



HEALTH AND SOCIAL CARE COMMITTEE:  
POLICY AND RESOURCES COMMITTEE:

26 NOVEMBER 2015  
2 DECEMBER 2015

## **SOCIAL WORK COMPLAINTS PROCEDURE: CONSULTATION RESPONSE**

Report by Chief Executive

**PURPOSE OF REPORT** To seek approval of the terms of a response to a Scottish Government Consultation in relation to Social Work Complaints.

### **COMPETENCE**

- 1.1 This Report is concerned with constitutional matters.

### **SUMMARY**

- 2.1 Currently procedures for considering complaints with regard to the discharge of listed social work functions (including those relating to children) are governed by Section 5B of the Social Work (Scotland) Act 1968 and the Social Work (Representations Procedure) (Scotland) Order 1990. Unlike other complaints procedures within local authorities, the final internal stage is referral to a Complaints Review Committee which is required to have a Chair independent of the local authority working with elected members.
- 2.2 In 2007 and 2008 consideration was given to the Regulation of Audit, Inspection and Complaints Handling of Public Services in Scotland (The Crerar Review, published September 2007). Subsequent to this, the Fit for Purpose Complaints System Action Group (FCSAG) published the Sinclair Report in July 2008 making proposals for simplifying public service complaint handling procedures including recommendations that were specific or relevant to Social Work Complaints. The Sinclair Report made a particular recommendation that the role currently performed by local authority Complaints Review Committees (CRCs) for social work should be transferred to the SPSO to provide a standardised system to increase consistency across the country. That report also recommended that legislation should be introduced to allow changes to the complaints landscape and to allow better information sharing (for example to allow the SPSO and Complaints Handling Bodies to share headline information on cases under consideration).
- 2.3 The draft Order which is currently the subject of the consultation seeks to implement these recommendations of the Sinclair Report and the rationale for the proposals is detailed in the body of the Report together with a draft response to the questions raised.
- 2.4 Implementation of the Order as drafted would result in a move from the current position where SPSO's consideration of social work complaints is limited to consideration of whether there has been any maladministration rather than any consideration of the merits of the decision to the current position in health service complaints where this independent external review stage also allows the SPSO to consider the merits of decisions taken in exercise of clinical and professional judgement. This would allow the merits of decisions taken under the professional judgement of local authority staff under Social Work legislation to be considered. This may require SPSO to consult with and seek expert guidance from those with social work expertise. It is suggested that clarification and reassurance should be sought from Scottish Government in relation to how such consideration would relate to the role of the Scottish Social Services Council (SSSC) in relation to alleged malpractice of a social services worker or social worker and of the proposed safeguards in the procedure.

## **RECOMMENDATION**

- 3.1 **It is recommended that the Chief Executive, Comhairle nan Eilean Siar, be authorised to respond to the consultation on draft Order to amend the Scottish Public Services Ombudsman Act 2002 on the basis of the draft response appended to the Report taking account of any comments made at Committee.**

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## **BACKGROUND**

- 4.1 A formalised Social Work Complaints Procedure was introduced in the early 1990's set against the backdrop of improving public services for citizens. The framework is set out in the Social Work (Scotland) Act 1968 and is separate from that relating to other complaints in relation to a service received from a local authority. Social Work complaints are those made by or on behalf of:
- A person for whom the local authority provides a (Social Work) service either directly or indirectly.
  - A person whose request for such a service has been refused by the local authority.
  - Other persons whose need or possible need for a service which the local authority has a power or a duty to provide has come to the authority's attention.
- 4.2 These provisions relate to the discharge of listed social work functions (including those related to children). The current proposals do not intend to amend the remit of social work complaints.

## **CURRENT POSITION**

- 5.1 Currently complaints in relation to social work services progress through a four stage process:
- Informal problem solving stage.
  - Investigation by specially designated staff.
  - Referral to Complaints Review Committee.
  - SPSO consideration (currently limited to consideration of whether there has been maladministration rather than any consideration of the merits of the decisions).
- 5.2 These Review Committees are required by Scottish Government and are required to have Chairs who are independent of local authorities (working with elected members). In terms of the timescales, this can be a prolonged process. A complaints Review Committee requires to make recommendations within 56 days from the date the complainant requested the Panel and the local authority then has a further 42 days from the date of the decision to agree actions and notify the complainant in writing. In addition to the 28 days which the local authority has to initially investigate the complaint this can result in relatively substantial delays in complaints being processed.
- 5.3 Currently the CRC's role is to objectively and independently examine the facts of a complaint. Although it can express disagreement with policies, priorities, resources and professional judgement, it only has the power to make a recommendation to the appropriate local authority Committee. The consultation also highlights that some local authorities have expressed concerns about problems in maintaining membership for Complaints Review Committees which can lead to difficulties and delays in convening the Committees when they are requested. The resources required to maintain the CRCs process specifically the level of

administration associated with convening CRCs have also been highlighted by some authorities.

- 5.4 The new proposals seek to provide a quick, simple and streamlined process with a strong focus on local early resolution by empowered and well trained staff.

## **CURRENT PROPOSALS**

- 6.1 A Working Group established in February 2013 by Scottish Government made the following recommendations to Ministers.

- The model Complaints Handling Procedure which is currently in use for other local government complaints, should be adopted for Social Work Complaints. This would bring the procedure broadly in line with other local authority complaints and also NHS Complaints procedures.
- Given the generally more complex nature of Social Work Complaints, there should be a possibility of extending the first (frontline resolution) stage from five to fifteen working days on cause shown. The second (investigation) stage would apply as it does in other local authority and health complaints with a definitive response being provided within 20 working days of the escalation to the second stage with responses signed off by senior management.
- The SPSO take on a role similar to that currently undertaken by the CRCs. This would involve the SPSO's remit being extended to cover Social Work Complaints.

- 6.2 CRCs currently consider complaints made by or on behalf of users or carers about the provision or non-provision of services, the quality and extent of services, the operation of services and allied issues. They do not consider grievance procedures or other procedures in relation to employees. It is clarified that issues around the allocation of resources are for the individual local authority, and it is not proposed that SPSO have a power to force local authorities to amend decisions based on their agreed eligibility criteria. There is a policy intent that the equivalent health provision be replicated to allow for the SPSO to consider the merits of decisions take under the professional judgement of local authority staff exercising their functions under the 1968 Act and other listed Social Work legislation.

- 6.3 It is not intended that SPSO would have any ability to hear appeals or overturn decisions made by local authorities in relation to resource allocation. It would, however, have the power to make recommendations to the local authority on decisions made by social work staff- including on resource allocation- for individual users. It is not clear what the role would be in relation to professional judgement applied in relation to exemptions in financial assessments and it is suggested that clarification be sought on this point. It is not intended that SPSO should be able to reverse decisions made by the local authority on the basis of the effective and efficient use of resources. They may make recommendations but will not have the power to overturn those decisions.

- 6.4 It is proposed that SPSO will be allowed to consider the merits of decisions taken in consequence of the exercise of professional judgement. The reference to professional judgement is intended to reflect the reference to clinical judgement in the context of health decisions and to prevent the SPSO from considering the merits of wholly political decisions. In summary it may be appropriate to consider the impact on an individual in consequence of an exercise of professional judgement but not a decision made by a local authority in its resource allocation at a strategic level.

## **INTEGRATION OF HEALTH AND SOCIAL CARE**

- 7.1 The principles reflected in Integration Schemes are that complaints in relation to services within the remit of the IJB are handled in an effective timely and person centred way. The body corporate model, adopted in the Western Isles means that the Health Board and local authority create a partnership in the form of an Integration Joint Board (IJB) which plans and commissions services that are then delivered by the Health Board and local authority in accordance with any Directions issued by the IJB. The Health Board and local authority remain responsible for the delivery of Health and Social Care services and any complaints about service delivery will be dealt with through the existing Health and Social Work Complaints processes. Health Boards and local authorities must agree and set out within their

integration schemes their arrangements for managing complaints that relate to the delivery of the services that are within the scope of integration. These arrangements require to be jointly agreed and be clearly explained, well publicised, accessible and allow for timely recourse. It must also be ensured that complainants are sign posted to independent advocacy services.

### **INFORMATION SHARING**

- 8.1 The SPSO has previously raised the difficulties that it encounters in sharing information with the Care Inspectorate and SSSC. The draft order makes a provision for SPSO to be able to share information with SSSC and the Care Inspectorate where it considers that the information relates to those bodies' regulatory functions. It is therefore proposed that SPSO should be able to disclose information to SPSO in relation to any matter in respect of which the SSSC could exercise any power to grant or refuse registration, vary the conditions of registration or remove a social care professional from the register. It is also proposed that information should be able to be disclosed to Social Care and Social Work Improvement Scotland in relation to matters relevant to their inspections, the registration of care services and local authority adoption and fostering services. There is also a proposal that information may be disclosed by a Care Inspectorate Officers to the SPSO to the extent considered necessary for the purpose of assisting the SPSO's investigatory function.

### **CONCLUSION**

- 9.1 The consultation requests responses to five questions. Draft responses are appended to the Report.

## APPENDIX 1

### CONSULTATION ON DRAFT ORDER TO AMEND THE SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002

#### Consultation Questions

- (1) Do you agree that the Local Authority Complaints Review Committees should be replaced?

**Comhairle nan Eilean Siar would have no objection to the third stage of review in relation to Social Work Complaints being replaced by external independent scrutiny with appropriate safeguards.**

- (2) Do you agree with the proposal to extend the functions of the Scottish Public Services Ombudsman (SPSO) to allow the SPSO to investigate Stage 3 of complaints for Social Work? Comhairle nan Eilean Siar has no objection to this proposed subject to the points raised in the response to question 3.

- (3) Do you agree with the proposal to extend the role of the SPSO in relation to Social Work Complaints to allow them to consider in their investigations matters of professional judgement of Social Work staff?

**Comhairle nan Eilean Siar has no objection to SPSO conducting the third stage of review but would seek reassurance and further information in relation to the proposed powers of SPSO with particular reference to what is meant by reviewing the merits of the “professional judgement” of Social Work and Social Care professionals and how this will relate to the regulatory functions of SSSC in relation to the conduct of such professionals. It is noted that strategic resource allocation decisions will not be a valid subject of complaint to the third stage. Clarification is sought as to the proposed role for SPSO in relation to cases in respect of financial assessment for homecare charges and the exercise of discretion by professionals.**

- (4) Do you agree that the SPSO should be able to share information with the Care Inspectorate (Social Care and Social Work improvement Scotland) and the Scottish Social Services Council in relation to Social Work.

**Comhairle nan Eilean Siar agrees with the proposed amendments to the Scottish Public Services Ombudsman Act 2002 and the Public Services Reform (Scotland) Act 2010 as detailed in the draft Order. In reaching this conclusion regard has been had to the safeguards elsewhere in legislation.**

- (5) Do you have any other comments on the proposals?

**Comhairle nan Eilean Siar would welcome the opportunity to comment further when clarification is provided in relation to its response question 3.**