

27 May 2015

Kevin Stewart MSP
Convener of the Local Government and Regeneration Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Convener,

Complaints procedures following Integration of Health and Social Care

I would like to thank the Committee for the invitation to give evidence about complaints procedures and the integration of Health and Social Care.

As the Committee know the complexity of complaints procedures across health, social work and social care has long been of interest to this office. I am aware that, over a number of years, I have submitted information about the detail of my concerns to the Committee and, in January of this year provided an overview of these. Therefore, instead of providing more detail, I include in Annex A, a chronology with links to some relevant documents. I also enclose in Annex B a letter, with permission of the signatories¹, which was sent to the Scottish Government earlier this year demonstrating that this situation is of broader concern.

As you will see from Annex A, concerns about aspects of the operation of this process were raised in 2008. The move to closer integration of services does not, of itself, change the situation, but, arguably, it makes the problem more acute. In particular, after a number of years of working with the public sector to standardise complaints, the lack of clear guidance in this area is leading to the risk of those involved in creating integration schemes and plans taking different approaches and introducing more complexity.

You will see in the more recent documents referred to in annex A that I have repeatedly stated my support for integration. I remain of the view that integration has distinct benefits for the public and I know the complaints processes are one aspect of a much broader picture.

Possible ways forward

¹ In signing this letter, the Social Work Scotland Complaints Sub-group was providing a professional perspective and acting within its own remit and was not signing the letter on behalf of Social Work Scotland.

It has been known for some time that significant changes are needed and these will likely require legislation². For example legislation would be needed to:

- align the Social Work and NHS complaints processes and resolve some issues around the definitions of what is or is not a social work complaint;
- allow SPSO to work more closely with the Care Inspectorate and, where appropriate, either to undertake joint investigations or share information with each other about on-going separate investigations to ensure that concerns are dealt with in full and;
- finally, legislation would be needed to bring the work of joint boards fully within SPSO jurisdiction. At present, only Councils and Health Boards are in our jurisdiction and any responsibilities which are those of the Board cannot be considered in either of their complaint processes.

Legislation itself will take time³. We have also made it clear to Scottish Government officials that we would need time to prepare for any significant change to our jurisdiction, and, as a relatively small organisation, that change should not occur at the same time as any other major change in jurisdiction. We have been given no timetable for proposed legislation.

This means that there will be a period, possibly of some years, while the current legislation remains in force and integration is moving forward. Complaints processes are also changing. Since 2011, we have been working with others to create simple, standardised complaints process for the Scottish public sector. In the next year, we will be working with others to ensure that the NHS complaints health process aligns with what has become the Scottish Standard Complaints Handling Model of two simple stages. This leaves the Social Work process increasingly isolated.

You will see from the letter to the Scottish Government that was co-signed by a number of interested parties, that there is support from a range of organisations to work together in the interim to ensure the system is as good as it can be given the current, legal constraints. We have asked the Scottish Government to issue interim guidance to ensure that organisations are not developing systems, processes and complaints cultures in isolation and that, as far as possible, common standards and processes are in place. As a result of this letter, SPSO and Citizens Advice Scotland met with officials recently. We are expecting to meet with them again following that initial discussion.

I would like to close by saying again, I appreciate the interest the Committee is showing in this issue.

Yours sincerely

Jim Martin
Ombudsman

² This section is based on proposals we understand are likely to be put to Ministers. It is our understanding that a final decision on the way forward has not yet been made.

³ The time may vary according to whether primary or secondary legislation is required. It is likely primary would be needed for the first two points but secondary legislation may allow the issue of joint boards to be dealt with more quickly.

Annex A – Chronology

Note: This chronology is a summary of events/consultations since 2008 where issues relating to complaints have been taken forward or highlighted. It is not comprehensive.

2008 – *Fit for purpose complaints system action group reports to ministers.* (Known as the Sinclair Report) It suggests changing the social work procedure and transferring the role of Complaints Review Committees to SPSO as well as allowing for closer working between ourselves and the Care Inspectorate.

<http://www.gov.scot/Topics/Government/PublicServiceReform/IndependentReviewofReg/ActionGroups/FCSAG>

2009 – In their response to the report the Government accepts the proposals in principle and says they will consider whether legislation is required.

<http://www.gov.scot/Topics/Government/PublicServiceReform/IndependentReviewofReg/scrutinyimprovementAG>

2010 – The Public Services Reform (Scotland) Act gives SPSO the responsibility for standardising complaints processes – a key recommendation from the Sinclair report This only applies where there are no other statutory provisions around complaints.

We highlight issues in relation to the need to take into account the Sinclair recommendations in response to consultation on regulations that set up the Care Inspectorate and HIS; <http://www.spsso.org.uk/sites/spsso/files/consultations-and-inquiries/2010/10-11-05%20form%20re%20regulations%20re%20SCSWIS%20and%20HIS.pdf>

2011 SPSO respond to the Health and Sport Committee's call for evidence on the regulation of care for older people and highlight complaints processes as part of this. We close by saying: *"In summary, the system for complaining about care for older people would benefit from standardisation, simplification and better arrangements for dealing with complaints about integrated*

services." <http://www.spsso.org.uk/sites/spsso/files/consultations-and-inquiries/2011/11.07.27%20Response%20to%20Health%20and%20Sport%20Committee%20Call%20for%20Evidence%20on%20Regulation%20of%20Care%20for%20Older%20People%20%28POST%208%29.pdf>

In December 2011 the Scottish Government issue a consultation on the social work complaints process which closes in March 2012. Our response is here:

<http://www.spsso.org.uk/sites/spsso/files/consultations-and-inquiries/2012/120315%20-%20Review%20of%20Social%20Work%20Complaints%20-%20Consultation%20-%20SPSO%20Response%20-%20Final.pdf>

2012 The Government publish a consultation report on 1 August:

<http://www.gov.scot/Resource/0039/00398131.pdf> They establish a working group to look at Social Work complaints.

Also in 2012 we make a detailed submission on complaints handling in the response to the SG consultation on Adult Health and Social Care. This response included specific reference to how this is dealt with elsewhere in the UK.

<http://www.spsso.org.uk/sites/spsso/files/consultations-and-inquiries/2012/12.09.11%20SG%20integration%20of%20adult%20health%20and%20social%20care%20all%20docs.pdf>

2013 The working group on social work complaints holds meetings. The final one in July and the group comments on drafts of a submission to Ministers in the Autumn.

Separately we raise the wider issues in our written and oral evidence to the Parliament in connection with the Public Bodies (Joint Working) (Scotland) Bill.

<http://www.spsso.org.uk/sites/spsso/files/consultations-and-inquiries/2013/130802%20SPSO%20response%20to%20the%20call%20for%20evidence%20on%20the%20Public%20Bodies%20%28Joint%20Working%29%20%28Scotland%29%20Bill.pdf>

2014 In January the report of the working group on social work complaints with recommendations is submitted by officials to Ministers.⁴

Later in the year, we raise concerns about the way complaints are dealt with or not dealt with in the draft regulations that relate to the Public Bodies (Joint Working) (Scotland) Act.

<http://www.spsso.org.uk/sites/spsso/files/consultations-and-inquiries/2014/140801SPSOResponseDraftRegulationsandOrdersRelatingtoPublicBodies%28JointWorking%29%28Scotland%29Act2014.pdf>

⁴ This has not been published on scotland.gov.uk.

Annex B – Text of letter sent to Geoff Huggins Director of Health and Social Care Integration on 6 March 2015⁵

A number of stakeholders with a key interest in the area of health and social care met on Wednesday 14th January to discuss integrated approaches to complaints handling by NHS and local authority providers of integrated services. A number of areas of joint concern were identified with some proposals for helping the development of a simplified, consistent and user-focused approach, which we would like to bring to your attention.

User involvement and vulnerability

We are particularly concerned about the impact that the lack of integration of NHS and local authority complaints procedures will have on people wishing to raise complaints and specifically on vulnerable people who may fall through the gaps. If raising a complaint is someone's best opportunity to have their concerns heard, then there is a real chance that people will lose confidence if the different complaints systems are not moving towards integration and the issues they raise are not responded to, or are addressed in different ways by each organisation.

One of the main issues is the complexity of the complaints processes in that different procedures will apply depending on where funding comes from. Depending on how a service is funded, the NHS, social care or social work complaints process could apply, and more than one procedure could be relevant to an individual's situation. This will be very confusing for people. As we move towards integration, health boards and local authorities who are seeking to work together are coming up against these conflicting legal processes and requirements to add to the challenges in bringing together different complaints cultures and structures. If there were any doubt about whether different models of complaints handling were being used, the current consultations on draft integration schemes show varying approaches to complaints handling. Those that have been issued to date show that some areas intend to use a streamlined approach, some have no plans to make immediate changes, and others intend to use Local Authority Complaint Handling Processes to deal with complaints. What is clear is that there is no intention to operate a standard approach in developing complaints handling arrangements with each area doing so in isolation. This is disappointing given the huge amount of work, led by SPSO, that has gone into developing a standardised approach to complaints handling across public services, in line with the SPSO mandate provided by the Public Services Reform (Scotland) Act 2010. This improved, simplified approach across Scotland risks being undermined in this vital area of public service provision.

It was agreed at the meeting that those present would commit to working together to ensure the best possible service is provided to the public, and in particular to vulnerable people. We set out below the practical steps that were discussed and which we are hoping to take forward collectively. We also welcome the actions the Scottish Government has already taken to consider changes around NHS and social work complaints procedures but remain concerned about the fact that integration schemes are progressing without any clear consistent guidance at a national level for operation of the complaints schemes.

Role of the Scottish Government

The key contribution required from the Scottish Government is a recognition of the confusion surrounding the current approach to complaints in relation to integrated health and social care, and a clear commitment to working with us to ensure complaints

⁵ The meeting and letter were co-ordinated by CAS and this was sent on CAS headed paper.

processes are simple, consistent and accessible. There are some practical steps that would assist with this.

The Scottish Government will shortly be making decisions as to whether or not to approve Integration Schemes. We would recommend that in doing so, they ensure that the commitments in the schemes around complaints are user-focused rather than organisation focused and that they also ensure there is a standard approach across Scotland.

There is still a need to resolve the legal barriers in this area, in the form of conflicting statutory complaints processes and requirements, and there are outstanding recommendations made by the Scottish Government's Social Work Complaints Working group.

There is also a need to look carefully at data sharing and access to data. It was identified at the meeting that, at present, there are a number of discrepancies between systems and the ability to share can vary considerably.

As a group, we would welcome the opportunity to meet with the Scottish Government to discuss this issue in more detail and to help support the development of user focused solutions to the problems identified.

Yours sincerely

David Brownlee
Acting Head of Bureau Services, Citizens Advice Scotland

Colin McKay
Chief Executive, Mental Welfare Commission for Scotland

Shaben Begum
Director, Scottish Independent Advocacy Alliance

Jim Martin
Scottish Public Services Ombudsman

Marieke Dwarshuis
Chair, Scottish Tribunals and Administrative Justice Advisory Committee

Sarah E M Bogunovic
Chair, Social Work Scotland Complaints Sub-Group