

Patient Rights (Scotland) Act 2011 – Consultation on Secondary Legislation - RESPONSE

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

a. Scottish Public Services Ombudsman

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

a. Martin

Forename

a. Jim

2. Postal Address

a. 4 Melville Street

a. Edinburgh

a.

a.

a. Postcode EH3 7NS

a. Phone

a. Email

3. Permissions - I am responding as...

Individual

Please tick as appropriate

Group/Organisation

(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 No

Question 1

Treatment Time Guarantee:

- a) Do you think that we have covered the right areas in the regulations/directions at Annex B (given what the Act allows)?
- b) Do you think we have missed anything that should be covered (given what the Act allows)?
- c) Do you have any other observations?

Question 1 Answer

No comment.

Question 2

Direction 5 (above) incorporates some changes to the current arrangements and suggests that front line staff should be 'able to handle complaints where appropriate'. Do you have any observations on direction 5?

Question 2 - Answer

We welcome the proposal to ensure that, where appropriate, frontline staff should be able and trained to deal with complaints.

This accords with the *SPSO Statement of Complaint Handling Principles* approved by the Scottish Parliament in January 2011, which states that an effective complaints procedure should:

*"Seek early resolution: it aims to resolve complaints at the earliest opportunity, to the service user's satisfaction wherever possible and appropriate."*¹

The proposal also accords with subsequent guidance published by the SPSO's Complaints Standards Authority, an internal unit set-up to fulfil the duty imposed on us by the Public Service Reform (Scotland) Act 2010 to lead on complaints handling improvement in the Scottish devolved public sector. Our *Guidance on a Model Complaints Procedure* states:

*"...all staff members who could potentially be the first point of contact for a service user wishing to raise a complaint should be equipped to attempt to resolve a complaint relevant to their area of service there and then, wherever possible. In a practical sense, this means all frontline staff should, as a minimum, be aware of the organisation's CHP and be empowered to deal with and resolve such complaints as they arise. Alternatively, in the event that they are unable to deal with the complaint, for example if they are unfamiliar with the issues or area of service involved, they should be in a position to signpost service users and/or complaints received to the appropriate point for frontline resolution."*²

As our guidance makes clear, we consider that it is important to ensure that complaints

¹ <http://www.valuingcomplaints.org.uk/wp-content/uploads/2010/11/statement.pdf>

² <http://www.valuingcomplaints.org.uk/wp-content/uploads/2011/03/Guidance-on-a-Model-Complaints-Handling-Procedure.pdf>

handling is an activity and skill that is a mainstream part of frontline staff's roles. An effective initial response to a complaint, provided by the person closest to the incident in question, has the potential to:

- Avoid complaints escalating (and the consequent time and cost burdens associated with this); *and*
- Result in greater customer satisfaction and restored confidence in the public service being provided.

Many of the complaints which are escalated by the complainant to the SPSO might be avoided if public bodies improved their initial handling of complaints. There should be a far greater emphasis within organisations to 'get it right first time' and, for a significant number of complaints, the frontline is the appropriate place for this.

Our investigations regularly report failures in complaints handling and show that public bodies, including the NHS, are often failing appropriately to resolve complaints. The Ombudsman's August 2011 commentary stated that:

"I am very concerned about the high number of cases that we are upholding. Of all the complaints that were valid for SPSO in 2010–11, we upheld or partly upheld 34%. To put this another way, in over a third of cases that had already been investigated by the local service provider – through multiple, often lengthy stages of review and appeal – that provider had got something wrong.

This scale of upheld complaints is unacceptable and demonstrates that public bodies need to have better processes and policies and a better culture of valuing complaints to support staff in making the right decision first time round.

*The public deserve services that are run by bodies that are responsive and that sort out problems at the first opportunity. The hundreds of cases I see where councils, health boards and other bodies have got something wrong or handled a complaint poorly underline the importance of the Complaints Standards Authority (CSA) we are developing. The CSA's role is to streamline and standardise complaints handling procedures and encourage good complaints handling. Evidently, it is a much needed agency for change."*³

In summary, the proposals that, where appropriate, frontline staff should be able to handle complaints effectively is timely and very much in line with guidance being developed by the CSA. Key to this will be providing effective support and training to empower frontline staff by providing the necessary skills and, crucially, providing clear guidance on the authority frontline staff have to resolve complaints and provide redress (for example, apology).

³ <http://www.spsos.org.uk/files/webfm/Commentaries/2011/2011.08.24%20SPSO%20Commentary%202011.pdf>

Question 3 – Directions 10 and 11

Do you have any observations on the requirements set out in the directions above, including how they would be delivered by relevant NHS bodies and service providers?

Question 3 - Answer

We welcome the proposals that NHS bodies are required to monitor and regularly report on their performance in handling complaints. Again this accords with the *SPSO Statement on Complaints Handling Principles* and the *Guidance on a Model Complaints Procedure*. See in particular paragraphs 80 to 90 of the *Guidance*. Monitoring, recording and publishing key information on complaints is crucial to ensuring transparency and ensure that organisations learn from complaints and, therefore, use complaints to deliver service improvements. It is important that this information is monitored and actioned by Health Boards at a senior level within the organisation. Senior management should review this information regularly.

Externally it is important that sufficient information is available to the public through annual reports (as provided for by s.10(3)(b)) to allow patients to be able to see where service improvements have been made on the back of service failures identified through the complaints handling process. It would also be helpful if this information is published in a consistent fashion across the NHS to allow for comparisons to be readily made by patients and others. To achieve this consideration should be given to providing more detail in the directions as to what information should be made publicly available. Being as open and transparent as possible is crucial to ensuring patients recognise the value of the complaints process and, therefore, feel encouraged to make a complaint where they have a grievance about a service they have received. Previous research on the NHS complaints system has indicated that many such patients are reluctant to do so for a variety of reasons and that demonstrating how complaints can add value helps address this. 4

We note that Direction 11 (4) lists the organisations to whom NHS bodies must send a copy of their annual reports. We suggest that, in light of the terms of Section 16G of the Scottish Public Services Ombudsman Act 2002 (relating to the SPSO's duty to monitor trends in the way that public bodies handle complaints), you may wish to add the SPSO to the list of organisation to whom NHS bodies must copy their annual report.

Making this amendment would be consistent with the role that we have been given to look holistically at complaints handling across the Scottish devolved public sector and to take the lead where improvements are required.

Question 4

Do you have any comments or suggestions about the Directions relating to the Health Care Principles?

Question 4 - Answer

No.

(iv) Secondary Legislation – General Questions**Question 5**

Is there any further information or support that Health Boards will need to implement and deliver the Patient Rights (Scotland) Act 2011 and its secondary legislation?

Question 5 - Answer

No comment.

(iv) Secondary Legislation – General Questions (cont'd)**Question 6.**

Do you have any additional comments to make about the Patient Rights (Scotland) Act 2011 Secondary Legislation?

Question 6 - Answer

As a general comment, we note that the legislation makes no reference to the SPSO's statutory role in publishing model complaints handling procedures or promoting best practice in complaints handling. It may be helpful for the Directions to suggest that NHS bodies should have regard to their obligations to comply with any relevant model CHP published by the Ombudsman under the terms of the Public Services Reform (Scotland) Act 2010 and have regard to best practice advice issued by the SPSO/CSA.

Such a suggestion might be included as a general direction or within a specific Direction, such as Direction 7, which deals directly with the approach that should be taken to investigation.

As noted above in response to Question 2, we consider that public bodies need to significantly improve not only their policies and processes for dealing with complaints, but also their culture of valuing complaints. Consequently, we feel that it would be helpful for the secondary legislation to make reference to the need for NHS bodies to have reference to guidance and advice issued by this office.

Turning to two more specific points, we make the following comments:

The Patient Rights (Complaints Procedures and Consequential Provisions) (Scotland) Regulations 2012, Regulation 4 (h) (i) (ii): it is unclear whether this part of the regulations exempts NHS bodies from recording informal, verbal complaints that are made to them. Our *Guidance* suggests that all complaints should be recorded, given their importance in enabling learning and the improvement of services.

The Patient Rights (Feedback, Comments, Concerns and Complaints) (Scotland) Regulations 2012, Regulation 7 (5) and 7 (6) and The Patient Rights (Feedback, Comments, Concerns and Complaints) (Scotland) Directions 2012, Direction 6 (b) (ii): we

note that these provisions refer to possible delays in the completion of the complaints process. While we understand that delays may sometimes be unavoidable, we note that the guidance issued to support the previous Statutory Directions 5 made clear in paragraph 58 that NHS Bodies should inform complainants of their right to ask the SPSO to review the complaint in cases where the 20 day statutory timescale has not been met. We suggest that this practice should continue to be the case under the new Regulations and Directions, in order to ensure that complainants are not subjected to unacceptable delays in progressing their complaints. This is particularly so in relation to decisions to suspend complaints, which we understand to be a novel aspect of the Regulations.