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## Annex G Consultation Questionnaire

### The case for change

**Question 1:** Is the proposal to focus initially, after legislation is enacted, on improving outcomes for older people, and then to extend our focus to improving integration of all areas of adult health and social care, practical and helpful?

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Yes  No

The role of the SPSO means our comments are about the place of complaints in the new system. We deal with this in detail in our response to question 2 which is set out in the attached paper.

### Outline of proposed reforms

**Question 2:** Is our proposed framework for integration comprehensive? Is there anything missing that you would want to see added to it, or anything you would suggest should be removed?

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Yes  No

There is an important barrier to this seamlessness which is not dealt with in the consultation - the complexity of complaints processes. We appreciate that the consultation says that it cannot refer to all the details. However, although we have had discussions with the Government's team working on this area over the last year, we remain concerned that despite this engagement, this barrier may not be being considered. We have also raised these issues in response to the Government's consultation on Social Work procedures<sup>1</sup>. We set out our concerns in more detail in the attached paper.

### National outcomes for adult health and social care

**Question 3:** This proposal will establish in law a requirement for statutory partners – Health Boards and Local Authorities – to deliver, and to be held jointly and equally accountable for, nationally agreed outcomes for adult health and social care. This is a significant departure from the current, separate performance management mechanisms that apply to Health Boards and Local Authorities. Does this approach provide a sufficiently strong mechanism to achieve the extent of change that is required?

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<sup>1</sup><http://www.spsos.org.uk/files/webfm/Media%20Centre/Inquiries%20and%20Consultations/2012/120315%20-%20Review%20of%20Social%20Work%20Complaints%20-%20Consultation%20-%20SPSO%20Response%20-%20Final.pdf>

Yes  No

Comments

**Question 4:** Do you agree that nationally agreed outcomes for adult health and social care should be included within all local Single Outcome Agreements?

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Yes  No

Comments

**Governance and joint accountability**

**Question 5:** Will joint accountability to Ministers and Local Authority Leaders provide the right balance of local democratic accountability and accountability to central government, for health and social care services?

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Yes  No

Comments

**Question 6:** Should there be scope to establish a Health and Social Care Partnership that covers more than one Local Authority?

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Yes  No

Comments

**Question 7:** Are the proposed Committee arrangements appropriate to ensure governance of the Health and Social Care Partnership?

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Yes  No

Comments

**Question 8:** Are the performance management arrangements described above sufficiently robust to provide public confidence that effective action will be taken if local services are failing to deliver appropriately?

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Yes  No

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Comments

**Question 9:** Should Health Boards and Local Authorities be free to choose whether to include the budgets for other CHP functions – apart from adult health and social care – within the scope of the Health and Social Care Partnership?

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Yes  No

Comments

### Integrated budgets and resourcing

**Question 10:** Do you think the models described above can successfully deliver our objective to use money to best effect for the patient or service user, whether they need “health” or “social care” support?

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Yes  No

Comments

**Question 11:** Do you have experience of the ease or difficulty of making flexible use of resources across the health and social care system that you would like to share?

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Yes  No

Comments

**Question 12:** If Ministers provide direction on the minimum categories of spend that must be included in the integrated budget, will that provide sufficient impetus and sufficient local discretion to achieve the objectives we have set out?

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Yes  No

Comments

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### Jointly Accountable Officer

**Question 13:** Do you think that the proposals described here for the financial authority of the Jointly Accountable Officer will be sufficient to enable the shift in investment that is required to achieve the shift in the balance of care?

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Yes  No

Comments

**Question 14:** Have we described an appropriate level of seniority for the Jointly Accountable Officer?

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Yes  No

Comments

### Professionally led locality planning and commissioning of services

**Question 15:** Should the Scottish Government direct how locality planning is taken forward or leave this to local determination?

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Yes  No

Comments

**Question 16:** It is proposed that a duty should be placed upon Health and Social Care Partnerships to consult local professionals, including GPs, on how best to put in place local arrangements for planning service provision, and then implement, review and maintain such arrangements. Is this duty strong enough?

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Yes  No

Comments

**Question 17:** What practical steps/changes would help to enable clinicians and social care professionals to get involved with and drive planning at local level?

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Comments

**Question 18:** Should locality planning be organised around clusters of GP practices? If not, how do you think this could be better organised?

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Yes  No

Comments

**Question 19:** How much responsibility and decision making should be devolved from Health and Social Care Partnerships to locality planning groups?

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Comments

**Question 20:** Should localities be organised around a given size of local population – e.g., of between 15,000 – 25,000 people, or some other range? If so, what size would you suggest?

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Yes  No

Comments

**Do you have any further comments regarding the consultation proposals?**

Comments

**Do you have any comments regarding the partial EQIA? (see Annex D)**

Comments

**Do you have any comments regarding the partial BRIA? (see Annex E)**

Comments

## **SPSO response to the Scottish Government consultation on the Integration of Adult Health and Social Care in Scotland**

### **Background and context**

The Scottish Public Services Ombudsman (SPSO) is the independent body that investigates complaints from members of the public about devolved public services in Scotland. This includes, amongst others, local government, the National Health Service and a range of public bodies including the Care Inspectorate.

We recognise the Scottish Government's objectives in moving towards the integration of health and social care to improve outcomes and, in particular, the aim set out in the consultation to ensure that "services are planned and delivered seamlessly from the perspective of the patient, service user or carer, and systems for managing those services that actively support such seamlessness".

There is an important barrier to this seamlessness which is not dealt with in the consultation - the complexity of complaints processes. We appreciate that the consultation says that it cannot refer to all the details. However, although we have had discussions with the Government's team working on this area over the last year, we remain concerned that despite this engagement, this barrier may not be being considered. We have also raised these issues in response to the Government's consultation on Social Work procedures<sup>2</sup>, and these are outlined more fully later in this submission.

### **Complexity of complaints processes**

The barrier relates to the inconsistent and conflicting complaints processes that operate in the health, social care and social work areas.<sup>3</sup> We do not think that this is a secondary issue. The laudable aim to put the person at the centre of care can only work if that person also has a clear route to raise concerns and questions about that care and the key decisions made which impact on them.

There are three key complaints processes operating within this area.

Complaints about the local authority's assessment of a person's care needs or about social services provided. Such a complaint would be subject to the local authority's social work complaints procedure and the statutory directions issued by the Scottish Government.<sup>4</sup>

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<sup>2</sup><http://www.spsso.org.uk/files/webfm/Media%20Centre/Inquiries%20and%20Consultations/2012/120315%20-%20Review%20of%20Social%20Work%20Complaints%20-%20Consultation%20-%20SPSO%20Response%20-%20Final.pdf>

<sup>3</sup> A good summary of the complexity can be found in the case study from Fife Council in a paper provided for the Sinclair report. This can be found in the papers for the meeting of 13 May 2008 (Paper 2). <http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReviewofReg/ActionGroups/FCSAGPapers5>

<sup>4</sup> CIRCULAR NO SWSG5/1996. <http://www.scotland.gov.uk/library/swsg/index-f/c156.htm>.

Complaints about a registered care service<sup>5</sup>. Such a complaint would normally be made to the provider in the first instance or directly to the Care Inspectorate. The latter has a duty to operate a procedure for receiving complaints about registered care services under Section 79 of the Public Services Reform (Scotland) Act 2010.<sup>6</sup>

Complaints about NHS services. These complaints would be directed to the statutory NHS complaints process which is now set out in terms of regulations made under the Patients Right (Scotland) Act 2011<sup>7</sup>.

In our view, there is already a danger to vulnerable citizens in the overlap and confusion between complaints handling for health, social care and social work services. There is further scope for additional confusion as the move towards integration progresses. This is not a theoretical concern. In their evidence to the Health and Sport Committee, NHS Highland reported that they did not realise complaints would be an issue until late in the process<sup>8</sup>. They told the committee that they would be operating two separate complaints processes depending on the underlying legal accountability.

The confusion affects not only the point where the user wishes to make a complaint to the service and may not know which route to use, but also has considerable potential to add to the complexity in terms of our own role.

### **The SPSO's dual role: complaint handling and standardisation**

There are two key issues. The first relates to the different ways we can look at complaints that come to us through the three different routes. The second relates to our new role in some areas as the body charged with improving and standardising complaints processes in public services.

#### *1. Our role in complaint handling*

In terms of the NHS complaints process our role is straightforward. Once the NHS complaints process has been completed, the person has the right to complain to us. We can look not only at issues relating to maladministration and service failure but, uniquely in terms of our remit, can review clinical decisions. This allows us to consider fully all aspects of the complaint made to us.

When a complaint is made to us through the social work complaints process, our role is normally restricted to investigating complaints about the operation of the social work complaints procedure rather than the substance of social work complaints.

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<sup>5</sup> This may be a service directly supplied by the local authority; commissioned by them and supplied by a private provider or supplied as a result of a private contract between the user and the service.

<sup>6</sup> Their interim complaints procedure is available here: [http://www.scswis.com/index.php?option=com\\_docman&task=doc\\_details&gid=514&Itemid=714](http://www.scswis.com/index.php?option=com_docman&task=doc_details&gid=514&Itemid=714)

<sup>7</sup> The Patients Rights (Complaints Procedures and Consequential Provisions) (Scotland) Regulations 2012 <http://www.legislation.gov.uk/ssi/2012/36/contents/made> This is supplemented by additional support and guidance. <http://www.show.scot.nhs.uk/publications/me/complaints/docs/1guidance010405.pdf>

<sup>8</sup> Official Report. Health and Sport Committee 6 March 2012 column 1092

If a complaint is made to the Care Inspectorate, we are only able to consider the way the Care Inspectorate has handled the complaint. This is because we do not normally<sup>9</sup> have jurisdiction over social care providers themselves - that role is a function of the Care Inspectorate.

## *2. Our role in improving complaints handling*

The SPSO has recently taken on a new statutory function, empowered by the Public Services Reform (Scotland) Act 2010 (the Act), to improve complaints handling in bodies across the public sector through a programme of standardisation and simplification of complaints handling procedures. This is in line with the recommendations of the Sinclair Report and with the backing of the Scottish Parliament and the Scottish Government. To deliver this function we have created the Complaints Standards Authority (CSA), an internal unit within the SPSO.

### *Model complaints handling procedures*

Following a full public consultation and with parliamentary approval for our *Statement of Complaint Handling Principles*, we have developed model complaints handling procedures for all local authorities and registered social landlords. All organisations in these sectors are now required to adopt this standardised procedure involving only two internal stages – a frontline resolution stage of 5 working days and an investigation stage 20 working days. This streamlined approach is based broadly on the NHS complaints process in Scotland<sup>10</sup> and will shortly be rolled out to all other sectors of the public service within our jurisdiction.

Since 2010, therefore, the work of ourselves and many others has created what is becoming the national standard for complaints in the public sector and brings us significantly closer to the goals of the Crerar and Sinclair reviews. However, because of the statutory requirements that regulate these areas, the SPSO does not have the power to develop and enforce a model CHP for either social care or social work providers. This is problematic for those public service organisations such as local authorities and housing associations who are generally under our jurisdiction and will now be applying the model for complaints about all other service areas. The current position requires them to comply with different processes, and in some circumstances this may mean different process for a single complaint brought by one member of the public. Integration will only further complicate this issue as it may bring together bodies who are and are not applying the standard model but who will be providing a joint service.

### *Social work*

We have worked in partnership in creating the model procedures and we are continuing to do so to seek to resolve these issues. We have already had discussions with the Association of Directors of Social Work (ADSW), Convention of Scottish Local Authorities (COSLA) and the Scottish Government on reform of the existing statutory directions on

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<sup>9</sup> Some social care providers – local authorities and housing associations are in jurisdiction

<sup>10</sup> [Guidance on Model Complaints Handling Procedure \(February 2011\)](http://www.valuingcomplaints.org.uk/wp-content/media/Guidance-on-a-Model-Complaints-Handling-Procedure.pdf): <http://www.valuingcomplaints.org.uk/wp-content/media/Guidance-on-a-Model-Complaints-Handling-Procedure.pdf>

social work complaints and will shortly be joining a working group set up by the Scottish Government for this. We have also had discussions with the Care Inspectorate about improvements to complaints handling procedures for care providers. For both of these areas we have recommended an alignment with our guidance in line with our plans for the wider public sector. However, given our more limited role in relation to revising complaints handling procedures in these areas of service, we are only able to recommend and have no power to direct improvements. Scottish Government leadership and the leadership of other key organisations is required to ensure that clear and simple complaints processes do cover the whole public sector including those areas not formally covered by our guidance and models to ensure that whoever and whatever citizens are complaining about, the public service they are complaining to can provide a clear, simple process for doing so.

### **Other jurisdictions**

There are examples from other parts of the UK and Ireland of different routes that operate to allow for the integration of services. In Ireland, services are delivered by a single Health and Social Care Executive, making complaints more straightforward. A consultation on complaints handling in care and social services procedures has recently closed in Wales.<sup>11</sup> It is anticipated that the Public Services Ombudsman for Wales will be given additional powers to look at social care and social service complaints as a result.

England has operated a single approach for dealing with complaints about NHS and adult social care services since April 2009. They have done so without significant structural change. Department of Health guidance<sup>12</sup> requires or encourages joint working and investigation where a complaint cuts across health, social services and social care. This applies both at the level of the initial complaint and also at the Ombudsman level.

The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 which came into force on 1 April 2009 represented a significant simplification and shift in the complaints process. The Regulations cover the NHS and social services provision by the local authority and there is an explicit duty placed on the NHS and local authorities to cooperate if a complaint appears to relate to more than one body. The Department of Health has provided guidance on joint working and recommends that a protocol be put in place where care is provided jointly. The guidance stresses that **"if a complaint is made about care delivered by more than one organisation, it is important to provide a single point of contact and a single response to the complainant."**<sup>13</sup>

The Regulations also deal with complaints that reach local authorities but deal in part with a breach of care standards or social care provision. As these can relate to private bodies, the local authority is required to ask the complainant's permission to pass the information to the registered person or adult social care provider. Once this has happened, the local authority is required to co-operate as far as is reasonable and practicable to ensure a single, co-ordinated response for the complainant.

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<sup>11</sup> <http://wales.gov.uk/docs/dhss/consultation/120228betteren.pdf>

<sup>12</sup> [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_095408](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_095408)

<sup>13</sup> [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_095408](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_095408)

Complaints about health, once they have completed the local complaints process, go to the Parliamentary and Health Services Ombudsman (PHSO). Complaints about local authorities including social work and social care provision funded by the local authority, are dealt with by the Local Government Ombudsman (LGO). Again, the local complaints process must have been exhausted before a complaint can be reviewed by the LGO. In October 2010, the LGO's remit was extended to include adult social care not funded by the local authority, so all adult social care complaints are now dealt with by the LGO. The Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007 allows the PHSO and LGO to work together jointly to investigate complaints.

### **Conclusion**

The integration of health and social care has the potential to add to the complexity of the complaints handling arrangements. There is an increasingly urgent need to amend the statutory schemes guiding social care, social work and NHS complaints to ensure that complaints that involve several or jointly delivered services can be dealt with effectively and to minimise potential confusion amongst members of the public. Agency clarity is essential and we support the idea of setting up a working group that would develop revised procedures not only for social work, as outlined in the Scottish Government's consultation, but for wider social care. The integration proposal allows for a number of models of delivery and any complaints process would have to reflect this flexibility.

We have already suggested in our response to the Government's consultation on reviewing social work complaints that the option we favour is that the local authority model CHP be extended to cover social work complaints. We have also asked to be given the same powers over social work complaints as we do on health to review professional judgement. This is not a new power as Complaints Review Committees which would be replaced under changes to the social work complaints procedures have long had this power, but it would allow health and social work procedures to align which would help resolve the problems identified by Highland NHS.

For social care, we will continue to work with the Care Inspectorate to align providers' complaints processes. We would also like to suggest changes to allow us to undertake joint investigations with the Care Inspectorate where a complaint relates to matters which cover both our jurisdictions. In order for this to come about, changes may need to be made to our respective statutes to allow for this.

These two moves - changes to the social work complaints procedures and to our relationship with the Care Inspectorate - would resolve a problem of overlaps and gaps which has been raised ever since our creation; and greatly simplify the landscape for the service user. It would also allow for service providers to have clear and simple procedures.

As a point of principle, simplicity from the complainant's perspective should be uppermost, as underscored in the Sinclair Report<sup>14</sup>. Whatever the complexity of the service delivery, there should be a single point of contact for the complainant and a single, co-ordinated response to their complaint.

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<sup>14</sup> The *Fit-For-Purpose Complaints System Action Group Report*, July 2008, p.13-14. This report was produced by the Scottish Government Action Group chaired by Douglas Sinclair in order to consider the recommendations on complaints handling made by the Crerar *Review of Regulation, Audit, Inspection and Complaints Handling in Scotland* (2007). The Sinclair Report is available at <http://www.scotland.gov.uk/Resource/Doc/923/0063564.doc>.