

Consultation on direct access to the Parliamentary Ombudsman

Thank you for the opportunity to respond to your consultation on direct access to the Parliamentary Ombudsman.

Who we are

As you know, the Scottish Public Services Ombudsman (SPSO) is the body charged with investigating unresolved complaints about Scottish devolved public bodies and some other organisations delivering public services in Scotland. Our jurisdiction includes central and local government, the National Health Service, housing associations, colleges and universities, prisons and water providers. We have also recently been given new powers to lead on the design and oversight of Model Complaints Procedures for Scottish public service providers.

Background to direct access in Scotland

In response to your consultation, we thought it would be helpful to share the Scottish experience with regard to direct access.

The Scottish Public Services Ombudsman Act 2002 (the Act) removed the “MSP Filter”, allowing members of the public the choice to complain directly to our office or to ask an MSP to complain on their behalf. The context in which the MSP Filter was removed and the arguments that were rehearsed in the run up to this are outlined below; we hope this provides some useful context for the ongoing debate regarding direct access to your office.

The Scottish’s Government’s consultation document, *Modernising the Complaints System (2000)*¹, noted that there were arguments for and against retaining the MSP filter. However, it concluded that the filter might interfere with the efficiency of the proposed new system. In summarising the arguments for abolishing the MSP filter, *Modernising the Complaints System* stated:

‘Of the 34 Ombudsmen which we researched outside the UK, only the Mediator of the French Republic requires complaints to be referred via a member of parliament or senator. Requiring all complaints to be submitted via an MSP adds an extra step to the complaints process and can simply make the process take longer. Complainants often do not know when or if their complaint has reached the Ombudsman and can feel that the Ombudsman is remote and does not fully understand their concerns.’

The Scottish Government’s initial consultation was followed up in 2001 by a further consultation exercise, *A Modern Complaints System*², which stated:

‘4.2 The initial consultation paper discussed allowing complaints to be made directly to the Ombudsman, as in the case of the Local Government Ombudsman, instead of requiring all complaints to be submitted through an MSP, as in the case of the Scottish Parliamentary Ombudsman. If the requirement that all complaints be submitted through an MSP were removed, it would still be necessary to allow a person the option of submitting their complaint via an MSP, in order to comply with section 91(1) of the Scotland Act.’

¹ <http://www.scotland.gov.uk/consultations/misc/mtns-00.asp>

² <http://www.scotland.gov.uk/consultations/localgov/ppso-05.asp>

4.3 An overwhelming majority of consultees supported the proposal to remove the MSP filter. Therefore, the Executive proposes to allow complaints to be made directly to the Ombudsman. However, we recognise the valuable contribution which MSPs can make to the process of resolving complaints. For this reason, and to comply with section 91 of the Scotland Act, we intend also to allow MSPs to refer complaints with the constituent's agreement.'

A summary of responses to both consultations reported clear support for these proposals³, which were subsequently reflected in Section 9 of the Act.

Our experience of direct access

In effect, therefore, the system adopted in Scotland is similar to the 'dual track' system referred to in your consultation document. We have found this arrangement to be effective, making the office more directly accessible to members of the public while not excluding MSPs from representing their constituents' interests.

In our engagement with MSPs, however, we have had to make clear that MSP representation will not affect how we deal with complaints and that MSPs should not be in a position to influence the conduct and outcomes of individual cases.⁴ Our standard practice, when a complaint is brought to us by an MSP, is now to deal directly with the complainant, keeping the MSP informed of the outcome of the complaint as an interested party.

In our experience, the removal of the MSP filter did not lead to a significant or unmanageable increase in complaints, nor have MSPs since been excluded from carrying out their grievance handling function. The cases we see show MSPs being regularly and actively involved in pursuing their constituent's interests with public bodies and fulfilling their traditional role as a parliamentary redress mechanism.

As a final point, we note that the current divergence in approaches between the Scottish and UK ombudsman jurisdictions in relation to direct access has resulted in citizens based in Scotland having to follow different rules depending on whether they wish to complain about a reserved or devolved public service. It has been remarked that the administrative justice landscape in the UK is complex and confusing for citizens⁵, and this inconsistency of approaches appears to be one of the areas where unnecessary complexity and confusion exists for service users.

In conclusion, the Scottish approach shows that a 'dual track' system can work effectively and achieve the key aim of ensuring that citizens can directly access our service if they wish to do so. We believe that any measures to make ombudsmen's offices more accessible and to simplify the system for complaining about public services are likely to be in the interests of aggrieved citizens.

I hope that you find this response helpful and would be happy to provide further details.

Yours sincerely

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³ <http://www.scotland.gov.uk/Resource/Doc/159134/0043282.pdf>

⁴ See Page 2, Paragraph 2, 'Rules of Engagement with MSPs' http://www.spsso.org.uk/webfm_send/2351

⁵ For example, see the final report of the Administrative Justice Steering Group:
<http://www.consumerfocus.org.uk/scotland/files/2010/10/Administrative-Justice-in-Scotland-Summary.pdf>