

**Scottish Public Services Ombudsman response
to the Scottish Government's consultation
on draft statutory guidance to accompany
the Social Care (Self-directed Support) (Scotland) Act 2013**

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 and the National Health Service. Since 2010, we are also the body tasked with improving the handling of complaints by public bodies. We recently developed and launched, with NHS Education for Scotland, e-learning modules to support frontline NHS staff in dealing with complaints. Over the past two years we have worked in partnership with local authorities in Scotland to develop and implement a standardised model complaints handling procedure.¹

The draft guidance

The guidance sets out in detail how the provisions in the legislation may be applied in practice. In responding to this consultation, we have sought to comment where we may have genuine and useful insight as a result of our roles in investigating complaints and improving complaint handling. As a result of our experience, there are three key points that we would like to make:

- The limited reference to complaints in the guidance may be confusing;
- It would be helpful to provide clear information about the relationship between the complaints and the review process; and
- Where reference is made to the ability to delegate decisions, it would be helpful to add some advice about how complaints about such decisions should be handled.

The guidance and complaints

There is very little information in the guidance about what will happen if a person is unhappy with the actions or decisions of a local authority. There is a single reference to our role on page 30 at paragraph 66, which refers to the discretion to refuse a particular type of support.

Given the range of decisions made and the concerns that a person may have in relation to self-directed support set out throughout the document, it is not obvious why this is the only clear reference to either the options that may be available to a person who is unhappy about decisions made, or to the requirement of a professional to ensure that the individual is aware of those options. We would suggest that this is either removed and advice on complaints produced separately, or that a distinct section on complaints is included in the draft guidance so that the full position is made clear.

This is important because the full position may be complex. An example of this can be shown by, for example, looking closely at a statement currently in the draft. This is: "as with any key decisions about a person's assessment or support plan, the professional should take steps to inform the person of their right to complain about the process used to arrive at any decision".

This statement correctly says that there are other areas about which people may complain but incorrectly suggests that they can only complain about the process. That may not be the

¹ This model does not apply where there is competing statutory guidance and this is why the new model does not currently apply to social work complaints.

case. Under social work legislation, there is a specific requirement to establish a procedure for complaints². This procedure is currently set out in the Social Work (Representations Procedure) (Scotland) Directions 1996 and the additional guidance set out in Circular No SWSG5/91. This regulates the internal complaints procedures of local authorities in connection with social work matters, and is clear that the person can complain not only about the process, but more broadly.

The internal local authority social work procedure currently concludes with a complaints review committee (CRC). The CRC must have at least some independent membership. Some local authorities have three independent members on their CRC. Paragraph 54 of the circular mentioned above sets out the breadth of the matters they can consider - *“CRCs should consider not only the manner in which decisions have been arrived at, but also decisions about assessment and service provision made.”* At paragraph 53 of the Directions (under the heading ‘Review arrangements’) the Directions say - *“The CRC should be aware of local authority policies, priorities, and resources and should recognise where professional judgement has been exercised. The CRC may express disagreement with any of these in relation to the case under review.”*

As further background, the Scottish Government is currently considering reform to the social work complaints process. This is against the background of other changes in this area occurring as a result of the aim to better integrate the delivery of health and social care. We would recommend that, when considering guidance on complaints in this area, you look to align with these related developments. It seems, however, that significant changes are unlikely to occur until after at least the first year, if not later, of the implementation of the self-directed support legislation.

Complaints and the review process

The draft guidance says on page 36 at paragraph 77 that a review can be requested. It is not clear whether, or in what circumstances, such a request could be refused or whether this would always be granted.

The reason we are highlighting this point is that it is important that a person who is unhappy with an assessment knows whether or not they would have a right to a review purely on the basis that they consider the assessment is wrong. They also need to know whether, if they do make a review and are unhappy, they can request a further review or whether at that point they should enter the complaints process instead. They should also know whether or not they can make a complaint instead of asking for a review.

We would suggest these questions could be resolved by clearly setting out the relationship between complaints and reviews in the final guidance.

Delegating to health bodies

The draft guidance deals in detail with situations where joint assessment or delegating assessment to health professionals may be appropriate.

The draft guidance says that health professionals will have the same legal powers and duties as the local authority when acting in connection with delegated functions. Health and social care are moving closer together, but complaints procedures are not being kept up with alongside the changes. This means that there is more than one statutory complaints process. It, therefore, also means that an individual who is unhappy with the actions of the health professional may need to access more than one procedure to ensure that all their concerns are dealt with. We have set out in detail the complexity of this landscape in our

² Section 5B of the Social Work (Scotland) Act 1968.

response to the Scottish Government consultation on the integration of health and social care³.

The Scottish Government has indicated that the matter of delegation is a factor under consideration in terms of their review of social work complaints. However, any change will take time and may not fully resolve this issue. If, therefore, functions are being delegated, we think it should be the responsibility of the bodies involved at the time they are delegating powers to ensure that both the local authority and the health board understand their responsibilities in terms of the complaint process or processes. They should also ensure that professionals know how to respond appropriately and how to signpost individuals to the complaints process.