

SPSO guidance on **requests made under Section 2(2) of the Scottish Public Services Ombudsman Act 2002**

Under certain circumstances, an authority within the Ombudsman's jurisdiction (a 'listed authority') may ask the Ombudsman to investigate a complaint about itself. This guidance note clarifies the SPSO view on this.

Section 2(2) of the Scottish Public Services Ombudsman Act 2002¹ says that the Ombudsman may investigate a matter if the listed authority concerned requests an investigation of a complaint that has been brought to them. This is, however, qualified by Section 5(5) of the Act² which says that the Ombudsman may do so only if she is satisfied that:

- (a)** *it has been alleged publicly (whether or not by a person aggrieved) that one or more members of the public have sustained injustice or hardship [...], and*
- (b)** *the listed authority in question has taken all reasonable steps to deal with the matter to which the allegation relates.*

The Scottish Executive provided guidance³ on the intent behind the 2002 Act. This includes the following: *Requests by listed authorities*
Section 2(2) allows a listed authority to request an investigation by the Ombudsman. This provides a means to address cases where there has been public criticism of an authority but, as no complaint has been made to the Ombudsman, she cannot investigate. The intention is that this option should be used very much as a last resort and so that it does not divert the Ombudsman from her main function of dealing with complaints from members of the public...

SPSO view

The SPSO would, therefore, normally expect a request to be made only in the following circumstances:

- The listed authority has done all that it believes it reasonably can to resolve the complaint, including telling the complainant of their right to complain to SPSO.
- The complainant/aggrieved person appears to have chosen not to bring the matter to SPSO (i.e. we have not notified the authority that we have received a complaint).
- A public statement has been made alleging hardship/injustice to a member or members of the public as a result of the alleged maladministration or service failure by the authority.

The Ombudsman views the option of requesting an investigation as a last resort, and encourages authorities to consider carefully before making a request.

It is of course for the SPSO to decide whether or not it will investigate the matter, and whether or not it believes the allegation has been publicly made.

1 <http://www.opsi.gov.uk/legislation/scotland/acts2002/20011--a.htm#2>

2 <http://www.opsi.gov.uk/legislation/scotland/acts2002/20011--a.htm#5>

3 <http://www.scotland.gov.uk/Publications/2002/10/15564/11762>

FAQs

Q: How does an authority make a request?

A: They write to us with a formal request for an investigation under Section 2(2) of the Scottish Public Services Ombudsman Act 2002. They should explain the matter in detail and what they have done to try to resolve the complaint. They should provide all relevant correspondence and evidence (see below) with the request.

Q: What happens next?

A: We will consider the request and decide whether or not we will investigate it. If we decide not to investigate we will explain the reasons for this to the authority. If we decide to investigate we will follow a process very similar to our investigation of complaints brought to us by members of the public, and we will lay the Investigation Report before the Scottish Parliament.

Q: How does the Ombudsman define an allegation that has been made publicly?

A: The allegation should have been made in such a way that it is or was clearly available within the public domain. So for example where the allegation is only made in correspondence with, or that has circulated internally within, an authority, we would not consider it to have been made publicly. Examples of when we would normally consider the allegation to have been made publicly include:

- in the media (press, TV, radio)
- on a website
- at a public meeting or forum

Q: How does the Ombudsman know that the allegation has been publicly made?

A: This is something we would want to confirm before deciding whether or not the matter is one that we can and should investigate. We consider that the onus is on the authority when making the Section 2(2) request to provide evidence that the matter has been publicly alleged. If they cannot provide such evidence we are unlikely to investigate.

Q: Can a listed authority make a request to SPSO under Section 2(2) in order to have the Ombudsman check their handling of a complaint, or as a general check of their processes?

A: No, unless there is a public allegation that someone has suffered hardship or injustice as a result of the alleged maladministration or service failure.

Q: Can an authority ask SPSO to investigate if a complainant simply seems unable to accept a decision that they have given, and repeatedly writes or contacts the authority about it?

A: No, unless the allegation has been publicly made as described above. The Ombudsman recommends that as a matter of good practice public authorities should have a transparent, freely available policy on how they will handle approaches from the public that they find unreasonable. The SPSO has its own Unacceptable Actions Policy which is available from our office.

We hope that this guidance is helpful. If you would like more information you can ring our office on **0800 377 7330** or e-mail **ask@spsso.org.uk**.

Please note, however, that in this context we cannot discuss individual complaints in detail with a representative of a listed authority.

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