

DATA LABEL: PUBLIC



## **PARTNERSHIP AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL**

### **SCOTTISH PUBLIC SERVICES OMBUDSMAN: ANNUAL REPORT 2020 - 2021**

#### **REPORT BY CHIEF EXECUTIVE**

##### **A. PURPOSE OF REPORT**

To update the Panel on the Scottish Public Services Ombudsman's annual report 2020-2021.

##### **B. RECOMMENDATION**

1. The Panel is asked to note the Scottish Public Services Ombudsman's (SPSO) annual report 2020-2021, and recommend that it be submitted to the Council Executive for information; and,
2. The Panel is asked to note West Lothian Council's performance in relation to the number of complaints received by the SPSO and the outcome; and,
3. The Panel is asked to note the learning from SPSO complaints which is appended to this report for information.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs; being honest, open and accountable; providing equality of opportunities; making best use of our resources;
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	None.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	The council is required to report against a set of performance indicators developed by the SPSO.
<b>V Relevance to Single Outcome Agreement</b>	None.
<b>VI Resources - (Financial, Staffing and Property)</b>	None.
<b>VII Consideration at PDSP</b>	The previous annual report was considered by the Partnership and Resources PDSP at its meeting of 4 December 2020.

**VIII Other consultations**

None.

**D. TERMS OF REPORT****D1 Background**

The Scottish Public Services Ombudsman (SPSO) handles complaints at the final stage for public services in Scotland, including local authorities, the National Health Service (NHS), housing associations, prisons, water and sewage providers, the Scottish Government, universities and colleges and most Scottish Public Authorities. The SPSO investigates complaints when the complainer has exhausted the formal complaints procedure of the relevant authority.

The SPSO has specific powers and responsibilities to publish complaints handling procedures, and monitor and support best practice in complaints handling.

Additionally, the SPSO is the 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.

The SPSO has now launched its new Independent National Whistleblowing Officer role as of April 2021 (delayed from July 2020 due to the pandemic) and this includes working with NHS boards on the implementation of national whistleblowing standards, developing training resources and defining their own processes.

**D2 Local Government – Annual Review of Complaints and Issues**

A copy of the SPSO's Annual Letter is attached as Appendix 1.

The SPSO reports that the number of complaints received regarding local government has decreased by 28% to 951 for 2020-21, from 1,327 the previous year.

In 2020-21, complaints about local government made up 30% of all complaints to the SPSO; a slight decrease from the 31% in 2019-20. 34% of complaints received by the SPSO can be attributed the health sector, making it accountable for the largest proportion of cases received in 2020-21.

The percentage of premature complaints about local government has decreased significantly from 21% in 2019-20 to 2% in 2020-21. This differs from the overall rate of premature complaints across all sectors which increased from 19% to 20%.

Of the total complaints investigated by the SPSO against local government in 2020-21 (63), the number of fully upheld complaints for local government decreased to 54%, from 64% in 2019-20.

**D3 West Lothian Council – Statistics, Update and Recommendations**

The SPSO publishes data relating to the complaints received and determined each year however the format of this has changed for 2020-21 which means that the data is not split into individual local authority tables, as was provided previously. Appendix 2 provides an extract of the data published online in relation to West Lothian Council for 2020-21 by subject area

Appendix 2 highlights that the total number of complaints received about West Lothian Council for 2020-21 was 44, which has decreased from 71 complaints in 2019-20. As also detailed in Appendix 2, the greatest number of complaints about West Lothian Council was in relation to Housing, which is in line with the local authority sector as a

whole. The second highest subject for complaints against West Lothian Council was Environmental Health & Cleansing which differs slightly from the sector totals.

The SPSO closed 49 complaints about West Lothian Council in 2020-21. 16 of these were dealt with at the advice stage, whilst a further 31 were considered to have had an early resolution. 2 complaints were investigated. None of the complaints received by the SPSO against West Lothian Council in 2020-21 were considered to be premature.

The council received 11 decisions from the SPSO during 2020-21. Nine of these cases were not progressed, one case was fully upheld and another was partially upheld. Further detail is provided in Appendix 3.

The recommendations and learning from SPSO decisions are also reported to the council's Complaints Steering Board and Performance Committee on a quarterly basis.

#### **D4 Scottish Welfare Fund (SWF)**

The data providing details on the requests for reviews that the SPSO received for SWF applications by applicants in the West Lothian Council area in 2020-21 has not yet been published.

Appendix 4 provides a summary overview of the requests received by the SPSO for this period.

#### **D5 Improving Complaints Standards**

The Model Complaints Handling Procedure (MCHP) is now fully adopted across Scottish public bodies under SPSO's jurisdiction, much of our focus is on monitoring compliance and supporting improvement. The SPSO monitor in various ways, for example through conducting compliance assessments of organisations' complaints handling procedures, following-up issues identified from the complaints made to SPSO, acting on what is learned from complaints, and through working directly with organisations to share and support good practice in complaints handling.

### **E CONCLUSION**

The SPSO has published its annual report along with its annual letter to local authorities.

The SPSO reports that the total number of complaints determined about West Lothian Council has decreased to 49 in 2020-21, down from 71 in 2019-20, and only one complaint was fully upheld after SPSO investigation.

The SPSO continue to expect organisations to be proactive in ensuring that opportunities for learning from complaints is embedded in governance structures.

A report will continue be submitted quarterly to the council's Complaints Steering Board and quarterly to Performance Committee, outlining the learning from SPSO decisions, which have been implemented by the council in response to complaints made.

### **F BACKGROUND REFERENCES**

- Scottish Public Services Ombudsman: Annual Report 2020-2021
- Partnership and Resources PDSP, 4 December 2020

**Appendices/Attachments: 4**

**Appendix 1: Letter to West Lothian Council from Scottish Public Services Ombudsman**

**Appendix 2: Tables of statistics to illustrate West Lothian Council vs sector total complaints received by subject area and complaints closed by outcome for 2020-21**

**Appendix 3: Scottish Public Services Ombudsman (SPSO) Complaint Recommendations and Service Learning 2020-21**

**Appendix 4: Scottish Welfare Fund Requests for Review – SPSO Overview Summary Statistics for 2020-21**

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**Graham Hope**  
**Chief Executive**

Date of meeting: 4 February 2022

19 October 2021

## Annual Report from the Scottish Public Services Ombudsman

I am very pleased to enclose my 2020-21 Annual Report and Accounts.

In addition to the attached PDF document, there is also a web version at <https://www.spsso.org.uk/annual-report/2020-21.html> which is easy to navigate digitally.

To say 2020-21 was a challenging year for the SPSO (and all of us) is an understatement. On the one hand, SPSO's investigative capacity was affected because of our own reduced staffing resource, reduced availability of some clinical advisers and because of delays in obtaining information from public bodies who themselves were struggling to maintain services. On the other hand, we adapted and accelerated the improvement of our processes and policies. So, while lockdown presented the SPSO with significant challenges, it equally offered opportunities to develop our business and approach.

And amongst all of this, we prepared for the launch of our new Independent National Whistleblowing Officer role (which went live on 1 April 2021), including working with NHS boards on the implementation of the National Whistleblowing Standards, developing training materials and resources as well as defining our own processes.

This report features our performance across all our functions and our significant achievements during 2020-21.

Some highlights include:

- we received **3,130** public service complaints (4,226 in total when including complaints carried over from last year) and closed **3,176**
- of all investigated public service complaints we **upheld 61%**
- we made **740** recommendations to public bodies, **52%** being about learning and improvement
- we launched our new online training courses and delivered **11** complaints handling courses in just the last quarter of the year alone
- our Scottish Welfare Fund independent review service took on review applications for council decisions of the new **Self-Isolation Support Grants**, and **we met or exceeded** all of our SWF KPIs
- we successfully prepared for the launch of our new Independent National Whistleblowing Officer service on **1 April 2021**.

Detailed statistical information about public service complaints is available here:  
[www.spsso.org.uk/statistics](http://www.spsso.org.uk/statistics)

Moving into 2021-22, we continue to learn from our experience and to build on the positive learning and improvements for ourselves and public services generally. Our values remain at the heart of what we do and inform how we balance the needs of our users, with supporting colleagues, driving complaint handling improvements and being as efficient and effective as we can.

If you would like to talk to us about our work, I and my SPSO colleagues welcome feedback on this report, or on any aspect of our work.

Yours sincerely



Rosemary Agnew  
**Scottish Public Services Ombudsman**

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**Local Authority Cases Received By Subject**

<b>Subject</b>	<b>West Lothian Council</b>	<b>Total</b>
Building Control	0	6
Consumer Protection	0	4
Economic Development	0	4
Education	2	109
Environmental Health & Cleansing	8	62
Finance	1	68
Fire & Police Boards	0	3
Housing	15	232
Land & Property	0	12
Legal & Admin	5	54
National Park Authorities	0	2
Other	0	9
Personnel	0	4
Planning	2	115
Recreation & Leisure	0	13
Roads & Transport	4	63
Social Work	5	135
Subject unknown or Out of Jurisdiction	2	48
Valuation Joint Boards	0	2
Welfare Fund - Community Care Grants	0	3
Welfare Fund - Crisis Grants	0	3
<b>Total</b>	<b>44</b>	<b>951</b>



### Local Authority Cases Determined By Outcome

Stage	Outcome Group	West Lothian Council	Total
Advice	Discretion – alternative action proposed	0	1
	Organisation not in jurisdiction	0	1
	Premature	11	244
	Subject matter not in jurisdiction	0	1
	Unable to proceed	5	140
	<b>Total</b>	<b>16</b>	<b>387</b>
Early Resolution	Cause and impact test not met (s 5 (3))	0	7
	Discretion – alternative route used or available	0	7
	Discretion – Insufficient benefit would be achieved by investigation	6	85
	Discretion – alternative action proposed	2	17
	Discretion - Good complaint handling	18	291
	Discretion – referred back	4	25
	Member of the public test not met (s 5 (6))	0	1
	Premature	0	11
	Right of appeal to court/tribunal/Scottish ministers (s 7 (8))	0	8
	Subject matter not in jurisdiction	0	23
	Time limit (s 10)	0	7
	Unable to proceed	1	21
	<b>Total</b>	<b>31</b>	<b>503</b>
Investigation	Fully upheld	1	29
	Not upheld	0	22
	Some upheld	1	12
	<b>Total</b>	<b>2</b>	<b>63</b>
<b>Total Complaints</b>		<b>49</b>	<b>953</b>



## Scottish Public Services Ombudsman (SPSO) Complaint Recommendations and Service Learning Q1 2020/21

Service and SPSO ref.	Outcome	Customer Complaint(s)	SPSO Recommendation / Areas to consider	Council appropriate practice
Education Service	Not Progressed	You complained about the way your daughter was treated by Primary School staff, specifically that the school changed her out of clothes that were new on, and freshly laundered, and sent her home in different clothes. You said your daughter had not soiled herself, and was not in an unhygienic state.	None	The council, referred to the issue having a negative impact on the child's self-esteem and ability to make friends. In such circumstances, irrespective of the reasons for the issue (i.e. medical / hygiene or both) the school would have to view it from a pastoral care perspective. Pastoral care is the holistic approach by which a school attempts to meet the personal, social, emotional and intellectual needs of every pupil, in order that they can participate fully and gain maximum benefit from everything the school has to offer.
FPS	Not Progressed	The Council have decided to close automated public toilets in the area without considering the (Covid19) facts or providing alternative provision.	None	It is ultimately for the Council to decide whether or not the automated public toilets should remain open – that is a decision they are allowed to take.
PEDR	Not Progressed	The complaint was about the Council's handling of a planning application for the erection of a fence (in retrospect) at your neighbour's property. You said that, while the application had been granted, the fence had taken away your safe line of vision to the road.	None	Where planning permission has been granted, as has happened in this case, we have no power to change the decision of the planning authority and require the fence to be removed or altered. Nor could we instruct the Council to take action against your neighbour, where there is an allegation of a breach of planning control as explained above, it is for the Council to decide whether to take formal enforcement action.

## Scottish Public Services Ombudsman (SPSO) Complaint Recommendations and Service Learning Q2 2020/21

Service and SPSO ref.	Outcome	Customer Complaint(s)	SPSO Recommendation / Areas to consider	Council appropriate practice
Corporate Service	Not Progressed	The Council have failed to action your complaints, and repeatedly ignored them, and as such they have failed to adhere to their own complaints procedure.	None	None identified-the action taken by the Council is reasonable in the circumstances.
HCBS	Not Progressed	Your complaint is that there has been an unreasonably delay by the Council in progressing the application for a mutual exchange of tenancy.	None	The Council's response to your complaint is reasonable in view of the current situation. They have acknowledged your concerns; explained the current restrictions on the service; and have set out that hopefully there will be some movements on applications in the near future.
HCBS	Upheld	<p>The Council failed to consider Miss A's request for a review of an offer of housing in a reasonable or appropriate manner.</p> <p>The Council failed to provide a reasonable level of communication to Miss A in respect of housing matters.</p>	<p>Apologise to Miss A</p> <p>Ensure that the process failings identified are taken into account when considering any future applications for housing made by Miss A</p> <p>Requests for a review of a homeless decision or an offer of housing should be considered and decided on in line with the relevant Council guidance/policy.</p> <p>Service users should receive a</p>	See SPSO Recommendations.

## Scottish Public Services Ombudsman (SPSO) Complaint Recommendations and Service Learning Q2 2020/21

Service and SPSO ref.	Outcome	Customer Complaint(s)	SPSO Recommendation / Areas to consider	Council appropriate practice
			<p>reasonable level of communication when contacting the Council in respect of housing matters.</p> <p>Tenants should be informed if their Housing Officer is expected to be absent for a significant length of time.</p> <p>Communication with service users should be recorded appropriately.</p>	
Operational Services	Not Progressed	You complained about the council's decision to stop collecting your refuse from your property. In a hand-delivered letter dated 8 May 2020 the council requested that your bins are presented for collection from the bottom of the farm road, saying it was becoming more of a danger for their vehicle to access your property because of the state of the road. You responded by email on the same day, setting out a number of reasons why it would not be possible for you to take the bins down the road for collection.	None	SPSO consider it is reasonable to expect the council to respond further, covering points raised by the customer. (the customer raised concerns in an email on 8 May).

## Scottish Public Services Ombudsman (SPSO) Complaint Recommendations and Service Learning Q2 2020/21

Service and SPSO ref.	Outcome	Customer Complaint(s)	SPSO Recommendation / Areas to consider	Council appropriate practice
Social Policy	Not Progressed	You complained about the Council's assessment of Disability Related Expenditure (DRE) and the amount you have to contribute to the costs of your care.	None	The SPSO welcome the Council's review of their statement that one-off purchases are not considered DRE and that they have corrected this statement and taken action to prevent future unclear communication in this regard.

## Scottish Public Services Ombudsman (SPSO) Complaint Recommendations and Service Learning Q3 2020/21

Service and SPSO ref.	Outcome	Customer Complaint(s)	SPSO Recommendation / Areas to consider	Council appropriate practice
Housing, Customer and Building Services	Part Upheld	<ol style="list-style-type: none"> <li>1. The Council failed to take appropriate action in relation to reports of noise nuisance (not upheld); and</li> <li>2. The Council failed to investigate and respond to the complaint appropriately (upheld).</li> </ol>	Apology to be provided to the customer and provide an update about the delay in the investigation and provide a revised timescale for the response.	<ol style="list-style-type: none"> <li>1. The service should ensure that complainants are kept up to date on the progress of their complaint; and</li> <li>2. informed of any delays including revised timescales for complaint resolution.</li> </ol>
Social Policy	Not Progressed	You raised concerns with the Council about the financial assessment	N/A	<p>In summary, the Council asserted that their position is that there was no error in the financial assessment which was carried out in line with applicable legislation, guidance, policy and practice.</p> <p>The Council's response to your complaint appears reasonable.</p>

## Scottish Public Services Ombudsman (SPSO) Complaint Recommendations and Service Learning Q4 2020/21

Service and SPSO ref.	Outcome	Customer Complaint(s)	SPSO Recommendation / Areas to consider	Council appropriate practice
Education Services	Not Progressed	A parent raised a complaint about the fact that they and the other parents were originally advised their children would be placed in a class and a day later advised that this had been changed to a different class	N/A	<p>The council provided a clear response, explaining the steps they took to investigate and the reasons they do not agree with the parent's position.</p> <p>The Council's response to The complaint was reasonable.</p>

## 2020-21 Statistics

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In 2020-21 we received:

- 1,093 review applications – a 5% increase on the 1,038 in the previous year
  - 212 community care grants
  - 740 crisis grants
  - 141 self-isolation support grants

We determined:

- 1,099 review applications – a 6% increase on the 1035 in the previous year
  - 217 community care grants
  - 742 crisis grants
  - 140 self-isolation support grants

Other key figures

- 2,405 – the number of people to contact our Scottish Welfare Fund team. An increase of 29% from the previous year.
- 1,312 – the number of people we signposted to other forms of assistance. 806 of those were signposted to their local council.
- 833 – the number of review requests that progressed to a decision being made:
  - 53% - the uphold rate for community care grant applications. This remains the same as the previous year.
  - 25% - the uphold rate for crisis grant applications. Down from 27% in the previous year.
  - 29% - the uphold rate for self-isolation support grant applications.
- 95% - the percentage of community care grants determined within 21 working days.
- 100% - the percentage of crisis grants determined within one working day.
- 96% - the percentage of self-isolation support grants determined within one working day.

Note: Self-isolation support grants were introduced by the Scottish Government on the 12 October 2020, therefore these figures represent Q3 and Q4 of 2020-21 only.