

## **Submission of Accountability Scotland to the Commission on Parliamentary Reform**

This submission relates mainly to ‘engagement with wider society’ and to ‘checks and balances’ and, more specifically, to administrative justice and to problems with the flow of information. It has three parts – an exposition of problems within parliament, suggestions for improvement, and an Appendix giving more detailed information (including publicly available evidence that issues we have taken to the Scottish Parliament are serious and worthy of its attention).

### **PROBLEMS WITHIN PARLIAMENT**

#### 1. Parliament, a broken machine?

The governmental, executive and parliamentary machine has never worked. There is a plethora of systemic failures that result in parliament and its MSPs being ill-informed of the facts. This results in illogical decisions and legislation that is poorly drafted and enacted.

#### 2. Ten years of frustration

Since the formation of Accountability Scotland, a decade ago, we have tried to raise serious issues concerning complaint handling across the whole of government, local government and NHS with MSPs, committees and ministers and have ultimately achieved nothing despite presenting irrefutable evidence; we are told that all is well.

#### 3. Failure of complaints handling and delivery of justice

Our primary concern has been with administrative justice, in other words whether complaints are adequately and effectively investigated and accurately reported. Our existence attests to the large number of people who have been denied this, many of whom have been seriously damaged psychologically and suffer from long term life threatening medical conditions (with, to our knowledge, two suicides). We, as well as MSPs and other frustrated individuals, have tried to engage parliament on this, but with no success. This is despite the fact that complainants’ satisfaction with the SPSO has only been about a woeful 50% (see Appendix). Too often individuals with the strength to be persistent have been excluded from direct engagement with parliament with the label of ‘vexatious’. The facts are being ignored or inadequately presented to the relevant committees and it seems that parliamentary mechanisms encourage this

denial. We presume that much of what we say here has a wider applicability than administrative justice. We therefore welcome the opportunity of reform.

#### 4. Failure of parliamentary process

The following story is a good way to illustrate several failings of the parliamentary system. Full details are in the Appendix (“A tale of two Holyrood committees”).

In 2014 the Scottish Public Petitions Committee (SPPC) recommended a review of the SPSO’s service. This recommendation was sent to the government and, we were told, filed—unread by ministers—in a data vault. An SPPC clerk received an acknowledgment from the Policy Office of Tribunals & Administrative Justice, but the recommendation was entirely ignored by the justice directorate of the Scottish government. The recommendation was also referred to the Local Government and Regeneration Committee. The LGRC considered it briefly—given information by ourselves and not by the clerk. Then, at a second meeting, having been given two seriously misleading documents, they dismissed the matter without public discussion. The petitioner received a letter giving a spurious reason for not reviewing the SPSO. Later, a seriously misleading letter was sent to John Swinney giving the same spurious reason. He told our chairman that the situation was unacceptable, but later dismissed the matter without explanation. This process should be transparent and open.

The justice department wrote to the LGRC, in reply to a request from the LGRC for the department’s opinion on the SPSO. We learned from its author that it was prepared by cutting-and-pasting from a press release from the SPSO website, without any independent verification—despite the fact that the petition concerned the SPSO.

More generally, we have usually found dealing with Scottish parliamentary committees and government to be hard-going. Indeed, we provide evidence below that there is presently no way at all that our arguments can achieve traction in Holyrood.

A senior member of the Community Justice Division advised us to work through MSPs and committees. We did as told and got nowhere. We were not advised to write to ministers.

The Head of Committees and Outreach told us that our concerns had been fully considered by the SPCB, LGRC and the previous Justice Committee, She suggested that they are more appropriately directed towards the government

rather than parliament (contradicting the advice from the Community Justice Division). There seemed to be a general complacency.

As for the SPCB, they have refused over the years to address the serious shortcomings of the SPSO, largely on the grounds that, in law, they cannot question individual SPSO decisions (which is correct but irrelevant). However, the SPCB is able to, and should, ask the SPSO to include an independent report on the quality of its decision making within its Annual Report. Reporting on the quality of the investigations does not change the SPSO's independence as ombudsman but could give parliament confidence in the office's quality.

A clerk of the LGRC (now LGCC) seems to have the remit of minimising and editing submissions from the public. Obstruction and arrogance are not appropriate in parliament. Clerks (in general) should not unduly influence committee deliberations, other than by providing full information and oiling the proceedings. If the Commission requires them, we can give our reasons for these comments.

This submission is not about the failings of the SPSO, but we should make clear that they are a serious issue that Parliament should not dismiss as too trivial to act on. The SPPC agreed with us (see Appendix). Rather than cite specific SPSO cases, we call attention to evidence published on the SPSO website, namely the appalling results of surveys of complainant ('customer') and SPSO staff satisfaction (see Appendix).

To summarize, here are some problems we have encountered.

- MSP's general lack of knowledge of, and interest in, administrative justice.
- Lack of time for committee members to consider issues prior to meetings (confirmed by MSPs in conversation),
- Inadequate or misleading information in SPICe reports.
- Manipulation of information flow by committee clerks.
- Abolition of Scottish Committee of AJTC Council in August 2013 and of the interim Advisory Committee (STAJAC) in 2014.

## **PROPOSALS FOR IMPROVEMENTS**

1. Reinstatement/replacement of a committee concerned with administrative justice (AJTC, STAJAC) is essential. Administrative justice is far larger than either criminal or civil justice

2. Maximum use should be made of the international standards on complaints and quality assurance of **ISO9001** which we have advocated for the SPSO. These standards require internal quality assurance processes that check outcomes as well as processes and would help to provide public assurance. ISO9001 is used by ombudsmen in Australia and the SPSO's lawyers and is promoted, and to some extent used, by the Scottish Government. ISO 9001 contains a independent external review which would report on the quality of investigations carried out by the SPSO and give Parliament and the SPCB confidence in his office and also to improve the dismal 50% satisfaction rate expressed by the users of this service. Parliament must be aware of the poor levels of service in its oversight.

3. We support those many people who argue for a second, revising, chamber. As well as bringing in valuable expertise, this would provide a larger work force, leaving MSPs more time to prepare for committees.

4. Optimizing committee work (with emphasis on the Public Petitions Committee): Committee papers should be made available well in advance, as members generally have little time to study them beforehand. Some documents (or summaries) could be read aloud at meetings.

There is often a lack of effective debate. Both sides of the argument should be presented in person to parliamentary committees, summed up and a decision arrived at.

A petition should be presented orally by the proposer if possible, either with opposing views delivered by an external person or group or else, where there is no opposer, SPICe could provide the opposing arguments.

If necessary for their attendance, petitioners should be re-imbursed for travel, but if petitioners cannot attend they should be encouraged to supply depositions to be read aloud. If that seems costly in time and money, there may yet be ultimate savings.

The SPPC holds private discussions. These should subsequently be made public. This should minimize the bewilderment and frustration of disappointed petitioners.

Committee debates should not be subject to the whims of committee clerks.

The parliamentary website has pages for Petitions documents. It should also record the subsequent and on-going history of all petitions accepted.

In other words, web pages for successful petitions should include continuing feedback on government responses, if any. We know of one recommendation being followed up, but by an official who retired, leaving the job forever unfinished. We have been unable to find out what proportion of successful petitions lead to successful changes in legislation. The Commission should find this useful information.

SPICe writers should be skilful and diligent, and include some individuals experienced in understanding and communicating statistical arguments. Their reports should always give sources/references for statements – as many do. If written by experts, they could go beyond recording the facts to recommending decisions to be made.

#### 5. Information handling and availability

The Parliamentary website is good, but could be improved. Sometimes one has to search through a collection of documents, the dates of which are not visible until the documents are opened. Sometimes Google locates pages almost at once, but the present search system could be improved. It should be easier to locate a petition by PE number. More generally, there is poor signposting. Thus, despite our frequent contacts with MSPs and use of the parliamentary website, we only learnt of the following very recently:

The existence of your Commission;

The fact that the Minister for Community Safety and Legal Affairs has responsibilities for the SPSO (which we have not subsequently been able to find evidence for on the website);

The responsibilities of the SPCB for handling complaints.

## APPENDIX

### **A tale of two Holyrood committees**

#### *Summary of events:*

25/11/2014: Scottish Public Petitions Committee (SPPC) considered petition PE1538 and recommended a review of the SPSO's service.

7/1/2015: Local Government and Regeneration Committee, armed only with a document hurriedly written by ourselves, postponed scheduled discussion.

14/1/2015: LGRC discussed the report of SPPC. They had by then been given two seriously misleading documents. The recommendations of the SPPC were dismissed without reported discussion.

9/3/2015: A letter from the convenor of the LGRC to John Swinney is seriously misleading. It mentions a review of the SPSO undertaken by Parliament in 2009. This is irrelevant because that only considered aspects of legislation raised by the previous ombudsman and was not concerned with the performance of the present SPSO who succeeded her in 2009. The petitioner was told this too.

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#### *Detailed account*

The SPPC met on 25 November 2014 to consider petition PE1538 ('Transparency in SPSO investigations'). Considering written and verbal evidence the committee supported the petition, but also went further to endorse the view that "it is time that we had a review of the SPSO's service".

One outcome of the LGRC's careful deliberations was the burying of their report in the computer of the justice department. The issue was also referred to the Local Government and Regeneration Committee (LGRC).

The LGRC was to discuss the matter on 7/1/2015, but we learnt just a few days before that practically none of the necessary information was being passed on by the clerk to the committee members. We were therefore obliged, in a hurry, to send the documents to each one individually, with additional comment. The LGRC was later given a briefing document which contained serious misinformation (coming from the SPSO) that we had already called attention to in our petition. They also had a lengthy document from the ombudsman which did not directly address six key points made in the petition. (For details, see 'Commentary from Accountability Scotland on Jim Martin's letter to the LGR

Committee concerning PE01538' within the Accountability Scotland website document "What happened to our petition 1538. How Parliament works.")

On 14 January 2015 the LGRC considered the evidence it received from the SPSO following its oral evidence session on 7 January 2015. In light of this the Committee agreed to close the petition.

Thus the final outcome of the careful deliberations of the SPPC has been the burying of their report in the computer of the justice department and the summary dismissal of their conclusions by the LGRC after little informed discussion.

The LGRC (now the Local Government and Communities Committee) formerly invited questions from the public to be put to the ombudsman at meetings held to quiz him on the SPSO Annual Report. Such questions are no longer invited or accepted. The committee is therefore denied this source of information.

The recent meeting, of 14 January 2017, was useful, but nothing was said of the established poor performance of the SPSO. The committee members were presumably ignorant of major issues of concern.

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***Regarding a letter from the convenor of the LGRC to John Swinney 9<sup>th</sup> March 2015***

We were dismayed to read this letter. Evidence can be supplied on all points. There is nothing here that the LGRC is unaware of, but they are ignoring unequivocal evidence and so frustrating administrative justice and the proper Parliamentary process.

1. The letter starts by referring to our view that the SPSO should be investigated. This is not just our view, but also that of the Public Petitions Committee.
2. The second paragraph refers to a briefing from the SPSO on SPSO processes. We have given clear evidence to the LGRC that this included false statements about these.
3. The third paragraph says that "The vast majority of [SPSO constituents = complainants] are reported to be happy with the service provided". This comment must be based on the Craigforth reports as there is no other evidence. However, the statistics in these reports are almost the worst in the

world. A new report has now been published; the majority of customers happy with the service provided is hardly vast (see item 1).

So the sentence is demonstrable nonsense.

4. The ombudsman was asked about a stakeholder sounding board meeting held in 2014. He did not answer the question, but responded by commenting on the 2013 meeting. Having spoken to one of those present, we know that the answer would have been embarrassing.
5. The SPSO staff survey revealed an appalling level of staff dissatisfaction.
6. The final paragraph of the letter mentions a review of the SPSO undertaken by Parliament in 2009. This is irrelevant because it only considered aspects of legislation raised by the previous ombudsman and was not concerned with the performance of the ombudsman who succeeded her in 2009.

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### **Relevant evidence for the poor performance of the SPSO**

We realise that the SPSO is not the concern of the Commission, but feel it appropriate to show that our concerns about the SPSO are serious and not to be dismissed by parliamentary committees as trivial. The very existence of Accountability Scotland is evidence for this. Rather than citing individual case, we offer evidence from the SPSO's own website.

In November 2016 the SPSO published their '**Customer Survey Report** 2015-16'.

This showed that only about half of customers were satisfied, but despite this, the SPSO proclaimed that as good. Our more detailed statistical analysis shows that claim to be spurious. The Gibraltar ombudsman achieves a 95-98% satisfaction rate even though many complaints are not upheld.

The SPSO also published a '**staff survey report**' in May 2014. This indicated considerable dissatisfaction and poor management.

Accountability Scotland representatives would be happy to expand on these points if invited to give evidence to the Commission in person.