

# Citizen Participation and Public Petitions Committee

17th Meeting, 2022 (Session 6), Wednesday  
7 December 2022

## PE1964: Create an independent review of the Scottish Public Services Ombudsman

**Lodged on** 7 September 2022

**Petitioner** Accountability Scotland

**Petition  
summary** Calling on the Scottish 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.

**Webpage** <https://petitions.parliament.scot/petitions/PE1964>

## Introduction

1. This is a new petition that was lodged on 7 September 2022.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected not to collect this information.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

6. Two submissions have been provided by the petitioner. They are included at **Annexe D**.
7. The Committee has also received submissions from John Stuart, Jean Erskine, Bob Doris MSP, and one anonymous submission. These can be found in **Annexe E**.

## Action

8. The Committee is invited to consider what action it wishes to take on this petition.

**Clerk to the Committee**

## Annexe A

# PE1964: Create an independent review of the Scottish Public Services Ombudsman

## Petitioner

Accountability Scotland

## Date lodged

7 September 2022

## Petition summary

Calling on the Scottish 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.

## Previous action

We have met Bob Doris, MSP and Sir Paul Grice (of the Scottish Parliament).

We have met the SPSO, presented evidence of what, in our view, were false statements and contradictions of statutory policy, evidence and witnesses. The SPSO states it can choose which evidence it uses.

In November 2014 the Public Petitions Committee suggested a review of the activity of the SPSO, but the Local Government and Regeneration Committee argued a review of their work was premature at that time.

## Background information

Since its inception in 2002 there has been no independent oversight of the SPSO, despite mounting complaints against it. The SPSO has always investigated all complaints against itself.

Almost every online review gives it the lowest rating, with common themes of bias, illogical arguments and evidence being ignored or contradicted.

Cases handled by the SPSO include children harmed in schools or other settings, medical negligence, mistreatment of the elderly and those in prisons, wrongful dismissals and loss of business. They can be highly sensitive cases with serious implications for the individuals and families involved, and for communities if services are at fault and their failings continue unchecked.

The Scottish Public Services Ombudsman Act 2002 states:

“The procedure for conducting the investigation is to be such as the Ombudsman thinks fit.”

Based on our reading, the wording of the Act allows the SPSO to cherry-pick evidence, ignore witnesses and repeat the public body’s unsupported claims. The SPSO does not address why evidence of wrongdoing can be ignored.

The aim of this petition is to protect the public and improve the delivery of justice and public services in Scotland.

## Annexe B

The logo for SPICe, featuring the text 'SPICe' in white on a purple-to-blue gradient background.

The Information Centre  
An t-Ionad Fiosrachaidh

### **Briefing for the Citizen Participation and Public Petitions Committee on petition PE1964: ‘Create an independent review of the Scottish Public Services Ombudsman’, lodged by Accountability Scotland Brief overview of issues raised by the petition**

The Petition calls on the Scottish 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.

### **Background information**

The Scottish Public Services Ombudsman (SPSO) is the final stage for complaints relating to most devolved public services. The body also has a role in reviewing decisions made regarding applications to the Scottish Welfare Fund. The Ombudsman is funded by the Scottish Parliament Corporate Body, although it functions independently of the SPCB.

The [Scottish Public Services Ombudsman Act 2002](#) sets out the SPSO's powers and duties which cover three distinct areas of statutory functions:

- 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;
- Specific powers and responsibilities to publish complaints handling procedures, and monitor and support best practice in complaints handling;
- Independent Review Service for the Scottish Welfare Fund (SWF) with the power to overturn and substitute decisions made by councils on Community Care and Crisis Grant applications. SPSO decisions on SWF matters are binding on councils and must be implemented.

The SPSO also became the independent national whistleblowing officer for the NHS in April 2021.

## SPSO budget and resource challenges

The SPSO receives most of its funding from the Scottish Parliament Corporate Body (SPCB). The SPCB budget is scrutinised and approved by the Finance and Constitution Committee, with the following table showing that funding for the Ombudsman has risen over the last 5 years:

|                           | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 |
|---------------------------|---------|---------|---------|---------|---------|
| Funding from SPCB (£,000) | 4,707   | 4,850   | 5,971   | 6,236   | 6,301   |

Source: [SPCB annual reports](#) and [SPCB submission to Finance Committee](#)

[Writing to the previous Committee in January 2020](#), the Ombudsman stated, “having insufficient resources is an increasing, business-critical risk”. Again, in the [recent submission from SPSO](#) sent to the Local Government Committee in March, the Ombudsman raises the issue of resources and workload:

“Over recent years, the most significant challenges SPSO experienced were rising volumes of complaints cases, with broadly static investigation staff numbers.”

The [2020-21 Annual Report](#) shows that the SPSO employed 71.8 (FTE) members of staff. This compares to 65.2 in 2019-20. Staff numbers have grown with each new jurisdiction added to the Ombudsman’s statutory responsibility, with the focus during 2020-21 being on recruiting for the new Independent National Whistleblowing Office function.

## The SPSO and the complaints process

The [SPSO annual report 2020-21](#) provides a summary of the complaints process (see page 24). Once a complaint about a public service has been escalated to the SPSO, the Ombudsman must assess whether the complaint can and should progress.

SPSO reviewers carry out assessments of all complaints to check that the matter is one the SPSO can investigate. For example, reviewers

check that the complaint has arrived within 12 months of when the matter happened. They also assess whether or not to prioritise the complaint. In 2020-21, 87% of cases escalated to the Ombudsman were closed at the initial assessment stage. The majority of these were cases which the SPSO decided not to consider further, and one of the main reasons for this was that the Ombudsman felt the complaints had already been well-handled by the public body receiving the complaint. The Ombudsman received a total of 3,130 complaints in 2020-21 with the two sectors seeing the most complaints being health (34%) and local government (30%). Of the 420 cases that passed assessment stage in 2020-21, and were then investigated by SPSO, 246 were upheld in full or in part. This is equal to 7.7% of all those complaints closed by the SPSO during that year.

## **Service standards and performance**

SPSO publishes the results of customer satisfaction surveys and public body surveys: [Service standards performance | SPSO](#). SPSO annual reports also document customer satisfaction and its internal complaints handling: [Annual Reports | SPSO](#)

How the Ombudsman handles complaints about its own services is set out here: [Our customer service standards | SPSO](#) and [CSCProcedure.pdf \(spsso.org.uk\)](#)

In the 4 years between 2017-18 and 2020-21, the SPSO received 369 complaints about the services it provides. The 2020-21 Annual Report states that

“where a customer remains unhappy with either the decision we make on their CSC or the way we handled it, they can ask the Independent Customer Complaints Reviewer (ICCR) to review our handling of the complaint and the decision(s) we made”.

During 2020-21, 19 service complaints were sent to the ICCR. The Annual Report states:

“The ICCR did not uphold any complaints at first hand this reporting year. Each of ICCR’s decisions resonated with the customer service decisions taken by SPSO on the customer service complaints escalated to her office that ICCR independently determined were also the correct decisions. Four customers had multiple customer service complaints of between two and three separate complaints raised to ICCR....Of the 19 matters referred to ICCR there was no evidence of a service failure or

maladministration by SPSO, or a failure by SPSO to effectively handle a service complaint against its customer service standards.”

According to the Annual Report, SPSO has a contract in place with an independent customer complaints reviewer to whom the organisation signposts complainants. More information on the ICCR is available in the ICCR’s [2020-21 Annual Report](#).

## Previous Parliamentary activity

The [2002 Public Services Ombudsman Act](#) requires the SPSO to report annually to the Scottish Parliament on the exercise of his or her functions. Most recently, the Local Government, Housing and Planning Committee [held a session with Ombudsman](#), Rosemary Agnew, in March 2022. Session 5’s [Local Government and Communities Committee](#) also took evidence most years on the SPSO’s annual reports.

## SPSO’s request for change to legislation

In 2019, the previous Local Government and Communities Committee [asked the Scottish Government](#) about the Ombudsman’s request for changes to legislation that would allow it to take complaints in any format, not just in writing. The [Cabinet Secretary for Justice responded](#):

“Whilst we are supportive of the proposals, we are of the view that they could only be delivered by way of an affirmative SSI under section 14(1) of the Public Services Reform (Scotland) Act 2010 (the 2010 Act), which enables Ministers to make any provision to improve the exercise of public functions, having regard to efficiency, effectiveness and economy... due to competing demands and current pressures, there is not, at this time, sufficient resource to progress matters and finalise a way ahead with the SPSO resulting in the desired changes.”

The Scottish Government [subsequently informed the Committee](#) that they had “raised the question with the Public Petitions Committee [in relation to Petition [PE1740](#)] whether this could be an appropriate subject for a Member’s Bill or Committee Bill”.

The Committee also asked the Government about changes to legislation that would allow the Ombudsman to carry out investigations at her own initiative, i.e., without requiring an external complaint. Statutory powers are currently that the SPSO cannot investigate a matter in which no



complaint has been made. On this matter, the [Cabinet Secretary for Justice responded](#):

“The SPSO has also asked for powers to conduct own initiative ‘Public Value’ investigations, i.e. to be able to undertake an investigation without an individual having made a complaint. This change would require primary legislation to amend the SPSO Act 2002. Giving the SPSO the power to conduct ‘Public Value’ investigations would be a fundamental change to the role of the SPSO. Parliament has previously rejected this request and in my view, there has been no material change in circumstances since that time which would require this decision to be revisited.”

In its recent [submission to the Local Government Committee](#), the SPSO states that “the international community has set new standards and expectations for Ombudsman which have been ratified at UN level”.

## Previous Petition

As mentioned above, Session 5’s Public Petitions Committee considered [Petition PE1790](#) during 2019 and 2020. Like this current petition, PE1790 was lodged on behalf of Accountability Scotland. This called 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.

Correspondence and Committee discussion relating to this petition is available here: [PE01740: Improving the handling of complaints about public services - Getting Involved : Scottish Parliament](#)

**Greig Liddell**  
**Senior Researcher**  
12/10/2022

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot) Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these

briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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## Annexe C

### Scottish Government submission of 26

October 2022

### PE1964/A: Create an independent review of the Scottish Public Services Ombudsman

Thank you for your email of 7 September 2022 in which you requested the Scottish Government's written response to the issues raised in petition PE1964. Included below is information that may assist the Committee in considering the petition.

The Petitioner, Accountability Scotland, has called upon the Scottish Parliament to urge the Scottish Government to create an independent review of the Scottish Public Service Ombudsman (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.

In considering the terms of the Petition, we are of the view 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. The background information and current considerations which have informed this decision is included below. We will however keep this matter under review and should circumstances change, be content to reassess our position.

#### **Background information**

The functions of the SPSO, and the ways in which those functions are to be delivered, are set out in the Scottish Public Services Ombudsman Act 2002 ("the 2002 Act"). The SPSO investigates complaints made about public authorities in Scotland, where these fall within the remit set out in that Act.

The Scottish Parliamentary Corporate Body (SPCB) funds the SPSO and the SPSO's budget forms part of the SPCB's overall budget. However, as an independent officeholder, the SPSO is not subject to the direction or control of the SPCB or any member of the Scottish Government (SG) or Scottish Parliament concerning its functions.

## **Current safeguards**

### **SPSO complaints process - Complaints about Service**

The SPSO operates a 2-stage complaints process internally. Stage 1 is an opportunity for early resolution; where this does not resolve a complaint, or early resolution is not appropriate, it will be dealt with under stage 2, where the complaint will be investigated by management within SPSO.

Should the above process fail to resolve a complaint the complainant may ask the Independent Customer Service Complaints Reviewer (ICSCR) to consider it. The ICSCR has the responsibility of independently reviewing service complaints in relation to SPSO. The ICSCR is a non-statutory role established by SPSO on 1 October 2007 to provide assurance that it has robust arrangements for ensuring that service complaints are dealt with appropriately and that service users have the opportunity for review by someone outside of the organisation.

The ICSCR is responsible for investigating and responding to complaints about the service provided by SPSO in the carrying out of its statutory functions. The ICSCR role is limited to complaints about the service SPSO provides, including failure to meet SPSO's service standards. Matters related to SPSO's decisions or basis for those decisions (including evidence gathered to make that decision) are not issues within the ICSCR remit. There is a separate review process for disagreements with SPSO decisions, covered below.

Where they have examined a matter, the ICSCR is required to issue a final report to the complainant and the Ombudsman.

In April each year, ICSCR is required to produce a formal report about their work on complaints in the previous year, which is published on SPSO website. All SPSO decisions are posted on SPSO website and ICSCR decisions are reflected in SPSO's quarterly and annual reporting.

### **Complaints about decisions made by the Ombudsman**

The SPSO criteria for complaints against decisions set out that disagreement with a decision will not be grounds for review.

If a party to a complaint is unhappy with the decision of the Ombudsman, there are very specific circumstances where a decision can be reviewed. A decision will only be changed if a party;

- Sends new information, and/or
- Demonstrates information that the Ombudsman used was wrong, and/or
- Demonstrates that the Ombudsman made a mistake.

And

- The above had an impact on the original decision.

The Ombudsman cannot change a decision simply because someone disagrees with it and if a public report has been issued then the review rights will not apply.

### **External review / safeguards**

Audit Scotland carries out annual reviews of the SPSO, and publishes detailed reports on its website. The most recent of these was issued on 3 September 2021 and can be accessed on the Audit Scotland website - Scottish Public Services Ombudsman annual audit 2020/21 | Audit Scotland (audit-scotland.gov.uk). This report covers predominantly financial sustainability however it includes an action plan for improvement, which contains suggestions for short to medium term improvements.

The SPSO publishes an annual report and lays its strategic plan before Parliament, allowing for further scrutiny.

### **Current Considerations**

There are continuing delays of up to 10 months in allocating a new complaint (about a regulated body) to a Complaints Reviewer, however the SPSO advise that this is the maximum time taken and that many complaints are allocated sooner than this. We understand that the Scottish Parliament Corporate Body has agreed to provide additional funding to assist in dealing with this backlog.

### **Response to the Petition for seeking an Independent Review of SPSO**

In terms of considering if an independent review is required on the terms suggested by the Petitioner, we have looked at current arrangements as outlined above.

We have taken into account that the SPSO is required to lay before the Scottish Parliament each year a general report on the exercise of its functions, to lay every four years a Strategic Plan setting out how it proposes to perform the Ombudsman's functions during the 4 year period, and that its work is scrutinised on an annual basis by the appropriate Parliamentary Committee. The SPSO must also, after conducting an investigation, lay a copy of the report produced before Parliament in accordance with the 2002 Act, and if such a report finds that the person aggrieved has sustained injustice or hardship may also produce a special report which must be laid before Parliament.

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.

## Annexe D

# Petitioner submission of 27 October 2022 PE1964/B - Create an independent review of the Scottish Public Services Ombudsman

Throughout this petition we refer to the current SPSO, Rosemary Agnew, but the same problems have been reported with all previous Ombudsmen. This petition is not contending that every investigation / decision by the SPSO is flawed, but it is concerning that any are.

Accountability Scotland was formed in 2011 by members of the public who had been harmed by the SPSO. Ever since, traumatised and distressed people have approached us following engagement with the SPSO, many describing deteriorating health as a result of the SPSO exacerbating their ordeal and treating them as if they are the problem.

### **Complaints against the SPSO**

When investigating complaints against itself, the SPSO refuses to address complaints of factual errors it makes, or when evidence directly contradicts their statements and / or decision. Here is a typical response to a complaint against the SPSO: "The remit of the service delivery complaints process... is to investigate complaints about SPSO's service... it is not to take a view on how evidence was assessed and taken into account in reaching a decision."

The SPSO's refusal to explain why incriminating evidence has been ignored, combined with the wording of The SPSO Act, leaves the SPSO free rein. Contradicting evidence is one of the most common complaints people make against the SPSO.

Additionally, the SPSO need not present evidence that supports its decision, so another common complaint is that it parrots the unsubstantiated claims of the public body, despite evidence proving the opposite to be true.

Unsatisfied complainants can then go to the Independent Customer Service Complaints Reviewer which, similarly, does not look into the SPSO's investigations. It simply assesses whether the SPSO responded appropriately to a service complaint. It cannot question whether the story the SPSO presented is factually correct. This is analogous to deciding whether the table service is polite and efficient, even if the food is rotten.

Finally, the SPSO routinely tells people they can pursue Judicial Review if unsatisfied, yet the cost is prohibitive to almost everyone. There is no one to go to in order to blow the whistle on the SPSO.

### **Need for structural independence**

In 2013 the UK Supreme Court issued a unanimous ruling that questioned Police Scotland's ability to investigate itself and shone a light on what can happen when a service has no oversight at all. (Kevin Ruddy v Chief Constable Strathclyde Police + The Lord Advocate). The public has seen how lives can be destroyed when organisations, such as the police and Post Office, investigate themselves. We contend that the SPSO is no different. It is our understanding that Rosemary Agnew, the current SPSO, recently investigated and cleared a claim that her office bullied complainants.

In another example, Rosemary Agnew in our understanding falsely insisted to a family and Bob Doris, MSP, that statutory policy intended to protect vulnerable children (and violated by a school under investigation) is discretionary – therefore, she argued, the school acted correctly. The SPSO claims it considers complaints that “its staff do not possess the relevant skills and knowledge for the job”, so this fact was included in a service complaint against the SPSO, along with other examples of illogical arguments and false statements. Rather than address the mistakes they made, John Stevenson, Head of Improvement, Standards and Engagement at the SPSO simply explained, “We only employ staff who demonstrate that they possess the relevant skills and competencies for the job.” The SPSO's unwillingness to countenance that they make mistakes – while being confronted with them - is extremely concerning.

### **Witnesses**

The SPSO has no interest in contacting independent witnesses. We have examples of witness testimony supplied as evidence being discounted. Quote from an SPSO investigator prior to an investigation: “Nor will we be speaking to any potential witnesses”

Meanwhile, they have lengthy contact with the PR departments of the public bodies accused of wrongdoing. This leaves people alone confronting huge organisations - such as councils - who may have a vested interest in maintaining their image. There is no penalty if the organisation hides evidence or even lies. If two opposing sides disagree about an event in which one was harmed and witnesses can shed light on the matter, should they not be heard?

Finally, examples of statements by members of the public who responded to a survey we conducted on experiences with the SPSO:



“I have given up with this but it will haunt me for the rest of my life.”

“My experience with the SPSO made me lose the will to live.”

“Child protections have been weakened across Glasgow as a result of our complaint.”

“My emotional health has been in decline since the incident and pretty much nose-dived after the SPSO.”

“SPSO added to the damage that had already been done.”

## Petitioner submission of 17 November 2022 Petition 1964/G – Create an independent review of the Scottish Public Services Ombudsman

We would like the opportunity to speak to the Committee.

The Scottish Government has stated that resource constraints, the independent nature of the Ombudsman and Parliament’s “role in scrutinising the work of the Ombudsman” prevents them from taking forward an independent review of the Ombudsman “in the near future”. It would be helpful if the SG confirmed whether they think an independent review of the SPSO would ultimately be desirable or not, with their reasoning.

In the SG’s response, they reiterate the SPSO’s own material, assuming it to be reliable. The SPSO presents itself in an excellent light in its own literature. We have evidence to show the SPSO covers up its mistakes at a cost to the public.

**SPSO complaints process** (see also additional submission, PE1964/B)

If the SPSO clears itself of wrongdoing, unsatisfied people can make a “service complaint” to the Independent Customer Service Complaints Reviewer. The SPSO established the ICSCR itself and chooses who to employ to fill this role, raising questions about its independence. More significantly, the ICSCR does not look into the SPSO’s investigations. If an investigation is biased or inadequate, the ICSCR will never know. If the SPSO has ignored evidence that incriminates the public body, that evidence will not be mentioned in the SPSO’s report and there is nothing the complainant can do to have it included. As a result, it may look to the ICSCR, or anyone reading the SPSO’s report, that they are making a

reasonable case. Imagine if witnesses to a murder could not testify that they saw a person stabbing the victim. This is how hamstrung some cases are by the SPSO, and how public services can sometimes commit systematic breaches of policy and negligence without anyone knowing about it, apart from the victims. As the Scottish Government admits in its submission:

“Matters related to SPSO’s decisions or basis for those decisions (including evidence gathered to make that decision) are not issues within the ICSCR remit.”

A complaint reaching the ICSCR may have become unrecognisable, due to false claims and missing facts, including the SPSO wording the complaint themselves. We have seen this used against the complainant, as the SPSO chide them that evidence of wrongdoing they have supplied is not relevant to the exact wording of the complaint they chose to investigate.

The SG titles a section of its response “**Complaints about decisions made by the Ombudsman**”. In fact, it is forbidden to complain about a decision made by the SPSO. The SPSO claims to conduct reviews under specific circumstances, but we have seen plenty of cases where - despite a complainant sending new evidence which fulfils the SPSO’s criteria and shows breaches of policy, wrongdoing etc - this promise is not kept and a review is flatly rejected.

### **“External review / safeguards”**

The SG cites Audit Scotland and the SPSO’s annual reports to Parliament as safeguards, but neither amount to real scrutiny of the SPSO.

We have met with Audit Scotland and, similarly, their work is not to look into how the SPSO conducts its investigations or makes its decisions - nor do they wish to be drawn into that role.

The SPSO’s rosy annual reports to Parliament are at odds with the public’s perception. While upholding more complaints against itself, it doesn’t mean faulty investigations can be reopened and re-adjudicated. An SPSO Corporate employee says “we would usually issue an apology... An upheld customer service complaint would not affect the decision made on your public service complaint.” After a faulty investigation, a bad decision still stands.

## **Conclusion**

Allowing the SPSO to continue its work without oversight, despite mounting complaints from the public, is damaging to Scotland and its people, who deserve fair, adequate and effective investigations of their complaints. It takes enormous time and effort to complain to the SPSO and people describe impacts to their health and work during engagement with them. Most people tell us they only do it to prevent the same thing from happening to someone else. They aren't seeking compensation or for someone to lose a job. They simply want an apology and for the public body to learn from their mistakes and improve.

Taking the SPSO's word that it is doing a wonderful job, while failing to investigate the public's concerns will not save resources: it will drain them. It will harm more people and lead to continuing problems in public services, creating ever increasing complaints and requests from the SPSO for additional funding. Many public reviews state that it would be better to remove the SPSO and its funding so it can't hurt anyone else. Any additional funding should be contingent on the results of a proper independent review of the SPSO and the legislation by which it is bound. After 20 years of the Ombudsman doing whatever it "thinks fit" it is time to test its fitness.

## Annexe E

### John Stuart submission of 27 October 2022 PE1964/C - Create an independent review of the Scottish Public Services Ombudsman

Administrative justice may not be the most high profile or glamorous area of justice but is nonetheless of great importance to many people. In Scotland a key player in the system is the SPSO and from the survey conducted by Accountability Scotland, and other surveys, there is clearly a good deal of dissatisfaction with this body.

1. Many respondents to that survey are unhappy, not so much with the decision reached by the SPSO, as by the inadequate way the investigation has been carried out. The survey elicited many examples. The satisfaction rate of complainants in Scotland compares very unfavourably with that of Gibraltar. This may be due to the training officials receive or the background from which they come – e.g. many from customer service, few with legal experience – or inadequate staffing, but the problem needs to be addressed.
2. There seems to be little provision for impartial review of decisions of the SPSO apart from seeking a judicial review, which would be prohibitively expensive for most people.
3. When the SPSO finds in favour of the complainant it has a very limited range of effective sanctions it can impose on the BUJ.
4. Since the establishment of the SPSO there has been no proper review of its performance by the Parliament's Corporate Body to which the SPSO is in principle accountable. It is clear that such a review is now required.

Scotland should aim to emulate Gibraltar's success rate.  
The crave of the petitioners should be granted.

# Jean Erskine submission of 31 October 2022

## PE1964/D – Create an independent review of the Scottish Public Services Ombudsman

This is a letter of support for PE1964 seeking an independent review of the SPSO, in order to investigate complaints against the SPSO, assess the quality of its work and decisions, and establish whether current legislation governing the SPSO is fit for purpose.

In 2006-2007 the SPSO was not fit for purpose when dealing with my medical negligence case. After rejection by the SPSO, for over ten years I fought and won my case in a court of law in 2017 at much personal expense, loss of time and deep anxiety, and thereby proved how wrong the SPSO had been.

It had required a lawsuit to correct the SPSO's blunders.

### **Catalogue of my experience with SPSO's blunders:**

- No personal interview. A personal, face to face, interview should have been offered to me as complainant to prevent innocent errors by a lowly citizen in front of a faceless bureaucracy. No empathy with someone's personal plight and distress. We were not gratuitous troublemakers but honourable people acting with integrity.
- The SPSO had sent me a draft report which I amended to correct inaccuracies (with reasons). Most of these amendments were ignored in the final report.
- There was no appeal procedure against a decision by the SPSO.
- 'Open to all': The SPSO produced a leaflet stating: '....provides an open, accountable and accessible public services complaints system.' Also: '...an independent, free and fair response to complaints about public services.'

The SPSO never probed deeply into my individual situation, nor with any personal attention to my distress; I was just another bureaucratic exercise, to be ruthlessly dispensed by blinkered practices compliant with the need for a speedy outcome.

At present it seems to us that the office of SPSO is wasting taxpayers time and money by refusing to listen to voices of experience.

Cases handled by the SPSO can be from individuals and families who genuinely believe in their grievance. To be faced by an incompetent and unfair system of judgement can be psychologically damaging to their wellbeing and their welfare for the rest of their life.

As a knowledgeable woman who cared for her body and knew its workings, I was convinced from first noticing changes in my breasts that I had breast cancer as early as 2002. The SPSO in 2006-2007 could have concluded the same, and could have saved me over ten years of wearying work, at the same time as surviving a late diagnosis and poor prognosis, regardless of the cost of hiring a legal expert.

This case is now over, but seemingly over the years (ie 2007-2022) the SPSO has not been prepared to listen to similar failures on their part, nor attempt to make improvements for the future.

## Anonymous submission of 14 October 2022 PE1964/E - Create an independent review of the Scottish Public Services Ombudsman

I fully support the petitioner. In a 21<sup>st</sup> Century Scotland the primary role of the SPSO is to ensure a basic human right - the right to a fair hearing. Members of the public are entitled to an adequate and effective investigation of their complaints, independent of bias. Rosemary Agnew, the current Ombudsman is afforded a unique, privileged and trusted position. A position which is not subject to the same scrutiny and oversight as most other Crown appointees. In my opinion this can only work if the Ombudsman's integrity and trustworthiness is beyond reproach.

My view is that the SPSO is not trustworthy nor does it act with integrity at all times. I base this on facts and evidence gained by experience with the SPSO.

In March 2022, the Information Commissioner's Office (ICO) agreed that a claim the SPSO had made about me to the Independent Customer Service Complaints Reviewer (ICSCR) was false and gave them thirty days to correct this. This is important because the ICSCR had relied on this incorrect information to find in the SPSO's favour. When the SPSO failed to meet this deadline, I took legal action to enforce my rights and have this unsafe ICSCR decision voided.

Faced with proper scrutiny for the first time, i.e., the Sheriff Court, the SPSO finally admitted that it had acted unlawfully by making a false claim about me and refusing to rectify this upon a valid and legal request. Compensation for the distress this has caused me was agreed, the SPSO accepted that the ICSCR decision was wrong and voided it. At a hearing in October 2022 the court instructed the SPSO to also pay my court expenses. The hypocrisy of the SPSO's intervention in a supposedly independent investigation is stunning. The organisation which sets the standards for others to follow when handling complaints failed to follow these standards, gave false information and then tried to cover up its actions. Had I not taken the SPSO to court they would have succeeded.

Judging by the reviews of the SPSO online, I am not the only member of the public aware of this type of behaviour.

The irony of this is that whilst I succeeded in bringing to light the lengths to which the SPSO will go to harm a complainant and create the appearance that it is beyond reproach, none of this has impacted on the reason I engaged with the SPSO in the first place. None of this will result in a proper investigation of my original complaint when I approached the SPSO expecting a fair hearing, as per my human rights. They denied me a fair hearing then and did the same again with regard to my ICSCR complaint. No one should need to go to the lengths I have, i.e., instructing legal action to get the SPSO to correct a deliberate, unfair, wrongful and unlawful act by them.

The Petition does not mention something else which is also important to note. The Independent Customer Service Complaints Reviewer does not act as oversight of the SPSO. It simply assesses whether the SPSO handles service complaints in line with the process, in a timely and polite manner. They cannot look into whether or not the SPSO conducts fair and just investigations.

I agree with the Petitioner that Parliament needs to look at whether or not the SPSO is delivering justice for the public. My experience tells me they are not. If they have made false claims about me three times (two more claims to come) it begs the question - how often are they doing this with others? I personally think I am the "tip of the iceberg".

## Bob Doris MSP submission of 8 November 2022

### PE1964/F: Create an independent review of the Scottish Public Services Ombudsman

My thanks to your committee clerks for drawing the progress of the above petition to my attention, and, in particular the further consideration by the committee of the petition on Wednesday 7 December 2022.

Whilst other parliamentary commitments mean I will not be attending said meeting, my thanks for the opportunity to make some brief remarks based on my experience in supporting my constituents engagement with the SPSO, as well as the Scottish Government response to the petition.

In the first instance the Scottish Government reply lacked clarity in one aspect. Whilst it was clear that resource implications will mean there is unlikely to be a review in the near future, the Scottish Government did not engage with what I would consider the underlying matter to be, that is - is there value in having a review of the SPSO 20 years on?

For me there is a clear value in doing so although I also acknowledge resource implications may delay any potential review. I accept that on occasions members of the public will never be able to reconcile any SPSO findings which do not uphold their complaints. However I am not convinced there is a robust and effective process by which individuals, who believe the SPSO has erred in its conclusions, can have a meaningful review of SPSOs decisions. I would include the Independent Customer Service Complaints Reviewer in that regard.

That has certainly been the experience of my constituent.

The Scottish Government has described the process and safeguards within the SPSO process and system at present. However it is silent as to whether these are effective or otherwise. This may be because there has been no meaningful or detailed analysis of these. I am also well aware of the desire of the SPSO to have additional powers. It would seem reasonable to review how effective the SPSO is currently and what changes may be required as matters stand, before considering extending the SPSO's remit or powers.

It would be helpful to better understand the Scottish Government's thinking in this area.



