



PUBLIC PETITION NO.

PE01594

Name of petitioner

Richard Burton on behalf of Accountability Scotland

Petition title

Specification of 'lying' as an example of public maladministration

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to amend the Scottish Public Services Ombudsman Act 2002 to define maladministration in such a way that formalises the Crossman Catalogue as a source of examples and adds lying to the list of examples.

Action taken to resolve issues of concern before submitting the petition

The petitioner looked at official definitions and listings of maladministration to check that 'lying' is missing from them and is not clearly implied by some other listed item.

I wrote to the SPSO. In the response, Mr. Jim Martin was quoted as saying (in response to a question from the Local Government and Regeneration Committee) that "we would criticise a body who provided inaccurate or misleading information", but it was implied elsewhere that they did not always do so. My letter was not fully answered.

My list MSP wrote to the Minister for Parliamentary Business asking for the Government's view. The response confirmed the petitioner's knowledge of the present legal position, but did not discuss the realities of complaint handling and the other issues raised in this petition.

Petition background information

According to the government document: "A modern complaints system: The new Scottish Public Services Ombudsman" (which relates to the Scottish Public Services Ombudsman Act 2002):

"the term 'maladministration' is not defined in the Scottish Public Services Ombudsman Act 2002. Nor was it defined in previous Ombudsman legislation, e.g. the Parliamentary Commissioner Act 1967. When the 1967 Act was being taken through the UK Parliament, Mr Crossman, as Leader of the House of Commons, gave the following examples of maladministration: 'bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and arbitrariness and so on'.

This is known as the 'Crossman catalogue'.

Additional examples of Maladministration were quoted in the UK Parliamentary Ombudsman's annual report for 1993."

The Crossman catalogue is also available in the Scottish Public Finance Manual and is relevant to public law (see CILEX Chartered Institute of Legal Executives).

Inclusion of the definition in the SPSO Act would make it relevant to all circumstances involving public maladministration.

It happens that public bodies (including those under the jurisdiction of the SPSO ('BUJs')) sometimes make statements to complainants or the SPSO that are demonstrably untrue. For example, it may be averred that some fixed object, such as a tree or building, is in a position that is visibly wrong. Such untruths, when deliberate, are usually intended to cover up maladministration that is defined as such in the Crossman catalogue.

'Knowingly giving advice which is misleading or inadequate' is included in the latter, but neither the above examples nor lying in general are covered.

A public body can inadvertently give false information, of course. That may be due to 'incompetence or ineptitude', both of which are in the Crossman catalogue. However, the latter words do not apply to deliberate lying.

A definitive catalogue would be unsatisfactory inasmuch as it could be inadvertently incomplete. However, there are reasons why lying should be included.

Firstly, maladministration is what the SPSO is empowered to consider.

Secondly, some of the lies that come the way of the SPSO necessarily do so via CEOs of BUJs, these being passed to them from people they administer and accepted as true. CEOs might be more assiduous in checking facts if the passing on of lies were itself maladministration.

A member of the public has tried repeatedly to discover from the SPSO whether they treat lying as maladministration. This was attempted through email correspondence with the SPSO Advice Team. The anonymous SPSO correspondent refused in three emails to give a written answer. However, he or she did refer to the Crossman list, possibly intending to imply that the SPSO does not treat lying as maladministration as it is not listed.

In one email, the member of the public provided very specific, but hypothetical, examples that failed to elicit an answer:

"For example, what if a BUJ were to lie twice regarding an immoveable object, like claiming:

- (1) a wall had been built somewhere else than it demonstrably now is and
- (2) that the wall was built outside a Conservation Area when all documentation shows it is well within it.

Would this lying be regarded as maladministration by the SPSO?"

Whether or not the Advice Team was justified in avoiding answering, it does seem that the **SPSO lacks a clear policy on this issue**. That adds point to this petition. Some other complainants believe that lies are not always taken seriously by the SPSO.

Conclusion: Define maladministration, open-endedly, using the Crossman Catalogue with the addition of 'lying' or its equivalent. Add this definition to the Scottish Public Services Ombudsman Act 2002.

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01594>

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