

PE1740/E

Petitioner submission of 10 December 2019

Response to submissions of Scottish Public Services Ombudsman (28 Oct 2019) and Scottish Government (4 Nov 2019)

We will respond to the submissions on our petition by discussing each element of the petition in turn. The petition requests two changes to improve complaints handling:

1. Allowing SPSO to take complaints in any format
2. Requiring organisations to permit complainants to audio-record meetings and phone calls and use this evidence in a subsequent complaint.

Allowing SPSO to take complaints in any format

Both SPSO and the Scottish Government agree this is needed so SPSO can “remain fit for purpose and enable, rather than prevent us offering a fully accessible service” (SPSO). Discussions between the two regarding this and other changes have been ongoing since 2017. The Scottish Government asserts that this small change would require amendments to the Scottish Public Services Ombudsman Act 2002, but that they don’t have the resources to make those amendments.

According to SPSO, the Local Government and Communities Committee expected a response from the Minister by 5 Nov 2019, as to when resources will be available for this. We would like to hear this response.

Until this change is made, we agree with the Ombudsman that they are unable to deliver a fully accessible service. This means that currently an unknown number of people are being discriminated against by not being able to access the service. We are aware that these are the very people who may be disproportionately suffering discrimination already, due to being non neuro-typical, and who may have a greater need of SPSO.

Bob Doris, MSP, in a letter to us, wrote (4 Dec 2019), “I welcome that the SG will return to the matter of reviewing technical changes required to allow a complaint to be taken in any format in the new year. It would be helpful for the SG to set out what technical changes may be required to secure this. This would inform the committee or any individual MSP who may wish to progress a Bill...A small, technical Government Bill makes most sense.”

It would be helpful if it could be clarified, for ourselves and the public, exactly what vehicles are available for making these changes and which use the least resources, since this is the reason the Government give for not implementing them.

- Can SPSO make the changes themselves? They says it is “disappointing in the extreme” that the Government are not doing so.

- The Scottish Government say, “an Order under Section 14(1) of the Public Services Reform (Scotland) Act 2010 (the 2010 Act) might be a suitable mechanism to deliver those amendments...”

- The Scottish Government also say, “ it may be worth exploring whether this could be an appropriate subject for a Member’s Bill or a Committee Bill.”

We would like guidance on how we can best ensure these changes are taken up, since everyone seems to be in agreement that they ought to be.

Requiring organisations to permit complainants to audio-record meetings and phone calls and use this evidence in a subsequent complaint.

On this matter the Scottish Government wrote, “Before the Scottish Government can express a view on this proposal, we need to carefully consider the matter, understand the rationale and business case and what it is intended to achieve...”

We outlined our rationale in the petition, but would be happy to meet with members in person to explain this.

Regarding this matter, SPSO believes the intent is to “give individuals who might struggle to take notes a way of keeping a record of a meeting or phone call.”

While this is, in part, true we would like to point out that, particularly when discussing a distressing matter (such as medical problems, safety concerns, child protection issues etc), many people find it hard to take notes and would benefit from being able to refer back to a recording, to understand professional opinion, advice etc. We also pointed out that the mere presence of a recording would discourage bad behaviours which lead to complaints, eg. people being discriminated against, swept aside, lied to, gas-lighted etc.

SPSO agrees that a recording may be useful and should be considered along with other evidence.

Bob Doris, MSP states (4 Dec 2019), “the SPSO submission does throw some light on the importance of capturing a verbatim account of evidence garnered in meeting, as opposed to relying wholly on the interpretations of those present.”

“The SPSO are absolutely right that the recording should be considered along with other evidence. However there should be no hierarchy of evidence and if other evidence contradicts the recording, that should flag up a wider concern with the SPSO.”

On 5 Dec 2019, in further correspondence with us, Bob Doris clarified this latter point thus: “It may cast doubt on the knowledge base, understanding, competence or veracity of what the person has said in any recorded meeting. However by the same token it can cast doubt on the knowledge base, understanding, competence, veracity or completeness of documented evidence.”

Bob Doris also highlighted a concern we had with the Ombudsman’s response. Their view on potential recordings is that “both parties should have a copy that they agree it is a true and fair record.”

In theory this sounds reasonable, but we are concerned that an organisation would be free to withhold their agreement, thereby rendering the recording useless as evidence.

Bob Doris: “Of course I would not support covert recording. Any accurate – not doctored-recording- must surely be a ‘true and fair’ record. I would want to ensure that a party to the recording did not have veto on the recording if they felt the meeting did not go well for them and be able to use the excuse that it was not a *‘true and fair’* record.”

“The SG is bringing forward a systematic right for PIP/DLA claimants to have their assessments or reassessments recorded when the operation of disability benefits

transfers to Social Security Scotland and the new Disability Assistance benefits replace PIP/DLA. If safeguards can be built into that process then surely they can also be built into the SPSO process.”

Since the SPSO has suggested these matters regarding changes to protocols and use of recordings could be covered in guidance, as opposed to primary legislation, then we would ask that either the SPSO or probably most appropriately the Scottish Government should provide more details as to how this could be achieved.

Additional point, that could be added to the petition

We believe that Bob Doris, MSP, is making a valuable point when he says:

“Indeed the petitions committee process itself is a display of best practice. You, as petitioner, get to make comment on the evidence being provided by the SPSO and SG before the committee deliberates further. An evidence review, with feedback from the petitioner if you like. There appears to be no evidence review with feedback from the complainant ahead of decisions being taken by the SPSO (based on what you have told me). Perhaps this is another area worth considering”

It is indeed true that the complainant rarely sees the evidence presented by the BUJ (body under jurisdiction) - and we understand that some evidence must be protected by GDPR if it relates to other people. Many complainants are mystified as to SPSO’s decision as there is no evidenced explanation of how SPSO has come to it, or why false assertions by the BUJ are accepted as fact by SPSO. It would certainly improve transparency, accuracy and accountability if the complainant could review and respond to the evidence and assertions of the BUJ.