



Annual Report 2006 / 2007

SPSO Scottish
Public
Services
Ombudsman

Contents

Ombudsman's Introduction	03
Ombudsman's Overview of the Year	07
Health	15
Scottish Executive and Devolved Administration	21
Housing	25
Local Government	33
Further and Higher Education	39
Outreach and Communications	43
The Year Ahead	49
Business Plan and Strategic Objectives	50

“The role of an ombudsman is pivotal in linking justice for the individual to the wider improvement agenda and the work of others, such as regulators, inspectors and auditors.”

Alice Brown, Ombudsman



Ombudsman's Introduction

It is now almost five years since the office of the Scottish Public Services Ombudsman was established. This marks an important milestone and represents an opportunity to reflect on what has been achieved since 2002. In the section below I describe the journey we undertook to create a modern complaint handling system, and highlight some of the key developments of the past year.

From merger to modern complaint handling system

Our journey began with the basics – simply making sure we were open for business. The Act¹ which established our office was designed to create a modern complaint handling system and a ‘one-stop-shop’ – one place to which members of the public could direct their complaints about any of the vast range of devolved public services that they receive. In our first months of operation, we successfully merged the offices of the three previously separate ombudsmen services in Scotland, bringing together all the staff into new premises and setting up entirely new systems and processes without any interruption to the service of handling complaints.

Next, we concentrated on building and developing an office that would be accessible to all, in line with the aspirations and principles of the Scottish Parliament, and at the forefront of good practice in our field. Our aim was to create a simple, independent, fair and impartial system with the complainant at its heart.

Research carried out by the National Audit Office endorsed the ‘one-stop-shop’ approach, stating that ‘the primary advantage of the Scottish arrangements

is that complex, multi-agency issues can be addressed in a much more joined-up way, and the inconvenience to the complainant can be minimized’.² In 2005, changes to the NHS complaints process increased our caseload and further and higher education came under our jurisdiction.

Our next step was to increase our accountability. As an organisation we set and delivered our strategic objectives and the aims set out in our Business Plans. We wanted to go further than this, however, and sought to increase our own accountability and that of bodies under our jurisdiction by changing our reporting process to make public a much larger number of investigations than previously.

One of the tools we established for disseminating information more widely about our investigations was my ‘Ombudsman’s Commentary’, which summarises the Investigation Reports we lay before the Scottish Parliament each month. I have been very pleased with the reception by the public and bodies to the Commentaries. They are read by a wide range of individuals and organisations, especially within the sectors under our jurisdiction. Their primary function is to draw attention to particular issues and highlight recurring themes and trends so that lessons can be learned and improvements made to avoid recurrence of the problems identified. Such summary information is of value to MSPs and Parliamentary Committees in their role of scrutinising legislation and its effects, and to policymakers more generally. We also raise awareness of our role with advocacy agencies and interact directly with the public through events such as the Parliament’s Festival of Politics.

¹ www.opsi.gov.uk/legislation/scotland/acts2002/20020011.htm

² Citizen Redress: *What citizens can do if things go wrong with public services*, NAO, 9 March 2005, p 99

Introduction

The role of an ombudsman is pivotal in linking justice for the individual to the wider improvement agenda and the work of others, such as regulators, inspectors and auditors. Crucially, we make the link between responding to individual complaints and remedying any injustice or hardship suffered by a member of the public and feeding back the learning to those responsible for delivering public services. In so doing, we contribute to the improvement of public administration and the delivery of public services.

The decisions reached and redress recommended, as illustrated by the case studies that feature in this Report, have a significant impact on the lives of individuals, contribute to the better governance of organisations and inform the wider improvement of public services.

‘Continuous improvement’ internally as well as externally was the next challenge we identified. We set new Standards and Commitments for our service and improved our Outreach role and our governance arrangements. At the same time we led important initiatives such as ‘Just say Sorry’ and ‘Valuing Complaints’ through which we work with bodies to help them prevent complaints from arising in the first place and to handle them well when they do.

We continue to fully play our part in the wider ombudsman community. To give a flavour of this work, recent activities include the following: I was elected as an executive member of the British and Irish Ombudsman’s Association (BIOA) and the Deputy Ombudsmen and members of my staff play an active role in different BIOA Working Groups. Lewis Shand Smith, Deputy Ombudsman, represented the

office on the BIOA Group that produced the *Guide to Good Complaint Handling*³. Our links with the Office of the Ombudsman of Malawi continue to be strengthened through the sharing of procedures and processes, and most recently through a visit by Deputy Ombudsman, Eric Drake, which was supported by the British Council. During the year I spoke at an event hosted by the Catalan Ombudsman on the role of ombudsmen in different constitutional frameworks.

We have strengthened our links with offices of commissioners and related bodies and given advice and support to plans to set up the office of the Scottish Police Complaints Commissioner and the Legal Services Complaints Commission. During the year we entered into a new Memorandum of Understanding (MoU) with Her Majesty’s Inspectorate of Education, adding to those we have already established with the Mental Welfare Commission for Scotland, NHS Quality Improvement Scotland, the General Dental Council and Communities Scotland. We have a protocol with the Standards Commission for Scotland and most recently have established MoUs with the Ombudsman of the Republic of Malawi, the Office of the Scottish Charity Regulator and the General Medical Council. These links allow us to share best practice and ideas for improvement and to work together more efficiently to resolve issues raised by members of the public.

Consolidation and next steps

I believe that merging former offices successfully, devising a modern complaint handling system, building the ‘one-stop-shop’ and developing the role of the Ombudsman in Scotland and beyond is

³ http://www.ombudsman.org.uk/improving_services/good_administration/principles.html

an achievement of which we should be proud. It has not, of course, been without its challenges. The period has been marked by a substantial increase in our casework from the around 1,800 complaints and enquiries handled in 2002-03 to over 4,200 which came to the office during the last financial year. This increase in demand has had implications for our timescales in dealing with complaints, and we are continually seeking ways of reducing those timescales within the resources which we are allocated. Our priority is to deliver the best service we can to the public, and our challenge is always how to achieve that aim through the most efficient use of those resources.

This is why I have chosen 'proportionality' as my theme for this year's Annual Report. It allows me to explore some of the issues that we have addressed throughout the last year (and previous years) and to explain the ways in which we have sought to be proportionate about what we do and how we do it. We have applied proportionality not only to decisions about how best to utilise our resources, but also to determining which complaints we shall pursue to investigation.

It is important to ensure that complaints brought to us are handled in the most appropriate manner. This is a careful balancing act. For example, while the hardship caused by maladministration might be small, the failure in administration might be significant and to investigate and report may lead to improvement in a body's procedures and more generally. There are complaints where to investigate will not bring either enlightenment or resolution and others where a quick phone call or email might sort things out. Commentators⁴ on the role of

ombudsmen have long recognised that all ombudsmen face difficult choices about how best to apportion resources in the demand-led environment in which they operate.

Dedication and commitment

Finally, it would certainly not have been possible to achieve all that we have without the tremendous hard work, enthusiasm and commitment of my staff. I take this opportunity to thank them for everything they have done to support me in my role. They have demonstrated flexibility and adaptability in the face of internal change and external pressures and I am very grateful for their perseverance and dedication.

I wish to pay special tribute this year to my three part-time Deputies – Eric Drake, Carolyn Hirst and Lewis Shand Smith – both individually and collectively. Their terms of office come to an end in September 2007. Each has worked tirelessly over the years, well beyond what they have been required to do. They have been generous with their time, expertise, ideas and energy and have provided leadership and guidance in their respective roles. It has been a great pleasure to work with them and I owe them a huge debt. They have played a significant role in ensuring that the SPSO becomes the first class complaint handling service to which it aspires.



Professor Alice Brown
Scottish Public Services Ombudsman

⁴ See, for example, Jane Munro, Chapter 13, *Public Law*, Thomson, W Green, 2003 p.425 - 435

“ I would just like to thank you and your team, on behalf of my family and myself, for all your hard work and help. It means a lot to us to know that if big organisations make poor decisions there are people like yourselves there to help.”

Complainant

Ombudsman's Overview of the Year

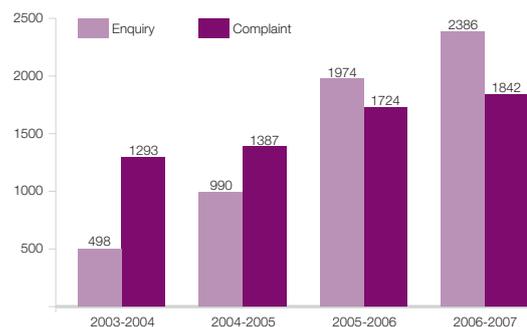
During the year, the number of enquiries and complaints⁵ handled by staff has continued to rise and this has brought with it resourcing challenges. We have progressed a number of improvement initiatives which we identified in previous Annual Reports.

In addition, we have contributed to such developments as the Parliament's Finance Committee Inquiry into Governance and Accountability (February – September 2006), the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland (March 2006 – August 2007) set up by the Scottish Executive; and to the proposals and debates surrounding the creation of new bodies such as the Scottish Commission for Human Rights, including exploring opportunities for sharing services with these and other new office-holders. I address these matters in turn below.

Enquiries and Complaints received

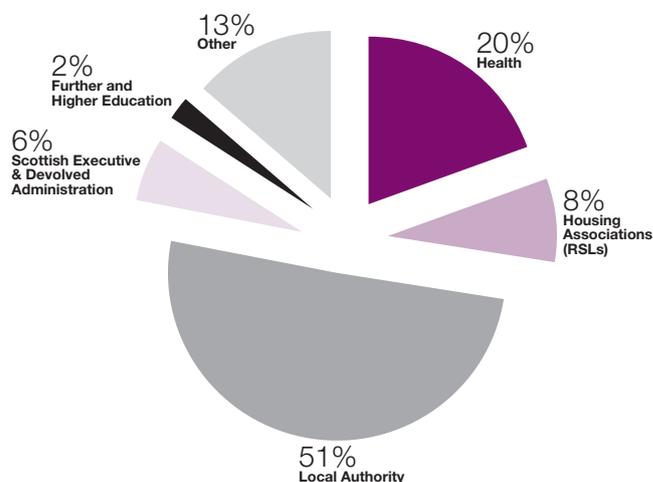
The number of both enquiries and complaints received by my office in 2006 - 07 rose to a total of 4,228. The number of enquiries rose to 2,386 from 1,974 in the previous year (an increase of 21%) and the number of complaints increased to 1,842 from 1,724 (an increase of 7%). Compared with last year this represents a slowing in the rate of increase. It also shows, however, that the number of enquiries increased at a higher rate than that of complaints themselves.

Total enquiries and complaints received by year



Enquiries are a significant and valued part of the work of our front office staff. The members of the Outreach Team, who are responsible for 'first contact' from members of the public, daily field a wide range of questions about our remit and functions. Where appropriate, they signpost enquirers to relevant support agencies such as Planning Aid for Scotland or Citizens Advice Bureaux or to other offices which have responsibility for the specific issues raised.

Enquiries and complaints received in 2006 - 2007 by subject (4228)



⁵ We define an enquiry as an approach to us seeking information, for example about whether we can deal with a complaint about a particular issue or how to pursue a complaint about a particular organisation. A complaint is an approach raising a concern about something which might be investigated by us.

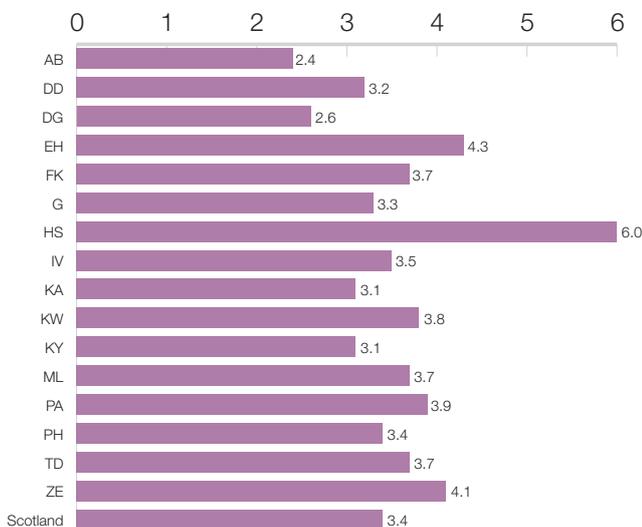
Overview

Some enquirers are unclear about how to make a complaint, or where to address it, and the front office staff provide detailed information and guidance about how to complain to the appropriate person. This may involve contacting the body concerned on behalf of the enquirer, in order to clarify the body's complaints procedures. Sometimes it is possible to resolve the complaint at this early stage just through discussing it with the body concerned. Where appropriate, staff also provide information about how to bring a complaint to the SPSO.

The distribution of the subjects of enquiries and complaints received is similar to other years. Reflecting the number of services they deliver, local government has the highest number (2,141, 51%), followed by health (833, 20%), Registered Social Landlords (RSLs) (336, 8%), Scottish Executive and NDPBs (252, 6%), and higher and further education (97, 2%). These are discussed in more detail in the chapters covering the different sectors.

The geographical distribution of complaints is shown in the graph below, which illustrates how different parts of Scotland compare in terms of numbers of complaints received in 2006-07.

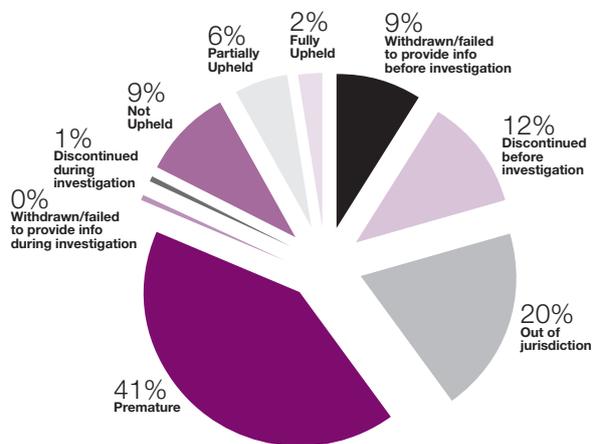
Complaints received per 10,000 people by Scottish postcode area



Closed complaints (outcomes)

We received 1,842 complaints and closed 1,826 (some of the closed complaints were received before the reporting year began, and some that we received during 2006-07 were still under consideration or investigation at the year's end). Of the closed complaints, the breakdown in terms of outcomes was as follows:

Complaints closed by outcome



Some 315 complaints (17%) of the total resulted in Investigation Reports being laid before the Scottish Parliament. A small number of cases (20, 1% of the total) progressed to investigation but were discontinued before they could be completed. Most of these were discontinued because we and the complainant agreed such a course was appropriate, or because we lost contact with the complainant. Other reasons included lack of sufficient evidence to continue, or the complainant choosing to take legal action instead. The remaining 1,491 complaints (82%) did not result in an Investigation Report for a variety of reasons: 357 (20%) were found to be out of jurisdiction, so we could not investigate them; a further 758 (41.5%) were found to be premature (these are complaints that have not yet been through the full complaints procedure of the body complained about);

and 165 (9%) complaints were withdrawn by the complainant or discontinued before investigation because the complainant did not provide us with information we needed to continue. The remaining 211 (11.5%) of the cases that did not progress to investigation were discontinued for reasons such as there being insufficient evidence.

It is important to emphasise that a great deal of work is often done on complaints that do not progress to investigation and where we nonetheless consider we are adding value by making recommendations for improvement. Closing complaints by means that do not involve investigation can include, for example, a Complaints Investigator contacting the body to see if informal resolution is possible.

The most high profile aspect of our work is the Investigation Reports that we lay before the Parliament. Of the 315 reports that were laid, 41 were fully upheld (13%); 105 were partially upheld (33%); and the remaining 169 (54%) were not upheld. Where a complaint is not upheld, we often make recommendations where we consider improvements can be made.

When the reports are laid at the Parliament, they become public documents and often attract press attention. The Commentaries that accompany these reports provide an opportunity to highlight where I see good practice by bodies in handling complaints and where I see problems in an organisation or a policy that may have wider consequences for a particular sector or for Scotland as a whole. By sharing the learning from reports in this way I hope to encourage bodies to take pre-emptive action in the areas for which they have responsibility.

The sections that follow cover the different sectors under the jurisdiction of my office. Lewis Shand Smith discusses the issues arising in the local government sector and also highlights trends in the complaints about

further and higher education. The health sector is covered by Eric Drake who, with Carolyn Hirst, looks also at complaints about the Scottish Executive and its agencies and NDPBs. In addition, Carolyn Hirst explores the issues that stem from complaints about the housing functions of councils and the work of Registered Social Landlords.

Resources

The continued rise in case numbers posed particular challenges over the past year. It resulted in difficulties in timescales in handling complaints, which was reflected in many of the 42 complaints about our service (which is less than 1% of the total handled) which referred to delay.⁶ This has meant we have had to make hard choices and to consider how we apply the principle of proportionality to our work in order to achieve the best use of our resources.

Alongside these changes, we have sought ways of enhancing the performance of our staff through further training and guidance and the introduction of Key Performance Indicators (KPIs).⁷ Our Quality Assurance mechanisms continue to monitor the service we provide, and evidence from this process and from our Service Quality Complaints process are used as valuable feedback with a view to sharing the learning and improving our service.

I very much welcomed the Scottish Parliamentary Corporate Body's decision to increase the SPSO budget for the year 2006-07. The additional funding made it possible to recruit new Complaints Investigators and other casework handling staff. This is already helping us to deal with the volume of enquiries and complaints we receive and to provide a high quality service within the timescales that we consider appropriate.

⁶ www.spsso.org.uk/complain/article.php?ssi=36

⁷ www.spsso.org.uk/statistics/article.php?ssi=57

Overview

Internal and External Initiatives

Initiatives that we have launched or progressed over the past year include:

i) Gateway Project

Our Outreach Team is working imaginatively to manage the number of complaints that come to the SPSO without first going through the appropriate procedures of the bodies under jurisdiction. The Gateway Project, which aims to reduce the number of premature complaints, is outlined in more detail in the Outreach section along with an update on the 'Valuing Complaints' initiative.

ii) 'Just Say Sorry'

A continuing initiative is the 'Just Say Sorry' proposal (made in our 2004-05 Annual Report) for legislation that would provide for an apology to be given by a public body when something has gone wrong without that apology being seen as an admittance of liability or negligence. Evidence shows that the fear of litigation acts as a barrier to giving apologies. In the two years since, I have held discussions on this matter with a wide range of health professionals, chief executives and monitoring officers in local government, and many MSPs, including the former Justice Minister. Although the proposal has been received positively, I am disappointed that more progress has not been made and shall continue to push for consideration of appropriate legislation. This is perhaps even more of an issue as Section 2 of the Compensation Act 2006⁸, which applies only to England and Wales, provides for such an apology to be given. Scotland is out of line in not having a similar provision in place and I would urge action to address this omission.

iii) Guidance on Apology

The absence of such legislation, however, should be no barrier to bodies' ability to deliver an apology. As many of our reports illustrate, in most cases where things have gone wrong, what people want is a meaningful apology. As one complainant told us of his enquiries to a health board about the death of a relative:

'I had no thoughts whatsoever of taking legal action against anybody. All I wanted was the truth regarding my son's death. What is the problem that everybody thinks everybody is going to take legal action against them? All we wanted was the truth. "I made a mistake, this is what I did, I'm sorry."'

The majority of people do not wish to pursue the matter to court but there is evidence to suggest that, in the absence of an apology, they are more likely to consider and take up this option.

When we investigate a complaint and find unremedied fault, the Investigation Report will recommend what an organisation needs to do to put things right. A common recommendation is that an apology should be offered. We have produced a guidance note⁹ to assist bodies on what is required for an apology to be meaningful, and I am pleased to record the positive feedback we have received from bodies in response to its publication.

New Developments

i) Administrative Justice

In last year's Annual Report we recorded that legislation being introduced into the UK Parliament would have an impact on the administrative justice system in Scotland.

By way of background, the Scottish Executive has been committed to modernising the criminal law system to protect individual rights¹⁰. They have also pursued other related initiatives, including support for mediation pilots and a gateway website for members of the public who encounter civil justice problems. Further, the report of an advisory group chaired by Lord Coulsfield¹¹, published in November 2005, recommended that there should be a review of important aspects of the civil justice system in Scotland to address concerns that it is too slow, expensive and complex.

⁸ www.opsi.gov.uk/acts/acts2006/20060029.htm

⁹ www.spsa.org.uk/advice/article.php?ssi=41

¹⁰ *A Partnership for a Better Scotland: Partnership Agreement – Justice*. www.scotland.gov.uk/librar5/government/pfbs-04.asp

¹¹ *Civil Justice in Scotland: a Case for Review?*, Scottish Consumer Council, November 2005. www.scotsconsumer.org.uk/accessjustice/documents/rp11civil_000.pdf.

It is understood that the Scottish Executive is now considering how best to take forward the recommendations of the group.

There has, however, been less attention paid to the administrative justice system in Scotland. This is of some concern especially in the light of the legislative changes proposed by the UK government. In a White Paper published in July 2004¹², the then Department for Constitutional Affairs put forward the case for improvement of the entire system of administrative justice. It proposed that the Council on Tribunals should evolve into an Administrative Justice and Tribunals Council with a remit for promoting administrative justice as a whole. The resultant Tribunals, Courts and Enforcement Act obtained Royal Assent in July 2007. The exact implications for Scotland are still to be explored fully.

As an office which is part of the administrative justice system, the SPSO has contributed to the debate, in particular through the Scottish Committee of the Council on Tribunals (SCCT) of which I am an ex-officio member. Together with the SCCT we have established an Administrative Justice Steering Group, chaired by Lord Philips. The Group comprises representatives from the SPSO, the SCCT, the Justice Department of the Scottish Executive, the Scottish Consumer Council and others.

The remit of the Group is to commission research and act in an advisory capacity in the preparation of a final report to be presented to Cabinet Secretaries. The report will aim to set out the current administrative justice system in Scotland; highlight any problems and issues arising from the current system; and propose options for the type of administrative justice system that would best suit conditions in Scotland. It is anticipated that the report will be finalised by the end of 2007.

ii) Accreditation/training

In August 2007 we will launch a new initiative in training public sector staff in complaint handling. We have worked throughout the past year with Queen Margaret University in Edinburgh to develop an innovative accreditation module in Managing Customer Complaints. The module is targeted at complaint handlers in public bodies and staff of ombudsmen and similar offices and is included as one of the optional modules of the University's Executive Masters Degree in Public Services Management. The programme will be attended by SPSO staff as well as staff from scrutiny bodies and public service providers.

We decided to explore academic training for investigators for two main reasons. Firstly, to allow for better benchmarking of staff training against a recognised standard that can also apply to other complaint handling bodies, and to create a more consistent approach to the development of investigation skills. Secondly, despite the wide range of courses in public administration currently on offer, there appears to be a lack of practical, service focussed courses for public service managers in Scotland, especially those which specialise in complaint handling. We hope that the course will support bodies in developing effective complaint management processes.

Other Contributions

Like all bodies that are funded from the public purse, the SPSO is affected directly or indirectly by changes to legislation, by the creation of new bodies, and by initiatives to transform public services or to share services. Where appropriate, I have submitted evidence to the relevant Parliamentary and Executive inquiries and consultations and these responses are listed on the next page¹³.

¹² www.dca.gov.uk/pubs/adminjust/transformfull.pdf

¹³ www.spsa.org.uk/news/article.php?ssi=17

Overview

20 April 07 Submission to Professor Lorne Crerar's Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland.

24 January 07 Written evidence to the Finance Committee Report on Legislative Consent Memorandum on the Statistics and Registration Service Bill (UK Legislation).

5 December 06 Oral evidence to the Local Government and Transport Committee.

28 July 06 Response to Scottish Executive's Consultation on Shared Services.

6 June 06 Oral evidence to the Finance Committee Inquiry into Accountability and Governance.

16 May 06 Oral evidence to the Justice 2 Committee on Legal Profession and Legal Aid (Scotland) Bill.

18 April 06 Written evidence to the Finance Committee Inquiry into Accountability and Governance.

I welcome opportunities to give evidence to Parliamentary Committees and other stakeholders. However, responding to consultations and inquiries also requires time and resources and these demands have to be balanced against the priority that I must give to our core work of handling enquiries and complaints.

i) Finance Committee Inquiry

In our written evidence to the Finance Committee's Inquiry into Accountability and Governance¹⁴, we made the point that the Ombudsman does not operate in isolation but is part of a wider system of governance. We noted that with the

creation of new bodies and appointment of new office-holders, it was important that the respective roles are understood and that the work of the different bodies should complement each other. We argued that there was a need for a more coherent governance framework design and suggested six 'design principles'¹⁵:

- 1** Clarity of Remit: a clear understanding of the office-holder's specific remit;
- 2** Distinction between functions: a clear distinction between different functions, roles and responsibilities including audit, inspection, regulation, complaint handling, advocacy;
- 3** Complementarity: a dovetailing of jurisdictions creating a coherent system with appropriate linkages with no gaps, overlaps or duplication;
- 4** Simplicity and Accessibility: simplicity and access for the public to maximise the 'single gateway'/'one-stop-shop' approach;
- 5** Shared Services: shared services and organisational efficiencies built in from the outset; and
- 6** Accountability: the establishment of clear, simple, robust and transparent lines of accountability appropriate to the nature of the office.

The adoption of such principles should avoid overlap and confusion of roles when new bodies are set up and office-holders appointed. It should also highlight opportunities for more joint working and the sharing of services.

ii) Scrutiny Review

Some of the work of the Finance Committee has been continued by the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland, chaired by Professor Lorne Crerar. My office very much welcomed the review as a way of addressing some of the problems we have identified in relation to the administrative and governance architecture of Scotland and the need to simplify the complaint handling landscape.

¹⁴ www.scottish.parliament.uk/business/committees/finance/inquiries/actgov/fc-actgov-05.pdf

¹⁵ www.scottish.parliament.uk/business/committees/finance/reports-06/fir06-07-Vol02-02.htm#supsbvqf

During the year we met with the review team on a number of occasions and submitted written evidence¹⁶. We discussed the way in which the intelligence gathered through the handling of individual complaints and seeking administrative justice for members of the public can provide a crucial link with the work of scrutiny bodies such as regulators and inspectors. The effective handling of complaints can contribute to the continuous improvement in the delivery of public services in a number of ways:

- **By promoting good complaint handling within public bodies;**
- **By identifying wider issues arising from individual complaints and making recommendations for change;**
- **By making the outcomes of complaint consideration available in a way that allows the learning from them to be understood and acted upon by public service providers generally; and**
- **By informing the work of inspectors, regulators and auditors.**

We, therefore, look forward to working with others towards the aim of creating a more coherent governance framework for Scotland and more a simplified complaints system that can be easily accessed by the public.

iii) Human Rights

A development that is likely to have a significant impact on the work of the SPSO in years to come is the growing awareness of human rights in Scotland. During the year, we received more and more complaints that explicitly mention human rights. In some the reference is specific in suggesting an identifiable breach of an individual's rights. In others, 'human rights' is used loosely in a general sense of 'I wasn't treated fairly'. Dealing with unfair treatment is not a new concept for the SPSO, but human rights legislation – which makes implicit as well as explicit demands on public bodies – does present a new challenge that we must address.

We look forward to working with the two new bodies that will have responsibilities for human rights in Scotland – the office of the Commission for Equality and Human Rights (CEHR) in Scotland and the Scottish Commission for Human Rights (SCHR). This is a good example of where our work needs to complement that of other bodies and it will be important that we enter into Memoranda of Understanding at the earliest possible opportunity. While the SCHR is not charged with investigating individual cases, it does have an important power that is not within the SPSO's legislation, which is conducting self-initiative inquiries. However, the SPSO will continue to deal with individual complaints about administrative problems and service failure which may contain a human rights component. I anticipate that our Investigation Reports and other evidence from complaints may be used by the SCHR as a means of uncovering or highlighting breaches of human rights.

There is a need, therefore, for the respective roles of the different bodies to be understood so as to avoid confusion for members of the public and others.

Conclusion

The SPSO has continued to respond effectively to the continued rise in the cases being brought by members of the public and to the changes in the context in which we work. In the final section of this Report I look forward to the challenges that lie ahead and the new political environment in which the SPSO will be operating.

¹⁶ www.spsso.org.uk/news/article.php?ssi=17

“We just wanted to say a very big thankyou for all your help in allowing us to finally attain some sort of closure... We have so much that we would like to say to you but cannot find words to express ourselves truly so, thank you from the bottom of our hearts for everything you have done and achieved for us.”

Complainant



Health Eric Drake, Deputy Ombudsman

We received 833 enquiries and complaints about the NHS in 2006-07.

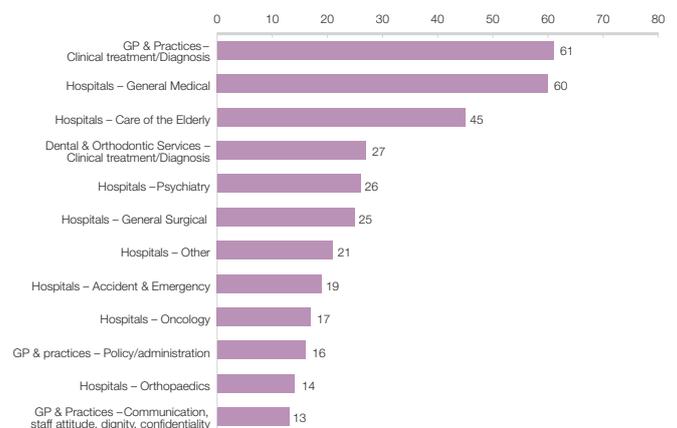
The following table shows how this total breaks down between enquiries and complaints and makes a comparison with the previous two years.

NHS cases	Enquiries (% of all enquiries)	Complaints (% of all complaints)	Total (% of all enquiries & complaints)
2006-2007	336 (14%)	497 (27%)	833 (20%)
2005-2006	255 (13%)	477 (28%)	732 (20%)
2004-2005	82 (8%)	238 (17%)	320 (13%)

As noted in last year's Annual Report, the sharp increase in NHS cases between 2004-05 and 2005-06 mainly resulted from the introduction of a revised NHS complaints procedure in April 2005 which made it easier for people to bring complaints to this office. The almost 14% increase in NHS cases between 2005-06 and 2006-07 was in line with the overall increase in our caseload in the period.

Of the 497 NHS complaints received 282 (57%) were about hospital services, 107 (22%) about general practitioners and 46 (9%) about dental and orthodontic services. The remaining 62 complaints covered the State Hospital, NHS 24, the Scottish Ambulance Service and a wide range of other NHS services. The top twelve categories of complaint were:

Top 12 subjects of health complaints



It is worth making the point that the number of complaints we receive about the NHS is tiny in comparison with the number of contacts which people across Scotland have with the health service. Is that a good or a bad thing? In 2006 the SPSO and the Scottish Health Council jointly commissioned research¹⁷ on experience and attitudes in relation to NHS complaints. This found high levels of satisfaction with GP and hospital-based services but also that there are many barriers to complaining, including resignation (the most common reason selected from those who were dissatisfied but chose not to complain was 'I have come to expect these things'). Additionally, many people felt there was a lack of information about the NHS complaints process and some did not complain because they were worried about potential repercussions. As one person put it: 'Your hackles go up: "you'll need to make a formal complaint" – you don't want to rock the boat'.

¹⁷ For the full report visit www.spsos.org.uk/advice/article.php?ssi=60

Health

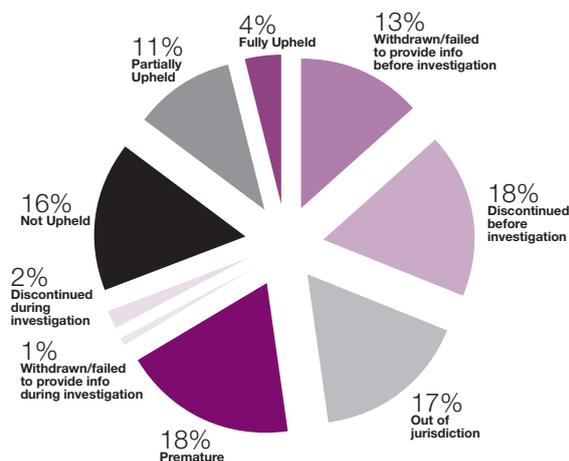
That people are often reluctant to complain is understandable. Equally, those on the receiving end of complaints may find it hard to accept that they are ‘jewels to be treasured’ as has sometimes been suggested. However, it is important that when people have genuine cause to make a complaint they are able to do so and get a proper response. There is much evidence that a prompt and appropriate response to a complaint can not only restore but actually enhance relationships. And information from individual complaints can often provide evidence to inform wider service improvements. In that sense complaints really are jewels to be treasured. All providers of NHS services are required to have complaints procedures in place and to publicise them. They also have a legal duty to make people aware of their right to bring a complaint to the SPSO. We see an important part of our role as being to help providers of Scottish public services improve their own processes for dealing with complaints and learning from them. We are pleased that NHS organisations have continued to use our DVD ‘Learning from complaints: using grievances to inform governance’ and to invite us to take part in conferences and training events. We are also encouraged by the interest which the Scottish Executive Health Directorates continue to show in ensuring that the lessons to be learned from our investigations are picked up across the NHS in Scotland.

What happens to health complaints that come to the SPSO?

We reached decisions on 435 complaints about the NHS during 2006-07. 289 of these decisions did not involve investigation. Of these cases 72 were outside our jurisdiction (for example, because the complaint was about private treatment); 81 were premature (that is, they had not

been through the NHS complaints procedure – in such cases we normally advise the complainant to first raise their concerns with the relevant NHS practitioner or organisation); and 58 were closed either because the complaint was withdrawn or because the complainant did not respond to a request for information. In a further 78 cases after initial consideration of the complaint we decided that an investigation was not appropriate. This was most commonly because, from the information available, it was clear that there was no basis for the complaint, or, where there was, that the NHS body concerned had already taken appropriate action; or because it was clear that we would not be able to reach conclusions (for example, on a complaint about what was said during a conversation to which there were no independent witnesses). In a further 12 cases investigations were started but discontinued. In 134 cases investigations were completed and reports were issued. In the 134 Investigation Reports we fully upheld 16 complaints; partially upheld 47; and either did not uphold or made no finding on 71.

Health complaints closed by outcome





What issues come out of the health complaints we investigate?

A recurring theme is communication in the broadest sense. Examples include information not being properly conveyed to patients and their carers and relatives; not passing from one part of the NHS to another when responsibility for a patient is transferred; or not being shared among members of a team caring for a patient because clinical records are inadequate. Other cases have raised concerns about the clarity of information available to the public (for example on spotting and acting on the symptoms of a particular condition or on what can be expected from the NHS in particular circumstances).

Nursing care, particularly for vulnerable people, remains a concern. Cases reported this year have found serious shortcomings in the care of an elderly person with dementia; failure to deal properly with another patient's dementia related problems and unnecessary physical restraint; the inappropriate admission of a third patient with dementia to an assessment ward; concerns about the planning of care for an elderly patient; inadequate assessment of a patient's risk of falling; and inadequate care of an elderly man in an A&E department.

Problems can also arise when a patient's care transfers within the NHS: for example from a GP to hospital (or vice versa); from one specialist to another; or from child to adult services. In these circumstances what is sometimes referred to as the patient's journey can be bumpy and

involve delays and blockages. In one case we investigated this year the 'patient journey' metaphor was all too apt. Over a six year period a young woman with severe anorexia nervosa was treated in nine different facilities (private and NHS) in Scotland and England. We found that her treatment and care within a number of the hospitals was excellent but its long-term benefit was severely hampered by the necessity for the treatment to be delivered so far from her home and in so many different settings. Our report (Case 200400447, issued in June 2006) noted that a number of changes to the available psychiatric provision had occurred since these events but drew attention to outstanding unmet needs.

Our findings were taken into account by NHS Quality Improvement Scotland in their November 2006 report *Eating Disorders in Scotland: Recommendations for Management and Treatment*.

This is an example of how evidence from our investigation of an individual complaint can contribute to wider service improvement. The case studies on following pages provide further examples.

Health



Orthodontic Treatment

Case 200500110

The parents of a young man who needed complex orthodontic treatment complained that they had been forced to pay to have this carried out privately because they had been told he would have to wait at least two years for NHS treatment.

The Ombudsman recognised that the NHS has to prioritise resources against diagnosed need, which means that difficult choices have to be made. In this case the NHS Board concerned quite properly operated an orthodontic waiting list. This was ostensibly needs-based but lacked the flexibility to ensure that individual patients received treatment at the most effective time, which in this case was when the young man was aged 12.

The Ombudsman recommended that the Board pay the complainants a sum equivalent to the cost of the private treatment and review the current Urgent Waiting List policy to ensure there was sufficient flexibility in its application to respond to the specific needs of individual patients.



Deep Vein Thrombosis (DVT)

Cases 200301943 and 200402133

Two cases reported in May 2006 concerned the failure to diagnose and treat DVT.

In both cases the Ombudsman made recommendations relating to DVT Management Protocols. She also noted that although DVT is difficult to diagnose it is not uncommon. She asked that consideration be given to the need for Scotland-wide guidance on the management of DVT, and that a Patient Information leaflet be integrated into any such guidance.

In one of the above cases, the complainants subsequently put a petition to the Scottish Parliament, citing the SPSO report and calling on the Scottish Executive to introduce mandatory tools for all health boards for the detection of DVT.



Continuing Care

Case 200500976

A man complained that his father should have received NHS funding for all his care in a nursing home rather than the limited funding he received from his local authority. The Ombudsman found that the NHS Board concerned had not properly assessed the complainant's father's eligibility. She recommended a retrospective assessment.

This investigation, like others, identified issues concerning the clarity, accessibility and transparency of the process for assessing eligibility for NHS funded Continuing Care. The Scottish Executive Health Directorates have acknowledged procedural gaps in the current guidance and say that they are seeking to address this issue in draft revised guidance which they are in the process of developing.



General Practice

Case 200501587

A woman complained that her GP practice had been incompetent in making a diagnosis and insensitive in providing treatment and had not provided follow-up or support after she was discharged from hospital. The Ombudsman did not uphold any of these complaints. The woman also made a complaint, which was upheld, that the Practice had unnecessarily tried to persuade her to attend cervical smear tests.

The Practice apologised to the woman and, before the Ombudsman's report was issued, had examined the entire cervical smear recall system and, in consultation and conjunction with the software providers, had identified and implemented areas for improvement. In addition, the practice manager now took a greater role in overseeing processes in relation to the computer system and further training for staff had been organised.

“Thank you for your letter informing me of the results of your investigation into my complaint. Although I am disappointed with the outcome, I appreciate the thoroughness and diligence with which you carried out the task.”

Complainant



Scottish Executive and Devolved Administration

Eric Drake and Carolyn Hirst, Deputy Ombudsmen

Scottish Executive

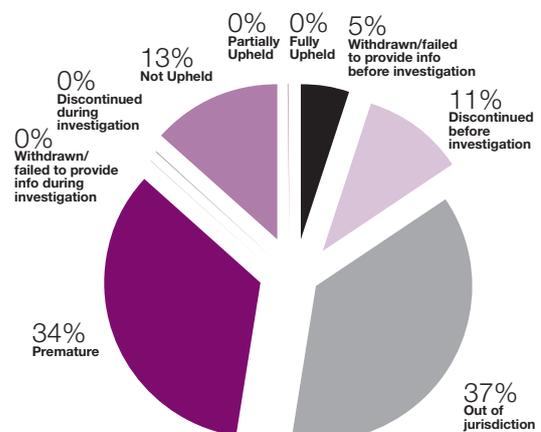
We received a total of 65 enquiries and complaints about the Scottish Executive in 2006-07, just 1.5% of our total caseload. Nineteen of these were enquiries and 31 complaints. We determined 38 complaints about the Scottish Executive in the year. Of these determinations, five resulted in Investigation Reports, none of which were upheld.

That complaints about the Scottish Executive form such a small part of our caseload is not surprising. Most complaints relate to the delivery (or non-delivery) of services which have a direct impact on individuals' lives. The Scottish Executive is less involved in the direct delivery of such services than, for example, local authorities and the NHS.

However, where the Scottish Executive does have a direct responsibility is in the formulation of legislation and policy which provide the framework for the delivery of public services and in promoting consistency and good practice across the spectrum of Scottish public service providers. It is in these areas that the SPSO has much of its engagement with the Scottish Executive rather than in the consideration of individual complaints. For example, the Scottish Executive Health Directorates have been particularly active in engaging with us to ensure the lessons coming out of our investigations are picked up across the NHS. We welcome this and see it as a model which could be followed in other sectors. The Ombudsman has referred in her Overview to our engagement with the Scrutiny Review.

Elsewhere in this report, we mention problems which our investigations have exposed around policies and guidance on NHS Continuing Care, Free Personal Care and the calculation of capital when someone who is in residential care is being assessed for the level of financial contribution they are due to make. In all these areas we see a need to review guidance to ensure it is comprehensive, up-to-date and fit for purpose so that members of the public understand their entitlements and how to claim them and service providers have a clear understanding of their obligations and a framework which allows those obligations to be met consistently across the country. We recognise that this presents difficulties and that policy and guidance cannot cover every eventuality. However, in all the areas mentioned we consider the present situation unsatisfactory and in several reports we have urged the Scottish Executive to move quickly to improve matters.

Scottish Executive complaints closed by outcome



Scottish Executive and Devolved Administration

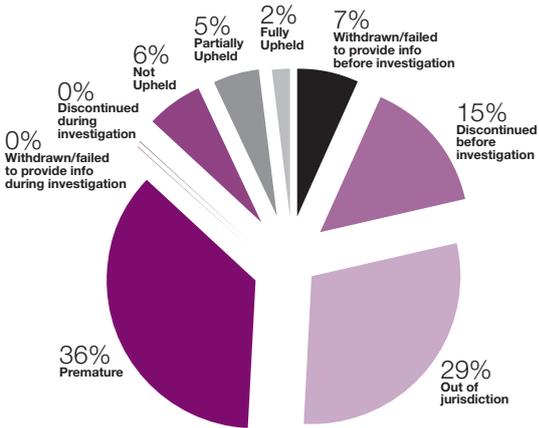
One area where the Scottish Executive has moved to bring about greater simplicity and clarity is in the introduction of a revised NHS complaints procedure. This has now been in operation for over two years and is generally acknowledged to have been a success. Other parts of the UK seem likely to adopt a similar model for NHS complaints. The SPSO was pleased to be involved with the Scottish Executive in the work which led up to the introduction of the revised NHS complaints procedure. We would welcome similar engagement in reviewing the Social Work complaints process, something which we consider is urgently required. Our colleague Lewis Shand Smith comments further on this in the local government section of this Report.

Devolved Administration

Sector	Complaints received	Enquiries received	Total
Scottish Executive	35	30	65
Public Bodies	104	83	187
Total	139	113	252

We received a total of 187 enquiries and complaints about the bodies comprising the devolved administration (Scottish public authorities and cross-border public authorities) in 2006-07. There were 83 enquiries and 104 complaints. A wide range of bodies come under the devolved administration heading. We determined a total of 116 complaints about 37 of these bodies in 2006-07 with the following outcomes:

Devolved Administration complaints closed by outcome





Graduate Endowment Payment

Case 200501034

The complainant said that the body were demanding a Graduate Endowment payment from him and threatening legal action if he failed to pay. He felt aggrieved because, despite providing the body with information which he considered showed that he was clearly not liable, they continued to pursue him for payment. Following investigation of the matter, however, the Ombudsman was satisfied that the complainant was liable to pay the Graduate Endowment under the terms of the relevant regulations and, to that extent, his complaint was not upheld.

However, he was justified in feeling aggrieved because information on the body's website was incomplete. This was a shortcoming that the body had remedied but the Ombudsman recommended that they formally apologise to the complainant for any confusion that their administrative error may have caused him and acknowledge his part in bringing the matter to their attention.



Application for Apportionment¹⁸

Case 200500736

The complainant was concerned she had been encouraged by the body to submit an application for apportionment as part of a planned scheme and that this was then considered as a single application and rejected. The Ombudsman upheld the complaint and recommended that the body apologise to the complainant for their handling of her application; reimburse her for any expenses she could demonstrate were reasonably incurred in the course of making her application; and review relevant advice and training given to staff.



Failure to Investigate Properly

Case 200503536

The son of a resident in a care home complained about her care to the body. He complained to us that the body failed to investigate properly his complaint and in particular that the conclusion of their investigation was not borne out by the evidence presented. The Ombudsman upheld the complaint and recommended that the body adopt the practice of seeking to agree a statement of complaint which would include reference to the specific matters being investigated.

¹⁸ Apportionment of common grazings is a means by which a shareholder in a particular grazings may secure a portion for his/her exclusive use.

Housing Carolyn Hirst, Deputy Ombudsman

This section covers the work of Registered Social Landlords (RSLs) and the housing functions of councils. Recent Scottish Executive statistics estimate that around 625,000 households in Scotland live in the social housing sector. We received 979 enquiries and complaints in 2006-07 about housing (23% of our caseload and an increase of 10% compared to 2005-06).

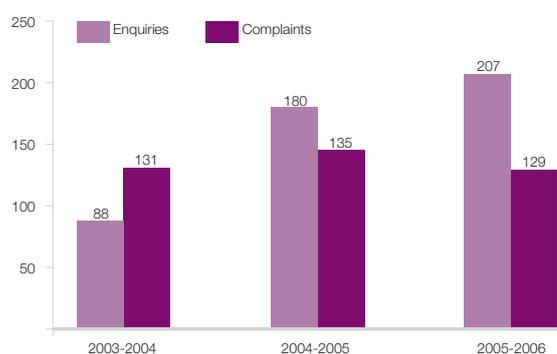
Housing Sector	Complaints	Enquiries	Total
Council	286	357	643
RSL	129	207	336
Total	415	564	979

The 129 RSL complaints received related to 58 of the 259 RSLs registered with Communities Scotland and the 286 council complaints were about the housing functions of 29 of the 32 councils.

The number of enquiries received about RSLs (207) continued to rise in 2006 – 07. However, the number of complaints received about RSLs (129) decreased by 11%. Complaints received about RSLs accounted for 7% of our caseload in 2006/07.

Enquiries received about the housing functions of councils (357) continued to increase in 2006-07 as did the number of complaints (286), which increased by 10%. Complaints received about council housing accounted for 16% of our caseload in 2006-07.

Housing Association enquiries and complaints received by year



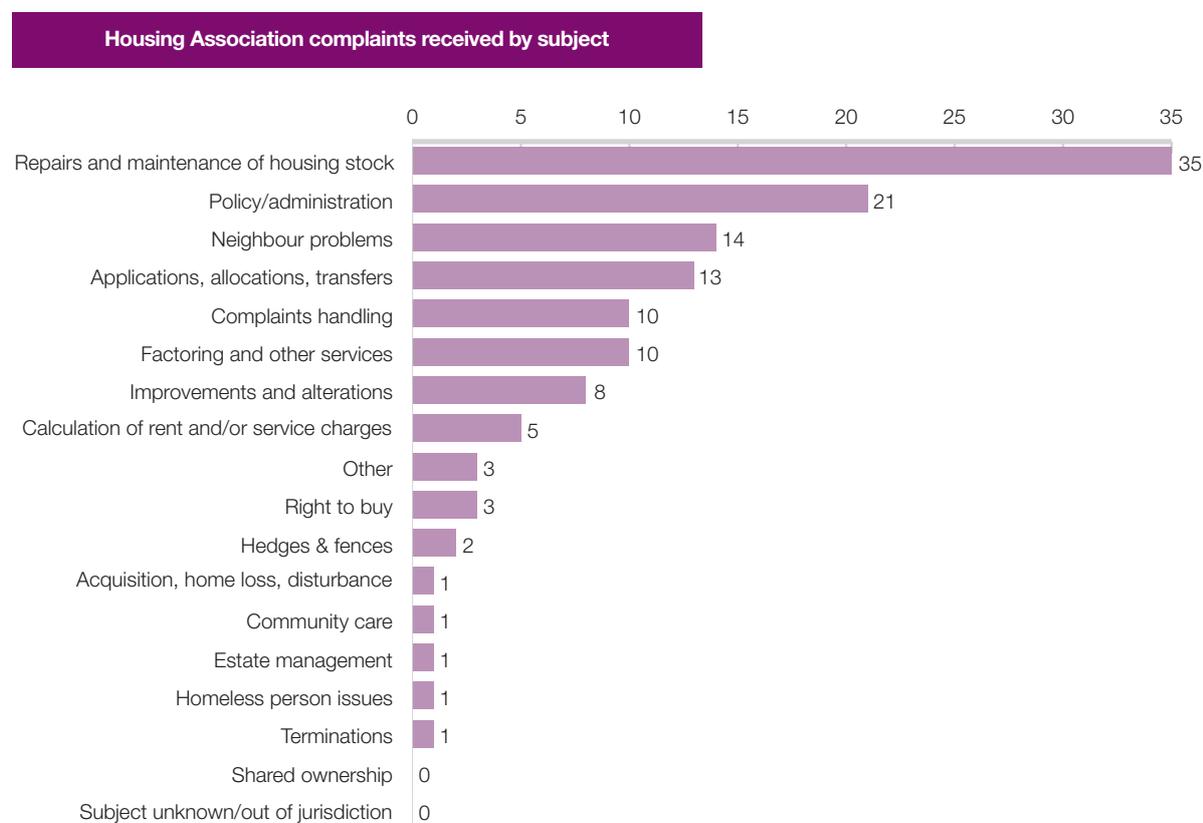
As has been the case for the past four years, the combined top three complaint subject categories were repairs and maintenance (28%), applications/allocations (16%) and neighbour disputes/anti-social behaviour (12%). However, these top three complaint subjects all decreased in number this year for RSLs, whereas council housing had an increase in complaints about repairs and about neighbour disputes/ASB.

Housing

Subject categories of all housing complaints (council and RSL)

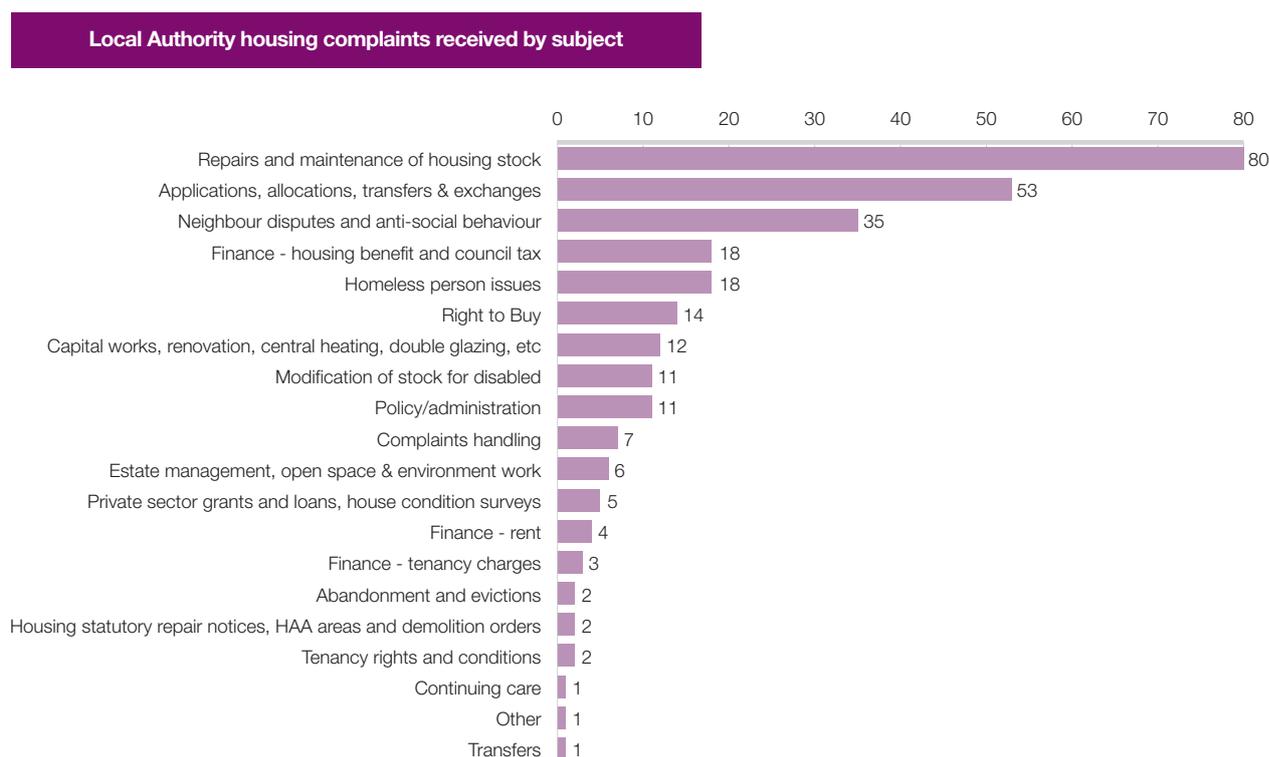
Complaint Subject	Council 2006-07	Council 2005-06	RSL 2006-07	RSL 2005-06	Total 2006-07	Total 2005-06
Repairs/Maintenance	80	64	35	49	115	113
Applications/Allocations	53	58	13	16	66	74
Neighbour Disputes/ASB	35	32	14	20	49	52

If we take only RSLs, the second highest complaint subject category was again policy/administration.





For council housing complaints, the subject categories were as follows:



A total of 435 housing complaints were determined in 2006-07.

Outcome	Council	RSL	Total
Withdrawn/Failed to Provide Info	28	6	34
Out of Jurisdiction	24	29	53
Premature	172	96	268
Discontinued before Investigation	18	12	30
Discontinued during Investigation	2	1	3
Not Upheld	10	10	20
Partially Upheld	11	6	17
Fully Upheld	8	2	10
Total	273	162	435

Housing

11% of the complaints received about housing resulted in a published Investigation Report. As has been emphasised elsewhere, much of our work is done at stages before investigation and reporting. Eighteen of the 47 housing Investigation Reports related to RSLs and 29 to council housing. 43% of these resulted in complaints not upheld, 36% were partially upheld and 21% were fully upheld. We fully or partially upheld 44% of RSL investigations and 66% of council housing investigations.

As the case studies below illustrate, housing complaints often originate in times of change: organisational change (such as new staff, new systems, mergers or transfers) or changes in individual circumstances (such as the start or end of tenancies, including the Right to Buy).



Failure to give disabled tenant help with decoration costs

Case 200502707

The Ombudsman partially upheld a complaint that a tenant was not given help with redecoration costs to which he was entitled as a result of his disability. She recommended that the Housing Association apologise to the complainant for failing to inform him that he may have been able to ask the Housing Association to carry out the decoration works; and ensure that tenants in receipt of a decoration allowance are aware that additional help may be available.



Handling of termination of tenancy

Case 200502300

The complaint was made by former council tenants who alleged that when they gave up the tenancy the Council's Housing Department failed to ensure that they completed the proper termination procedure and that as a consequence of this they incurred considerable rent arrears.

In the course of the investigation, the Department accepted that there was a failure to ensure completion of the proper termination procedure. They apologised to the Ombudsman's office for this administrative failure and agreed to offer the former tenants a formal apology. The Council agreed to take on board the administrative issues raised by the complaint and, in this context, they indicated in their reply to the SPSO Complaints Investigator that they had put in place appropriate training procedures for staff to follow when dealing with similar cases. The Council also agreed to authorise an immediate rent credit to the complainants. The Ombudsman commended the actions that the Council took to resolve this issue.

Premature Complaints

Housing attracts a higher percentage of premature complaints than any other sector. Last year, 62% of all housing complaints that we determined were premature. For RSLs, the premature figure was the same as last year (59%), but the figure for the housing functions of councils was slightly higher at 63%. In response to this fact, we carried out a small pilot study in October 2006 to find out why premature complaints came to us

when they did and what had happened since the complainants contacted us. One finding from the study was the need for bodies to indicate more clearly when the response provided to the complainant was their final response. As part of the follow-up to the study, we are contacting housing sector bodies to ask for their participation in a more comprehensive study on complainants' experience of bringing a complaint to the body and the SPSO.

Outcome All Complaints	All Council	RSL	Health	SE&D	FE & HE	Total
Premature	509	96	81	55	17	758
Total Complaints	1029	162	435	154	36	1816
% Premature	49%	59%	19%	36%	47%	42%

Outcome Housing Complaints	Council Housing	RSL	Total
Premature	172	96	268
Total Complaints	273	162	435
% Premature	63%	59%	62%

Housing

Focus on Factoring

Factoring is a management service offered to property owners to co-ordinate and carry out work on their behalf, usually in respect of repairs, improvements, maintenance, insurance and administration. Legislative constraints mean that we are unable to deal with all complaints about factoring by RSLs. Schedule 4 of the SPSO Act 2002 sets out matters that the Ombudsman must not investigate. These include (with some exceptions) action taken in matters relating to contractual or other commercial transactions of a listed authority. The SPSO has taken the view that where RSLs factor properties that were not originally owned by a council or RSL, complaints about these services are not within our jurisdiction. However, complaints about factored properties that were owned previously by a council or RSL may be. This is an example of how the legislation restricts our ability to consider complaints in what many might consider to be an illogical way. As has been raised in previous Annual Reports, we would welcome the opportunity to revisit our founding legislation to consider whether it meets the intent and aspirations of the Parliament.

An issue in factoring complaints is that housing providers do not always make available clear and concise information on how they will deal with complaints from owners about factoring services.

Focus on the Right to Buy

Recent investigations have found issues about the provision of good, relevant and timely information in relation to the Right to Buy. A particular concern relates to the timing of the provision of this information.

Section 23(4) of the Housing (Scotland) Act 2001 states that: 'Before the creation of a Scottish secure tenancy the landlord must provide the tenant with information about (a) the tenant's right under Part 111 of the 1987 Act to purchase the house which is the subject of the tenancy...' (The Act referred to is the Housing (Scotland) Act 1987). However, it appears to be the practice of some landlords to advise transferring tenants orally at the time of tenancy sign-up about the effect that transfer will have on their existing Right to Buy discount. We consider that this does not give a tenant sufficient time to consider and/or seek advice on the implications that a transfer to a new home may have on their Right to Buy. We have been, and will continue to be, critical of housing bodies that use this practice. We recommend that tenants be provided with written advice, in advance of any new tenancy being created, about the likely implications and changes to their Right to Buy discount.

case study

3

Housing allocation

Case 200500551

The complainant raised a number of concerns about the way in which her housing allocation had been handled by the Council. She complained that council officers had provided incorrect information in connection with medical advice relating to the appropriateness of a property; that the Council delayed acting when informed of the unsuitability of a property; and the Council had failed to comply with the time limits of its complaints procedure.

The Ombudsman did not uphold the first or second aspects of the complaint. She did uphold the third, and recommended that the Council remind staff of the Council's commitment to answering complaints within the timescale specified in its complaints process, and, furthermore that complainants should not be referred to the Ombudsman before they have exhausted the Council's own complaints process.

case study

4

Noise disturbance

Case 200501985

The complainant claimed undue delay by the Council in researching and resolving a problem of noisy pipes which was preventing her from sleeping. After he was notified of the complaint to the Ombudsman, the Council's Chief Executive reviewed the circumstances of the complaint. The Ombudsman was pleased to note that the Chief Executive accepted that the complaint was justified, apologised to the complainant and made a substantial payment to her for the poor service she had received. The Ombudsman commended the Chief Executive for his open acceptance that the case carried important lessons for customer care and asked him to inform her of the outcome of discussions with staff on how to avoid a recurrence of the situation.

“

This was a particularly complex case involving sensitive issues. I did not uphold the complaint and was grateful to the council for their thorough, detailed responses.”

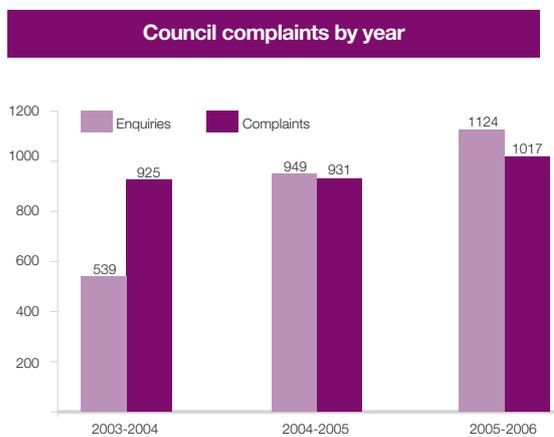
Ombudsman's Commentary, November 2006



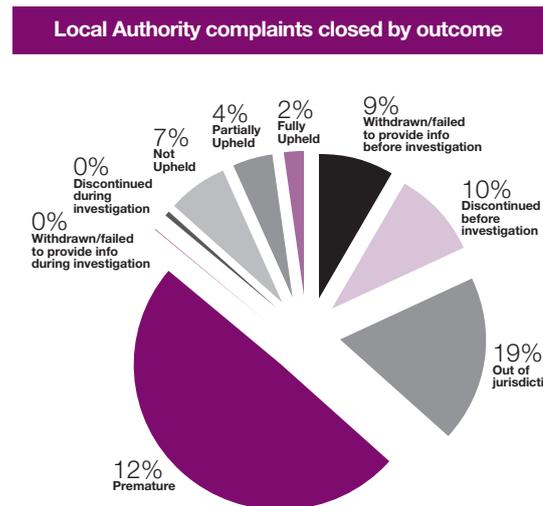
Local Government

Lewis Shand Smith, Deputy Ombudsman

The number of complaints and enquiries received about councils continued to rise. During 2006-07 there were 1,124 enquiries and 1,017 complaints about councils, 2,141 in total.



Complaints about local authorities made up 55% of all complaints received. As we have commented in previous Annual Reports, this is no surprise, given that each day every one of us is provided with services for which councils have responsibility. The 'league table' of subjects remains much the same, and, again, we remain concerned about the high number of premature complaints we receive.



Premature complaints

Just under half the cases received in this sector are closed as premature. In some cases the complainant has not even approached the council concerned. There would appear to be many reasons for this, and we are attempting to understand them. In some cases complainants did not know who to contact; in others they thought there was no point in making the complaint to the council because they did not think they would be listened to. Some complainants did not pursue their complaint because they found staff unhelpful. There are others where the subject was not really a complaint, but more a request for advocacy – for example to get help to repair a pavement.



Local Government

Whatever the explanation, it is important that people know who to approach in a council if they wish to complain, that they have confidence in the system and that they are treated with empathy and respect by council staff. Councils must ensure that their complaints processes are accessible, easily understood and operate with clarity and transparency. They need to demonstrate that complaints are welcomed and can bring about positive improvement to the way in which the council conducts its business and provides services. Council staff should be trained in dealing with complaints and be empowered and supported to do so. There are many examples of good practice by councils, some of which are pointed to on our ‘Valuing Complaints’ website along with general support and advice.

Of the 1,029 local government complaints we determined last year, we took 136 (13%) to investigation. 191 (19%) of complaints were out of jurisdiction, generally meaning that the subject was one that we cannot investigate. A further 193 (19%) complaints were considered and did not progress to investigation. 509 (49%) of complaints were premature. The table below shows how these figures compare with the NHS.

We believe the table below illustrates the need for councils to improve the accessibility of their complaints processes as one way that would reduce the number of premature complaints we receive. As described in our Outreach section, we shall continue to do what we can to assist complainants in finding their way through the formal complaints mechanisms of different councils. If it is appropriate, we will intervene to help resolve an issue at this stage.

	NHS Complaints	Local Authority Complaints
Total Complaints Determined	435	1029
Out of jurisdiction	72 (17%)	191 (19%)
Premature	81 (18%)	509 (49%)
Not progressed to investigation	148 (34%)	193 (19%)
Total Complaints Investigated	134 (31%)	136 (13%)



Investigation Reports

2006-07 was the first full year since we introduced the change to our reporting process, resulting in a much greater number of reports being made public. In the local government sector, we reported on 136 investigations, compared to just five in the year before we revised the process (2004-05). We are grateful for the positive way in which councils have responded and indeed have welcomed the developments. Of the 136 cases investigated, 66 were upheld in full or in part and 70 were not upheld.

When a report is complete it is issued as a draft to the parties involved. One of the inevitable consequences of the increase in investigation and reporting is a slight rise in the number of challenges by authorities to our decisions – the conclusions, recommendations or both. This, we believe, demonstrates just how seriously councils treat complaints that come to the Ombudsman. We consider comments by both authorities and complainants on draft reports with great care. The final decision rests with us. If we decide to make major changes then a further draft is issued, if not then the final report is laid and we give feedback on the representations received.

Once a report is laid, we follow up to check whether recommendations have been implemented; apart from that the Ombudsman's role in the complaint is complete. The report cannot be changed and any challenge to it can only be made through judicial review. This year we faced our first such review since the creation of the SPSO, which concerned a specific issue to do with Free Personal and Nursing Care (Case 200503650). At the time of writing we await the outcome of the review.

We have seen an increase in complaints about Free Personal Care. There is undoubtedly confusion amongst councils about the implementation of this core national policy. In light of this, the decision by the Scottish Executive to review Free Personal Care is timely and welcome.

A related issue is the calculation of capital when someone who is in residential care is being assessed for the level of financial contribution they are due to make. If they have passed their home on to their family, councils are entitled to take the value of that into account as notional capital when determining assets. There are no guidelines as to how many years should pass before such a transfer is disregarded and councils throughout Scotland use widely differing criteria.

We investigated a complaint (Case 200503530) that a council decided to include, as notional capital, the value of Mr A's home which he had transferred to his son nine years previously. The consequence was that Mr A was regarded as self-funding for his care home costs. We upheld the complaint that the council had acted unreasonably and recommended that they review their current practice for assessment of nominal capital and reassess Mr A's financial means, excluding the nominal value of the property. We also upheld a related complaint that the council had no formal means for Mr A's family to appeal on his behalf.

These cases highlight the need for clarity in legislation and guidelines. Where views between public authorities diverge, it is unreasonable for those receiving the service, or their representatives, to find the resolution. These, and other similar complaints, also illustrate the need for appropriate appeals mechanisms following needs or financial assessments. Because they have no other means available to them, councils often have to use a complaints process to deal with what is, in effect, an appeal.

Local Government



Council Tax Case 200501685

We received a complaint that a Council had changed their policy relating to the level of discount on second homes and long-term empty properties. The Ombudsman found that while the Council were entitled to exercise their discretion to reduce the level of discount for such properties, to do so retrospectively was administratively incorrect and imposed an unfair and unforeseen burden. By way of redress, the Ombudsman recommended that the Council reimburse the complainant. They did so, and in addition refunded 227 others who had also been charged.



Repairs and improvements Case 200502249

The complainant was concerned that in carrying out repairs to a block of flats which was partly in council and partly in private ownership the Council undertook to improve the block by installing a firewall in the roof space without obtaining his prior consent. Mr C, who owned a flat in the block, complained that the Council should have had his permission for the improvement. The Ombudsman partially upheld the complaint and asked the Council to apologise to Mr C. She did not recommend any further form of redress because the block of flats had been upgraded and made safer by the installation of the firewall. A case of maladministration, yes, but with one in which a council had done the right thing in the wrong way.



Planning applications Case 200500129

The complaint concerned handling of the development of a house on a plot adjoining that of the complainants, who claimed that their privacy was infringed by an extension to the house. The Ombudsman found that the planning applications had been properly considered, and, therefore, did not uphold the complaint. She did recommend, however, that the Council intervene to assist in protecting the privacy and amenity of the complainants.

There are two final points to record this year. Firstly, the Scottish Consumer Council produced a report on complaints about schools.¹⁹ This demonstrated that parents are generally reluctant to make complaints and that many schools and education authorities do not make it clear that they have the right to do so. Our new Memorandum of Understanding with Her Majesty's Inspectorate of Education aims to help our organisations work together to encourage improvement.

The vexed question of Social Work complaints remains. With the implementation of changes in the handling of NHS complaints, the difference between the two is increasingly clear. Talks continue on whether there can be either a harmonisation with the NHS process or with the general complaints processes of the councils. This area can involve particularly complex and distressing complaints, and we would welcome any initiatives that would benefit the vulnerable people concerned.

case study

4

Transport of young men with Special Educational Needs

Case W030517 and 200401927

The complaint was brought on behalf of two sets of parents whose sons had special needs and who were transported to and from their school by a Council. The parents had complained to the Council about the treatment of their sons while they were being transported.

The parents decided to transport their sons themselves, but the Council insisted that they do so jointly and allowed only one mileage allowance between them. Because the young men had different physical needs, joint transport proved impossible, and they were not able to attend school for ten months. The Ombudsman upheld the complaint about the way the Council had dealt with the issue and the effect this had on the young men and their families. While the Council's Education Department had followed their complaints procedure, the Ombudsman considered that the procedure was not an example of good practice.

The Ombudsman recommended redress payments to both families in recognition of the anxiety and frustration they had suffered while pursuing their complaint. The Ombudsman asked the Council to give them a full apology and made several recommendations about the review of aspects of Council procedures. While the complaint was not specifically about the human rights of the two young men, the investigation demonstrated the need for public bodies to be aware of human rights issues in their policies and procedures particularly where vulnerable people are concerned.

¹⁹ www.scotconsumer.org.uk/education/documents/rp12comp_full.pdf

“ I really was impressed with the way my initial call was handled. So refreshing to be treated with such courtesy... Good service is sometimes difficult to define but you always know it when you meet it. ”

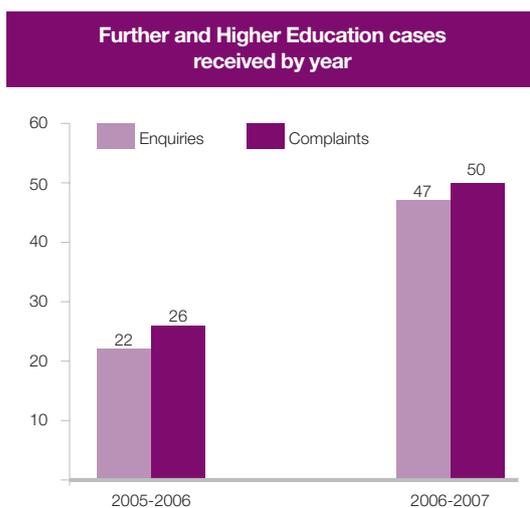
Complainant



Further and Higher Education

Lewis Shand Smith, Deputy Ombudsman

We became responsible for complaints about Further and Higher Education Institutions in October 2005. During the first six months we received 48 complaints and enquiries about the two sectors. These numbers remained stable in the following twelve months with a total of 97 complaints and enquiries. Complaints represent 3% of all those we received in 2006-07.



The number of complaints is probably too few to determine any particular pattern but the breakdown of subjects is shown over the page.

Policy and administration covers a wide variety of complaints, and relates to issues such as communication, the implementation of various procedures and the provision of advice and support. We have found that a high proportion of those contacting our office are overseas students. We are following this up with the sector to understand why this is the case and whether there are specific needs that require to be met.

I attended the annual conference of the European Network of Ombudsmen in Higher Education and was interested to discover just how many universities on mainland Europe and in the USA employ 'Campus Ombudsmen' to deal with disputes and complaints. Many are also keen to tailor the method used to achieve resolution – for example by mediation.

The Bologna Process, which aims to create a European Higher Education Area by 2010 in which students can choose from a wide range of high quality courses and benefit from smooth recognition procedures, brings new opportunities and challenges to Scottish universities. They, and we, must be prepared for the kind of support overseas students require and expect.

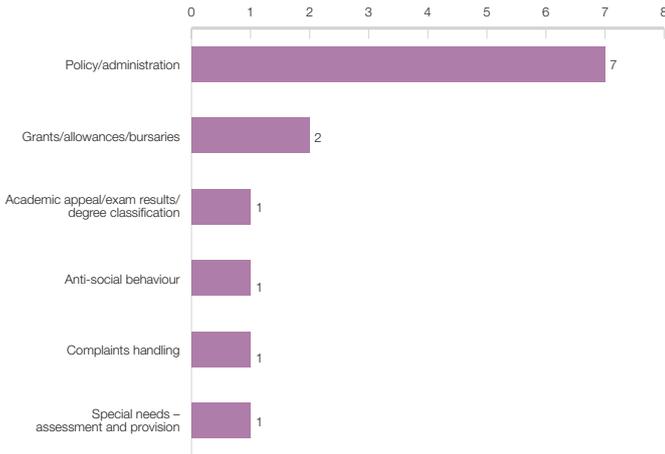
The complaints investigated, closed and reported on all relate to Higher Education Institutions. Of these one was partly upheld and six not upheld.

Of all the further and higher education complaints we determined, 17, or 47% were premature. The number is small, but the percentage high. It is important that organisations have robust complaints processes in place, and that these are advertised.

The institutions also need to be aware that it is not only students who can bring complaints to us about them, but also members of the public. They therefore need to have internal procedures to deal with complaints made against them by non-students.

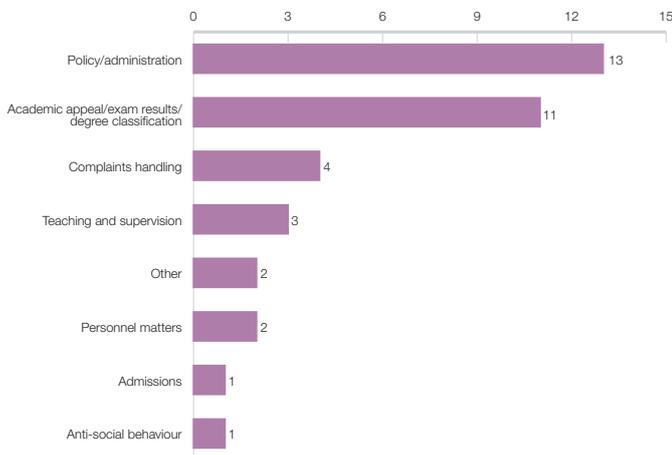
Further and Higher Education

Further Education cases received by subject

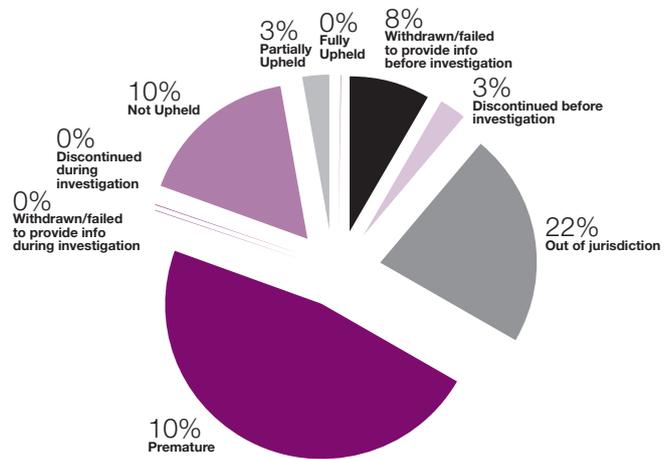


We have continued to liaise with colleges, universities, and student bodies. We have participated with the Scottish Further Education Unit in the development of their guidance to College Boards on complaints and with the Quality Assurance Agency for Higher Education on the revision of the section of their Code of Practice that deals with complaints and appeals. The history and background of the administration and structure of the colleges is, of course, quite different from that of most of the universities, and they are to be congratulated for the way in which they integrate complaint handling into their overall governance.

Higher Education cases received by subject



Further and Higher Education complaints closed by outcome



case study

1

Postgraduate supervision

Case 200501345

The complainant, Ms C, claimed that the University had failed to provide her with appropriate supervision and that as a consequence her PhD had been disadvantaged. The Ombudsman found that Ms C had not remained in contact with her supervisors but, instead, continued to work on her thesis without their guidance, and, consequently, submitted work that fell below the required standard. The Ombudsman was satisfied that the University had taken appropriate steps to inform Ms C that her work was not up to the required standard and, therefore, did not uphold the complaint.

case study

2

Academic Appeal

Case 200501676

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



Outreach and Communications

Emma Gray, Communications Manager

In June 2006, we combined our Communications and Outreach functions in order to free up more resources for investigations. The benefits of bringing the two functions together have been manifold and we shall continue to strengthen this merger in the coming year.

Our Outreach Team is the first point of contact for members of the public and bodies. As frontline staff, they handle telephone, letter, text and email enquiries, as well as those made by individuals who drop in to our Edinburgh offices. They answer queries about our role and remit, and have the expertise to signpost members of the public when there are bodies that are better placed to provide the information that is sought.

Addressing premature complaints

As we have stated repeatedly in this and previous Annual Reports, too many complaints received by our office each year (41.5% of the total in 2006-07) are premature. In line with a provision in our legislation, we firmly believe that a body should be given an opportunity to put the matter right first, and that we should be involved only if local resolution is not achieved.

The Outreach Team's small telephone study conducted in October 2006 aimed to help us better understand the cause of premature complaints, and what happens to complainants when we ask them to go back to the body to complete the process.

Key findings²⁰

- Of the 65% of complainants who went back to the body after receiving our letter stating that they needed to complete the complaints process, 91% were dissatisfied with the outcome (but did not come back to the SPSO).
- Of the 35% who did not go back to the organisation, the most common responses when asked why not were previous negative experience and staff attitude.
- 20% of premature complainants thought that they had completed the complaints process of the body.

In light of the findings we took actions, including:

- Producing a leaflet for complainants with advice on how to make or pursue a complaint about a public body;
- Advising bodies to indicate clearly when the response provided to the complainant is the final response or whether there is a further stage (or stages) in their internal process;
- Contacting bodies in the housing sector to ask for their participation in more in-depth research about premature complaints; and
- Introducing a 'sift' to isolate premature complaints when they come to our office (a project we have named 'Gateway').

²⁰ For the full report and more findings, visit www.spsa.org.uk/advice/article.php?ssi=60



Gateway Project

Gateway links with other service improvements and our principles by aiming to deal more promptly and proportionately with complaints that come to us too early. Our frontline staff now sift out premature complaints (and also those that are clearly out of jurisdiction) and provide tailored advice and support to complainants about how to progress their complaint appropriately.

They are also bringing the matter to the attention of the relevant body to encourage early, local resolution. Our statistics show that the Gateway service for these complainants is speedier, and the new system also allows our Complaints Investigators to concentrate on the in-depth work required to deal with complaints that progress to the consideration and investigation stages. An added advantage is that we are gathering better intelligence about why complaints are brought to us too early and this will better inform our external activities. Given the success of a three month pilot, we are continuing Gateway and integrating it fully into our complaint handling process. It is our experience that sometimes complainants are advised by a body to bring a complaint to our office too early. While public bodies do of course have a duty to inform the public that they have a right to bring their complaint to the Ombudsman, this step should be the last and not the first resort in resolving a complaint. Again, all the evidence shows that if complaints are handled well when they first arise by the organisation concerned they are much less likely to escalate or need the involvement of an independent third party to resolve.

Valuing Complaints

In their meetings with the leaders of public sector organisations, the Ombudsman and Deputy Ombudsmen noted a strong willingness to examine and improve complaints processes. It was with this in mind that the Ombudsman launched the 'Valuing Complaints' initiative in October 2006.

This came about as a result of the Ombudsman's proposal (outlined in our 2004-05 Annual Report) for a model complaints process across public services and in response to requests from the local government sector in particular for advice about good complaint management and developing a platform for sharing good practice. The initiative has developed to be our key tool for supporting bodies and viewing good complaint management as a vehicle for improvement.

'Valuing Complaints' was designed following discussion with SOLACE and COSLA. It is targeted at the three key audiences (the governing body, management, and frontline staff) that we identified in an organisation. It underlines the Ombudsman's belief that complaints should not be seen as just a matter for frontline staff. Good complaint handling and learning from complaints is integral to the delivery of good public services and ownership and responsibility should start from the top of the organisation and be reinforced at different levels. 'Valuing Complaints' emphasises that information drawn from complaints is crucial management data from which organisations can learn and improve.



Outreach

Valuing Complaints²¹ the Basics:

- Complaints should be welcomed with a positive attitude and valued as feedback on service performance;
- The process should be owned by the governing body of the organisation;
- The complaint management function should carry the authority of the Chief Executive, or equivalent;
- There should be clearly defined responsibilities for dealing with complaints;
- The process should be readily available to all customers and staff of the organisation;
- The process should be subject to regular review;
- The process should reflect and enhance the culture of good service delivery;
- The process should be driven by the search for improvement and not the apportionment of blame.

User experience survey

We are keen to hear from bodies and from the public about their experience of using our service. We invite feedback from bodies at the numerous events we hold with and for them throughout the year. Our monthly Commentaries and the feedback box on our website also generate a good level of response.

This year, we have decided to explore complainants' perception and experience of our service and recently commissioned an independent research company to find out the views of the over 2,000 people whose enquiry or complaint we determined in the past 12 months. Their feedback on how they experienced our office will help us identify areas of our service that are working well and other areas where we may need to make changes. We look forward to sharing those results later this year.

Reaching out to the sectors

The Ombudsman, Deputy Ombudsmen, Outreach Team and Investigators carry out a busy programme of external activities each year. Combined with our communications work, these face-to-face meetings aim to better inform bodies and the public about our role and about what we can, and cannot, investigate. In 2006-07, we delivered or attended over 100 presentations, workshops, meetings or conferences to all levels of public bodies and across all the sectors.

Spotlight on... Housing

While we carry out work in all sectors every year, our Outreach activities have a particular focus each year. Two years ago, for example, we concentrated on the local government sector, and last year's focus was health. In 2006-07, we devoted much of our activities to housing.

21 www.valuingcomplaints.org.uk/valuing-complaints/

Outreach

In June 2006, we gave a presentation to the Chartered Institute of Housing (CIH) in Scotland Sheltered Housing Conference entitled 'Complaints – Why Bother?' which emphasised the importance of the approach and attitude of frontline staff when dealing with complaints. Much of this information is detailed on the 'Valuing Complaints' website.

Frontline Staff – Attitude and Approach²²

First Contact

The first contact a complainant has with an organisation will set the tone for future contact. Many people do not find it easy to complain and may be worried about how the frontline staff member will react. They may also be angry or upset. It is important to remember that the complainant is another human being and that any anger is directed at the situation they are complaining about and not the staff member they are complaining to. It is also important that they see their first point of contact as someone who is committed to hearing what they have to say and to dealing with the problem that they have raised. This does not mean that the complainant is always right, but their sense of grievance will be real and it is the job of the frontline staff member to successfully deal with this grievance.

Jointly with the CIH in Scotland, we held a conference in Glasgow in September 2006 – 'Housing Complaints in Scotland: Turning Negatives into Positives'. Our staff facilitated workshops on valuing complaints – how organisations and service users can benefit from feeding back the learning from complaints – and on good investigation techniques. Representatives from Audit Scotland, the Care Commission, Communities Scotland and the Scottish Information

Commissioner each gave short presentations on joint working with the SPSO.

At the Rural and Islands Housing Associations Forum Conference in September 2006, Deputy Ombudsman Carolyn Hirst highlighted the difficulty of handling complaints in small communities, where there were often conflicts of interest and frequently no choice of an alternative service provider. She and members of the Outreach Team also held or attended events or meetings throughout Scotland with representatives of the Scottish Federation of Housing Associations, Communities Scotland, Shelter Scotland, the Tenant Participation Advisory Service and a number of housing associations. Housing can be an issue for older people, and we also met representatives of Age Concern and Help the Aged to discuss ways of helping older people who may have complaints about the sector.

Last year also saw the launch of our six-monthly newsletter devoted to the housing sector. *Housing News* is a tool for sharing the good practice we see in complaint handling in the sector, and for highlighting the learning from complaints that we have investigated. We have been delighted with the response to the newsletter and plan to issue similar publications in other sectors.

Our main communications channels for working with bodies are our websites (www.spsso.org.uk and www.valuingcomplaints.org.uk) and we encourage bodies to use them and feed back comments to us about where we can improve. The SPSO website is of course for complainants as well (it is the second highest means of learning about us) but we are mindful that not everyone can or likes to use the internet or other written means to communicate. Part of our Outreach Strategy for the year ahead is to ensure that we are accessible to all parts of the community, and to work with other organisations to find ways of overcoming barriers to complaining.

²² www.valuingcomplaints.org.uk/attitude-and-approach/first-contact/

Outreach and Communications Strategy 2007 - 08

- to analyse feedback from users in order to provide a higher standard of service;
- to utilise intelligence from casework to ensure that Outreach activities and communications are targeted appropriately;
- to continue to increase the visibility, accessibility & accountability of the SPSO;
- to raise awareness of the SPSO with the new Scottish Executive, MSPs and local councillors;
- to continue to build and strengthen links with listed authorities and other stakeholders;
- to embed clarity and accuracy in all communication;
- to continue to develop the 'Valuing Complaints' guidance;
- to collaborate with the wider ombudsman and other office-holder community in order to promote mutual learning and share best practice; and
- to develop an effective communications strategy that maintains our reputation.

“The work of the Ombudsman is important in cases such as this to establish the facts, ensure action is taken and to follow up on that action in the months to come.”

An MSP



The Year Ahead

Alice Brown, Ombudsman

At the heart of the organisation are our key principles, which continue to be:

To be open, accountable and accessible in providing our service

To be independent, free and fair in responding to complaints

To raise awareness of our service and promote good practice by Scottish public service providers.

The year ahead marks the last year covered by our Strategic Objectives for 2005-08. Our Business Plan for 2007-08 addresses the key priority areas – Strategy, Service, People and Governance, and we will continue to work hard to deliver our strategic objectives as set out at the end of this Report.

Internally we will be striving to improve our performance and the effectiveness and efficiency of our complaint handling and incorporating Best Value principles into our work. Our governance arrangements will also be strengthened through the setting up of a new Audit Advisory Committee. We are delighted that Sir Neil McIntosh (Chair of the Judicial Appointments Board for Scotland) has agreed to chair this Committee and that he will be joined by two other external members – Baroness Rennie Fritchie (the former UK Public Appointments Commissioner) and David Thomas (Corporate Director and Principal Ombudsman of the Financial Ombudsman Service).

The year will be significant also because we are moving to a new organisational structure following the departure of the three part-time Deputy Ombudsmen in September 2007.

To replace them we will be recruiting two full-time directors – a Director of Investigations and a Director of Policy and Development.

Externally and strategically, we will be pursuing all of the initiatives outlined in the introduction to this Annual Report. Specifically we will be taking forward the debate on good public administration and administrative justice and establishing links with the relevant human rights bodies being created in Scotland. We will want to work effectively with the new Scottish Parliamentary Corporate Body and raise awareness of the SPSO with the new Scottish Executive, and newly elected MSPs and local councillors.

There are particular issues arising from our reports that have implications for policy in Scotland in areas such as Free Personal Care and Continuing Care as well as issues such as the Right to Buy. We will want to share the learning from our casework with politicians and policymakers as a way of highlighting ways in which the delivery of public services to the people of Scotland can be improved. An example of how this can best be done is through giving evidence to Parliamentary Committees. In this respect the work of the Ombudsman does not exist in a vacuum – it is and should be linked directly to the wider governance, improvement and delivery agenda.

We, therefore, look forward to the year ahead and to working on behalf of the public towards our aim of improving public services throughout Scotland.

Business Plan and Strategic Objectives

2007-08 Yearly Objectives

Aim: To be the model of excellence

1 Strategic Objective: Real strategic influence

- 1.1 To promote the debate on good public administration and administrative justice.
- 1.2 To contribute to the Scrutiny Review and any subsequent Scottish Executive initiatives.
- 1.3 To initiate a review of our Act.
- 1.4 To establish links with relevant Human Rights bodies.
- 1.5 To develop appropriate protocols with new bodies.
- 1.6 To collaborate with the wider ombudsman and other office-holder community in order to promote mutual learning and share best practice.
- 1.7 To establish effective working arrangements with the new Scottish Parliamentary Corporate Body (SPCB).
- 1.8 To raise awareness of the SPSO with the new Scottish Executive, MSPs and local councillors.
- 1.9 To develop an effective communications strategy that maintains our reputation.

2 Strategic Objective: Service standards

- 2.1 To strive to meet our published commitments, standards and key performance indicators (KPIs).
- 2.2 To improve the effectiveness and efficiency of our casework by using resources proportionately.

3 Strategic Objective: Functional excellence

- 3.1 To refine our reporting regimes.
- 3.2 To review SPSO location strategy in the event of outgrowing the existing premises.

4 Strategic Objective: Continuous improvement

- 4.1 To review the case management process and implement initiatives where appropriate.
- 4.2 To embed clarity and accuracy in all communication.

5 Strategic Objective: Pro-active advisory service

- 5.1** To analyse feedback from users in order to provide a higher standard of service.
 - 5.2** To utilise intelligence from casework to ensure that Outreach activities and communications are targeted appropriately.
 - 5.3** To continue to increase the visibility, accessibility and accountability of the SPSO.
 - 5.4** To continue to build and strengthen links with listed authorities and other stakeholders.
 - 5.5** To continue to develop the 'Valuing Complaints' guidance.
-

6 Strategic objective: People development

- 6.1** To ensure we have the optimum organisational structure and resource allocation to deliver our objectives.
 - 6.2** To further develop leadership capacity and continue to build succession-planning mechanisms.
 - 6.3** To continue to build the capability and understanding of staff to meet strategic objectives.
 - 6.4** To focus on developing those core competencies that are essential to the effective delivery of our services.
 - 6.5** To build the capacity and provision of our HR services to meet our business requirements.
 - 6.6** To develop systems and processes that encourage more effective and efficient learning.
-

7 Strategic Objective: The 21st century office

- 7.1** To continue to work within Best Value principles.
- 7.2** To continue to operate within Scottish Executive accounting rules and best practice.
- 7.3** To further develop our ICT technologies, services and methodologies.
- 7.4** To review with the SPCB the budget-setting process.
- 7.5** To agree the next three-year Strategic Objectives and 2008-09 Business Plan.
- 7.6** To review the use of professional advice and support services.
- 7.7** To maintain the Scheme of Control and a robust risk management approach.



SPSO

4 Melville Street

Edinburgh EH3 7NS

Tel **0800 377 7330**

Fax **0800 377 7331**

Text **0790 049 4372**

Email **ask@spsso.org.uk**

Web **www.spsso.org.uk**