

Scottish Public Services Ombudsman Response to the consultation on tax management

Background

The Scottish Public Services Ombudsman is the independent body that handles complaints from members of the public about devolved public services in Scotland. Since 2010, we are also the body tasked with improving the handling of complaints by devolved public organisations.

In responding to this consultation, I have sought to comment where we may have useful and genuine insight as a result of our roles in investigating complaints and improving complaints handling. I have not commented where I felt others could do so more effectively. This means I have restricted my comments to the management of complaints and the relationship between this and dispute resolution.

Managing complaints

It is proposed that the Scottish Government will seek to bring the new Revenue Scotland under our jurisdiction. On a practical point, I should first point out that, if Revenue Scotland is established as a non-ministerial department and part of the Scottish Administration, my understanding is that it would automatically be a body under our jurisdiction without any change being needed to our legislation. Under schedule 2 paragraph 3 of the Scottish Public Services Ombudsman Act 2002, any office-holder in the Scottish Administration is within the jurisdiction of this office.

Bringing Revenue Scotland into our jurisdiction would mean two things. The first is that we would be the final stage complaint handler for Revenue Scotland. This would provide their customers and taxpayers with recourse to a free, impartial and independent body to deal with any unresolved complaints. The second is, as is stated in the consultation, that doing so allows for the complaints process to be aligned with the established approach to complaints handling in Scotland. A key aspect of this established approach was the decision of the Scottish Parliament in 2010¹ to give us an additional responsibility. From 1 April 2011, as well as being the final stage complaint handler for public bodies in Scotland, we have had a new role in developing a standardised model of complaints handling across the public sector. In those terms, Revenue Scotland would, along with other Scottish public authorities, be required by the SPSO Act 2002 (as amended by the Public Services Reform (Scotland) Act 2010) to comply with the published model complaints handling procedure for the Scottish Government, Scottish Parliament and associated public authorities in Scotland². This model will be in place by 1 April 2014. We can also provide training and specialist advice and support to bodies under our jurisdiction, which Revenue Scotland would be able to access.

The consultation notes that complaints may also be made about SEPA and the Registers of Scotland and that some issues would need to be dealt with, not by us but by the Police Investigations and Review Commissioner (PIRC). I suggest that, in advance of any legislation, all the organisations involved in complaints handling

¹ Section 119 of the Public Services Reform (Scotland) Act 2010

² To read this procedure and supporting information visit www.valuingcomplaints.org.uk

should meet and discuss with the Scottish Government any overlaps or potential for confusion so that, when the new system is in place, there is clarity about which process an individual should access.

I also need to note that changing the powers of organisations under our jurisdiction and adding a new organisation will have an impact on our resources. It can be difficult to anticipate changes in caseload and we will be happy to work with the Scottish Government and the Scottish Parliamentary Corporate Body to evaluate in detail the possible impact on us.

The relationship between complaints and disputes

The consultation suggests there is a clear distinction between complaints and disputes and that a complaint is, by definition, not a complaint about a substantive decision. This is not necessarily the case. For organisations, our procedures simply define a complaint as an expression of dissatisfaction and this can clearly include a disputed decision as well as a concern about customer service. Nothing prevents an organisation that made a decision from changing it if, in response to a complaint, they consider the decision was unsafe. Members of the public often have complaints that are both about the decision itself and about how they were treated. They do not see these as separate but as part of their experience.

I would argue that, generally, any organisation should seek to see the experience of their customers in a holistic fashion and be able to deal with both types of issues through a single process. If more than one internal process is required, we would recommend that, whenever possible, a single answer is still given or, as a minimum, the organisation manage the processes and do not require more than one submission from the member of the public.

Although a complaints process run by an organisation can clearly deal with complaints about decisions made, it is not the appropriate route to use to pursue a concern if there is an alternative route that has been set up to deal with a particular class of issues or is the only route that can provide the outcome sought. For Revenue Scotland, it is clearly envisaged that a disagreement about liability would have its own process and, to change the decision on liability, that process would be used. This would end with the option to approach the courts or a tribunal for a final ruling. In these circumstances, decisions that can be dealt with through this route should not also be dealt with through the complaints process.

When explaining options to members of the public, we have found that they do not find it helpful when organisations try to differentiate a complaint from a review or an appeal in abstract terms. However, they do understand when this is explained in terms of the route they need to use to achieve their desired outcome, and that for particular concerns there are particular routes. As there will be more than one route for concerns, staff at Revenue Scotland who receive concerns from the public will need to be clear about how to signpost them to the appropriate route, and about when more than one route may be needed.

While I would generally support single and simple access, there can be benefits to having different routes for separate issues when those issues are clearly easy to separate or where keeping them together can cause confusion. We ourselves have

an internal process for those individuals unhappy with our service, which is different from the way they can ask for a review of our decision. This enables us to be clear with our customers about information that may influence a change of decision (such as evidence of an error in fact, or new information) from matters that we take seriously (such as failings in service) but which, even if we find a failing, do not mean that the decision is unsafe and needs to be changed. The nature of the work of Revenue Scotland does seem to lend itself to this approach and, while staff will need to be clear to ensure they direct users to the appropriate route, I do not see any particular issues with this approach.

There is, though, a need to ensure that learning from the complaints process informs decision-making to help the organisation get it right first time. This is particularly important when complaints are about delay or the clarity of an explanation. These can lead to a lack of confidence in the decision, which is more likely to lead to a request that the decision is reviewed. Therefore, although the consultation clearly splits reviews from complaints, I would argue that, in practice, these two processes will need to work together, and information from each will be helpful in improving the overall service for the public and preventing the recurrence of any problems.

Resolving disputes and ensuring access to justice

Our role means we are part of the administrative justice landscape. There are two key founding principles for administrative justice. It is important that an individual can hold public bodies to account for actions which those public bodies have taken and that impact on the individual. It is also important that any system set up to allow for this can deal with the disparity in power and the ability to both access and use information that occurs in any disagreement.

The complaints handling procedure will have a part to play in this and, as I have argued above, should not be seen as completely separate from any process set up to deal with a particular outcome or class of issues. In this part of my response, I want to concentrate on looking at the proposals the Scottish Government is considering for dealing with certain decisions made by Revenue Scotland. These decisions are broadly described as how much tax should be paid; when it should be paid; whether a penalty is due or whether interest should be charged. There is a suggestion that a dispute could also be about how a decision has been reached.

I support the consultation's emphasis on early resolution. This is in line with the approach taken in the complaints handling procedure that we have developed, and to which I refer on page one. Indeed, at the earliest stage, a complaint about the decision or service will be dealt with in an almost identical way.

In avoiding disputes escalating, we have found that two points are of particular importance - the initial point of contact with the organisation, and the explanation given to the person about the outcome after a review or investigation has been undertaken. At both these points, the user needs to feel they have been listened to and that the communication has been personal and clear. The consultation's emphasis on plain language will certainly assist and there also needs to be a culture of consumer focus within the organisation. This can be established by a management who are not frightened of complaints and disputes but genuinely see

them as a learning tool. This needs to be coupled with ensuring that frontline staff are empowered with the authority to quickly resolve problems.

If early resolution does not work - and there are always cases where this will happen - the consultation envisages a single internal review stage. There would be publicly available guidance for this stage of the process and outcomes would also be published. This mirrors the approach taken in our standard complaints handling procedures and so, understandably, I support this approach. One technical point I would make is that it is suggested that this process could also look at complaints about how the decision was made. However, if there was no dispute about the decision, I would argue that the review process would not be appropriate. It will be more straightforward and easier for users to understand if it is clear that this is the process you use to get a decision changed, and if they are also told what evidence the reviewer will likely consider when deciding whether or not to change the decision. If the user is happy with or accepts the decision but still wishes to raise concerns about the process, these would be better dealt with through the complaints handling procedure. We would be very happy to work with Revenue Scotland, as we do with other organisations, about ensuring clarity in signposting.

In terms of managing the review process, good practice and our experience in complaints handling suggests that early telephone contact with the person requesting the review, to clearly establish their concerns, is very helpful and can lead to quick resolution. I would also recommend that the targets set for the length of this process should be challenging. In the model complaints handling procedure, the standard for a similar stage is 20 working days. We do not anticipate all complaints being dealt with within this target but a high proportion should and, where complexity means this is not possible, the user should be kept fully informed. Revenue Scotland, having made the initial decision, should be in possession of all the facts and will only occasionally have to seek expert advice or more evidence. As an organisation that will likely be subject to our complaints standards, they will be required to operate a 20 working day time limit for their internal complaints handling stage and I would suggest they also attempt to achieve this timescale for reviews. In circumstances, where an individual has raised concerns that require both processes to be used, this does mean Revenue Scotland may have the ability to co-ordinate a single response if they felt that was appropriate.

The consultation refers to the benefits of mediation. These have been known for some time but, as the consultation acknowledges, mediation remains an under used process. It is easier for people to understand the benefits of a process which may be new to them if they have examples and I would suggest that, alongside the information about relative costs and satisfaction, Revenue Scotland publish examples or case studies which show what happens in practice. This should include both successful and unsuccessful examples.

Finally, the consultation highlights the need to learn from experience and to publish information about the disputes Revenue Scotland receives. Again, this approach is similar to that undertaken in relation to complaints. I suggest sufficient flexibility is provided to allow Revenue Scotland to deal with complaints and dispute information in a similar way, as learning may arise from looking at these together to get a holistic view of the experience of the user.