



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

4th Meeting, 2020 (Session 5)

Wednesday 29 January 2020

The Committee will meet at 9.45 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
2. **Scottish Public Services Ombudsman Annual Report and Accounts 2018-19:** The Committee will take evidence from—

Rosemary Agnew, Ombudsman, Niki Maclean, Director, and John Stevenson, Head of Improvement, Standards and Engagement, Scottish Public Services Ombudsman.
3. **Subordinate legislation:** The Committee will consider the following negative instrument—

The Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019.
4. **Scottish Public Services Ombudsman Annual Report and Accounts 2018-19:** The Committee will consider the evidence heard earlier in the meeting.
5. **Period Products (Free Provision) (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

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The papers for this meeting are as follows—

Agenda item 2

Note by the Clerk

LGC/S5/20/4/1

PRIVATE PAPER

LGC/S5/20/4/2 (P)

[Scottish Public Services Ombudsman](#)

LGC/S5/20/4/3

Agenda item 3

Note by the Clerk

LGC/S5/20/4/4

Agenda item 5

LGC/S5/20/4/5

Local Government and Communities Committee

4th Meeting (Session 5), Wednesday 29 January 2020

Scottish Public Services Ombudsman

Purpose

1. This paper provides background information for the Committee's evidence session with the Scottish Public Services Ombudsman (SPSO). Since May 2017, the SPSO has been Rosemary Agnew. She will be accompanied for the session by senior colleagues from her office.
2. The evidence session provides the Committee with an opportunity to scrutinise [the SPSO's Annual Report and Accounts 2018/19](#). The session follows a precedent set earlier in this session for this Committee to take evidence from the SPSO annually.
3. The SPSO is funded and appointed by the Scottish Parliament Corporate Body but is statutorily independent, with discretion to exercise her complaints handling and decision-making powers as she considers appropriate.

Background

4. The Scottish Public Services Ombudsman Act sets out the SPSO's powers and duties which cover three distinct areas of statutory functions¹—
 - The final stage for complaints about most devolved public services in Scotland including councils, the health service, prisons, water and sewerage providers, Scottish Government, universities and colleges;
 - Specific powers and responsibilities to publish complaints handling procedures, and to monitor and support best practice in complaints handling and;
 - Independent Review Service for the Scottish Welfare Fund with the power to overturn and substitute decisions made by councils on Community Care and Crisis Grant applications.

Annual Reporting

5. The 2002 Act states that the SPSO must report annually to the Scottish Parliament on the exercise of his or her functions. The Committee last heard evidence from the SPSO on her Annual Report 2017-18 at its meeting [on 23 January 2019](#).
6. The SPSO's most recent [Annual Report and Accounts 2018/19](#) was published on 31 October 2019.

¹ More information about the role and responsibilities of the SPSO can be found [here](#).

7. The Annual Report and Accounts 2018/19 reports on the SPSO's performance and activities during the reporting year and highlights key issues and risks for the organisation. The document also identifies future work for the SPSO including an update on its new role as the Independent National Whistleblowing Officer for the NHS from 1 July 2020. This role was meant to have been implemented in 2019 but was delayed due to reasons outside the SPSO's control.

Written submission

8. The SPSO have provided a written submission in advance of the evidence session and it is attached at Annexe A. The submission contains a summary of its Annual Report and Accounts 2018/19, information on key developments in 2019/20, an update on the model complaints handling process review, information on resources risks and challenges, and commentary on the Scottish Public Services Ombudsman Act 2002.

Next Steps

9. The 29 January evidence session is an opportunity for the Committee to question the SPSO and her team on their performance over the last year and on particular challenges they anticipate in coming months, and will stand on the public record. The Committee will have the opportunity to consider any further action it may wish to take immediately following the evidence session and in future work programme discussions.

Written Submission from the Scottish Public Services Ombudsman of January 2020

Overview

This update provides:

- an overview of the 2018/19 Annual report including a summary of key developments in 2019/20
- an update on the model complaints handling process review
- information about resources risks and challenges
- commentary on the Scottish Public Services Ombudsman Act 2002

2018/2019: Annual Report and Accounts (ARA)

2018/19 saw continued strong performance by the SPSO. The ARA highlighted many significant achievements over the year including the: move to new shared offices, introduction of provisional decisions, publication of our Support and Intervention Policy and maintaining a good level of output by meeting or exceeding all but one of our key performance indicators.

Performance at a glance. SPSO:

- handled 1,707 enquiries
- received 4,188 and closed 3,955 complaints
- upheld 58% of complaints investigated
- made 1,160 recommendations for redress and improvement to public service
- handled 800 Scottish Welfare Fund review applications
- decided 100% of Crisis Grant review applications within five working days

Our 2018/9 accounts include the funding provided by the Scottish Parliamentary Corporate Body (SPCB) for the Shared Accommodation Project, which brought together the Children and Young People's Commissioner for Scotland, Scottish Human Rights Commission and SPSO in Bridgeside House, Edinburgh. Our 2018-19 budget, excluding building costs was £4,732,648, our total spend was £4,721,053.

2019/2020: a year of transition and change for SPSO

2019/20 is the final year of SPSO in its current form. From 2020/21, the SPSO assumes the additional statutory function of the Independent National Whistleblowing officer for the NHS (INWO). 2019/20 saw significant work to prepare for INWO. In the first three quarters of 2019/20 SPSO, including the drafting and laying before Parliament the Whistleblowing Principles and Standards for the NHS which will be implemented from Summer 2020 when the new powers take effect.

In other areas of work, SPSO

- completed the first review of the model complaint handling standards with the revised versions issued this month (more detail on this important work is below)

- has experienced an 8% increase in the number of complaints received from 3,164 this time last year to 3,403 this year
- increased productivity in complaints closed by 2%, from 3,011 this time last year to 3,077 this year
- saw a significant 39% increase in Scottish Welfare Fund Review cases handled from 551 to 711
- decided 100% of Crisis Grant review applications within five working days

Review of the Model Complaints Handling Procedures (excluding Health)

SPSO carried out a review of the Model Complaints Handling Procedures (MCHP).

MCHPs were introduced in a phased programme: 2012; Local Authority, Housing, Further & Higher Education, 2013; Scottish Government and Associated Public Authorities in Scotland. 2016; Social Work and Health. The review covered all except the health sector MCHP for the health sector which was excluded because it is underpinned by the Patient Rights (Scotland) Act 2011 and the Healthcare Principles introduced by the Act and cannot therefore be amended by the SPSO in the same way as the MCHPs for other sectors.

Revised MCHPs and guidance, produced after extensive consultation, will be published at the end of January 2020, and must be implemented by Scottish public sector organisations by, at the latest, April 2021.

MCHPs bring consistency across sectors and drive best practice by setting complaint handling standards. The review ensured they remain fit for purpose. The underpinning principles and approach remain broadly unchanged. The process and governance elements have not changed. The main changes are: there is now a stronger focus on resolution, supporting vulnerable people, supporting staff who have been complained about, and more streamlined performance management of complaints.

Resources: increasing risk and challenge

Having insufficient resources is an increasing, business-critical risk.

In December 2017, the SPSO cleared the existing backlog of cases, a major achievement in terms of increased productivity and improving the service we provided to the public. This was only achieved because we had an opportunity to divert staffing resource temporarily from another part of the organisation, and defer work in that area.

Since then we have reviewed and revised processes, improving case-handling to make it more efficient and people-centred. We also reviewed the way we monitor and track cases so we can assess the complexity of complaints received, not just the number. We continued to focus on complaint handling standards as good complaint handling by the public sector has an impact on the complaints SPSO receives.

Despite all of this, by the end of December 2019, we had 410 cases unallocated cases. It can now take 13 weeks before cases are allocated to a complaints reviewer. This is driving dissatisfaction with the SPSO's service, understandably so.

The reason for the build-up of unallocated cases is very simple; there is more work, of greater complexity coming in, but the number of staff to handle them has not increased.

There have been increases in both SWF review applications and complaints. In terms of SWF, the SPCB has supported funding for one additional case reviewer from April 2020. In the meantime we have had to cover peaks in this statutory function (important to those in great need) from other areas of the organisation, including complaints.

As highlighted above, the number of complaints received has increased. But this is only part of the equation, as explained in detail in the draft strategic plan, complaints are increasingly complex meaning individual complaints require more work, and hence more resource.

For example, the most complex complaints concern health and social care. In 2019/20 41% of all complaints we received were about health and social care organisations making this our largest sector (37% in 2017/18) and 75% of complaints closed at investigation were about health and social care organisations (61% in 2017/18)

Having increased productivity over the years, it is proving increasingly difficult for us to continue to do so within a largely static resource-base.

We continue to support the overall effectiveness and efficiency of the SPCB budget by providing shared services to other office holders. We hold the lease not only for SPSO but also for the Scottish Human Rights Commission and the Children and Young People's Commissioner for Scotland and provide them with facilities management. We share a Data Protection Officer with the Parliament and other office-holders. The savings made as a result of shared services benefit the wider parliamentary budget and are not directly retained by SPSO.

Ombudsman's comments on the Scottish Public Services Ombudsman Act 2002 and the need for change

The SPSO Act 2002 was revolutionary and innovative. It created the first public services Ombudsman in the UK, giving Scottish citizens a "one-stop-shop" for complaints about public services.

The legislation and the SPSO continued to evolve and innovate – up until now that is. For example:

- extending into new areas such as Further and Higher Education (2005) prisons (2010) and water (2011)
- 2011 SPSO became the first Ombudsman to have complaint standards powers (CSA)
- 2016 SPSO became the independent reviewer for the Scottish Welfare Fund
- 2017 SPSO was given extended investigatory powers for social work complaints allowing us to consider the merits of social work decisions
- 2020 SPSO becomes the INWO, able to set whistleblowing standards and investigate whistleblowing complaints in the NHS .

Many of these changes have added to the SPSO's scope, but, with the exception of the CSA, have not fundamentally changed either SPSO's powers, or how our services can be accessed. Scotland no longer leads the way. Innovations in Wales and Northern Ireland means we are now one of only two UK public service ombudsmen, and the only one of the "integrated" public service ombudsman without public value investigation powers or recently updated legislation.

At European level, thought has been given to the purpose and status of Ombudsman and in May 2019 the Vienna Commission endorsed the Vienna principles on strengthening the Ombudsman institution. While I am pleased to note that SPSO broadly meets these principles which took into account international best practice, there are areas, including our role in relation to human rights, where the restrictions of our legislation mean we could do more if legislation enabled it.

I have previously argued for amendment and revision on the understanding that some improvements could be delivered without the need for changes to primary legislation. However, I am of the view that the point has now been reached when further amendment is not sufficient and that there is a need for a full review and revised legislation. That will require work and consultation. The Government have said they do not have resources to take forward even minor amendments and, as a Parliamentary-supported organisation it is arguable that this more wide-ranging work should be taken forward independently. I appreciate resources everywhere are limited and I would like to discuss with SPCB and this Committee how we may take that vital work forward to ensure this office remains fit for purpose.

While I have come round to the view that a holistic look at the legislation is now required, this risks leaving one urgent matter unremedied for an unacceptably long period of time. There is an increasingly need to amend the section of the legislation which currently places a barrier to access by privileging writing to allow me to take a complaint in any format. The Government supports this change, this Committee has supported that change, the Public Petitions Committee supports that change. This change does not require primary legislation but could be taken forward by secondary legislation. This is a small change in terms of the legislation that needs altered but significant in terms of access and we would appreciate the continued support of this Committee to encourage the government to make this change.

Draft Strategic Plan

SPSO are currently consulting on our Draft Strategic plan for 2020-2024. The plan has been shared in full with the Committee and we would be happy to consider any comments made. The plan sets the direction and priorities for the SPSO and is driven by our recently reviewed values. Our vision considers what we do, how we do it and our impact on, and value-added, to public service improvement.

Local Government and Communities Committee

4th Meeting, 2019 (Session 5), Wednesday 29 January 2020

Subordinate Legislation

Overview of instrument

1. The following instrument, subject to negative procedure, is being considered at today's meeting:
 - The Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/438)

Background

2. These Regulations amend the Local Government Superannuation (Scotland) Regulations 1987 ("the 1987 Regulations"), the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 ("the 2008 Regulations") and the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 to authorise the payments made by administering authorities between 12 November 1979 and 8 April 2019 of annual increases to certain persons who are entitled to a guaranteed minimum pension. They also introduce a new entitlement to an Increased Pension Entitlement ("IPE").
3. They will ensure continuity of an affected member's pension at its current rate where incorrect guaranteed minimum pension data has been applied to the annual indexation of that pension. The incorrect element of the award is converted to an award of IPE.
4. The instrument was laid before the parliament on 20 December 2019 and comes into force on 1 March 2020. It is subject to the negative procedure. The policy note for the instrument is attached at **Annexe A**.
5. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2019/438/made>
6. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [21 January 2020](#) and [determined that](#):

Regulation 1(2) of this instrument provides that the regulations have effect from the 8th of April 2019, subject to the exceptions in paragraph (3). However, exceptions are also specified in paragraph (4). Regulation 1(2) should therefore refer to the exceptions in both paragraphs (3) and (4), not just paragraph (3).

8. The Committee therefore drew this instrument to the attention of the Local Government and Communities Committee under the general reporting ground. In doing so, the DPLRC also welcomed the Scottish Government's commitment to correct this error by amending instrument.

Committee Consideration

9. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2019/438 is 10 February 2020.

Procedure

10. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
11. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument
12. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
13. Each negative instrument appears on the Local Government and Communities Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
14. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

POLICY NOTE**THE LOCAL GOVERNMENT PENSION SCHEME (INCREASED PENSION ENTITLEMENT) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2019****SSI 2019/438**

The Scottish Ministers make the above Regulations in exercise of the powers conferred by sections 7 and 12 of, and Schedule 3 to, the Superannuation Act 1972 (a), and of all other powers enabling them to do so. Functions under that Act as regards Scotland have been executively devolved to the Scottish Ministers. The instrument is subject to negative procedure.

Purpose of the instrument.

The purpose of this instrument is to ensure continuity of an affected member's pension at its current rate where incorrect GMP data has applied to the annual indexation of that pension. The incorrect element of the award is converted to an award of Increased Pension Entitlement.

Policy Objectives

Contracted out employment was abolished from April 2016 with the introduction of the new single tier State Pension. A Guaranteed Minimum Pension (GMP) accrued for contracted out service between April 1978 and April 1997. It reflects the level of earnings related state pension a member would have received had they not been contracted out. With the ending of contracting out public service schemes are undertaking a reconciliation of their GMP data with HMRC.

For those scheme members who reached state pension age before April 2016 and had claimed their state pension the annual indexation of their GMP is shared between the scheme and the Department for Work and Pensions (DWP). Annual indexation for a GMP accrued between April 1978 and April 1988 is fully paid by DWP. Payment of the annual indexation of a GMP accrued between April 1988 and April 1997 is shared between the scheme and DWP with the scheme paying the annual increase up to the value of 3% with any remainder paid by DWP.

In cases where either no GMP details are held or the GMP data is incorrect, the result can be indexation has been applied incorrectly leading to an overpayment which is compounded year on year by further incorrect indexation being applied. The GMP reconciliation exercise will establish correct GMP data allowing any identified incorrect pensions to be corrected.

The indexation of GMP's for those reaching state pension age after April 2016 is fully paid by the scheme so similar errors will not arise going forward from that date.

A similar exercise was undertaken in 2008/9 which identified GMP related overpayments across the public service schemes. At that time Scottish Ministers

chose to allow the pension in payment to remain unadjusted going forward for affected pensioners in the Police, Firefighter and Local Government Pension Schemes. This was achieved by introducing legislation that provided for a new scheme award known as an Increased Pension Entitlement (IPE) which reflected the GMP-related overpayment.

Scottish Ministers have decided that a similar approach should be taken for GMP-related overpayments that arise from the current reconciliation exercise. This means that affected pensioners in the Police, Firefighters' and Local Government schemes will see their existing level of pension maintained by the award of an IPE.

The regulations make amendments to the existing provisions which introduced an IPE in 2009. There are no changes to the approach taken in 2009 and the aim of the amendments is to:

- i) Calculate the value of the IPE which is based on the annual GMP related overpayment for 2019/20.
- ii) Apply the IPE from 8 April 2019 and reflect the requirements of the Pensions (Increase) Act 1971 in calculating the final level of IPE applicable.
- iii) The regulations provide for payments made before 8 April 2019 to be authorised, but any overpayments accrued prior to 8 April 2019 will be for the scheme's Accountable Officer to determine.
- iv) The net outcome aims to allow the affected member's pension to continue at its current rate.

Consultation

A formal consultation was undertaken from 12 July to 11 October 2018. The consultation was issued to representatives of Local Government employees, employers and relevant Scottish and UK Government departments.

Impact Assessments

This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these Regulations.

Financial Effects

The final costs of introducing the IPE will be finalised once the GMP reconciliation has concluded. Costs will be reflected in scheme valuations which set the employer contribution rate paid to the scheme. The introduction on the IPE will not have a material impact on the costs of the scheme or the employer contribution rate.

Scottish Public Pensions Agency
An Agency of the Scottish Government
11 December 2019