



Ombudsman's Commentary

DECEMBER 2007 REPORTS

I laid 39 investigation reports before the Scottish Parliament today. Nineteen relate to the local government sector, 15 relate to the health sector, one to housing associations, one to further and higher education, one to the Scottish Government and devolved administration and there are two reports about two sectors: local government and Scottish government and devolved administration. Details of the reports are summarised below and the full reports are available on the SPSO website at <http://www.spsso.org.uk/reports/index.php>

Ombudsman's Overview

Looking at this month's Compendium of reports, it is evident that many complaints are resolved during the course of an investigation by my office. In several of the reports listed below, I am pleased to commend bodies for having taken appropriate action to sort out the issues that led to the complaint arising in the first place or to deal with problems identified in the course of looking at the complaint. This demonstrates the tremendous value of complaints, both from the point of view of the complainant whose problem is resolved, and of the organisation which has been able to improve their service as a direct result of a user of that service voicing their dissatisfaction.

This is the positive side of complaint handling – an individual is listened to, their complaint looked into and, where merited, action is taken. There is learning for the body, and ideally, no one else will go on to receive the same poor service. This improvement occurs not only in the relatively small proportion of complaints that we report to the Parliament (17% of the total determined last year), but in all the complaints we look at and determine at different stages in the process. The goal is consideration, resolution and learning that leads to improvement.

Sometimes, however, complaint handling can be less straightforward. Two investigations in this month's Compendium raise unusual and complicated issues, and highlight the importance of robust, fair and workable 'Unacceptable Actions Policies'. I should emphasise at the outset that the vast majority of complainants do not exhibit unacceptable behaviour. As the Ombudsman in New South Wales, Australia has commented: '*...the mere fact that a complainant is persistent, makes demands, or may be angry does not mean that their conduct is unreasonable in most circumstances. Unreasonableness requires the conduct to go beyond the norm of situational stress that*

many complainants experience and only a very small percentage of complainants display such unreasonable conduct, nevertheless, dealing with them consumes a disproportionate amount of resources.

... Such conduct must be dealt with by staff who are well trained, resourced and supported by endorsed official policies and detailed guidelines so that they can confidently make decisions in their interaction with complainants whose behaviour is difficult ...'

Occasionally, situations can and do arise where complainants' behaviour takes staff into unfamiliar territory. It is important in these rare cases not only to have policies which cover all eventualities, but to ensure that staff are familiar with them and confident in their ability to operate them. I hope that the two cases below may offer some reassurance as well as some guidance for staff of public bodies across Scotland. The SPSO's Unacceptable Actions Policy is available on our website or by phoning our Outreach Team on our free phone number.

In the first case the complainant, Mr C, alleged that a council had failed to handle a number of his complaints in line with their Complaints Procedure (Case ref: 200600661). I found there was a considerable volume of correspondence between Mr C and the Council; that he made multiple complaints, sometimes closely related and poorly referenced, and that his complaints were often brief and incoherently presented and without relevant dates, times and locations as requested by the Council's complaints procedure. I did not uphold the complaint, and recommended that the Council consider whether or not to invoke their Unacceptable Actions Policy against Mr C, given that his communication approach had significantly contributed to the problems around the handling of his complaints.

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I explained that the context in which I did so was the widely recognised concern about the impact that unreasonable actions on the part of complainants can have.

I stated:

'One of the reasons for the Council to invoke the policy is that they must consider whether or not their current handling of Mr C's complaints represents a good use of public resources. If action was to be taken to more effectively manage Mr C's correspondence, I believe that would be a strong case to show that the Council are taking into consideration the principles of 'Best Value'. The Council have to seriously consider whether or not their management of Mr C's complaints and correspondence is an effective use of public resource.'

The second complaint (Case ref 200603203) concerned the arrangements put in place for the management of an individual's care and behaviour in a hospital where he was receiving treatment. The complainant, Mr C, complained that those arrangements were inadequate, unfair and deprived him of his right to dignity and privacy. Mr C also had concerns regarding the Board's relationship with the media, which he claimed caused him and his family unnecessary distress. I did not uphold those complaints but I did uphold the complaint that the Board's application of their complaints procedure unfairly prevented Mr C from receiving responses to his complaints. This case involved complex issues regarding conflicting rights and responsibilities and I am quoting at length below from the report in order to answer several of the important questions raised:

'...the Board's actions, with the exception of the procedural failings identified in relation to their complaint handling, show that they dealt well with a patient presenting a complex mix of problems and difficulties in a way that protected the interests of their staff, without denying Mr C his right to be treated with fairness, consideration and dignity. The Board's example, and my recommendations where failings have been identified, may provide useful guidance for other bodies under my jurisdiction in dealing with complex situations involving conflicting rights and responsibilities.'

'The issue of violence against frontline public service staff is one that has rightly gained the attention of the media and politicians. There have been initiatives to ensure that any inappropriate behaviour is dealt with strongly and according to a 'zero tolerance' model. I would be surprised if any public body providing a frontline service did not now have a zero tolerance policy in place. Similarly, the unacceptable actions of some complainants in pursuing complaints and in accessing services generally have been a matter of public comment recently and many bodies, including the Ombudsman's office, have adopted policies to deal with such behaviour.'

'In order for such policies to be effective and for staff providing key services to be able to carry out their duties without fear of abuse or assault it is vital that public bodies show leadership and strength in implementing them and supporting their staff. However, it is also extremely important that bodies ensure the rights of an individual accused of inappropriate behaviour are respected and that any action is proportionate, reasonable, taken at an appropriate level and only after careful and full consideration. It is also vital that bodies pay close attention to the requirements of their own policies and ensure that those requirements are fulfilled.'

My office would be happy to work with public authorities who want to refresh their policies and procedures to ensure that they are fit for purpose in this respect.



Professor Alice Brown, Ombudsman
19.12.2007

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Local Government

Housing: Right to Buy Aberdeen City Council (200604038)

I fully upheld this complaint by Mrs C who complained that her daughter, Miss A, was not able to purchase her flat under the Right to Buy scheme due to an administrative failure by the Council. Whilst I accepted that the Council are entitled to apply for authority to serve a notice of refusal on an application for a property that they consider to be part of their amenity housing stock, I found that there had been clear maladministration in this case, as a predecessor council initially failed to designate Miss A's flat as amenity housing and the Council then allocated her a property which, if the designation had been properly made, she should not have been given. Furthermore, the Council had previously sold properties in Miss A's street that they should have retained as part of their amenity housing stock. I have made no recommendations in this case as I consider that a proposal made by the Council to Miss A to remedy the situation is a reasonable response. I am also satisfied that the Council have taken steps to address the complaint and I welcome their assurance that they will take a similar approach to other complaints of this nature. However, Miss A retains the right to bring the matter back to my office if she is unhappy with the Council's progress.

Finance: Council Tax, complaint handling East Dunbartonshire Council (200600109)

Miss C complained that the Council had not administered her Council Tax correctly. I fully upheld two aspects of the complaint, as I found that Council failed to keep proper records of enquiries about Council Tax, which affected the quality of information that could be provided in relation to Miss C's case. A number of errors and oversights also appear to have contributed to the general confusion around Miss C's Council Tax account. The Council have since implemented a policy of logging all customer telephone calls and I commended them for this

action and made no recommendation on this aspect. However, I did recommend that the Council remind all staff to ensure the accuracy of account details before taking action on Council Tax accounts, apologise to Miss C for their errors and the confusion caused and also make a time and trouble payment to Miss C equal to the disputed amount.

Finance: Council Tax, housing benefit Glasgow City Council (200603376)

Mr C (a solicitor in a law centre) raised a number of concerns about the way in which the Council dealt with Mr A's (his client) application for Housing and Council Tax benefit. I fully upheld two aspects of the complaint and partially upheld another as I found that there was a delay in the Council's handling of Mr A's claim. The Council have agreed with this and I am satisfied that the apology given and the remedial action since taken provides a suitable remedy to this aspect of the complaint. The Council have also expressed regret for the delay in making the appropriate payment, which they believe was a consequence of a new processing system. Given that the new system has now been fully implemented, I am satisfied that this problem has now been addressed. However, I did recommend that the Council make a formal apology to Mr A. Finally, I found that the Council did not deal well with Mr A's, and then Mr C's, correspondence and that they failed initially to recognise the distress the protracted nature of this matter caused him. I therefore recommended that the Council consider favourably any reasonable claim for out of pocket expenses that Mr A may make and apologise to him for their failure to recognise his distress.

Handling of planning application Aberdeen City Council (200501215)

Mr C raised a number of concerns about the Council's handling of his objection to his neighbours' planning application for an extension to the neighbouring property.

I fully upheld one aspect of the complaint as I found that an error meant that the Committee was not informed of Mr C's request for a site visit. I recommended that the Council ensure that appropriate procedures are in place so that the Committee is made aware of any requests for site visits that are made, and responds to them appropriately.

Planning: listed buildings, complaint handling Aberdeenshire Council (200603594)

Mr C complained that when issuing a Defective Buildings Notice the Council did not inform his co-proprietors that the work would have to meet listed building requirements. He also raised concerns about the Council's handling of his complaint. I partially upheld one aspect of the complaint as, despite the fact that the Council were proactive in visiting the proprietors before issuing the Notice, which is good practice, no record was kept of the discussion which took place. I recommended that the Council review their current recording practices, in respect of keeping a note of discussions from visits, and take a decision on what action was required in respect of the Defective Buildings Notice, which is still outstanding. Although there was no statutory requirement to include in the Notice listed building responsibility, the Council have taken action to improve the advice which is issued with a Notice and I commend them for this. I also fully upheld the complaint handling aspect of this complaint. However, I have not made a recommendation as the Council have taken appropriate action in producing a new complaints leaflet, which clearly sets out the various steps in their Complaints Procedure and details who to contact at each step. However, I did recommend that the Council apologise to Mr C for the difficulties he experienced in pursuing his complaint.

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Local Government

Housing: repairs and maintenance

Stirling Council (200603272)

I fully upheld one aspect of this complaint by Mr C about the Council's response to his reports about the condition of the windows in his council flat. I found that the method used by the Council to inspect the works carried out to the windows was not appropriate. Whilst I acknowledge that the Council are not obliged to inspect all works carried out on their behalf by contractors, if they opt to do so, then the mode of inspection should be appropriate. I recommended that the Council apologise to Mr C for this failing.

I did not uphold thirteen other complaints in the local government sector about the following issues and bodies:

Complaint Handling

The Moray Council (200503276)

Handling of Planning Application

Fife Council (200600558)

Planning: listed buildings

Dundee City Council (200602029)

Education: school transport

North Ayrshire Council (200602279)

Handling of Planning Application

Dundee City Council (200402036, 200402211)

I did not uphold these complaints but I did recommend that the Council develop a written protocol that sets out the Council's position and guides the actions of officials following deferral of a planning application to allow discussion between the parties involved.

Handling of planning application

Falkirk Council (200500791)

Debt advice, complaint handling

North Ayrshire Council (200601273)

Common Repairs

Fife Council (200502323)

Housing: repairs and maintenance

The City of Edinburgh Council (200500263)

Complaint handling

Dumfries and Galloway Council (200600661)

I did not uphold this complaint but I recommended that the Council consider whether or not to invoke their Unacceptable Actions Policy against Mr C. This issue is dealt with in more detail in my Overview.

Handling of Planning Application

Argyll and Bute Council (200603820)

Housing transfers, anti-social behaviour

Angus Council (200501865)

Complaint handling

Stirling Council (200602766)

Health

Admissions, staff attitude, communication, complaint handling

Lothian NHS Board (200501189)

Mrs C complained about the care and treatment received by her husband from the Board's Unscheduled Care Service. I fully upheld her complaints that a GP should have arranged Mr C's admission to hospital; that a separate GP was unhelpful and provided Mrs C with inadequate information; and that there was undue delay by the Board in dealing with Mrs C's complaint. I made a number of recommendations to the Board, chiefly about communication failings.

Waiting times, waiting lists

Greater Glasgow and Clyde NHS Board (formerly Argyll and Clyde) (200501352)

Mr C made three complaints, all of which I fully upheld. He complained about a delay in referral for an appointment at a hospital department, that the Board had wrongly stated that his GP had referred him to the Department, and that he was removed from the waiting list although he had not asked for this. To redress these failings, I recommended that the Board apologise to Mr C for their error in saying the referral was from his GP; remind staff members of the importance of keeping accurate and contemporaneous records to verify their understanding of all patient information; and remind Department staff of the value of alerting patients' GPs to the changes in the clinical care of patients on their practice list.

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Health

Diagnosis, clinical treatment Fife NHS Board and a Medical Practice, Fife NHS Board (200502539, 200600555)

A father, Mr C, complained that a GP Practice and a hospital Out of Hours Service had not properly diagnosed and treated his daughter's illness. His daughter died within three weeks of attending A&E with severe pain in her head and neck, and blurring in one eye. I did not uphold the complaint about the GP Practice, but I did recommend that they review their threshold for considering whether or not a patient might have a subarachnoid haemorrhage, and whether or not early/urgent imaging would be beneficial; and consider recording patients' actual blood pressure when a check is made.

I upheld the complaint about the Out of Hours Service and recommended that the Board apologise to Mr C for the failure of medical staff to reach a differential diagnosis of subarachnoid haemorrhage; review their locally agreed indications and process for admission, observation and investigation of patients presenting with acute headache in A&E, including ensuring that the teaching and guidance given to A&E junior doctors is based on current research; and ensure that Out of Hours records are in line with relevant record-keeping standards, for example as laid down by the General Medical Council.

Communication, policy/administration Borders NHS Board and NHS 24 (200603457, 200700450)

Ms C called NHS 24 when her mother, Mrs A's, condition deteriorated. She was concerned that she did not receive adequate information on the night of the call about the time it might take for a GP to attend. She also complained that GP out of hours cover for the Board area was inadequate. I upheld the first complaint and recommended that the Board review their procedures for keeping patients who are referred from NHS 24 informed about likely GP attendance when the GP is not in the hub when the referral is received; NHS 24

and the Board both apologise to Mrs A's family for not appropriately communicating to Ms C the difficulties in arranging GP attendance and the likely time this would take; and NHS 24 share with her the results of their audit of home visits that are made within one hour. I did not uphold the second complaint.

Communication, staff attitude, nursing care Greater Glasgow and Clyde NHS Board (200501476)

Mrs C raised a number of concerns about the care her late brother, Mr A, received in hospital in the days before he died. I did not uphold some aspects of the complaint but I did find that Mrs C was not kept properly informed about her brother's condition and that a member of the nursing staff was rude to the family. By way of redress, I recommended that the Board apologise to Mrs C for shortcomings in communications about her brother's condition; take further action to ensure that a proactive approach is taken to establishing good communication with relatives; use this complaint as a case study to illustrate the importance of good communication with relatives, especially when the hospital are aware that the patient is unlikely to survive; and apologise to Mrs C formally for the conduct of a member of nursing staff and also give consideration to providing to staff dealing with patients and their families a more focussed reinforcement of the importance of good customer care through, for example, appropriate training.

Diagnosis, clinical treatment Greater Glasgow and Clyde NHS Board (200603373)

Mr C complained that his condition was misdiagnosed by a hospital and that as a result he did not receive appropriate, timely treatment. I partially upheld one aspect of the complaint concerning treatment with antibiotics. I recommended that the Board emphasise to staff that extreme care should be taken when drugs are being administered and recorded.

Diagnosis, clinical treatment, communication Tayside NHS Board (200601247)

The complainant raised a number of concerns about the care and treatment of his sister, Miss A, in the days leading up to her death in hospital. There were several aspects of the complaint that I did not uphold, but I did find that the Board failed to provide urgent and appropriate treatment to Miss A and that they failed in their duty of care towards her. In particular, I found that they failed to have a single doctor in charge of the patient's care, which made communication with her brother very difficult. I recommended that the Board find a way to better inform ward staff and relatives of the named consultant in charge of a patient's care, and made a suggestion as to how this could be achieved.

Right to dignity and privacy, nursing care, complaint handling Lothian NHS Board (200603203)

Mr C raised a number of concerns regarding the arrangements put in place for the management of his care and behaviour in a hospital where he was receiving treatment. Mr C complained that those arrangements were inadequate, unfair and deprived him of his right to dignity and privacy. Mr C also had concerns regarding the Board's relationship with the media, which he claimed caused him and his family unnecessary distress. I did not uphold those complaints, but I did uphold the complaint that the Board's application of their complaints procedure unfairly prevented Mr C from receiving responses to his complaints. I made a number of recommendations to the Board in connection with Mr C's complaints.

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I did not uphold seven other complaints in the health sector about the following issues and bodies:

Clinical treatment

A Dentist in Lothian NHS Board (200603028)

Clinical treatment, complaint handling

Greater Glasgow and Clyde NHS Board and Western Isles NHS Board (200700183, 200700300)

Diagnosis, clinical treatment, communication

Ayrshire and Arran NHS Board (200502347)

While I did not uphold this complaint and made no formal recommendations, I did suggest that the Board consider making the manufacturer's patient information leaflet available to patients prior to the commencement of Prostag therapy (used to decrease oestrogen levels and decrease the size of fibroids prior to surgery).

Clinical treatment

A GP Practice, Lothian NHS Board (200602617)

Clinical treatment, complaint handling

Lothian NHS Board (200502808)

Psychiatric assessment

Lothian NHS Board (200503013)

Referrals, diagnosis, staff attitude

Tayside NHS Board (200602983)

While I did not uphold this complaint, I did recommend that the Board review the completion of triage documentation in an A&E Department to ensure the reasons for the triage assessment are documented.

Local government and Scottish Government and devolved administration

Education: policy / administration, complaint handling

Scottish Borders Council and Scottish Executive Education Department (now Scottish Government Education and Training Directorate) (200400363, 200400840)

I fully upheld one aspect and partially upheld two other aspects of this complaint by Mr C, who considered that the Council had failed to implement their duties under the education legislation in relation to a situation involving his son who has recognised special educational needs. Mr C sought the intervention of the Scottish Executive Education Department and was unhappy at their reasons for not exercising their default powers. I recommended that the Council should give consideration to ensuring a more formal approach is adopted in informing and consulting with parents of children in future like circumstances, and particularly where there has been a significant absence from school. The Council have accepted my recommendations. I also suggested that the Scottish Government Education and Training Directorate may wish to take steps to ensure that their policy and practice in relation to exercising their default powers is fully publicised but did not make a formal recommendation as I have noted that instructions have been issued to avoid a recurrence of the matters that I partially upheld. These related to complaint handling and providing proper explanations of decisions.

Planning: listed buildings, policy / administration

The City of Edinburgh Council and Historic Scotland (200500739, 200500763)

I upheld three aspects of this complaint by Mr C, who raised a number of concerns about the conduct of the Council and Historic Scotland in issuing a Building Preservation Notice on his property and then later issuing a Category B listing. These decisions impacted on planning applications that Mr C had already submitted to the Council to demolish the house, which he then decided to withdraw. I found that there had been shortcomings on the part of Historic Scotland, mainly a number of procedural errors in the issuing of both the Building Preservation Notice and the Category B listing and the fact that they had given inaccurate information to the Council about the matter. Historic Scotland have revised their procedures for the listing process and specific training and internal guidance has been developed, particularly with regard to listing proposals where a Building Preservation Notice has been served. A new guide has also been published for property owners about the consequences of listing. While I commended Historic Scotland for the changes they have made to their procedures for deciding on listing, I recommended that they review the events considered in this report and consider whether they should take further steps to ensure that their decision making and communication processes are clear. I also recommended that they apologise to Mr C for the failings identified in my report. Historic Scotland have accepted my recommendations and I have asked that they notify me when they have been implemented. I made no recommendations in respect of the Council.

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Further and Higher Education

Policy / administration

Coatbridge College (200600107)

I did not uphold the complaint that the College failed to apply their disciplinary procedure properly and I commended the College for their sensitive and proportionate handling of the complaint.

Housing

Repairs and maintenance, complaint handling

Dumfries and Galloway Housing Partnership (200502366)

I did not uphold this complaint as the Housing Partnership acknowledged their service failure, apologised for it and offered compensation at each stage of the complaints process. However, I did recommend that the Housing Partnership review their decision on whether or not to waive three months rent and inform me of how the communication problems identified in my report have been resolved. The Housing Partnership have since offered the complainants a payment for redecoration costs and have provided me with the requested information.

Scottish Government and devolved administration

I did not uphold this complaint in the Scottish Government and devolved administration sector:

Policy / administration

Highlands and Islands Enterprise (200503301)

Compliance and Follow-up

In line with SPSO practice, my Office will follow up with the organisations to ensure that they implement the actions to which they have agreed.

Professor Alice Brown

19.12.2007

The compendium of reports can be found on our website, www.spsso.org.uk

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The Scottish Public Services Ombudsman

The Scottish Public Services Ombudsman (SPSO) provides a 'one-stop-shop' for individuals making complaints about organisations providing public services in Scotland. Our service is independent, impartial and free.

We are the 'last resort' in handling complaints about councils, housing associations, the National Health Service, the Scottish Government and its agencies and departments, the Scottish Parliamentary Corporate Body, colleges and universities and most Scottish public authorities.

We normally consider complaints only after they have been through the formal complaints process of the organisation concerned. Members of the public can then bring a complaint to us by visiting our office, calling or texting us, writing to us, or filling out our online complaint form.

The Scottish Public Services Ombudsman was set up in 2002, replacing three previous offices – the Scottish Parliamentary and Health Service Ombudsman, the Local Government Ombudsman for Scotland and the Housing Association Ombudsman for Scotland. Our role was also extended to include other bodies delivering public services.

We aim not only to provide justice for the individual, but also to share the learning from our work in order to improve the delivery of public services in Scotland. We have a programme of outreach activities that raise awareness of our service among the general public and promote good complaint handling in bodies under our jurisdiction.

Further details on our website at: www.spsso.org.uk

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