

SCOTTISH PUBLIC SERVICES OMBUDSMAN

ANNUAL COMPLAINTS REPORT 2012–2013

Learning
from
complaints



Improving
complaints
handling



Supporting
public service
improvement



LOCAL GOVERNMENT

SPSO

This is one of a series of reports through which we are aiming to put key messages, information and analysis of complaints about individual sectors into the public domain. We anticipate that Parliamentary committees, government departments, scrutiny bodies, regulators and local 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 the SPSO and how we handle them.

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(L – R: Jim Martin, Lorne Crerar, Douglas Sinclair)



It is an enormous personal pleasure to evidence the fulfilment of the vision and ambitions of my Review for the reform of the Complaints Handling System for Public Bodies in Scotland. I strongly believe the SPSO has put in place a leading world class system which helps ensure that public service delivery is to the highest level. The Ombudsman and his team should be congratulated for a job well done. PROFESSOR LORNE CRERAR

The approach by the Fit for Purpose Complaints System Action Group can be summarised in one word: simplification. That objective has now been achieved. We now have standardised, simplified complaints handling processes for each public service sector. The SPSO has built this strong and enduring foundation on which our public services need to continue to embed an ethos which sees genuine complaints as opportunities for learning and which empowers complaints handlers to resolve as many complaints as possible at the first level. DOUGLAS SINCLAIR

OMBUDSMAN'S INTRODUCTION



It is this culture of valuing complaints combined with processes that are simple and accessible that will, in time, lead to the significant improvements that councils and the public want to see.



It is appropriate that my inaugural sectoral report is about local government. It is the sector about which we receive the most complaints (37% of our total caseload in 2012/13) and, most significantly for this reporting year, it is the first sector in which a standardised model complaints handling procedure (CHP) was implemented.

This radical innovation was led by our Complaints Standards Authority (CSA), a small team within the SPSO that is working to deliver the decision of Parliament that there should be standardised complaints handling procedures across the public sector that are simple, streamlined and accessible, and that deal with complaints as quickly and effectively as possible. The model CHP for the local government sector was published in March 2012 with an implementation date of 1 April 2013. All 32 councils in Scotland now operate the same procedure, underpinned by the principles approved by the Parliament.

I was very pleased that the architects of the new complaints landscape – Professor Lorne Crerar and Douglas Sinclair – have given positive verdicts on our work to bring about this groundbreaking new approach to complaints handling.

Changes to the delivery of services

Throughout the past year, I have been keen to ensure that SPSO is as well prepared as possible for policy changes that may impact on our work. There are two areas of significant potential change – social work complaints processes and further integration of health and social care services.

We have outlined in our consultation responses and elsewhere how we see these changes impacting on users of public services, and there is a summary of our policy engagement later in this report. An important message is that where changes are proposed, the service user's right to challenge decisions should be considered in advance and complaints systems embedded in policy changes at the formulation stage. To truly put an individual's needs, for example those of a person who needs a combination of health and social care, at the heart of a process means considering how they will be able to challenge decisions they disagree with or raise concerns about the quality of care received.



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Performance monitoring and continuous improvement

As well as developing the model complaints handling procedures, the CSA has laid the groundwork for future continuous improvement. All councils are now required to publish information on their complaints handling performance on an annual basis and publish a quarterly summary of outcomes, trends and actions taken.

We have developed a set of performance indicators against which all councils will be required to report. This will provide rich complaints data for the sector as a whole, providing consistency and transparency on the numbers of complaints received, the areas of service they relate to and how they have been handled. It will help each individual council to benchmark their complaints handling performance against other councils and identify emerging trends and areas for service improvement.

I appreciate that the requirement to implement the model complaints handling procedure coincided with increasing financial pressure on local authorities. I am grateful for the way authorities have risen to the challenge of implementation and in particular for the expertise, time and hard work put in by the members of the local authority complaints handlers group that worked with the CSA to bring about these changes. I am confident that authorities and the public will reap the benefits in years to come.

The CSA has carried out our statutory role to promote good complaints handling in a number of innovative ways, including establishing sectoral networks and a cross-sectoral online community. Its informative website carries guidance on good complaints handling, and hosts an online training centre. The hundreds of case studies we have published on the SPSO website provide a wealth of material to raise awareness and support learning.

I urge local authorities to draw on these tools and look forward to continuing to work with them to enable them to demonstrate more fully to their service users 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

In 2012/13 we received 1,505 complaints about local government, representing a continuing trend of a slight drop in complaints received about this sector (down from 1,527 in 2011/12 and 1,604 in 2010/11). The local government complaints we received made up 37% of our total caseload and it remains the sector about which we receive most complaints (the next largest is the health sector, which in 2012/13 accounted for 30% of our caseload).

During the year, we dealt with 1,507 complaints, 1% more than in 2011/12 (the number of complaints received and dealt with differ because some cases received at the end of 2011/12 were dealt with in 2012/13).

What we do with complaints

At the end of this report, there is a table with the outcomes of all the local government complaints we dealt with. Below, 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 provide not only advice about our work but also help people find additional support. They can 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 normally are only able to deal with complaints when they have completed the local authority 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 local authority. We can also give advice about other organisations that may be able to help, such as Citizens Advice Bureaux or advocacy groups, who can help people through the complaints process.

Premature complaints

This year saw a small drop in the number of premature complaints about the local government sector, from 52% to 50%. Compared with other sectors, however, this is a high rate (the overall rate is 40%) and in 2013/14 we launched a project that aims to try to reduce the number of premature complaints by drilling down in more detail into why people come to us before completing an organisation's complaints process.

There are two main reasons for premature complaints. The first is that the complainant does not have enough information about the council's complaints process and does not understand how to escalate their complaint. The second is that, despite the complainant having the correct information, their complaint has got stuck in the system. Through our project, we want to provide more information about the premature complaints we receive, for example, by highlighting where there may be different numbers received about particular departments or services. This will help councils find any gaps in their signposting or flaws in their process that may be causing premature complaints. We recognise that there will always be people who want to bypass the local process – our aim is to reduce the level of local government premature complaints to the same kind of rate as we see in other sectors, such as 30% for health complaints.

All enquiries and the vast majority of premature complaints are dealt with by our advice team. In 2012/13, the team handled 21 enquiries about local authority services, and 1,051 complaints, of which 704 were premature. At the next stage in our process, where complaints receive further detailed review, another 46 local authority cases were found to be premature.

Assessing complaints

Last year, 492 local government 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 what outcome they want. We aim to see if there is a resolution that would be agreeable and acceptable to all parties and last year we resolved 16 at this stage.

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. Our complaints reviewers are helped in their work by being able to call on the services of professional advisers. In the case of local government, we have three planning advisers, who provide technical advice in complaints about planning matters, advising whether processes and procedures have been properly followed. The SPSO remains responsible for the decisions made on each complaint and we are careful to ensure we test the advice we receive and that it is of the highest quality.

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 249 cases further. In some instances 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 or not the complaint should or should not be upheld. 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 that some local government complaints are about difficult experiences, for example those that involve social work issues or school bullying. 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 decisions by letter in 237 local government cases and a further six complaints went to our full detailed report stage because they satisfied our public interest criteria.

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. Across the local government sector, we made 191 recommendations in 2012/13. The case studies at the end of this report provide examples of the kinds of recommendations we make. There are many more available in the cases published on our website. 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.

Key figures in local government complaints 2012/13

➤ We received **1,505** complaints and dealt with **1,507** complaints

➤ The rate of complaints coming to us too early dropped from 52% to **50%** compared with last year – but it is still high compared with other sectors (the overall rate is 40%)

➤ The rate of upheld complaints was **47%** up from 32% last year and above the overall rate of 46%

➤ People who received advice, support and signposting: **1,036**

➤ Number of cases decided following detailed consideration pre-investigation: **249**

➤ Complaints fully investigated **243** with 228* publicly reported to Parliament

➤ We made **191** 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?

The top five areas complained about remain the same as previous years, with little change further down the table either. While the numbers are small, the most notable changes were in building control and roads and transport where complaints dropped by 38% and 24% respectively and in environmental health and cleansing, where complaints rose by 50%.

Top areas of local government complaints received 2012/13

Housing	361
Planning	197
Social work	183
Finance	85
Education	76
Roads and transport	73
Environmental health and cleansing	60
Legal and administration	48
Land and property	28
Building control	26

The number of complaints received about planning fell (by 6%), although the number of upheld complaints about planning rose (we provide more detail about this in the planning section later). Other subjects of complaint that saw an increase (albeit on much lower numbers of complaints) were finance, which saw a 16% increase and environmental health, as mentioned above.

Within these broad areas of complaint, we received most complaints about the subject of policy and administration. This is an extremely broad category, usually covering the way in which a local authority has handled an issue. Complaints received under this category varied from concerns about a local authority's

monitoring of safety policies in a working harbour to those of a group of home-owners who complained that the council failed to properly handle issues relating to the conditions attached to planning consent granted before their homes were built. We also received complaints about how rights of way were administered, and about how a council went about changing a system they had for numbering flats.

Some of the case studies at the end of this report are examples of policy and administration complaints, including one where a council failed to provide accurate information when a woman wanted to build a driveway into her property.

Top subjects of local government complaints received 2012/13

Policy/administration	211
Housing repairs and maintenance	130
Planning – handling of application (complaints by opponents)	98
Complaints handling, including social work complaints procedures	83
Council tax	75
Neighbour disputes and anti-social behaviour	63
Housing applications, allocations, transfers and exchanges	42
Local housing allowance and council tax benefit	34
Parking	33
Social work – child services and family support	31

Issues in local government complaints

Housing issues comprise five of the other top ten subjects of complaint. Housing is the subject of a separate report, but it is worth noting that there was a 6% increase in the number of complaints received about local government in which housing was the main subject of the complaint. One of our case study examples is about a council tenant who was unhappy about the way the council handled repairs to her property, which she had to vacate while they were carried out, and that was not left in the state she had expected. It is also worth pointing out that even where a local authority have not retained their housing stock, they may still receive complaints related to housing issues, such as those about anti-social behaviour, or housing-related benefits.

Looking ahead, we anticipate a rise in complaints related to changes resulting from cuts in local authority budgets. These are already generating complaints, and recent examples include councils deciding not to maintain roads that they have previously maintained as a gesture of goodwill, council house improvement schemes being scaled back, significant increases in burial costs, and cuts in library opening hours.

Complaints handling

We received 83 complaints that were directly about complaints handling. In addition to this, in more than half of the cases in which we upheld or partly upheld a complaint, the upheld aspect

included the council's handling of the original complaint. These failings were in all areas of council services, and ranged from failure to reply to a letter or to respond to a complaint, or delays in completing the response, to serious shortcomings in how the social work complaints procedure was used. In many cases, complaints handling was the only element that we upheld, and the authority had done nothing wrong in terms of the main issue complained about.

For example, in council tax cases, five out of six complaints were found to involve poor complaints handling. In one example of this, a woman complained about a council taking recovery action against her for unpaid council tax. We did not uphold that complaint, because we found that her council tax account was in arrears and she did not make reasonable attempts to contact the council to make payment arrangements. However, we upheld her complaints that the council did not respond to emails and about the quality of their complaint response (case 201200138).

In another area – recreation and leisure complaints – all four cases that we upheld had a complaints handling element. Local authorities should look carefully at all these areas and ensure that staff understand the need to handle complaints according to the relevant complaints procedure, and that they must not lose sight of the handling of the complaint while dealing with the issue complained about.

To read our decisions or search by subject, authority or case reference number, visit www.spsso.org.uk/our-findings

CASEWORK



Planning

The subjects of complaint that saw the greatest rise in upheld complaints were policy and administration (mainly in the areas of planning and social work) and the handling of planning applications. Planning is the second highest subject of complaints received about local authorities, and saw a notable increase in the number of upheld complaints (from a total of 16 in 2011/12 to 38 last year). This is of particular interest because we saw a small drop in the overall number of planning complaints that reached us during the year (from 210 in 2011/12 to 197 last year).

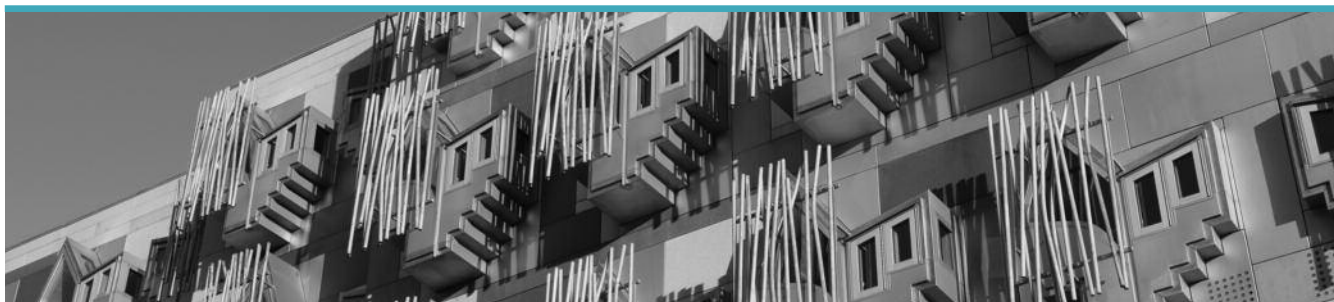
Of the planning cases where we upheld either all or part of a complaint, we found that in well over half (24) poor correspondence or complaints handling was an issue. Failure to follow the planning process appropriately featured in 16 cases, related to issues such as the accuracy of information or measurements on websites and in reports, leading to the complainant questioning the decision. In five cases we upheld complaints about failure to properly enforce planning conditions or to deal with a breach of planning permission and in three we found that a council failed to notify neighbours about proposed development. (A number of the cases featured multiple failures, usually a combination of poor complaints handling and the planning process.) We also upheld cases where enforcement of planning conditions was an issue. This area is one of frustration for complainants, who most often have a concern that a developer is apparently flouting a condition laid down when planning permission was granted.

Of the six detailed local government investigation reports, four were about planning issues – failure to ensure that a developer complied with planning consent, or to enforce planning conditions (cases 201103415, 201101316); failure to ensure that a developer provided an adequate source of water for a new housing estate (case 201102194) and about the way a council decided to identify a particular location for development (case 201003487).

Social work

In this subject, ten out of twelve upheld complaints related to or were directly about complaints handling. This high percentage reflects the fact that the complaints themselves mainly related to issues about how matters were handled through the statutory social work complaints process. We have found discrepancies between councils about who they will permit to take a complaint through this process – one case study in this report demonstrates this (case 201104029). Other cases related to a failure to direct the individual to the normal complaints process when a council said a complaint was not appropriate to the social work process, and there were two about a delay in convening a complaints review committee. Two cases involved concerns that a complaints review committee did not look at issues that we considered they should have looked at (for example see case study 201101997).

SHARING THE LEARNING



Publishing reports

Each month, we publish reports of as many cases as we can and lay them before Parliament. In 2012/13 we published 228 decisions about the local government 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. Often complaints are brought to us by family members. There is a very small number of cases where even publishing anonymously would identify an individual, or where for other reasons such as a person's vulnerability, it would be inappropriate to publish. In these rare circumstances we will exclude a case from publication.

The bulk of the reports are the summary reports of decision letters. These detail the complaint, our decision and whether recommendations were made. We also publish each month some full investigation reports (six about the local government sector in 2012/13) where it is in the public interest that all the detail is in the public domain. All the 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 1,800 recipients, including MSPs, scrutiny bodies, service providers, advocacy agencies and the media.

Annual letters

Each year, as an additional tool for learning and improvement, we send each council their own individual statistics to consider. We publish these annual letters on our website.

Working with others

As well as publishing reports, we also have memoranda of understanding in place with key regulator, inspectorate and scrutiny bodies such as the Standards Commission for Scotland, the Scottish Social Services Council and the Scottish Housing Regulator to help them to use complaints as part of their work. While our role is to seek redress for people at an individual level, if an investigation points to the possibility of a systemic issue, we can and do make broader recommendations as well as publicly alert the appropriate organisation to look into the matter. There can be insight and learning from the different approaches of organisations with different roles and it is essential that we all share information and concerns, within the legal limits under which we operate.

Our arrangements with professional bodies, regulators and others are set out in a series of protocols and memoranda of understanding, which are published on our website at <http://www.spsa.org.uk/freedom-information/spso-publications-list/about-spsa>

IMPROVING COMPLAINTS STANDARDS

Model complaints handling procedures

As we have highlighted earlier, 2012/13 was a significant year in moving towards our vision of a streamlined complaints handling system across the public sector, with the local government and housing sectors leading the way. Our Complaints Standards Authority (CSA) published the model complaints handling procedure (model CHP) for local authorities in March 2012 and supported these organisations in implementing their model CHPs throughout 2012/13. The model CHP is now operating across all council services in the 32 local authorities (with the exception of services subject to pre-existing legislative guidance and directions, such as social work). This is a significant achievement, which was realised through a partnership approach and the significant efforts of local authorities.

Process and procedure have been the key focus, with standardised stages, timescales, recording and reporting and clarity around roles and responsibilities. However, we recognise that process and procedure are only part of a successful complaints system. The key to a robust and effective approach to complaints handling – one that truly values and uses complaints to inform service improvement – is in the culture of the organisation. The CSA message in this regard has been consistent – the need to build a culture where all staff value and welcome complaints, with frontline resolution as close to the point of service delivery as possible, and organisational learning from all complaints driving and informing service improvements. A performance culture should also drive complaints handling with a key set of common indicators developed to assess and monitor complaints handling performance and allow for benchmarking of consistent information. Our work with local government will continue to focus on these areas.



We recognise that process and procedure are only part of a successful complaints system. The key to a robust and effective approach to complaints handling – one that truly values and uses complaints to inform service improvement – is in the culture of the organisation.



Complaints handlers network

In 2012/13 we successfully established the local authority complaints handlers network, which met for the first time in September 2012 and twice after this in 2012/13. The network is led by the sector for the sector and its aims are to:

- **share best practice in complaints handling**
- **share learning from complaints**
- **provide a benchmarking forum**
- **provide a voice for the sector on complaints handling**

The network discussed shared experiences of implementing the model CHP, common solutions to the challenges arising from this and areas of best practice in what they do. Future plans for the network include further developing the approach to benchmarking performance, developing a methodology to allow comparison of costs and volumes, helping to further develop SPSO training/e-learning courses and producing a best practice *'Learning from complaints'* guide. We will also use the network to discuss specific issues and developments in complaints handling, including the approach to integrating complaints procedures as part of the forthcoming integration of health and social care.

We have welcomed the positive response to the establishment of the network and the input from all members. Our particular thanks go to North Lanarkshire Council who took up the role of chair of the network in the crucial early period of operation, including the administration and facilitation of the regular meetings, and whose efforts have seen the network membership grow to 25 local authorities. We will continue to engage with the network as our key partner in complaints handling for the local government sector.

Performance indicators

With the network, we developed detailed performance indicators for the sector, based on those previously outlined in the model CHP *Guide to Implementation*. Local authorities will be required to report against these indicators from 2013/14, and they will be comparable against other public service providers. These indicators will help us move towards a greater consistency of reporting on complaints across the sectors and provide an excellent basis for developing benchmarking arrangements for comparing how the various sectors are performing in relation to their complaints handling.

Training

During the year we launched a number of e-learning courses, including one developed specifically for local authority staff. The eight short modules are designed to support staff awareness of the frontline resolution stage of the model CHP, and good practice in complaints handling in general. The modules can be accessed through the training centre of our Valuing Complaints website.

Since the launch, over 1,500 local authority staff have registered for e-learning and six local authorities are running the modules directly from their own learning management system so that they can track participation and completion, with some making it compulsory for all existing and new staff. A number of councils have developed an internal training package using the e-learning materials as part of a blended learning package.

During 2012/13 our training team provided 21 direct delivery courses to staff in ten different local authorities. Two courses looked at frontline resolution with the remainder focusing on complaints investigation skills.

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

POLICY AND ENGAGEMENT

Consultations

The complaints that people bring us provide a valuable source of information about the direct experiences of those using council services. As we have said earlier, we put as much of this as possible in the public domain and use recommendations to try to prevent the same problem happening again. We also use our knowledge of complaints systems and people's experience of such systems when we respond to inquiries and consultations.

Sometimes, we are called to give direct evidence. Each year, the Ombudsman gives evidence to the Local Government and Regeneration Committee in connection with our annual report. We also responded to a number of consultations where the subject matter had a direct impact on or relevance to our work.

SPSO local government-related consultation responses 2012/13

15 Aug 2012	Scottish Housing Regulator's consultation on Scottish Social Housing Charter indicators
11 Sept 2012	Scottish Government consultation on the integration of adult health and social care in Scotland
25 Sept 2012	Scottish Government consultation on the Children and Young People Bill
27 Sept 2012	Margaret Mitchell MSP's consultation on a proposed Apologies Bill
16 Jan 2013	Briefing for Local Government and Regeneration Committee
23 Jan 2013	Oral evidence to Local Government and Regeneration Committee

We post all evidence sessions and consultation responses on our website at: www.spsos.org.uk/media-centre/inquiries-and-consultations

Integration of health and social care

We want to highlight in this report a repeated theme in our responses. This is the difficulty currently caused by a number of incompatible and overlapping complaints processes in the fields of health and social care. This problem will become critical as, while the move to integrate health and social care is going ahead, complaints processes are being left behind and increasingly reflect a style of provision that no longer exists.

To give a practical example, let us consider an older person who has complex needs but who can still remain at home with the right mix of

support. A number of bodies will be involved: the local authority has responsibility for assessing needs, a registered care service may provide support and direct assistance and the individual may also require NHS care and support. Organisations already do their best to work together and co-ordinate their efforts and the move to further integration aims to make these processes smoother and more effective. However, what happens if that person is unhappy? At present, and if there are no legislative changes in the near future, the position will look like this:

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POLICY AND ENGAGEMENT



- Complaints about NHS services are governed by the Patient Rights Act 2011 and secondary legislation. The person will have a number of options about how to raise concerns and if they wish to complain there will be a simple, single investigation with a response within 20 working days and then the right to bring the complaint to the SPSO. At that point, if relevant, we will be able to directly consider professional judgment because we can look at the clinical decisions made by NHS staff.
- Complaints about a registered care service are governed by the Public Services Reform (Scotland) Act 2010. The person does not need to complain to the organisation first but is encouraged to do so as this may resolve the problem. Complaints are made to the Care Inspectorate and they will assess the complaint against the Care Standards. If the person is unhappy with the work of the Care Inspectorate, they can complain to the SPSO but we will only look at the work of the Care Inspectorate and not the registered care service.
- Complaints about local authority social work assessments are governed by the Social Work (Scotland) Act 1968 and Directions issued in 1996. This is a much longer and more complex process than either of the first two and involves complaining to a quasi-independent complaints review committee (CRC). The CRC can look at professional judgment. If the person is unhappy with the CRC they can complain to us. We can comment on maladministration but professional judgment is a matter of discretion and, outside of health complaints, is excluded from our jurisdiction.

There are, therefore, three different complaints systems with three different standards for judging complaints. This is clearly not a satisfactory position and will become more complex when we are having to work out which part of an integrated service needs to be put through which complaints process because, for example, ultimately something is still a local authority responsibility even if it is being carried out by NHS staff.

We have suggested that a possible way forward (one that we think would require minimal legislative intervention) would be for the social work and health complaints procedures to be aligned. This would mean that when complaints come to us we could also look at professional judgment in a social work context. There is more detail about this below. We have also suggested that we and the Care Inspectorate should be given the flexibility to work together on certain complaints.

Social work

Under the current social work complaints process, the final step before a complaint can be brought to our office is to take the complaint to a complaints review committee (CRC). This is a local authority committee but one that involves independent membership and the ability to make recommendations to change decisions. Such committees can review the judgement of professionals and this is an important protection for individuals, but our experience is that access to CRCs can be patchy, and may depend on where the complainant lives. We also see significant variation in how local authorities interpret the Directions. For example as mentioned on page 12, in the complaints we see, we find they can have different views about who can complain and what they can complain about.

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It is worth pointing out that we are not generally able to look into the subject matter of such complaints, merely the process through which the complainant went in pursuing their complaint. As we have highlighted earlier, this is because we cannot directly review the discretionary decisions that are the professional judgment of social workers.

The social work complaints procedure, therefore, is an area where most stakeholders agree that reform is needed. During 2012/13 the process was under review by the Scottish Government, who published a report of their consultation in August 2012. They then set up a working group to look at this in more detail. We have participated in this with other interested parties, including the Care Inspectorate, the Convention of Scottish Local Authorities (COSLA), the Association of Directors of Social Work and a number of third sector organisations, including Capability Scotland.

It is not yet clear what the final shape of social work complaints handling will be in future. Although no final decision has been made, the Government has stated its preferred option, which includes adopting the Complaints Standards Authority model process for internal handling of complaints (with some flexibility around timescales) and the SPSO taking on the role of CRCs, with a remit to look more closely at the decisions made in social work service provision. This is a model we support. A final proposal will be agreed in the coming year. Whatever happens, it is likely that the way in which we handle social work complaints in future will be different, and in fact may mean we can give them a different level of scrutiny from that which we can provide at the moment. In his evidence to the Local Government and Regeneration Committee in January 2013, the Ombudsman pointed out that 'any change to the current system will have an impact on complaints numbers and the expertise required within the SPSO'.

It is important to note that, until any changes are made, the current process remains in force and local authorities need to ensure that access to this system is maintained. They also need to

ensure that they interpret the Directions carefully bearing in mind that the ability to question decisions is an important safeguard for the public.

Scottish Welfare Fund

In April 2013 Scottish local authorities took on a new role, administering a replacement for community care grants and crisis loans, known as the Scottish Welfare Fund. When this happened, the fund automatically came within the remit of the SPSO. In preparation for this we prepared a leaflet for advisers and others about our new role. The leaflet explained that our role is different from the Independent Review of the Social Fund (IRS), the previous body which reviewed decisions made about grants and loans, which was abolished by the UK government. This is because our legislation means that, unlike the IRS, we cannot normally look at whether a decision is correct. Our leaflet explains that there are two local authority processes that can be used to raise concerns about the fund. The review process allows the local authority to reconsider the decision. The complaints process deals with customer service complaints and some issues that cannot be raised through the review process. The Scottish Government has issued detailed guidance and documentation about the fund, which can be found on their website. It is not yet clear how many complaints we are likely to receive about the fund and its administration, although figures so far have been low. We will reflect on this again at the end of the coming year.

The Scottish Government has made it clear that the current arrangements will be in place for an interim period of two years. We understand that local authorities, through COSLA, have agreed to take on the role of administering the Scottish Welfare Fund on an ongoing basis but the future review arrangements to be put in place are less clear at this stage. The Scottish Government will shortly undertake a consultation on future options and one of those is likely to be to provide the SPSO with a remit to undertake second tier review of the decisions made. This is, therefore, an area we will continue to monitor closely.

For SPSO leaflets, visit www.spsos.org.uk/information-leaflets

CASE STUDIES

This is a selection of case studies from investigations we published about local authorities in 2012/13. Some illustrate the double injustice that can happen when a poorly delivered service is compounded by poor complaints handling. Other case studies 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 a complaint properly.

Delay in assessing an appeal about priority housing need Case 201100730 **Positive action taken by organisation**

This complaint was about an application for priority housing. A man sent the council a medical assessment form, explaining that his property was unsuitable as his daughter had complex health needs. He was awarded 'serious medical need' priority, but appealed this and was awarded 'urgent medical need' priority, although not until more than four months after he appealed. We found that it took far too long to deal with that appeal. We also found that the council had not given clear, detailed reasons for initially only awarding 'serious medical need', and had not backdated the 'urgent medical need' award to the correct date. The council apologised for the delay, reviewed their medical assessment process and met with their medical adviser to ensure that the outcome of medical assessments is in future properly explained to applicants. They also backdated the 'urgent medical need' award to the date the original application was submitted. As the council took appropriate action to resolve these problems, we did not find it necessary to make any recommendations.

Local government: complaints review committee – failure to review **Case 201101997**

This complaint arose after an elderly man was diagnosed with dementia. His family knew that he would eventually need residential care, and that at that point the council would assess his finances to decide what he should pay towards care costs. The family decided to temporarily transfer some money to his wife, so that she could benefit from the interest until then. She, however, unexpectedly moved into residential care herself. Before she was financially assessed, the family moved the money back into her husband's account. On the financial assessment forms, they explained what they had done, and why. When the social work department looked at this, they decided that the money in fact belonged to the man's wife, and she should be considered as still having it. This meant that she had to pay the majority of her care costs. A social work complaints review committee (CRC) looked at this, but said they could not comment on the social work department's decision, which was a matter of professional judgement. We took the view, however, that the CRC should have looked at it, and that in not doing so they had denied the family the opportunity to challenge the original decision.

Recommendations

The council apologise to the family and arrange for the financial assessment to be independently reviewed; ensure they tell those having their case reviewed by a CRC of the extent of the CRC's remit and powers; and ensure that CRC members have appropriate training and access to expert advice to deal with all matters presented to them.

Local housing allowance – paid to tenant rather than letting agent

Case 201004828

In this case, the owner of a property had asked for local housing allowance (formerly known as housing benefit) to be paid directly to their letting agent rather than to the tenant. This was because the tenant was behind in paying the rent. The council, however, continued to have the allowance paid to the tenant, who then left owing the owner money. We found that although the council acted correctly at first, they later delayed in taking action to have the letting agents paid direct when it became appropriate to do so, and had not responded when asked about this. There was also evidence that the council did not meet their customer care standards in handling the subsequent complaint.

Recommendations

The council pay the owner the amount that should have been paid to the letting agent; and take steps to ensure that their procedures, and notices issued to landlords about appeal procedures, comply with the housing benefit regulations and the Department of Works and Pensions' good practice guidance.

Unregistered care provider Case 201104029

This complaint was about the care of a brother and sister, who were adults with learning difficulties. After their mother died in hospital, they were left without direct support. The council had arranged for a care provider to provide some help while their mother was in hospital. After she died, the council reassessed the brother and sister as needing additional help with personal care, managing finances, carrying out domestic tasks, daily living skills and sleepover care. The council had welfare guardianship for them, and their aunt had financial guardianship. She was, however, unhappy with the care provider in a number of respects. This included failing to renew the home insurance policy, which meant that after a leak, her niece and nephew had to pay hundreds of pounds for repairs. She complained to the council but they told her she could not use the social work complaints process. She went to the Care Inspectorate who found that the care provider was not registered to provide housing support services, upheld the complaint and criticised the provider on a number of matters. The council immediately arranged for a new care provider.

Our investigation upheld the complaint and found that section 99 of the Public Services Reform (Scotland) Act 2010 says councils must ensure that service providers are appropriately registered. We welcomed the fact that the council had taken steps to ensure this would not happen again. This included identifying similarly affected individuals, and carrying out an exercise to ensure they know which care providers are registered to provide particular levels of service. However, we considered that the council should have taken further action to remedy the specific injustices in this case. We also disagreed with their view that, because the aunt was not herself a service user, she could not take this up through the statutory social work complaints process.

Recommendations

The council apologise for failing to ensure that the care provider was appropriately registered; investigate the care provider's actions in relation to the renewal of home insurance with a view to establishing and remedying any financial losses suffered; and review their practice in relation to taking social work complaints about a social work service provided to another person.

Housing repairs Case 201103774

A council carried out repairs to a tenant's home. The work needed was extensive, and the woman, who had health problems, had to move out. The council told her that her home would be returned to the same condition as it was before she moved out. She complained because she was unhappy at the state in which the property was returned to her. While she was out of her home she and her partner were also contacted several times for access to it, although she had given the council keys. She also found that her home was left insecure. We found evidence that there were problems with the different trades accessing the property, and upheld her complaint about the state of the property. We also found that the council had not compensated her for a missed appointment nor had they repainted her bedroom as they had said in their response to her complaint.

Recommendations

The council apologise to their tenant for the problems; ensure her bedroom is repainted; and provide us with evidence that she has been reimbursed for missed appointments.

Gas contractor access fee Case 201203652

A man complained that the council charged him for a visit. His annual home gas maintenance check had been due, but he had missed a first appointment. (The man said he was at home on the first date but the contractor had not arrived.) He said he received nothing more from the council until a contractor's card was put through his door. The council then went there for a third time. They were granted access, but 'capped' the gas supply and charged the man an administrative fee. We found evidence that when contractors could not gain access the council had sent three letters and left two cards at the house. They had the correct address details, had given appropriate notice on each occasion, and had followed their policy. We found that in the circumstances they were entitled to charge him the administration fee and did not uphold the complaint.

Stair lighting Case 201200538

Positive action taken by organisation

A council tenant complained about changes to the lighting in the close that he shares with his neighbour. He said that, historically, lighting was provided from dusk to dawn, but that this service was withdrawn.

Our investigation found that the council were not obliged to provide lighting in the close. The original light was connected to the neighbour's electricity supply and, although there was an understanding that the light would be left on overnight, this was ultimately at her discretion. When a new tenant moved into that property she decided not to use the light. Although the council were not required to light the close, we found that they had provided the man with a second light, over which he had sole control. We were satisfied that this was an appropriate gesture and that they had suggested other steps that he could take to increase the level of lighting available.

Planning permission Case 201104974

When a woman wanted to build a driveway into her property, she asked the council for advice. They told her that planning permission was not needed. They explained when it would be needed and who to contact if she wanted to reduce the height of the kerb. The woman built the driveway, based on that advice. More than two and a half years later the council contacted her to say that they owned a piece of land at the edge of the road, which she had used in creating the driveway. They wanted her to either buy it or re-instate it. We found that the council had never explained to her that they had in fact responded to her in their role as planning authority. They should also have explained that she needed to get their consent in an additional role, as the owner of the piece of land.

Recommendations

The council apologise to the woman and consider waiving their administration charges for any sale of the land to her.

Council tax refund Case 201104971

This complaint was about a council's refusal to refund council tax. A church owned a property, and the tenant left, owing council tax. The church officers asked the council to forward any relevant correspondence to a particular person. The council then sent that person a demand notice for the unpaid council tax, wrongly naming him as the debtor and threatening recovery action. To avoid the person being at risk of such action, the church officers decided to pay the council tax, believing that when they explained the position to the council, this would be refunded. The council, however, refused to do so, even though they admitted that the person to whom they had sent the demand was not liable. They did not have a policy about refunding money from a council tax account. We found that the council were wrong to keep money that had been paid because of their error and to name the person on the demand notice. We also found that the council handled the complaint poorly.

Recommendations

The council make a payment to the church in lieu of the monies paid to the council tax account; consider developing an appropriate policy/procedure for refunding council tax; and consider reviewing how they respond to such complaints in future.

Neighbour issues – flooding and dog fouling Case 201101580

A man told us that the council had not dealt with a flooding issue, after concrete slabs were laid in the next garden. When it rained, water ran off the slabs into his own garden. This also carried with it dog excrement, which the neighbour had not picked up as they should have done. We found that the council had investigated this and, as they had already planned to do some building work on the property next door, they had arranged to re-lay the slabs with drainage at the same time. Although there was some delay in doing this, we felt that it was a reasonable solution to the flooding. However we found that they had not acted quickly enough on the dog fouling issue. Council staff had been told to monitor the situation, clear away any excrement and charge the next door tenants for doing so. There had been delay in taking action on this and rather than clearing it up, staff had simply asked the tenant to remove it, which had led to a more prolonged problem.

Recommendations

The council apologise for the delay in dealing with the dog fouling; and consider reviewing their approach to monitoring and acting on such complaints at their properties.

LOCAL GOVERNMENT CASES DETERMINED 2012 / 2013

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

Case type	Stage	Outcome	Sector																	Total		
			Building control	Consumer protection	Economic development	Education	Environmental health & cleansing	Finance	Fire & police boards	Housing	Land & property	Legal & admin	Other	Personnel	Planning	Recreation & leisure	Roads & transport	Social work	Valuation joint boards		Subject unknown or out of jurisdiction	General enquiry
Enquiry	Advice & Signposting	Enquiry	0	0	0	2	0	0	7	0	1	1	1	1	0	0	2	2	0	1	1	21
	Total Enquiries	Total	0	0	2	0	0	7	0	1	1	1	1	0	0	2	2	0	1	1	21	
Complaint	Advice	Matter out of jurisdiction (discretionary)	0	1	0	1	3	0	3	0	1	1	0	1	0	1	1	1	4	0	19	
		Matter out of jurisdiction (non-discretionary)	0	1	0	3	1	0	2	1	2	1	3	3	0	0	5	0	18	0	40	
		No decision reached	2	1	0	9	5	13	0	49	0	6	1	26	5	8	21	1	91	0	239	
		Outcome not achievable	0	1	0	1	0	1	0	5	1	0	0	0	0	0	0	0	4	0	13	
		Premature	9	3	1	32	30	48	1	159	8	17	7	42	10	32	112	3	189	0	704	
		Total	11	7	1	46	37	65	1	218	10	26	10	72	15	41	139	5	306	0	1,015	
	Early Resolution 1	Matter out of jurisdiction (discretionary)	0	1	0	2	0	0	14	4	2	0	0	10	0	0	7	0	0	0	40	
		Matter out of jurisdiction (non-discretionary)	3	1	0	2	8	5	32	4	8	0	2	16	0	9	8	0	1	0	99	
		No decision reached	1	0	0	1	1	3	13	2	1	0	0	3	0	1	9	0	3	0	38	
		Outcome not achievable	2	0	0	0	1	2	4	0	5	0	0	4	0	2	5	0	0	0	26	
		Premature	2	1	0	1	1	1	12	3	2	0	0	11	0	5	7	0	0	0	46	
		Total	8	3	0	6	11	11	75	13	18	0	2	44	0	17	36	0	4	0	249	
	Early Resolution 2	Fully upheld	0	0	0	1	0	3	3	0	0	0	0	2	0	1	0	0	0	0	10	
		Partly upheld	1	0	0	2	1	1	5	1	0	0	0	3	2	3	0	0	0	0	19	
		Not upheld	2	0	0	2	1	2	12	3	1	0	0	15	0	6	3	0	1	0	48	
		No decision reached	0	0	0	0	0	0	2	0	0	0	0	2	0	0	0	0	0	0	4	
		Total	3	0	0	5	2	6	22	4	1	0	0	22	2	10	3	0	1	0	81	
	Investigation 1	Fully upheld	1	0	0	1	0	0	5	0	0	0	0	4	0	1	4	0	0	0	16	
		Partly upheld	2	0	0	1	3	3	14	0	1	1	0	26	2	3	7	0	0	0	63	
		Not upheld	2	0	0	7	2	1	18	2	1	0	0	33	1	6	2	0	0	0	75	
		No decision reached	0	0	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	2	
		Total	5	0	0	9	5	4	38	2	2	1	0	64	3	10	13	0	0	0	156	
	Investigation 2	Fully upheld	1	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0	3	
		Partly upheld	0	0	0	0	0	0	0	0	0	0	0	2	0	0	1	0	0	0	3	
		Total	1	0	0	1	0	0	0	0	0	0	0	3	0	0	1	0	0	0	6	
	Total Complaints		28	10	1	67	55	86	2	353	29	47	11	7	205	20	78	192	5	311	0	1,507
	Total Contacts		28	10	1	69	55	88	2	360	29	48	12	8	206	20	80	194	5	312	1	1,528

Note: 'No decision reached' includes not duly made, withdrawn and resolved

SPSO
4 Melville Street
Edinburgh
EH3 7NS

Tel 0800 377 7330

Fax 0800 377 7331

Web www.spsso.org.uk

CSA www.valuingcomplaints.org.uk