

Consultation on the Provisions of the Education (Scotland) Bill

Background

1. The Scottish Public Services Ombudsman (SPSO) is the final stage for public sector complaints including complaints about local authorities and Scottish Government agencies. As well as considering individual complaints, the SPSO plays a key role in supporting improvements in complaints handling.
2. In responding to this consultation, we do not intend to comment on the specific questions around governance. Instead, we wish to put on record two technical points on accountability in relation to complaints.

1. SPSO and complaints about schools

3. Complaints are not explicitly mentioned in the consultation. They do, however, provide an important route for parents and children to raise concerns directly with the school or local authority. Responding to, monitoring and acting on learning from complaints should form part of any accountability arrangements.
4. When the SPSO was set up in 2002, the Scottish Parliament extended our role in education complaints. Our predecessor body did not have the ability to look at complaints about the internal management of schools. After consultation, the Scottish Government and Scottish Parliament decided the SPSO should have the powers to consider such complaints with some specific exclusions for certain subject areas (broadly these are around curriculum and discipline issues see schedule 4, paragraph 10 of the SPSO Act 2002).
5. Since 2010, the SPSO has had a statutory role in setting complaints standards, presented in the form of a model complaints handling procedure. These help to ensure a consistent, positive response to complaints. The procedure also applies to complaints made in schools and the local authority is required to ensure that these are managed appropriately.
6. It is not clear to us from the consultation what the impact will be on the structures of accountability and, in particular, for complaints following the proposed changes.
7. In our response to the previous consultation on reforms, we highlighted that our jurisdiction only covers schools which are under the management of an education authority. This means not all publicly-funded school provision is currently in jurisdiction. Although it should be noted that this is not always straightforward, for example if a local

authority is providing a service using a grant-aided school that could bring some aspects of the service provision at that school into our jurisdiction.

8. We suggest that when considering any changes to governance and structure, it is important to consider any potential impact on complaints: process, standards and management, being mindful of the duty to comply with the SPSO model complaints handling procedure. In particular, there should, as a minimum, be no reduction or erosion in the current ability of parents and children to complain to an independent complaints-handling organisation. It is important to ensure that complaints made to schools are covered by an accessible, straight-forward complaints procedure.
9. We would also urge consideration about whether the review of governance is an opportunity to introduce greater parity and consistency by extending complaints rights to all those receiving a publicly-funded education. This approach is both more child-centred and would provide for an equal right to access the SPSO by making all publicly funded school provision subject to the same requirements to have appropriate complaints handling, recording and reporting arrangements in place.

2. Status of the proposed Education Workforce Council

10. The proposed Council will combine the General Teaching Council for Scotland (GTCS) with the Community and Learning Development Standards Council (CLDSC). The consultation says the intention is that this will not be an executive agency but will be independent of the Scottish Government. The decision on the status of this agency has significance for complaints because the decision on whether or not any new organisation should or could come within our jurisdiction depends on that status. That status also affects *how* it comes under our jurisdiction.
11. To give some examples.
 - As an executive agency, Education Scotland automatically comes within our jurisdiction because it covers the Scottish Government and Administration.
 - The Scottish Social Services Council, referred to in the consultation is, as a Non-Departmental Public Body, listed by name within the SPSO Act 2002 bringing it under jurisdiction.
12. Prior to 2012, the GTCS was also listed by name in the SPSO Act 2002. However, when the GTCS underwent a significant change in status in 2012 we asked the Government to consider whether it should remain within our jurisdiction. The Government decided it should not and it was removed.¹ We would ask that, when the decision about the status of the new organisation is confirmed, consideration be given as to whether or not that status means it should be a listed authority for the purposes of the SPSO Act 2002. We would be very happy to provide advice when the decision on status has been confirmed.

¹ Link to the Parliamentary debate is here:
[http://www.parliament.scot/parliamentarybusiness/report.aspx?r=7139&i=65081&c=0&s=The%2520Scottish%2520Public%2520Services%2520Ombudsman%2520Act%25202002%2520Amendment%2520\(No.%25202\)%2520Order%25202012](http://www.parliament.scot/parliamentarybusiness/report.aspx?r=7139&i=65081&c=0&s=The%2520Scottish%2520Public%2520Services%2520Ombudsman%2520Act%25202002%2520Amendment%2520(No.%25202)%2520Order%25202012)