

Ombudsman's Commentary

APRIL 2010 REPORTS

The SPSO laid eight investigation reports before the Scottish Parliament today. Three relate to the health sector, three to the local government sector, and two to the Scottish Government and devolved administration. Our investigation reports form only one part of our work. In March, we determined 363 complaints, including 65 resolved after detailed consideration.

Each investigation may contain several complaints, and overall the eight reports laid today:

- **Upheld 18 complaints**
- **Did not uphold 5 complaints**
- **Made 29 recommendations**

Ombudsman's Overview

This month's reports are about a wide range of subjects. In the health sector, I found that follow-up care was wanting in the treatment of a woman in a fracture clinic (Ref: 200802296) and I made several recommendations to the clinical staff of the hospital concerned. Another investigation (Ref: 200801102) found that a GP practice had not followed recognised procedures in reaching a diagnosis on a patient with diabetes nor had they arranged appropriate follow-up. I made recommendations to improve the management of patients with diabetes and to address the practice's poor complaint handling procedures. In the third investigation (Ref: 200801621) I similarly made recommendations to ensure that the practice address inadequacies in its complaint handling.

In the local government sector, two complaints related to planning. In one case (Ref: 200802723) I did not uphold the complaint that the council's advice on pre-planning application enquiries was inadequate. In the other planning case (Ref: 200900833), I upheld Mr C's complaints that the council failed to properly handle an agricultural 'prior notification', as well as later representations from him and his agent and his formal

complaint about the matter. I made several recommendations to prevent recurrence of the errors. In the third case (Ref: 200800438), a member of the public complained that proposed parking restrictions opposite her home were excessive and unwarranted. I did not uphold the complaint, as I found that the council had clearly taken relevant factors into account.

There are two reports (Refs: 200801907 and 200802827) about the Scottish Prison Complaints Commission. Both investigations found failings in the way the SPCC had investigated the complaints and I made several recommendations for improvement. Among other things, I recommended that the SPCC review their internal procedures, including timescales, file management, and communication. I also recommended that the SPCC apologise to the complainants for the failings identified.

Ombudsman's Commentary

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case reports

Health

Diagnosis; complaint handling

A Medical Practice, Greater Glasgow and Clyde NHS Board (200801102)

After she was diagnosed with diabetes, Ms C raised a number of concerns about her GP Practice's handling of the diagnosis and aftercare. I upheld all her complaints as I found that the Practice had not followed recognised procedures in reaching a diagnosis, or in their complaint handling. I also found that they had not arranged appropriate follow-up for Ms C, and that their communication with her about the diagnosis and test results was inadequate. I recommended that the Practice put in place protocols to ensure that diabetes is in future diagnosed in line with recognised practices, and that newly diagnosed diabetics receive appropriate follow-up care. I also recommended that the Practice take steps to ensure that in future they deal with complaints in line with the NHS complaints procedure and asked them to apologise in writing to Ms C for the failings identified in my report.

Clinical treatment; follow-up care; communication; record-keeping

Greater Glasgow and Clyde NHS Board (200802296)

Mrs C raised concerns about the hospital treatment she received after fracturing her lower leg in a fall. On admission to the hospital, an orthopaedic consultant treated the fracture conservatively by placing Mrs C's leg in a cast. Mrs C complained about her treatment, and was also unhappy with the

standard of follow-up care she received in the Fracture Clinic. I did not uphold the complaint that the decision to treat Mrs C's fracture conservatively was inappropriate as I found that although unusual it was not unreasonable in the circumstances. I did, however, uphold her complaint about follow-up care, which I found to be inadequate. I recommended that the Board highlight to all relevant staff the issues raised by my report; remind clinical staff of the importance of properly documenting discussions with consultants; and encourage consultants to consider taking a more proactive role in complex cases. I also recommended that the Board apologise to Mrs C for the failings identified in my report.

Diagnosis; follow-up care; communication; complaint-handling

A Medical Practice, Lanarkshire NHS Board (200801621)

Mr A visited his GP with severe pain and swelling in his left testicle. He was given antibiotics with the GP recording the need to 'review if not settling'. The problem remained, and after an ultra sound scan some four weeks later, Mr A was diagnosed with testicular cancer and subsequently had his testicle removed. Mr A's mother, Mrs C, complained that the GP failed in his duty of care by not referring Mr A for an immediate ultrasound scan. She also complained that the GP Practice failed to meet the requirements of their Practice Complaints Procedure in the way they dealt with her complaint. I did not uphold the complaint about the GP as I found he had acted reasonably in

the circumstances, but I did uphold the complaint about the Practice's complaints handling as Mrs C did not receive an appropriate response within the stated timescales. I recommended that the Practice formally apologise to Mrs C for failing to follow their procedure, and that they take steps to ensure that staff who deal with complaints understand the procedure and respond in accordance with the time standards in it.

Local Government

Planning; policy/administration; complaint handling

Aberdeenshire Council (200900833)

The owners of a field gave the Council 'prior notification' that they planned to build an agricultural building in an area of the field close to Mr C's home. In such cases, the planning authority has 28 days to decide whether planning permission is required and to respond to the notification. Mr C complained to the SPSO that the Council failed to properly handle the 'prior notification', as well as later representations from him and his agent and his formal complaint about the matter. I upheld his complaint, as I found that the Council did not follow correct procedures. I recommended that they review their handling of the complaint and its circumstances to prevent recurrence of these errors, and that they review the content of their website in relation to communication with those making representation on planning applications.

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Local Government

Planning advice

Midlothian Council (200802723)

Mr C and Ms C wanted to alter and extend their home, which is a listed building in a conservation area. They asked the Council for advice about the acceptability of their plans before applying for planning and listed building consent. The applications were refused. Mr C and Ms C complained to me that the Council's response to their pre-planning application enquiries was inadequate, and said they should be reimbursed the cost of their applications. I did not uphold their complaint. I found that the Council acted appropriately although a plan on which Mr C and Ms C had sought comments was mislaid. I am pleased to note that the Council have assured me they will take steps to clarify the role of such enquiries for members of the public.

Roads and transport: parking

Scottish Borders Council (200800438)

Mrs C complained that proposed parking restrictions opposite her home were excessive and unwarranted. She was also unhappy about the Council's approach to reducing the impact of heavy goods vehicles entering and leaving commercial premises opposite her home, and felt that they acted unreasonably in deciding not to introduce protective bollards there. I did not uphold her complaints as I found that the Council had clearly taken relevant factors into account in making both decisions.

Scottish Government and Devolved Administration

Policy/administration; communication; complaint handling

Scottish Prisons Complaints Commission (200801907)

Mr C complained that the Scottish Prisons Complaints Commission (SPCC) failed to properly investigate his complaint that he was being kept unnecessarily in segregation by the Scottish Prison Service. He said that when a new Commissioner was appointed, his decisions to suspend and then re-investigate Mr C's complaint were unreasonable. He also complained of delays and poor service by the SPCC, and that, having decided to re-investigate his complaint, the SPCC misinterpreted it and later dropped it because he was moved to another prison. I upheld all Mr C's complaints. I recommended that the SPCC urgently establish from the SPS whether there is a long-time management plan for Mr C. I also recommended that they review their own internal procedures, including timescales and communication. I also recommended that the SPCC apologise to Mr C for the failings identified. My recommendations can be read in full in my report.

Policy/administration; communication; complaint handling

Scottish Prisons Complaints Commission (200802827)

Mr C complained that the Scottish Prisons Complaints Commission (SPCC) failed to deal with his complaint in a reasonable time, failed to communicate adequately

with him or with the Scottish Prison Service (SPS), and did not deal with the substance of his complaint against the SPS or pursue it appropriately. I upheld all his complaints as I found that the SPCC had not kept him updated about progress in his complaint or dealt with his complaint adequately. I made a number of detailed recommendations which can be read in my report, including process and timescale changes and apologising to Mr C for the failings I identified. I also asked them to provide redress to Mr C by referring the matters complained about to SPS again and setting a deadline for response.

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Compliance & Follow-up

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

Jim Martin, Ombudsman
21 April 2010

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

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

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

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

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

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

Further details on our website at: www.spsso.org.uk

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