

**CONSULTATION ON DELEGATION OF LOCAL AUTHORITY
FUNCTIONS: MENTAL HEALTH (CARE AND TREATMENT)
(SCOTLAND) Act 2003 & ADULTS WITH INCAPACITY (SCOTLAND)
ACT 2000**



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

Scottish Public Services Ombudsman

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Martin

Forename

Jim

2. Postal Address

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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

CONSULTATION QUESTIONS

Mental Health (Care and Treatment) (Scotland) Act 2003

Where Local Authorities and Health Boards reach agreement on the integration of adult health and social care:

- a) which of the 2003 Act MHO functions should it be possible to delegate to Health Boards?

Please see my response in the further comments box below.

- b) which of the 2003 Act MHO functions should not be permitted to be delegated to Health Boards?

Comments

- c) what are your reasons for your choices at a) and b) above?

Comments

Any further comments

Comments

Adults with Incapacity (Scotland) Act 2000

Where Local Authorities and Health Boards are in agreement in the context of integration of adult health and social care:

- a) which of the 2000 Act Local Authority [MHO] functions should it be possible to delegate to a Health Board?

Comments

- b) which of the 2000 Act Local Authority functions should it be possible to delegate to a Health Board?

Comments

- c) what are your reasons for your choices at a) and b) above?

Comments

Equality

Please tell us about any potential impacts, either positive or negative, you feel any or all of the proposals in this consultation may have on a particular group or groups of people.

Comments

Any further comments

The Scottish Public Services Ombudsman is responsible for looking at complaints about most public services in Scotland and for helping these bodies improve their complaints handling.

I have put on record elsewhere that I have concerns that the integration of health and social care agenda is moving forward much more quickly than discussions about the related complaints processes¹. This may mean that a person receiving care and support from a single provider (health or local government) has to access more than one complaints process to raise their concerns because, while the service is delivered by one provider, more than one body retains responsibility for different aspects of that service.

My detailed concerns and the reason why this is a particular issue for any matter delegated between health and local government are set out in responses to previous consultations and I do not intend to repeat those here. However, I did want to put on record my concern that this consultation does not appear to clearly address how, when matters are delegated, the person receiving care is helped to understand what that means for them. I have noted that the briefing note of May 2012, the Scottish Government laid out an expectation that bodies would communicate clearly to staff and stakeholders, and in so doing eliminate the potential confusion over responsibility for particular functions.

Good communication is critical. However, it is not always sufficient in and of itself. For person-centred care to be fully achieved, it is essential that the system is set up clearly and comprehensibly so that the individual can understand who is accountable; why that person is accountable and how to hold them to account. This is particularly important when the person involved may be vulnerable. It can be very difficult for a person to trust a decision if they feel that the lines of accountability are not clear. This is clearly significant when the purpose is to provide some oversight or independent review to protect a potentially vulnerable person.

It should, therefore, be the case that when deciding whether or not some powers should be delegated, public organisations should be obliged to make sure that, in considering the impact on users, this should include how users will be able to complain about the service.

¹ See our response to the Scottish Government consultation at:
<http://www.spsso.org.uk/files/webfm/Media%20Centre/Inquiries%20and%20Consultations/2012/12.09.11%20SG%20integration%20of%20adult%20health%20and%20social%20care%20all%20docs.pdf>