

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2161](#): Extend the time period for complaints through the Scottish Public Services Ombudsman for neurodivergent people to two years, lodged by Ivor Roderick Bisset

The petitioner is calling on the Scottish Parliament to urge the Scottish Government to amend the Scottish Public Services Ombudsman Act 2002 to allow for a two-year complaints period for people with cognitive disabilities.

They had applied for a time extension from the Scottish Public Services Ombudsman (SPSO), believing that they would get a reasonable adjustment under the Equality Act 2010, because the petitioner is neurodivergent. However, this request was rejected.

The petitioner suggests that the time limit for complaints creates a barrier to justice.

Scottish Public Services Ombudsman (SPSO)

The [SPSO](#) has four statutory functions under the Scottish Public Services Ombudsman Act 2002:

1. The final stage for complaints about most devolved public services in Scotland including councils, the health service, prisons, water and sewerage providers, Scottish Government, universities and colleges.
2. Specific powers and responsibilities to publish complaints handling procedures, and monitor and support best practice in complaints handling.
3. Independent review service for the Scottish Welfare Fund (SWF) with the power to overturn and substitute decisions made by councils on Community Care and Crisis Grant applications
4. Independent National Whistleblowing Officer for the NHS in Scotland (INWO) – from 1 April 2021 – final stage for complaints about how the NHS considers whistleblowing disclosures and the treatment of individuals concerned.

Time limit for making complaints to SPSO

The SPSO website provides details of [time limits](#) for making complaints.

Generally, the time limit is 12 months from the incident, but the SPSO has discretion if there are 'special circumstances.' This is not defined in the [Scottish Public Services Ombudsman Act 2002](#). [Section 10](#) of the Act covers time limits and procedures for complaints.

The SPSO website says that they may take complaints beyond the 12-month time limit in special circumstances, which include whether the complainant can show that they had good reason to delay because of health or personal difficulties, “such as a defined disability (physical or mental) that impacts upon daily living tasks and functioning.”

The SPSO does not normally consider there to be special circumstances where:

- the delay has arisen because of action or inaction on the part of the complainant, unless they can show that there is good reason for this
- the complainant knew they had cause to complain but chose to delay making the complaint to the public body (for example, where they chose to use a route other than the body’s complaints process to take the matter forward).

If someone does submit a complaint outside the 12-month period, they must send it with a clear explanation of why the complaint was delayed in reaching the SPSO.

The SPSO website states:

“It is for the SPSO to decide whether the specifics of the case mean that there are ‘special circumstances’.”

Equality Act 2010

Disability definition

The SPSO may consider complaints outside the time period if the individual has a ‘defined disability.’ There are no details given of what this might include, except that it can be physical or mental and impacts on daily living tasks and functioning.

This description is similar to the disability definition in the Equality Act 2010. Section 6 of the Act defines disability as a physical or a mental impairment which has a substantial and long-term impact on a person’s ability to carry out normal day to day activities.

Three medical conditions come under the definition of disability automatically upon diagnosis: Cancer, HIV infection, and Multiple Sclerosis. A person is also “deemed to have a disability” where that person is “certified as blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist.”

Other disabled people would have to show that they meet the disability definition.

Disability Discrimination

There are six types of [disability discrimination](#):

- direct discrimination
- indirect discrimination
- failure to make reasonable adjustments
- discrimination arising from disability
- harassment
- victimisation.

The petitioner refers to the 'reasonable adjustment' duty. This duty requires service providers and employers to make sure that disabled people can access jobs, education and services as easily as non-disabled people. Failure to meet the duty is one type of disability discrimination.

Time limits for discrimination claims

It may be helpful for comparative purposes to show the time limits for claims of unlawful discrimination.

The Equality Act 2010 provides protection against unlawful discrimination to nine protected characteristics, including disability.

If a service user wants to bring a claim against a service provider under the Equality Act, they must start court action (sheriff court) within six months (minus a day) of the alleged unlawful act.

If the claim is outside that time period, the court still has discretion to hear proceedings if it thinks it is just and equitable to do so (s.118(1)(b)).

If an employee, wants to bring a claim against an employer under the Equality Act, they must bring their claim to an Employment Tribunal with three months (less one day) of the alleged unlawful act.

If the claim is outside that time period, the Employment Tribunal still has discretion to hear proceedings if it thinks it is just and equitable to do so (s.123(1)(b)).

Scottish Government

Learning Disabilities and Neurodivergence Bill (LDAN Bill)

In a broader context, it may be helpful to note that the Scottish Government committed to the LDAN Bill in its [Programme for Government 2021-22](#) (September 2021). It said:

“To uphold and protect the rights of people with autism or learning/intellectual disabilities, we will take forward a Learning Disability, Autism and Neurodiversity Bill, with scoping work carried out

in 2021-22. We will also provide an independent advocate for people to secure the protections of such a law, through a Learning Disabilities, Autism and Neurodiversity Commissioner.”

The Scottish Government ran a [consultation](#) (December 2023) and published independent [analysis](#) (August 2024).

The consultation said that ‘Neurodivergent people’ generally refers to: people with learning disabilities, people with learning difficulties such as dyslexia, autistic people, and a wide variety of people whose neurology is different by virtue of ADHD, Fetal Alcohol Spectrum Disorder (FASD), and other conditions.

It is recognised that not everyone is comfortable with the term ‘neurodivergence’, particularly people with learning disabilities. The consultation used the term ‘neurodivergent people and people with learning disabilities’ throughout.

The overarching aims of the Bill include:

- Statutory Strategies for Neurodivergence and Learning Disabilities – while there have been national strategies, there is no legislative requirement for national or local strategies specifically for neurodivergent conditions or learning disabilities.
- Mandatory Training in the Public Sector - there needs to be greater awareness, understanding, and training on learning disabilities and neurodivergence.
- Inclusive communications - sharing and receiving information in a way that everybody can understand.
- Data – better data collection and reporting will enable better understanding of the requirements of people with learning disabilities and neurodivergent people throughout their life and build evidence on whether they are able to realise their rights.
- Independent advocacy – this is one way that people can receive help to understand and access their rights.

Despite strong support for the Bill, which was expected to be in the [Programme for Government 2024-25](#), the Scottish Government said it would publish draft provisions this parliamentary year. Maree Todd MSP, the Minister for Social Care, Mental Wellbeing and Sport [wrote](#) to the Convener of the Health, Social Care and Sport Committee on 4 September 2024 and said:

“It is our intention to publish these provisions in order to seek people’s views on our finalised proposals and how the legislation will be framed.”

The Equalities, Human Rights and Civil Justice Committee held two evidence sessions regarding the delay, on [26 November 2024](#) and [3 December 2024](#).

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12 June 2025

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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