

Scottish Public Services Ombudsman Response to the Consultation on a Draft Order to revise the procedures for complaints about social work

We welcome and support the changes proposed in the draft Order to amend the social work complaints system, which follow closely the recommendations of the Scottish Government Working Group on social work complaints which reported in 2013 and the earlier recommendations of the Sinclair Fit for Purpose Complaint Working Group, which reported in 2008. As noted in the consultation, this order builds on work we have undertaken across the public sector to simplify and improve complaints handling and sits alongside work we are currently supporting to change and improve the NHS complaints process and bring integrated joint boards within our jurisdiction.

As the consultation notes, concerns about the operation of the current social work complaints process date back to 2007/2008. The problems are now becoming more acute as we move towards closer integration of services, and service providers and users struggle to work with complaints procedures that are very different. We have publicly called for changes for some years and are pleased that action is now being taken to resolve this. In this response, we highlight the practical steps that would be needed to implement these important changes as quickly as possible.

Developing a model complaints handling process for social work

The removal of the provisions set out in the Social Work (Scotland) Act 1968 will enable the provisions in the Scottish Public Services Ombudsman Act 2002 (as amended by the Public Service Reform (Scotland) Act 2010) which allow us to develop and publish model complaints handling procedures (CHPs). Significant and innovative work has already been done in both sectors to improve complaints handling and this will build on that foundation. If the Order is approved as currently set out, we intend to work with the sector to develop an approach to social work complaints which aligns with the local authority model CHP and the developing NHS model CHP.

The provisions in the 2002 legislation (as amended) allow for a statutory backing and enforcement of complaints procedures which provides the basis for the current standardised model complaints handling procedure now operating across most of the public sector. Not specifying the detail in legislation has allowed SPSO to work with each sector to develop procedures tailored to those sectors and also to ensure they can be adapted easily when appropriate. In relation to social work, this approach would provide for the potentially significant added benefit of allowing organisations to bring together complaints about social work and health as we move towards increased integration of services.

Sufficient time would be needed to allow us to effectively work with key partners, stakeholders and users of social work services to develop a suitable model complaints handling procedure, to support implementation and to align with the relevant procedures being developed for the NHS and integrated joint boards. This work would need to be resourced as part of the transition phase to the new system and we highlight again below the need to ensure that this role is resourced if it is to be effective. We would seek assurance from the Scottish Government for this for SPSO and the Scottish Parliamentary Corporate Body (SPCB). The date for implementation in the Order does reflect our earlier hope that we would be able to complete all necessary steps by October 2016. This statement was made in August 2015 and, since then, progress has not been as quick as we had hoped. We already have undertaken some initial discussions with social work practitioners about working with the sector to prepare for this change. In all the circumstances, we consider that a better date may now be April 2017.

Changes to the role of SPSO

We support the proposals to amend the role of the SPSO in relation to social work, to include professional judgement. This would replace the existing system of Complaints Review Committees (CRCs) which has been widely regarded as in need of reform for some time. This proposal was first raised as a recommendation of the Sinclair report in 2008, reflecting the views held at that stage that the existing system was complex. The proposed changes would provide users with a well-established, accessible external independent route to challenge social work assessments without recourse to the court system. It would also align the SPSO's role with its current role in relation to health, where we are able to review clinical judgement. This would help align the systems and provide a clearer, coherent route for independent review of complaints across integrated areas.

To prepare for this role, as part of the transition process, we would engage with all relevant partners, stakeholders and users to discuss issues around how SPSO would assess professional decisions, the basis of professional advice we would seek on these complaints and how we will work with others, in particular the SSSC and the Care Inspectorate to ensure that it is, whenever possible, clear to both social workers and the public what is the most appropriate route for their concerns.

In responding to this Order we would like to begin that process by explaining:

- We take the responsibility of assessing professional judgement, a power we already have in relation to health matters, seriously. We use relevant independent experts to advise on key aspects of clinical judgement and we also assess the overall quality of advice we receive through our regular quality assurance programme. We assess whether the decision was reasonable and not simply whether another decision was possible.

- We would like to stress the importance of a broad and clear definition of professional judgement. It is our experience that too much detail in legislation to define such roles can make them unworkable. While we know there may be some nervousness about a broad definition, social workers are making very significant decisions and the public should be able to question as much of the assessment made in relation to their needs as possible through an accessible administrative justice route. It is also worth bearing in mind that we uphold around 50% of health cases each year which means that in 50% of cases we are not finding problems. Many of the problems we find relate to communication and our broad role over clinical judgement has allowed us to work effectively in relation to health boards and provide maximum impact. We provide constructive criticism where necessary, whilst also, when we have found this to be the case in our investigation, providing assurance to other clinicians whose judgements have been challenged that their decision was reasonable.
- The consultation provides a general definition of resource decisions. For the avoidance of doubt, as currently worded, we consider the Order would allow us to recommend direct changes to decisions that have resourcing implications with regards to individuals. We consider we also could comment on professional judgement that was involved in larger resourcing decisions by the Council. If we found an error in that judgement potentially undermined that larger decision, we are of the view that we could recommend that decision be looked at again ..
- We would need to work closely with SSSC to establish a clear protocol in relation to our respective roles. We already can consider professional judgement in health care and this has provided us - and other Ombudsmen across the UK who also have this role - with nearly two decades of experience of managing the interaction with regulators and professional organisations. We have found, in practice, that this has worked smoothly. We have strong and positive relationships with the appropriate regulators and professional bodies. We would aim to develop the same with the SSSC. We consider that there is the potential for this to be even more effective by supporting the inclusion of a specific information-sharing provision.
- The section on information-sharing was included following a suggestion we made that this could help ensure important information and concerns are shared between appropriate organisations in terms of their respective roles. At present, SPSO can only release information for the purposes of our investigation or when we consider there is a threat to the health and safety of people. We cannot release information about a matter we have investigated to a regulator who is looking at the same issue as part of a broader assessment of the individual's fitness to practice. It is important to stress that, simply because we find a professional judgement was flawed in one case, that does not mean there is a competency issue. All professionals will, at some time, make mistakes and it is important we move away from a blame culture which inhibits open discussion and disclosure of errors. However, we think that it would be appropriate to share information in cases where we have investigated an issue and identified that the relevant information that we hold (including the expert advice), may be valuable for the SSSC in making a quicker or proportionate decision about how far they investigate. Our legislation is unusually restrictive in the way we can share information but this

does balance our broad powers to access information. The loosening of this restriction is narrow and we consider it would mostly be used if the SSSC was investigating and felt work we had already done would assist with that. We have also asked for a similar provision in relation to the Care Inspectorate to ensure that, as provision of service moves towards integration, important information and concerns are heard by the most appropriate organisation.

Resourcing

It is not clear what the demand for our service would be in the new system and this presents a challenge in estimating resources required for this role. In 2014/15, 253 people contacted us with social work complaints in terms of our existing maladministration role. From the available information from local authorities in relation to the current CRC system, this seems to be larger than the group currently accessing the CRC system. It is also worth highlighting that when a similar system was repealed in health in 2005 we saw an initial 50% uplift. We have also seen a significant increase in health complaints over the subsequent period, an increase which has not been met with additional resources.

We have welcomed the engagement of Scottish Government on the issue of resourcing these changes and we have submitted an estimate of complaints volumes and costs required for this new role. SPSO's budget is a matter for the Scottish Parliamentary Corporate Body. We will be keen to continue to work closely with the SPCB and Scottish Government to ensure that SPSO is resourced and prepared for the initial changes but also, crucially, that there is a sensible process in place to manage either any increase or decrease from that point. An important first step will be for the SPCB and SPSO to be given clear assurances on appropriate resourcing.