

Scottish Public Services Ombudsman submission of 19 January 2023

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

Scrutiny

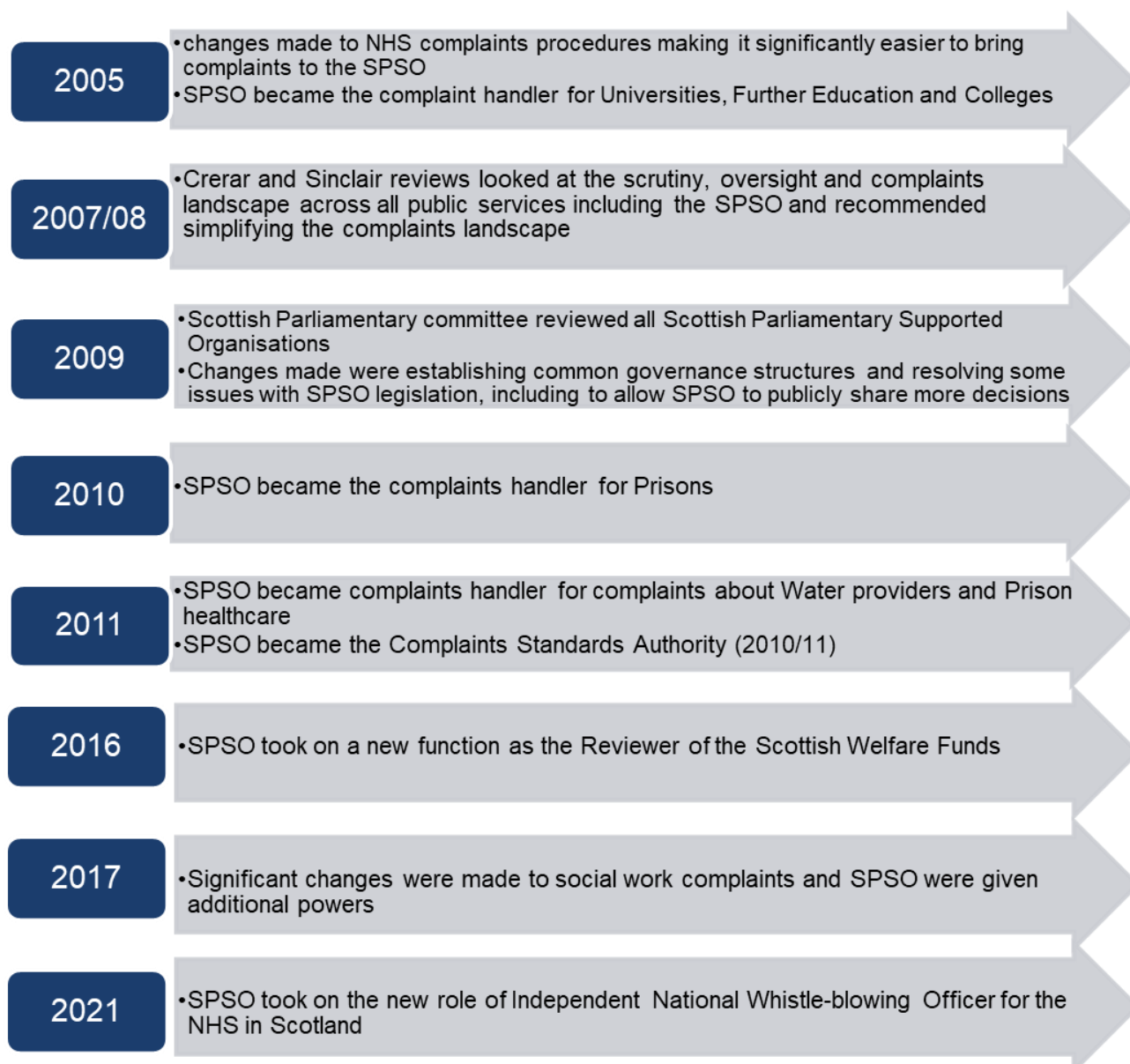
1. SPSO is scrutinised in several ways
 - 1.1. corporate performance
 - 1.2. legislative scrutiny and review
 - 1.3. decision making on complaints about Scottish public services

Corporate performance

2. SPSO are accountable to Parliament for operations generally and appear regularly before the Local Government and successor committees to account for performance.
3. The SPCB set our budget and take an active interest in our governance structures (see below).
4. SPSO are subject to other statutory accountability structures (e.g. FOI/EIRs/DPA, SPFM and Audit Scotland). We have also established an Advisory Audit Board, internal audit arrangements, and a risk-based quality assurance programme along with our review process monitors the quality of decision-making.
5. SPSO takes complaints about our own service (CSCs) based on model complaints handling procedures. SPSO established a voluntarily non-statutory independent customer service complaints reviewer (ICSCR). This gives service users an independent final stage, that can consider complaints that we have not met our service standards.

Legislation

6. SPSO's role and purpose has been reviewed and incrementally changed as outlined in the diagram since it was established in 2002. At key points, SPSO's legislation was scrutinised by Parliament.



Decision-making

7. SPSO is the final, independent stage of the complaints procedures for many public organisations. Our jurisdiction is set out in legislation, requiring public service complaints (PSCs) and whistleblowing complaints to meet certain tests before we can consider them. This both limits our ability to consider some matters and empowers us in some areas to consider professional judgement.

8. Decisions are published online allowing us to share our decision-making openly. There are several thousand such decisions available (either in summary or as full reports). They demonstrate publicly how we assess evidence and make decisions.
9. We also publish statistics which explain the outcome of complaints.
10. SPSO decisions, while independently taken, are (in common with all public bodies) subject to the supervisory jurisdiction of the courts.
11. Decision-making on PSCs is the Ombudsman's (independent) responsibility and she remains legally accountable for decisions and their quality. SPSO's statute at schedule 2, para 2 (2) protects that independence.
12. Independence of decision-making is a key pillar of the Venice Principles adopted by the UN General Assembly through Resolution A/RES/75/186 in 2020 on "*The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law*".
13. The 25 Venice Principles (the ombudsman equivalent of the Paris Principles), are the recognised global standard for ombudsmen institutions. They stress the importance of independence of the institution and the need to establish it as a key part of constitutional accountability structures.

Need for review of SPSO legislation?

14. SPSO accept the need for a general legislative review; something we have actively sought.
15. We would have significant concerns about a review of individual decision-making as this would undermine the very independence that makes the Ombudsman, an ombudsman (including international recognition under the Venice Principles).
16. We have been calling publicly for amendments to the SPSO Act 2002, to update it in line with wider changes in ombudsmen jurisdictions. E.g. ensuring SPSO
 - 16.1. meet international standards
 - 16.2. are comparable to other UK institutions

- 16.3. can leverage greater value from scarce resources
 - 16.4. can focus on the vulnerable, particularly those most reliant on services and least likely to complain; a voice for the voiceless
 - 16.5. have improved information-sharing powers to drive holistic improvement.
17. SPSO intended to report to Parliament but indicated to the LGHPC recently that this work had paused in light of significant policy matters before Parliament or likely to be so in coming years. Including
 - 17.1. National Care Service Bill
 - 17.2. Patient Safety Commissioner Bill
 - 17.3. mental health law review
 - 17.4. plans for a human rights framework bill and
 - 17.5. a learning disability, autism and neurodiversity Bill.
 18. Their cumulative impact means SPSO's operating landscape and SPSO's legislation itself, may be different by the end of this session. Given that, SPSO decided it would be sensible to postpone a report until the impact of those changes is better understood.

Specific questions

Handling of evidence

19. SPSO's investigations manual (updated regularly in light of learning) sets out our approach to evidence.
20. Section E9 has been extracted in full and sent with this submission. E9 includes seeking and identifying evidence; weighing evidence; avoiding bias; and recording decisions.
21. Other sections cover related matters, e.g. seeking and using expert advice (we can furnish the Committee with a copy).

Relationship between customer service complaints (CSCs) and reviews

22. CSCs and reviews are separate processes as they consider distinct matters. Both are voluntary and non-statutory.

- 22.1. CSCs consider complaints about service against published service standards
- 22.2. reviews consider decision making on (Public Service) complaints where decisions are made by officers under the Ombudsman's delegated authority. The Ombudsman reviews decisions personally at either complainants' or public bodies' request. Reviews can consider and change delegated decisions.
23. It is possible to engage with the review process whether or not a CSC has been made or upheld/not upheld (and vice-versa).
24. The CSC process has an additional scrutiny stage where complainants can escalate a CSC to the Independent Customer Service Complaints Reviewer. The ICSCR also conducts random file reviews to support internal learning.
25. CSC data is reviewed quarterly and published in annual reports, including learning from complaints.

Budget

26. SPCB set SPSO's annual budget which is also considered by the Finance and Public Administration Committee as part of the scrutiny of the Scottish Parliament's budget.
27. SPCB indicate in advance of each annual budget the parameters within which they expect SPSO to operate. In practice this means we have not had a real increase in our baseline budget for PSC casework for several years, resulting in significant resourcing challenges.
28. SPCB ensure we meet statutory and contractual requirements relating to staff costs so we have been able to make annual pay offers in line with those for Parliamentary staff. SPCB also provides contingency funding for one-off costs; e.g. maternity leave, ICT projects (subject to a business case) and significant legal costs.
29. Contingency funding (additional to but not part of our baseline funding) means that our budget can vary year-on-year.
30. The most significant annual differences are the result of taking on new functions/projects. E.g. compared to four years ago, our 2022—23 budget includes

- 30.1. funding for the setting-up of the INWO function from 2018—19 and ongoing funding from 20—21. This explains the main increase in funding (circa £825,000) in the review period 2019—20 and 2020—21
- 30.2. in 2022—23 SPSO received temporary funding for additional project/temporary functions
- Self-Isolation Support grant reviews (£39,000). This project commenced in 2020-21 and will be phased out this year with the end of the self-isolation support grant
 - child-friendly complaints development (£156,000). This represents year two of a three-year project to develop child-friendly complaints procedures for Scottish public services
 - temporary staff for covid-recovery (£200,000). This is for additional staff to cover maternity contracts and long term absence, enabling us to address the backlog of unallocated cases accumulated during covid (more information is in our 2021—22 Annual Report).

Shared services.

31. SPSO holds the building lease for ourselves and three other parliamentary-supported organisations. As part of that, all costs related to the running of the building are in the SPSO budget.
32. From 2022—23 we provided shared support services to the Biometrics Commissioner (e.g. finance and HR support).
33. Shared service provision accounts for around 10% of our annual budget.

A summary of the SPSO decision-making tool for complain investigations is available on its website: [Decision-making tool for complaint investigators | SPSO.](#)