Ombudsman's **Commentary**

DECEMBER 2010 REPORTS

The SPSO laid five investigation reports before the Scottish Parliament today. Two relate to the health sector and three to local government.

Ombudsman's Overview

Last month, in November, in addition to the three investigation reports laid before the Parliament, we **determined 326 complaints and handled 45 enquiries**. Taking complaints alone, we:

- gave advice on 235 complaints
- resolved 71 in our early resolution team
- resolved 20 by detailed consideration
- made a total of **47 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 41 complaints, of which we gave advice on 22, resolved 18 in our early resolution team, and one required detailed resolution.

Notional income in relation to residential care costs

Two of the complaints reported today arise from decisions made by officers of local authorities about 'deprivation of capital' issues (typically when an elderly parent's home is transferred to their children, thus potentially affecting the funding of their residential care home accommodation). The two cases (Refs: 200905049 and 200905042) are, however, about the way Complaints Review Committees (CRCs) handled complaints about issues relating to financial assessment and the alleged lack of a full explanation for not upholding the complaints. The investigations are summarised below and can be read in full on the reports section of our website.

In putting these cases into the public domain, I would like draw to the attention of local authorities, COSLA (the Convention of Scottish Local Authorities), the Parliament and the Government the need to ensure consistency in decision making based on the national guidance – 'Charging for Residential Accommodation Guidance' (CRAG) on financial eligibility for public funding for residential care. Neither the legislation nor the guidance prescribes a period beyond which it would not be reasonable to assume that an asset has been transferred to avoid it being taken into account in the financial assessment of an individual at the time they enter care. A local authority has discretion in the way in which it decides the matter and, therefore, each case requires to be decided on its own merits. It is not the role of this office to stipulate conditions or terms beyond those contained in national guidance; our role is to examine the administrative process followed. In these two instances, the aggrieved relatives who pursued the matter to CRCs through their agents were unhappy that the CRC had not fully explained their decisions based on the arguments presented, and complained to my office.

For those looking for equity of treatment in the decisions, I believe we must consider the wider issues. On the one hand, public bodies have a duty to safeguard the public purse, and in doing so must be alert to individuals purposefully depriving themselves of capital in order to ensure that, if they at a point in the future require residential care, their assets at time of assessment will be reduced to such an extent that the costs of care will be a burden picked up by the taxpayer. On the other hand, where an asset was disposed of many years ago the Council are required to establish whether avoidance of residential care charges was a significant part of the motivation, and to justify their decision. CRCs appear to me to being used as a venue to challenge decisions of officers and I consider that it is important that, in dealing with appeals, the CRC provide an adequate and reasoned explanation of their decisions and any associated recommendations to their social work authority.

On the basis of the two investigations published today, and others that are currently under consideration by my office, I am concerned that there may be a perceived unfairness by the public about the differing interpretations of the CRAG by local authorities. It would be difficult for the ordinary citizen to understand why there is a marked difference in the amount of time taken into consideration by different local authorities when considering these disposals. To use a cliché, there would seem to be a 'post-code lottery' in operation. I urge the relevant authorities to read these reports and consider whether further guidance might be appropriate.

Dementia Care

One of the cases laid today is about the care of a man with Alzheimer's (Ref: 200904074). The man's granddaughter complained that the care home failed to provide her grandfather with proper nutrition, general personal care or any form of stimulus. I upheld the complaints and I also found communication with the family was poor. I made a number of recommendations to redress the failings identified in the investigation and to prevent recurrence of the issues.

Ombudsman's **Commentary**

DECEMBER 2010 REPORTS

By way of general comment, I would add that the care home that is the subject of the complaint is a specialist residential unit catering for patients with particularly challenging aspects of dementia. It is, therefore, particularly worrying that this investigation found several different aspects of the patient's care lacking. As the number of people with Alzheimer's increases, hospitals and care homes must ensure that they have policies and procedures in place to assess and respond to such patients' needs and that these are put into practice. I would urge the relevant health authorities to read this report, and take all necessary steps to ensure that the care provided to elderly people with dementia provides appropriate pain relief, comfort and stimulus, and maintains their dignity.

Seeking complainants' views

Today, we are publishing the results of our latest independent survey of complainants' views on our website. It compares the survey returns of people who received a decision from the SPSO in the first quarter of this financial year with those who received a decision in the first quarter of last year. The survey was issued and the returns analysed by the independent research company, Craigforth Consulting. We are very grateful to members of the public who used our service for taking the time to provide feedback to us. To read our summary and the actions we are taking in light of the findings, as well as the full survey results, visit http://www.spso.org.uk/media-centre/research.

Our complaints reviewers receive feedback about our service all the time. Here are some examples of direct quotes from users of the SPSO:

'We trust that your findings will be taken in by the Council and ensure those who may find themselves in a similar situation to us in future may benefit (especially those unable to speak up for themselves) which would be an achievement. We are really grateful that you have listened to us and have upheld much of our grievances. I don't know if SPSO will ever realise just what this means to us. On behalf of my family and I, THANK YOU.'

'I would also like to take this opportunity to thank you and everyone who assisted you with your investigation. From the well written report you sent me it was obvious that your investigations were very thorough and that was very much appreciated. It highlighted some issues that we had not been aware of and gave a proper explanation of what had happened to my dad. It is very reassuring to know that you and your colleagues are there to help when things go wrong in the NHS.'

'Thank you and your colleagues for your professional, timely and thorough consideration.'

'Thank you for the extremely thorough and painstaking approach which you undertook when investigating this complaint. I have never had an investigation referred to SPSO before, and am deeply impressed. The experience cannot ever be an easy one, however the manner in which you conducted the enquiry was as helpful as possible without prejudicing impartiality.'

Guidance about complaints over 12 months old

We are also publishing today an expanded explanation of how we handle complaints to us that do not meet the time limit within which a member of the public should normally bring us their complaint. The time limit is set out in Section 10(1) of the Scottish Public Services Ombudsman Act and is one year from when the person first knew of the problem about which they are complaining.

This means that in most circumstances we would not normally investigate a complaint that breaches this time period. However, we may consider that in certain cases there are 'special circumstances' that mean that we should take a complaint even though it is over a year since the person knew of the problem. The expanded explanation indicates the type of 'special circumstances' that we are likely to take into account and, we hope, will help clarify why we may or may not consider a particular complaint. You can read this guidance note on our website at the following link, www.spso.org.uk/our-process/advice/time-limit-for-complaining-spso

Consultation Update

We presented our statement of complaints handling principles to the Parliament on 5 November. The revised statement of principles can be accessed on our Valuing Complaints website www.valuingcomplaints.org.uk. The aim of the statement of principles is to guide public service providers towards a cohesive view of complaints procedures. It was developed in partnership with service providers and following consultation with a wide range of stakeholders including the public and tenant groups.

On 15 December, the Local Government and Communities Committee recommended that the Parliament agree the draft statement of principles. The Committee's report is available at http://www.scottish.parliament.uk/s3/committees/lgc/reports-10/lgr10-11.htm.

The consultation also asked for views on our guidance on model complaints handling procedures (model CHPs) for the public sector. The purpose of the guidance is to provide direction to service providers on what should be included in an effective complaints handling procedure. We are currently analysing the responses and will produce revised guidance early in the new year.

Visit www.valuingcomplaints.org.uk for more information.

Ombudsman's **Commentary**

DECEMBER 2010 REPORTS

case reports

Health

Care of the Elderly; nursing care; patient dignity; communication

Lothian NHS Board (200904074)

Mr A was resident in a care home which specialises in particularly challenging aspects of dementia. His granddaughter, Ms C, complained to the Board about the care and treatment that Mr A received there, believing that her grandfather was not afforded the care or dignity he deserved. She said that when admitted to hospital just before his death, he was severely dehydrated, had a urinary tract infection and bedsores. I upheld her complaints that the Board failed to provide Mr A with proper nutrition, general personal care or any form of stimulus (as a patient suffering from Alzheimer's disease). I also upheld the complaint that the Board did not communicate adequately with Ms C's family about Mr A and his condition. I recommended that the Board apologise in writing to Ms C for these failures, and for some misinformation provided in responding to her complaints. I further recommended that they monitor procedures in the care home for four months and emphasise to staff there the necessity of following procedures and properly completing forms, the importance of appropriate activities for patients, and the benefit to all parties of clear communication. I recommended that the Board ensure that when a patient is admitted the care home take steps to discuss and record communication methods with families. I asked that they provide me with evidence of this and of the range of activities now available to residents of the care home. I did not uphold a complaint that the Board failed to take action to prevent bedsores.

Ambulance; delay; child protection; complaint handling

Scottish Ambulance Service (201001372)

Mrs C complained on behalf of Mrs A about the Scottish Ambulance Service (SAS). Mrs A was walking with her three year old great grandson when she fell and broke her leg. She said that a passer-by called for an ambulance, which she believed took over an hour to arrive, and that she was meanwhile left lying outside in the cold. When the ambulance arrived, an inflatable splint used on her injured leg was faulty. The ambulance crew provided pain relief that meant Mrs A was not fully aware, and she was particularly distressed to realise on the way to hospital that her great grandson had been given into the care of a person she did not know. Mrs C also told me that the SAS failed to respond properly to the complaint. I upheld the complaints about the inflatable splint, and the failure in complaints handling and recommended that the SAS apologise to Mrs C and Mrs A for the way in which they handled the complaint. As the SAS are in the process of piloting new complaints handling procedures I recommended that they keep me updated on their progress and provide me with a copy of the new procedure when it is introduced. I also upheld the complaint that the crew inappropriately handed Mrs A's great grandson to an unknown person while she was incapacitated and recommended that they apologise to her for the distress this caused. I also recommended that they amend their Child Protection Code of Practice to take into account the circumstance where children are left in their care when the responsible adult has been taken ill or involved in an accident. I did not uphold the complaint about the delay in the arrival of the ambulance as records showed that the time it took to arrive was not as long as Mrs A had thought, and was not unreasonable.

Local Government

Roads and footpaths; delays; flood prevention

Argyll and Bute Council (200904955)

Mr C raised concerns about flooding problems near his home that had continued over a number of years despite being given a priority status in the Council's Minor Flood Prevention Scheme programme. He also said that damage to the adopted road that serves his home had not been repaired. I upheld his complaint that the Council delayed unduly in taking action to reduce flood risk to his property and to effect repairs on the adopted road, and recommended that they: consider whether there is a need, following the identification of projects in their capital plan, to provide periodic updates on their website of progress in implementation; apologise appropriately to Mr and Mrs C and, as a matter of urgency, ensure that the works identified under the programme are carried out without further delay.

Social Work: complaint handling

East Lothian Council (200905042)

Mr C complained on behalf of his client, Mrs A, about a financial assessment that the Council carried out in respect of her mother Mrs B and the way the Council's Complaints Review Committee (CRC) dealt with his complaints. I upheld his complaint that there were shortcomings in the information given to Mrs A at the time of the financial assessment, as there was no evidence that the Council made Mrs A aware of the specific implications of property transfer. I also upheld the complaint that the CRC failed to fully to explain the reasoning behind their decision not to uphold the complaint. I recommended that in consultation with the Chair and other members of the CRC, they revisit their decision with a view to providing a full and adequate explanation based on the merits of Mr C's case. I did not uphold complaints that the Council failed to consider the case on its own merits, or acted unreasonably in not agreeing to convene a new CRC hearing to consider a salient piece of information that was submitted after the CRC took place. I did, however, recommend that, in consultation with the Chair and other members of the CRC, they assess the significance of that document.

Ombudsman's **Commentary**

DECEMBER 2010 REPORTS

case reports

Social Work: complaint handling

South Lanarkshire Council (200905049)

A firm of solicitors, Firm C, complained on behalf of their clients about how a Social Work Complaints Review Committee (CRC) held by the Council dealt with a complaint about a decision relating to a financial assessment in respect of care home fees. Although finely balanced, I upheld the complaint that the CRC did not properly explain their decision by reference to the merits of the case, and recommended that the Council consult with the Chair and other members of the CRC with a view to producing an adequate and reasoned explanation for their decision, based on the merits of Firm C's case.

Recommendations made in decision letters in November 2010

Recommendations to Councils

- in a complaint about a postal vote deadline, a Council review the administrative operations of the Election Office, in particular public access to that office, during the whole of the period leading up to the published deadline
- in a complaint about the handling of repairs to a chimney, a Council should deduct 25% from the complainant's share of the rechargeable works and meet the additional cost; the Property Maintenance Services Manager should issue a formal reminder to their staff about the importance of ensuring that the Council's mutual repairs and shared costs procedures are properly followed. In particular, affected parties should be provided with a copy of the repairs specification in writing which should appropriately retained for audit purposes. The Council should provide a written guarantee to the complainant for the works (5 year warranty).
- a Council apologise to the complainant for the delay in initiating eviction proceedings against a next-door neighbour; review their administrative process for recording breaches of an ASBO, to ensure that decisions taken on whether or not to proceed to formal tenancy enforcement action are recorded; and consider making an ex gratia payment to the complainant for the distress caused by their failings as identified in the Decision Notice.
- in a complaint about the purchase of an area of land, the Council apologise for the failures identified in dealing with the correspondence from the complainant and his solicitor; meet the costs incurred by the complainant in connection with the reminders sent by his solicitor to the Council over a specified period; emphasise to staff the importance of properly kept records particularly in relation to telephone calls; emphasise to staff the importance of acknowledging correspondence and proactively providing updates and urgently review their procedures for the sale of Council assets, to ensure a similar situation does not recur.
- in a complaint about repairs to a burst water main, the Council apologise for providing misleading information in their responses to the complaint and for the delay in responding to a request for a full breakdown of the bill; investigate the complainant's concerns to satisfy themselves that the contractors can evidence that all houses were checked, and provide a full response to the complainant.
- in a complaint about a fence erected between two allotments, the Council re-consider their decision and make a number of improvements to their complaints handling procedures.
- a Council ensure that a training strategy is developed and staff are fully aware of the options for ensuring that school pupils with disabilities are included in extra-curricular activities; and meet all reasonable costs associated with ensuring that the pupil concerned can complete the activity.

Ombudsman's **Commentary**

Recommendations made in decision letters in November 2010

Recommendations to Health Boards

- a Board apologise to the complainant for the delay in carrying out cataract surgery due to confusion about the protocol that was in force at the time.
- a Board apologise to the complainant for failing to recognise the cause of knee pain; and arrange for the Orthopaedic and Rheumatology departments to jointly review her case to determine whether there is any further appropriate action that can be taken to improve the condition of her knee.
- a Board consider introducing measures to confirm whether patients who decline counselling in hospital have received this from their GP and to ensure that counselling is made available to those patients who have not. The Board should also review their handling of this case with a view to ensuring that adequate follow-up care is provided by the clinic to patients who contact them complaining of symptoms which may indicate post-operative problems.
- a Board formally apologise to the complainant for the shortcomings identified in complaints handling, and that they review their procedures and make the necessary changes to ensure they deal with complaints in accordance with the NHS complaints procedure.

Recommendations to Housing Associations

- an Association apologise for their failure to address in a letter to the complainant the poor staff attitude that they complained about and, in future, ensure a comprehensive approach is made when considering complaints.

Recommendations to Colleges or Universities

- that a University apologise to a student for the lack of clarity about remuneration on work placements. The University should also look again at the written advice presented to students about work placements. If there is a requirement for placements to be paid, this should be clearly stated and, if other placement acceptance criteria exist, these should be clearly stated. The University is asked to report back to the Ombudsman on the action they have taken. The University should apologise to the complainant for the lack of clarity in invoices and statements and make these clearer by providing details of the module(s) to which the fee relates.
- that a College apologise to a student for not following their complaints procedure. Where the College believes that deviation from the complaints procedure is appropriate, they should document the reason for this and explain it to the complainant. The College should review their process for investigating complaints, to ensure that appropriate enquiries are undertaken and that this is documented to support the final decision made.

Recommendations to a Scottish Government or devolved administration body

- that a body remind its staff of the importance of properly filing paperwork; remind all staff involved in handling complaints of the importance of being in possession of all relevant information when reaching decisions; and of the importance of communicating accurate information when responding to complaints.
- that a body apologise to a complainant for failing to provide a full and accurate response to his complaint.

Ombudsman's **Commentary**

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, 22 December 2010

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

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SPSO Scottish Public Services Ombudsman

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.spso.org.uk**

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