



Ombudsman's Commentary

SEPTEMBER 2007 REPORTS

I laid 28 investigation reports before the Scottish Parliament today. Fifteen relate to the local government sector, ten to the health sector and three to the Scottish Government and devolved administration. Details of the reports are summarised below and the full reports are available on the SPSO website at www.spsso.org.uk/reports/index.php

Ombudsman's Overview

In this month's Overview, I wish to highlight a number of themes that I have touched on in previous Commentaries, and also to pay tribute to the three Deputy Ombudsmen, whose terms of office come to an end at the end of this month.

Several of today's reports about the **health sector** contain references to familiar themes – the quality of nursing care (especially of the elderly); poorly-kept records; and inadequate communication. One less familiar but important theme that is brought out in one report (Case ref: 200600378) is that of mental therapy in hospital, particularly for longer term patients. In my conclusion I state: *'I am struck by the apparent lack of mental therapy offered to patients in Mrs A's situation and acknowledge the very real importance of ensuring patients are given mental stimulation to improve their quality of life in hospital.'*

In **local government**, I report again on the issue of Free Personal Care (FPC) payments (Case ref: 200601620). The first aspect of the complaint was that a council failed to continue FPC payments for the complainant's aunt following her move to a new residential home in another council's area. The other aspect of the complaint was that the first council failed to properly administer arrangements for her aunt's move. While I did not uphold either aspect of the complaint, I did recommend that the two councils concerned, as a matter of urgency, prepare and submit an appeal for determination of the aunt's ordinary residence by the Scottish Ministers. Following such a determination, appropriate payments should be made to the aunt and (if necessary) the second council so that all parties would be returned to the position they should have been in when the aunt moved to her new home. The appropriate council should then take ongoing responsibility for the FPC payments.

This and other complaints to the Ombudsman indicate a need to review the guidance on the application of the FPC policy issued by the Scottish Executive Health Department (SEHD) (now the Scottish Government's Health Directorates) as well as the guidance on the determination of ordinary residence also issued by the SEHD. This is not a matter which any individual council is able to address so cannot be resolved within the report. I have drawn this matter to the attention of the SEHD.

A number of other local government cases underline the need to better manage people's expectations in relation to **planning issues**. Later this month, we shall issue a leaflet about what the SPSO can, and cannot, do with regard to planning matters. The leaflet explains that the SPSO cannot change discretionary decisions made without maladministration by a council as planning authority and will, I hope, go some way towards enhancing understanding of our role.

One planning complaint (Case ref: 200600426) was about replacing schools which I recognise is a sensitive matter. I acknowledge in the report that *'schools are an important part of communities and often hold strong emotional attachments for the people they serve, quite beyond the mere provision of educational services. However, that a project prompts strong feelings does not mean that it has been badly administered.'*

In a complaint about a Local Plan (Case ref: 200602214), the complainant also felt that the wishes of the community had not been taken into account. A further complaint reported today was about alleged unauthorised developments (Case ref: 200601662), in which I recognise that *'members of the public, complaining about*

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unauthorised developments that may have a significant impact on their lives, may feel that the enforcement and planning system is stacked in favour of developers and may have trouble in understanding why a council should choose not to immediately take formal enforcement action against unauthorised developments.' The report continues: *'In order to manage the expectations of complainants, and in order to make sure that they have a realistic understanding of what the enforcement process might achieve, I consider that it might be helpful for the council to provide more exhaustive explanations to complainants regarding the system and its possible outcomes.'*

I did not uphold the complaints in any of the above three cases, since my investigations found no evidence of any maladministration. As is the case in all such matters where emotions understandably run high, I hope that while the complainants may not agree with the outcome of the reports, the fact that their complaints have been thoroughly investigated may go some way towards resolving matters.

The final case I wish to comment on is about the **Scottish Executive** (Case ref: 200503572). The complainant, Mr C, raised a number of concerns about statements made in February 2006 by the then First Minister in the Scottish Parliament in relation to the Shirley McKie case. It also concerned how Mr C's complaint was dealt with by the Office of the First Minister. The case, which is summarised below, raised and clarified issues of jurisdiction regarding whether actions or statements by Ministers relate only to ministerial conduct (and thus subject to the Ministerial Code which is not a matter for the Ombudsman), or can also relate to the administrative functions of Ministers.

Tribute

Finally, I would like to take this opportunity to pay tribute to my three part-time Deputy Ombudsmen, whose terms of office come to an end at the end of this month.

Eric Drake, Carolyn Hirst and **Lewis Shand Smith** have worked tirelessly over the past five years. They have been generous with their time, expertise, ideas and energy and provided leadership and guidance in their respective roles. I am truly grateful to them for their significant contribution to the SPSO.

Eric Drake will continue to work with the office in a new capacity, as Director of Investigations. Our new Director of Policy and Development is David Robb, who joins us from the Scottish Executive, where he has worked for the past 17 years, most recently in the Public Service Reform Directorate.

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Health

Clinical treatment

A GP Practice, Greater Glasgow and Clyde NHS Board (200501333)

I upheld the complaint made by Mrs C that the Practice should have investigated her mother's symptoms more fully than they did. In Mrs C's view, this would have avoided the Practice's late diagnosis of her mother's colon cancer. However, my report concluded that it was not possible to know whether earlier investigation would have affected her mother's chances of survival. I recommended that the GPs apologise to Mrs C, acknowledging that further investigation should have been done; and inform me what steps they have taken and/or are taking to learn from and try to avoid recurrence of this serious case.

Admissions, clinical treatment Greater Glasgow and Clyde NHS Board (200502730)

I did not uphold the aspect of the complaint relating to surgical treatment, but I partially upheld the complaint that a patient was inappropriately admitted to an orthopaedic ward rather than a medical ward. The complainant believed that this had delayed diagnosis of septicaemia which caused his sister's death. I concluded that *'there was both a general and a specific failure by orthopaedics to involve other disciplines in the patient's care planning and transfer her promptly when it was recognised that her problems were more medical in nature'*. I, therefore, partially upheld this aspect of the complaint and I recommended that the Board review their procedures for ensuring an overall treatment plan with ongoing input from all the relevant specialisms where a patient has a number of underlying medical problems.

Care of the elderly: record-keeping, nursing care, clinical treatment Greater Glasgow and Clyde NHS Board (200600378)

The complainant, Mr C, raised a number of concerns about aspects of the hospital

care and treatment of his mother, Mrs A, who was in hospital for a period of approximately six months. I upheld his complaint that records were not available to staff or of sufficient quality and that there was a lack of planned therapy for Mrs A.

I did not uphold two other aspects of his complaint. I made a number of recommendations to the Board, including that they complete work on a Bed Alarm Policy, and reflect on lessons from this case in relation to record-keeping and communication. I also asked them to consider how to address the needs of longer term patients for mental stimulation to enhance their quality of life, and advise me of the outcome of this and their other reflections.

Clinical treatment, nursing care, discharge

Highland NHS Board (200503079)

The complainant, Mrs C, raised concerns about the nursing care received by her late husband, Mr C. Of the eight aspects to the complaint, I did not uphold or made no finding on six of the complaints, and I upheld two – that Mr C was not kept elevated when he was sitting in his chair and that this resulted in the formation of blisters on his heels. I recommended that the Board take steps to ensure that relatives are given appropriate information where treatment provided in hospital is different from at home; apologise to the Mrs C for the failings identified in the report; and remind staff to be attentive to any physiotherapy advice given on positioning a patient.

Oncology: delay, clinical treatment

Forth Valley NHS Board (200602210)

I upheld the complaint that the Board did not arrange timely follow-up for the complainant's husband, Mr C, but I did not uphold the complaint that they had not provided him with appropriate treatment following his diagnosis of cancer. I recommended that the Board apologise to the complainant for the

delays in arranging the follow-up appointment and requested that they send me a copy of their finalised policy on Patient Access, which will address the problems identified in this case.

I did not uphold five other complaints in the health sector about the following issues and bodies:

Obstetrics: clinical treatment Greater Glasgow and Clyde NHS Board (200503152)

While I did not uphold this complaint, I did recommend that the Board consider whether it needs to review when clinical risk reviews of incidents such as those that occurred in this case are carried out. I also recommended that the Board ensure that staff are reminded of their responsibility to maintain detailed records, in particular, in respect of anaesthetic procedures.

Care and treatment Greater Glasgow and Clyde NHS Board (200602488)

Referrals, access to information

A GP Practice, Lothian NHS Board (200502314)

Clinical treatment, diagnosis A GP Practice, Tayside NHS Board (200601627)

Delay in diagnosis, referral A GP Practice, Ayrshire and Arran NHS Board (200600619)

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Local government

Housing: applications, policy/administration

North Lanarkshire Council
(200500253)

The complaint concerned the way Mr and Mrs C's application for special case consideration for housing transfer had been handled by the Council. I found that the Council had delayed unduly in putting Mr and Mrs C's request for special case consideration before the appropriate committee, but I did not uphold or make no finding on three other aspects of the complaint. I recommended that the Council apologise to Mr and Mrs C for the delay, and take steps to review their record-keeping with regards to special case consideration to avoid recurrence.

Finance: Council Tax, complaint handling

The City of Edinburgh Council
(200502873), (200603479),
(200700035)

I upheld three separate complaints about the above issues. In the first, I found that the Council had wrongly pursued a couple for arrears of council tax and had handled the complaint about the matter incorrectly. In the course of the investigation, the Council made arrangements for an apology to be made to the couple, and they have also accepted the need for better systems to track responses to complaints and are taking steps to remedy the shortcoming identified in the report. I, therefore, made no further recommendations in this case.

The second complaint concerned the way in which the Council had dealt with the complainant's correspondence and subsequent appeal in relation to council tax liability, and the way in which his complaint was handled. I recommended that the Council introduce a system to record all council tax appeals on receipt, and that they review their complaints handling process. In line with the SPSO's 'Valuing Complaints' initiative, I asked the Council to ensure that their complaints handling process properly identify the root causes of complaints and use this information to identify service improvements.

I upheld the third complaint that the Council failed to correct an error on the complainant's council tax account, which led to incorrect demands and a summary warrant being issued against her. I also upheld the complaint that the Council failed to handle her complaint appropriately and in line with their complaints procedure. I recommended that the Council provide complaints handling training for their staff and use the learning from this report to ensure that the type of repeated errors that occurred in this case would be less likely to occur in future.

Burial grounds: policy/administration

Dundee City Council
(200602830)

I did not uphold the aspect relating to the Council's imposition of a payment levy in respect of an inspection of the headstone of the complainant's late brother. I partially upheld the complaint that the Council delayed in responding to a request for details about the inspection and that the information provided was incorrect. I made recommendations to redress the issues identified.

Anti-social behaviour, complaint handling

East Lothian Council
(200602645)

I did not uphold the complaint that the Council failed to take action to obtain Anti-Social Behaviour Orders against named persons, but I did uphold the complaint that they failed to respond to the complaint within stated timescales.

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

Care of the elderly: Free Personal Care

Clackmannanshire Council
(200601620)

I did not uphold this complaint, but I made a recommendation to the two councils concerned as outlined in my Overview above.

Finance: benefits, information/advice

The Highland Council
(200501241)

Planning application, committee procedure

The Highland Council
(200600426)

Planning: policy/administration

Argyll and Bute Council
(200602214)

Social Work: policy/administration

Fife Council (200502631)

Planning application: enforcement action, policy/administration

Fife Council (200601662)

Social Work: policy/administration

Dundee City Council
(200600542)

Housing: repairs grant

Dumfries and Galloway Council
(200601721)

Housing: information/advice

East Dunbartonshire Council
(200601899)

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Scottish Government and devolved administration

Policy/administration, complaint handling

The Scottish Executive
(200503572)

The complainant, Mr C, raised a number of concerns about statements made in February 2006 by the then First Minister in the Scottish Parliament in relation to the Shirley McKie case. It also concerned how Mr C's complaint was dealt with by the Office of the First Minister.

I did not uphold the complaint that the First Minister made two inaccurate statements to the Scottish Parliament on 9 February 2006. I also did not uphold the complaint that there is no clear and publicly available complaints procedure for the Office of the First Minister, which should incorporate the right of an appeal to an independent body. I partially upheld the complaint about a lack of a clear mechanism for bringing complaints about Scottish Ministers. I upheld the complaint that the Office of the First Minister failed to respond within the stated timeframes to a complaint submitted by the complainant.

I recommended that Scottish Ministers and the Scottish Executive reflect on how they might bring about greater clarity in the arrangements for making different types of complaint about Scottish Ministers and the Scottish Executive. I also recommended that the Scottish Executive review its procedures for acknowledging complaints and keeping complainants informed when target response times cannot be met. The Scottish Executive have accepted my recommendations.

Policy/administration

Directorate for Planning and
Environmental Appeals
(200603174)

I did not uphold the complaint.

Policy/administration, complaint handling

The Scottish Commission for the
Regulation of Care (200602684)

Although I did not uphold the complaint, I did recommend that the Commission ensure that, in relation to child protection issues and where there are concerns, staff are fully aware of the procedures to be followed.

Compliance and Follow-up

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



Professor Alice Brown

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The compendium of reports
can be found on our website,
www.spsso.org.uk

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