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The ombudsman

leaves too many punters still angry

Richard Burton



Jim Martin

Failings in public bodies and in complaints systems are much in the news nowadays so it is appropriate to look now at our Scottish Public Services Ombudsman (SPSO), Jim Martin. He represents the pinnacle of administrative justice in that he has the invaluable function of providing recourse to individuals experiencing maladministration by public service bodies.

These include health boards, local councils, housing associations, most water and sewerage providers, the Scottish Government and its agencies and departments, colleges and universities, prisons, and the police complaints commissioner for Scotland (formerly Mr Martin himself). This service is free to the public, in contrast to the very costly final resort of judicial review. Mr Martin was appointed in 2009 and controversially re-appointed for six years in 2011. Many people have benefited from the SPSO's services, so what are the problems?

The SPSO handles around 4,000 complaints and inquiries about public bodies each year, despite not publicising his services. Of course, a proportion of the complaints are invalid, especially as the SPSO can only deal with 'maladministration' and not everyone grasps the limitations of this term. Our public services generally serve us well, yet many individuals suffer appalling experiences with them.

The SPSO rightly sees the numbers of complaints he handles as unsatisfactorily high because they indicate failures in the complaints systems within the various public bodies. He has an important role in improving these systems, but his major role is in investigating those complaints that are within his remit. Here there are two problems. One is that there is considerable dissatisfaction with his decisions. The second is that, to safeguard his independence, the ombudsman is a crown appointee and, though nominated by parliament, he is largely unaccountable to it or anyone else.

Indeed there is no public body outside of the SPSO's office that monitors or investigates the quality, effectiveness and justice of its rulings. The present situation may thus be compared with that of a baked bean factory in which all of the production processes are carefully monitored – but no-one tastes the beans except the public.

One might be happy with that if there were general satisfaction with the SPSO's rulings, but it is well-known to public and MSPs that some SPSO judgements are seriously unjust. We might try to prove the point by recounting harrowing tales of complainants rebuffed for illogical or arbitrary reasons. However, most cases are complicated to describe and could be dismissed too easily and wrongly as merely 'anecdotal'. So we focus here on evidence from the SPSO's own website.

From 2007 to 2010, the SPSO monitored complainant satisfaction by means of questionnaires analysed by private companies. These revealed high levels of dissatisfaction with various aspects of the SPSO's case handling. According to the latest survey statistics

(produced by Craigforth Consultancy and Research in 2010), 40% of complainants responding to the survey were dissatisfied with their treatment by the SPSO.

In the year 2010-2011 there were 3,351 complaints to the SPSO. Putting these figures together, one arrives at a tentative estimate of around 1,340 dissatisfied complainants in a year. Therefore, over the 10 years the SPSO has been in existence, there must be well over 10,000 dissatisfied complainants. Mr Martin himself has acknowledged the large number of emails he gets about his rulings.

The SPSO discontinued these embarrassing surveys, but in 2012 Craigforth investigated complainant satisfaction by focus group and interview. Again high levels of dissatisfaction were revealed. Mr Martin makes the fair point that there will always be dissatisfied complainants. However, many of the SPSO staff are trained in customer services and should have some understanding of the psychology needed to improve complainant satisfaction – and therefore public trust in the SPSO – by full, honest and sympathetic discussion of the issues, preferably face to face. That should make the SPSO confront any illogicality and arbitrariness in his decisions – to the ultimate benefit of both SPSO and public.

Mr Martin acknowledged this deficiency in that he responded to the latest Craigforth report by saying how his investigators would be required to improve their interactions with complainants. About time. Thus, not only are many SPSO investigations inadequate and ineffective, but the organisation is insufficiently skilled even in persuading complainants of the justice of its correct rulings.

Our concern is not only with injustice in the abstract, but with the fact that maladministration within the public services, and sometimes their lack of accountability, does lead to serious psychological stress. The effects can include the wrecking of individual careers, mental illness and even homelessness and suicide.

The common lack of trust in administrative justice, officialdom and public bodies is demoralising to the public and undermines social health. People are understandably angry, frustrated and desperate when they are fobbed off by officials, with the result that a proportion of complaints submitted to the SPSO are inappropriate or presented less than optimally. Whilst SPSO staff should be trained to recognise this and react helpfully and sympathetically, many complainants are simply dismissed as 'vexatious' or 'persistent'. Such labels, though no-doubt appropriate in a few instances, are sometimes used by the SPSO as an excuse for discontinuing investigations. This tactic has also been used by Mr Martin as means of denigrating organisations that campaign for SPSO reform.

The writers of this article are members of one such organisation, namely Accountability Scotland (accountabilityscotland.org), which has as one of its aims the reform of the SPSO. To this end we have submitted much evidence to the Scottish Parliamentary Corporate Body (SPCB) which is responsible for recommending the appointment of SPSOs. The SPCB maintains that it, and parliament generally, has no power over the SPSO (aside from re-appointing him, which they did far from unanimously) and the SPCB has informed ourselves and MSPs to that effect.

The Ombudsman Act of 2002 states otherwise. According to this the 'Ombudsman must lay before the parliament annually a general report on the exercise of the ombudsman's functions' and 'Parliament may give the ombudsman directions as to the form and content of this report and the ombudsman must comply with any such direction'. Moreover, the ombudsman 'may be removed from office by Her Majesty as a result of a vote in parliament and in other respects, holds office on such terms and conditions as the parliamentary corporation may determine'. Mr Martin has himself written: 'We recognise our accountability to the SPCB'.

The act thus makes clear that parliament may, for example, direct that the ombudsman's report includes one from some independent body that analyses and quantifies complainant satisfaction more fully than Craigforth has done and that identifies shortcomings, not just in SPSO-complainant interactions, but also in procedures likely to affect the adequacy and justice of SPSO rulings. The Craigforth reports illustrate two quite different approaches that could be developed to be more informative. Indeed, not all the information elicited by Craigforth has been published. Fuller reports need not infringe statutory confidentiality provisions.

So our parliament is not completely without powers to monitor and improve the performance of the SPSO. Indeed, there is an accepted method of scrutiny that has already been used, for example the quizzing of the SPSO by the parliamentary local government and restoration committee on 14 March 2012. This was in relation to a petition which called 'on the parliament to urge the Scottish Government to carry out urgently an independent, "fit for purpose", review of the Scottish Public Services Ombudsman (SPSO)'.

Although the meeting accomplished much less than one might hope, the acceptability of such a confrontation is at least established. The same committee questioned the SPSO again on 23 January 2013. Its members, clearly aware of public disquiet, asked further incisive questions, but Mr Martin again demonstrated his considerable skill in not quite answering them. More time should clearly be allowed for preparation and questioning.

The procedures of the SPSO are audited by Audit Scotland, but a complete audit of value for money has yet to be submitted to parliament. As conventionally defined, the audit would include the quality and effectiveness of the outcomes of those procedures, but the relatively meagre budget of the SPSO presumably ranks it low on Audit Scotland's value-for-money priorities.

On the failings of the Mid Staffordshire NHS Foundation Trust, Robert Francis QC commented that: 'An institutional culture which put the "business of the system ahead of patients" is to blame.....'. For 'patients' now read 'complainants'. The inquiry into that trust revealed major failings in the UK Parliamentary and Health Service Ombudsman (PHSO). This is very relevant to the SPSO in that Mr Martin contracts his health service complaints to the PHSO. Although we are aware of serious deficiencies in the handling of a case involving the Glasgow Health Board, the PHSO achieves much higher satisfaction rates than the SPSO.

Several problems with the SPSO could be solved easily. His investigators should, where practicable, have face-to-face discussions both with complainants and with those complained about – as in police investigations. Complaints should be accepted from organisations

and not just from individuals. The imposition of a 12-month time bar on complaints should be dropped. The SPSO should be compelled to give the reasons for his judgements.

Finally, the ombudsman should be a qualified investigator in the field of administrative justice, and likewise his relevant employees. If it is really true that he fails to see the difference between checking procedures and checking the quality and effectiveness of outcomes, then much of the problem with the SPSO could conceivably be put down to a blind spot for failings. That would be another reason for feedback on the beans.

Richard Burton is secretary of Accountability Scotland and is a physiologist who has widened his interest to include the pathology of public bodies