

PE1693/E

Scottish Public Service Ombudsmen submission of 29 October 2018

Background

1. Scottish Canals came under the SPSO's jurisdiction on 2 July 2012. This means that the SPSO can:
 - 1.1. consider complaints made about Scottish Canals
 - 1.2. set complaints standards for Scottish Canals.
2. Scottish Canals must comply with the two-stage model complaints procedure we have established for Scottish Government and related organisations.

Complaints about Scottish Canals.

3. Since 2012 we have received eight complaints about Scottish Canals.¹ We have:
 - 3.1. published one investigation report: <https://www.spsso.org.uk/decision-reports/2017/october/decision-report-201608915-201608915>
 - 3.2. advised four complainants that they needed to first complain to Scottish Canals
 - 3.3. advised two complainants that their concerns were not matters we could investigate
 - 3.4. resolved one complaint.
4. In cases where we have not investigated, there are statutory limits to what we can tell Parliament about complaints received. We also only hold limited information about complaints received more than two years ago or complaints which we have referred back to the organisation, but, broadly, concerns have been raised with us about:
 - 4.1. administration of consultations
 - 4.2. setting of rents and charges
 - 4.3. attitude of staff
 - 4.4. management of moorings.
5. We have no record of specific complaints about the general management of the Canals such as the maintenance of waterways or about the impact of diversification².

What we can look at

6. Before the Ombudsman can consider a complaint they must meet certain criteria. They must:

¹ See the Appendix for tables of all complaints received and closed.

² Although please see the note at para 4 about the limited nature of the information we hold on complaints from some years ago or which are premature.

- 6.1. have usually been put to the organisation first
 - 6.2. come from or on behalf of a person³ who has been impacted or affected by the issue (put another way, they must be from someone who is complaining about an issue which they believe was maladministration that lead to injustice to them)
 - 6.3. not fall within one of the excluded categories of subject matter in our legislation.
7. Of the topics mentioned in the Committee's letter, we could, consider complaints about the maintenance of a waterway, failure to meet statutory obligations or diversification but **only** if a person can show that has had an impact on them directly. As we are not a regulator or scrutiny organisation, we do not have general powers to assess the overall quality of the service being provided. Nor do we have the powers to initiate an enquiry where we have no complaint, but believe there may be an issue that is having a detrimental effect on service users generally.
 8. In individual cases, there may be additional limitations that affect how closely we can get to decision-making. We have an extended jurisdiction over health and social work matters where we can assess the merits of a decision. In other areas, such as canals, however, we cannot look at the merits of a decision unless there has been maladministration in how that decision was made. Failure to fulfil a plainly stated statutory obligation would amount to maladministration, but if there was some discretion about how to interpret that obligation that may limit what we can do.
 9. Rent and service charges are an excluded category and the impact of that can be seen in our one published investigation (link above). The issue raised was about the way the charges had been set. We were restricted to looking at complaint handling issues.
 10. The Waterways Ombudsman in England and Wales was not set up by statute and was established by the Canal and River Trust to take complaints about them. Its powers and limitations are set out in scheme rules. The rules establish the limits of the role and there are some limitations on what they can consider. These are different to the legislation under which we operate and in some areas we have more flexibility. In terms of scope, they do not appear to have the same restriction around rent or service charge.
 11. As we have previously noted to the Committee, it is the areas of exclusion which lead to the highest levels of dissatisfaction with our office, higher than when we do not uphold a complaint we have been able to investigate⁴.

Additional comments on the petition

12. The petition specifically seeks an "independent" Ombudsman. This phrase was repeated during the evidence. The Waterways Ombudsman in England and

³ In this context, person can include a company or an organisation

⁴ Our response to petition PE1659
http://www.parliament.scot/S5_PublicPetitionsCommittee/Submissions%202017/PE1659_D.pdf

Wales is appointed by the organisation it considers complaints about and, while its Board includes a minority of appointees from the Canal and Rivers Trust, its status is significantly less independent than the SPSO's which is a Crown appointment, funded through the parliament and with powers set out in statute.

13. From reading the oral evidence, it seems likely that the request for an independent Ombudsman may be more reflective of a desire for someone with a canals specialism and expertise rather than the specific status of the organisation. While this is understandable, it may help to give reassurance if we address this point specifically.
14. The SPSO has a very broad jurisdiction. This reflects the size of Scotland, its public services and the population it serves. It would simply be disproportionate and unnecessarily expensive to the public purse to have a number of small, subject specific offices. The benefits to having a broad jurisdiction, are that we can share best practice and learning quickly across sectors and achieve economies of scale and flexibility in the service we provide. We appreciate that there may be perceptions that the breadth leads to a loss of expertise and, in individual cases, the SPSO has a range of expert advisors on which we can draw, and where we do not have an existing arrangement for specific advice, will seek it. We may not be the subject experts across the board, but we are expert in investigating complaints and knowing how to ask questions of experts in such a way as to ensure we have sufficient knowledge to make robust decisions.
15. While the larger population in England and Wales means that it is possible to appoint a single Ombudsman, the Waterways Ombudsman remains a small organisation consisting of one individual who operates on a part-time basis and in 2017/18 dealt with 48 enquiries and conducted 14 investigations⁵.
16. In conclusion, from considering the petition and evidence given it seems likely that, while there was some dissatisfaction arising from the limitations on our role (specifically around rents and charging), more generally, the underlying unhappiness was that there was not a regulator or other scrutiny organisation which could hold Scottish Canals to account for its performance and service generally. An Ombudsman would, in our view, simply do much as SPSO do, and in some circumstances hold the organisation to account about specific issues, relating to specific people, shining a light on matters that enable a range of stakeholders to hold them to account. While the desire for a specialist Ombudsman is understood, we question the value it would add.
17. We also noted the concerns about the lack of protection afforded to someone living full-time in a canal boat. We have considerable sympathy for anyone in that position but would point out that a legislative change is required to remedy this. An Ombudsman cannot change laws but only look at the protections afforded by the law, raising issues that might lead others to drive legislative change.

⁵ <http://www.waterways-ombudsman.org/media/1112/ombudsman-annual-report-17-18.pdf>

Appendix - SPSO complaints data

Scottish Canals	No of complaints received	No of complaints closed	Cases closed before investigation	Reasons for closure pre-investigation	Investigations
2012/13	0				
2013/14	1	1	1	Premature	0
2014/15	0				
2015/16	2	2	2	Both Premature	0
2016/17	2	1	1	Out of jurisdiction	0
2017/18	1	2	1	Out of jurisdiction	1
2018/19 (YTD)	2	2	2	1 premature and 1 Resolved	0
Total	8	8	7		1