



## Briefing for the Public Petitions Committee

**Petition Number:** [PE01538](#)

**Main Petitioner:** Dr Richard Burton on behalf of Accountability Scotland

**Subject:** Transparency in SPSO investigations

Calls on the Parliament to urge the Scottish Government to amend the *Scottish Public Services Ombudsman Act (2002)* to ensure that complainants are shown all correspondence between SPSO and the bodies complained about before the investigation is concluded (including emails) and that they are also made aware of the content of any verbal communications.

### Background

As stated on its website, the Scottish Public Services Ombudsman (SPSO) provides a free, independent and impartial complaints handling service for complaints about public services in Scotland. The SPSO Act 2002 sets out its powers. The legislation describes the types of complaints it can and cannot look at, and what it can and cannot do about them. It gives the SPSO the role of checking that an organisation has proper procedures in place and that those procedures are followed.

The SPSO is not an appeal body for the decisions made by organisations. It can check that a decision has been properly made, but it cannot change or overturn the decision. If the SPSO finds that something has gone wrong, it can make recommendations to put things right.

In December 2013 the director of the office of SPSO gave evidence to the Local Government and Regeneration Committee. She gave a detailed description of the complaints process:

“at the initial stage the complainant will make contact with the advice team, which is frequently done by telephone. They will have an initial discussion about whether, on the face of it, we can consider the complaint. The next stage is for the complaint to go to our early resolution team. The complainant will be contacted within two weeks by the complaints reviewer who is dealing with their case, which will normally be done by phone. We try to establish within the advice team whether the complainant wishes to have telephone contact—as you might imagine, some complainants do not want that. Some cases are

incredibly sensitive and people do not necessarily want telephone contact.

The early resolution team will have an initial discussion with the complainant to establish the nature of the complaint. We will then seek to gather evidence from the body that is being complained about. We will normally provide an update for the complainant in writing and we will decide within a 10-week period, although it can be much shorter than that, whether the case requires further investigation. If it does, the case will be moved to our investigation team. Again, the complainant will be contacted by the complaints reviewer in the investigation team who is handling their case.

The level of contact thereafter depends on the type of case and whether we need to clarify any points with the complainant. We will often provide update letters about the evidence and how the investigation is progressing. Prior to issuing a decision, we will again make contact with the complainant to inform them that the decision letter is being issued and that if they wish us to discuss the case with them prior to that we will do so. However, in our decision letter we always offer the complainant the opportunity to come back to us to discuss the decision that we have reached once they have had an opportunity to absorb the decision's details."

A complainant may ask the SPSO to review its decision if it was based on inaccurate evidence or facts or the complainant has new and relevant information. If the complainant remains dissatisfied they may seek a judicial review of the decision.

### **Scottish Government Action**

The terms of appointment of the SPSO are laid down by the Scottish Public Services Ombudsman Act 2002 (Schedule 1). The Ombudsman is appointed by Her Majesty, on the nomination of the Scottish Parliament. In order to safeguard the independence of the SPSO, under the provisions of the Scottish Public Services Ombudsman Act 2002, in the exercise of the SPSO's statutory functions, the SPSO is not subject to the direction or control of any member of the Scottish Government or the Scottish Parliamentary Corporate Body.

### **Scottish Parliament Action**

On 11 December 2013, the Local Government and Regeneration Committee took [oral evidence](#) on the SPSO annual report 2012 from SPSO officials.

Ahead of the oral evidence session the Committee launched a call for questions to be put to the SPSO. Some of those questions were answered at the oral evidence session. The remaining questions, selected by the Committee, were [answered in writing](#). Including the following questions:

Question 5: Would the Ombudsman agree to an appeal of his decision if the complainant can show the opinions/advice of his independent expert consultants/advisors were factually wrong/biased/misleading?

The simple answer is yes. The two criteria for conducting a review of the Ombudsman's decision are either that new significant evidence has come to light or that the decision is based upon factually incorrect information. If it is clear from a request for a review that factually incorrect information has been relied upon to reach a decision then a decision would be re-visited. We would regard evidence that an adviser had been biased or misled this organisation as very serious and new evidence. However, it is important to note that a difference of opinion is not the same as evidence of bias or error or a sign that we have been misled. We require all advisers to notify us of any potential conflicts of interest before they provide advice and assess any advice we receive carefully against standard criteria.

Question 18: Why is the SPSO reluctant to reveal to complainants the correspondence between investigators and BUJs?

When we receive a request for information, it is our current practice to release everything we can that has not already been shared with the complainant as part of the investigation process. Sometimes, we hold information which we cannot release.

In the response to this latter question the SPSO did not indicate what information they cannot release. However, Section 19(1) of the SPSO Act 2002, relating to Confidentiality of information, states that:

Information obtained by the Ombudsman or any of the Ombudsman's advisers in connection with any matter in respect of which a complaint or a request has been made must not be disclosed except for any of the purposes specified in subsection (2) or as permitted by subsection (3).

Subsection 2 relates to decisions not investigate; to instances when information obtained by the SPSO could be subject to the Official Secret Acts or when the offence of perjury is alleged to have been committed during an investigation.

Subsection 3 allows information to be shared if any person is likely to constitute a threat to the health or safety of patients.

In a parallel follow-up to the oral evidence session the Committee sent the SPSO questions. One of those questions related to the 5.5% of all decisions which were reviewed internally. The committee asked how many complaints that related to and what action the SPSO took to bring the existence of the review to the attention of complainers.

The SPSO's [response](#) (to question 15) told the Committee that:

The request for review process allows complainants or bodies to request a review of a decision on the basis of new information or factual inaccuracy. Last year we received 216 such requests from complainants and 7 from bodies. Ten of these requests led to a revision of the original decision. As soon as complainants bring their complaint to the office, they are notified of the request for review process in our 'what we do when we get your complaint' leaflet. They are also advised of our service delivery complaint process. Once we have reached a decision, the complaints reviewer issues the decision letter in which the complainant will again be advised of the process should they wish to access it.

In the majority of cases, through explanation and discussion, the complaints reviewer is able to clearly demonstrate how they have reached their decision and answer any further queries that the complainant may have. We continuously seek ways to develop our staffs skills to have these often difficult conversations where a complaint is not being upheld. We make every effort to help the complainant understand how the decision has been reached and to be reassured that we have heard and paid attention to all of the information they have provided us with and have weighted it fairly.

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13 November 2014

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