

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

Section One

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?

On p13 of the annual report we point to the fact that we publish requests for review of our decisions on our website. The 2012/13 statistics including the number and outcomes are available there. The annual report cannot include everything and in many places we point to the website where further information can be found.

<http://www.spsos.org.uk/decision-review-information>

In 2012/13 we received 223 requests for review and reopened 28 cases as a result. The request for review process is an important one and we make it visible to complainants and bodies alike. A request for review can also be made not only on cases where we have investigated and upheld or not upheld a complaint but on almost all decisions we make including cases where we have decided not to investigate. The request for review process is open to both complainants and bodies under our jurisdiction. (Recent figures we have seen from other Ombudsmen suggest the numbers of requests we receive is in line with other Ombudsman with similar processes).

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? Answered at meeting

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

We put a significant amount of raw data into the public domain for anyone to access. We also publish additional analysis which we hope is of assistance. The data we publish includes complaints determined at different stages in our process. It is important that members of the public should not be identifiable from the data we put in the public domain. However, if a complainant wanted to know how we recorded their data, we would be happy to let them know.

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

When we commission feedback of customer satisfaction, we put it out to tender, and most recently the successful independent consultant was Craigforth Consulting which has

carried out the last two surveys on our behalf. We publish all our customer satisfaction surveys on our website, along with an action plan that details our senior management team and our service improvement group's response to the messages and recommendations. The action plans set out what we will do in light of the feedback.

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?

The simple answer is yes. The two criteria for conducting a review of the Ombudsman's decision are either that new significant evidence has come to light or that the decision is based upon factually incorrect information. If it is clear from a request for a review that factually incorrect information has been relied upon to reach a decision then a decision would be re-visited. We would regard evidence that an adviser had been biased or misled this organisation as very serious and new evidence. However, it is important to note that a difference of opinion is not the same as evidence of bias or error or a sign that we have been misled. We require all advisers to notify us of any potential conflicts of interest before they provide advice and assess any advice we receive carefully against standard criteria.

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? Answered col 2999-30 of the Official Report

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?

We called for powers of own-initiative investigation when the Parliament was undertaking its Review of Scottish Parliamentary Supported Bodies in 2009. These powers would allow us to broaden or dig deeper on issues. We remain of the view that it would be useful to have this power, particularly given there are some groups who find any complaints process difficult to access. There are links below to our evidence to the RSSB Committee and their response.

SPSO evidence:

<http://archive.scottish.parliament.uk/s3/committees/rssb/inquiries/rssb/documents/RSSBFSPSOSUPP.pdf>

RSSB committee response:

<http://archive.scottish.parliament.uk/s3/committees/rssb/reports-09/rssb09-01.htm>

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?

The model Complaints Handling Procedures (CHPs) for each sector was rolled out in a phased approach, recognising the resourcing capacity of our Complaints Standards Authority. They have, therefore, been and are being implemented at different times in different sectors. We are not aware of any organisations not complying with their requirements to adopt the model CHP within the timescales of this phased approach, although this is something we continue to monitor in conjunction with regulatory bodies.

If we consider an organisation is failing to comply with the model CHP there are a number of routes we can go down. First and foremost we can notify the relevant regulator, scrutiny or sponsor body to the issues of non-compliance. We have, from the outset, built the requirement to comply with the requirements of the model CHPs into existing regulatory mechanisms. For example, where a local authority is non-compliant this would be addressed through Audit Scotland's Shared Risk Assessment or annual audit processes. Secondly, Where we become aware of an issue of non-compliance through investigation of individual complaints, we will seek not only to resolve that case but to make recommendations which ensure that action is taken to address these issues so that other complainants do not have the same problems. Ultimately, we do have legislative power to make a declaration of non-compliance, although we intend to use that option as a last resort.

To reiterate, however, we are not aware of any organisations not complying with their requirements to adopt the model CHP within the timescales and have received assurance from all providers in each sector that they will or have done so.

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? 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?

It is unclear what statute is being referred to here. We have complied with section 17A of the 2002 Act which sets out the requirements for our Strategic Plan. The Committee were provided with a draft of that Plan for comment.

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?

It is unclear what this question means. We publish as many of our decisions as we can and this includes details of all recommendations made. We publish recommendations in our annual reports and sectoral reports. Our recommendations are the actions we consider the organisations should undertake to remedy the faults we have found. We also publish performance data on the timeliness of the implementation of our recommendations in the annual report.

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?

We take customer feedback very seriously and there are a number of routes by which this is gathered. This includes our own quality improvement processes and the feedback from service complaints. All the findings are fed into our service improvement group. We published our most recent complainants satisfaction survey in 2012. We are currently planning our next one, due in the next financial year, and will be taking into account the views of our new customer sounding board on the detail.

We have been audited against the audit code of practice and have received a clean audit.

The Officeholder’s annual evaluation is the responsibility of the SPCB. We advised them of this question and they did not understand how this question linked to the framework.

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?

As a public service provider we carry out an annual assessment against the best value framework. This is a self-assessment process as part of our business planning process. In addition we seek to benchmark in key areas of our work where appropriate benchmarking standards are available. For example as an employer we have Investor in People status. Where no clear benchmarking standards are available we seek to gather and share best practice through other routes, for example the use of our internal audit process to assess our own QA process and we also used external consultants to assess the efficiency and effectiveness of our complaints handling process.

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?

We use a number of methods to assess the quality of our work we and seek to continually improve on this quality both during the life of the case and as part of the formal QA process. As well as the formal process where 10% of cases are considered, managers and the Ombudsman are involved in reviewing the quality of work and signing off decisions and feeding back learning.

Our QA process has been audited by external reviewers through the internal audit process as well as by our audit and advisory committee.

There is currently no formal validation process available for ombudsmen QA processes. We are leading efforts to further identify and develop best practice and our QA process was recently presented to a Conference of European Ombudsmen as an example of innovation. We set up a UK Ombudsman Association on QA process in December.

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?

This is incorrect. Among the performance indicators we report is one specifically linked to the QA process and which looks at the findings of the QA process. There are a further two related to complaints about the service we have delivered and requests for review.

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?

Indicator 7 refers to the Performance Indicators we have published to help organisations under our jurisdiction report on their own complaints handling performance. It sets a general requirement to report on customer satisfaction, providing some indication of the issues which should be covered in their reporting. It is for each organisation to decide how best to do this taking into account the specific needs of - and relationship with - their customers. There is a requirement to publish their findings so this will be available to all. For local authorities this information will be available to their governing organisation which will be locally elected representatives.

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?

Our external (Audit Scotland) and our internal auditors (Scottish Legal Aid Board) attend our A&AC meetings. They carry out reviews of various aspects of our organisation and their reports and actions are discussed at the meetings. All these reports and the details of our governance arrangements are made public. Among the areas Audit Scotland's report looks at under the Code of Audit Practice is 'corporate governance and systems of internal control'. Their most recent report (2012/13) found that the SPSO has sound governance arrangements in place supported by a risk management policy and risk register.

We are a body created by Parliament and are accountable to them. The Parliament undertook a review of the governance and finance arrangements of all Supported bodies in 2006, there was an additional review in 2009. Since then issues have been raised with the petitions committee of the Parliament. The Parliament has not indicated it has any concerns with the current arrangements.

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?

We discussed this question with SPCB and they also struggled to understand what is being asked. As we have said in question 10, we publish as many of the recommendations as we can on our website. We publish data on compliance including time taken. We have stated publicly we have never had a failure in a body implementing a recommendation. As the committee will be aware, despite this, we have sought to clarify what would happen if we ever needed to report a failure and the issue of special reports is being considered by the Standards Committee.

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

When we receive a request for information, it is our current practice to release everything we can that has not already been shared with the complainant as part of the investigation process. Sometimes, we hold information which we cannot release.

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?

See also our responses to questions 13 and 14. The QA is described on p14 of our annual report. The process is an internal management tool. It is available on request to anyone who seeks it.

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?

If we did find that a decision was wrong either because of new information or because we had clear evidence of a significant factual error, we would prepare and lay a second report. We cannot take ourselves 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.

As this is an exercise of statutory discretion, we make decisions on a case by case basis but to help the public and to ensure consistency we do publish information on our website about this discretion and the factors we would take into account when deciding whether to exercise this discretion. The link is here:

<http://www.spsso.org.uk/time-limit-making-complaints-spsso>

The criteria includes failure to publicise this office. We would recommend individuals submit a complaint when they consider they have been failed by an organisation. If a new situation occurs, they can raise this as a new complaint. Individuals who have an ongoing concern do not need to continuously raise this. To give a simple if rather basic example, if an individual’s bins are not being collected, they do not need to raise a complaint each time but one single complaint will do. Equally if a person considered there was an ongoing breach of planning conditions, they need only raise this once rather than in response to every breach.

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? Answered col 3010 Official Report

Question 23 – Why are complaints not accepted from organisations? Answered col 3010 Official Report but follow up explanation sought (per discussion)

This question could have more than one meaning. The first meaning suggests that we cannot accept complaints from *any* organisation *about* a body under our jurisdiction. This is not the case. Under section 5 of the SPSO Act, the definition of member of the public is broad enough to allow us to take complaints from organisations and companies about organisations under our jurisdiction and we have done so.

It is the case that there are *some specific* organisations we cannot accept complaints from. They are specifically excluded from being a member of the public under section 5. Section 5 excludes from the broad definition of member of the public organisations who are constituted for the public service and publicly funded. Such organisations are usually under our jurisdiction so this exclusions means that we normally cannot take a complaint from one organisation under our jurisdiction about another organisation. To give some examples, we cannot take a complaint from a Health Board about Health Improvement Scotland or a Council about Audit Scotland. We were asked about this exclusion recently by the Petitions Committee and responded to them in some detail about this. The link to that explanation is here:

http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/P E1484 A SPSO 10.10.13.pdf

One exception is that we could take a complaint from a public body about their licensed water and sewerage provider - this reflects the very specific set up of the water industry in Scotland. Public organisations are customers of licensed providers rather than subject to scrutiny or regulation by them.

Another possible meaning for this question is we cannot accept a complaint referred by an organisation under our jurisdiction about *itself*. Normally, we require a member of the public (individual, group or organisation) to bring a complaint to us. However, in some circumstances, we can take a request from an organisation under our jurisdiction to consider a complaint that has been made against them publicly but no one has brought the complaint to us. The ability for organisations to ask us to do this is set out in section 2 (2) and there are additional requirements in section 5. We have a leaflet available for bodies under our jurisdiction who may be considering this.

http://www.spsso.org.uk/sites/spsso/files/communications_material/leaflets_buj/Guidance%20on%20Section%202%282%29%20Requests.pdf

Question 24 – What explanations are given when SPSO uses its discretion to delete cases? Answered col 3011 Official Report

Question 25 – Is there a presumption that public officials and their records are more likely to be trustworthy than complainants? Answered col 3011 Official Report

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? **Answered col 3011 Official Report**

Question 27 – Are complainants given all the reasons for SPSO rulings? **Answered col 3011 Official Report**