

A guide for MSPs/MPs and Parliamentary Staff



We are Scotland's Ombudsman

We are an organisation directly accountable to the Scottish Parliament. We provide services direct to the public and public organisations.

What do we do?

- We can conduct independent investigations into complaints about most public services in Scotland – including the NHS, local government, prisons, water providers, universities, colleges, the Scottish Government and most NDPBs.
- We set standards for complaints handling by those public services and support best practice in complaints handling throughout Scotland.
- We conduct independent reviews of decisions made by councils about Scottish Welfare Funds.

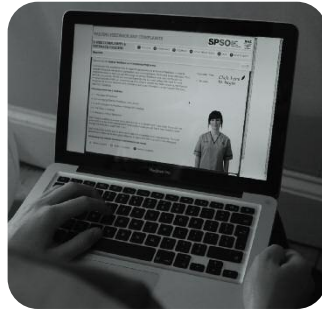
We provide advice and guidance on all our roles and have a freephone telephone helpline. We publish most of our decisions and recommendations on our website:

www.spsso.org.uk

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Helpline: **0800 377 7330**



Scotland's independent complaints investigator

This is the role we are most associated with. Most public organisations are under our jurisdiction – local authorities, the NHS, prisons, water providers, universities, colleges, the Scottish Government and most NDPBs. If someone has completed the organisation's complaints process, they can come to us and ask for an independent investigation.

What we can do for a member of the public?

We investigate and that can in itself be reassuring. Following an investigation, we may make recommendations. We always robustly follow up recommendations and we require organisations to provide evidence that they have implemented them by the deadline which we set.

The most common recommendations we make after an investigation are for apologies and to stop the problem happening again. This may be about asking organisations to change processes, to ensure they follow procedures or to put in place training and support for staff. The reasons these are the most common recommendations is that this reflects the aims of people who come to us. A very important stage of our process occurs right at the start when we discuss, usually by phone, what people want to achieve. This helps us to understand how the problem has affected them. And, if they are seeking something we know we can't achieve, it allows us to signpost them to a route that might get them the outcome they are after.

While apologies and future changes are the most common outcomes, we will look for practical solutions where there are on-going problems. In the past we have recommended that kitchen repairs are made, or screening put in place to maintain someone's privacy. We have recommended that a water bill is reduced or someone is put back on a GP practice list. Other examples are asking a health board to change the information they give people before surgery, or asking them to apologise for someone's poor care. If someone has had to pay money for a service they should have had for free, we may recommend a repayment.

We can only make recommendations and our decisions are not binding. However, we find that organisations do comply. If one did not, we would approach the Parliament to explain this and ask for the help of MSPs to persuade the organisation to correct any outstanding injustice. The process by which we would do this is called issuing a special report and is not an option we have ever had to take.

Investigation and recommendations are not the only outcomes we can provide. We seek to resolve issues early if we think both sides will agree to a solution. We also take a proportionate approach. If it is clear we will not be able to achieve anything more for the individual, we will not investigate but we may be able to reassure the member of the public that the service they have received was appropriate. We can always provide advice on what we may or may not be able to achieve for any individual.

There are some important legal limitations which may prevent us from investigating a complaint. We operate within the rules set out for us by Parliament. We have been given a broad jurisdiction but there are restrictions on what we can do. We provide information on our website and we have also produced subject-specific leaflets that give advice on what we can and can't do in particular areas. Some of the most common restrictions are:

- Time limit – we do not normally investigate complaints about issues that occurred more than 12 months ago. There are exceptions so we encourage people to contact us even if they are outside this limit.
- The decision was made properly within the discretion of the organisation. With the important exception of complaints about the NHS and some new areas highlighted below, we are unable to assess the merits of the decision. This 'discretionary decisions' point is worth explaining further. Across Scotland public bodies make thousands of discretionary decisions every day. For example, local authorities routinely make decisions about whether or not, based upon their policies and procedures, to change how they collect refuse or to approve a planning application. The SPSO Act says that we can't question a decision simply because a complainant is unhappy with it. We can, however, look at the procedures that led up to a decision. We often find that organisations have correctly followed the procedure. In such cases, the complainant is likely to remain unhappy with the body's decision, but if there is no evidence of anything having gone wrong in the way a decision is reached, we cannot question its merits.

We know that it is frustrating for someone to bring us a complaint and find that we cannot look at it. However, we can only work within the powers that we have. Our powers in relation to health complaints are different, where we can look at clinical decisions.

- Anything that has been dealt with or should be dealt with by a court or tribunal – this may affect complaints where there is a clear right of appeal or someone has already been to court. For example, if the issue is about a child's additional support needs not being met there are clear routes for appeal.
- We cannot look at employment or personnel matters.
- We need a person to bring us a complaint about something that has affected them directly. A person can sometimes be a company or a group of people but we cannot investigate an issue if no one has brought us a complaint.

We will always explain to someone what we are doing and that will include if we decide we are not able to or should not investigate their complaint. They can ask us to look at this again if they think we have made a mistake. We can also always give advice if you are unsure how best to signpost a constituent.

What we don't do

While we cover most public services in Scotland, there are some areas where complaints should go to other organisations. To give some of the most common examples: we don't consider complaints about the police – these are dealt with by the Police Investigations and Review Commissioner. A complaint about a breach of a code of conduct should go to the Commissioner for Ethical Standards in Public Life. And we are not able to consider complaints about a wholly reserved function. The organisation you wish to complain about should provide details of who to contact but if you are not sure it is likely we will be able to signpost you.

On individual complaints, we remain fully responsible for the decisions we make and cannot be directed on an individual case by an MSP, MP or the Government. This is an important guarantee of our independence.

Quick Guide to supporting constituents who have concerns about public services

A member of the public is unhappy with a service they have received – what should they do?

We always encourage people to contact the organisation they are unhappy with first as, often, things can be quickly fixed. People can sometimes be nervous about this but the public services that we work with are required to have an accessible and straightforward complaints process. They should all have publicly available information about how to complain and it should be possible to make a complaint through a number of methods. Organisations are also required to take complaints seriously and respond positively.

How do I know if an organisation is following the right process when I'm helping someone with a complaint?

Most organisations in Scotland now operate a two-stage complaints handling procedure. It is a simple process with a frontline resolution stage for straightforward complaints and an investigation stage for more complex complaints or issues where the member of the public is still unhappy after the first stage. The organisations should try to resolve the first stage within 5 working days and the investigation stage within 20 working days. After the investigation stage, the person making the complaint should expect to receive a letter of response which should

include signposting to us or another appropriate independent organisation if they remain unhappy.

My constituent would like to make an anonymous complaint

Organisations should have a process that allows them to log anonymous complaints and undertake what investigation they can. We, however, are unable to take anonymous complaints because we can't investigate without a named person. Making a complaint anonymously does lessen the effectiveness and we would expect organisations to provide reassurances and guarantee that someone complaining does not receive a lesser or different service as a result.

My constituent would like my support to make a complaint to SPSO

There are two options depending on what the constituent would prefer. If they would like you to represent them and to deal with us direct, our complaints form provides a section where they can give consent for this to happen. If they would prefer to deal with us but want to know that you are being kept informed because that reassures them or it allows them to discuss this with you easily, we can copy you into all correspondence. We would need consent for this too and can arrange to copy you in by email or by post.



When should someone bring a complaint to you?

We would normally only get involved when the organisation's complaints process has been completed. The person making the complaint should receive a letter signposting to us at this point. If you are unsure where someone is in the process, you can either call the organisation the person is complaining to or contact us for advice.

My constituent is unsure what information to send you

We have a form (online and also in paper format) that helps people explain the issues to us. We also need to see the final letter they have received from the organisation. This will be the letter that signposts to us. This allows us to confirm that they have completed the complaints process. That is all we need to start the process and when we need more information we will ask. We don't require people to send us lots of paperwork.

My constituent is unhappy with a decision you have made – what should they do?

The letter they received with the decision should explain how they can ask for a review of our decision. If this isn't clear, there is information on our website or you can call us and we can explain the next steps.

My constituent has a complicated complaint and I am unsure who they should complain to

Call our freephone number 0800 377 7330. We can usually give advice on what the best options are. On the rare occasions we can't, we will usually know of another organisation who can do this.

My constituent is unhappy with the service they have received from SPSO

We have published service standards and our own complaints process for people who are unhappy with our service. We have the same two stages as other organisations. If someone is still unhappy, we have an external independent customer complaints reviewer who can be approached. We publish information quarterly about the complaints we have received and an annual report setting out what we have learned from complaints.

Finding out more about our complaints work

We publish most of the decisions and recommendations we make on our website, along with statistics and information about our own casework performance. Each month we publish an e-newsletter containing key findings which is sent to MSPs and MPs. There is a searchable database of our decisions on our website.

www.spsso.org.uk

Setting standards and supporting best practice – the work of our Complaints Standards Authority

Since 2011, the Complaints Standards Authority, a small team within SPSO, has focussed on setting standards and developing procedures to support public service organisations in complaints handling. SPSO was given the authority to lead on developing standardised complaints procedures under the Public Services Reform (Scotland) Act 2010. Until recently this role was unique. It has been so successful it is now being adapted across the UK.

Most public service organisations now operate a simple two-stage model complaints handling procedure (CHP) and we are now supporting organisations with the next stage, which is ensuring that they can demonstrate learning from complaints.

What are the standards?

In 2011, the Parliament approved the SPSO's statement of principles which all complaints processes must comply with. It states that an effective CHP is: user-focussed; accessible; simple and timely; thorough, proportionate and consistent; objective, impartial and fair; and should seek early resolution and deliver improvement.

The model CHPs put those principles into practice. They not only set out the basic two stages but support and encourage staff to ask key questions and to be responsive to complaints. They also require organisations to report, publish and demonstrate learning from complaints.

Organisations are expected to use complaints made to them and to us about them to prevent issues recurring and to support improvement work. This is an area which is continuing to develop, with networks of complaints handlers sharing good practice and ensuring that this can be benchmarked.

Providing training and tools

We further support this work by providing training and tools to improve practice. Find out more here:

<https://www.spsso.org.uk/how-we-offer-support-and-guidance>



Independent Reviews of Scottish Welfare Fund Decisions

The Scottish Welfare Funds are a national scheme delivered by local authorities in line with guidance issued by the Scottish Government. It is backed by legislation and regulations. It supports the most vulnerable in society by providing grants to people when they are in crisis and helping them to remain in the community.

We provide the independent review stage. We can direct local authority decisions and make changes to grants received. The timescales for this work are significantly tighter than for complaints investigations generally and we have a dedicated team to manage this role.

This work began on 1 April 2016 and we are keen to be open, accessible and to share any learning that we have.

Our SWF team can be contacted:

- **by phone on 0800 014 7299 – calls are free to this number, even from mobiles**
- **by writing to us at FREEPOST SPSO – you don't need to use a stamp**
- **through our website: www.spsso.org.uk/scottishwelfarefund**
- **in person at our office. Opening hours:
Monday, Wednesday, Thursday, Friday 9am–5pm; Tuesday 10am–5pm**

SPSO and the Parliament

We are an office-holder of the Parliament. An Ombudsman reports to Parliament to help members of that Parliament hold public organisations to account and to reassure themselves that citizens are being treated appropriately. All our reports are issued to the Parliament and have the status of parliamentary documents. We lay regularly before the Parliament:

- summary reports of decisions
- full investigation reports of the most significant investigations
- annual reports which set out our performance
- our strategic plan which we are required to lay every four years.

We also have the power to lay additional reports when we consider that to be appropriate.

As an office-holder, we are answerable to the Parliament for our overall performance and service including our use of public resources. Our budget is set by the SPCB and they can direct where we are located. The Ombudsman is appointed following a vote of the Parliament.

We appear annually before the Parliament to answer questions about our own performance. We have been questioned in the past on areas such as our quality assurance process, our systems of governance and on how we manage our resources. We also submit evidence to committees on request and in response to calls for evidence which draws on our experience of complaints.

An evolving organisation

Since we were set up in 2002, this office has undergone significant change. The Parliament has taken the lead on making complaints an important part of public service and helped Scotland to become an acknowledged centre of good practice. The Parliament approved the statement of principles in 2011 which remains the foundation of all of our work on complaints standards. They initiated the 'one-stop-shop' model in 2002 and we became the first unified public services Ombudsman in the UK.

Since then we have been given new areas of jurisdiction and roles whenever the Parliament has decided our role has needed to be modernised and adapted to reflect the needs of the public.

Supporting the integration of health and social care

The integration of health and social care is one example of an area where our role is changing. This has been driven by Parliamentary committees who have highlighted this area of work. There are a number of initiatives under way. We are working with the government and others to align the health complaints model with the standard model used by local authorities. We will be developing a social work model which will also bring that area into line and support good complaint handling in that area. Until recently, legislation required a separate and distinct model. We will be able to look at social work decisions the same way we do clinical judgement. We will also be able to share information more easily with key organisations – the Care Inspectorate and the Scottish Social Services Council.

We keep MSPs and MPs up to date with significant changes in our monthly e-newsletters. If you work for an MSP or MP or in the Scottish Parliament and would like to receive our regular news updates, you can sign up on our website: <https://www.spsso.org.uk/spso>

Contact us



by phone on freephone **0800 377 7330**



by letter to **FREEPOST SPSO** (you don't need to use a stamp)



online at **www.spsso.org.uk/contact-us**

in person at our office:

SPSO, Bridgeside House, 99 McDonald Road, Edinburgh, EH7 4NS

Opening hours: Monday, Wednesday, Thursday, Friday 9am–5pm; Tuesday 10am–5pm

Calls to and from SPSO phone lines may be recorded to check the quality of our service and help us do our job to help you. More details are in the privacy notice: www.spsso.org.uk/privacy-notice. Please ask if you want to confirm if a call is or is not being recorded or if you would like to know what options may be available to you if you do not wish to be recorded.

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