

ISDR Report to AAC meeting on 1 Oct 2013

Annex 1 quotes what I said in SPSO's 2012-13 annual report. The reference to SPSO being well ahead of public-sector colleagues elsewhere, in having an independent appeal for service complaints, is based on research conducted for this year's Ombudsman Association conference.

Annex 2 summarises the cases that I dealt with in the period covered by that report. Annex 3 summarises the cases that I have dealt with so far in the current year. I have highlighted a few leading issues.

Case [REDACTED] (16 May 2012) illustrates the problems that can arise if SPSO fails to see how things look from the point of view of a complainant, who is not familiar with the finer points of SPSO jurisdiction and procedure.

Case [REDACTED] (27 Nov 2012) illustrates complainant confusion about when a complainant gets a chance to raise factual inaccuracies – *before* decision (by seeing a draft) for a public report, but *after* decision in other cases.

Cases [REDACTED] (7 Jan 2013) and [REDACTED] (31 Jan 2013) show problems caused by SPSO's former leaflet referring to 'agreeing' the complaint with the complainant. That has now been amended, to say that SPSO has the final word – see case [REDACTED] (4 Apr 2013).

Case [REDACTED] (28 Jan 2013) shows SPSO being very robust with a public body in private, but getting into problems through appearing to want to spare the public body's blushes in correspondence with the complainant.

Cases [REDACTED] and [REDACTED] (both 7 Feb 2013) and [REDACTED] (8 May 2013) illustrate the need for complaint reviewers to be clearer about the difference between whether SPSO *could* or *would* award compensation.

As I mentioned in SPSO's 2012-13 annual report, the ombudsman and his staff provided me with all of the information that I required, and (where I upheld a service complaint) reacted positively to my report.

David Thomas
Independent Service Delivery Reviewer

Annex 1: SPSO annual report 2012-13

It is uncommon for public-sector ombudsman schemes to have arrangements for service delivery complaints to be reviewed externally. So it is to SPSO's credit that it voluntarily created such arrangements in April 2007. I took over from my predecessor in December 2012.

During the year ended 31 March 2013, eleven people referred service delivery complaints to me. Two of them each complained about two cases. So I looked at thirteen case files in total – which is about 0.34 per cent of the cases handled by SPSO. Though I focused on the concerns that had been raised with me, I also carefully reviewed the whole of the case files, to see whether there were any wider lessons to be drawn.

All of the people who brought service complaints to me were disappointed in some way with the outcome of their case against the public body. Some of them found it difficult to distinguish between their view of the merits of their complaint against the public body (which is not a matter for me) and their view of the way in which the case was handled (which can be for me).

In seven of the cases that I looked at, I considered that the service delivery complaints were entirely unfounded; SPSO had dealt with the cases impartially, efficiently and with considerable patience.

Some people had unrealistic expectations. Some wrongly expected to be able to direct SPSO's independent investigation of the case. And one person complained that, when he phoned and asked to speak to a senior manager, one was not available immediately – even though, as he was promised at the time, a senior manager called him back promptly.

At the beginning of a case, SPSO summarises the scope of what it will be investigating – which is legally a matter for SPSO. A few complainants thought that they should have the last word on scope. I am glad to note that, during the year, SPSO amended its explanatory leaflet to make clear that it is SPSO that has the last word on this.

In five of the cases that I looked at, I considered that there had been a handling error concerning either the case itself or the service delivery complaint: a lack of clarity, a minor delay or a minor procedural error. These handling errors did not have any significant impact on the six cases, but indicated areas in which SPSO might consider improvements to its process.

In one of these cases, there was confusion about whether SPSO could or would award financial compensation. It would have been helpful if SPSO had explained this more clearly. In another case, where the complainant had not cooperated with the investigation, it would have been helpful if SPSO had sent a final warning before closing the case.

In one of the cases that I looked at, I considered that there had been a lack of clarity which did have a materially adverse effect on the complainant concerned. SPSO had not made sufficiently clear at the outset that it would not be investigating a [REDACTED] issue referred to in the complaint form sent to SPSO.

The law says a complaint must first be made to the public body concerned, which has to issue a final response, before SPSO can look at it. This raises problems where, as in this case, the complainant adds an issue between receiving the public body's response and referring the complaint to SPSO.

It was obvious to SPSO that it could not look at the extra issue, but it was not obvious to the complainant. SPSO did not make it sufficiently clear at the outset, or as it went along, that it could not look at the extra [REDACTED] issue – and it was not unreasonable for the complainant to believe that SPSO was dealing with it.

As the original case took a significant time to resolve, it was months before the complainant received SPSO's decision and discovered that it would be necessary to start over again from scratch on the extra [REDACTED] issue. The [REDACTED] worry resulting from the delay caused her distress.

In relation to all of the cases that I looked at, the ombudsman and his staff provided me with all of the information that I required. Where I upheld a service complaint, SPSO reacted positively to my report, accepting my conclusions and apologising to the complainants concerned.

Annex 2: Summary of ISDR cases 2012-13

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 4 May 2012
Outcome: Not upheld

Service complaint: When the complainant phoned SPSO, he asked to speak to a senior manager or supervisor. None was immediately available. He thought they should have been.

ISDR decision: The response from the Director of Corporate Services had been correct. It was not practicable to ensure a senior manager or supervisor was always immediately available. The complainant was promised a call-back from a supervisor, and the call-back was made just over two hours later.

Any wider comments: None.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 16 May 2012
Outcome: Partly upheld

Service complaint: SPSO did not communicate in accordance with its stated procedures. Its procedures were unclear. SPSO did not deal properly with her requests for clarification and disability needs. There were factual errors in its decision. SPSO's letter about the review stage was misleading. Though SPSO upheld her [REDACTED] complaint, she had still lost out because [REDACTED].

ISDR decision: The complainant had two concerns about [REDACTED]. One related to [REDACTED]. The second related to [REDACTED]. The second issue arose after [REDACTED] final decision but before the referral to SPSO. The complainant (reasonably) thought SPSO was dealing with the [REDACTED] issue as well; she had included it on her complaint form. SPSO failed to make clear that it was not dealing with the [REDACTED], because [REDACTED] had not issued a final decision on that. And SPSO's decision made it look like SPSO was confirming the [REDACTED]. Despite the complainant's focus on this issue up to and beyond the ombudsman's decision, SPSO failed to make the position clear. She was now free to raise a separate complaint about the alleged [REDACTED] 18 months later. The delay and [REDACTED] worry had caused her distress. SPSO should apologise for the delay and distress caused by its failure to make the scope of its investigation sufficiently clear. And it should expedite any case about the second issue.

Any wider comments: SPSO was slow to recognise the problem, and the complainant's real distress, even when the matter was referred to me – and SPSO was apparently unable to see that technicalities familiar to it would not be apparent to a complainant unless explained.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 6 Jun 2012
Outcome: Not upheld

Service complaint: The complainant alleged that SPSO had "corrupted" data and "lied" in an internal case summary, which he had obtained as a result of a data protection request.

ISDR decision: The complaint was without foundation. Having carefully reviewed the whole of the case file, I concluded that the matter had been conducted throughout by SPSO impartially, efficiently, with care and with considerable patience. The complainant is now threatening to sue me.

Any wider comments: None.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 7 Aug 2012
Outcome: Not upheld

Service complaint: Lengthy arguments that were actually about merits plus: the accuracy of personal information; the right to be heard; the amount of information in the [REDACTED] response and in SPSO's decision; and alleged bias.

ISDR decision: The case was conducted throughout by SPSO impartially and appropriately.

Any wider comments: None.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 13 Nov 2012
Outcome: Not upheld

Service complaint: SPSO had 'changed' the agreed summary of his complaint in its decision, and he had not had a response to which he was entitled under the service complaint procedure.

ISDR decision: SPSO had not 'changed' the agreed summary of his complaint in its decision, and he had been dealt with fully under the service complaint procedure.

Any wider comments: None.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 19 Nov 2012
Outcome: Not upheld

Service complaint: Arguments that were actually about merits plus general process and alleged failure to supply copy documents before the case was decided.

ISDR decision: The case was conducted throughout by SPSO impartially and appropriately. The copy documents were only requested after the case was decided.

Any wider comments: None.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 27 Nov 2012
Outcome: Upheld one minor point; otherwise not upheld

Service complaint: Besides challenging the merits of the ombudsman's decision, the complainants raised concerns about: the procedure for reviewing the SPSO decision; SPSO not checking whether certain recommendations had been carried out; the accuracy of the case summary on SPSO's website

(they thought it unfair and misleading); the procedure for preparing and propagating such summaries; and the procedure for raising a service complaint about SPSO.

ISDR decision: SPSO treated the complainant's email of 18 Jul 2012 as a service complaint. It should have treated their earlier email of 12 Jul 2012 (on the same point) as a service complaint. Otherwise, there was no substance in the service complaints – though there might be a complaint to the ICO about breach of confidentiality by the [REDACTED]

Any wider comments: Another case where the complainants got confused by the difference in timing of when factual inaccuracies can be raised – before (in the case of a report to be laid) or after (in the case of a decision letter). The ombudsman might like to consider harmonising the process.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 7 Jan 2013
Outcome: Upheld on an inconsequential point; otherwise not upheld

Service complaint: The complainant, who had accused [REDACTED] raised concerns about: SPSO refusing to use his wording for the complaint summary; giving him insufficient time to respond; letting a manager contact him about his case whilst a service complaint was current; SPSO not proceeding with his case; SPSO not accepting his service complaint; and SPSO not responding to a final email.

ISDR decision: SPSO was entitled to decide how the case was summarised, and to refuse to use the pejorative terms that the complainant wanted. All the other issues flowed from this. There was no substance in the service complaints, save that SPSO should have at least acknowledged his final email and indicated why it would not provide a substantive response.

Any wider comments: To avoid misunderstanding later, it is sensible to try to agree a complaint summary at the outset. The SPSO leaflet *What we do when we get your complaint* includes – 'The complaints reviewer will agree with you what your complaint is about ...' Consider amending this to make it clear that SPSO will try to agree the summary, but has the final decision on the wording.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 28 Jan 2013
Outcome: Upheld on an inconsequential point; otherwise not upheld

Service complaint: The complainant's underlying complaint was against [REDACTED], which he pursued through a series of complaints against [REDACTED]

[REDACTED] His complaints against SPSO were: delay in dealing with the case, and SPSO tolerated delay by [REDACTED] his queries about the reasons for the delay were not responded to; he was not treated with dignity and respect; full details of his complaint against [REDACTED] were not covered; things were not explained clearly and points he raised were ignored; a meeting on 2 Aug 2012 was a 'stitch-up'; no explanation was given about why SPSO did not use its powers; the investigation was neither thorough nor robust; he was treated with bias and prejudice; and the head of complaint standards did not reply properly to his service complaint.

ISDR decision: The complainant wanted SPSO to do things it could not do, and would not accept SPSO's explanation of the extent of its powers. So most of his service complaints were entirely misconceived. The head of complaint standards had already apologised for delay in dealing with the case, including waiting for information from [REDACTED] I recommended that SPSO should also apologise for not having made clearer the reason for the delay in obtaining the information from [REDACTED]

Any wider comments: The reason was that [REDACTED] disputed SPSO's powers. SPSO dealt with the issue robustly, with the ombudsman personally involved. But SPSO appears, wrongly in my view, to have been reluctant to let the complainant know about this.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 31 Jan 2013
Outcome: Not upheld

Service complaint: The complainant, who was concerned about [REDACTED] raised concerns about: SPSO misrepresenting his complaint; not allowing him to comment on its description of his complaint; wrongly suggesting that his complaint may have been the subject of [REDACTED] delayed in dealing with his case; communicated with him by post rather than email; did not treat him with respect; should not have let its complaint reviewer write to him while the service complaint was outstanding; should not have suspended his case; misrepresented his service complaint; and breached article 6(1) ECHR.

ISDR decision: The head of complaint standards had already apologised for the use of post, rather than email, and the delay in replying to his service complaint at stage 2. The other issues were not upheld. The complainant objected to SPSO's summary of his complaint against [REDACTED] and all the other issues flowed from this. SPSO was entitled to decide how the case was summarised, but should consider amending the wording in its leaflet *What we do when we get your complaint* to make it clear that SPSO will try to agree the summary, but has the final decision on the wording.

Any wider comments: To avoid misunderstanding later, it is sensible to try to agree a complaint summary at the outset. The SPSO leaflet *What we do when we get your complaint* includes – 'The complaints reviewer will agree with you what your complaint is about ...' Consider amending this to make it clear that SPSO will try to agree the summary, but has the final decision on the wording.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 1 Feb 2013
Outcome: Not upheld

Service complaint: The complainant complained: as the head of complaint standards was late in responding to his service complaints, they should be upheld by default; [REDACTED] was permitted to comment on the recommendations in SPSO's draft report, whereas he was specifically told not to comment; SPSO refused to meet him when he requested a meeting but accepted [REDACTED] offer of a meeting; he was not convinced that all the evidence was looked at by SPSO in arriving at its conclusions on the case; he was not satisfied that SPSO acted independently; SPSO seemed to always favour [REDACTED] and give it the benefit of the doubt; SPSO was biased in favour of [REDACTED], and so the whole of the case should be independently reviewed.

ISDR decision: The head of complaint standards had already apologised for the delay in replying to the service complaint. Otherwise, the complaints were factually incorrect or misconceived.

Any wider comments: None.

Cases: [REDACTED] and [REDACTED]
Respondent: [REDACTED]
ISDR decision: 7 Feb 2013
Outcome: Not upheld

Service complaint: The complainant complained: (rushing) the original complaint reviewer had put pressure on her and rushed the case, perhaps because she was leaving; (lost correspondence) the complaint reviewer said she had not received correspondence posted by recorded delivery on 25 Jul 2012; (phone-back) on 4 Aug 2012 she was promised a phone-back by the successor complaint investigator, but this had not happened within an hour; (leave) the successor complaint reviewer went on four-months' leave without warning, though she had spoken to him two days previously; (cash for cases) she had been told that the ombudsman receives cash for each case, and the longer it goes on the better; and (statistics) it might be interesting to find out whether the ombudsman publishes the percentage of cases upheld and not upheld.

ISDR decision: Her main concern was with the outcome of the cases, and she could not 'appeal' to me; SPSO should apologise for the delay between the original complaint reviewer's letters of 19 Jun 2012 and 17 Jul 2012 (in the case); it would have been better practice if the complaint reviewer's letter of 2 Nov 2012 (in the case) had also given an alternative contact name just in case; and SPSO should apologise for the head of complaint standards not responding to the service complaint in her letter of 11 Aug 2011 until later. Otherwise, the complaints were factually incorrect or misconceived.

Any wider comments: Correspondence from complaint reviewers was not clear about the actuality of whether SPSO could or would recommend compensation. SPSO may care to take steps to ensure that complaint reviewers choose their words more carefully.

Annex 3: Summary of ISDR cases 2013-14 to date

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 4 Apr 2013
Outcome: Partly upheld (minor)

Service complaint: The complainant complained (at some length) that: SPSO would not investigate the matters about which he was concerned; SPSO was unclear and did not respond to specific points he raised; and his case was closed with no prior warning.

ISDR decision: By law, SPSO could only deal with the issues the complainant had previously complained to [REDACTED] about. Its complaint summary was reasonable, and it tried hard to explain to him the position – which he was reluctant to accept. But SPSO should apologise for some initial delay by the investigator and for not giving him a specific warning before closing the case.

Any wider comments: I am glad to note that SPSO has since clarified the wording in its explanatory leaflet (www.spsos.org.uk/files/2013.03.15_SPSO_information_leaflet_2.pdf) to – *"The complaints reviewer will discuss with you the wording of the complaint that we will ask the organisation about. The wording needs to be clear, and in exceptional cases where there is not agreement about wording, our reviewer has the final say."* I would be good practice to write, before closing a case, to warn the complainant that the case would be closed if he/she did not accept SPSO's complaint summary within some specified time limit.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 8 May 2013
Outcome: Partly upheld (minor)

Service complaint: The complainant complained (15 pages plus enclosures) that: there was a contradiction between the Ombudsman ruling that the complaint was within SPSO's jurisdiction (i.e. there was evidence of administrative failure) and the complaints reviewer's subsequent investigation, which did not take account of the evidence you submitted on this; she was not allowed sufficient opportunity to input into agreement of the heads of complaint, because very little or nothing she suggested was included or taken into account during the investigation; the complaints reviewer thought that she was just after money; this has been repeatedly quoted, including in the Head of Complaint Standards' letter of 23 Nov 2012; the ethical grounds of her complaint were overlooked; she was discouraged from sending in more evidence; she remains remain unconvinced that SPSO adequately, thoroughly and effectively investigated her complaint; she made clear her intention to submit a decision review request in a timely manner, and she was not given any specific deadline for submission of evidence; the Ombudsman's decision of 18 Jun 2012 pre-empted matters; the Head of Complaint Standards did not respond to her emailed request of 20 Jul 2012 for clarification; the Head of Complaint Standards' letter of 23 Nov 2012 did not mention her request for a complaint decision review; the Head of Complaint Standards did not acknowledge or respond to her further service delivery complaint email of 12 Nov 2012, asking why her email of 20 Jul 2012 was misplaced; it is not clear to you what correspondence she was sent on 12 December (year?) and the Head of Complaint Standards did not state whether this was a letter, leaflet or email; the Head of Complaint Standards overlooked evidence of her specific concerns on the complaint reviewers' tone and language; the Head of Complaint Standards claimed to be unable to find evidence in the file of her being referred to by the wrong gender or sent an internal email; the Head of Complaint Standards' decision letter (dated 23 Nov 2012) provided inadequate guidance on requesting independent review; the Head of Complaint Standards discounted many of the matters that she raised, on the grounds that they fell outside the scope of a Service Delivery Complaint; the second (investigating) complaint reviewer's appropriateness to work as an SPSO investigator has been publicly questioned; and SPSO senior staff, such as the ombudsman, have links to higher education through previous public bodies.

ISDR decision: It would have been helpful if the Ombudsman had given reasons for his jurisdiction decision of 23 Feb 2012. SPSO should apologise for not clarifying the basis on which her case was reopened, which would have avoided some subsequent misunderstanding. The Head of Complaint Standards' letter of 23 Nov 2012 did not deal specifically with the additions to her service delivery complaint in her email of 12 Nov 2012. SPSO should apologise for that. It was careless of SPSO to send its email of 13 Feb 2012 to her, rather than its intended internal recipient. But no harm was caused, and it was not sufficiently serious to require an apology. It is impossible for me now to decide conclusively whose account of the phone conversation of 9 Mar 2012, about financial compensation, is correct. I do not consider this had any impact on the subsequent investigation and decision of her complaint against [REDACTED]. I consider that SPSO provided her with adequate information about its service delivery complaint procedures, and adequate information about my contact details, but I have no objection to SPSO routinely providing my email address as well as my postal address. I do not uphold any other aspects of her service delivery complaint.

Any wider comments: Correspondence from complaint reviewers was not clear about the actuality of whether SPSO could or would recommend compensation. SPSO may care to take steps to ensure that complaint reviewers choose their words more carefully.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 17 Jun 2013
Outcome: Not upheld

Service complaint: The complainant complained about: overall delay in handling the case; failure to deal with his concerns, and lack of explanations and answers; no reply to his email of 3 April 2013; an 'out of office' response from the complaints reviewer he had been told to deal with; and frustration that SPSO had requested additional information from him.

ISDR decision: The head of complaint standards had already apologised for a delay between 3 and 24 April 2013. Otherwise, there had been no substantial service failure by SPSO.

Any wider comments: None.

Case: [REDACTED]
Respondent: [REDACTED]
ISDR decision: 18 Aug 2013
Outcome: Partly upheld (minor)

Service complaint: The complainant said that: he asked SPSO to investigate four issues, but it agreed only to look at three; because English was not his mother tongue, he requested personal meetings with the complaints reviewers, but this was refused; SPSO questioned his [REDACTED] about [REDACTED] though it should not have looked at [REDACTED], and accepted photocopy evidence from [REDACTED] that was unreadable; SPSO did not ask for proof that [REDACTED] and did not ask some basic questions or ask for further explanations; SPSO twisted his complaint about [REDACTED]; SPSO did not give adequate reasons for its decision, nor show what proof there was that [REDACTED]; SPSO told [REDACTED] that he was going to challenge SPSO's decision and told [REDACTED] that he was going to make a complaint against it; SPSO should have treated his communication of 13 Mar 2013 as a service complaint, and should not have treated it as a request to review the case decision; and SPSO's head of complaint standards did not give adequate reasons for his decision, particularly on the request for a meeting and accepting evidence on [REDACTED]

ISDR decision: It would have been better if the ombudsman's letter of 17 Apr 2013 had specifically asked if he wished the matter to go on to be treated also as a service complaint, and the response

from the head of complaint standards should have dealt specifically with the question of what he said about requesting a meeting and accepting evidence on [REDACTED] Otherwise, not upheld – and mostly factually incorrect.

Any wider comments: None.
