

PE1740/F

Information Commissioner's Office submission of 2 April 2020

Thank you for your letter of 5 March in which you invite the Information Commissioner's Office (ICO) to respond to the points outlined in the above petition.

In respect of the first point about the format of complaints to the Scottish Public Services Ombudsman (SPSO), this is outwith the locus of the ICO and I have, therefore, no comment to make on this.

I assume that the principal reason for seeking the views of the ICO on this petition is because of the nature of the second point, which is to require bodies under SPSO jurisdiction to permit complainants to audio-record meetings and phone calls and to use this as evidence in any subsequent complaint. Clearly, this will involve the recording of personal data and, in many cases, special category data such as health related information relevant to the complaint. Where audio recordings are being made and used by individuals acting in their personal capacity regarding their own or a proxy's personal interests, they are unlikely to be Data Controllers for the purposes of data protection. As such, the obligations of data protection law would not apply to them and their use of such data.

Indeed, there is nothing to stop individuals from making such recordings at the moment in these circumstances. The problem is the lack of consistency across organisations with whom individuals may be engaged in this way, with some acquiescent and happy to oblige and others that refuse such requests in any circumstances. The ICO receives a number of enquiries on this issue from the perspective of both the organisation and the individual. Currently, there is no legal right for individuals to make such recordings and there is no legal obligation on organisations to permit such recordings, other than for reasonable adjustment. In responding to any such enquiries, we simply explain the legal position in terms of controllership and that while the individual may ask to record the discussion, it is ultimately a decision for the organisation.

Should the petitioners be successful in bringing about the changes they are pursuing, once the recording was in the hands of the SPSO, data protection law would apply and the data in question would be subject to the provisions therein.

I trust that the Committee finds this information helpful but do get in touch again if any further explanation is required.