

Scottish Public Services Ombudsman Response to the Scottish Government consultations on Draft Regulations and Orders Relating to Public Bodies (Joint Working) (Scotland) Act 2014 – Sets 1 and 2

Introduction

The Scottish Public Services Ombudsman is the final stage for public service complaints for most devolved services in Scotland. Organisations we can take complaints about include local authorities and health boards. I also have a statutory role in setting standards for complaints handling. Following work by my office over the last few years we now have, for the first time, a simple, standardised complaints handling procedure operating across most public services in Scotland.

One of the exceptions to this is in the area of health and social care. I have, over a number of years now, expressed concerns about the failure to provide for properly integrated complaints procedures where services overlap or are provided in an integrated fashion. There remains a complex and confusing landscape for users of health and social care services and, unless action is taken quickly, integration will simply serve to make it more difficult for users to challenge assessment and provision of their health and social care needs. This is because, despite receiving an integrated service, users face a system for complaints and feedback that remains highly fragmented because of separate and conflicting statutory procedures in place for different areas of service provision.

Without changes to this fragmented landscape, and as a minimum an alignment of the different statutory frameworks, there will be confusion for service users who may receive services from one organisation but need to complain to another. Similarly, there will be confusion for people who receive a holistic service but need to complain separately about individual parts of that service to individual organisations through separate procedures and processes.

The Public Bodies (Joint Working) (Scotland) Act 2014 and the associated draft regulations under consultation do not address this issue.

It is perhaps notable that every other jurisdiction in the UK has moved or is moving to integrate and simplify complaints systems in this area. Having led the UK in implementing standardised and simplified complaints handling procedures across other parts of the public sector, it is with regret that I have to note that in this area - where users are most vulnerable - we are in danger of lagging behind others.

Concerns relating to the complaints handling arrangements for integrated services

Concerns in this area were first raised in 2008 as part of the conclusions of the Sinclair report (the Fit for Purpose Complaints System Action Group¹) which recommended the simplification of complaints handling arrangements and highlighted, in particular, the complexity of the system in relation to care services. The report asked for the care sector to

¹ <http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReviewofReg/ActionGroups/FCsAG>

be given priority in taking forward work to simplify complaints handling and also highlighted the need to consider the existing statutory regimes in place.

The existing statutory complaints handling arrangements in relation to health and social care services include provisions under the Patient Rights (Scotland) Act 2011 and associated regulations, directions and guidance and the provisions of the Social Work (Scotland) Act 1968 and associated directions and guidance. The SPSO's model complaints handling procedure is also now implemented by all local authorities, covering all services with the exception of social work.

SPSO concerns about the failure to simplify and align these arrangements have been outlined in a number of responses through the passage of the Public Bodies (Joint Working) (Scotland) Act 2014, including my response to the Scottish Government's consultation on integration² and response to the Scottish Parliament's Health and Sport Committee's call for written evidence on the Public Bodies (Joint Working) (Scotland) Bill³. I have also outlined these concerns in person in evidence to the Health and Sport Committee⁴.

The issue is best summarised in the following passage from my submission to the Scottish Government's consultation:

"I recognise the potential benefits in delivering integrated, joined-up services and support the aims of the bill. However, as I and others have previously raised with the Committee, the areas of health and social care contain competing legislative complaints processes and, without legislative change, there are barriers to these processes working together. As an example, a resident of a care home may need to access three different procedures to question the way their needs have been assessed by the local authority, how their care is being delivered by the care home and their treatment by any NHS staff who visit them there. Should they choose to take their complaint to independent review they would, potentially, be faced with different routes to the Care Inspectorate and SPSO, with SPSO then having different powers over health and other areas of jurisdiction. This means that, while the bodies and delivery of the service may be integrated, there is no integration of the complaints process. As the Chief Executive of Highland NHS informed the Committee in March 2012, they are currently having to use the NHS process initially but then escalate social care through a separate route."

Despite these concerns, and similar concerns being raised by others including Citizens Advice Scotland (CAS)⁵ and Health and Social Care Alliance Scotland⁶, the draft regulations are virtually silent on complaints handling. I welcome the inclusion of information about how

²<http://www.spsso.org.uk/sites/spsso/files/consultations-and-inquiries/2012/12.09.11%20SG%20integration%20of%20adult%20health%20and%20social%20care%20all%20ocs.pdf>

³<http://www.spsso.org.uk/sites/spsso/files/consultations-and-inquiries/2013/130802%20SPSO%20response%20to%20the%20call%20for%20evidence%20on%20the%20Public%20Bodies%20%28Joint%20Working%29%20%28Scotland%29%20Bill.pdf>

⁴http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8546&mode=html#job_77419

⁵http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Public%20Bodies%20Joint%20Working%20Scotland%20Bill/PBJW0029 - Citizens Advice Scotland.pdf

⁶[http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Public%20Bodies%20Joint%20Working%20Scotland%20Bill/PBJW0042 - Health and Social Care Alliance Scotland \(the ALLIANCE\).pdf](http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Public%20Bodies%20Joint%20Working%20Scotland%20Bill/PBJW0042 - Health and Social Care Alliance Scotland (the ALLIANCE).pdf)

complaints will be handled as one of the categories of information that should be provided in an integration scheme. The requirement to provide information does not, however, resolve the underlying problem that statutory complaints processes in this area are multiple and are not completely compatible. The result of this is that local authorities and health boards, in outlining integration schemes, will be faced with the task of bringing together different statutory processes into one procedure. This will lead to complexity and confusion for both service users and providers and will lead to significant inconsistency across the country.

Specific concerns relating to the regulations

In addition to the overall concerns relating to complexity of complaints handling in this area I have a number of specific points in relation to the provisions of the regulations:

- There are no clear requirements to delegate complaints handling when the functions of the local authority or health board are delegated. In particular, in the proposals for Prescribed Functions regulations in Set 1 of the draft regulations, neither the feedback and complaints handling responsibilities in the Patient Rights (Scotland) Act 2011 nor the complaints handling provisions in terms of the Social Work (Scotland) Act 1968 (section 5B) must be delegated. This contrasts with the review process for self-directed support which must be delegated alongside the responsibility for assessment. We appreciate some organisations may choose to delegate the complaints handling responsibility. Section 25 of the 2014 Act does provide some reassurance by effectively saying that duties will follow the delegated function. However, it is not clear that delegating full responsibility for complaints would be possible in practical terms, given the current statutory complaints handling provisions outlined above. As currently set out it is possible that responsibility for the service provision would be delegated without any requirement to delegate the responsibility for answering concerns from users about that provision.
- No information is given about how complaints against Joint Improvement Boards or Committees should be handled. On this point it should be noted that organisations with separate identities from the health board or local authority will not come within the SPSO's jurisdiction for any actions that they take on their own authority. Further provision is required to ensure users have access to independent external review by SPSO.
- I have noted that there is no explicit mention of the importance of user feedback of any kind in terms of performance monitoring (set 2 Annex 5 (B)). I am assuming these will be regarded as key indicators or measures and, if so, it would be helpful if there could be some clarification about how this would relate to existing reporting and monitoring requirements.

Conclusion

It should be clear from the comments above that I am concerned about the way that the move towards integrating services not only fails to integrate complaints handling arrangements, but may actually make the situation more complex by allowing for a separation of responsibility between service delivery and complaints handling. Alongside the difficulty this may have for service users wishing to raise concerns, the potential for splitting

responsibility for frontline service delivery from complaints about that delivery appears to me to provide for confusion for those with ultimate responsibility for these areas.

Public bodies and third sector organisations are increasingly seeking advice and guidance on how complaints handling in an integrated service should be managed. I remain disappointed that I cannot provide any clear answers to those queries.

Jim Martin

Ombudsman

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