

Scottish Government submission of 26 October 2022

PE1964/A: Create an independent review of the Scottish Public Services Ombudsman

Thank you for your email of 7 September 2022 in which you requested the Scottish Government's written response to the issues raised in petition PE1964. Included below is information that may assist the Committee in considering the petition.

The Petitioner, Rachel Lowther on behalf of Accountability Scotland, has called upon the Scottish Parliament to urge the Scottish Government to create an independent review of the Scottish Public Service Ombudsman (SPSO), in order to

- Investigate complaints made against the SPSO,
- Assess the quality of its work and decisions, and;
- Establish whether the current legislation governing the SPSO is fit for purpose.

In considering the terms of the Petition, we are of the view that due to current resource constraints, the independent nature of the Ombudsman and the Parliament's role in scrutinising the work of the Ombudsman, we do not intend to take forward an independent review in the near future. The background information and current considerations which have informed this decision is included below. We will however keep this matter under review and should circumstances change, be content to reassess our position.

Background information

The functions of the SPSO, and the ways in which those functions are to be delivered, are set out in the Scottish Public Services Ombudsman Act 2002 ("the 2002 Act"). The SPSO investigates complaints made about public authorities in Scotland, where these fall within the remit set out in that Act.

The Scottish Parliamentary Corporate Body (SPCB) funds the SPSO and the SPSO's budget forms part of the SPCB's overall budget.

However, as an independent officeholder, the SPSO is not subject to the direction or control of the SPCB or any member of the Scottish Government (SG) or Scottish Parliament concerning its functions.

Current safeguards

SPSO complaints process - Complaints about Service

The SPSO operates a 2-stage complaints process internally. Stage 1 is an opportunity for early resolution; where this does not resolve a complaint, or early resolution is not appropriate, it will be dealt with under stage 2, where the complaint will be investigated by management within SPSO.

Should the above process fail to resolve a complaint the complainant may ask the Independent Customer Service Complaints Reviewer (ICSCR) to consider it. The ICSCR has the responsibility of independently reviewing service complaints in relation to SPSO.

The ICSCR is a non-statutory role established by SPSO on 1 October 2007 to provide assurance that it has robust arrangements for ensuring that service complaints are dealt with appropriately and that service users have the opportunity for review by someone outside of the organisation.

The ICSCR is responsible for investigating and responding to complaints about the service provided by SPSO in the carrying out of its statutory functions. The ICSCR role is limited to complaints about the service SPSO provides, including failure to meet SPSO's service standards. Matters related to SPSO's decisions or basis for those decisions (including evidence gathered to make that decision) are not issues within the ICSCR remit. There is a separate review process for disagreements with SPSO decisions, covered below.

Where they have examined a matter, the ICSCR is required to issue a final report to the complainant and the Ombudsman.

In April each year, ICSCR is required to produce a formal report about their work on complaints in the previous year, which is published on SPSO website. All SPSO decisions are posted on SPSO website and ICSCR decisions are reflected in SPSO's quarterly and annual reporting.

Complaints about decisions made by the Ombudsman

The SPSO criteria for complaints against decisions set out that disagreement with a decision will not be grounds for review.

If a party to a complaint is unhappy with the decision of the Ombudsman, there are very specific circumstances where a decision can be reviewed. A decision will only be changed if a party;

- Sends new information, and/or
- Demonstrates information that the Ombudsman used was wrong, and/or
- Demonstrates that the Ombudsman made a mistake.

And

- The above had an impact on the original decision.

The Ombudsman cannot change a decision simply because someone disagrees with it and if a public report has been issued then the review rights will not apply.

External review / safeguards

Audit Scotland carries out annual reviews of the SPSO, and publishes detailed reports on its website. The most recent of these was issued on 3 September 2021 and can be accessed on the Audit Scotland website - Scottish Public Services Ombudsman annual audit 2020/21 | Audit Scotland ([audit-scotland.gov.uk](https://www.audit-scotland.gov.uk)). This report covers predominantly financial sustainability however it includes an action plan for improvement, which contains suggestions for short to medium term improvements.

The SPSO publishes an annual report and lays its strategic plan before Parliament, allowing for further scrutiny.

Current Considerations

There are continuing delays of up to 10 months in allocating a new complaint (about a regulated body) to a Complaints Reviewer, however the SPSO advise that this is the maximum time taken and that many complaints are allocated sooner than this. We understand that the Scottish Parliament Corporate Body has agreed to provide additional funding to assist in dealing with this backlog.

Response to the Petition for seeking an Independent Review of SPSO

In terms of considering if an independent review is required on the terms suggested by the Petitioner, we have looked at current arrangements as outlined above.

We have taken into account that the SPSO is required to lay before the Scottish Parliament each year a general report on the exercise of its functions, to lay every four years a Strategic Plan setting out how it proposes to perform the Ombudsman's functions during the 4 year period, and that its work is scrutinised on an annual basis by the appropriate Parliamentary Committee. The SPSO must also, after conducting an investigation, lay a copy of the report produced before Parliament in accordance with the 2002 Act, and if such a report finds that the person aggrieved has sustained injustice or hardship may also produce a special report which must be laid before Parliament.

We are aware of the Ombudsman's request for legislative amendments to permit the SPSO to carry out own initiative investigations and for a small number of technical changes. The ability of Ombudsman to carry out these types of investigation would represent a fundamental change in the nature of its role and would require primary legislation to put into effect. Given competing demands on resource, we have opted not to take forward work in this area at present.