

EVIDENCE TO THE REVIEW OF SPCB SUPPORTED BODIES COMMITTEE FROM DR J WALLACE HINTON AND DR RICHARD F BURTON

In response to the Committee's general call for evidence, our Report provides objective evidence on the biased functioning of the Scottish Public Services Ombudsman's office. It is based on experience with *two* independent sets of complaints against Glasgow City Council submitted by Dr Richard F Burton on behalf of the MPAG (Metered Parking Action Group - an organization which supports commuter parking control, but which was formed because of totally inadequate public notification and consultation on a Council Order). Dr Burton worked with the assistance of MPAG colleagues (especially Dr J Wallace Hinton) and many members of the public.

Our report here relates directly to the published remit of the Scottish Parliamentary Committee which is to report on whether "...alterations should be made to the terms and conditions of the office-holders and the structure of the bodies supported by the SPCB.....and to make recommendations accordingly".

On the basis of our devastating experience, explained below, we propose that the SPSO Office be abolished in its present form and re-established with unbiased lawyers taking on the jobs currently enjoyed by ex-Council employees. (Currently *eleven* SPSO employees are from the *City Councils* alone!). We have substantive evidence of a cosy relationship of Council employees with Ombudsman officials. (The latter could be employed instead in dealing with complaints about prisoners and the water industry within the SPSO as proposed by The Cabinet Secretary, John Swinney MSP, who also suggested re-deployment when Office functions are changed.)

Our report is directly relevant to the statement made by John Swinney in the parliamentary debate on the Crerer Report " We will formalise the independence of bodies that scrutinise services to give public assurance that their reports and findings are free not only from the influence of those delivering the services, but from political interference." It can be seen that our report is directly relevant to the five principles enunciated by Prof Crerer in her Review of 2007 on complaints handling of public services in Scotland, section 7.3. She states: "We have concluded that five principles should govern the application and use of external scrutiny – public focus; independence; proportionality; transparency; and accountability."

From examination of the Crerer Review (Sept 2007) into complaints about the handling of public services in Scotland, it is clear that the views of public users of the SPSO regarding Councils had not been sought. We therefore report on our depressing experiences of the biased way our two submissions about the behaviour of Glasgow City Council were brushed aside by the SPSO officials over the past three years.

Our two separate submissions to the SPSO were put forward by Dr R F Burton, with many signed statements and supporting evidence. They concerned a total of 42 specified examples of mal-administrations, illegal attacks on civil liberties, lying and disregard of democratic procedures. These showed that Council officials used lack of public notification and devious undemocratic procedures to bulldoze through an unpopular money-making Order. None of the latter affected Dr Burton personally, so in this respect he was a disinterested party. The SPSO finally supported the Council on *every* issue.

Our experience of how the SPSO deals with complaints

- 1) **The SPSO misrepresents evidence, ignoring principles of elementary logic**, to provide excuses for not taking a decision against the City Council. Extensive corroborated evidence of lack of public notification of an Order (eg seriously inadequate posting of public notices) was brushed aside by the Ombudsman personally as well as by her officials. (In one case she accepted our evidence but then downgraded its significance – documentation available.)
- 2) **The Ombudsman was not prepared to seriously consider our representations from third parties** on illegal undemocratic behaviour of City Council officials in thwarting free speech even when signed statements were made available with pictures of incidents (and even a video of physical attack offered).
- 3) **Strong evidence of bias by the SPSO**
 - (a) *Cosiness of correspondence* with the Council (in both directions) suggests lack of impartiality (copies available). Correspondence with us was correctly formal. (NB these cosy relations had clearly developed over years, since, in our case, none of the SPSO officials involved had been previously employed by the City Council.)
 - (b) It is *statistically highly improbable* that of around 42 complaints (23 + 19) in two submissions to the Ombudsman, NONE was considered valid. Almost all of these complaints concerned mal-administration or unlawful behaviour by Council officials, yet the SPSO rejected *everything*.
- 4) **SPSO was not concerned with gross violations of Civil Liberties** by the Council but concerned *only* with letter of the law regarding mal-administrations relating to implementation of an Order. The SPSO accepted the City Council's general account of events and statements from officials who were not involved in the illegal activities (thwarting free speech) whilst dismissing extensive signed evidence from members of the public who were directly involved in incidents (even physical violence to stop the silent holding-up of a notice by an elderly man).
- 5) **The SPSO provides 'fob-off' replies on a number of important issues** of complaint, with the Ombudsman herself merely stating: "Your comment has been noted".
- 6) **SPSO does not consider prevarications by the City Council as deserving censure**. Clear evidence of lying is ignored. For example, Council lying about the reason for introducing road charges as given in the Council's own earlier meeting report and false statements about requests from an Area Association to back up a proposed Order.
- 7) **Lack of Openness by the SPSO** is illustrated by the secretiveness of correspondence with the Ombudsman by having all correspondence from that office marked "confidential". Why should this be so, when the matter is of public importance and the complainant's correspondence is not marked "confidential"?
- 8) **SPSO is not concerned with disability discrimination legislation** and the flouting of this in regard to public notification of Orders to the housebound and the needs of carers of housebound disabled. Dr Burton was told by the SPSO that he could not complain on their behalf and that complaints have to be submitted by single individuals; but how can housebound disabled complain as a group? How can housebound disabled people take any action when they receive no notification of Council Orders? The SPSO ignores the logic.
- 9) **SPSO dismissed some evidence on the grounds that legal interpretation was involved**. This is ridiculous when the statutes are in simple language. It is also somewhat astounding that the SPSO states that it has no access to lawyers.
- 10) **Unacceptable time taken for SPSO to deal with our Complaints**. Replies to our correspondence with the SPSO have taken much time and SPSO did not complain to the Council about its considerable delay in responding to correspondence. For our first submission we had to wait *two years* for the Ombudsman's final Investigation Report

(Case 200501013). It took more than one year (18 May 2007 - 13 June 2008) before we received the final SPSO decision not to investigate further. Each of these cases has involved us in months of voluntary work assembling evidence and writing necessary letters.

- 11) **The Ombudsman refused to recognize the status of complainant** (despite requests) in their Investigation Report to the Scottish Government (Case 200501013). The complainant (Dr R F Burton) acted as representative of a properly constituted organization (MPAG), but the Ombudsman insisted on calling him merely "Mr C", whilst Glasgow City Council was identified with its proper title. (NB MPAG had collected over 1000 signatures of people complaining about inadequate consultation on the Council Order, the main issue in our SPSO submission. This petition underpinned a *successful* Petition to the Scottish parliamentary Petitions Committee.)
- 12) **Biased terminology used in the Report** (Case 200501013) like "Mr C *believed*" when it should have stated "Mr C *knew* (and indeed had corroborated evidence for)". This demeans the status of Mr C's complaint (ref para 73 p15; 75 p 16)

We have a mountain of evidence to back up our brief report to you (which has to be restricted to four pages). This evidence can all be made available if you request it. Furthermore, we are prepared to meet you in Edinburgh if requested.

The outcome of our two multifaceted complaints of mal-administration against the Council was that the Council was completely exonerated. Our first submission, which took *over two years* to investigate resulted in an SPSO Report which was passed to the Scottish Government. However, the second submission, which involved even stronger allegations and evidence, was not considered as worth proceeding with after *over one year* of arduous correspondence.

We consider that our experience of the behaviour of the SPSO constitutes a devastating travesty of Scottish democracy and social justice. We are reminded of Andrew Carnegie who, on one of his many visits to Scotland, stated: "The great error of your country is that things are just upside down. You look to your officials to govern you instead of you governing them".

We think that when you consider our report you will see how the five principles which Professor Crerar said should govern the application and use of external scrutiny, namely, "*public focus; independence; proportionality; transparency; and accountability*" have been flouted by the SPSO and we hope that your Committee can recommend appropriate reforms.

Dr J Wallace Hinton
8 January 2009

Dr Richard F Burton