



PUBLIC PETITION NO.

PE01489

Name of petitioner

John W.H. McLean supported by Scottish Ombudsman Watch & Accountability Scotland

Petition title

Realignment of Parliamentary Governance on Scottish Public Services Ombudsman

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to establish proper Parliamentary scrutiny and accountability of the Scottish Public Services Ombudsman (SPSO) as required by legislation. To further impose action that will ensure compliance by the Ombudsman to his Parliamentary remit and provide a fit for purpose SPSO.

Action taken to resolve issues of concern before submitting the petition

This Petition reflects a broad spectrum of concerns relating to Public Complaints. These encompass Public Service Providers (PSPs), SPSO and Parliamentary Governance bodies. For simplification, only those organisations, processes and individuals encountered by the prime Petitioner have been referenced. No positive results were achieved for a myriad of diverse reasons.

Public Service Provider

Matters were discussed with various Councillors; many of whom were sympathetic but all confirmed the limitation of their individual ability to progress matters; noting that support from leaders of the relevant political parties was essential in such matters. The four party leaders were approached: all referred back to the Council Officials that were essentially the subject of the Complaints!

A meeting with the “then” current Chief Executive resulted in a rejection to investigate those formal complaints laid before them or to have the concerns reviewed by an independent external party. Instead a direct request for the SPSO to review such complaints on their behalf was issued.

During this period the Chief Executive was replaced and following discussions with my MSP, who had proved supportive throughout; agreed to take these matters up with the new Chief Executive directly. This failed to positively advance matters, with subsequent correspondence unable to obtain a meeting or agreement to undertake an independent external review. Rather, it resulted in an unrealistic claim that all complaints had been “exhausted”: contrary to the evidence provided by that organization. Regrettably for the sake of this process, my MSP was promoted within Government causing the loss of his support.

Scottish Public Service Ombudsman

Delaying six months after the PSP request, the SPSO reverted: noting they were

unable to undertake such a review, as the PSP had never implemented any approved investigation procedures. A situation I had advised to both Chief Executives and the SPSO from the start. The PSP thereafter continued to refuse a formal investigation as proscribed by their procedures yet the SPSO refused to direct the PSP to meet their obligations?

Engagement with the SPSO readily identified serious matters of concern relating to multiple aspects of failure of Due Diligence. Discussions with MSP's upon the subsequent refusal of the Ombudsman to engage on the matters raised with his office. These included claims of systemic maladministration and other serious failures of Governance within the SPSO but proved only marginally beneficial.

Parliamentary Governance

Attempts to bring to the attention of the SPCB our claims for consideration of an unfit for purpose role of the Ombudsman were ignored when they addressed his re-appointment. Later, a request for guidance from the PPC was sought; vis-a-vis numerous petitions laid before that committee: Regrettably the SPCB guidance provided to both the LG&RC and PPC did not accurately reflect upon the best evidence and could be subject to reasonable question. This proved seriously detrimental to the subsequent outcomes of these multiple Petitioners.

After significant correspondence, all Officials and Committee members of the SPCB and LG&RC, these bodies were provided an "Argument" (12 pages) & "Strategic Plan Rebuttal" (9 pages) respectively for consideration and possible corrective action. Each document defining the shortfalls in application of their particular Parliamentary remits. This un-necessarily resulted in an extended period of unconstructive correspondence without generating any of the positive results expected.

Rejection by SPCB & LG&RC served as the catalyst for a comprehensive investigation into better understanding SPSO Parliamentary Governance - an essential pre-requisite to establish why the Ombudsman is unaccountable to Parliament; a state both unintentional and improper in legislation.

Petition background information

Over the last few years colleagues and I have investigated why there is no true Administrative Justice for Complainants? Those dis-satisfied with the results of PSP conclusions & subsequently their further grievances with SPSO determinations when in search of redress. What eluded us was why the Ombudsman remained unaccountable to the Parliament, irrespective of what we considered a significant failure of his Due Diligence?

SPSO Governance Parameters Overview

The Ombudsman takes his authority from the Scottish Public Service Ombudsman 2002 Act as amended. Actions are only the actions of the Ombudsman when they draw their legitimacy from some part of the Act. The Act both enables the actions of the Ombudsman and limits his powers. Any action of the Ombudsman which does not draw on the Act is 'ultra vires' or beyond his powers, and represents a breach of his remit. These proved to be legion.

Success or otherwise of any Governance role can only be responsibly assessed against the particular remit proscribed. In this specific instance the mandate given by Parliament to the Ombudsman was primarily defined by the SPSO Act 2002; later amended by Public Services Reform (Scotland) Act 2010. Responsibility is not limited to only these statutes, but includes all other pertinent legislation

The raison d'être of the SPSO 2002 Act is clearly recognised as a Prime Directive requiring the Ombudsman to "**.....provide remedy / redress for individuals resulting from maladministration or service failure by Public Service Bodies.**". A Secondary Directive required the Ombudsman to, "**...enhance Complaint Handling for Public Service Bodies through the application of lessons learnt**".

The above obligations were endorsed by Professor Alice Brown in her "Ombudsman

Introduction” of the 2006 – 2007 SPSO Annual Report. James Martin also concurred in his 2010 – 2011 Business Plan. It follows that scrutiny of the SPSO Annual Performance by oversight bodies shall as a minimum, establish and review compliance to this distinct and unambiguous criteria.

There followed an in-depth investigation of the facts facing Complainants, a critique (106 pages) on our findings which we considered identified SPSO's potential failures of due diligence was produced as a vehicle hopefully leading to positive change in the treatment of Complainants. This document noted a myriad of examples that the investigating team considered questionable but unanswered. These examples covered the spectrum of Governance matters. Strong evidence was relatively easy to collate; confirmed in our view, significant bias of process directly against Complainants. Correspondence with the SPSO established that they would not entertain any dialogue that was deemed to advance potential SPSO criticism. In our case, this related to detailed and serious concerns on the subjects we designated maladministration, ultra vires, misrepresentation and systemic failure of Due Diligence: and which we duly reported to the SPSO. The SPSO rapidly, closed all potentially critical correspondence on such matters.

Parliamentary Governance Parameters

Sometimes, even though the words in the legislation indicate that perhaps there is discretion as to whether or not to act - e.g. that the public authority “*may*” do something – there are cases where that must be interpreted as a duty to act. In SPSO Act 2002 Section 17(3) and others, the term “may” is not one of “choice”, but a directive to act ensuring the validity and integrity of these particular SPSO documents comply with the Ombudsman’s remit. Ensuring the report does not mislead the Parliament when laid before it.

In September 2009 the Standards, Procedures and Public Appointments Committee received a letter from the Convener of the Review of SPCB Supported Bodies Committee (“RSSB Committee”). It then recommended Committees to:

- Consider the SPSO more frequently (than annually), given that one of its roles is to let Parliament know how public services are working.
- take a more active role in scrutiny of the Commissioners' annual reports; as being an extremely important function of their remit.
- spend more time examining parts of the reports about which there are concerns
- get Commissioners to expand on the reasons for the causes of concerns.
- scrutinise the exercise of the functions of SPCB supported bodies, i.e. the operation of and delivery of services by such bodies rather than financial accountability”

None of the above items have yet been adopted as part of the Parliamentary Governance process.

Examples of other Parliamentary Governance process failings are noted below:

Annual Reports

- Absence of “Remedy / Redress” & “Lessons Learnt” statistics from every SPSO Annual Report confirms these have never been addressed by Parliamentary Governance or discussed with the SPSO at any time. Determinations do not equate to Remedy / Redress!
- No “Bench Marks / KPIs” relating to Quality Standards have ever been adopted by the current Ombudsman.
- Numerous and significant implication of audits not incorporating mandatory considerations required by Code of Audit Practice, such as:
 - o “a more holistic approach to the assessment of performance”
 - o “Audits should help the public gauge how well services are being delivered”
 - o “Audits should focus on public service outcomes from a user perspective”
 - o “the expectations of the stakeholders”

None of the above audit requirements have ever been fulfilled within SPSO. Historically such audit conclusions are therefore potentially highly suspect; especially regarding value of authenticity of financial audits reported.

Parliamentary Governance has never raised the absence of these and other critical SPSO data or directed him accordingly on any matter.

Strategic Plans

Critical aspects of the SPSO draft Strategic Plan 2012 – 2016 failed to address any mandatory requirements specifically demanded by legislation:

- No priorities are identified
- No practical methodology given on how strategic Objectives will be achieved
- No timetables provided
- No cost estimates provided against planned objectives.

No corrections were requested or directions given, following scrutiny reviews of draft 2012 – 2016 Strategic Plans by SPCB and LG&RC. Previous verbatim Strategic Objectives were also unquestioned by any Parliamentary Governance process.

Budget

None of the criteria necessary to justify approval of a Budget was produced by Ombudsman, only an unsubstantiated Cost Estimate forecast.

- No financial prudence in monitoring expenditure can be achieved against a non-targeted allowance
- No legitimacy exists in the uncorrelated, SPSO “Budget” process and it continues to receive scant interrogation by Parliamentary scrutiny.

General

The Ombudsman shall comply with all other relative legislation.

- Common Law duty demands all Public Bodies to act with Natural Justice. This means he must act fairly and it must be clear to others that he is acting fairly.
- Fundamental matters of Best Practice
- Standards in Public Life
- KPIs
- Value for Money
- full audit compliance with content and relationship of “Annual Reports”, Strategic Plans” and “Budgets”

These are all aspects to which Parliamentary Governance has never given any practical consideration.

Observations / Conclusions

- In order to inform the direction of any serious review undertaken of Parliamentary Governance: an independent, external investigation to establish the extent of Governance performance that meet or exceed national quality standards by the Ombudsman must be vigorously employed. Such an action is not precluded by legislation, but complies with the obligation of the SPCB / LG&RC to scrutinise SPSO performance.
- It is not for the SPCB and LG&RC to administer SPSO’s operations; rather they must ensure the SPSO does so ethically! There exists an historical departure in this matter that demands early redress.
- No consequences follow when parties ignore their statutory responsibility to Parliament. Whilst this scenario has never been the intent of legislation, it is fact based.
- The SPCB / LG&RC have stated that SPSO operational matters are out-with their remit. Yet they are tasked to scrutinise the exercise of the functions of SPCB supported bodies, i.e. the operation of and delivery of services by such bodies rather than financial accountability”
- Parliamentary Governance of the SPSO requires realigning in order to achieve full benefit from its remit.
- It is strongly recommended detailed procedures be produced for the benefit of Officials and Committee Members.
- No genuine Administrative Justice for the Scottish Public exists
- Failure to fully implement Governance responsibility stems from the top (tacitly the SPCB), through Parliamentary Committees, thence the Scottish Ombudsman and finally the PSPs. Each party relies upon their monitoring partner to allow them to continue to act in an inappropriate manner, without any consequences. Governance realignment by the SPCB & Parliamentary Committees will automatically facilitate a restitution of the Parliament’s Will across key Governance areas.
- Without corrective change the Scottish Public is destined to be deprived of the Public

Services as determined by the Parliament.

- The reason for this petition therefore is to
 - o bring evidence into the proper arena for consideration
 - o correct (some) systemic failure of Due Diligence in Public life
 - o improve the eventual opportunity of Administrative Justice for the Public
 - o reinforce democracy and emphasise that no person or organisation is above the law!

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01489>

Related information for petition

J. McLean: <http://scottishombudsmanwatch.org/19JMcLeanPublicPetition.html>

Scottish Ombudsman Watch (SOW): <http://www.scottishombudsmanwatch.org>

AccountabilityScotland: <http://www.accountabilityscotland.org>

Do you wish your petition to be hosted on the Parliament's website to collect signatures online?

YES

How many signatures have you collected so far?

0

Closing date for collecting signatures online

12 / 08 / 2013

Comments to stimulate online discussion

- Why is the Scottish Public, excluded from the Governance process?
- Why is there no training or credible procedures available for Parliamentary Governance of SPSO?
- Why is there a lack of transparency by the SPCB and LG&RC regarding SPSO critical information by “in camera” aspects of meetings?
- Why has the “token” Judicial Review process not been amended to make it attainable to the “average” member of the Public?
- Why have the subject of (low) recorded complaint numbers against the SPSO not been investigated in the face of evidence to the contrary?