

Ombudsman's Commentary

NOVEMBER 2010 REPORTS

The SPSO laid three investigation reports before the Scottish Parliament today. One relates to the higher education sector and two to the local government sector.

Ombudsman's Overview

In October, in addition to one investigation report laid before the Parliament, **we determined 342 complaints and handled 86 enquiries**. Of the complaints:

- we gave advice on 248
- 93 were suitable for us to look at
- we were able to resolve 72 of them in our early resolution team
- 21 required detailed consideration
- we made a total of 27 recommendations in decision letters (some of these are listed at the end of this Commentary).

The above figures include enquiries and complaints about our new area of responsibility, Scottish prisons. Taken separately, prisons complaints consisted of one enquiry and 55 complaints, of which we gave advice on 32, resolved 21 in our early resolution team, and two required detailed resolution.

Publishing our work

In the briefing document that I provided to the Local Government and Communities Committee ahead of giving evidence about our Annual Report on 10 November, I took the opportunity to explain in some detail the rationale for changing the way we publicise the learning from our work. The briefing and the transcript of the session is available on the Parliament's website and on our website at www.spsso.org.uk/media-centre/inquiries-and-consultations.

Evidence to the Parliament

I also shared with the Committee the SPSO's continuing solid casework performance figures. Our open caseload at the end of October was 210, plus an additional 39 complaints from our new area of responsibility, Scottish prisons. This compares with 241 open cases on 31 March 2010, and 500 open cases on 31 March 2009.

In terms of overall enquiries and complaints, we received 515 enquiries and 1,787 complaints in the first six months of the financial year 2010 – 11. These figures are almost exactly the same as for the same period the previous year (515 enquiries and 1,795 complaints) and we are therefore seeing a levelling off of contacts. Given the anticipated cuts to public services, however, this is a not a trend I expect will continue.

As I explained to the Committee, while we have embarked on the process of transforming the SPSO, it has been extremely important to me that the quality of our work is maintained and enhanced. We have revised our quality assurance system to ensure that the SPSO's corporate initiative to improve quality and consistency within the business is met.

Draft Statement of Complaints Handling Principles

The Committee also discussed the statement of complaints handling principles that the SPSO presented to the Parliament on 5 November. It was developed in partnership with service providers and following consultation with a wide range of stakeholders including the public and tenant groups. We received 92 responses to the consultation and these are available on our Valuing Complaints website (except where the respondent did not give permission). On the site, it is also possible to access the draft statement of principles, our analysis of the responses and background on the SPSO's new powers and duties to oversee the development of standardised complaints handling procedures in Scotland, to be taken forward by our Complaints Standards Authority. See www.valuingcomplaints.org.uk

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case reports

Further and Higher Education

Student discipline

University of Dundee (200801977)

Mr A, a student who has dyslexia, was disciplined after allegations of misconduct were made against him by the University. Mr A's parents were unhappy with the University's investigation and felt the punishment was excessive. I upheld the complaint that the University did not properly follow their own process in reaching a decision and made several recommendations, including apologising to Mr A and his parents, reviewing the events of this case to improve transparency of procedures, and providing more information to the student in such situations.

The recommendations can be read in full in my report. I did not uphold the complaints that Mr A's special needs were not taken into account or that the punishment was not appropriately decided.

Local Government

Planning; pre-planning application advice, complaint handling

East Lothian Council (200903486)

Mr and Mrs C wished to install solar panels on the roof of their home, which is in a conservation area. Legislation passed in 2009 means that the law about installing such equipment in a conservation area has changed. Following a meeting at the Council's Planning Service offices (at which they sought advice about their intentions) Mr and Mrs C complained about the quality of advice they were given, and about the way their subsequent complaint was handled. I did not uphold their complaint about the pre-planning advice, although I did recommend that the Council assess the need to supplement existing internal guidance about proposed installations of this kind in conservation areas. I upheld Mr and Mrs C's concerns about the handling of their complaint and recommended that the Council take steps to ensure that in future the outcome of pre-application meetings and advice are properly recorded.

Education; community use of school facilities

East Renfrewshire Council (200905003)

Mr C lives next door to a primary school. When the Council decided to install a

multi use games area in the school grounds, they regarded the development as permitted (i.e. not requiring planning permission) and Mr C and other residents were not consulted. Following the installation, Mr C raised a number of concerns about the effect of this on residents' amenity. He was unhappy about the specific location and about how the area was managed. His concerns increased when, a year later, the Council decided that the games area should be open, without restriction, to the community. I did not uphold Mr C's complaints that residents were not consulted about the plans, that the Council ignored a more suitable site or that they ignored Mr C's requests to restrict access by locking the gates at certain times. I did, however, uphold Mr C's complaints that directly affected residents were not consulted about the decision to leave the gates permanently open, and that the Council delayed in telling Mr C of his rights in terms of making a formal complaint. I recommended that the Council now consult on the 'open gate' policy and reconsider it, taking into account the views of residents. I also recommended that if the Council decide that the 'open gate' policy should remain, they then take advice from their Planning Department to ascertain whether it constitutes a material change of use of the site.

Recommendations made in decision letters in October 2010

Recommendations to Health Boards

- that a Board formally apologise for the wrongful interpretation of scans relating to cancer of the bladder
- that a GP Practice apologise for failing to follow the Regulations appropriately when they excluded a patient from the Practice list; that the Practice review their procedures for removing patients from their list to ensure they comply with the Regulations and reassure the Ombudsman that they have done so.
- that a Board use the example of a complainant's mother's loss of jewellery to revisit their policy on the procedure for the care of patient's property and valuables and make reasonable adjustments to it to accommodate the needs of particularly vulnerable patients; and that the Board include, as part of their audit, the process for managing the valuables of those patients who are incapable or vulnerable.
- that a Board apologise for the delay in providing a community psychiatric nurse; ensure their healthcare professionals record a rationale for clinical decisions and patient records; apologise to the complainant for failing to ensure that only appropriate healthcare professionals were involved in a decision; ensure their healthcare professionals maintain a reasonable standard of record keeping and apologise for their failure to inform the complainant properly of the decision.

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Recommendations made in decision letters in October 2010

Recommendations to Councils

- a Council review their systems for retaining planning files in order to ensure that, in future, such files are not mislaid; ensure that, in future, officers keep contemporaneous notes of their visits to site where disputes arise or exist; remind their staff of the need to include accurate background and representation information in their reports; feed back the Ombudsman's views on a misleading statement in their letter; put in place a system to ensure that delays do not occur in the future, should they agree to provide legal advice to members of the public; and apologise to the complainant for failing to provide the full information obtained from their solicitor.
- that a Council consider the extent to which non-public safety-related factors influenced their decision to issue an emergency notice, with a view to ensuring that such notices are issued strictly in accordance with their internal protocols and the terms of the Council Order Confirmation Act 1991; and that they consider whether it is appropriate to levy the full administration charge.
- In relation to a social work complaint, in situations where complaints are complex or there has been a delay in bringing them to the Complaints Review Committee (CRC), the CRC consider holding a preliminary hearing or clearly state as a matter of record in the minute why they had not considered any particular matters raised; and that the Head of Children's Services make an apology.

Recommendations to colleges or universities

- that a College apologise to the complainant for failing to notify him formally, in writing, of the outcome of the Stage 4 consideration of his complaint within a reasonable timescale; review their current complaints procedure to ensure that the final Stage 3 Appeals to the Principal are responded to in writing, within a published and agreed timescale; and review their process for documenting complaints, to ensure that there is a sufficient audit trail of the work undertaken in order to support the final decision made.

Recommendations to Scottish Government or devolved administration bodies

- that a body give further consideration to improving the quality of the explanation they provide in informing correspondents of the reasons why they are not pursuing a matter reported to them or may not be able fully to report the outcome of their inquiry or intervention
- that a body apologise for failing to provide a full and accurate response to a complaint
- that a body re-open and investigate a complaint about their organisation.

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
17 November 2010

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

For further information please contact:

SPSO, 4 Melville Street, Edinburgh EH3 7NS

Communications Manager: **Emma Gray**

Tel: **0131 240 2974**

Email: egray@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, prisons, the Scottish Government and its agencies and departments, the Scottish Parliamentary Corporate Body, colleges and universities and most Scottish public authorities.

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

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

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

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

Contact us at:

SPSO	Tel: 0800 377 7330
4 Melville Street	Fax: 0800 377 7331
Edinburgh EH3 7NS	Text: 0790 049 4372