

**EVIDENCE TO THE REVIEW OF SPCB SUPPORTED BODIES  
COMMITTEE FROM GREGOR HAMILTON**

Dear Sirs

I understand that a committee as above has been established, and seeks input for consideration.

I should like the committee to consider the performance of the Scottish Public Services Ombudsman from inception to the present date and, in particular, to Petition [PE1163](#) submitted by me to the Public Petitions Committee. Also relevant to the matter is Petition [PE1212](#) by a person unconnected to me, but which largely supports the gist of the representations I have made.

I enclose a number of attachments which may prove helpful in establishing the background to the widespread dis-satisfaction with this body.

Also of concern is the attitude of Audit Scotland in this matter. Despite a wealth of evidence to suggest that the SPSO is neither efficient, effective nor providing value for taxpayers' money, Audit Scotland have displayed a perverse disinclination to look further into the operations of the SPSO. As the only public body with powers to conduct an investigative audit, the Auditor General's reluctance to become involved seems itself to be a matter of considerable concern.

If I can supply any further information to the Committee, please let me know.

Yours sincerely

G.A. Hamilton  
30 November 2008

**SUPPORTING DOCUMENT (1)  
FROM ROBERT W BLACK, AUDITOR GENERAL FOR SCOTLAND**

Address: 110 George Street  
Edinburgh  
EH2 4LH

Telephone: 0845 146 1010  
Fax: 0845 146 1009

Website: [www.audit-scotland.gov.uk](http://www.audit-scotland.gov.uk)



Mr Frank David  
Assistant Clerk to the Petitions Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

7 October 2008

Dear Mr David

**Consideration of Petition PE1163**

Thank you for the opportunity to assist the Committee by responding to the issues raised in petition PE1163. I do not consider that it would not be appropriate for me to undertake an examination of the economy, efficiency and effectiveness of the Scottish Public Services Ombudsman (SPSO) at this stage.

As Auditor General I have responsibility for securing the audit of most public bodies in Scotland, including the Scottish Government, its executive agencies, non-departmental public bodies and further education colleges. I may also initiate examinations into the economy, efficiency and effectiveness with which bodies and office-holders have used their resources in discharging their functions. I have no responsibility for operational decisions taken by individual public bodies and, as such, cannot comment on the way bodies such as the SPSO handle any specific case.

I deliver examinations of economy, efficiency and effectiveness through a forward work programme. The programme is produced after a risk assessment of the issues affecting public bodies. One important consideration is the added value any proposed examinations might have in relation to work being undertaken by other bodies such as the Scottish Government in the same timeframe.

I have no immediate plans to undertake an examination of the economy, efficiency and effectiveness of the SPSO. I am aware of the ongoing work following the Scottish Government's response to the Crerar review of the Scrutiny of Public Bodies. Action groups have been established to consider a range of recommendations made by Lord Crerar. These include groups looking at the extent to which current complaint handling systems in Scotland are fit for purpose and at governance and accountability for bodies involved in scrutiny such as SPSO. The groups are in the course of reporting their findings to Ministers and there is provision in the current Parliamentary legislative programme for a bill to take forward any action Ministers may consider necessary. I consider that it would be inappropriate for me to undertake an examination at SPSO at this time.

I hope this information is of use to you.

Yours sincerely

**SUPPORTING DOCUMENT (2)  
FROM DIRECTOR OF POLICY & DEVELOPMENT, SPSO**

29 October 2008

Assistant Clerk to the Public Petitions Committee  
Room TG.01  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Dear Mr

Thank you for the opportunity to respond to the issues raised in petition PE1163. At the outset I regard it as appropriate to state that the Scottish Public Services Ombudsman (SPSO) has no objection to an audit being carried out by Audit Scotland should they decide that they wish to undertake such an examination. We strive to be a Best Value organisation, and are committed to continuous improvement.

I note, however, that the Auditor General for Scotland, in his letter to the Committee of 7 October 2008, states he does not regard this to be an appropriate time for him to undertake such an examination on account of the ongoing work undertaken by the Scottish Government and the Fit-for-Purpose Complaints System Action Group (FCSAG) established following Professor Lorne Crerar's review of regulation, audit, inspection and complaints handling of public services. The FCSAG group have now reported and made a series of recommendations to Ministers which have the potential to change the remit of the SPSO. Ministers have not, to date, responded. I note that the Convenor of the Petitions Committee outlined this context at the Committee's meeting on 10 June 2008.

Your Committee may be interested in the SPSO's general approach to good governance and continuous improvement. You will be aware that in 2006 the Scottish Parliament's Finance Committee conducted a review of the accountability and governance of the Scottish Parliamentary Commissioners and the SPSO. The SPSO has carefully studied the Finance Committee's recommendations and the Scottish Parliamentary Corporate Body's response. We consider that we are already in general compliance with the appropriate corporate governance requirements – for example by giving the Local Government and Communities Committee an opportunity to scrutinise our performance following the laying of our annual report before the Parliament. We also submit, on a voluntary basis, regular performance reports to the Scottish Parliamentary Corporate Body, and make available more widely a considerable amount of information about our strategic planning and our performance.

The audit submitted to the Auditor General for the year 2006/07 by our auditors, , stated that the SPSO's governance arrangements operated well and within a generally sound control environment, commensurate with the scale of the Ombudsman's operations. They did, however, note the requirement to establish an internal audit function and to that end in June 2007 our Audit Advisory Committee was established under the Chairmanship of Sir Neil McIntosh. The Audit Advisory Committee assists the SPSO Board and Management Team by constructively challenging our plans and performance reports, with a view to continuously improving our business planning, our operational efficiency and our effectiveness.

Let me turn now to the specific issues raised by Mr Hamilton. Although the petitioner has said that the purpose of raising the petition was not that Audit Scotland would look into the circumstances of his individual complaint he has in fact made substantial reference to that complaint, including providing the SPSO reference (200501297) under which it was considered. As can be seen from information available on our website, that complaint has been the subject of an investigation. That investigation was completed in May 2006 and, as is our normal practice, the full report of it is posted on our website. Generally we cannot comment in public on the detail of an individual complainant's case. However I think it appropriate to record that we do not accept the accuracy of what the petitioner says about the investigation of his complaint and the report on that investigation. Nor do we accept the validity of the general conclusions he draws. I would be happy to provide further details to the Committee if that would be helpful.

More generally, I note that a substantial number of the comments contained on the forum associated with the petition seem to originate from individuals not content with the decisions reached by this or other Ombudsman offices on their complaints. It is the role of the SPSO to determine complaints received from aggrieved members of the public against public service bodies in Scotland. In so doing we will often decide a matter one way or another. Inevitably, we frequently find that the individual or body whom who does not regard the SPSO's decision as being favourable remains aggrieved. A similar point was raised by Robin Harper MSP during the Committee's initial consideration of the petition where he stated:

'It is important to keep in mind that, by the time a complaint comes to the Scottish Public Services Ombudsman, the complainer will have gone through one or two or more complaints procedures. Clearly, it would be unreasonable to expect the Ombudsman always to come to a decision that will please all those who present a complaint...'

I am grateful to Mr Harper for his stating this understanding of the difficulties of determining complaints between two opposing views held by parties but I do also recognise that the service the Ombudsman's office provides to the public and bodies under our jurisdiction can always be improved. For that reason we instigated a comprehensive survey seeking feedback from complainants. Mr Hamilton gives his interpretation of the results in his

submission to the Committee. This was referred to by Angela Constance MSP in the report of Committee's initial consideration of the petition.

The full results of the survey were published in February 2008. This covered complaints dating back to July 2006, a time when the office was under pressure because of rapid increases in our caseload that were not matched by the same rise in resources. This was reflected in the survey results: many complainants were concerned about the time taken to reach decisions on their cases. The study also showed us that: complainants' understanding of our role and powers was low; many complainants found our consideration and investigation stages lacked empathy; and only a minority felt that their expectations had been met. Similar to surveys carried out by other ombudsman offices, there was a correlation between the outcome of the complaint – whether it was investigated or not and then whether it was upheld or not – and the level of complainant satisfaction. More positively, the survey showed that awareness of our office was high; there was good feedback about our accessibility; the quality of our website and leaflets and the service we provide at the initial contact stage were highly rated; there were high ratings for clarity of written communication; and satisfaction was higher among recent contacts compared with those whose complaint had been handled under our process before October 2005 when it underwent significant change. In light of the findings, we have taken action on four main fronts:

- Seeking to better manage complainants' expectations
- Giving more explanation about why we have considered it appropriate to determine a complaint without a formal investigation
- Improving the accessibility of our Complaints Investigators
- Committing to a rolling survey of complainants beginning in August 2008 to provide regular feedback and spot potential problems early.

I trust the information above is of interest to the Committee and will help it reach a conclusion on the petition in question. If I can be of any further assistance in this matter then please let me know.

**SUPPORTING DOCUMENT (3)  
SUBMISSION BY PETITIONER, GREGOR HAMILTON**

**PETITION PE1163  
RESPONSES TO PETITION BY SPSO, AUDIT SCOTLAND AND THE  
SCOTTISH GOVERNMENT**

**SUBMISSION BY PETITIONER**

Having carefully read all three responses, I would ask the Committee to consider the undernoted points :

1. SPSO In his response on behalf of the SPSO Mr.        has commented on, amongst other matters, my inclusion of the SPSO Reference No. and some details of the complaint made; presumably he infers that I should not have done so. My inclusion of this information was to satisfy the Committee that I was a genuine complainant with a genuine complaint - at the time of submitting the Petition I was not in a position to know that this information would be promulgated further although my approach throughout has been that I have no objection to any of the circumstances being made public, and that remains my position.

Elsewhere in his reply Mr.        refers to my “interpretation” of the ORC International Survey of 2007 - the Petition contains data lifted directly from the Report referred to and the figures speak volumes for themselves, without any necessity for “interpretation” or embellishment by me.

In her 2008 Annual Report the Ombudsman chose “Trust” as her theme and decried the apparent collapse of trust by the public in public bodies in Scotland. Whilst agreeing fully with these lofty sentiments I would just point out that the actions and inactions of the SPSO in the period 2002 to the present have if anything exacerbated this collapse of trust. For example, it has emerged following a FOI request by a person unconnected to me that complaints against the SPSO itself were divided into two categories - “service” complaints and “comeback” complaints. Only the former (numbering 147 during this period) were ever reported to MSP’s; “comeback” complaints (i.e. complaints about the investigative process, the conclusions drawn and decisions taken) during the same period numbered 641 and have never been reported despite the reporting regime supposedly in place at the SPSO. The failure to report this category of complaint suggests that the SPSO has been in denial to the extent that the true picture of dissatisfaction has been concealed from MSP’s. It is worth mentioning, I believe, that the fact of this non-reporting was extracted with some difficulty from the SPSO who are on record as complaining to the “requester” that he/she has made previous FOI requests. A good deal of the SPSO’s response is given over to the fact that substantial changes were made in the SPSO’s procedures after October 2005, and to the fact that the Fitfor- Purpose Complaints System Action Group have made certain recommendations to Ministers, which may result in an improved and expanded service to those having cause

to complain; this does not begin to address the question of the (at least) 641 persons who consider that the SPSO did not properly handle their complaint, either through a presumption in favour of public bodies, ineffectual investigative procedures or sheer inefficiency prior to October 2005.

In my own case, the Ombudsman's "Monthly Commentary" noted that a "finding" had been made and that my complaint against a public body had been partially upheld – this document as the Committee will know has a wide circulation but no legal effect. The "Final Report", however, made no mention of either fact but went on to "commend" the body for doing what it was statutorily bound to do anyway. This has allowed the body in question to ignore the question of maladministration, and to continue as though nothing had happened. I suggest this represents a considerable waste of public resources and is yet a further reason why Audit Scotland's stance is unsupportable.

No reasonable person would expect every complaint to be well-founded or upheld by the Ombudsman, but the figures suggest that the large numbers not upheld or otherwise dismissed are a statistical improbability in the overall picture. Mr. offers in his response to provide Committee Members with further details of my specific complaint; it might well serve the interest of all parties were Members to take this offer up and note, amongst other things, the apparently intimate relationship between SPSO staff and staff within the body complained of - something which in itself is not likely to foster a dispassionate examination of the facts. The SPSO chose to disregard the actions of a public body effectively manipulating the relevant legislation to improve its' performance figures whilst disadvantaging a member of the public, and ignored the possible application of the Disability Discrimination Act to this case - in so doing it precluded me from seeking redress under that Act as it had become time-barred.

2. AUDIT SCOTLAND The response from the Auditor General for Scotland is not entirely unexpected, following as it does a well-rehearsed routine. What seems to have been addressed mainly is the possibility that the SPSO will undergo major change in the future both in the way it operates, and in the scope of its' remit. The Petition, on the other hand, seeks to have the SPSO' past operations examined. A promise of better performance in the future is scarcely good reason not to audit past performance, which as I understand it, is what audits are often for.

The breadth of dis-satisfaction with the SPSO, backed up by facts and figures, renders Audit Scotland's perverse disinclination to explore this body unsupportable.

3. THE SCOTTISH GOVERNMENT This response might well be a mirror image of Audit Scotland's view of the situation. The smokescreen of FCSAG's recommendations to Ministers seems to be just that - a smokescreen to cover inaction regarding the SPSO's dismal performance since inception and an attempt to sweep under the carpet the disappointment and disillusionment of

hundreds, perhaps thousands, of those who have neither the means nor the inclination to seek a Judicial Review.

**CONCLUSION** The Petitioner requests the Public Petitions Committee to look once more at Audit Scotland's response, and to consider whether a further approach or other action might be taken to bring the operation of the SPSO fully to MSP's attention.