

29 February 2012

Duncan McNeil MSP
Convener of the Health and Sport Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Convenor,

Inquiry into the Regulation of Care for Older People

Thank you for the opportunity to provide feedback and comments on the Committee's report on the Inquiry and the Scottish Government's response to the report.

Complaints

We welcome the Committee's endorsement of the role complaints can play in helping drive continuous improvement in care services. We also welcome the Government's commitment to support the Care Inspectorate in raising the profile of the complaints process. We recognise that the Care Inspectorate is currently reviewing the responses it received to its consultation on arrangements for complaints handling, to which we contributed.

We do, however, 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. This is discussed in detail further.

Model complaints handling procedures (CHPs)

It may be helpful to outline the breadth and scope of the model CHPs which have been developed by the SPSO's Complaints Standards Authority (CSA). As we state in our original submission, the CSA is the internal unit that is leading the development of simplified and standardised complaints procedures across the Scottish public sector. The statutory footing for this work is the Public Services Reform (Scotland) Act 2010 (the PSR Act) which gives the SPSO the power to publish CHPs with which bodies must comply.

The CSA is currently working with partners to develop a CHP for each sector which will introduce a standardised 2-stage complaints process across the public service in Scotland. This implements the recommendations of the Crerar and Sinclair reports which recommended a standardised, simplified model to address what was described as an inconsistent, 'not-fit-for-purpose' complaints system. So far, the CSA has developed model CHPs for the local authority and housing sectors. These procedures, due to be published in April 2012, form the basis upon which future CHPs will be developed for other sectors over which the SPSO has jurisdiction. This includes local government, the NHS and a range of

public bodies including the Care Inspectorate. The CSA has developed detailed procedures, and two key documents - a public-facing document and a complaints handling guide for public service staff. This will be supported by an expanded best practice guidance and networking website and e-learning tools, which will be launched in April 2012.

To ensure compliance with the CSA's complaints standards, public bodies will be required to adopt the CHPs. The CHPs covers not only a standardised 2-stage process but also includes detail on the governance arrangements in relation to complaints handling with a particular emphasis on senior management ownership of and accountability for the procedure, the recording, reporting and organisational learning from complaints and publicising complaints performance.

As we state in our original submission, any new procedures should align with the CSA's guidance in the interests of simplifying the public sector complaints handling system for the user. Crucially, however, the SPSO's powers under the PSR Act do not include all social care¹ providers who instead fall under the jurisdiction of the Care Inspectorate. We have discussed with the Care Inspectorate the need to ensure that the procedures it implements for complaints about care providers (and indeed the procedures of the providers themselves) align with the SPSO's model CHP which will soon be the standard in place across the wider public sector.

Social work and health and social care integration and single point of entry for complaints about services delivered by more than one agency

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. A good summary of the complexity can be found in the case study from Fife Council in a paper provided for the Sinclair report. This can be found in the papers for the meeting of 13 May 2008 (Paper 2). <http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReviewofReg/ActionGroups/FCSAGPapers5>

As we state in our original submission, 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 also noted previously, 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.

As is recognised in the Government's response, the SPSO is fully engaged in the Government's work of reviewing social work complaints, which will take account of health and social care integration. Our view remains that whatever the new arrangements decided on by the Government, there is a need to align these as much as possible with the 2-stage process being implemented through the local government model CHP and across the public sector. As the Government's consultation paper makes clear, if they decide to abolish the final stage of social work complaints, the Complaints Review Committee, and give the SPSO that role, this would provide the SPSO with a wider remit over the substance of social work complaints and there would be a requirement for legislative change and significant additional resource for SPSO.

¹ A care home run by or on behalf of a local authority is under the jurisdiction of both ourselves and the care inspectorate in terms of complaint handling. Private care homes are solely under the jurisdiction of the care inspectorate.

The integration of health and social care, whilst a very positive development overall, will potentially add to the complexity of the complaints handling arrangements by adding in the NHS procedure as a potential route. Where a care service currently provided for by a local authority is provided in future by the NHS, questions will need to be addressed on whether a service is being provided by the NHS or local authority and, therefore, whether a route applies directly to the SPSO through the NHS complaints arrangements or through the Care Inspectorate arrangements for care providers. If coming through the NHS route to SPSO, the SPSO could potentially have a wider remit given that it currently has powers to investigate clinical decisions in NHS cases as opposed to being restricted to investigating maladministration or service failure in relation to other sectors.

Given this complexity we would reiterate the point we make in our original submission that 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. Agency clarity is essential and we support the idea of setting up a working group that would develop revised procedures not simply for social work, as outlined in the Scottish Government's consultation, but for wider social care. We suggest that a mapping exercise to capture the current complexity of complaints procedures from the users perspective would be a good starting point and we would be pleased to be involved in such work with other key agencies from the relevant sector. 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, there should be a single point of contact for the complainant and a single, co-ordinated response to their complaint.

Other jurisdictions

There are examples from other parts of the UK and Ireland of different routes that operate in relation to multi-agency complaints. In Ireland, services are delivered by a single Health and Social Care Executive, making complaints more straightforward. There are changes underway in how social care is delivered in Wales and consequent changes for complaints handling. England has operated a single approach for dealing with complaints about NHS and adult social care services since April 2009. Department of Health guidance² requires or encourages joint working and investigation where a complaint cuts across health, social services and social care. This applies both at the level of the initial complaint and also at the Ombudsman level.

The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 which came into force on 1 April 2009 represented a significant simplification and shift in the complaints process. The Regulations cover the NHS and social services provision by the local authority and there is an explicit duty placed on the NHS and local authorities to cooperate if a complaint appears to relate to more than one body. The Department of Health has provided guidance on joint working and recommends that a protocol be put in place where care is provided jointly. The guidance stresses that **"if a complaint is made about care delivered by more than one organisation, it is important to provide a single point of contact and a single response to the complainant."**³

The Regulations also deal with complaints that reach local authorities but deal in part with a breach of care standards or social care provision. As these can relate to private bodies, the

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http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_095408

3

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_095447.pdf

local authority is required to ask the complainant's permission to pass the information to the registered person or adult social care provider. Once this has happened, the local authority is required to co-operate as far as is reasonable and practicable to ensure a single, co-ordinated response for the complainant.

Complaints about health, once they have completed the local complaints process, go to the Parliamentary and Health Services Ombudsman (PHSO). Complaints about local authorities including social work and social care provision funded by the local authority, are dealt with by the Local Government Ombudsman (LGO). Again, the local complaints process must have been exhausted before a complaint can be reviewed by the LGO. In October 2010, the LGO's remit was extended to include adult social care not funded by the local authority, so all adult social care complaints are now dealt with by the LGO.

The Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007 allow the PHSO and LGO to work together jointly to investigate complaints.

In closing, I would like to again thank the Committee for the opportunity to comment and welcome the attention being brought to this area both by the Committee and by the Government.

Yours sincerely,

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Ombudsman

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