

SCOTTISH PUBLIC SERVICES OMBUDSMAN

ANNUAL COMPLAINTS REPORT 2012–2013

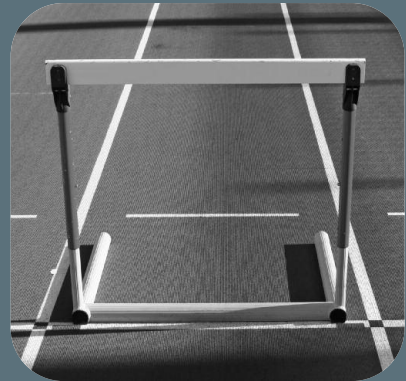
**Learning
from
complaints**



**Improving
complaints
handling**



**Supporting
public service
improvement**



SCOTTISH GOVERNMENT AND DEVOLVED ADMINISTRATION

SPSO

This is the SPSO's first annual complaints report about the Scottish Government and devolved administration sector. It is one of a series of reports through which we aim to put key messages, information and analysis of complaints about individual sectors into the public domain. We anticipate that Parliamentary committees, scrutiny bodies, regulators and government departments, agencies and NDPBs as well as other Scottish public authorities will find this an effective means of enhancing the learning from our work and identifying issues arising from the complaints we see. Equally, we hope it will prove useful to members of the public who seek more information about the kinds of complaints that are escalated to us and how we handle them.

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OMBUDSMAN'S INTRODUCTION



This report covers complaints about the Scottish Government, Parliament and devolved administration. It is the most diverse sector we handle, including government agencies and non-departmental public bodies, regulators, inspectorates and commissioners, as well as Scottish public bodies and cross-border authorities.

While based on a very small number of cases, the uphold rate for this sector is high compared with the average across all sectors. This is mainly because of the procedural and complaints handling failings we find. These should be relatively straightforward to reduce, and the model complaints handling procedure (CHP) we have developed should go some way to addressing this.

Improving complaints standards

2012/13 was the year in which we developed a model CHP for the sector, which was published in March 2013. The CHP is built upon those published previously for other public service sectors and builds on our consultation in 2010. Throughout the year we received valuable input on the CHP, particularly from the Scottish Government, and I am grateful for this expertise.



One of the benefits of our process is the transparency of our decisions. Publishing our decisions helps organisations to identify improvements they can make, learn from each other, and helps the public gain insights both where we do not uphold complaints and where we do.



Our aim has always been for each model CHP to be owned by the relevant sector and, following implementation in March 2014, I hope we will move quickly to a position where this is the case. We look forward to working in partnership with the Scottish Government, Scottish Parliament and others to support ongoing improvement of the CHP's operation through sharing of experience, learning and best practice across the sector.

Sharing the learning

One of the benefits of our process is the transparency of our decisions. In 2012/13, we published 26 complaints about this sector on our website. Through this, organisations can identify improvements they can make to reduce any failings we find. Similarly, the public can see the kinds of complaints that are made, gain insights both where we do not uphold complaints and where we do, and find examples of the kinds of redress we are able to recommend. I urge organisations to make the most of these tools and to demonstrate the ways in which they value complaints and how they use them to drive improvement.

Jim Martin
Ombudsman

CASEWORK



Number of complaints received and dealt with

This sector includes complaints received about all the departments and directorates of the Scottish Government, as well as a number of other Scottish public bodies. These include non-departmental public bodies and a few cross-border authorities (where the authority is acting in a Scottish capacity and the complaint is about an issue that arose in Scotland). It is the most diverse sector under our jurisdiction, and the organisations involved carry out very different functions, many under their own separate guidance, rules or legislation. Some of these organisations are regulators in their own right, and so we may receive complaints about them that relate to a care or health issue.

We have previously reported complaints about the Scottish Prison Service and the water industry in this sector. This year, however, to enhance the opportunities for learning from our consideration of prisons and water complaints, we have issued separate reports about these areas, which are available on our website along with all our sectoral reports. This change means that the overall figures we reported for the sector for last year are not directly comparable with this report.

In 2012/13, excluding prisons and water complaints, we received 207 complaints. Of those, 118 were about the Scottish Government, 77 were about Scottish public authorities and 12 were about cross-border public authorities. The main areas of complaint were justice issues, social care and health, financial matters and courts administration. We determined 208 complaints (the numbers received and dealt with differ because some cases received at the end of 2011/12 were completed in 2012/13).

Jurisdictional matters

We often find that complaints made to us in this sector are out of our jurisdiction and so we cannot take them forward. The Scottish Public Services Ombudsman Act 2002 says that we cannot normally investigate issues about court or legal matters, or those where the individual has an alternative right of appeal. And where we can look at a complaint, unless there is evidence that something has gone wrong in the decision-making process, we generally cannot look at the decision that was taken, only the process that was used. Each year we receive a number of complaints that we simply cannot consider, or where we can only look at the complaints handling of the organisation concerned. Examples of this include cases where an individual has been made bankrupt, where a prosecution has (or has not) taken place or where what happened during a court appearance was considered unfair.

Given the high numbers of complaints we receive that we cannot examine, we have developed leaflets to help the public understand the limits of our jurisdiction. We have specific leaflets about the Crown Office and Procurator Fiscal, the Accountant in Bankruptcy, courts administration and other Ombudsmen and commissioners. The leaflets include information to help people find the right organisation to which to take their concerns, if they are about a matter that we cannot investigate.

What we do with complaints

At the end of this report, there is a table with the outcomes of all the complaints we dealt with. Over the page, we identify some of the key points and what we do at each stage of our process.

Advice

All complaints and enquiries come first to our advice team. Their role is to provide information, signposting and support. Much of this work is conducted by telephone and they not only provide advice about our work but also help people find additional support. They can also make a decision on a complaint if it is clearly a matter that we are not legally able to consider or it has come to us too early. We are normally only able to deal with complaints after they have completed the organisation's complaints process. If a complaint comes to us too early (we call these premature complaints) we will let the person know how best to make the complaint to the organisation concerned. We can also give advice about organisations (such as Citizens Advice Scotland) who can provide advice or support people through the complaints process.

All enquiries and the vast majority of premature complaints are dealt with by our advice team. In 2012/13, the team made decisions about 135 complaints about the Scottish Government and devolved administration, of which 85 were premature. At the next stage in our process, where complaints receive further detailed review, we found another nine cases to be premature. In 2012/13, the rate of premature complaints for this sector was 45%, compared with an overall rate of 40%.

Assessing complaints

In 2012/13, 73 complaints passed from the advice stage to further detailed review. At this stage, we try wherever possible to talk to the complainant to make sure we understand their complaint and the outcome they want. We aim to see if there is a resolution that would be agreeable and acceptable to all parties and in a very small number of cases we were able to do this. We also have to assess whether there are reasons we should not take the complaint further. We can only investigate where we have the legal power to do so.

We know it is frustrating for complainants if we can't resolve a complaint or take it further, so we try to take this decision as quickly as we can. Last year, we decided at this stage that we could not take 46 cases further. In some cases, this was because they were premature, or out of our jurisdiction. In others, the complainant did not provide us with enough information, withdrew the

complaint, or wanted an outcome we could not achieve for them. We provide a breakdown of the decisions we made at this stage at the end of this report.

Investigating complaints

At the investigation stage, we decide whether the complaint should or should not be upheld. In order to do so, we will consider all the available evidence. This normally includes the complaint file and the information provided by the complainant, plus any other relevant evidence. We assess whether what happened was reasonable in the circumstances, and whether the organisation followed the correct procedures.

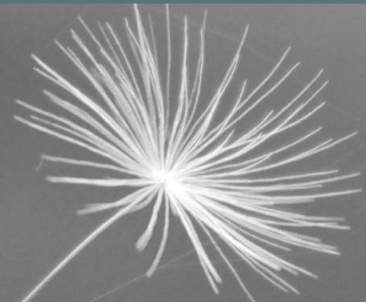
Decisions

When we investigate, we always issue a written decision. This is an important record and sets out in detail what we have investigated and how. The organisation and the complainant will receive copies. We know these decisions are sometimes about difficult experiences and in 2012/13 we began moving towards supplementing the written record with a telephone discussion with the people who had made the complaints. This has proved successful and is now part of our regular and increased use of direct contact with complainants.

The written record will be in one of two formats. In most cases we issue decisions by letter. This letter remains private between ourselves and the parties. In order to ensure learning is shared, we publicly report a summary of the decision to Parliament. In 2012/13 we issued 26 decisions about complaints in this sector by letter. We did not publish one of these decisions (because we took the view that to do so would risk a complainant being identified) so we reported a total of 25 decisions to Parliament. We also published one public interest report about the sector in 2012/13. Our public interest criteria are set out below.

Our public interest criteria can include:

- > **significant personal injustice**
- > **systemic failure**
- > **significant failures in the local complaints procedure**
- > **precedent and test cases**



Recommendations

Where we find that something has gone wrong, we will uphold the complaint and we usually make recommendations for redress and improvement. Of the 27 complaints taken forward and on which we issued a decision by letter or public report, we upheld or partly upheld a total of 16 (59%). We fully upheld seven complaints and partly upheld another nine. The uphold rate is significantly higher than the overall average across all sectors (46%). This is due in large part to our finding procedural and complaints handling failings. These should be relatively straightforward to reduce, and the work we have done with the sector to develop the model complaints handling procedure should help organisations improve in these areas.

In 2012/13, we made a total of 35 recommendations about this sector. We track every recommendation to ensure that the organisation implements it within a specified timescale and provides suitable evidence to show that they have done so effectively. Below, and through the case studies at the end of this report, there are examples of the kinds of recommendations we make. There are more case summaries on our website: www.spsso.org.uk/our-findings.

Recommendations

We recommended that an organisation or government directorate:

- ensure that they comply with their advertised timescales when assessing applications and apologise for failing to meet these
- apologise in writing for not obtaining evidence of another organisation's actions, on which they based a reply to a complainant

- obtain missing evidence and review their decision based on this, and put procedures in place to make sure that staff in future obtain appropriate evidence when considering appeals
- review procedures for the use of conditions related to consent under forestry regulations, and establish a process and criteria for submissions, to ensure clarity
- develop an online database for applications
- prepare a written agreement on when notification will be made to local communities about their management plan
- apologise for delays in completing a claim and review their procedures to identify opportunities to minimise such delays
- review how and when they investigate creditors' claims in anticipation of challenges from debtors
- review contact procedures to ensure that correspondence with complainants is clear and accurate
- introduce routine updating for complainants and alter their inquiry and investigation policy and their complaints policy
- remind staff involved in complaints handling to ensure they make it clear, internally and externally, what stage complaints are at and keep complainants updated if they are unable to respond within published timescales.

Key figures in Scottish Government and devolved administration complaints 2012/13

- We received **207** complaints and dealt with 208
- The rate of complaints coming to us too early was **45%** (the overall rate is 40%)
- The rate of upheld complaints was **59%**, well above the overall rate of 46%
- People who received advice, support and signposting: **135**
- Number of cases decided following detailed consideration pre-investigation: **46**
- Complaints fully investigated **27** with 26* publicly reported to Parliament
- We made **35** recommendations for redress and improvement

* We publicly report the decisions a minimum of six weeks after sending the decision letter. In a small number of cases we do not put information in the public domain, usually to prevent the possibility of someone being identified.

What do people complain about?

Top subjects of complaints received 2012/13

| Subject | Total |
|---|-------|
| Justice | 27 |
| Care and health | 22 |
| Financial matters | 22 |
| Courts administration | 19 |
| Agriculture, environment, fishing & rural affairs | 10 |
| Education | 7 |
| Roads and transport | 6 |
| Planning | 5 |
| Arts, culture, heritage, leisure, sport & tourism | 4 |
| Ombudsmen/commissioners | 4 |

Taken as a whole, the top categories remain similar to last year, with some slight changes to the order.

Justice remains the top category of complaint, with a slight increase on the 22 complaints received in 2011/12. Complaints about how organisations handled issues about care and health, and then about financial matters, are next and were received in virtually the same numbers as last year, as were most other categories, with many showing only a few complaints more or less than in 2011/12. The most notable drop was in the number of complaints about educational issues, which fell from 20 to only seven.

As well as the complaints shown in the table above, we received a number of complaints where contact with us was at a very early stage and, although we knew they were related to this sector, we were not given enough information to enable us to take these further. We record these as 'subject not known'.

Issues in Scottish Government and devolved administration complaints

The table below shows the organisations in the sector about which we received most complaints. Again it is worth bearing in mind that many of the issues brought to us, particularly about organisations with a legal remit, were about matters that are out of our jurisdiction. A high number of complaints brought to us about an organisation does not, therefore, necessarily indicate that these were complaints that we could look at.

| Organisation | Total |
|---|-------|
| Student Awards Agency for Scotland | 32 |
| Crown Office & Procurator Fiscal Service | 30 |
| Scottish Government | 22 |
| Care Inspectorate | 19 |
| Scottish Courts Service | 12 |
| Police Complaints Commissioner for Scotland | 11 |
| Criminal Injuries Compensation Authority | 6 |
| Forestry Commission Scotland | 6 |
| Scottish Public Pensions Agency | 6 |
| Scottish Environment Protection Agency | 5 |
| Scottish Legal Aid Board | 5 |

We closed 29 of the complaints about the Student Awards Agency for Scotland (SAAS) as premature. Many of these had been prompted by information on the SAAS website which signposted people to the SPSO at too early a stage. When SAAS took action to remedy this, the number of premature complaints dropped.

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We upheld elements of two of the complaints we took forward. One was about the way SAAS handled an appeal against their decision to not accept a late application for tuition fee support (case 201201461). We found evidence of a number of problems during the appeals process, and also found that in their responses SAAS made statements (about what a university said they had done) for which they did not have supporting documentary evidence. We considered it would be reasonable for them to require institutions to provide documentary evidence of action they claimed to have taken, particularly where a complainant disputed these.

Our jurisdiction is extremely limited in relation to complaints about the Crown Office and Procurator Fiscal Service (COPFS). We found that eight of the complaints that reached us were out of our jurisdiction – they were about matters such as how the prosecution of a criminal case was handled, why charges were brought against only one of the parties involved in an incident, and how the investigation of a sudden death was carried out. Twelve other complaints came to us too early. Of the rest, we upheld four – of which there are examples later in this report – all about administrative matters and complaints handling.

Of the complaints we handled about the Scottish Government and its directorates, four were out of our jurisdiction, and thirteen reached us too early and were directed back to the local complaints procedure. We upheld one of the remaining complaints, about complaints handling, which is outlined later in this section.

Policy and administration complaints

By far the largest subject area across the authorities complained about was policy and administration and, of course, this is the very area in which we are most likely to be able to look at complaints about these authorities. Even so, 21 complaints turned out to be about issues that we could not look at, and 24 were premature. Of the complaints we took further, the subject matter varied considerably.

One example (case 201203653) involved a complaint that Highlands and Islands Enterprise (HIE) had said that they had been notified that there was interest in buying an area of land they were considering selling. The man who complained was of the view that this was not the case, and that they had simply claimed this in order to put the land on the open market and increase the value. He also felt that, in ultimately selling the land to a developer, HIE failed to protect the future amenity value of the land for the community. Our investigation found, among other things, evidence that there was interest in the land from other parties, and we noted that the designation of land as amenity was the responsibility of the council and not HIE. As HIE's actions were reasonable, and as we found no evidence of administrative failure in the way they dealt with this matter, we did not uphold the complaint.

Another complaint (case 201103288) was from a man who was a recreational deer stalker, and used land owned by the Forestry Commission Scotland (FCS). He said that they refused him permission to use a pistol to kill wounded deer, despite this being a recognised method of humane dispatch, and thought that this policy put him and others at risk. He complained to us that they refused to answer relevant questions or to produce the documentation they referred to in defence of their position. We found no legislation or guidance requiring the FCS to permit the use of pistols for this purpose and, as such, we considered that they had discretion to decide not to allow the use of pistols on their land. We were satisfied that this policy was not unreasonable and that they had given due consideration to the man's request. That said, we found that the information the FCS sent him was confusing, not relevant to recreational stalkers, and not specific to Scotland. We were also critical of their handling of the man's enquiries and complaint, although we noted that they had already accepted and apologised for this.

Finally we looked at a complaint from a woman who had been made bankrupt (case 201202962). She said that the Office of the Accountant in Bankruptcy (AiB) delayed in dealing with funds and did not respond adequately to her request for information. We told her that we could not look at what AiB did with the funds, but that we could look at how they responded when she queried this. Our investigation found that it took them seven weeks to deal with this, but that they did explain to her why there was a delay. In the circumstances, although the time they took was not ideal, we did not uphold this complaint. We found, however, that they did not respond adequately to her request for information. Although there was no evidence that AiB misinformed the woman, there was nothing to show that they actively kept her informed about what was happening or when matters were likely to be concluded. To do so would have been in keeping with good practice in dealing with correspondence and complaints. We recommended that they ensure that in future they keep phone notes and keep their correspondents updated.

Jurisdiction and complaints handling

We dealt with 38 complaints across the sector in which complaints handling was the main subject. We did not look further into 31 of these, as they had not completed the relevant organisation's complaints procedure. Of the remaining complaints, we upheld or partly upheld only three. As explained earlier, we often find that complaints about this sector are out of our jurisdiction, or our jurisdiction is severely limited. This means that we often cannot look at the substance of the complaint, simply the complaints handling.

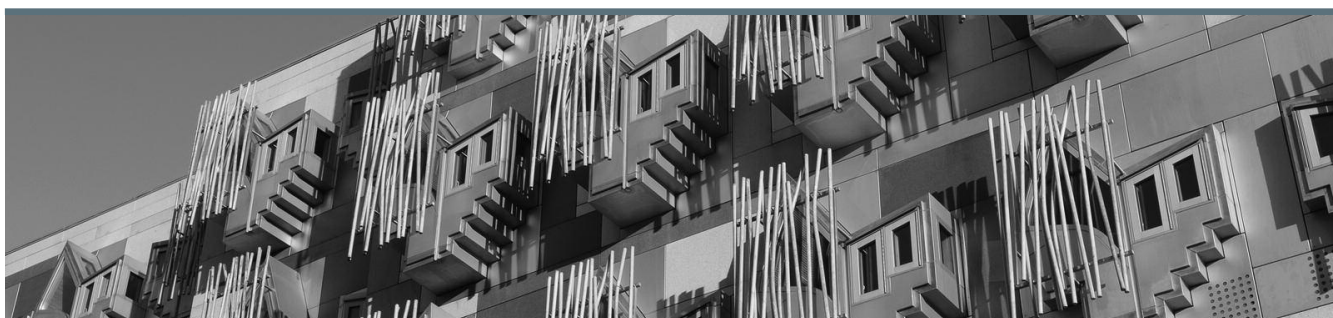
One case, where we upheld the complaints, and on which we publicly reported (case 201103092), was about a complaint to the Scottish Government Learning Directorate. A man complained to them about the way in which the Registrar for Independent Schools conducted an investigation. The man had requested that a notice was served on a school under section 99 of the Education (Scotland) Act 1980, on the grounds that his child's welfare as a pupil was not adequately safeguarded or promoted. The man complained that the Registrar did not thoroughly investigate this and

that his report to the Scottish Government was based on factually incorrect information. We took the view that, although it would not necessarily have changed the advice he gave to the Scottish Government, the Registrar should have followed up more robustly when considering the parent's request, and that he should have obtained clarification of the position from the Directorate. We noted that there were minor inaccuracies in the report. Our recommendations including improving procedures and pointing out our findings to the Registrar.

In another example (case 201201354), a man complained about the way in which the Office of the Scottish Charity Regulator (OSCR) dealt with his complaint about a charity. His concerns related to both the quality of the investigation and communication. We found no administrative failure in terms of the content of the investigation, but we did note that it had taken far too long to complete. In addition we noted that OSCR had failed to keep the man fully informed of the progress of the case and had not dealt appropriately with his subsequent complaint. We recommended that they apologise for these failures and review and improve their policies on investigation and complaints.

In a further example (case 201200720), a man complained to COPFS after his parents were victims of a crime involving damage to their property. COPFS had decided to fine the individual responsible, using a process called Fiscal Fine, but this did not include any provision for the cost of the damage. After the man complained, COPFS decided to make a goodwill payment to his parents for the cost of repairing the damage, but he felt that the payment was inadequate. The man's complaint about these decisions was not something that we could look at, as they are for COPFS themselves to make, provided they do so through the correct process. We did, however, investigate and uphold his complaint about their complaints handling, mainly because of unreasonable delay and failure to respond to all the issues he raised. We recommended that they apologise for this, and remind complaints handling staff to make it clear what stage a complaint is at, and to keep complainants updated if they cannot respond within stated timescales.

SHARING THE LEARNING



Each month, we publish reports of as many cases as we can and lay them before Parliament. In 2012/13 we published 26 decision reports about the sector, making them publicly available to raise awareness and to support learning within and across sectors. In doing this, we are careful to protect the identity of the person who complained and the person about whom the complaint was made. Although we publish the vast majority of our decisions, in a very small number of cases we take the view that even publishing anonymously might identify the individual, or that there are other reasons for not publishing, such as a person's vulnerability. In these rare circumstances we will exclude a case from publication.

The bulk of the reports we publish are summary reports of decision letters. These detail the complaint, our decision and whether recommendations were made. We also publish some full investigation reports each month where the public interest makes it important that all the detail is in the public domain. We published one such report about this sector in 2012/13, about a Scottish Government directorate. All reports are searchable on our website by organisation, date and outcome and they provide a wealth of information for

complainants and organisations. We promote learning from the reports through the Ombudsman's monthly e-newsletter which highlights themes and issues from our casework. It is sent to 2,000 recipients, including MSPs, scrutiny bodies, service providers, advocacy agencies and the media.

As we have highlighted, it is not unusual for us to have to tell an individual that we cannot look at the complaint they have brought us about an organisation in this sector because the subject matter is out of our jurisdiction. We have also outlined how we use communications tools to help people understand the limitations of our remit, through leaflets, our website and when people contact us with their individual concerns. If we are unable to look at the complaint, we try to help people find the right organisation to help them.

Working with others

We have memoranda of understanding with some of the authorities in this sector – for example Healthcare Improvement Scotland, the Office of the Scottish Charity Regulator and the Standards Commission for Scotland – and are developing others.

To read our decisions or search by subject, organisation or case reference number, visit www.spsso.org.uk/our-findings and to read our information leaflets, visit www.spsso.org.uk/information-leaflets

Our memoranda of understanding are on our website at www.spsso.org.uk/class-1-about-us.

IMPROVING COMPLAINTS STANDARDS

2012/13 was a significant year in moving towards our vision of introducing a standardised complaints handling procedure across the public sector. Our Complaints Standards Authority (CSA) worked with the Scottish Government, Scottish Parliament and other associated public authorities in Scotland as it moved towards publishing the model complaints handling procedure (CHP) in line with our statutory obligation to improve complaints standards.

Developing the model complaints handling procedure

Building on the successful development and implementation of model CHPs for other sectors, the CSA engaged with stakeholders from the Scottish Government and devolved administration. This engagement included the Scottish Government Directorate for Governance and Communities, the Scottish Parliamentary Corporate Body and other individual organisations in the sector. The model CHP was published on 28 March 2013.

We carried out a number of outreach activities with the sector throughout the year. These activities are important in ensuring both senior-level commitment to improving complaints handling and the quality of the arrangements that organisations were putting in place. They were used to explain the requirements of the model CHP, provide feedback on developing the CHP and organisational plans for implementation, and provide tailored advice on improving complaints handling processes and culture.

CHP compliance

While ensuring that bodies have adopted the CHP and its requirements in full, we want to be as light-touch as possible in monitoring implementation of model CHPs. The SPSO Act 2002 now contains powers for the Ombudsman to monitor and report on non-compliance, but our aim in publishing the model CHPs was to work with regulatory and sponsor bodies to develop a consistent method for monitoring

compliance against these within existing regulatory structures including, wherever possible, through self-assessment. Compliance with the model CHP will, therefore, be monitored by the SPSO in conjunction with the appropriate funding body.

Complaints handling performance

One of the aims of the CHPs is to improve the information available about complaints to help develop a performance culture in complaints handling across the public sector in Scotland. In addition to requiring bodies to analyse and report complaints information internally on a regular basis, CHPs require service providers to publish annual information on complaints performance statistics.

With each of the model CHPs we published indicative performance indicators, designed to be broadly consistent across the sectors. Our aim is to provide a greater consistency of reporting on complaints and provide a basis for developing benchmarking arrangements for comparing how sectors are performing in their complaints handling. For the first time members of the public will have access to clear, transparent and consistent information on the volume of complaints received by public bodies and how they have handled these. We are very grateful for the support that the Scottish Government, Scottish Parliament and other organisations within the devolved administration have shown in the development and implementation of the model CHP.

Supporting organisations

A key objective of the CSA is improvement through monitoring, promoting and facilitating the sharing of best practice in complaints handling and supporting service providers in improving their complaints handling. We aim to achieve this through developing and coordinating networks of complaints handlers, promoting good complaints handling by providers through the sharing of best practice and by developing and delivering high quality training.



Our CSA team: **Francesca Richards, Paul McFadden, John Stevenson**

Networks of complaints handlers

As with other sectors our aim is to establish a network or networks of complaints handlers for the Scottish Government and devolved administration, led by individuals from within the sector. The aims of the network will include supporting complaints handling practitioners, sharing best practice and learning, developing standardised reporting frameworks and providing a forum for benchmarking performance against SPSO indicators. The networks would also provide a voice for the sector on specific issues affecting complaints handling. As there is such a range of different services and functions across the sector, this may take the form of small networks of organisations providing similar services or engaging with similar customer groups. In this respect we are content to take the lead from the sector.

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Valuing Complaints website and online forum

In 2012/13 we facilitated the sharing of knowledge and best practice in complaints handling through the launch of our dedicated CSA website at **www.valuingcomplaints.org.uk**. The website, launched in May 2012, provides:

- information on the CSA and progress on roll-out across the sectors, including access to model CHPs and the requirements to implement these;
- good practice guidance on complaints handling and links to relevant sources of information and best practice in complaints handling;
- an online community forum for discussion and sharing best practice in the professional complaints handling community, both within and between sectors.
- an SPSO training centre providing access to our e-learning resources, and information about directly provided courses offered by the SPSO training unit.

Our aim over the year has been to develop the website and forum and increase its usage as a central information point for complaints handlers. The aim of the online forum, in particular, is to facilitate the effective professional networking of complaints handlers and support the sharing of experiences and learning.

Training

Training courses

Our training unit worked closely with the CSA throughout 2012/13, meeting a steep increase in demand for direct delivery training courses resulting from the introduction of the model CHPs and our engagement with the various sectors. Classroom-based training for complaints investigators and others involved in complaints handling remains crucial to improving the way that organisations handle complaints, particularly on reaching the right decisions first time.

E-learning courses

During the year we launched a number of e-learning modules on complaints handling. They aim to increase awareness of the importance of good complaints handling and the role of frontline staff in complaints, and help improve the skills required for successful frontline resolution. The modules are available free of charge to public sector staff and can be accessed through the training centre of our Valuing Complaints website.

The modules provide an opportunity for staff to think about complaints and how they handle them. They include real life scenarios so learners are able to practice new knowledge and skills in a safe environment, and they also demonstrate how complaints can be used to improve services.

For more about the CSA visit **www.valuingcomplaints.org.uk** and to learn more about our training activities, visit **www.spsotraining.org.uk**

CASE STUDIES

This is a selection of case studies from investigations we published into complaints about the Scottish Government and other devolved public organisations in 2012/13. Some show just how badly things can go wrong when policies are not followed, or complaints are not investigated properly. Others are included to show some of the positive actions that organisations take in response to complaints. To share this good practice, the reports on our website normally highlight where an organisation has taken such action. Still other case studies summarised here are included as examples of where organisations have delivered a service and investigated the complaints properly.

Administration of bankruptcy proceedings Case 201200845

A tradesman, who had been declared bankrupt, owed a man a large sum of money. The man complained to us that the Accountant in Bankruptcy (AIB) took too long to recover money and pay the creditors. We found that some years before, the tradesman had moved assets into another person's name. The AIB had successfully challenged this and raised an action against him, but the man who was owed the money complained that this took far too long. We found that the sequestration of the tradesman's estate was complex and was always going to take time. Ultimately, however, it took more than seven years to pay creditors, which we did not consider reasonable. Although there is no target timescale for the sequestration process, and the legislation allows unlimited extensions, we found that the AIB had caused at least fifteen months of avoidable delays. Individual actions taken to sequester the estate were reasonable, but we considered that the process could have been shortened if some tasks had been carried out simultaneously. Furthermore, midway through the process, the tradesman had questioned the amount of the man's claim. This led to the AIB reinvestigating the claim over several months in anticipation of a possible formal challenge. We considered that such challenges should be anticipated as a matter of course and that the additional investigation should take place either at the start of the claim process, or when the debtor actually formally challenges it.

Recommendations

The organisation apologise for the delays in completing the man's claim; review this case and their procedures to identify opportunities to minimise such delays; and consider reviewing how and when they investigate creditors' claims in anticipation of challenges from debtors.

Complaints handling and delay Case 201103627

A man, who is a former teacher, complained that the Scottish Qualifications Authority (SQA) did not respond reasonably to complaints that he and his school submitted about examinations. We found that the initial responses did not adequately address the complaints, and that there was a significant delay in responding to the points raised. In addition, the SQA should have explained that there would be a delay in responding to one of their letters because the matters raised were to be discussed at a meeting. We, therefore, upheld the complaint. However, we also found that the SQA had already reminded staff to ensure that they provided appropriate information in response to all enquiries and complaints, and of the importance of adhering to the timescales in their customer complaints process. We, therefore, only made one recommendation.

Recommendations

The organisation apologise for failing to adequately address the issues raised in the initial correspondence and the delays in responding to some of the complaints.

Administrative failures

Case 201204430

A man was told to attend court as a witness in a trial. However, when he turned up he was told that he was not needed because the accused had pled guilty. The man complained to the Crown Office and Procurator Fiscal Service (COPFS) that because he was not told this he suffered financial loss and unnecessary upset, anxiety and inconvenience. COPFS apologised and explained that the omission was a result of administrative errors. They explained that they did not make payments in respect of upset, anxiety or inconvenience, but invited him to submit an expenses claim for financial loss, which they then paid as if the trial had gone ahead. We upheld the complaint, as COPFS had accepted that it was their error that had caused him to turn up unnecessarily, but as they had already taken steps to address the problem we did not make any recommendations.

Drainage issues – trunk road

Case 201103465

A man's house is accessed from a trunk road maintained by contractors working on behalf of Transport Scotland. Some years before, contractors working for the previous road authority had upgraded the road and the access. The man complained to Transport Scotland that drainage problems were affecting his property, which he thought were linked to these earlier road works. He was unhappy with their response, and complained to us that Transport Scotland had not adequately provided for water draining from the trunk road, and had denied liability for this.

Our investigation did not find evidence to uphold his complaints. Transport Scotland had not accepted liability, as they were entitled to do. Changes in the trunk road contractor and the misplacing or disposal of relevant drawings meant that it was not possible to establish what was designed. We noted that on a 'without prejudice' basis, Transport Scotland had since instructed works to try to resolve the problems, but the man disputed that these had been effective. Because of this, we made one recommendation.

Recommendations

The organisation monitor the effectiveness of the works and, should these not prove effective in draining water from the road, consider what more could be done.

Notification of rescheduling of ancient monument

Case 201103675

A woman complained on behalf of a male relative about Historic Scotland's process for rescheduling an existing scheduled monument. She said they did not provide clear information on the process, which caused him confusion and uncertainty and meant that he did not submit relevant information to them. She also said that their letters did not convey the importance of the issue or explain that his property was affected, and failed to suggest that he should consider seeking legal advice.

We found that there is no legal requirement for Historic Scotland to consult with owners before rescheduling an existing monument, or to advise owners to consider seeking legal advice. Their procedures only require them to notify the owner or occupier. The evidence showed that Historic Scotland wrote to her relative three times about this, and the letters made it clear that this was an important matter that might affect him. They sent him maps showing his property and in each letter they invited him to contact them if he had any questions, which he did not do. We considered that, if he had been uncertain about what the letters meant, it would have been reasonable for him to have contacted Historic Scotland.

Environmental checking Case 201103656

A landowner who owns a stretch of river close to a fish farm complained that when Highlands and Islands Enterprise (HIE) approved a grant for expansion of the fish farm, they did not conduct sufficiently robust environmental checks or investigate the probable environmental impact. Our investigation, which included taking professional advice, found that HIE's scrutiny process was reasonable and had been properly applied. Overall, we were satisfied that HIE are not a regulatory body and it is not their role to monitor or police compliance, and as the application documentation was correctly scrutinised, assessed and evaluated we did not uphold the complaint.

We found, however, that some of the information about how the fish farm complied with environmental regulations was supplied by the applicants themselves. They had provided copies of licences issued by SEPA, and HIE made some enquiries to ensure that the licences were current and that SEPA were working with the fish farm to ensure ongoing compliance. Our adviser said that while this complied with the process in place at the time, it would be more robust if this was obtained from a third party, such as a regulatory body – in this case the Scottish Environmental Protection Agency (SEPA). HIE have since reviewed their procedures and issued revised staff guidance, so that in future information on compliance will be obtained directly from the regulatory body.

Failure to respond to concerns Case 201104524

A woman complained that the Mental Welfare Commission for Scotland (MWC) did not respond appropriately to a letter that her son sent them, in which he explained his concerns about his detention and treatment under mental health legislation. She was also unhappy that the MWC did not tell her or her husband about the letter, and said that they failed to provide her son with reasonable levels of help. We did not look into the complaint about levels of help, as it came to us too early – the woman had not given the MWC the opportunity to respond through their complaints process. We did not uphold her complaint that they did not tell her or her husband about the letter, as the MWC had no authority to share this with them. We did, however, uphold her complaint that they failed to respond appropriately. We found that their response was delayed by staff absence and that, by the time the letter was actioned, their son had moved to another part of the UK. As, however, the MWC had acknowledged and apologised for their failure to respond promptly to the letter, made changes to their processes and as they had visited her son in hospital when he returned to Scotland, we did not make any recommendations.

Handling of appeal about student award Case 201201461

A man complained about the way in which the Student Awards Agency for Scotland (SAAS) handled his appeal against their decision to not accept his son's late application for tuition fee support. Although we did not uphold all his complaints, we did find that there were problems in the handling of his appeal, including failure to ensure that the correct person handled it at different stages, and to ensure that additional information was fully considered. We also found that they made statements in their responses (about action that they said a university had taken) for which they did not have supporting evidence, which the man disputed and for which he had some supporting evidence.

Recommendations

The organisation apologise in writing for failing to escalate the appeal to the chief executive and for not obtaining evidence of the university's actions; provide us with documentary evidence that they raised the failings with staff involved; obtain the missing evidence and review their decision based on this, and put procedures in place to make sure that staff in future obtain appropriate evidence when considering student appeals.

Complaints handling Case 201102066

A childminder complained that the Care Inspectorate upheld a complaint that she did not have a safety net on a trampoline used by children in her care. She said that this had not been pointed out on previous inspections. She also said that they ignored information from the parents of the children she looked after, which indicated that they were aware that there was no safety net but were happy for their children to use the equipment without it. The law says that we cannot question a discretionary decision made by an organisation where there is no evidence of administrative error, and we found no such evidence in this case. The information that the parents had sent had clearly been considered, and it was for the Care Inspectorate to decide how much importance to attach to this when reaching their decision. We also considered it appropriate for them to raise legitimate concerns that had not been picked up on previous inspections.

We did find that the Care Inspectorate had not responded to all of the points in the woman's complaint and had delayed in replying. As they had, however, since issued a response that we considered appropriate and had apologised for the omission, we did not make any recommendations.

Administration of decisions Case 201200179

A man contacted us after Registers of Scotland (RoS) made an error that affected his family's title to property. Although RoS agreed that they had done this, he complained to us that, among other things, they had refused to honour an agreement to compensate him for the loss, or to fix the error.

Our investigation found that in 2009 and 2010 RoS had told the man that he was entitled to make a claim against them on the grounds that they had refused to rectify the register. However, when he made his claim, it was refused on the basis that there had been no decision not to rectify. The Keeper of the Records told us that the register was not rectified at first as at that point no inaccuracy had been established. When one was established, in 2010, the application was cancelled as an issue about possession had to be resolved. She explained that there was some confusion among staff about whether the application had been refused or cancelled but that the refusal was in accordance with new practice at the time. It appeared, however, that no one told the man about this until 2011, and the standards for dealing with his claim had, therefore, changed without him being told, so we upheld his complaint. However, we noted that the way for him to challenge the decision was by appealing to the Lands Tribunal. We also found that to make his claim the man had to obtain a valuation of the land involved. He said that staff at RoS had told him to do so, but they now denied this. We found evidence indicating that his recollection of events was likely to have been correct.

Recommendations

The organisation apologise for the confusion and inconvenience caused and for the fact that they did not formally tell him that his rectification application had been cancelled.

Further information about this sector is available on our website at www.spsso.org.uk/statistics

Note: No decision reached' includes not duly made, withdrawn and resolved.
NB these numbers exclude complaints about the Scottish Prison Service, on which we have issued a separate report

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