

24 April 2013

David Stewart MSP
Convener of the Public Petitions Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Convener,

Petition PE01466

I am writing in connection with Mr Tait's petition. It came to my attention because the petition and related documents mention the SPSO and the social work complaints working group. The SPSO has representation on that group.

I am writing to offer some views which I hope may be useful to the Committee.

Mr Tait raises the issue of our remit. It is the case that I am prevented from looking at the discretionary decisions of local authorities unless there is maladministration or service failure. These are broad concepts and mean, for example, that in some cases I can look at allegations of unfairness and bias as well as more generally ensuring the appropriate procedures, guidance and legislation are followed. I also must look at each case and body on an individual basis. This means that I am unable to question a decision made by Council A on the basis that a different decision may be made by Council B. When this relates to decisions which are fundamentally political, such as the allocation of resources, and to which councils are ultimately made to answer through democratic means, the logic for this is clear. However, I think Mr Tait raises an important point about the frustration this can generate when an individual feels they are paying for a service that would cost less, or for which they would not pay for at all, if they lived only a short distance away.

In December 2010, I raised a similar point about decisions made in connection with the Charging for Residential Accommodation Guidance (CRAG). This was national guidance but it was worded in a way which meant there was local inconsistency. This meant, on the same facts, the disposal of a house could be disregarded by one Council but included as an asset in financial calculation by another. This was based on differing interpretations by councils of the same piece of national guidance. I could and did criticise failings in individual councils but, as long as their interpretation of the national guidance was reasonable, could not criticise them for coming to differing views of that guidance. The guidance was worded in such a way that this broad range of differing interpretations was possible.

I said in 2010: 'On the basis of the two investigations published today, and others that are currently under consideration by my office, I am concerned that there may be a perceived unfairness by the public about the differing interpretations of the CRAG by local authorities. It would be difficult for the ordinary citizen to understand why there is a marked difference in

the amount of time taken into consideration by different local authorities when considering these disposals.'

Mr Tait's petition demonstrates similar concerns about the fairness on local variations around charging for non-residential services. This may become more acute as we move towards more integration of health, which historically has always had more and stricter national guidance than charging and social care.

It is my view that this may be a matter best dealt with through the group looking at national guidance rather than that looking at social work complaints. Our experience of the national guidance on CRAG would demonstrate the importance of ensuring any new guidance is sufficiently clear to prevent a range of charging which leads the public to feel they are being treated fundamentally differently because of where they live. A complaints procedure cannot resolve disputes which ultimately lie in political decisions about the balance to be struck between national consistency and providing flexibility for councils to respond and adapt to local needs. Good national guidance can, however, greatly reduce the frustration felt by citizens when it can help to ensure that local variability is not so great as to feel fundamentally unfair.

Yours sincerely

Jim Martin
Ombudsman