



# Ombudsman's Commentary

## JANUARY 2007 REPORTS

**I laid 28 reports before the Scottish Parliament today. Fourteen relate to the health sector (of which five are about dental treatment), 11 to local government, one to a housing association, one to the Scottish Executive and devolved administration and one to further and higher education.**

### Ombudsman's Overview

#### Transport of young men with Special Educational Needs; complaint handling

North Lanarkshire Council  
(W030517 and 200401927)

This month I am highlighting an investigation that illustrates the obligation on public authorities to look beyond the narrow letter of the law when designing and delivering their services.

The complaint was brought on behalf of two sets of parents by an MSP and relates to events that began in 2001. Parents of two young men then aged 16 and 17 complained about the transport of their sons, who have special educational needs, to and from their school. One of the young men had Cerebral Palsy and Spastic Quadriplegia, and required the use of a wheelchair at all times. The other had a severe learning disability, had a spinal steel rod in his back which restricted his movements and also used a wheelchair.

The parents complained to the Council about the treatment of their sons by members of a bus company's staff while they were being transported to the special educational needs school. The Council's response was that an independent inspection of the bus showed that it was 'fully compliant'. In letters that my Report describe as 'bureaucratic and unsympathetic' they went on to state that if the parents would not allow their sons to travel on the bus, they would have to consider whether or not the pupils' placement at the school could continue to be maintained.

The parents decided to transport their sons themselves (daily round trips of

80 and 64 miles respectively for the two families). As I state 'This was not a decision I believe they would have taken lightly, particularly given their sons' physical difficulties, unless they genuinely considered their sons were suffering significant distress when travelling on the school bus.' The Council, however, further aggravated the situation by insisting that the parents jointly transport their sons to and from the school with only one mileage allowance claim between them – even though the parents had explained that it was not feasible to transport the young men together in one vehicle because of their differing physical needs. As a consequence of the dispute the young men did not attend their school for ten months.

I upheld the complaint about the way the Council dealt with the issue and the subsequent effect of the dispute on the pupils and their families. The second aspect of the complaint concerned complaint handling by the Council's Education Department. While I did not uphold this aspect I did so with reluctance as I considered that the Department's procedure at the time was not an example of good practice.

I recommended that the Council:

- (i) make redress payments to both sets of parents in recognition of the anxiety and frustration they suffered during the course of their dispute with the Council and for their time and trouble in pursuing their complaint;
- (ii) issue both sets of parents with a full, formal apology for the manner in which the Council, in particular the Education Department, dealt with the school transport dispute;
- (iii) review the administrative procedures to ensure (a) there is a system for

proper liaison and cooperation between different Council departments; (b) that relevant information is shared between those departments; and (c) that, as far as possible, the maladministration identified in the Report does not recur;

- (iv) review the system for handling complaints so that all of its departments can demonstrate to a complainant that their complaint has been fairly, impartially and thoroughly investigated; and
- (v) review the system for handling complaints so that, where a complaint relates to more than one Council department, consideration should be given to designating a lead officer to deal with the whole complaint, thereby ensuring consistency in the handling of that complaint.

Although this specific complaint did not refer to human rights when it was presented to my office, the investigation demonstrates the requirement on public bodies to be mindful of human rights when they design and implement their policies and procedures.

The Human Rights Act 1998 sets out the rights that need to be taken into account in the delivery of public services. The law on human rights is no different from any other law that my investigators may consider when looking into complaints. In this connection, I believe that the role of my office includes the promotion of respect for human dignity, particularly where vulnerable people and their families are concerned. My expectation is that public authorities are not only technically compliant with the law, and with their own policies and procedures, but that they make decisions and take actions that further an approach that integrates human rights into their work.

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### Health

Of the fourteen complaints about the health sector this month, I fully upheld one complaint, partially upheld six complaints, and did not uphold or made no finding in the other seven. There were five complaints relating to dentistry.

#### **Delay in making a referral** A Dentist, Lothian NHS Board (200502052)

I upheld the complaint about a delayed referral for orthodontic treatment. I am pleased to report that during the investigation the Dentist confirmed that he has revised his system for the recording of referrals, which should prevent a similar occurrence in future.

#### **Clinical treatment; complaint handling** A Dentist, Lothian NHS Board (200502765)

I did not uphold the clinical treatment aspect of the complaint, but I partially upheld the complaint handling aspect. I recommended that the dental practice apologise to the complainant for any confusion caused by their correspondence.

I did not uphold any of the three other complaints related to dentistry. Although I made no recommendations in an investigation into the removal of a patient from the register (Case reference: 200503335), I did raise concerns about the general issue of a lack of guidance on removing patients from dental lists with the Scottish Executive Health Department. I am pleased to report that they have agreed to consider this.

#### **Inadequate response to emergency call; complaint handling** Scottish Ambulance Service (200502396)

This complaint concerned the response time of an ambulance following an emergency call and the explanations given for this when the complainant raised her concerns with the Service. I partially upheld the first aspect and fully upheld the complaint handling aspect, and recommended that the Service:

- (i) provide the crew involved in the incident with a copy of the Investigation Report and ensure that steps are taken to identify and provide any training needs relating to responding to emergency calls;
- (ii) apologise to the complainant and her family for the delays experienced while pursuing her complaint; and
- (iii) review their complaint handling systems and procedures and, in particular, systems designed to track and monitor the progress of complaints.

Prior to the laying of the Report the Service completed such a review and provided me with details of software they had installed which allowed the progress of complaints to be monitored centrally.

#### **Diagnosis; communication** Borders NHS Board (200503000)

I partially upheld the complaint about an Ear, Nose and Throat consultation and recommended that the Board:

- (i) apologise to the complainant for confusion over the diagnosis;
- (ii) remind staff dealing with complaints that explanations should be provided when requested; and
- (iii) apologise to the complainant for failures in communication and takes steps to ensure that patients are clear about what appointments they can expect.

#### **Clinical treatment/diagnosis** Lothian NHS Board (200500468)

The investigation found that there had been a failure to make appropriate referrals for a woman with breast cancer. I also found that the NHS complaints process had taken too long. I recognise in the Report that the Board have already taken steps to address the issues raised and, therefore, have no recommendations to make. I did, however, ask the Board to let me have further information about the monitoring of their referrals process.

#### **Clinical treatment; record-keeping** A GP, Fife NHS Board (200501436)

I did not uphold the aspects of the complaint relating to clinical treatment, but I did find that a GP's record keeping was not of a professional standard and

recommended that he takes action to ensure that he produces records that are legible.

#### **Diagnosis; complaint handling** A Medical Practice, Borders NHS Board (200600307)

I did not uphold the aspects of the complaint relating to clinical care but I did find failure in complaint handling procedures and recommended that the Board:

- (i) reflect on my medical advisers' comments regarding the recording of examination findings and use such advice to inform good practice;
- (ii) provide the complainant with a written apology for their failure to properly follow the NHS Complaints Procedure.

I did not uphold or made no finding on seven other complaints in the health sector this month, about the following issues and bodies:

#### **Clinical treatment** A Medical Practice, Lanarkshire NHS Board (200502097)

#### **Care of the elderly; complaint handling** Greater Glasgow and Clyde NHS Board (200502666)

#### **Clinical treatment** Shetland NHS Board (200500779)

#### **Dental treatment** Lothian NHS Board (200502015)

#### **Removal of patient from register** A Dental Practice, Lothian NHS Board (200503335)

#### **Clinical treatment** A Dentist, Tayside NHS Board (200502545)

#### **Care and treatment; record keeping** Tayside NHS Board (TS0166\_03)

Although I did not uphold the complaint about care and treatment, I did recommend that the Board include doctors' note keeping as part of their yearly appraisal; and perform an audit to ensure that record keeping at the hospital concerned is of a sufficiently high standard and complies with the standard set down by the General Medical Council's Good Practice Guidelines.

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### Local government

Of the 11 reports about local government, three were upheld in full, five were partially upheld and three were not upheld.

#### Administration

**Dundee City Council**  
(200501971)

A Housing Association acting as management agent for a Housing Support Provider (HSP) complained that the Council had failed to properly administer the HSP's application and to correct an error once identified. I fully upheld the complaint and recommended that the Council award the HSP an interim contract with immediate effect.

#### Housing improvements; complaint handling

**Fife Council** (200503422)

The complainant, Mr C, raised concerns that funding for the replacement and upgrade of his central heating was withdrawn by the Council without justifiable reasons and that the Council had not handled his complaint according to their complaints procedure. I fully upheld the complaint and made several recommendations to the Council to remedy the situation.

#### Housing benefit appeal delay

**Renfrewshire Council**  
(200502753)

I fully upheld the complaint that there was delay in progressing a housing benefit appeal and recommended that the Council:

- (i) ensure that appellants receive regular written updates of the progress of their case;
- (ii) apologise for not advising the complainant of the outcome of a review; and
- (iii) make an appropriate payment in recognition of the time and trouble taken in bringing the complaint to my Office.

#### Housing move advice

**Perth and Kinross Council**  
(200501141)

I upheld the complaint that the Council had given inaccurate advice in respect of a housing move and made no finding on another aspect of complaint. I recommended that the Council make a payment to the complainants and review the way advice is provided and recorded within the Housing and Building Services Department.

#### Transport of young men with Special Educational Needs; complaint handling

**North Lanarkshire Council**  
(W030517 and 200401927)

I have detailed this investigation above in my Overview.

#### Council Tax; staff attitude

**Aberdeen City Council**  
(200502645)

The complaints which were investigated were that the Council failed to adequately record a verbal agreement reached between the complainant, Mrs C, and a member of staff regarding her payment schedule for Council Tax. Mrs C claimed that this error resulted in a summary warrant being issued and that staff failed to treat her with an open mind. I upheld the first aspect of complaint, but did not uphold the second, and I recommended that the Council:

- (i) devise and pilot a clear procedure for staff updating customer records once a verbal payment agreement has been reached via a face-to-face discussion; and
- (ii) apologise to Mrs C for the inconvenience and distress caused by the issuing of an unnecessary summary warrant.

#### Planning applications; breach of confidentiality

**Aberdeenshire Council**  
(200501517)

I upheld part of this complaint and recommended that the Council apologise to the complainant for the failure identified, and that they respond to her question about possible breach of the Data Protection Act (1998).

#### Housing: statutory repair notices

**The City of Edinburgh Council**  
(200500735)

The complainant raised a number of concerns about how the repairs contract on his property was managed and his dissatisfaction with the increased cost from the original estimate. I upheld or partially upheld aspects of this complaint and recommended that the Council review and reinforce the advice given on site visits and ensure that the guidance makes clear to officers that they are required to record every site visit which is carried out.

I did not uphold three other complaints in the local government sector this month about the following issues and bodies:

#### Housing Improvements

**East Lothian Council**  
(200503482)

#### Maintenance and repair of roads

**Glasgow City Council**  
(200502916)

#### Complaint handling

**Loch Lomond and The Trossachs National Park Authority** (200502807)

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### Housing Associations

#### Allocations policy

West Highland Housing Association Ltd  
(200503282)

I fully upheld the complaint which concerned the withdrawal of an offer of housing which the complainant alleged was both unfair and not in compliance with the Association's allocations policy. I was satisfied that the Association's offer of housing provided a suitable remedy to the complaint and, therefore, had no recommendations to make.

### Scottish Executive and devolved administration

#### Delay in issuing of decision notices

Scottish Information Commissioner (200502906)

I did not uphold the complaint but in the course of the investigation I identified issues concerning the complaints procedure of the Office of the Commissioner. I recommended that the Office streamline their complaints procedure; and consider whether or not to implement an unacceptable actions policy for service users.

### Further and Higher Education

#### Academic appeal

The University of Aberdeen (200501676)

I upheld one aspect of the complaint, namely that the reasons given for a decision by the Student Progress Committee were inadequate, but I did not uphold four other aspects of the complaint. I recommended that 'the University issue guidance on the need to provide students with sufficient information about the reasoning behind the decision for them to make an appeal and to include in their standard letters an indication that they can request clarification if they require to do so before submitting an appeal.'

### Compliance and Follow-up

In line with SPSO practice, my office will follow up with the organisations to ensure that they implement the actions to which they have agreed.



**Alice Brown.** 30.01.2007

The compendium of reports can be found  
on our website, [www.spsso.org.uk](http://www.spsso.org.uk)

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