

Citizen Participation and Public Petitions Committee  
Wednesday 15 May 2024  
9th Meeting, 2024 (Session 6)

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

### Introduction

**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>

1. [The Committee last considered this petition at its meeting on 28 June 2023](#). At that meeting, the Committee agreed to write to the Scottish Independent Advocacy Agency, Citizens Advice Scotland, Patient Advice and Support Service Scotland and Shelter Scotland.
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 a new written submission from the Petitioner which is 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 gave its initial response to the petition on 26 October 2022](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 22 signatures have been received on this petition.
8. [The Local Government, Housing and Planning Committee took evidence from the Ombudsman as part of its annual scrutiny of the SPSO's Annual Report](#). In her evidence, the Ombudsman stated that she believes there should be a review to establish whether the Scottish Public Services Ombudsman Act 2002 is fit for purpose. An extract from the Official Report is set out at **Annexe D**.

9. [The Finance and Public Administration Committee is undertaking an inquiry into Scotland's Commissioner Landscape](#) which will cover the SPSO. The remit of the inquiry is:

- to foster greater understanding of how the Commissioner landscape in Scotland has evolved since devolution
- to enhance clarity around the role, and different types, of Commissioners and their relationships with government and parliament
- to establish the extent to which a more coherent and strategic approach to the creation and development of Commissioners in Scotland is needed and how this might be achieved
- to provide greater transparency to how the governance, accountability, budget-setting, and scrutiny arrangements work in practice, and whether any improvements are required, and
- to identify where any lessons might be learned from international Commissioner models.

## **Action**

10. The Committee is invited to consider what action it wishes to take.

**Clerks to the Committee**  
**May 2024**

## **Annexe A: Summary of petition**

### **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 28 June 2023**

**The Convener:** The next petition, PE1964, was lodged by Accountability Scotland and calls on the Scottish Parliament to urge the Scottish Government to create an independent review of the Scottish Public Services Ombudsman, 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 petition was last considered by us on 7 December, when we agreed to write to the SPSO, the Scottish Government and the Scottish Parliamentary Corporate Body, of which, I should commit to the record, I am a member.

The SPCB's response details the financial and governance accountability structures that exist between the SPCB and the SPSO, noting that there have been no adverse external audit reports to date. The corporate body states that, although committees have a role, it would expect that committee scrutiny work focuses on how the SPSO is carrying out its functions at a high level and should not aim to review, direct or control specific decisions or actions, which are properly matters for the SPSO.

The SPCB acknowledges that there might be scope for a review by the Scottish Government on how well the legislation is working and on any areas that could be improved but, given the independent role of the SPSO and the assurances that it has that the office is working well, it does not consider that there is a need to undertake an independent review into the quality of the SPSO's work or the decisions that it has taken or to investigate the complaints against it.

The SPSO's response to the committee details its approach to decision making, highlighting the option for complainants to request a review of the decisions that are made by it.

The Scottish Government's written submission states its view that an independent review on the terms that are suggested in the petition is not required and that it does not have the available resources that are required to undertake such a review.

The petitioner has responded to the written submissions, focusing on the question whether an independent review would interfere with the SPSO's independence. The petitioner argues that an independent investigation of the SPSO would strengthen it, because the nature of truly independent opinion would be outwith any influence of the ombudsman, the Parliament and Scottish ministers.

The petitioner claims that the SPSO is using its discretion to deny the majority of complainants a fair and impartial investigation. Their submission states:

"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."

Do members have any comments or suggestions for action?

**David Torrance:** I wonder whether we could write to the Scottish Independent Advocacy Alliance, Citizens Advice Scotland, Patient Advice and Support Service

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and Shelter Scotland, seeking their views on the action that is called for in the petition.

**The Convener:** Does the committee agree to do that?

**Members *indicated agreement.***

## **Annexe C: Written submission**

### **Petitioner submission of 20 February 2024**

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

Accountability Scotland is grateful for the committee's consideration to date.

On 5 December 2023, the SPSO appeared before the Local Government, Planning and Housing Committee to take questions on its 2022/23 Annual Report. When asked about PE1964 and whether or not the SPSO should be subject to an independent review, Rosemary Agnew, the Ombudsman agreed that there should be one. The relevant section of the Official Report can be found here:

[https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/LGHP-05-12-2023?meeting=15600&iob=133122#orscontributions\\_M16196E313P802C2542426](https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/LGHP-05-12-2023?meeting=15600&iob=133122#orscontributions_M16196E313P802C2542426)

Given that the SPSO agrees that an independent review is required Accountability Scotland would now like to present in person to the committee its views on what such an independent review should consist of. We believe this is the next logical step and hope that the committee is in agreement with this.

## **Annexe D: Extract from Official Report of Local Government, Housing and Planning Committee session on the Scottish Public Services Ombudsman “Annual Report 2022-23”**

**The Convener:** I have a couple of questions around the public petition relating to the SPSO, which the Citizen Participation and Public Petitions Committee is considering. Among other things, the petition calls for an independent review to “establish whether the current legislation governing the SPSO is fit for purpose.”

Given that you are also pushing for legislative change, I would be interested to hear whether you agree that, 20 years after the legislation to set up the SPSO, a review might be required. If so, who do you think should conduct that review?

**Rosemary Agnew:** How long have we got? I absolutely and fundamentally think that there should be a review. I have been trying, almost since I came into office, to get that review. There are a number of reasons for that. From a complainer point of view, the Scottish Public Services Ombudsman Act 2002 was written at a time when everybody did everything in writing and kept paper files. I do not think that it is adaptable enough, or as adaptable as it should be, for the different ways of delivering services and making complaints. Each time that we have had a new function, something has been added to the act. It is an incredibly messy piece of legislation to read now, and there is something about making it clearer. It is not just lawyers who read legislation.

Within that, though, there are some areas where, as an ombudsman’s service and organisation, we are not keeping up with our colleagues in other areas of the UK and across Europe. That relates to own-initiative investigations, which I will not go back to, because we have talked about them before. There are other things that would help, but they may not be as obvious. It almost goes back to the relationship point about being able to share information differently with other scrutiny and oversight bodies, because as public services become more complex, the scrutiny and oversight of those services becomes quite complicated. There needs to be a review of how those bodies are enabled to work together, because it is often the legislative things that get in the way.

I will leave the point about who should conduct a review to the greaters and betters, but I cannot see that parliamentary scrutiny of our legislation would go amiss.

**The Convener:** That is certainly a good point: not everybody complains, but there are people who are sitting on something with which they could really do with some help and support. Thanks for unpacking that a bit. It was very helpful.