



Local Government and Regeneration committee – Call for Questions for the Scottish Public Services Ombudsman (SPSO)

Clerks Paper on Questions Received

Introduction

1. On 8 November 2013 the Local Government and Regeneration (LGR) Committee issued a public Call for Questions to be put to the Scottish Public Services Ombudsman (SPSO). The Call for Questions closed on 25 November 2013 with 14 submissions. The LGR Committee will take evidence from the SPSO at its meeting on Wednesday 11 December 2013.
2. This paper has collated and consolidated the varying sources of submissions into one document. The Questions have been separated into two sections. Section one contains the questions which come within the criteria set for submitted questions, whereas Section two encompasses those questions received which do not fit the criteria.
3. Some editing of the questions has been undertaken by the Clerks, generally to delete unnecessary commentary originally included and make the question clearer. Members are invited to note the questions that have been received and use any they consider appropriate, bearing in mind the earlier discussion to focus the session on how the work of the SPSO can inform the Committee scrutiny role. All questions within the first section not asked will after the meeting be forwarded to the SPSO for a written response.

Section One – Questions

Question 1 – The SPSO receive “Service Delivery complaints” and “Decision complaints” from members of the public. The SPSO currently do not provide any details in their annual report of the number and outcomes of the complaints made by the public about the SPSO’s own decisions. Can the SPSO provide details of these “decision complaints” for 2013?

Question 2 – Are there circumstances where the SPSO would over-ride legal advice sought and received? If that were to occur would he inform Parliament? If not, why not?

Question 3 – What independent body compiles the complaint statistics and how might a complainant know how his/her complaint figures in the published data?

Question 4 – Who monitors/publishes the feedback of customer satisfaction?

Question 5 – Would the Ombudsman agree to an appeal of his decision if the complainant can show the opinions/advice of his independent expert consultants/advisors were factually wrong/biased/misleading?

Question 6 – Is the quality of the work which the SPSO turns out, in terms of the thoroughness of its investigations and the impartiality of its reports and decision letters, ever scrutinised by anyone who is completely independent of the SPSO?

Question 7 – The reports make no reference to widening the SPSO remit to include complaints about a system. (e.g. the initial response to calls to NHS 24; failure of an NHS Board to take account of evidence when introducing a policy as for example 100% single rooms; or the Scottish Health Council hosting consultations but with no responsibility for ensuring that any notice is taken of public concerns).

Many complaints concerning matters such as these are made by individuals. However if the SPSO were able to respond to observations made by a knowledgeable third party (either an individual or an organisation) on behalf of a complainant, then the likelihood of a systemic failure being uncovered *and acted upon* would be very much greater. What can the SPSO do to make this change?

Question 8 – There is a growing number of complaints received by the SPSO each year. In some instances public bodies do not comply with the model code Complaints Procedure as set out by SPSO. What can be done about this?

Question 9 – The proposed 2012 – 2016 Strategic Plan when originally issued, failed to comply with any of the parameters proscribed by statute for its content. i.e. No Priorities, No methodology, No Timetables and No Estimated Costs for Achieving Activity Completions. Do you have any plans to address this?

Question 10 – Why have Remedy / Redress performance by the SPSO on behalf of Complainants never been reported to The Parliament or advised to the Public as part of their Outcomes analysis omitted from Annual Reports?

Question 11 – No new Complainant Satisfactory Survey was carried out for the SPSO Annual 2012 – 2013 reporting period. This reporting ceased after 2009 – 2010. In the 2011-2012 Annual Report under “Customer Satisfaction – Background”, it stated as a rationale for these omissions, “There is no statutory requirement for the SPSO to gather service users’ views”. How can such a claim be justified when Complainant Satisfaction Surveys are a requirement of the Officeholder’s Annual Evaluation and is an intrinsic requirement of Code of Audit Practice Section 25?

Question 12 – What methodology is adopted to import “Best Practice”? Can examples of specific “Best Practice” be adopted - from whom and when? Have these procedures been validated via A&AC QA requirements, and if so when? Where in the SPSO’s latest Report is detailed information on the performance achieved, and how does that compare to the progress planned?

Question 13 – The SPSO claims their Governance is anchored in the strength of an authentic Quality Assurance system, but it only applies a limited “after the fact” monitoring function. Essentially key attributes demanded by authentic QA are absent from all SPSO

processes. No process applied without benefit of QA validation can be automatically assumed acceptable – none has! Do you have any plans to address this?

Question 14 – SPSO has never established any KPI's that relate to Quality Standards; only "time" is applied as a metric. Quality is a key requirement of SPSO's remit but "time" is not. Do you have any plans to address this?

Question 15 – The Indicator 7 requires a "report", not the compilation of specific metrics on Customer Satisfaction. Only peripheral aspects of "Quality" are considered which do not begin to address a dialogue, whereby Complainants can record their basic opinion on the treatment received or the outcome achieved. Why is the SPSO not following Crerar's clear directions to involve the Public / Local Elected Representatives, when his "put the people at the heart of the process" has been endorsed by virtually all respected reports on Public Service Reforms?

Question 16 – Are the SPSO satisfied with their Governance arrangements including the role of the A&AC to meet requirements in this area and what assurance can they offer in this regard?

Question 17 – Recommendations have been highlighted in this last SPSO Annual Report, noting some 1,003 as "redress and improvements to public services". There is a clear implication from this and other passages that SPSO recommendations are to be directly comparable to redress for Complainants. SPSO have advised that they do not statistically record any factors regarding Complainant redress and the SPCB have confirmed the subject has never been discussed with the SPSO. Does the SPSO accept this implication?

Question 18 – Why is the SPSO reluctant to reveal to complainants the correspondence between investigators and BUJs?

Question 19 – Jim Martin wrote "Last month, I was invited to give a presentation to the Scottish Parliamentary Corporate Body (SPCB) about our casework quality assurance (QA) process. This is the process we have developed for assuring ourselves, the public and other stakeholders that the decisions we come to are the right ones, by providing demonstrable evidence of the soundness of these decisions." What is this process? What kind of 'demonstrable evidence' is given? Why is the QA process not on the SPSO website?

Question 20 – Once an investigation report has been presented to Parliament, it cannot be changed. What would you do if you discovered subsequently that the judgment was wrong? Would you, for example, take it to judicial review?

Question 21 – What criteria are applied by the ombudsman in exercising his discretion in regard to the 12-month rule? A dispute with a BUJ may consist of a series of service failures and acts of maladministration that, with associated correspondence and delay, continues over a year or more. To avoid disqualification through the 12-month rule, does Mr Martin recommend that separate complaints be submitted to him at each stage in the process, or would this seem vexatious? Would it make better sense to look at the whole picture after a complainant has explored all avenues bearing in mind that some people only learn of the SPSO's existence late in the proceedings, as it is not publicised.

Question 22 – The new CHP is helpful, but is there a possibility that contact between BUJs and SPSO officers in the training sessions could make some investigations less impartial. What safeguards do you have in place to prevent this?

Question 23 – Why are complaints not accepted from organisations?

Question 24 – What explanations are given when SPSO uses its discretion to delete cases?

Question 25 – Is there a presumption that public officials and their records are more likely to be trustworthy than complainants?

Question 26 – Rulings should not be arbitrary or illogical – or contradict rulings of similar cases in similar circumstances. Are full explanations given in all cases?

Question 27 – Are complainants given all the reasons for SPSO rulings?

Section Two – Questions

4. The following questions were also received. In each case they refer to an individual case, are covered by the report, or are covered by earlier questions in this document or the written questions the Committee has submitted.

Question 1 – When a Local Authority Planning Department is advised of obvious anomalies in planning applications by members of the public, (as authorised in the Planning Service Charter) and those applications are still submitted to their Planning Committee, this is maladministration on several counts according to both the SPSO and Scottish Parliament websites. It is also a failure to provide a service to both the public and local Councillors. What powers do the SPSO have to address these recognised forms of maladministration, the injustice caused to local residents as a result of subsequent breaches of planning control, (as defined in the Planning Enforcement Charter) and to protect those Councillors who have a legal obligation to make good planning decisions but have no way of knowing what they are actually approving?

Individual Comment

Question 2 – What can the SPSO do if a Local Authority refuses to change its planning system to comply with its Planning Service Charter? Does he for example have any legal powers to enforce the recommendations he would hopefully be making and how does he monitor if those changes to procedure have been carried out?

See Committees No 22

Question 3 – Do the SPSO have a recognised Service Level Agreement for dealing with complaints? For example, how long would Mr Martin expect his team to take to agree headings for their customers' complaints and how long after that would he expect them to take before their investigation into a complaint began? Can he produce performance metrics to show if SPSO staff are dealing with complaints in a timely manner?

See Committees No 13

Question 4 – Do the SPSO have a legal obligation to investigate examples of 'maladministration', (as defined on their website) and 'failure to provide a service' that are brought to their attention? Would he expect his staff to explain to complainants where they were mistaken if the evidence they had provided was not in fact 'maladministration'? Can he produce any statistics to show how many cases of maladministration are ignored and on what grounds they are ignored?

Individual

Question 5 – Does Mr Martin accept that his staff do make mistakes from time to time and when this happens, what steps does he take to rectify the situation?

Covered in report

Question 6 – The organisation Accountability Scotland held a conference in the Scottish Parliament on 16 September 2013. It included a presentation entitled, 'School inspection

complaints and the Scottish Public Services Ombudsman'. It detailed cases where complaints raised of the schools' inspectorate were taken to SPSO. Yet the SPSO discontinued these cases without an investigation report, with no published decision letter, without observation in his monthly commentary and did not issue a special report to Parliament. How does the ombudsman account for this?

Individual

Question 7 – In October 2011 a senior SPSO staff member wrote to a correspondent "...in order to comply with the requirements of the Public Services Reform Act, Education Scotland is required to have in place a CHP [complaints handling procedure] that is in line with the [Complaints Handling] Principles." But in March 2012 the ombudsman wrote to another complainant, dismissing the complaint, stating, 'My view is that the substance of complaints about HMIE/Education Scotland inspection reports is not within my office's jurisdiction...' Yet the revised Education Scotland complaints system of 2012 states, "If, after receiving our response to your complaint and you remain unhappy, you can ask the Scottish Public Services Ombudsman to consider your complaint." The 2012 SPSO annual report stated that the SPSO was consulted on its drafting. How does the ombudsman account for these apparent discrepancies? See:

Individual

Question 8 – During 2008 and 2009 the jurisdiction of SPSO in regard of school inspection complaints was the subject of detailed and lengthy internal correspondence between SPSO and HMIE (now within Education Scotland). There was a meeting between the former ombudsman and the chief executive of HMIE on this matter in March 2009. The former ombudsman sought legal advice from Anderson-Strathern solicitors in regard of whether school staff could be considered as a 'member of the public' and thus be eligible as complainants. The advice received was that they were. Does SPSO now act in regard of that advice or has it been superseded? If it has, is that following further legal advice, or by internal decisions taken in SPSO. Thus may a headteacher take a complaint of HMIE/Education Scotland on to SPSO as a valid complainant? Or not?

Individual

Question 9 – If the ombudsman considers that the substance of complaints about HMIE/Education Scotland inspection reports is not within his office's jurisdiction, as he has written, does he consider that there should be a separate, independent complaints body for audit, scrutiny, and inspection, as for the police?

Not a matter for the SPSO to comment upon

Question 10 – In January 2013 a submission to the Standards, Procedures And Public Appointments Committee Inquiry Into Post-Legislative Scrutiny gave analysis that *The Scottish Public Services Ombudsman Act 2002*, and *The Public Services Reform (Scotland) Act 2010* were inadequately drafted. It quoted from the 2012 Leveson Inquiry report into the culture and practices of the press, but altering "the press" to "regulators":

It should not be acceptable that regulators use their voice, power and authority to undermine the ability of society to require that regulation is not a free for all, to be ignored

with impunity. The answer to the question who guards the guardians should not be "no one".

He observed that it is indeed "no-one", for public services' regulators. Does the ombudsman agree? Does he consider that he should have a role in doing something about it?

Individual

Question 11 – In March 2012 the SPSO wrote to a senior politician stating "...how a person in a regulated body can complain about the regulator is a particularly complex one because our legislation is clear that the body itself, the school in this case, could not complain... I am aware that there have been other concerns raised about the difficulty in pursuing concerns about a regulator by those subject to regulation, particularly in the education sphere. While I can note these concerns, it is ultimately for those who make policy and legislation to decide whether the current position needs changed". How will policy makers or legislators do this if the ombudsman does not draw these issues to their attention? Given considerable correspondence, by HMIE, by several politicians, and given several cases, why has the ombudsman not instigated a special report to Parliament?

Individual

Question 12 – A school dissatisfied at OFSTED's response to their complaint of a school inspection may appeal to 'The Independent Complaints Adjudication Service for OFSTED', ICASO <http://www.ofstedadjudicationservice.co.uk> There is no such body in Scotland. The only recourse is the SPSO, but he has written, "our legislation is clear that the body itself, the school in this case, could not complain". Therefore I wrote to ICASO asking, "Is the procedure available to be utilised by school staff and in particular a head teacher?" Their reply, on 4 October 2013, was, "We do not have any restriction on who can apply to use the scheme." Does the SPSO consider that this complaint adjudication deficit in Scotland concurs with his 'Valuing Complaints' initiative, and if not, what does he propose to do about it?

Individual

We know from the SPSO's Annual Report that - apart from the Local Government & Regeneration Committee - Audit Scotland, the SPCB, the SPSO's Audit & Advisory Committee, its Service Delivery Reviewer, its Internal Auditor and its External Auditor all scrutinise and approve different aspects of the SPSO's operation, including financial and procedural, but it is not clear either from the literature which the SPSO has produced or from previous oral evidence which the SPSO has given to the Committee that anyone other than the SPSO itself ever scrutinises the quality of the work it produces.]

If the Ombudsman's answer to this question takes some form of the positive I would propose that the SPSO simply be pressed to explain fully to the Committee how and by whom such scrutiny is carried out.

See Question 6 on page 2

However, if the Ombudsman's answer to that first question takes some form of the

negative I would propose that a second question be asked which is (below):

Question 13 – Why, with the importance it attaches to transparency and accountability in the operation of other public service bodies, has the SPSO never asked the Scottish Parliament to make provision for the work which the SPSO itself turns out to be independently scrutinised?

[Note 2: We know that not only does justice need to be done, justice also needs to be seen to be done. The Scottish Parliament is committed to transparency and accountability and the SPSO is the Scottish Parliament's creation; it would therefore seem a contradiction if the SPSO operates or is allowed in future to operate as one of the Scottish Parliament's instruments of justice without having duties of transparency and accountability in respect of how it performs its core function.]

See Question 6 on page 2

Question 14 – There is no OUTSIDE PUBLIC SCRUTINY of what really goes on. Have any of the scrutinizers had any personal experience of Scottish Government Complaints Procedures and SPSO complaint procedures?

Covered by Committee question 7

Question 15 – We note that subsequent Operational and Business plans etc obviously do not reflect the full scope of Strategic Plan requirements: only concentrating on a specific annual portion of SPSO's obligations. More than adequate time has elapsed for SPSO's compliance to such important matters, but apparently without any priority; which is a common feature lacking in your Strategic Plan?

No Question Apparent

Question 16 – In the event that a complainant raises an issue which clearly involves organised institutional criminality within and between Scottish local authority personnel and the SPSO chooses not to assist in its exposure specifically due to their preferential use of their 12 month time bar, does the SPSO's office have any remit to advise a complainant that the complaint is of a legal nature and to which government office they should approach to have their complaint adequately dealt with?

Covered by question 22

Question 17 – The SPSO Act 2002 does not define the term “outcomes” that should be applied to segregate Public from administrative justice. It does require SPSO to apply the process of Remedy to acts of Maladministration and Service Failure. SPSO brochure “Redress Policy & Guidance” states, “Redress for the Complainant may include some or all of the following:” It then lists options including: “other appropriate action suggested by the Complainant or the organisation”. Despite this clear commitment, SPSO have developed a Complaints Handling Policy applying unwarranted tests for “satisfactory outcomes”. Can SPSO identify how many Complainants may have been treated this way?

Refer to Committee questions 11, 18