

Local Government, Housing and Planning Committee

31st Meeting, 2022 (Session 6)

Tuesday 6 December 2022

Scottish Public Services Ombudsman Annual Report 2021-22

Introduction

1. The purpose of this paper is to provide information for the Committee's evidence session with the Scottish Public Services Ombudsman (SPSO) on its Annual Report for 2021-22.
2. The Committee will take evidence on the Annual Report from—
 - Rosemary Agnew, Ombudsman;
 - Niki Maclean, Director; and
 - Andrew Sheridan, Head of Improvement, Standards and Engagement.
3. The Annual Report and Financial Statement for 2021-22 can be accessed via the following link—

[SPSO Annual Report and Financial Statements 2021-22](#)

4. The SPSO has also provided a covering letter from the Ombudsman along with a six-month update on its performance since it last appeared before the Committee. Both letters are attached as an annexe.

Background

5. The SPSO was created by statute and its role, powers and duties are set out in the Scottish Public Services Ombudsman Act 2002. It is funded by the Scottish Parliament Corporate Body although it functions independently.
6. Under the 2002 Act, the SPSO is to report annually to the Scottish Parliament on the exercise of his or her functions.
7. The SPSO is the final stage for complaints about most devolved public services in Scotland including councils, the health service, prisons, water and sewerage providers, Scottish Government, universities and colleges. It has specific powers and responsibilities to publish complaints handling procedures and to monitor and support best practice in complaints handling.
8. The SPSO is also the independent review service for the Scottish Welfare Fund with the power to overturn and substitute decisions made by councils on Community Care Grant and Crisis Grant applications.
9. The SPSO also became the Independent National Whistleblowing Officer for the NHS in Scotland in April 2021.

10. The Committee last met with the SPSO in March to discuss its Annual Performance Report and Accounts for 2020/21. The meeting papers and Official Report of that session can be accessed via the following links—

[LGHP Committee Meeting Papers, 29 March 2022](#)
[LGHP Committee, Official Report, 29 March 2022](#)

11. After the meeting, the Committee wrote to the Ombudsman inviting updates on three specific areas of interest as set out below—

- “The Committee was interested in the potential legislative changes that you raised, namely powers to launch investigations on your own initiative and without having received a complaint, allowing complaints in any form (i.e. not in writing), and powers relating to the sharing of data with other bodies. I would be grateful if you could provide the Committee with a written briefing on exactly what legislative changes you would like to see take place and why.
- The Committee has some concerns about the backlog of complaints that has arisen during the pandemic. Whilst we fully recognise the pressures that the SPSO, like most organisations, has faced, we would welcome six-monthly updates on progress made in reducing this backlog.
- The Committee was also interested in NHS whistleblowing and the relatively low numbers of such cases to date. The Committee is clear that an absence of whistleblowing should not necessarily be seen as a measure of success as it is possible that it could be due to other reasons, such as a lack of awareness of the new procedure among NHS staff. We welcome the work that you are undertaking to raise awareness of this new aspect of your role and invite you to provide six-monthly updates on numbers of whistleblowing cases and any emerging trends in the data. The Committee also intends to liaise with the Health, Social Care and Sport Committee to establish whether it has, or intends to, give scrutiny to this topic.”

12. The Ombudsman provided an interim response in May 2022 in which she committed to providing a further update by the end of October. Both letters are attached as an annexe.

Financial Statement

13. The financial statement which accompanies the annual report notes that the SPSO received £6.095m in funding from the SPCB in 2021-22, an increase of slightly less than 2.1% on the £5.971m it received in 2020-21.

14. The financial statement also notes that the average number of full-time equivalent (FTE) persons employed in the office of the Ombudsman had increased from 72 in 2020-21 to 77 in 2021-22.

Citizen Participation and Public Petitions Committee

15. The Citizen Participation and Public Petitions Committee will consider its approach to [PE1964: 'Create an independent review of the Scottish Public Services Ombudsman'](#) on 7 December. The Petition calls for the Parliament to urge the Scottish Government to create an independent review of the SPSO in order to:

- investigate complaints made against the SPSO;
- assess the quality of its work and decisions; and
- establish whether the current legislation governing the SPSO is fit for purpose.

16. The [Scottish Government submission on the petition](#) states that—

“due to current resource constraints, the independent nature of the Ombudsman and the Parliament’s role in scrutinising the work of the Ombudsman, we do not intend to take forward an independent review in the near future.”

17. It further states that—

“We are aware of the Ombudsman’s request for legislative amendments to permit the SPSO to carry out own initiative investigations and for a small number of technical changes. The ability of Ombudsman to carry out these types of investigation would represent a fundamental change in the nature of its role and would require primary legislation to put into effect. Given competing demands on resource, we have opted not to take forward work in this area at present.”

Conclusion

18. The Committee is invited to consider the above in its evidence session with the SPSO.

**Clerks,
Local Government, Housing and Planning Committee**

CORRESPONDENCE FROM SPSO, 27 OCTOBER 2022

Annual Report from the Scottish Public Services Ombudsman

I am very pleased to enclose my 2021-22 Annual Report: Performance Report. In addition to the attached PDF document, there is also a web version at [SPSO Annual Report 2021-22](#) that is easy to navigate digitally.

If you want to read a full copy of the Report and Financial Statements, which includes the accountability report, this will be available in due course at www.spsso.org.uk/finance. Look out for updates in our monthly e-newsletter, our website and twitter.

Since I took up office in 2017, my team has, year on year, taken on new functions and duties and had to cope with unprecedented change and challenges. We would have faced many of these irrespective of COVID-19.

We started 2021-22 in the knowledge we had high workloads and faced capacity and resourcing challenges. Despite uncertainty about lockdown and the ongoing impact of COVID-19, on ourselves and Scottish public services, we were, and remain, optimistic. We set ourselves an ambitious business plan, driven by our values and strategic aims and were successful in delivering many of these objectives.

This report features our performance across all our functions and our important significant achievements during 2021-22. Some highlights include:

- we received **3,665** public service complaints and closed **3,492**
- of all investigated public service complaints we upheld **63%**
- made **511** recommendations to public bodies, **51%** being about learning and improvement
- our Scottish Welfare Fund independent review service observed a **36.7%** increase in review applications and handled **26.6%** more than the previous year
- our Independent National Whistleblowing Officer function completed its first year of service, considering **107** whistleblowing enquiries and cases
- we successfully launched three project work streams to review our own organisational learning and recommend improvements on **future working arrangements, intelligence and learning from casework and internal communications.**

Detailed statistical information about public service complaints is available here: www.spsso.org.uk/statistics.

Driven by our values, we are committed to delivering the best service we can with the resources we have. Reducing the number of unallocated public service complaints, shortening the time taken to decide complaints, and increasing stakeholder engagement are top priorities for 2022-23. We also

look forward to supporting the development of child friendly complaints procedures in anticipation of the incorporation of the United Nations Conference on the Rights of the Child (the UNCRC) developments.

If you would like to talk to us about our work, my SPSO colleagues and I welcome feedback on this report, or on any aspect of our work.

Yours sincerely

Rosemary Agnew
Scottish Public Services Ombudsman

CORRESPONDENCE FROM SPSO, 28 OCTOBER 2022

28 October 2022

Dear Ariane,

Annual report 2021—2022

1. Thank you to the Committee for giving the SPSO the opportunity to provide a six-monthly update on performance, particularly in the context of the unusually long waiting times for SPSO to allocate and respond to complaints. As you are aware, the background to this was the adverse impact of covid-19 on this office and on organisations under my jurisdiction. I am pleased to now provide the first such update.
2. My annual report for 2021/2022 was published on 27 October 2022 and sets out the highlights and key achievements for the 2021—22 financial year [SPSO Annual Report 2021-22](#). This shows an increase in cases received and an increase in productivity compared to 2020—2021. I look forward, in due course, to speaking to this at Committee.
3. This letter focuses on the current (2022—23 year).

Six monthly update

4. In my last letter to the Committee, I noted that at close of business on 31 March 2022 (the last day of the reporting year), we had 604 cases awaiting allocation. At that year-end point, we estimated that some complainers, particularly those whose cases had not been prioritised, could wait up to 11 months before their case was allocated.
5. Not every complaint made to the SPSO joins the pool of unallocated complaints, meaning many complainers do not and have not experienced the long delays.
6. Complaints are assessed at an early stage, with over 50% of them allocated to a dedicated team following that assessment. These cases are usually those complaints we will not investigate beyond initial enquiries. For example, they are

- out of jurisdiction
 - resolved to the satisfaction of the complainer following input and work by SPSO, or
 - closed because further input or investigation beyond initial enquiries by my office would not achieve added value or result in better outcomes for the complainer (N.B. we would investigate if there were a wider public interest, or it would lead to additional learning for the public body).
7. Where further investigation is required, every case is triaged so we can identify those that need to be prioritised. For example, we consider the time sensitivity of the case, whether it involves on-going clinical treatment, a terminal diagnosis, homeless application, child protection issues, etc. If the case meets our criteria, we will prioritise it for allocation. We introduced this process at the start of lockdown when it became clear there would be an impact on our capacity to investigate and the capacity of public bodies to respond to our requests.
 8. We will also review the priority if someone whose complaint is in the unallocated cases pool contacts us because something has changed.

The current position

9. In the period 1 April—30 September 2022, around 45% of the cases dealt with by the initial assessment team, were concluded within 30 days of receipt, with 93% concluded within 80 days.
10. The current maximum wait for triaged cases considered a priority to be allocated is three months; and today we have 84 cases awaiting priority allocation.
11. There are currently 443 cases in the remaining allocation pool. The current maximum delay in allocating cases from that pool has fallen to 10 months.
12. This timeframe is reducing, and we anticipate a significant reduction in waiting times over the next six months.
13. At the same time as reducing the time to allocate, we have also looked to reduce the time taken to issue a decision on cases under investigation. We have successfully managed to reduce the age of the oldest cases in the office. Today, only one case, a particularly complex investigation, has been with us for more than two years without receiving a decision.

The Allocations Project

14. As part of the actions taken to improve all our timescales, we introduced a dedicated, temporary project team who focus on reducing waiting

times for those cases which are not prioritised and are in (or added to) the unallocated case pool. This comprises eight additional colleagues who will be with us for 12 months. I am grateful to the SPCB for the additional resources for this.

15. The Allocations Project are directly supported by experienced investigation staff and a manager. The project was set up in May, but only recently became fully staffed because, like many others, we struggled to recruit staff in a competitive labour market. Since their introduction, the team has handled 293 cases and we anticipate that the pace of this will pick up over the coming months.
16. In summary, while we still have a way to go, we are making significant progress and expect the pace of that progress to increase if our current position and environment remain relatively unchanged.

Projects and initiatives

17. Alongside the work to recover from the legacy of the pandemic and return to pre-pandemic performance measures, we continue to pursue improvement initiatives. For example:
 - 17.1. Scotland's first "Speak-up week" for the NHS was held in October 2022, promoting the benefits of a good speak-up culture and the value of the whistleblowing standards to NHS staff, students and trainees.
 - 17.2. We have agreed with the Scottish Government to develop child friendly complaints procedures in anticipation of the proposed incorporation of the UNCRC into Scots Law. The child friendly approach is a rights-based approach and would apply to both complaints made directly by children and young people and to complaints made on their behalf. This is exciting work for us, and we are currently co-designing the approach with input from a range of stakeholders, including children, young people and parents.

SPSO Legislation

18. I shared my recent response to the Health, Social Care and Sport Committee concerning the National Care Service (Scotland) Bill with the Committee. Since then, the final report of the Scottish Mental Health Law Review has been published ([Scottish Mental Health Law Review Final Report | Scottish Mental Health Law Review](#)). The report supports the need for specific changes to SPSO's legislation including the ability to take collective complaints. We anticipate proposed Human Rights legislation will again, focus attention on the need for improvements to the current system of redress and resolution of complaints about public services.

19. I am still committed to producing a short report in the current year for the Committee but pressure on resources mean that I have been unable to dedicate the resources and time needed, to date. It is though, increasingly clear that in consultation after consultation there are concerns about complaints and common themes emerging about the need to make improvements.
20. There is a significant risk that if attempts are made to resolve those piecemeal, on a policy-by-policy basis, rather than taking an holistic approach that leverages value out of existing systems, the situation will be made worse by introducing additional complexity into an already complex and fragmented landscape.
21. I will provide the next six-monthly update to the committee after the end of the financial year and before the end of April 2022. Meanwhile, I would be very happy to answer any of the Committee's questions about our functions and performance.

Yours sincerely

Rosemary Agnew
Scottish Public Services Ombudsman

CORRESPONDENCE FROM SPSO, 31 MAY 2022

Dear Ariane,

Scottish Public Services Ombudsman Evidence Session 29 March 2022

22. Thank you for the Committee's letter of 22 April 2022 following the evidence session in March. I provide an update below in response to the points raised and look forward to ongoing engagement with the Committee.

Public service complaints handling and pressures

23. We have recently published our 2021—22 annual public service and whistleblowing complaints statistics. They are available in full here: [Statistics 2021-22 | SPSO](#).
24. At close of business on 31 March 2022 (the last day of the reporting year), we had 604 cases awaiting allocation. This figure had been relatively consistent during lockdown. At that year-end point, we estimated that some complainers, particularly those whose cases had not been prioritised, could wait up to 11 months before allocation.
25. Reducing both the number of unallocated cases, and the waiting time is a priority for us in the current year. Supported by contingency funding from the SPCB, we have recently appointed two additional Complaints Reviewers (CRs, investigators), with a further two starting over the

coming weeks. As these staff develop their knowledge and expertise, they will provide some much needed additional investigation capacity. We have also offered overtime to current CRs on a voluntary basis.

26. The additional capacity, combined with our business focus on these unallocated cases, is enabling us to focus effort on both reducing the numbers of cases awaiting allocation and the time it is taking. We also strive continually for other ways to improve our performance and the experience of complainers; for example, we are increasingly resolving complaints to the satisfaction of complainers and public bodies, without the need for lengthy investigation.
27. I will be delighted to provide an update on six-monthly figures after the end of Q2 and anticipate doing so no later than the end of October 2022, by which time we will also have shared our Annual Report and Financial Statements with the Committee.

Whistleblowing complaints

28. I note the Committee's intention to liaise with the Health, Social Care and Sport Committee to establish whether it has, or intends to, give scrutiny to this topic, particularly the question of how much the new Whistleblowing Standards are being used by NHS staff (and others delivering services on behalf of the NHS in Scotland).
29. We continue to monitor complaints and enquiries to us, and maintain contact with NHS staff responsible for managing and reporting on whistleblowing. We are also intending to increase our stakeholder engagement as we emerge from the pandemic.
30. We will provide further updates over time.

SPSO Legislation

31. I intend to provide the Committee with a report about the growing need to modernise the role, function and powers of the office of the Scottish Public Services Ombudsman. To do this will require legislative change. While there are some things that can be achieved through secondary legislation, the most significant changes can only come about through updating the SPSO Act 2002.
32. This Act is now twenty years old and much has changed in public service delivery and the expectations of service users over that time. This change is multifaceted ranging from attitude and approach shift to the way we communicate and access services (public and private).
33. Underpinning this is a growing shift to a rights-based approach in relation to what public services citizens are entitled to and how they access and interact with public services. There is a continued need to focus on the importance of learning from complaints to improve user

experience, quality and the efficiency of public services. It is also notable that for the first time there are international standards for Ombudsman schemes.

34. Arguably the legislation requires a full and detailed review to ensure this office remains fit for purpose in a changed context. I indicated to the Committee that two items are particularly pressing.

- 34.1. The legislation should be changed as a matter of urgency to make it easier for people to make complaints to the SPSO in a way that is focused on their accessibility needs. Currently the Act requires complaints to the SPSO be in writing (which includes electronic writing) unless there are special circumstances.

In practice, this means I need to demonstrate, on each individual case, that a person has provided good reasons to make their complaint in an alternative format. This is a significant barrier to improving the accessibility of my office.

I would like the flexibility to take complaints “in any format”. I understand, following discussions with the Scottish Government, that this change could be implemented through secondary legislation and may not need to wait until a fuller review is complete.

- 34.2. I am currently restricted to investigating what complainers bring to me. While some significant issues have been identified and remedied over the years (and will continue to do so), it means I cannot initiate an investigation under my own initiative in the public interest. This affects my ability to, for example,

- investigate matters that I identify when investigating a complaint that are not within the scope of the complaint made.
- investigate whether significant failings that I have identified at one organisation are occurring across others, or across sectors.
- consider and investigate matters where data and intelligence monitoring indicate there may be issues which if reported on now, could lead to earlier improvements, better outcomes for people and fewer complaints
- I know there are vulnerable people and groups who are unlikely to make complaints for a variety of reasons. Own initiative powers is one way to ensure their voices are heard.

35. Many public service ombudsman schemes across the world can undertake “own initiative” investigations which enables them to focus on achieving great impact and improvement in a more timely and efficient way. This is a power my fellow Ombudsman schemes do not exercise lightly but a good example of how impactful the approach can be is the

Northern Ireland Public Service Ombudsman own initiative reports. They investigated the use of restrictive practices in schools, and the use of evidence in PIP assessments by the DWP. These reports can be read here: [Own Initiative investigations Archives • Office of the Northern Ireland Ombudsman \(nipso.org.uk\)](#) Also on that page you will see details of their current investigation which is into communication with people on healthcare waiting lists.

36. Please let me know of other areas of interest.

Yours sincerely

Rosemary Agnew
Scottish Public Services Ombudsman