

I am writing in response to the Health and Sport Committee's (the Committee's) call for evidence to inform its inquiry into regulation of care for older people.

Background

The Scottish Public Services Ombudsman (SPSO) is the independent body that investigates complaints from members of the public about devolved public services in Scotland.

This includes, amongst others, local government, the National Health Service and a range of public bodies including Social Work and Social Services Improvement Scotland (SCSWIS). We look at complaints about the quality of administration and service provided by such bodies.

The Committee should note that the SPSO does not have jurisdiction over social care providers themselves. That role is taken on by SCSWIS, with the SPSO only able to consider the way SCSWIS has handled such complaints.

There are also limitations to our jurisdiction regarding social work complaints; because statutory directions apply in this area, our role is normally restricted to investigating complaints about the operation of the social work complaints procedure rather than the substance of social work complaints.

The SPSO has recently taken on a new statutory function, empowered by the Public Services Reform (Scotland) Act 2010 (the Act), to improve complaints handling in bodies under our jurisdiction. To deliver this function we have created the Complaints Standards Authority (CSA), an internal unit within the SPSO. The CSA has now taken the lead in the development of simplified and standardised complaints procedures across the Scottish public sector.

Problems with the social care and social work complaints system

This response focuses on the current system available to members of the public to complain about care for older people. In our view, the system is characterised by complexity and is not in line with developing best practice in complaints handling.

The Sinclair Report¹ highlighted the care sector as an area that requires priority attention in terms of its complaints processes and this remains the case. This as an area where there is significant risk to consumers, high volumes of complaints and high complexity in terms of the complaints landscape.

¹ The *Fit-For-Purpose Complaints System Action Group Report*, July 2008, p.13-14. This report was produced by the Scottish Government Action Group chaired by Douglas Sinclair in order to consider the recommendations on complaints handling made by the *Crerar Review of Regulation, Audit, Inspection and Complaints Handling in Scotland* (2007). The Sinclair Report is available at <http://www.scotland.gov.uk/Resource/Doc/923/0063564.doc>.

Two key issues were highlighted by the Sinclair Report:

- The lack of a National Care Standard for handling care complaints, which means that the ease with which a person living in care home can complain about services is subject to a 'postcode lottery'; *and*
- The potential for confusion between complaints handling for social care and for social work services handled through local government.

With regard to the first issue, the relevant National Care Standard in relation to Care Homes for Older People² does not provide detailed guidance on the complaints processes that should be operated by care homes. It is unclear what action has been taken to address the Sinclair Report's concerns in this respect and a question remains over whether the level of guidance currently provided to care homes regarding complaints processes is sufficient.

With regard to the second issue, there are a number of distinct statutory processes that a person living in a care home might have recourse to. This includes:

- Complaints about the local authority's assessment of a person's care needs or about social services provided to an older person. Such a complaint would be subject to the local authority's social work complaints procedure and the statutory directions issued by the Scottish Government.³
- Complaints about a care home's services. Such a complaint would normally be made to the care home in the first instance or directly to SCSWIS. The latter has a duty to operate a procedure for receiving complaints about care homes under Section 76 of the Public Services Reform (Scotland) Act 2010.⁴
- Complaints about NHS services (such as GP or podiatry visits) that take place in the care home setting. These complaints would be directed to the statutory NHS complaints process.⁵

In our view, there is a danger to vulnerable citizens in the overlap and confusion between complaints handling for social care and for social work services. With the increasingly integrated delivery of health and care services, there is also potential for confusion and blurred boundaries between complaints about care homes and NHS services. There is scope, therefore, for complaints procedures to be more integrated, paying particular care to arrangements for dealing with complaints that cut across traditional service delivery structures.

² National Care Standards: Care Homes for Older People (Revised November 2007 Edition), Standard 11. <http://www.scotland.gov.uk/Publications/2011/05/16142828/0>.

³ CIRCULAR NO SWSG5/1996. <http://www.scotland.gov.uk/library/swsg/index-f/c156.htm>.

⁴ http://www.scswis.com/index.php?option=com_docman&task=doc_details&gid=166&Itemid=378.

⁵ <http://www.show.scot.nhs.uk/publications/me/complaints/docs/1guidance010405.pdf>.

A further area in which the current system may require modification is the social work complaints procedure itself. This is guided by the statutory directions on social work complaints referred to above. Social work complaints procedures typically have three stages, culminating in a Complaints Review Committee (which has 56 days to determine a complaint). In our view, this arrangement is overly complex, difficult to administer and too lengthy.

The SPSO's role: standardisation and alignment

As noted above, the SPSO now has a role in improving and standardising public sector complaints procedures. Our *Guidance for a Model Complaints Procedure*⁶ sets out guidance for better and simpler complaints procedures. The key measures that we have suggested are: (1) that complaints processes should have only two internal stages – a frontline resolution stage and an investigation stage; and (2) the frontline stage should normally take place within 5 working days and the investigation stage within 20 working days. If complaints cannot be resolved internally, members of the public then have the right to refer their complaints for external review (in most cases, to the SPSO). This streamlined approach is broadly in line with the approach to complaints across the NHS in Scotland.

We have begun discussions with each part of the public sector on how this guidance will work in practice and how to ensure that improvements are secured in the way public bodies handle complaints. As far as possible, we want to ensure that members of the public have access to recognisably similar complaints procedures regardless of the public service which they wish to complain about.

In relation to social care and social work complaints, however, our role is not straightforward. Because of the statutory requirements that regulate these areas, the SPSO does not have the power to develop and enforce a Model Complaints Procedure on either social care or social work providers. We do, however, consider that it is important that complaints procedures of all public organisations, or private organisations delivering a public service, should align with the principles and good practice guidance we are developing and, in particular, the streamlined two-stage internal process.

To ensure this alignment, we have had discussions with the Association of Directors of Social Work (ADSW), Convention of Scottish Local Authorities (COSLA) and the Scottish Government on reform of the existing statutory directions on social work complaints. We have also had discussions with SCSWIS about improvements to complaints handling procedures for care providers. For both of these areas we have recommended an alignment with our Guidance in line with our plans for the wider public sector. However, given our more limited role in relation to revising complaints handling procedures in these areas of service, we are only able to recommend and

⁶ Guidance on Model Complaints Handling Procedure (February 2011): <http://www.valuingcomplaints.org.uk/wp-content/uploads/2011/03/Guidance-on-a-Model-Complaints-Handling-Procedure.pdf>

have no power to direct improvements. We are, therefore, unable to guarantee alignment between these two areas or with others areas such as health and local government.

Summary: points the Committee may wish to address

In light of the above, there are a number of points the Committee may wish to discuss:

- There is a need to reform the statutory directions on social work complaints and, as far as possible, for these to align with the *SPSO Statement on Complaints Handling Principles*⁷ and good practice Guidance issued by the CSA.
- Similarly, there is a need to ensure that care providers operate simple and standardised complaints procedures to avoid the ‘postcode lottery’ referred to in the Sinclair Report. Any new procedures should align with the CSA’s guidance referred to above. One way of ensuring improvements in this area might be to develop a more detailed National Care Standard relating to complaints handling.
- There is a need to amend 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. This might, for example, include provisions for a single procedure to be used in such instances, rather than forcing a member of the public to make three separate complaints.

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.

I hope that you find this response helpful. Please let me know if you require any further information.

Yours sincerely

Jim Martin
Ombudsman

⁷ *SPSO Statement of Complaints Handling Principles*, approved by Parliament January 2011:
<http://www.valuingcomplaints.org.uk/wp-content/uploads/2010/11/statement.pdf>