

# **MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**SCOTTISH PUBLIC SERVICES  
OMBUDSMAN**

**AND**

**THE WATER INDUSTRY COMMISSION  
FOR SCOTLAND**

**December 2011**

# MEMORANDUM OF UNDERSTANDING

Between

THE SCOTTISH PUBLIC SERVICES OMBUDSMAN

And

THE WATER INDUSTRY COMMISSION FOR SCOTLAND

## **1. Introduction**

The purpose of this Memorandum is to set out the functions of the Scottish Public Services Ombudsman and the Water Industry Commission for Scotland and to describe the arrangements for co-operation and communication between the two bodies in relation to their respective functions, the handling of complaints and the promotion of good administrative practice.

## **2. Functions of the Parties to this Memorandum**

### **2.1 SPSO**

The Scottish Public Services Ombudsman ("SPSO") has the functions set out in the Scottish Public Services Ombudsman Act 2002 ("the 2002 Act"). The SPSO can consider complaints from members of the public who claim to have sustained injustice or hardship as a result of maladministration or service failure on the part of an authority within the SPSO's jurisdiction, providing that the matter complained about is one which the SPSO is entitled to investigate. Schedule 2 of the 2002 Act lists the authorities that come within the jurisdiction of the SPSO ("listed authorities"). This list includes Scottish Water. Under section 11A of the Water Services etc (Scotland) Act 2005 (as amended by the Public Services Reform (Scotland) Act 2010), Licensed Providers can choose to be treated as if they were listed authorities.

The functions of the SPSO include raising awareness of its service, promoting good administrative practice by Scottish public services and leading the development of simplified and standardised complaints handling procedures across the public sector. The SPSO aims to work in partnership with public services across Scotland to help prevent complaints from arising and to help public services to improve their complaint handling processes.

### **2.2 WICS**

The Water Industry Commission for Scotland ("WICS") has the functions set out in the Water Industry (Scotland) Act 2002 ("the 2002 Water Act") and the Water Services etc. (Scotland) Act 2005 ("the 2005 Water Act").

Under the 2005 Water Act WICS has the general function of promoting the interests of persons whose premises are connected to the Scottish public water and/or

sewerage systems. WICS discharges this general obligation in two main ways: first, under the 2002 Water Act it must set prices for Scottish Water's water and sewerage services that deliver Ministers' objectives at the lowest reasonable overall cost; and second, under the 2005 Water Act it was required to facilitate competition in the Scottish water industry through the creation of a retail water and sewerage market for non-household customers. WICS opened the Scottish water and sewerage market for all non-household customers in April 2008.

### **3. Requirements relating to Complaints**

#### **3.1 SPSO**

Section 16A of the 2002 Act requires listed authorities to have in place a complaints procedure which complies with the Complaints Handling Principles approved by the Scottish Parliament in February 2011. Section 16B allows the Ombudsman to create a model complaint handling procedure for a sector. Subsequent sections deal with how a listed authority would be informed such a procedure applies and the enforcement action the Ombudsman may take in the event of non-compliance. Section 16G places obligations on the Ombudsman to share best practice and to monitor complaint handling trends.

Section 22 of the 2002 Act (Information about right to make a complaint) requires a listed authority to take reasonable steps to publicise the application and effect of the 2002 Act. It includes in particular, the right conferred by the 2002 Act to make a complaint, the time limit for doing so and how to contact the SPSO. This information must be included in, or provided with, any document published by the listed authority that contains information about the services it provides to members of the public, or about how it deals with complaints. The information must also be included in any response to a complainant who may be entitled to complain to the SPSO.

#### **3.2 WICS**

Under the 2005 Water Act WICS regulates the non-household retail market, issuing and monitoring all of the licences granted to Licensed Providers. WICS has extensive powers for the purposes of monitoring and ensuring compliance with the terms and conditions of licences.

As well as the terms of their licences, all Licensed Providers must comply with the various documents that make up the market framework arrangements. These documents include the Disconnections Document under which all Licensed Providers are required to have an internal complaints handling procedure. The Disconnections Document also restricts the circumstances in which a Licensed Provider may disconnect a non-household customer. These restrictions include if the non-household customer has reasonably made a complaint directly related to the issue for which disconnection is proposed, and all reasonable steps have not been taken to resolve the complaint using the Licensed Provider's internal complaints handling procedures. A failure by a Licensed Provider to comply with the terms of the Disconnections Document is a *prima facie* breach of its licence conditions.

In relation to Scottish Water, WICS compares Scottish Water's performance with companies in England and Wales through the use of an overall performance assessment (OPA) score. The OPA score combines individual service measures that customers consider to be most important, including how well Scottish Water deals with complaints. To work out Scottish Water's OPA, WICS uses customer service information that is provided each year. This information is scrutinised for accuracy and reliability by an independent technical Reporter. As part of WICS' monitoring process, and to ensure transparency, it also publishes a report each year on Scottish Water's customer service performance.

#### **4. Sharing Information about Complaints.**

The SPSO will assist WICS, wherever possible, in discharging its regulatory function. The SPSO will provide statistical and qualitative information about complaints relating to Scottish Water and any licensed providers who are being treated as listed authorities. In particular, SPSO commit to providing annual statistics detailing complaints received against Scottish Water within a reasonable time following the end of the financial year.

Legislative restrictions relating to confidentiality and disclosure of information put limits on the information that can be shared. The SPSO will normally be able to provide information relating to trends which may be of concern to WICS and to share best practice under section 16E.

However, individual complaints about Scottish Water and licensed providers may also be reported in more detail when they are laid before parliament. Given its role as regulator, the SPSO will inform WICS, when appropriate, in advance of the laying of any full investigation report.

The SPSO will consult with WICS if they intend to create a model complaints handling procedure which could apply to bodies regulated by WICS. They will also inform WICS in advance of any intention to inform a body regulated by WICS that a model applies to them or before undertaking any enforcement action.

Nothing in this section should be taken as implying or allowing WICS any role in decision making on matters within the SPSO remit which are their sole responsibility.

#### **5. Ensuring Effective Operation of Section 11A of the Water Services (Scotland) Act 2005**

This section allows licensed providers to be treated by SPSO as if they were listed authorities. Licensed providers need to make the request in writing to be either included or, if they are included, to leave the scheme.

WICS will ensure that SPSO is informed if there are any new entrants to the market and will inform those new entrants of their obligations under section 11A. WICS will also contact SPSO with full contact details when any licensed provider has indicated they wish to be included in the scheme. SPSO will agree a date for inclusion with the provider and, if WICS has not received a request in writing but a verbal request, SPSO will arrange for a formal written request to be completed and copied to WICS.

WICS or SPSO will contact each other in the event they receive written notice that a licensed provider would like to withdraw. WICS will ask SPSO for comments before coming to a decision.

If WICS has concerns about the complaints handling of a licensed provider who has not made use of section 11A to come under the authority of the SPSO, they may decide to use their regulatory role to encourage the licensed provider to do so. They will let SPSO know that they intend to contact a licensed provider in this way and the outcome.

## **6. Consultation and Co-operation**

The SPSO and WICS agree that where the functions and actions of one body affect the functions and actions of the other, they will consult and co-operate together in order to fulfil their respective functions as fully, effectively and efficiently as possible. This co-operation will include the sharing of appropriate information and maintaining effective communication. Within available resources, the SPSO and WICS will invite representation from the other party to project teams, work groups etc. where both parties believe there would be advantage in joint working. The two parties will encourage formal and informal contacts between their staff to raise awareness of the roles, responsibilities and methods of working of each.

## **7. Exchange of Information between the Parties**

SPSO and WICS will actively share information on developments which may be of interest to the other party. They will also ensure that information which they intend to make public and which may be of interest to the other party or on which the other party may be likely to be asked to comment will be shared with each other in advance of public release.

SPSO and WICS are committed to ensuring that information flows freely between them to enable them to carry out their respective functions. They shall, however, observe any restrictions on disclosure which may apply in a particular case. They undertake to respond within a reasonable timescale. When one of them refuses to supply information or is aware there will be a delay in doing so, the reasons for this will be explained.

## **8. Public Information and Information to Other Organisations**

Before issuing any guidance, publicity and information to the public or other organisations about any aspect of their current or proposed functions relating to complaints, each party will consider the extent to which it would assist the other in the effective and efficient discharge of its functions if mention were made of that organisation and its functions. Where relevant and possible, each party will invite the other to participate in any conferences, seminars or workshops it organises.

## **9. Liaison Meetings**

SPSO and WICS representatives will meet on request to consider matters of mutual interest arising from their respective functions.

## **10. Complaints about WICS**

As a listed authority, WICS is under the jurisdiction of the SPSO. Therefore, the SPSO may investigate a complaint made by a member of the public that they have sustained injustice or hardship as a result of maladministration or service failure on the part of WICS. The SPSO will not usually consider a complaint until the complaints process of a listed authority has been invoked and exhausted.

It has been agreed that the Director of Corporate Affairs of WICS will be the liaison person for complaints received by the SPSO.

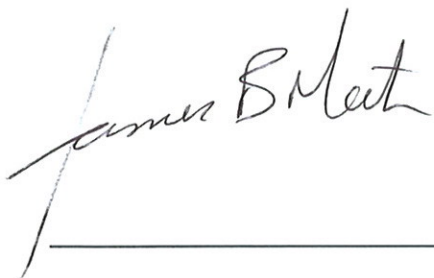
## **11. Monitoring and Review of this Memorandum**

The initial point of contact within each office for discussion of the MOU will be:

Richard Khaldi for WICS  
Annie White for SPSO

SPSO and the WICS representatives will meet at least once every 2 years to review the operation of this Memorandum of Understanding. Where problems in the operation of this Memorandum are identified by either party they will seek to resolve them quickly and informally. If this is not possible then the Ombudsman and the Chief Executive of the WICS will take responsibility for achieving a mutually acceptable resolution. Their decision will be final.

Signatures to the Memorandum:



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