

Response of the Scottish Public Services Ombudsman (SPSO) to the Scottish Government Consultation on Complaints Concerning Functions Relating to the Named Person and Child's Plan.

Our views on the approach taken

We respond to the specific questions asked in the consultation below. We thought it would first be helpful to provide some more general views about the approach taken by Scottish Government and also to set out separately the potential impact on SPSO which will need to be considered as part of this consultation.

The consultation document highlights the significant work that has been done since 2008/09 to simplify and standardise the complaints processes used by public organisations in Scotland. The consultation also highlights the work that is ongoing. Much of this ongoing work is to resolve problems caused by individual areas having their own, separate, legislative complaints processes. When this exists, the standard model process created by SPSO working in partnership with others and now in use and established across the public sector cannot be used. The consultation seeks to align, where possible, the proposed new system with this standard model. However, it is intending to set this in a separate regulation with supporting guidance. This means if the standard model changes or if the regulations do not correctly replicate the model there will be problems with organisations being required to operate two different systems. (You will see below we consider the flow charts show some misunderstanding of the current model in relation to front-line resolution).

We appreciate some of the aspects of the Named Person scheme and Child's Plan mean that the current systems would always have required some legislative change but consider that the simpler approach of allowing sections 16A to F of the Scottish Public Services Ombudsman Act 2002 to apply and only making any additional legislative changes where necessary would have been preferable. Partly as a result of this, we would highly recommend that as much as possible of the process is left to guidance which will be easier to change to align with any proposed changes to the model and that regulations are only used to resolve specific issues which are unique to the Named Person and Child's Plan.

Potential impact on SPSO

In both the options presented, the consultation suggests we should have more power to look at the professional decisions being made. We can already do this in health care and there is a separate consultation that suggests we should be able to look at social work decisions in the same way. If this is approved, this would not reduce the ability of professionals to exercise discretion and judgment. Our role would be to assess whether that was reasonable and the service received by the child, young person or parent was of the standard they should expect from a public organisation. It is our experience of health that this means a higher proportion of cases that comes to us will be ones we can consider and that we can do so in more depth. We will also need to have access to appropriate professional advice to ensure our assessments of the merits of decision-making is undertaken to the highest standard.

Nowhere are estimates given for numbers of cases we may receive. We appreciate that predicting complaints numbers can be difficult when a new service provision is proposed. It is arguably more difficult in this case because existing legal processes for resolving dispute remain and may overlap. For example, the consultation highlights that the ASL process will remain and also, there will be overlap potentially with cases being dealt with through the children's hearings system. We are happy to work with SG and others to develop simple to understand signposting that should ensure that, whenever possible, the correct process is used and that the best possible information is given to the public about this. We do have to put on record that we are not resourced for additional work and anticipate working with SPCB and SG to agree an appropriate level of funding. Currently, health cases tend to be the most expensive end of our caseload. Given the level of uncertainty about numbers we consider a review phase should be built in to ensure that this does not lead to either under or over-resourcing of our office.

Response to individual questions

Questions

1) Should making complaints concerning functions relating to the Part 4 and/or Part 5 be restricted to a child, young person and parent (as defined by the CYPA)

Reason/s

We have not answered yes or no to this question. There may be other people in the life of a child who have an interest. However, they would likely be able to use existing complaints processes if this one was not available to them. The question the Government will need to resolve is whether they feel that is appropriate and the extra aspects of this process (merits of the decision and the single response) should be limited to the group most directly affected. If that approach is taken signposting should be clearly made to allow those who are unhappy but not child, parent or young person to know what they can do.

2) Should the parent and child be entitled to request and authorise the assistance of other persons in making their complaint.

Yes No

Reason/s

This is a standard part of almost all complaints processes. Advocates, lay and professional, can be invaluable in helping people who are vulnerable or who lack confidence to effectively access complaints processes.

3) Should the merits of decision making about functions, as set out in Appendix A, under parts 4 and 5 be looked at by SPSO

Reason/s

As with any new proposed role we won't offer a view on whether this is the most appropriate option – this is, of course, a policy decision for the SG and Parliament on the back of consultation with key stakeholders – but we are confident that this is a role that could be made to work within SPSO and be made to align with our existing role, structures and expertise. We would also note that confusion in complaints process often comes about because of varying powers and we already have this power in relation to health and may well do so in relation to social work. For a child who has multiple interactions with health and social work, this means we could have this power for part of the process but not for aspects covered by the Named Person and Child's Plan.

4) Should complaints concerning functions relating to the Part 4 and/or Part 5 be considered as set out in Option 1

No

Reason/s

Whenever possible we support a single, unified response. The services are increasingly delivered jointly and the individual should not have to work out what may be the complex legal relationships behind that joint delivery. In addition, decisions made together should be reviewed together in the process. It is artificial and unhelpful to the complainant to separate aspects of this out.

5) Should complaints concerning functions relating to the Part 4 and/or Part 5 be considered as set out in Option 2

No

Reason/s

We are concerned that the model set out is similar to but is not in fact the standard procedure in use by Scottish public organisations. In particular, it suggests two written stages. The early resolution stage is generally a single or couple of phone calls and does not require a separate acknowledgement stage within 2 days. At paragraph 19 it suggests one organisation decides whether this should be a stage 1 or stage 2 response. Ideally and in line with the model, this should be the decision of any front-line member of staff who should also be empowered to resolve simple issues on behalf of all organisations involved without the need for complicated discussions. There are other small points throughout the document which do not fully align with the standard model.

For example, while generally complaints must complete the process of the organisation first, we currently have discretion (paragraph 10). We also consider that there is a need for work throughout on definitions and responsibilities. Detailed guidance will need to be given to organisations to ensure that this works smoothly. We are happy to work closely with Scottish Government and others to ensure that the regulations and guidance do align with the model and on guidance to support the implementation of the proposed new procedure.

6) We invite comments on what should happen in situations where the Named Person service provider or the managing authority are coordinating the investigation of a complaint involving other bodies where they may agree with the parent and child at the outset. (See paragraph 25.)

Response and Reasons

We refer to our response above where we refer to the need for detailed guidance on responsibilities and definitions to make this complaint process work. It is also worth noting again in this context that all frontline staff should feel able to respond to simple complaints about a service that is jointly provided whatever organisation they are ultimately employed by. In areas of joint working, all organisations involved will need to work together effectively and that does mean they need to accept others will take a view of their approach and be involved in how they operate. It would not be appropriate for organisations to be arguing at length over the position while the parent, child or young person is left waiting for a response, particularly if this is a simple matter. We anticipate that this may be an area where some of the need for more detail, also referred to above, will be of particular use. In this situation, the greater clarity that can be provided on the responsibilities of organisations involved the better the outcome is likely to be. As we have also said above, we would suggest that such detail may not be appropriate for regulations but would be better set out in guidance where it can be more quickly altered if it proves problematic in practice.

7) We invite comments/suggestions on what information and guidance on the complaints process would help parents and children.

Response

The greatest confusion is likely to come around signposting. There needs to be simple information available about this. We would also recommend that it is clear to the public can approach any person delivering a service with their concerns and should receive a positive, non-defensive response and, ideally a resolution. It is important that information and guidance for parents and children is the same as that given to staff who will also need a good understanding of their role in order to ensure that front-line resolution works well and also that any advice they give about what to do if the person is still unhappy is appropriate.