

LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

AGENDA

31st Meeting, 2006 (Session 2)

Tuesday 5 December 2006

The Committee will meet at 2 pm in Committee Room 5.

1. **Subordinate Legislation:** Tavish Scott MSP (Minister for Transport) to move S2M-5143—

Tavish Scott: The Draft Bus User Complaints Tribunal Regulations Revocation Regulations 2006— That the Local Government and Transport Committee recommends that the draft Bus User Complaints Tribunal Regulations Revocation Regulations 2006 be approved.

2. **Petition PE758:** The Committee will take evidence on the issue of home safety officers from—

Lewis Macdonald, Deputy Minister for Health and Community Care, David Stone, Senior Medical Officer, John Froggatt, Branch Head, Public Health and Substance Misuse, Public Health Team and Annette Stuart, Policy Officer, Public Health and Substance Misuse, Public Health Team.

3. **Scottish Public Services Ombudsman:** The Committee will take evidence from—

Alice Brown, Scottish Public Services Ombudsman and Lewis Shand Smith, Deputy Public Services Ombudsman.

4. **Prostitution (Public Places) (Scotland) Bill (in private):** The Committee will consider a draft of its Stage 1 Report on the Prostitution (Public Places) (Scotland) Bill.

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Agenda Item 1

Covering note on The Draft Bus User Complaints Tribunal Regulations Revocation Regulations 2006 [LGT/S2/06/31/1](#)

The Draft Bus User Complaints Tribunal Regulations Revocation Regulations 2006 [LGT/S2/06/31/2](#)

Agenda Item 3

Submission from Scottish Public Services Ombudsman [LGT/S2/06/31/3](#)

Agenda Item 4

Draft report on Prostitution (Public Places) (Scotland) Bill [LGT/S2/06/31/4](#)
[private]

Agenda item 1

**Local Government
and Transport
Committee**

5 December 2006

SSI Cover Note For Committee Meeting

SSI title and number: The Bus User Complaints Tribunal Regulations Revocation Regulations 2006, (SSI 2006/draft)

Type of Instrument: Affirmative

Meeting: 5 December 2006

Date circulated to members: 13 November 2006

SSI drawn to Parliament's attention by Sub Leg Committee: No

Purpose: The purpose of this instrument is to revoke the Bus User Complaints Tribunal Regulations 2002. The functions of the Bus User Complaints Tribunal have been conferred on the Public Transport Users' Committee for Scotland by virtue of the Public Transport Users' Committee for Scotland Order 2006.

The Bus User Complaints Tribunal Regulations Revocation Regulations 2006, (SSI 2006/draft)

1. The Committee asked the Executive two questions on this instrument. Firstly, the Committee asked for confirmation that no transitional provisions are required in relation to the staff of the Tribunal and secondly, for an explanation of the absence of the word "Scotland" from the title of the instrument.
2. The Executive, in its response printed in Appendix 1, confirms that transitional provisions are not required as no staff are employed by the tribunal. The Executive also provides a full explanation for the second question in relation to the title of the instrument.
3. **The Committee is content with the Executive's response to these matters.**

APPENDIX 1

The Bus User Complaints Tribunal Regulations Revocation Regulations 2006, (SSI 2006/draft)

1. On 14th November 2006 the Committee asked the Executive for an explanation of the following matters:

“(a) To confirm that no transitional provisions are required in relation to the staff of the Tribunal.

(b) To explain the absence of the word “Scotland” from the title of the instrument.”

The Scottish Executive responds as follows:

2. The Executive confirm that the Tribunal does not employ staff and therefore no transitional provisions are required in this respect.

3. The regulations being revoked (the Bus User Complaints Tribunal Regulations 2002) do not contain Scotland in the title and we accordingly considered it would be preferable to be consistent with that approach in the naming of this instrument.

30 November 2006

**Briefing for the Local Government and Transport Committee
Ombudsman Professor Alice Brown and Deputy Ombudsman Lewis Shand
Smith**

Deputy Ombudsman Lewis Shand Smith leads in the local government sector. We are pleased to have this opportunity to update the Committee on the work of the SPSO since our last meeting on 22 November 2005.

Background and jurisdiction

The SPSO was established in 2002 and replaced three previous Ombudsman services, including the Local Government Ombudsman for Scotland. We are empowered to investigate individual complaints that maladministration or service failure have caused hardship or injustice. The SPSO Act is available at:

<http://www.opsi.gov.uk/legislation/scotland/acts2002/20020011.htm>

Not only local authorities, but almost all bodies providing public services in Scotland are under our jurisdiction, ranging from all parts of the NHS to Registered Social Landlords (RSLs). Our remit includes the Scottish Executive and its agencies, the Scottish Parliamentary Corporate Body and the Enterprise Network. Colleges and Universities came under our remit in October 2005.

The Convener of Waterwatch Scotland has his own team of complaints investigators, but he and the Water Industry Commission are under our jurisdiction. Similarly, we can take complaints about bodies such as the Care Commission, Audit Scotland and the Freedom of Information Commission. Under the Police, Public Order and Criminal Justice (Scotland) Act, Police Boards will no longer be under jurisdiction when the Police Complaints Commissioner for Scotland is established. The Commissioner will be within our jurisdiction as will the Scottish Commission for Human Rights when that office is established.

1. Enquiries and Complaints about Local Authorities

The numbers

As our Annual Report statistics illustrate, during 2005–06 we received 949 enquiries (out of a total of 1974) and 931 complaints (out of a total of 1724) about local authorities. This accounts for 48% of total enquiries and 54% of total complaints received by our office. In the first six months of this year, we received 541 enquiries and 516 complaints about local authorities, an increase of 14% and 11% respectively compared with the figures for 2005-06. Local authority complaints are almost all about councils, although they also include any about other bodies such as National Parks.

Members may be interested to know that in addition to the statistics in our 2005-06 Annual Report, we have a significant amount more data now available on our website. This includes some information in which members expressed an interest at the meeting last year, such as the number of complaints about each council and the outcomes of the complaints. The link to the website statistics is:

<http://www.spsso.org.uk/statistics/index.php>

Earlier this year, we issued an Annual Letter to the Chief Executive of every council, providing details of enquiries and complaints about their council in 2005–06. We expressed the hope that in reviewing the council's performance they would find the statistics and comments a useful addition to other information they hold highlighting how people perceive or experience council services.

General issues arising from complaints

We are concerned that we see a large number of complaints that could – and, in our view, should – have been resolved by the body when the complaint first arose. When these relate to minor issues, it seems to us disproportionate that the Ombudsman should investigate such concerns. We accept that a small number of complainants will always want to come to the SPSO, but we do believe there is work to be done to improve bodies' own complaint handling, so that almost all cases are resolved locally. For this reason, the primary focus of the office activities that we call Outreach is preventative work, and we outline below our strategies for supporting public bodies in effective complaint handling.

A common cause for concern in many complaints in all sectors continues to be delay and there are also continuing issues about the provision of good, relevant and timely information.

Premature complaints

The statistics also show that 49% of complaints about local authorities determined last year were premature, that is they came to us before the complainant had completed the internal complaints process. Wherever possible, we try to resolve such complaints, often by contacting the body complained about to see if informal resolution is possible.

We have conducted a small study to find out why so many people bring their complaint to us at the wrong stage, and also what happened to their complaint when we advised them to go back to the body. Results of this research will be available in the New Year, and may inform a wider piece of research that will help us develop strategies we could adopt to reduce the high number of premature complaints.

Subjects of Local Authority Complaints

The largest single subject of local authority complaints is Housing, followed by Planning. The next largest subject is Finance (these are primarily Council Tax issues), then Social work and then Roads. The largest group of complaints in connection with local authority roads relate to parking and maintenance and repair of roads.

Housing

As was the case last year, the highest three categories for housing complaints were Repairs and maintenance, Applications/allocations, and Neighbour disputes/Anti-social behaviour. Enquiries and complaints about RSLs increased slightly in 2005–06, in part reflecting large-scale stock transfer issues. SPSO staff are kept up-to-date about these issues and we are monitoring the impact on our work.

Planning

The handling of planning applications was the second highest category of local authority complaint in 2005–06. Many complaints about planning are about decisions rather than process. We do not have the power to overturn decisions, nor can we question the merits of a decision made without maladministration.

We contributed to the consultation on the Planning Bill (now Act) and generally welcomed the thrust of the proposals. We did, however, identify particular areas of practice that might lead to new types of complaints to our office. These include:

- consultation and community engagement at all stages and levels
- complaints by developers after appeals to the authority
- complaints by third parties after decisions in favour of development
- neighbour notification
- good neighbour agreements
- enforcement
- conduct of hearings
- definition of 'community'

Ministers have the power to investigate an authority regularly departing from Local Development Plan. This is something we can also consider and report on if, based on complaints investigated, we suspect systemic failure. It will be necessary for us to agree protocols with the Scottish Executive on this, and on sharing information with those carrying out inspections.

Our written evidence about the Bill is available at:

http://www.scottish.parliament.uk/business/committees/communities/inquiries/planning/PL_163_Scottish_Public_Services_Ombudsman.pdf

Education

We receive very few complaints about schools. For a variety of reasons, parents and pupils are unwilling to make complaints to the schools themselves. Many schools do not make it clear that they can. We will be working on this issue with Her Majesty's Inspectorate of Education (HMIE), the Scottish Consumer Council and education authorities.

We are drawing up a Memorandum of Understanding (MoU) with HMIE on closer working and the sharing of information that we are permitted to share.

Social Work

Social Work complaints procedures continue to be a matter of concern. It is clear from consultation with councils that they would prefer a single approach to complaints covering all the services for which they have responsibility. Complainants find Complaints Review Committees frustrating and some councils have difficulty in setting them up. They meet so rarely that training of members and consistency can also be a problem.

Following changes in the handling of health complaints, the social work and health processes are no longer aligned. Where services are being provided jointly this can make it difficult for people wishing to make a complaint.

We are discussing possible changes with the Scottish Executive, and we are also considering a MoU with the Scottish Social Services Council.

2. Reporting

Reports laid before the Parliament represent the most visible part of our reporting activities. However, as we outline above, we also do a considerable amount of work to resolve complaints at an earlier stage.

Members will recall that we introduced a new reporting practice in October last year. Under the revised process we now define every complaint we take on as an investigation. All reports on investigations are laid before the Parliament and we have laid a total of 225 since October 2005, 102 of which were about local government. Of local government reports, we fully upheld 12, partially upheld 30, made no finding on one and did not uphold 59.

The proportion of complaints that we uphold differs across sectors and is related to the subject of the complaint. For example, we uphold a higher proportion of complaints about the NHS than we do about local authority services. Even in cases where we do not uphold a complaint, we may make recommendations for improvement to the public body.

Issues arising from Reports

The reason for changing our reporting practice was to share more widely the learning from complaints, to improve our own accountability, and that of bodies under our jurisdiction. In monthly Commentaries that accompany the compendium of reports that we lay, we highlight issues and trends that emerge. With reference to local authority reports to date these have included:

- the large number of complaints that we receive that could – and in our view – should be dealt with more effectively by bodies themselves
- poor complaint handling
- SPSO guidance on the need to make a ‘meaningful’ apology
- discretionary decisions and continuous improvement
- commendation of a council for the way they dealt with a housing complaint

Free Personal Care

My most recent, November 2006, Commentary highlights a complaint about Free Personal Care. The complaint illustrated how individual members of the public can suffer when there is disagreement between different public bodies responsible for the implementation and delivery of policy. As the investigation into the individual complaint progressed, it became clear that it has wide-ranging implications, which we have discussed at length with the council concerned, COSLA and the Scottish Executive Health Department.

3. Proposals Progressed

We would like to update members on two proposals that we outlined in our 2004–05 Annual Report.

Apology

Our proposal for legislation to allow for an apology without admission of liability has gathered cross-party support. The health sector has shown particular interest in the proposal, and we have had dialogue with other jurisdictions, especially in Australia

where there is evidence that the introduction of such legislation appears to have contributed to a fall in civil suits and improvement in the culture of complaint handling. British Columbia too recently introduced legislation (remarkably, fitting onto one side of paper), which we are also enclosing for members' interest and which we have discussed with the Justice Minister and others in the Parliament.

Valuing Complaints

This initiative grew out of our proposal for a 'model complaints process'. It was developed with support from COSLA and SOLACE, who contributed to the production of the *Principles of Good Complaint Handling* (see enclosed). Valuing Complaints is a part of our office's guidance for public bodies to help them prevent complaints arising in the first place and deal with them effectively when they do.

It focuses on the cultural elements (such as attitude, behaviour and openness) as well as the technical elements (process, procedures, and so on) of good complaints management. It reflects a key belief that an organisation can only deliver high quality service and lever the benefits of complaints if there is a positive attitude towards complaints and complainants across the organisation.

It deliberately brings complaint management into the realms of good leadership and governance, and in this way links to Best Value. By laying out standards that can be implemented across all public services, the *Principles* establishes both a common approach to process as well as a common philosophy. Over the next months and years, our intention is that Valuing Complaints grows into the definitive source of best practice in Scotland. More information can be found at:

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

So far we have rolled out Valuing Complaints in the local government, health and FE/HE sectors. The second stage, which is a web-based toolkit to help managers implement the Principles, is currently under development. Feedback from the first stage has been overwhelmingly positive.

4. Outreach Activities

As we state above, our Outreach Team are devoted to preventative work, supporting bodies under jurisdiction to stop complaints arising in the first place and helping them deal with them effectively when they do arise. They hold seminars, workshops and training to help bodies handle complaints well and also produce guidance for authorities which is posted on our website.

The Outreach Team is also responsible for gathering information about who complains to us. Our Equal Opportunities Monitoring forms (which we have collected since April 2006) tell us that in terms of ethnicity, age and gender our complainants reflect the makeup of the population (in line with the last census), and we know that the distribution of complainants is relatively even across different parts of Scotland.

Council Visits; Liaison Officer workshops; Housing Conference

We visited every Council in Scotland in 2005-06, meeting all the Chief Executives and most Council Leaders, and finding broad support for our new reporting practice. Where invited to do so, we gave presentations to Councillors and staff. In May we held our annual workshops for council liaison officers (our main point of contact for complainants). This is a forum for sharing experiences, best practice and developments.

In September we jointly held a conference with the Chartered Institute of Housing in Scotland for complaints managers from both councils and RSLs. As housing is the largest subject of council complaints and the highest generator of premature complaints, we have focussed on this sector over the year and produced the first issue of a 6-monthly housing newsletter. At the SPSO-CiH conference, we gave presentations about our investigation techniques, and about valuing complaints, and also used the opportunity to demonstrate joint-working practices with other bodies such as Communities Scotland, the Scottish Information Commissioner, the Care Commission and Audit Scotland. We have MoUs or draft MoUs with all of these bodies.

Issuing guidance to bodies

In response to requests from bodies, we have issued guidance on how to make a 'meaningful' apology and on Section 2(2) (part of the SPSO Act under which bodies can ask the Ombudsman to investigate a complaint under certain circumstances); and on the Ombudsman's recommendations for change and redress. (See enclosed).

5. Looking forward: Issues for the Future

Partnership working

As public services are increasingly delivered by more than one council (waste-disposal and other environmental services, for example), complaints about local authorities are becoming more and more complex. In addition to understanding partnership arrangements, our investigators must also be knowledgeable and flexible in handling complaints about issues such as housing stock transfers and the creation of new bodies which are run by a number of organisations, such as the Forth Estuary Transport Authority.

Public/private/voluntary provision of services

An increasing number of public services are delivered by private and voluntary organisations. The SPSO can consider complaints about services those organisations are delivering which are paid for by a public body – these are defined as 'actions taken by or on behalf of a listed authority' (SPSO Act 2002, section 23 (2)).

Contractual or other commercial transactions

We still have concerns about a lack of clarity over our ability to investigate the administrative processes leading up to the awarding of contracts.

The SPSO Act 2002 Schedule 4 (7(1)) states that the Ombudsman must not investigate 'Action taken in matters relating to contractual or other commercial transactions of a listed authority'. According to the Scottish Executive guidance on the Act 'the Ombudsman will continue to be able to investigate maladministration in the process leading up to contracts or commercial transactions'. However none of the predecessor Ombudsmen could, and counsel's opinion is that the SPSO does not have the powers to do so.

Someone with a contract to provide a service for a Listed Authority has the right to negotiate with the other party or ultimately have a grievance settled by a legal judgement. If, for example, an unsuccessful tenderer has a complaint about the process then they have no route to independent investigation and redress. It is clear that in the consultation process on the new ombudsman service consideration was given to changing the original wording to allow the Ombudsman to investigate

maladministration in the tendering process, but this is not reflected in the wording of the Act. .

This has been a cause of frustration for certain complainants and for us. We have seen cases where there has been maladministration and injustice, but our hands are tied. A very simple amendment to paragraph 7 of Schedule 4 would allow for such maladministration to be capable of investigation by the Ombudsman.

Human Rights and Application of European Legislation

It is evident through our contact with complainants that the general public are increasingly aware of their 'human rights' (and this is likely to increase with the setting up of the offices of the Scottish Commissioner of the Commission for Equality and Human Rights and the Scottish Commission for Human Rights). As a recent Amnesty International Report¹ on Scottish public bodies revealed, awareness of human rights legislation in the sector is very low. When we investigate a complaint, we are obliged to check whether bodies have considered the relevant legislation – including about human rights – in coming to a decision. We look forward to working with the new human rights bodies to help improve the sector's understanding of the legislation.

Executive Scrutiny and Legislative Review

We welcome the Crerar review and hope that our contribution will provide insights into the service user's position as well as encourage policy makers to consider the design principles that we have long espoused. In our evidence to the Justice Committees that examined the Bills to establish a Police Complaints Commissioner for Scotland and Scottish Commissioner for Human Rights, we emphasised our view that design principles should be built in when considering the establishment of new bodies or changes are being made to the remit of existing organisations.

Our evidence is available at:

<http://www.scottish.parliament.uk/business/committees/justice2/reports-06/j2r06-02-vol02-04.htm#15>

<http://www.scottish.parliament.uk/business/committees/justice1/reports-06/j1r06-01-vol02-02.htm#3>

We were even more explicit about the design principles in our evidence to the Finance Committee's Inquiry into Accountability and Governance, and suggested six 'design principles' for the Committee, and others, to consider:

1. *Clarity of Remit*: a clear understanding of the office-holder's specific remit
2. *Distinction between functions*: a clear distinction between different functions, roles and responsibilities including audit, inspection, regulation, complaint handling, advocacy
3. *Complementarity*: a dovetailing of jurisdictions creating a coherent system with appropriate linkages with no gaps, overlaps or duplication
4. *Simplicity and Accessibility*: simplicity and access for the public to maximise the 'single gateway'/'one-stop-shop' approach
5. *Shared Services*: shared services and organisational efficiencies built in from the outset
6. *Accountability*: the establishment of clear, simple, robust and transparent lines of accountability appropriate to the nature of the office

¹ http://www.amnesty.org.uk/uploads/documents/doc_17149.pdf

For more, see:

<http://www.scottish.parliament.uk/business/committees/finance/papers-06/PublicServiceOmbudsman.pdf>

We support the Parliament's approach to post-legislative scrutiny and we feel there is a strong case for revisiting our founding legislation. For example, when new bodies are established by or under enactments, such as the Office of the Scottish Road Works Commissioner, Transport Scotland and the Air Discount Scheme, there is scope for confusion about whether they fall within jurisdiction. When set up, the latter two bodies did not include information about the general public's right to make complaints to us. We are working with the Executive to put measures in place to ensure that we learn about new bodies when they are set up, and that those bodies are made aware of their statutory obligation to publicise the SPSO as the 'last resort' in their complaints process.

Informing MSPs and Councillors

In preparation for the May 2007 elections, the Outreach Team will prepare packs for MSPs and Councillors to inform them about our office. We recognise that MSPs and Councillors are often the first point of contact for members of the public who have concerns about a service.

Conclusion

We believe that we can and do add value in improving public services in Scotland and contributing to better administrative justice. We welcome the views of the Committee and look forward to discussing our proposals with you in further detail.

Encs. Annual Report
Apology guidance note
Redress policy
Section 2 (2) Requests
Valuing Complaints: Principles of Good Complaint Management
British Columbia legislation to allow for Apology without fear of litigation

Annex

British Columbia Apology Act

Apology Act [SBC 2006] CHAPTER 19

Contents

Section

- 1 Definitions
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Definitions

- 1 In this Act:

"**apology**" means an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit or imply an admission of fault in connection with the matter to which the words or actions relate;

"**court**" includes a tribunal, an arbitrator and any other person who is acting in a judicial or quasi-judicial capacity.

Effect of apology on liability

- 2 (1) An apology made by or on behalf of a person in connection with any matter

(a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter,

(b) does not constitute a confirmation of a cause of action in relation to that matter for the purposes of section 5 of the Limitation Act,

(c) does not, despite any wording to the contrary in any contract of insurance and despite any other enactment, void, impair or otherwise affect any insurance coverage that is available, or that would, but for the apology, be available, to the person in connection with that matter, and

(d) must not be taken into account in any determination of fault or liability in connection with that matter.

(2) Despite any other enactment, evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any court as evidence of the fault or liability of the person in connection with that matter.

Commencement

- 3 This Act comes into force on the date of Royal Assent. (**May 18, 2006**)

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