

Citizen Participation and Public Petitions Committee

11th Meeting, 2023 (Session 6), Wednesday
28 June 2023

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

Lodged on	7 September 2022
Petitioner	Accountability Scotland
Petition summary	<p>Calling on the Scottish Parliament to urge the Scottish Government to create an independent review of the SPSO, in order to:</p> <ul style="list-style-type: none">• 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. The Committee last considered this petition at its meeting on [7 December 2022](#). At that meeting, the Committee agreed to write to the Scottish Public Services Ombudsman, the Scottish Government and the Scottish Parliamentary Corporate Body.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from the Scottish Public Services Ombudsman, the Scottish Government and the Scottish Parliamentary Corporate Body which are set out in **Annexe C**.
4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.

6. The Scottish Government's initial position on this petition can be found on the [petition webpage](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 5 signatures have been received on this petition.

Action

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

Extract from Official Report of last consideration of PE1964 on 7 December 2022

The Convener: We move to PE1964. Apologies—I have quite a long screed to read here, but this is our final petition this morning. The petition, which was lodged by Accountability Scotland, calls on 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.

The SPICe briefing outlines the role and responsibilities of the SPSO, the budget and resource challenges, the complaints process, service standards and challenges. The briefing states that, over four years, the SPSO received 369 complaints about the service that it provides. The briefing also highlights the SPSO's request for a change to legislation to allow it to take complaints in any format and to enable it to initiate its own investigations. A note on previous related petitions is also contained in our briefing.

The Scottish Government's response to the petition states that, due to current resource constraints as well as the independent nature of the ombudsman and Parliament's role in scrutinising the work of the ombudsman, it does not intend to take forward an independent review of the SPSO in the near future. The Scottish Government also states that it has opted not to amend the legislation in relation to the powers of the SPSO at present, due to competing demands on resources.

Members may wish to note that the Local Government, Housing and Planning Committee took evidence from the ombudsman yesterday as part of its scrutiny of the SPSO's annual report, and I understand that those considerations did not include the issues that have been raised by the petitioner.

We received several additional submissions from the petitioner and others. Those set out concerns about the complaints process and the SPSO's consideration and handling of evidence, including the approach taken where factual errors have been identified. People's negative experiences and the impact of the SPSO complaints handling process on complainants have also been highlighted. The issues raised include the challenges of self-investigation and the need for structural independence. The submissions also call for an independent review of the SPSO. Accountability Scotland said that it would welcome clarification from the Scottish Government as to whether it considers that there is value in an independent review.

In an interesting submission to the committee, Bob Doris MSP stated that he believes that there is clear value in reviewing the SPSO 20 years on, as there has been no meaningful or detailed analysis of the processes and systems that are currently in place. He suggested that there would be merit in exploring how effective the SPSO is, including by considering the effectiveness of the safeguards that are in

place and what changes are required. He also suggested that we may wish to understand the Scottish Government's thinking on whether such a review would be desirable.

In reading the Scottish Government's response, it struck me that it does not necessarily deny some of the issues that are raised in the petition; the Government simply takes the view that it does not have the resource or time to explore those matters at the moment. The Government did not express a view as to whether a review would be of value, as Bob Doris suggested it would be, and said that it would consider doing one at a later date.

Do members have any comments or suggestions for action?

David Torrance: Before we make any further recommendations, could we write to the Local Government, Housing and Planning Committee to ask it what relevant work it intends to do in that area, and whether it will consider what the petition asks for?

The Convener: Apparently, we have already established that that committee is not interested in pursuing what the petitioner raised.

David Torrance: Okay. If that is the case, would the committee like to ask the petitioner and the SPSO to give evidence to members?

I also have another, rather lengthy, ask. Could we write to the SPSO on the issues raised in the petition, including its approach to the handling and consideration of evidence and the rationale for not reviewing its decisions when complaints are upheld? Could we also write to the Scottish Government to clarify its view on the need for, or the desirability of, a review of the SPSO after 20 years of operation, and ask whether it considers that its processes and safeguards in relation to the SPSO are sufficient and effective? Finally, could we ask the Government whether it considers that the legislation governing the SPSO is fit for purpose, whether it would benefit from a review and what revisions might be required?

The Convener: I am happy to write to the organisations that you have suggested, but we would do that instead of taking evidence from the petitioner, at this stage. As you suggested, we would write to the SPSO and the Scottish Government.

Are there any other suggestions, or are members content for us to proceed in that way?

Alexander Stewart: It would also be useful to write to the Scottish Parliamentary Corporate Body to seek clarification of its role in relation to the SPSO and to ask for its views on the action that has been carried out for the petition, specifically in relation to the value of the independent review of the SPSO.

The Convener: That is very generous of you, Mr Stewart. I am on the corporate body and am therefore one of the people who would be in receipt of the letter that you suggest.

Paul Sweeney: I support those proposals.

I note that a similar petition was considered in 2014, at which point it was recommended that there should be oversight, but the Government advised that it was too soon to consider doing that in the light of the legislation in 2002. It feels like we are sufficiently distant from that juncture and should now reconsider the issue and whether there might be a means for the Scottish Parliament, as an institution, to hold greater oversight of the ombudsman. Perhaps that could be done through a discreet committee that could be the ultimate arbitrator or escalating body.

Fergus Ewing: I agree with Mr Sweeney that it must be time for some sort of review, after 20 years. The can has been kicked so far down the road that there cannot be much road left.

I also note that the SPSO's budget has increased from £4.7 million to £6.3 million in only four years, and yet the SPSO says that it has insufficient resources because of case volumes. I am interested to learn more about that, because the increase has been much more handsome than that which other public bodies have received during the same period.

To be fair to the ombudsman, one of its limitations is that it does not really have any teeth, and therefore, even complainants whose complaint is upheld do not have a remedy; they do not get any cash or anything else. They might get an apology, if they are lucky. That is an inherent limitation, and it is not the fault of the ombudsman. However, that would fall to be considered in any review into whether the role of an ombudsman is efficacious and achieves what society might expect when there has been serious maladministration.

The Convener: I am happy to take all those suggestions on board. The Parliament has not existed for much longer than the SPSO has, and we have had two or three reviews into how we function, so it seems perfectly reasonable that after a similar length of time it might be time to have a look at the way that the SPSO functions. I do not think that it can be argued that a review needs to be deferred indefinitely, because it has been deferred for long enough.

We are collectively agreed on the suggestions that have been made.

Annexe C

Scottish Parliamentary Corporate Body submission of 18 January 2023

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

Governance

The Scottish Public Services Ombudsman (SPSO) is established by the Scottish Public Services Ombudsman Act 2002. The Act provides statutory functions for the SPCB including:

- Determining the terms and conditions of appointment of the, including salary and term of office.
- Providing annual funding for the office
- Appointing the Accountable Officer
- Agreeing determinations for staff numbers and their terms of employment and adviser fees
- Powers of direction for the sharing of services and office location
- Commenting on draft strategic plans, and
- Appointing an acting Ombudsman when the office is vacant for any reason

The SPSO can be removed from office if (a) the SPCB is satisfied that the officeholder has breached their terms and conditions of appointment and the Parliament resolves that the officeholder should be removed from office for that breach or (b) the Parliament resolves that it has lost confidence in the officeholder's willingness, suitability or ability to perform the functions of the office. In either case, the resolution is voted for by members not fewer than two thirds of the total number of seats for Members of the Parliament.

As can be seen from the above, the SPCB's relationship with the SPSO is a governance oversight role. These governance arrangements have evolved following parliamentary reviews carried out by committees in previous sessions.

It is also important to note that the SPSO, in respect of the functions of the office, is independent of the SPCB, Ministers and MSPs and this is set out in legislation to ensure there is no interference in the decisions they make.

The SPCB supplements the above statutory governance requirements in several other ways.

Terms and Conditions of Appointment

The SPSO is provided with an appointment letter when they take up office setting out their terms and conditions of appointment. It also sets out their functions and that it is a matter for them to familiarise themselves with their statutory powers and all other statutes applying to their office and to undertake any necessary personal development to ensure they can fulfil their functions and duties.

Annual Evaluation

The SPSO is subject to annual evaluation which is undertaken by an independent assessor for the SPCB. The annual evaluation process is designed to provide independent information to the SPCB on whether an officeholder is fulfilling the functions of their post; evaluates an officeholder's performance against the objectives they have set; and ensures any development needs are identified quickly and support provided.

Accountable Officer

The SPSO receives an Accountable Officer letter from the Presiding Officer and a detailed Memorandum setting out their duties. This appointment is a personal one and cannot be delegated to others. Accountable officers are directly answerable to the Parliament in the exercise of the following functions:

- a) signing their accounts of their expenditure and receipts
- b) ensuring the propriety and regularity of their finances; and
- c) ensuring that their resources are used economically, efficiently and effectively.

The Memorandum sets out what governance arrangements should be in place including a sound system of internal control, strong corporate governance arrangements and access to an Advisory Audit Board for independent advice on their corporate governance and risk and financial

management performance arrangements and internal control systems. Arrangements should also be made for internal audit which should accord with the latest standards and practices.

Strategic Engagement Documents

The SPSO must adhere to a suite of strategic engagement documents issued by the SPCB. These include a Finance Manual, a Framework document to support the efficient administration of the relationship between an officeholder and the SPCB and a budget process agreement.

In addition, the SPSO is subject to external audit which provides assurances that the financial accounting and governance arrangements are working properly on an annual basis. There have been no adverse external audit reports regarding the office of the SPSO.

Advisory Audit Board

The SPSO has an independent Advisory Audit Board (AAB). This acts in a similar way to an audit committee and provides advice and assurances to the SPSO about the governance arrangement they have in place.

Internal Audit

The SPSO has the services of an internal auditor who works closely with the AAB.

Certificate of Assurance

It is a formal requirement that the SPSO provides the SPCB's accountable officer (the Clerk/ Chief Executive) with an annual Certificate of Assurance that they have followed good governance practices and used resources appropriately. This certificate is also discussed with external auditors before it is submitted.

This summer we contacted all officeholders supported by the SPCB, including the SPSO and sought and were provided with written assurances on the following:

- they all have governance processes in place and that they are operating effectively
- they have a defined performance management framework in place to monitor performance against key performance indicators

- they have an Advisory Audit Board (AAB)
- they have an effective risk management framework which has been approved by the AAB and that their risk management policy and risk register are reviewed regularly with the AAB
- they have an internal audit function in place
- they have a whistleblowing policy in place for staff to raise concerns within the organisation and externally.

Taking account of the above, we are confident that the governance arrangements of the SPSO's office are working well.

Scrutiny

While the oversight of governance is for the SPCB, the oversight of the functions of the SPSO is more a matter for parliamentary committees.

While the SPSO is, under the legislation, independent in her decision-making and how the office functions, the SPSO is accountable to the Parliament for these functions and that is by committee scrutiny. In respect of the SPSO, this is primarily through the Local Government, Housing and Planning Committee.

Committee work related to officeholders can include the scrutiny of annual and other reports which are referred to the relevant committee(s) by the Clerk/Chief Executive. It is for committees to decide the frequency and level of scrutiny they undertake in relation to how the officeholders within their respective remits, carry out their statutory functions.

Committees do not have a governance role in respect of officeholders, although they may consider governance arrangements as part of their scrutiny work. We would expect that committee scrutiny work focusses on how the SPSO is carrying out their functions at a high level and is not intended to review, direct or control specific decisions or actions, which are properly matters for the SPSO.

I hope this provides the committee with details of the relationship between the SPCB and the SPSO.

Independent Review

The committee has sought the SPCB's views on an independent review. As the Committee will appreciate, the primary purpose of the SPCB is to provide the Parliament with the property, staff and services it requires to

function. The SPCB also has governance oversight of officeholders as outlined above.

Officeholders are set up under legislation agreed by the Parliament and the SPCB does not have a policy role in respect of their functions. The SPCB takes its directions from the Parliament in respect of its oversight role. We note that the petitioner is calling on the Parliament to urge the Scottish Government to undertake an independent review. While there is nothing to prevent the Scottish Government instigating such a review, we should point out that the SPSO is a parliamentary funded officeholder and is accountable to the Parliament. Decisions of the SPSO can only be challenged through the courts.

We have some observations which may be helpful to the Committee in its consideration of the Petition.

As set out above, external positive assurances have consistently been provided to the SPCB about the governance of the SPSO's office. While it is more a matter for committees in relation to scrutiny, there have not been any concerns from any committee raised with the SPCB in either this or the last parliamentary session.

As committee members will be aware, it is in the nature of the role of the Ombudsman that not everyone will be satisfied with all the decisions reached and that is understandable. Indeed, over this session and the last session, the SPCB has only received a handful of representations about a decision of the SPSO. We would, however, draw the Committee's attention to the latest annual report (2021-22) published by the SPSO.

The report sets out that during the reporting period the SPSO handled 3,492 complaints, and it upheld 63% of complaints it dealt with. In doing so, it made 511 recommendations to public bodies – 51% about learning and improvement. Also in the same period, the SPSO received 222 requests for a review of its decisions and dealt with 214 of these of which 173 of the original decisions were upheld. To put it in context, the number of reviews of its decisions amounted to 6% of the cases dealt with.

The Local Government, Housing and Planning Committee took evidence on the SPSO's Annual report on 6 December this year and the [Official Report](#) of that meeting has been published.

Finally, in recent years the remit of the SPSO has been extended again to cover the role of independent review service for the Scottish Welfare Fund with the power to overturn and substitute decisions made by councils on Community Care and Crisis Grant applications. It is also now the Independent National Whistleblowing Officer for the NHS in Scotland (INWO); the final stage for complaints about how the NHS considers whistleblowing concerns and the treatment of individuals concerned.

We are not aware of any concerns raised about the work of the SPSO when consideration was given to extending the SPSO's role to include these important functions.

In conclusion, and based on all of the above, we can see there may be some scope for a review by the Scottish Government on how well the legislation is working and any areas that could be improved, but given the independent role of the SPSO and the assurances we have that the office is working well, we do not consider there is a need to undertake an independent review into the quality of the work or the decisions taken by the SPSO or to investigate complaints received.

Scottish Public Services Ombudsman submission of 19 January 2023

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

Scrutiny

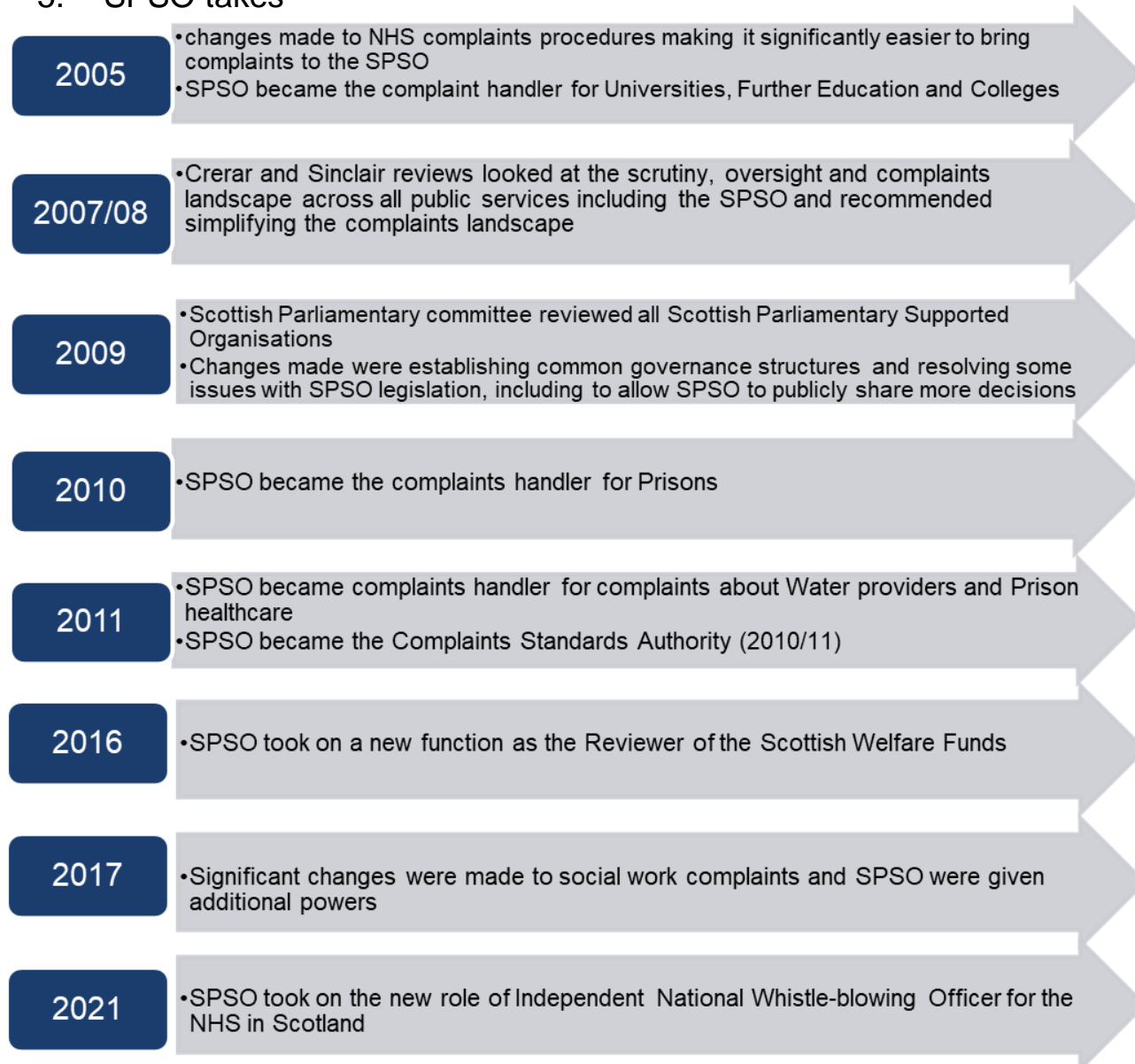
1. SPSO is scrutinised in several ways
 - 1.1. corporate performance
 - 1.2. legislative scrutiny and review
 - 1.3. decision making on complaints about Scottish public services

Corporate performance

2. SPSO are accountable to Parliament for operations generally and appear regularly before the Local Government and successor committees to account for performance.
3. The SPCB set our budget and take an active interest in our governance structures (see below).

4. SPSO are subject to other statutory accountability structures (e.g. FOI/EIRs/DPA, SPFM and Audit Scotland). We have also established an Advisory Audit Board, internal audit arrangements, and a risk-based quality assurance programme along with our review process monitors the quality of decision-making.

5. SPSO takes



complaints about our own service (CSCs) based on model complaints handling procedures. SPSO established a voluntarily non-statutory independent customer service complaints reviewer (ICSCR). This gives service users an independent final stage, that can consider complaints that we have not met our service standards.

Legislation

6. SPSO's role and purpose has been reviewed and incrementally changed as outlined in the diagram since it was established in 2002. At key points, SPSO's legislation was scrutinised by Parliament.

Decision-making

7. SPSO is the final, independent stage of the complaints procedures for many public organisations. Our jurisdiction is set out in legislation, requiring public service complaints (PSCs) and whistleblowing complaints to meet certain tests before we can consider them. This both limits our ability to consider some matters and empowers us in some areas to consider professional judgement.
8. Decisions are published online allowing us to share our decision-making openly. There are several thousand such decisions available (either in summary or as full reports). They demonstrate publicly how we assess evidence and make decisions.
9. We also publish statistics which explain the outcome of complaints.
10. SPSO decisions, while independently taken, are (in common with all public bodies) subject to the supervisory jurisdiction of the courts.
11. Decision-making on PSCs is the Ombudsman's (independent) responsibility and she remains legally accountable for decisions and their quality. SPSO's statute at schedule 2, para 2 (2) protects that independence.
12. Independence of decision-making is a key pillar of the Venice Principles adopted by the UN General Assembly through Resolution A/RES/75/186 in 2020 on "*The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law*".
13. The 25 Venice Principles (the ombudsman equivalent of the Paris Principles), are the recognised global standard for ombudsmen institutions. They stress the importance of independence of the institution and the need to establish it as a key part of constitutional accountability structures.

Need for review of SPSO legislation?

14. SPSO accept the need for a general legislative review; something we have actively sought.
15. We would have significant concerns about a review of individual decision-making as this would undermine the very independence that makes the Ombudsman, an ombudsman (including international recognition under the Venice Principles).
16. We have been calling publicly for amendments to the SPSO Act 2002, to update it in line with wider changes in ombudsmen jurisdictions. E.g. ensuring SPSO
 - 16.1. meet international standards
 - 16.2. are comparable to other UK institutions
 - 16.3. can leverage greater value from scarce resources
 - 16.4. can focus on the vulnerable, particularly those most reliant on services and least likely to complain; a voice for the voiceless
 - 16.5. have improved information-sharing powers to drive holistic improvement.
17. SPSO intended to report to Parliament but indicated to the LGHPC recently that this work had paused in light of significant policy matters before Parliament or likely to be so in coming years. Including
 - 17.1. National Care Service Bill
 - 17.2. Patient Safety Commissioner Bill
 - 17.3. mental health law review
 - 17.4. plans for a human rights framework bill and
 - 17.5. a learning disability, autism and neurodiversity Bill.
18. Their cumulative impact means SPSO's operating landscape, and SPSO's legislation itself, may be different by the end of this session. Given that, SPSO decided it would be sensible to postpone a report until the impact of those changes is better understood.

Specific questions

Handling of evidence

19. SPSO's investigations manual (updated regularly in light of learning) sets out our approach to evidence.
20. Section E9 has been extracted in full and sent with this submission. E9 includes seeking and identifying evidence; weighing evidence; avoiding bias; and recording decisions.
21. Other sections cover related matters, e.g. seeking and using expert advice (we can furnish the Committee with a copy).

Relationship between customer service complaints (CSCs) and reviews

22. CSCs and reviews are separate processes as they consider distinct matters. Both are voluntary and non-statutory.
 - 22.1. CSCs consider complaints about service against published service standards.
 - 22.2. reviews consider decision making on (Public Service) complaints where decisions are made by officers under the Ombudsman's delegated authority. The Ombudsman reviews decisions personally at either complainants' or public bodies' request. Reviews can consider and change delegated decisions.
23. It is possible to engage with the review process whether or not a CSC has been made or upheld/not upheld (and vice-versa).
24. The CSC process has an additional scrutiny stage where complainants can escalate a CSC to the Independent Customer Service Complaints Reviewer. The ICSCR also conducts random file reviews to support internal learning.
25. CSC data is reviewed quarterly and published in annual reports, including learning from complaints.

Budget

26. SPCB set SPSO's annual budget which is also considered by the Finance and Public Administration Committee as part of the scrutiny of the Scottish Parliament's budget.
27. SPCB indicate in advance of each annual budget the parameters within which they expect SPSO to operate. In practice this means we have not had a real increase in our baseline budget for PSC casework for several years, resulting in significant resourcing challenges.
28. SPCB ensure we meet statutory and contractual requirements relating to staff costs so we have been able to make annual pay offers in line with those for Parliamentary staff. SPCB also provides contingency funding for one-off costs; e.g. maternity leave, ICT projects (subject to a business case) and significant legal costs.
29. Contingency funding (additional to but not part of our baseline funding) means that our budget can vary year-on-year.
30. The most significant annual differences are the result of taking on new functions/projects. E.g. compared to four years ago, our 2022-23 budget includes
 - 30.1. funding for the setting-up of the INWO function from 2018-19 and ongoing funding from 20-21. This explains the main increase in funding (circa £825,000) in the review period 2019-20 and 2020-21
 - 30.2. in 2022-23 SPSO received temporary funding for additional project/temporary functions
 - Self-Isolation Support grant reviews (£39,000). This project commenced in 2020-21 and will be phased out this year with the end of the self-isolation support grant
 - child-friendly complaints development (£156,000). This represents year two of a three-year project to develop child-friendly complaints procedures for Scottish public services
 - temporary staff for covid-recovery (£200,000). This is for additional staff to cover maternity contracts and long term absence, enabling us to address the backlog of unallocated

cases accumulated during covid (more information is in our 2021-22 Annual Report).

Shared services.

31. SPSO holds the building lease for ourselves and three other parliamentary-supported organisations. As part of that, all costs related to the running of the building are in the SPSO budget.
32. From 2022-23 we provided shared support services to the Biometrics Commissioner (e.g. finance and HR support).
33. Shared service provision accounts for around 10% of our annual budget.

A summary of the SPSO decision-making tool for complain investigations is available on its website: [Decision-making tool for complaint investigators | SPSO](#).

Scottish Government submission of 9 February 2023

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

Thank you for your letter of 14th December 2022 regarding Petition PE1964, which seeks to create an independent review of the Scottish Public Services Ombudsman (SPSO).

Your letter asks for clarity on the Scottish Government's view on the need for, and desirability of, a review of the SPSO after 20 years of operation. At present, our view is that an independent review of the SPSO on the terms suggested by the petition is not required. Whilst the SPSO has been in operation for 20 years now, its remit has considerably evolved so that it now covers four distinct and varied statutory functions. Naturally the SPSO's powers and processes have changed as its remit has widened, so that in those 20 years matters have been far from static in terms of progress and reform.

We would also reiterate the point made in our letter of 26 October 2022 that we do not currently have the available resources required to take forward an independent review due to existing priorities and commitments, regardless of whether it would be desirable to do so.

However, we continue to look at how improvements can be made and keep matters under regular review within this context. For example, as part of policy development in relation to a forthcoming Human Rights Bill, we are liaising with a wide range of stakeholders, including the SPSO, to explore how best we can strengthen non-court routes to remedy under that Bill. This includes exploring the role of the SPSO, such as in relation to potential own initiative investigation powers and receiving complaints in other formats.

Policy development is continuing ahead of a public consultation that will be launched in the first part of this year to inform the Bill. The Cabinet Secretary for Social Justice, Housing and Local Government recently wrote to the Convener of the Local Government, Housing and Planning Committee in relation to the Bill and consideration of the role of the SPSO.

You have also asked whether the Scottish Government considers that:

- **The processes and safeguards in relation to the SPSO are sufficient and effective.**

Our letter of 26 October sets out in detail the processes and safeguards which are in place within the SPSO which the Scottish Government consider to be sufficient and effective. There is an independent and impartial body who is responsible for dealing with complaints against the SPSO (namely the Independent Customer Services Complaints Reviewer (ICSCR)). There is also scope to appeal against a decision of the SPSO if it can be shown that a mistake was made in the original decision. In addition to this, the SPSO publish and lay before Parliament their annual report every year which allows for public scrutiny of their process and safeguards and holds them accountable for the work they have carried out.

- **The legislation governing the SPSO is fit for purpose or would benefit from a review and what revisions may be required.**

As stated above, we keep the legislation regarding the SPSO under consideration to ensure that it remains fit for purpose. Our letter of 26 October referred to lack of resources as a reason why we did not

consider that we could progress with a review. However, if the Committee felt it was required, Parliament could commission a review of its own volition. Should such a review be commissioned the Scottish Government would engage as necessary regarding the outcome.

- **The SPSO internal complaints process is in line with other parts of the UK/Europe.**

Our letter of 26 October set out in detail the procedures that are in place in respect of internal complaints. We consider that the procedures are robust however we cannot comment on the systems that are in place for other jurisdictions as we do not have the data to provide that analysis.

Petitioner submission of 8 March 2023

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

We write in response to the SPSO, SPCB and Scottish Government's written submissions.

It is notable that the SPSO does not deny or rebut any of the evidence of its failures we raised in our petition and in our additional submissions. In fact, the SPSO's response to our petition and the failures we raise is illustrative of how the SPSO responds to evidence of wrongdoing – as experienced by ourselves and by members of the public who approach us, following injustice being compounded by the SPSO. In its submission, the SPSO has simply ignored the failures we describe and presented its own rosy, unconnected narrative. This, sadly, feels like a very familiar strategy. This is how the SPSO responds to complaints about public services. This approach does not create a genuine dialogue with both sides addressing the same problems, nor does it create proper, evidence-based investigations.

On the matter of independence: anyone appointed by Parliament to investigate the adequacy and effectiveness of an SPSO investigation

cannot change the outcome of that investigation. Therefore there is no legal challenge to the independence of the Ombudsman. The findings of the Ombudsman are still relevant and legal, no matter how bad or ineffective an investigation is.

Independent reviews have undoubted value. For example, the Hillsborough Police inquiry looked at a lack of adequacy and effectiveness. The inquiry did not prejudice people who had previously investigated the Hillsborough case. Nobody would argue that the independent inquiry was unwarranted out of greater concerns for the previous investigators than for the victims and the truth.

We feel that the SP Corporate Body is misleading the Committee in saying that it will challenge the independence of the SPSO. Nobody has the power to challenge the independence of the SPSO because the Ombudsman can decide what they do and do not investigate. We feel that the submission from the SPCB makes unsubstantiated claims that there is no legal basis for an independent investigation.

An independent investigation of the SPSO would strengthen it, because the nature of truly independent opinion would be without any influence of the Ombudsman, Parliament and Scottish Ministers.

All organisations ought to be capable of critical self-reflection and be transparent in how they operate. An organisation that demands that its work must not be reviewed is not seeking independence, in our view. It is seeking secrecy, unaccountability and unfettered authority.

Furthermore, the Scottish Government refers to the Independent Customer Service Complaints Reviewer (ICSCR) as a “safeguard”. This is unfortunately not true, as we have elaborated on in our original submission. The best the public can hope for from the ICSCR, is for it to ask the SPSO to apologise for poor service. It cannot change a decision or demand an investigation be done properly – it merely considers the SPSO’s service, not the contents of its work. As previously mentioned, what good is it if a restaurant insists its service was excellent when the food it served was rotten? Nor does the ICSCR check the SPSO’s

statements are correct. The SPSO has the power to state that black is white and the ICSCR must accept that.

We, and other members of the public, are clearly informing the Scottish Government that the processes and “safeguards” in relation to the SPSO are neither sufficient, nor effective. We are appealing to the Scottish Government to trust the Scottish people when they say that the SPSO is harming people.

The claim made by both the SPSO and the SPCB that an independent third party appointed by Parliament to investigate the adequacy and effectiveness of the SPSO will impact its independence is misleading and wrong. This is also true for any review of individual cases as their outcomes will remain unchanged irrespective of any findings due to safeguards within the Ombudsman Act. Apart from a Judicial Review no one has the power to challenge the independence of the Ombudsman because the SPSO is granted significant discretion about what and how it investigates referrals made to them. Even then, this challenge is limited to a point of law.

It is the use of this discretion which concerns us the most. With no oversight in place the SPSO for 21 years has been free to do what it wants without any fear whatsoever. We see the damage this is doing to complainants’ mental health and human rights on a regular basis. This is reflected within reviews left on the likes of Trustpilot where many accuse them of being biased as well.

In Point 12 of the SPSO’s response to the Committee it confirms:

“the role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law”.

If so, why is the SPSO using its discretion to deny the majority of complainants who had met the statutory test for a fair and impartial investigation as per their human rights within Article 6 of the EHCR. In 2021-22, up to 1,636 of them who had met the criteria were potentially denied this basic human right. With only 284 actual investigations in 2021-22 this looks to be a sizeable problem given the feedback we often receive.

When recently asked about this, Rosemary Agnew told the Sunday Times :

“whether or not we should investigate something is a decision we do not take lightly, and our focus is always on the benefit to, and outcomes for, the person making the complaint”.

How can this possibly be true if the vast majority of complaints that met the statutory test in 2021-22 are not investigated by the SPSO. People don't make referrals for the fun of it, they do so because they are not happy with the referred organisation's response. There is only one way to determine if the SPSO is protecting our human rights as it claims it is, that's an independent review of individual cases. Without doing this basic level of due diligence this can't possibly be done.

In 2022, the SPSO faced independent oversight for the first time in many years, albeit in another area, i.e. it related to a complaint made about how they handled a service complaint made about them (not another party). Following a review by the Information Commissioners Office (ICO) they were asked to rectify a false claim it had made about one of our members.

When they failed to do this our member took legal action against the SPSO. Faced with proper scrutiny the SPSO had no option but to revisit our member's allegation where they uncovered an error on their part. They admitted this to the court, corrected the false claim and agreed to pay compensation for the distress this had caused.

If the SPSO judges others based on how it handles complaints against themselves we are in real trouble as their conduct in relation to this was both unlawful and unacceptable.

In 21 years there has been no review of the SPSO. When you look at the most basic statistics, i.e., 284 investigations out of 3,655 complaints (7%) in 2021-22 at an average cost of £21,704 per investigation based on an annual expenditure of £6,164,000 something is clearly amiss.

Eight years ago, a decision was taken to delay Accountability Scotland's previous request to review the SPSO. Given our current concerns it's essential and in the public interest that an independent review of the SPSO moves ahead this time.

We are convinced that a stronger, more effective and better value for money Ombudsman will be the outcome of this and that natural justice for the majority will finally be seen to be served.

Accountability Scotland would like to request that it appears before the Committee to provide evidence on this petition.

