

# **PE2161/A: Extend the time period for complaints through the Scottish Public Services Ombudsman (SPSO) for neurodivergent people to two years**

## **Scottish Government written submission, 9 June 2025**

### **Does the Scottish Government consider the specific ask of the petition to be practical or achievable?**

The ask is achievable. Amendments to the Scottish Public Services Ombudsman Act 2002 (the 2002 Act) could be made either through primary legislation or delivered by way of an affirmative Scottish Statutory Instrument (SSI) under section 14(1) of the Public Services Reform (Scotland) Act 2010 (the 2010 Act).

The powers under section 14(1) of the 2010 Act must improve the exercise of public functions of public bodies and office holders having regard to efficiency, effectiveness or economy and so any amendments made using powers under the 2010 Act would need to be scrutinised to ensure they met those grounds.

Section 26 of the 2010 Act requires that Scottish Minister consult with any organisations or bodies that appears to be affected by any proposals being considered under section 14 of the Act.

Making amendments to the 2002 Act through primary legislation or through the making and laying of any SSI and the consultation requirement comes with cost and resource implications.

### **What, if any, action the Scottish Government is currently taking to address the issues raised by this petition and is any further action being considered that will achieve the ask of this petition?**

The Scottish Government is committed to building a country that ensures equality of opportunity for all by embedding equality, inclusion and human rights into everything that we do and recognises the difficulty that statutory time limits can cause neurodivergent people.

The Scottish Government has consulted on the [Learning Disabilities, Autism and Neurodivergence Bill](#) (LDAN) that sets out proposals aiming to ensure that the rights of neurodivergent people, including autistic people and people with learning disabilities, are respected, protected and championed. This is a unique opportunity to help create a Scotland where being neurodivergent or having a learning disability is as accepted as being neurotypical.

While an extension of the time period available for complaints to be made through SPSO for neurodivergent people was not proposed in the Learning Disabilities, Autism and Neurodivergent Bill consultation, the Bill itself is an important opportunity to raise awareness of the needs of neurodivergent people. The consultation, fully co-designed with people with lived experience via our Lived Experience Advisory Panel (LEAP), covered a wide range of issues that people have told us would make real

improvements. It included 'overarching themes' such as independent advocacy, inclusive communications, mandatory training for the public sector, data collection and statutory strategies. There were also 'specific themes', including health and wellbeing, social care, justice, relationships, transport, employment, housing, education, transitions to adulthood, and others.

The next steps for the LDAN Bill will be to continue to develop proposals for an LDAN Bill and to publish draft provisions. These will take into account insights and views gathered through the consultation and a second phase of development with the three Bill advisory panels. It is unlikely that the LDAN Bill will be introduced to the Scottish Parliament before the next election in May 2026.

**Is there any further information the Scottish Government wish to bring to the Committee's attention, which would assist it in considering this petition?**

The SPSO is operationally independent from Scottish Ministers. The 2002 Act states that the SPSO cannot consider a complaint made more than 12 months after the day on which the person aggrieved first had notice of the matter complained of, unless there are 'special circumstances' which make it appropriate for them to consider a complaint made outwith that period. Special circumstances are not defined in the 2002 Act.

The SPSO's website ([Time limit for making complaints to SPSO | SPSO](#)) provides examples of what the SPSO considers when applying the special circumstances test. Special circumstances could be a single factor or a combination of factors. The SPSO's complaint form asks complainants to explain and provide any reasons for a delay in making a complaint while the SPSO also assesses for special circumstances (for example, evidence of delay by a public body).

The Scottish Government understands that SPSO decisions on special circumstances are made on a case-by-case basis, with guidance available to decision makers. If the SPSO decides not to waive the time limit, that decision is subject to the SPSO's review process under which the decision can be looked at again and which provides an opportunity for a complainant to supply new information. The SPSO's decisions are also subject to judicial review.

The SPSO have confirmed that in relation to training they have delivered the following:

- Understanding & Supporting Neurodivergent Applicants - to staff in the Social Welfare Fund Independent Review Service, and Independent National Whistleblowing Officer and SPSO managers.
- Neurodiversity in the Workplace - to all staff as mandatory training.

A session with Autism Initiatives is planned for September 2025, which will be available to all staff.

The Scottish Government is therefore of the view that the current legislation has a degree of flexibility and offers the SPSO a wide degree of discretion as to whether to waive the time limit, with any such decision also being subject to the SPSO's review process.

## Justice Directorate