LOCAL GOVERNMENT AND REGENERATION COMMITTEE

AGENDA

32nd Meeting, 2013 (Session 4)

Wednesday 11 December 2013

The Committee will meet at 9.30 am in Committee Room 6.

1. **Scottish Public Services Ombudsman 2012 Annual Report:** The Committee will take evidence on the Scottish Public Services Ombudsman 2012 Annual Report from—

   Jim Martin, Scottish Public Services Ombudsman, Niki Maclean, Director, Emma Gray, Head of Policy and External Communications, and Paul McFadden, Head of Complaints Standards, Scottish Public Services Ombudsman.

2. **Scottish Public Services Ombudsman 2012 Annual Report (in private):** The Committee will consider the evidence received.

   *Not before 12.00 pm*


   Nicola Sturgeon, Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities, and Andrew Gunn, FOI Officer, Freedom of Information Unit, Scottish Government.

4. **The Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013:** Nicola Sturgeon to move motion S4M-08523—

   That the Local Government and Regeneration Committee recommends that the Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013 be approved.

5. **EU Issues:** The Committee will consider correspondence from the Standards, Procedures and Public Appointments Committee review on EU Rules and the
European and External Relations Committee correspondence on EU Strategy and EU Engagement.

6. **Work Programme (in private):** The Committee will consider its work programme up to Easter Recess.

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The papers for this meeting are as follows—

**Agenda Item 1**

- SPSO cover paper LGR/S4/13/32/1
- SPSO Letter to Convener LGR Committee LGR/S4/13/32/2
- SPSO Response to LGR Questions LGR/S4/13/32/3
- Public Submissions for the SPSO LGR/S4/13/32/4
- SPICe paper LGR/S4/13/32/5
- PRIVATE PAPER LGR/S4/13/32/6 (P)

**Agenda Item 3**

- Cover note and appendix LGR/S4/13/32/7

**Agenda Item 5**

- EU issues paper LGR/S4/13/32/8

**Agenda Item 6**

- PRIVATE PAPER LGR/S4/13/32/9 (P)
Local Government and Regeneration Committee

32nd Meeting, 2013 (Session 4), Wednesday, 11 December 2012

Scottish Public Services Ombudsman (SPSO)

Purpose

1. This paper notes the information available for the above agenda item and seeks to remind Members of the purpose of the session as agreed at the meeting on 6 November.

Agreed Approach

2. The following approach was agreed upon:

   a. To send questions on the annual report, and the strategic plan update, in writing to the SPSO for an answer in writing before the oral evidence session. Previous evidence sessions with the Ombudsman have overly focused on the process of complaining which is suggested should be of minimal interest to the Committee;

   b. The issue of a public invitation for questions to be submitted to the Committee in advance of the evidence session with the SPSO on 11 December. Restrictions were put in place to ensure the questions received appropriately address the issues;

   c. The evidence session is to concentrate on looking forward at what the SPSO is doing to educate public services, to help them learn from complaints, and how the SPSO can assist the Committee in scrutinising public services.

Information provided to the Committee

3. In relation to approach item (a), above, the questions drafted by the clerk relating to the annual report and the separate local government report together with the written answers received from the SPSO. Paper LGR/S4/13/3 refers. Members may wish to follow up on any questions that do not appear to have been fully or satisfactorily answered.

4. In relation to approach item (b), above, the questions received from the public have been edited and compiled into a paper which has two parts. Part 1 covers questions that fall within the criteria set by the Committee (relating to relevancy and length and excluding individual complaints) and part 2 covers the remaining questions which do not fall within the criteria set. Paper LGR/S4/13/32/4 refers. Members may wish to ask questions from this paper. All questions not asked will however be forwarded to the SPSO following the meeting on 11 December for a written response.

5. In addition, Members are provided, for information, with a set of the questions as received from the public, paper LGR/S4/13/32/6(P) refers. This is a private paper as it contains personal details of whom the original question was submitted.
6. The SPSO have also submitted a letter, Paper LGR/S4/13/32/2 refers, which contains an update on the work of the SPSO in the first 6 months of 2013/14. The letter sets out their initial thoughts on approach item (c), and may be a helpful starting point in any questioning on this aspect. Although no question paper is provided, Members are reminded they agreed to concentrate on such an approach.

7. Members may note the SPSO Annual report for 2012-13 and their separate Local government report. The SPSO website states that it wants Parliamentary committees, government departments, scrutiny bodies, regulators and local authorities to consider these reports an effective means of enhancing and learning from its work, and identifying issues arising from the complaints it examines. A SPICe briefing is also attached, paper LGR/S4/13/32/5 refers.

David Cullum
Clerk to Committee
11 December 2013
5 December 2013

Kevin Stewart MSP
Convener of the Local Government and Regeneration Committee
The Scottish Parliament
EDINBURGH
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Dear Convener,

Thank you for your letter of 11 November which sets out the Committee’s approach to the December 11 evidence session.

We welcome your focus on how our work can better inform scrutiny. We also recognise the role the public have in informing the Committee and welcome your attempt to increase openness and transparency by widening the pool from which comment is sought by issuing a public call for input.

Please find attached our answers to the Committee’s questions about the annual report and the report on local government complaints. I am also attaching a briefing note to update the Committee on our work over the first six months of 2013/14 and to lay out some of our thinking about the areas I understand from the clerks to be of most interest to the Committee: outcomes and informing scrutiny.

1. Update on first six months of 2013/14

Strategic Plan
While our 2012-16 strategic plan objectives remain unchanged at present, we are keeping the plan closely under review in light of the potential addition of social work complaints to our remit (we outline the likely impact on us in our response to the Committee’s question 28). The outcome of the independence referendum may also have implications for us. At present, however, the same five key objectives remain our focus, underpinned by annual business plans.

Key points in the first six months of 2013/14:

1. We received 2,209 complaints and determined 2,160. The complaints received rate was up 13% on last year. While our productivity rate was also up for the first six months of the
year, a fixed head count means that the gap between complaints received and cases determined will widen. We welcome the fact that the SPCB agreed to recommend to the Finance Committee two extra head count for 2014/15.

2. In addition to closely tracking and managing performance measures, we are undertaking a number of initiatives to continue to drive efficient case working. These include projects to increase involvement of our investigations staff at the advice stage to support their advice colleagues in providing early detailed advice; an increasing focus on telephone contact; and closer working with service providers that generate high numbers of complaints to us to reduce volumes and upheld complaints.

3. The number of premature complaints is continuing to fall – a positive story for complainants but one that represents increased work for SPSO. In the two largest areas of jurisdiction - local authorities and health – the levels of prematurity are down 8% for local authorities and 4% for health. However, the level of upholds have risen, up to 53% from 47% for local authorities and up to 55% from 52% for health.

4. Significant public service improvement outcomes for the first six months of the year include:

- changes across the prison estate to ensure that there is now a consistent approach to visits by young people (case 201101687)
- a health board reviewing how it handles prison healthcare complaints to ensure that they are being dealt with in line with the good practice outlined in the Scottish Government Guidance ‘Can I help you?’ (case 201203514)
- a council reviewing its neighbour notification process to ensure it is robust and that relevant neighbours are notified of planning applications (case 201203267)
- a council monitoring the implementation of its anti-bullying policy (case 201204321)
- a health board required to make a significant financial payment to cover the cost of a cycle of infertility treatment after delays meant that the couple were denied an opportunity for a possible second cycle of treatment that they might otherwise have had (case 201103956)
- a health board required to use our investigation to review their practice in respect of patients with learning difficulties and/or suspected dementia, with particular focus on a review of the quality of decision making, the recording of decision making and the quality of record-keeping on admission and about DNACPR (‘do not attempt cardiopulmonary resuscitation’) decisions (case 201104966). I also referred this case to the Mental Welfare Commission for Scotland who have oversight in this area, and it is one of many complaints we handled that involved vulnerable people. In my July 2013 newsletter I used five other decisions to highlight a lack of awareness or misunderstanding of the Adults with Incapacity (Scotland) Act 2000.
- asking Business Stream to look again at a complaint, which they had previously investigated but not upheld. On doing so, they discovered an error, which when corrected reduced a person’s debt from approximately £10,000 to approximately £400. (case 201204614)

In the next section I outline the evidence we require from organisations to assure ourselves that they have implemented these and the many other recommendations made.

5. The implementation of the model complaints handling procedures (CHPs) for the further and higher education sectors was complete by August 2013. We published the model CHP for the Scottish Government, Scottish Parliament and associated public authorities at the end of March 2013 with an implementation date of the end of March 2014.
6. We are continuing to engage in policy areas with a complaints locus including social work, health and social care integration, prisoner healthcare and the Children’s Bill.

2. Outcomes for 2012/13

Casework
In terms of adding value, our annual report and sectoral reports contain dozens of case studies telling some of the individual stories of how we have helped people (with hundreds more reports of investigations on our website). These are real outcomes for the people concerned, and, as illustrated above, some investigations lead to wider improvement across the council, health board etc and sometimes across a whole sector.

When we issue recommendations, we are rigorous in following up with organisations to check that they have been implemented and we ask for robust evidence of implementation.

In order to assess the impact of our recommendations it may be helpful to see them in different categories along with the kind of evidence of implementation that we require.

1. Recognising the impact the injustice has caused, for example through a letter of explanation and apology.

Evidence required: a copy of the letter, demonstrating not simply that it was sent by the deadline we set but that it satisfies our guidance on making a meaningful apology (the guidance says that an apology should cover all the areas of concern, set out what went wrong and why, take responsibility for the failings, let the person know what has been done to ensure that the mistake is not repeated and so on).

2. Future prevention for the individual, and where relevant for others, for example ensuring that:

- a council develop an appropriate policy/procedure for refunding council tax
- a housing provider review their practice on funding arrangements for disability adaptations
- a complaints review committee consider financial assessments appropriately
- a university arrange staff training to raise awareness of hidden disabilities and their impacts
- a health board carry out training on deaf culture, language and legal rights
- relevant hospital staff are aware of and implement appropriate falls prevention measures including when to seek the advice of a falls specialist, in line with national guidance
- prison staff who chair complaints committees are reminded of their responsibilities under the prison rules.

In health cases it is, of course, not always possible to put the person back into the position they would have been in, and our recommendations are usually about making sure the failing will not happen to someone else.

Evidence required: as well as evidence that the deadline has been met, we expect to receive the new policy/procedure with a plan for its implementation; evidence that the failings we identified cannot now be repeated; documentation showing that the staff training has been carried out; evidence that findings from our investigation have been shared with the relevant staff and of how reminders have been communicated.
3. Remedy and redress, to put the person back in the situation they would have been in had the injustice not happened, for example:

- a council arrange for the financial assessment of an elderly person to be independently reviewed (in respect of whether or not they should pay their care costs)
- a council reconsider a request for housing points
- a council credit a claimant’s rent and council tax accounts with wrongly taken deductions from her benefits
- the prison service review the case of a prisoner as a matter of urgency to ensure appropriate steps are being taken to progress her
- a water company apologise and pay a customer the amount of his insurance claim plus any fees for the disconnection of his water supply.

Evidence required: again, by the deadline we set, we would expect to see documentation of the reviews/reconsideration, taking into account the findings of our investigation and informing us of any consequent change; documentation showing that the credits/payments have been made.

4. Identifying systemic issues – where we see repeat failings, we would recommend for example:

- a council provide evidence that they have implemented a policy to assess the cognitive function of elderly patients, including their capacity to take decisions, taking government policy on the issue into account
- a health board undertake an audit of hospital wards to ensure that pressure ulcer care and management is in line with national guidance
- a health board review a sample of clinical records from GPs at two practices to assess the standard of record-keeping, and discuss any deficiencies at the GPs’ annual appraisals, where necessary with appropriate training

Evidence required: we would expect to see documentation of the policies/reviews/audit including action plans that have been prepared and the outcomes of these, demonstrating that the organisations concerned have taken into account the findings of our investigation.

In any of these categories, but particularly the last one on systemic issues, where appropriate we will ask one of our independent advisers to assess the evidence as well.

Improving complaints standards
As well as handling 4,077 complaints in 2012/13, we met our targets for developing standardised model complaints handling procedures (CHPs) in three sectors: local authorities, registered social landlords, and further and higher education.

The impact of this work is outlined in the annual report and in the sectoral complaints reports, with further detail in our responses to several of the Committee’s questions. These outline the benefits - for the public and for service providers and others - of the introduction of the model CHPs, the benchmarking they provide, and our best practice guidance and training.

3. Scrutiny
As I have indicated, I welcome the approach you wish to take at the evidence session to explore with us how our work can better inform scrutiny. In this regard, I would like to offer a note of caution, and some ideas for us to explore.
The note of caution is two-fold. We look at what members of the public bring us (and often only persistent members of the public at that). We can only look at complaints under the terms of the SPSO Act. And we do not have powers of own initiative investigation – as the Committee will be aware, our proposal that we should have such powers was rejected by the RSSB Committee.

Secondly, it is important to recognise that there is a time lag between a problem arising and a member of the public asking us to look at it. This is relevant for example, where Health Improvement Scotland (HIS) have asked us to be involved in their scrutiny and assurance network, which we are keen to do, while being clear that the complaints we are seeing are about incidents that may have happened some months or years previously. Our input would therefore be more about how well or otherwise health boards deal with complaints, which we see as a good litmus test for how well their governance mechanisms are performing. We are already participating in a learning and improvement HIS working group looking at benchmarking and the impact and effectiveness of significant event reviews.

Multi-agency delivery
One idea for us to explore might be a more holistic approach to complaints resolution. With increasing multi-agency delivery of services I have been advocating for some time that there should be no barriers to organisations working together to solve the public's problems. An example of this in the area of health and social care integration would be enabling joint investigations between the SPSO and the Care Inspectorate in relation to social work/social care complaints. While there are legislative barriers to us sharing information with other organisations, if these could be overcome the public could have one point of contact for their complaint. I think we need to have a system where people complain once to one organisation and get one answer. I have made this point about a 'holistic' approach to complaints systems in my written and oral evidence to Committees on a number of areas including social work, self-directed support and health and social care integration. I am pleased that the Cabinet Secretary for Health is also of the view that complexity of complaints systems is unhelpful, and I welcomed his supportive comments at the Health Committee meeting on 1 October.

Ownership of a valuing complaints culture and learning/improvement
A further area to explore is where the responsibility lies for good complaints handling and ensuring that learning from complaints leads to improvement. While we have a statutory role in improving complaints standards, embedding a culture of handling complaints well and ensuring that learning has real impact is the responsibility of a range of organisations including primarily the service providers themselves, with regulators, scrutiny bodies, the Parliament and the Government playing their roles as appropriate.

SPSO makes recommendations and ensures that they are implemented by rigorously following up with organisations. However, it is ultimately for the service providers, scrutiny bodies, regulators and improvement agencies to ensure that complaints are an effective part of the service providers’ governance and that failures across the sector inform service improvement across the sector.

The Committee may wish to consider which organisation in the local authority sector is best placed to lead on this area and whether SOLACE, COSLA, the Improvement Service or some other body could have such a role. I believe it would be beneficial to replicate the arrangements in place in the health sector, through Health Improvement Scotland and the Scottish Government Health Directorates, for the local government and, indeed, other sectors.

Support we provide
The SPSO has provided tools to service providers and others in the form of the Principles of Good Complaints Handling and standardised model complaints handling procedures. We back this up through direct delivery training and e-learning. We have established a best
practice website, complaints handlers networks and forums, and have a busy outreach programme of meetings, articles, media work etc, underpinned by our stakeholder engagement strategy.

Our investigations provide a working data base for scrutiny bodies, regulators and improvement agencies as well as government officials and Parliamentary Committees. Our statistics, annual letters, sectoral complaints reports, oral evidence, consultation responses, and participation in working groups etc are available and I look forward to hearing the Committee’s thoughts about how they could use our work more effectively, when we meet next week.

Yours sincerely

Jim Martin
Ombudsman

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SPSO response to Local Government and Regeneration Committee questions in advance of oral evidence session to be held on 11 December 2013

1. Ultimately, the SPSOs role is to indirectly support improvement in public service provision, through effective and fair public service complaints processes and procedures. What degree of success are the SPSO having in ensuring that complaints systems embed service users rights to challenge decisions?

As I highlight on page 8 of the annual report, simplicity is key in helping people access administrative justice. Complex systems with numerous routes for complaints and appeals can be a barrier to people challenging administrative decisions. Through our Complaints Standards Authority (CSA) we have created, we believe for the first time in Europe, a standardised, streamlined complaints system which gives people simpler access to the administrative justice system. The model complaints handling procedures include consistent definitions of what is covered by the complaints procedures and encourage bodies to signpost to any existing alternative appeals routes to challenge decisions.

2. To what extent do Local Authorities continue to view complaints as a nuisance rather than learning from them?

It would be unfair to say that local authorities view complaints as a nuisance. We have made much progress in complaints handling with the introduction of the model CHP and I have been greatly encouraged by the positive attitude of the local government sector through their work in partnership with the CSA. I think it is fair to say, however, that a positive ‘valuing complaints’ culture is more prevalent within some organisations than others. The fact that we upheld 46% of all complaints investigated last year and 47% about local authorities tells us that organisations could do better in learning from complaints. That is not something which is unique to the local government sector.

The CSA has helped provide the building blocks for a successful complaints system: clear, simple procedures; a positive focus on resolving complaints early; clear definition of roles and responsibilities; and a focus on robust, transparent information on complaints performance and learning. The model CHP now requires local authorities and other public sector bodies to publish regular commentary on the outcomes, trends and actions taken in relation to complaints which will provide, for the first time, information for the public on how they have learned from complaints. However, the CSA can only go so far in helping complete that cultural change. Getting to a point where staff don’t see complaints as a threat, are empowered and trained to resolve issues close to the frontline and learning from all service failures informs service improvement takes time. It also require strong leadership and training with a clear, visible signal from the most senior level that complaints matter and should be welcomed. The model CHPs and the e-learning training we have delivered are acting as a cultural catalyst but the onus is on individual local authorities (and the sector as a whole) completing the transition and delivering ongoing improvement in their complaints handling.
3. We acknowledged that your remit does not extend to complaint outcomes; and indeed that effective complaint procedures will not necessarily lead to a positive outcome as deemed by the complainant. That said do you believe there would be as much, if not greater, value from benchmarking/monitoring how the learning from the outcome of complaints is shared, rather than concentrating on benchmarking complaint handling processes?

You are correct that there is significant value in monitoring, sharing and benchmarking the outcome of complaints. The performance indicators the CSA have developed for the local authority sector, in partnership with the Local Authority Complaints Handlers Network (the network), include an indicator on learning from complaints (see http://www.valuingcomplaints.org.uk/wp-content/media/SPSO-performance-indicators-for-the-Local-Authority-Model-Complaints-Handling-Procedure.pdf). This will require all local authorities to publish a statement outlining changes or improvements to services or procedures as a result of the consideration of complaints. In addition the model complaints handling procedures for all sectors require organisations to publish, on a quarterly basis, the outcomes, trends and actions taken in relation to complaints which will provide comparative information on this for the first time. Our aim is that a large part of the role of the networks will be in sharing and benchmarking this learning.

In terms of monitoring outcomes of complaints the indicators also require local authorities to monitor, report and publish the number of complaints upheld/partially upheld/not upheld at each stage of the CHP. The aim of this is to encourage local authorities and others in the sector to assess and compare the proportion of ‘positive’ outcomes achieved, particularly at the early stage of complaints handling, allowing them to compare and track the proportion of complaints resolved at the frontline. The requirement to comply with the CHP requirements is built into existing regulatory structures, including Audit Scotland’s approach to Shared Risk Assessment and annual audit processes, with an onus on self-assessment wherever possible. The indicators are, for example, built into the Public Service Improvement Framework used in local government to self-assess performance.

4. 50% of complaints received are “premature complaints”, can you provide more detail about these, and is there any pattern in types of complaints and authorities with the highest incidence? Would it be helpful to highlight this information?

There are some subjects of complaint that generate high complaint numbers and the pattern of premature complaints follows the overall subjects of complaints, with housing, social work and planning the top three overall (page 23 has a table showing premature complaints by subject). The subject of many premature complaints is unknown or out of jurisdiction since at this early stage categorisation can be difficult because of the lack of detailed information provided by the complainant.

While we do not think league tables are helpful, we do highlight each authority’s premature complaints rate in the annual letters we send them (for 2012/13 see http://www.spsso.org.uk/statistics-2012-13#letters). The tables in each letter show the rate
of prematurity for the authority against the general sectoral rate, as well as a comparison with the previous year’s figures.

In addition to the annual letter, we provide each authority with a spread sheet showing more detail of all the complaints we have received and handled, including premature complaints. We do not publish the spread sheet because it contains personal data. This degree of detail is provided in order to encourage authorities to examine whether there are patterns and to ask themselves why there may be a high incidence in a particular area. Some organisations request information about premature complaints on a more frequent basis than annually, and we are happy to provide that to them.

Our aim is to provide information that supports organisations in understanding complaints about their services, including premature complaints. Once they have this information they can spot micro trends within their own services. Ultimately local authorities are free standing democratically elected bodies that are responsible for acting on the intelligence they receive.

5. What is the difference between an inquiry and a complaint, and can you explain the difference in the figures on page 7 which state 50% of complaints are premature yet around 70% to the advice team are premature?

The difference is explained in full on our website at http://www.spsso.org.uk/explanation-terms; here is a shortened version.

An enquiry is an approach by a member of the public seeking information or advice, for example about whether we can deal with a complaint about a particular issue or how to pursue a complaint about a particular organisation. Enquiries include queries made about organisations and subjects outwith our jurisdiction. Not all contacts are classified as enquiries, but all significant contacts are recorded.

A complaint is an approach to us by or on behalf of a member of the public making a complaint about something which, subject to more detailed consideration, might be investigated under the terms of the SPSO Act. A complaint may cover a number of issues and be about more than one public body. An additional approach by an existing complainant may or may not be counted as a separate complaint depending, for example, on how closely it is related to the previous complaint and whether it has been raised with the organisation concerned.

Page 7 highlights the work of the advice team. Within that team itself, 70% of the complaints which they determined were premature. The rest of the complaints, which they did not determine, moved to the next stage of our process. Taking all of the cases determined by this office, 50% were premature. The table on page 23 shows all the outcomes at each stage in detail.

6. How are local authorities spreading the learning from complaints beyond their own boundaries?
We are keen to help the sector build on this and improve its mechanisms for sharing information on complaints across the sector. However, we can only go so far with the remit and resources we have and clearly SOLACE, COSLA and the Improvement Service, have a key role to play in this.

As outlined above in relation to question 2, much of our focus so far has been on helping organisations improve their capacity for learning within their organisations. That is an important starting point in ensuring that organisations are responsive to failures in their own service delivery.

In terms of a cross-sector approach, we have developed the complaints handlers network which will provide the key forum for sharing information from complaints across the sector. We have also provided a platform for complaint handlers to share information through our online Valuing Complaints Forum. As outlined above in relation to question 3 the network will soon have access to comparable, consistent information on complaints which will help them to focus on areas of improvement for the sector as a whole. This will provide valuable information on service failures for all in the sector.

7. Environmental Health and Cleansing complaints rose by 50%, what is encompassed by such complaints? Is this rise a symptom of the squeeze on local authority budgets?

This category covers complaints about matters such as bin collection and street cleaning, drainage problems, smells and noise eg from cooling units or restaurants. A number of cases were about discretionary decisions on policy issues (eg how often the bins are emptied).

While the percentage is high, the table on page 10 where it is mentioned and the text below the table show that the numbers were relatively low (60 in 2012/13, therefore 40 in 2011/12). So the number of complaints about this area has risen by 20 (out of a total of 1,505). If the Committee is particularly interested in the reasons for this rise, it may be helpful to analyse the stage these complaints reached in our process (eg were they premature) and whether there were high numbers of complaints about this area about particular authorities. Should the Committee wish me to carry out this work, please let me know.

The squeeze on local authorities budgets could be expected to result in an overall increase in complaints to us, for example about the closure of facilities. However, complaints to us about local authorities were slightly down last year on the previous year. There may be a number of reasons for this as people’s motivation for making complaints can be complex. Reasons include improved complaints handling by the organisations themselves, or people not complaining because they do not think it will make any difference. We have seen a big rise (23.5%) in complaints to us about the NHS, and we think that this may be a consequence of people seeing more publicity about complaints being taken seriously and leading to action, which has in turn made them feel more
comfortable about complaining. It is not possible to say that increases or decreases on their own are results of changes in the underlying quality of services.

8. Given the role of the SPSO there is a risk that organisations will give more focus to complaint handling than on the outcomes that follow? i.e. ‘following the process’. How can this be avoided?

We have a dual role, casework and complaints standards.

In our casework role we look at how an organisation has carried out its investigation of a complaint and we also look at whether the outcome was reasonable. If we found flaws in how the complaint was handled we would criticise the organisation for that and uphold the complaint. We would also look at whether the outcome for the complainant was reasonable and if it was not we would where possible recommend a remedy for that injustice and where appropriate make a wider recommendation to ensure that the problem did occur again.

In our complaints standards role, the key is training to ensure that staff are focused on achieving a positive outcome and not solely focused on following the process. The emphasis of the model CHP is on empowering staff to achieve a positive resolution for customers, wherever possible, as early as possible and as close to the frontline as possible. Our online e-learning modules, developed to support the CHPs and available for all local authorities to access, put more focus on the skills that can help frontline staff achieve a positive outcome than they do on the process they are required to follow. This includes the importance of understanding what the customer wants to happen when they complain, how to get it right from the start, active listening and finding the appropriate solution for the customer. We believe that this empowerment of frontline staff has helped shift the approach to handling complaints towards one focused on the outcome. Elma Murray, Chief Executive of North Ayrshire Council and current Chair of SOLACE, stated recently to this committee:

'North Ayrshire Council encourages its local staff to deal with everything at the point of service delivery. We try to allow our staff the authority and the room to take their own local decisions to best fit people.'

The Scottish Public Sector Ombudsman’s work with local authorities over the past year or two is also quite interesting. We have now all adopted a single common complaints-handling procedure, which means that before a complaint goes anywhere else, the first point of complaint resolution is with the local staff member. That has been a change in our focus, which supports staff’s authority to do things at the coalface.’

The model CHP itself also provides flexibility to allow staff to focus on achieving a positive outcome rather than be bound by the requirement to meet the process. For example, the frontline resolution stage (stage 1 of the complaints process) allows the timescales for the complaint to be resolved to be extended from 5 to 10 working days in situations where a resolution is seen as possible within that extended timescale. For stage 2 complaints the
timescale for extensions is open ended, subject to clear and regular communication with the customer. There is also the ability to instigate mediation outwith the process if that is something which staff feel will help resolve the situation.

We must keep in mind, however, that robust process and procedure are important to underpin this outcomes-focused approach. Clear published standards on which the customer can base their expectations of the response to their complaint are important. The reason that the model CHPs were introduced was as a direct result of the conclusions of the Crerar and Sinclair reports in 2007 and 2008 which identified the lack of a clear, consistent, simple and timely process as the greatest barrier to a fit for purpose complaints system. Complex processes were a barrier to customers complaining - or managing to escalate their complaints where they remained dissatisfied – and the lack of robust and available information on complaints across the public sector made it difficult to assess where the problem areas lay. The system was, in essence, broken. We must not lose sight of where we were as a public sector or of the progress that has been made in this regard.

9. Which Local Authorities are not members of the network?

The local authority complaints handlers network has met on six occasions since November 2012. In total twenty five local authorities have provided attendees over the lifetime of the working group and one other, Angus Council, has recently applied to join. Local authorities that have not provided a delegate are: Comhairle nan Eilean Siar; Dumfries and Galloway Council; Falkirk Council; Moray Council; Orkney Council; and Shetland Islands Council. Whilst these local authorities have not been involved in the network meetings, they have been actively involved in other ways. Comhairle nan Eilean Siar and Dumfries and Galloway Council were, for example, members of the SPSO/SOLACE working group which developed the model CHP. Others have been involved through our online Valuing Complaints Forum or have been in contact in relation to the implementation of their procedures or training of staff.

Annual Report (2012-13)

10. Under “building future improvement” you refer to performance measures being established. Could you explain what type of performance measures you envisage being established and what they will tell you and allow you to continue to improve? To what extent are the performance measures directed at outcomes and the extent to which the same or similar outcome related issues are repeated in complaints?

This section of the report refers to the performance indicators the CSA have developed, referred to above under question 3. As outlined in response to question 3, these indicators do contain some focus on outcomes and learning from complaints and will allow benchmarking of issues within and between sectors. As per our response to question 6, we would emphasise that it is for the service providers, not the SPSO, to identify failings and repeat failings and take action to prevent recurrence.
11. In the event that you identify legislative gaps what action do you take to alert relevant policy officials and the Parliament?

Our engagement varies depending on what the legislative gaps or potential gaps are about. To give you an example, in the case of plans for health and social care integration our policy team contacted the relevant policy team in the Government to discuss complaints pathways with them in person and we provided our views in our consultation response. Following this, the Ombudsman gave evidence to the Health and Sport Committee and he has also raised the matter in numerous meetings, including with the then head of NHSScotland and other senior officials. On self-directed social care, we raised concerns in our consultation response about the lack of clarity around the complaints process.

On the Children’s Bill and the social work complaints review, we were contacted by government policy officials, requesting assistance from us. When the discussions moved to the area of resourcing, as they have for social work, we updated SPCB officials about the implications.

When we found problems with prisoner access to the NHS complaints process, we highlighted the matter through our e-newsletter and sectoral reports, and the Ombudsman gave oral evidence on the matter to the Health and Sport Committee. An MSP has raised it as a Parliamentary question.

We provided input to an MSP on their proposed Apology Bill in the form of discussions and written contributions including sharing the research we have gathered about Apology legislation in other countries.

In terms of the SPSO Act itself, we highlighted to this Committee the lack of a mechanism for the Ombudsman to lay a special report before the Parliament and this matter is now being considered by the Standards Committee.

We are pleased there is an increasing recognition of the importance of considering complaints processes early on in policy discussions and that we are being invited to take part in discussions about potential changes at an earlier point than we have been in the past.

12. Could you explain how certainty around response times etc. (page 11) could lead to an increase in complaints?

We have designed and helped implement a more accessible complaints system, as Parliament asked us to do. This will help many more customers achieve a positive outcome. A possible unintended consequence of this, however, is that more people access the system and then pursue their complaints through to review by the Ombudsman where they do not believe they have achieved the correct outcome.
Historically, people could be caught in complaints processes for long periods with no set timescales and many stages. It is generally accepted that under such arrangements only the most determined individuals would have pursued their complaints. The new standardised approach arising from the work of the CSA means that people can now move through the two stage process to receive a final response much more quickly. Combined with well-trained, well executed complaints processes this should mean better, quicker outcomes for public service users. However, with larger numbers of people moving through the full complaints process, there is also a likelihood that larger numbers of people will then choose to exert their statutory right to pursue matters further by taking their complaint to the SPSO. The key is for public bodies to focus on improving their decision making and working to get it right first time more often, reducing the number of complaints coming to SPSO which are upheld. In this regard you may wish to engage with the sectors themselves on how they are working to address this.

The evidence so far is that the level of premature cases coming to this office is continuing to fall away so that people are being correctly signposted at the right point in the process to SPSO. This is a positive outcome for public service users, although it does create resourcing challenges for SPSO. We will continue to monitor overall volumes received, although, as we note elsewhere in this response, the reason for increasing numbers of complaints is complex.

13. Given that justice delayed is justice denied, what action is the SPSO taking to improve its performance against its targets of progress within 50 days and decisions within 6 months?

The amount of time spent on each individual case can vary significantly and there are a number of external factors that influence this such as the length of time taken to gather information from both complainants and bodies under jurisdiction and, in the majority of cases taken to full investigation, to seek expert advice from one or more sources. The SPSO has a number of mechanisms in place to ensure that the time spent on each case is justified activity and kept to a minimum given the particular complexity of that case including close tracking of responses from bodies under jurisdiction, regular monitoring of case ages, quality assuring timescales to assess for unjustified delays, and investigating service complaints about delay.

The profile of the SPSO’s caseload is changing. The level of premature cases is falling and the number of complex cases is rising, largely as a result of the increasing number of health complaints being considered at investigation stage. These cases require more resource to manage and are therefore more likely to take longer.

To ensure we improve on the targets we set ourselves, whilst managing an ongoing rising caseload (around 13% at this point in the 2013-14 year) we continue to seek ways to process work most efficiently with a fixed resource. The focus this year is to work with bodies bringing high volumes of complaint to support them in reducing case numbers
coming to SPSO. In turn this will impact on SPSO’s ability to continue to improve our own performance.

14. What does the SPSO consider to be the reasons why no cases were taken to judicial review and how do you avoid the danger of adopting a risk adverse approach by, for example, favouring local authorities to ensure that reviews are not taken?

To put our low rate in some context, I asked other public service ombudsman in the UK and Ireland what their experience of judicial review was. The Irish Ombudsman has never been subject to a judicial review. The Welsh Ombudsman has gone two years without a challenge and told us that there have only been a handful throughout the life of that office. The Parliamentary and Health Services Ombudsman with an English Health as well as UK jurisdiction says they receive on average 4/5 applications for leave to judicial review each year. The Northern Ireland Ombudsman has one ongoing at present. It is also the experience of other Ombudsman that, when they occur, such challenges are much more likely to come from complainants than organisations under jurisdiction.

Our experience of low or no judicial reviews in light of this picture is not exceptional. In terms of managing the risk of review, the fact that other Ombudsman have found these are significantly more likely to come from complainants mean that if we were risk adverse we would not be favouring local authorities. There is also no evidence that we favour organisations over complainants. We upheld 46% of all complaints investigated last year. The strongest way of evidencing unbiased decision-making is transparency and we publish all the decisions that we can online.

This does not mean that we do not choose to manage this risk. While judicial review is rare, we are mindful that we are subject to the jurisdiction of the courts and the way we choose to manage this risk is by ensuring that our decisions can stand up to the level of scrutiny a court would place on them. Any decision which favoured a local authority would not be able to stand up to that level of scrutiny and would actually increase the risk of an adverse judicial review.

15. You are asked to internally review 5.5% of all decisions, how many complaints does that relate to and what actions do you take to bring the existence of review to the attention of complainers?

The request for review process allows complainants or bodies to request a review of a decision on the basis of new information or factual inaccuracy. Last year we received 216 such requests from complainants and 7 from bodies. Ten of these requests led to a revision of the original decision. As soon as complainants bring their complaint to the office, they are notified of the request for review process in our ‘what we do when we get your complaint’ leaflet. They are also advised of our service delivery complaint process. Once we have reached a decision, the complaints reviewer issues the decision letter in which the complainant will again be advised of the process should they wish to access it.
In the majority of cases, through explanation and discussion, the complaints reviewer is able to clearly demonstrate how they have reached their decision and answer any further queries that the complainant may have. We continuously seek ways to develop our staffs skills to have these often difficult conversations where a complaint is not being upheld. We make every effort to help the complainant understand how the decision has been reached and to be reassured that we have heard and paid attention to all of the information they have provided us with and have weighted it fairly.

16. We note that no decisions were changed following your QA process, although we infer that a number of findings were made. Could you provide some examples of these findings? What action have you taken on these findings?

The QA process is used for a number of purposes. It helps us assess whether our casework is being delivered to the standards we set ourselves as well as to pick up on areas for improvement and best practice that can then be fed back into our service improvement system to drive quality and culture change. The QA process looks at a number of areas including whether the process that has been followed was in line with our requirements, if the decision reached was sound and how well the service was delivered in terms of both timeliness and communication.

The types of findings and recommendations that arise from the QA work relate to these areas. For example, in relation to the decision reached the type of finding might be that, whilst the decision was sound, the explanation of the decision could have been clearer or, alternatively from a best practice point of view, the explanation provided to the complainant was clear, concise and empathetic and to be used as an example for others to learn from. All of the findings from each of the quarterly QA reviews are fed back to individuals and teams as well as the service improvement group, who have operational responsibility for identifying systemic or organisation wide issues and implementing changes.

17. Are we correct in understanding that the “small number” of cases not identified (see page 17) is 89, or almost 10% of investigations?

That is correct. As we indicate in the notes below the table, we exclude some cases from publication, usually because to do so might risk someone being identified. We have a statutory duty not to identify complainants and take this very seriously.

In 2012/13, 17 (of the 89 cases) were complaints about water. The reason that these cases were excluded was that they were cases that had transferred to us from Waterwatch Scotland, the previous complaints body that was abolished. It was agreed by the Government’s water transition team that oversaw the transfer that we would not publish transition cases because they would be dealt with under atypically, having started under one process and been finished under another.
18. The information provided under strategic objective 2 relating to informing providers and bodies is entirely process driven. How does the SPSO assess if you are meeting your objective to make a difference?

The heading of the chapter is making a difference and this section is about our second strategic objective which is about i) how we share strategic lessons ii) ensure service providers implement SPSO recommendations and iii) use communications to promote understanding of SPSO.

On a case-by-case basis, the main way we know we are making a difference is because of the evidence we require to satisfy ourselves that our recommendations are being implemented effectively. In some of our recommendations we ask organisations to act in conjunction with the appropriate body, for example we recently asked a health board to arrange an external review of their radiology practice and procedures, in consultation with The Royal College of Radiologists, and provide evidence of this review to the SPSO. In our briefing to the Committee, we provide further detail in the outcomes section on how our recommendations make a real difference to the public.

In relation to sharing strategic lessons and promoting understanding of SPSO, we know we are making a difference because of the positive response we have had to our new sectoral reports from providers and bodies. One of the ways we are getting feedback on the impact of the reports, as well as our other communications tools is through our sounding boards. We have set up two sounding boards, for the NHS and for customers, and are in the process of setting one up for local authorities.

We readily acknowledge in the annual report the difficulty of quantifying the impact of our work and alongside that we emphasise a key point, which is that it is for other organisations to pick up on and use our work to inform theirs.

19. Similarly on policy engagement and administrative justice you report a considerable amount of effort. It would be as interesting to understand what they results of this effort are, to what extent have you been successful in influencing policy etc.?

Given that we have a very small policy team, we need to be selective in the effort put into this work. We focus on the areas in which we have a strong locus and where our complaints handling expertise can be used. As we outline in our response to question 11, the main efforts we have made in this area are in highlighting the importance of building in complaints procedures early on when policy changes are being formulated and trying to ensure that complaints procedures are aligned and are simple for the public to access and use. This approach informed our work on health and social care proposals; the Children’s Bill, SPSO special reports. More recently we have advised the Petitions Committee about jurisdictional limitations in education complaints and highlighted to the Justice Committee our views on proposals for lay monitors to take complaints from prisoners.
In terms of success in influencing policy, an example is the action taken by the Scottish Government in response to our raising the problems of prisoner access to the NHS complaints process. On health and social care, as we mention in question 11, we were pleased with the Cabinet Secretary for Health’s agreement with the Ombudsman on the need for simple complaints systems.

On administrative justice, we were pleased that the Scottish Government have moved ahead with their decision to put in place an Interim Committee. Our Head of Complaints Standards has been asked to sit on this. We also were asked for advice on how to take this forward and concentrated on the need to make the needs of the user central. Again, we have had positive responses from the Scottish Government to this.

It is worth emphasising again that while we provide input, on our own initiative and when asked, decisions are ultimately in the hands of the Parliament and Government and other stakeholders.

20. It is interesting to note the approach of public bodies in tracking recommendations, are you aware if local authorities adopt a similar approach? If not should this be encouraged?

Everyone has access to our decisions and recommendations for their sector and can view these on a monthly basis from our compendium reports. We know anecdotally that some bodies in the Local Authority sector systematically track the recommendations made within their own sector so as to ensure that their own practice is in line with these. The onus here is on each individual body but there may be a role for the sector taking a lead role in co-ordinating these, whether through COSLA, SOLACE or the Improvement Service.

As the annual and sectoral reports refer, in addition to this, the Scottish Government Health Department tracks recommendations within the health sector and the Scottish Prison Service in prisons and we see this as a progressive model for other sectors to follow.

21. And following on from the above are there any formal mechanisms in place to encourage learning across sectors?

As outlined above in relation to question 6, the complaints handlers network will have a key role in sharing information from complaints across the local government sector. As we develop networks across the different sectors one of our aims is to encourage an exchange of learning between sectors to focus on common areas of improvement or sharing of best practice where these are identified but this is not something we have within our current business priorities.
22. It is disappointing to read that 22% of recommendations are not implemented within the agreed timescale, can you give any reasons for this delay, does it relate to particular types of cases, recommendations or specific areas?

As we highlighted in our evidence to the Committee last year, whilst we work hard to engage with boards and bodies to meet the timescales wherever possible, ultimately it is down to each individual organisation to implement the recommendations on a timely basis. There is some variation between sectors in the percentage of recommendations not being implemented on time, ranging from 32% in the small number of housing recommendations we make to 18% for local authority recommendations. There may be structural or operational reasons for this, for example in the way that different authorities take decisions, which can slow down the implementation of recommendations, or in cases where recommendations are more complex, implementation may sometimes take longer than first anticipated.

23. We note the extent of the monitoring etc. undertaken by SPSO (page 22) could you indicate what benefits flowed from this work, what were the outcomes/improvements/learning that followed?

We take monitoring to refer to our monitoring of the impact and value of our on and off-line services. The outcomes/improvements/learning from this were strengthening our links to advocacy services and the redesign of our monthly e-newsletter and website.

The key changes to the e-newsletter was introducing longer summaries of our public interest reports and more links and to website that we segmented the information for our various user groups to improve the online user experience. This reflected our new approach to providing sectoral complaints information in the form of specific reports. Feedback on this has been very positive, in particular from our NHS sounding board. The open rate of the monthly e-newsletter has risen 5% at the end of Q2 of 2013/14 (around 200 people open the enewsletter within an hour) and the visitor traffic to our website has increased by 8.3%.

The monitoring also provided evidence for developing further links with advocacy and advice agencies, who are often the organisations that can tell vulnerable people about our service and support them in making complaints. Specific outputs are e-learning modules for Citizens Advice advisers, attending conferences and workshops with organisations like the SIAA and Alliance Scotland, and a project to set up a microsite to share resources such as SPSO facts sheets and leaflets and to act as a centre for information about sources of advice and support and about effective complaints handling.

We are looking forward to learning from the expertise of our customer sounding board to test how we can best use our resources to reach hard-to-reach or typically excluded users and potential users of our service.

24. Could you confirm that the anticipated outcome from utilising social media etc. more widely is likely to be an increase in complaints? What plans does the SPSO
have to use such media to drive other changes, for example reductions in premature complaints?

We hope that social media will increase the likelihood of an increase in complaints among certain demographics, specifically children and young people. However, we are also aware that social media is often used to express opinion rather than as a vehicle for making complaints.

We are already using social media to try to bring about reductions in premature complaints, for example by using twitter to signpost people to where they may be able to get help if we are not the appropriate organisation, and to help people understand the extent of our remit. For example, we will use tweets to redirect people to the right place for their complaint or concern (such as the Financial Ombudsman Service, Shelter, Ombudsman Services). Where people have concerns that might be ones we could look at, we invite them to contact our freephone advice line or to email us so that we can hear about their complaint in detail.

We are aware that technology is changing all the time and that how people use it is also changing, and are developing a digital strategy to help us ensure that we are responding to the new ways people will use to contact us and to make complaints. We also hope to gain input from our customer sounding board about how we might use social media to reach communities that we do not hear from very often.

We have used communications technology to set up an online community forum on our CSA website for discussion and sharing best practice in the professional complaints handling community, both within and between sectors.

25. The case studies contained in the report are helpful in understanding the work of the SPSO, and we note the range of recommendations that are shown. Many of these recommendations suggest actions by bodies; it would be interesting if, perhaps in future reports you were also able to provide some detail of how such recommendations improved the work and service of such bodies. We would find it useful if benefits and outcomes flowing to other bodies as a direct result of SPSO recommendations could be captured.

Many of the recommendations made relate to complaints handling – the performance and improvement of individual bodies in relation to complaint handling is becoming increasingly transparent through the publication of performance data and so the benefits of SPSO’s work should become more transparent in that regard.

Some recommendations are only relevant to the individual case and the learning which is applicable to other bodies is limited. However, some cases do address wider or systemic issues and the learning from these cases can and is shared in a number of ways, including through our own monthly commentaries and publication of decisions and reports. However, we can only go so far with the limited resources we have to allocate to such activity. To test how recommendations improved the work and service of bodies or to
measure benefits and outcomes flowing to other bodies would require the resources and skills of improvement agencies and regulators to track and analyse this impact.

26. **What measures are used to evaluate the effectiveness of the e-learning courses, and what is the result of any such measurement?**

We have not, as yet, undertaken an evaluation of the e-learning modules as our priority has been on completing the development and roll-out of training modules across the sector. We rolled out the latest modules for further and higher education in July of this year and are currently developing courses on Investigation skills for NHS complaints handlers. We plan to undertake an evaluation in quarter 4 of this financial year following completion of this launch activity. This will involve obtaining feedback from local authorities and others on the impact of the modules, focusing in part on the numbers of staff who have accessed the training. Although we track numbers who access the e-learning directly from our website (currently over 2,500), many local authorities have adapted the e-learning package for use on their own internal systems. We know from some local authorities that they have rolled the e-learning out to a majority of their staff. It is important to highlight, however, that there is an onus on individual organisations in evaluating the effectiveness of training within their organisations and identifying any remaining gaps.

As with all training evaluation it is difficult to measure impact in numbers alone given the qualitative nature of the activity. Our evaluation will also ask local authorities and others to assess whether, in their view, staff are applying what they have learned, what improvements they have identified or measured (for example, through increases rates of resolution at the frontline), areas that may require further training and the value frontline staff placed on the training. It is worth noting that our e-learning modules have been developed on the basis of the direct delivery courses we have been delivering for a number of years and which have received consistently positive feedback from participants.

Anecdotally, feedback on the e-learning modules has been very positive and there is demand to expand the range of these to other areas of complaints handling. We have also received enquiries about access to our training materials (and the CHPs more generally) from other jurisdictions, including some local authorities in New Zealand. Most recently, and closer to home, NHS Education Scotland (NES) have received enquiries from the NHS in England and Wales for access to the NHS e-learning modules - developed by NES and the SPSO and based on the SPSO local authority modules – for them to adopt and adapt for NHS staff England and Wales.

In evaluating the impact of e-learning – and assessing whether we can provide further packages here - we need to bear in mind that the resource our training unit is limited (this amounts to less than 1 FTE plus some ad hoc resource from our CSA and Complaints Investigation teams). We have provided these initial packages to providers but we will be limited in how far we can go in re-designing these or rolling out further programmes.
27. We would be interested in understanding how the complaint handling indicators for local government will assist in a “move towards a greater consistency of reporting on complaints across the sectors”.

All of the model CHPs for the different sectors contain the same or similar indicative list of indicators for those sectors. These are outlined in our response to question 3 and there is more detail in the local government sectoral complaints report. We have developed those for the local authority and housing sectors to adapt them to the specific needs of the individual sectors but they remain broadly similar. Given that these remain broadly similar we will be in a position where we have greater consistency of reporting on complaints across the sectors.

28. What effect is envisaged on SPSO workload from the output of the social work complaints working group and in particular the SPSO taking on the role of complaint review committees?

It is important to point out that a decision on social work complaints has not been made. We are awaiting the decision of Scottish Ministers and it is not at this stage entirely certain what the SPSO’s role might be or when this might take place. Both of these factors would have an influence on any impact on SPSO.

On the basis of preliminary discussions, the most obvious impact on SPSO will be in terms of dealing with the increased volume of complaints and the need to recruit specialist skills and advice, similar to those we have in health and some other specialist areas. We have submitted estimates to the Scottish Government (copied to the SPCB) on the potential impact on SPSO of the role proposed by the working group (although yet to be agreed by ministers). The costs have not yet been approved by Scottish Government and are indicative only at this stage. Further dialogue would be required with the SPCB.

Our estimate of the total number of complaints is between 300-400. The complaints that we handled are also likely to be more complex and require further investigation than those we currently investigate, given that our role in relation to these complaints will be significantly wider, focusing on professional judgement rather than reviewing the handling by the CRCs. Total staff headcount to deal with these complaints is estimated at 4.5 FTE following transfer with some required in the lead up. These estimates are based on analysis of current levels of social work complaints to SPSO and to CRCs and estimates for future levels based on previous transfers of complaints responsibilities to the SPSO. It also factors in resource levels used for previous transfers of complaints functions to SPSO. We have also submitted cost estimates for recruiting specialist advice on social work based on existing costs associated with advice on health complaints, where we have a similar role as proposed with social work.

These are estimates and are dependent on a number of variables and uncertainties which we have highlighted to the Scottish Government and the SPCB. The most significant variable relates to volume of complaints - our ability to accurately predict the cost of social work complaints is significantly affected by the lack of robust available data on the current
volumes at local authority level. In addition to this uncertainty, experience in changes to our remit in health complaints in 2005 demonstrates that we are likely to see a significant ongoing increase in complaints in future years. We received 1,237 complaints in 2012/13 compared to 239 in 2003/4 before changes to the NHS system. Significant changes to local authority provision of social work services (including self-directed support) are also likely to have an ongoing impact on numbers of complaints brought to local authority levels.
Local Government and Regeneration Committee – Call for Questions for the Scottish Public Services Ombudsman (SPSO)

Clerks Paper on Questions Received

Introduction

1. On 8 November 2013 the Local Government and Regeneration (LGR) Committee issued a public Call for Questions to be put to the Scottish Public Services Ombudsman (SPSO). The Call for Questions closed on 25 November 2013 with 14 submissions. The LGR Committee will take evidence from the SPSO at its meeting on Wednesday 11 December 2013.

2. This paper has collated and consolidated the varying sources of submissions into one document. The Questions have been separated into two sections. Section one contains the questions which come within the criteria set for submitted questions, whereas Section two encompasses those questions received which do not fit the criteria.

3. Some editing of the questions has been undertaken by the Clerks, generally to delete unnecessary commentary originally included and make the question clearer. Members are invited to note the questions that have been received and use any they consider appropriate, bearing in mind the earlier discussion to focus the session on how the work of the SPSO can inform the Committee scrutiny role. All questions within the first section not asked will after the meeting be forwarded to the SPSO for a written response.

Section One – Questions

Question 1 – The SPSO receive “Service Delivery complaints” and “Decision complaints” from members of the public. The SPSO currently do not provide any details in their annual report of the number and outcomes of the complaints made by the public about the SPSO’s own decisions. Can the SPSO provide details of these “decision complaints” for 2013?

Question 2 – Are there circumstances where the SPSO would over-ride legal advice sought and received? If that were to occur would he inform Parliament? If not, why not?

Question 3 – What independent body compiles the complaint statistics and how might a complainant know how his/her complaint figures in the published data?
Question 4 – Who monitors/publishes the feedback of customer satisfaction?

Question 5 – Would the Ombudsman agree to an appeal of his decision if the complainant can show the opinions/advice of his independent expert consultants/advisors were factually wrong/biased/misleading?

Question 6 – Is the quality of the work which the SPSO turns out, in terms of the thoroughness of its investigations and the impartiality of its reports and decision letters, ever scrutinised by anyone who is completely independent of the SPSO?

Question 7 – The reports make no reference to widening the SPSO remit to include complaints about a system. (e.g. the initial response to calls to NHS 24; failure of an NHS Board to take account of evidence when introducing a policy as for example 100% single rooms; or the Scottish Health Council hosting consultations but with no responsibility for ensuring that any notice is taken of public concerns).

Many complaints concerning matters such as these are made by individuals. However if the SPSO were able to respond to observations made by a knowledgeable third party (either an individual or an organisation) on behalf of a complainant, then the likelihood of a systemic failure being uncovered and acted upon would be very much greater. What can the SPSO do to make this change?

Question 8 – There is a growing number of complaints received by the SPSO each year. In some instances public bodies do not comply with the model code Complaints Procedure as set out by SPSO. What can be done about this?

Question 9 – The proposed 2012 – 2016 Strategic Plan when originally issued, failed to comply with any of the parameters proscribed by statute for its content. i.e. No Priorities, No methodology, No Timetables and No Estimated Costs for Achieving Activity Completions. Do you have any plans to address this? We note that subsequent Operational and Business plans etc obviously do not reflect the full scope of Strategic Plan requirements: only concentrating on a specific annual portion of SPSO’s obligations. More than adequate time has elapsed for SPSO’s compliance to such important matters, but apparently without any priority; which is a common feature lacking in your Strategic Plan?

Question 10 – Why have Remedy / Redress performance by the SPSO on behalf of Complainants never been reported to The Parliament or advised to the Public as part of their Outcomes analysis omitted from Annual Reports?

Question 11 – No new Complainant Satisfactory Survey was carried out for the SPSO Annual 2012 – 2013 reporting period. This reporting ceased after 2009 – 2010. In the 2011-2012 Annual Report under “Customer Satisfaction – Background”, it stated as a rationale for these omissions, “There is no statutory requirement for the SPSO to gather service users’ views”. How can such a claim be justified when Complainant Satisfaction Surveys are a requirement of the Officeholder’s Annual Evaluation and is an intrinsic requirement of Code of Audit Practice Section 25?
Question 12 – What methodology is adopted to import “Best Practice”? Can examples of specific “Best Practice” be adopted - from whom and when? Have these procedures been validated via A&AC QA requirements, and if so when? Where in the SPSO’s latest Report is detailed information on the performance achieved, and how does that compare to the progress planned?

Question 13 – The SPSO claims their Governance is anchored in the strength of an authentic Quality Assurance system, but it only applies a limited “after the fact” monitoring function. Essentially key attributes demanded by authentic QA are absent from all SPSO processes. No process applied without benefit of QA validation can be automatically assumed acceptable – none has! Do you have any plans to address this?

Question 14 – SPSO has never established any KPI’s that relate to Quality Standards; only “time” is applied as a metric. Quality is a key requirement of SPSO’s remit but “time” is not. Do you have any plans to address this?

Question 15 – The Indicator 7 requires a “report”, not the compilation of specific metrics on Customer Satisfaction. Only peripheral aspects of “Quality” are considered which do not begin to address a dialogue, whereby Complainants can record their basic opinion on the treatment received or the outcome achieved. Why is the SPSO not following Crerar’s clear directions to involve the Public / Local Elected Representatives, when his “put the people at the heart of the process” has been endorsed by virtually all respected reports on Public Service Reforms?

Question 16 – Are the SPSO satisfied with their Governance arrangements including the role of the A&AC to meet requirements in this area and what assurance can they offer in this regard?

Question 17 – Recommendations have been highlighted in this last SPSO Annual Report, noting some 1,003 as “redress and improvements to public services”. There is a clear implication from this and other passages that SPSO recommendations are to be directly comparable to redress for Complainants. SPSO have advised that they do not statistically record any factors regarding Complainant redress and the SPCB have confirmed the subject has never been discussed with the SPSO. Does the SPSO accept this implication?

Question 18 – Why is the SPSO reluctant to reveal to complainants the correspondence between investigators and BUJs?

Question 19 – Jim Martin wrote “Last month, I was invited to give a presentation to the Scottish Parliamentary Corporate Body (SPCB) about our casework quality assurance (QA) process. This is the process we have developed for assuring ourselves, the public and other stakeholders that the decisions we come to are the right ones, by providing demonstrable evidence of the soundness of these decisions.” What is this process? What kind of ‘demonstrable evidence’ is given? Why is the QA process not on the SPSO website?

Question 20 – Once an investigation report has been presented to Parliament, it cannot be changed. What would you do if you discovered subsequently that the judgment was wrong? Would you, for example, take it to judicial review?
**Question 21** – What criteria are applied by the ombudsman in exercising his discretion in regard to the 12-month rule? A dispute with a BUJ may consist of a series of service failures and acts of maladministration that, with associated correspondence and delay, continues over a year or more. To avoid disqualification through the 12-month rule, does Mr Martin recommend that separate complaints be submitted to him at each stage in the process, or would this seem vexatious? Would it make better sense to look at the whole picture after a complainant has explored all avenues bearing in mind that some people only learn of the SPSO’s existence late in the proceedings, as it is not publicised.

**Question 22** – The new CHP is helpful, but is there a possibility that contact between BUJs and SPSO officers in the training sessions could make some investigations less impartial. What safeguards do you have in place to prevent this?

**Question 23** – Why are complaints not accepted from organisations?

**Question 24** – What explanations are given when SPSO uses its discretion to delete cases?

**Question 25** – Is there a presumption that public officials and their records are more likely to be trustworthy than complainants?

**Question 26** – Rulings should not be arbitrary or illogical – or contradict rulings of similar cases in similar circumstances. Are full explanations given in all cases?

**Question 27** – Are complainants given all the reasons for SPSO rulings?

**Question 28** – What opportunity do the public have to input into the Standardised Complaints Handling procedures?
Section Two – Questions

4. The following questions were also received. In each case they refer to an individual case, are covered by the report, or are covered by earlier questions in this document or the written questions the Committee has submitted.

**Question 1** – When a Local Authority Planning Department is advised of obvious anomalies in planning applications by members of the public, (as authorised in the Planning Service Charter) and those applications are still submitted to their Planning Committee, this is maladministration on several counts according to both the SPSO and Scottish Parliament websites. It is also a failure to provide a service to both the public and local Councillors. What powers do the SPSO have to address these recognised forms of maladministration, the injustice caused to local residents as a result of subsequent breaches of planning control, (as defined in the Planning Enforcement Charter) and to protect those Councillors who have a legal obligation to make good planning decisions but have no way of knowing what they are actually approving?

**Individual Comment**

**Question 2** – What can the SPSO do if a Local Authority refuses to change its planning system to comply with its Planning Service Charter? Does he for example have any legal powers to enforce the recommendations he would hopefully be making and how does he monitor if those changes to procedure have been carried out?

**See Committees No 22**

**Question 3** – Do the SPSO have a recognised Service Level Agreement for dealing with complaints? For example, how long would Mr Martin expect his team to take to agree headings for their customers’ complaints and how long after that would he expect them to take before their investigation into a complaint began? Can he produce performance metrics to show if SPSO staff are dealing with complaints in a timely manner?

**See Committees No 13**

**Question 4** – Do the SPSO have a legal obligation to investigate examples of ‘maladministration’, (as defined on their website) and ‘failure to provide a service’ that are brought to their attention? Would he expect his staff to explain to complainants where they were mistaken if the evidence they had provided was not in fact ‘maladministration’? Can he produce any statistics to show how many cases of maladministration are ignored and on what grounds they are ignored?

**Individual**

**Question 5** – Does Mr Martin accept that his staff do make mistakes from time to time and when this happens, what steps does he take to rectify the situation?

**Covered in report**
Question 6 – The organisation Accountability Scotland held a conference in the Scottish Parliament on 16 September 2013. It included a presentation entitled, ‘School inspection complaints and the Scottish Public Services Ombudsman’. It detailed cases where complaints raised of the schools’ inspectorate were taken to SPSO. Yet the SPSO discontinued these cases without an investigation report, with no published decision letter, without observation in his monthly commentary and did not issue a special report to Parliament. How does the ombudsman account for this?

Individual

Question 7 – In October 2011 a senior SPSO staff member wrote to a correspondent “…in order to comply with the requirements of the Public Services Reform Act, Education Scotland is required to have in place a CHP [complaints handling procedure] that is in line with the [Complaints Handling] Principles.” But in March 2012 the ombudsman wrote to another complainant, dismissing the complaint, stating, ‘My view is that the substance of complaints about HMIE/Education Scotland inspection reports is not within my office’s jurisdiction...’ Yet the revised Education Scotland complaints system of 2012 states, “If, after receiving our response to your complaint and you remain unhappy, you can ask the Scottish Public Services Ombudsman to consider your complaint.” The 2012 SPSO annual report stated that the SPSO was consulted on its drafting. How does the ombudsman account for these apparent discrepancies? See:

Individual

Question 8 – During 2008 and 2009 the jurisdiction of SPSO in regard of school inspection complaints was the subject of detailed and lengthy internal correspondence between SPSO and HMIE (now within Education Scotland). There was a meeting between the former ombudsman and the chief executive of HMIE on this matter in March 2009. The former ombudsman sought legal advice from Anderson-Strathern solicitors in regard of whether school staff could be considered as a ‘member of the public’ and thus be eligible as complainants. The advice received was that they were. Does SPSO now act in regard of that advice or has it been superseded? If it has, is that following further legal advice, or by internal decisions taken in SPSO. Thus may a headteacher take a complaint of HMIE/Education Scotland on to SPSO as a valid complainant? Or not?

Individual

Question 9 – If the ombudsman considers that the substance of complaints about HMIE/Education Scotland inspection reports is not within his office’s jurisdiction, as he has written, does he consider that there should be a separate, independent complaints body for audit, scrutiny, and inspection, as for the police?

Not a matter for the SPSO to comment upon

Question 10 – In January 2013 a submission to the Standards, Procedures And Public Appointments Committee Inquiry Into Post-Legislative Scrutiny gave analysis that The Scottish Public Services Ombudsman Act 2002, and The Public Services Reform (Scotland) Act 2010 were inadequately drafted. It quoted from the 2012 Leveson Inquiry report into the culture and practices of the press, but altering “the press” to “regulators”:
It should not be acceptable that regulators use their voice, power and authority to undermine the ability of society to require that regulation is not a free for all, to be ignored with impunity. The answer to the question who guards the guardians should not be “no one”.

He observed that it is indeed “no-one”, for public services’ regulators. Does the ombudsman agree? Does he consider that he should have a role in doing something about it?

**Individual**

**Question 11** – In March 2012 the SPSO wrote to a senior politician stating “…how a person in a regulated body can complain about the regulator is a particularly complex one because our legislation is clear that the body itself, the school in this case, could not complain… I am aware that there have been other concerns raised about the difficulty in pursuing concerns about a regulator by those subject to regulation, particularly in the education sphere. While I can note these concerns, it is ultimately for those who make policy and legislation to decide whether the current position needs changed”. How will policy makers or legislators do this if the ombudsman does not draw these issues to their attention? Given considerable correspondence, by HMIE, by several politicians, and given several cases, why has the ombudsman not instigated a special report to Parliament?

**Individual**

**Question 12** – A school dissatisfied at OFSTED’s response to their complaint of a school inspection may appeal to ‘The Independent Complaints Adjudication Service for OFSTED’, ICASO [http://www.ofstedadjudicationservice.co.uk](http://www.ofstedadjudicationservice.co.uk) There is no such body in Scotland. The only recourse is the SPSO, but he has written, “our legislation is clear that the body itself, the school in this case, could not complain”. Therefore I wrote to ICASO asking, “Is the procedure available to be utilised by school staff and in particular a head teacher?” Their reply, on 4 October 2013, was, “We do not have any restriction on who can apply to use the scheme.” Does the SPSO consider that this complaint adjudication deficit in Scotland concurs with his ‘Valuing Complaints’ initiative, and if not, what does he propose to do about it?

**Individual**

We know from the SPSO’s Annual Report that - apart from the Local Government & Regeneration Committee - Audit Scotland, the SPCB, the SPSO's Audit & Advisory Committee, its Service Delivery Reviewer, its Internal Auditor and its External Auditor all scrutinise and approve different aspects of the SPSO's operation, including financial and procedural, but it is not clear either from the literature which the SPSO has produced or from previous oral evidence which the SPSO has given to the Committee that anyone other than the SPSO itself ever scrutinises the quality of the work it produces. ]

If the Ombudsman's answer to this question takes some form of the positive I would propose that the SPSO simply be pressed to explain fully to the Committee how and by whom such scrutiny is carried out.
However, if the Ombudsman's answer to that first question takes some form of the negative I would propose that a second question be asked which is (below):

**Question 13** – Why, with the importance it attaches to transparency and accountability in the operation of other public service bodies, has the SPSO never asked the Scottish Parliament to make provision for the work which the SPSO itself turns out to be independently scrutinised?

[ Note 2: We know that not only does justice need to be done, justice also needs to be seen to be done. The Scottish Parliament is committed to transparency and accountability and the SPSO is the Scottish Parliament's creation; it would therefore seem a contradiction if the SPSO operates or is allowed in future to operate as one of the Scottish Parliament's instruments of justice without having duties of transparency and accountability in respect of how it performs its core function. ]

**See Question 6 on page 2**

**Question 14** – There is no OUTSIDE PUBLIC SCRUTINY of what really goes on. Have any of the scrutinizers had any personal experience of Scottish Government Complaints Procedures and SPSO complaint procedures?

**Covered by Committee question 7**

**Question 15** – In the event that a complainant raises an issue which clearly involves organised institutional criminality within and between Scottish local authority personnel and the SPSO chooses not to assist in its exposure specifically due to their preferential use of their 12 month time bar, does the SPSO's office have any remit to advise a complainant that the complaint is of a legal nature and to which government office they should approach to have their complaint adequately dealt with?

**Covered by question 22**

**Question 16** – The SPSO Act 2002 does not define the term “outcomes” that should be applied to segregate Public from administrative justice. It does require SPSO to apply the process of Remedy to acts of Maladministration and Service Failure. SPSO brochure “Redress Policy & Guidance” states, “Redress for the Complainant may include some or all of the following:” It then lists options including: “other appropriate action suggested by the Complainant or the organisation”. Despite this clear commitment, SPSO have developed a Complaints Handling Policy applying unwarranted tests for “satisfactory outcomes”. Can SPSO identify how many Complainants may have been treated this way?

**Refer to Committee questions 11, 18**
SCOTTISH PUBLIC SERVICES OMBUDSMAN

This paper on the activities of the Scottish Public Services Ombudsman (SPSO) was prepared for the Local Government and Regeneration Committee (LRG) ahead of its annual evidence session with the Ombudsman, Jim Martin, on the SPSO’s latest annual report.

SPSO AND THE SCOTTISH PARLIAMENT

The SPSO was established by the Scottish Public Services Ombudsman Act 2002. It describes itself as the final stage for complaints about councils, the National Health Service, housing associations, colleges and universities, prisons, most water and sewerage providers, the Scottish Government and its agencies and departments and most Scottish authorities, including, from 1 April 2013, complaints about the Scottish Welfare Fund.

The SPSO is one of the bodies supported by the Scottish Parliamentary Corporate Body (SPCB). The 2002 Act was amended by the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, primarily, in order to standardise the SPSO’s terms and conditions.

The SPSO is directly accountable to Parliament through the laying of annual and other reports, for example, after conducting an investigation, the Ombudsman must lay a copy of his report before the Parliament, but it is independent of the Scottish Government, members of the Scottish Parliament and the SPCB in the exercise of its functions.

SPSO STRATEGIC PLAN

Before it is published the SPSO provides the SPCB with a draft of its strategic plan, which covers a four year period, asking for comments before the final plan is laid before Parliament. Under the provisions of the 2002 Act, the Ombudsman may also submit the draft plan to a committee of the Parliament for comment. The draft of the latest plan, covering 2012-16, was one of SPSO activities discussed by the Local Government and Regeneration Committee (LRG) at its meeting on 14 March 2012.

Following the annual oral evidence session with the Ombudsman, held on 23 January 2013, the Committee wrote to the SPSO (12 February 2013), requesting that the Ombudsman produce a report on how the Strategic Plan 2012-16 was being implemented and how the SPSO was tackling the, apparently systemic, problem of the public’s difficulty in understanding where to go with complaints. The Ombudsman responded by letter on 28 February 2013, providing a copy of the organisation’s Business Priorities 2012-2013 and its Key Targets and Year-to-date Performance 2012-2013.
The SPSO had five Strategic objectives, with fifteen associated primary performance measures, for 2012-13:

- Providing a high quality, independent complaints handling service
  - case time and age profile targets
  - quality assurance measures
  - user satisfaction measures
- Supporting public service improvement
  - meeting our stated commitments to raise awareness of our role and publicise learning from complaints
- Improving complaints handling practices
  - with key partners, build networks of complaints handlers for all sectors
  - develop the Valuing Complaints website as a platform for sharing best practice
  - effectiveness of training provision
- Simplifying the design and operation of complaints handling systems
  - publish model Complaints Handling Procedures for all sectors and support bodies to implement them
  - establish compliance and performance monitoring measures for all sectors
- Being an accountable, best value organisation
  - audit findings
  - financial performance measures
  - staff satisfaction
  - workforce statistics
  - ICT performance information
  - environmental impact assessments.

**ANNUAL REPORT**

By law the Ombudsman is required to lay an annual report on the work of his office before the Parliament each year. The SPCB may give the SPSO directions as to the form and content of the annual report. The SPSO published its [Annual report for 2012-13](#) on 26 July 2013.

The annual report comments on the achievements of the SPSO based around the five strategic objectives set out in the Business Priorities. The annual report includes examples of the cases dealt with by the office.

In the report the SPSO points out that it does not always have the legislative power to investigate or initiate the changes or outcomes which complainants which prefer. In particular the report highlights that SPSO cannot deal with:

- planning system complaints – the second highest category of local authority complaints
- social work complaints – the SPSO suggests that local authorities should adopt model Complaints Handling Procedures (see below).

**Casework performance**

Reporting on its strategic objective for casework the SPSO states that in:
- 2012-13 it received 531 enquiries and 4,120 complaints and dealt with 4,077 complaints.
- 2011-12 it received 625 enquiries and 3,918 complaints.

The report provides a breakdown of the complaints received in 2012-13:

![Complaints received by sector in 2012/13]

<table>
<thead>
<tr>
<th>Sector</th>
<th>Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local government</td>
<td>1,505</td>
</tr>
<tr>
<td>Health</td>
<td>1,257</td>
</tr>
<tr>
<td>Scottish Government and devolved administration</td>
<td>525</td>
</tr>
<tr>
<td>Water</td>
<td>353</td>
</tr>
<tr>
<td>Housing associations</td>
<td>328</td>
</tr>
<tr>
<td>Further &amp; higher education</td>
<td>127</td>
</tr>
<tr>
<td>Other</td>
<td>45</td>
</tr>
<tr>
<td>Total</td>
<td>4,120</td>
</tr>
</tbody>
</table>

and the complaints dealt with in 2012-13:

![Complaints dealt with by sector]

<table>
<thead>
<tr>
<th>Sector</th>
<th>2011-12</th>
<th>2012-13</th>
<th>% difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Further and higher education</td>
<td>115</td>
<td>138</td>
<td>+20%</td>
</tr>
<tr>
<td>Health</td>
<td>937</td>
<td>1,197</td>
<td>+28%</td>
</tr>
<tr>
<td>Housing associations</td>
<td>278</td>
<td>316</td>
<td>+14%</td>
</tr>
<tr>
<td>Local authority</td>
<td>1,497</td>
<td>1,507</td>
<td>+1%</td>
</tr>
<tr>
<td>Scottish Government and devolved admin</td>
<td>852 incl water</td>
<td>874 incl water</td>
<td>+3%</td>
</tr>
<tr>
<td>Other</td>
<td>69</td>
<td>45</td>
<td>-35%</td>
</tr>
</tbody>
</table>

The annual report states that in 2013-14, in order to reduce the number of complaints which have to be dealt with by the SPSO, the Office is planning to carry out targeted work with public service providers to help them increase the number of complaints they can resolve themselves.

**Annual complaints reports**

For its second strategic objective, of supporting public sector change, the SPSO details the various methods it has of reporting its investigations and recommendations.
Since September 2013, the SPSO has started publishing a new series of annual reports, in order to put “key messages, information and analysis of complaints about individual sectors into the public domain”, this statement of intent appears in each of the published reports.

The first five published reports were on:

- **Local government** (4 September)
- **Water** (10 September)
- **Health** (12 September)
- **Housing** (24 October)
- **Prisons** (8 November 2013)

The SPSO states on its [website](http://example.com) that it wants Parliamentary committees, government departments, scrutiny bodies, regulators and local authorities to consider these reports an effective means of enhancing the learning from its work and identifying issues arising from the complaints it examines. It also wants them to prove useful to members of the public who are seeking more information about the kinds of complaints that are escalated to the SPSO and how the Ombudsman service handles them.

Although the five reports have been laid before the Parliament to date, the LGR Committee is the only Committee to have looked at one of the reports, namely, the Local government report.

The annual report also provides examples from its casework to illustrate the kinds of recommendations it has made. The SPSO tracks that the recommendations are made within the specified timescales. In 2012-13, of the 918 recommendations it made, 78% were carried out in the agreed timescale. And, within three months of the target date, 99% of the recommendations had been implemented.

**Complaints Handling**

In 2010, SPSO set up an internal unit, the [Complaints Standards Authority](http://example.com) (CSA), to lead on the development of sector specific standardised complaints handling procedures. The SPSO’s strategic objectives 3 and 4 relate to the functions of the CSA.

A [Statement of Complaints Handling Principles](http://example.com) was published by SPSO in January 2011, and in March 2011, it published its [Guidance on a Model Complaints Handling Procedure](http://example.com).

Since 2012, the SPSO has produced model Complaints Handling Procedures for:

- **Local authorities** (published 28 March 2012 for implementation by 31 March 2013)
- **Registered Social Landlords** (RSLs) (published 18 April 2012 for implementation by March 2013)
- **Further and Higher Education sectors** (published 19 December 2012 for implementation by 30 August 2013)

In addition, for the NHS, the Guidance on Handling and Learning from Feedback, Comments, Concerns and Complaints about NHS Health Care Services, published in 2012, reflects the principles on complaints handling in the SPSO’s 2011 statement.

The SPSO believe that a fully standardised complaints system will be achieved across the public sector in Scotland by 2014.

The SPSO Act 2002 was amended, in 2010, to include powers for the Ombudsman to monitor and report on non-compliance with the implementation of model Complaints Handling Procedures (CHPs). In carrying out this power the SPSO takes a ‘light-touch’.

Its aim is to work with the relevant regulatory and sponsor bodies to develop a consistent method for monitoring compliance within existing regulatory structures including, self-assessment. For example:

- the Scottish Social Housing Charter includes the requirements of the model CHP for RSLs. All RSLs are required to confirm their compliance with the CHP to the Scottish Housing Regulator. The Regulator will monitor the compliance as part of their wider monitoring of the Charter in 2013-14

- Audit Scotland is working with the SPSO to develop ways of assessing compliance by local authorities, through the Shared Risk Assessment (SRA) and the annual audit processes.

The CSA is developing networks of complaints handlers in order to promote best practice and develop and deliver training. The two initial networks, for local government and RSLs, met for the first time in autumn 2012.

In May 2012, the CSA launched a dedicated website, Valuing Complaints. The Authority uses it to share information on model CHPs and good practice, to provide an online discussion forum and allow access to its e-learning resources.

The CSA also has a training unit which has provided in:

- 2012-13: 71 courses
- 2011-12: 41 courses
- 2010-11: 36 courses.

The Authority publishes monthly updates on its activities in each of the sectors. The latest Update appeared in November 2013.

Corporate performance

The final section of the annual report relates to the corporate performance of the SPSO. This includes setting out the five strategic objectives for 2013-14, which are similar to last year’s:

- provide a high quality, user-focused independent complaints handling service
• support public service improvement in Scotland
• improve complaints handling by public service providers
• simplify the design and operation of the complaints handling system in Scottish public services
• be an accountable, best value organisation.

This section of the report also includes details of the complaints received about the SPSO’s service delivery, which includes those considered by the Independent Service Delivery Reviewer.

In 2012-13 there were 45 formal service delivery complaints:
• 24 were not upheld
• 18 were fully or partly upheld
• 2 had no decision reached
• 1 was withdrawn.

At the request of complainants the Independent Service Delivery Reviewer considered 11 of these complaints, two of the complainants complained about two cases so the Reviewer considered a total of 13 complaints, which he reported was 0.3% of the cases handled by the SPSO.

The Reviewer found that all of these complainants had been disappointed in some way with the outcome of their case against the public authority. The Reviewer reported that some of them found it difficult to distinguish between their view of the merits of their complaint (which is not a matter for the Reviewer) and their view of the way in which the case was handled (which the Reviewer could investigate).

The Reviewer found that:
• seven cases were unfounded, for example, people have unrealistic expectations, they expect to direct the SPSO’s investigation or they expect to set put the scope of the investigation
• five were cases of handling errors, minor issues which highlighted areas where the SPSO could improve its processes
• one case highlighted confusion about whether SPSO could or would award financial compensation. The Reviewer thought it would have been helpful if SPSO had explained this more clearly.
• in one case the complainant had not cooperated with the investigation. The Reviewer suggested it would have been helpful if SPSO had sent a final warning before closing the case.
• in one case there had been a lack of clarity on the part of the SPSO, which resulted in delay which had caused the complainant distress.
SPECIAL REPORTS

Section 15 of the 2002 Act makes provision for the SPSO to investigate and report on public bodies, following a complaint or request. Under Section 16, where the report finds that the person aggrieved has sustained injustice or hardship then, if it appears to the SPSO that the injustice or hardship has not been, or will not be, remedied, the SPSO can make a special report on the case. A copy of the report must then be laid before the Scottish Parliament.

No such reports have been laid by the SPSO and the Ombudsman does not anticipate one being brought forward in the near future.

In November 2012, the Convener of the LGR Committee wrote to the Standards, Procedures and Public Appointments Committee (SPPA) to ask it to examine the parliamentary procedure for considering special reports laid before the Parliament by the SPSO.

In June 2013 the SPPA Committee considered an options paper for dealing with special reports. The Committee is currently pursuing its preferred option for a parliamentary procedure for special reports.

SHARING INFORMATION

As well as the new annual complaints reports and the CSA updates the SPSO has also worked to improve its other information provision resources, for example:

- on 18 September 2013, the SPSO launched its redesigned website. The key changes included:
  - providing segmented information for its various customer groups
  - improving the online contact and complaint submission forms
  - improving accessibility for all users, in particular, disabled users
  - making it easier to access specific information such as its findings, statistics and corporate documents.
- from October 2012, the SPSO has published a new style monthly e-newsletter, SPSO news. The Ombudsman simplified the design with the aim of improving the accessibility of its reported findings and news. Each edition includes the latest findings and decisions on complaints and SPSO news.

INQUIRIES INTO THE UK COMPLAINTS SYSTEM

The House of Commons Public Administration Select Committee launched two inquiries in March 2013:

- **Complaints: do they make a difference?** – looking at whether the current complaints system delivers fairness, redress, and justice for people who complain, and to examine how departments and agencies use complaints as a source of information and challenge, to improve the delivery of public services.
• **Parliament’s Ombudsman service** – looking at the work of the Parliamentary and Health Service Ombudsman in terms of both performance and effectiveness, and trying to establish how its remit and function can best serve both the public in access to justice, and Parliament in driving improvements in complaints systems and the performance of Government and public services.

The first inquiry has completed its oral evidence sessions and is expected to report in the new year.

The second inquiry has two further oral evidence sessions planned for 10 and 16 December 2013.

**Francesca McGrath**  
Senior Researcher  
4 December 2013
Purpose of the Document:

1. The Freedom of Information (Scotland) Act 2002 (‘the Act’) came into force on 1 January 2005. The Act encourages the development of a more open culture across the public sector. It does so by providing a statutory right of access to information held by Scottish public authorities (including, for example, the Scottish Ministers, local authorities, health boards, doctors and dental practitioners).

2. The policy objective of this order is to promote openness and transparency across Scottish public authorities by reducing the lifespans of certain exemptions in the Act. Changing practice and greater expectations of openness and transparency have led the Scottish Government to reassess the appropriate lifespans of certain time-limited exemptions.

3. The order amends section 57(1) of the Act to make alterations to the definition of when a record containing information becomes a historical record for the purposes of that Act. Following the amendment of the order-making power in section 59 of the Act by the Freedom of Information (Amendment) (Scotland) Act 2013, the Scottish Ministers may make different provision for records of different descriptions, exemptions of different kinds and different purposes in other respects when using the revised order-making power.

4. At present, a record becomes ‘historical’ at the end of a period of 30 years commencing at the beginning of the calendar year following that in which it was created. The order amends the general definition of when a record becomes a historical record for
the purposes of the Act from 30 to 15 years. This will mean that, once the Order is in force, most time-limited exemptions under the Act can only be applied for up to 15 years after information was created.

5. To ensure an appropriate degree of protection is maintained for certain types of information separate provision is made for records which contain information which would be exempt under section 36 of the Act (legal advice and information provided in confidence) as well as records to which section 41(a) could apply (i.e. records relating to communications with her Majesty, a member of the Royal Family or the Royal Household).

Local Government and Regeneration Committee consideration:

6. The Committee will take oral evidence on the Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013 from the deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities, Nicola Sturgeon MSP, as well as consider a motion seeking the Committee to recommend approval of the Order to the Parliament. A copy of the Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013 is attached to the paper at Appendix A.

7. Affirmative instruments are instruments that are “subject to approval” by resolution of the Parliament. Depending on the terms of the parent Act under which the instrument is laid, an affirmative instrument cannot be made, come into force, or remain in force beyond a stated period, without it first being laid in draft before, and then approved by resolution of, the Parliament. All affirmative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

8. Under Rule 10.6.2 of the Standing Orders, any member of the Scottish Ministers may, by motion, propose to the lead committee that it recommends that the instrument (or draft instrument) be approved. The motion may be moved in committee only by the minister in whose name it is lodged or by any other member who has indicated support for it. The minister in whose name the motion is lodged is entitled to attend the committee and participate in the debate on the motion, but may not vote. To inform the debate on the motion for approval it has become normal practice to have a separate agenda item on the instrument in order to take evidence from the Minister and officials prior to the debate. This is because officials cannot speak in the debate and because the debate itself is limited to a maximum of 90 minutes.

9. Where the lead committee has considered a motion recommending approval of the instrument, it must report to the Parliament. If the committee recommends approval of the instrument, the Parliamentary Bureau must lodge a motion inviting the Parliament to approve the instrument, which is then moved in the Chamber. If the committee disagrees to the motion recommending approval, it is up to the Scottish Government to either withdraw the instrument or invite the Bureau to schedule time in the Chamber for a debate on a motion to approve the instrument.

Ben Morton
Committee Assistant
Appendix


**D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S**

2013 No.

**FREEDOM OF INFORMATION**

The Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013

Made - - - - 2013

Coming into force - - 1st April 2014

The Scottish Ministers make the following Order in exercise of the powers conferred by section 59(1) to (1C) of the Freedom of Information (Scotland) Act 2002(1) and all other powers enabling them to do so.

In accordance with section 72(2)(b) of that Act(2) a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. This Order may be cited as the Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013 and comes into force on 1st April 2014.

**Meaning of “historical record”**

2. In section 57 of the Freedom of Information (Scotland) Act 2002, for subsection (1) substitute—

“(1) For the purposes of this Part, a record becomes a “historical record” in accordance with subsections (1A) to (1C).

(1A) A record becomes one at the end of the period of 15 years beginning with 1st January in the calendar year following the date on which the record is created.

(1B) A record containing information which would be exempt by virtue of section 36 becomes one at the end of the period of 30 years beginning with 1st January in the calendar year following the date on which the record is created.

---

(1) 2002 asp 13; section 59(1) was amended by section 4 of the Freedom of Information (Amendment) (Scotland) Act 2013 (asp 2) (“the Act”); section 59(1A) to (1C) was inserted by section 4 of the Act.

(2) Section 72(2)(b) was amended by section 4 of the Act and has been modified by paragraph 5(2) of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).
(1C) A record containing information which would be exempt by virtue of section 41(a) becomes one at the end of the later-ending of—

(a) the period of 20 years beginning with the date on which the record is created;
(b) the period of 5 years beginning with—
   (i) in relation to communications with Her Majesty, the date of the death of Her Majesty,
   (ii) in relation to communications with another member of the Royal Family, the date of the death of that member,
   (iii) in relation to communications with the Royal Household, the date of the death of the Sovereign reigning when the record is created.

(1D) In the application of subsections (1A) to (1C)—
(a) the general rule in subsection (1A) is subject to the operation of subsections (1B) and (1C) so far as relevant;
(b) a record to which both subsections (1B) and (1C) relate becomes a historical record at the end of the later-ending of—
   (i) the period provided for in subsection (1B),
   (ii) the period provided for in subsection (1C)(b).”.

Name
A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date
EXPLANATORY NOTE
(This note is not part of the Order)

This Order amends section 57(1) of the Freedom of Information (Scotland) 2002 Act (“the Act”) to make alterations to the definition of when a record containing information becomes a historical record for the purposes of that Act.

Following the amendment of the order-making power in section 59 of the Act by the Freedom of Information (Amendment) (Scotland) Act 2013, the Scottish Ministers may make different provision for records of different descriptions, exemptions of different kinds and different purposes in other respects when using that power to amend section 57(1) of the Act.

The general definition of when a record becomes a historical record for the purposes of the Act is amended from 30 to 15 years.

Records which contain information which would be exempt under section 36 of the Act become a historical record 30 years after the beginning of the year when the record was created.

Records which contain communications with her Majesty, a member of the Royal Family or the Royal Household become historical records either 5 years after the death of the person or 20 years after the date when the record was created (whichever is later).

The amendments regarding communications with her Majesty, the Royal Family or the Royal Household mirror amendments made to the Freedom of Information Act 2000 by the Constitutional Reform and Governance Act 2010.
Correspondence from the European and External Relations Committee and the Standards, Procedures and Public Appointments Committee on various EU Issues

Clarks Note

Introduction

1. On 1 October 2013 the Standards, Procedures and Public Appointments Committee wrote to the Committee seeking a response to a number of questions relating to the operations of Standing Order Rules 10A.2; 10A.3 and 12.6.2 in relation to the consideration of EU legislation.

2. On 3 December 2013 the European and External Relations Committee wrote to the Committee seeking information on the work the Committee has undertaken on its EU priorities as part of the 2013/14 work programme. Both committees have requested that the Committee respond to these requests by no later than 10 January 2014.

Response

3. The Committee’s EU Reporter, Stuart McMillan MSP, has considered the correspondence in question and has proposed the Committee agree a joint response to both requests. A proposed letter from the Convener, containing responses to the questions posed on these issues, is attached to this paper for consideration.

4. Stuart McMillan MSP will speak to this paper during the meeting on 11 December.

For decision

5. The Committee is invited to consider and amend/agree the attached response to the European and External Relations Committee and the Standards, Procedures and Public Appointments Committee.

Seán Wixted
Assistant Clerk
6 December 2013
Dear Stewart and Christina,

Re: SPPA Committee Review of EU Rules and EER Committee Correspondence on EU Strategy and EU Engagement

On 1 October this year our late colleague, Helen Eadie, wrote to us in her then capacity as Deputy Convener of the Standards, Procedures and Public Appointments Committee ("SPPA Committee"). This letter sought the Committee’s views to a number of questions relating to the operations of Standing Order Rules 10A.2; 10A.3 and 12.6.2 in relation to the consideration of EU legislation.

On 3 December the Committee received a letter from the European and External Relations Committee ("EER Committee") seeking information on the work the Committee has undertaken on our EU priorities as part of our 2013/14 work programme.

As both pieces of correspondence seek a response from the Committee by 10 January 2014, the Committee has decided to combine its response into a single reply.

Annexe A to the letter responds to the questions raised by the SPPA Committee.
Annexe B responds to the questions raised by the EER Committee.

I hope you find this combined response useful in terms of gaining an overall appreciation of the level of EU scrutiny the Local Government and Regeneration Committee has undertaken as part of its work programme for 2013/14. Central to this effort has been the work of our EU Reporter, Stuart McMillan MSP. I wish to take this opportunity to thank Stuart for his efforts in this regard.

Yours sincerely

Kevin Stewart MSP
Convener
Local Government and Regeneration Committee

CC: Stuart McMillan MSP – EU Reporter to the Local Government and Regeneration Committee
Response to questions from the SPPA Committee on its Review of EU Rules

Rule 10A.2 – Referral to lead committee

Q1. How often has your committee considered an EU legislative proposal under this rule and what have the outcomes been?

A1. Between August 2012 and December 2013, the Local Government and Regeneration Committee has only considered one formal Memorandum on proposed EU Regulations. This was the Explanatory Memorandum on Proposed European Union Regulation on measures to reduce the cost of deploying high-speed electronic communications networks. This was published 27 March 2013 and was considered by the Committee on 15 May 2013.

The proposed regulation was also considered by the Infrastructure and Capital Investment Committee (“ICI Committee”), and the clerks of both committees coordinated our joint efforts to scrutinise this proposal.

In the case of this proposed regulation, the subsidiarity question for the Committee to consider was whether this as a matter which would be more appropriately taken forward at member State level (in this case at UK level).

The major obstacle facing the Committee in terms of scrutinising this proposal was insufficient time. The total period for consideration is eight weeks from the publication of the draft regulations. Within that period both Houses of the UK Parliament require to consider whether they are content that the matters covered do not raise issues of subsidiarity. On this occasion both the House of Commons and the House of Lords had already considered their position and their opinions were due to be issued before the end of the week on which we considered this memorandum.

As that memorandum had only just been brought to the Scottish Parliament’s attention, there was insufficient time for us to involve others, or take evidence, so as to fully participate in the scrutiny process. We, along with the ICI Committee, agreed to follow the legal advice we received and asked the Presiding Officer to write to both Houses of the UK Parliament outlining our views that the proposed regulation invokes a subsidiarity issue and to notify the UK Parliament of our concerns.

In June 2013 the Committee was informed of a possible memorandum on a European Union Document on the Proposed Regeneration of Industrial and Military Brownfield Sites. However, the Committee was not required to consider this proposed memorandum in terms of its remit.

Q2. What have been the implications of the requirement to consider EU legislative proposals for your committee?

A2. There have been few implications for the Committee under Rule 10A.2 as we have only had one such proposed regulation referred to us during the period. That said, the Committee has included work in its programme where we felt the potential of
EU legislation would have major implications for the local government sector in Scotland. One example of this has been our consideration of the Procurement Reform (Scotland) Bill, which is referred to in Annexe B.

Q3. How has your committee influenced outcomes at a UK and EU level as a result of this rule?

A3. Given the single experience we have had with the proposed regulation referred to in Answer 1, and the very limited time we had to consider it, it is virtually impossible to judge what outcome, if any, our scrutiny has had at either a UK or EU level.

On 5 June 2013 the Presiding Officer received a letter from William Cash MP, Chairman of the European Scrutiny Committee of the House of Commons. Mr Cash noted the views of the Committee, along with the views we expressed on the insufficient timescale for scrutiny. The European Scrutiny Committee debated the reasoned opinion on 20 May 2013, and on 21 May the House of Commons forwarded the reasoned opinion on the proposed Directive to the Presidents of the European Institutions.

Q4. How practicable is Rule 10A.2.2 (designation of lead committee where the subject matter of an EU legislative proposal falls within the remit of more than one committee) given time constraints?

A4. Answer 1 refers to this situation. Rule 10A.2.2 required us to coordinate our scrutiny with the ICI Committee in the case of the proposed regulation on high-speed electronic communications networks. However, this coordination was conducted mainly through clerk-to-clerk communications and did not prove any more complex that other examples of where committees have to liaise on a common piece of work (e.g. for example taking Stage 1 evidence on a Bill).

The practicability of Rule 10A.2.2 is dependent on the period of time the Scottish Parliament has to consider a proposed regulation and make its response to the UK Parliament in sufficient time for those views to be considered and reflected. If two or more committees have, in reality, a week or less to consider such a proposal then issues of coordination in terms of scrutiny are rather redundant as neither committee is in a position to undertake any meaningful scrutiny. So in effect, committees are merely coordinating a very superficial scrutiny of a proposal.

Rule 10A.3 – Consideration of proposal for European Union legislation

Q5. Under Rule 10A.3.1 committees are obliged to consider an EU legislative proposal where it has been referred to the Committee in terms of Rule 10A.2. Is this rule sufficiently flexible to allow a committee to decide which proposals it wishes to consider? Specifically, is it necessary for a lead committee to consider all proposals where the UK Government, UK Parliament or Scottish Government has brought to the attention of the Parliament a subsidiarity concern?

A5. Again, as the Committee has only had one occasion on which it has considered such a proposal, we do not feel we are in a position to offer any detailed comment on the flexibility of Rule 10A.3.1.
Q6. Under Rule 10A.3.2, where the lead committee considers that an EU legislative proposal does not comply with the principle of subsidiarity, the Convener shall by motion propose that the Parliament agrees that the proposal does not comply with the principle of subsidiarity, and the Parliamentary Bureau shall allocate time for debate. How often has your committee applied this rule? Are there any issues around timing, given the constraints of the 8-week period and competing demands on parliamentary time?

A6. The Committee has never had cause to apply Rule 10A.3.2. However, in light of our experience to date, it is hard to see how the Parliament could reasonably be expected to debate a motion on subsidiarity given it would take a minimum of one week between a formal decision in a Committee to seek such a debate; informing the Parliamentary Bureau of this; the Bureau’s subsequent agreement and lodging of a motion and a debate taking place. It is hard to see how the business of the Parliament could reasonably be expected to change at such short notice. This timescale may be exacerbated if more than one committee were considering a proposed regulation and wished to coordinate its efforts on a Chamber debate with another committee. Put simply, we consider the current timescale to be insufficient.

Q7. Under Rule 10A.3.3 where an EU legislative proposal is referred to a lead committee and the lead committee decides that there is an insufficient period remaining for report and debate, the Presiding Officer shall notify the UK Parliament of any concerns that the lead committee has that the proposal does not comply with the principle of subsidiarity. How often has this rule been invoked in the context of your committee’s consideration of an EU legislative proposal? How effective this process is?

A7. As outlined in Answer 1 this Rule has been invoked once by the Committee. As outlined in Answer 3, we are unaware of how effective this process has been.

Q8. How often has Rule 10A.3.4 (making special arrangements for recess periods) been used?

A8. To date the Committee has not had cause to invoke this rule.

Rule 12.6.2 – EU Reporters

Q9. On how many occasions has your EU Reporter brought to the committee’s attention any EU issue, proposal for EU legislation, or implementation of European Communities or EU legislation, as provided for in this rule?

A9. Our EU Reporter, Stuart McMillan MSP has brought EU issues to the attention of the Committee on four occasions since August 2012. Some of this has been in the context of the ongoing inquiry work of the Committee, as outlined in Annexe B. Other occasions, such as the one referred to in Answer 1, have been brought directly to the Committee by the EU Reporter. This has impacted on subsequent Committee work, such as our examination of various provisions of the Procurement Reform (Scotland) Bill at Stage 1. These instances are referred to in Annexe B to this letter.
Response to the EER Committee on EU Strategy and EU Engagement 2013-14

Overview

1. The scrutiny of EU issues is central to the remit of the Local Government and Regeneration Committee. This includes the consideration of proposed EU legislation specific to our remit (see Annexe A), the EU priorities we identified for 2013 (see below), as well as the wider mainstreaming of the scrutiny of proposed EU issues arising as part of our Committee work programme.

2. In February 2013 the Committee’s EU Reporter, Stuart McMillan MSP, set out the Committee’s key EU priorities for the coming year in the EER Committee parliamentary debate on the EU Strategy. They were—

- the EU Multi-Annual Financial Framework and the Scottish Partnership Agreement for 2014-2020, and potential changes in European Structural Funds;
- Changes to EU public procurement rules.

3. Paragraphs 8 to 17 set out how the Committee is scrutinising its two EU priorities for 2013.

4. Alongside these priorities, over the period from August 2012 to December 2013, the Committee has consider the implications of EU legislation and/or rules in eight other major pieces of work, namely—

- Scrutiny of the Draft Budget 2014-15;
- Inquiry on the implications of procurement reform for public services and community regeneration from the Procurement Reform (Scotland) Bill;
- Inquiry on the Delivery of Regeneration in Scotland;
- Public Services Reform inquiry: Strand 3 - Developing New Ways of Delivering Services;
- Consideration of the *Explanatory Memorandum on Proposed European Union Regulation on measures to reduce the cost of deploying high-speed electronic communications networks*.
- Inquiry on Scottish Local Government Elections 2012;
5. Paragraphs 18 to 25 set out the EU issues the Committee has considered in terms of this work.

6. Paragraphs 26 to 34 highlight the work of the EU Reporter on behalf of the Committee.

Consideration of EU Priorities

7. As stated above, the principle EU issues for consideration by the Committee have been the potential changes to EU Structural Funds as a result of the EU Multi-Annual Financial Framework, and the EU’s Directive on public sector procurement.

EU Structural Funds

8. In January 2013 the Committee launched a detailed inquiry into the delivery of the Scottish Government’s regeneration strategy. This inquiry seeks to examine the effectiveness of the strategy in developing community-led regeneration across Scotland.

9. One of the central issues the Committee has considered is the impact of potential changes to EU Structural Funds and the subsequent implications for regeneration in Scotland. EU Structural Funding is a key aspect of the regeneration sector in Scotland, both in terms of Scottish Government funding, and in regeneration activity by local government and the third/voluntary sector.

10. As part of its ongoing inquiry the Committee has taken specific evidence on the role EU Structural Funds play in supporting regeneration activity in Scotland and enabling the delivery of various initiatives. This has included oral evidence from Scottish Government officials and ministers on EU funding.

11. The Committee has also undertaken five fact-finding visits around Scotland during the inquiry. During these visits the Committee has undertaken community engagement events which, to date, have resulted in engagement with approximately 300 members of community groups and members of the public. At all of these sessions, the Committee explored the importance of EU funding (whether delivered directly or via an intermediary such as a local authority) to the successful regeneration efforts of community groups.

12. The Committee has also examined the implication of EU State Aid rules in terms of community regeneration. This issue was highlighted as a result of our Public Services Reform inquiry: Strand 3 - Developing New Ways of Delivering Services.

13. The Committee expects to report on its regeneration inquiry in late January 2014. As a consequence of its findings, the Committee will look to see whether it should carry out further examination of changes to EU Structural Funds in its 2014 work programme.

EU Procurement Directive

14. The Committee’s second EU priority for 2013 was the EU’s directive on public procurement. Local government procurement accounts for nearly 40% of all public procurement in Scotland, which is valued at approximately £9 billion per annum. In tandem with this directive, the Scottish Government introduced the Procurement Reform (Scotland) Bill.
15. The Committee took written and oral evidence on the implications of the Directive, and the Procurement Reform (Scotland) Bill, in October and November 2013. As part of this, the Committee examined three aspects of policy relevant to its remit, namely—

- Sustainable procurement;
- Community benefit requirements, and
- The transposition of the EU Directive into Scots law.

16. The Committee submitted its findings and recommendations to the Infrastructure and Capital Investment Committee (the lead committee for scrutiny of the Bill) on 5 December 2013.¹

17. The findings of the Committee will also inform our 2014 work programme as we prepare for consideration of the forthcoming Community Empowerment (Scotland) Bill.

Mainstreaming of EU issues in the work programme

18. Apart for the main EU priorities for 2013, the Committee has also sought to mainstream consideration of EU issues, as appropriate, in the rest of its work programme. The following is a brief summary of this work.

Scrutiny of the Draft Budget 2013/14

19. In October 2012 the Committee examined the Scottish Government’s draft budget proposals for 2013/14. As part of this work, we focussed on those aspects of the budget which support community regeneration. The Committee examined the role of EU Social Funds and EU Regional Development Funding (such as JESSICA² and SPRUCE³ funds) and their importance in delivering regeneration in Scotland.

Low Carbon Scotland: The Draft Second Report on Proposals and Policies (RPP2)

20. The Committee considered the implications of RPP2 in terms of local government’s contribution to meeting Scotland’s 2030 carbon reduction targets. As part of this scrutiny the Committee considered the implications of the EU directive on procurement, and its potential impact on local government procurement’s use as an effective tool to achieve carbon reduction targets.

Inquiry on Scottish Local Government Elections 2012

21. As part of our inquiry on the conduct to local government elections in 2012, the Committee examined the timing of European Parliament elections in Scotland and the level of voter turnout/engagement in these vis-a-vis local elections.

Public Services Reform inquiry: Strand 3 - Developing New Ways of Delivering Services

22. As part of the final strand of our inquiry into Public Services Reform and Local Government, the Committee examined both the implications of EU procurement

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¹ Insert link when it goes online  
² JESSICA (Joint European Support for Sustainable Investment in City Areas) fund  
³ Scottish Partnership for Regeneration in Urban Centres (SPRUCE) Fund
changes to local government, as well as the general implications for local government (as the main delivery agent for the majority of EU legislation and regulation in Scotland).

23. The Committee undertook some initial consideration of the potential impact of reforms in the area of EU State Aid Rules and public procurement policy as part of this inquiry. This assisted in informing the Committee’s work programme in terms of the focus on relevant EU issues.

24. The Committee also took the opportunity of this inquiry to carry out an examination of the EU priorities set by COSLA’s on behalf of Scottish local government.

Proposed EU Regulation on measures to reduce the cost of deploying high-speed electronic communications networks

25. As previously stated we considered a single piece of EU legislation referred to the Committee under Standing Order Rule 10A.2. Please see Annexe A for information on the Committee’s scrutiny of this proposal.

Delivery of Regeneration in Scotland

26. Apart from the consideration of EU Structural Funds, as previously referred to, the Committee has also considered the issue of EU State Aid Rules as part of this inquiry. Specifically, the Committee has considered proposed reform of State Aid rules and guidelines and the implication for effective community-led regeneration. The Committee expects to report its findings on this issue in early 2014.

Scrutiny of the Draft Budget 2014-15

27. The Committee has recently submitted its report to the Finance Committee on the Scottish Government’s 2014-15 draft budget.

28. While the scrutiny of this draft budget did not pose any major questions in terms of EU issues for the Committee, we did receive evidence on the role various EU funding mechanisms play in the revenue-generating capacity for Scottish local authorities. Gaining a clearer picture of the role of EU funding across Scottish local government is an issue the Committee may wish to return to in terms of its future work programme.

Role of the Committee’s EU Reporter

29. Stuart McMillan MSP was appointed EU Reporter by the Local Government and Regeneration Committee on 26 September 2012.

30. In the last 12 months the EU Reporter has undertaken two visits to the EU institutions in Brussels, along with other EU Reporter colleagues. On 2 and 3 December 2012 the EU Reporter visited Brussels in order to build relationships with the Commission and European Parliament, thereby allowing him to investigate the European dimension to forthcoming areas of interest which come within the Committee’s remit.

31. In April 2013 the EU Reporter brought the Committee’s agreed EU priorities to the attention of COSLA, as a key local government stakeholder.
32. On 4 September 2013 Mr McMillan, along with Member of the Local Government and Regeneration Committee, and other MSPs, met with EU Commissioner for Regional Policy, Johannes Hahn.

33. During a question and answer session MSPs raised a variety of issues with the Commissioner, including the implications of changes to State Aid Rules; changes to EU Structural Funds, as well as the forthcoming EU Procurement Directive. The discussion at this meeting informed the work programme of the Local Government and Regeneration Committee in terms of its inquiry on regeneration, as well as its scrutiny of various provisions of the Procurement Reform (Scotland) Bill.

34. On 21 and 22 September 2013, the EU Reporter visited Brussels with counterparts from the Economy, Energy and Tourism Committee, the European and External Relations Committee and the Infrastructure and Capital Investment Committee. This visit specifically focussed on examining proposed changes to EU procurement regulations in advance of the introduction of the Scottish Government’s Procurement Reform (Scotland) Bill. The information gained from the visit informed the Committee’s decision to examine the provisions of the Bill and its subsequent inquiry.