

Response from the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) to the Scottish Government consultation on the Draft Regulations and Orders Relating to Public Bodies (Joint Working) (Scotland) Act 2014 – Sets 1 and 2

Introduction

The Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) welcomes the opportunity to submit views to the Scottish Government on the Draft Regulations Relating to the Public Bodies (Joint Working) (Scotland) Act 2014 (Sets 1 and 2).

STAJAC was established by Scottish Ministers in November 2013 (following the abolition of the Scottish Committee of the Administrative Justice and Tribunals Council) to provide external, expert scrutiny of the devolved administrative justice and tribunals system in Scotland. Its remit includes promoting the interests of system users and championing an administrative justice and tribunals system that is accessible, responsive and has users' needs at the centre.

Comments on the regulations – effectiveness of remedies for users' grievances

Given the committee's remit, our comments focus on one specific aspect of the regulations - namely the focus on arrangements for addressing and responding to user dissatisfaction in this area. One of the committee's work priorities for the period May 2014 – December 2015, developed following discussion with key stakeholders, is to monitor and contribute to a number of ongoing or upcoming policy developments, to understand the impact these will have on users and to ensure the needs of users are considered. Given its significance in terms of change to the delivery of key public services to the people of Scotland, one of these areas is the integration of health and social care. In particular, our workplan sets out our commitment to reviewing the possible impact of this on the availability and effectiveness of remedies for grievances for users of integrated services.

Given the fact that the committee was only recently established we have not, until now, been able to contribute to the debate and consultation on the integration of health and social care services or on the detail of the Public Bodies (Joint Working) (Scotland) Act 2014. However, we have noted the contributions of others in relation to the effectiveness of complaints handling arrangements in this area and concerns that integration could lead to increased complexity. The committee has noted, in particular, the submission by the Scottish Public Services Ombudsman (SPSO) in response to the Scottish Government's consultation on integration¹ and the submissions from SPSO², Citizens Advice Scotland (CAS)³ and Health

¹<http://www.spsos.org.uk/sites/spsos/files/consultations-and-inquiries/2012/12.09.11%20SG%20integration%20of%20adult%20health%20and%20social%20care%20all%20docs.pdf>

and Social Care Alliance Scotland⁴ in response to the Scottish Parliament's Health and Sport Committee's call for written evidence on the Public Bodies (Joint Working) (Scotland) Bill. It also notes the conclusions of the Crerar Review⁵ in 2007 which recommended the simplification of complaints handling arrangements and the Sinclair report in 2008 (the Fit for Purpose Complaints System Action Group⁶) which further highlighted specific concerns about the complexity of complaints handling arrangements in relation to care services. The Sinclair report highlighted the need for the care sector to be given priority in work taken forward to simplify complaints handling and the need to consider links between statutory regimes in place. As these contributions have highlighted, the impact of service failure is particularly acute in relation to care services because of the vulnerability of many users of these services. Accessible and clear complaints processes are a key accountability mechanism for listening to people's experiences and in enabling them to access their rights in relation to health and social care.

The current draft regulations (set 1 of 2) contain some reference to complaints, which is set out in the schedule as a matter prescribed for inclusion in the Integration Scheme. This requires the arrangements for management of complaints about integrated functions to be included as prescribed information in the integration scheme, in particular information on the process by which a service user may make a complaint. Whilst reference to complaints as a prescribed matter is welcome, the committee is concerned that this does not address the complexity referred to in relation to the existing arrangements, given the conflicting statutory obligations currently in place for the handling for complaints by local authorities and health boards.

Whilst the committee does not offer solutions at this stage, we are clear that further clarity is required on how local authorities and relevant health boards, through their integrated arrangements, can and will meet their continuing conflicting statutory obligations in terms of complaints handling without creating additional complexity and inconsistency. These include provisions under the Patients' 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](#). It seems necessary for these arrangements to be revoked or amended through primary or secondary legislation and for any new proposals to be subject to further consultation. Consideration should also be given to the differing external routes for final stage independent review of complaints about health care and social work and other local authority functions (to the SPSO) and care provision (to the Care Inspectorate) under their respective statutory functions.

² <http://www.spsos.org.uk/sites/spsos/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>

³ http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Public%20Bodies%20Joint%20Working%20Scotland%20Bill/PBJW0029 - Citizens Advice Scotland.pdf

⁴ [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)

⁵ <http://www.scotland.gov.uk/Resource/Doc/82980/0053065.pdf>

⁶ <http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReviewofReg/ActionGroups/FCSAG>

It is the Committee's view that the Public Bodies (Joint Working) (Scotland) Act 2014 and the draft regulations offer no solution to the complexity highlighted in this area and that the Scottish Government, with key stakeholders, should consider further the steps necessary to put in place a simple, clear and consistent complaints handling procedure for integrated services across Scotland.

We are extremely concerned that unless this matter is addressed, service users, many of whom are particularly vulnerable, will be unable to pursue their grievances because the complaints processes are too complex for them to navigate, effectively denying them their right to complain about the assessment and provision of their health and social care needs. Any arrangements put in place should contain, as a minimum, a clear commitment to a single point of contact for users of these services who wish to raise grievances, as well as process and agency clarity.

**Scottish Tribunals and Administrative Justice Advisory Committee
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