

Briefing note

To: The Local Government and Communities Committee

From: Rosemary Agnew, the Scottish Public Services Ombudsman (SPSO)

Introduction

This briefing note provides supplementary information to the Local Government and Communities Committee to inform its consideration of the 2016/17 Annual Report. It also provides an update for the first nine months of 2017/18 and looks forward to developments anticipated in the coming year.

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2016-17

Annual Report 2016/17

1. The 2016/17 Annual Report covered the final year of Jim Martin's tenure as Ombudsman. The SPSO has three distinct areas of statutory functions/powers:
 - 1.1. the final stage for complaints about most devolved public services in Scotland
 - 1.2. specific powers and responsibilities to publish complaints handling procedures and support best practice in complaints handling
 - 1.3. Independent Review Service for the Scottish Welfare Fund with the power to overturn and substitute decisions made by councils on community care and crisis grant applications.
2. 1.1 and 1.2 above were reported through our Annual Report 2016/17¹, and Accounts 2016/2017².
3. 1.3 above was reported through our Annual Report on the Scottish Welfare Fund Review Service.³

Learning and improvement

4. Learning from complaints and experience sits at the heart of the SPSO's work as it adds value to the delivery of public services across Scotland. In 2016/17 the SPSO:
 - 4.1. published our first thematic report which looked at the important issue of consent in health⁴
 - 4.2. held a cross-sectoral conference on using complaints to drive improvement attended by over 200 delegates
 - 4.3. refreshed and updated the SPSO's Valuing Complaints website⁵
 - 4.4. reviewed in detail how we make recommendations and how that could be improved from April 2017.

¹ <https://www.spsso.org.uk/sites/spsso/files/SPSOAnnualReport2016-17.pdf>

² https://www.spsso.org.uk/sites/spsso/files/communications_material/annual_accounts/SPSOAnnualAccounts2016-17FINAL.PDF

³ <https://www.spsso.org.uk/scottishwelfarefund/2016-17-annual-report#overlay-context=2016-17-annual-letter-and-statistics>

⁴ <https://www.spsso.org.uk/news-and-media/informed-consent-report>

⁵ <http://www.valuingcomplaints.org.uk/>

Complaints Standards

5. The social work and health sectors both adopted model complaints handling procedures on 1 April 2017 completing the public sector wide roll-out started in 2011.
6. The Scottish model of complaints handling is now being adopted across the UK and is also increasingly the subject of academic interest.

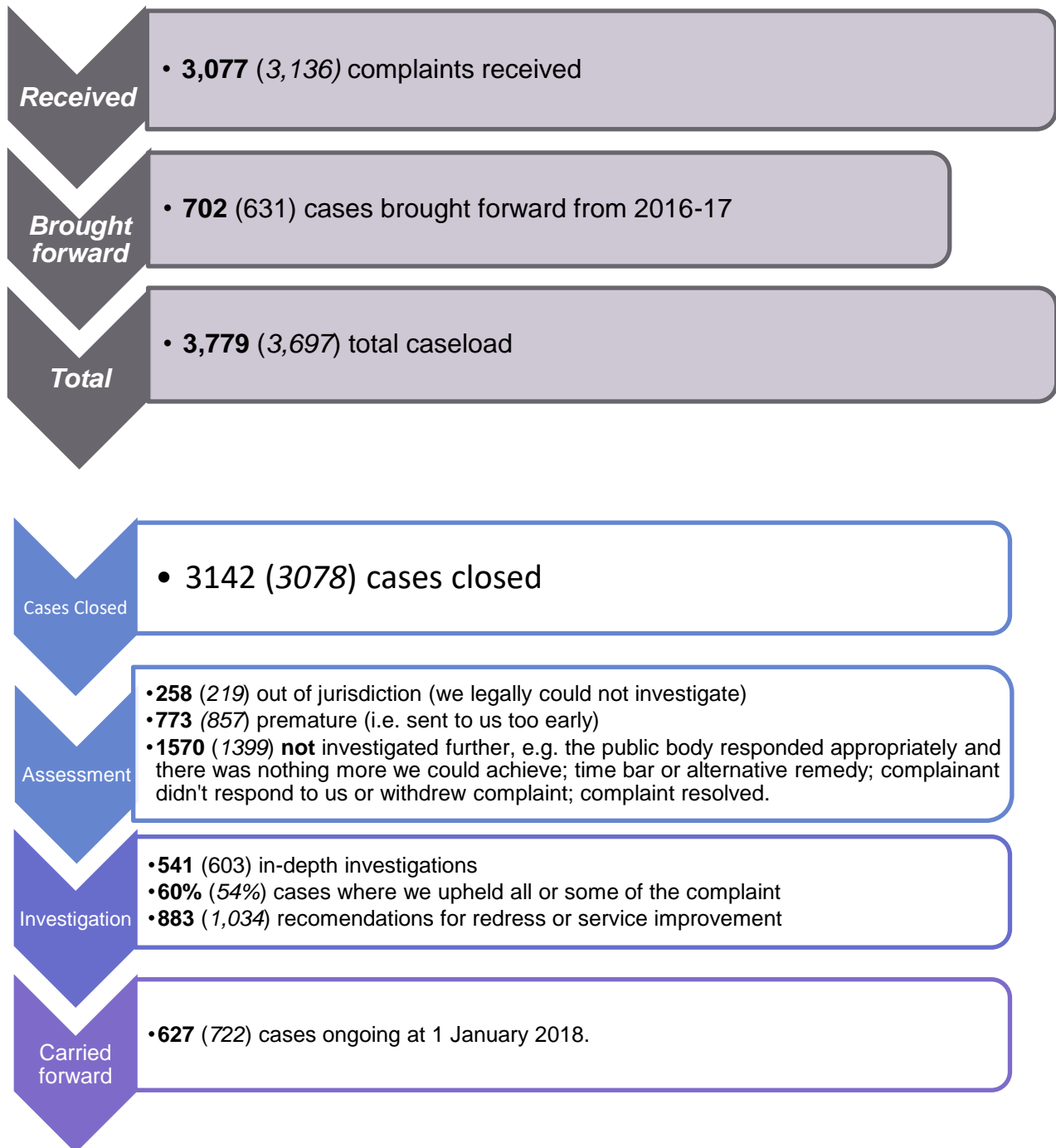
Scottish Welfare Fund Independent Review Service

7. The SPSO very successfully took on the role of Independent Review for the Scottish Welfare Fund on 1 April 2016. We published a separate annual report for this role:
8. Key highlights:
 - 8.1. 437 reviews determined: 99.5% of crisis grants within the target of one working day and 97.8% within 21 working days⁶
 - 8.2. 72% of initial contact by phone. We made a decision to take reviews orally and provided a freephone number, an improvement in accessibility from the previous system
 - 8.3. a 26% increase in crisis grant reviews received compared with the previous system suggesting a positive impact of the improvement in accessibility
 - 8.4. we awarded 66 crisis grants (median award of £82.35) and 98 community care grants (including 345 individual items).

⁶ These targets run from the point at which we have received the information needed.

2017/18 and beyond

Complaints received and closed in the first 9 months of 17/18⁷



9. The total number of complaints that we have received to date is marginally down on last year (-2%) although the last quarter is often busy for complaints so this may end up

⁷Figures in brackets represent the equivalent period for the previous year.

around the same by the year end. In general, we are finding that complaints we are assessing and investigating are becoming more complex. We are also finding that first contact is increasingly by telephone or online.

Backlog

10. An upsurge in complaint volumes in 2015-16 meant the SPSO carried a backlog of unallocated cases throughout 2016/17 and into 17/18. All cases were assessed on receipt and urgent cases were allocated, but this “holding bay” meant that many complainers had to wait 8-10 weeks before a case could be allocated. At its peak in 17/18, there were over 240 cases unallocated
11. The holding bay was closed on 15 December 2017. This represented a considerable amount of focused effort from the whole organisation, achieved by
 - 11.1. ensuring we had a full complement by filling case-handling vacancies
 - 11.2. temporarily not replacing a non-case-handling member of staff which freed up financial resource to offer staff overtime for case-work
 - 11.3. taking more active approach to the cases in the holding bay by identifying those likely to require a full investigation and moving them straight to our investigations team, and/ or seeking early advice to shorten the process later and
 - 11.4. working with staff to develop an action plan, which led to the allocation of the final cases.
12. While the closing of the holding bay is a significant step, the practical impact of allocating all the cases, even in this managed way, has resulted in individual Complaints Reviewers holding higher caseloads. While this is manageable, it means that in 2017/18 we will likely report an impact on our overall annual timescales for handling complaints.
13. The decision not to replace staff immediately and to focus resource on the holding bay has had an effect on other parts of the organisation that have had to work with reduced resources. We are pleased that we are now in a position to replace that resource which will both reduce the pressures on staff and allow us to look again at projects and work that has been delayed.

Specialist advice service

14. The clinical adviser service managed by the Parliamentary and Health Services Ombudsman ended on 1 April 2017. This meant SPSO had to make its own arrangements.
15. The SPSO extended its bank of independent Scottish-based advisers who provide the SPSO with a range of specialist advice, including on clinical matters, social work, mental health and planning. This was a significant achievement as the organisation had to put in place administrative support, quality control, and training and peer support for advisers within a very short timescale.
16. The service is proving to be very effective. Not only does it provide targeted, specialist advice on cases, it is a further opportunity for the sharing of complaints handling practice and experience. Benefits are already evident in advice being timelier, focused on the Scottish context and improvements in the quality of advice.

Social work complaints

17. In 2016/17 we prepared for a new, enhanced role in social work complaints which began on 1 April 2017. In addition to being able to look at complaints about the procedures followed, we can now also consider the quality of professional judgements made about social work functions. This brings social work into line with health where we have had this power for many years. Changes were also made to the social work complaints process being used by local authorities. We received 248 social work complaints in the first three quarters of 17/18. This compared to 150 for the equivalent period in 16/17. 48 of the social work complaints we received this year came to us from Health and Social Care Partnerships.

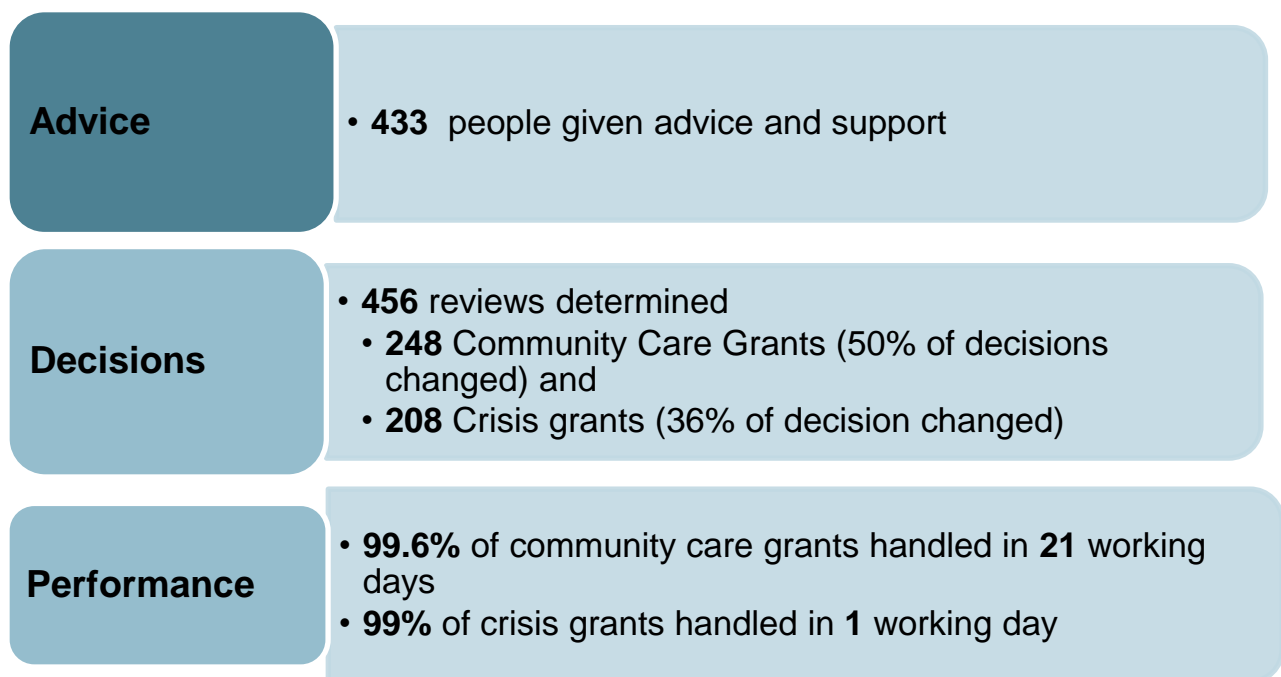
Learning and improvement

18. The resources made available to the SPSO to engage in work on learning and standards continue to be used to good effect. So far this year, they have enabled the SPSO to:
 - 18.1. research and publish a second thematic report “Making Complaints Work for Everyone” to help organisations support staff who are complained about, this is critical if organisations are committed to a positive complaints culture.⁸ This included commissioning research from Queen Margaret University (QMU) and launching the report, with supporting workshops and presentations, at QMU’s conference in December 2017

⁸ <https://www.spsos.org.uk/news-and-media/making-complaints-work-everyone-report>

- 18.2. make significant changes to the way in which we make recommendations on complaints. In addition to remedying personal injustice, they also make outcome focussed recommendations for service, and for complaint handling improvements
- 18.3. begin to develop a database of recommendations which over coming months and years will be available as a public, on-line, searchable dataset.
- 18.4. extend stakeholder engagement, for example becoming actively involved in the Intelligence Sharing group of Healthcare Improvement Scotland.

Scottish Welfare Fund Reviews



19. We surpassed the number of cases determined in the full year 2016/17 (437) by Mid-December. We would also highlight:

- 19.1. 280 people contacted us looking for help instead of their local Council. In some cases this was due to accessibility problems as the Council did not have a Freephone number and they had little or no credit on their phone. Some

applicants told us they were struggling to ask for a written review of the Council's decision⁹.

- 19.2. Applicants continue to prefer telephone contact and this is 69% of all initial contact. The majority of our investigatory work is also by phone.
- 19.3. Disagreement with the Council's interpretation of the evidence was the most common reason we upheld a review
- 19.4. Our most common suggestion for improvement was around the quality of the Council's written communication.
- 19.5. We understand the guidance will shortly be changed to emphasise that decisions must contain sufficient information to enable applicants to understand the decision. This is as a result of our repeated identification of this as an area needing improved (see 19.4).

Independent National Whistleblowing Officer for NHS Scotland

20. It is proposed that, from November 2018, the SPSO will be the Independent National Whistleblowing Officer (INWO) for NHS Scotland. The proposals are that SPSO will set standards for the way NHS Scotland handles concerns raised with them as well as investigating individual's concerns about how their whistleblowing concern was dealt with.
21. Giving the SPSO the INWO role of Independent National Whistleblowing Officer brings whistleblowing complaints in line with service complaints, providing an independent final consideration of the way in which a matter is investigated and responded to. It will also ensure standards are consistent, properly applied and result in fair outcomes, while providing the necessary safeguarding of patients, and those raising the complaints.

Updating SPSO legislation

22. Scotland has long been recognised as providing an effective and innovative Public Sector Ombudsman service. For this to continue, Scotland must ensure that the SPSO's legislation is both fit for current purpose, and keeps pace (or leads) on wider development of Ombudsman services. A range of proposals are currently being discussed with the Scottish Government.
23. Two particular areas where we consider enhancement is needed to enable improvements to the service we deliver are giving the Ombudsman:

⁹ Applicants need to ask the Council for a review and receive that before they come to us. This has to be in writing.

- 23.1. clearer, more comprehensive powers to share information more easily
- 23.2. powers to investigate and issue even if an individual has not complained to us (own initiative powers).

Information sharing

24. These proposals support efficiency and the statutory functions of ourselves and others. They reflect the changes in the Ombudsman's role in recent years which have led to a significant shift of emphasis towards learning from complaints and prevention of maladministration leading to injustice. While significant for us, the proposals are relatively modest. They would allow us to:
 - 24.1. share information with a broader range of regulators/scrutiny organisations. We can currently only share information with organisations on a named list. This was recently extended to include Scottish Social Services Council and the Care Inspectorate but does not include any equivalent Healthcare organisations such as Healthcare Improvement Scotland or the GMC.
 - 24.2. share anonymised information for the purposes of learning and training. At present, we can only do so for the purposes of reporting on individual cases.
25. These changes are being requested at a time when the new General Data Protection Regulation will ensure greater protection and transparency about what we do with personal data. Nothing in these changes diminishes that protection, on the contrary it makes them more robust in many areas and we need to ensure that the way in which we operate remains compliant yet flexible.

Own Initiative powers

26. This has long been a gap in our powers when compared to other Ombudsman schemes. It is available as standard to many Ombudsmen across Europe, particularly those jurisdictions most like Scotland's. The position in the UK is developing: the Northern Ireland Public Service Ombudsman's legislation confers these powers; it is currently being discussed in draft legislation at the Welsh Assembly. In both Northern Ireland and Wales considerable work was, and is, being undertaken to ensure that the powers are proportionate and provide appropriate checks and balances in the Ombudsman's powers.
27. While we would advocate taking a similar approach, we are mindful there are aspects of the Scottish context which means the arguments are stronger.

28. The Scottish Welfare Fund Review role and proposed INWO role are unique to Scotland. They give us a different insight into Scottish public service delivery which means we are more likely to come across service delivery issues that could benefit from investigation, but which have not been raised (or pursued) as complaints by an individual.
29. Experience of health and prison complaints is that sometimes we cannot complete individual investigations because we no longer have contact with the complainant. In these cases, we have no option but to close the case, potentially losing the benefit of making findings on matters of public interest that could affect others in what are some of the most sensitive areas of public service delivery.

Planning complaints

30. We will be responding separately to the Committee's call for evidence on the Planning (Scotland) Bill. Planning was the third most complained about subject for local authorities in 2016/17 and is consistently in the top 5 from year to year. We find that complaints about planning matters can be the most difficult to resolve and those complaining about planning often express the most dissatisfaction with our service, the local authority and the system generally. A key driver of this dissatisfaction is that complainants do not feel there is anyone who can consider their concerns.
31. In the absence of an appeal process for third parties and, given the restriction on this office of looking at discretionary decisions, the issue that, in our experience, causes most frustration is that complainants feel no one is able to properly challenge the professional judgment of officers. This causes frustration both when the full decision has been delegated and when Councilors have made the decision relying on, often very technical, advice. The restriction on our ability to look at discretionary judgement is there to defend democratically made decisions and that remains an imperative. However, at a time when more decisions may be delegated, it may be appropriate to consider whether this should continue to apply to the judgement of officials.

Strategic plan

32. The SPSO is laying a revised Strategic Plan before Parliament in March 2018. It will shortly be sent to the SPCB for consultation. The main changes are to make the aims of the organisation more clearly "people" and "improvement" centred.
33. A link will be provided to the Committee when the draft plan is issued.