

30 January 2015

Kevin Stewart MSP
Convener of the Local Government and Regeneration Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Convener,

I would like to thank the Committee for the email of 9 January 2015 which both highlighted the questions from the public that still require a response and set out the areas where the Committee would like further information.

Annex A to this letter deals with the additional information that was requested on three points: integration of health and social care; ISO 9001 and comments on an email from a member of the public received after the Committee meeting.

Annex B contains my response to the questions from the public that had not yet been answered. My response to question 21 is supplemented by Annex C which contains the contents of an email from the Gibraltar Ombudsman.

I hope the Committee find this helpful and would be happy to provide additional comments or information on any of the points.

Yours sincerely

Jim Martin
Ombudsman

Annex A

1. Integration of Health and Social Care

1.1 The problems

I have said on record that I support the aims of the integration of Health and Social Care. However, I have on-going concerns about the difficulties that those responsible for integrating services will face given there has been no integration of complaints processes. The Scottish Government has shown a general and very welcome willingness to be at the forefront of improving complaints handling generally in the public sector. I set out below steps we understand that are being taken in this area. However, I am concerned that these are coming fairly late in the process with most of the integration plans already out for consultation showing differing approaches to complaints because of the current confusion. I also am not convinced that the steps underway, while welcome, will solve all the problems.

I will remind the Committee of the current situation. At present, there are at least three separate complaints processes and the problem organisations will face in trying to make these accessible for the public is that they are all based in statute and have different legislative requirements.

These are:

- Complaints about the local authority's assessment of a person's care needs or about social services provided. Such a complaint would be subject to the local authority's social work complaints procedure and the statutory directions issued by the Scottish Government.
- Complaints about a registered care service. Such a complaint would normally be made to the provider in the first instance or directly to the Care Inspectorate. The latter has a duty to operate a procedure for receiving complaints about registered care services under Section 79 of the Public Services Reform (Scotland) Act 2010.
- Complaints about NHS services. These complaints would be directed to the statutory NHS complaints process which is now set out in terms of regulations made under the Patients Right (Scotland) Act 2011.

It is worth bearing in mind that each route has different processes and the complaint will be assessed by different standards. Complaints can be made to us at the end of all three processes but, again, we use different standards because of the underlying legislation for example: if a complaint comes to us about a health matter, though the NHS process, we can assess professional judgement. We cannot do this if a complaint comes to us via the social work route.

To put this into practical terms, a person receiving care at home who has concerns currently needs to:

- Use the social work procedure if they were concerned about how their need for care had been assessed or how the local authority was managing the care;

- Use the health process for any services delivered to them by a GP or other health professional visiting them at home or for any health input into an assessment;
- Use the social care complaints process for any concerns about the quality of social care delivered.

To give another example a decision on when to discharge a person for hospital and what support will be needed to provide care for that person at home will involve both health and social work. However, in order to complain about that joint decision, two procedures currently need to be used.

Integration does not, of itself, change this situation. However, if the service is being provided increasingly holistically, it may be more confusing for someone trying to work out which organisation is responsible.

Alongside this problem, I have highlighted that no integration joint board, however constituted, will be under the jurisdiction of this office. My understanding is that, insofar as they are dealing with delegated functions of organisations under my jurisdiction, the organisation responsible for that delegated function will be responsible for ensuring a complaints procedure is in place for their area of responsibility and I will be able to consider complaints that come to me through that process. The point I have been seeking to clarify is about aspects of the role of the new institutions which may be constituted in a number of ways are not delegated functions.

1.2 Discussions to date

Concerns were raised about the complexity in this area in 2008 by the Sinclair review. We have repeatedly raised these issues in response to consultations and as part of regular meetings I hold with senior officials such as the Chief Executive of the NHS and also senior civil servants. My staff have had contact with the integration team, the social work team and the NHS team at the Scottish Government. One of the issues we have had is that it has not always been possible to bring the various parts of government who have an interest together. In 2013, a working group was set up by the Government involving regulators and the third sector looking at one part of the jigsaw, the Social Work complaints process and recommendations were made to the Government.

1.3 Steps that are being taken

Changes are beginning to happen. Commitments have been made to align the NHS processes with the standard model procedures used elsewhere in the Public Service. We understand that this is also likely to be the case for Social Work although we still have not had a formal decision on the recommendations made by the working group and, in particular, on changes which may require legislation. We have very recently (since the evidence session) had contact from officials who are looking at the problem around joint boards above and hope that will lead to a solution.

While we do not doubt the commitment that the Scottish Government has to improving complaints generally and particularly for vulnerable groups, we remain

concerned about how long this has taken and also are not convinced that all the issues will be resolved by the steps they are currently taking which tend to look at each process separately and from the point of view of the responsibility of the organisation for the service rather than from the perspective of the user of the service.

2. ISO9001

SPSO has had quality assurance processes in place since 2010 and, as previously noted to the Committee, the current process has been reviewed and rated independently as sound. There are a number of reasons why SPSO has decided to invest in developing its own set of standards, that reflect the specific nature and principles that apply to ombudsmen and second tier complaints handlers. We have also, in the last year, been leading a project working in conjunction with other ombudsman schemes in the UK to try to develop common service standards. This will support the quality framework.

The quality management system standards of ISO9000, including ISO9001, are based upon eight quality management principles – customer service, leadership, involvement of people, process approach, a systems approach to management, continuous improvement, factual approach to decision making and mutually beneficial supplier relationships.

Whilst broadly the principles of the ISO9000 family of standards are ones SPSO already adopts, the language used in a number of areas does not directly represent the role and functions of the SPSO as an independent and impartial service. For example, in relation to customer service where the focus is on depending upon customers and therefore requiring to understand customer needs in order to exceed customer expectations – whilst SPSO must strive to always achieve high levels of customer service, it must not compromise its independence or impartiality in order to meet or exceed customer expectations (whether that be the member of the public or the public body) and so this language does not accurately reflect the role SPSO has to play. The last principle relates to mutually beneficial supplier relations, working interdependently with suppliers to enhance the ability of both to add value. Again, this does not accurately reflect the role that SPSO exists to perform.

No other ombudsman scheme in the UK has adopted or, as far as SPSO is aware, has plans to adopt ISO9001. A number of schemes have developed and implemented their own quality management frameworks, some of which have been informed by SPSO's own process.

SPSO is a small organisation but takes its commitments to quality and continuous improvement seriously. SPSO has a number of mechanisms in place for benchmarking including conducting timely, proportionate customer and staff surveys and maintaining IIP status to ensure that the service is responsive and that staff are trained and resourced to deliver that service. In addition, SPSO has undertaken two reviews of its core investigations process in the past five years, including one undertaken by external business process re-engineering experts. In this way, we have ensured that our core business process is fit for purpose. We have mechanisms in place to continuously improve our service, one example of this is feeding the

learning in relation to complaints about our own service back into the system to drive improvement. We also ensure that key documents that provide information to the public are reviewed and approved by the plain language commission.

Branded, external accreditation such as ISO9001 is relatively costly for an organisation of SPSO's size. There is no obligation on public bodies to adopt this as model as a quality management framework and it is not a mechanism used by other parliamentary sponsored bodies or Audit Scotland.

The benefits of SPSO developing its own service standards, with input from other experts and customer representatives and working with the Ombudsman Association to develop agreed generic service standards, are that there will be a tailored and appropriate approach to meet the specific business needs of the SPSO, at what is likely to be a significantly lower direct cost.

3. Email from a member of the public

We have been asked to comment on an email received from a member of the public in response to our comments to the Committee about reviews.

I am happy to restate that the review process is open to anyone when a delegated decision has been made. The criteria used focus the review process on testing and ensuring that the decisions reached are sound. I do not consider that having criteria in place to allow me to ensure that I can demonstrate the assessment of those reviews is consistent and fair to all and also ensuring everyone is aware of that criteria so that they understand in advance what is likely to be most successful is denying anyone the right to request a review. The criteria refers to two critical points which, if wrong, would mean the decision that had been made was unsound. I do not consider it is wrong to focus the process on those or to let people know that I do so.

Annex B

On 9 January 2015 the Committee confirmed the numbers of the questions answered in the evidence session. These were 1, 2, 9, 17, 19, 26, 29, 30, 33 and 36. For completeness, we've included all the questions below and the text of these questions are included below with the one word comment – Answered.

Question 1 –

Why are there timebars for bringing complaints? The film 12 Years a Slave showed that these are unfair for someone in captivity.

Answered

Question 2 –

What percentage annually of 'requests for reviews of the Ombudsman decision' have been rejected by Jim Martin since he became the Scottish Public Services Ombudsman?

Answered

Question 3 –

Can Mr Martin explain his understanding of the SPSO's legal obligations to the people of Scotland?

The most significant legal obligations for the Ombudsman are set out in the Scottish Public Services Ombudsman Act 2002. The Ombudsman is also, as an employer and a public organisation, subject to a large number of other important legal obligations set out both in common law and legislation. It would take a considerable amount of time to set out in full all the legal obligations that he is under and his individual understanding of each obligation. We do set out our understanding of the Ombudsman's role in our vision, strategic plan, and business plans. We provide detailed information on the website about our roles in specific sectors to help people understand how the obligations are interpreted in practice. When we make a decision on a specific issue which is based on a specific legislative provision we will explain that to that individual.

Question 4 -

Can Mr Martin explain whether there is a difference of opinion between SPSO and the Scottish Parliament over what constitutes 'maladministration' and 'a breach of planning control', have any steps been taken to rectify this situation if it exists?

We are unaware of any difference of opinion and are, therefore, unable to comment in detail on this question.

Question 5 –

How does Mr Martin justify putting MSPs at risk of triggering complaints to the Standards Commission when they are made aware of injustices caused as a

result of maladministration and service failure, and the SPSO fails to address these?

We have found this question difficult to answer. We are not aware what actions by the SPSO could put an individual MSP at risk of a complaint to the Standards Commission.

Question 6 -

Could the SPSO have highlighted maladministration within City of Edinburgh Council Planning Dept. since his appointment as Ombudsman?

We highlight the information we hold about individual organisations in a number of ways. We produce annual statistics and each Council also receives an annual letter with their own individual statistics explaining how they compare to the national average.

We also highlight individual cases by reporting those complaints publicly. These may be full detailed reports if we consider there is a public interest in all the detail being put in the public domain. However, we also ensure other decisions we make are reported in summary form to ensure that as much information as possible about performance is publicly available.

A search on my website and the section called "our findings" will identify that since 2011, we have produced public reports relating to 20 individual complaints about planning at City of Edinburgh Council. We upheld or upheld some part of 7 of those.

If you look at the individual cases, most of the 20 complaints related to the handling of objections by neighbours to an individual's planning application. Over the same period, we have also published reports about statutory notice cases.

We published a full 12 page public interest report on a complaint in November 2011 which highlighted concerns about how the Council was responding to complaints about the statutory notice process. This was of particular concern to us because we had been receiving an increased number of these complaints. We also took the very unusual decision in the same month to publish summary reports of a further seven complaints before we had come to a decision. We had not investigated those cases very far because the Council had committed to an independent, external review and to look at these complaints as part of that. Their process had, therefore, not been completed. All complainants were told if they were unhappy with the outcome of the review on their individual case they could return to us. We would not normally prepare individual reports of premature complaints in this way but, as noted above, we were concerned on the volume over a relatively short period and wished to make the information on the review and our role publicly available.

Since 2013 we have investigated and reported summaries of a further 12 complaints about statutory notices. We upheld five of those but also made recommendations on a further three where we did not uphold the complaint but did find areas where the service provided could have been better. All of that information is available on our website in the section "our findings".

Question 7

What steps has Mr Martin taken to improve the public's confidence in the SPSO's ability to provide the 'trusted, effective and efficient complaint handling service' mentioned in his vision?

Each annual report details the way we have sought in that year to improve the quality of the way we operate. There is a great deal of information on this in the reports published since I took office. I would highlight here: an independent review of an individual case which I asked to be conducted shortly after I took up the post; the development of our quality assurance process which has attracted international attention; two business process reviews since 2011; the creation of the sounding boards; the creation of the independent service delivery reviewer; and our on-going commitment to Investors in People.

Question 8

What Service Level Agreements are in place and how does the Ombudsman monitor these to ensure the public is receiving the high level of service expected from the SPSO?

We have one Service Level Agreement (SLA) currently in place which relates primarily to the service we provide to the public. This SLA is with the Parliamentary and Health Service Ombudsman and allows us to access clinical advice which is not otherwise available because our own advisers, based in Scotland, have a conflict of interest (ie it is about their own health board or they have worked with the person complained about) or it is about a specialism for which we do not have a separate Scottish Adviser. This is regularly monitored to ensure that the commitments on both time and quality are met. We individually assess the quality of advice on each individual case to ensure it meets our criteria and also undertake separate audits of the quality of advice. Where we have concerns, we raise those direct with PHSO. On the rare occasions we think the advice is not of sufficient quality, we will commission a different adviser. We do have other SLAs in place in relation to the smooth running of the organisation, for example around our technical database maintenance. These can indirectly affect our service but do not do so directly. We track performance against each SLA and internally audit their effectiveness where appropriate in line with our internal audit strategic plans and would act on any failings or recommendations for improvement.

Question 9

Are the SPSO's SLA's available to the public thus allowing them to judge for themselves if they have received the expected level of service or not?

Answered

Question 10

Your model complaints handling procedures recommend that Stage 2 public body complaint investigators discuss the complaint they are investigating with the complainant.

Why is it not part of your own procedure for SPSO complaints investigators to discuss the complaint with the complainant?

Whenever possible, we do discuss complaints with the complainant and it is an important part of our procedure.

Question 11

Your procedures allow for the public body to comment on the complaint, but the complainant is not asked to comment on the public body's response and so does not have the opportunity to rebut arguments put. Does this non-symmetrical approach benefit the public body and how do you justify this?

We explained in some detail in our response to petition PE1538, the requirements we have to release and to protect information. I do not repeat those here.

We are legally required to put the allegations made by the member of the public to the public organisation as part of our investigation. We will already have spoken and had comments from the complainant at this point about the final response which they will have received from the organisation when they complained direct to the organisation. If, in the comments we receive from the organisation, anything new or material is raised, that point will be put to the complainant for comment. However, if, as is often the case, the organisation simply restates the position already given to the complainant, we do not require the complainant to comment on something they will have already commented on.

Question 12

Your systems include additional quality checks for complaints resulting in recommendations (generally upheld complaints), but no extra check for a not-upheld decision (unless it is seen as unusually complex). How do you justify giving extra protection to the body which is not given to the complainant?

We need to use our resources carefully. We are a very flat organisation and have limited managerial capacity. We only have two managers who are responsible for a significant number of decisions made by their teams – this was over 1,500 cases last year. Each complaints reviewer is carefully recruited and trained to make delegated decisions on behalf of the Ombudsman without managerial supervision being required on all cases. Because of the potential impact on public resources that may arise from recommendations, we consider it appropriate that decisions being made by CRs that include recommendations receive managerial consideration. It should also be noted that all delegated decisions whether made with or without managerial consideration can be reviewed by the Ombudsman on request.

Question 13

When a public body gives information which is shown by other evidence to be inaccurate or misleading do you criticise the public body for this in order to encourage accurate responses and increase the likelihood of fair and correct decisions in the future?

Yes, we would criticise a body who provided inaccurate or misleading information. It is worth noting that the simple fact we disagree with their decision and uphold a complaint does not mean that the organisation has been seeking to mislead or provided inaccurate information.

Question 14

You summarise complaints into agreed Heads of Complaints and send only these to the body for comment. This means that the body will not necessarily know the detail of the complaint – particularly if the substantive complaint was not dealt with appropriately. Why not give the body the full information?

This question should be read alongside the petition and our answer to question 10. The organisation will have responded to the complaint already. We do inform them of the allegations we have received. The amount of information we consider they need to respond to the allegations varies from case to case. In many cases, it is clear they will have a good understanding of the issues because of the previous complaint correspondence.

Question 15

Your website shows no quantitative information since 2010 about customer satisfaction (e.g. percentage very satisfied, satisfied, dissatisfied and very dissatisfied). Why have you stopped collecting this data and do you intend to collect in again in the future? If so when?

We provided details of our plans for this in our briefing document to the Committee. We have decided to move away from our previous approach of using consultants to conduct a survey for us on a biannual basis. The last survey was, at the direct advice of the consultants, a qualitative approach. We are currently finalising our plans and will have completed a pilot of a new approach which we hope will allow us to provide regular quantitative data on a much more timely basis.

Question 16

Last year you indicated a new complaints satisfaction survey was being planned, when will that take place and report?

Please see the response to question 15.

Question 17

You recently sought help from the Samaritans in order to improve your treatment of complainants. What did you learn from them and how has it improved the conduct of your investigators?

Answered

Question 18

The distinction between decision letters and investigation reports is fairly clear, but also somewhat arbitrary. To what extent is 'public interest' a matter of topic and to what extent is it a matter of alleged corruption or deliberate maladministration?

Complaints reviewers assess all cases we investigate against public interest criteria which is set out in our guidance and includes;

- Significant personal injustice or hardship
- Systemic failure

- Precedent and test cases
- Local complaints procedures failures that are significant

An individual case only needs to meet one of these criteria to be recommended for a public interest report.

Question 19

How many cases in the year involved corruption or deliberate malpractice, real or alleged? What were the most serious examples?

Answered

Question 20

Your standardised complaints handling procedures (CHPs) for bodies under your jurisdiction have presumably proved useful, can they cannot prevent serious maladministration of the sort that involves corruption, cover-ups, whistle blowers, gagging clauses etc. What plans and ideas do you have for combating these?

These are serious matters and we appreciate as a very visible organisation people will come to us when they have such concerns. However, our legislation makes it very clear that we are not legally able to become involved when the matter relates to the relationship between an employer and employee which precludes us from looking at whistleblowing and gagging clauses. We will signpost to appropriate support routes when we can.

In connection with corruption and cover-ups, we explained in our response to question 19 during the Committee meeting that direct malpractice is rare. We will comment on this when it is identified as part of our investigation and would take this extremely seriously. It is worth noting that, in many cases, other organisations may be a more appropriate route for some particular concerns. Professional bodies will look at allegations of serious misconduct made against individual professionals and an allegation of corruption is an allegation of a criminal offence which is a matter for the police. We will signpost an individual to the organisation we think is most appropriate for the concerns raised and the outcome sought.

Question 21

Your “Note of the Customer Sounding Board” of 19 March, paragraph 4, implies that the SPSO needs to learn from similar organisations how to improve service standards. What has been learnt from the Gibraltar ombudsman with his 98% satisfaction rate? What have been the main deficiencies in SPSO’s service standards?

In response to this question, I contacted the Gibraltar Ombudsman direct to ask for his views. I attach at the end of this document his full response which I consider explains the very particular circumstances under which he operates which mean it would be difficult for any other Ombudsman to replicate those satisfaction rates. This does not mean we do not strive to continuously improve and this includes learning from others. As I said during the hearing, it is disheartening when every time it is suggested we would like to learn or improve it is suggested we must be failing.

There is a difference between a well-run organisation seeking to improve and one which is failing. The note of March 19th says:

“The Ombudsman invited the Executive Casework Officer to inform the Group of the project to update the SPSO service standards. RH explained the first steps of the project is to scope all existing standards of similar organisations and others exhibiting good customer service. Then following a review of the gathered information, forming a set of standards that could be adopted by any Ombudsman-type organisation, with the intention that the final agreed standards could be adopted UK-wide by similar organisations.

“The Ombudsman asked the Group for examples of organisations that demonstrate good customer service that could be included in the scoping exercise. The Ombudsman confirmed that Group members would be included in the circulation list for commenting on the draft standards.”

Question 22

The SPSO has published a “Note of the Customer Sounding Board held on 19 March 2014”: Under its previous name Accountability Scotland was invited to act as a sounding board, but never subsequently approached. Who are meant by the SPSO’s “customers” and were complainants included, if not, why not?

When I first became Ombudsman I invited the strongest critics of the office in to tell me, personally, their concerns. This included members of an organisation called Integrity 4 Scotland who were campaigning for changes to this office. I understand some members subsequently left this group to set up Accountability Scotland. I also spoke to some MSPs and certain local authorities and Health Boards who were also critical of the SPSO. I felt listening not only to those who could tell me the good news but also those with concerns about the SPSO was an important part of ensuring I had a good understanding of the organisation for which I had become responsible.

The customer sounding board which was created in 2013 was set up for a specific purpose. It is relatively easy to hear from my direct customers (those who complain to me and organisations under my jurisdiction). To give some examples, I receive direct feedback from individuals who complain to me (my direct customers) in a number of ways: through comments made to complaints reviewers, feedback I see in the requests for review, and the concerns raised in our own customer services complaints process. As stated in our briefing note and above, we intend to improve our approach to customer surveys to provide for an additional route for feedback.

The sounding board was created to provide me with a perspective on our service that I did not feel I currently had access to. I wanted to hear from organisations who, because of their role as advocates had experience of us across a number of cases which gives them a unique view. And I wanted to be able to understand the needs and views of those who use public services but may not yet have interacted with us directly. The sounding board members are therefore either representative of advocacy groups or service users.

I appreciate that campaigning organisations such as Accountability Scotland have a role to play in any healthy civic society. However, I did not think it is appropriate to

have them on the sounding board given the aims for that board that I have set out above. Accountability Scotland and their individual members already have appropriate routes to raise their concerns and have clearly demonstrated their ability to do so. It is worth noting that we will have already have received direct feedback from any individual members of Accountability Scotland who have had a complaint with us about the service we delivered direct to them. I am also aware of the concerns they raise publicly about us through my normal press and web monitoring and, when they seek change through political processes such as the petition process or putting questions to the Local Government Committee for me to respond to, I am asked to publicly account for my position on their concerns.

Question 23

The SPSO's "Note of the Customer Sounding Board held on 19 March 2014" includes no conclusions or comments on the performance or methods of the SPSO. Was, if anything learnt from the meeting about these?

The note reflects what was dealt with on that day. The first sounding Board in December 2013 began with an open question from the Ombudsman about how we were regarded and the minute (available here: <http://www.spsso.org.uk/customer-sounding-board>) records the specific responses and questions about SPSO that were made in December.

Question 24

What do you see as the most important skills and training for SPSO investigators?

The job description sets out the skills we require for our complaints reviewers. This is always available on our website. The description is detailed but, briefly, we require our reviewers to be able to undertake effective investigations; provide a modern transparent, independent and empathetic service; manage a portfolio of complaints on a timely basis as well as supporting their team and the general work of the office. I know complainants are often particularly interested in the investigation requirements and set out in more detail the section of the job description on that. This requires them to evidence they can investigate in line with our guidance in the areas of:

- planning the investigation;
- clarifying with the complainant what the complaint is about;
- identifying and gathering evidence and seeking external advice where appropriate;
- deciding on appropriate methods of investigating or, if appropriate giving information on other advice agencies;
- using discretion to tailor investigation approach;
- questioning the evidence;
- making written recommendations; and
- following up recommendations.

Training is designed to support those key skills. I set out in response to question 32 how we assess individual training needs.

Question 25

SPSO investigators have no formal legal training and are therefore in danger of unconscious incompetence in relation to the law. Please indicate how this is addressed and describe the relationships between the SPSO and legal advisers.

The SPSO is an ADR, or alternative dispute resolution, mechanism. We are not designed to be nor are we like the court process. We do have some members of staff who are confident in the law or have legal backgrounds and can draw on that. However, if all investigators had legal training we would be concerned that we were becoming more legalistic which would not be appropriate. We are also not supposed to make the same decisions a Court would; for example, we would not determine what the law is when there were two reasonable interpretations. We do ensure that investigators can access additional support on specific legal issues when it is required for them to make a decision on a case. Staff are supported in their training to recognise these situations and we can access both quick telephone support and more detailed, written comments from our legal advisers when required.

Question 26

The Quality Management Standard ISO9001 has been an almost universal requirement for businesses employed by the Scottish government. Why specifically has it not been adopted by the SPSO?

Answered and see annex A

Question 27

Recently the Welfare Reform Committee questioned Mr. Martin on extending his jurisdiction to include welfare. Why should the SPSO be chosen to undertake the new functions, new jurisdiction and new skills required?

As we have made it clear in all our comments on the Scottish Welfare Funds Bill, this is a decision for the Scottish Parliament. The report of the Welfare Reform Committee set out their thinking behind the recommendation that this comes to us and is supplemented by comments from the debate on stage 1 where this general principle was approved.

Question 28

Page 18 of the Report states: "We re-opened eight complaints in light of new information received (i.e. entirely new and relevant information that we did not have during the original investigation)." How did this come to light and how much of this was information the BUJ should have divulged earlier?

This refers to our review process. I cannot comment on individual reviews, but at that stage new information would most commonly come from the complainant who had produced this in response to the decision. We do not criticise members of the public who do this. I have criticised publicly organisations under our jurisdiction who have produced evidence late in the process.

Question 29

Should the SPSO undergo the kind of rigorous, independent investigation of its work which it applies to BUJs?

Answered.

Question 30

Is there any means by which someone can bring a complaint to the SPSO over service failure in the NHS when records are historical?

Answered

Question 31

Has the SPSO done anything towards recommending improvement in GP re-training, including the adoption of new working practices and treatment regimens with particular reference to cancer?

Last year, we made 684 recommendations in NHS complaints. Almost all of our recommendations are in the public domain. On this particular question, I would highlight my November 2014 newsletter where I reported on 4 cases in full about a delay in cancer diagnosis or issues with the treatment of cancer post-diagnosis. The 17 recommendations I made on these cases included the following:

- urgently review the diagnostic process used for colon cancer, including the use of Multi-Disciplinary Team discussions, taking into account national guidance;
- provide evidence that the actions set out in their Significant Event Analysis have been met, giving consideration to the NHS Education for Scotland Enhanced Significant Event Analysis approach;
- identify the training needs for the practice team relating to the issues raised in this complaint, and reflects these in appraisals and assessments;
- review with the doctor involved in Mrs C's care the SIGN guideline 126;
- ensure, as a matter of priority, the Consultant reflects on the events investigated and discusses all learning points at their next annual appraisal. Including when and how a cancer diagnosis is made and communicated;
- ensure that all the medical staff involved in this case are reminded of the importance of adhering to the General Medical Council guidance on record-keeping;

As the committee will be aware our role is to investigate and comment on individual complaints. We make recommendations to try to prevent problems recurring and this will include recommendations to improve the treatment for others in the future. However, ultimately the role for setting national standards for cancer treatment lie with SIGN and for ensuring the general competence of GPs with the GMC.

Question 32

How are SPSO investigators skills and knowledge kept up to date?

Each individual member of staff has their personal development and training needs assessed on an annual basis. These are considered at regular one to one meetings with managers and we have a significant, formal review point at 6 months to ensure this is on track. We also assess all the personal development plans together at the start of each year to see if there are any themes which indicate the need for wider training and which we can make available to staff generally. To give some few

recent examples we have had training in the office for staff on critical thinking; difficult conversations; the legal requirements of natural justice and also on wellness and personal resilience. We will shortly have training sessions on common mental health problems and on unconscious bias and how to avoid this.

Question 33

Caseworkers have no medical training yet they are tasked with going through medical records in order to submit a request for clinical advice. Guidelines for clinical advisers state that only evidence ‘tagged’ by caseworkers should be looked at:

How can the SPSO deliver ‘natural justice’ for medical complainants following these procedures?

Answered

Question 34

Can the ombudsman explain the procedures used by caseworkers in order to ‘tag’ evidence – why do the SPSO not use the same standards set out by the NHS Code of Practice/Scottish Government on the handling of Medical Records?’

‘What progress has been made by the UK Ombudsman Association in this regard?

We handle records for the purposes of our investigation and records are filed in an appropriate way for this use. Our clinical advisers do handle clinical records in their own fields regularly and are aware of the appropriate and relevant standards for storing and using records in clinical practice. It is worth noting that not only do we not use them for this purpose, we do not hold original clinical records only copies and our records are destroyed after use.

Question 35

Were an SPSO investigator to inform the ombudsman of a conclusion there was a claim of injustice arising from maladministration at the core of a complaint in relation to a Body Under Jurisdiction not following due process would the ombudsman ensure an investigation report was issued?

This question refers to the test in section 5 of the Scottish Public Services Ombudsman (Scotland) Act 2002 which complaints need to pass before we can investigate. This is only one of a number of requirements in the legislation therefore, while it is necessary for someone to claim an injustice as a result of maladministration before we could investigate, it is not sufficient. For example, an employee complaining about actions of their employer could meet this test but we could not look at their complaint because of a restriction in schedule 4 which means I cannot look at employment-related complaints.

If a complaint meets all the requirements we will usually investigate and report. There are some limited, cases where we consider that, even although all the tests have been met it would not be a proportionate or reasonable use of our resources to investigate. We have recently approved updated guidance on this and this would

cover cases where for example the organisation had already upheld the complaint and taken action or the injustice alleged was minor and an investigation would be a wholly disproportionate use of a public resource. When we make such decisions, the person is informed of the reasons why and they can ask for that decision to be reviewed.

Question 36

Can the SPSO investigate complaints about HMIE/Education Scotland inspection reports? If not who can?

Answered

Annex C Email response from Mario Hook, the Gibraltar Ombudsman in relation to question 21

Dear Jim

I refer to our telephone conversation earlier today.

I believe that you are being asked why the Scottish Ombudsman cannot achieve the high satisfaction rates that the Gibraltar Ombudsman achieves.

My office works very hard in order to provide a service commensurate with modern day expectations. The customer is always at the center of our attention and we ensure that customers are kept updated of our investigations. Where possible, we involve them in our investigations by asking them into our offices and seeking their comments on replies to our inquiries from the entity being investigated. Of course this is quite achievable in a small place such as Gibraltar.

We seek our customers' views as to our performance by sending survey cards on a regular basis to all those who visit our offices. We also conduct annual satisfaction surveys and additionally we go out into the streets and ask people, who have not necessarily come into contact with us questions such as whether they have heard about our service, if they know how to contact us and whether they would make use of our service if ever the situation arises.

Of course, you already know about our Annual Report distribution day. This is perhaps our main annual awareness event, which gives us the opportunity to meet all and sundry outside our Parliament building.

In respect of the question being posed, I am of the opinion that the question is incapable of being answered in any reasonable manner without extensive background information as to the environment in which we operate here in Gibraltar I am also of the opinion that the comparison simply does not arise.

Gibraltar is a small jurisdiction with a total surface area is seven square kilometers and a population of about 30.000 inhabitants. In respect of the Ombudsman, in all probability we are the smallest of all Ombudsman offices across Europe. This in itself should be enough to dispel any notion of a reliable comparison.

Whilst it is the norm for Ombudsman offices to receive complaints via mail in its many forms, in our office (despite being capable to receive complaints via any form such as mail, e-mail, Skype, on-line complaint form, etc.) the traditional manner of lodging a complaint is in person. Our offices are in the center of town and are of easy access.

Without wishing to appear boastful (and in the humblest of expressions) I can safely state that I am extremely well known in Gibraltar. It is not uncommon for me to be stopped whilst out in the street, beach or even church by someone who needs assistance from the Ombudsman. I cherish such opportunities and find it extremely gratifying to be able to assist

I believe that perhaps I am the only Public Services Ombudsman who meets almost all complaints and without doubt the only one who is in first names terms with its customers.

Without in any manner wishing to belittle our efforts to ensure that those seeking our assistance receive the best possible service, all the foregoing plays an important part at the time of seeking satisfaction surveys.

I would like to assure you that I am available to whomever wishes to contact me or visit our offices in order to further explain the environment in which we operate and our modus operandi.

Yours sincerely

Mario M Hook
Gibraltar Public Services Ombudsman

6 January 2015
Gibraltar