

21 May 2010

CONFIDENTIAL

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Our ref: 200801621

Dear [REDACTED]

Service delivery complaint

I am writing further to your letter to me dated 7 May, received here on 10 May, raising a complaint about the service you received from the SPSO in investigating your complaint against [REDACTED]

As part of my consideration, I have carefully considered your letter and I have reviewed your file. In terms of openness and accountability I also informed my manager, the Director of Complaints and Investigations of your complaint when it was received and I have discussed my findings, as noted below, with the Director in detail. He will be sending a separate response to your request for a review of the SPSO's decision on your complaint.

Your complaint about our service

When making your complaint you have advised that your main concern is that the final report was published containing factual errors which were previously pointed out to [REDACTED]. You say that, when reporting on the case, the Evening Times incorrectly stated that [REDACTED] and that you had pointed out this factual error when commenting on the draft report. You are concerned that [REDACTED] had to discuss this with the [REDACTED] adviser and consult [REDACTED] records before agreeing to amend it. You are very unhappy that this factual error was reported in the Evening Times and ask if the SPSO raised this with the Evening Times. You also express your concern about the length of time the SPSO took to reach the final report stage, in April 2010, following receipt of your complaint in September 2008.

My findings

I am setting out below how the issues you have raised were handled and how the errors occurred.

Factual Error

[REDACTED] wrote to you on 24 February 2010, enclosing a copy of the draft report of his investigation into your complaint and asking you to bring to his attention any mistakes or factual errors before he prepared the final version. You responded on 8 March 2010, identifying what you felt were factual inaccuracies. In particular, you pointed out a factual inaccuracy in [REDACTED] of the report, where it was stated that [REDACTED]. You advised this was incorrect and that [REDACTED]

[REDACTED] On 6 April 2010 [REDACTED] responded to the points you had raised in your letter of 8 March, advising of the changes that he was making to the report. Specifically,

in relation to the point you have raised above, he confirmed that [REDACTED] would not be amended. Having considered the information we hold, I have concluded that the report should have been amended at that time to reflect that:

[REDACTED]

That is what was recorded in the [REDACTED] records and was, therefore, factually correct. Had the change been made at that time this would not have put you to the trouble of having to e-mail the SPSO again on 7 April 2010 on the matter. On behalf of the SPSO I apologise for this.

In response to your e-mail of 7 April 2010, [REDACTED] acknowledged that the report should have been amended earlier on this point and he apologised. The report was then amended to read as detailed above. However, unfortunately [REDACTED] omitted to alter Annex 1 to the report which stated:

[REDACTED]

The report was therefore published with this factual inaccuracy entered in the annex. As soon as [REDACTED] became aware of this he wrote to you with an unreserved personal apology and he confirmed that the copy of the report printed on our web site would be updated.

In sum, we have fallen short of the standards we set ourselves in your case and I understand why you have complained to us about it. Your concerns on this point are clearly justified and I take on board that we made a mistake. We are taking steps to ensure there is not a recurrence of this (see below).

Evening Times article

I appreciate the distress to you and [REDACTED] that what was reported in the Evening Times was inaccurate. In response to your specific point, I can confirm that the matter was followed up with an e-mail from our Head of External Communications and Policy to the Evening Times on 28 April 2010. She drew their attention to what was stated in [REDACTED] of our report and that they had inaccurately reported this paragraph in the article.

I am also sorry that I inadvertently e-mailed you a copy of my response back to [REDACTED] on this issue.

Length of time taken by the SPSO to reach the final report stage

Your complaint was received in our office on 8 September 2008 and, while it was initially closed, it was re-opened on 26 September 2008 when we received confirmation from you that you were unhappy with the response you had received from the [REDACTED] to your complaint. Following this, we received [REDACTED] records on 22 October 2008 and, thereafter, [REDACTED]

When we decide to investigate a complaint, as in this case, our target for completing the draft report is 90% in 12 months. While this is a target that we recognise cannot be met in all cases, we clearly fell short of this target in your case. Part of the delay related to the period between 16 July 2009, when [REDACTED] confirmed to you he was reviewing the evidence with a view to preparing the draft report, and 24 February 2010, when he sent you a copy of the draft report. Simply put, the length of time taken by the SPSO to reach the final report stage was too long and I apologise for this.

Conclusion

For the reasons outlined above, the service you have received from the SPSO has fallen short of the standard you were entitled to expect and I uphold your complaint. I apologise sincerely to you and [REDACTED] for this.

We have very recently completed a business review of our complaints and investigations work. Its scope was to review all aspects of SPSO complaint handling and to produce revised policies and structure. We are now at the stage of implementing the changes brought about by this review and structural changes have been made to the organisation to ensure delays that you experienced do not recur.

Having discussed my findings in detail with our Director of Complaints and Investigations and [REDACTED] I would like to assure you that we will learn from your complaint and, in particular, to ensure that factual inaccuracies highlighted to us are picked up from the outset.

Yours sincerely

[REDACTED]
Investigations Team Manager

DD telephone: [REDACTED]
Email: [REDACTED]

Enc Service Standards leaflet

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2 June 2010

Dear [REDACTED]

Re: Case No SPSO 01/2010

I have now had an opportunity to review all the documentation relating to your service delivery complaint against the Scottish Public Service Ombudsman's office. I have produced a list of the key milestones in the processing of your complaint and I have received, from you, confirmation that you are happy for me to conduct this review. I outline my key findings below.

Background

You originally complained against [REDACTED], regarding a [REDACTED] to the SPSO in July 2008. A decision was taken by the then Deputy Ombudsman, Mr E Drake, to close this case on 1 August 2008. The reason for this decision was that it was outside the Ombudsman's remit to [REDACTED]. This was a very rapid decision, made within two weeks of receipt of your original complaint. As such the service received from SPSO was excellent and clear.

You challenged this decision on 16 September 2008. After a review by SPSO, a decision was taken to close your challenge on 29 October 2008. Your challenge was not upheld.

You then appealed directly to the Ombudsman, Professor Alice Brown, who subsequently decided to close your appeal on 31 March 2009.

However it was decided by the Acting Ombudsman that your case would be referred to the new Ombudsman on his appointment on 1 May 2009. After reviewing all the documentation, and a further letter sent from you on 13 April 2009, the Ombudsman confirmed that no further action would be taken and the file remained closed. This was confirmed to you in writing in a final reply from the Ombudsman on 29 July 2009.

You subsequently brought a service delivery complaint about the handling of your complaint. This was acknowledged by [REDACTED], who confirmed that your case would remain closed.

In November 2009 you contacted me and asked that your case be referred to me for review. Your complaint was that it had not been through the internal escalated process of SPSO. My review outlines my findings regarding the complaint.

Complaint has not been through the correct internal processes

I have reviewed all the available documentation relating to your complaint. You complain that your original complaint against [REDACTED] has not been through the complete internal processes of the Scottish Public Service Ombudsman. This would appear to be because the Deputy Ombudsman, Eric Drake, chose at an early stage in the process not to investigate your complaint. This is within the powers of the Ombudsman and I believe you were given an explanation for this at the time. You were also given an explanation for the reasons for that decision, in relation to the limit of the Ombudsman's remit, as laid down in legislation. While a short time between receipt of a complaint and a decision could give the impression that the matter had not been considered fully there are often situations where it is clear that the case does not fall within the organisation's remit, and when this happens it is best practice to make a decision quickly and inform the complainant. I believe that this was the situation in your case.

You subsequently raised various challenges to this decision, directly to the original Ombudsman, and finally, on the appointment of her successor, Mr Jim Martin, to him. At each stage it was explained to you that it was within the Ombudsman's power to decide not to investigate a complaint. It was clear that this was a legitimate decision on their part and occurs in a number of cases which are not progressed further. **Complaint not upheld.**

When you initially referred your complaint to me, you stated that it had not been through the internal escalated process. At that time, because of that situation, it would not have been possible for me to investigate your complaint. However in January 2010 the Director of Complaint and Investigation, Mr S Carney, conducted a further review of your challenges and service delivery complaints and again refused to progress the complaint further. In his letter to you of 26 January 2010, Mr Carney explained that at each stage the decision not to progress your complaint had been upheld. Mr Carney also refused to refer your complaint to me at that time.

Subsequent to this decision you again contacted me, on 6 March 2010, and raised a further service delivery complaint stating that SPSO had not followed its own internal procedures. After discussion with Mr. Carney it was agreed that this was a legitimate complaint, falling within my remit, and I would investigate this specific complaint.

SPSO had not followed their internal procedures

I have considered this particular element of your complaint and while I can understand your frustration and dissatisfaction I do not believe that SPSO failed in following their own internal processes. You were entitled to challenge the decision not to progress your complaint in the

first instance and this was responded to. This was in line with the Ombudsman's Challenge to Casework Decisions procedure. When you issued a further challenge this was referred to the Ombudsman who gave a response. You remained dissatisfied with this and this dissatisfaction was considered on the appointment of the new Ombudsman in May 2009.

This decision to have your challenge reviewed by the Ombudsman on his appointment was an addition to the procedures as outlined in the documentation of SPSO and was, in fact, an additional opportunity for a review of your complaint. While it is not listed in the procedures it was considered best practice and allowed the widest possible consideration of your complaint. The fact was it was an additional step, not necessary to the procedures as outlined in documentation, which could only have benefited you. You were allowed an independent, objective review of the case to date by a new Ombudsman.

I believe that this may have built up in you expectations of having your case reopened. This was not the outcome you had hoped for but it did allow you the opportunity for the widest possible consideration of your complaint. I do not believe that SPSO could have given you any further or better service than you were offered. **Complaint not upheld.**

I am aware that there was some additional confusion as to whether your complaint could fall within my remit or not. I apologise for this confusion which was due to issues of communication between me and the Ombudsman's office. In conducting my review I have taken these circumstances into consideration but do not believe you have been disadvantaged in any way because of this. If anything, I believe that review and consideration of your complaint has been greater than might otherwise have been so.

After concluding my review I am unable to uphold either element of your complaint against the Scottish Public Service Ombudsman.

I am sorry that this decision will not meet with your satisfaction and apologise for any confusion that has arisen in the handling of your service delivery complaint.

I do hope that this review, together with all the previous considerations of your challenge will reassure you that your complaint has been given a thorough investigation.

Yours sincerely

Ros Gardner
Independent Service Delivery Reviewer

23 June 2010

CONFIDENTIAL

Our ref: 200901734

Dear [REDACTED]

Service Delivery Complaint

I am writing further to Mr Martin's letter of 8 June 2010 confirming that I would be responding to your Service Delivery Complaint about the handling of your complaint (reference 200901734) by [REDACTED]. As part of my consideration I have reviewed our file on this complaint and, in terms of openness and accountability, I have discussed my findings, as noted below, with [REDACTED] and my manager, the Director of Complaints and Investigations.

Your complaint about our service

You emailed Mr Carney, Director of Complaints and Investigations for the attention of Mr Martin on 3 June 2010 in which you stated you wished to affirm and re-confirm your service delivery complaints on delays. While you raised other issues in this e-mail, for the avoidance of doubt, Mr Martin confirmed in his letter of 8 June that my consideration related to your service delivery complaint about the handling of your open complaint file (reference 200901734)

Time taken to progress your complaint

On 28 July 2009 the complaint file reference 200901734 was opened to look at two issues concerning [REDACTED]

Both you and your advocate [REDACTED] were advised of this on 11 August 2009. The [REDACTED] were also advised of the position and asked for their comments on the advice received. It was also explained to you that we would communicate solely with [REDACTED] on your behalf as you had previously indicated that this was your preference, and that the SPSO would not in future respond to communications direct from you.

The [REDACTED] comments were received on 27 August 2009 and their letter was copied to your Advocate on 7 September 2009 with a request for any comments by 28 September 2009.

[REDACTED] sought advice from the Ombudsman's adviser on 13 October 2009 in relation to the comments received from the [REDACTED]

Over this period of time you had also continued to email the SPSO and you made a request for information under the Data Protection and Freedom of Information Acts (this was responded to on 23 October 2009). The Director of Complaints and Investigations also wrote to both you and your Advocate on 8 October 2009 advising that the multiple emails you had sent were taking up a disproportionate amount of time and resources of this office. He confirmed that any future correspondence received direct from you would be read and filed without acknowledgement.

A response was received from [REDACTED] on 4 November 2009, commenting on the original IPA report that [REDACTED] had forwarded to her on 15 September 2009. The further advice requested from the Ombudsman's adviser was received on 11 November 2009.

Following this, a decision was taken to investigate one specific complaint - [REDACTED] [REDACTED] was advised of this on 26 November 2009. The [REDACTED] were also advised of the decision at this time and asked to comment on the advice received from the adviser by 4 December 2009.

You emailed our office on 10 December 2009 and [REDACTED] subsequently contacted your Advocate to confirm she would not be responding to this email.

The [REDACTED] response was copied to [REDACTED] on 5 January 2010. It was also confirmed that [REDACTED] was seeking further advice on the [REDACTED] comments. A response from the adviser to this request was received on 26 January 2010. [REDACTED] responded to [REDACTED] letter of 5 January on 28 January and 4 February 2010 with comments on the [REDACTED] response. On 15 February 2010 [REDACTED] sought clarification from the adviser on two points in relation to the advice he had provided and advised [REDACTED] of this, also providing a copy of the latest advice received.

Due to the adviser being on leave, clarification was only obtained on 4 March 2010 and a copy of this advice sent to [REDACTED] with a request for any comments by 9 April 2010. Comments were received, following a request from [REDACTED] for an extension, on 14 April.

Over this period we again received a number of emails from you and the Director of Complaints and Investigations responded on 13 April 2010.

Subsequently, in an email dated 30 April 2010 you requested paper copies of all the information we held on you under the DPA and FOI Act and this was responded to on 3 June 2010. Further to the email correspondence received from you in early June Mr Martin responded on 8 June 2010 as detailed above.

Currently the Complaints Reviewer is in discussions with the Ombudsman's [REDACTED] adviser prior to reaching a decision on your complaint. I appreciate that you are anxious about this and can advise the case is being dealt with as a priority with a view to a decision being issued.

My Findings

[REDACTED] has sought advice and further advice from our adviser and this has taken time, however, equally, as the Director of Complaints and Investigations has advised you, the level of correspondence from you has, at times, taken up a disproportionate amount of time and resources in terms of our ability to progress the case file.

In conclusion I accept that your file has been open for a long time but it is clear that this has been a complex case that has necessitated a number of requests for advice prior to reaching a decision. You have also made information requests and with such requests it does mean that for a period of time the complaint file is not in the hands of the complaints reviewer and this has been the case here. Taking all the above factors into account, I have not seen any period of unreasonable delay on our part in progressing the case. I have, therefore, not seen grounds to uphold your complaint of delay. However I have discussed with [REDACTED] and Mr Carney ways in which, in the future, we can manage cases where we consider it necessary to make a number of requests for advice before being able to reach a decision to see if there is any way in which we can speed up this process.

Yours sincerely

[REDACTED]
Investigations Manager

DD telephone: [REDACTED]
Email: [REDACTED]

Enc: SDC leaflet