



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

1st Meeting, 2017 (Session 5)

Wednesday 11 January 2017

The Committee will meet at 9.30 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take items 7 and 8 in private.
2. **Scottish Housing Regulator Annual Report and Accounts 2015/16:** The Committee will take evidence from—

Kay Blair, Chair, and Michael Cameron, Chief Executive, Scottish Housing Regulator.
3. **Scottish Public Services Ombudsman Annual Report 2015-16:** The Committee will take evidence from—

Jim Martin, Ombudsman, Niki Maclean, Director, and John Stevenson, Head of Complaints Standards, Scottish Public Services Ombudsman.
4. **Consideration of evidence (in private):** The Committee will consider the evidence heard at agenda item 2.
5. **Consideration of evidence (in private):** The Committee will consider the evidence heard at agenda item 3.
6. **Work programme (in private):** The Committee will consider its work programme in relation to homelessness.
7. **Draft Budget Scrutiny 2017-18:** The Committee will consider a draft report to the Finance Committee on the Scottish Government's Draft Budget 2017-18.
8. **Payments to returning officers in Scotland:** The Committee will consider a draft report.

LGC/S5/17/1/A

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The papers for this meeting are as follows—

Agenda Item 2

Scottish Housing Regulator cover note

LGC/S5/17/1/1

[Scottish Housing Regulator Annual Report and Accounts 2015/16](#)

LGC/S5/17/1/2

PRIVATE PAPER

LGC/S5/17/1/3 (P)

Agenda Item 3

Scottish Public Services Ombudsman cover note

LGC/S5/17/1/4

[Scottish Public Services Ombudsman Annual Report 2015-16](#)

LGC/S5/17/1/5

PRIVATE PAPER

LGC/S5/17/1/6 (P)

Agenda Item 7

PRIVATE PAPER

LGC/S5/17/1/7 (P)

Agenda Item 8

PRIVATE PAPER

LGC/S5/17/1/8 (P)

Local Government and Communities Committee

1st Meeting (Session 5), Wednesday 11 January 2017

Scottish Housing Regulator

Purpose

1. This paper provides background information in advance of the Committee's evidence session with the Scottish Housing Regulator (SHR).

Background

2. The SHR is an independent Non-Ministerial Department, established on 1 April 2011 under the Housing (Scotland) Act 2010 ('the Act'). Its statutory objective is to safeguard and promote the interests of current and future tenants, homeless people and other people who use services provided by social landlords.¹
3. The main functions of the SHR are to:
 - keep a publicly available register of social landlords.
 - monitor, assess and regularly report on all social landlords' performance of housing activities and on registered social landlords' financial well-being and standards of governance.
4. The SHR regulates 160 registered social landlords (RSLs) and the housing activities of Scotland's 32 local authorities. The Act requires that the SHR carries out its functions in a proportionate, accountable and transparent way.

Annual Report

5. The SHR is required to report annually on how the office performs its functions. The Annual Report and Accounts 2015/16 was published on 5 October 2016 and can be accessed here:

<https://www.scottishhousingregulator.gov.uk/publications/annual-report-and-account-201516>

Next Steps

6. The Local Government and Communities Committee will take evidence from the Scottish Housing Regulator on its annual report and accounts at its meeting on 11 January 2017.

¹ As specified at section 2(1) of the Act

Local Government and Communities Committee

1st Meeting (Session 5), Wednesday 11 January 2017

Scottish Public Services Ombudsman

Purpose

1. This paper provides background information in advance of the Committee's evidence session with the Scottish Public Services Ombudsman (SPSO).

Background

2. The SPSO (Jim Martin) is the final stage for complaints about councils, the National Health Service, housing associations, colleges and universities, prisons, most water providers, the Scottish Government and its agencies and departments and most public authorities.

Annual Report

3. The SPSO is required to report annually on how the office performs its functions. The Annual Report 2015-16 was published on 27 October 2016 and can be accessed here:

http://www.spsso.org.uk/sites/spsso/files/communications_material/annual_report/SPSO%20Annual%20Report%202015-16.pdf

Next Steps

4. The Local Government and Communities Committee will take evidence from the SPSO on his Annual Report at its meeting on 11 January 2017.
5. The SPSO has provided a written submission in advance of his evidence session and it is attached at Annexe A.

Annexe A

Written submission from the Scottish Public Services Ombudsman dated 4 January 2017

Thank you for your letter of 5 October 2016 and your invitation to the SPSO to give evidence to the Committee.

This will be my final annual evidence session as Ombudsman. This organisation has undergone significant change in the nearly eight years since I took office, particularly in relation to our remit, and on 1 April 2017 we will take on a significantly enhanced role in social work complaints. We have also become, I believe, both a more efficient organisation and one that demonstrates its commitment to listening to and acting on feedback from stakeholders. Our 2015/16 annual report provides an outline of some of the work we do to continuously improve our performance and to further the positive impact we have on public services.

As this is the first appearance for the SPSO before this Committee in the new Parliamentary session, I am attaching a briefing note for members' attention. It sets out how we have successfully taken on a series of new responsibilities over a number of years and how we have done so in a way that I believe clearly demonstrates value for money. In outlining the expansion of the SPSO's remit I would underline that we do not advocate for new roles (beyond those that flow directly from the simplification of complaints handling), and how we work with the SPCB and the Scottish Government to ensure that any new function is resourced fairly. The briefing note also highlights two recent achievements in our role of improving complaints handling by public bodies, particularly their learning from complaints to improve services. Finally, I reflect on where I think the Parliament could consider legislative change to support the work of the next Ombudsman to help to ensure that we continue to provide an efficient, effective and impactful service to the public.

I would also like to add that I have valued the relationship that SPSO had with predecessor Committees, who built up a high level of awareness of our work. I am grateful for their support particularly in relation to the Learning and Improvement Unit that we have set up in 2016/17. I know the SPSO may be new to some members and I would be pleased to host a visit if the Committee or individual members would find that useful.

Yours sincerely

Jim Martin
Ombudsman

Note for the Committee:

1. Ensuring value for money while effectively managing change

Since I took office in 2009, the SPSO has been given a number of additional roles and functions. We now also:

- take complaints about water providers;
- take complaints about prisons;
- take NHS complaints from prisoners;
- are the Complaints Standards Authority; and
- are the Independent Reviewer for the Scottish Welfare Fund.

Apart from the Complaints Standards Authority, all of this work was previously being done elsewhere in the public sector. The transfer of responsibilities to SPSO significantly reduced costs to the public purse. Two small stand-alone organisations - the Scottish Prisons Complaints Commissioner and Waterwatch Scotland – were able to be abolished. Through maximising our business efficiency, we absorbed prison complaints without additional funding. Once the transition of water complaints was complete, our budget had increased by only £80,000 for that additional work. The savings achieved as a result of those two changes alone was estimated to be around £489,000¹. In 2011, we were also able to absorb NHS complaints from prisoners without additional resource, work which had previously been undertaken within central government.

As well as the clear financial benefits, the transfer of responsibilities to the Ombudsman has increased the level of perception of independence, transparency and accountability of these roles. They have also allowed for greater opportunities for sharing learning from the new areas under jurisdiction.

The Complaints Standards Authority was set up within SPSO in 2010, as a result of the Sinclair and Crerar reports which recommended a simplification and standardisation of complaints processes, a focus on frontline resolution and on preventing repeat failings. Since then, the CSA has developed model complaints handling procedures across almost every public service in Scotland. This has entailed minimal cost with staff resource averaging 2 or 3 FTE over the period. We have also established a highly-regarded training unit which, again, runs with minimal staff (0.5 FTE) and which is funded by charging for the training on a cost-recovery basis.

The Committee will be aware that this change and innovation took place during a time of austerity. At the request of the SPCB, we reduced baseline costs by 15% by 2013/14². Since 2009/10 we have also seen a 40% increase in complaints received and achieved a 31% increase in productivity.

¹ See paragraph 46

[http://www.parliament.scot/S3_Bills/Public%20Services%20Reform%20\(Scotland\)%20Bill/b26as3-stage2-amend-fm.pdf](http://www.parliament.scot/S3_Bills/Public%20Services%20Reform%20(Scotland)%20Bill/b26as3-stage2-amend-fm.pdf) In its final full year of operation, the customer levy for Waterwatch was £609,688. Some of its work was transferred to Customer Focus so not all the savings can be attributed to SPSO – however, complaints were a significant part of Waterwatch’s work. The Prison Complaints Commissioner budget was reported as £165,650 for 2010/11.

² Baseline was 2010/11.

However, in our draft strategic plan 2016-2020 we clearly set out our belief that we had maximised the efficiencies we could and that, if resourcing remained static and the volume and complexity of complaints continued to rise, difficult decisions could lie ahead. As we explained in our 2015/16 annual report, while the overall total of complaints is finally beginning to stabilise and reduce, the complexity of complaints, and in particular the increase in health investigations, mean additional pressure and costs for this office.

We took on the role of Independent Reviewer for the Scottish Welfare Funds on 1 April 2016. This is a new statutory role³ which replaces an interim scheme under which all of Scotland's local authorities managed their own arrangements for reviewing their decisions on awarding funds. This role is different to the traditional role of an Ombudsman and we developed new systems and ways of working to ensure we would meet the needs of a particularly vulnerable group. As with the previous expansions of SPSO's remit, as well as providing savings to the public purse, this provides for greater consistency, transparency and learning than the previous arrangements. My successor will report next year on the first year of this role but I am pleased to let the Committee know that stakeholder feedback supports my view that the process is working well.

It is important to note that, as an officeholder of the Parliament, this office traditionally does not advocate for new roles. When one is proposed we offer information and advice about what that may mean for us and this will include what resourcing would be required to meet any new statutory function. We are funded directly by the Parliament and we work with the SPCB and the Government to make sure that any new function is resourced fairly. The SPCB and the Government are currently developing a framework agreement which sets out the steps that should be taken into consideration when a proposal to change our remit is made.

2. Improving complaints handling and learning from complaints

I would like to draw two recent achievements to the attention of the Committee.

New Complaints Handling Procedures: health and social work

Two new Complaints Handling Procedures (CHPs) were published towards the end of 2016. This represents the culmination of the Crerar and Sinclair reviews of complaints handling. The CHPs have been designed to align with the existing local authority CHP procedures and to enable organisations to integrate complaints as they integrate services. Members of the public will therefore have access to simplified and standardised complaints processes across these service areas. I have provided links to copies of the procedures.

This builds on significant work carried out by SPSO since 2011 through the CSA, to develop and implement the first local authority CHPs. This has included developing training, building a performance framework tool and creating and supporting a network of local authority complaints handlers. In 2015/16, as a result of work by SPSO and this network, the Improvement Service has taken ownership of national

³ Welfare Funds (Scotland) Act 2015

reporting of local authority complaints performance information. Going forward, this will allow the network to benchmark their performance against each other and identify areas of good practice which can be shared across the sector.

Learning and Improvement Unit

The second development is that we have set up a Learning and Improvement Unit (LIU) within SPSO, funded for one year by the SPCB. This followed strong support for the unit in response to our draft consultation on our 2016-2020 strategic plan. The aim of the LIU is to support organisations to prevent repeat service failings and improve the quality of their complaints handling. To bring this about, we are developing the way we make recommendations to make them even more targeted and effective. We are carrying out this project in partnership with public authorities and using insights from our Customer Sounding Board. As well as continuing to ensure that recommendations address individual complainants' injustices, the onus will increasingly be on supporting authorities to identify and develop their own solutions for preventing repeat mistakes and improving services.

There are also other projects on-going in the LIU. We are preparing for a cross-sectoral conference in March which will help to share best practice across Scotland. Our first thematic report on the issue of obtaining informed consent for medical treatment will be published in early 2017. The aim is not only to highlight recurring issues we see, but to explore the context and reasons for this and to provide a tool to encourage organisations to address the problem. We will also be working alongside two public organisations to support improvements to their complaints process.

In the longer term as a result of this work we expect to see public bodies make real and lasting improvements in service areas that are the cause of multiple complaints. We also expect to see significant improvements in how public authorities handle complaints. This will help to improve the experience people have of public services and their perceptions of those services.

3 Legislative changes

The previous Committee asked on a number of occasions whether I thought our legislation needed change. Developments in the last year have led me to reflect on this and I would like to make four suggestions which I think would help to make the SPSO more effective and help us improve our service to the public.

3.1 Allowing SPSO to make better use of its knowledge to support service improvements

The current legislation setting out our powers⁴ restricts us from sharing information we obtain during an investigation. This includes information which does not contain personal data as well as information which does. The reasons for the restriction is one I respect: we have significant powers to access information and it is important that that is handled with care. However, the specific wording of the legislation does cause problems and I believe could be changed to allow for information sharing for the benefit of the public while still respecting individual confidentiality.

⁴ SPSO Act 2002 (as amended)

At present, I am unable to share information I have found in an investigation for the purpose of helping other organisations learn and improve. For example, the LIU had wanted to include real-life good practice examples of the implementation of recommendations in some of their work but are extremely restricted in what they can share. A bill recently published at Westminster which is designed to create a Public Services Ombudsman for England contains a clause which allows for information to be shared for learning or training, providing confidential information is excluded. I would argue that the same would be of benefit to Scotland.

3.2 Allowing SPSO to share information with regulators and scrutiny organisations

The same restriction means that I am extremely limited in what information I can share with regulators and scrutiny organisations. I can only share information if I consider that there is a health or safety risk (based on the information I hold). This is a high bar to reach. I am concerned that on occasion we may have information that may not reach that bar but, in combination with other information held by regulators or a scrutiny organisation, may be pieces of a jigsaw that combine to shed light on a potential risk. To give the Committee an example, I have occasionally been asked by the General Medical Council to release information to them from our investigation when they are also considering a related matter. However, unless the information I have on its own indicates a risk, I cannot do so and I have had to refuse to release information. This may be impeding the efficiency of investigations carried out by other organisations.

Our legislation offers a potential way to resolve this. Under section 20, I can release information to certain limited and named organisations if it relates directly to matters they regulate/scrutinise. These are currently few in number and for example include Audit Scotland and the Information Commissioner. From 1 April 2017, two new organisations will be added, the Care Inspectorate and the Scottish Social Services Council (reflecting our new social work role). These were included in the Order the Government placed before the Parliament about social work complaints.

I would argue that the power for us to share information under section 20 could be extended to allow us to share relevant information with other organisations such as Healthcare Improvement Scotland and other professional regulators such as the GMC and the Nursing and Midwifery Council. Although information shared could potentially include personal information, any such sharing would be protected by existing data protection legislation. The clear benefits are better protection for the public, greater opportunities to promote service improvements, and the potential for more efficient investigations by another organisation.

3.3 Allowing SPSO to issue 'special reports' if an organisation failed to comply with a 'wider improvement type' recommendation

Under the existing legislation, the recommendations SPSO makes are not binding. I have no power to compel an organisation to take any action. Under section 16 I have the power to issue a 'special report' to the Parliament if a recommendation is unfulfilled, but this power can only be used where there has been a failure to comply with a recommendation that relates to the individual who brought the complaint and an outstanding injustice to them.

My concern, therefore, is with the wider recommendations that ombudsman schemes are expected to make in order to bring about more general improvements or reduce the likelihood of a failure being repeated. Around two thirds of SPSO's recommendations are of this wider improvement type. I would suggest that the 'special report' power be explicitly extended to allow the Ombudsman to issue a special report in circumstances where an organisation fails to implement a wider recommendation. This power would help the SPSO to ensure organisations treat such recommendations with appropriate seriousness, and also, I believe, would be of interest to the Parliament in its role of scrutinising public services.

While to date, SPSO has never had to resort to issuing a 'special report', it has been a useful lever in relation to recommendations remedying personal injustice and I believe would be similarly helpful in relation to recommendations for wider improvement.

3.4 Allowing SPSO to make binding recommendations in specific, limited circumstances

I would also like to suggest that, in specific, limited circumstances, the SPSO be given the power to make binding recommendations of the individual remedy type.

This is for two reasons. First, I have become concerned about the time and difficulty we occasionally experience in ensuring that the implementation of a recommendation remedying individual injustice is implemented. We have sometimes had to use significant resource over an extended period to ensure compliance. To date, the lever of a 'special report' has eventually ensured that the recommendations are completed, but the time and resource entailed have, on occasion, been disproportionate in my view to the financial impact the recommendation would have on the organisation. More significantly, the organisation's obstruction has delayed justice.

Secondly, I am concerned about fairness. A member of the public who wished to challenge a SPSO decision could, ultimately, only do so by judicial review⁵. An organisation that did not want to implement a recommendation could simply ignore it. This seems to me inherently unfair.

There is some practical and successful precedent for binding powers. Since 1 April 2016 SPSO has had the ability to make binding decisions in relation to Scottish Welfare Fund review cases. This has proved highly effective in ensuring that such decisions are implemented quickly, which is crucial for the individuals, who may be vulnerable and/or in crisis.

I would invite the Committee to consider a power whereby, in specific, limited circumstances, recommendations can be made binding. These circumstances would be where an organisation had not provided good reason why a recommendation should not be implemented *and* the organisation had not challenged that decision or did not intend to challenge that decision in court. This would not automatically make all recommendations binding as it would only be used where the Ombudsman had

⁵ Part of our process does allow for the person and the organisation to raise challenges with us. However, like many other public sector decisions, the only challenge when we have come to a final view, is through the courts.

found the organisation had neither provided an acceptable justification for refusing nor undertaken any appropriate legal challenge but could prevent some of the delaying tactics and delayed injustice we have seen.