

A guide for MSPs and Parliamentary Staff

SPSO Scottish
Public
Services
Ombudsman

2011

About the SPSO

The SPSO was created by a Parliamentary Act in 2002 as an independent body, accountable to the Parliament. The current Ombudsman is Jim Martin. He has been in post since May 2009 and was reappointed by the Parliament in March 2011 for a six year term.

Resolving complaints

The SPSO is the final stage for complaints about most public services in Scotland including councils, the NHS, prisons, housing associations, government agencies and non-departmental public bodies, the Parliamentary corporation, colleges and universities and most cross-border public bodies.

A member of the public can bring a complaint to the SPSO directly. They don't have to ask an elected representative to do it for them. We know, however, that some people ask their MSPs for support in making a complaint. When this is the case, it's in everyone's interest that our remit is understood. In particular, it's important that those helping someone make a complaint understand the kinds of outcomes we can achieve. We also need to be sure that complainants are happy to be represented by their MSP and that they give us their consent.



MSP HELPLINE: 0131 240 8849



Last year the SPSO received 3,500 complaints and 750 enquiries

Our role

Handling complaints

The SPSO is the final stage for complaints about most public services in Scotland. Last financial year (2010 – 11) we received about 750 enquiries and 3,500 complaints from members of the public. The range of subjects we look is very broad and varied, and includes, for example, hospital and GP treatment and care, planning applications, housing repairs, council tax and prisoner access to offending behaviour programmes.

What we can and cannot look at

We examine complaints to decide whether there has been maladministration in the delivery of a service, or failure to deliver a service at all. For NHS complaints, we can also look at the clinical decisions that led to a complaint. About half the complaints we receive are about councils, and about a quarter are about the NHS.

Two key points:

- › We can't overturn decisions reached by bodies such as planning authorities. We can't look at such decisions unless something has gone wrong in the process (see page 4 for more information).
- › We cannot normally look at complaints that come to us before going through the full complaints process of the body complained about.

Remedy

If we find failings, the Ombudsman may make recommendations to put things right and to try to avoid problems in the future. We share lessons from complaints to improve the delivery of public services. We do this by publishing our investigation reports and regular updates about our work.

MSP advice

Having the right information from the start helps the complainant and helps us to manage their expectations. Please use our MSP helpline for advice on any aspect of our work, such as:

- › helping a constituent through a public body's complaints procedure
- › checking if a particular complaint is something the SPSO can look at
- › finding out what kinds of outcomes we can achieve
- › learning about our process, our governance or our remit.

We have fact sheets about common subjects of complaints, such as planning, housing allocations and hospital care. Please look online www.spsa.org.uk/information-leaflets or call us and we will send you copies.

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Understanding our remit

There are some things that may prevent us from looking at a complaint, such as:

- > the complaint is not about a body or subject in our jurisdiction (there is a list of bodies at the end of this Guide)
- > the complaint has not completed the public body's complaints process
- > time limits for making a complaint (normally a year from when the person knew they had something to complain about)
- > rights of appeal to tribunals and the courts
- > the complaint is about employment and personnel matters
- > the complaint is about commercial and contractual matters

- > the complaint is about the merits of 'a discretionary decision taken without maladministration'. An important exception to this is complaints about the NHS, where we *can* look at clinical decisions.

As far as non-NHS complaints are concerned, the 'discretionary decisions' point is worth explaining further. The SPSO Act says that we can't question a decision simply because a complainant is unhappy with it. We can, however, look at the procedures that led up to a decision. We often find that service providers have correctly followed the procedure. In such cases, the complainant is likely to remain unhappy with the body's decision, but if there is no evidence of anything having gone wrong in the way a decision is reached, we cannot question its merits.

We know that it is frustrating for someone to bring us a complaint and find that we cannot look at it. This happens in about a third of the complaints that we receive. We would encourage MSPs and their staff to call our helpline to check that the complaint is one that we can handle before advising anyone to bring us their complaint.

Call our MSP helpline if you need advice **0131 240 8849**.

Outcomes – redress and recommendations

After looking into a complaint, we may make recommendations to the body about what they should do in response to what has happened. In doing this, we have two main objectives: to put the person concerned in the position they would have been in had things not gone wrong (if that can be done) and to take steps to prevent the same thing happening to anyone else in future.

Recommendations could include:

- > an apology and/or an explanation
- > practical action (for example, if we find that someone has been treated unfairly over a housing transfer, we might advise the body to review the application in line with its normal processes and procedures)
- > reimbursement of any actual loss/costs necessarily incurred
- > other suitable redress, either under a redress scheme run by the body itself or as a 'one-off' based on the specific circumstances of the case. In most cases, this redress is likely to be non-financial.

We do not award damages or compensation. These are matters for the Courts.



An important part of our work is ensuring – as far as possible – that any failings we identify do not happen again. So, as well as making recommendations about the complaint we've looked at, we may recommend broader action by the body itself, or in some cases by other organisations such as the Government. This could include changes to procedures or to policy or staff guidance/training. We always follow up our recommendations to make sure that they are complied with.

We do not have enforcement powers, but bodies almost always carry out our recommendations. If a body did not comply, we could lay a 'special report' before Parliament, asking them to take action.

Using our service



Making a complaint

To complain to the SPSO you will need to:

- > fill in a SPSO complaints form with details of the complaint.
- > get your constituent to sign section 6 of the form to allow you to complain for them.
- > send the form and relevant paperwork to the SPSO – including the final reply from the organisation complained about.

Completed complaints forms and paperwork can be faxed, emailed or posted to us (address details below).

Consent

We always have to check with a complainant that they are happy for someone to complain on their behalf. Our Act says consent must be in writing.

So, if a member of the public asks an MSP to act for them, we will need the written consent of the member of the public in order to share information with the MSP.

Our complaints form includes a section which allows for consent, and is available online or from our advice team.

Contact our advice team

For the public we have a freephone advice line and a freepost address. Call the advice team to request any of our advice material or complaints form. We can provide material in any language or format (such as large print or Braille) on request.

Public advice line **0800 377 7330**

MSP helpline **0131 240 8849**

SPSO, Freepost EH641, Edinburgh EH3 0BR

For more information visit our website: **www.spsso.org.uk**



Improving service delivery

The breadth of our remit gives us a unique perspective on public services across Scotland. It allows us to see where there are differences in how a service is delivered, or to recommend that national guidance is produced on an issue that has arisen in one place and is likely to arise elsewhere. Examples of areas where we have made recommendations that go beyond the individual complainant or body are:

- treatment for anorexia
- care for people with dementia
- use of anti-psychotic drugs
- identification of DVT
- notional capital – charging for residential care

We work closely with scrutiny bodies and have established protocols or Memoranda of Understanding with a range of regulators and inspectors including the Scottish Housing Regulator, the General Medical Council, the General Dental Council, the Mental Welfare Commission for Scotland, Her Majesty's Inspectorate of Education, the Office of the Scottish Charity Regulator and the Scottish Social Services Council.

Establishing standards in complaints handling and sharing best practice

A further role for SPSO comes from the Public Services Reform (Scotland) Act 2010. This Act built on the work of the Crerar and Sinclair Reports, which recommended changes to improve the way complaints are handled in Scotland. It gives us the authority to lead the development of simplified and standardised complaints handling procedures across the public sector.

This Act required the SPSO to develop a Statement of Complaints Handling Principles and required all public bodies under the SPSO's jurisdiction to have complaints handling procedures that comply with these principles. We consulted on these principles in 2010. They were approved by Parliament and published in January 2011.

The Act also gives us the power to publish model complaints handling procedures. Following consultation we published guidance on this area in February 2011. On the basis of this we are developing model procedures in partnership with service providers.

The SPSO's internal unit, the Complaints Standards Authority (CSA) provides support, including training, in improving complaints handling procedures. The CSA is setting up networks of complaints handling practitioners to identify and share best practice. There is more information about this on our CSA website www.valuingcomplaints.org.uk.



Informing Parliament about our work

We must lay an annual report before a Parliamentary Committee. We must also invite the Scottish Parliamentary Corporate Body to comment on our strategic plan. We must lay investigation reports before the Parliament, and we may also lay other reports. While we name public bodies in reports, we keep all complainants' details confidential.

The Ombudsman provides a regular Commentary to MSPs and other stakeholders. This summarises the findings from complaints that he considers to be significant. The Commentary also draws attention to particular issues, and highlights recurring themes and trends so that lessons can be learned and improvements made. We hope our work will be used as a resource by MSPs and others responsible for making, delivering and reviewing policy.

All our published Investigation Reports are available on our website. They can be searched for by parliamentary region, sector, body and subject. See www.spsso.org.uk/reports



Parliamentary relations

Office-holder's accountability and independence

The terms of the Ombudsman's appointment are laid down in the Scottish Public Services Ombudsman Act 2002. When the Act came into force the then Scottish Executive explained that it was intended to maintain and reinforce the Ombudsman's independence from the bodies he investigates, while making the appointment process more modern and democratic.

In order to safeguard our independence, in making decisions on complaints the SPSO is not subject to the direction or control of any member of the Scottish Government or the Scottish Parliamentary Corporate Body (SPCB).

The Ombudsman is the accountable officer.

Financial scrutiny

We liaise regularly with the SPCB. Our joint aim is to make sure that resources are managed effectively and appropriately. Our budget was £3.26 million last year and we had a staff of 47 of whom three quarters were directly involved in complaints handling. We make an annual budget application to the SPCB, which is considered (as part of the SPCB's expenditure plan) by the Finance Committee and the Scottish Government. The SPCB's final expenditure proposals, including the SPSO's budget, then appear in the annual Budget Bill which is voted on by Parliament.

Bodies under the SPSO's jurisdiction

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The list of bodies we can receive complaints about is based on Schedules 2 and 3 to the SPSO Act 2002 (amended on 1 April 2011). We can look into complaints about services delivered by the private or voluntary sectors if these are delivered 'on behalf of' a body under jurisdiction. The list below gives an idea of the main bodies we can look at. It is not however, definitive – new bodies may be added and old ones deleted as names and functions change. If you are unsure about whether a body is under our jurisdiction, please contact us.

Scottish Parliament and Scottish Administration

- The Parliamentary Corporation
- Any member of the Scottish Government
- Any other office-holder in the Scottish Administration

Health Service

- Health Boards
- Special Health Boards
- The Mental Welfare Commission for Scotland
- Healthcare Improvement Scotland
- GPs and dentists when they are providing NHS care

Local Government, etc.

- Local authorities
- Committees, joint committees or joint boards of one or more local authorities
- Licensing boards
- The Strathclyde Passenger Transport Authority
- Transport Partnerships
- National Park authorities
- Joint fire and rescue boards
- Children's Panel Advisory Committees and joint advisory committees

Housing

- All registered social landlords

Further and Higher Education

- Universities
- Colleges including The Scottish Agricultural College

Prisons

Scottish public authorities

- The Accounts Commission for Scotland
- Audit Scotland
- The Auditor General for Scotland
- The Commission for Ethical Standards in Public Life in Scotland
- Community justice authorities
- Creative Scotland
- The Crofters Commission
- Bòrd na Gàidhlig
- The General Teaching Council for Scotland
- Highlands and Islands Enterprise
- The Judicial Appointments Board for Scotland
- Learning and Teaching Scotland
- Local enterprise companies
- The Local Government Boundary Commission for Scotland
- The Board of Trustees for the National Galleries of Scotland
- The Trustees of the National Library of Scotland
- The Board of Trustees of the National Museums of Scotland
- The Parole Board for Scotland

- The Police Complaints Commissioner for Scotland
- The Board of Trustees of the Royal Botanic Garden, Edinburgh
- The Royal Commission on the Ancient and Historical Monuments of Scotland
- The Scottish Agricultural Wages Board
- The Scottish Children's Reporter Administration
- The Scottish Commission for Human Rights
- The Scottish Committee on Climate Change
- Scottish Enterprise
- The Scottish Environment Protection Agency
- The Scottish Further and Higher Education Funding Council
- The Scottish Further Education Unit
- The Scottish Information Commissioner
- The Scottish Legal Aid Board
- Scottish Natural Heritage
- The Scottish Qualifications Authority
- The Scottish Sentencing Council
- The Scottish Social Services Council
- The Scottish Sports Council (Sport Scotland)
- Social Care and Social Work Improvement Scotland
- Visit Scotland
- The Water Industry Commission for Scotland

Cross-border public authorities

The Ombudsman can consider complaints about a number of UK-wide bodies, where their actions related to devolved Scottish matters. For example:

- British Tourist Authority
- British Wool Marketing Board
- Design Council
- United Kingdom Sports Council
- The Statistics Board
- The Committee on Climate Change
- Forestry Commissioners

Tribunals

The Ombudsman can consider complaints about the following tribunals. We cannot look at their decision or how the tribunal was run. We can look at the administrative actions of staff.

- The Lands Tribunal for Scotland
- Private Rented Housing Committees
- Mental Health Tribunal for Scotland
- The Plant Varieties and Seeds Tribunal
- The Scottish Land Court

Read the SPSO Act 2002 online at www.legislation.gov.uk/asp/2002/11

Corporate Strategic Objectives 2011 – 2015

- 1 To provide a high quality, independent complaints handling service:** By developing our capacity as complaints handlers to be able to deliver individual benefit to complainants who have suffered maladministration or service failure – by being accessible and dealing with all enquiries and complaints impartially, consistently, effectively, proportionately and in a timely manner; and by producing clear, accurate and influential decisions about complaints.
- 2 To support public service improvement in Scotland:** By continuing to raise informed awareness of the role of the SPSO and to feed back and capitalise on the learning from our consideration of individual enquiries and complaints, to work in partnership with public service deliverers, policy makers, scrutiny bodies and regulators to promote good administrative practice.
- 3 To improve complaint handling by public service providers:** By using our expertise and resources to monitor, promote and facilitate the sharing of best practice and supporting service providers in improving their complaints handling.
- 4 To simplify the design and operation of the complaint handling system in Scottish public services:** By working in partnership with service providers and other key stakeholders to facilitate the development of simplified, standardised and user-focussed Complaints Handling Procedures across the public sector as an integral part of the wider administrative justice system in Scotland.
- 5 To be an accountable, best value organisation:** By making best use of our resources and demonstrating continuous improvement in our operational efficiency and supporting the professional development of our staff.

MSP HELPLINE: 0131 240 8849

Contact us

Visit **SPSO, 4 Melville Street, Edinburgh EH3 7NS**

Write **SPSO, Freepost EH641, Edinburgh EH3 0BR**

Email	www.spsso.org.uk/contact-us
Public advice line	0800 377 7330
Fax	0800 377 7331
Text	0790 0494372
SPSO information	www.spsso.org.uk
SPSO complaints standards	www.valuingcomplaints.org.uk