading and untrue. Additionally the decision not to uphold these complaints was not reasonably supported by the evidence

199. Mr C complained to the Council on 13 August 2015. He said the Council were unable to provide information within a reasonable timescale to requests or to respond accurately to requests for information about the AAP, which he believed was in its sixth year, and the trial installation of the drums in various locations around the city, which was in its eleventh year.

200. Mr C said it appeared that the normal planning process had not been followed and that the Council had not followed the expected processes for commercial utilisation of their assets. Mr C referred to a number of FOI responses from the Council which he said supported his views. He also referred to FOI responses which he said showed the owner of the drums had been receiving significant revenue from the process, whilst the Council had not received anything.

201. Mr C added there appeared to be no way of measuring the success of the projects. The Council had had considerable difficulty in providing a list of all the sites utilised in the AAP and for the drums. Mr C said the drums in particular appeared to have benefited from a transition from a temporary installation of two drums for a year, into a year round permanent network of sites across the city.

202. Mr C complained that his attempts to communicate with Council officers had been frustrated by their inability to provide accurate or comprehensive responses. At times officers had simply stopped responding to him altogether, which had forced him to use FOI requests to obtain the necessary information.

203. Mr C said he believed his complaint demonstrated that the Council were not capable of acting in an appropriately open and fair manner and their response to his correspondence and complaints had lacked accuracy and transparency.

204. Mr C chased the complaint by email at the end of August, without a response from the Council, and contacted my office on 6 September 2015. On 9 September we informed Mr C that the Council had closed the complaint by mistake. The Council had confirmed it would be re-opened and that Mr C would be contacted.

205. Mr C contacted the Council on 10 September 2015 asking for confirmation the complaint was being dealt with and for a complaints reference number. The Council acknowledged his email that day but did not provide a complaints reference number. Mr C emailed back immediately requesting that the Council confirm they would deal with each of his complaints separately. Mr C re-sent this request on 18 September 2015 and 23 September 2015.

206. The Council did respond on 25 September apologising for the lack of contact, however, they did not provide a complaint reference number. Their response did not answer Mr C's question about whether the complaint would be dealt with separately. Mr C asked this question again by email on 1 October 2015 and was provided with a complaint reference number on 2 October 2015. On 9 October 2015 Mr C was contacted and subsequently promised a response by 22 October 2015.

207. The Council then emailed Mr C on 14 October 2015 saying due to the complexity of the complaint and the volume of his correspondence with other service areas, the time period would be extended and his complaint would be answered on 19 November 2015. Mr C was told the response would cover all outstanding requests for information.

208. Mr C received identical letters on 17 November 2015 and 8 December 2015. These stated that due to the 21 FOI requests he had made, the Council were extending the deadline for issuing their response to his complaint. The deadline was subsequently extended to 10 December 2015 and then to 31 December 2015. An almost identical letter was sent on 31 December 2015, however this provided an additional reason for the delay, stating the Council's response needed to be checked by their legal department prior to issue. The deadline for issuing the response was moved to 28 January 2016.

209. Mr C received the final response from the Council on 22 January 2016.

The Council's formal response

210. The Council's response apologised for the delay in responding but said a full investigation had been required, given the high volume of correspondence between Mr C and the Council. The Council also apologised that Mr C's original complaint was closed in error.

211. The Council said Mr C's complaint was one he had raised on numerous occasions previously. The Council's response of 2 April 2015 had dealt with the issue of the advertising drums in detail. Mr C had also been invited to meet with Council staff on 16 July 2015 but he had declined, stating he would not be available until September 2015 at the earliest. Mr C was then offered two dates in September but declined, on the basis that he required answers to his outstanding questions first.

212. The Council acknowledged Mr C's frustration that they were unable to supply him with the information he was seeking and that his requests had not been dealt with adequately. The Council said this was because the trial nature of the project asked about meant they did not have established protocols, performance measures, project organograms, or as robust a framework as they had hoped for.

213. The Council said there had been an on-going review of the advertising drums project which commenced in May 2015, involving officers from a variety of different service areas. This had concluded that the drums needed to be removed from the highway by 12 November 2015. This had, however, been delayed by contact from Councillors and various organisations from the arts and cultural sectors which used the drums. A meeting had been held on 20 November 2015 to discuss the drums in more detail. The Council said it was clear the arts and cultural sectors relied on the drums and they felt their removal would be particularly detrimental over the winter period.

214. The Council had advised the organisations that any such services had to be equitably tendered and they agreed to be involved in discussions with the Council moving forward. Any tender would be progressed jointly with the arts and cultural sector and would go forward through the Council's usual procurement processes. The Council said this would allow Mr C to get involved but would also allow the introduction of a more robust management framework.

215. The Council said they were sorry Mr C felt he had not had answers to the queries he had raised about the AAP and the advertising drums project. They said they appreciated the SIC had found against them over one FOI request. They said, however, all available information in that case had now been provided.

216. Mr C contacted the Council again on 25 January 2016. He asked for confirmation that the advertising drums had been removed and for information on how the Council's tender and procurement process would now progress.

217. The Council responded on 1 February 2016. They informed Mr C that the drums would not be removed until 31 March 2016. This was because it was the end of the financial year for the Council and the removal of the drums would then be subject to the progression of a procured contract. The Council confirmed the procurement process had started and was going out to tender before 31 March 2016. Mr C asked the Council when this decision had been taken and whether there might be further deferrals of the removal of the drums. Mr C said this would be unfair as the current situation continued to prevent any other interested party from becoming involved.

Issues raised by Mr C – complaints handling

218. Mr C was concerned by the length of time taken by the Council to respond to his complaint. He was particularly concerned by the decision to close his complaint immediately following receipt and the lack of response from the Council. Mr C said that it had required the intervention of this office, as with his other cases, to obtain a response.

219. Mr C noted that no aspect of his complaint appeared to have been upheld by the Council. He considered this unreasonable, as the Council had failed to respond within a reasonable timescale and had insisted on dealing with this complaint in conjunction with other complaints Mr C had made, despite his repeated requests that they not do this. Mr C felt it had been unreasonable for the Council to simply alter the deadline for issuing their final response four times, particularly as little explanation had been provided for these delays. Mr C also complained that issues raised with the Council during the complaints process, in response to the Council's invitation to contact them, had been ignored in the complaint response.

Issues raised by Mr C – failure to uphold

220. Mr C said the Council should have upheld his complaint on the grounds they had acknowledged that although they were operating both the Advertising Drum project and the AAP as trials, they acknowledged they did not have any method of measuring performance or outcomes. Mr C felt this was a clear admission of failings in the Council's project management.

221. Mr C disputed the Council's position that the complaint had been raised on 'numerous' occasions previously. He also disagreed with the Council's statement that the complaint had been dealt with. Mr C accepted there was some crossover between this complaint and others raised with the Council, but suggested this was because he was trying to demonstrate a pattern of failure on the part of the Council and the Council had failed to respond properly or fully to earlier complaints.

222. Mr C said that the Council had failed repeatedly to investigate his complaints properly. He did not consider it reasonable to refuse to respond in detail on the basis that previous investigations had been conducted which he had proved were inadequate.

223. Mr C also felt the Council's reference to an unwillingness to meet on his part was disingenuous. He noted he had agreed to meet in an email on 31 August 2015. He had, however, felt it was essential that the majority of issues he felt were outstanding were addressed prior to a meeting taking place, so that these could form the basis of any discussion. Mr C said this information had never been provided by the Council.

224. Mr C also disputed whether his FOI requests were a valid reason for the Council to delay responding. Mr C noted that he felt he had been obliged to make formal FOI requests because he could not rely on the information provided by the Council. Mr C said he had repeatedly been forced to go to the SIC either because the Council's responses were late, or because they had not provided complete information.

225. Mr C said the Council had told him on numerous occasions that requests from information from the appropriate Council directorate managing the project would be responded to. This had not happened and the Council had subsequently acknowledged that he had had difficulty obtaining the information he was seeking.

226. Mr C noted that a significant part of the complaint was the Council's inability to provide information about the advertising projects. The Council's response acknowledged they did not hold information about the assessment of the trial projects because this information had not been recorded. Mr C considered not upholding his complaint in these circumstances to be illogical.

227. Mr C pointed out the Council told him that their review of the advertising drum project commenced in May 2015. This had concluded that the drums would be removed by 12 November 2015. Mr C said his subsequent FOI requests showed the Council's review had begun in April 2015. The Council had said this was due to confusion between on-going operational issues and a formal review of the project. Mr C also said that although the Council had had the opportunity to acknowledge and apologise for their failings, they had provided a misleading and inaccurate response.

228. Mr C pointed out that contrary to the statements made by the Council, the advertising drums had yet to be removed.

229. Mr C highlighted the fact that the Council had chosen to say they had only been found to have supplied incomplete information on one occasion by the SIC. Mr C said this was untrue and the Council's responses had been found to be inadequate or inaccurate on several other occasions. Mr C provided details of these decisions. He said that one related to the provision of information about the advertising drum locations, another had related to the provision of information about revenue generated by the drums and the Council had failed to provide minutes of meetings relevant to the drums.

230. Mr C said that, overall, the AAP had progressed with a series of breaches of process and failures to record, assess or retain information by the Council. Mr C said the drums, for example, had never gone through a tender or procurement process. No consultation had ever taken place over their use, or placement, none had advertising consent, effectively breaching planning control. The Council could not show any advertising rates had ever been paid, nor had any form of rental been paid. No review information was available, even though the Council had told Mr C that the project had been subject to review on more than one occasion.

231. Mr C said he had, for example, asked the Council officer he had been told was responsible for the introduction of drums into the Area A, apparently against stakeholders' wishes. The officer had told him an investigation was underway into their introduction, but had then refused to answer questions about it. Mr C pointed out there were no available records to support the Council's explanation for the introduction of the advertising drums. Mr C added in response to an FOI request the Council had contradicted themselves, stating that no investigation was being undertaken and there had never been plans to carry one out.

The Council's response to my office

232. The Council said they acknowledged Mr C's complaint was incorrectly closed following receipt. They had addressed this with the service area. The need to follow the complaint procedure correctly had been emphasised.

233. The Council said it was unfortunate that Mr C's stage two complaint response was not issued until 22 January 2016. The Council said they acknowledged that delays had occurred in responding to this complaint and other correspondence from Mr C. The Council's complaints procedure did allow for extensions to the time allowed for issuing a response with the agreement of

the complainant. There was unfortunately no evidence of Council officers seeking to agree an extension with Mr C. The Council said the service clearly expressed regret for the delays which occurred in responding to Mr C but said although these failures were unacceptable, they were during a period of large amounts of correspondence from him.

234. The Council said they were sorry if Mr C had not found the information provided to him to be a clear and simple explanation. This had been the Council's aim and they denied their response was inaccurate or misleading.

235. The Council said that steps were now being taken to address Mr C's concerns about the trial advertising projects, particularly their operation and procurement. Three different strands had now evolved. There was the Festival Fringe Advertising Contract, which had gone out to tender in 2014, 2015 and 2016; the establishment of the Unight group of clubs, to ensure that city night clubs advertised legally on Council and privately owned assets; and the advertising drums, which had provided a valued opportunity for the local arts and cultural movement to promote their activities.

236. The Council said they acknowledged the concerns Mr C had regarding FOI requests and the information that the Council had released following them. The Council had been actively seeking to address these issues with the service areas concerned. They had also addressed all investigations by the SIC. They suggested that if Mr C had further concerns that they should be addressed to the SIC.

237. The Council said they monitored sites visually to assess the effectiveness of the projects as well as monitoring complaints about flyposting. There were weekly meetings about the Edinburgh Festival Fringe advertising contract and the procurement process had allowed a more robust management framework to be in place and monitored.

238. The Council said they had actively sought a meeting with Mr C, in order to resolve his complaints. They felt it was unfortunate that Mr C had not yet chosen to engage in this manner to resolve his outstanding concerns.

(f) Decision

239. The Council have accepted that they did not handle Mr C's complaint in line with their published procedures. Mr C's initial complaint was closed without

any response being issued. The Council have attributed this to an 'error' and state that it has been addressed with the service area. I note that the Council have submitted no evidence of the action they have taken.

240. Mr C's complaint was not handled in line with the Council's complaint handling procedure, once it was progressed into the complaints handling process. The Council have acknowledged their response was delayed. They have also acknowledged that whilst Mr C was informed of these delays, there was no attempt by officers to agree extensions with him, as required by the Council's complaints handling procedure.

241. Although the Council have acknowledged their failure to handle the complaint reasonably, elements of their response are concerning. Mr C had made a number of complaints to the Council, all about the same service area. It is surprising, therefore, that a complaint from him would have been closed without any investigation at all.

242. Additionally the Council officers involved in responding to Mr C's complaint had also been involved in the responses to Mr C's other complaints and correspondence. It is concerning that they appeared to continue to be unaware of, or unfamiliar with, the Council's complaints handling procedure, after the Council had stated that the delays in response to Mr C's previous complaints had been addressed with the service areas involved.

243. I consider the Council's handling of Mr C's complaint was unreasonable and I uphold this complaint. I have not made specific recommendations in this case, as the issues surrounding complaint handling are dealt with by a general recommendation at the end of this report.

(g) Decision

244. The Council believe they have responded appropriately to Mr C's complaint. They suggest that it repeats issues previously raised, which were dealt with in detail. The Council do not accept Mr C has demonstrated a pattern of repeated failures, although they have acknowledged there have been difficulties in providing Mr C with information he has requested.

245. The Council said that they were taking steps to address the issues Mr C was concerned about. They believed the project had reduced the amount of flyposting within the city and that positive developments had evolved out of it.

246. I do not find the Council's position reasonable. There is substantive evidence to support their assessment of the project. Mr C has been able to demonstrate the Council's responses to his complaints were inaccurate. Importantly the information he relied upon to do this was held by the Council at the time they were investigating his complaint. I uphold this complaint. As previously, I have made a general comment and recommendations on complaint handling at the end of the report.

Ombudsman's Comments

Delays in complaints handling

247. Overall, the handling of Mr C's complaints has been characterised by delays and failures to follow the Council's complaints procedure. The Council made no attempt to agree extensions to the response dates with Mr C, as their complaints handling procedure requires them to do, and failed to respond to requests for information from Mr C. I note that Mr C was also, at times, provided with inaccurate and misleading information about the progress of the Council's investigations into his complaint and that the Council did not commence some of their investigations until after the agreed deadline for responding had passed.

248. On more than one occasion Mr C's requests for updates were passed to the officer handling his investigation without response. I note that following his automatic acknowledgement, Mr C was not contacted by the officer investigating his case until he had repeatedly chased it.

249. In case 201508738, Mr C was informed that the deadlines set by the Council for providing a response were being changed. Again however, this was not done in a manner which complied with the Council's complaints handling procedure. This requires the Council to inform the complainant of the need to change the deadline and to attempt to obtain their agreement. This failure is amplified by the fact that the Council should have been aware of the difficulties they had encountered in handling Mr C's other complaints, particularly as they had already acknowledged these and taken action to address the previous delays he had experienced.

250. Taken in isolation, these failings in complaints handling would be unreasonable. Looking at Mr C's complaints as a group, the evidence suggests in this case there have been systemic failures in the Council's complaints

handling. Mr C's complaints have repeatedly encountered the same problems. Following the initial automated acknowledgement, there have been protracted delays in producing a final response and, in one case, a failure to produce a final response at all.

Complaints Handling responses

251. As set out, the Council's responses to Mr C do not make it clear whether his complaints were upheld or not. All the letters acknowledge difficulties or failings on the part of the Council without making the findings of the investigation explicit. I consider this unreasonable.

252. Additionally, Mr C has demonstrated through FOI requests that, in several cases, the Council failed to provide all the relevant information they held in relation to the matters he had complained about. I am particularly critical of this failing, since the Council justified the delays in responding to Mr C on the need to ensure he received a comprehensive and accurate answer. Although the Council have suggested that Mr C should take up concerns over their responses with the SIC, the ability to access and provide accurate and complete information is an essential part of complaints handling. I am concerned that the Council's response does not make clear what actions they are taking to address their failings in this area.

253. There is also concern over the management of the various advertising projects Mr C has complained about. The Council have referred to these projects as having been subject to review on several occasions since 2012. There is no evidence, however, that a comprehensive review has been carried out of the project. The evidence the Council have provided of their review has been extremely limited, consisting of some informal minutes and internal email exchanges.

254. The Council's submission on the future role of the drums is confusing. Some eleven years after they were introduced, and with the Council accepting a formal procurement process should take place, the drums will remain in situ until March 2017. I am critical that over such an extended period, during which the Council were receiving regular correspondence expressing concerns about the drums, no action was taken to ensure they had the required planning consents, nor was any work done on creating an appropriate procurement process for them. It is also concerning, given that the drums were installed on a

trial basis, that the Council did not seek engagement with stakeholders until after November 2015, when they had decided they should be removed.

255. Overall, I do not consider that the evidence supports the Council's position that these were trial projects. There is no evidence of the type of information gathering essential for assessing the success or failure of a trial. Nor is there evidence of engagement with service users and other stakeholders to ascertain their views on the various projects. The confusion around the removal of the drums would seem symptomatic of the dysfunctional project management to date, with the Council's position shifting from requiring the drums removal by November 2015; retaining them until the end of March 2016 to allow a procurement process to take place; to retaining them until March 2017 on the basis of economic importance.

256. It is clear from the varying responses Mr C has had from different Council departments that there is a lack of clarity internally over the various advertising projects. The Council have acknowledged that there are none of the usual project management records which would be expected. It would be appropriate for the Council to ensure that a full review is now carried out, identifying any failings on the part of the Council, as well as lessons to be learnt to improve future service delivery.

257. As I have upheld Mr C's complaints, and in view of this pattern of failure in complaints handling, I make the following recommendations.

Recommendations

258. I recommend that the Council

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|---|-------------|
| (i) carry out a full review of the complaints handling in these cases to establish the lessons to be learnt for handling future complex complaints; | 18 May 2017 |
| (ii) provide evidence that all the officers involved in responding to this complaint have undergone complaints handling training; | 8 May 2017 |
| (iii) conduct a full review of their management of all the various advertising projects from their inception as proposed in 2012 and provide their findings to the Ombudsman; and | 18 May 2017 |
| (iv) provide evidence of the actions taken to improve | 18 May 2017 |

internal communication in view of the acknowledged failings in this case.

General recommendation

259. I recommend that the Board:

Completion date

- (i) apologise to Mr C for the failures identified in this report.

8 May 2017

260. The Council have accepted the recommendations and will act on them accordingly. We will follow-up on these recommendations. The Council are asked to inform us of the steps that have been taken to implement these recommendations by the date specified. We will expect evidence (including supporting documentation) that appropriate action has been taken before we can confirm that the recommendations have been implemented.

Explanation of abbreviations used

Mr C	the complainant
the Council	City of Edinburgh Council
AAP	Authorised Advertising Project
X Street	a street in Edinburgh
FOI	Freedom of Information
Area A	an area of the city of Edinburgh
Area C	an area of the city of Edinburgh
Y Street	a street in Edinburgh
Z Street	a street in Edinburgh
Area B	an area of the city of Edinburgh
SIC	the Scottish Information Commissioner
Area D	an area of the city of Edinburgh

Glossary of terms

advertising drums	free standing multisided drums, providing space for advertising or information
Authorised Advertising Project	a project intended to manage and control street advertising within the city and reduce flyposting
fly posting	illegal placing of posters or similar advertising on buildings or street furniture
small format advertising	posters smaller than commercial billboard size, frequently used in illegal flyposting
streetscape delivery groups	groups chaired by senior council officers concerned with improving Edinburgh's streetscape