Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016

Inclusion Scotland, Self Directed Support Scotland and the Scottish Disability Equality Forum

Inclusion Scotland is a national network of disabled people’s organisations (DPOs) and individual disabled people. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people’s everyday lives and to encourage a wider understanding of those issues throughout Scotland. Inclusion Scotland is part of the disabled people’s Independent Living Movement.

Self Directed Support Scotland (SDSS) is a national membership organisation which actively promotes Independent Living by supporting, working with, and championing the aims of self-directed support Disabled People’s Organisations (DPOs).

Scottish Disability Equality Forum (SDEF) works for social inclusion in Scotland through the removal of barriers to equality and the promotion of independent living for people affected by disability. SDEF is a membership organisation, representing individuals affected by disability, and organisations and groups who share our values. Our aim is to ensure that the voices of people affected by disability are heard and heeded within their own communities and at a national and political level.

Independent living: Disabled People have defined independent living as:

“disabled people of all ages having the same freedom, choice, dignity and control as other citizens at home, at work and in the community. It does not mean living by yourself or fending for yourself. It means rights to practical assistance and support to participate in society and live an ordinary life.”

Independent living is about more than having control and choice for the purpose of self-management of your condition. This definition has been endorsed in the ‘Vision for Independent Living” by the Cabinet Secretary for Health for Scottish Government and COSLA.¹

Introduction:

For those people who use it – including disabled people – social care and support is an example of the essential practical assistance and support needed to participate in society and lead an ordinary life (see the definition of independent living above). Without such support, many disabled people and other social care users cannot enjoy their human rights on an equal basis to non-disabled people. As such, social care is an essential infrastructure for the equality and human rights of disabled people and others who use social care and support.

¹ http://www.gov.scot/Publications/2010/03/29164308/1
There are principles outlined in legislation, guidance and outcomes that underpin the rights and entitlements of people who use require social care, including:

- The Social Services (Self-directed Support) (Scotland) Act 2013
- Health and Social Care Integration – Planning and delivery principles in the Public Bodies (Joint Working) (Scotland) Act 2014 and the National Health and Wellbeing Outcomes.
- National Care Standards
- Carers (Scotland) Bill

The way social care services are provided may be subject to discretionary powers of the local authority. However, how this discretion is exercised may lead to the national principles above not being met, or people not receiving a level of social care the meets their needs or allows them to exercise their human rights. The complaints process should allow for these discretionary decisions to be independently reviewed and redressed.

**Existing Complaint Review Mechanism:**

The existing social work complaints system is not fit for purpose, and the Complaint Review Committees (CRC) in particular are not working as intended. Disabled people tell us there is no\(^2\). This has led to a deficiency in accountability within social care and support. Service users have stated their concerns to us about the proposals for change.

During the passage of the Public Bodies (Joint Working) (Scotland) Act 2014, DPOs expressed concerns about the lack of a single complaints process for health and social care complaints. The Health and Sport Committee was assured by the Cabinet Secretary that a revised social works complaints procedure would be published for consultation by the end of 2013.

**Scottish Government proposal:**

The proposals in the consultation paper on the Draft Order\(^3\) were based on the recommendations of the 2013 Scottish Government working group. It is important to note that DPOs were not included in the working group, although a number of our concerns were raised by Capability Scotland. Capability Scotland expressed reservations on the approach proposed by the working group, which DPOs shared.

DPOs responded to the Scottish Government’s Consultation raising a number of concerns.

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- Right of Appeal (compliance with Article 6 EHRC)
- Coproduction of a complaints mechanism
- The role of an Appeals Organisation
- Resourcing of complaints mechanism
- Timescales and status of packages review
- ILF Complaint review and this proposal

As yet we have not seen the Scottish Government’s full response to the consultation, but the Draft Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016 is the same as that published in the consultation paper. We are concerned, therefore, that the issues raised in the consultation have not been addressed by the Scottish Government in the Draft Order.

**Right of Appeal (compliance with Article 6 EHRC):**

As DPO’s we have concerns with the Scottish Government proposals in that they do not provide an independent appeals process for social work and is therefore not compliant with Article 6 of the European Convention on Human Rights (EHRC). Decisions of the SPSO are not binding on the local authority. ECHR Article 6 states an individual has a right to an independent and impartial tribunal in determination of a civil right.

**Coproduction before Consultation:**

During the passage of the Public Bodies (Joint Working) Act the Cabinet Secretary gave direct assurances to DPOs that they would be involved in developing the complaints procedures. The then Cabinet Secretary did not endorse the proposals from the working group and instead called for further research.

DPOs asked the Scottish Government to clarify what further research was carried out, and what consultation with service users and their representative organisations was carried out before deciding to proceed with the working groups proposals in the current consultation paper was carried out before deciding to proceed with the working groups proposals in the current consultation paper.

**Role of an Appeals Organisation:**

The Scottish Government’s proposal states the SPSO should not rule on policy or resource allocation issues of local authorities. As DPOs we have concerns in relation to resource allocation policies of local authorities that directly impact on the life of people. The policies are directing social care and support staff in their professional judgement, with a bias to make saving and

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as a result reduce the resource allocation to individuals. We believe this goes against the intention of the Social Care (Self-directed Support) (Scotland) Act 2013:

(a) that the right to dignity of the person is to be respected

(b) that the person’s right to participate in the life of the community in which the person lives is to be respected.

A recent example seen by DPOs is the Internal Guidance on Adult Social Care Assessment, Planning and Costing issued by the City of Edinburgh Council which seems focussed on cutting costs rather than meeting the needs of service users. Professionals are asked to use their judgment and experience to “help find solutions to care needs and achieving personal outcomes where possible at reduced cost.” The related Self Directed Support Reasonable Guidance and Support appears to restrict the service users choice and control in a way that is inconsistent with the intent of the 2013 Act.

For the stage 3 complaints procedure to be compatible with international human rights obligations, including Article 6 of the ECHR, then it needs to be not only independent but able to change a decision, not just recommend that it be reconsidered by the local authority.

This would be consistent with the approach on the Welfare Funds (Scotland) Act 2015 which gives the SPSO the powers to:

“… quash the decision and

(a) direct the local authority to reconsider the application to which the decision relates, or

(b) direct the local authority to use its welfare fund to provide

(i) the assistance concerned, or

(ii) any other assistance (being assistance which may be provided by the local authority under section 2)3.”

Resourcing of the Complaints process:

DPOs agree with the proposal for a “well-publicised, accessible and timely discourse.” However, these values should reinforce stage one and two. We do not agree with the Scottish Government that the proposal will be “without additional costs.” In our experience, reasonable adjustments and complaint mechanisms are under-funded by local authorities in Scotland. We believe a financial impact assessment will assist the Parliament’s decision on the proposed Order. This should include properly resourced organisations that can support service users during a complaint process. Funding provision must also take account of providing communication support and accessible information of the Complaints process.

Throughout the whole process, an individual’s need for support should be addressed separately from the organisation being complained about. This will ensure an individual is not hindered making a complaint. Without explicit ring-fenced funding for accessibility, reasonable adjustments and advocacy, in the whole process, the proposed changes will make little or no impact on the lives of disabled people.

**Timescales and status of packages review:**

SPSO investigation processes can take a long time, especially if the case is complicated. Social care and support complaints are complex. If a service user is in a period of crisis, with a complaint moving from local authority to SPSO or SPSO back to the local authority, the proposed timescales will be detrimental to the service user.

Service users have told us their concerns that the proposals do not state what happens to a social care and support package, when a service user has initiated a complaint. DPOs believe that a support package, should at the very least, be stayed whilst a complaint procedure is initiated. This would be in common with other condensed procedures for benefits and terminal illness, such as DWP process DS1500. DPOs recommends, that timescales be fast tracked and support continues to be provided depending on the needs of the individual.

**ILF Scotland Complaints and jointly funded packages with a local authority:**

DPOs stated their concerns to Scottish Government that ILF Scotland complaints were not mentioned in the proposals for change. ILF Scotland are reviewing their complaint mechanism. We believe the ILF Scotland complaint review should not work in isolation to the Scottish Government’s proposal. ILF Scotland support packages have shared decision making, and are jointly funded, with local authorities. All complaints should be dealt with consistently, as highlighted above. These changes need to be coproduced with service users and their representative organisations, to ensure changes are fit for purpose.

**Conclusions and Recommendations:**

Disabled People’s Organisations do not consider that the proposals contained in the consultation paper, and therefore the Draft Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016 meet the request of disabled people for an effective independent review and redress process for local authority social work decisions and policies.

The proposals do not in our view provide an individual with a right to an independent and impartial tribunal in determination of a civil right as required by Article 6 of the European Convention on Human Rights.
DPOS have offered, and remain ready, to work in coproduction with the Scottish Government, Local Authorities and the SPSO to develop an effective independent review process for Social Work complaints.

Disabled People’s Organisations therefore ask the Health and Sport Committee to:


2. Raise the issues highlighted in this submission with the Scottish Government.

3. Noting that the Draft Order will not come into effect until April 2017, and therefore there is no immediate urgency pass the Draft Order, ask the Scottish Government to withdraw the order to allow further consideration of the responses to the consultation, and to work in coproduction with DPOs on developing the proposals for Social Work Reviews.

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