

# Ombudsman's Commentary

SEPTEMBER 2011

The SPSO laid three investigation reports before the Scottish Parliament today. Two are about planning decisions by councils and one is about a health board. We also laid a report about 44 decisions. All the reports can be read on the 'Our findings' section of our website.

## Case numbers

Last month (in August) in addition to the three full reports laid before the Parliament we determined 367 complaints and handled 56 enquiries. Taking complaints alone, we:

- gave advice on 257 complaints
- resolved 74 in our early resolution team
- resolved 36 by detailed consideration
- made a total of 37 recommendations in decision letters.

## Ombudsman's Overview

One specific area that gives rise to significant frustrations for people who complain to my office is planning. Each year, without fail, it ranks as the second highest subject of complaint we receive about local authorities. We hear from complainants on opposing sides of the planning process – individuals who are unhappy about an authority's handling of their application and objectors that are opposed to particular planning applications. Two of the complaints reported today are about planning.

My approach is pragmatic and where I find that planning authorities are acting unfairly I will make robust recommendations to rectify what has gone wrong and to prevent reoccurrence, and I will draw attention to any failings. As Ombudsman, I do not believe that it is enough for planning authorities to simply toe the line and meet the minimum standard to keep on the right side of the law and regulations. Individual members of the public deserve more from organisations delivering public services. I frequently find failures in the administration of planning applications and breakdowns in communication – this should not happen. Given their enhanced powers, planning authorities need to provide a level of service that is demonstrably reasonable, transparent and fair.

It is the responsibility of planning officers to ensure that they explain their decisions clearly and fully to the public, and I will hold them to account for that.

## Complaints Standards Authority update

Working in partnership with the local government and housing sectors, the CSA continues to make progress towards standardising complaints handling procedures (CHPs).

## Local government

The working group of local authority representatives is presently developing a draft CHP for the sector in line with the framework of the SPSO's complaints handling principles and guidance. This draft CHP will be reviewed by the CSA in October with a view to sharing it across the sector. As we move towards the new model CHP, we have taken account of the priority training requirements which were identified by local authority stakeholders at the recent SPSO conference. The SPSO training team will develop materials to address these priority areas. These will be made available on the CSA website and developed with a view to SPSO delivering one day training launch events at regional locations for groups of local authority nominees. It is anticipated that the local authority nominees who attend will take on responsibility for rolling out the training in their organisations as required.

The local authority working group has also made significant progress in developing a number of supporting products. It has undertaken work to better understand the current approach to recording complaints across the sector with a view to developing a standardised approach to recording the categories, types and sub types of complaints. The group is also developing a methodology to monitor compliance with and performance against the key component parts of the model CHP. The proposal being considered is a three staged approach of self assessment, internal audit testing and Audit Scotland's annual audit of local government. The Sinclair Report recommended the introduction of a network of professional complaints handlers. This recommendation has also been progressed by the working group, with plans in place to introduce a network of local authority complaint handlers with terms of reference developed around identifying and using complaints knowledge, creating complaints knowledge, managing and sharing that knowledge and networking to solve problems.

We are pleased with the progress of the local authority working group and remain committed to introducing the new CHP for the local government sector in March 2012. In advance of the CHP being published, councils should be aware of their planning requirements around systems, awareness training, leaflets and the need to prepare plans for implementation in good time for March 2012.

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## Complaints Standards Authority update *(continued)*

### Housing

There has also been good progress in the housing sector. We have been working to raise awareness of our work, to highlight for RSLs what the development of the model CHP will mean and to gain their input to the process. Initially we attended several housing forum meetings, where we gained useful feedback. More recently we have distributed surveys to RSL staff, committee members and tenants, with some encouraging early responses. From the feedback we are getting it is clear that many RSLs have taken on board the SPSO principles and guidance and are working with these to revise internal policies, though they are not yet all aware of the model CHP and its potential impact on them.

However, awareness-raising will come to the fore in October, when the CSA will attend a wide range of events, several of them based around the issue of regulation, what new systems for self assessment will look like, and what part complaints may play in this. Our work with the Scottish Government in the development of the Scottish Social Housing Charter will form a pivotal element of monitoring complaints, with the potential for housing providers to show how they value complaints from their customers. We are also working with HouseMark to ensure that the benchmarking

systems that they have developed for complaints can work alongside standardised categories for regulatory requirements and alternative benchmarking systems.

As with local authorities, many RSLs are aware of the training needs that their staff will have in taking forward improvements to complaints handling. While the approach to each sector needs to be distinct, we will ensure that, wherever possible, comparable resources are made available for RSLs.

### Higher and further education; Scottish Government

The CSA is in the early stages of engagement with the higher and further education sectors, working with Universities Scotland and Scotland's Colleges. These two sectors are taking different approaches. We are working closely with them to steer their internal discussions towards fostering the development of model CHPs for their sectors.

We have also now engaged with the Scottish Government where we will be working together to develop a CHP across Government. Additionally, we are working on an ad-hoc basis with an increasing number of Non-Departmental Public Bodies, providing advice and guidance as they revise their complaints procedures.

For further information, see [www.valuingcomplaints.org.uk](http://www.valuingcomplaints.org.uk)

## Case summaries

### Local Government

#### Planning, handling of application

Scottish Borders Council (200904711)

Firm C, who are a firm of solicitors, complained on behalf of their client, a housing developer, Firm A, about the way the council handled a planning application for the development of a new secondary school. They said that the council did not observe appropriate planning procedures and, in particular, did not notify interested parties of significant changes. Firm A had conditional planning consent for a housing development, and knew that a school was to be built near it. When, after some time, the school was built, Firm A were unhappy about the way the planning of it was handled, saying that they were not notified of changes to the plans that had a significant

impact on the housing development. They said that the school access road had been substantially elevated, which meant that those using the road would be able to see directly into some houses on the site. They also said the construction of the bridge should have been treated as a reserved matter, and that if it had been, they would then have been notified of this and able to express their concerns about the elevation of the road. The council disagreed and said that the 'as built' road and bridge did not represent a departure from the approved plans.

After taking the advice of my planning adviser, I decided, on balance, to uphold this complaint. I found that although there was evidence in accompanying reports of an intention to elevate the road, the plans did not specifically identify this. I did not think it

was reasonable for the council to have decided on a planning application without heights and levels being accurately identified, and it is my view that the embankment should have been more clearly specified. I also found that part of the council's planning conditions were ambiguously worded, and that they provided inconsistent responses to Firm C. There was no statutory duty on the council to notify Firm A about the embankment, but they should at least have taken steps to discuss this, as they knew that Firm A had a direct interest in the matter. It is not, however, for me to adjudicate on what should have happened in terms of the planning, had these failures not occurred. In the circumstances, I recommended that the council apologise to Firm A for the failings identified in my report.

# Ombudsman's Commentary

## SEPTEMBER 2011 REPORTS

### Case summaries

#### Local Government

##### Planning, handling of application

The City of Edinburgh Council  
(201003274)

Mrs C complained about how the council handled a planning application to erect a two-storey extension at her neighbour's property. She said that by not acting on an email from a councillor asking that the application be put to the planning committee, the council did not follow the proper process before granting planning permission. She felt that this meant her views were not taken into account, and that she was denied the opportunity to have the matter heard by committee which might have meant a different outcome. The application was in fact decided under delegated powers by a planning officer. The council accepted that administrative error meant they had not acted on the email, but could not explain why because the email had been deleted. They said, however, that although the decision was made under delegated authority there were no material planning considerations to justify refusal and that Mrs C's representations were taken into account. I found that the council breached their scheme of delegation, which meant that the case was determined under delegated powers at a point when it should not have been. This does not necessarily mean that the ultimate decision would have been any different, but I agreed that the correct process was not followed. A planning officer can make a decision under delegated powers, but since a request had been made to have the matter heard by committee, the officer should not have made the decision at that point. For this reason I upheld the complaint. Although planning consent cannot be withdrawn, I recommended that the council now refer the application to the committee to consider whether in the circumstances it would be appropriate to make a revocation order. I also recommended that they review the

current planning team email system to prevent loss of emails or planning applications, and feed back my decision on this case to the planning team. I recommended that they apologise for failing to investigate Mrs C's complaint properly and for failing to ensure that the councillor's request was processed correctly.

#### Health

##### Clinical treatment, diagnosis, complaints handling

Greater Glasgow and Clyde NHS Board –  
Acute Services Division (201002636)

Mrs A attended hospital after breaking her ankle. She was x-rayed and fitted with an air cast, given crutches and discharged from the hospital, although she lived alone in a top flat and had told staff she felt she would not be able to manage the air cast. After she got home, she was in severe pain and felt her ankle blistering under the cast, which felt too tight. She called an out-of-hours doctor, who arranged for an ambulance to take her back to hospital where she was admitted, fitted with a different cast and treated for the blistering. She was discharged after a week, and attended the fracture clinic over the next few weeks. After a couple of months her cast was removed but she was still experiencing pain and swelling. Her daughter, Mrs C, complained to the board about this. While her complaint was being investigated, a further x-ray showed that Mrs A had in fact also fractured her heel bone. However nothing was done about this until some five months later. Mrs C complained again about this. When the board responded to Mrs C's complaints, their letters contained inaccuracies and inconsistencies, and she was unhappy about the length of time that it took them to respond. She complained to this office about all of these issues.

I upheld all of Mrs C's complaints. I found that although the treatment Mrs A received for her broken ankle was also appropriate for a broken heel bone, staff missed a number of opportunities to diagnose the second injury. My medical adviser confirmed that such a fracture could be easily missed, but noted it was still not picked up by a number of staff who looked at the x-rays over a period of some weeks. My medical adviser also said that although the second fracture was in fact confirmed by a consultant about a month and a half after Mrs A's accident, he did not appear to do anything about it until he referred Mrs A to another consultant some five months later. I recommended that the board should use the events of Mrs A's experience for learning purposes by presenting the details of her case to the relevant staff at a suitable forum. I also found that Mrs A was inappropriately discharged home, given her personal circumstances, and should probably have been admitted at the time of her accident. The board have accepted this, and that staff may not have fully appreciated the difficulties she would face. I recommended that they review their procedures for assessing patients' suitability for discharge and consider providing further training to staff on patient discharge eligibility assessment. Finally I found that the board's responses were inaccurate on more than one occasion, which meant Mrs C had little confidence in their investigation. Her complaint could have been resolved more quickly had the board provided accurate and timely responses.

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SEPTEMBER 2011 REPORTS

## Case summaries

### 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 September 2011**

The compendium of reports can be found on our website [www.spsso.org.uk](http://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 for handling complaints about councils, housing associations, the National Health Service, prisons, the Scottish Government and its agencies and departments, the Scottish Parliamentary Corporate Body, water and sewerage providers, 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](http://www.spsso.org.uk)

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