

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE SCOTTISH PUBLIC SERVICES OMBUDSMAN
AND
AUDIT SCOTLAND

March 2016

Purpose of Memorandum of Understanding

1. The purpose of this memorandum of understanding (MoU) is to outline the functions of the Scottish Public Services Ombudsman (SPSO) and Audit Scotland, and to describe the arrangements for co-operation and communication between the two organisations in relation to their respective functions, handling complaints and the promotion of good administrative practice.
2. Each organisation will take steps to ensure that their staff are aware of what is in the MoU. They will keep staff updated about it, and about the responsibilities it places on each individual member of staff.
3. This memorandum of understanding (MoU) aims to:
 - a) Secure cooperation and the exchange of information between the SPSO and Audit Scotland subject to any legal constraints, including the need to respect personal or commercial confidentiality;
 - b) Foster mutual understanding and effective relations generally between the organisations;
 - c) Secure consistent treatment of matters which affect them both;
 - d) Ensure an open and transparent relationship between the organisations.

Role and function of the SPSO and Audit Scotland

SPSO

4. The SPSO has the functions set out in the Scottish Public Services Ombudsman Act 2002 ("the 2002 Act"). These include raising awareness of its service, promoting good administrative practice by Scottish public services and leading the development of simplified and standardised complaints handling procedures across the public sector. The SPSO aims to work in partnership with public services across Scotland to help prevent complaints from arising and to help public services to improve their complaint handling processes.
5. The SPSO can consider complaints from members of the public who claim to have sustained injustice or hardship as a result of maladministration or service failure by an authority within the SPSO's jurisdiction. The matter complained about must also be one that the SPSO is entitled to investigate. Schedule 2 of the 2002 Act lists the authorities that come within the jurisdiction of the SPSO ('listed authorities'). Complaints to SPSO need to first have been made to the listed authority concerned and have completed their complaints process.
6. Audit Scotland, the Auditor General and the Accounts Commission are all 'listed authorities' under the jurisdiction of the SPSO. The SPSO may investigate a complaint about Audit Scotland acting on its own behalf or on behalf of other listed authorities provided the complaint meets the criteria set out in the 2002 Act.

Audit Scotland

7. Audit Scotland is a statutory body established under the Public Finance and Accountability (Scotland) Act 2000. Audit Scotland supports the Auditor General and the Accounts Commission to ensure public money in Scotland is used properly, efficiently and effectively. It does this by carrying out financial, performance and Best Value audits across the public sector in Scotland whose total annual spend is over £40 billion.

8. People or organisations write to Audit Scotland because they have concerns about an issue within a public body that falls under the remit of the Auditor General for Scotland or the Accounts Commission. An issue of concern may be something such as a breakdown in financial management or governance arrangements. The key factor in determining whether Audit Scotland examines an issue is the relevance of the issue to Audit Scotland's role and functions.

9. Audit Scotland is the appointed auditor of the Scottish Public Services Ombudsman. Audit Scotland can investigate concerns raised by people or organisations about the SPSO's financial or governance arrangements in accordance with its powers under the 2000 Act.

Complaints procedures and requirements to publicise complaints

10. Section 16A of the 2002 Act requires listed authorities to have in place a complaints procedure which complies with the Complaints Handling Principles approved by Parliament in February 2011. Section 16B allows the Ombudsman to create a model complaint handling procedure for a sector. Subsequent sections deal with how a listed authority would be informed such a procedure applies and the enforcement action the Ombudsman may take in the event of non-compliance. Section 16G places obligations on the Ombudsman to share best practice and to monitor complaint handling trends.

11. Section 22 of the 2002 Act (Information about right to make a complaint) requires a listed authority to take reasonable steps to publicise the application and effect of the 2002 Act. It includes in particular, the right conferred by the 2002 Act to make a complaint, the time limit for doing so and how to contact the SPSO. This information must be included in, or provided with, any document published by the listed authority that contains information about the services it provides to members of the public, or about how it deals with complaints. The information must also be included in any response to a complainant who may be entitled to complain to the SPSO.

Consultation and co-operation

12. The SPSO and Audit Scotland agree that where the functions and actions of one body might affect, or be relevant to, the functions and actions of the other, they will consult and cooperate together in order to fulfil their respective functions as fully, effectively and efficiently as possible. This co-operation will include the sharing of appropriate information and maintaining effective communication. This will take into account the legislative restrictions on transfer of information which may apply. Within

available resources, the SPSO and Audit Scotland will invite representation from the other party to project teams, work groups etc. where both parties believe there would be advantage in joint working. The two parties will encourage formal and informal contacts between their staff to raise awareness of the roles, responsibilities and the methods of working of each.

Sharing information

13. The SPSO and Audit Scotland recognise that certain issues may be submitted (or may be capable of being submitted) to both organisations. In these circumstances, the bodies may liaise having due regard to the requirements on each to comply fully with relevant data protection and confidentiality obligations. The focus of such liaison will be to ensure that the wishes of the person raising the concerns is respected and that they are given the best possible advice about the options open to them. Particular care will be taken to avoid situations where concerns are not properly considered because of confusion about where to signpost an individual or whether an individual has been signposted.

14. Section 20 and Schedule 5 of the Scottish Public Services Ombudsman Act 2002 allows the SPSO to share information it obtains with some named individuals/organisations if the information appears to the Ombudsman to relate to any matter specified in relation to that person or body in the second column of that schedule. Schedule 5 lists amongst others: the Auditor General for Scotland, the Scottish Commission for Public Audit and individuals who are undertaking or responsible for audit in line with certain named pieces of legislation. The SPSO could release information proactively under this section or in response to a request from one of the individuals/organisations listed if they considered it met the standards for release. Prior to any release, it may be appropriate to liaise with Audit Scotland having due regard to the requirements on each to comply fully with relevant data protection and confidentiality obligations to ensure that any release is appropriate and in line with the relevant legislation.

15. This MoU may be supplemented by a separate information sharing or complaints handling agreement which will set out detailed arrangements where appropriate.

Resolving disagreements

16. Where either party identifies problems in operating this MOU, it will seek to resolve them quickly and informally. If this is not possible then the Ombudsman and the Director of Performance and Best Value will take responsibility for achieving a mutually acceptable resolution.

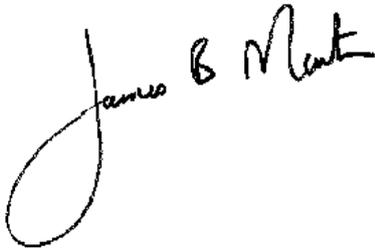
Review

17. Representatives of Audit Scotland and the SPSO will meet as required to consider any matters of mutual interest arising from their respective responsibilities.

18. Audit Scotland and the SPSO will keep this agreement under review. Either party may suggest amendments to the MoU.

A handwritten signature in black ink, appearing to read 'Fraser McKinlay', written in a cursive style.

Fraser McKinlay, Director of Performance and Best Value, Audit Scotland

A handwritten signature in black ink, appearing to read 'James B Martin', written in a cursive style.

Jim Martin, Scottish Public Services Ombudsman