

Monthly news from the Scottish Public Services Ombudsman

The SPSO laid three investigation reports before the Scottish Parliament today. We also laid a report on 67 decisions about all of the sectors under our remit. All the reports can be read on the 'Our findings' section of our website at www.spsso.org.uk/our-findings.

Case numbers

Last month (in September), we received 426 complaints. In addition to the four reports we laid before Parliament, we determined 363 complaints and of these we:

- gave advice on 263 complaints
- handled 67 complaints in our early resolution team
- decided 29 complaints through detailed consideration
- made a total of 65 recommendations in decision letters.

Ombudsman's Overview



Today's reports demonstrate the range of issues we see: the tendering process for a ferry route, a missed diagnosis of lung cancer and prisoners' access to the NHS complaints process. Although I did not uphold the complaint about the ferry route (201202798), I recommended that, as a matter of urgency, the Government agency responsible continue to look at measures to reduce weather related ferry cancellations and to increase the reliability of the route for passengers. On the health complaint (201202912), I made an unusually resource-intensive recommendation, which is that the board arrange an external review of their radiology practice and procedures.

The final report (201203374) is about a prisoner's access to the NHS complaints process and contains very similar issues to an investigation I made public in May this year about a different health board (201203514). In both cases, I found that the boards were restricting and over-complicating prisoners' access to the NHS complaints process by using the feedback process as an additional and unnecessary level of complaint.

As I said in my May newsletter, it is clear that the Scottish Government *Can I Help You?* guidance does not require NHS users to complete the feedback process before accessing the complaints process and the same should apply to those who receive NHS care and treatment whilst in prison. Since the NHS became responsible for prisoner health care, we have received a number of contacts from prisoners throughout Scotland complaining that they are having difficulties in accessing the complaints process. I raised this matter with the Parliament's Health and Sport Committee in January this year. In response to my comments, the Scottish Government wrote to the relevant NHS boards, asking them to ensure that their complaints process was accessible to all prisoners. It would appear that there may still be confusion in this area and variance in practice, and I urge boards to assure themselves once again that their complaints processes are in line with Scottish Government guidance.

Housing complaints report

Later this month, we will publish our first annual complaints report about the housing matters that we considered in 2012/13. Like the other sectoral reports we have published, it contains:

- key complaints figures
- issues and themes arising from the complaints we see
- how we share learning and how we work with other organisations
- an overview of the relevant activities of our complaints standards authority
- our policy engagement.

The report highlights that housing complaints are often about issues with living environment that can have a significant, ongoing and inescapable impact on tenants. This emphasises the importance of effective and quick remedy through the complaints process.

The report also outlines the work of our Complaints Standards Authority in developing a standardised model complaints handling procedure (CHP) for registered social landlords (RSLs), which is now in place across the sector. My aim has always been for this procedure to be owned by the housing sector and I believe that this is now the case. We look forward to working in partnership with the RSL complaints handlers network and other partners to support ongoing improvement of the CHP's operation through sharing of experience, learning and best practice across the sector. To read the reports and access other sectoral information, visit <http://www.spsso.org.uk/sector-specific-information>. Annual statistics for 2012/13 for all sectors were published on our website in mid-September and can be seen at <http://www.spsso.org.uk/statistics>.

Health and social care integration

I was pleased to give evidence to the Health and Sport Committee earlier this month on the role of regulators and complaints bodies under the plans to integrate health and social care services. I was keen to stress my view that the proposed changes should take a holistic, person-centred approach, including when considering how people can complain if they are unhappy with a service. It is vital that easy access and good signposting to complaints processes are built in at the formulation stage of these plans. Read the evidence session at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8546&mode=html>

NHS sounding board meeting

Health and social care integration was one of the areas discussed at the second meeting of our NHS sounding board in early October. Other items on the agenda were the SPSO's annual health complaints report and annual letters to boards; prisoner healthcare complaints; NHS boards' first annual feedback and complaints reports; SPSO and NES training in investigative skills in complaints handling; and our involvement in Healthcare Improvement Scotland's learning and improvement working group.

Investigation Reports



Investigation report ref: 201202798

Transport; policy/administration

Transport Scotland

Summary

Mr C raised a number of concerns on behalf of an action group about the tendering process for the ferry route from Dunoon town centre to Gourock rail terminal. The action group was formed with the objective of campaigning for a frequent, safe, reliable vehicle and passenger ferry service on that route. The tender was put out by Transport Scotland, who awarded a six year contract that started on 30 June 2011 on a passenger-only basis.

The action group took their complaints to Transport Scotland and, dissatisfied with their response, brought them to this office. I investigated four concerns, namely that Transport Scotland:

- failed to reasonably consider whether vessels offered by bidders were capable of performing with reasonable reliability;
- unreasonably omitted to include a contractual clause which ensured that vessels on the route were capable of reasonable reliability in poor weather conditions;
- gave insufficient consideration, during the investigation and tendering process, to the implications of the route becoming passenger only; and
- unreasonably failed to include Dunoon Pier in the tender.

I examined all the evidence provided by the action group and by Transport Scotland. I took account of the situation before and after the tender, the statistics for car, freight and passenger traffic, the general legal framework for financial support for the performance of ferry services in Scotland and a European Commission decision on state aid for ferry services. The significance of the EU decision was that it required that a tendering exercise by the Scottish Government should start by particular dates and that it only allowed for the subsidy of a passenger service on this route. I also took account of the potential risks identified by Transport Scotland's procurement team in setting out the specification for vessels, and that international maritime law reserves the decision on whether or not to sail to the master of the vessel.

I did not uphold any of the complaints, and details about how I arrived at these conclusions are laid out in the report. Nevertheless, I made a recommendation that Transport Scotland, as a matter of urgency, continue to look at measures to reduce weather related cancellations and to increase the reliability of the route for passengers. I made this recommendation in light of my observation that the new passenger-only service that began at the end of June 2011 was subject to much public criticism (manifested in November 2011 with the formation of the action group). Ministers reacted to that public concern initially by meeting with the ferry company awarded the contract, seeking an improvement plan and, later, meeting with the action group. Mr C provided evidence, publicly available, pointing both to significant numbers of cancellations and to a considerable drop in passenger numbers on the Dunoon town centre to Gourock route service. I note that in September 2013, the Scottish Government announced measures to improve the reliability of the service.

Investigation Reports



Investigation report ref: 201202912

Clinical treatment; diagnosis

Fife NHS Board

Summary

Mr C raised concerns about delays in diagnosing his late wife (Mrs C) with lung cancer. Specifically, he complained that an x-ray taken over five months before her eventual diagnosis had not been properly read. He complained that this misled clinicians into dismissing lung cancer as a diagnosis, despite other serious, persistent symptoms. He felt that this, at least, left his wife with inappropriate treatment and pain relief in the final months of her life, and possibly reduced her life expectancy as her cancer was not identified until it was too late for treatment.

Mrs C developed a persistent cough and her GP referred her for a chest x-ray, which was taken in January 2012 and reported to be normal. Her symptoms persisted and changed, and she had x-rays taken of her pelvis, hip and lumbar spine in March. The pain continued and Mrs C also developed numbness in her shoulder. A respiratory consultant diagnosed her with a viral infection and her shoulder was x-rayed again in June, with a diagnosis of rotator cuff tendonitis and the plan was to treat it with a steroid injection and physiotherapy.

However, at an appointment later in June, an orthopaedic registrar recognised several concerning warning signs and referred Mrs C for urgent tests including blood tests and an MRI scan. Two days later, she was admitted to hospital as she was no longer coping at home. The further tests revealed that Mrs C had lung cancer, which was by then affecting her bones, kidney, lung and brain. She died less than three weeks later.

In examining this complaint, I took independent advice from a consultant radiologist and an A&E consultant. I accepted the advice that the initial x-ray of January 2012 showed subtle abnormalities that should have been identified by the radiologist at the time and by subsequent reviews by other clinicians. The reporting of this x-ray influenced later investigations into Mrs C's other symptoms. As a life-long non-smoker, Mrs C was at a low risk of lung cancer. This, alongside a reportedly normal chest x-ray, misled clinicians to discount a possible lung cancer diagnosis.

Subsequent x-rays showed increasingly clear evidence of a serious underlying condition which should have been identified. Several further opportunities to diagnose lung cancer sooner were missed. It is not clear whether the clinicians would have been able to diagnose the cancer before it had spread to her bones, as it was aggressive in nature and further tests would have been required before any definitive diagnosis was possible. However, even if the diagnosis had come after the x-ray in March which showed clear signs of the disease in Mrs C's pelvis, it would then have been possible to alleviate the severe and distressing pain that she suffered over the next three months.

I upheld the complaints and made three recommendations to the board for redress and improvement, including that they highlight to all clinical staff the need to review x-rays as well as x-ray reports when diagnosing patients and that they apologise to Mr C for the failings identified in my report. Given the repeat failings identified in radiology, I also made an unusually resource-intensive recommendation, which is that the board arrange an external review of their radiology practice and procedures, in consultation with the Royal College of Radiologists, and provide evidence of this review to the SPSO.

Investigation Reports



Investigation report ref: 201203374

Complaints handling

Greater Glasgow and Clyde NHS Board

Summary

Mr C, who is a prisoner, complained that the prison health centre's handling of his complaint forms at a particular time was unreasonable and that he had problems in accessing the relevant forms. I upheld the complaints and made a number of recommendations.

Mr C's original complaints to the health centre were that he had not received an explanation about why he had not received his medication, and that a nurse had been rude to him. He submitted a large number of feedback forms and a complaint form, and while I recognised that this inevitably took up a lot of the health centre's time, I found that they had not handled Mr C's complaints in line with their procedures. I also found that the board's procedure was not in line with the Scottish Government's guidance on NHS complaints *Can I Help You?* in regard to the number of days that are allowed for them to respond to a complaint.

On Mr C's second concern, I found that access to the board's complaints process was restricted. The board's leaflet on their complaints procedure for prisoners says that they can make a formal complaint by letter. In their response to a draft copy of my report, the board said that they believed that complaint forms and the ability to register complaints by other means had always been available to prisoners. They also said that a new combined feedback and complaint form had recently been introduced. However, during our investigation, we received information from the board that indicated that prisoners normally had to complete a nurse referral form in order to request a complaint form. Even when they did that, they only received a feedback form, unless they specifically said that they did not want one of these.

It appears to me that in some cases, the board used the feedback process as an additional level to the NHS complaints process. This restricted and over complicated prisoners' access to the NHS complaints process. It is clear that the Scottish Government guidance does not require NHS users to complete the feedback process before accessing the complaints process and the same should apply to those who receive NHS care and treatment in prison. I recognise that the board have stated that a prisoner can request a complaint form in person if they are attending the health centre for an appointment. They can also write to the board direct with their complaint. However, I have concerns that prisoners and (given the initial response we received from the board) some of the board's staff were unaware of this.

I therefore made three recommendations for redress and improvement, including that the board apologise to the prisoner, ensure that the local process in place for the management of prison health care complaints is in line with the good practice outlined in the Scottish Government guidance, and take steps to confirm that complaint forms are readily available for prisoners to access.

Complaints Standards Authority update



Model CHP for the Scottish Government, Scottish Parliament and associated public authorities in Scotland

Each organisation was required to provide the SPSO with a compliance statement and a self-assessment of compliance by 30 September 2013, notifying of their progress towards the introduction of the model complaints handling procedure (CHP). All organisations are required to have implemented the model CHP by 31 March 2014.

We are pleased to report that the required return has been received from all but a small number of organisations. Good progress towards full compliance and implementation by March 2014 has been reported. We will now be working closely over the next few weeks with those organisations yet to provide the required information and with all organisations over the remaining months to help ensure implementation. We remain confident that, with our support, all organisations will be in a position to report compliance by March 2014.

To help provide further support with implementation of the CHP we have received a number of requests to establish a network of complaints handlers in the sector or similar forum. If you would be interested in joining such a network, please contact the CSA team at CSA@spsso.org.uk.

Higher and further education

In our last update we reported that we are pursuing the development and introduction of complaints handling network groups with sector representatives, building on existing networks wherever possible. The aims of the networks will include:

- enabling complaints practitioners to share information and best practice in complaints handling
- increasing knowledge and awareness of complaints handling to improve skills and competence across the network
- developing key performance indicators and performance management arrangements
- creating a standardised approach and consistency across institutions for complaints handling
- shaping future complaints handling arrangements on behalf of the sectors.

If you are interested in joining a network group for your sector, please contact the CSA team at CSA@spsso.org.uk.

Local authority complaints handlers network

The application of the model CHP in schools is one that has been discussed several times, and it featured on the agenda of the most recent complaints handlers network meeting. In light of this recurring theme, we have agreed to work with the network group to develop additional information specific to the issues surrounding education complaints, including the relevant roles for schools and education departments and the various other routes for raising dissatisfaction, including statutory appeal routes and complaints about the assessment of qualifications. We hope that this will add clarity to the application of the CHP in handling education complaints. In progressing this work we plan to engage directly with the Association of Directors of Education.

NHS: Handling and learning from feedback and complaints – corporate responsibility master class

The Ombudsman will speak at an NHS Education for Scotland ‘Masterclass’ for executive and non-executive NHS board members later this month. The focus is on the role of feedback and complaints in good corporate governance. Three sessions are planned and have been designed for those who sit at NHS board level.

The sessions will focus on the importance of complaints in the governance of organisations and their value as indicators of performance, service quality and risk, particularly for health boards in the light of the recent findings of the Francis report. In addition to the Ombudsman, Malcolm Wright (CEO, NHS Education for Scotland) and representatives of the Scottish Health Council and the Scottish Government Health and Social Care Directorate will be providing insight. A representative from Glasgow Housing Association will be outlining their approach to using complaints as part of their governance model.

The learning sessions will be run at three events, in October, November and December.

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.

Jim Martin, Ombudsman, 23 October 2013

The compendium of reports can be found on our website: <http://www.spsso.org.uk/our-findings>

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The 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 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 complaints procedure of the organisation concerned. Members of the public can then bring a complaint to us by visiting our office, calling or writing to us, or filling out our online complaint form.

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 complaints handling in bodies under our jurisdiction.



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