

Ariane Burgess MSP
Convener of the Local Government, Housing and
Planning Committee

18 December 2023

Dear Ariane,

Annual Report 22—23 Evidence Session of 5 December 2023

1. During the evidence session on 5 December 2023, I promised to send the Committee some information about Community Councils and the complaints process. The Committee were also interested in a breakdown by local authority of cases received against cases investigated.

Community councils

2. The Scottish Public Services Ombudsman Act says that I can only accept public service complaints from a member of the public (the rules are different for whistleblowing complaints).
3. “Member of the public” is defined broadly, and is not limited to individuals but can include a group or an organisation.
4. The legislation does, though, set out exemptions. These are mostly groups or organisations who might otherwise meet the broad definition of member of the public, but whom the legislation says cannot bring complaints to the SPSO. For obvious reasons, the exclusions are intended to rule out public bodies. The wording of the legislation includes a subsection that says we cannot take complaints from organisations constituted for the public service.
5. SPSO, some time ago, took legal advice which confirmed that community councils are not members of the public. This is because they are set up under local government legislation, and are therefore constituted for the public service. I would like to make it clear that organisations with a public aim, such as charities, are not covered by this exclusion.



6. The specific question raised at the session was what avenue do community councils have to make a complaint? That, of course, would be dependent on the issues raised. When we have been approached by community councils, the issue has usually been around the way their views have been considered as part of a consultation (perhaps a planning matter) or about how an individual, or the council was communicated with. Community councils will likely have their own contacts within each council through which they could raise such issues. I am though, not aware of any process by which a community council could subsequently bring such a complaint against the council itself. If an issue were about the conduct of individual elected council members, there may be a route through the Ethical Standards Commissioner, but he would be best placed to advise on that.
7. Audit Scotland provides a role in terms of considering the overall functioning and performance of each local authority, and while they do not consider complaints, they will sometimes take evidence from the public as a concern that they may consider during an audit process.
8. I'm not aware whether those routes are or are not open to community councils working collectively or are only open to individuals. But they may provide alternative routes depending on the concerns being raised.
9. The question of community councils as organisations that cannot complain, were considered briefly when there was a review of Parliamentary Supported Organisations in 2009. At that stage, Parliament did not consider any changes were needed to be made to our legislation to clarify or change the definition of member of the public.
10. Before I move on, I would like to note that nothing prevents an individual community councillor from complaining to SPSO about a local authority service (or a failure to deliver a service) that impacts on them personally and directly, and they have already complained to the local authority on that basis.

Local authority statistics

11. Each year we publish, in full, details of all complaints received by local authority and all outcomes for cases that are closed. These are published separately because there is not a direct correlation between the cases received within the year and the cases closed (we may close cases in 22—23 that we received towards the end of 21-22 for example and will have open cases at the end of 22—23 that we have not closed).
12. The numbers are though fairly similar. We received 1,053 and closed 1,151. This means that the statistics for closed cases by authority gives a fairly accurate picture of the stages at which we close cases and the reasons why for each local authority as a proportion of cases received.



13. The links for the data (both in excel which allows for data to be easily reused and analysed and PDF for easier reading) are here: [Statistics 2022-23 | SPSO](#). Copies will also be attached with this letter.
14. In summary, most local authority cases are closed at the early resolution stage. As discussed with the Committee, these are cases which we actively consider and where we will usually make enquiries, before deciding that we do not need to move these to the longer investigation stage.
15. The most common reason we close cases for local authorities (331 last year) is good complaint handling. This is not surprising, given that the model complaints handling process (MCHP) has been in place for local authorities since 2011/12. In these cases we have
 - 15.1. (usually) sought information and evidence through initial enquiries, to provide evidence on which to base our decision (from either or both parties as needed)
 - 15.2. actively considered the quality of investigation and whether it met the expectations and requirement of the MCHP
 - 15.3. considered the response and whether it appropriately identified learning, provided appropriate redress, where necessary, and seen is evidence that promised actions have been, or are being implemented.
16. As explained at the session, we take a people-centred approach and whether we can achieve more for someone, or whether there is a wider public interest. It is important to note that while cases closed at early resolution are not “investigated” in the specific sense set out in our legislation, they receive a decision from this office, which either party can ask me to review.
17. I should also note that where the local authority has delegated delivery to a health and social care partnership (for example some social work functions), complaints which relate to services that are the legal responsibility of the local authority are logged against the health and social care partnership. We publish statistics about those separately and they can also be found in the same spreadsheet.

Yours sincerely

Rosemary Agnew
Scottish Public Services Ombudsman