

PE1740/H

Cabinet Secretary for Justice submission of 17 July 2020

Thank you for your letter of 5 March 2020 regarding the Scottish Public Services Ombudsman (SPSO). Please accept my apologies for the delay in sending a response.

Our position remains the same as set out in my previous letter in November 2019. We are not able to offer a timetable on when we will be in the position to progress the proposed legislative amendments. Within Government, all resources where possible, have had to be directed at Covid-19, which I am sure is not unique to the Scottish Government.

My officials have made me aware that during their annual accountability session, the Committee and Andy Wightman MSP in particular, raised the possibility of taking forward an Order on behalf of the SPSO. For this to happen, the Scottish Government would need to take a lead on key elements, including putting the Order to Parliament. Only once we have further clarity on the impacts of Covid-19 on our resources will we be able to review, and decide the level of involvement and support that the Scottish Government can commit to.

My officials have been in communication with the SPSO, and reiterated Scottish Government support for the majority of the technical amendments. In light of discussions between the Committee and the SPSO, my officials confirmed what amendments the Scottish Government were supportive of to assist them in deciding what they could consider taking forward.

You also requested an update on when the Scottish Government will be able to express a view on the proposal to permit complainants to audio-record meetings and phone calls and use this evidence in a subsequent complaint. Having carefully considered the matter this is not something that the Scottish Government would support at this stage.

In coming to this view, we have taken into account submissions from the Information Commissioner's Office (ICO) to the effect that there is nothing preventing individuals from making recordings of meetings with BUJs in relation to their own or a proxy's personal interests.

For those complainants who experience barriers to writing, minute-taking etc., we consider that the legal duty on individual organisations to make reasonable adjustments to avoid putting such individuals at a disadvantage would provide a strong argument in favour of BUJs permitting audio recording. As the SPSO states, it would be especially difficult to justify a public service refusing to allow someone to take a recording where they wished to do so on accessibility grounds.

With regard to requests by complainants to audio-record meetings or phone calls for the purposes of retaining an independent record, rather than in the context of a reasonable adjustment, we agree that one of the main issues appears to be a lack of clarity and consistency amongst the organisations on this issue. We would agree with the SPSO that where changes are required this is something that would be

more appropriately addressed in the guidance produced by the SPSO, and in the complaints handling procedures of individual BUJs, as opposed to legislating on the matter.

I hope you find this information helpful.