

PE2161/D: Extend the time period for complaints through the Scottish Public Services Ombudsman for neurodivergent people to two years

Scottish Public Services Ombudsman written submission, 15 October 2025

Background

Legal restrictions and process

1. The Scottish Public Services Ombudsman Act 2002 sets out a number of restrictions on our powers to investigate, some act as a complete bar and in others we have discretion. The time limit restriction is one where we have discretion, so if a matter is out of time, we may still be able to investigate but we need to find and establish specific reasons to do so, in the wording of the legislation, we need to find that there are “special circumstances”.
2. Our complaint form (both in paper and online) asks complainants when the problem happened and the reason for any delay. This means that this information is proactively sought. In cases where we consider that we need clarification or further information about the reasons for any delay in submitting the complaint, we will also contact the complainant to request this. We also assess the case ourselves for special circumstances – for example if there is clear evidence of delay by the public body, so the member of the public doesn’t always have to highlight these.
3. If, having considered all the information available, a decision is made that a complaint is not one where the test of special circumstances is met, this will be explained in full and the complainant will be able to ask for an internal review of that decision. This review process is a non-statutory process and means that individuals can ask for the decision on their complaint to be reviewed directly and personally by the Ombudsman.
4. The Ombudsman will review the decision and can decide to reopen. The person will, again, be able to present any additional reasons why they consider they meet special circumstance, and the Ombudsman will be able to consider those reasons already on file and any other information that they consider is relevant.

Exercising discretion – guidance and approach

5. As well as the review process, which ensures the Ombudsman personally can consider the decision, in order to ensure consistency, we have detailed guidance for complaints reviewers, specifically about the application of the time limit. They also have a tool, a questionnaire which guides them through this process. This guidance is

reviewed regularly, and, at the time of writing, we are currently piloting a revised version of the time bar guidance and tool.

6. The current guidance and approach is available in summary form online and that includes a series of examples available here: [Time limit for making complaints to SPSO | SPSO](#)
7. We look at each decision on a case-by-case basis, but the guidance gives general direction and includes examples. One of the reasons we say we may extend the time limit is where an individual has a disability. While cognitive difficulties are not specifically mentioned, they can meet the legal definition of a disability and would clearly be covered.
8. It is important to stress that people do not need to meet the legal definition of disability, for us to consider adjusting our service or extending the time limit. We have produced guidance on vulnerability for staff, which, we also make available publicly to encourage good practice by public bodies.
9. This guidance was designed to ensure not only that we meet our legal obligations to make our organisations accessible but also that we reflect vulnerabilities in our work which may not strictly meet any legal definition, but which may still impact on a person's ability to access the service. The guidance also sets out our commitment to taking a trauma-informed approach. The guidance is available in full here: [VulnerabilitiesGuidance.pdf](#)
10. In addition to the review process, we have a number of other processes that help us to ensure the quality of our work. We have service standards, a quality assurance process, an induction programme to ensure decision-makers are fully aware of our complaints handling guidance and approach before they start to make decisions independently and we have regular training and support, which has included training specifically about the impact of neurodivergence.

Statistics about decisions

11. We report publicly on all decisions made. Last year we made decisions on 5,208 complaints. We log all cases where we do not extend the time bar (i.e. that the decision is out of time and that there were not special circumstances). In 2024-2025 that was 189 cases (4%). To put that in context, nearly 600 cases (11%) were closed because of prematurity one of our other discretionary tests. We close only a small number of cases on the grounds of being out of time where there were no special circumstances.
12. We do not log the number where we exercise this discretion. This means we cannot say which of the 2,717 cases we took to preliminary investigation or investigation, (these are cases which were not excluded for jurisdictional reasons) were ones where we found special circumstances to extend the time limit.

Data about our users, disability and neurodivergence

13. We know that many of our users have a disability, and this has been a key driver behind some of the work on vulnerability mentioned above and accessibility improvements noted below. Indeed, last year, 69% of people who answered the question about disability on our monitoring form told us they have a condition that affects their ability to undertake day to day activities. 49% told us that impact was a lot or significant which meets the legal definition of disability in equalities legislation.
14. In the same form, we ask people to select any conditions that affect them (people can select more than one condition) and in response to this more detailed question:
 - 14.1. 1,757 users told us they had at least one condition.
 - 14.2. 4,797 conditions were listed.
15. Mental ill-health is the most commonly noted condition with 1,107 people highlighting that as a condition that affects them, below this is long-term illness at 677 and physical disability was listed by 640 respondents. We follow the definitions in the census, which does not include cognitive difficulties as a category, but it might be interesting for the Committee to know that learning disability was listed by 221 people and learning difficulty by 237 respondents to our form.
16. We also monitor, on an anonymised basis, what reasonable adjustments are being requested and why.
17. In 2024-25, 254 people noted on our forms (either online or on paper) that they may need adjustments. 120 people chose not to divulge the reason, and we do not require people to tell us why they need an adjustment. 46 people told us they may need an adjustment for neurodivergence. Some of this group of people told us they had specific types of neurodivergence (ADHD, Autism, Dyscalculia etc) reflecting the diversity of this population.
18. Not all of those 46 specified a specific adjustment, of those that did the adjustments requested were varied and ranged from preferring simpler communication, struggling with long letters, needing help with forms, needing key information highlighted, having difficulty with numbers, preferring written or verbal communication or needing specific font size, and needing more time to process.
19. As well as making adjustments for individuals, as an organisation, we have a long-standing interest in the impact of neurodivergence on the ability to successfully access and navigate complaints systems. As the Scottish Government response noted we have provided staff with training in this area, particularly around neurodivergence. The most recent was in September 2025 when 34 staff attended a session run by a local Autism charity.
20. We have sought to ensure our service reflects the needs of our users over a number of years in a variety of ways. For example, we have:

- 20.1. made concerted efforts to use simpler, more straight-forward language,
 - 20.2. published the vulnerability guidance to help us meet the needs of all users,
 - 20.3. proactively ask all users for their contact and communication preferences and any adjustments that will help them to access our service,
 - 20.4. increased use of templates that are easier to navigate,
 - 20.5. increased the use of video on our website,
 - 20.6. focused our training provision on key areas to ensure staff have an understanding of how different conditions may affect users,
 - 20.7. empowered staff to make individual adjustments without the need for authorisation.
21. In addition, given the difficulties a number of users have told us they have with written communication, we have asked Parliament and Government to consider changing the legal requirements around written communication in our legislation.

Extending the time limit for neurodivergent people

22. It should be evident from above, that we are keen to ensure our service and the use of discretion available to us does fully reflect the lived experience of neurodivergent people, and indeed all users who may need support to access our service. We have taken and continue to take steps to ensure this. As in all accessibility work, this is an area where we strive to continue to improve and we have considered carefully both the proposal in this petition and, while there are legal restrictions which mean we are not able to comment on individual situations, the experience that lies behind it.
23. We understand the strength of feeling behind the petition, and the need and of public services generally to improve the experience of neurodivergent people engaging with them. However, we are not convinced that this proposed change to legislation is the best tool to do so and it may have unintended consequences.
24. As proposed, the petition seeks statutory protection for a single discretionary test for a specific group of users. This means the test would become two-tier where some individuals would have a different time limit to others on the basis of meeting defined criteria. Given this, there would need to be clear definitions and, while at present we rarely require evidence or ask an individual to divulge a specific diagnosis this would likely need to change.
25. The petition makes reference to both neurodivergence and cognitive disabilities. Not everyone who has neurodivergence is disabled. Depending on the framing of legislation, this means we may need separate evidence of a cognitive disability. This feels both intrusive and unnecessary given an easier solution is to ensure we are using our current flexibility appropriately.

26. We have set out above how we seek to ensure we are exercising our discretion in relation to applying time limit flexibly and consistently taking into account relevant individual circumstances. We are committed to continue to improve our knowledge of neurodivergence and to learn from all feedback. Where it is considered that additional legislation or guidance is needed to ensure that improvement occurs broadly and consistently across the public sector, it is likely to be more effective if undertaken at a national level.
27. Finally, as noted above, our current system does not easily allow for reporting on cases where we have exercised discretion. As the Committee will appreciate changes to our database and practice are not without a cost but, given the petition and comments made by parliamentarians, we are exploring whether we could gather this data in a cost-effective and efficient manner that would allow us to add that information to the data we report regularly to Parliament.