

## Briefing for the Public Petitions Committee

**Petition Number:** [PE1740](#)

**Main Petitioner:** Rachel Lowther on behalf of Accountability Scotland

**Subject:** Calls 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.

### Background

[Accountability Scotland](#) campaigns for transparent public accountability in Scottish governance.

The Scottish Public Services Ombudsman (SPSO) deals with complaints about public services in Scotland. This includes complaints about local authorities; the NHS; the Scottish Government; the Scottish Parliament; prisons; housing association; colleges and universities and most water providers. The SPSO also deals with complaints relating to Scottish public authorities such as the Care Inspectorate and Creative Scotland. A [full list of bodies under the jurisdiction of the SPSO](#) is available.

[Section 10](#) of [The Scottish Public Services Ombudsman Act 2002](#) provides that:

*“A complaint must be made in writing or electronically unless the Ombudsman is satisfied that there are special circumstances which make it appropriate to consider a complaint made orally.”*

In its [guidance on making a complaint](#), the SPSO states that “You will need to put your complaint in writing to the SPSO, explaining why you are still unhappy and what you would like us to do.”

The SPSO does encourage people to get in touch if they are unable to make a complaint in writing because of issues with accessibility, and has stated that it would like to see a legislative change to allow complaints to be made in

different ways, without the need for a complainer to demonstrate exceptional circumstances.

The SPSO also provides the Scottish Welfare Fund independent review service, carrying out reviews of decisions made by councils on community care, and crisis grant applications. The SPSO is able to take review applications in a variety of ways, including over the phone. [SPSO's 2017/18 Annual Report and Accounts](#) stated that:

*“We take applications in a variety of ways. At 69% of applications, by far the most well used route to making a review request is through our Freephone number. We consider this ability to take applications verbally as critical to the accessibility of our service.”*

### **Scottish Government Action**

The SPSO has stated that it has been discussing a legislative change to allow complaints to be made in different ways and that these discussions have been positive.

### **Scottish Parliament Action**

The Local Government and Communities Committee took evidence from the SPSO on 23 January 2019. The evidence session was an opportunity for MSPs to discuss the SPSO's 2017/18 Annual Report and Accounts.

In [a written statement ahead of the evidence session on 23 January](#), Rosemary Agnew, Ombudsman, Scottish Public Services Ombudsman stated:

*“Last year, I informed the committee of three areas where I was seeking change to our legislation to ensure that Scotland has a modern Ombudsman service... I have continued to discuss these with the Scottish Government, but am concerned about the lack of progress... The two main areas where amendment or extension is being sought concern Public Value (own initiative) Investigation powers and accessibility...”*

*“The SPSO Act was put in place before use of digital (and telephone) services were common place. Currently it requires complaints to be in writing. I can waive this in exceptional circumstances, but that puts the onus on a complainer demonstrating why their circumstances are exceptional... I am seeking the powers to take complaints in any format. Having these powers would enable us to design our business to be more accessible, remove communication barriers and assist greatly in delivering one of our core values: we are people focussed.”*

During the [evidence session](#), Rosemary Agnew, Ombudsman, explained that it is individual complainants which must prove exceptional circumstances. It is not possible for the Ombudsman to give general exemptions to groups who may face similar barriers to making a complaint in writing.

The [Local Government and Communities Committee wrote to the Cabinet Secretary for Justice](#) on 25 January “to seek an update on what consideration it has given to the Ombudsman’s request for additional legislative powers, including whether it is supportive in principle of the Ombudsman’s requests

and if so, whether there is a timetable for resolving these matters satisfactorily.” The Committee has not yet received a response.

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**15 August 2019**

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