

# SPSO NEWS

## February 2016

### Monthly news from the Scottish Public Services Ombudsman

This month we are laying 61 decisions about all of the sectors under our remit before the Scottish Parliament and one full public report about the NHS. The decisions can be read on our website at [www.spsso.org.uk/our-findings](http://www.spsso.org.uk/our-findings).

## Case numbers

Last month (January), we received 400 complaints. We determined 368 complaints and of these we:

- gave advice on 204 complaints
- considered 106 complaints at our early resolution stage
- decided 58 complaints at our investigation stage

We made a total of 88 recommendations.

## Ombudsman Overview

### Casework outcomes

This month I am highlighting the issue of surgical consent, which is the subject both of our full public report and of several other health investigations we are laying today. I am also highlighting cases in some of the other sectors we deal with to illustrate the range of complaints the public bring us, what our investigations find and the recommendations we make to authorities to put things right or to ensure that the same problems are not repeated.

**Health:** Our full public report (case [201403214](#)) is about a woman's colonoscopy procedure (examination of the bowel with a camera on a flexible tube). It was carried out under conscious sedation rather than general anaesthetic. The two surgeons continued the procedure despite her and nursing staff asking for it to be stopped, and she experienced excessive pain and discomfort. Our investigation found several failings including non-compliance with General Medical Council

guidelines on obtaining informed consent. I was particularly concerned about an apparent lack of understanding, acknowledgement or sufficient appreciation of the seriousness of the failings and I also noted the similarity of the circumstances to another recent complaint (case [201402959](#)) about the same board. In today's case, I made a total of 12 recommendations.

Several other complaints laid today are also about inadequate information being provided about possible complications of surgery and/or incorrect treatment during surgical procedures. In a complaint (case [201405825](#)) about an operation to fit a pacemaker, we found that in addition to failing to provide evidence of adequate consent, staff had not adequately taken the patient's additional needs (anxiety and loss of hearing) into account. In another case ([201403459](#)), we criticised the amount of information provided before a woman had surgery to remove an ovarian cyst. We also found informed consent was not obtained before a circumcision operation (case [201405524](#)). In all three cases, we made recommendations to improve how staff communicate with and provide information to patients before surgery.

We also upheld two complaints about the Scottish Ambulance Service (cases [201500443](#) and [201502531](#)) and made a number of far-reaching recommendations including to improve ambulance crews' ability to diagnose life-threatening conditions.

We uphold health complaints in around 50% of cases and examples of where we found that the treatment carried out was reasonable include dental work (case [201402414](#)), throat cancer diagnosis ([201406355](#)) and mental health legislation being correctly followed ([201405725](#)).

**Water:** there were four complaints this month, all about charging. In one case ([201306245](#)) a faulty meter led to disagreement over charging and we made a number of recommendations for redress. In another case ([201406428](#)) the licensed provider had failed to read the meter when they should have and they made a credit to the social club concerned to account for their delays in taking readings. They also made a refund to a business owner who queried her disproportionately high bills, in recognition of the incorrect information that had been provided to her when she raised the issue ([201401201](#)). In the fourth case, we found that the licensed provider had unreasonably invoiced a business owner for water services and in view of this we asked them to close her account and waive all associated charges ([201404548](#)).

**Local authority:** this month we laid two reports into complaints about statutory repairs. As is common in these cases, we did not uphold most aspects of the issues brought to us because we found that the way the council had acted was reasonable. In one case ([201405881](#)) however, we did make recommendations for redress and asked the council to consider how they may better research the likely cost of repairs when issuing their initial estimates.

**Further and higher education:** the three complaints about this sector related to communication, academic appeals and complaints handling. While we found some good practice, we made recommendations in each case to improve how complaints are handled, in particular in case [201407809](#).

**Housing:** in case [201407227](#) about the end of a tenancy, we found that a housing association acted reasonably in respect of a complaint about charges for a redecoration allowance and plaster repairs. They had evidence to support their position on these. However, we found that there was no evidence that it had been made clear that outgoing tenants were unable to leave rubbish in wheelie bins. We asked the association to remove the associated charge from the tenant's account, and we also made recommendations to ensure specific information is clear in their written materials.

**Scottish Government:** most complaints in this sector are about the Scottish Prison Service (SPS). This month's includes a complaint we often see about delay in prisoners' progression to less secure conditions (case [201404427](#)). We did not uphold the complaint because we found no evidence that there had been unreasonable delays by SPS. Another case ([201503386](#)) was from a prisoner who wanted to transfer cash from his prison account to his bank account and to hand over cash to a visitor. In relation to handing out money at visits, we found that the SPS had unreasonably refused the prisoner's request and we made a recommendation to prevent this from happening again. We also investigated a complaint from a prisoner that he had to walk handcuffed in view of the public and found that this could have been avoided (case [201503494](#)). We upheld this complaint because the prisoner escorting agency had not adhered to the relevant procedure and we also upheld his complaint that the matter was not responded to adequately. We recommended that the service that provides escorting services apologise to the prisoner and ensure appropriate complaints handling training is

carried out. We also made recommendations for improvements in complaints handling to another Scottish Government body to ensure that its procedure is compliant with the model complaints handling procedure ([201501960](#)).

## **Scottish Welfare Fund**

We have made further progress on preparing for our new role as SWF independent reviewer. We have continued to learn about councils' initial decision-making and first tier reviews through visits and our local authority sounding board. This is helping us as we progress our development of the new review guidance and process ahead of our SWF review team recruits joining us at the end of this month. We have also progressed our work on communications, ensuring that applicants will be able to contact us in different ways such as by using a Freephone number and via an online application form on the SWF website that we are developing. We recently co-hosted a user engagement event with one of our third sector sounding board members. Their input was extremely valuable and will help us ensure that we are on track to deliver a responsive and accessible service from 1 April.

We have published our analysis of the responses we received on our consultation on how we intend to implement our new role. Overall, the responses were very positive. The dominant repeated theme was the importance of ensuring that our process is properly and genuinely accessible. On this, there were two key concerns – visits/ interviews and oral hearings, and we detail these and our responses to them in the analysis. All the responses will be considered in detail as we finalise the Statement of Practice and work on the guidance that will support this. These will be published later in the year and we will highlight changes that have been made as a result of the consultation responses.

You can read the responses and our analysis at

<http://www.spsso.org.uk/scottish-welfare-fund-statement-practice-analysis-responses>

On February 2, we gave evidence about our role to Parliament's Welfare Reform Committee which is looking at the regulations on the fund. Papers and the official report are available at

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/46339.aspx>

Our SWF role was also the subject of questioning from MSPs in our oral evidence to the Local Government and Regeneration Committee which considered our 2014/15 annual report on 3 February. This evidence can be seen at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29852.aspx>

If you have any questions, please contact Paul Smith, SWF project lead, at [paul.smith@spsso.gsi.gov.uk](mailto:paul.smith@spsso.gsi.gov.uk) or 0131 240 2969.

### **Other evidence**

As well as the sessions above, we commented this month on the Scottish Government's consultation about setting up a new role of independent national whistleblowing officer (INO). We conclude that we think there are potential benefits to introducing a role such to the NHS in Scotland but that it needs to be sufficiently wide-ranging and powerful to be effective. We also recommend that serious consideration should be given to extending these potential benefits to other public organisations. Our full comments are available at:

<http://www.spsso.org.uk/sites/spsso/files/consultations-and-inquiries/2016/SPSOresponseINOConsultationFeb2016.pdf>

Finally, we will be giving evidence to the Health and Sport committee on our role in relation the Government's proposed changes to social work complaints procedures on 1 March (there is more about this in the CSA section below).

## Complaints Standards Authority (CSA)

### NHS

Development of the revised NHS model complaints handling procedure (CHP) continues to progress to plan. The most recent meeting of the project steering group in January 2016 considered the progress of three working groups, each looking at a specific area of the project. Over the next few weeks we will be working with NHS Education for Scotland (NES) and other key stakeholders to deliver NHS complaints workshops where we will provide further updates on our work to date, together with a description of the revised model CHP and how it will work in practice. Our intention remains for the NHS model CHP to be published during 2016 with implementation by NHS Scotland being introduced from April 2017.

### Integration of health and social care

The Scottish Government are currently working to develop guidance on complaints for Health and Social Care Partnerships to help ensure an integrated approach to handling complaints and annual performance reporting. This will largely follow the SPSO model CHP, although including reference to the existing statutory social work and NHS complaints arrangements. The Government aim is for this guidance to be published in spring 2016.

The Government have also recommended changes to social work complaints procedures to help align and integrate processes. Parliament is currently taking evidence on the Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016. The Draft order contains provisions for:

- extending the remit of the SPSO to enable us to consider complaints made about social work which are not solely about maladministration, but also enable us to consider the professional judgment of social work staff.
- repealing the existing power for Scottish Ministers to require local authorities to create a social work complaints procedure. The Scottish Government have indicated that one effect of this repeal is that the SPSO will be able to use its existing functions to create a model complaints handling procedure (CHP) for social work complaints, and that local authorities will be obliged to adopt a

procedure which complies with that model. The Government want to bring SPSO functions in relation to social work into line for those for health, where the SPSO sets out the model CHP which it expects local authorities to follow.

- allowing the sharing of information between SPSO, Care Inspectorate and the Scottish Social Service Council where relevant to their regulatory functions.

## **Local government**

The local government complaints handlers network met most recently in January. Guests included Audit Scotland, who spoke about the important role complaints play in continuously improving services. Other issues covered by the network included learning from complaints where volunteers shared their learning through a case study approach and a peer review of councils' annual complaints reports to consider benchmarking outputs, share good practice and generate ideas for improvement.

We encourage all local authority complaints handling colleagues to join this network, either by attending the meeting or participating via the well-established knowledge forum.

## **Further education**

The Further Education Complaints Handling Advisory Group met in early February at College Development Network Stirling. Issues considered by the group included signposting to accreditation bodies and the group's progress in developing standardised categories of complaints for the sector.

The group's annual complaints event will be held on 22 April 2016. The work on standardised categories will be presented to the sector at the event. Also covered will be the annual complaints handling performance for all colleges for 2014/15, and in the year to date. Other sessions will include the approach to assessing customer satisfaction with the complaints procedure, and how to quality assure complaints handling performance by using the SPSO Complaints Performance Assessment Tool, with feedback from a college to explain the approach.

## **Housing**

The next meeting of the Housing Complaints Handlers Network will be held on 26

February in Edinburgh. The network will consider the complaints handling performance of members in quarters 2 and 3 of the business year. It will also look to learn from the Further Education Advisory Group's approach to standardising complaints categories, and has invited a guest speaker from the Further Education group to share the learning from their work. The ever popular complaints surgery will present another opportunity for members to identify and share best practice in handling complaints.

Further information on the role of the network, including details of how you may join, can be obtained from [anne.fitzsimons@tollcross-ha.org.uk](mailto:anne.fitzsimons@tollcross-ha.org.uk).

For all previous updates, and for more information about CHPs, visit our dedicated website [www.valuingcomplaints.org.uk](http://www.valuingcomplaints.org.uk).

## Training Events

### Upcoming courses (all based in central Edinburgh)

**Complaint investigation skills (stage 2 of the model CHP):** 1-day open course

Thursday 23 June

Tuesday 29 November

**Managing Difficult Behaviour:** Wednesday 28 September

These are open to staff from all sectors under the SPSO's jurisdiction. **Full course details are available on the SPSO Training Unit website.**

For more information and to book spaces, please contact [training@spsso.org.uk](mailto:training@spsso.org.uk)

We have more information about courses that we can offer to organisations in our flyer: **SPSO Training 2016 (PDF, 40KB)**



## **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, 17 February 2016**

The compendium of reports can be found on our website:

<http://www.spsso.org.uk/our-findings>

For further information please contact:

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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.

Communications team: T 0131 240 8849

SPSO website: [www.spsso.org.uk](http://www.spsso.org.uk)

Valuing Complaints website: [www.valuingcomplaints.org.uk](http://www.valuingcomplaints.org.uk)

Contact us: T 0800 377 7330 [www.spsso.org.uk/contact-us](http://www.spsso.org.uk/contact-us)