

REVIEW OF SOCIAL WORK COMPLAINTS



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation

Organisation Name

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

REVIEW OF SOCIAL WORK COMPLAINTS CONSULTATION QUESTIONS

Options for Revised Procedures

The final stage of current social work complaints procedures provides for complaints to be considered by a Complaints Review Committee (CRC) when all other avenues of redress have been explored. The guidance says that CRCs should aim to bring an objective and independent eye to bear on complaints to give the public additional safeguards that their wishes and needs are being fairly considered and their complaints properly investigated. The Directions specify that the CRC should have an independent chair and the expertise that members are required to have.

The Sinclair Report recommended that the SPSO should take on the CRC stage of social work complaints. Alternatives to this would be to retain CRCs but modify and improve them or align social work complaints with the standardised Model Complaints Handling Procedure currently being developed by the SPSO and local government for all local authority services

Q.1a Please choose which of the following options you would prefer for dealing with complaints about social work services, providing reasons for your choice :

- **Option 1 – Social work complaints to be dealt with in line with all other local authority complaints through the process set out in the SPSO model CHP for local government.**

Yes

Reason

We are of the strong view that revised arrangements for social work complaints should align with the SPSO's model CHP for local government and, in particular, the 2-stage process and timescales contained within that procedure. The consultation document sets out well the background to the Sinclair report, including recommendations, and I will not set these out again here. However, in summary there was a clear conclusion from both Crerar and Sinclair that there was a need for consistency and standardisation in relation to complaints handling across the public sector, particularly in relation to local government and social care. The focus was very much on a streamlined approach which was more focused on the user and on obtaining consistent measuring of outcomes.

The SPSO's Complaints Standards Authority (CSA) has taken forward the development of a standardised model process which will apply to all public sector bodies within our jurisdiction. This model is based broadly on the streamlined approach adopted across the NHS in 2005 and on the recommended model outlined in the Sinclair report. Our view is that the

2-stage model process is an appropriate and robust model for handling all complaints irrespective of sector. We believe the adoption of this model, with no additional stages of review, will help to focus service providers on moving towards a culture of 'getting it right first time' and will reduce the cost of handling complaints through the removal of multiple stages of review. This also applies within sectors and we have not, in the course of our discussions with stakeholders, seen robust evidence which would justify a deviation from the streamlined model in relation to social work services.

We outline below our view on the possibility of extended timescales. We remain open to this possibility but believe that this should only be considered on the basis of sound evidence that this is in the interests of the user and that there is a specific need which is different from the needs of users in relation to similarly sensitive complaints in other areas, for example around sensitive or serious health provision. This would also apply in relation to additional stages of review. In our guidance on model CHPs, published in 2011, we stated that:

'We...recognise...that there may be a need for additional stages of review in some circumstances, particularly in relation to sensitive complaints or those involving vulnerable individuals where set criteria are met. The CSA will work in partnership with service providers to identify circumstances where there is a strong justification for an additional tier of review and to develop appropriate criteria. Any justification should be supported by robust evidence.'

In discussions with service providers we have not heard any strong justifications for this and remain of the view that the 2-stage process within the CHP timescales remains the correct approach. We remain open to further discussion but believe that the Government should provide a clear steer on the back of consultation responses to inform the proposed working group's remit.

We do, of course, recognise the particular importance of social work services and the significant impact these services can have on individuals and families. However, the importance and pressing nature of many of the issues underlying social work complaints makes it all the more important that complainants have a clear, streamlined process to follow allowing to them to receive a prompt response to their complaints from the provider and the opportunity to seek independent external review within a similarly quick timeframe rather than have to negotiate a number of time-consuming and complex stages of review.

Next steps

In terms of taking forward the work to align social work complaints with the model CHP we agree with the Government's suggestion of a working group involving representatives with expertise in all aspects of social work complaints. The CSA would contribute to that discussion. The group

must, however, have clear terms of reference within which to operate. We believe that the Government should provide a very clear steer in relation to the preferred option (1-4) rather than delegate this consideration to the working group. It is also important that consideration is given to the wider arrangements for social care complaints to ensure a holistic approach focused on the user. This is considered in more detail below in our response to question 4.

The local authority CHP will be published in March 2012 and will be implemented over the course of 2012/13. Provision has been made to revise the model CHP in due course until the social work provisions have been revised and this will be something to be discussed by the working group.

- **Option 2 - As with Option 1 but with additional scope for increasing the working day timescale at stage 1 or 2 for social work complaints when circumstances require this. (Details of the circumstances in which timescales can be extended could be developed by the working group if there is support for this option.)**

No

Reason

As stated above in our discussions with service providers we have not seen any strong evidence justifying extended timescales which would differentiate social work complaints or users from those involving other areas such as health. We remain of the view that the 2-stage process within the CHP timescales remains the correct approach.

However, we remain open to this possibility but believe that this should only be considered on the basis of sound evidence that this is in the interests of the user. It should also be emphasised that the existing model CHP for local authorities allows discretion on the part of local authorities to extend the 20 working day timescales at investigation in cases where this is clearly justified.

If evidence was available to suggest that there was a clear need it would be necessary to ensure that this applied only to specific complaints relating to particular issues of vulnerability, for example. It would not seem appropriate for all social work complaints to have an extended timescale simply because they were provided by social work services. Many social work complaints will not involve issues of significant vulnerability or complexity, for example, and certainly no more than many complaints from other service areas.

If this were the preferred option, therefore, we would recommend that very

clear criteria are set for the types of complaint where an extension to the standard process was available.

- **Option 3 - Modified and improved CRCs operating within local authorities. CRCs would be retained but improved (e.g. faster time limits within which a committee must be convened and reach a decision). Please specify the improvements you would recommend.**

No

Reason

We do not believe that there is a justification for a continued role for CRCs. The CRCs (even if improved in terms of time limits) add an unnecessary stage to the complaints handling process which adds complexity for service users and may act as a barrier for many in progressing their complaint through to independent external review by SPSO. The current statutory social work complaints procedure has three stages with a total minimum timescale of 112 days from the complaint being made to a local authority to the CRC reporting at the final stage. The aims of the Crerar and Sinclair reports should be central to any decision on future arrangements. We believe the user is better served in having a simplified approach to complaints handling which is in line with that in relation to other public services.

As we have documented (for example in SPSO commentaries and annual report 2010/2011¹), the experience we have of reviewing CRCs has caused us concern. We agree with the issues raised in the consultation document relating to the independence, timeliness and membership of CRCs. We also question the consistency with which the CRCs are being applied across the 32 local authorities and the scope of what the CRCs are currently considering.

Fundamentally, it remains vital that complainants have access to a streamlined process to follow allowing to them to receive a prompt response to their complaints from the provider and the opportunity to seek independent external review of the decision and the administration of the service within a similarly quick timeframe rather than have to negotiate an additional and time-consuming stage of review.

If Yes, recommended Improvements

N/A

¹ Available on www.spsso.org.uk

- **Option 4 - The SPSO expanding its remit to take on a similar role to that of the CRCs. This would provide the SPSO with a remit over social work decisions in line with its role in relation to NHS complaints. Please specify the main benefits of the SPSO taking on this expanded role.**

Yes – However, it is important to point out that this option, were it to be supported by stakeholders and the Scottish Government, would need to be considered more formally through the parliamentary process and would require input from the Scottish Parliamentary Corporate Body (SPCB) from an early stage. It would also be subject to the considerations below in relation to how exactly this new role for SPSO would be defined and in relation to resource implications for this organisation.

Reason

The importance of social work service decisions and the impact that they have on individuals and families mean that it is an area where there is a strong argument for a fully independent external review. One of the aims of the original CRC model was to “bring an objective and independent eye to bear on complaints to give the public additional safeguards that their wishes and needs are being fairly considered and their complaints properly investigated”. As the consultation paper sets out, the current CRC model provides for CRCs to express disagreement with, for example, polices or professional judgement.

Investigative powers

Under the SPSO Act 2002 (The Act) the SPSO currently has the power to investigate complaints about maladministration or service failure. We cannot overturn decisions where a body has made a decision within its discretion. We can look into whether a body has followed a proper process in reaching its decision but, if the body has followed a proper process, the SPSO cannot decide that the wrong decision was made. There is one exception to this within the SPSO Act and this relates to decisions made by the NHS on clinical judgement where the SPSO does have a power to investigate decisions.

Matters considered by CRCs include the provision or non provision of social work services, the quality, extent and operation of social work services, the way in which decisions were arrived at and the decisions themselves (including financial assessments). The SPSO currently investigates the handling of the complaint by the CRCs, including, for example, whether the CRC was conducted properly, whether the CRC received all relevant information or whether the council had properly considered a CRC decision or recommendation. However, we can't look at the subject of the complaint such as decisions or professional judgements about a person's needs or the services they get. Neither can we look at complaints about financial assessments, although we may be able to consider complaints from people financing their own care arrangements

through Direct Payments. We can't be used to 'appeal' a CRC decision. In short, we can normally only consider an outstanding administrative or procedural matter relating to the CRC or the subsequent actions of the council.

It is clear, therefore, that, if a decision was reached to abolish CRCs and provide SPSO with a similar role, this would require a wider SPSO remit over the substance of social work decisions. This would require legislative change to the SPSO Act 2002 to provide the SPSO with a remit over social work complaints, similar to the role SPSO has on health.

Resourcing

As well as legislative change, it would require additional resource for the SPSO to recruit and develop skills and advisors in social work services to enable it to make judgements in relation to the substance of social work complaints. The SPSO currently has a bank of advisors available to provide advice to SPSO on clinical matters. A similar arrangement would be required in relation to social work. It is not possible to provide an estimate for this without further definition of the exact remit proposed for the SPSO and the exact definition of complaints to be subject to this remit. However, our experience of changes in complaints handling arrangements suggests that we may see a significant increase in the volume of complaints in this area at least in the short term (on taking on the role of the Scottish Prisons Complaints Commission in 2010 SPSO received an average rate of approximately 50% more cases than the SPCC considered in its final year). There would, though, also be savings for the 32 local authorities who would no longer have to administer the additional CRC stage.

Independence

We have said above that, in practice, the operation of CRCs has caused us concern. The fact that it is administered by the local authority and only has the power to make a recommendation to the appropriate local authority committee has led to a perception that CRCs are not independent enough to undertake the role of reviewing the merits of the decision. Providing SPSO with this role would ensure a greater degree of public transparency and should increase confidence that, as originally intended, there is an objective look at such decisions.

Social care/health/social work – aligning complaints

The strength of option 4 is that it would fulfil both the need to have a streamlined internal model for handling the complaints as set out above while ensuring that the individual could have an objective, external view of decisions which may, as decisions made by the NHS also do, have a profound impact on them.

It is also a model that would be adaptable enough to cope with the changes which are being brought about by the move towards integrating health and social care. It is currently the position that if matters previously the responsibility of a social work department are transferred to the NHS,

the NHS not only needs to run two complaints processes but our organisation will be in the position of having to consider whether the judgement is NHS clinical judgement and we can review or not.

As we expand on below in relation to question 4, there is an important consideration in relation to wider arrangements for social care, health and social work complaints. With the move to integrate social care and health we believe there would be a benefit in aligning the SPSO's role in social work with its role in relation to health complaints.

Question 1b Are there any of the above options that you do not feel should be considered? please give reasons why.

For the reasons outlined above we do not support option 3 for the retention of CRCs. We also do not feel that option 2 relating to a model CHP with longer time should be considered without strong evidence that there is a need for this in relation to the complaint.

Scottish Ministers' Regulations and Directions

Section 5 B of the Social Work (Scotland) Act 1968 provides that Scottish Ministers may by order require local authorities to establish a complaints procedure. Such an order is in place – *The Social Work (Representations Procedure) (Scotland) Order 1990 (SI 1990/2519)*. Sections 5 and 5B also provide guidance and direction making powers in respect of local authority complaints procedures. SWSG 5/96 contains such guidance and directions. Local authorities have a duty to comply with directions made under the 1968 Act.

The Regulations and Directions can be amended in line with the new social work complaints procedures, but we'd welcome your views on whether or not they are still needed.

Q. 2 Are Regulations and Directions still required in order to ensure that appropriate social work complaints procedures are adopted by all local authorities or will clear guidance be sufficient? Please tick and give reasons if you wish.

Directions still needed

or

Clear Guidance Sufficient

Reasons

The Public Services Reform (Scotland) Act 2010 provided the SPSO with a statutory role in relation to the publishing of model CHPs for authorities under

its jurisdiction. Once published, authorities to which these CHPs apply are under a duty to comply with this CHP. If they do not comply, the Ombudsman has a power to declare an authority non-compliant. We believe that the local government CHP will provide sufficient guidance for local authorities and the Ombudsman's powers provide sufficient statutory authority to ensure that the arrangements are adopted. There will though be a need for statutory changes to our own powers if it is decided that we should fully take on the role of the CRCs.

Appeals

The SPSO guidance on model Complaint Handling Procedures explains the importance of being clear about what a complaint is. This is an issue that needs to be carefully considered for social work services and it would be helpful to have views on whether or not there would be benefits in drawing a distinction between:

- complaints about policies and how they have been applied that may be more appropriately dealt with through an appeals process e.g. disagreement with the result of a financial assessments, the way eligibility criteria have been applied, or charging policies; and
- complaints about practice e.g. the way an individual has been treated by a social worker, delays in processing enquiries etc

The current guidance states that:

People with social care needs and their carers are entitled to have some-one take a second look at assessments, service decisions and the way in which matters have been handled. It is a clear aim of Government policy, reflecting the Citizen's Charter, to expose procedures and professional decision-making to more scrutiny than hitherto and it would be inconsistent with that policy to restrict the types of case to which complaints procedures relate. Local authorities can have alternative appeals arrangements for responding to certain types of complaints. However, complainers must have the right to refer their complaint to the formal complaints procedure at any stage, and should be made fully aware of this right.

Q 3a Should appeals procedures be established by all local authorities. (In the interests of good administrative justice – individuals would retain their right to complain at any stage.)

No

We have argued above that there is a need to retain what was originally planned to be the CRC role, that is to retain a place for an independent and objective look at decisions made. We have argued that the best way to achieve this is to give us the same powers over this area as we do over health

complaints.

In theory, this could be achieved by having an appeals process separate from the complaints process and leaving our powers as they are. However, the benefit of looking at the decision within the complaints process is that it allows for one body to take a holistic look at the whole experience and journey of the person. It can be difficult, for example, to take out concerns about the outcome of an assessment (the decision) from the complaint that the person was not treated with appropriate dignity and respect during that process. There is a need to focus not on the decision but on the person and an approach which starts with decisions and appeals can run the risk of being decision-centred rather than person-centred.

In arguing for this position, we do accept that local authorities have significant democratic accountability and also that not all local authority decisions should come under either any broader remit of this organisation or a formal appeal route. The argument here is one which we are narrowly applying to this area where there may be particular vulnerability and also where separating service decision from service delivery may not be appropriate.

We would, though, like to mention that, in our experience, purely financial decisions, such as those relating to the possible sale of a family home for care funding, do not sit easily alongside issues about service delivery and it may be both possible and desirable to deal with these separately through an appropriate appeal route.

Possible changes in the delivery of health and social care may also be significant. As we move to shared services and joint delivery, individuals should be able to raise issues about the whole of their experience easily and without having to access different systems. It may be difficult to explain to someone, for example, that we can look at the decision made by an NHS member of staff in some cases but not if they are providing social work type care.

If YES

Q 3b Would it be helpful for the working group on social work complaints to develop good practice guidance on appeals procedures?

Q 4 Do you have any other comments you would like to add?

As is clear from our response above options 1, 2 and 4 are not mutually exclusive and it is possible to envisage a solution where more than one of these options apply.

As we have said above and also in our responses to the Health and Sport Committee's Inquiry in to the Regulation of Care for Older People, it is also important to widen the focus of the review to ensure future arrangements align with the wider arrangements for handling social care complaints and, in particular, arrangements arising out of the future integration of social care and health.

We continue to have concerns with the overall complexity of the current arrangements for handling social care complaints and feel that further detailed work is required to ensure future integration of social care and health does not add to the confusion. This will require a holistic look at the existing statutory schemes guiding social care, social work and NHS complaints.

The current arrangements for social care and social work complaints remain complex with different routes, different procedures and different powers for complaints, depending on the provider and depending on the route chosen by the complainant. It is possible for complainants, currently, to have their complaint looked at by three different agencies with differing routes of escalation (NHS, local authorities, Care Inspectorate).

The SPSO does not have jurisdiction over social care providers themselves. That role is taken by the Care Inspectorate, with the SPSO only able to consider the way the Care Inspectorate has handled such complaints. As we have outlined above, our role in relation to social work complaints is normally restricted to investigation of complaints about the operation of the social work complaints procedures rather than the substance of social work complaints.

Given this complexity we believe there is a need to review the statutory schemes guiding social care, social work and NHS complaints to ensure that complaints that involve several or jointly delivered services can be dealt with effectively and to minimise potential confusion amongst members of the public. It may be that such a review is required before consideration is given to the review of social work arrangements by the Government's proposed working group. Agency clarity is essential and we would support a discussion looking at revised arrangements for wider social care as a whole.

As a point of principle, simplicity from the complainant's perspective should be uppermost, as underscored in the Sinclair Report. Whatever the complexity of the service delivery, *as a minimum*, there should be a single point of contact for the complainant and a single, co-ordinated response to their complaint.

