

**RESPONSE TO SPCB COMMENTS**

SPCB's response to the PPC comprise four elements: (1) RSSB 2009 endorsement (2) claim of a compliant SPCB / LG&RC to their mandates (3) claim of a compliant SPSO to its mandate (4) misleading statements as fact

SPCB heavily emphasise the support concluded by the RSSB in favour of their role within the proposed PG regime for the SPSO. Strangely, a less than compelling case emerges when all the facts are consulted. It is therefore worthy of some genuine scrutiny.

Prior to 2007, there was no formal scrutiny attempted upon the SPSO via PG; primarily due to absence of necessary legislation resulting in delinquent methodology. Even so, RSSB accepted the simplicity in adopting an entirely new body as opposed to difficulties already experienced to add responsibilities to the SPCB!

RSSB also acknowledging the governance framework was still evolving years after the first commissioner was established, partly because the SPCB was not created with the role of financial monitor of commissioners and ombudsman in mind and SPCB had to spend time and effort adapting to the task.

Conceding the status quo (Q1-2) (Q2-15) only to the short-medium term, it was clearly stated, this would be open to "later reconsideration". Therefore limiting 2009 determinations not to make oversight changes of the SPSO at that time made by the RSSB, were possibly prudent in their initial judgement? The undeniable strength of an alternative independent route must have been hard to resist; especially in the face of positive evidence from successful examples of international Ombudsmen's operations demonstrated by serious participants.

Perhaps the impact that the Sinclair recommendations will have heavily influenced the Committee's decision to retain SPCB as the authority of choice. In particular, the Committee's expectation that the new office-holder will carry out a comprehensive review to ensure that the most efficient and effective processes and procedures were being followed. Whereby, the Committee considered that further upheaval caused by a change in governance at that time might not benefit the public. Accordingly, the Committee recommended that there should be no change at that time to the governance structure of the Scottish Public Services Ombudsman. This performance expectation never materialised.

A further seven years have elapsed since 2006 evidence was collected, with substantial evidence from subsequent operations now gained: allowing the opportunity to reconsider and enhance the level of PG performance and accountability achieved for The Parliament. We would suggest that no reasonable, balanced person with fact based knowledge, could legitimately resist adoption of significant changes to the current PG of the SPSO. It is strongly contended, such action is not just beneficial, but actually essential if efficiencies in operation, valid scrutiny and administrative justice is ever to be achieved.

When recommending SPCB be the adopted body for the Strategic Plan approval it was neither universal nor unqualified. Witnesses suggested to the Committee that a new body was required and that the role was not an appropriate one for the SPCB to continue to undertake. However, all parties stipulated that ***"SPCB should be given responsibility, powers and resources to oversee the strategic business operations of the SPSO and commissioners; the SPCB should scrutinise the annual business plan and budget projections from office-holders; the SPCB should regularly review the strategic business performance of the office-holders; the SPCB should provide an added independent dimension to the scrutiny arrangements for the SPSO"*** It was also the Finance Committee's strong view, ***"the SPCB must adopt the measures which the Committee has recommended to strengthen scrutiny and examine its resource allocation in that context"***. Another requirement seemingly unfulfilled.

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The Committee recorded that, “.... **proposals for SPCB were aimed at monitoring SPSO business operations.....**” Thereby reinforcing SPCB’s obligations to have an intimate grasp of SPSO’s functional operations!

SPCB are extremely selective and perhaps disingenuous with their RSSB quotations, naturally avoiding reference to numerous other important obligations specified by the RSSB, which PG have chosen to blithely ignore. A brief selection is noted below:

- **“officeholders should be subject to an annual review to ensure that they are fulfilling all the functions of their post as set down in legislation”**
- **“The role for committees provides public scrutiny”**
- **“our committees to spend more time examining parts of the reports about which there are concerns”**  
None of the above & many other requirements failed to be translated into actions and adopted into PG methodology.
- **“Governance should represent the operation of and delivery of services by such bodies rather than financial accountability”** Yet in 2012 the SPCB advised that SPSO Governance was only judged through the prism of its financial performance: the absolute opposite to the clear guidelines given to it.
- **“that one of the Scottish Public Services Ombudsman roles is to let Parliament know how public services are working”** It states **“how its working”** a condition demanding analysis; not simply copy individual investigations into the public domain.

It would be remiss not to note the misleading plea for **“more time”** for the Ombudsman’s to implement a Strategic Plan (Q1-9); stated as being his **“first”**. It is in fact the second Strategic Plan for which he was responsible for its performance. The first Plan he inherited half way through its duration. It did not stop him from copying verbatim, its five inappropriate Strategic Objectives into his 2012 – 2016 Strategic Plan; of which the SPCB sadly seem quite proud?

SPCB statements offering unwarranted praise and support for the Ombudsman is not unusual. Some, like the unsound and inappropriate advice to both LG&RC and PPC in 2010 on other Public Petitions that questioned the integrity of SPSO’s operation. These SPCB allegations had serious consequences for nine separate petitions. SPCB unwavering, inappropriate support for SPSO and rejecting valid criticism is unfortunately well recorded

During December 2012 in reply to a statement that the SPSO 2007 - 2011 and 2012 – 2016 Strategic Plans and to individual analyse of these individual documents did not comply with legislative requirements: SPCB stated, **“the requirement for such plans was only introduced by legislation in 2010”**. Such obfuscation completely avoiding the fact that it was then the end-2012, a SPSO Strategic Plan had been issued for the period 2008 – 2011 and RSSB had decreed SPCB’s involvement since 2009!

SPCB acknowledge an involvement to review and approve SPSO Strategic Plans, but apparently fail totally to comprehend what that entails. SPSO Strategic Plans incorporate Objectives and Priorities, Tactical Plans, Budget Estimates and Schedules: with all these requirements clearly defined in The SPSO Act 2002 as amended, Section 17A, (2) -Strategic Plans None of the required data was incorporated into SPSO’s 2012 - 2016 Strategic Plan.

However, SPCB insist Strategic Plans do not directly reflect a necessity to have any interface with SPSO functional operations and therefore they have no obligation to scrutinise or be involved with SPSO’s performance! This is a sad claim of convenience not fact; an argument that ranks for logic

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with “You cannot see me my eyes are closed”. Their assertions fail the true test of reality: as with any organisational structure, the Strategic Plan is the prime document from which all operations are driven, including that of the SPSO.

Over many years of disclaiming any obligation to address the SPSO operations via SPSO Strategic Plans; SPCB have never the less employed regular, but informal monthly “meetings” directly with the SPSO; apparently to discuss their Strategic status. Interestingly, no representation from the LG&RC were invited as a key Stakeholder, nor minutes of meeting taken or information distributed even amongst the attendees!

Given their “no involvement” position, why does SPCB initiate and misapply public resources indulging in such meetings involving functional operational matters? Without such knowledge, how can SPCB independently judge SPSO Strategic Plan performance, first to initially grant valid, formal approval: Second, how can SPCB evaluate achievement without any established process for evaluation? We have addressed this conundrum with SPCB without success. SPCB continue to implement actions that obviously, diametrically oppose their claimed statements of obligation: yet fail to identify any obvious fundamental conflict? Submissions providing detailed analysis on PG of SPSO resulted in dismissal by both PG bodies

The Strategic Plans review and approval is completed by the SPCB some 8-9 months prior to the LG&RC get around to formally reviewing the SPSO Annual Report that has long since been laid before The Parliament! This laxity is allowed due to the poor drafting of the 2002 SPSO Act. No attempt has been made by either PG body to realign this disjointed relationship and enhance PG co-ordination. The general lack of communication and consideration between PG bodies only aggravate an already ridiculously incomplete methodology: as evidenced by the LG&RC Convenor’s complaint during review of the 2011 – 2012 SPSO Annual Report.

Claims of SPCB’s “challenge role” (Q1-12) in funding again does not address any of the serious financial management information lacking in the 2012 – 2016 Strategic Plans which were detailed in the analysis submitted to both PG bodies upon the documents’ release by SPSO. Those PG bodies promptly rejected this comprehensive analysis without identifying any aspect that demanded correction. Reducing a budget by any required percentage, when that budget is simply an artificially capped, top down value does not take much in the way of a challenge.

It simply is a promise not to spend over that amount: a promise without any performance obligations identified in their currently approved Strategic Plan. In this there is no commitment to meet predetermined progress deadlines or satisfy definitive quality standards. There exists only an obligation to meet the ongoing repetition of a rolling 4 year schedule to spend money! There is no valid component of genuine financial management.

Supporting SPCB obligations is the Independent Annual Review of the Ombudsman’s performance embodied in the Framework Document, that demands review of critical, current documented evidence including:

- **Annual Reports** – SPCB have refused to confirm the legitimacy of these documents. i.e. were they current or relevant to a previous reporting period – why?
- **Annual Complainant Satisfaction Surveys** (a document that ceased in 2010)
- **Strategic Plans** – to evaluate Strategic Vision for office, identifying current status and plans for future?

A key function of the Assessor is to review all the functions of the post as set down in legislation, evaluating Ombudsman’s duties and the processes in place to meet these obligations, plus annually measuring Officeholder’s performance. This highlights what is working well and what is not. .

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Annual Ombudsman Reviews have regularly failed the test of due diligence in various regards. The Assessor is mandated to, **“ensure familiarity with the Ombudsman’s work”**. However, other than a single visit in 2010, the Assessor never attended the SPSO offices again! Attendance at the Annual Evaluation process requires an independent third party observer present to take notes. No such person has ever been in attendance.

The only SPSO document laid directly before Parliament that has first been subject to an external SPSO review and approval stage is their Strategic Plan. All others being directly laid before Parliament without benefit or protection of external SPSO scrutiny! Consequently numerous MSP’s have advised they vote (rubber stamp) the Ombudsman’s documents believing all such documents have been submitted to normal pre-approval scrutiny from an independent third party. Both PG bodies have been notified of this fact, but have shown no interest in rectifying such a serious omission. Currently Parliament continues to be open to potential misinformation from the SPSO.

That there perhaps exist an unhealthy scrutiny relationship by the SPSO towards PG could be perceived from examples of several extreme and inappropriate statements made to the LG&RC. SPSO claimed, **“The Scottish Parliamentary Corporate Body is currently responsible for the SPSO’s internal governance”** and **“SPCB had given directions on the format of the SPSO Annual Report”**. Then again this year, Niki Maclean claimed **there were no valid QA ISO standard accreditation available to Ombudsmen!** None of these claims were challenged by the LG&RC, due primarily to a basic lack of knowledge by the members on the subject matter they are responsible to scrutinise. We consider it could also demonstrate poor support from their Officials.

When the first two matters were put to SPCB, they simply responded on the former with **“no correction had been issued to the LG&RC”** and on the later, **“no directions had been given to the Ombudsman on the format of the Annual Report”**. Regrettably, also noting no corrections for such inappropriate comments were advised to LG&RC. Reinforcing the conclusion these bodies act in isolation, without consideration of their overlapping remits.

At a meeting with both the LG&RC and SPCB Clerks in July 2013, the matter of direction to the Ombudsman on his Annual Report was discussed. It was declared by the SPCB Clerk, **“the SPCB would never deem to do such a thing”**, whilst it was claimed by the LG&RC Clerk, **“this would never be necessary as a simple suggestion would suffice to obtain this result”**. We observed that irrespective of the alleged criteria to be employed, nothing had ever been implemented to gain SPSO accountability by either party.

Other than dis-satisfaction by SPCB, there are only two legitimate vehicles of influence on the Ombudsman, These are withholding of funding, and the ability to structure form and content of the Annual Report under SPSO Act 2002: Section 17(3). SPCB authority to direct form and content of SPSO Annual Reports is the simplest, positive & practical tool in the armoury of PG. How can PG deny its application as an obvious tool to obtain Parliamentary accountability? Yet SPCB constantly ignore such a powerful option – why?

Prudent implementation, without resort to Judicial Review, could bring the Ombudsman to face all his statutory obligations. Ensuring for example, SPSO reporting against pertinent outcomes, as specified in the Code of Audit Practice could be readily achieved. In such circumstances, we have a potential pathway towards Administrative Justice. Due to the delinquency displayed by both PG bodies, it was never addressed by either party.

We have concentrated mainly on the SPCB position, since we consider that the failure of the LG&RC role in PG has been possibly adequately covered in earlier discussions and petition documentation. Any doubt in the integrity of this position cannot possibly be sustained when

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considering the directions given to LG&RC for SPSO's 2012 – 2013 Annual Report meeting. These directions stated, ***“The evidence session is to concentrate on looking forward at what the SPSO is doing to educate public services, to help them learn from complaints, and how the SPSO can assist the Committee in scrutinising public services.”*** This was reinforced with advice that, on the subject of ***“process of complaining”*** it ***“is suggested should be of minimal interest to the Committee”***

We find LG&RC's un-usual approach somewhat worrisome, as it directly contradicts their mandate defined under The SPSO Act 2002, Section 17 – Annual Reports, **“to review (for the period of the Annual Report) all the functions of the (SPSO) post as set down in legislation”**. Their former point should be covered under a CSA review, for which to date, no statistical data has yet been produced; nor has the short-falls in such content been questioned by PG. CSA only represents a small element of SPSO's functions set down in legislation for scrutiny. Their latter point is a confusing instruction to defy Parliament and not to question the functions of the post of Ombudsman! However, there is no more damning evidence of a complete PG break-down, than after +11years of operations: to witness LG&RC basically ask SPSO for directions how to do their job!

We have been vocal in noting that MSP Committee members are generally over-stretched and perhaps poorly served by the professionals assigned to ease their burden. A simple example of this is every Public body is responsible to apply Best Practice as an obligation for their allocation of Public Funds. Neither PG body employ Best Practice in the activities in which they indulge relating to the SPSO.

From the isolation of their position, SPCB blandly state SPSO comply with its Parliamentary mandate and they “disagree” with the content of our fact based petition. They naturally offer no substantive or valid examples to actually contradict our evidence. Regrettably, this inappropriate attitude is a direct reflection of the significant failure of due diligence evident within the PG regime for the SPSO. The actual scope of SPSO maladministration is both extensive, fundamental and systemic.

The full list is extensive. This subject has been documented in part within petition PE01489 but is too large a topic to be tackled in this response. However, a serious matter where Parliament is misled is noted below as an example of importance embodied in such failures in due diligence:

Endorsement of Governance via SPSO Annual Reports cannot be deemed acceptable for a myriad of valid reasons that include but is not limited to:

- It does not have the integrity of ever having established a comprehensive check-list that defines the scope of SPSO Governance obligations to be met!
- No holistic audit evaluation ever implemented for remit compliance
- No systems / process ever reviewed for integrity to satisfy SPSO's mandate!
- Compliance with full requirements of Code of Audit Practice not met!

It is arguable that the inappropriate dialogue and claims relating to SPSO's availability and implementation of authentic Quality Assurance system within their operations is also a candidate for the above group. However, the impact upon its damage to the integrity of the SPSO operations is profoundly negative; as it places the quality of all their work into question.

Despite SPCB and SPSO strongly implied statements to the contrary: there has never been an independent investigation of the SPSO, as is evident from the above observation. It must be remembered that the condition of the SPSO from a procedure and process standpoint in 2009, was acknowledged as dire. Crerar was eloquent in his diagnosis that the SPSO was ***“unfit for***

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*purpose*". SPCB were also naturally devoid of actual procedures and processes as they were not authorised to undertake specific governance. A situation we understand that has not improved?

A RSSB requirement includes a key Sinclair Report recommendation that stated, "***standards used for scrutiny are not set solely by the scrutiny body responsible for assessing performance against them, but also involve other stakeholders, service users in particular***". Exclusion of the Scottish Public (service users) is an active policy of the SPSO and is also engrained in the CSA's role, thereby denying any positive involvement of the people at the very source of complaint solutions. These process deficiencies have been drawn to the attention of the SPSO and ignored but appear oblivious to PG bodies.

It is quite shocking, if not surprising to note SPCB's comments professing hope over positive action ( Q1-9) and the status quo over corrections in systemic maladministration practices (Q1-10), as the future for the Scottish Public. It is incredulous that the SPCB can still claim to define the scope of the Ombudsman's remit in terms of an incomplete set of document titles and not against operational performance required, as defined in The SPSO Act 2002 as amended.

SPCB invariably table homilies (Q1-3) (Q1-5) of the Ombudsman independence from external parties. These are always disappointedly couched in such a way as to imply that scrutiny is unable to address matters of concern. Whilst legislation is explicit that such restrictions are limited to the Ombudsman's individual Complaint determinations, and do NOT relate to the integrity of the processes he applies (functions)! Regrettably, neither PG body when advised of this fact displayed interest, preferring to continue their distribution of misleading commentaries.

We would repeat that an independent, external investigations does not impinge on the independence of the Ombudsman but more realistically assist the obligations of PG to apply their responsibility for scrutiny. The whole of such an investigation would be vested in process and does not represent a challenge to the Ombudsman's decisions on Complaints.

SPCB's response (Q3-17) is again mischievous, since our comments on the composition of any Sub-committee has always been based upon the application of the most suitable level of experience and skill-set available, and not defining its source! SPCB would appear to be at conflict in this matter with a policy from the FCSAG 2008, Sinclair Report; which recommended, "***the scrutiny staff (whether directly employed or acting as, for example, lay assessors) are deployed under the management of the scrutiny organisation itself.***"

We would record our disappointment and concern at the number and scope of their disingenuous statements which have, by necessity required to address. However, in overviewing our petition it may be beneficial to pose reasonable questions as to the success level of current PG bodies? "Are they effective" or "What do they actually add towards administrative justice goal in Scotland?" Relating solely to the SPSO; neither PG body is cost effective, each wasting Public Funds as non-effectual talking shops. The greatest financial waste being, the default facilitation of SPSO and subsequently PSP's not getting it "right first time" with no consequences. We would strongly contend that the answers must be heavily negative?

In such circumstances, "Is there a better way?" must therefore be prime for consideration? We believe that the suggestion from Angus MacDonald MSP, that a non-parliamentary committee similar to the SCPA to be formed to oversee the SPSO be adopted as the best and possibly the most practical solution. We trust you will find in favour of such a solution?

**J.W.H. McLean**  
**(For & On Behalf of PE01489 Petitioners)**  
**6<sup>th</sup> January, 2014**

## **ATTACHMENTS**

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1. GOVERNANCE ARGUMENT
2. LG&RC DRAFT STRATEGIC PLAN 2012 – 2016\_ANALYSIS

# ARGUMENT IN SUPPORT OF THE PREMISE THAT PARLIAMENTARY GOVERNANCE DOES NOT MEET ITS REMIT OBLIGATIONS VIS-À-VIS THE SPSO

## **1.0 INTRODUCTION**

Over the last few years colleagues and I have been investigating why there is no Administrative Justice for Complainants who have been dis-satisfied with the results of Public Bodies conclusions to their complaints; and subsequently their further dis-satisfaction with the determinations of the SPSO following submission of their complaints to that body in search of remedy / redress.

A critique on the SPSO failure of due diligence was produced following an in depth investigation, as a vehicle hopefully leading to positive change in the treatment of Complainants. This document identifies a myriad of examples of failure of due diligence including ultra vires. It was already a well understood impression by Complainants that Public Service Bodies were not concerned with any potential repercussions from the Ombudsman due to their inappropriate determinations regarding Complainants. i.e. Public Service Bodies were comfortable with the quality of determinations of the Ombudsman in regard to Complaints Handling as being generally supportive of Public Service Bodies; to the detriment of Complainants.

Strong evidence was relatively easy to collate that confirmed significant bias of the Ombudsman directly against Complainants; including vis-à-vis Public Service Bodies. What eluded us all, was why the Ombudsman remained unaccountable to the Parliament, irrespective of the magnitude of his failure of due diligence? This proposed argument is the result of the further investigations to establish why the Ombudsman was and is totally unaccountable to the Parliament; a state both unintentional and improper in legislation.

The following argument will note the requirements of both the Ombudsman and the SPCB and LG&RC as directed by the Parliament in the matter of applicable Governance. It will further define specific aspects of failure of due diligence on the part of the Parliamentary Bodies concerning the Ombudsman's operations.

## **2.0 SPSO INTERNAL GOVERNANCE PARAMETERS**

The Ombudsman takes his authority from the Act. The legal entity that is the Ombudsman only exists within the scope of such legislation. 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 mandate / remit.

The success or otherwise of the Governance role can only be responsibly assessed against the particular mandate / remit proscribed for its operations and any potential failure of common law. In this specific instance the mandate given by Parliament to the Ombudsman was primarily defined by the SPSO Act 2002; and as later amended by Public Services Reform (Scotland) Act 2010.

The raison d'être of the SPSO 2002 Act is clearly contained in its Prime Directive requiring the Ombudsman to ***"..... provide remedy / redress for individuals resulting from maladministration or service failure by Public Service Bodies."*** The Secondary Directive



required the Ombudsman to, “...*enhance Complaint Handling for Public Service Bodies through the application of lessons learnt*”. The ability to advance the Secondary Directive, without first achieving the Prime Directive is of course highly imponderable. Subsequent legislation has not altered these requirements.

The annual performance of the Ombudsman must therefore as a minimum be a reflection of achievement towards “*Remedy*” and “*Lessons Learnt*” together with his financial prudence in meeting his approved budget limits expended within his obligations to meet the Parliaments’ remit / mandate.

The obligation of the Ombudsman is also inclusive of applying and reporting on how he fulfils all the functions of his post as set down in legislation and for his prudent use of resources. Such obligations include but are not necessarily limited to Common Law, Audit requirements, application of “Best Value” and also include Standards in Public Life as set out by the Seven Nolan Principles.

The additional obligations placed upon the Ombudsman through the extension of his remit by the Public Services Reform (Scotland) Act 2010; into the development of a Complaints Standards Authority, Water Authority and Prison Complaints handling: are considered immaterial and therefore excluded for the purpose of simplifying this argument. “*Special Reports*” function required to be laid before the Parliament is also ignored for comment as despite the historical overwhelming need, there has never been such a document during the history of the SPSO operations!

### **3.0 SPSO EXTERNAL GOVERNANCE PARAMETERS**

All SPSO external reporting documentation such as the SPSO Annual Report to be laid before the Parliament, must as a minimum identify the valid operational performance achieved by the Ombudsman against these statutory directives / functions. Whilst the 4 year SPSO Strategic Plans shall identify those activities and budgets necessary for the Ombudsman to continue to meet both these directives and other requirements as may be directed by the Parliament. Individual budgets must be provided annually to the SPCB for approval, prior to the commencement of the Financial Year in question.

It follows that any consideration / investigation / scrutiny of the Ombudsman’s Annual Performance by Parliamentary Committees shall establish and review as a minimum, his compliance to the distinct and unambiguous criteria identified by the Prime and Secondary Directives noted in Section 2.0, SPSO Internal Governance Parameters (operational functions) and all other pertinent legislation.

Sometimes, even though the words in the legislation indicate that 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 the case of SPSO Act 2002 Section 17 (3), the term “*may*” is not one of “*choice*”, but a directive to act to ensure the validity and integrity of these particular SPSO documents comply with the Ombudsman’s remit / mandate and do not mislead the Parliament when laid before it.

Further, the Ombudsman has an over-riding responsibility to keep the Parliament annually informed on the actual performance of his functions. Similarly the SPCB and Lead Parliamentary Committee are instructed to scrutinise the record of the Ombudsman via the

relevant document for its compliance. It is by such action that the Parliament can be assured; that for what-ever reason it is not mis-led and the public purse is not abused.

There can be no other reasonable interpretation of the above noted legislation, since to do so would bring the Parliamentary Governance into disrepute. The simple question of why would the time, resources and costs be expended through the involvement of Parliamentary Bodies, if the objective is for them to either ignore or rubber stamp such critical SPSO documentation? What exactly would such a redundant process contribute to the Governance procedures? It is a question put to several officials without ever having been provided with the courtesy of a response.

#### **4.0 KEY LEGISLATION**

In order not for the Parliament to be misled, drafts of all SPSO documentation destined to be laid before the Parliament should be first required to be considered / investigated / scrutinised by a Parliamentary Body. However, only the Strategic Plans are directed to comply with this basic first step! This scrutiny is augmented under, "*Framework Document, Introduction*" which states: "*Officeholders are however subject to parliamentary scrutiny and are funded by the SPCB. They are accountable to the Parliament by way of laying an Annual Report and, as part of this accountability regime, the SPCB has determined that officeholders should be subject to an annual review to ensure that they are fulfilling all the functions of their post as set down in legislation and for their use of resources.*"

The remit of the SPCB is further specifically noted for action as detailed below:

##### **SPSO Act 2002: Section 17-Annual Reports**

*17 (1) The Ombudsman must lay before the Parliament annually a general report on the exercise of the Ombudsman's functions during the reporting year.*

*17 (3) The Parliamentary corporation may give the Ombudsman directions as to the form and content of a report under subsection (1); and the Ombudsman must comply with any such direction.*

##### **SPSO Act 2002 as amended: Section 17A-Strategic Plans**

*(1) The Ombudsman must, in respect of each 4 year period, lay before the Parliament a plan (referred to in this section as a "strategic plan") setting out how the Ombudsman proposes to perform the Ombudsman's functions during the 4 year period.*

*(2) A strategic plan must, in particular, set out—*

*(a) the Ombudsman's objectives and priorities during the 4 year period,*

*(b) how the Ombudsman proposes to achieve them, (\*)*

*(c) a timetable for doing so, and*

*(d) estimates of the costs of doing so."*

*(3) Before laying a strategic plan before the Parliament, the Ombudsman must provide a draft of it to and invite, and (if any are given) consider, comments on it from—*

*(a) the Parliamentary corporation,*

*(\*) Noted by the RSSB Committee as "Tactical Plans"*

##### **SPSO Act 2002 as amended: Schedule 1, Budget Section 12D**

*(1) The Ombudsman must, before the start of each financial year, prepare proposals for the Ombudsman's use of resources and expenditure during the year (a "budget") and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.*

***(3) In preparing a budget or revised budget, the Ombudsman must ensure that the resources of the Ombudsman will be used economically, efficiently and effectively.***

***Standing Orders, Rule 3A.6 Annual Reports and Strategic Plans***

***1. Where a supported body's annual report or strategic plan is laid before the Parliament, the Clerk shall refer that document to the committee within whose remit the subject matter of that document falls for consideration."***

In practical terms the responsibilities specifically noted in legislation as being designated to the SPCB are subsequently delegated to the LG&RC for consideration as a lead committee.

***Scottish Parliamentary Commission & Commissioners Act 2010***

***Section 15 Procedure and validity of acts***

***(1) The Commission may regulate its own procedure.***

***(4) Subsection (1) is subject to—***

- (a) any direction in that regard given by the Parliamentary corporation, and***
- (b) the other provisions of this Part.***

**5.0 ADDITIONAL EVIDENCE IN SUPPORT OF ARGUMENT**

That the Ombudsman is subject to the direction of the SPCB is made clear under the legislation noted in Section 4.0, Key Legislation. Any doubt about the significant obligation of scrutiny to be applied by the SPCB, either directly or via a Lead Committee, cannot stand when tempered against the resolute position recorded by the RSSB Committee below.

***In September 2009 the Standards, Procedures and Public Appointments Committee (the Committee) received a letter from Trish Godman MSP, Convener of the Review of SPCB Supported Bodies Committee ("the RSSB Committee"). The RSSB Committee was asking the Committee to consider whether Standing Order rule changes would be required to underpin the recommendation that there should be enhanced monitoring and scrutiny of bodies supported by the SPCB.***

***The recommendation from the RSSB Committee was—***

***"Given the important functions undertaken by all of these bodies, the Committee recommends that the Scottish Parliamentary Corporate Body supported bodies should be subject to committee monitoring and scrutiny on the exercise of their functions on at least an annual basis. The Committee would expect the Scottish Public Services Ombudsman to be considered more frequently given that one of the Scottish Public Services Ombudsman roles is to let Parliament know how public services are working.***

This recommendation stemmed, in part, from oral evidence given to the RSSB, on 10 March 2009 by Tom McCabe MSP on behalf of the SPCB. Mr McCabe stated that—

***"The central point is that all bodies that Parliament establishes must have a line of accountability back to Parliament for their overall performance and their expenditure. We suggest that parliamentary committees should take a closer interest in overall performance. Some certainly have, but a more systematic approach to the review of annual reports would be desirable. That would also have benefits when we consider the strategic plans that might be required to be submitted."***<sup>4</sup>

***"In the context of a wider concern about performance, I mentioned the need for parliamentary committees to take a more active role in scrutiny of the commissioners' annual reports. That is extremely important. Some committees have done that, but there is***

***certainly scope for our committees to spend more time examining parts of the reports about which there are concerns, and getting the commissioners to expand on the reasons for the causes of concern. That would address any concerns about interference in the functioning of the office-holders.”***

In its 1st Report 2009, at paragraphs 129 and 130, the RSSB Committee then commented that in terms of SPCB supported bodies—

***"Some are frequently scrutinised in public session, others less so. The Committee agrees with the evidence that "all bodies that Parliament establishes must have a line of accountability back to Parliament for their overall performance" (and their expenditure).***

***The Committee further agrees with the SPCB evidence of "the need for parliamentary committees to take a more active role in scrutiny of the commissioners' annual reports.***

***The role for committees provides public scrutiny as well as addressing any concern that might in future arise about SPCB interference in the functioning of office-holders. In evidence all the office-holders indicated that they would welcome greater opportunities to work with the committees of the Parliament"***

In his letter dated 1<sup>st</sup> October 2010, on the subject of independent external investigation of his office; the Ombudsman was categorical in his position on the subject, stating ***“I welcome external scrutiny”***. He further offered supportive comments to enacting such an investigation by noting, ***“It would help MSPs and Committees reap the benefits of our work more fully than I believe is currently the case. There is more we could and should be doing to share the learning from complaints and drive improvements in public services. A stronger link with a Committee would also allow the Parliament to hold the Ombudsman to account more effectively”*** and ***“The process by which the SPSO receives its annual budget is also an opportunity for the Parliament to externally scrutinise this office”***

***“The Committee also noted that the recommendation from the RSSB Committee was for scrutiny of 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”***

## **6.0 GOVERNANCE PERFORMANCE STATUS**

The SPSO Act 2002 is explicit in defining the subject that the Ombudsman shall report against; Section 17 (1) states) ***“The Ombudsman must lay before the Parliament annually a general report on the exercise of the Ombudsman’s functions during the reporting year”*** Further, Section 17 (3) states, ***“The Parliamentary corporation may give the Ombudsman directions as to the form and content of a report under subsection (1); and the Ombudsman must comply with any such direction”***

Compliance with the stringent obligations of the Parliamentary Committees and the Ombudsman can only be properly be considered / investigated / scrutinised when evaluated against the parameters defined within Sections 4.0 & 5.0 noted above. Unfortunately, serious aspects of failure to meet their respective remits / mandates were clearly evident when investigated, and could be readily confirmed by any party wishing to establish such facts.

In order not to unreasonably make any accusations which could subsequently prove incorrect or questionable; we therefore sought to test our conclusions by approaching all parties for further guidance. Historically, the Ombudsman and the SPCB / Parliamentary Committees

have been requested via FOI Requests to provide evidence that supports the action / inaction taken by that particular body regarding Governance aspects which were considered inappropriate or unsound following our investigations. Regretfully such documentation as provided by the parties did not actually satisfy support for their current or historical Governance actions.

In simple terms, the case of the Ombudsman failure of due diligence emanates through his non-performance to meet vital functions of his office. Failure of due diligence by the Parliamentary Committees arises from their non-performance to identify the Ombudsman's shortfall in this regard and direct him accordingly: and protect the Parliament from being misled as to the actual performance of the Ombudsman's relating to his functions as defined by the Parliament.

To define the magnitude of failure by the Ombudsman to meet his remit / mandate is not a function of this argument, but is clearly identified sufficiently to confirm a failure of due diligence in examples detailed within the body of this argument. Rather, we have chosen to detail typical examples where each party has failed to meet their respective remit. Comprehensive examples are contained within the critique produced following our initial investigations. Copies of this document can be provided to pertinent parties upon request.

## 6.1 SPSO ANNUAL REPORTS

- *The Ombudsman must lay before the Parliament annually a general report on the exercise of the Ombudsman's functions during the reporting year.*
- SPSO Act 2002 requires Ombudsman to *“provide remedy / redress for individuals resulting from maladministration or service failure by Public Service Bodies”*; and also annually report to the Parliament on the performance of his remit. This aspect of his functions has never been incorporated within any SPSO Annual Report or stated as an objective within any draft Strategic Plans laid before Parliamentary Committees or the final Strategic Plans laid before the Parliament. Neither has this practical obligation been implemented by the Ombudsman for the benefit of Complainants. Under a FOI Request, the Ombudsman confirmed that this statistic i.e. *“Remedy / Redress”* has never been recorded or nominated as a Key Performance Indicator (KPI) to identify \SPSO annual performance. These are clearly failures of due diligence by the Ombudsman.

The absence of *“Remedy / Redress”* statistics from every SPSO Annual Report on performance has never been addressed by Parliamentary Committees as a fundamental flaw in these reports! FOI Requests to the Parliamentary Committees further confirmed that the subject of *“Remedy / Redress”* had never been discussed with the SPSO at any time, including Strategic Plans review. Subsequently, *“Remedy / Redress”* as the Prime Directive has been allowed to disappear from the agenda as a measure of Ombudsman's performance. These are clearly significant failures of due diligence by the Parliamentary Committees.

- Given the above, achievement of the Secondary Directive, that of *“lessons learnt”* is at best an imponderable and reduced to marginal aspects, with the vast majority of complaints, circa 67% rejected within <10days without ever categorising them. Self imposing an un-necessary condition making it impossible to later redress, through the absence of the Ombudsman's prudence in not maintaining these essential records as

required by his remit. Thus the opportunity that would have benefited through necessary analysis was lost along with the opportunity to enhance our public services. This is clearly a failure of due diligence by the Ombudsman.

The implication of this failure has significantly more ramifications that would be at first considered possible. **“Right First Time”** by Professor Alice Brown, the original Ombudsman, has identified the cost of not resolving complaints at their initial stages as a 40% burden on the final cost expended by the public purse. Complaints designated as “Premature” has been a perennial 50%+ of the submissions received by the SPSO. It is in the locus of the Ombudsman to rectify such matters, but for <3 years has not implemented any concrete effort to do so, despite this matter being brought to his personal attention by a Complainant. That such delay and waste of additional expenditure was not identified or the Ombudsman directed accordingly, is clearly a failure of due diligence by the Parliamentary Committees.

- Only KPI’s relating to the speed at which the SPSO administered / rejected all complaints, have ever been adopted by the current Ombudsman. This is plainly inappropriate and ignores the statutory obligation that dictates the application of “Best Practice” to Benchmark as a methodology. The shortfall of the KPI system employed that also ignores the requirement for any quality based standards has been noted to the Ombudsman without any improvement or compliance with such requirements. This is an important failure of due diligence by the Ombudsman.

The absence of a full spectrum of valid Benchmarks produced by the Ombudsman from the SPSO Annual Reports / Strategic Plans has essentially denied and blind-sided the Parliamentary Committees from having basic standards of performance placed in-front of them for evaluation. No Parliamentary Committee raised this matter with the Ombudsman or directed him accordingly, despite this having been brought to their attention. It is particularly disconcerting given the emphasis on this particular condition was highlighted by Professor Brown in the AJTC report, **“Right First Time”**. This is a fundamental failure of due diligence by the Parliamentary Committees

- The absence of full audits demanded under the **“Code of Audit Practice”** is a persistent maladministration on the part of the Ombudsman as the Accountable Officer. In particular a failure to meet, **“the expectations of the stakeholders”** under Section 24, “Objectives” and numerous other aspects under Chapter 25, “General Principles” demanding that, **“Audits should focus on public service outcomes from a user perspective”** of the Code. The following key points are also stressed under Section 25, **“.....a more holistic approach to the assessment of performance...”** is essential; and that, **“It (the audit) should help the public gauge how well services are being delivered”**. Again under a FOI Request the Ombudsman confirmed that no holistic assessment has ever been undertaken within the SPSO. These are an important failures of due diligence by the Ombudsman.

The implication of audits that did not incorporate the above noted considerations, result in audit conclusions that must be viewed as potentially highly suspect; especially in the authenticity of financial audits. The inability to identify and direct the Ombudsman to comply with pertinent legislation is an unfortunate failure of the Parliamentary Committees.

- Reporting of Governance performance must encompass Ombudsman’s achievement in, “.....***fulfilling all the functions of their post as set down in legislation and for their use of resources.***” This has never been credibly attempted by the current Ombudsman. In addition to those examples provided under the sub-headings; **6.1 SPSO Annual Reports; 6.2 Strategic Plans & 6.3 Budgets**, the magnitude of his reporting failure is truly staggering! The enormity of this aspect is fully detailed within the previously noted critique, which can be made available to pertinent parties upon request. This is a deliberate failure of due diligence by the Ombudsman.

In answer to a FOI Request, the SPCB advised that performance of non-financial Governance at the SPSO had been taken through the prism of their budget performance; and not established through evaluation of, “... ***the operation of and delivery of services by such bodies rather than financial accountability***” In fact the methodology applied by the Parliamentary Committee is completely erroneous, being the wrong way around and cannot produce sound judgment on performance!

Governance reporting can only be initially evaluated against the data provided within the SPSO Annual Report, which is the proper vehicle for this information, as determined by the Parliament. It therefore follows that no effective evaluation of the specific SPSO Governance role has apparently taken place by a Parliamentary Committee and therefore all budget judgments are potentially seriously flawed or extremely suspect. Performance of the SPSO Governance role cannot be measured only from checks of ability to keep within approved budget levels, as it ignores the “functions” of his office. This is a considerable and fundamental failure of due diligence by the Parliamentary Committees.

## 1.2 STRATEGIC PLANS

- ***A strategic plan must, in particular, set out—***
  - (a) the Ombudsman's objectives and priorities during the 4 year period,***
  - (b) how the Ombudsman proposes to achieve them, (\*)***
  - (c) a timetable for doing so, and***
  - (d) estimates of the costs of doing so.”***
- The content and scope of SPSO Strategic Plans are specifically defined by legislation. Yet the documents produced for the periods 2007 – 2011 & 2012 – 2016 were particularly poor examples that did not meet the required legislation by a considerable margin. It is immediately obvious that critical aspects of the SPSO draft Strategic Plan 2012 – 2016 failed to address all the majority of Parliamentary requirements. i.e.
  - a) No priorities are identified
  - b) No practical methodology given as to how strategic Objectives will be achieved
  - c) No timetables provided
  - d) No cost estimates provided against planned objectives

Those objectives proposed were almost verbatim repeats from previous years and not a very considered reflection of the needs for a further 4 years for this organisation. This document did not provide a comprehensive basis from which sound judgments could be reached; and if impartially considered would fail to engender confidence in any reasonable person for numerous valid reasons. The result of Parliamentary

Committee consideration did not produce any necessary request for change to correct or enhance the information contained in the draft 2012 – 2016 SPSO Strategic Plans.

The cost estimate provided as part of the Strategic Plans, doubled for an individual Budget submission to the SPCB. Any Parliamentary Committee consideration could not begin to produce a tool that can credibly evaluate the Ombudsman's future financial accountability; or even a measure where, "*...the Ombudsman must ensure that the resources of the Ombudsman will be used economically, efficiently and effectively*". The "cost estimate / budget" element was noted (but not approved) on behalf of the SPCB, whilst the Budget document specifically requires to be approved. Without such formal approval in place on behalf of the Parliament; operations by the Ombudsman are not sanctioned or ultra vires. These were seriously, significant failures of due diligence by the Ombudsman.

No corrections were requested or directed by the LG&RC following their review of the draft 2012 – 2016 Strategic Plans at their meeting on the subject with the SPSO. Despite a comprehensive, 9 pages, line by line rebuttal document provided to the LG&RC; no action was taken by the Parliamentary Committee. Options available to the LG&RC included: to correct the SPSO draft document, review the Rebuttal with the SPSO or investigate the matter in a positive manner! No action or genuine interest was demonstrated by the LG&RC. These were seriously, significant failures of due diligence by the Parliamentary Committees.

- Unfortunately, due to the less than favourable quality of the draft document it is difficult to provide a simple summary of its numerous failures to comply with its obligations. The individual aspects not covered in this document represent multiple failures, but are not identified in this Argument. Absence of the Ombudsman to provide details of a comprehensive Strategic Plan and the Parliamentary Committee to have one established are important failures of due diligence.

### **1.3 BUDGETS**

- Reference to comments under 6.2 Strategic Plans must be considered when evaluating 6.3 Budgets.
- Without benefit of valid tactical plans as demanded by the SPSO Act 2002; the Parliamentary Committees were unable to make sound judgments as to the credibility of the associated cost estimates / budget projections? The Estimated Annual Cost extrapolated as the individual Budget is solely numbers without any factors upon which to gauge its worth. Essentially these were simply annual numbers that could not be correlated against objectives, priorities, pertinent timetables and most importantly, tactical plans to identify fundamental methodology. The inability of the Ombudsman to provide credible financial information in the manner proscribed is a serious failure of due diligence by the Ombudsman.

The approval of any professional budget is established following the evaluation and acceptance of those activities which it must support: not the other way around! The action implemented by the SPSO makes nonsense of the cost estimate / budget projections, which are to be a financial reflection of the Governance activities specified within the Strategic Plans. This could not under ever the most favourable light be considered as having met any of the strict criteria defined by the Parliament



of such a document. However, if approved, can only ever be considered a pot of money with no associated performance obligations. The Parliament does not place the level of budget as the sole measure of “performance” for the SPSO, only: “.....*that it will be used economically, efficiently and effectively*”. This is an unacceptable situation relating to the public purse finances, and a serious failure of due diligence by the Parliamentary Committees.

## **7.0 GOOD GOVERNANCE**

In 2004, The Independent Commission on Good Governance in Public Service noted the Principles of Good Governance as being a standard comprising of six core principles, each with its supporting principles. They concluded:

*Good Governance means -*

- 1. focusing on the organisation’s purpose and on outcomes for citizens and service users*
- 2. performing effectively in clearly defined functions and roles*
- 3. promoting values for the whole organisation and demonstrating the values of good governance through behaviour*
- 4. taking informed, transparent decisions and managing risk*
- 5. developing the capacity and capability of the governing body to be effective*
- 6. engaging stakeholders and making accountability real*

Given the evidence, it is reasonable to note that these are not generally evident within the SPSO or such interfaces between the Parliamentary Committees and the Ombudsman. This current situation cannot be the intention of the Parliament, and therefore requires the urgent remedial attention by involved parties. Failing such prudent action, Administrative Justice will remain only a theoretical goal for the Scottish Public, and the will of the Parliament shall continue to be thwarted.

## **8.0 COMMENTS / CONCLUSIONS**

In hindsight, for most ordinary members of the public it was extremely difficult to grasp or believe that there could be any failure of Parliamentary Governance at such a high level within the Administration. This had resulted in an almost universal acceptance by the Public that if nothing was being done to correct the inappropriate action of the Ombudsman, there was indeed no governance oversight of the SPSO required by the Parliament! However, this was a false proposition, unsupported by legislation.

The extent of time, cost and resources applied in the development of persistently mis-leading information contained in draft documentation distributed by the Ombudsman to Parliamentary Committees; can only be considered a breach of his obligation to only use resources economically, efficiently and effectively. This is a fundamental failure of due diligence by the Ombudsman and Parliamentary Committees.

All of the afore-noted failures of due diligence have allowed for highly questionable / suspect SPSO Annual Reports and SPSO Strategic Plans to be laid before the Parliament against the required stipulation of the legislation. This represents a complete failure of both the offices and due diligence by the Ombudsman and Parliamentary Committees.

Given the amicable environment on a positive course of action noted by the RSSB Committee on the willingness expressed by the Ombudsman to comply with significant

scrutiny by the SPCB; it is disconcerting not to have seen evidence of any credible scrutiny of the SPSO operations by the responsible Committees? Particularly since the SPCB, via Tom McCabe's oral evidence in March 2009 was so clear on the need for concerted action and improvement in performance by Parliamentary Committees. That such a course of action after <3 years, still does not reflect current Parliamentary Committee procedures is surprising, disappointing and confusing.

It is however, the joint resistance by Parliamentary Committees to even acknowledge in correspondence such basic obligations exist is by far the most alarming position of all. Typical examples of the strength of dis-interest are perhaps demonstrated by the following:

- In addition to the 9 page Rebuttal of the 2012 – 2016 Strategic Plans, a further 11 page analysis of the earlier 2008 – 2011 Strategic Plans were provided to the LG&RC that identified in detail the failure of that plan when compared to Ombudsman actual performance. It also clearly identified the magnitude of contrast between the activities specified for action and the actual results i.e. what is said and what is done. No interest what-so-ever was expressed by the LG&RC in this data with no comment on its content received at all! At a general time of their “consideration” of the SPSO Strategic Plans for the next 4 years, it would be reasonable to assume that such an analysis of the previous and current 4 year plans would have been an important, welcomed and pertinent consideration to the LG&RC?
- Over the course of <3 years, multiple examples of records detailing numerous failure of due diligence have been provided to the SPCB. Most recently a list of some 18 extremely serious failures was provided on 13<sup>th</sup> March 2012. No action was taken by the SPCB to investigate the credibility of such failure of due diligence at any time; despite offers to attention any meetings to substantiate and delineate the claims accordingly. Earlier submissions did not even warrant a cursory cover letter. The last occasion resulted in protracted and inappropriate comments, or a rejection to answer the serious matters raised.

We were all struck by the apparent lack of any evidence within the correspondence received from the Parliamentary Committees; to identify that these parties were fully cognizant with the scope of their remit? It was established via a FOI Request that no formal / informal training was provided either the Committee Officials or to members of each Committee! This is amongst the most fundamental of mistakes of Governance, especially given the regular change out of Committee members. This situation cannot be deemed to represent “Best Value Practice” to which all parties are committed?

During the course of development of this Argument, it became evident that currently & historically the SPCB have persistently made statements in correspondence (including Parliamentary Committees) that was not fact based. These imprudent comments were all in support of the performance of the Ombudsman and were all inappropriate to the situation at hand.

Repeated requests for evidence or comment from the SPCB to substantiate their erroneous positions on such improper claims such as SPSO compliance with, “Best Value Practice”, implementation of Quality Assurance Standards and availability of adequate procedures for Claimants who were dis-satisfied with SPSO determinations etc. All have been met with a continuing refusal to respond. Such action / inaction in this refusal are contradictory to the obligation of the SPCB to meet the Nolan Standards in Public Life. Whilst this fact was also

advised to the SPCB, it met with the same failure of response. It is worthy of note that only via Judicial Review does the Ombudsman accept that Complaints of his Maladministration activities can be determined! A situation recognised as outwith all but the exceptionally affluent members of Scottish society; and therefore without serious merit. Providing the final irony that an organisation set-up for the remedy / Redress of maladministration / failure of service; refuses to be held to this level of standard by the Public!

Relating specifically to their interface with the Ombudsman, there appears to be a common theme in the absence of sound, basic information provided to inform and direct the Parliamentary Committees in their functions. The alternative that such requirements are known but ignored for reasons unknown is rejected by this argument as having no merit.

This further raises a fundamental obligation of any public office / appointment. i.e. the responsibility of the individual to keep themselves informed as to the parameters of the obligation of their office / appointment? When the Parliamentary Committees were asked this specific question, no answer was forthcoming. However, we do not consider that such laxity of ignorance is a choice available to individuals holding public office / appointment?

**Q.E.D.**

We consider that this argument has been proven in that, *“the premise, that Parliamentary Governance does not meet its remit obligations vis-à-vis the SPSO”* has been satisfied. We therefore request that immediate action should be taken to fully implement the current legislation by the relevant Parliamentary Committees and the Parliament. Further, a sound and comprehensive training regime should be provided for all Parliamentary Committee members and officials. It is anticipated that delivery of their remit in full by the Parliamentary Committees will have an early, beneficial impact for all Complainants forced to use the services of the SPSO? An improved situation that should not find any detractors!

## **SPSO DRAFT STRATEGIC PLAN 2012 – 2016 ANALYSIS**

### **OVERVIEW**

In order to meaningfully comment on any Strategic Plan it is essential to understand the corporate management drivers for that organisation. In the case of the SPSO these would be the mandate assigned to the Ombudsman by statute. i.e. SPSO Act 2002 etc.

The Prime Directive of this Act required the Ombudsman to, “...*provide remedy / redress for individuals resulting from maladministration or service failure by Public Service Bodies.*” The Secondary Directive required the Ombudsman to, “...*enhance Complaint Handling for Public Service Bodies through the application of lessons learnt*”. Later legislation did not alter these requirements.

It therefore seems reasonable to place these Directives at the centre of any scrutiny of all Strategic Plans and Annual Reports produced by the Ombudsman on the Planned and Actual performance of the SPSO?

Scottish Parliamentary Commissions and Commissioners etc. Act 2010, Section 14 states, “*A strategic plan must, in particular, set out:*

- a) objectives and priorities during the 4 year period*
- b) how the above will be achieved*
- c) timetables for doing so*
- d) estimates for the cost of doing so”*

It can clearly be seen that critical aspects of the SPSO draft Strategic Plan 2012 – 2016 has failed to address the majority of Parliamentary requirements. i.e.

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

The first basic observation is to question how can any SPSO Strategic Plan be considered as well considered or valid when the core performance (Prime Directive) requirement, that of obtaining redress / remedy for Complainants; does not appear within its scope? It does however; clearly identify the systemic lack of essential focus of this organisation and the perpetual disregard that exists to meet compliance to the Parliament’s mandate.

NONE of the SPSO’s Strategic Objectives have ever been evaluated against Parliament’s mandate defined by the SPSO Act 2002. Further there has never been an audit that has given the holistic parameter any consideration. It therefore further enforces the general questionability of financial audits issued.

It must be noted that the draft Strategic Plan 2012-2016 Objectives are a verbatim copy of the previous 4 years; and as such is fatally flawed and no more appropriate now than when it was originally produced.

The Ombudsman has no line reporting function and is, in the most basic of understanding, completely UN-ACCOUNTABLE. A condition that the Ombudsman reinforces at every opportunity. Therefore to have a Strategic Objective (SO5) claiming to further the course of

democracy by being accountable is insulting to the Scottish Public, and can only be seen as a sad joke!

If Strategic Objective 5 is read in its entirety, it is clear that accountability is NOT a factor within this Strategic Objective! SO5 further requires the SPSO to be a Best Value organisation. This term “Best Value” is effectively a combination of the application of “Best Practice” and “Value for Money”.

The SPSO have no practical mechanism to systematically and routinely incorporate any external improvements to their processes and have not done so historically. “Value for Money” demands that in addition to being efficient it is also pertinent. This basically means that ALL the activities of the SPSO should be expended to achieve Parliament’s mandate to the Ombudsman. i.e. to meet the Prime and Secondary Directives.

The platitudes and self-congratulatory comments throughout the Draft Strategic Plan 2012 – 2016 are unwarranted, disingenuous and offensive to the vast body of Complainants that have had the misfortune to need the services of this Ombudsman.

## **Section 1. Ombudsman’s Foreword**

### **Introduction**

States that under the Strategic Plan will sit “Business Plans for each year”, but nowhere are these identified even for a first year! Business Plans should not be confused with Section 4, Measuring Performance and Impact, which comprise generally misleading and very incomplete headings. Business Plans are essentially Tactical Plans that are detailed and comprehensive – not jottings.

It is difficult to comprehend the reference to the Christie Report and the emphasis on prevention when the Ombudsman has emphatically failed to constructively address the problems of “premature complaints” that accounts for 45% - 50% of complaints received each year by the SPSO? This reflects a clear example of the Ombudsman’s failure to act effectively.

### **Fit-for-Purpose Complaints Handling Service**

A claim that the SPSO system is “*Fit for Purpose*” and “*trusted by the people*” cannot be substantiated by the facts. The number of petitions submitted on this very subject must attest to this condition. Historically, Complainants that are dis-satisfied have exceeded those noting a degree of satisfaction in the Annual Complainants Satisfaction Surveys (ACSS) carried out in previous years. It is probably the reason NO such key report was commissioned by the Ombudsman for the period ending 31<sup>st</sup> March 2012!

Both the quality of earlier ACSS’s, being statistically insignificant: and the absence of any ACSS for the last reporting period is failures of due diligence. The Ombudsman is required to provide the Parliament by the laying of reports on the performance of his mandate, In particular a failure to meet, “*the expectations of the stakeholders*” under Section 24, “Objectives” and numerous other aspects under Chapter 25, “General Principles” demanding that, “*Audits should focus on public service outcomes from a user perspective*” of the Code.

### **Complaints Standards Authority**

Reference is made to “*best practice guidance*” when no facilities are implemented within the SPSO to identify and import such “best practices”. It may simply be mis-placed arrogance,

suggesting the SPSO have no need to learn but only teach this subject. However, again it is not a claim that can be supported by facts. Currently the SPSO have no Quality Assurance Management Systems accreditation in place and operate what is at best an inappropriate Quality Control system that proved to be a serious failure during the 1960 -1970 period. Yet they continually report that they operate functional Quality Assurance systems and what is even more worrying, have an obligation to impart these skills within the Complaints Handling Authority – HOW?

### **Powers and Independence**

The above observation is perhaps reinforced by the Ombudsman’s comment, “...*we do not anticipate any significant change in how we work*”. Reflecting smugness not warranted by the performance and obligations of the SPSO to its mandate and detailed by Quality Assurance failures noted above.

The following appears out of place, “*In all matters relating to changes to our remit and powers and in how we carry out our work, we will continue to maintain and protect the independence (and perception of independence) of the SPSO*” and could be easily taken as a veiled threat?

### **National Performance Framework (NPF)**

We found the following phrase to be particularly inappropriate, “...*we recognise our accountability to the SPCB and our responsibility to the Scottish people*”. Nowhere within their operations does the SPSO recognise any responsibility to the Scottish people: their literature is full of such phrases as, “Your Complaint: Our Decision”. Your attention is drawn to the SPSO policy document, “Unacceptable Actions” and “Special Requirement Information Signal” which adopts a form of “Complainant Profiling”, both of which maligns Complainants characters by starting from an unconstitutional position where Complainants are deemed guilty.

There is still no formally approved (or even draft) benchmarking criteria employed by the SPSO in their operations. Therefore, how can anyone take the glib comments of the SPSO in this document as serious? In 2010, the requirement for “*benchmarking*” was reported as, “*No Action Taken*”.

### **The Plan**

“*Quality assurance is key to ensuring the work of the office is delivered efficiently but is also proportionate, risk based and leads to balanced, evidence based decisions*”, Here again we have statements of the most disingenuous kind. The Ombudsman is claiming that there is indeed a reputable Quality Assurance Management System (QAMS) operating within the SPSO when it is not fact based. See previous comments.

“...*making significant contributions to the development of public services as well as providing redress for individuals...*” may read well but “*redress for individuals*” is not embodied in any Strategic Objective for the next four years – just as it was not considered in the previous four years. Given the mandate obligations, redress is the most fundamental element of the SPSO’s performance, but one never reported upon or records maintained by the Ombudsman. The Ombudsman glibly highlights rectification of systemic issues of Public Service Providers, when significant evidence is available clearly noting his refusal to tackle such problems.

Again we are faced with such statements as, ***“Underpinning our work is an effective performance management system with clear performance indicators”*** which does not pass the test of unbiased scrutiny. At the time of the Draft Strategic Plan issue, there was not ***“an effective performance management system”*** only a “Complaints and Investigation Guidance” which itself is incomplete; plus numerous miscellaneous policies, guidance and instructions. Nowhere does there exist any competent ***“procedures”*** as required by statute?

The SPSO refer to, ***“Delivering our objectives.....”*** and not upon delivering against their obligations to the Parliament! There is a misplaced implication that everything the SPSO say or do is appropriate. It would be more valid if they stated as a Strategic Objective, ***“Ensure that all SPSO actions are in accordance with its mandate from the Parliament; and in compliance with Common Law and other pertinent statutes”***.

It is interesting to note that a similar requirement was inserted as a 2010 Business Plan Objective (SO5-d) which required, ***“Continue to meet obligations and statutory duties in relationship to risk, governance etc,”*** It was inappropriately reported as ***“Closed”*** without any action being taken!

## **Section 2, Role, Vision and Values**

### **Role**

Whilst noting the requirement to, ***“...undertake independent investigations into complaints from members of the public about service failure and maladministration by Scottish public services”***. The Ombudsman critically avoids advising that the standards upon which he makes judgements are less than those of the parties on which he adjudicates. i.e. the SPSO do not recognise failure on the part of his organisation and refuses to address legitimate complaints against the SPSO for maladministration and service failures. Unfortunately this inappropriate irony is completely ignored by the SPSO!

### **Our Vision**

A similar “Vision” in the Strategic Plan 2008 – 2011 proved to have little to no correlation with any positive achievement, as is demonstrated in the attached report for that period. When stating, ***“We continue to aim to bring this about (public confidence etc) by providing a trusted, effective and efficient complaint handling service which remedies injustice for individuals....”*** The implication is that all these attributes already exist, which is incorrect, in fact the exact opposite is true! Regrettably, the wish-list of ***“Our Vision”*** is isolated from the reality of the performance of the SPSO.

### **Values**

An assurance that the SPSO proscribe to the Nolan Committee’s “Seven Principles of Public Life” is perhaps particularly disingenuous given the despotic nature of the Ombudsman’s Office? The Seven Principles of Public Life contain the requirement for the following principles: accountability, honesty, integrity, leadership, objectivity, openness & selflessness.

Regrettably, the principles proffered, reflect unrealistically restricted definitions: since how is it possible to refer to “honesty” only in terms of finance and ignore truthfulness? The definitions for the principles to be adopted possibly represent the lowest practical common denominator for standards in public office, comparing particularly poorly against “The Good Governance Standard for Public Service”.

However, as a vehicle to address standards they are particularly meaningless within the SPSO, since given the unfortunate reality of the Ombudsman's unaccountable authority: the SPSO are protected from any external accountability. Therefore ALL of the standards espoused by the Nolan Principles are non-enforceable from a practical & external perspective without redress to judicial review.

This fact and the relevant operational conditions are well known and part of the culture within the Ombudsman's Office, it therefore makes such a claim by the Ombudsman quite duplicitous. Like so many other claims on behalf of the Ombudsman's Office; it cannot be simply be judged by what is said or written, but only upon the actions invoked!

The Ombudsman fails to be: *“impartial, fair and evidence based”*, *“accountable, open, with Complainants recording little confidence in their governance”*, *“responsive to the needs of Complainants”*, *“exemplars of efficient and effective complaints handling”* or *“a best value organisation which is efficient and effective”*. It is hard to believe so many erroneous claims can be found together in such a high level document that fail so easily the test of any scrutiny

### **Section 3, Strategic Objectives 2012 – 2016**

There is a general confusion in the selection and content of the five Strategic Objectives that have again been chosen by the Ombudsman for the next four years. If for no other reason than the organisation should have achieved various pertinent goals by this stage and should have a much better handle on the key challenges of today and for the future? Apparently not!

It could be strongly argued that SO1, SO2, SO3 & SO4 bear remarkably similar goals, as defined by the language of their descriptions? Further, the comments added to give more definition to the Objectives actually makes understanding any difference between them even more confusing! There is a remarkable overlap in the scopes of the Strategic Objectives proposed. A simple example is the last paragraphs in SO1, SO2 & SO4 could easily be interchanged without affecting their intent?

Again we would note the absence of such key terms such as, *“Administrative Justice”* and *“Remedy or Redress”* within the Draft Strategic Objectives tabled by the Ombudsman – both core statutory requirements.

SPSO often use the term Procedure when they actually mean instruction, guidance, policy etc. If the use of this term under Strategic Objective 4 is correct it will be the only PROCEDURE within the SPSO governance armoury. Despite the fact that the SPSO are obligated by statute to produce Procedures such as the Complaints Handling Procedure they have to date set their face against such actions.

### **Section 4, Measuring Performance and Impact**

It is claimed that, *“The SPSO has developed a range of performance measures.....These measures map against the five Strategic Objectives..... and provide a measure for monitoring business performance against targets”*. The only targets (KPI's) ever produced by the current Ombudsman are ones of speed. There are currently 5 KPI's, last year there were 4 KPI's and before that 3 KPI's. They essentially represent the same philosophy of speed as the ONLY target for the SPSO and have been modified essentially to match the changes in the practical operations within the organisation: and does not therefore, *“provide a*



*measure for monitoring business performance*". Please note previous comments regarding the absence of professional benchmarking within the SPSO.

It is difficult to understand the validity of such an exaggerated claim that KPI's "*provide a measure for monitoring business performance against targets*". Since the Ombudsman has openly stated by his limited choice of KPI's, that they have no standards to which the organisation is to be measured against except "speed". Clearly the Ombudsman does not consider the need for standards or values relating to quality, integrity, administrative justice, remedy / redress, openness clarity and scope of reporting etc, as these facets of the SPSO operations do not warrant stringent KPI's against which to report. SEE comments on Section 2, Values.

Nowhere within the statutes does the Parliament instruct the Ombudsman to be the fastest public service; it is simply not part of his mandate. However, it does clearly identify the vast discrepancy of focus within the SPSO operations where speed circumvents his directive to "*...provide remedy / redress for individuals resulting from maladministration or service failure by Public Service Bodies.*"

To Complainants, "*...focus on outcomes.*" should provide performance statistics highlighting the achievement of "*redress / remedy*" by the SPSO, not just how successful it is at rejecting / closing complaints. The claim that, "these performance measures...map against the five Strategic Objectives is not correct or fact based.

## **Primary Performance Measures**

### **SO1**

It is incredible that "*Quality Assurance*" and "*User Satisfaction*" are quoted as "*measures*", given there is no recognised standards for Quality Assurance functioning within the SPSO and that Complainant Satisfactory Surveys have been totally excluded from the scope of the last year's operation after years of statistically insignificant surveys! There is however an unfortunate consistency in SPSO reports and documents, where the language used does not represent the facts. "*Providing a high quality Complaints Handling Service*", strangely excludes any reference to Quality, Standards or Values except for their disingenuous claim regarding Quality Assurance!

### **SO2**

In the fourth year of operation for the current Ombudsman, no Special Report has been placed before the Parliament noting problems in obtaining redress / remedy from the Public Services Bodies. It therefore follows that he is satisfied by the level of redress / remedy achieved on behalf of the Complainants. There is no evidence from Complainants supporting this assumed satisfaction. Historically Complainant Satisfactory Surveys have recorded greater dis-satisfaction than satisfaction.

### **SO3**

Premature Complaints have maintained a 45%-50% burden each year. A prime cause for this is that the SPSO have not implemented their responsibility under Section 22 of The Act. A condition which The Commission on the Future of Public Services Report have estimated this type of failure to take preventive measures to cost public service bodies 40% of their spending!

### **SO4**

We have not investigated sufficiently to comment meaningfully on this area of SPSO operations, except to note that the SPSO mandate required them to implement Quality Assurance standards within the Complaints Standards Authority. A condition they have failed to achieve for their own operations!

## **SO5**

“*Accountable*” has disappeared from the scope of this Strategic Objective? Whilst listing 6 jottings under this heading; no reference is made of their obligations to Stakeholders including Complainants.

## **Section 5, Governance and Risk Management**

There is nothing under this heading that advances the grasp of reader on the Draft Strategic Objectives 2012 – 2016 document.

## **Section 6, Resources**

### **Overview**

Highlighting 4 duties for the SPSO would reasonably tend to identify how they see their core functions and responsibilities. Again conspicuous by its absence is any reference to achieving remedy / redress for Complainants. In this respect we believe it to be true that such Administrative Justice does not play a part in the focus of the Ombudsman

### **Timetable**

Throughout the document the Strategic Objectives are defined on 4 separate occasions and in each they vary in definition – WHY? By design or incompetence, it demonstrates a lack of professionalism. It further demonstrates the impact of an organisation that lacks the discipline of a functional Quality Assurance System.

Alternative Potential Strategic Objectives are offered for consideration:

### **Strategic Objective 1:**

*“Ensure that all SPSO actions are in accordance with its mandate from the Parliament; and in compliance with Common Law, other pertinent statutes and professional integrity”.*

### **Strategic Objective 2:**

*“Strive to improve the remedy / redress for Complainants in both quality and proportion through the application of Administrative Justice and an integrated Complaints Handling Procedure”*

### **Strategic Objective 3:**

*“Translate lessons learnt into strengthening Public Service Providers Complaints Handling and minimise wasteful “premature” complaints inappropriately sent to SPSO”*

### **Strategic Objective 4:**

*“Maintain an awareness of ongoing matters that may potentially impact on the scope and effectiveness of future operations of the SPSO and bring these to the attention of Parliament”*

### **Strategic Objective 5:**

*“Meet statutory obligations for Complaints Standards Authority and lead development of standardised, simplified Complaints Handling Procedure for the public sector”*

### **Strategic Objective 6:**

*“Establish Administrative Justice, trust and support of Stakeholders including the Scottish Public by demonstrating only Best Practice in Governance, comprehensive outcomes reporting and the development and application of an accredited Quality Assurance Management System (QMS)”*

Only when detailed Tactical Plans are evaluated, can there be any confidence in understanding whether or not the Strategic Objectives are to be seriously attempted. Even then there must be scepticism as to the actions that need to be applied!

In support of this contention we would draw your attention to the Advisory & Audit Committee comments relating to the Jerry White Report 2009. They stated categorically on 31<sup>st</sup> March 2010, *“The SPSO aims to mitigate these risks by developing a revised quality Assurance system to support revised key performance indicators”*. It is disappointing that the A&AC were unable to see that no functional QA system existed at that time, thereby making redundant the term *“revised”* in the context of QA systems. It is even more worrisome that circa 4 years later, after several interventions by the SPSO, they are basically no further advanced in meeting this commitment; but continue to hide behind misleading and disingenuous statement to the Parliament and their Committees.