

# Local Government, Housing and Planning Committee

## 11<sup>th</sup> Meeting, 2022 (Session 6)

Tuesday 29 March 2022

## Scottish Public Services Ombudsman Annual Report 2020-21

### Introduction

1. The purpose of this paper is to provide information for the Committee's evidence session with the Scottish Public Services Ombudsman (SPSO) on its Annual Report for 2020-21, published on 19 October 2021.
2. The Committee will take evidence on the SPSO's Annual Report from—
  - Rosemary Agnew, Ombudsman;
  - Niki Maclean, Director; and
  - Andrew Sheridan, Head of Improvement, Standards and Engagement.
3. The Annual Report and Accounts for 2020-21 can be accessed via the following link—
  - [SPSO-Annual-Report-2020-21\\_0.pdf](#)
4. The SPSO has also provided a summary of some of the work that it has undertaken since the period covered by the Annual Report along with a covering letter from the Ombudsman. This update and letter are attached as an annexe.

### Background

5. The SPSO was created by statute and its role, powers and duties are set out in the [Scottish Public Services Ombudsman Act 2002](#). It is funded by the Scottish Parliament Corporate Body although it functions independently of it. Under the 2002 Act, the SPSO is to report annually to the Scottish Parliament on the exercise of his or her functions.
6. The SPSO is the final stage for complaints about most devolved public services in Scotland including councils, the health service, prisons, water and sewerage

providers, Scottish Government, universities and colleges. It has specific powers and responsibilities to publish complaints handling procedures and to monitor and support best practice in complaints handling.

7. A flowchart summarising the complaints process is provided on page 24 of the Annual Report.

8. The SPSO is also the independent review service for the Scottish Welfare Fund with the power to overturn and substitute decisions made by councils on Community Care Grant and Crisis Grant applications.

9. The SPSO became the Independent National Whistleblowing Officer for the NHS in Scotland in April 2021

10. The previous Local Government and Communities Committee last met with the SPSO in January 2020 to discuss its Annual Performance Report and Accounts for 2018/19. The meeting papers and Official Report of that session can be accessed via the following links—

- [Local Government and Communities Committee Meeting Papers, 29 January 2020](#)
- [Local Government and Communities Committee Official Report, 29 January 2020](#)

11. The Ombudsman wrote to the Committee after the evidence session to “provide more information about the progress (or lack of) in our discussions with the Scottish Government about amendments to the Scottish Public Services Ombudsman Act 2002; specifically in relation to being able to make the complaints process more accessible by giving the SPSO to powers to accept complaints in any format.” The letter can be accessed via the following link—

- [20200305\\_FromSPSOtoLGCC.pdf \(parliament.scot\)](#)

## Conclusion

12. The Committee is invited to consider the above in its evidence session with the SPSO.

**Clerks,  
Local Government, Housing and Planning Committee**

**Letter to Convener from Scottish Public Services Ombudsman, 18 March 2022**

Dear Convener,

**Scottish Public Services Ombudsman Evidence Session 29 March 2022**

Thank you for the invitation to give evidence to the Committee following the laying of my most recent Annual Report before Parliament (2020—2021). The Committee will have the full Annual Report and Accounts available to them. I have also provided with this letter written evidence in advance of my appearance before the Committee.

I am mindful that it has been some time since the end of 2020—2021 and given the significant changes and challenges of the last two years, thought the Committee may be interested in information about SPSO's performance to date in the current year, particularly given that nearly a year has passed since the laying of my most recent Annual Report.

The attached update includes some key information to provide this more recent picture. Figures for this year are partial (covering for the main part, the first three Quarters, April—December 2021). Although they are from our live database, which means they may change (slightly) when we collate and publish official statistics later this year, I am confident they provide a reliable overview of performance.

I am happy to answer questions about the information provided.

Yours sincerely

Rosemary Agnew  
**Scottish Public Services Ombudsman**

## Local Government, Housing and Planning Committee 2021/2022 update from SPSO

### Context

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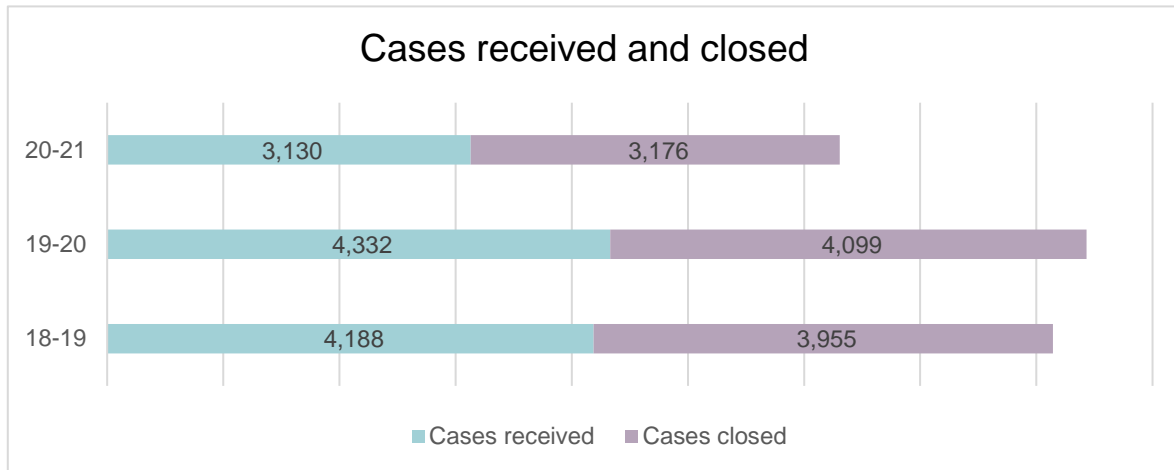
1. The SPSO's statutory duties are summarised here: <https://www.spsso.org.uk/about-us>.
2. Over the lifetime of the last Parliamentary session covering 2016 to 2021, the SPSO underwent some significant changes:
  - 2.1. The Ombudsman implemented her new role of Independent Reviewer for the Welfare Fund enabling us to change and direct individual decisions relating to crisis and community care grants (this new role began just before the last session on 1 April 2016)
  - 2.2. The Ombudsman was given additional powers to consider professional judgement in social work cases (from 1 April 2017)
  - 2.3. The Ombudsman became the Independent National Whistleblowing Officer for the NHS in Scotland. The post went live on 1 April 2021
  - 2.4. The SPSO moved offices and now provides shared accommodation services to the Scottish Human Rights Commissioner, Children and Young People's Commissioner Scotland and the Biometrics Commissioner, shared corporate services to the Biometrics Commissioner.
3. Over recent years, the most significant challenges SPSO experienced were rising volumes of complaints cases, with broadly static investigation staff numbers. Over the last two years, the most significant challenges to the organisation are because of the impact of COVID-19. These were:
  - 3.1. impact on resources as we adapted technology and procedures to home-working.
  - 3.2. significant impact on capacity as colleagues took on additional caring responsibilities, home schooling and adapted to working at home.
  - 3.3. higher than average staff turnover and absence rates.
  - 3.4. introduction of Self-isolation Support grants as part of the Scottish Welfare Fund
  - 3.5. the impact on public services capacity to respond to complaints and subsequently to respond to SPSO's enquiries, with a consequential impact on our timescales.
4. We adapted to these challenges by taking a people-focused approach which prioritised resources towards those most vulnerable, while supporting colleagues wellbeing.
5. Looking ahead, we are focused on recovery but there are also significant projects and shifts in the landscape:
  - 5.1. The SPSO has been commissioned to put in place Child Friendly Complaints procedures for organisations in jurisdiction. This work is in the early stages
  - 5.2. There are potentially significant structural changes to delivery and scrutiny in key areas under jurisdiction (for example the proposed National Care Service and Patient Safety Commissioner).
6. Additionally, the international community has set new standards and expectations for Ombudsman which have been ratified at UN level.

## Performance Update

### Public Service Complaints

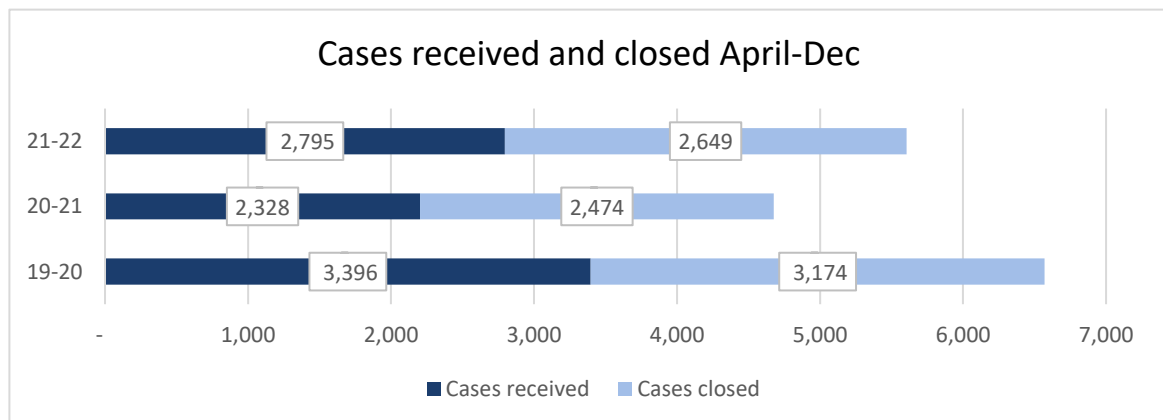
*Overview of complaints received and closed – full years 2018—19, 2019—20, 2020—21*

- These are the most recent years for which we have full comparative data. They reflect performance covered by the first lockdown 20—21, showing that it had a significant impact on complaints and performance, for the reasons outlined at para 3 above. Both complaints received, and our closure rate dropped significantly. The critical point to note, is SPSO did not stop delivering a complaint service.



*Overview of complaints received and closed for part years for the period April—December<sup>1</sup>*

- To understand the impact of the second lockdown and current situation, we have shown the comparative data for the first three quarters of this and the last two years. this enables the current position to be compared directly to the two previous years.



- As this shows, although over the first three quarters of this year, complaints received rose by 20%, they were still not at pre-pandemic levels. The rate of output (i.e. number of cases closed) is also recovering but the time taken to close them has increased significantly. The main reasons for this is the impact of the first lockdown coupled with the time taken to allocate new complaints to Complaints Reviewers. See paragraph 12 for more information about this.

<sup>1</sup> Figures from the current year (2020—21) are from our live database, which means they may change (slightly) when we collate and publish official statistics later this year.

Performance against KPIs

KPI		19-20	20-21	21-22 Year to date
PI1	95% of advice stage complaints handled within 10 working days	100%	91%	96%
PI2	95% of early resolution complaints decided or moved to more complex investigation stage (PI3) within 70 working days	66%	60%	64%
PI3	85% of (complex) investigations complaints decided within 260 working days	81%	46%	28%

10. As can be seen, while performance against PI1 remains high, demonstrating the ongoing effectiveness of our advice service and first contact during lockdowns, the time taken to handle complaints has been severely impacted, especially the more complex investigations.
11. As reported in our Annual Report and Accounts 2020—21, pre-pandemic, we had high caseloads as a result of a number of factors, including rising complaint numbers over a number of years. We put in place a number of measures to address this, including reviewing our processes and approach. Good progress was made, then the pandemic arrived. The pandemic has exacerbated the position as it has taken us longer to investigate complaints for the reasons set out in paragraph 3 above, particularly the capacity of public bodies to respond to our enquiries.
12. Regrettably, the SPSO is currently experiencing significant delays in allocating some public service complaints to Complaints Reviewers with *some* complaints taking up to 11 months to allocate after initial assessment, but it is important to note that not all complaints are affected. We actively manage complaints from the point we receive them.
13. New complaints are reviewed with two weeks of receipt. We assess each complaint to identify whether it should be prioritised for immediate consideration, or whether it can be resolved or handled quickly. We prioritise cases where the complainant (or person affected) is vulnerable, the matter is urgent and ongoing, or where there is a significant public interest.
14. We recognise that not all cases can be prioritised or addressed quickly, and these are held until they can be allocated. We inform people about the delays and encourage them to contact us if they think their complaint should be given priority or their circumstances change. We also keep our website updated.
15. We have agreed extra resources with the Scottish Parliamentary Corporate Body and are recruiting more staff on a fixed-term basis to enable us to speed-up pandemic recovery measures.
16. As well as putting in extra capacity, we monitor resources and service delivery constantly and where we can, adapt to make more effective use of our resources. Fundamentally, we need the extra resource to be able to put us back into the position we were in pre-pandemic so that is what we are focused on.

**Complaints by sector**

17. Health, Social Care and Social Work combined is now the largest sector of our work comprising around 44% of all cases received and closed. This sector saw the most significant drop in cases last year and is still below pre-pandemic figures, although numbers are increasing each quarter and we are projecting it will end this year much closer to pre-pandemic levels.

	19-20 Full year	20-21 Full year	21-22 (to end February)	% of SPSO cases in 21-22
Health, (including prison health) social care, social work	1,975	1,354	1,453	43%
Local Authority (non-social work)	1,128	816	971	29%
Housing Associations	338	224	264	8%
Prisons	310	219	222	7%
Scottish Gov & Devolved Administration	220	147	165	5%
Universities	161	205	176	5%
Water	143	111	82	2%
Colleges	29	21	21	1%
Other	33	28	35	1%
	4,332	3,130	3,389	

*Themes and trends*

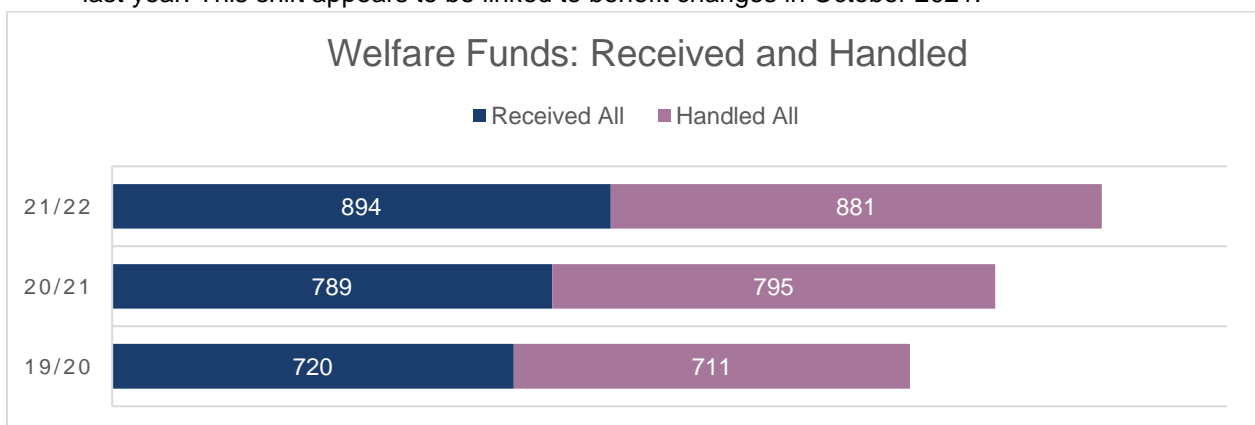
18. The subjects of cases received have not been significantly different over this period than in previous years. The University sector saw an increase related to the impact of COVID-19 on the quality of education received and remote learning but is now beginning to return to normal levels. In 2021/2022, we have received 115 cases which relate directly or indirectly to COVID-19. Over half were related to health or health/social care including issues about acquiring COVID-19 in a healthcare setting. We are also now beginning to see complaints about delays in healthcare reaching us.

*Complaints handling*

19. While we recognise the challenges faced by public services, we have continued to monitor local complaints handling issues as far as possible and reminded public bodies about their duties to respond to complaints, while also supporting public bodies where we could.

**Scottish Welfare fund**

20. 2021/2022 has seen a 24% increase in applications for welfare funds received compared to pre-pandemic levels. As community care grants have fallen, this has been driven by a 55% increase in crisis grants, which, as a category, include self-isolation support grants. While figures showed a fall in the total number of crisis grants to Q3, we are currently experiencing a further wave of increases which began late last year and we anticipate this ending higher than last year. This shift appears to be linked to benefit changes in October 2021.



21. Because of the urgent nature of the need, welfare fund decisions were given priority when we needed to allocate our limited home-working equipment at the start of the pandemic. We also received some limited additional funding from Scottish Government to help with administering reviews relating to self-isolation support grants. This has enabled us to achieve a 24% increase in productivity. However, while we remain close to achieving the extremely challenging KPI for crisis grants, including self-isolation support grants, staffing resources required to meet targets and handle the volume of applications are of significant concern, and the subject of ongoing dialogue with the Scottish Government.

## Independent National Whistleblowing Officer for the NHS in Scotland.

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22. This new role launched on 1 April 2021 and while we have provided training, had direct engagement with a number of Boards, and held webinars and other awareness raising events, we are concerned that awareness is not sufficiently high amongst front-line staff in Boards and is very low in primary care. The figures of cases received and under consideration indicate a need over the coming year to continue with raising awareness of the Standards, and to go beyond Boards to ensure primary care and Health and Social Care Partnerships implement them effectively, and to work with universities to ensure students have access to appropriately informed staff to support them in raising concerns.

### Headline figures

	Received/ transferred				Closed			
	Q1	Q2	Q3	tot	Q1	Q2	Q3	tot
Advice	40	26	22	<b>88</b>	36	19	16	<b>71</b>
Initial assessment	2	5	5	<b>12</b>	2	4	8	<b>14</b>
Investigation	0	2	0	<b>2</b>	0	0	0	<b>0</b>

23. From the cases and enquiries we have received some early themes are emerging and include:
- 23.1. Around a third of advice cases are signposted to HR, as they do not include any elements that meet the whistleblowing definition.
  - 23.2. All of the case we are investigating include concerns about culture and/or detriment, as do most of the monitored referrals.
24. Topics raised that were potentially in jurisdiction include:
- 24.1. Staffing pressures impacting on patient safety due to long term sickness/ understaffing (significant volume of concerns, across range of settings)
  - 24.2. Unprofessional conduct in teams (not just individuals)
  - 24.3. Recruitment/ contractual concerns (with implications for patient safety)
  - 24.4. Cleaning practices
  - 24.5. Admin staff concerned about Covid working arrangements
  - 24.6. Management culture creating unsafe working environment.

## Complaints Standards

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25. We have continued to support good complaint handling practice including answering over 200 individual queries from bodies. We also delivered
- 25.1. 110 training modules virtually
  - 25.2. attended 26 Complaint handler network meetings (there are networks in place for most sectors)
  - 25.3. continued to monitor performance through our support and intervention policy; and



- 25.4. engaged with public organisations to develop refreshed Key performance Indicators for the revised model complaint handling procedures.