

[REDACTED]

4 January 2011

Dear [REDACTED]

Re: Case No [REDACTED]

I have now had an opportunity to review all the correspondence relating to your service delivery complaint against the Scottish Public Services Ombudsman (SPSO). This includes all the documentation referred to me from the Ombudsman's office together with your detailed email sent to me on 15 December 2010. Please note that while there is a lot of background information relating to your complaint, my remit is restricted to a review of the service delivery issues associated with complaint number [REDACTED]. There is a significant amount of background information both included in the documentation I have been sent from the Ombudsman's office and in your own correspondence with me. While reviewing it in order to establish the context of your complaint, I have restricted myself, very specifically, to a consideration of your service delivery complaint.

Background to your complaint

In considering your service delivery complaint I have noted that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Prior to the start of your current complaint under review, number [REDACTED], you had been in communication with Mr Steve Carney, Director of Complaints and Investigations, regarding a previous complaint, reference number [REDACTED]. On 12 April 2010 you received a reply from Mr Jim Martin, the Ombudsman, who had taken the opportunity to review your complaint personally. Having reviewed all the correspondence and having considered the matter carefully he informed you that:

- He would not review the [REDACTED]
- He would not review any of the decisions reached by his predecessors on your complaint;
- Any complaints brought to the Ombudsman's office which are about or spring from or are related in any way to events of [REDACTED] would be considered very carefully as to whether it would be proportionate to consider such complaints.

He reassured you that any complaint would be assessed on its merit. He also informed you that it was unlikely to represent a good use of public resources to investigate such complaints.

Following further communication with SPSO personnel, you recontacted Mr Martin on 6 June 2010. In this letter you made clear that you were raising a complaint of current maladministration by [REDACTED]. This complaint alleged that [REDACTED]
[REDACTED]

Your complaint was allocated to [REDACTED], Complaints Reviewer. On 22 June 2010 she informed you that having had an internal assessment of your complaint; SPSO had decided that they would not be considering this complaint. The reasons given related to the linking of this complaint with previous ones associated with the [REDACTED] problems.

On receipt of this decision, you again contacted the Ombudsman's office, expressing dissatisfaction with the decision taken. You stated your belief that [REDACTED] decision making had been compromised by prejudicial influences on the part of her superiors.

You received a reply from Mr Steve Carney, Director of Complaints and Investigation, who confirmed that he believed your response was a request for a decision review and as such could not be considered as a service delivery complaint. As such, it would progress through a different process. He provided you with an outline of what further options remained available to you should you remain dissatisfied.

Following further communication between yourself and Mr Carney, your complaint was finally referred to Ms Niki MacLean, Director of Corporate Services. In your letter to her, of 9 November 2010, you raise a number of concerns about the communications you had received from Mr Carney. It is this letter and its contents that form the basis of the service delivery complaint that I am now reviewing.

Your complaint

The basis of the service delivery complaint that I am reviewing relates to the two communications you received from Mr Steve Carney, dated 26 July 2010 and 10 October 2010. You complain:

1. Mr Carney should not be investigating a complaint about himself;
2. Your complaint had not gone through the various steps as outlined in SPSO's own documentation;
3. Mr Carney's decisions have resulted in there being no further options available to you;
4. Excessive delay in replying to your correspondence;
5. Confusion regarding the headings of your complaint.

My findings

It is clear from a review of all the documentation relating to this complaint that the history and context of the complaint have had an impact on your perception of the service you receive from public bodies in Scotland and from the Ombudsman's office in particular. Every effort has been made to separate any previous activities and decisions from this service delivery complaint but it is clear that the environment established by previous decisions have had an impact on how you have perceived the service that you have received. It may also be true that this history will have had an impact on how your latest complaint, of current maladministration on the part of [REDACTED] may have been perceived within the Ombudsman's office.

On review of all the documentation I can reassure you that the complaint you made on 6 June 2010, relating to current maladministration on the part of [REDACTED] was treated as a separate new complaint. I have read the documentation and can reassure you that there was a separate case number, [REDACTED] allocated to it and it was treated and considered in isolation. Nevertheless there was an obvious link with previous complaints made, and in particular to the most recent one, number [REDACTED]. If anything I consider that the links made to this previous complaint resulted in a more considered decision than might normally have been the case. Looked at objectively, your complaint against [REDACTED] could have been dismissed out of hand. It did not meet one of the key requirements of a complaint for investigation by the Ombudsman's

office. All complaints investigated by the Ombudsman must have been through the full internal processes before they can be considered. As your complaint failed to meet this criterion there were good grounds for not progressing with it. From my review I believe that the context and history of your complaint meant that that decision was only taken after careful discussion and thought.

The letter you received from [REDACTED] in re-establishing the context of your complaint and some of the history associated with your previous communications with the Ombudsman's office, may not have helped to reassure you. Including as it did, comments from the previous letter from Mr Carney sent on 20 October 2009, may have led you to believe that the two decisions were more closely linked than they were in practice. But all the documentation that I have seen leads me to believe that your complaint against [REDACTED] of current maladministration, was reviewed on its own merits. This is in line with the commitment given to you by the Ombudsman himself when he wrote to you in April. A copy of the decision not to progress with your complaint was also sent to the [REDACTED]. This is normal practice and occurs on the progression of all complaints handled by the Ombudsman's office.

Having received this letter from [REDACTED], you again contacted the Ombudsman's office on 11 July. You directed your letter to [REDACTED] and stated that you believed her decision making had been compromised by prejudicial influences on the part of her superiors. You made it clear that you were expecting a response to this letter. The reply was provided by Mr Carney as the Director of Complaints and Investigation. The content of some of this letter related to your service delivery complaint. In his reply to you Mr Carney explained that he believed that you had not articulated a failure against SPSO service standards. He accepted that you stated that you had been treated unfairly but he believed that this reflected dissatisfaction with the decision and its rationale rather than a complaint about the service received. I consider Mr Carney's response and interpretation of the circumstances to be reasonable. However I recognise that this may be interpreted differently by yourself. In his final paragraphs he made it clear that in order to have a service delivery complaint investigated you would need to state clearly what service standards you believed had been breached. I believe that that advice was meant to be helpful, although I realise that you will not have seen it as such.

You responded to Mr Carney's letter on 30 July 2010, expressing dissatisfaction with his findings, in particular his personal involvement in the situation. You requested that your concerns be referred to [REDACTED]. Following various further communications between yourself and the SPSO's office it is clear that you remained dissatisfied with the responses you received. You received two acknowledgement letters, one dated 3 August and a further one dated 26 August 2010. Both of these informed you that your previous letter was receiving attention.

On 3 October 2010 you again contacted the SPSO office requesting a reply to your letter. This was provided in a response from Mr Carney on 20 October 2010. In this letter he endeavoured to set out the definitive SPSO position on the various matters relating to your concerns. He informed you that the Ombudsman's office would be happy to receive any new complaint you may have about a matter within its jurisdiction. However, they would not respond further to correspondence which merely restated your previous concerns. You were informed that further such correspondence would be returned to you.

It is the contents of the two letters from Mr Carney, dated 26 July and 20 October 2010 which have formed the basis of the service delivery complaint that I am now investigating. I will attempt to respond to each of the key elements of your complaint in turn.

1. Mr Carney's involvement in the complaint investigation.

You remain unhappy about Mr Carney's involvement in the investigation of your complaint. Having received a reply from [REDACTED] outlining the reasons why SPSO had decided not to considering your complaint, you again contacted the office on 23 June 2010. In this contact you raised a number of issues which required responses. It is clear that the matter of your complaint was considered very carefully within SPSO and as is normal in such events advice was sought from a senior member of staff. This is perfectly normal in the circumstances and is considered best practice. In this particular

case Mr Carney was the senior member of staff involved. He responded in his letter of 26 July 2010, and outlined the view of SPSO. He also informed you that [REDACTED] was out of the office and offered information on how to complain about the service quality should you remain dissatisfied or if you wished to review the decision taken. Given that this was a new complaint number 2010 01022 I consider it quite appropriate for Mr Carney to have responded to you.

His second letter sent to you on 26 October 2010 was sent as a further communication to his earlier letter and to your response on 29 July 2010. Again this is a continuation of previous correspondence you had had relating to this complaint and it was quite appropriate, in my opinion that Mr Carney should reply to you. In fact in your e-mail of 3 October 2010 you state specifically that you wanted to know when you could expect a reply from Mr Carney. **I do not uphold your complaint**

2. Your complaint had not gone through all the steps in SPSO's own published procedures.

Most service delivery complaints can go through three key steps should the complainant request it:

Step 1- Line Manager

Step 2- Director of Corporate Services

Step 3- Independent Service Delivery Reviewer

In this case there was some confusion as to the status of your first complaint. You considered it a service delivery complaint while Mr Carney, as Director of Complaints and Investigation, considered it as a decision review request. Because of the unusual nature, and possibly because of the history associated with your complaint, it was escalated at an earlier stage than would normally have occurred. This was to incorporate the operational issues around the definition of your complaint. The Director of Complaints and Investigation would have been the best person to explain this matter to you and as such Mr Carney was in a position to do so. The fact that you did not like the explanation provided does not undermine its operational validity. If the reply had come from the Director of Corporate Services or [REDACTED] line manager it is possible that this would have been challenged because it lacked the appropriate operational input.

Subsequent to your communication with Ms Niki MacLean, Director of Corporate Services, she then escalated your complaint to me as Independent Service Delivery Reviewer. This was because your complaint related to Mr Carney and referred to involvement by the Ombudsman himself, Mr Martin. In considering all the handling of your complaint I do not believe you have been disadvantaged in any way by the amendment to the normal steps that were taken in this case. Each alteration was made for good reason with the objective of providing you with the best possible explanation for each decision taken along the way. **I do not uphold your complaint**

3. Mr Carney's decision made further options unavailable to you.

Again having reviewed all the documentation I believe that the letter sent from Mr Carney on 26 July 2010 outlined exactly what options remained available to you. These were twofold:

1. Should you wish to complain about the service provided by SPSO, you were informed that you needed to write to the office stating clearly what service standards you allege had been breached;
2. Should you wish to complain about the decision, you were informed to write to the Ombudsman's office providing readily available information which showed that important facts on which the decision had been based were wrong.

To me this was clear guidance on what further options were available to you. While you continued to communicate with the office you never actually provided the specific information outlined by Mr Carney in his letter of 26 July 2010. The options available to you were clearly spelled out. **I do not uphold your complaint**

4. Excessive delay in replying to your correspondence.

It is clear that there were significant delays in responding to your letter of 29 July 2010 and some of your subsequent emails to SPSO personnel. Although you were provided with acknowledgements there was no specific timeline set and there was a gap of over 10 weeks before you received a full response. This exceeded the normal 20 working days service standard published by SPSO. In his letter to you of 20 October 2010 Mr Carney did apologise for this delay, stating that they arose as a consequence of other operational priorities. However I do realise that this delay must have been frustrating and annoying to you. The explanation you were given was limited and not completely satisfactory. **I uphold your complaint.**

5. Confusion regarding the headings to your complaint.

It is clear that on some occasions you were given slightly different headings. These were either:

Complaint against [REDACTED] or

Case Decision [REDACTED]

I can understand that this may have been confusing for you. Each formal communication from SPSO had as its reference the case number. This was a common thread throughout all the formal correspondence with you and would have provided you with an easy reference point. I do not attach any significance other than the subject matter of the specific letter to the change of headings. However I do realise that these changes would not have helped maintain your confidence in the process. **I uphold your complaint.**

I have endeavoured to conduct a comprehensive review of the service delivery elements outlined by you in your letter to Ms MacLean on 9 November 2010. I have considered all the documentation that you have sent to me, together with the official file from SPSO, and have reviewed all the paperwork associated with this complaint. Because of this I am well aware of the context within which this complaint was made. I have endeavoured to focus specifically on your current service delivery complaint. I realise that you may not be totally happy with the outcome of my review and I am sorry if this is the case. I can only reassure you that I have considered all the relevant matters carefully and thoroughly. I hope that the scale and thoroughness of this response will reassure you the matter has been taken seriously.

Yours sincerely,

Ros Gardner
Independent Service Delivery Reviewer

18 January 2011

CONFIDENTIAL

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

Our ref: [REDACTED]

Dear [REDACTED]

Service delivery complaint

In your telephone call of 13:45 of today's date to Niki Maclean you made a complaint about the service you received and asked that her manager review the previous telephone call, in particular the allegation that Ms Maclean called you a racist. I have listened carefully to the recordings of both telephone calls you had with Ms Maclean between 13:30 and 14:00 today.

I did not find any evidence to support the allegation that Ms Maclean called you a racist. I did find your manner towards Ms Maclean aggressive without provocation and the allegations about Ms Maclean's service unwarranted.

On the basis of these calls I am formally notifying you under our Unacceptable Actions Policy that any further contact you make with this office must be done in writing only. Telephone calls from you will not be accepted. I enclose a copy of our Unacceptable Actions Policy for your information.

I note from your calls that you are not happy with the decision that has been taken on your case. I have enclosed the SPSO leaflet 'Your Complaint, Our Decision' which explains our casework decision review process. As explained in this leaflet, if you would like the decision on your case to be reviewed, please provide an explanation and relevant information to support why you think the decision on the case is incorrect. A review of your case will be undertaken if this supporting information is received.

Yours sincerely

Jim Martin
Ombudsman

Encs

If you remain unhappy about our treatment of your formal service complaint you may contact Ros Gardner, Independent Service Delivery Reviewer within three weeks of receiving this decision, at PO Box 5454, Newton Longville, Milton Keynes, MK17 0XN. See leaflet for further details of our process.

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

27 January 2011

Dear [REDACTED]

Re Case No [REDACTED]

Further to your complaint against the Scottish Public Service Ombudsman, I have now had an opportunity to review all the documentation relating to your complaint and your latest letter sent to me on 7 January 2011. I note from this correspondence that you had previously sent me a letter on 17 December 2010; however I can confirm that I did not receive that communication. I am sorry that this has delayed the opportunity to review your correspondence but there was much disruption to the postal service in our area at that time due to the bad weather conditions, and it is possible that it may have got mislaid.

I also note your request that all documentation relating to your complaint be returned to you. As the documentation I have received has been sent from the office of the Ombudsman it remains their property and therefore any request for copies of files should be directed at them. I will not be sending you any documentation other than my report on your complaint. I also note that you have some concerns about the content of the key milestones sent to you for your consideration on 30 November and I have taken these comments into my thinking during my review of your complaint. I outline below my key findings and any recommendations that I may make to the SPSO's office.

Background to your complaint

You initially raised a complaint against [REDACTED] with the Scottish Public Service Ombudsman's office on 23 September 2009. You complained that [REDACTED]. As your complaint did not fall within the Ombudsman's remit it was signposted to the Information Commissioner's office. Following various communications by telephone between you and the SPSO's office, further documentation was sent from you on 12 October 2009 which resulted in SPSO accepting your revised complaint. This now related to [REDACTED]. Your complaint was accepted by SPSO, as confirmed by their letter of 12 October 2009. It was also suggested that you might wish to contact your local Citizens Advice Bureau, who could help to pursue your complaint by drafting letters and providing advocacy on your behalf.

You again wrote to SPSO on 15 June 2010 and followed this up with a telephone call on the 16 June to their office. You also wrote to me at that time, as the Independent Service Delivery Reviewer, but as your service delivery complaint had not been through the internal processes I referred it back to the SPSO's office, as is normal procedure in these matters. On 28 June 2010 SPSO re-contacted you by letter providing you with the leaflet outlining the process for making a service delivery complaint against the organisation and its personnel.

On 15 July 2010 you wrote requesting that all the papers relating to your complaint be returned to you. This request was acknowledged by SPSO, who confirmed they would reply fully within 40 days, by 24 August 2010.

On 17 August you were sent a letter from SPSO which enclosed a complete copy of the SPSO file on your complaint against [REDACTED]. You were also given information on how to request a review of the documentation and signposted to Niki McLean, Director of Corporate Services, who has responsibility for these matters. You were again given the details of the Information Commissioner's office contacts. It is clear from further communication between you and the SPSO office that you had difficulty in putting your request for a review in writing because of your medical condition and you asked if it would be possible to have personal contact with Niki McLean. It is obvious that some communication by telephone occurred on 26 August, because on 14 September 2010 you again contacted Ms McLean, expressing dissatisfaction with the lack of a reply to your requests.

On 5 October 2010 you received a full reply, by letter, from Niki McLean which confirmed that there was no further documentation on file regarding your complaint. You were again signposted to the Information Commissioner's office. Ms McLean dealt with one of your particular issues, the non-inclusion of a report from [REDACTED] and explained that this had related to an earlier complaint and that the request for information had been restricted to documentation relating to this current complaint.

Ms McLean also responded to various comments made during your conversation with her regarding the behaviour of SPSO staff. Following a further telephone conversation between you and Niki McLean, on 6 October 2010, she again wrote to you. In this letter she accepted that you had made a service delivery complaint earlier in the year, on 15 July 2010, and that this had not been responded to at that time. She provided you with a response to each of the service delivery areas that you had raised and signposted you to me, as Independent Service Delivery Reviewer, should you remain unhappy. I was able to confirm, on receipt of your complaint to me that it now fell within my remit. This report is a response to that complaint and the various issues you raised in it.

Your complaint

The key elements of your service delivery complaint against the Scottish Public Service Ombudsman are:

- The Ombudsman refused to answer your letter of 29 May and passed the letter to the lowest rank.
- A delay of one month in the handling of your complaint.

- The Ombudsman's office has a policy to ignore complaints until they become time-barred
- A member of SPSO staff member found against you without proof
- SPSO staff are corrupt and taking bribes

My Findings

I have reviewed all the documentation available to me and have taken all your comments into consideration in arriving at my findings for this investigation. I have considered your complaint under the five separate headings outlined above.

The Ombudsman refused to answer your letter of 29 May and passed the letter to the lowest ranks.

This is normal practice for all large complaint handling operations. The Scottish Public Services Ombudsman's office receives over 2000 separate communications each year and it would not be realistic or effective for the Ombudsman to deal with them all himself. All the staff working within the office have delegated authority to reply on his behalf. The fact that you designated your letter as "private and confidential" would not alter this. This would be considered the normal status of all mail received into his office. Your complaint was treated in the same way as all other similar complaints and there is no evidence of discrimination or unfairness in the treatment of your correspondence.

I do not uphold your complaint

A delay of one month in the handling of your complaint

Initial contact was made by you regarding this matter on 23 September 2009. SPSO were informed, by you, on 25 September 2009 that you wished to provide them with additional information. The complaint investigator handling your complaint correctly waited for this additional material to arrive. Again this is best practice as it is necessary to ensure that all relevant information regarding a complaint and the context within which it is made, is available before any decision is made. This additional material was received on 2 October 2009 and you were provided with a reply on 5 October 2009, well within the service standard timescales published by SPSO.

It is also clear that there was some confusion regarding what it was you were actually complaining about. This is not unusual and part of the role of the complaint investigator is to gain clarity before arriving at a premature decision. It was only after a telephone conversation with you on 9 October 2009 that it became clear that your complaint was not mainly about [REDACTED]. At this time you indicated that you would be sending further information into the SPSO office. I have found no evidence that this additional information was provided, and this obviously restricted the options available to SPSO personnel in their further handling of your complaint.

I do not uphold your complaint

The Ombudsman's office has a policy to ignore complaints until they become time-barred

I have found it more difficult to resolve this particular issue, based as it is on alleged comments by an ex-employee of the SPSO's office. I can confirm that there is no record of such comments on file and [REDACTED] is no longer employed the SPSO's office so it is not possible to check with him personally exactly what was said. I have reviewed notes of all the telephone conversations between you and SPSO personnel and I have found no evidence of such wording or anything similar that could be interpreted as such, in any of those conversations.

I do know from my experience of working with the SPSO for over two years that this is not their policy. It would be counter-productive to the organisation because it would result in no reports being produced and no resolutions to any of the cases being arrived at. It is true that in some instances it can take some time to clarify exactly what the complainant is complaining about and what outcome they are hoping for. I believe that this was the case in the handling of your complaint and this may have given you the impression that there was some unnecessary delay. However I have found no evidence that any of these delays were excessive or not linked with efforts to clarify exactly the nature of your complaints.

I do not uphold your complaint

A member of SPSO staff found against you without proof

This particular element of your complaint relates specifically to the decision of the Ombudsman, delegated to a senior staff member. As such this decision remains outside of my remit. However the evidence I have seen in the documentation would indicate to me the decision was taken after full consideration of all the available evidence.

SPSO staff are corrupt and taking bribes

This is an extremely serious charge and is not one directly within my remit, leading as it does to the possibility of criminal charges. I can confirm that I have found no evidence of this in any of the cases I have dealt with as the Independent Service Delivery Reviewer for the SPSO.

Other matters

It is clear that there was some mishandling of your correspondence, dated 15 July 2010, part of which was mislaid by the SPSO. This error was identified by Niki McLean, Director of Corporate Services, in a letter to you sent on 8 October 2010 and was apologised for.

Regarding my previous involvement in your complaint, I note that you requested my details in October 2009 and were correctly referred back to the SPSO management as:

- no service delivery complaint had been identified
- any concerns expressed by you had not been through the internal processes

You again wrote directly to me in May 2010. At that time, as your complaint had not been through the internal processes of the SPSO, it remained outside of my remit. I clarified this to you in a reply sent on 2 June 2010.

I realise that you will remain unhappy with this reply. I can reassure you that all the matters raised in your complaint have been investigated fully and I am confident that had there been any evidence of discrimination, bias or disadvantage to you in the handling of this complaint I would have identified it. I can also reassure you that I would have informed you should such evidence have presented itself. I hope that as the matter has now been investigated fully you will be able to accept the findings and put this matter aside.

I wish you well in the future

Yours sincerely

Ros Gardner
Independent Service Delivery Reviewer

23 February 2011

CONFIDENTIAL

[REDACTED]
[REDACTED]
[REDACTED]

Our ref: [REDACTED]

Dear [REDACTED]

Service delivery complaint

As you know, I have been reviewing the service delivery complaint letter that you sent to me on 3 February 2011. Normally we ask that complaints about our service are made within three weeks of the incident occurring in order for us to be able to address the issue at an early stage. However, I have considered all aspects of your complaint because I believe you had highlighted all of these concerns at an earlier stage albeit not formally as part of the service delivery review process

I am very sorry to hear you were not satisfied with the quality of service you have received from the SPSO. I have now had the opportunity to review your case in detail including considering a chronology of events (as set out at Appendix 1). On this basis, I am now in a position to be able to provide you with a response to the concerns you have raised.

In your letter you raised seven areas of concern. I have considered each of these against our four service delivery standards, as set out in our attached service standards leaflet and set out my findings and conclusions below:-

Service standard 1 – how we will treat you

1. *The decision on the case being reviewed by Mr Steve Carney, Director of Complaints and Investigations, which you consider to be unfair given his involvement in approving the original decision on your case;*

and

2. *Refusal of a meeting with the Ombudsman to discuss your concerns on the handling of the case which you consider to be rude and unfair.*

I recognise that you were dissatisfied with both the decision of the Ombudsman to not respond further to your continuing queries on your complaint or to meet with you in person to discuss your complaint. I also understand that you view Mr Carney's involvement in reviewing the decision on your case as unfair.

The SPSO Act states that it is a matter for the Ombudsman (or his staff with his delegated authority) to determine how each case is investigated. These issues are therefore not service delivery issues. However, I think it is helpful if I provide further explanation of the position here to you.

There is no statutory obligation for the SPSO to review decisions once they have been made. We introduced this policy because we consider it to be best practice. Our policy explains that we will review decisions once only. Your complaint was reviewed by both Mr Carney and the Ombudsman. This means that your case had an additional level of scrutiny and consideration that is not applied to all cases. I appreciate you were concerned about Mr Carney's involvement in the review as he was involved previously. Senior staff, including the Ombudsman, are regularly involved in the decisions made by Complaints Reviewers. This happens for a number of reasons, for example: when a case is considered to be complicated, to have had a significant impact on the person complaining to us or to raise issues that require a policy decision. If senior staff could not then be involved again at the review stage this may mean that some people would not be able to access the review process and to put their concerns to us. We ensure *service* issues are dealt with by someone who has not been involved in the decision.

In terms of responding to the individual questions posed by you, once we have reached a final decision on a case and provided a final response our policy is to acknowledge correspondence only. This is to ensure that there is not ongoing indefinite discussion on cases that have been closed correctly in line with our policies and legislative requirements. Having reviewed the correspondence you received from the Ombudsman dated 17 January 2010 I can see that this was explained clearly to you.

3. *The decision to change your complaint just before publishing an investigation report without consulting you.*

Your complaint is that the decision to change your complaint was taken without consulting you. It is a matter for the Ombudsman (or his staff with his delegated authority) to determine what aspects of any complaint brought to us that we can or should investigate further. We would consider it good practice to communicate this clearly at the beginning of an investigation and not to change this during the investigation whenever possible. However, sometimes, this does need to change during an investigation because of new information or because we discover that the way we have described the complaint does not allow us to fully explain our decision or to investigate a significant point. We would also regard it as good practice that any changes that need to be made are communicated prior to a decision being reached. I note that whilst a clear explanation was given to you by [REDACTED] in his email to you of Friday 20 August following the issuing of the decision letter, and it is clear from [REDACTED] explanation that this did not change the nature of his investigation, it would have been best practice to communicate this change to you prior to the decision letter being issued. I, therefore, uphold this complaint.

4. *The SPSO investigation was small and only one letter was sent to [REDACTED] and the response from [REDACTED] was very vague.*

Again, the SPSO Act states that it is a matter for the Ombudsman (or his staff with his delegated authority) to determine how each case is investigated. This issue is therefore not something that can be addressed through the service delivery review process.

5. *The SPSO's case investigator suggested to [REDACTED] that there should be meetings following on from your case in order to explain how the SPSO's processes work.*

As part of the SPSO's role to support improvement of complaints handling in all bodies that fall under our jurisdiction, we regularly meet with bodies to advise them on ways to support the development of their complaints handling process. This meeting was offered as part of this outreach service and was not in any way related to your individual complaint. This is therefore not a service delivery issue in relation to the handling of your complaint and hope

that you are now satisfied that this is part of SPSO's wider role to improve complaints handling across the public sector.

Service standard 2 – our contact with you

6. *The Complaints Reviewer refused to answer questions or give explanations about the conflicts that existed within the decision letter and factual documents.*

The review process deals specifically with concerns about any errors in the decision. This is not a service delivery issue.

7. *The SPSO took 9 months to make an enquiry to the body and a total of 14 months to issue a decision letter.*

Having reviewed the chronology for your complaint, I can see that the time taken to make enquiries of the body were significant in your case and although you received an apology for the delay in handling your case on 7 September 2010, both the delay in commencing enquiries with the body and on reaching a decision were not acceptable and were outside of both our normal standard of 6 months on 80% of cases or of 12 months on more complex cases. I, therefore, uphold this complaint

Conclusions

In summary, I am upholding your complaints in relation to the lack of communication of the change to one head of complaint before the decision was issued and your complaint in relation to the delay in the processing of your complaint. Our service has fallen short of the standards we set for ourselves in these two respects and which you should expect to receive. I would, therefore, like to apologise on behalf of the SPSO for the delay you experienced in the handling of your complaint and also our failure to meet the required level of service.

I would also like to thank you for raising your concerns with us. As an organisation we are committed to improving our service. As stated above, in the course of reviewing your service complaint I have discussed matters with the members of staff concerned where possible. A summary report of this complaint will be communicated to our senior management team so that we can learn from these matters and address any systemic issues that may be identified.

Yours sincerely

Niki Maclean
Director of Corporate Services

If you remain unhappy about our treatment of your formal service complaint you may contact Ros Gardner, Independent Service Delivery Reviewer within one month of receiving this decision, at PO Box 5454, Newton Longville, Milton Keynes, MK17 0XN.

March 2011

CONFIDENTIAL

[REDACTED]

Our ref: [REDACTED]

Dear [REDACTED]

Service delivery complaint

My apologies for the delay in replying to your correspondence. I note that my assistant [REDACTED] has explained that I had hoped to reply earlier but was ill.

I have had an opportunity to read your complaint file and correspondence. I have concluded that Ms Maclean's letter to you of 21 December dealt appropriately with the complaints which you have raised; gave explanations of her decisions and indicated clearly how you could pursue any points you still felt aggrieved about.

I see from your letter of 21 December that you are unhappy that we did not comply with your "instruction" to pass your correspondence to Parliament. I believe that the limitations of our powers in this regard has been explained to you. It is of course open to you to send correspondence sent to SPSO to anyone of your choosing.

While I know this letter will disappoint you, I believe you have had full explanations to the points you have raised.

Should you wish to complain about the service you have received from the SPSO you are free to contact the Independent Service Delivery Reviewer, Ros Gardner, within one month of receiving this decision, at PO Box 5454, Newton Longville, Milton Keynes, MK17 0XN.

Yours sincerely

Jim Martin
Ombudsman

Draft Report to [REDACTED]

Dear [REDACTED]

Re: Case No [REDACTED]

I have now had an opportunity to review all the documentation relating to your most recent complaint against the Scottish Public Service Ombudsman (SPSO). I note that this complaint is related to a previous complaint against [REDACTED]. I conducted a review of that original complaint then provided you with a response. In clarification I would like to reassure you this subsequent complaint is being treated completely separately although it is obvious that there are some issues which referred to the historical situation.

Background to your complaint

Your complaint relates to [REDACTED]. Having failed to receive satisfaction in the handling of your complaint by [REDACTED] you referred it to the SPSO's office. Following a review by the SPSO's office personnel, you received communications from the Director of Complaints and Investigations, and subsequently from the Ombudsman himself. You remained unhappy with their responses to you and referred your complaint to the Director of Corporate Affairs for a review of the service delivery that you had received.

As the complaint related to both the Ombudsman and the Director of Complaints and Investigation, it was decided to refer the complaint to me, as the Independent Service Delivery Reviewer. I am now conducting this investigation as a result of this referral.

Your complaint

You complain that:

- SPSO has treated you unfairly
- You were not being listened to by SPSO

My Findings

I have reviewed all the documentation available to me and have taken all your comments into consideration in arriving at my findings for this investigation. I have considered your complaint against the two headings outlined above.

SPSO has treated you unfairly

Having made a complaint to [REDACTED]
[REDACTED] Subsequent to this, you made a complaint to the SPSO regarding [REDACTED]. You were informed by SPSO that after an initial investigation they believed that [REDACTED] and they would not be taking any further action.

You appealed this decision and were informed by Mr Steve Carney, Director of Complaints and Investigation, on 11 November 2010, that SPSO were considering your correspondence. On 16 November 2010, Mr Carney, Director of Complaints and Investigation re-contacted you and informed you that your complaint would not be reopened as no new substantive complaint information had been received.

You remained unhappy about this and informed the SPSO of such on 6 December 2010. On 22

December 2010 you received a letter from Mr Martin, the Ombudsman, informing you that SPSO should not have responded to your latest complaint.

On 24 December 2010 you informed the office that you wished to lodge a formal complaint against the decision of the Ombudsman. In this you outlined your complaint against Mr Martin:

- SPSO had treated you unfairly.
- you were not being listened to by the SPSO

I can understand your dissatisfaction with the responses you received from the SPSO's office.

Having made your complaint to the office regarding [REDACTED], you were informed that your complaint would be considered when you were told that they were calling for the file of your complaint. Two weeks later you were informed that the SPSO would not take any further action.

When you made your appeal you were again informed that your correspondence would be considered. It is understandable that these communications would have led you to believe that there was a possibility that your complaint would have been considered. Both the information on the call for the file and the letter stating your correspondence had been considered could have built up expectations that your complaint would be reopened.

It would have been difficult for the SPSO to make a considered, informed decision about the situation if they had not looked at the previous complaint and had not considered all the relevant information available to them before deciding not to progress with your complaint. They would not have been able to ascertain whether any new information was available or not. As the lack of any new substantive complaint was a major consideration in the decision not to reopen the file, this was an important factor and required investigation and consideration.

The letter from the Ombudsman acknowledged that the communication with you had built up your expectations. This was his reason for saying that the complaint should not have been responded to and his confirmation that the matter remained closed.

I acknowledge that you have received mixed and confusing signals from the Ombudsman's office. There appears to be some discrepancy in the policy regarding the handling of your complaint by various senior personnel within the office. This is unfortunate and has obviously contributed to your dissatisfaction with the service that you have received.

However I do not believe that this inconsistency has amounted to unfair treatment. On the contrary, my review of all the documentation would indicate that each of your communications was treated fairly, although the outcome arrived at was not the one you would have chosen.

I concur with the Ombudsman that it would have been better had your complaint not been reconsidered initially. This would have prevented the unrealistic expectations which you have experienced. The reasons why this occurred have been explained but I recognise that it will have contributed to your perception of unfair treatment. **I partially uphold your complaint.**

You were not being listened to by SPSO

Your complaint against the Ombudsman was initially formulated by you as a complaint against the decision of the Ombudsman. As you will be aware under the legislation, any decision of the Ombudsman is final and cannot be revoked. That is why the letter from the Director of Corporate Services, sent you on 14 January 2011, informed you that the case remained closed.

You subsequently brought a service delivery complaint against Mr Martin and Mr Carney. Having named both the Director of Complaints and Investigation and the Ombudsman specifically, once details of the service delivery elements had been provided your complaint was referred to me, as Independent Service Delivery Reviewer. The evidence you provided to support your service delivery complaint referred to the communication from Mr Carney on 16 November 2010 and that from Mr

Martin on 22 December 2010.

While I understand that you remain unhappy with the contents of these communications I do not believe they amount to poor service. As already stated there was some confusion in the messages you were being sent from the Ombudsman's office and I have dealt with that in the first element of your complaint, partially upholding it. I have not found any evidence that you were not listened to by either Mr Carney or Mr Martin. I believe that both were clear as to your intentions and your requirements. The fact that they arrived at a decision which was not to your liking does not mean you were not listened to. **I do not uphold your complaint**

Conclusion

I realise that you will remain unhappy with this reply. I can reassure you that all the matters raised in your complaint have been investigated fully and where there was evidence of poor service I have identified it and have responded accordingly. I hope that as the matter has now been investigated fully you will be able to accept the findings and move forward.

Yours sincerely

Ros Gardner
Independent Service Delivery Reviewer

18 March 2011

CONFIDENTIAL

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

Our ref: [REDACTED]

Dear [REDACTED]

Service delivery complaint

I have been reviewing the service delivery complaint letter that you sent to me on 8 March.

I am very sorry to hear you were not satisfied with the quality of service you received from the SPSO during your phone call on Tuesday 8 March 2011 at 15:08. In your letter you complained that [REDACTED] work practice was obstructive and prevented you from speaking to a supervisor or other senior member of staff by claiming that no-one was available at that time. You alleged that her work practice was dishonest.

Normally we would have dealt with your complaint informally in line with our process at step 1. However, given that (i) your complaint related to the fact that there were no senior staff available to take your call at the time you called, and (ii) you wrote in on the same date to raise your concerns, I have taken the decision to deal with your complaint under step 2 of our service delivery process to ensure you get a full response.

In order to do this, I have considered your complaint against our first service delivery standard, *Service standard 1 – how we will treat you*, as set out in our service standards leaflet.

In reviewing your complaint I have listened to the call in question and checked relevant staff diaries. I can hear no evidence within the call of [REDACTED] being deliberately obstructive and note that, from a review of relevant staff diaries (including my own) the information provided by [REDACTED] in the call was accurate.

On this basis, I am therefore not in a position to uphold your complaint.

Yours sincerely

Niki Maclean
Director of Corporate Services

If you remain unhappy about our treatment of your formal service complaint you may contact Ros Gardner, Independent Service Delivery Reviewer within one month of receiving this decision, at PO Box 5454, Newton Longville, Milton Keynes, MK17 0XN.

Enc

25 March 2011

CONFIDENTIAL

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

Our ref: [REDACTED]

Dear [REDACTED]

Service delivery complaint

I have been considering your letter of complaint dated 24 February, addressed to [REDACTED]. Normally we ask that complaints about our service are made within three weeks of the incidents occurring for a number of reasons. Firstly this is in order for us to be able to address the issues raised at as early a stage as possible. Secondly it is to ensure that we are able to deal with complaints quickly and efficiently at a point in time that allows are to gather relevant, current evidence to reach an accurate judgement and to make recommendations to changes in our working practices as appropriate.

I am sorry to hear [REDACTED] was not satisfied with the quality of service he received from the SPSO during his phone call with [REDACTED] on 27 September 2007, in particular in relation to her attitude and behaviour and the accuracy of her note recorded on file. I have reviewed [REDACTED] file carefully and have spoken to [REDACTED] about this matter. Given that it is three and a half years since the telephone call took place, this is not a matter that we could now consider under our service delivery complaints process for the reasons set out above.

I also note that you intend providing additional documents to support a review of the decision taken on [REDACTED] case. This information would be considered in line with our normal complaint handling process and as per previous correspondence on [REDACTED] complaint from this office.

I realise this will not be the outcome you are seeking but would like to assure you that I have looked into this matter carefully.

Yours sincerely

Niki Maclean
Director of Corporate Services

If you remain unhappy about our treatment of your formal service complaint you may contact Ros Gardner, Independent Service Delivery Reviewer within one month of receiving this decision, at PO Box 5454, Newton Longville, Milton Keynes, MK17 0XN.

31 March 2011

CONFIDENTIAL

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

Our ref: [REDACTED]

Dear [REDACTED]

Complaint about [REDACTED]

Thank you for your note of 18 March 2011 in which you complain about the service you have received from [REDACTED] in relation to this complaint. In this you explain that you feel there has been 'unreasonable delay in you replying to me since 22/2/11 (4 weeks)'.

I can see from the file that the following correspondence has taken place since [REDACTED] has been working on your complaint. We told you on 9 February that he would be looking at it. On 17 February, having considered the information you provided, [REDACTED] asked [REDACTED] for the relevant background correspondence. The next day he wrote to you to clarify the complaint, and the outcome you were seeking. He asked you to sign and return a copy of his letter. You returned a modified copy of the letter, which we received on 22 February. That same day [REDACTED] amended his formal letter to reflect your comments and returned it to you. You signed the copy letter, and it arrived back here on 1 March.

On 7 March we received a response to our enquiries from [REDACTED] and on 21 March [REDACTED] received your note asking him to tell me about your complaint about his service.

Having looked through the file, I do not agree that there has been 'unreasonable delay' on the part of [REDACTED]. He has taken your complaint forward correctly and has made appropriate enquiries of [REDACTED]. He also wrote to you to clarify your concerns and your desired outcome, amended these as requested by you and has made appropriate contact with you. Although by 18 March you had not heard anything further, the receipt of your complaint about service may in fact have pre-empted any further letter that [REDACTED] planned to send. We normally keep people updated about every four weeks. I would have expected him to have updated you during the week in which your note arrived, given that there had already been correspondence with you towards the end of February, including the sending and return of the signed letter (see second paragraph above). He of course wrote to you on 24 March, after receiving your note, explaining that he had been in touch with [REDACTED] and asking you for some information.

For these reasons I consider that [REDACTED] investigation of your case complies with our service standards, and I do not uphold your service complaint.

I have received your letter of 18 March (our reference [REDACTED]) about the three other complaints that you sent us earlier this year, which we did not take further. I will write to you separately by Friday 15 April about what you say in that letter.

Yours sincerely

[REDACTED]

Telephone: [REDACTED]

Investigations by the Scottish Public Services Ombudsman are to be carried out in private, in terms of the Scottish Public Services Ombudsman Act 2002. Accordingly, this correspondence must not be made publicly available. This does not affect the rights of recipients to seek legal advice in relation to this complaint. Where appropriate, recipients are also reminded of their obligations under the Data Protection Act 1998 in relation to the processing of personal and sensitive personal data.