

PSOW 08

Bil Ombwdsmon Gwasanaethau Cyhoeddus (Cymru)

Public Services Ombudsman (Wales) Bill

Ymateb gan: Ombwdsmon Gwasanaethau Cyhoeddus yr Alban (SPSO)

Response from: Scottish Public Services Ombudsman (SPSO)

1. The Scottish Public Services Ombudsman's (SPSO) written evidence focuses on the areas where our experience in Scotland is most relevant to the changes proposed in the Bill. These are:
 - 1.1. our role in Scotland as the Complaints Standards Authority; and
 - 1.2. our experience taking oral reviews.
2. We also express our support for the Public Services Ombudsman for Wales having own initiative powers.

Overview of SPSO statutory functions

3. To assist the Assembly, we have summarised our statutory functions to provide both context and comparison when deliberating the draft Public Services Ombudsman (Wales) Bill.

Complaints

4. The SPSO is the final stage for complaints about most devolved public services in Scotland, including complaints about:
 - the NHS
 - local authorities
 - prisons
 - Scottish Government and associated agencies and public bodies
 - registered social landlords
 - Universities
 - colleges and
 - water providers.

Complaints Standards Authority

5. The Complaints Standards Authority (CSA) is a statutory function, conferred under The Scottish Public Services Ombudsman Act 2002 as amended¹. The CSA was established by the SPSO in October 2010.
6. The CSA:
 - 6.1. gives the SPSO the power to publish standardised complaints handling procedures for listed authorities
 - 6.2. requires the SPSO to monitor and promote best practice in complaints handling.
7. In practice, we:
 - 7.1. aim to drive improvement through improved complaints handling
 - 7.2. work closely with public bodies to standardise and simplify complaints handling procedures
 - 7.3. promote greater consistency, and resolution at the first point of contact, wherever possible.

Independent review service

8. Since 1 April 2016, the SPSO has also provided the independent review service for the Scottish Welfare Fund. We carry out independent reviews of decisions the councils make on community care and crisis grant applications, and have the powers to overturn and substitute a new decision.
9. Community care grants are made to help people on a low income live independently in the community or to help people maintain their home in the face of exceptional

¹ The complaints standards amendments in 2010 by the Public Services Reform (Scotland) Act 2010

pressure. Crisis grants are made to help people cope with unexpected expenses arising out of an emergency or disaster.

Complaints Standards Authority

Background

10. The Scottish Government and Parliament have long had an interest in the quality of complaint handling in public services. In 2008, Douglas Sinclair reported² to Scottish Ministers on behalf of the Fit for Purpose Complaints System Action group. That report set out concerns about the quality of complaint handling across the public sector in Scotland.
11. In January 2011, the Scottish Parliament became the first Parliament in the UK to approve a set of Complaint Handling Principles³ which all public services must apply when handling complaints.
12. Parliament also gave the SPSO new legislative duties and powers as the Complaints Standards Authority (CSA)⁴ to publish model complaint handling procedures for each sector, which, in turn, require listed authorities to ensure their complaints handling procedure complies with the published model.

The Model Complaints Handling Procedures

13. The model complaints handling procedure (MCHP) is a procedure which sets out the process and key elements of governance, recording and learning that organisations

² <http://www.gov.scot/Resource/Doc/923/0063564.doc>

³ <http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/principles.pdf>

⁴ Public Services Reform (Scotland) Act 2010

must have in place to ensure they are acting in line with the complaints handling principles approved by the Scottish Parliament⁵.

14. Our approach was to work from a basic model which was adapted for the specific needs of each sector of public service.

15. There are now six model complaints handling procedures operating in Scotland. These were introduced as part of a phased programme.

- local authorities – 28 March 2012
- registered social landlords – 28 April 2012
- Scottish government, parliament and associated public authorities – 28 March 2013
- further and higher education – 30 August 2013
- social work⁶ – 1 April 2017
- NHS – 1 April 2017

16. While there are individual differences, all models operate the same basic structure.

This is designed to be simple for complainers and has only two stages: early, front-line resolution (within 5 working days) and more in-depth investigations or complaints which cannot be resolved in the first stage (within 20 working days). More detailed information about this can be found at www.valuingcomplaints.org.uk

17. The MCHP is not only about procedures. Organisations must record and report how they respond to complaints. They must do so internally at least quarterly and publish a public report annually. The SPSO expects them to scrutinise, analyse and demonstrate that they have learned from complaints to both improve complaint handling and improve the services they provide.

⁵ The legislation does allow for variation for individual organisations if we agree they can or need to deviate from the model

⁶ This followed changes to legislation which had prevented a MCHP applying to social work before this date.

18. This approach gives valuable information about complaints handling across Scotland and highlights or indicates where support may be needed to help public bodies improve. The longest-established model procedure is the one for local authorities. The recording of information across the sector means that we can say for example that provisional 2016/17 figures tell us:

- over 75,000 complaints were received by councils in Scotland
- on average around 88% of these complaints were closed at the stage 1
- around 70% of complaints were upheld or partly upheld at stage 1
- around 60% of complaints were upheld or partly upheld at stage 2.

This indicates to us that Councils identify, and are accepting when failings occurred.

19. The MCHP and associated performance reporting go beyond the reporting of numbers. They include a requirement to produce evidence of learning from complaints and to survey users of their experience of the complaints procedure.

20. The SPSO is not naïve and appreciates that the existence of the procedure will not in itself ensure the quality of response. We strive, both through the complaints that subsequently come to us, and through other stakeholder engagement, outreach, training, support and guidance, to promote and enable improvement in complaint handling standards. Indeed, our legislation requires us to support the sharing of best practice and that commitment is open-ended.

21. The SPSO's CSA team continues to provide support and advice to organisations. In addition to the website dedicated to supporting good complaints handling referenced above, we undertake a range of support activities. We report on these activities in our newsletter⁷ which we issue monthly and also in our annual report. We would particularly highlight:

- The networks of complaint handlers which meet around three to four times per year to compare and contrast performance, identify and share good practice, discuss areas of common interest and challenge in complaints handling practice. This is sector-led but SPSO attends.

⁷ <https://www.spsos.org.uk/ombudsmans-newsletter>

- Our training unit which has produced free e-learning tools as well as providing more intensive training on investigation skills⁸.
- Our good practice guidance including:
- guidance on making a good apology⁹
- guidance for elected members which we developed alongside the Improvement Service¹⁰.

External evaluation

22. The approach in use in Scotland is still relatively new. The first academic evaluation was published in October 2017 and concentrated on the local authority sector. In their executive summary the researchers commented¹¹:

“The new model CHP has been implemented across Scotland and stakeholders directly involved in the process are unanimous that this has been a success. Key benefits identified by interviewees were improvements in simplicity and speed for complainants and the beginnings of a more positive culture around complaints in local authorities. The publication of complaints data was seen by most interviewees as focusing minds on complaints and providing opportunities for learning. The key challenges in relation to the new system related to inconsistency between authorities in collecting data, how complaint data should be interpreted, and how performance indicators around complainant satisfaction and learning from complaints should be reported against.”

23. One of the recommendations in the research was that policy makers in other UK jurisdictions should consider: *“Investigating, where appropriate, the scope for adopting a Complaint Standards Authority approach in other parts of the UK public sector.”*

⁸ <https://www.spsso.org.uk/training>

⁹ <http://www.valuingcomplaints.org.uk/handling-complaints/resources/apology>

¹⁰ http://www.improvementservice.org.uk/documents/em_briefing_notes/EM-briefing-spsso.pdf

¹¹ The quote is from p. 2. The full report is available here:
<https://www.spsso.org.uk/scottishwelfarefund/sites/scottishwelfarefund/files/Documents/SWFAnnualReport2016-17.pdf>

Oral reviews

24. The SPSO has been the independent reviewer of the Scottish Welfare Fund since 2016.

25. We published our first annual report for this service on 29 June 2017 and it identified the improvement in accessibility as a result of allowing oral complaints as one of the highlights of the first year. We said¹² :

“From the outset, we recognised the importance of accessibility for the particularly vulnerable people who apply for SWF grants. We held a public consultation to gather views on our suggested approach. We set up two sounding boards (for councils, and for the third sector), held a user engagement event and visited several councils. The responses, feedback and learning from these helped shape our processes.

“An important decision we made as a result of the feedback was that we would accept reviews by telephone, using a Freephone number. This represents a significant change from the previous scheme, which required second tier reviews to be in writing. In 2016–17, 72% of all initial contact was made by phone, evidence that this is people’s preferred method of accessing the service. We also saw a 26% increase in the number of crisis grant reviews received compared with the previous year, which we believe is likely to be in large part due to our service being accessible by phone.”

26. We accept there are significant differences between the types of review we receive and complaints. Complaints are more complex and the amount of information people provide is often significantly more than we need to conduct a review. While we do not think the percentage who would prefer to access a complaints process by telephone, would be anywhere near 72%, our experience that it has improved accessibility for people who rarely access formal complaints processes, means we strongly support its inclusion in the Bill.

27. The SPSO has itself asked for the powers to take a complaint in any format, not restricting it only to oral complaints as we have sought to future-proof as far as we are

¹² From p8 of the annual report available here:

<https://www.spsso.org.uk/scottishwelfarefund/sites/scottishwelfarefund/files/Documents/SWFAnnualReport2016-17.pdf>

able the provisions in the legislation. In this respect we recognise that methods of communication are developing continually and we do not want to restrict it to any one approach.

Own initiative investigations.

28. Own initiative investigations are simply a normal aspect of role and function of many Ombudsmen globally. The UK notably lags behind and so far only the Northern Ireland Ombudsman has these powers.¹³

29. We are pleased that Wales is to get these powers and continue the strong lead and example that sets in the UK.

30. This is a power we would also like to see in Scotland. While the level and reasons for use can differ, across Europe where this power is common, we have found no evidence of widespread concern this power is used indiscriminately or excessively. Indeed, it is our experience that it is seen as an important protection for the vulnerable who can be reluctant to complain and a way of ensuring that issues which affect many people are resolved quickly.

¹³ We note the explanatory note published with the Bill at paras 3.36 highlights how few Ombudsmen in Europe do not have this and also links to the RIA which also provides some information about how this has used. Given this, we have focussed on the principle.