

## **Scottish Public Services Ombudsman Response to the Call for Evidence by the Finance Committee on the Revenue Scotland and Tax Powers Bill.**

### **Background**

The Scottish Public Services Ombudsman (SPSO) is the independent organisation that handles complaints from members of the public about devolved public services in Scotland. This includes almost all of the organisations listed in the schedules of the Bill<sup>1</sup>. Under the Public Services Reform (Scotland) Act 2010, the SPSO was also given a lead role in improving the handling of complaints by public sector organisations in Scotland.

This is a detailed and complex bill and I intend to comment on only two points. The first relates to how complaints about Revenue Scotland will be handled and the second to the approach in the bill to reviews.

### **Revenue Scotland and complaints**

While the bill is silent on complaints, this is because, as a non-ministerial department, Revenue Scotland will automatically come within our jurisdiction. This means that members of the public will be able to complain to us about actions taken by Revenue Scotland or on their behalf. It also means that Revenue Scotland will be subject to the model complaints handling procedure for the Scottish Government, Scottish Parliament and associated public authorities issued in March 2013 and available here: <http://www.valuingcomplaints.org.uk/complaints-procedures/scottish-government-scottish-parliament-and-associated-bodies/>

The two organisations to which Revenue Scotland intend to delegate certain activities are both already within our jurisdiction and already subject to this model process.

As the public will be able to complain as well as ask for reviews and make appeals, it is important that clear signposting should be in place to help the individual decide which route is most appropriate for them. The model procedure already provides for the distinction between complaints and appeal routes to be taken into account and should ensure that individuals are appropriately signposted. We are happy to work with Revenue Scotland prior to their creation to make sure this is as simple as possible.

On this point, we have noted that the Financial Memorandum does note that Revenue Scotland will be dealing with complaints, but makes no provision for any impact on SPSO of complaints coming to us. Given that the most likely driver of dissatisfaction will be unhappiness with a decision, and that there is a separate appeal route for this, we do not anticipate a significant impact. However, the Committee will be aware from previous consultations that we are alert to the fact that, over time, a number of small changes can result in SPSO seeing a significantly increased workload with no specific provision to handle this. This is something we will continue to monitor closely with the Scottish Parliamentary Corporate Body who are responsible for our budget.

### **Revenue Scotland reviews**

The Committee has asked for comments on the proposed approach to reviews and appeals. Our comments are limited to the review which most closely parallels a complaints process rather than the more formal appeal process. We are supportive of the general approach of the Scottish Government which parallels many principles that would apply to good complaints handling. This includes the importance of a “getting it right first time approach”; using mediation and involving the taxpayer in the process by offering initial discussions and views.

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<sup>1</sup> The one significant exception is police organisations.

However, I am surprised by how much of the detail of the process is established in primary legislation. There is a benefit in setting some clear legislative limits and ensuring transparency by reporting against published standards, but within this we would recommend that Revenue Scotland are given the flexibility to develop and adapt their review process so that they can respond appropriately to each individual situation. I explain this below using some examples from the legislation.

The first example is where the taxpayer will have the option of using the internal review process, including a mediation stage, or going direct to the tribunal. If the review process is to succeed, it needs to be seen as simple, capable of providing quick decisions and overturning decisions where appropriate. As I read the legislation, the timescales allow 30 days for an initial view to be communicated to the taxpayer and a further 45 days from that date for the conclusion of the review. The policy memorandum allows the taxpayer to respond to the initial view if they do so timeously.

While we are supportive of involving the taxpayer in the review process, it is not clear why there is a need to set out two parts to this process in legislation. That may be more than is needed for some straightforward cases. In practice, a taxpayer will likely be more irritated by waiting for a formal final view that adds very little or nothing to an initial view.

Another example is that, from my reading, mediation is included as a possible option to be included *after* a review. Mediation can work well, but usually at an early stage before positions become entrenched. It may be only appropriate in a small number of cases, but we would recommend that Revenue Scotland should have the flexibility to use mediation as part of, or instead of, the review process where they consider the individual circumstances merit this and the taxpayer agrees. Over time, they will develop an understanding of what cases are particularly amenable to mediation. It would be unfortunate if the detail in the legislation about how reviews need to be carried out prevented them from using this sooner.

This simply highlights to us the difficulties of setting out such a process in legislation. I would argue that it would be more appropriate to put some of this detail in subsidiary regulations or guidance, which allow for the process to be adapted more easily than primary legislation, ultimately based on the experience of how it works in practice. It would be possible to set out, for example, that all reviews must be completed within 75 days and then use guidance to set out the process which could be reviewed and changed as Revenue Scotland gain an understanding of what works best for the taxpayer and which can respond to individual circumstances. We would also recommend that Revenue Scotland report on the speed with which they are actually completing reviews to demonstrate to taxpayers the realistic time involved, which may be much less than 75 days.

More generally on the point of challenges to decisions, we would draw the Committee's attention to some interesting research in Holland and since repeated in Sweden which has looked at the benefits of what is described as a "pro-active" and "solution-driven" approach to complaints and challenges to decisions by public organisations. The research has seen significant financial savings, a reduction in the use of formal appeals and an improvement in the morale of staff. They have done this by training staff in what are described as mediation-like skills and giving them flexibility when they are dealing with objections to decisions, or complaints<sup>2</sup>. This research further supports the benefits that can be obtained from a review process that is person-focussed and flexible.<sup>3</sup>

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<sup>2</sup> [http://www.styrketborgerkontakt.dk/files/Engelske\\_brochure\\_mediation\[1\].pdf](http://www.styrketborgerkontakt.dk/files/Engelske_brochure_mediation[1].pdf) and [http://www.styrketborgerkontakt.dk/files/Report\\_on\\_Strengthened\\_Citizen\\_Contact\\_.pdf](http://www.styrketborgerkontakt.dk/files/Report_on_Strengthened_Citizen_Contact_.pdf) for more details

<sup>3</sup> The approach which emphasises early, personal contact and good listening and communication skills is similar to those which we are helping to develop through the model complaints process and our training modules.

In conclusion, I think the general approach is a good one and one we support. In order to fulfil this in practice and ensure staff have the flexibility to ensure they focus on an appropriate response to individual taxpayers rather than the rules on review process in the legislation, it may be appropriate to have less detail in the Bill than at present.

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Ombudsman  
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