

Briefing for the Citizen Participation and Public Petitions Committee on petition PE1964: 'Create an independent review of the Scottish Public Services Ombudsman', lodged by Rachel Lowther on behalf of Accountability Scotland

Brief overview of issues raised by the petition

The Petition calls on the Scottish Parliament to urge the Scottish Government to create an independent review of the 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.

Background information

The Scottish Public Services Ombudsman (SPSO) is the final stage for complaints relating to most devolved public services. The body also has a role in reviewing decisions made regarding applications to the Scottish Welfare Fund. The Ombudsman is funded by the Scottish Parliament Corporate Body, although it functions independently of the SPCB.

The [Scottish Public Services Ombudsman Act 2002](#) sets out the SPSO's powers and duties which cover three distinct areas of statutory functions:

- 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;
- Specific powers and responsibilities to publish complaints handling procedures, and monitor and support best practice in complaints handling;
- 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. SPSO decisions on SWF matters are binding on councils and must be implemented.

The SPSO also became the independent national whistleblowing officer for the NHS in April 2021.

SPSO budget and resource challenges

The SPSO receives most of its funding from the Scottish Parliament Corporate Body (SPCB). The SPCB budget is scrutinised and approved by the Finance and Constitution Committee, with the following table showing that funding for the Ombudsman has risen over the last 5 years:

	2018-19	2019-20	2020-21	2021-22	2022-23
Funding from SPCB (£,000)	4,707	4,850	5,971	6,236	6,301

Source: [SPCB annual reports](#) and [SPCB submission to Finance Committee](#)

[Writing to the previous Committee in January 2020](#), the Ombudsman stated, “having insufficient resources is an increasing, business-critical risk”. Again, in the [recent submission from SPSO](#) sent to the Local Government Committee in March, the Ombudsman raises the issue of resources and workload:

“Over recent years, the most significant challenges SPSO experienced were rising volumes of complaints cases, with broadly static investigation staff numbers.”

The [2020-21 Annual Report](#) shows that the SPSO employed 71.8 (FTE) members of staff. This compares to 65.2 in 2019-20. Staff numbers have grown with each new jurisdiction added to the Ombudsman’s statutory responsibility, with the focus during 2020-21 being on recruiting for the new Independent National Whistleblowing Office function.

The SPSO and the complaints process

The [SPSO annual report 2020-21](#) provides a summary of the complaints process (see page 24). Once a complaint about a public service has been escalated to the SPSO, the Ombudsman must assess whether the complaint can and should progress.

SPSO reviewers carry out assessments of all complaints to check that the matter is one the SPSO can investigate. For example, reviewers check that the complaint has arrived within 12 months of when the matter happened. They also assess whether or not to prioritise the complaint. In 2020-21, 87% of cases escalated to the Ombudsman were closed at the initial assessment stage. The majority of these were cases which the SPSO decided not to consider further, and one of the main reasons for this was that the Ombudsman felt the complaints had already been well-handled by the public body receiving the complaint.

The Ombudsman received a total of 3,130 complaints in 2020-21 with the two sectors seeing the most complaints being health (34%) and local government (30%). Of the 420 cases that passed assessment stage in 2020-21, and were then investigated by SPSO, 246 were upheld in full or in part. This is equal to 7.7% of all those complaints closed by the SPSO during that year.

Service standards and performance

SPSO publishes the results of customer satisfaction surveys and public body surveys: [Service standards performance | SPSO](#). SPSO annual reports also document customer satisfaction and its internal complaints handling: [Annual Reports | SPSO](#)

How the Ombudsman handles complaints about its own services is set out here: [Our customer service standards | SPSO](#) and [CSCProcedure.pdf \(spsso.org.uk\)](#)

In the 4 years between 2017-18 and 2020-21, the SPSO received 369 complaints about the services it provides. The 2020-21 Annual Report states that

“where a customer remains unhappy with either the decision we make on their CSC or the way we handled it, they can ask the Independent Customer Complaints Reviewer (ICCR) to review our handling of the complaint and the decision(s) we made”.

During 2020-21, 19 service complaints were sent to the ICCR. The Annual Report states:

“The ICCR did not uphold any complaints at first hand this reporting year. Each of ICCR’s decisions resonated with the customer service decisions taken by SPSO on the customer service complaints escalated to her office that ICCR independently determined were also the correct decisions. Four customers had multiple customer service complaints of between two and three separate complaints raised to ICCR....Of the 19 matters referred to ICCR there was no evidence of a service failure or maladministration by SPSO, or a failure by SPSO to effectively handle a service complaint against its customer service standards.”

According to the Annual Report, SPSO has a contract in place with an independent customer complaints reviewer to whom the organisation signposts complainants. More information on the ICCR is available in the ICCR’s [2020-21 Annual Report](#).

Previous Parliamentary activity

The [2002 Public Services Ombudsman Act](#) requires the SPSO to report annually to the Scottish Parliament on the exercise of his or her functions. Most recently, the Local Government, Housing and Planning Committee [held a session with Ombudsman](#), Rosemary Agnew, in March

2022. Session 5's [Local Government and Communities Committee](#) also took evidence most years on the SPSO's annual reports.

SPSO's request for change to legislation

In 2019, the previous Local Government and Communities Committee [asked the Scottish Government](#) about the Ombudsman's request for changes to legislation that would allow it to take complaints in any format, not just in writing. The [Cabinet Secretary for Justice responded](#):

“Whilst we are supportive of the proposals, we are of the view that they could only be delivered by way of an affirmative SSI under section 14(1) of the Public Services Reform (Scotland) Act 2010 (the 2010 Act), which enables Ministers to make any provision to improve the exercise of public functions, having regard to efficiency, effectiveness and economy... due to competing demands and current pressures, there is not, at this time, sufficient resource to progress matters and finalise a way ahead with the SPSO resulting in the desired changes.”

The Scottish Government [subsequently informed the Committee](#) that they had “raised the question with the Public Petitions Committee [in relation to [Petition PE1740](#)] whether this could be an appropriate subject for a Member's Bill or Committee Bill”.

The Committee also asked the Government about changes to legislation that would allow the Ombudsman to carry out investigations at her own initiative, i.e., without requiring an external complaint. Statutory powers are currently that the SPSO cannot investigate a matter in which no complaint has been made. On this matter, the [Cabinet Secretary for Justice responded](#):

“The SPSO has also asked for powers to conduct own initiative ‘Public Value’ investigations, i.e. to be able to undertake an investigation without an individual having made a complaint. This change would require primary legislation to amend the SPSO Act 2002. Giving the SPSO the power to conduct ‘Public Value’ investigations would be a fundamental change to the role of the SPSO. Parliament has previously rejected this request and in my view, there has been no material change in circumstances since that time which would require this decision to be revisited.”

In its recent [submission to the Local Government Committee](#), the SPSO states that “the international community has set new standards and expectations for Ombudsman which have been ratified at UN level”.

Previous Petition

As mentioned above, Session 5's Public Petitions Committee considered [Petition PE1790](#) during 2019 and 2020. Like this current petition, PE1790 was lodged on behalf of Accountability Scotland. This called on the Parliament to

urge the Scottish Government to improve complaints handling in the following ways:

- To allow the Scottish Public Services Ombudsman (SPSO) to take complaints in any format.
- To require bodies under SPSO jurisdiction (BUJs) and the SPSO to permit complainants to audio-record meetings and phone calls and use this as evidence in any subsequent complaint.

Correspondence and Committee discussion relating to this petition is available here: [PE01740: Improving the handling of complaints about public services - Getting Involved : Scottish Parliament](#)

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12/10/2022

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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