
To: Audit, Risk and Scrutiny Board

On: 23 January 2023

Report by: Director of Finance & Resources

Heading: Scottish Public Services Ombudsman (SPSO) Annual Report 2021/22

1 Summary

- 1.1 The Scottish Public Services Ombudsman (SPSO) has issued her 2021/22 annual report. The report is available on the SPSO's website at <https://www.spsso.org.uk/annual-report/2021-22.html>
- 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.
- 1.3 The report advised that Public Service cases received in 2021/22 rose in comparison to 2020/21.
- 1.4 It was noted that the health sector was the sector about which the SPSO received most complaints 1,238 (34%) from a total of 3,665 complaints and enquiries, with local authority cases receiving the second highest number of 1,189 (32%),
- 1.5 The statutory functions of the Ombudsman, together with the complaints process and a look forward to the coming year are set out within the SPSO's report.

2 Recommendations

- 2.1 That the SPSO's 2021/22 Annual Report be noted; and
 - 2.2 That it be noted of the 47 complaints against Renfrewshire Council determined by the SPSO in 2021/22 none went to public investigation.
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3 **Background**

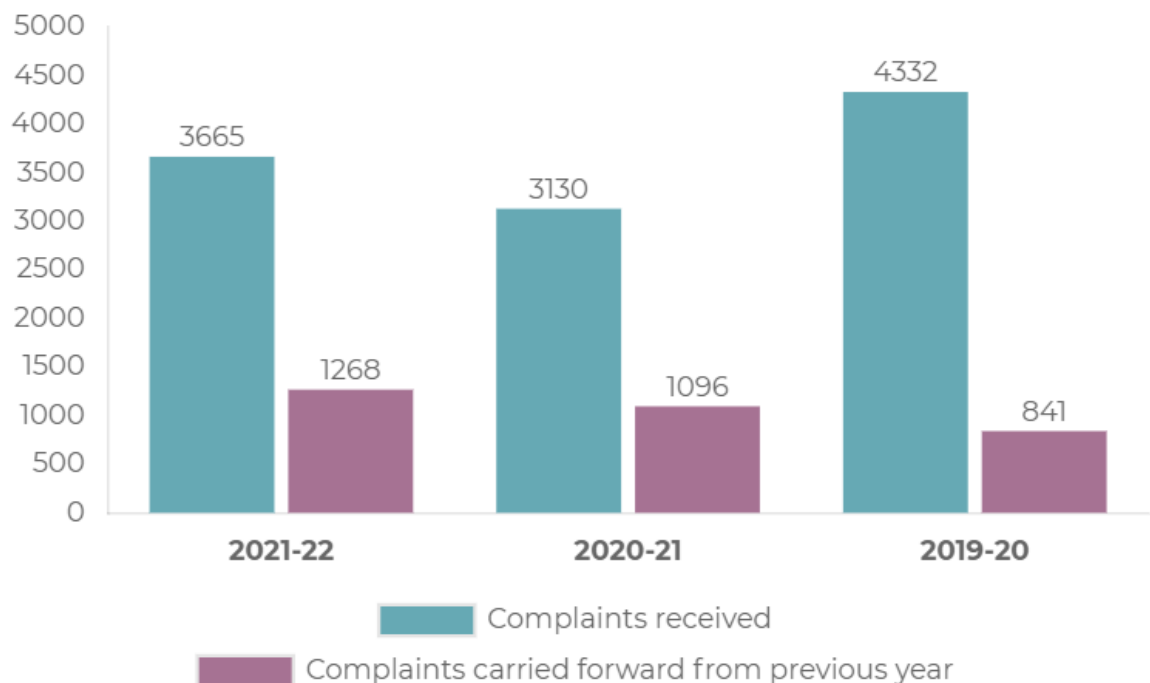
3.1 **SPSO Role and Function**

The SPSO has a wide remit which covers a variety of functions and services. There are four distinct statutory functions:

- the final stage for complaints about most devolved public services in Scotland;
- powers and responsibilities to publish complaints handling procedures and monitoring and supporting best practice in complaints handling;
- 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; and
- Independent National Whistleblowing Officer for the NHS in Scotland; the final stage for complaints about how the NHS considers whistleblowing concerns and the treatment of individuals concerned.

4 **Complaints Overview**

4.1 The report advised that in 2021/22 the SPSO saw an increase in overall caseload compared with the previous year.



4.2 The report noted that nationally, in 2021/22 the SPSO received 3,665 complaints and enquiries (4,933 in total when including complaints carried over from last year) compared with 3,130 in the previous year and 4,322 in 2019/20.

4.3 Of the 3,665 complaints handled, 284 went to full investigation compared to 420 in 2020/21. The SPSO advised that they had focused on actively seeking opportunities to resolve complaints early to improve customer experience and journey times by providing redress more quickly.

4.4 Of the 284 complaints investigated, the SPSO upheld or partly upheld 60% of complaints.

5 Public Service Complaints Received

5.1 The table below shows the breakdown of public service complaints by sector and it is largely unchanged from last year.

Authority Sector	2021-22	2020-21	% change 2020-21 to 2021-22	2019-20	% of 2021-22 total received
Colleges	24	21	+14%	29	0.7%
Health (including prisons)	1,238	1,056	+17%	1,562	34%
Housing Associations	295	224	+32%	338	8%
Joint Health & Social Care	188	163	+15%	214	5%
Local Authority	1,189	951	+25%	1,327	32%
Other	39	33	+18%	28	1%
Prisons	235	219	+7%	310	6%
Scottish Government & Devolved Administration	182	147	+24%	220	5%
Universities	187	205	-9%	161	5%
Water	88	111	-21%	143	2%
Total	3,665	3,130	+17%	4,332	

5.2 The report advised that this year, 1,238 complaints were about the health sector and 1,189 complaints were about local authorities. As in previous years, the health sector continued to account for the largest proportion of cases received in 2021/22.

- 5.3 The Ombudsman commenced 2021/22 with high workloads, capacity and resourcing challenges and with uncertainty about lockdown and the ongoing impact of COVID-19. They were successful in delivering many of the objectives set out in their business plan. Where they didn't achieve their aims, such as reducing the number of unallocated cases, this was down to not being able to recruit staff as quickly as anticipated and the extended lockdown they, and the public sector more widely, experienced.
- 5.4 Of the investigations completed in Scotland as a whole, seven cases were reported in full as public investigation reports (which was the same as the previous year). These are cases where they decide to publish the investigation in full because there is evidence of significant personal injustice or hardship, systemic failure, significant complaints handling failures, or it is a test/precedent case. None of these cases involved Renfrewshire Council
- 5.5 Cases that are not published in full as public investigation reports are usually published as decision summaries. Public reports and decision summaries can be found in the 'Our findings' section of their website.

6 Premature Public Service Complaints Rate

- 6.1 The actual number of premature complaints received rose by 20% (a premature complaint is one that has not been considered by the public body first). This meant the rate of premature public service complaints as a proportion of cases received rose from 20% last year to 22% this year. This was against a backdrop of previously good progress over a number of years to reduce the number of premature complaints. This increase reflected the fact that some public bodies found it challenging to deliver a complaints service that met the timescales set out in the Model Complaints Handling Procedures during the pandemic. The SPSO has continued to support and advise public bodies during this time as to how they should approach these challenges. The Ombudsman recognised (and shared) the challenges faced and advised that it was important to ensure public bodies maintained a complaint handling service and continued to communicate well with service users even where they were unable to meet timescales, giving reasons and anticipated timescales.

7 Complaints in relation to Renfrewshire Council 2021/22

- 7.1 No complaint details for specific organisations are included in the report. However, information received separately from the SPSO, indicates that the number of complaints received by the SPSO relative to Renfrewshire was 43 compared with 31 in 2020/21 and 47 in 2019/20. A copy of the SPSO investigation reports relative to the two cases where the decision was "not upheld" and "Upheld" are attached as appendices.

- 7.2 Of the 43 cases in 2021/22 relative to Renfrewshire, the main subjects of these are as follows, with 2020/21 figures in brackets. The subjects are the SPSO's and may not relate directly to the way Renfrewshire Council services are organised: Education 4 (2); Environmental Health & Cleansing 16 (6); Finance 4 (6); Housing 9 (9); Legal & Admin 1 (2); Personnel 0 (0); Planning 3 (2); Roads & Transport 1 (1); Social Work 4 (2); Subject Unknown/Out of Jurisdiction 1 (1); and Welfare Fund – Community Care Grants 0 (0)

7.3 **Complaints Determined in relation to Renfrewshire Council 2021/22**

RENFREWSHIRE COUNCIL CASE OUTCOMES 2021/22 & 2020/21			
Stage	Outcome Group	2021/22	2020/21
Advice	Discretion – alternative action proposed	0	0
	Organisation not in jurisdiction	0	0
	Premature	8	5
	Subject matter not in jurisdiction	0	0
	Unable to proceed	6	6
	Total	14	11
Early Resolution	Cause and impact test not met	0	0
	Discretion – alternative route used or available	1	0
	Discretion – insufficient benefit would be achieved by investigation	4	4
	Discretion – resolved – both parties satisfied with proposed outcome	2	0
	Discretion – alternative action proposed	0	1
	Discretion - good complaint handling	16	10
	Discretion – referred back	6	0
	Member of the public test not met	0	0
	Premature	0	0
	Right of appeal to court/tribunal/Scottish ministers	0	0
	Subject matter not in jurisdiction	1	1
	Time limit (s10)	1	0
	Unable to proceed	0	1
	Total	31	17
Investigation	Fully upheld	1	0
	Not upheld	1	1
	Some upheld	0	2
	Total	2	3
Total Complaints		47	31

- 7.4 It should be noted that received and determined numbers do not tally as complaints determined include cases carried forward from previous years.

- 7.5 The SPSO will not generally consider a complaint unless the complainer has gone through the Council's complaints procedure fully. In 2021/22 the Council received 9,193 complaints, compared with 6,179 in 2020/21 (the pandemic resulted in a much-reduced volume of complaints in that year). The annual report on the Council's complaints was considered at the last meeting of this Board held on 14 November 2022.

8 Other Developments

- 8.1 The SPSO set out an ambitious business plan for the year. Driven by their values and strategic aims they were able to deliver all services electronically and online. As the year progressed, they developed the functionality of and their expertise in using online collaboration tools which enabled them to actively involve all staff in business planning and setting operational priorities.
- 8.2 They continued to develop their business, by keeping key elements of their service under constant review and development and built on their people-centered approach to complaint handling, recognising the increasing vulnerability of some service users as lockdown continued. They also recognised that lockdown was not the only factor driving vulnerability and remains, very important to them.
- 8.3 The report advised that the Independent National Whistleblowing Officer (INWO) service started operating under the new powers set out in legislation on 1 April 2021. The powers allow them to investigate cases that have been through the two-stage local process within the health service. They have considered 107 whistleblowing enquiries and cases in their first year of service. The Ombudsman noted that their case numbers over the first year were lower than anticipated, and it has become clear that it will take time for the new procedure to bed in within NHS boards and other health service providers.

9 Looking Forward

- 9.1 The SPSO, within their report, have set out an ambitious business plan which recognises that, like last year, their priorities may change because of the uncertainty of COVID-19 and recovery from it. They have recognised the continued need to balance ongoing commitments, staff wellbeing, services and functions with COVID-19 recovery, recovering from the enduring impact of COVID-19, business development based on learning from COVID-19 and ongoing commitments.

Implications of the Report

Financial – None

HR & Organisational Development – None

Community Planning – None

Legal – None

Property/Assets – None

Information Technology – None

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.

Health & Safety – None

Procurement – None

Risk - None.

Privacy Impact – None

COSLA Implications – None

Climate Risk - None

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Decision Report 201905325

Case ref: 201905325
Date: October 2021
Body: Renfrewshire Council
Sector: Local Government
Outcome: Not upheld, no recommendations
Subject: Care charges for homecare and residential care

Summary

C held Power of Attorney (POA, a legal document appointing someone to act or make decisions for another person) for their parent (A) who moved to a care home. Due to their level of capital, it was determined that A would be self-funding their accommodation. C requested a reassessment for funding towards care home fees as A's savings had reduced to the required threshold.

C provided the evidence required to show A's income and expenditure to social work and was informed that A had been overspending on items other than care costs. The council determined that there had been deprivation of capital (where someone has spent or otherwise reduced their capital at least in part to avoid paying that money towards care home fees). This meant they would not contribute towards A's care costs. By the time C was informed of this, A's finances reduced significantly and had accrued debt.

C complained to us that the council's view that A had deprived themselves of capital was unreasonable and also that the council had failed to provide adequate information about reasonable spending and deprivation of capital.

We took independent advice from an appropriately qualified social worker. On reviewing the council's records, we considered a reasonable approach had been taken to the financial assessment and that the conclusion reached was reasonable, as there was clear evidence that A's spending had not been consistent with their spending in previous years. We also considered that reasonable information had been provided about deprivation of capital and made clear that it was the responsibility of a POA to understand A's financial obligations and that the council did not have responsibility to provide financial advice.

As such, we did not uphold C's complaints.

SPSO decision report

Case: 201910087, Renfrewshire Council
Sector: Local Government
Subject: Handling of application (complaints by opponents)
Decision: upheld, recommendations

Summary

C complained about the planning procedure followed by the council for a planning application to build a dwelling house and garage on the site of a post office in C's street. C raised a number of concerns, including that the garage drawings were not published on the council's planning portal for comment, that the correct garage floor area was not shown on the block plan and that the planning officer approved a garage of 51 square metres and then allowed a garage to be built which was clearly larger than this. We took independent advice on the complaint from a planning adviser.

The council acknowledged to C and this office that they failed to upload all relevant information on this planning application to their planning portal, including the detailed garage drawings. However, they failed to apologise to C for this failing and explain what action they had taken to prevent this type of failing from happening again. We noted that the system upgrade the council advised they were now installing to prevent errors in manual uploading was reasonable and we asked the council for evidence of the completed implementation and confirmation of its scope.

We noted that the block plan did not show the garage floor area and it was not specifically required to do so. However, they said that the garage floor area in the block plan appeared to be considerably smaller than the garage shown in the approved garage plans and elevations and it would have been good practice for the council to have ensured that all plans were consistent.

We noted that although the planning report referred to the garage as being 51 square metres, the stamped plans were what was ultimately approved and what an applicant could then implement and they showed the garage as being 77.8 square metres. The council have said that the reference to a 51 square metre garage was based on a miscalculation by the planning officer and remedial action had been taken to address this.

We were concerned that the planning report did not contain any reference to the assessment of the garage or any evidence that the potential impacts of the garage were considered in the determination of the application. We were critical of the council in this regard.

We were also concerned that, despite being advised by the council that they did not re-notify neighbours about the change in the dimensions of the garage because this was to a reduced footprint with a lower impact, we did not see any evidence that the original proposal was for a garage which was larger than the one approved by the council. As such, it was not possible to determine that re-notification of the neighbours was not required. Therefore, we upheld the complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to C for failing to upload all relevant information on the planning application to their planning

portal, providing incorrect/misleading information on the size of the garage in the planning report, failing to include information on the assessment of the garage and its potential impact in the planning report, and, in their complaint response, unreasonably failing to explain to C why the planning report stated that the garage was 51 square metres, when at no time was a garage of that size approved. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/information-leaflets.

What we said should change to put things right in future:

- For planning reports for applications to appropriately address all aspects of a development.
- For site visits on planning applications to be recorded and include information such as the date of the visit, who attended, what was considered and any photographs taken.
- Plans for development should be consistent, in that the dimensions of buildings should be the same on all stamped approved plans.

In relation to complaints handling, we recommended:

- The council's responses to complaints should address all issues raised, as required by the Model Complaints Handling Procedure.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.