

Accountability and complaint handling of Scotland's public services' regulators and the role of the Scottish Public Services Ombudsman

The wider import of the handling and outcome of SPSO case 200800985

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Introduction

This statement presents outstanding and unresolved issues of SPSO case 200800985 with commentary on aspects of wider relevance. The original complaint to the Scottish school inspectorate, HMIE, contended that certain statements of this school's nursery HMIE inspection report were invalid on the basis of the evidential referencing processes of the inspection, both that of the assessor at the time and of other HMIE staff subsequently. The case was brought to SPSO in August 2008 but after a delay of 16 months was deleted without adjudication.

Summary of the trajectory of the case within SPSO

Once the case was brought to SPSO on 2 August 2008 there followed a substantial correspondence over an 8 month period regarding contradictions of jurisdictional issues with stated published complaint handling procedures and memoranda, of both HMIE and SPSO. To resolve these Alice Brown, then SPSO, convened a meeting between myself, herself, and Eric Drake, SPSO director of investigations, which was held on 9 March 2009. The substantive issue was this case, but also its wider significance for any school bringing a complaint in regards of an HMIE inspection to SPSO for investigation and adjudication. Miss Brown informed me at the meeting that she was authorising the case to proceed, but pending receipt of advice of Scottish Government solicitors in regard of one outstanding impediment to my status as a valid SPSO complainant. Following the meeting Alice Brown wrote to me on 10 March 2009, indicating that she was meeting with Graham Donaldson, senior chief inspector of HMIE, on this matter later that same week. On receipt of advice that the impediment did not pertain I was informed by letter on 23 April 2009 that this case was at that point proceeding to SPSO investigation and adjudication. I received no further communication on any substantive aspects of the case, or in regard of an investigation, other than a letter to tell me that the investigation was then being delayed by other cases (letter of 12 May 2009) and then by the case officer's absence from the office (letter of 10 July 2009).

Given this further delay I offered other routes to resolution including mediation with HMIE under the auspices of SPSO, letter of 8 June 2009, and later queried how any new evidence put by HMIE to SPSO would be tested in a transparent manner offering me right of response to further points put by HMIE, letter of 30 November 2009, it being reasonable to assume that some case investigative activity had by then occurred, though this had not been communicated to me. The reply I next received was from Jim Martin, SPSO, on 7 December 2009 informing me that he was deleting the case forthwith without case investigation and without adjudication. That cannot constitute due process for an Ombudsman. This position was re-confirmed by Steve Carney, director of investigations in his letter of 26 January 2010 in reply to my letter to Mr Martin of 17 December 2009 (and my listing of case study parallels 23 December 2009), in which I had challenged the propriety of Mr Martin's decision to annul this case in such fashion given its significance. To delete this case without investigation was to resurrect the contradictions between actual and stated procedures of both HMIE and SPSO, which I had brought to the attention of Alice Brown, then SPSO, and which had led to her convening meetings with me and with Graham Donaldson of HMIE.

At that time the circumstances of another school inspection were then receiving challenge external to the HMIE complaints process through another jurisdictional entity, that of a Fatal Accident Inquiry, which was held December 2009 – January 2010, and which had been constituted following the death of a head teacher

immediately following her school's inspection in March 2008. There was substantial accompanying publicity in the Scottish media from a broad range of commentators, including MSPs. That case reported on 19 January 2010 with further substantial national publicity in regards of the sheriff's commentary and its significance for the conduct, methods and ethos of school inspections in Scotland. The Times Educational Supplement for Scotland on 5 February 2010 carried a report of an interview with Graham Donaldson, senior chief inspector, in which he made assertion in regard of SPSO adjudication of cases regarding school inspections, which he claimed had been adjudicated in HMIE's favour. In a letter of 17 February 2010 I put it to Mr Martin that Mr Donaldson's assertion was incorrect and evidence of a further contradiction in regard of procedures of SPSO stated to exist, but which were not available. Mr Martin had claimed he did not have a role of adjudication in regard of complaints of HMIE inspections in his letter of 7 December 2009. If Mr Donaldson was right, then these cases had been adjudicated by SPSO and such right of adjudication existed. The opposite was communicated to me from SPSO by Mr Martin and Mr Carney. That was the central point of my letter 17 February 2010. I received no reply.

I carried out further investigations of the background of my case in terms of complaint handling, of SPSO, of public services, and of regulators, and in regards of comparisons with similar cases in England in terms of internal complaint handling within OFSTED, the English school inspectorate, and external routes of adjudication in regard of non-resolution. I put those in a letter to Jim Martin of 25 August 2010. That letter also received no reply.

Following blatant contradiction of stated avenues of complaint and external adjudication, on the part of both HMIE and SPSO, and the termination of correspondence by both organisations, I contacted XXXXXXXXXXXXXXX of the Association of Head Teachers and Deputies in Scotland. I had not contacted him on this matter since July 2008 when I had thanked him for the letter he had recently wrote to HMIE in support of my complaint to HMIE and which had comprised the formal point of non-resolution on this side in regard of that complaint, before I placed it with SPSO. XXXXXXX contacted Mr Martin asking for a meeting which was held on 24 November 2010.

The status of the matter as it now stands is of conflict between actual and stated procedures of routes to external resolution of a complaint put by a school in regard of a school inspection, known to both SPSO and HMIE. The right does not exist, though it is stated to exist by both organisations. The wider significance is that school staff, in particular headteachers, will not know this, and will be misled by the published complaints procedures of HMIE and of SPSO, especially the SPSO-HMIE Memorandum of Understanding (an SPSO document), HMIE complaints procedure (an HMIE document) and HM Inspectorate of Education in Scotland Executive Agency Framework (a Scottish Government document), discussed in greater detail below. All other parties will be similarly misled. The local significance is that my case is left unadjudicated and I am deprived of external adjudication of the merits of my case or any remedy if that were warranted.

There has been a further subsequent development in this case subsequent to its deletion by SPSO. Given that there are two regulators for nurseries, HMIE and The Care Commission, nursery inspection reports are placed on the websites of both organisations. There had been a further inspection here in November 2008 with report in February 2009, which included the nursery. Nursery practice was found to be "good". Then in March 2010 we received a further inspection in regard of this nursery which was very favourable, with "very good" gradings of all school indicators (one pertaining to the Education Authority was graded "good"). I verified its publication online but also then checked on our previous HMIE/Care Commission reports on the Care Commission website. I found the February 2009 report to be incorrect, containing parts of the text of the 2007 report in place of the 2009 report. I again contacted XXXXXXXXXXX of AHDS asking him to contact HMIE and Care Commission to correct their report and to apologise. (There had been material consequence of this error which I detail below). I received a letter from XXXXXXXXXXX HMIE, and XXXXXXXXXXX, Care Commission of 15 November 2010 indicating that they were withdrawing this report and issuing a new version, published online on that date and in which they apologised for this error. However whilst removing the erroneous text identified, the new report contained new text, also not contained within the 2009 report, but which had derived from the 2007 report, but which purported to be of the 2009 report. I thereby complained of this new report of 15 November 2010 and pointed out that it too needs correction for this reason. The text I am complaining of is that of the 2007 report, the subject of this

complaint as put to SPSO, parts of which having been republished in error in February 2009 and again in November 2010 by HMIE/Care Commission.

Thus the text of the 2007 report, the subject of this complaint to SPSO, arises in a fresh complaint to HMIE/Care Commission of 17 December 2010. This may appear a bizarre twist but I would contend not; it is indicative of the non-involved, non-collaborative nature of school inspections and their reporting. Neither organisation checked with me first. Given that the first signatory of the letter of apology to me is XXXXXXXXXXXX of HMIE, with whom I was in correspondence throughout 2007 on this matter, I placed this complaint to her on behalf of both organisations. I have placed the entire matter in that complaint, and have added some new analysis in regard of the underlying methodology of nursery inspections and the failure of HMIE here to apply their methodology in terms of their stated inspection procedures. I demonstrate how that led to the errors which arose in this inspection, when also accompanied by a negative inspection ethos, confrontational “challenge” style approach, lack of respect for headteachers in the reporting process and lack of due discourse in forming report conclusions. The amended Care Commission/HMIE report of 15 November is merely the continuation of that institutional culture which is how such a new error so readily occurred.

This matter is now contorted in the extreme. I contend that this has arisen due to the hostile, confrontational and imposed nature of school inspections, both their procedures and their associated ethos, for HMIE, but now also SPSO, which mitigates against mediation and solution-focused resolution at every turn. I give further details on the reason for this conclusion below.

This status of this matter is now profoundly unsatisfactory. It points to a national system of public services regulation, conduct of inspections, complaint handling within regulators, and external adjudicative routes operating in breach of stated process. That Jim Martin, SPSO, is at the time of writing putting a new ‘model’ complaints handling system to Parliament, following the Crerar Review report and the Sinclair Report of complaints handling which followed on from it, yet in full cognisance of this case, and both his and HMIE’s handling of it, is further confirmatory evidence of this negative ethos. At every step the regulatory agencies involved have sought to prevent fair resolution or external adjudication of a complaint pertaining to themselves. There is not due procedural, even-handed approach to a complaint concerning the actions of public services regulators in Scotland, either internally or externally. The notion of SPSO placing a ‘model’ complaints handling procedure to Parliament given SPSO handling of this case in the same period and its implications is to nullify the logic of the process and render it absurd.

Following the major publicity and commentary in regards of the Jedburgh Sheriff Court Fatal Accident Inquiry report of 19 January 2010, the Cabinet Secretary for Education and Lifelong Learning announced a school inspections review on 23 February 2009, followed by a private ministerial forum in March 2010, with launch of a formal consultation by HMIE September – December 2010 on an amended model of school inspection. I participated in the meeting, and have published on this topic in regard of policy, but I have been assiduous in not presenting this case publicly or in that forum. However given that my new complaint to HMIE of 16 December 2010 (but whose substance also pertains to this complaint) fell within the school inspections review I have now asked HMIE that it be considered for its lessons as part of their review. Similarly my letter of 25 August 2010 on complaints handling of this case and its wider significance, with case study example, fell within the period of the SPSO consultation on complaints handling. I do not know why the letter was ignored and not replied to, nor considered and put along with the other submissions on complaints handling, but I am asking Mr Martin now to do so and to rectify this omission.

However, I now put it that any amendment to school inspections, and to complaint handling procedures of public services, also to include regulators, should not occur until the lessons of this case have been acknowledged and assimilated. The proposals put by Mr Martin following his consultation should not now proceed within the Scottish Parliament until the lessons of this case are noted, investigated, resolved and learned from. There have to be clear procedures of complaint handling; they have to operate in straightforward, even-handed fashion, they have to function in accordance with stated procedures; they have to be accessible; there has to be external redress; there has to be accountability of public services’ regulatory operations. In overall function such procedures have to do what they say they do, without demur. For those who come to this system for the first time what is written on the tin must be what is contained in the tin. Due

process must be followed in all cases at all times. The ethos has to be one of reasonableness, fairness and of proper procedure, with recognition of the need to fairly recognise and to apply remedy to errors and mistakes when they occur, as they do. The process has to be transparent. Difficult cases or transgressions from stated procedures must not be made to disappear. A schools is not so excused; why should its regulator?

On 16 August 2009 Jim Martin, SPSO, commissioned Jerry White, one of the Local Government Ombudsmen in England, to review the handling of an outstanding SPSO case (200502514). That report was received on 2 October 2010. Mr White wrote:

“I conclude that the SPSO’s handling of the complaint was characterised by very considerable delay and confusion. Bluntly, it is the worst case of complaint handling by an Ombudsman’s office that I have seen.”

Mr Martin had instituted an internal review of SPSO procedures to run concurrently and which reported on 9 October 2009. My case had been put on 2 August 2008, cleared for investigation on 23 April 2009, yet I received no further contact until 7 December 2009 when it was merely deleted without investigation. Yet on 2 October 2009 Mr Martin had written in his accompanying report to Mr White’s report:

I committed to publishing Mr White’s report, and am doing so by means of laying an ‘other’ report in Parliament under section 17(4) of the SPSO Act. I believe this step is necessary to the exercising of my duties to ensure confidence in the complaints process and to be able to address and report on problems transparently (particularly to the Parliament, to which I am ultimately accountable).

I contend that my case was worse, and at that exact same time point. The period of that external Ombudsman review of case 200502514 was the exact mid-point of the eight month period when I had heard nothing of the progress of investigation on my case. The handling of it subsequently in December 2009 was yet worse again. Throughout 2010 even worse. And it is worse again in terms of its current status. The above case led to an investigation and a report. Mine did not. Mine has been made to disappear, despite its significance to SPSO complaint handling procedures in regards of case 200502514, but also in regard of HMIE internal complaint handling procedures and due process and fair commentary of any complaint of a school inspection brought to HMIE for investigation and adjudication. Throughout 2010 this was a very major subject of public and professional interest including Government review and formal consultation. The only complaint of HMIE to my knowledge to receive adjudication external to that of HMIE, was not from SPSO, but from Sheriff James Farrell, who reported: "There can be no doubt that Irene Hogg's death is inextricably linked to the outcome of the Glendinning School inspection in March 2008." Jedburgh Sheriff Court, 19 January 2010. A freedom of information request put to HMIE on 18 January 2010 and published on the HMIE website, asked about the outcome of complaints about HMIE, in terms of how many were successful and what HMIE had learned from them. HMIE’s answer (15 February 2010) was to state that HMIE conducts no analysis of complaint outcome of their service and keeps no central record of whether complaints to HMIE about school inspections are upheld or not, discussed further below. Thereby I contend that HMIE have no means of learning anything about their own procedures, their methods and their impact. And neither can SPSO, in deleting just such a case to finally reach SPSO adjudication after the inordinate obstacles which had been placed in its way, and for SPSO to re-confirm this to me just six days after the FAI report. In the public reporting of both organizations this complaint outcome is invisible and has been made to be invisible.

I now put it to SPSO that my case, 200800985, should be externally referred to Jerry White, now recently retired English local Government Ombudsman, for the reason that its procedural significance is greater than that of case 200502514 and its ‘other’ Ombudsman report of 2 October 2009.

Further details of associated evidence

The reporting status of non-adjudicated SPSO cases

Steve Carney’s letter to me of 26 January 2010 gave a different reason for non-investigation and non-adjudication of this case to that which Mr Martin gave me in his letter of 7 December 2009, inexplicably making reference to the substance of an investigation as if it had occurred when it had not. He then

misrepresented my complaint, misquoted me from my previous letter, misrepresented the role of the OFSTED English school inspectorate complaints adjudicator ICASO, and negated the content of the SPSO–HMIE Memorandum of Understanding. It is only now apparent to me why I received such a poorly constructed letter. Mr Carney wrote at least nine other such letters that day on 26 January 2010, information which has become available to me since SPSO publish Service Delivery Complaints Decision Letters online. I say ‘at least’ since I now know that this was not a complete list, given that those to me of 7 December 2009 and 26 January 2010 were excluded from that list. I note that all those presented there pertain to challenges of adjudications. Is mine excluded because it is a deletion of case by SPSO *without* adjudication, that it constitutes a challenge to a *non-adjudication*?

The claims of HMIE in regard of SPSO adjudication

In my letter of 17 February 2010 I referred to the claim by the chief executive of HMIE, who stated “that only two cases of a disputed inspection have gone to the Ombudsman, who found in favour of HMIE on both occasions.” (Interview by Neil Munro, editor of the Times Educational Supplement for Scotland, *Donaldson defies critics*, 5 February 2010). As I wrote to Mr Martin on 17 February 2010: “Clearly then, these cases were heard and adjudicated. Yet this school’s has not been. Why not? Or has it been? Is this school’s case one of the two mentioned in this article? If so, then it would be wrong to state that the Ombudsman found in favour of HMIE. You have not determined this.”

The questions I asked Mr Martin in that letter were not rhetorical. I sought an answer then and I do again so now. That assertion of Mr Donaldson, of 5 February 2010, constitutes ‘new and relevant information’ as per the section of the SPSO website ‘Asking for a review of an SPSO decision’ subsection “asking for a review”. I had brought it to the attention of SPSO and asked those questions on 17 February 2010 (I have further new information which I refer to further down). I wish an answer to these factual points from SPSO and I am entitled to receive such.

I put it to SPSO, that since its founding in 2002, that no case of a school disputing its inspection, on any grounds – conduct, procedure, evidence, process, judgement – has been adjudicated by SPSO. Given that I met with Alice Brown SPSO in person on this very point on 9 March 2009, that adjudication then did not occur during her period in office, yet she was the first Scottish Public Services Ombudsman. At that point in time this was the first such case. The only way in which it could not be, was if there were others subsequently under Mr Martin’s tenure, but that is negated by his letter to me of 7 December 2009. Or are there others which have received adjudication? If so, they do not feature in the Ombudsman monthly commentaries, and I therefore presume not. I wish Mr Martin to confirm this given Mr Donaldson’s assertion on 5 February 2010.

The role of SPSO in adjudicating cases brought concerning HMIE

Mr Martin also wrote to me on 7 December 2009: “I am also convinced that your appeal to this office is an appeal against an HMIE inspection report which I consider would effectively require me to take on the role of a regulator to HMIE, but that role is not within my remit.” That resurrects my claim of maladministration by SPSO in regard of the text of our February 2009 inspection report presenting that such right exists, known beforehand to SPSO and the subject of my then correspondence with Alice Brown, then SPSO. In addition to HMIE’s complaints procedure, the stated right of appeal to SPSO on school inspection reports and the SPSO–HMIE Memorandum of Understanding, I have recently become aware of the HM Inspectorate of Education in Scotland Executive Agency Framework Document April 2005. The forward is written by Peter Peacock, then Minister for Education and Young People who states “An important recent milestone in the development of Her Majesty’s Inspectorate of Education in Scotland (HMIE) was its establishment on 1 April 2001 as an Executive Agency of the Scottish Ministers under the terms of the Scotland Act 1998.” Section 3 is entitled “Accountability” and subsection 8 of that “Scottish Public Services Ombudsman”. It states:

“3.8 The Agency will maintain a complaints and appeals procedure which it will publicise in guidance. The activities of HMIE are subject to investigation by the Scottish Public Services

Ombudsman (SPSO) who will deal directly with the Chief Executive on any complaint received by the SPSO which she decides to pursue.”

HM Inspectorate of Education in Scotland Executive Agency Framework Document, April 2005

This is breached in three respects:

- (a) Whilst there is a complaints procedure HMIE (referred to here as The Agency, being an agency of Scottish ministers since 2001) keep no central records of the outcome of complaints. See HMIE answer to Freedom of Information request 18.1.10 responded to on 15.2.10: “Applicant sought:
 - a. figures on the number of complaints over the past five years (2005-2010), how many of these were related to Inspections of Schools and the proportion of such complaints which were upheld; and
 - b. in the case of complaints which were upheld, did this lead to any changes in the practice of inspections?”

Answer: “The information that HMIE holds on formal complaints is not analysed to record whether a complaint was upheld or not and as such I am unable to provide you with the detailed information you have requested.”

- (b) An appeal is different to a complaint. Alice Brown and I discussed this at our meeting of 9 March 2009. There is no appeals procedure in regards of an HMIE inspection. This is confirmed by Graham Donaldson in the same article referred to above of 5 February 2010. Yet by 2006-2008 an HMIE inspection had become far more than an examination and reporting on practice with recommendations, and had assumed the additional form of a personal competency tribunal cum public professional appraisal of headteachers. This was given in the form of a ‘verdict’ of individual personal qualities, as in my case, yet the procedures did not operate in the standard form of an appraisal interview. The verdict is received in written form afterwards in a draft report and derives from the overall ‘sweep through’ of an inspection in all of its activities. Headteachers can thereby receive severe public criticism of their professionalism, wrapped up in a supposed evaluation of ‘leadership’ but when due dialogue at the time did not occur with time allocation to this aspect commensurate with an appraisal, nor even application of the component elements of the leadership quality indicators. Moreover what other organisation conducts public appraisals of individuals? This point was put by Claire Grant in a letter to the Times Educational Supplement: *Shocking haste of inspectorate's 'vindication'*, also of 5 February 2010, in regard of the FAI report of 19 January 2010. Leadership commentary is also frequently written after the event, with substantial criticism coming not at the time, to which the headteacher can respond, but in a draft report necessitating written presentation of evidence in response. The verdict has to be disproved by countering a negative yet vague statement, remotely in writing. With only the option of a complaint, and not an appeal, to challenge what is in essence a verdict on an individual’s qualities rather than commentary on observed practice, the process of responding in writing in the form of a complaint is too arduous. Overwhelming evidence would have to be submitted in written form to ‘disprove’ what are in effect impressionistic slurs. A very specific aspect of this complaint, put to HMIE and then referred to SPSO is that nursery practice was commended, all observed practice was deemed good and both the management and leadership of the nursery were complimented. Yet I had to be insulted. That was and is my primary complaint. That is not coherent in regard of the other statements within this same inspection report. Once damning but cursory statements are put into the public domain in regard of aspects such as ‘leadership’ it is next to impossible to respond in the form of a written complaint. It is too impressionistic. There has to be the very different forum of an appeal, which means a forum which convenes and hears evidence, and indeed if there were such I would have utilised it and brought a witness to speak, the nursery coordinator teacher. I was denied that. There is no avenue of appeal within HMIE school inspection procedures despite the addition of reporting categories beyond practice observation such as ‘leadership’. This point was also misunderstood by MSPs in their discussion of the role of SPSO in their Parliamentary discussion of the Public Petitions Committee, Tuesday 4 December 2007. For instance the statement of Rhoda Grant MSP: “I tend to agree with Robin Harper. Before people go to the ombudsman, they use all the appeal functions in the public body that the complaint is about.” This does not apply to HMIE. There is no right of

appeal. There are no appeal functions. There is no forum to bring evidence or in which to speak to a public demolition of one's professionalism.

- (c) The third strand of this section is that of the activities of HMIE being subject to investigation by the Public Services Ombudsman "on any complaint received by the SPSO which she decides to pursue" as stated in the HM Inspectorate of Education In Scotland Executive Agency Framework Document, 2005. That route no longer exists as per Mr Martin's letter to me of 7 December 2009. He considers that he does not consider that this is within his remit, in contrast to the view of his predecessor and of this procedural document of the education minister. But Mr Martin has done nothing about these stated contradictions, which are of major significance to this profession.

Aspects of regulatory jurisdiction in this matter are subtle. I would contend that the Scottish Public Services Ombudsman is not a regulator as such, but operates at a higher level as the arbiter of propriety of process and conduct in regard of Scotland's public services, including regulators. It is the body which takes complaints which have not been resolved through the internal dispute resolution of those organisations. That is the distinction I wish to make in regard of Mr Martin's assertion of his role contained within his letter to me of 7 December 2009. It is a critical distinction which needs resolved. But the decision by SPSO to annul this case has further dimensions.

Different reasons given by SPSO for non-adjudication of this case

Five different reasons have been given by SPSO staff for the non-adjudication and deletion of this case. Mr Martin in his letter of 7 December 2009 stated that he does not have a role of adjudication in regard of HMIE within the SPSO remit even though that is contradicted in the evidence above. Then in the same letter he gave the contradictory statement of using his discretionary powers to delete the case without adjudication, which surely is an unnecessary statement given his previous statement. Mr Carney, director of investigations, in his letter of 26 January 2010 gave a different reason pertaining to an explanation of an investigation, but one which has not occurred, and he also misrepresented the substance of my complaint as put on 2 August 2008. Given this letter, I cannot consider that he read it. On 24 November 2010 Mr Martin met with XXXXXXXXXX of the Association of Headteachers and Deputies in Scotland. Mr Martin informed XXXXXXXXXX that he had sought further legal advice and made some indication that I was not a valid complainant on jurisdictional grounds. If that is the grounds upon which my case was annulled then this overruled the specific advice received by SPSO in April 2009. But this has not been communicated to me. I am unaware whether formal redefinition of the validity of my status as a complainant has occurred on the basis of new external legal advice. If that is so I wish SPSO to inform me of that. It is of profound significance to me, but also to all schools. Its significance is in regard of whether HMIE is or is not accountable to any external body in regards of its actions pertaining to school inspections. That will have a profound significance for how it conducts its investigations of complaints received, and its current status is that it does not even record complaint outcomes, which is rather significant. That explains to me why the basic elements of my original complaint were not addressed by HMIE.

I refer to Mr Martin's statement and his answers to the Local Government and Communities Committee of the Scottish Parliament of 26 May 2010. He stated [col. 3284], "When I came into the office, I found that we had had one case for more than a year and had not taken a decision on whether it fell within our jurisdiction." It would appear that Mr Martin was referring to this case. If so Mr Martin indicated an ambiguity to Parliament which he has not communicated to me. But more seriously, other than this oblique reference, Parliament has been denied any knowledge of this case and thereby its issues and wider significance. It was just "taken out" being the very term used by Mr Martin to Parliament in that meeting of his deletion of the backlogged cases by December 2009 since he took over in May 2009. Mine was one of those cases. He stated at that Scottish Parliament committee meeting:

"I discovered that, at the start of the business year, we had 83 cases that were nine months old or older, which would mean that they would be more than 12 months old or older by the end of June. I set the organisation the objective of removing all of those cases from the backlog by Christmas, and I am happy to say that we managed to do that. All of the backlog was removed in six or seven months, while we maintained our progress on all our other cases..."

Our open case load, at 31 March 2009—that is, at the close of the previous business year—was 500. On 31 March 2010, that number was 241. This morning, it is 230. That means that, over the year, there has been a reduction in the number of cases that are sitting on our desks of 52 per cent. We have taken out more than half of the case load.”

Statement by Jim Martin to the Local Government and Communities Committee of the Scottish Parliament, 26 May 2010

It would appear that that is precisely what happened to my case in December 2009. It was “taken out” by Mr Martin. But given that it had cleared the hurdle of jurisdictional validity, after surmounting so many hurdles, it was incumbent of SPSO to conduct an investigation. What then caused the additional eight month delay prior to it being “taken out”? This then constitutes the sixth reason. It would seem that given administrative difficulties pertaining following the retirements of both Alice Brown and Eric Drake in the same month, a significant proportion of the SPSO case load was just deleted. But to delete this case without adjudication and then fail to reply to my letter of 17 February 2010 meant that this matter could not, or more correctly would not then be rectified in regard of the contradictory public statement of the HMIE senior chief inspector that same month. Moreover by remarkable coincidence, in this sense in the literal meaning: co-incident, the *Scottish Public Services Ombudsman Act 2002* was amended in 2010 by the *Scottish Parliamentary Commissions and Commissioners etc. Act 2010*, schedule 1 part 2. It was discussed in Scottish Parliamentary committees on 9 February 2010, 2 March 2010, 16 March 2010, 24 March 2010, 4 May 2010. Mr Martin was aware of this since he referred to this forthcoming amendment at the Local Government and Communities Committee meeting of Wednesday 26 May 2010.

There is no gain to any party for an act of Parliament to be ambiguous, and the time of amendment of an act is the time to resolve contradictions. Both Alice Brown, then SPSO, and the Scottish Government solicitors in their reply to her had indicated that the 2002 Act was poorly worded in regard of my status as a complainant. Given that this matter was of such high profile in early 2010, and with the SPSO Act then to be amended that same year, SPSO were obliged to reply to me, not least that I had also made reference to it as a service delivery complaint in my letter of 17 February 2010. The fact that SPSO powers were being amended just then in legislation leaves me even more aggrieved. For the Scottish Public Services Ombudsman has an important role of bringing ambiguities and contradictions from the SPSO caseload to the attention of Parliament. This was just such a case. Certain of the responsibilities of SPSO were also amended by *The Public Services Reform (Scotland) Act 2010*. There had also been the Crerar Review of scrutiny and complaints handling and subsequent implementation action groups, with further developments such as *The Sinclair Report* then leading to the SPSO model complaints handling consultation 2010. The Crerar implementation committee into complaints handling [*The Sinclair report*] commences with its opening line as follows: “A key finding of the Crerar Review was that complaints processes in our Public Services are not fit for purpose.” That is pretty stark and to the point.

If ever there was a time to ‘get it right’, this was it. If my case could not be heard for legal or procedural obstacles, then 2010 was the time to have acted and learned on those and removed them, or alternatively made them clear and unambiguous. The personal and professional tragedy of March 2008 in regard of the Glendinning Terrace Primary School HMIE inspection, however broad its wider significance or relevance, had brought this into even sharper policy focus. Sweeping away a difficult case in this particular substantive area was profoundly the wrong thing to do. Yet that is what was done by SPSO. Given the meeting between Alice Brown and Graham Donaldson, HMIE as an organisation were aware of this. In the amendment of the 2002 SPSO Act in 2010 my status in regards of any future cases could have clearly been resolved either way. That would have been of high public interest in this sector. As former General Secretary of the Educational Institute for Scotland Mr Martin would have even more reason to know that. For, in the event of asserted procedural irregularities in the conduct of a school inspection, both Government and Parliament in Scotland may deem that there either should be, or should not be, recourse to independent adjudication in regards of the operation of the procedures of school external accountability. Given the SPSO remit also to review and advise on procedures of complaints in regard of public services, SPSO could have utilised my case to bring it to the attention to those drafting the amendment. Parliament would then have been in a position to have clearly signalled its intent. As the matter stands I doubt if any MSP or minister is aware of this issue.

This is a mess. But the real mess is not that there was a difficulty or an ambiguity, which does arise in all areas of the interface between governmental activity and the law from time to time, but pertains to the profound resistance and reluctance on the part of all involved agencies in this matter to recognise this as applying to this case and then do anything about it. Alice Brown SPSO did the most. Despite having closed the case she reopened it on the basis of my submission and argument. She had sought legal advice. She met with the HMIE senior chief inspector.

In my letter to SPSO of 17 February 2010, which was not replied to, I quoted with frank disbelief the SPSO commentary: “As is often the case, protracted or poorly managed complaint processes can contribute to personal grief or stress, whatever the subject of the complaint.” [SPSO commentary December 2009]. That Mr Martin should have written that commentary in the same month as his letter to me of 7 December 2009, after such delay within SPSO, then deleting the case leaving it unadjudicated, and then ignore my letter of 17 February 2010, leaves me in a state of incomprehension as to the function and role of the Scottish Public Services Ombudsman. There have been very profound professional and personal repercussions and implications for me of this matter, throughout the whole period, with considerable improprieties in the actions of certain parties, to which I have made complaint. Those are presented separately. Some of those, which directly emanated from this matter were occurring at this very same time in early 2010 and the combined pressure was such as to shortly after leave me very unwell. It is almost impossible to know where to take a matter such as this, having put valid points and received no reply from the external adjudicator and when the chief executive of the organisation I have complained about publicly misrepresents the complaint adjudication process of his organisation.

I took it upon myself to conduct further inquiries and investigations and I assembled substantial case study material, making analytic inference of implications and significance to the case handling of this complaint, its wider significance, the handling of it by HMIE and the handling of it by SPSO. I then wrote to Mr Martin on 25 August 2010. The particular subject of my letter was complaint handling, that of HMIE and of SPSO. He did not reply to that letter either. However the letter was on the subject of complaint handling, outlining the implications of this case, and of course any like it, and of the procedures and ethos of complaints handling, by both SPSO and HMIE, also with significant case study parallel of England. My letter date was of 25 August 2010 being within the period of the SPSO consultation on “Complaints Handling Principles and Guidance on a Model Complaints Handling Procedure”. I put bullet points of headings at the beginning to indicate the substantive comment of the letter in each section. Four of its headings, stated at the beginning of the letter were:

- Legal argument, procedure and precedent as to why it is incumbent on you to adjudicate this case
- That your refusal citing no grounds constitutes a failure of function of your office
- Parallels in regard of Ofsted complaint handling and adjudication and their ethos and its significance
- Implications for reform and improvement
- Unreplied to letter of 17 February 2010 [whose content also pertained to these issues]

Quite simply, I sent a submission to SPSO on the very topic of the complaints handling public consultation within the time period of the consultation. Why was it not responded to in regard of its implications for a ‘model’ complaints handling procedure? Why was it not included amongst the submissions, and published on the website? May I suggest the reason? It is that the current mechanisms of complaint handling are so far from this reality in both process and ethos as to provide no basis of contact. We are at the exact opposite point of a ‘model complaints handling’ process, within public services, regulators and SPSO, and if we do not recognise that and learn from the evidence of case study example of that reality then there is no possibility of that coming about; we being me, school staff, education authority staff, SPSO, SPSO staff, policy makers in regard of education, complaints handling, regulation and accountability, and regulators.

Following the tragic aftermath of the Glendinning Terrace Primary school inspection HMIE feedback on 21 March 2008, Scottish education should have asked itself “Are there any other cases where something similar nearly occurred but didn’t; where individuals were so crushed by the school inspection process in terms of procedural complexity and its hostile, confrontational ethos, but alive, though in what state of consequent psychological distress, or physical or professional incapacity and inability; where as a nation we made the process of regulation, scrutiny, audit and accountability so overbearing, so judgmental, so one-way, so

lacking in transparency, so intense, so all-at-once, so lacking in grace, humanity, discourse, reciprocity, subtlety, so mechanical, so quantitised, so bureaucratic, so devoid of local context, so absent in interpretation, so lacking in sensitivity, so devoid of different ways of looking at complex issues, so failing to incorporate different yet valid points of view, so lacking in right of reply or of appeal, that in the process we lost sense of our humanity? Melanie Reid in *The Times* wrote of that in two articles in response to that tragedy, speaking of a culture of hypercriticism and of Scottish education losing its very soul. So had XXXX, just previously, making similar points. XXX article ‘*The Perils of Permanent Perfection*’ spoke of the incoming “Curriculum for Excellence” and how such terminology was coming to form a new ideology:

“The thought that we are about to bring in perfection, or indeed must bring it in, can lead us to deem as enemies all those who stand in its way: the lesser people, the imperfect ones. A culture of perfection and universal excellence is a totalitarian one.

You may think this has nothing to do with Scottish education. But it has. The "done to" audit culture of idealised perfection is starting to create just such a culture here: it is a totalitarian one of no right of reply, imposed one-way judgments and wholesale assaults on human dignity. It is destroying careers and breaking people's health. The language of six-point scales and "How good is ...?" is really saying "How not good are you?" and we will spell out the exact precisely delineated 360-point measurement of your "ungoodness".

MacKinnon, N., *The Perils of Permanent Perfection*, TESS, 21 March 2008

Complaint outcomes of the English school inspectorate OFSTED and the Scottish school inspectorate HMIE

Charlotte Leslie MP tabled a Parliamentary question of the Secretary of State for Education, Nick Gibb MP. He asked HM Chief Inspector, Christine Gilbert, to reply. Her letter of 17 November 2010 was placed as his formal Parliamentary answer on 13 December 2010. It included the following table pertaining to English school inspection complaint outcomes:

Section 5 school inspection complaints data

<i>Period</i>	<i>Number of school inspections (1)</i>	<i>Number of complaints about judgments for inspections of schools (1)</i>	<i>As a percentage of number of inspections</i>	<i>Number of upheld complaints about judgments for inspections of schools (1)</i>	<i>As a percentage of number of complaints</i>	<i>Upheld complaints about judgments as a percentage of number of school inspections</i>
1 April 2006 to 31 March 2007	7,682	161	2.1	16	9.9	0.2
1 April 2007 to 31 March 2008	7,692	212	2.8	29	13.7	0.4
1 April 2008 to 31 March 2009	7,086	186	2.6	20	10.8	0.3
1 April 2009 to 31 March 2010	6,333	250	3.9	29	11.6	0.5
1 April 2010 to 30 September 2010 ⁽²⁾	2,685	151	5.6	21	13.9	0.8

⁽¹⁾ *This includes inspections of academies.*

⁽²⁾ *Please note that this is only six months' data.*

Source: Answer to Parliamentary question, House of Commons, 13 December 2010.

<http://services.parliament.uk/hansard/Commons/bydate/20101213/writtenanswers/part020.html>

In response to: “Charlotte Leslie [MP]: To ask the Secretary of State for Education how many formal appeals in respect of the outcome of an Ofsted inspection were brought by schools in each of the last five years; and how many such appeals were (a) upheld, (b) partially upheld and (c) rejected in each such year. [24105]”
 Accessed 11 January 2011

The Scottish equivalent table is as follows, which I have compiled on the basis of a comparable question in regard of HMIE and published complaints data of HMIE:

School inspection complaints data: Scotland

<i>Period</i>	<i>Number of school inspections</i>	<i>Number of complaints about inspections</i>	<i>As a percentage of number of inspections</i>	<i>Number of upheld complaints about inspections</i>	<i>As a percentage of number of complaints</i>	<i>Upheld complaints as a percentage of number of inspections</i>
<i>April 2005 to March 2006</i>	1329	45	3.4	?	?	?
<i>April 2006 to March 2007</i>	901	74	8.2	?	?	?
<i>April 2007 to March 2008</i>	825	106	12.9	?	?	?
<i>April 2008 to March 2009</i>	811	52	6.4	?	?	?
<i>April 2009 to March 2010</i>	886	54	6.1	?	?	?

Source: Number of school inspections and number of complaints: HMIE annual report and accounts for each year. Source figures extracted and tabulated by XXXXXXXXXX. Note that in addition to school inspections HMIE carry out a small number of other types of inspection such as Education Authorities. I have excluded these for comparative purposes.

Source: Number of upheld complaints about inspections: Freedom of Information request of 18 January 2010: “Applicant sought:

- figures on the number of complaints over the past five years (2005-2010), how many of these were related to Inspections of Schools and the proportion of such complaints which were upheld; and
- in the case of complaints which were upheld, did this lead to any changes in the practice of inspections?”

Response published 15 February 2010: “The information that HMIE holds on formal complaints is not analysed to record whether a complaint was upheld or not and as such I am unable to provide you with the detailed information you have requested.”

<http://www.hmie.gov.uk/NR/rdonlyres/C1D011B7-2606-46CE-9E60-45B45CB7E9D0/0/FOIresponse12.doc>

Accessed 11 January 2011.

The OFSTED average over this five year period was that of 12% of complaints being upheld. If HMI broadly conducts itself as does OFSTED then on the application of the same expectation in regard of complaint type and circumstance with application of the same complaint adjudication criteria there would have been 40 upheld complaints of HMIE in this five year period. That obviously contains many caveats. But it is interesting to note that in the previous year, 2004-05, the proportion of complaints upheld of OFSTED was far higher at 49 % and the proportion of complaints generating a complaint higher at almost exactly 5%. In that year just under 2.5% of OFSTED inspections led to a successfully upheld complaint (BBC online, *Half*

of appeals to Ofsted upheld, 16 March 2007). That year OFSTED had brought in a major alteration to its inspection system which may point to a reason for that year's high figures, so local factors such as a change in procedures in any one year may give a large alteration to the number of complaints and their resolution. Though the two national inspection systems are different and thus not strictly comparable, they are similar in being based on graded outcome judgements to give a whole picture of a school in a single published report based on one-off short duration visits. Other systems of school evaluation and accountability are quite different to this. Given this similarity between the two national systems, Scotland has also instituted far reaching changes to inspection methods, curriculum, and other administrative systems of schools in this period.

The number of complaints of OFSTED is far from insignificant. The number and proportion upheld may be small, but not so small. Inspections do go wrong, and in England it is recognised that they do, and remedy is given. Indeed inspection reports have been amended and overturned following publication, including withdrawal and annulment of reports. For the corresponding figure for HMIE to be year on year zero is not a credible statistic, and I would contend is a consequence of the complaints handling and resolution process and ethos pertaining here.

In May 2009 Christine Gilbert, English HM chief inspector appeared as a witness to the House of Commons Children, Schools and Families committee. She responded to this question from David Chaytor MP:

Q285 Mr Chaytor: If there is a strong case for independence from government, is there not equally a case for an independent appeal system for those schools or local authorities with a grievance against their Ofsted judgement?

Christine Gilbert: We have, as you would expect, an internal process, but we also have an independent complaints adjudicator, who is appointed not by us but by the DCSF. In fact, the adjudicator has changed fairly recently. That is the final stage, but, after that, people could contact an MP and go through the parliamentary ombudsman and so on, so there is a process.

House of Commons Children, Schools and Families Committee, 6 May 2009.
<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmchilsch/88/9050604.htm>

Regulators are subject to scrutiny and are subject to complaint of their own function and investigation of Ombudsmen within the UK, albeit in England. OFSTED is a case in point as above. But The Equitable Life case is another and the Parliamentary Ombudsman finding of deficiencies in the external regulation of The Equitable Life Assurance Society has recently led to a Government payout of £1.5 billion. This is hardly trifling. A key point of my letter to Mr Martin of 17 February 2010 is that school inspection is itself a public service.

I have published on the need for the processes and institutions of regulation of public services to be themselves subject to processes and systems of accountability and I list some of these in the references to this paper. A number of commentators have also raised this need for assurance of validity in making qualitative judgements and thoroughness of process. Carol Fitz-gibbon has raised the need for scientific studies using similar methods to the natural sciences in testing the adequacy of judgements in inspections and in particular the need for scientifically validated means to assure inter-rater reliability (Fitz-gibbon 1996, 2001).

Mick Brookes, author of a chapter of the recent book "*Inspecting the Inspectorate*" (de Waal 2008), then general secretary of the National Association of Headteachers, made the telling point: "Every inspection must be quality assured." Such an obvious point, once put. What would a quality assurance report on the March 2007, February 2009 and November 2010 reports of this nursery look like, not to mention the deleted and withdrawn one extant February 2009 to November 2010? Even to ask that question, to accept that it is legitimate to put it, would have found solution in this matter obviating the arduous communication trail which occurred. That is the sort of intelligent solution which honest treatment and resolution of complaints might bring about, with the effect of substantially lessening the number of future complaints and at the same

time enhancing working relations, thereby enhancing services to enable refocusing of attention to core work function.

Chris Keates, General Secretary of the teaching union, NASUWT has succinctly captured the central issue and its solution:

Inspection should be development-focused, celebrate success and, where appropriate, be constructive in its engagement with schools in need of guidance and support to overcome the difficulties they may face.

Systems of inspection need to be transparent, ensure that inspections are undertaken consistently and should be subject to accountability processes at least as rigorous as those to which schools are themselves subject.

Times Educational Supplement, *How do you mend Ofsted?* 12 February 2010
<http://www.tes.co.uk/article.aspx?storycode=6035611>

This would accord with the philosophy and content of the SPSO initiative and internal website on '*Valuing Complaints*'. But there has to be some means of bridging the gap between ideals, rhetoric and practice as it actually operates. The system has to operate in the way it says it does. And this one does not. I have found that, as have many others. Before we further attend to models and procedures we need to look at ethos, accountability and due process. Without those functioning properly, procedures and models are irrelevant. How can we make the systems of audit, regulation and complaints handling actually do what they say they do? Unless we honestly face where regulation has gone wrong, not just in terms of regulation of services, but also in terms of the regulation of regulation, we will get nowhere. The Crerar Review was set up because process and methods of accountability were too arduous, cumbersome and bureaucratic. Since the publication of that report, within the sector I work in they have got worse. The Care Commission grading schema in 2008 and QAF reporting schedule in 2009 would be a case in point; the adoption of *How Good Is Our School?* 3 and *A Child at the Centre* 2 in 2008 by HMIE another. How can we find space for the major 'transformational' innovation of Curriculum for Excellence when audit points in a different direction, with different methods and cumbersome new systems all piled on at the same time? Our move to a 3-8 planning format as part of our then development work, with the assessor locked into separate primary/ nursery mindset and imposing that without consultation, is a major part of this complaint. Part of the wider problem now is that the post-Crerar implementation bodies and committees became subject to professional capture, not of public services, but of their regulators. Essentially these bodies were asked to devise the structures and procedures for implementing the recommendations of the Crerar Review, yet they were the reason it had come about in the first place. There should have been balanced input from each representative sector: service users, service providers and the regulatory sector. But it was this last which has prevailed, and so it is continuing. Once audit becomes so restrictive and overbearing as to inhibit us from doing our jobs, then it is the service users who suffer. Yet in seeing inadequate service the auditors perceive that the need is to tie us down with more restriction and prescription, as Seddon (2008) has eloquently outlined.

This is to take me away from this complaint, but it is the context of this complaint, my lived professional and personal context as a class-committed teaching, rural, small school headteacher. I perceive that HMIE wish me to produce an audit trail as if I were a non-teaching headteacher and to apply a level of detail to that task beyond my managerial working time allocation. That is in essence how this complaint arose. That is also why I have pursued this. I have a right to a life.

Conclusion

This case should never have arisen. With proper and due attention to its issues, alteration of methods and most importantly a turnabout of ethos, it could be prevented from arising again. Of course schools and their nurseries will continue to have issues and difficulties. But some are largely the creation of their auditors and derive from the imposition of incompatible mindsets. We need to find a collegiate approach, including external moderation, focused on developmental enhancement to locally owed purpose, not castigation, blame and imposition of rigid, one-size fits all templates to centrally devised prescription. My contention is that

fair dialogue and solution-focused discussion of issues would easily have allowed agreement on the developmental pathway of this nursery at the time of the inspection of this complaint. Not that there were any great issues. Of course problems arise and had arisen. It is then necessary to learn in regards of them and act accordingly. I consider that we did and would do so in future. There is nothing which would place this nursery as warranting the negative commentary it received. This is all the more the case given the praise in that same report of practice, management and leadership. Mismatched and contradictory commentary is thereby a major part of this complaint. Why knock our enthusiasm and confidence in this way? What is achieved by doing that? Does anyone gain? Do the children? This case, and others arising at that time and shortly after place the current system of school inspection in question. At the very least there should be a right of reply contained within an inspection report. That would have saved this protracted complaint for HMIE would not have let remain my observation that an aspect of practice in the report was not viewed. They would have swiftly remedied that. Why could not HMIE have come back to view that practice and also view the records in the long period between the inspection and final report publication? Because that is not the way of HMIE.

When what is at issue is the professionalism of individuals rather than commentary on practice, there also has to be a right of appeal. Here I do mean appeal, not a complaint, and I make that important distinction. That is a major distinction. It is one made in *The Executive Agency Framework Document*: “the Agency will maintain a complaints and appeals procedure”; note “and”; it is a very significant “and”. HMIE does not do this.

There also has to be an absolute requirement to follow due process. That is for HMIE and for SPSO.

Given a fresh complaint has arisen, astonishingly pertaining to the same 2007 report text, will I be enabled of appeal to SPSO if this does not find resolution within HMIE? It would seem not, and I am one of the very few headteachers to know that. Does that constitute a ‘model’ complaint handling system?

In September 2008 Mr Donaldson, senior chief inspector, outlined the substantially altered school inspection system then just coming into effect. Shortly afterwards this school was one of the first to be inspected under it. Mr Donaldson said:

“The frequency of inspections will also not change - one every seven years for primaries and every six years for secondaries. Mr Donaldson pointed out this was hardly “excessive scrutiny,” a charge with which he said he had “little sympathy.”

Munro, Neil *Same rigour, less stress* TESS 30 May, 2008

But I and this school have been in a state virtual perennial inspection for four years – inspection 2006, report 2007 with substantial intervening correspondence, new inspection system standards and quality reporting system and school development planning system without notice in August 2008, inspection November 2008 with report in February 2009 with major intervening correspondence including a complaint which was partially upheld, meeting with parents and area manager in June 2009 to ‘take forward the recommendations of the HMIE report’, even though the inspection had ignored the incoming Curriculum for Excellence which we had adopted, HMIE alteration of our developmental pathway without consultation in consequence, Local Authority internal inspection for HMIE sign-off January 2010, report March 2010 with intervening correspondence and meetings, unannounced and entirely separate Care Commission inspection of March 2010 with report in April 2010, erroneous Care Commission/ HMIE report of February 2009 leading to new ‘corrected’ HMIE/Care Commission report of November 2010, itself in error and again needing correction, and fresh complaint arising in consequence. For Mr Donaldson to state that this is only once in seven years is to admit of an organisation which does not know itself. Note, those inspections were not follow-up inspections. I work in an auditocracy. I am far from alone in this. Chris Keates of NASUWT has made this observation of school inspections under OFSTED:

In its various guises, the Ofsted school inspection framework has led to an approach that is punitive, fixated on failure and is interpreted in practice by inspectors in a way that staff in school find increasingly difficult to predict with any confidence.

The inspection system operates in a way that puts schools on a permanent war footing. Ofsted's inspection of schools has included bizarre periodic shifts in its definitions of categories of school performance, where "satisfactory" is now unsatisfactory and where, as a consequence, any attempt to use information from inspections to draw credible and reliable conclusions about trends in school performance over time has been rendered almost impossible.

Fear of being judged by Ofsted as failing has promoted a culture in schools where doing things to please inspectors competes with professional judgments about the learning needs of pupils as the prime motivation for action.

Times Educational Supplement, *How do you mend Ofsted?* 12 February 2010
<http://www.tes.co.uk/article.aspx?storycode=6035611>

This is also a description of my lived reality. The only word which need alter is to substitute HMIE for OFSTED. It is the same system, method and ethos, save perhaps the difference that there is no functioning complaints system for Scottish school inspections.

I am placing this statement in a personal capacity along with accompanying letter to Jim Martin, Scottish Public Services Ombudsman in regard of it. The nursery itself has moved on, and indeed is largely now unaffected by this. The same cannot be said for me, with my professionalism, integrity, commitment and work input so impugned in the 2007 report. This complaint has continued unabated, step by step, yet has never reached final resolution in accordance with the stated procedures. It pre-dated the Irene Hogg case and now post-dates it. It has also run in tandem with the Crerar Review at all stages, just as I contributed to that at all stages with formal submission at each step, though not incorporating this complaint, only my experience of the process.

I add comment on another important aspect. I find it preposterous that there can be any doubt as to my status as a member of the public. In a remote, rural area, working in a small community it is my reputation which was so damaged, and me, individually by name who was subjected to personal, pejorative invective in the local press, to which I could not reply by virtue of my professional position and terms of employment. I am a member of the public. But that is a poor term and I am disappointed to find it used as the dominant term of the 2008 Sinclair Report into complaints handling of the Crerar Review. 'Citizen' would be far better. But for these reasons I am writing in my own name in a personal capacity.

I note in the 'other' Ombudsman report put by Jim Martin to Jerry White for adjudication in 2009 that the close involvement of an MSP was a subject of major criticism. I am well aware that an Ombudsman needs to be independent. I have been scrupulous in keeping this complaint out of the public domain and also not involving MSPs in the complaint. However I shall now put it for consideration by MSPs in regard of the propriety of its deletion without adjudication and its contradiction with stated SPSO and HMIE procedures, including the 'model' complaint handling consultation and proposal now in process of being put by SPSO to Parliament.

In his article in TESS on 5 February 2010 the HMIE senior chief inspector states: "We stand or fall by the judgments we make and we have to be able to defend them. Complaints cannot be about the judgments, but about the process - whether the judgments were arrived at in such a way as to suggest they might not be well-founded." But there is no forum in which this operates or in which this occurs. There is no forum existing in which they have to defend them. He went on to say '...if external inspection was to mean anything, it had to have "bite", and he would be more worried if nobody complained about it.'

Well he need hardly be worried. The answer he gave at that exact time to the freedom of information request on complaints of themselves and what HMIE may have learned was the response that HMIE do not keep a central record of these complaint outcomes. And as to "bite", is that what school staff need? When schools face problems, and difficulties arise, even difficulties which may be a step towards success in administering

complex wholesale policy change, does it help to pierce them and drawn blood? Of course not, for such “bite” is a profound hindrance. What is done to dogs which bite? They are put down.

There has to be a cultural shift in audit, regulation and complaints handling. Procedural change alone will not bring this about. This should not just be a change of process but also of ethos, now to accept reciprocity and engagement with an aim of systemic understanding, solution focus and mutually determined action, not quality control to fixed audit indication with imposed requirements. The audit procedures are also too complex, particularly the separation of nursery and primary, and back to 2006 both this school and this Education Authority had sought to integrate those, which was then a national policy objective within the incoming curriculum. That is a substantial part of the reason why this occurred, a fixed notion of audit, fixed indicators, lack of awareness of national policy in regards of curriculum change on the part of HMIE, to which the school was ahead, and such a poor inspection ethos. Over-complexity was just one part, but it too arose from such a poor ethos.

I have put together a separate statement of all school audit and regulatory systems as applying in early 2010. It comprises an edifice of undoability. It is in this context that we are adjudged as deficient in ‘leadership’ and ‘self-evaluation’ in regard of procedures that are essentially unworkable, especially for class committed headteachers such as myself. To tackle such issues, and even to recognise them would be to admit of a new evaluation and assessment method in promoting developmental enhancement. An issue such as regulatory overload cannot arise in a system of judgmental, graded, audit indication. It cannot fit anywhere in an inspection schema so it does not appear in school inspection reports, even though it may be the most significant and important material effect on the operational function and organisational capacity of schools.

There is a profound need for a new ethos and new method of school assessment and accountability, perhaps one redolent of the system which was in place prior to graded audit indication. It was not that long ago, and I have spoken with colleagues who speak well of it.

So too an Ombudsman must act as honest broker. The primary role of an Ombudsman is to act as a bulwark against the arbitrary, or overbearing power of an Executive and its agents. That includes regulators. By definition it has to include regulators. Complaints handling must be transparent and fair, and there have to be external routes to arbitration, mediation, and if necessary adjudication. The complaints which reach the Ombudsman must be fairly adjudicated. If the Ombudsman is receiving too many that speaks of an issue which itself must be addressed.

I have read the complaints handling responses to the SPSO consultation. I note that of J W H MacLean, who is not known to me:

“Should other, or additional, principles be considered?”

Yes. Openness, Transparency, Impartiality, Authoritive, Accountability, Independence, Ethics

“Is the model CHP guidance appropriate? If not, please outline why not?”

Currently there is no credible body to protect the public from the numerous forms of maladministration that daily plague our local authorities. This consultation, if it continues down the path as outlined will not change that condition.

The premise for the SPSO to be the owner and guardian of a national scheme for the protection of the public is unfortunately fatally flawed, since this organisation in its present and historical form has failed in the most basic of their obligations to the public. This can be seen by any impartial review of the public that have had the misfortune to find themselves caught up in the SPSO operations.

J W H MacLean has grasped the central issue. It is as I have found the whole process. “Valuing complaints” has to be a meaningful and credible process, not a soundbite placed as a gloss over a system which is negating this principle in its actions and ethos. We need a change of culture, one moving way from blame,

and avoidance when errors occur, to solution-focus, problem solving and systems learning. A new type of question needs to be asked: “What factors in the organization led to that person being disposed to act in that way?”, rather than “You are satisfactory, weak, unsatisfactory” etc. The goal needs to be to lessen complaints, and learn honestly from those that remain. Some will no doubt be not upheld, but then there may nevertheless be possibilities of systems learning from those too, to understand why parties perceive themselves to be aggrieved, and to resolve those issues and lessen the need for such complaints. But, in fundamental procedural respects the process has to be fair and seen to be fair. In the short term, with such a change there may be a surge in complaints and complaints upheld. I consider that would be true for HMIE. But only then will the culture change. Audit, regulation, scrutiny and complaints handling are all linked. We need to move away from done-to judgmentalism and blame. We need to find out the problems which are really out there, find out why they are occurring and learn from them, to prevent them recurring. To achieve that we must not shoehorn them into a fixed schedule. We need to probe their true nature, which may not concord with their surface appearance. That is a systems approach.

This SPSO complaint should now be adjudicated externally to SPSO as per case 200502514 and its report of 2 October 2009. This case requires external Ombudsman adjudication, in regard of the arduous nature of the procedures applying to myself as a complainant seeking SPSO adjudication, and the profoundly unsatisfactory status of contradictions of procedures and lack of any properly functioning, transparent complaints system in Scottish school inspections. The system is loaded wholly against the complainant. I was disabled by the HMIE report, press publicity, consequent local effects and HMIE complaint response all at the same time, yet being then subject to the very highest level of input in regard of high level projects at school level at that exact same time period. A class committed headteacher just cannot cope with such overload and that found major example shortly after. I placed strong warnings to the Scottish Government but they were not heeded. With the circumstances of my case pertaining I do not regard it as credible that SPSO can be in current process of forwarding a ‘model’ complaints handling process to Parliament for consideration. The lessons of this complaint must be learned, but it does not stand alone. It is only now where it is because I perhaps have a high analytic capability and determination. But why should these be necessary? A complaint should be handled fairly, clearly, without obstacles being placed in its way. It should be adjudicated in similar fashion, with transparent outcome. That is what I would call a ‘model’ complaints system. Resolve this complaint and its issues and in doing so we may achieve that. It is in resolution of difficulty that we find ways forward. But that has to be a creative, not a constraining process. For in face of difficulty we may either open up, or close down. The culture of external contact is central to which path is followed.

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Note:

XXXXXXXXX is headteacher of XXXXXXXX Primary School, XXXXXXXXXXXXXXXX. Though formed in the context of my professional duties this statement of observations and reflections is written in a personal capacity.