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The real point is that we do not exist for our own sake. We are not working in a vacuum. The objective is to improve the delivery of public services.

Professor Alice Brown, Evidence to Finance Committee, June 2006

The management of recreational land; disputes over planning applications; environmental concerns – these generate complaints because they are about issues that impact on the quality of our lives.

The handling of planning applications was the third highest category of complaint in 2005 – 06.

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improvement

Introduction

Improvement is my theme this year: improvement of the services provided by my office and improvement in the delivery of services provided by bodies under my jurisdiction. These services affect all of us at some stage in our lives, and in this year's report I am drawing particular attention to the range and complexity of subjects that come to my office for investigation.

Dignity and respect in hospital care; allocation of council resources; management of recreational land; disputes over planning applications; environmental concerns – these generate complaints because they are about issues that impact on the quality of our lives.

My office seeks to help the individual complainant find out why something went wrong, and to recommend ways in which it can be put right. Justice for the individual is a vital element of our work. Alongside it, however, sits an equally important requirement to share the learning from complaints as widely as possible in order to ensure that mistakes are not repeated.

In this way, the work of the Ombudsman fits into the administrative justice framework. We are an alternative to the courts, offering the citizen free and impartial access to justice. I see my work as a vital element of the democratic process – a single complaint from an individual can challenge our most powerful institutions and bring about changes that improve the lives of many.

The investigation reports that I lay before the Scottish Parliament are evidence of what is working, and what is not working, in our public services. They can inform the work of agencies involved in audit, regulation or inspection, and they should also be of value to Parliamentary Committees in their scrutiny and policy role.

I am very grateful for the skill, experience and dedication of my staff whose work culminates in the reports I lay before the Parliament. The reports are a resource for individuals and bodies determining the design, implementation and delivery of public services in Scotland. It is my task in the year ahead to make the office of the Ombudsman as relevant as possible to those people and bodies, as well as to all of us in Scotland who use those services.



PROFESSOR ALICE BROWN
SCOTTISH PUBLIC SERVICES OMBUDSMAN

overview of the year

Alice Brown, Ombudsman

2005 – 2006 in perspective

Awareness of my office has risen sharply over the past year. We received 99% more enquiries and 24% more complaints this year compared with 2004 – 05. This represents an increase of 56% in overall contact. For a statistical overview, see page 29.

Enquiries are an increasingly significant and valued part of the work of the SPSO. A few are about our functions, but more often they are enquiries about a particular concern. My frontline staff spend considerable amounts of time advising people on the best way to take forward their complaints. This may involve the SPSO contacting the body complained about to see if informal resolution is possible.

Sometimes people are seeking information about an issue or a body that is not under my jurisdiction, and much of our communications and Outreach work aims to raise awareness among the general public about the extent of our remit.

The sectoral distribution of enquiries and complaints has shifted as a consequence of several important changes:

- in April 2005 a simplified complaints process was introduced in the NHS, making it easier for members of the public to bring health complaints to my office;
- more housing stock was transferred from local government to housing associations;
- our remit widened to include further and higher education in October 2005.

Local government continues to account for the largest percentage of complaints (54%), followed by health (28%), housing associations (8%), the Scottish Executive and devolved administration (7%) and further and higher education (2%).

The subjects of complaint have remained relatively constant although the distribution has changed significantly compared with the previous year. NHS clinical treatment was the highest subject of complaint in 2005 – 06, followed by housing repairs and maintenance and then local authority handling of planning applications.

We receive complaints from all over the country. The distribution of complaints is relatively even across different parts of Scotland, and this year the top parliamentary regions for propensity to complain, adjusted for population, were the Highlands and Islands, followed by Lothian and the West of Scotland.

Improving our investigation and reporting process

I explained in my last annual report that, in response to feedback, particularly from complainants, we would introduce a significant change to our complaint handling process which would have consequences for the way in which we report the outcome of our investigations and the number of reports we lay before the Scottish Parliament. The key aim in making this change was to enhance the accountability and transparency of our own work as well as that of bodies covered by our legislation. Throughout the year we worked with bodies under our jurisdiction to explain the changes and the likely impact.

overview of the year

Alice Brown, Ombudsman

As anticipated, the move to the new investigation and reporting system has resulted in many more reports being laid before the Parliament. The first compendium of reports was laid in December 2005, the next in February and March 2006. Each compendium is accompanied by a Commentary which highlights the main themes identified in the reports. The December Commentary, for example, drew attention to poor nursing care.

'My concern relates not just to the narrow clinical aspect but more generally to values of dignity and respect that should be part-and-parcel of the treatment and care of all patients, particularly of the most vulnerable such as the elderly.'

I have also emphasised the importance of dealing with complaints early.

'A key message, therefore, is that communicating well and particularly at an early stage when a concern or complaint is raised can be effective. More generally, in delivering services to the public, being proactive and communicating effectively can also avoid problems from arising in the first place.'

Ombudsman's Commentary, Mar 06

The Commentaries are also an opportunity to identify and share good practice by public bodies. In the March Commentary for example, I stated:

'In this report I commended the [Housing] Association for the professional, courteous and practical way in which they handled the complaint.'

The Commentaries are distributed widely and are available on our website together with copies of the reports.

Improving communication and access to our service

The Commentaries are just one tool we use to communicate the outcomes of our work. In the course of the past year we have produced new publicity material to raise awareness of our service among the general public, including among people whose first language may not be English. We redesigned our website, simplifying the design and navigation in order to offer greater accessibility to the different audiences that seek information from us online. We also introduced free phone and fax numbers for complainants.

At the beginning of 2006 we began to issue equal opportunities monitoring forms to assist us in gathering data about complainants. This will help us find out more about who we are and are not reaching, and establish which means of communication are most effective.

We place a great deal of emphasis on supporting bodies under our jurisdiction. Preventing complaints from arising in the first place, and helping bodies deal with them effectively when they do arise, is at the core of our Outreach work.

Improving our Outreach

As our figures demonstrate, local government is the sector about which we receive the most complaints. In the course of the year, we visited Scotland's 32 local authorities to meet Chief Executives, Council Leaders and their colleagues. The meetings were very useful opportunities to share information about our work, and deepened my office's understanding of the sector and the fast-changing environment in which councils operate.

overview of the year

Alice Brown, Ombudsman

We held our annual workshops for local government liaison officers in our offices. We conducted Outreach work in other sectors too, holding events such as the NHS clinical governance seminars and an event for university principals and secretaries. We also gave numerous presentations to groups that work in housing, the Scottish Executive agencies and to bodies in the voluntary and charitable sector which have links to vulnerable members of society. My three deputies, Lewis Shand Smith, Eric Drake and Carolyn Hirst, detail this work in the sectoral chapters which follow.

Improving our standards and simplifying complaint handling

Revising our process led us to establish Standards and Commitments which we pledge to follow when we investigate a complaint. These are available on our website.

This work informed our development of a *Principles of Good Complaints Management* process for local government which we plan to extend to all public services in Scotland. As I identified in my last annual report, there is a need to simplify the complaints process for members of the public and to introduce proportionality and common standards and approaches for bodies that receive complaints.

Our *Principles* place a high value on a complaints process with three core levels:

- **Complain to the body**
- **Appeal to the body**
- **Refer to the Ombudsman**

Over the coming year we will be developing this guidance and a range of good practice examples to assist the delivery of the model.

These will be targeted at the governing level of an organisation; at the next tier of managers and heads of departments; and at frontline staff who receive complaints.

In our visits to local authorities we received unanimous support for developing such a model, and we give more details of the project in the local government section.

We are constantly seeking to improve our own accountability, governance and processes. We, therefore, welcome feedback from service users and stakeholders.

Improving redress: 'Just say sorry'

In my last annual report I called for legislation to allow public bodies to make an apology when a mistake has been made without that apology being treated as an admittance of liability or negligence. My proposal has generated a great deal of cross-party interest and support, not least when I presented our 2004–05 annual report to the Local Government and Transport Committee in November. This response was not unexpected – MSPs are often the first to hear about a problem or receive a potential complaint about a public body from a member of the public and are only too aware that people often simply want to receive an apology.

In our visits and presentations to local government and our Outreach work with other sectors, we have similarly received strong endorsement for the proposal.

It is a particularly sensitive issue in the health service, where when something goes wrong it can result in a death. Even in these sad circumstances, however, many relatives or friends want above all an apology and their main concern is often that lessons be learned so that the same thing does not happen to someone else. We have held several discussions with health professionals and the bodies representing them and we are encouraged by their willingness to work with us in taking forward this initiative.

overview of the year

Alice Brown, Ombudsman

We also had the opportunity to raise the issue when we met the Justice Minister early this year and have had further discussions with her officials. Our next step is to conduct research on the impact of such legislation in Australia where it has been adopted from 2002. Evidence to date points to positive outcomes: the number of cases going to court has dramatically reduced and the new legislation has helped change the culture and approach to handling complaints.

Improving governance

The context in which the SPSO conducts its work is constantly evolving and changing. In the years leading up to devolution the main focus was on bringing into being a Scottish Parliament and a new electoral and political system. Post-devolution, the focus has been on embedding those systems and establishing the Parliament in its new location. Now, I believe, is the right time for calm reflection and a review of the post-devolution landscape, and particularly of other arms of governance in the democratic process.

This year has seen a growing debate about the number of commissioner-type bodies proposed by the Parliament and regulatory offices created by the Scottish Executive. Concerns have also been voiced about potential 'over-regulation' and the need for efficient government. We welcome the Parliament's Finance Committee's Inquiry into accountability and governance of the various office-holders, and the Scottish Executive's review of the scrutiny landscape of Scotland.

We wish to play our part in moving towards a more coherent, planned system of governance. It is vital that the Parliament and the Executive work within a framework, and do not introduce new bodies on an ad hoc basis. To this end, in our evidence to the two Justice Committees that considered the Bills to establish a Scottish Commissioner for Human Rights and an

Independent Police Complaints Commissioner for Scotland, we cautioned against proceeding with legislation which might overlap with the jurisdiction of the SPSO. We argued that the 'one-stop-shop' – one place for members of the public to take their complaints about public services – is a model that works. We see tremendous opportunities for clarifying the architecture of governance, and have emphasised the benefits we see in building-in design principles and sharing services where practicable.

As I pointed out in my evidence to the Parliament, the Ombudsman is not an auditor, a regulator, an inspector, or an advocate for a particular cause. Our work is largely 'demand-led', determined by the nature of the complaints we receive from the public. In this way, our work can be seen as a barometer of people's satisfaction with public services. We hope that our reports will continue to be used as a resource by those making and implementing policy.

The Ombudsman, then, has a 'quasi-judicial' role and is part of the administrative justice system. That landscape will change with the proposal for UK legislation in the form of the Courts and Tribunal Bill and we will continue to play an active role in identifying the implications of this legislation for Scotland in part through our cooperation with the Scottish Committee of the Council on Tribunals. We are working with the Disability Rights Commission, the Commission for Racial Equality and the Equal Opportunities Commission to determine the impact of the office of the Commission for Equality and Human Rights in Scotland. I am of the view that the Executive's initiatives on criminal and civil justice should be supplemented by a debate on the administrative justice system.

As Scotland moves into its 'second phase of devolution', we look forward to playing our part in improving public services, designing good governance and building a more just society.



The quality of available nursing care, especially for the most vulnerable members of society – the elderly, the infirm and those with mental health problems – remains an ongoing concern.

NHS clinical treatment was the highest category of complaint in 2005 – 06.



Eric Drake
Deputy Ombudsman

health dignity and respect

This year complaints and enquiries about the NHS formed the second largest element of our caseload, as they did last year. We saw an increase from 321 (14% of our total caseload) to 732 (20%), which mainly results from the introduction of a revised internal NHS complaints procedure which made it easier for people to bring complaints to this office. Of the total NHS caseload 477 were complaints, of which just under two-thirds related to hospital care and most of the rest to family health services (mainly GPs and dentists). Complaints about NHS clinical treatment moved from overall second place to first, compared with last year.

Dignity and respect

In her May 2006 Commentary, the Ombudsman summed up many of the themes that were brought out in investigations into health complaints in the course of the past year.

'...It is disappointing that poor communication and inadequate record-keeping are still causes of confusion and anguish for patients and their relatives. The quality of available nursing care, especially for the most vulnerable members of society – the elderly, the infirm and those with mental health problems – remains an ongoing concern.'

Ombudsman's Commentary, May 06

Health professionals must attend not only to the physical symptoms of people in their care but also demonstrate respect for their emotional and psychological wellbeing. That translates into simple things like brushing hair and cleaning teeth and, crucially, keeping patients and relatives informed about treatment. These may seem too obvious to mention, and of course the vast majority of health professionals do adhere to the highest standards of care. This office though, sees too many complaints concerning just such matters, and it is our duty to investigate and where appropriate make recommendations to try to bring about improvement in the delivery of health care.

Sharing the learning

One way we have sought to do this in the health sector was by holding a series of seminars in March 2006 under the title *Complaints: Symptoms and Solutions – Using Grievances to Inform Governance*. These were organised in co-operation with the Scottish Executive Health Department and others and drew on the lessons of ten years of clinical investigation by the Ombudsman's office. They provided an opportunity for senior clinicians and managers to think about how they can prevent, respond to and learn from complaints. Feedback from the events was positive and following on from them we produced a DVD as a resource to allow the discussion and learning of the March events to resonate more widely within the NHS in Scotland.

Complaints to the Ombudsman were also used to inform the evidence we gave to the Parliament's Health Committee Care for the Elderly Inquiry.

Supporting complainants

The revised NHS complaints process should make it simpler for people to raise any concerns they may have. The Scottish Health Council have a specific responsibility to monitor the effectiveness of the process. With them we have jointly sponsored research which aims to capture the patients' views of pursuing complaints within the NHS and with this office. We also hope the research will provide information about what may deter people from complaining when they feel they may have grounds for doing so. The results of the research will be available later this year and will inform our future work with the NHS.

People are more likely to feel able to pursue a complaint if there is somewhere they can go for advice and support in doing so. In last year's annual report I expressed concern that it was not clear how, following the abolition of Local Health Councils, support would be provided across Scotland for people needing help in using the NHS Complaints Procedure. On 1 March 2006 the Scottish Executive Health Department confirmed that NHS Boards would be required to fund a local independent advice and support service, through a strategic partnership with a consortia of their local Citizens Advice Bureaux, while the Health Department would fund a Central Support Unit within Citizens Advice Scotland to provide support to Bureaux and NHS Boards. We look forward to working with the Central Support Unit in the year ahead.

Case Studies

Communication and record-keeping

In two cases (both involving the same hospital) families complained that failures in the **care and treatment of elderly relatives** had led to their death. In neither case did our investigation find that was so. But in both cases we found there were shortcomings in communication with the families and serious deficiencies in the clinical records.

Case references 200401461 and 200401824 reports issued Dec 05

In two cases involving **maternity services** (in different hospitals) we criticised communication with the mother and recommended that the hospitals concerned consider adopting the Scottish Women Held Maternity Record.

Case references TS0135_03 report issued Dec 05; 200501360 report issued Mar 06



Many complaints about local government are about 'discretionary' decisions, for example relating to setting up a skateboarding park, reorganisation of schools, or closure of public toilets. In most cases, we find that the councils have correctly followed procedure and, while the complainants are likely to remain unhappy with the council's decision, if there is no evidence of maladministration in the way a decision was reached we are precluded from questioning the merits of that decision.

Local government continues to be the subject of more than half the total enquiries and complaints we receive.



Lewis Shand Smith Deputy Ombudsman

local government

supporting councils to reduce complaints

Local government continues to be the subject of more than half the total enquiries and complaints we receive with 949 enquiries (48% of total enquiries) and 931 complaints (54% of total complaints) in the last year. The single largest category of complaint remains housing, followed by planning. These represent two very different types of complaints. Most of the housing cases are about repairs and maintenance or allocations and tend to be reasonably straightforward. Planning complaints, on the other hand, are often about the decision taken with regard to a development.

'Discretionary' decisions

Many complaints about local government are about 'discretionary' decisions, for example relating to setting up a skateboarding park, reorganisation of schools, or closure of public toilets. Section 7(1) of the SPSO Act 2002 states that *'The Ombudsman is not entitled to question the merits of a decision taken without maladministration by or on behalf of a listed authority in the exercise of a discretion vested in that authority'*. This means that although we cannot question a decision just because a complainant is unhappy with it, we can look at the processes that led up to the decision. In most cases, we find that the councils have correctly followed procedure and, while the complainants are likely to remain unhappy with the council's decision, if there is no evidence of maladministration in the way a decision was reached we are precluded from questioning the merits of that decision.

Sharing the learning

The Ombudsman was invited by the Parliament's Local Government and Transport Committee to update members on the kinds of complaints we receive about the sector. Questions were wide-ranging and included the difference in the propensity to complain in different parts of Scotland; our proposal for legislation to allow for an apology without fear of litigation; the large number of housing complaints; post-legislative review issues; and whistle-blowing in the public sector. We welcome the Committee's interest.

We were also pleased to contribute to the Executive's white paper on planning and submitted written evidence to the Communities Committee Inquiry into the Planning etc. (Scotland) Bill. In general, we welcomed the proposed changes. To avoid potential confusion or duplication of roles, we recommended that the Scottish Executive Development Department and the Inquiry Reporters Unit continue their discussions on the place of the Ombudsman in dealing with complaints about planning in so far as they relate to maladministration or service failure.

Council visits

During the year I visited all 32 councils, meeting with Chief Executives, Council Leaders and often giving presentations to senior managers and councillors. The purpose of the visits was to learn more about the context within which individual councils operate, to discuss with them the changes and improvements to the way in which the SPSO handles and reports complaints and to consult on the issues raised in our last annual report, particularly the model complaints process and our 'apology without litigation' proposal.

The Ombudsman joined me for most of these visits. We are grateful for the time given to us and for the useful discussions we had. Several recurring themes emerged, including what can be described as ‘scrutiny fatigue’ – concern over ever increasing inspection and regulation. Councils’ anxiety is not with these regimes in themselves, but the amount of time and resource it takes to produce the necessary documentation and evidence. They would welcome a simplification and co-ordination that would reduce this burden while continuing to identify both best practice and areas where improvement is required. The councils also welcome the efforts being made by the Ombudsman and various commissioners to co-operate as fully as legislation will allow.

Principles of good complaints management

Following our visits we produced a draft version of our *Principles of Good Complaints Management* which we have discussed with representatives of COSLA and SOLACE. We also shared it with council liaison officers at their meetings with us earlier this year and were encouraged by their enthusiastic approval. Another of the messages we have taken back is the desire councils have to be able to operate just one complaints process for all the services they provide. They believe this will benefit those receiving services by providing a clear, accessible route for airing grievances and achieving redress where justified. Making complaints could also be simplified for those receiving care from several organisations in partnership if they used a common process.

The statistics show that 49% of complaints about local government determined last year came to us too early; that is before the complainant had completed the internal

complaints process. We are attempting to identify the cause of this high number of premature approaches to our office, and we will work with councils to try to significantly reduce such approaches. It is key to good relationships with the public that grievances are sorted out quickly and as close to the origin of the problem as possible. Members of staff need to know their way around their authority’s complaints process and be empowered to take any necessary action. Information on how to make complaints should be clear and readily accessible to the public. The procedures themselves should be both simple and robust. These are all issues that will be addressed in our complaints management project.

Case Studies

A council received a complaint from a woman about their refusal to allow her to retain a camera at her home, which was to provide security for her children from anti-social behaviour. The complaint was upheld.

Case reference 200501976 report issued Mar 06

A council tax payer complained that a council had mishandled their demands of him for payment of council tax. Specifically he complained that for four out of five fiscal years the council had requested more council tax than he was required to pay; failed to notify or reimburse him until he queried a final demand; and in issuing the final demand for a current shortfall the council failed to recognise that he was in credit for a greater amount. All three aspects of the complaint were upheld. The Ombudsman recommended that the council issue a written apology to the complainant and that they inform him of specific measures they would introduce to avoid recurrence of the problem.

Case reference 200502190 report issued Mar 06



A feature of housing complaints is that there is usually an ongoing relationship with the complainant. We recommend, therefore, that housing bodies consider what can be done to follow up and repair the relationship after a complaint has been determined.

Housing repairs and maintenance was the second highest subject of complaint in 2005 – 06.



Carolyn Hirst Deputy Ombudsman

housing and human rights

Housing covers the work of Registered Social Landlords (RSLs) and the housing functions of councils. We received 888 housing enquiries and complaints in 2005 – 06 (24% of our total caseload, compared with 27% in the previous year).

The number of RSL complaints increased slightly this year and, in part reflecting large scale stock transfers, RSL enquiries also increased significantly. Enquiries and complaints about the housing functions of councils were 15% of the total received (compared with 17.7% in 2004 – 05).

As was the case last year, the main three categories for housing complaints were repairs and maintenance (28%), applications/allocations (18%) and neighbour disputes/anti-social behaviour (13%). There has been an increase in complaints about estate management and environmental issues (see case study) and about the Right to Buy (see case study). A common cause for concern in many complaints, including these two examples, continues to be delay. There are also on-going issues about the provision of good, relevant and timely information.

We changed our complaints handling and reporting process in October 2005. Prior to this, 20 complaints were resolved to our satisfaction by the body complained about under our old complaints process. We now investigate all complaints that are accepted and not premature. No investigated

complaints about RSLs were upheld in 2005 – 06 and we upheld or partially upheld four housing complaints against councils.

Case Studies

The complaint concerned a man's request for the removal of trees owned by the council that were overhanging his property. The complainant said that they had grown too large and shed a large amount of debris, damaged his lawn, blocked out sunlight, were noisy and caused his family to suffer from severe hay fever. He said the council were breaching his human rights, namely the right to respect for private and family life and the protection of property. We did not uphold the complaint.

Case reference 200501966 report issued Mar 06

While the complaint about the handling of the sale of a council house was upheld in the main, the Ombudsman commended the council for acknowledging the shortcomings identified in the investigation and for providing redress including an apology to the complainant.

Case reference 200500401 report issued Feb 06

Sharing the learning

A particular focus of mine this year was complaints from older people. In a joint presentation with the Care Commission at a Conference on Older People in Scotland, held in January 2006, I raised concerns that things often go wrong in times of transition. This could be a move between services, for example a discharge from hospital. It could be when an older person moves from one area of the country to another and no longer has access to the same type of service. Or it could be an age transition, when funding rules change. I am surprised how few complaints we do receive about these issues and there is work to do here both on raising awareness and on ensuring that vulnerable older people, who are often reluctant to complain, have access to appropriate advocacy services.

At this conference I also raised issues about joint working, and in particular, joint complaint handling. I see much good work on integrating services for older people, through both Joint Futures and Community Planning, but too often there is a lack of thought, in both the design and commissioning of services, as to what should happen if someone wants to complain. This is a particular issue when statutory bodies commission services from voluntary and private providers, as there is often a lack of clarity about responsibilities.

I also ran workshops at the Scottish Housing and Support Conference in October 2005 and a breakout session at the Chartered Institute of Housing in Scotland Annual Conference in March 2006. As well as raising awareness of the SPSO at both events, I fed back the learning that it is often the approach and attitude of the staff member receiving a complaint that determines whether the complaint is resolved or turns into a dispute. A key message was that people receiving public services want to believe that professionals are committed to the people they are serving and will take responsibility and ownership for the services they deliver.

Repairing the relationship

Complaints handling does not end with a determination by the Ombudsman. A feature of housing complaints is that there is usually an ongoing relationship with the complainant. We recommend, therefore, that housing bodies consider what can be done to follow up and repair the relationship after a complaint has been determined. This applies to both complaints upheld and not upheld.

Also, where things have gone wrong, the delivery of a genuine, timely, appropriate and well-worded apology can go a long way to heal a damaged relationship.

Premature cases

It is a continuing concern that 59% of the RSL complaints determined last year were premature. As we stated in our section on local government, we hope that our work on the *Principles of Good Complaints Management* will help to address this issue. We also noted that 9% of complainants either withdrew their complaint to us or failed to provide the required information. We know that the complaints withdrawn were mainly by complainants who were satisfied with the response from the housing body. However, we need to do more work on why others failed to keep in touch about their concerns.

Human rights

An increasing number of complaints during the year referred to the human rights of complainants. All public authorities have a duty to act in a way that complies with Convention rights and there is a positive obligation to ensure that respect for human rights is at the core of their day-to-day work. Although our founding legislation makes no direct reference to human rights, we do deal with complaints about human rights issues, for example, individual dignity or the right to peaceful enjoyment of property. There are also human rights issues in the way in which complaints are handled.



Evidence from our investigations is used to help bodies across Scotland learn from real examples of what went wrong to improve services in the future. In this way we make an important contribution to policy and practice as well as providing justice for the individual.

Professor Alice Brown, Evidence to the Finance Committee, June 2006

Enquiries and complaints about the Scottish Executive and devolved administration represented 6.2% of our caseload in 2005 – 06.

Eric Drake & Carolyn Hirst

Deputy Ombudsmen

Scottish Executive and devolved administration

Policy decisions and administrative systems

This year we received 229 enquiries and complaints about the Scottish Executive and devolved administration. This represented 6.2% of our caseload, compared with 5.3% (127 enquiries and complaints) last year.

Issues

The heading 'Scottish Executive and devolved administration' covers a wide and varied group of bodies ranging from the Scottish Executive itself to Audit Scotland to The Water Industry Commissioner for Scotland. It also includes a number of cross-border public authorities.

The issues that arise in complaints about these bodies are equally varied, but some common themes emerge. Half of the complaints we received about bodies in this sector concerned 'policy and administration'. As we highlighted in our section about local government, typically such complaints are rooted in disagreement with a body's policy. As we explain in that section too, it is only if there is some fault in the way a policy decision has been made, or in the implementation of a policy, that we would have a basis for upholding such a complaint.

It is a concern that complaint handling was the second most common cause for complaint (22%), followed by the handling of applications (13%) and failure to provide information (5%). We included some general advice on handling complaints and enquiries in this section of last year's annual report. That advice remains relevant and is set out again here.

Advice on Handling Complaints & Enquiries

- Be clear why information is being requested and how it will be used.
- Use face-to-face meetings and telephone calls to discuss complex issues, clarify understanding and agree future actions, rather than lengthy correspondence that often further confuses the issues.
- Have clear and up-to-date guidance on how policies and procedures should be implemented and make sure that staff have relevant and current training on implementation.
- Keep full and accurate records about the basis on which decisions are made in order to ensure accountability and consistency.
- Be clear about time-scales for action and don't let things run on. Most complaints to the Ombudsman refer to delays.

Scottish Executive and devolved administration

Sharing the learning

We held two seminars in March 2006 for complaints handling staff from Scottish public authorities. The purpose of the seminars was to update the bodies on the work of the SPSO and to share learning about good complaints handling.

We explained in last year's annual report that we were putting into action changes to our reporting practice to allow greater openness, accountability and sharing of the learning. In 2005 – 06 we produced one investigation report relating to a complaint about a body within the Scottish Executive and devolved administration category. It concerned the Scottish Executive Enterprise, Transport and Lifelong Learning Department and the upgrading of a road to motorway standard. The report highlighted general lessons about, for example, how work is prioritised and the importance of good administrative systems which have wider application (see case study).

More generally our revised reporting practice has made it much easier for us to share lessons from our casework with bodies that have policy and regulatory responsibilities in specific sectors. So, for example, in the health sector there is now productive feedback between our office and the Scottish Executive Health Department and NHS Quality Improvement Scotland.

Case Study

A man complained of failures by the Scottish Executive Enterprise, Transport and Lifelong Learning Department to address a number of issues that had arisen from upgrading a road through part of the land he managed. The Ombudsman found that the way in which the Department dealt with the complainant not only caused him injustice but created additional work and expense for the Department itself.

The Ombudsman's recommendations, which the Department accepted, included making the complainant a payment equivalent to all the professional fees he had incurred in his dealings with the Department and its agents plus a payment of £5,000 in recognition of the time and trouble to which he had been put in pursuing his complaint over such a lengthy period; and a review of departmental structures and processes with a view to addressing the systemic problems she had identified, in particular the tension in prioritising work on old and new schemes.

Case reference TH0003_02 report issued July 05

Lewis Shand Smith Deputy Ombudsman

further and higher education

Our new remit

Colleges and universities were brought under the jurisdiction of the Ombudsman with the commencement of the Further and Higher Education (Scotland) Act 2005 in October last year. We received a total of seven enquiries and six complaints about further education, and 15 enquiries and 20 complaints about higher education. The top category of complaint in further education was how the complaint had been handled at the internal stage, and in higher education it was academic appeal/exam results/degree classification.

The National Union of Students (NUS) north and south of the border campaigned for an independent adjudicator to deal with student complaints. While an independent office, the Office of the Independent Adjudicator (OIA), was set up to do so for England and Wales, the Scottish Parliament chose to add Scottish colleges and universities to the list of bodies for which the SPSO has responsibility.

In the months before further and higher education came under our remit, we worked closely with representatives of students, colleges and universities. With the NUS we produced flyers and posters for freshers' weeks, spoke to several groups and attended events. We made contact with Student Participation in Quality Scotland (SPARQS) and gave advice to welfare officers. We forged close links with

Universities Scotland and the Association of Scottish Colleges and are particularly grateful for the advice and co-operation they have given. I have met with the University Secretaries and addressed the College Chairs. We continue to give advice to individual colleges and universities on request.

We organised a joint conference with Universities Scotland last October. Topics discussed included an overview of the SPSO, the student contract, mediation on campus and examples of complaints received over the past 18 months by the OIA.

We meet regularly with the OIA and have become part of the Network of European Ombudsmen in Higher Education.

We estimated that we would be likely to receive a total of about 20 complaints each year about colleges and universities. Since October the numbers are on average four enquiries and four complaints each month. We are now at the stage where some of the first received are being laid before Parliament.

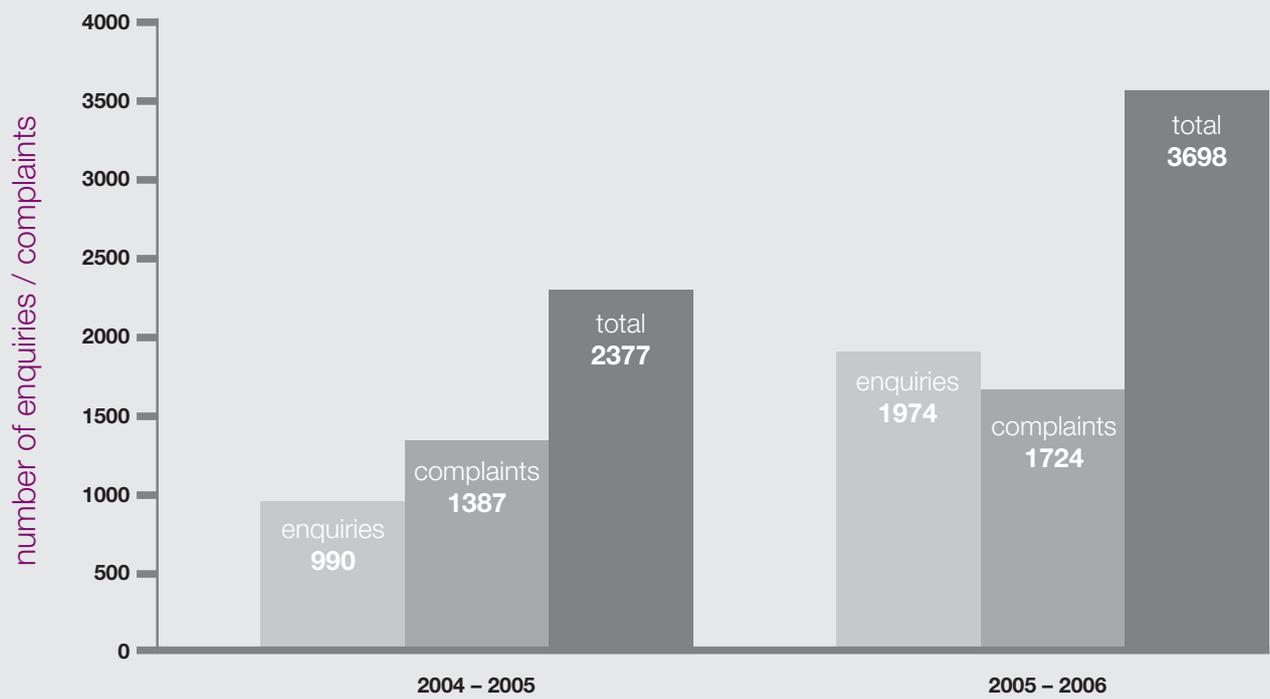
Colleges and universities have a large constantly changing population of students. The SPSO will continue to work with educational establishments and with student associations to provide guidance and training and to ensure our information and advice is accurate and relevant.

An annual report can only provide a snapshot of the work of an organisation and its aims and values. Much more information about our day-to-day activities and our investigation reports are available on our website.

Our website address is **www.spsso.org.uk**

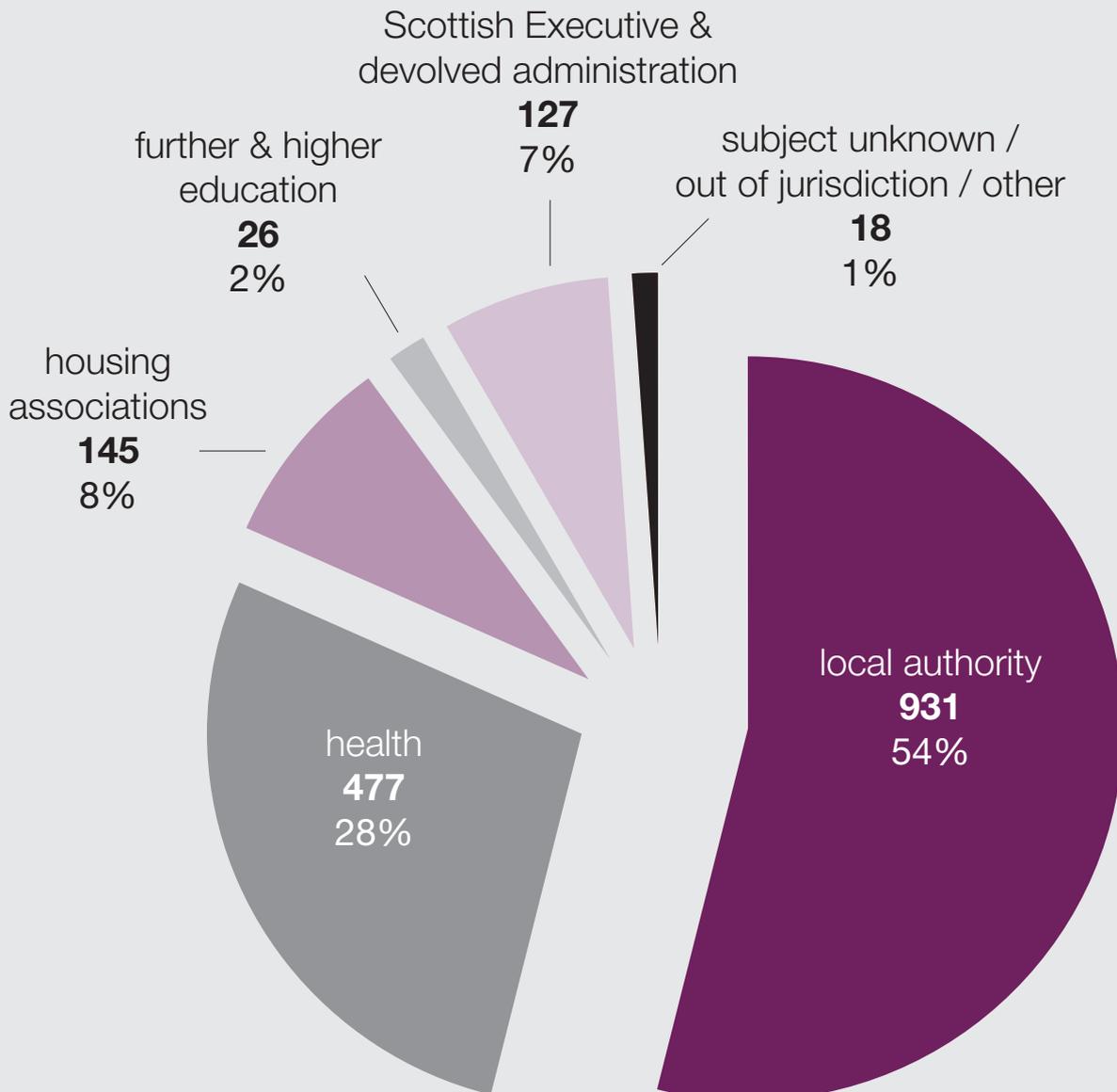
facts and **figures**

Total enquiries and complaints received

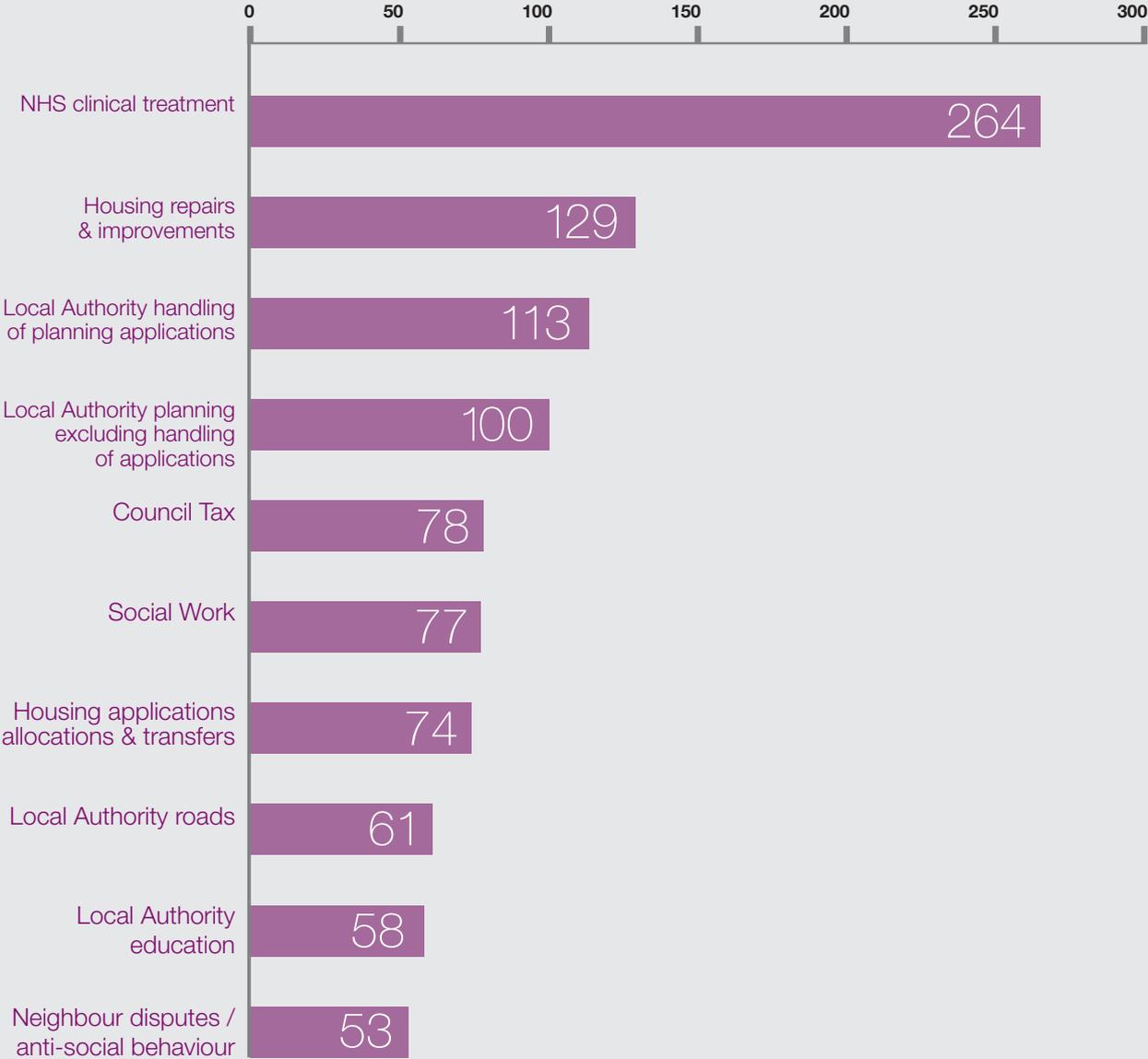


facts and figures

Total complaints received
in 2005 – 2006 (**1724**)

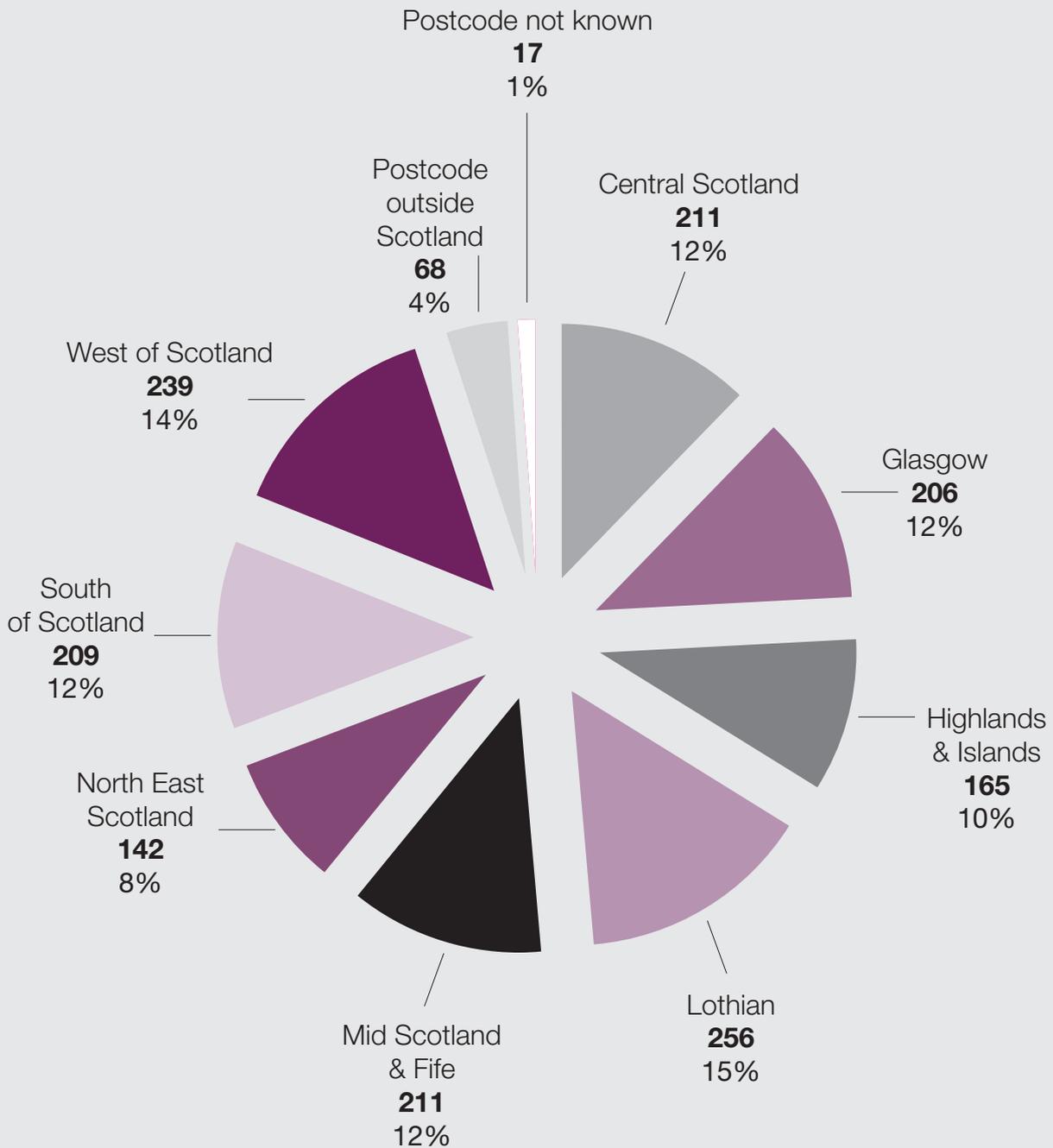


Top ten categories of complaints

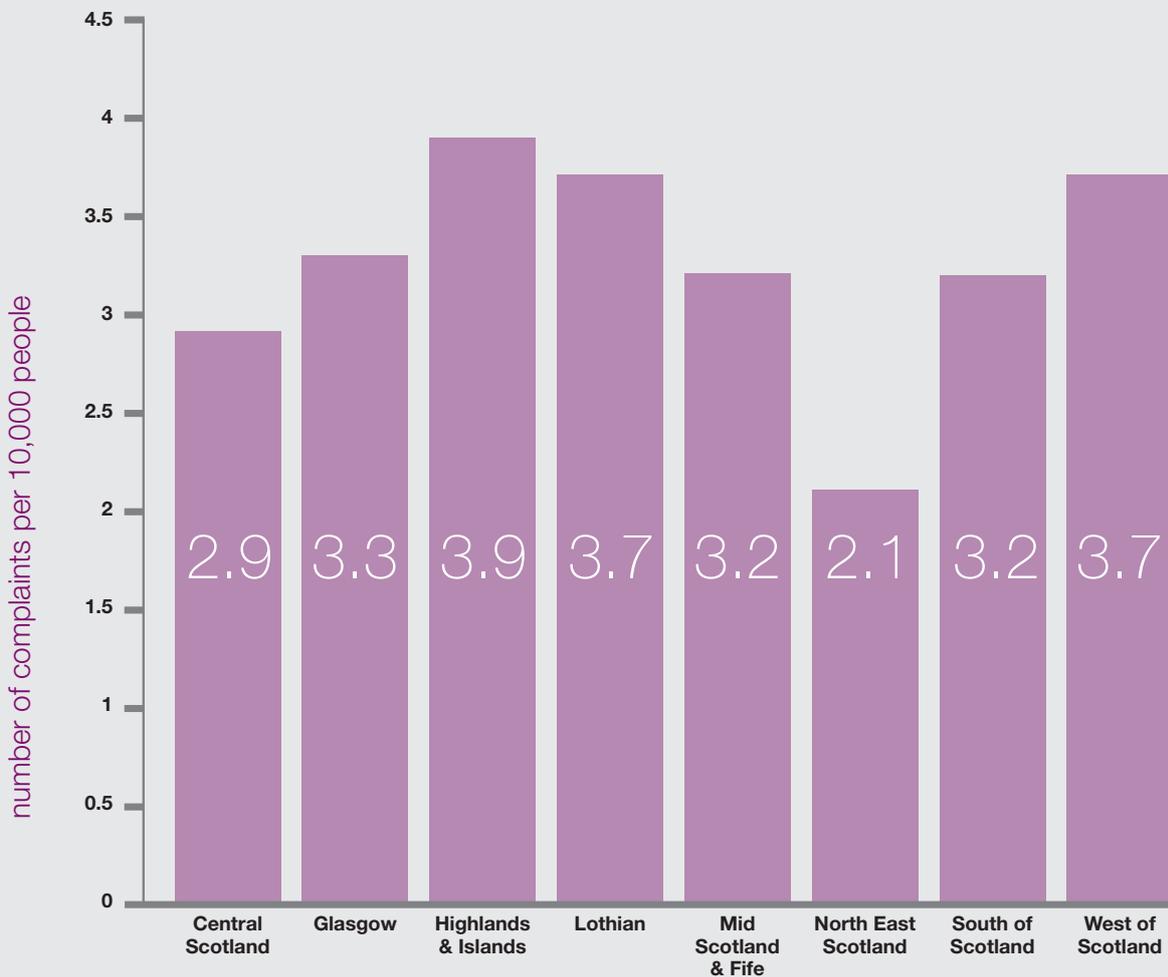


facts and figures

Complaints received by Scottish Parliamentary Region



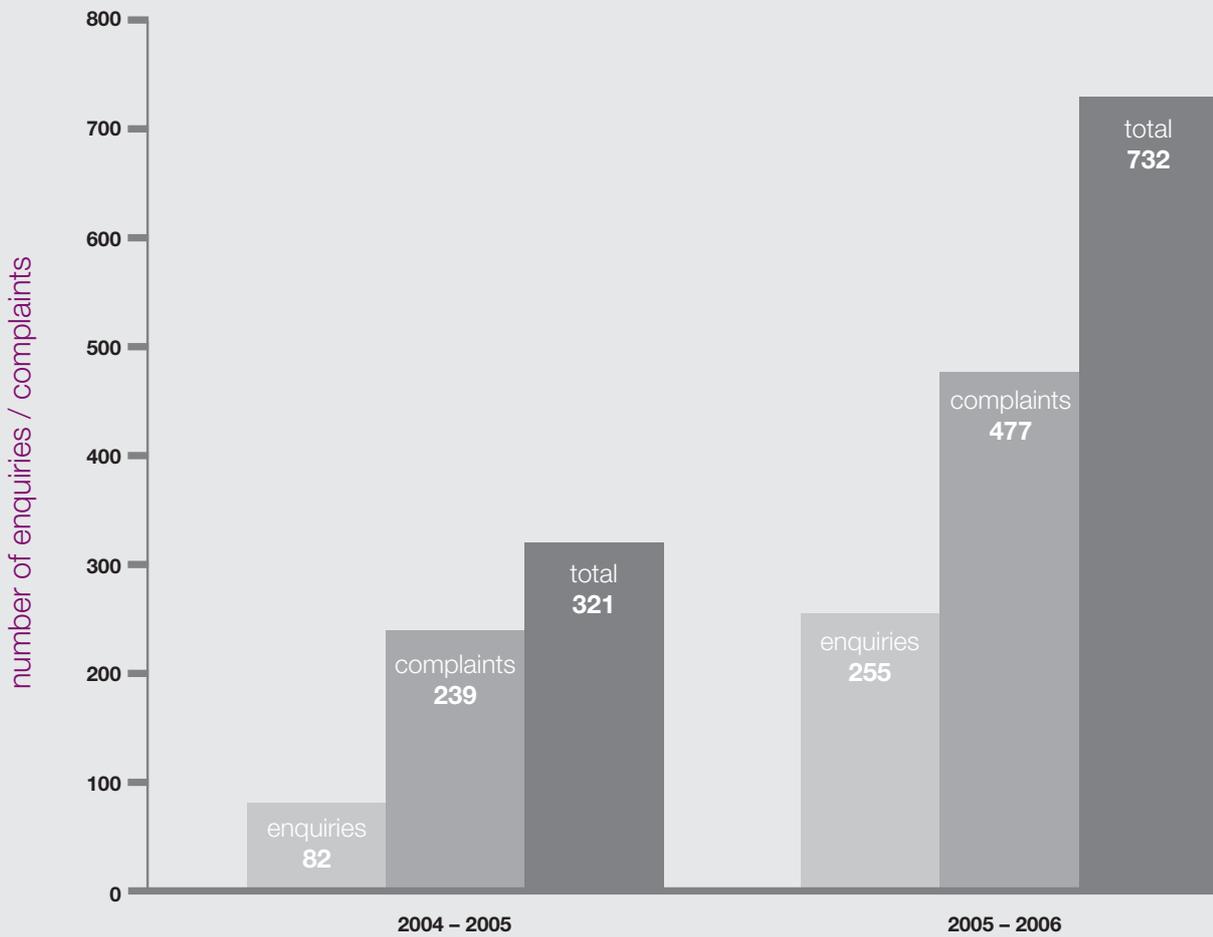
Complaints received per 10,000 people by Scottish Parliamentary Region*



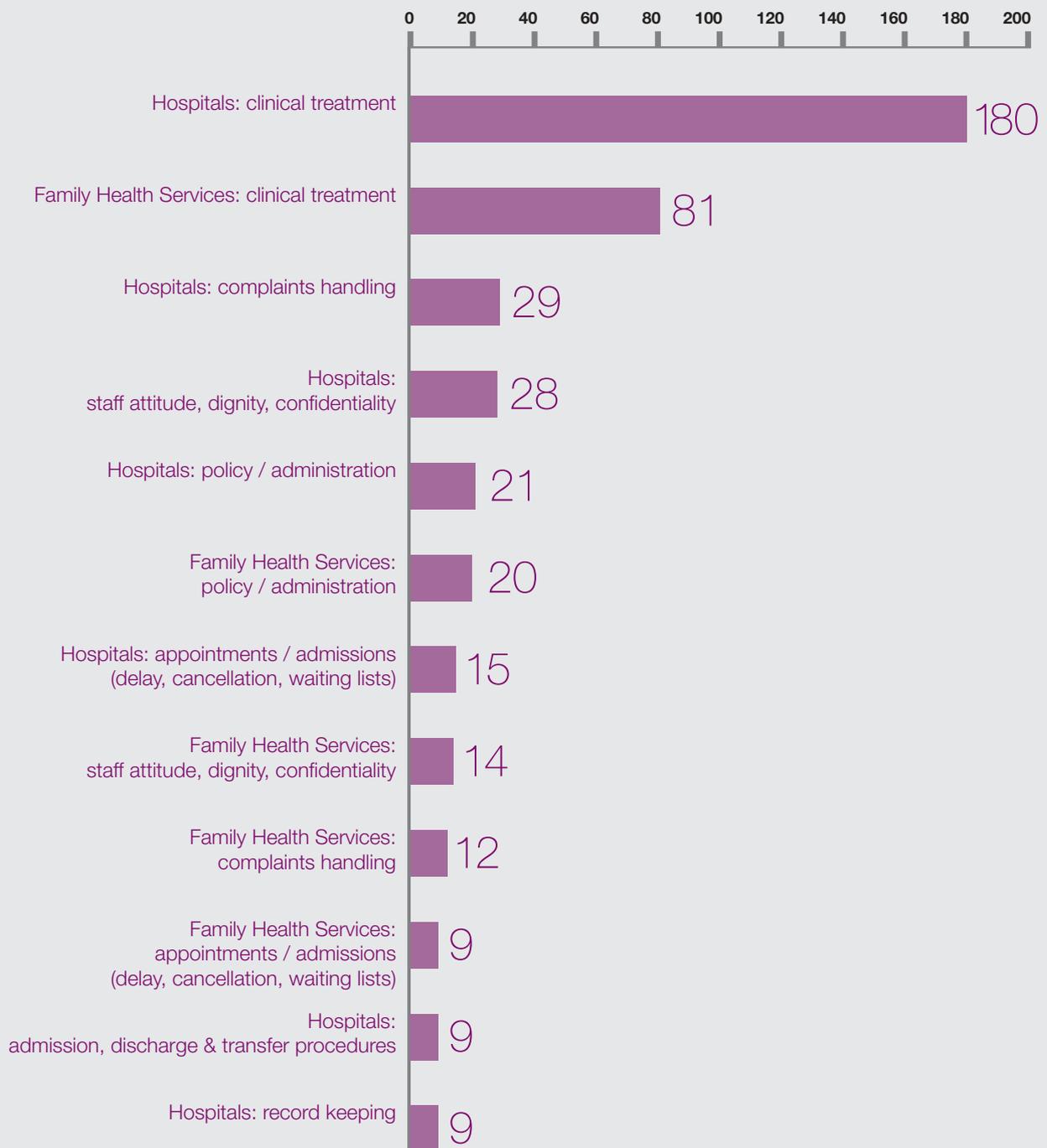
*Population data is taken from the 2001 Census (Source: GROS)

facts and figures

Health enquiries and complaints received

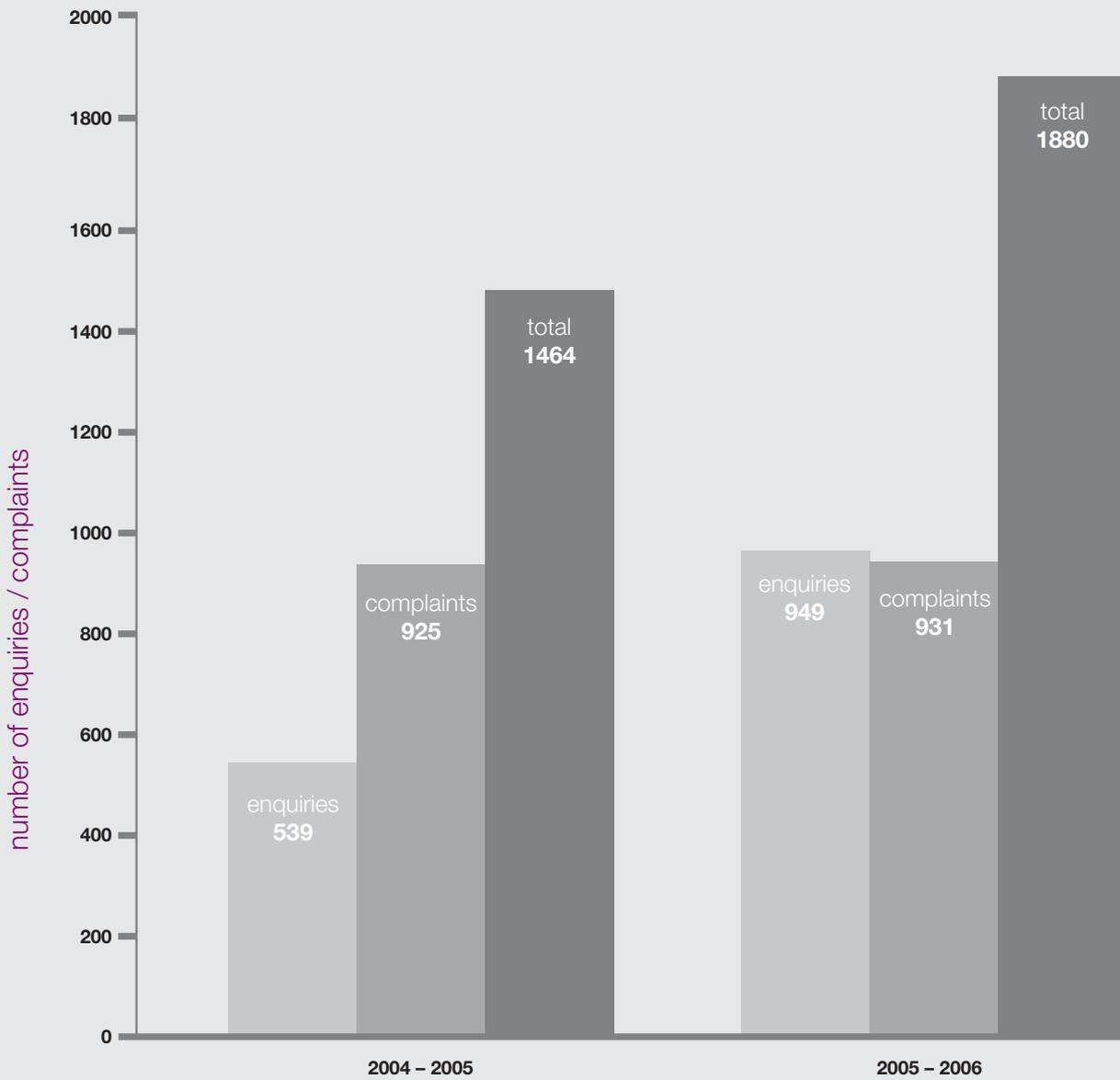


Top twelve categories of health complaints

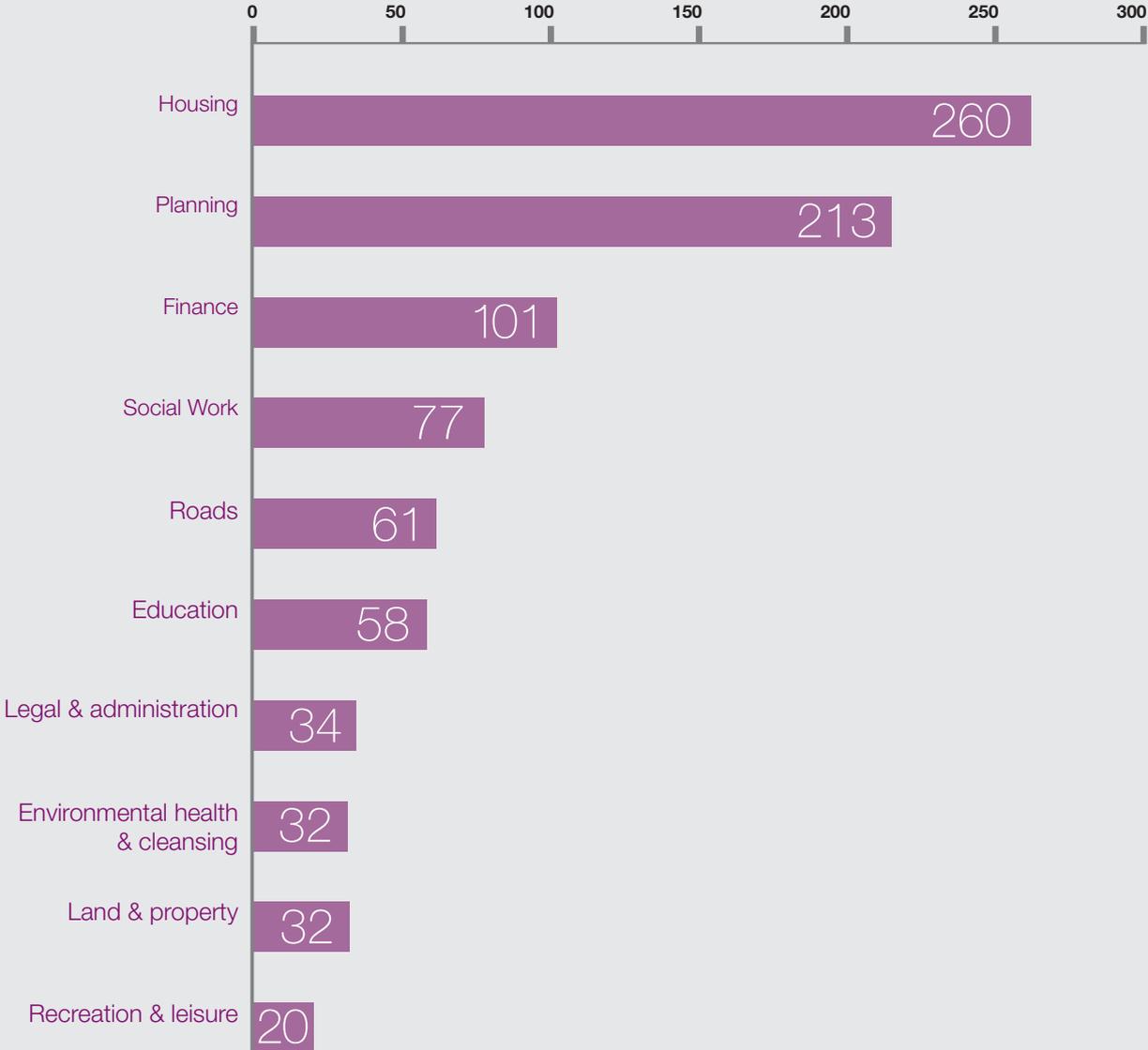


facts and figures

Local Authority enquiries and complaints received

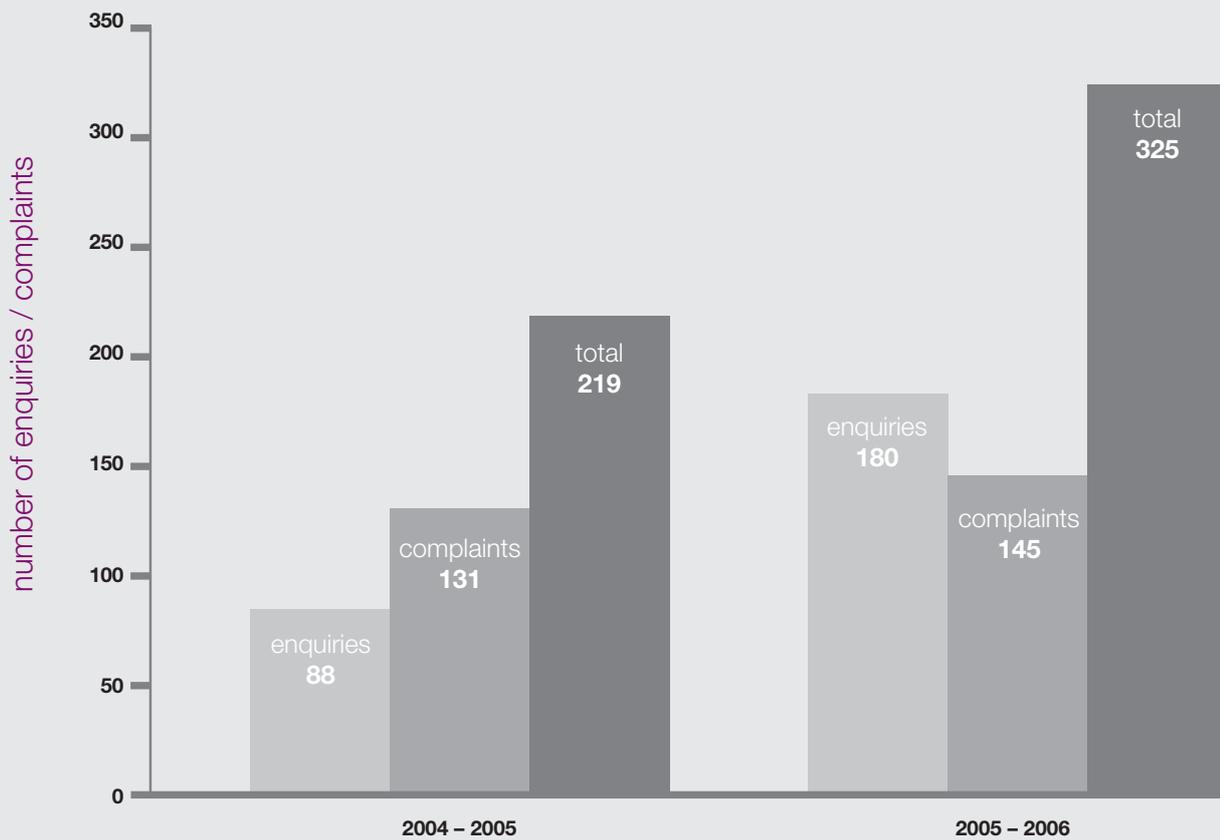


Top ten categories of Local Authority complaints

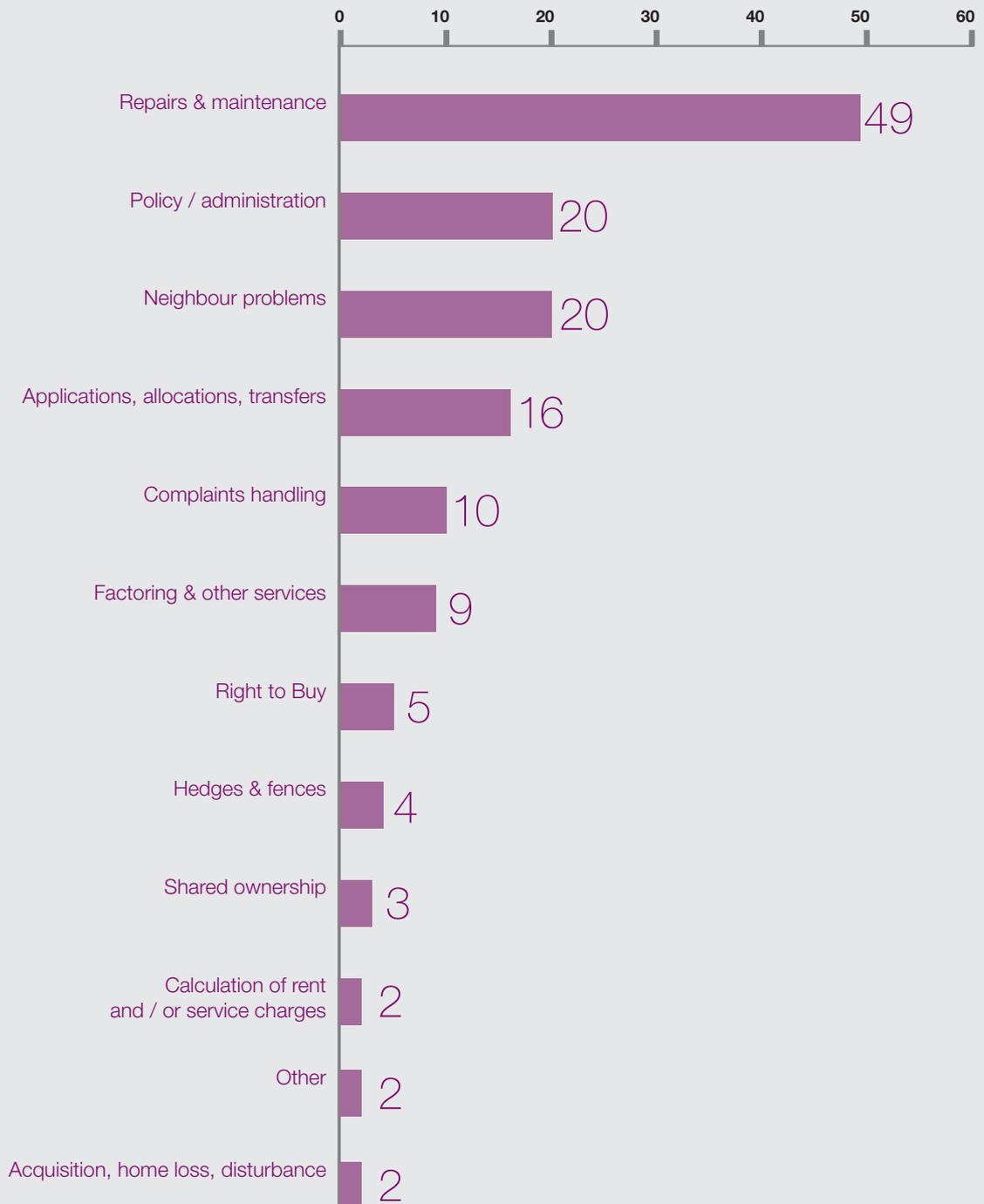


facts and figures

Registered Social Landlord enquiries and complaints received

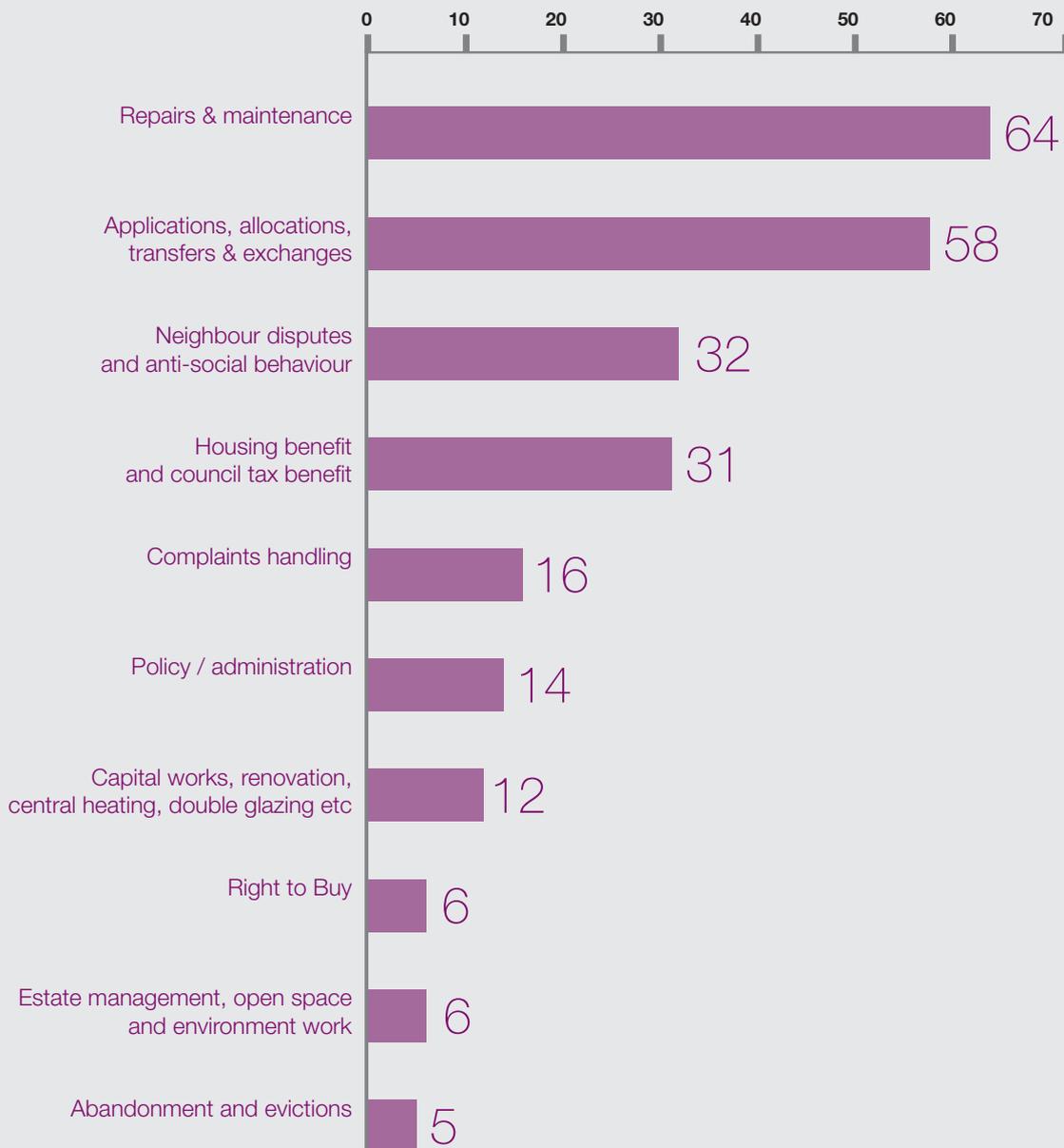


Top twelve categories of Registered Social Landlord complaints received



facts and figures

Top ten categories of Local Authority housing complaints

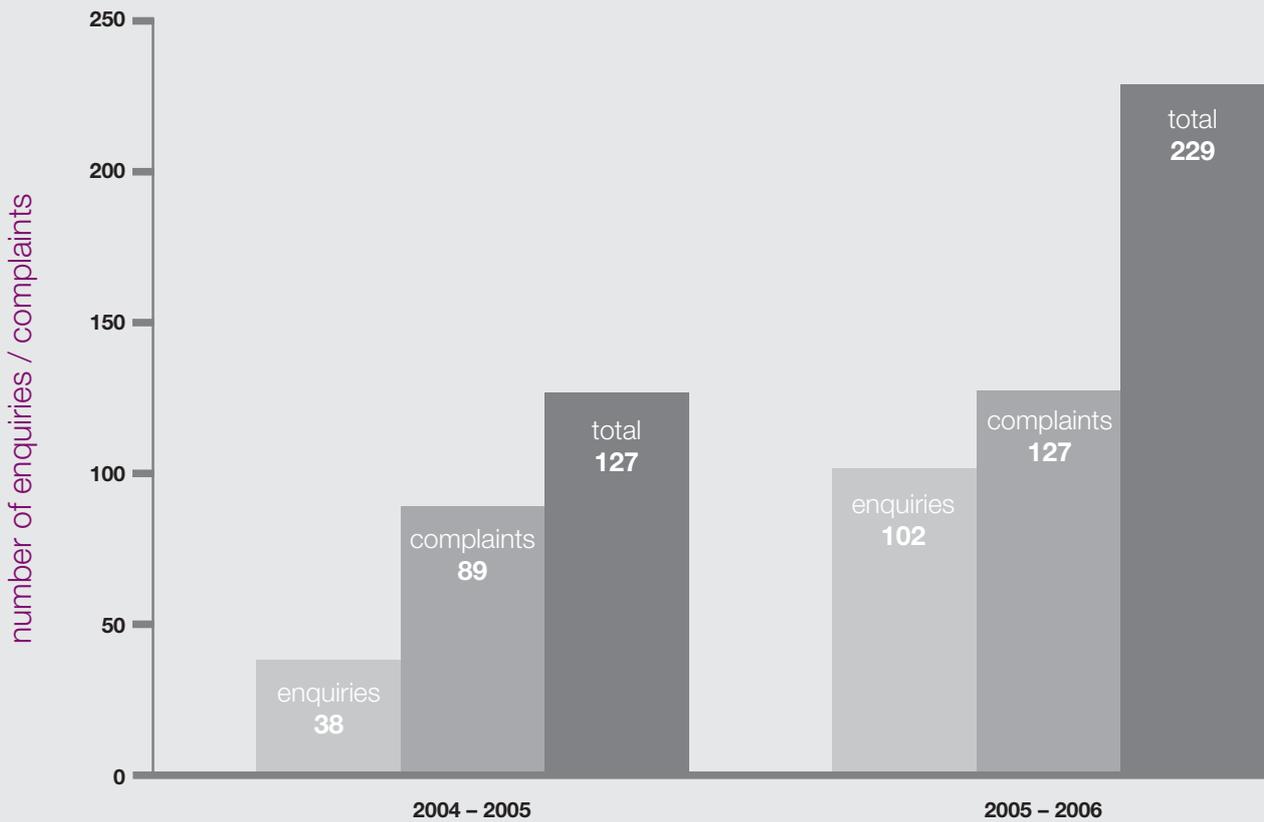


Top ten housing complaints (Local Authority and Registered Social Landlords)

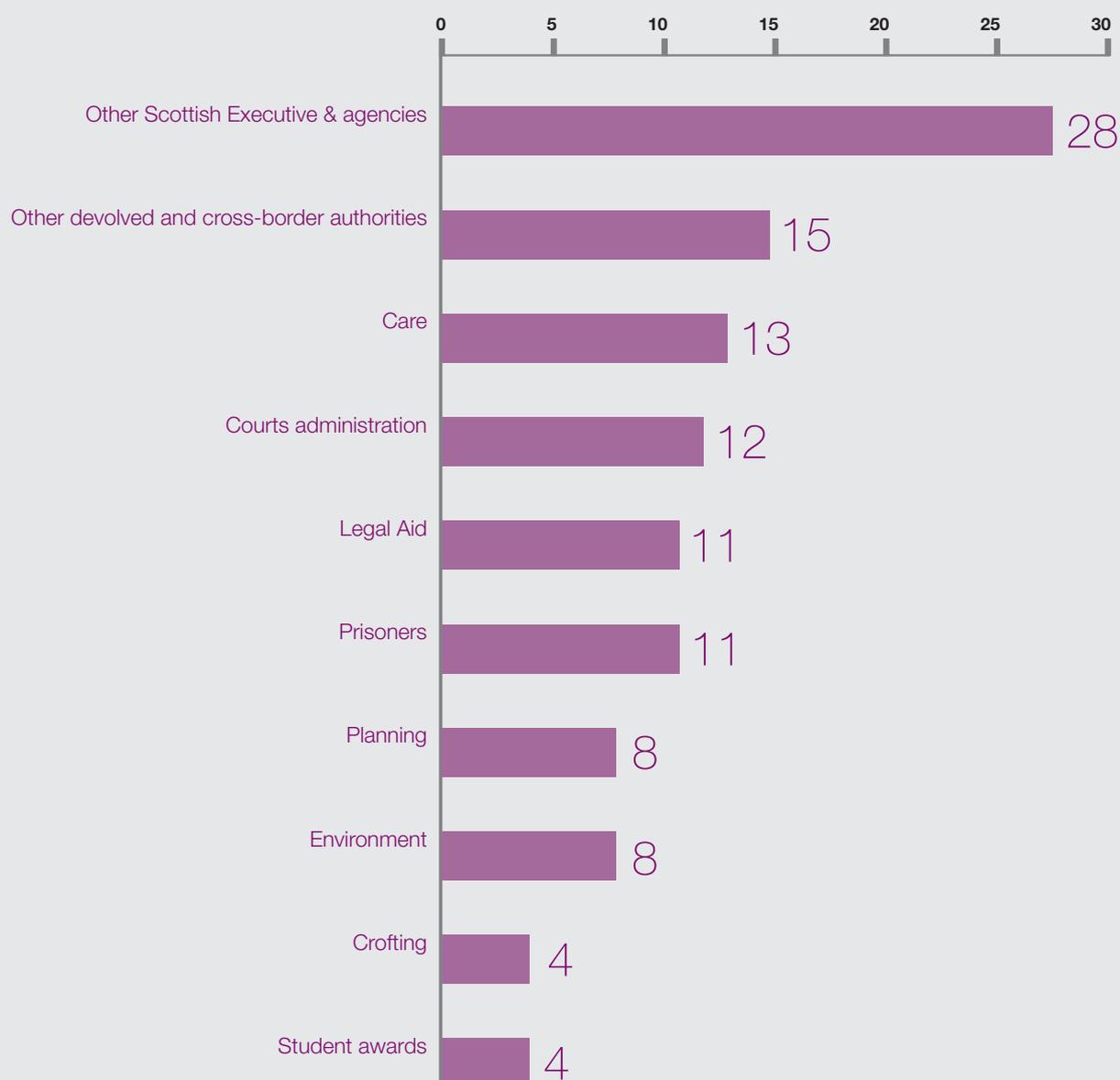


facts and figures

Scottish Executive and devolved administration enquiries and complaints received

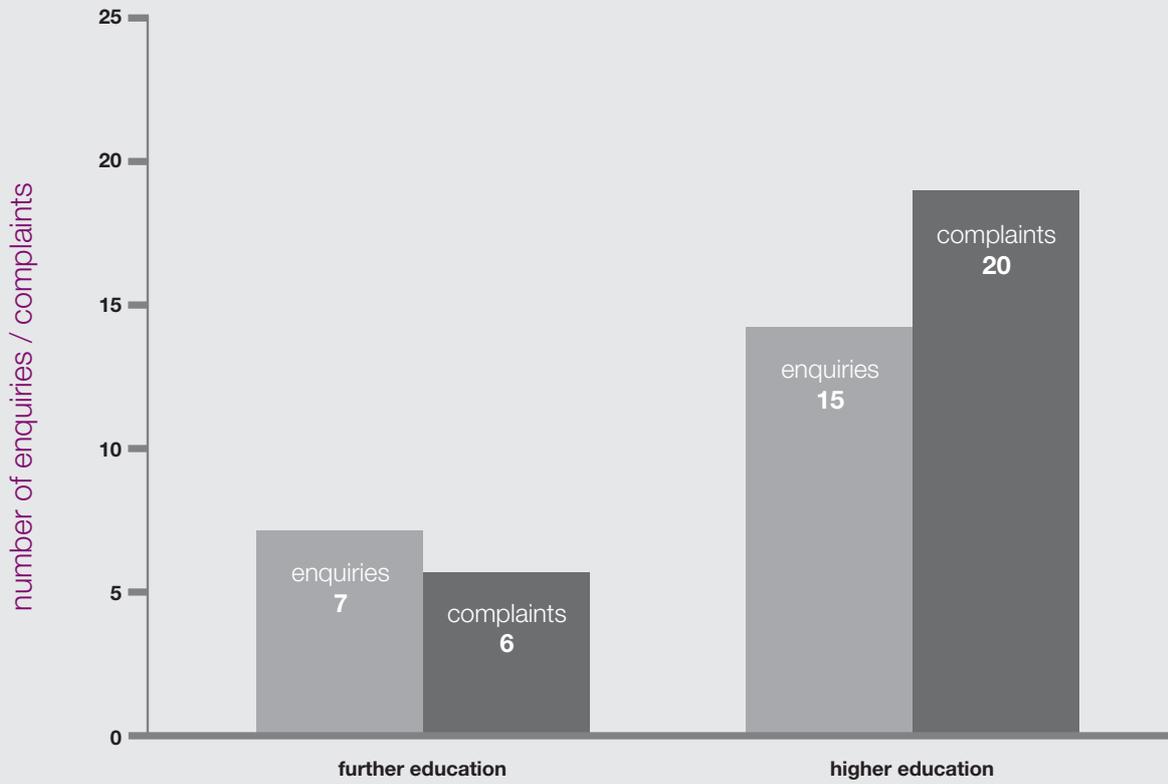


Top ten categories of Scottish Executive and devolved administration complaints

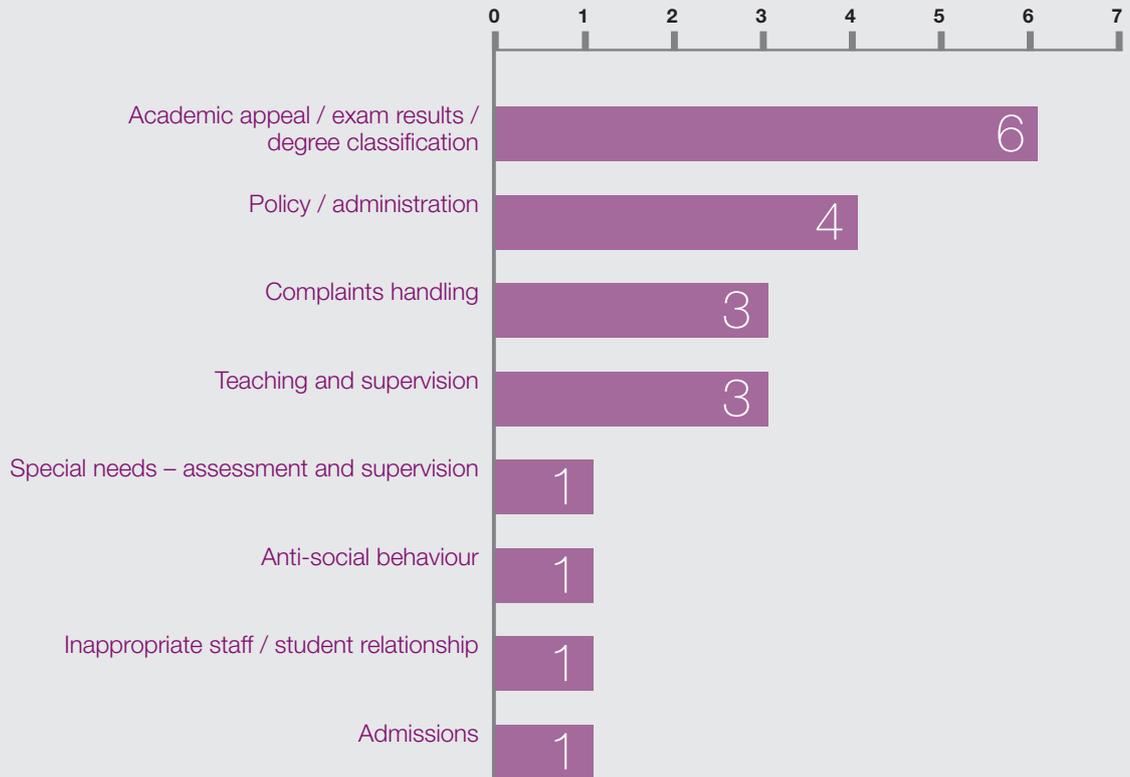


facts and figures

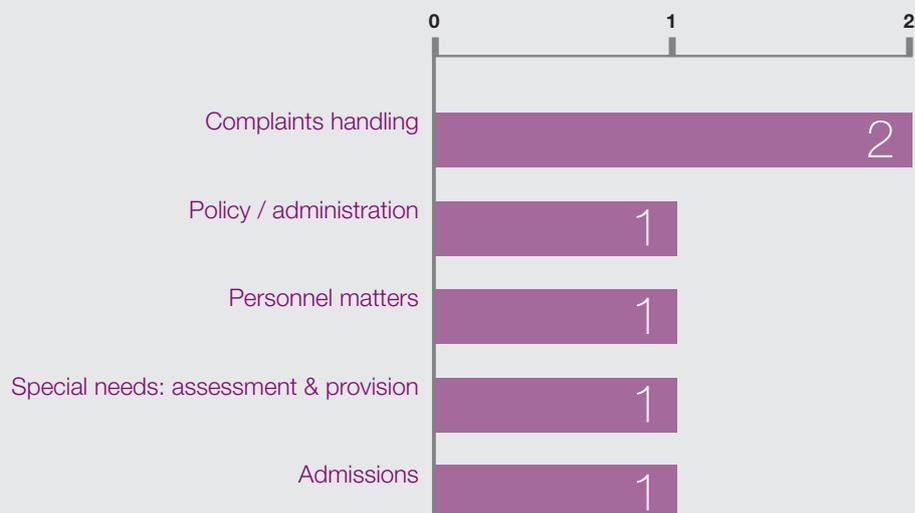
Total further & higher education enquiries and complaints



Higher education complaints received



Further education complaints received





An ombudsman's office offers an alternative to going further down the line to the courts. It might be that the courts provide the only way to resolve certain cases, but most day-to-day issues for most people in Scotland can be resolved much earlier.

Professor Alice Brown, Evidence to Justice 1 Committee, December 2005

the year ahead

Last year we set out our Strategic Objectives for 2005 – 07 and our Business Plan for 2005 – 06. Our Strategic Objectives remain largely the same and I am pleased to report that we fully met 19 of our Business Plan objectives and met the remaining six in part.

I consider successfully managing the changes in the NHS complaints procedure and taking over responsibility for complaints about further and higher education as two considerable achievements by my office. Some of our aims are, by their very nature, ongoing and are reflected in our Business Plan for the year ahead.

There will be specific challenges in the next financial year, especially if our workload continues to rise. We will continue to work towards improving the consistency and standards of our complaint handling by building quality into all our processes, while at the same time being mindful of timescales and targets.

The context in which we will be operating will be influenced by the Finance Committee's Inquiry and the Executive's review of regulation, audit, inspection and complaint handling of devolved services in Scotland. As I detail in my overview, I welcome these initiatives and hope that they will result in an improved governance framework and design.

We will continue to pursue opportunities to share services and co-locate with others, and to maximise the 'one-stop-shop' approach that underpinned the setting up of my office. This will be particularly relevant in the development of new offices covering human rights and police complaints.

Our core function is to provide a simple and accessible complaint handling system for citizens that leads to an improvement in the delivery of public services. The challenge for us as an office is to be flexible and proportionate in our response to the expectations of the general public and the bodies under our jurisdiction, and to influence where we can the environment in which we work.

The SPSO Business Plan for 2006 – 2007

Development

- To progress the debate on good public administration and ‘administrative justice’
 - To create the capability for shared services and multi-locational working
 - To explore and document all methods of investigation in a web-based manual
 - To increase effectiveness through greater use of knowledge management
 - To utilise the capability to lay before the Parliament ‘Other Reports’
 - To initiate a review of our 2002 Act
 - To launch our new website and to continue its development
 - To operate effectively in the changing context for public services in Scotland
-

Service

- To further promote and measure public awareness of the SPSO
 - To identify groups that are currently under-represented as complainants
 - To ensure we are accessible to people from all sections of society
 - To create a culture of continuous improvement based on measurement and feedback
 - To review and improve how we communicate our findings
 - To use our knowledge to help our stakeholders learn and improve
 - To design and launch the *Principles of Good Complaint Management* model
 - To introduce standards on timescales for investigations
-

People

- To reinforce performance assessment against objectives and competencies
 - To further develop our leadership skills and management capability
 - To finalise a comprehensive workforce plan to enable forward planning
 - To attract, retain and develop, and appropriately reward high-quality staff
 - To continue to develop our staff to maximise their capability and to meet our requirements
 - To continually review policies and practices in line with our corporate responsibility
-

Control

- To demonstrably work within ‘best value’ principles
- To continue to operate within Scottish Executive accounting rules and best practice
- To ensure that feedback is used to improve our processes and performance
- To maintain our scheme of control and a robust risk management approach
- To ensure that delegated authorities are clearly defined and understood
- To develop/implement proposals for sharing services with other bodies
- To further develop our IT technologies and methodologies

Strategic Objectives for 2006 – 2007

8 Challenges

- 1 **model of excellence**
- 2 **service standards**
- 3 **continuous improvement**
- 4 **pro-active advisory service**
- 5 **real strategic influence**
- 6 **people development**
- 7 **functional excellence**
- 8 **the 21st century office**



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