

# Ombudsman's Commentary

## JULY 2011 REPORTS

The SPSO laid five investigation reports before the Scottish Parliament today. Three were about the local government sector and two about the health sector.

### Case numbers

Last month (in June 2011) in addition to seven reports laid before the Parliament we determined 360 complaints and handled 60 enquiries. Taking complaints alone, we:

- gave advice on 233
- resolved 105 in our early resolution team
- resolved 15 by detailed consideration
- made a total of 40 recommendations in decision letters

### Ombudsman's Overview

In this month's Commentary I am drawing attention to two local authority investigation reports. As is always the case, each complaint concerns individuals and their unique circumstances. However, I believe that there are wider implications in the complaints described and that they contain useful learning for directors of services, chief executives and council leaders.

#### Sending reports to the Chairs of governing bodies

We are required by law to send a copy of investigation reports to the complainant, the organisation complained about and Scottish Ministers. I have decided from now on to also send a copy of investigation reports to the heads of governing bodies. I recognise the key role that they play in ensuring that the lessons from complaints are fed back internally and externally and in bringing about improvements to how their organisation delivers public services. The 'complaints – learning – improvement' loop is one underlined by our Complaints Standards Authority, and there is an update on their work below.

#### Investigation reports

##### Right to Buy

The complaint is about a dispute over discount entitlement under the terms of the Right to Buy (RTB) scheme. Mr C complained that the council had wrongly advised him about the impact on his RTB discount of a transfer of tenancy from his wife to himself. There is a substantial difference between the possible discounts that would be applied. The council could not provide clear evidence of what they had told Mr C.

I upheld the complaint, and having done so, am obliged to make recommendations that will, as far as possible, put the complainant back in the position they would have been had the council's failing not happened. In this specific case, I have recommended that the council

consult with Mr C and his wife to offer them the chance to either change to a joint tenancy or to re-assign the tenancy to Mrs C. In the event that Mrs C then subsequently applies to purchase the property either alone or jointly with Mr C, the council should apply to Scottish Ministers for consent to sell the property to Mr and Mrs C on the basis of the preserved RTB discount to which Mrs C was entitled. (Full details of the recommendations are in my report. They include provision in the event that Scottish Ministers do not agree to this.)

##### Disabled parking

Ms C lives in a Controlled Parking Zone (CPZ) and has a blue badge for her car because her son has a disability. She was unhappy because the council would not provide a disabled parking bay outside her home. The evidence in Ms C's case suggested to me that blue badge holders living within the CPZ may be disadvantaged compared to those living outside it.

I found that although the council have the right to make policy decisions, they had made a 'catch-all' decision that they will provide no further disabled bays within the CPZ, which does not allow them to reach a view on a case by case basis. While noting that designating such a space does not mean that the person requesting the space has exclusive use of it, I recommended that the council review their policy to take into account the individual circumstances of residents within the CPZ. I also recommended that they reconsider Ms C's request that they place a disabled parking bay outside her property.

#### Complaints Standards Authority

Since our last update we have made further progress in the local government and housing sectors, as we work with key stakeholders from those sectors to develop a model Complaints Handling Procedure (CHP) in line with the framework of the SPSO's complaints handling principles and guidance.

The local government working group has identified the need for a number of supporting products to be developed in parallel with the new CHP and the scope of this work has been identified and agreed. Work has already commenced on the model CHP with a view to developing and introducing this towards the end of 2011/12. We aim to provide an update of progress at our annual Council Liaison Officer conference in August. Places at the conference are still available to local authority representatives.

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We have taken a similar approach to developing a CHP for the housing sector. Earlier this month we met with a number of high level stakeholders including the Scottish Housing Regulator, the Scottish Federation of Housing Associations, the Chartered Institute for Housing, the Scottish Housing Best Value Network and tenants groups representatives with a view to developing a model CHP for Registered Social Landlords. We have also had input into the Scottish Government's proposals for a Scottish Social Housing Charter, which will go to consultation shortly.

While we are prioritising the local government and housing sectors, we also continue to engage with other sectors to progress development of CHPs for each. Most recently we met with Scotland's Colleges to discuss a model CHP for Further Education providers. We will continue engagement with other sectors as we take forward the work of the CSA.

Our CSA team are always available to give advice and guidance on improving complaints handling procedures. You can contact them at [CSA@spsso.org.uk](mailto:CSA@spsso.org.uk) if you would like more information. The Ombudsman's complaints handling principles and guidance can be found at [www.valuingcomplaints.org.uk](http://www.valuingcomplaints.org.uk)

## case reports

### Local government

#### Right to buy, communication

South Lanarkshire Council (200904272)

The tenancy of Mr and Mrs C's home was in Mrs C's name. Mrs C had been the sole tenant for a number of years. She had the right to buy the house from the council at a heavily discounted rate under the original Right To Buy (RTB) legislation (Housing (Scotland) Act 1987). Mr C wished to take on the tenancy himself as they wanted to buy the house and he wanted to apply for the mortgage. Mr and Mrs C contacted the council to discuss the options open to them, then made a request for the tenancy to be assigned to Mr C, which the council approved. The council knew he wanted the tenancy to be re-assigned because he wanted to get a mortgage to buy the house. When he then applied to buy the house, the council made him an offer using the original RTB discount. During the process, however, they realised there was an issue about the length of his tenancy. This meant

that he could only buy under the modernised RTB provision (Housing (Scotland) Act 2001) which meant a far smaller discount in the price. The council told him this and offered to reimburse the legal fees he had already spent on his application. Mr C then applied to buy the house under the modernised provisions but did not eventually do so.

He complained that the council had wrongly advised him about the impact that transferring the tenancy would have on the RTB discount. In fact, he said that he was told that the transfer would not affect the original RTB entitlement. My investigation found that there was no clear evidence of what Mr C was told. I consider that, in these circumstances, failure to provide evidence that Mr C was given advice about the modernised RTB position was a serious omission. Because of this, I consider that Mr C was wrongly advised and I upheld his complaint. I note that the council are taking steps to improve their Tenancy Sign-Up Procedures, but I have recommended

that they ensure that this review is completed as a matter of urgency, and that in future they keep a written record of the advice given when processing Assignment of Tenancy applications. In this specific case, I have recommended that the council consult with Mr C and his wife to offer them the chance to either change to a joint tenancy or to re-assign the tenancy to Mrs C. In the event that Mrs C then subsequently applies to purchase the property either alone or jointly with Mr C, the council should apply to Scottish Ministers for consent to sell the property to Mr and Mrs C on the basis of the preserved RTB discount to which Mrs C was entitled. (Full details of the recommendations are in my report. They include provision in the event that Scottish Ministers do not agree to this.)

# Ombudsman's Commentary

JULY 2011 REPORTS

## case reports

### Local government

#### Disabled parking, policy/administration

The City of Edinburgh Council  
(201001398)

Ms C lives in the centre of Edinburgh, in a Controlled Parking Zone (CPZ). Her son has a disability, and so Ms C has a 'blue badge' for her car. This provides parking concessions for people with disabilities, but these do not extend to places where there are loading prohibitions, as there are close to Ms C's house. After getting a parking ticket there, Ms C asked the council if they would provide a disabled parking bay. They declined to do so, saying that they had taken a policy decision not to provide further disabled bays within the CPZ, although they were continuing to do so outside it. Ms C complained to me that the council failed to fulfil their statutory duties about parking provision for disabled residents. I upheld her complaint. Section 5(2) of the Disabled Persons' Parking Places (Scotland) Act 2009 (the Act) says that where a qualifying person requests that a disabled street parking space is designated, the council must decide whether it is possible to identify such a place, from where the person who has made the request can conveniently access their address. If it is not possible to do so, then they must give their reasons to that person. The evidence in Ms C's case suggests to me that blue badge holders living within the CPZ may be disadvantaged compared to those living outside it. Although the council have the right to make policy decisions, the 'catch-all' decision that they will provide no further disabled bays within the CPZ does not allow them to reach a view on a case by case basis. While noting that designating such a space does not mean that the person requesting the space has exclusive use of it, I recommended that the council review their policy to take into account the individual circumstances of

residents within the CPZ. I also recommended that they reconsider Ms C's request that they place a disabled parking bay outside her property.

#### Complaints handling

A Council (200903102)

A firm of solicitors complained to my office on behalf of their clients, Mrs A and her son. Mrs A had raised a number of concerns about an incident alleged to have occurred during a school trip that her son was on. Information about the alleged incident only emerged after pupils and staff returned from the trip. At this point Mrs A withdrew her son from school for a time. The council investigated Mrs A's concerns but she was not happy with the outcome and complained about this to me. The police also investigated the alleged incident. It was not our role to look at the alleged incident, but rather to see whether the council had properly followed their processes and adequately investigated Mrs C's concerns. My Complaints Reviewer considered a large number of documents and procedural guidance about the council's procedures and investigation. Although I found that the council clearly took steps to assess risk when planning the trip, I identified areas of concern in their handling of the complaint. I therefore recommended that the council should: improve the preparation of risk assessments; put a policy in place to manage situations where allegations of a serious nature are made involving pupils and those pupils remain in school; provide adequate guidance to staff dealing with these types of complaints, and tell complainants of the timescales within which they will carry out any improvement actions identified when investigating a complaint. I did not uphold a complaint that the council failed to let Mrs A see relevant documents. I decided not to name the council in my report because by doing so the school and the pupils would be likely to be identified.

### Health

#### Diagnosis, clinical treatment

A Medical Practice, Fife NHS Board  
(201003193)

Miss C complained about the care and treatment provided to her cousin, Miss A, by a medical practice in the six years before Miss A's death from liver cancer. The practice carried out more than 20 liver function tests on Miss A during these years. All of these showed that her levels of GGT (a liver enzyme) were high, although they fluctuated over time. Miss C complained that the practice did not act appropriately in response to the raised GGT levels. Having taken advice from one of my medical advisers, I upheld the complaint. I found that at first it was reasonable for them to simply monitor the fluctuating levels of GGT. When, however, after a couple of years these levels started to appear significantly elevated I consider that the practice should have tried to find out why this was so. I concluded that the practice failed to take into account the increase in GGT levels over time. I cannot, however, say whether this would have affected the outcome for Miss A, or when the cancer was first likely to have appeared. I recommended that the practice apologise to Miss C for failing to investigate Miss A's abnormal GGT results and that they take steps to ensure that in future they investigate cases where the patient has a persistently high GGT level to try to establish the cause.

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### case reports

#### Health

##### Diagnosis

Greater Glasgow and Clyde NHS Board  
(201002536)

Mr C suffered from multiple sclerosis (MS). He felt very unwell one night with a number of symptoms that had gone on for some days, including throat tightness, tingling in his arms, back pain, dizziness, breathlessness and nausea. His wife, Mrs C, called NHS 24 and described these symptoms to a call handler, then to a nurse adviser. The nurse adviser said she thought the symptoms were related either to Mr C's MS or to a problem with his heart. She arranged for an out-of-hours GP to visit Mr C and told Mrs C to call an ambulance if Mr C got worse before the GP arrived. The GP came and examined Mr C. He said that he thought it was labyrinthitis (an

inflammation of the inner ear) and prescribed medication. Mr C, however, died a few hours later from a heart attack. Mrs C complained to the Board, then to me, that the Board's care and treatment of Mr C was not reasonable. She was unhappy that the GP did not diagnose that Mr C might be having heart problems, and did not send him to hospital. Mrs C accepted that even if her husband had been admitted to hospital he might still have died. She felt, however that had he been there it would have improved his chances of survival. Having taken account of both the advice from one of my medical advisers and having heard the content of Mrs C's telephone call to NHS 24, I upheld the complaint. Mrs C gave a clear and consistent description of Mr C's symptoms to both the call handler and the nurse. Although there is no independent evidence of the consultation with

the GP, the information I have indicates that Mr and Mrs C most likely gave him the same account.

My adviser said it can be difficult to diagnose a heart attack in some patients but that, given the symptoms described, a diagnosis of ischaemic heart disease would have been highly likely in Mr C's case and it would have been reasonable for him to have been admitted to hospital. I upheld this complaint and recommended that the failings identified in my report are raised with the GP during his next appraisal, to ensure that he learns from them, and that the Board apologise for these failings to Mrs C.

## Compliance & 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.

**Jim Martin, Ombudsman, 20 July 2011**

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

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# Ombudsman's Commentary



The Scottish Public Services Ombudsman (SPSO) provides a 'one-stop-shop' for individuals making complaints about organisations providing public services in Scotland. Our service is **independent, impartial** and **free**.

We are the final stage in handling complaints about councils, housing associations, the National Health Service, prisons, the Scottish Government and its agencies and departments, the Scottish Parliamentary Corporate Body, colleges and universities and most Scottish public authorities.

We normally consider complaints only after they have been through the formal complaints process of the organisation concerned. Members of the public can then bring a complaint to us by visiting our office, calling or texting us, writing to us, or filling out our online complaint form.

The Scottish Public Services Ombudsman was set up in 2002, replacing three previous offices – the Scottish Parliamentary and Health Service Ombudsman, the Local Government Ombudsman for Scotland and the Housing Association Ombudsman for Scotland. Our role was also extended to include other bodies delivering public services.

We aim not only to provide justice for the individual, but also to share the learning from our work in order to improve the delivery of public services in Scotland. We have a programme of outreach activities that raise awareness of our service among the general public and promote good complaint handling in bodies under our jurisdiction.

Further details on our website at: **[www.spsso.org.uk](http://www.spsso.org.uk)**

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