

Submission from Scottish Public Services Ombudsman

Introduction

I am pleased to contribute evidence to this Inquiry which addresses issues on which I have sought to generate debate since my office was established by the Parliament in 2002. I present my evidence by reference to the four heads of the Inquiry's remit. I summarise in Section 5 at the end of this evidence my answers to the five specific questions posed in the Convener's letter to me of 1 March.

Growth in the number of bodies since devolution

- 1.1 The Ombudsman role in Scotland is not a post-devolution creation. The first Ombudsman with responsibilities in Scotland was appointed in 1967. In 1999 there were four Ombudsmen dealing with complaints about devolved public services in Scotland.
- 1.2 The Scotland Act 1998¹ required the Scottish Parliament to consider arrangements for making complaints about the Scottish Executive. The Parliament introduced something much more imaginative and wide-ranging: merging the offices of the former Ombudsmen to create a 'one-stop-shop'. A key aim was to provide simpler, more accessible mechanisms for the public to make complaints.
- 1.3 The Parliament also extended our remit to include new areas: mental health complaints previously handled by the Mental Welfare Commission; and complaints about the enterprise network which had a separate Adjudicator system. Our work grew in April 2005 with implementation of a decision to simplify NHS complaints processes by removing Independent Review Panels (IRPs) so that complaints come straight to us if attempts at local resolution have failed. Our jurisdiction was extended again in October 2005 to include further and higher education.
- 1.4 We now cover local government, the NHS, housing associations, universities and colleges, Scottish Executive departments and agencies, regulators, NDPBs, cross-border bodies, the enterprise network, the Scottish Parliamentary Corporate Body (SPCB), and Crown appointees such as the Auditor General, and the Public Appointments Commissioner. Our remit continues to extend as new bodies are created and the range of public services delivered by the private and voluntary sectors increases.
- 1.5 These developments represent a considerable reduction in complaints handling and related bodies in Scotland rather than a growth in the number of offices.

Processes for setting and scrutinising budgets

¹ <http://www.opsi.gov.uk/acts/acts1998/80046--i.htm#91> (section 91).

- 2.1 In its call for evidence the Committee raises important questions about how budgetary control can be balanced with independence. For Ombudsman offices in most democracies that involves a division of responsibilities between the executive and the legislature. For example, in the Australian state of Queensland the Ombudsman is an officer of Parliament and reports through its Legal Constitutional and Administrative Review Committee (LCARC). The Ombudsman submits annual estimates to the state government but the Minister responsible for setting the Ombudsman's budget must consult the LCARC in developing the budget.
- 2.2 The UK Parliamentary Ombudsman reports to the Westminster Parliament through its Public Administration Select Committee and submits annual estimates to HM Treasury. Her responsibilities to Parliament, accountability and relationship with HM Treasury are set out in a *Statement of Responsibility*².
- 2.3 The Scottish Public Services Ombudsman Act 2002 requires the SPCB to pay any expenses incurred in the operation of my office. As Ombudsman I am required to submit annual accounts to the Auditor General for Scotland for audit. And, as the person designated by the SPCB as accountable officer for my office, I must ensure the propriety and regularity of the office's finances and that resources are used economically, efficiently and effectively. In this regard, since my office was established I have successfully operated within budget.
- 2.4 It could be argued that there is a tension in an arrangement whereby responsibility for budgetary oversight of my office rests with the SPCB, a body within my jurisdiction and whose chief function is to provide the Parliament with property, staff and services. By contrast, responsibility for examining Audit Scotland's proposals for its use of resources and expenditure rests with the Scottish Commission for Public Audit constituted under the Finance and Accountability (Scotland) Act 2000. It seems to me that this arrangement, and those I have outlined in paragraphs 2.1 and 2.2, provide good models for balancing budgetary control and independence.
- 2.5 The establishment of the annual budget is a detailed process based on the requirement to resource the delivery of our strategic objectives, as articulated in our annual business plans. The strategic objectives and the business plans are drawn up by the SPSO Executive Board. These objectives and plans are centred on our legislative obligations and include operational activities (complaints investigation, enquiry management, and advice giving), outreach work (public awareness raising and feedback to public bodies), general office functions, and specific improvement initiatives (eg projects and investments). In line with principles of accountability and

² http://www.ombudsman.org.uk/about_us/governance/statement_of_responsibility.html

transparency, I publish the business plan and our objectives in our annual reports.

- 2.6 The largest element of our budget is staff costs associated with complaints investigation plus linked revenue expenditure. The budget for specific improvement initiatives is agreed on an item-by-item basis, following the required procurement process. The total budget is reviewed and approved by the SPSO Executive Board in advance of submission for scrutiny by the SPCB. The SPSO Executive Board also formally reviews actual expenditure against budget at their monthly meetings.

Lines of accountability

- 3.1 I am accountable to the Parliament not only for my finances but also through the requirement that I lay before the Parliament reports of all of my investigations and, annually, a general report on the exercise of my functions. In addition I consider that effective accountability must be built into all our processes and procedures.
- 3.2 Accountability was the theme of my 2004-2005 Annual Report³. In that report I set out how my office sought to enhance our accountability as well as improving the accountability of bodies under our jurisdiction. We made significant changes to our reporting practice in order to present to Parliament the outcome of a far greater number of our decisions than previously. In so doing, we are able to make our reports available to all the bodies under our jurisdiction and to the general public. Other ways in which we have sought to improve our accountability and transparency are by constantly reviewing the efficiency and effectiveness of our business operations; developing the quality and consistency of our complaint handling; welcoming feedback and complaints about our service; supporting internal and external audits of our services through our Audit and Risk Committee and by engaging with the general public, bodies under our jurisdiction, MSPs, members of the Executive and other stakeholders.

Potential overlaps

- 4.1 Before addressing this issue it is worth clarifying the role of Ombudsmen. An Ombudsman is not a regulator, an inspector or a 'tsar'. The role is distinct: quasi-judicial and integral to the administrative justice system. Sweden was the first country to introduce the office of Ombudsman in 1809. Since then almost every democracy across the world has set up such an office⁴. What has changed and will continue to change is the context in

³ SPSO Annual Report 2004-2005 pp 5-7.

<http://www.scottishombudsman.org.uk/images/downloads/annualreport2005.pdf>

⁴See, for example, 'Human rights and non-judicial remedies – The European Ombudsman's perspective', Speech by the European Ombudsman, Professor P. Nikiforos Diamandouros, at the London School of Economics and Political Science London, 30 November 2005 <http://www.euro-ombudsman.eu.int/speeches/en/2005-11-30.htm>

which the Ombudsman operates. For example, countries like Sweden have recently developed the role of the Ombudsman to include a more specific responsibility for human rights⁵.

- 4.2 Ombudsmen offer a free and impartial service and provide a route by which members of the public who claim to have suffered an injustice in the delivery of a public service can seek redress from an independent body without recourse to the courts. As such my office is one of the key checks and balances in the democratic process providing a means by which members of the public in Scotland can hold public bodies and the Scottish Executive to account.
- 4.3 The core work of investigating complaints is demand led and determined by the general public. The number of complaints and enquiries recorded by my office has increased from 1791 in 2003-04 to 2377 in 2004-05 to 3698 in 2005-06. In addition to responding to public demand to investigate complaints, the SPSO has a proactive function in raising public awareness of the right to bring a complaint to the Ombudsman, providing advice to those who contact us, and in promoting good administration in the bodies under our jurisdiction. This gives my office a uniquely comprehensive understanding of the delivery of public services. Evidence from our investigations is used to help bodies across Scotland learn from real examples of what went wrong to improve services in the future. In this way we make an important contribution to policy and practice as well as providing justice for the individual.
- 4.4 The Ombudsman does not operate in isolation. Since devolution, new bodies have been created and it is important that the different roles complement one another. We have done much to reduce potential duplication - for example, through memoranda of understanding with other organisations and publishing guidance for the public such as the *Route Map*⁶ guide to complaining about public services in Scotland produced in cooperation with Audit Scotland and others.
- 4.5 In my view office-holders have a responsibility to explore all opportunities for joint working, not least to lower the cost of delivering our services. Real savings have already been made - for example, together with the Scottish Information Commissioner, the Commissioner for Children and Young People in Scotland and the Commissioner for Public Appointments in Scotland, we agreed to purchase the same financial system and used the same adviser to install it and train staff in its use. This brought economies of scale, as well as providing back-up for contingencies. Further, the case-management system developed by my office has been adapted for use by the Scottish Information Commissioner, the Welsh and Northern Ireland

⁵ Ibid

⁶ <http://www.audit-scotland.gov.uk/publications/pdf/2004/Routemap.pdf>

Ombudsmen and other bodies in Scotland and beyond. This also represents savings to the public purse.

- 4.6 I am currently exploring the scope for further cooperation between my office and others in terms of sharing both accommodation and services (HR, finance, IT, procurement, etc.) and the management of complaints investigation. I am confident that such cooperation could generate significant operational efficiencies and a more coordinated service for the public.
- 4.7 I do not consider that shared services are necessarily dependent on co-location. With the ongoing development of web-based systems, shared services can now be managed efficiently and supplied across different locations. This would allow office -holders to focus on fulfilling their statutory duties by drawing on the functional strength of another body.
- 4.8 However, our scope for joint working and sharing services has been limited by the lack of a framework design for the administrative architecture in the first years of devolution. This limitation has become more evident as more bodies are proposed. I addressed such issues in my recent evidence to the Justice Committees on the Scottish Commissioner for Human Rights Bill⁷ and the proposal in the Police, Public Order and Criminal Justice (Scotland) Bill for an Independent Police Complaints Commission for Scotland⁸.
- 4.9 Creating a governance framework design would achieve a number of objectives. First, it would facilitate more joint working; second, it would identify any gaps or duplication in the current jurisdictional framework; and third, it would avoid the likelihood of overlap and confusion of roles when creating new functions or office-holders. The Committee's Inquiry is, therefore, timely as it offers the opportunity to take stock. It is important that this work complements the review of governance arrangements being carried out by the SPCB and other work being undertaken by the Scottish Executive. Scotland has created a new Parliament with new procedures and a new way of making policy. Now there is an equally exciting challenge of designing the future governance of Scotland.

Summary: responses to the specific questions

How can budgetary control be balanced with independence?

- 5.1 As noted in section 2, there are models in Scotland and elsewhere which demonstrate that the balance between budgetary control and independence can be achieved in different ways. For my own office, I am not convinced that the current arrangements whereby responsibility for budgetary oversight is placed with the SPCB, a body within my jurisdiction, strike the

⁷ <http://www.scottish.parliament.uk/business/committees/justice1/reports-06/j1r06-01-vol02-02.htm#3>

⁸ <http://www.scottish.parliament.uk/business/committees/justice2/reports-06/j2r06-02-vol02-04.htm#15>

necessary balance. Whichever model is agreed, it should not be forgotten that independent external audit is a fundamental element of budgetary control.

Is it possible to implement section B2 of the UN Paris Principles and retain suitable budgetary control?

5.2 Yes, provided there are the necessary checks and balances.

What internal process occurs to establish your required budgets for each financial year in advance of scrutiny by the SPCB?

5.3 As detailed in paragraphs 2.5 and 2.6, the internal process for establishing our required budget derives from the setting of our strategic objectives and agreeing the business plan. These demonstrate how we will fulfill our remit and responsibilities. My office's core work of investigating complaints is demand led, and the budget has, therefore, to reflect the likely workload in the year ahead. The largest element of my budget is staff costs associated with complaints investigation and to a large extent other elements of the budget flow from that.

Do you have any views on how the processes for scrutinising your budgets works in practice?

5.4 In our experience, the scrutiny by the SPCB has worked satisfactorily. Budgetary issues are discussed on an ongoing basis. As accountable officer, I formally present my proposed budget to the SPBC for consideration annually. However, we have raised the issue of potential conflict of interest at paragraphs 2.4 and 5.1.

Do you consider there to be any overlaps between your remit and the remit of any established or proposed independent, regulatory or investigatory body?

5.5 We have sought to reduce any overlap through entering into memoranda of understanding with other existing bodies such as the Standards Commission. There is certainly a risk of overlap in the creation of new bodies, as we noted in our evidence to the Justice Committees on proposals for a Scottish Commissioner for Human Rights Bill and an Independent Police Complaints Commission for Scotland (see paragraph 4.8 above). This needs to be addressed by reviewing the current governance framework to ensure a more coherent design in which remits and jurisdictions complement one another. Our primary aim should be to create a framework that is both simple and accessible for the public.

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