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

National Carer Organisations

This response is made on behalf of the National Carer Organisations. The National Carer Organisations are brought together by a shared vision that all Scotland’s unpaid carers will be valued, included and supported as equal partners in the provision of care and will be able to enjoy a life outside of caring. They are Carers Scotland, the Coalition of Carers in Scotland, Minority Ethnic Carers of Older People Project (MECOPP), Carers Trust Scotland, the Scottish Young Carers Services Alliance, Crossroads Caring Scotland and Shared Care Scotland.

Q1-3
We welcome the regulations to replace the local authority complaints review committees and to enable the Scottish Public Services Ombudsman to investigate complaints and consider professional judgement of social work staff.

As outlined in our original consultation response, we believe that this opportunity for the SPSO to investigate complaints from social work services and to have the power to consider judgement is not only sensible but long overdue. It is also equitable and clearer for people who wish to make complaints. At present it is often confusing and frustrating for complainants when they discover that the SPSO is limited to consideration only of maladministration and service failure of social work services.

We further welcome work undertaken on delivering a standardised complaint handling procedure across the public sector and welcome the intention to develop this model complaints handling framework for social work services across all local authorities. We believe it is in everyone’s interests – service users, carers and professionals - for complaints to be handled consistently, with clear public information, and for complaints to be resolved as quickly as possible. It is important that there is no imbalance of experience across local authorities in complaints procedures, and we are pleased to see that the problems with this are acknowledged and the introduction of a consistent procedure will help to alleviate this.

However, as indicated in our consultation response, we continue to have some concerns that the SPSO will not have a strong enough role in relation to resource allocation decisions. Whilst we recognise the power of local authorities to make strategic decisions related to the use of resources and eligibility criteria, we continue to seek reassurance on the role of the SPSO where decisions appear to be made on the basis of reducing resources, and not on eligible need (as detailed in an individual’s care plan). These, in our view, remain professional judgements rather than political ones and as such we hope that appropriate guidance will be in place to ensure clarity for individuals and their carers.
The consultation appeared to suggest that the SPSO will have powers only to make recommendations to local authorities rather than overturning a decision. This may leave carers and people who use services in the same position as when they started the complaints process. If this is the case, we believe that it will only serve to further undermine confidence both in the health and social care system and in regulatory bodies.

Q5
The proposals give a clear opportunity to deliver a more integrated approach to complaints and complaints handling within the Integrated Joint Boards and integrated services. By streamlining processes, mirroring stages and the SPSO role between health and social care complaints, and by delivering a model complaints handling procedure, there appears to be a means of delivering this integrated approach. It is important, no matter whether a complaint is related to a social work, health or integrated service, that people who use services and their carers have a clear and consistent route to resolve issues.

Conclusion
We reiterate our support for regulations to replace the local authority complaints review committees and to enable the Scottish Public Services Ombudsman to investigate complaints and consider professional judgement of social work staff.

In the attached appendix we have illustrated within two case studies some of the current issues within social work complaints. We believe that the new procedure when brought together with the implementation of model complaints handling may assist in improving the outcome and experience of these cases. We also believe that there is merit prior to, or as part of, frontline resolution to consider opportunities to incorporate a process for review of decisions, for example a decision not to provide a service, without the need to resort to formal complaints procedures.

The model complaints process places an emphasis on frontline resolution, resolving complaints and issues as early as possible, encouraging mediation where appropriate and delivering appropriate redress. Its emphasis on key principles including that complaints procedures are “simple and timely” and within “agreed and transparent timeframe” and that above all they are “user focused” is welcome. However, carers and people who use services must continue to be involved in the ongoing development and review of the model complaints handling processes in their localities and, within a given period, consulted on their experience of the new SPSO responsibilities.

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Appendix 1 - Case Studies

Below are two case studies which illustrate the current issues with the social work complaints procedure for carers and those they support and where we see the new SPSO responsibilities and the model complaints handling process can have a role in improving outcomes and experiences.

Jean

Jean provides care for her disabled daughter and up until recently, has been providing significant amounts of care to her elderly mother. She has been in a battle with the local authority for the last 3 years over the amount of the individual budget for support which has been successively reduced as self-directed support has been introduced. She has argued that the council has made assumptions over the level of care that she has provided in the past and that this will continue into the future. She has repeatedly said in assessments that the level of care she has to provide is beginning to affect her and her husband’s health but this has not altered the budget made available for her daughter’s care.

A few months ago Jean’s mum died – in the latter stages of her mum’s ill health, Jean had been providing up to 30 hours a week of care. Not long after her mum’s death, following another assessment of Jean’s daughter, the proposed budget was reduced again and it was suggested that Jean make up the shortfall in support now that she no longer had to care for her mum and had more time to care for her daughter.

Jean is pursuing a challenge to the local authority’s proposed budget reduction. The Council are not taking into account that Jean needs a break as a carer, and are not allocating a budget based on the needs of the cared for person. Due to the breakdown in relationship between the family and the Council, the thought of formally challenging the Council is concerning as Jean is worried that they will suspend provision of all support to her and her daughter.

Some of the challenges highlighted through this case study include:

- The inability of the local authority to resolve this case informally, through a review process, without the person having to resort to a formal complaints procedure
- The length of time the complaints procedure has taken
- The formality of the system, which is intimidating and adds to the stress of the situation for the service user and carer
- The lack of an independent body to provide an impartial viewpoint and ensure the complaint is dealt with fairly and without bias
Julie

Julie looks after her daughter Emma who has autism. Julie is Emma’s welfare guardian. Julie has had several issues with her local authority in relation to the process for deciding her daughters care plan and budget and the use of her daughter’s direct payment. Initially Julie felt her local authority was not taking her views into account in relation to her daughter’s care. After becoming her daughter’s welfare guardian she was able to contribute to her daughters assessment, although she was not happy with some of the information in her SEQ, which she felt did not entirely reflect Emma’s needs.

Emma was awarded a direct payment, which was managed by Julie. This was used to purchase a service from providers, to purchase therapeutic equipment and to have a short break which Julie and Emma took together.

The local authority queried the use of the direct payment and said that several elements did not meet Emma’s outcomes and that they did not consider a break taken together to fit their criteria of a short break. Emma’s direct payment was suspended and Julie was told she would need to pay back several thousand pounds.

At first Julie tried to resolve this situation informally through speaking with her care manager and their immediate superiors. Julie also received advice and assistance from several carer support organisations who provided evidence from guidance and legislation to argue that this was an appropriate use of a direct payment.

Despite several meetings, these appeals were rejected and Julie moved to a formal complaint. During this time Emma was put on an emergency care plan and received only a few hours support a week, far less support than her previous care package provided.

This situation has been lengthy and ongoing and is still not resolved. Julie first received notice that the local authority were investigating the direct payment nine months ago, three months later she was told they required her to pay back the direct payment. Three months after that she was told Emma’s direct payment was being suspended.

During meetings and correspondence with lead officers she was consistently told that the decision to reverse this decision rested with someone else. Those responsible for policy decisions, said it needed to be dealt with by finance, the finance officer said she couldn’t overturn the decision. Julie was also told that if the local authority decided to pursue the debt they would be passing it on to an external agency for collection.

Eventually at a recent meeting one officer agreed to discuss the case with her superiors with a view to dropping the repayments and re-assessing Emma in order to put together a new care package. However, she subsequently contacted Julie to say her situation could not be resolved while a complaint was ongoing.
Julie has been through the first stage of the complaints process and is now waiting for a date with the Internal Complaints Review Committee. Julie lacks confidence that the committee will find a resolution to her complaint, as the panel will be formed of representatives from the local authority.

She is also extremely nervous of attending as it quite a formal proceeding, which she finds very intimidating.

**Some of the challenges highlighted through this case study include:**

- The inability for the local authority to resolve this case informally, through a review process, without the person having to resort to a formal complaints procedure.

- A lack of clarity in who the right person to talk to was and who was able to take effective action.

- The length of time the complaints procedure has taken. This is still ongoing.

- The formality of the system, which is intimidating and adds to the stress of the situation for the service user and carer.

- The suspension of support while the complaint has been ongoing which has meant the family is under additional strain.

- The lack of an independent body to provide an impartial viewpoint and ensure the complaint is dealt with fairly and without bias.