



The Scottish Parliament  
Pàrlamaid na h-Alba

**PUBLIC PETITION NO.**

**PE01740**

### **Name of petitioner**

Rachel Lowther on behalf of Accountability Scotland

### **Petition title**

Improving the handling of complaints about public services

### **Petition summary**

Calling on the Scottish 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.

### **Action taken to resolve issues of concern before submitting the petition**

We have had several meetings with Bob Doris, MSP, on these matters.

We have discussed with the Ombudsman the major difficulties some people have with preparing written complaints, form filling or telephoning.

The chairman of Accountability Scotland provided a written submission to the Local Government and Communities Committee (LGCC), in advance of its meeting with the SPSO on 23 January 2019.

ADHD Plus, along with a representative of Accountability Scotland, has also met with the Ombudsman to discuss these issues.

With regard to the audio recording of meetings, we have consulted with The Information Commissioner's Office and the Equality Advisory and Support Service who are investigating our concerns.

### **Petition background information**

#### **Allow the SPSO to take complaints in any format**

Our petition requests changes to the first bullet of which the Ombudsman Document

Our petition supports changes, the first bullet of which, the Ombudsman, Rosemary Agnew, herself has been requesting.

Currently, all complaints to the SPSO must be in writing unless the complainant can prove exceptional circumstances. For the complainant to prove they face exceptional circumstances (in writing), this may pose the exact same difficulties as they face when making a written complaint.

We believe that the SPSO and all BUJs should be afforded greater lee-way to accept complaints in any format. Certain groups, such as those with ADHD or dyslexia, have particular difficulties form-filling, and end up excluded from administrative justice for this reason. Most complainants would continue to submit written complaints to SPSO, but there is a minority for whom this greater accessibility would mean the difference between having their complaint fully understood and investigated or not.

We submit our chairman's document on this subject (available here:

[https://www.parliament.scot/S5\\_Local\\_Gov/Meeting%](https://www.parliament.scot/S5_Local_Gov/Meeting%20Papers/20190123_MeetingPapers.pdf)

[20Papers/20190123\\_MeetingPapers.pdf](https://www.parliament.scot/S5_Local_Gov/Meeting%20Papers/20190123_MeetingPapers.pdf)), which was made available to the LGCC at their meeting of 23 January 2019. At this meeting Rosemary Agnew said:

*“people who have ADHD face particular challenges in engaging with not only the SPSO but all public services.”*

*“I am very frustrated that there has been no progress on the issue of being able to make a complaint in any format; I do not think that a change in primary legislation is required. How much does it take to put an order through Parliament for something that will self-evidently benefit everybody?”*

### **Audio-recording of meetings and phone calls as evidence**

It is common for complainants to refer to undocumented events, such as meetings with the body (BUJ) about whom they ultimately complain to the SPSO. Our members have noted that BUJs will sometimes tell a very different story to the SPSO and omit important information, yet no record of these incidents is available. Since complaints may be about discrimination, threats, failure to follow appropriate procedures and policies etc, the mere presence of a recording is likely to prevent many of the incidents which result in a complaint, and to cause BUJs to act with greater care and consideration. Recordings will also benefit complainants who experience barriers to writing, minute-taking etc as discussed above.

As the law stands, members of the public are permitted to record meetings with these bodies, but there is a lack of awareness about this and some BUJs tell the complainant that they cannot do so. We are able to provide examples of this that have serious implications with potentially significant consequences. We think it is important that complainants are aware they are entitled to record and that BUJs do not obstruct them. These recordings must remain confidential, in line with the General Data Protection Regulation (GDPR). Currently complainants have to show lawful basis to share these recordings, which can be confusing. If the law were changed, however, to allow complainants to use these recordings as evidence in any further complaint, there would be greater clarity, transparency and accountability, and individual complainants would be less disadvantaged when speaking out against authorities. BUJs are at the additional advantage of holding the records pertaining to a complaint and are therefore able to control what evidence is released. The ability to share recordings would go part way to redress the David and Goliath imbalance.

There is an example of conflicting information on recording being given to the public on the Equality Advisory and Support Service's website. EASS lists recording meetings "without the prior knowledge and consent of the other person" as an example of "unreasonable complainant behaviour". The Information Commissioner's Office does not agree with this statement, saying it conflicts with GDPR, and currently EASS are investigating this. The ICO also pointed out that the time a recording would be most helpful is when members of the public are being treated unfairly, so preventing individuals from collecting any evidence of wrong-doing and blaming them if they do allows problems to remain hidden.

As an Accountability Scotland member wrote to us:

“If I knew I had been able to record meetings and had been able to share them with the Ombudsman, our case would have been an open and shut one, and the Ombudsman wouldn't have struggled to know who to believe.”

As our members point out, they, the BUJs and SPSO, spend a huge amount of time and resources in what often becomes a “he said/ she said” scenario. Recordings would speed investigations, reduce costs for everyone and improve accuracy in SPSO decision making.

### **Conclusion**

We believe that if BUJs are required to permit confidential recordings of meetings or phone calls when complainants request it, problems are more likely to be resolved at source without having to be escalated to SPSO, and cases that go to SPSO would be much faster to resolve. This requirement should be included in the SPSO's Model Complaints Handling Procedure (CHP), and ideally it would be strengthened by either primary or secondary legislative change.

### **Unique web address**

<https://www.parliament.scot/GettingInvolved/Petitions/PE01740>

### **Related information for petition**

**Do you wish your petition to be hosted on the Parliament's website to collect signatures online?**

NO

**How many signatures have you collected so far?**

0

**Closing date for collecting signatures online**

N/A

**Comments to stimulate online discussion**