Dear Convener,

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

In responding to this call for evidence I wanted to first set out some background to what has been a long and rather protracted process. In 2008, Douglas Sinclair prepared the groundwork for what have become significant developments in public sector complaints handling led by my Complaints Standards Authority team working in partnership with many others. As a result of this, today, most public organisations in Scotland are using the same, standard, simple procedure with a strong focus on empowering staff to resolve complaints early and close to the point of service delivery where possible. The sectors who have moved to the procedure first are now using the data and experience to look more closely at using complaints in learning, performance management and benchmarking. The work undertaken in Scotland has attracted interest across the UK and is likely to be adopted wholesale elsewhere.

This has only been possible in areas where there was no pre-existing legal framework for complaints. Over time, this has meant that in some areas organisations are operating more than one procedure. Councils have both the standard procedure and the social work procedure, for example. Health complaints are subject to the Patients Rights Act and the procedure is set out in legislation and is different from both of those processes. The Sinclair report highlighted the confusion that existed within this system and recommended changes focused on making things simpler for users, including the changes to the remit of SPSO provided for in the draft Order. As we have been moving towards integration, we have highlighted that the existence of three separate processes based on different legislative requirements would create a barrier to effective integration of services.

I have been highlighting concerns around this for some years and welcomed the decision of the Local Government and Regeneration Committee in 2015 to conduct an inquiry into issues arising from the integration of health and social care in relation
to complaints handling\textsuperscript{1}. I have since congratulated the Local Government and Regeneration Committee for the fact that there has been finally some movement on this area\textsuperscript{2}. At present, there are a number of Government-led initiatives underway in relation to the integration of complaints. I set these out in summary here:

- Following some work undertaken by the Scottish Health Council\textsuperscript{3}, the decision was made to revise the current NHS complaints procedure. The details are still being worked through but, in terms of process, this will mirror the model complaints handling procedure which is in place and operating largely successfully across the rest of the public sector. The emphasis will be on a two-stage process, frontline empowerment, resolution and ensuring appropriate monitoring and learning from complaints within the broader governance framework. The new procedure will be in place from 1 April 2017.
- The proposed Social Work complaints order would abolish the current legal arrangements. This means that the powers we have under sections 16A to G of our legislation would come into force. This would allow us to develop, in partnership, a model which will, again, align broadly with the other procedures, in particular the council and health processes.
- The proposed order also gives us the same power in social work that we already have in health to assess professional judgement which means that, particularly when service delivery is fully integrated, it will not matter if a health professional or a social work professional is making the key decisions, we will be able to assess the reasonableness of that judgement.
- The order which was approved recently by the Committee to bring Integration Joint Boards (IJBs) within our direct jurisdiction was, in part, simply a technical one. It is now a matter of standard practice that new public organisations come within our jurisdiction in the same way that they are automatically brought into FOI legislation. However, it also closes any potential gaps that could in theory arise and will allow IJBs to have the same standard process as other organisations. They will also be able to access our training and support.

The benefit of health and local government having very similar complaints procedures and of SPSO having the same powers in relation to both is that this reduces significantly the legal barriers to those processes being integrated from the perspective of the service user. The alignment of the process will allow local authorities and health boards to bring complaints processes together where, at present, different rules mean that is not currently possible. Potentially, it will not matter whether someone raises an issue with a health board employee or a local government employee, the process will be the same. Where the complaints relates to service issues related to both the complainant will have the right to a single, coordinated response, rather than having to engage with both organisations. Alignment will not resolve all issues and fix all problems but it will allow organisations to more easily focus on the issue and the person rather than unpicking what process will apply.

\textsuperscript{1}http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/89508.aspx
\textsuperscript{2}https://shar.es/1Cmz76
\textsuperscript{3}http://www.scottishhealthcouncil.org/publications/research/listening_and_learning.aspx
The call for evidence asked a specific question about the proposed new role we would have around professional judgment. Our comments below are very similar to those we made previously around these points in response to the Government consultation⁴.

- We take the responsibility of assessing professional judgement, a power we already have in relation to health matters, seriously. We use relevant independent experts to advise on key aspects of clinical judgement and we also assess the overall quality of advice we receive through our regular quality assurance programme. We assess whether the decision was reasonable and not simply whether another decision was possible.
- We would like to stress the importance of a broad and clear definition of professional judgement. It is our experience that too much detail in legislation to define such roles can make them unworkable. While we know there may be some nervousness about a broad definition, social workers are making very significant decisions and the public should be able to question as much of the assessment made in relation to their needs as possible through an accessible administrative justice route. It is also worth bearing in mind that we uphold around 50% of health cases each year which means that, in 50% of cases, we are not finding problems. Many of the problems we find relate to communication and our broad role over clinical judgement has allowed us to work effectively in relation to health boards and provide maximum impact. We provide constructive criticism where necessary, whilst also, when we have found this to be the case in our investigation, providing assurance to other clinicians whose judgements have been challenged that their decision was reasonable.
- We consider the Order would allow us to recommend, when appropriate, changes to decisions relating to individuals that had resource implications.
- We consider we also could comment on professional judgement that was used in larger, resourcing decisions by a council such as a significant change in services generally. Before we could do so we would need an individual to complain to us that the larger resourcing decision had had a direct impact on them so this is not something that could be brought to us simply because of a disagreement with the policy. It is also worth noting that these decisions are often complex and based on a body of evidence which may include some aspects of professional judgements alongside other evidence such as the views of service users. At present, we can already take complaints about these types of decisions if the criteria is met and would continue to do so. The change would simply mean that we could comment more closely on any professional judgments used in that process. If we found an error had crept in to the professional judgement, we would then need to consider, how significant that error was, and whether there was evidence that it had been critical to the council’s decisions. If we felt that it had been, we are of the view that we could recommended that decision be looked at again. Given the complexity of such decisions it is unlikely we would be able to simply recommend a different decision.

In closing, I would like to add that I appreciate the opportunity for my office to provide evidence in this area and we would be happy to provide any further assistance.

Yours sincerely

Jim Martin
Ombudsman