

# Petitioner submission of 8 March 2023

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

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

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

On the matter of independence: anyone appointed by Parliament to investigate the adequacy and effectiveness of an SPSO investigation cannot change the outcome of that investigation. Therefore there is no legal challenge to the independence of the Ombudsman. The findings of the Ombudsman are still relevant and legal, no matter how bad or ineffective an investigation is.

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

We feel that the SP Corporate Body is misleading the Committee in saying that it will challenge the independence of the SPSO. Nobody has the power to challenge the independence of the SPSO because the

Ombudsman can decide what they do and do not investigate. We feel that the submission from the SPCB makes unsubstantiated claims that there is no legal basis for an independent investigation.

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

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

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

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

The claim made by both the SPSO and the SPCB that an independent third party appointed by Parliament to investigate the adequacy and effectiveness of the SPSO will impact its independence is misleading and wrong. This is also true for any review of individual cases as their outcomes will remain unchanged irrespective of any findings due to safeguards within the Ombudsman Act. Apart from a Judicial Review no one has the power to challenge the independence of the Ombudsman

because the SPSO is granted significant discretion about what and how it investigates referrals made to them. Even then, this challenge is limited to a point of law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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