

To: Audit, Risk & Scrutiny Board

On: 22 January 2018

Report by: Director of Finance and Resources

Heading: Scottish Public Services Ombudsman (SPSO) Annual Report 2016/17

1. Summary

- 1.1. The Scottish Public Services Ombudsman (SPSO) has issued his 2016/17 annual report. The report is available on the SPSO's website at www.spsso.org.uk
- 1.2. The SPSO is the final stage for complaints about councils, the National Health Service, housing associations, colleges and universities, prisons, most water providers, the Scottish Government and its agencies and departments and most Scottish authorities. Local government remained the sector about which the SPSO received most complaints, 1528 (37%) from a total of 5586 complaints and enquiries, with the National Health Service again receiving the second highest number of 1414 (34%).
- 1.3. The SPSO sends authorities an annual letter about their complaint numbers and the new Scottish Public Services Ombudsman, Rosemary Agnew, who took over on 1 May 2017 sent the letter to the Council on 4 October 2017. She advised that the statistics covered in the letter and the annual report for 2016-17 were compiled by her predecessor Jim Martin.
- 1.4. This year the SPSO advised that they were continuing to develop their approach to making recommendations. This has led to a shift in being more strongly focused on outcomes in relation to services as well as remedying injustice to individuals. The changes began in April this year and were the result of careful planning and research. The annual report set out the SPSO's 2016-20 strategic plan with six strategic objectives and five equalities commitments.

2. Recommendations

- 2.1 That the SPSO's 2015/16 Annual Report be noted; and
- 2.2 That it be noted of the 49 complaints against Renfrewshire Council determined by the SPSO in 2016/17 five were investigated, three were fully upheld, one was partly upheld and one was not upheld.

3. Background

- 3.1 The report advised that in 2016/17 the SPSO saw an increase in overall caseload by 4% compared with the previous year. Nationally, in 2016/17 the SPSO received 5586 complaints and enquiries, compared with 5358 in the previous year. There was 4182 complaints handled compared to 4636 in 2015/16 and 1,404 enquiries compared to 720 enquiries in 2015/16. A change in how they recorded enquiries in 2016/17 meant that some of the complaints they received by phone were recorded as advice stage complaints which better reflected the volume of work required and explained the 85% increase in enquiries received and 9% decrease in complaints received compared with the previous year.
- 3.2 Of the 4182 complaints handled, 805 went to full investigation, 507 were about the health sector and 156 complaints were about local authorities. Of the investigations completed, 21 cases were reported in full as public reports resulting in the publication of 17 detailed, public, investigation reports (compared with 41 the previous year). None of these related to Renfrewshire. Of the 21 cases reported, 5 were about local authorities and the rest were about the health sector. The SPSO made 1379 recommendations for redress and improvements to public services, 9% less than in 2015/16. The proportion of complaints that reached the SPSO before completing authorities' procedures (premature complaints) dropped again from 31% to 28%.
- 3.3 No complaint details for specific organisations are included in the report. However, information is received separately from the SPSO, in their annual letter, which indicates that the number of complaints received by the SPSO relative to Renfrewshire was 47 compared with 56 in 2015/16 and 63 in 2014/15.
- 3.4 It should be noted that received and determined numbers do not tally as complaints determined include cases carried forward from previous years.
- 3.5 The SPSO will not generally consider a complaint unless the complainer has gone through the Council's complaints procedure fully. The Board receives an annual report on the Council's complaints performance.
- 3.6 In 2016/17 the Council received 6364 complaints, compared with 6860 in 2015/16. The annual report on the Council's complaints will be submitted to a future meeting of the Board.

- 3.7 During the period of the report the SPSO determined 49 complaints relative to Renfrewshire compared with 52 in 2015/16 and 62 in 2014/15. Of the 49 complaints determined by the SPSO during 2015/16, five were investigated, three were fully upheld, one was partly upheld and one was not upheld. A copy of the SPSO decision reports relative to the three fully upheld and one partly upheld are attached as appendices. The SPSO indicates that a low uphold rate suggests a robustness in the authority's handling of complaints.

<u>Outcome</u>	<u>2016/17</u>	<u>2015/16</u>	<u>2014/15</u>
Premature	16	28	34
Out of jurisdiction	10	10	4
Withdrawn	7	9	14
No outcome	4	2	4
Resolved	1	0	1
Not upheld	1	2	1
Fully upheld	3	0	3
Partly upheld	1	1	1
Proportionality*	6*	0*	0*
Total	49	52	62

*New indicator for 2016/17

- 3.8 The main subjects of complaint in Renfrewshire during the period are as follows, with 2015/16 figures in brackets. The subjects are the SPSO's and may not relate directly to the way Renfrewshire Council services are organised. Housing 9(19); Education 5(8); Social Work 5(6); Finance 5(6); Roads & Transport 7(5); Legal & Admin 2(4); Recreation & Leisure 0(2); Planning 3(1); Environmental Health & Cleansing 5(1); Economic Development 2(1); Personnel 0(1); Consumer Protection 0(1); Building Control 0(1); Welfare Fund/Community Care Grants 0(0); Land & Property 0(0); other 0(1); Subject Unknown 4* (new indicator for 2016/17).
- 3.9 The report advised that in April 2017 the SPSO was given notice that the clinical advice service they had relied on in respect of specialist input for health cases had been withdrawn. This resulted in an opportunity to expand their bank of independent Scotland-based advisers and the development of a new complaints handling procedure for the NHS.
- 3.10 The report also refers to the development of a new complaints procedure for social work complaints to align with local authority and NHS procedures. This year was also the first year of operation of the new service for independently reviewing applications for Community Care Grants and Crisis Grants.

Implications of the Report

1. **Financial** - none
2. **HR & Organisational Development** - none.
3. **Community/Council Planning** – none
4. **Legal** - as detailed in the report
5. **Property/Assets** - none
6. **Information Technology** – none
7. **Equality & Human Rights** - The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety** – none
9. **Procurement** – none
10. **Risk** – none
11. **Privacy Impact** – none
12. **Cosla Policy Position** – not applicable.

List of Background Papers - none

Author: Carol MacDonald, Senior Committee Services Officer, 0141 618 5967

SPSO decision report



Case: 201507464, A Council
Sector: local government
Subject: road authority as developer, road alterations
Outcome: upheld, recommendations

Summary

Mr C complained to the council about a local bus company's use of the street outside his house for driver changeovers. Various options that would help resolve this problem had been considered but none had been put in place. Separately to this, there were plans to upgrade a nearby junction. This project included measures to accommodate driver changeovers and the council anticipated these would resolve Mr C's problems with driver changeovers.

Following a local consultation, the council began formal proceedings to carry out the upgrade, including a statutory consultation. Mr C complained that the length of time taken by these proceedings was unreasonable. He also complained that the council was not enforcing regulations on buses stopping in a restricted area near his home.

We acknowledged that the statutory process and the way the upgrade project was funded affected the timescale and that this was outside the council's control. However, we found that the council had introduced some avoidable delays that extended the timescale. We also found that the council was aware of drivers being asked by the bus company to stop in the restricted area. We therefore upheld Mr C's complaints.

Recommendations

We recommended that the council:

- apologise to Mr C for the avoidable delay in the process;
- provide Mr C with an update and schedule for the works at the junction near his home; and
- consider whether enforcement of relevant traffic-related legislation is required.

SPSO decision report



Case: 201507576, Renfrewshire Council
Sector: local government
Subject: policy/administration
Outcome: some upheld, recommendations

Summary

Ms C removed her child from school and requested a transfer to a new school as she was concerned about the impact of the school environment on her child's wellbeing. The school raised concerns about her child's absence and scheduled a meeting to discuss this. Ms C subsequently found out that the school nurse had contacted her child's GP to request information just before this meeting and a report had been faxed to the school. Ms C complained that the head teacher inappropriately made this request. In particular, the GP records stated the requested information was required for an inter-agency meeting with child protection concerns involved, when the meeting did not involve other agencies and there were no child protection concerns.

The council said the request was made by the school nurse who only asked the GP practice if someone could call the school to discuss if there was anything in the child's medical history relevant to concerns about their ongoing wellbeing and absence from school. The council said there were no child protection concerns but it was not possible to seek this information from Ms C as she refused to have any contact with them. However, when we asked for evidence of the lack of communication, the council acknowledged that in fact Ms C did have contact with both the school and council officers during this period.

After investigating these issues and reviewing the records from the school and GP we found that although it was clear that inaccurate information was received by the GP about child protection concerns, it was not clear that this was due to the actions of the head teacher and we did not uphold this aspect of Ms C's complaint. However, we were critical that the council did not make any record of the request for information and did not inform Ms C or the child about this. We also found failings with the council's complaints handling.

Recommendations

We recommended that the council:

- take steps to ensure that decisions to seek sensitive information about a pupil are adequately recorded and the pupil and/or parents are consulted (unless there is a clear recorded reason for not doing so);
- apologise to Ms C and her child for the failings identified;
- remind staff of the definition of a complaint in their complaints handling procedure;
- review their complaints handling tools to ensure staff are prompted to identify relevant evidence when planning an investigation; and
- audit a sample of recent correspondence to ensure that correspondence meeting the definition of a complaint is being handled under the correct process.

SPSO decision report



Case: 201508653, Renfrewshire Council
Sector: local government
Subject: secondary school
Outcome: upheld, recommendations

Summary

Mrs C complained that the council failed to comply with their bullying policy. Mrs C had raised issues with the council in relation to her daughter (Miss A) being bullied at school. The council explained that they had not initially treated the issues raised by Mrs C as bullying. They provided logs detailing concern by Mrs C that Miss A was being bullied and outlined the action taken by the school.

Mrs C was also concerned that Miss A was not given a suitable room on a school trip in light of problems with bullying and that the council had not looked into why her daughter had slept outside her room. In their response, the council provided a copy of the risk assessment that detailed that spot-checks would be carried out. However, there was no record detailing these checks. Although the council apologised to Mrs C that the information she provided prior to the trip had not been passed on to staff, we were concerned that there was no record of conversations with staff members. We therefore upheld these elements of Mrs C's complaint.

Mrs C also complained that the school did not provide accurate information on whether the school operated a buddy system. The council acknowledged and apologised for this and we therefore upheld Mrs C's complaint.

Mrs C said that the council failed to keep reasonable care records. The council said they were satisfied that Miss A's notes contained sufficient information. However, we found in particular that they did not include a record of a pre-arranged meeting. We therefore upheld Mrs C's complaint.

Mrs C also complained that staff at Miss A's school had inappropriate conversations with Miss A. While we were satisfied with the way the council had acknowledged the concerns Mrs C raised with them in this regard and had apologised, on balance we upheld Mrs C's complaint.

Finally, Mrs C complained that the council did not handle her complaint or communicate with her reasonably. The council said that it was difficult to communicate reasonably as Mrs C had raised her complaints with a number of people. They said they would offer Mrs C an additional apology in relation to this. The council also accepted that there had been a delay outwith their own timescales in responding to Mrs C's complaint. In light of this, we upheld this aspect of Mrs C's complaint.

Recommendations

We recommended that the council:

- consider their procedures for organising school trips to ensure all relevant information is recorded and taken into consideration when organising a school trip;
- consider, in view of the issues raised in this complaint, whether there is a need for a formal record of the checks carried out on pupils during bed times;
- ensure that relevant staff are fully aware of all the strategies, including the buddy system, that are available to assist pupils experiencing difficulties; and

- consider the benefits of retaining a brief record or note of meetings with parents, in particular when these are pre-arranged.

SPSO decision report



Case: 201604163, Renfrewshire Council
Sector: local government
Subject: primary school
Outcome: upheld, recommendations

Summary

Mrs C complained about the council's handling of the decision to change her son (child A)'s school class for the following academic year. Child A had been informed of his class before the school summer holidays. However, very shortly before the beginning of the school term, Mrs C was told that he would not be going into the class of which he had been previously informed.

Mrs C was unhappy with the way the council handled this decision. Specifically, she felt that they had failed to take into account the provisions of the Scottish Government's 'Getting it Right for Every Child' (GIRFEC) approach by not consulting with her, her husband or child A about the decision and that they had failed to provide her with details of the information on which the council's decision had been based.

Mrs C also felt that the council had failed to give a reasonable explanation for their decision, delayed unreasonably in informing her and child A about the decision, and failed to consider the effect the decision would have on child A.

As part of our investigation, we received further information from the council about the complaint. Although we could not provide Mrs C with the confidential information received which had led to the council's decision, we were satisfied that the council's explanation for reaching their decision was reasonable and was in line with their policy on the selection of pupils for classes.

We also considered the provisions of GIRFEC in relation to children, young people and their families understanding what is happening and having their wishes heard and understood. In this case, child A and his family were not adequately informed about what was happening and why, or given the opportunity to have their wishes heard and understood before the decision was reached. We thought that, had the council contacted child A and his family, this would have also prepared them for the possibility that child A may have to change classes, rather than this decision coming without warning so close to the beginning of term.

We also had concerns that, contrary to the joint working approach set out by GIRFEC, it did not appear that the school was involved in the discussions about the decision, which took place over the summer holiday period. We also concluded that there was an unreasonable delay between the decision being made and this being communicated to child A.

Given that the council did not keep Mrs C's family properly informed and involved and that there was an unreasonable delay in informing them of the decision, we considered that the council did not take appropriate action to limit the upset caused to child A.

Although it did not form part of Mrs C's complaint to us, we identified concerns with record-keeping at the school and the council. The council acknowledged that there was very little physical evidence in relation to this complaint. Our view was that it would be good practice for the school and council to keep a record of discussions where

important matters which could have an impact on a child's well-being are discussed. In this case, it was difficult to establish exactly what had happened as there was no record of the relevant discussions within the school and the council.

In light of the above, we upheld Mrs C's complaint and made recommendations.

Recommendations

We recommended that the council:

- share the findings of this investigation with staff within the education department and remind them of the provisions of GIRFEC in relation to: children, young people and their families being kept informed about what is happening and why, and being listened to and having their wishes heard and understood; and the importance of joint working when making decisions which will impact on a child's well-being;
- apologise to child A and his family for failing to keep them informed about what was happening and why and not giving them the opportunity to have their wishes heard and understood before the decision was reached, and for the delay in informing them of the decision;
- remind staff involved in this complaint (including the school) of the importance of recording discussions (including with parents, carers, children, young people and other staff) where important matters which could have an impact on a child's well-being are discussed; and
- reflect more broadly on the failings identified in this investigation and take any necessary improvement action to prevent a similar situation occurring again, and inform us of any improvements.