

Ariane Burgess MSP
Convener of the Local Government, Housing and
Planning Committee

24 April 2025

Dear Ariane,

SPSO 2023-2024 Performance and six-month update

1. Thank you for the time the Committee has taken considering SPSO's performance in 2023—2024 and the detailed observations provided. In the attached document, I answer the additional questions and respond to some of the key observations.
2. I have taken the opportunity to provide our regular performance update and I have also included statistics for the 2024—25 year which are in the process of being published.

Yours sincerely

Rosemary Agnew
Scottish Public Services Ombudsman



Introduction

3. I would like to start by taking the opportunity to share with the Committee and the incoming Ombudsman, my reflections as I demit office.
4. It is my one significant regret that, I am leaving the office with, for public service complaints, the same legislation that I had on day one. This has been a recurring theme discussed with the Committee, which I have always found to be positive and constructive in relation to the matter. I appreciate you are aware of much of the detail but thought it would be helpful to capture it again, and so have included it later in my response. I am confident my successor will actively pursue those revisions as a key priority.
5. The other legislative area which would be a priority for me, had I still been in office, is seeking a post-legislation review of the whistleblowing legislation. While this has been broadly working as intended, I have outstanding concerns in three key areas.
 - 5.1. The co-design approach of the legislation and hence the Whistleblowing Standards was more focused on Boards, than on primary health services (e.g. GPs, pharmacists, dentists). While it can be made to work for primary care, I question (with the value of learning from experience) whether it is proportionate and would like to explore how Boards could provide a more active role.
 - 5.2. NHS staff remain concerned about speaking up. While I am seeing confidence increasing, it is notable to me that there is still more that we can collectively do. I would urge Government and Parliament to consider whether the INWO should have (and be funded for) a more direct role in taking complaints in the first instance, and referring them on to NHS bodies so that whistleblowers can be confident there is independent oversight of the process from the start. Experience of the monitored referrals we already do indicates that this approach works well and is a good opportunity to remind Boards of their responsibilities, particularly in ensuring confidentiality and support for whistleblowers (and others involved).
 - 5.3. There is room for greater clarity about the relationship between whistleblowing and HR processes; and whistleblowing and the Public Information Disclosure Act (PIDA).
6. I, and the SPSO leadership team, have noted a shift in our operating landscape, particularly in the risks the SPSO is facing and will face. These include the broader pressures on public services which often drive complaint numbers (which are still rising), cyber security and the adoption of digital and AI services. To meet these challenges, SPSO will need to continue to embrace new ways of working and be innovative in our approach. Again, more legislative flexibility that



enables us to work collaboratively with other oversight bodies would be of benefit.

7. There are, of course, things I wish I could have done more of, one of those being further along in stakeholder engagement, including with the third sector and people experiencing vulnerability. We have made significant progress over the last two years but were impacted by the pandemic which slowed down progress.
8. In closing this introduction, I cannot stress enough how much I have enjoyed my time as Ombudsman. The challenges - at times exhausting – have been more than off-set by the rewards of seeing general improvements in complaint handling, and in seeing my colleagues flourish and adapt; and I am grateful for their support. We are a compassionate, hard-working organisation, committed to improvement, and I will not hesitate to recommend to my successor that they listen to and rely on their colleagues' expertise.



2024—2025 Performance update

Public Service Complaints¹

9. **We received 5,021 complaints.**
 - 9.1. This is the first time in our history that we have recorded over 5,000 complaints in a single year. The highest previous figure was 4,895 in 2014—2015.
 - 9.2. The rate of increase was lower than last years record high of 33% but still high at 7% (and 16% higher than 2019—20 our last pre-pandemic year).
 - 9.3. The increase was driven by the health and local authority sectors which both saw a 32% increase. The increase in other sectors was more modest and apart from housing associations, below 10%.
 - 9.4. **We closed 5,208 cases** – this also was a record figure and a 12% increase on last year – demonstrating we are still continuing to improve productivity.
10. **We reduced:**
 - 10.1.1. The number of cases awaiting allocation from **289 to 167** – a **42 % decrease**
 - 10.1.2. The length of time for those cases awaiting allocation (these are cases which don't meet criteria for fast-track for priority allocation) **from 83 to 56 days – a 33% decrease.**

NHS Whistleblowing concerns

11. **We received 132 whistleblowing concerns.**
 - 11.1. An increase of **8%** on last year when we received 122.
 - 11.2. **We closed 140** whistleblowing concerns. An increase of **23%** compared to 114 last year.
 - 11.3. The majority of whistleblowing cases we receive are still from people seeking advice and support but there was also an increase in the cases being taken to initial investigation and investigation from 33 to 47 (**a 43% increase**)

Scottish Welfare Fund crisis and community care grants.

12. **We received 812 reviews. An 8% reduction of compared to last year's total of 886.**

¹ These figures are based on initial analysis and are subject to change.

13. **We dealt with 843.** A 1% reduction compared to the 855 dealt with last year (largely the reflection of reduced volumes).
14. We have been experiencing a reduction in review requests since the peak during the pandemic. This year this gave us the capacity to analyse our data and identified that we were receiving a lower level than anticipated from some local authorities. We have since put in place some targeted support to ensure that the system is accessible across the country.

Evaluation of annual performance 2023—2024

15. The Committee has undertaken the most detailed analysis of our performance to date; thank you for the care taken in doing so. I am mindful that the Committee already have a significant volume of information about our work. In the following sections, I respond to the conclusions and questions in **bold** in the Committee's analysis. While it will fall to my successor, I know that the SPSO can provide further comments and response to much of the key evidence noted in the rest of the document and would be very happy to do so.

International interaction and best practice.

16. SPSO is a member of the Ombudsman Association and the International Ombudsman Institute which opens us up to a wealth of experience across the globe.
17. Collaboration based on the contacts occurs often and it is unusual that we would undertake a major project without some contact with other schemes. I also contribute to their calls for information or input. To give just a few examples:
 - 17.1. I had contact with other public service ombudsman schemes when I introduced call recording – that ranged from consideration of the top-level detail of their policies to how they worded their call messages.
 - 17.2. I used the experience of the Office of the Independent Adjudicator (who deal with colleges and universities in England and Wales) to improve the way I approach handling with difficult behaviour after they reported a successful pilot.
 - 17.3. I collaborated recently with the Northern Ireland Public services Ombudsman and some academics to improving accessibility for vulnerable users.
 - 17.4. As members of the International Ombudsman Institute, I have access to their best practice papers and this office has also sought relevant input when, for example new areas of jurisdiction are being introduced. To give just one example, the New South Wales Ombudsman Office provided very helpful feedback during the development of the whistleblowing function.

18. I meet regularly with the UK Public Sector Ombudsman to discuss common themes and issues, and my colleagues are part of Ombudsman Association special interest groups (e.g. First Contact, Communication and Legal groups). I was approached to submit evidence to the Senedd to inform their review of the Public Sector Ombudsman of Wales' post legislative review (SPSO have subsequently been invited to give evidence in May 2025)

Performance data and customer satisfaction

19. Data is an increasingly vital tool for public services and SPSO is no exception. SPSO's data strategy seeks to ensure we make the best use of the data currently available to us, and that we keep informed of and adapt to using data-based approaches to inform and deliver services (e.g. digital and AI).
20. I have recently published for the first time, local authority data by SIMD and hope my successor will build on the type and volume of data that is made available about the cases we receive. The link to that is here:
<https://www.spsso.org.uk/statistics>
21. There are gaps in our understanding of the drivers behind rising complaint numbers across the public sector and about the impact of complaints which would benefit from greater research. Looking simply at data that we hold, the difference before and after the pandemic is striking. Between 2014—2015, and 2019—2020, we had seen either decreases or modest increases. The largest increase (2019—2020) was only 3% on the previous year. This year we are at a record high and have experienced a 16% increase since 2019—2020.
22. We have anecdotal, and feedback-based indicators as to why this is, but more detailed understanding would enable SPSO to target our engagement and policy resources more effectively. Unfortunately, there are only limited resources available for such work, both within this office and academically (and I am not funded for it). I encourage public bodies (and sectors) to also seek to understand their data better and more holistically.
23. Customer satisfaction or experience data is important, but progress in this area stalled. This was because of the direct impact of the pandemic on how service users were able to interact with services and complaints and then, because of knock-on effect of increased volumes and the backlog of unallocated cases, on how we were able to deploy our limited resources.
24. One of the key elements of this work is customer survey data (i.e. customer feedback). While this is only one part of the broader picture of user experience that we are developing, it was especially pleasing that we were able to test different approaches to how we get and use feedback. We are currently piloting a survey for how we get feedback on public service complaints which, in the way it is asking more customers at more points is broadly in line with the Committee's feedback and recommendations. It is not an external survey, which was considered but found to be prohibitively expensive.

25. The new approach is reaching the end of its first year, but early indicators are that there is still an underlying challenge in getting take-up. There will be a clearer picture once the first-year data has been analysed but we are still seeing a lower percentage of responses than we'd hoped. I will leave my successor with the task of considering the next steps but I wonder whether the approach needs a more fundamental refresh, particularly as more vulnerable users are less likely to complete surveys and as people generally are used to feeding back in a more rapid and fast-paced way than a traditional survey.

Cases reaching investigation stage – pre-investigation work.

26. As I have explained to the Committee, in terms of my Act, an investigation has a particular meaning, that is not necessarily consistent with the everyday understanding of the word. Technically, what the average person may think of as investigation is pre-investigation in terms of the Act. In reality, the early decisions on jurisdiction and whether to progress a complaint further is “investigation”, and involves analysis of the complaint, the information received, gathering of evidence, making inquiries and seeking expert advice. I speak more about this at paragraph 40 below, which explains the changes we are making to how we communicate our processes. The Committee's feedback has been helpful in this respect.
27. We publish key statistical data about every decision made by this office. This includes the body complained about, the general subject matter and the type of decision made.
28. For “pre-investigation” cases, those reasons may relate to legal bars or to discretionary decisions to not continue beyond preliminary investigation. The data is published in tables which are in an open data format soon after the end of the business year and a summary and explanation is provided in the annual report. (The full data is here: <https://www.spsso.org.uk/statistics>).
29. Common reasons why cases are not taken beyond the preliminary consideration is recognition that the public body has undertaken a reasonable local investigation and already provided a remedy in line with what we would recommend, and/ or we could not achieve more for the complainant under our powers. We will test a public body's position and not simply take it on face value. We are mindful of the need to capture learning and will provide feedback to organisation for improvement.
30. Increasingly, we also try to resolve complaints which delivers an outcome acceptable to both parties without the need for investigation.
31. There are legal restrictions, which means I cannot provide specific examples, but I can share some general, anonymised examples of outcomes that I have achieved at this pre-investigation stage.



32. *Individual remedies*

- 32.1. Refunds of payments that should not have been made.
- 32.2. Backdated payments (including some significant payments in relation to kinship care allowance).
- 32.3. Agreements to undertake further work, for example in relation to damage or repairs to property.
- 32.4. Agreements to meet, to undertake further investigation and to provide further explanation.

33. *Learning and Improvement remedies*

- 33.1. Improvements to communication.
- 33.2. Action plans to improve care to patients.
- 33.3. Improvements to social work processes that would benefit all future users of that department.

34. Again, while it is legally difficult to share specific examples, data from this stage can be used internally to drive support and intervention work.

35. Unsurprisingly, when we can achieve a quick outcome at this stage, we often receive positive, unsolicited feedback, particularly when we have managed to achieve a practical outcome or have put in place steps to help repair the relationship such as meetings and apologies.

36. If we could put more information about our work at this stage into the public domain, that would provide more assurance to the public (and the Committee) about the benefits of this approach as well as improving the impact it can have on broader public sector improvement.

37. I have recently written in detail to the Landscape Review Committee about this and would highlight this comment from that submission:

- 37.1. "Allowing me to report more details about these cases would improve the transparency of this work; enable Parliament to scrutinise it more fully and enable me to publish more data to share learning and support the work of other bodies.

Neutrality

38. I can point to the public criticism we make of public bodies in reported cases, and the action we take in line with our support and intervention policy, to demonstrate we are unbiased and impartial. How we demonstrate this impact is a core tenet of our strategic plan and engagement strategy for the coming business year.

39. Over the last 12 months, we have taken a number of steps to improve our communication and make our decision-making clearer.



- 39.1. We have moved away from long letters, often repeating what is already know to the parties, explaining decisions in a discursive way, to providing more focused statements of reasons for cases where we do not proceed beyond preliminary consideration. This makes our decisions clearer for the parties and is a more efficient approach for us.
- 39.2. We have moved away from the technical and difficult to understand language used to describe our process. Instead, we will be describing the process in ways that can be more readily understood and better reflect the work that we are doing in terms of everyday language.
- 40. We are now calling the key stages of our process:
 - 40.1. Advice and Guidance. This is often signposting, explaining how to make a complaint, or advising people they need to exhaust the local process first.
 - 40.2. Triage and early decision. This is where we make many of the jurisdictional decisions (i.e. *can* we investigate).
 - 40.3. Preliminary investigation. This is the investigatory work we do to establish whether we can achieve more and *should* we investigate further, and
 - 40.4. Investigation. A more detailed investigation resulting in a decision that is published in summary or full report, and which makes recommendations we follow-up.

Time taken to consider complaints.

- 41. The significant reduction in both the number of, and time taken to allocate, cases in the last few years (and which can be seen in the most recent figures above) shows the benefits of focusing resource and energy on internal efficiency and effectiveness. Again, despite challenges, productivity this year has increased, and we dealt with a record number of complaints. However, this is unlikely to be sustainable if complaint volumes continue to rise. We are nearing the completion of a medium-term financial plan which will articulate more fully the impact of resource levels on business sustainability.
- 42. As noted above, I wholeheartedly support more research into complaints and what is currently driving increased numbers with the goal of reducing the burden on public bodies at local level and the additional work for SPSO.
- 43. While we saw a general decrease in complaint numbers pre-pandemic, after the introduction of MCHPs, that has reversed since the pandemic. Increased complaint numbers are not necessarily a negative indicator, they can be opposite indicating complaints are more accessible (particularly under model complaints handling procedures). Of more importance is how well and efficiently they are handles and the outcomes. The reality is research would inform this but is not something that is currently resourced within my existing budget.



Accessibility

44. The relative simplicity of the two-stage complaints model and its general consistency across public bodies, has achieved its goal in making complaints more accessible. The key evidence for this is the increase in complaints to this office following its introduction as people found it easier to navigate the system.
45. Having improved general accessibility, the focus has, rightly shifted to those areas and groups where there are additional barriers. When most of the models were revised in 2021, they directed public bodies, when implementing those procedures, to not just consider their legal obligations around access but to ensure they actively supported vulnerable users to raise complaints. At that time, I issued public guidance and support to help public bodies meet that challenge.
46. Since then, I have worked with the Northern Ireland Public Services Ombudsman and some independent academics to produce a toolkit which, based on existing best practice, can be used by any public body to improve how they identify vulnerability amongst their users and use that knowledge to practically make improvements to accessibility for those groups.
47. Alongside that work, I have been looking at where there may be particular needs that I can target. For example, colleagues and I, met a group of female prisoners as part of an ongoing project to try to better understand why that group remains so reluctant to complain.
48. On oral complaints, I can reassure the Committee that we already have guidance in place that ensures we are using legislative flexibility as far as we can. The legislation says that in order to take an oral complaint, I need to have evidence not only that it is appropriate but that there are “special circumstances”. This is one of the highest tests for the use of any discretion in my legislation and can be contrasted with other areas where I can exercise discretion when I find it to be reasonable to do so.
49. This puts the onus on an individual to explain what their special circumstances are, on a case-by-case basis. This does not strike me as either dignified or compassionate. While I accept it is for this office to decide a complaint is duly made, I must operate within my legislation which does not give me the flexibility to simply give people the choice. Our experience in accepting Scottish welfare fund reviews by phone based purely on individual preference, is that it significantly improves accessibility, particularly for more vulnerable applicants.

Support improvement of public body complaints procedures

50. While it is good to note the positive response from public bodies to the call for views, it is important to note that this was a very small number of public bodies, and it is not clear it was fully representative.

51. Having said that, I can confirm that my own experience is that the relationships tend to be constructive, which supports our work with public bodies to generate the improvements in complaints handling and service delivery that should be the goal of all complaints handling.
52. Equally, while I consider it to be in the public interest to have good relationships with the bodies, there is clear evidence on my website and elsewhere that I am very comfortable criticising public bodies where that is necessary. Each month I publish and highlight decisions which can be highly critical of public bodies, I also publish in my annual report details of any body that I have had to move to level 3 or beyond in my support and intervention policy (i.e. we have taken direct action in relation to complaint handling issues).
53. This work is not limited to public service complaints. For example, in this year's annual report we will note that in 2024, we issued a level 4 for the Scottish Welfare Fund that resulted in a resource plan and reduced waiting times for applicants in crisis.
54. Finally on this point, I can reassure the Committee that when this office took on the role of a complaints standards body, steps were undertaken to create a degree of separation between the role and individual complaints decisions. This was so that we can create and maintain the positive relationships the standards role needed, while remaining objective and independent in our decision making. As a result, the support and guidance role is conducted by a separate team to the case handling teams, the Improvement, Standards and Engagement team.

Ombudsman Powers

55. In closing, I want to welcome, with thanks, the Committee's support for a review of the Ombudsman's powers. As noted above, this is a significant regret of my time in office that this has not been achieved, and I agree wholeheartedly that it could lead to addressing many of the concerns raised in this review. I have recently written to the SPCB Supported Bodies Landscape Review Committee highlighting where there are barriers to collaboration and joint working.
56. I would very much welcome a full review of the SPSO legislation and would highlight that some targeted and proportionate changes would have benefits not only for SPSO but our ability to support others to improve public services. These would include:
 - 56.1. The power to conduct complaints on the Ombudsman's initiative.
 - 56.2. Improved information sharing and collaboration powers.
 - 56.3. Improved reporting powers
 - 56.4. The ability to take complaints in any format.