

# Corporate Policy and Strategy Committee

10am, Tuesday, 19 January 2016

## Consultation on Draft Order to Amend the Scottish Public Services Ombudsman Act 2002 – Complaints Review Committee

Item number 7.2  
Report number  
Executive/routine  
Wards

### Executive summary

The consultation seeks views on the draft Order, which will amend the Scottish Public Services Ombudsman Act 2002 in order to allow the Scottish Public Services Ombudsman (SPSO) to investigate complaints in relation to the substance of social work decisions.

The consultation seeks views on the proposal to remove the Complaints Review Committee stage entirely, and extend the powers of the SPSO to allow them to investigate complaints relating to social work, including the professional judgement of social work practitioners and managers.

The draft Order also allows the sharing of information between the SPSO and the Care Inspectorate, and between the SPSO and Scottish Social Services Council (SSSC). This is to allow the SPSO to share information regarding a care service or member of staff with the appropriate regulatory body, as part of their investigation.

The deadline of submission for responses to the consultation was 14 December 2015.

### Links

#### Coalition pledges

Council outcomes CO10, CO11, CO23, CO24, CO25

Single Outcome Agreement SO2, SO3

## Consultation on Draft Order to Amend the Scottish Public Services Ombudsman Act 2002 – Complaints Review Committee

### Recommendations

---

- 1.1 The committee is asked consider the consultation response – attached as Appendix 1, which was submitted by the required deadline as an officer draft, with the caveat that elected members may wish to amend this at Committee, and if so, a revised response will be submitted in January.
- 1.2 The Committee is asked to note that if approved, the changes described within the draft Order are expected to come into force on **1 October 2016**.

### Background

---

- 2.1 In response to the [Crerar Review](#), Scottish Ministers established a number of working groups to consider the findings. The [Sinclair Report](#), published in July 2008, proposed the simplification of existing public service complaint handling procedures, including recommendations specific to social work services. This included a recommendation that the role currently performed by local authority Complaint Review Committees (CRC) should be transferred to the Scottish Public Services Ombudsman (SPSO). The draft order makes the legislative changes necessary to allow the SPSO to take on the role currently undertaken by local authorities' Complaints Review Committees.
- 2.2 The Order (The Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016), if passed by Parliament, will enable the SPSO to exercise functions for the social work complaints procedure in the same way they do for complaints relating to health services. The draft Order also allows the sharing of information between the SPSO and the Care Inspectorate, and between the SPSO and Scottish Social Services Council (SSSC).
- 2.3 Complaints about social work services currently progress through a four-stage process:
  1. Informal problem-solving stage (Frontline Resolution)
  2. Investigation by specially-designated staff
  3. Referral to Complaints Review Committee
  4. SPSO consideration (currently limited to consideration of whether there has been maladministration, rather than any consideration of the merits of the decision).

2.4 Complaints Review Committees represent the 3<sup>rd</sup> stage in the social work complaints procedure and are a requirement laid out in Directions and Guidance issued by Ministers in 1996. The role of the CRC is to examine objectively and independently the facts of a complaint. Whilst the CRC can express disagreement with policies, priorities and resources, it only has the power to make a recommendation to the appropriate local authority committee. It is the that committee, which takes a final decision on the complaint.

## Main report

---

3.1 In summary, the draft Order contains provisions the following provisions.

- Extending the remit of the SPSO to enable them to consider complaints made about social work that are not solely about maladministration, but enable the SPSO to consider the professional judgment of social work staff.
- Repealing the existing requirements on local authorities to create a social work complaints procedure. One effect of this repeal is that the SPSO will be able to use its existing functions to create a 2 stage model complaint handling procedure for social work complaints, and that local authorities will be obliged to adopt a procedure, which complies with that model. This brings SPSO functions in relation to social work into line with those for health and for other local authority services.
- Allowing the sharing of information between SPSO, Care Inspectorate and the Scottish Social Service Council (SSSC), where relevant to their regulatory functions. The SPSO, Care Inspectorate and SSSC will remain subject to Data Protection legislation, and will treat any information shared between them in accordance with the Data Protection Act 1998.

3.2 The SPSO may currently reach clinical judgements in relation to complaints regarding NHS services. If legislation provided the same remit in relation to social work cases, the SPSO would be able to investigate the merits of decisions taken by social workers in exercise of their professional judgement.

3.3 When the SPSO takes on the 3<sup>rd</sup> stage of the complaints procedure, it will have the same powers to recommend to local authorities that decisions be reconsidered. Should a local authority not comply with the recommendation of the SPSO, the Ombudsman may lay in Parliament a special report on that case.

3.4 The Scottish Government has made a commitment to the Scottish Parliamentary Corporate Body (SPCB) that the SPSO will be fully resourced for the changes made by the draft Order.

3.5 It is anticipated that local authorities will benefit from the changes, as an administrative burden (in the form of CRCs) will be removed from them. The resources currently required to manage the CRC process, specifically the level of administration and senior manager involvement associated with convening and holding CRCs, will represent a significant reduction of dedicated officer time.

- 3.6 Edinburgh has experienced some problems maintaining membership of CRCs, which has led to difficulties and delays in convening committees when requested. This is coupled with the limited availability of senior managers and professional advisors required to attend CRCs in order to present cases on behalf of the Council, and professional advisors to provide guidance and clarification to CRC panel members, where required.
- 3.7 Until the Order is enacted, it will remain a requirement for local authorities to continue to hold Complaint Review Committees.
- 3.8 The draft response at Appendix 1 supports the proposals in the draft Order, with a particular caveat surrounding the need for the SPSO to have access to independent professional social work advice as part of any investigation.

## Measures of success

---

- 4.1 Currently the CRC is required to make recommendations within 56 days of the date the complainant requested it. The local authority then has a further 42 days from the date of the CRC decision to agree actions and notify the complainant in writing of the decision. This can substantially lengthen the process for the complainant, especially when also taking into account the 20 working days given to local authorities to investigate the initial complaint. As a result, the complaints review stage can be lengthy and some service users have criticised CRCs as time consuming, frustrating and not user focused.
- 4.2 Currently the SPSO is not able to consider decisions made by the local authority in the exercise of its social work functions under the Social Work (Scotland) 1968 Act, except where there is a complaint regarding maladministration.
- 4.3 It is hoped the change will help to harmonise the complaints system, promoting greater consistency across health, social care and other local authority services. The draft order will give the SPSO the power to specify the procedures that local authorities should adopt for complaints in relation to social work through their model complaints handling procedure.
- 4.4 A standardised complaint system/process would make the link between outcomes and improvements more consistent across the Council and NHS Lothian.
- 4.5 The impact for social work services would be that the SPSO would have the authority to question professional decisions made by social work and make recommendations for change. This will require additional professional resources for the SPSO.
- 4.6 Transferring this stage of the complaints process will place a greater burden on the SPSO to receive, investigate and respond to complaints timeously. The success of this proposed model will depend on several key factors.

- Additional resources to the SPSO to undertake the function.
- The SPSO to adopt a standard in relation to timescales for responses to ensure complaints are dealt with as quickly as possible, reflecting the principles set out in the SPSO's own Model Complaint Handling Procedure.

## **Financial impact**

---

- 5.1 There are no financial implications arising from this report.
- 5.2 Once implemented, the Council will see a considerable reduction in resources currently associated with the administration, coordination and planning of CRCs. The transfer of stage 3 to the SPSO will also see a considerable reduction in time required from senior managers within social work services, currently presenting cases and acting as professional advisors to the CRC.

## **Risk, policy, compliance and governance impact**

---

- 6.1 Transfer of the 3<sup>rd</sup> stage of the complaints process to the SPSO will place a greater emphasis on the need for stage 2 complaint investigations to be prioritised within the relevant service areas to ensure the findings, conclusions and recommendations are robust, accurate and subject to the appropriate quality controls.
- 6.2 Governance and compliance related to the administration of statutory social work complaints are the responsibility of the Chief Social Work Officer, with operational oversight held by the Social Work Advice and Complaints Service.

## **Equalities impact**

---

- 7.1 There are no direct equalities impact arising from this report.

## **Sustainability impact**

---

- 8.1 There are no sustainability implications arising from this report.

## **Consultation and engagement**

---

- 9.1 The outcome of the consultation will have significant implications for the Council and its customers. Participation in the consultation will provide the Council with the opportunity to influence this outcome.

- 9.2 Council officials have facilitated discussions with the independent members of the Edinburgh Complaints Review Committee, who will be making their own submission to the Scottish Government.

## Background reading/external references

---

Report of the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland, September 2007: [Crerar Review](#):

Fit for purpose, Complaints System Action Group - REPORT TO MINISTERS, 18 July 2008: [Sinclair Report](#) :

Model Complaints Handling Guidance, 2011: <http://www.spsso.org.uk/media-centre/news-releases/model-complaints-handling-guidance-published>:

### Michelle Miller

Chief Social Work Officer

Contact: Jon Ferrer, Team Leader, Quality Assurance

E-mail: [jon.ferrer@edinburgh.gov.uk](mailto:jon.ferrer@edinburgh.gov.uk) | Tel: 0131 553 8396

## Links

---

### Coalition pledges

<b>Council outcomes</b>	CO10 Improved health and reduced inequalities CO11 Preventative and personalised support in place CO23 Well engaged and well informed – Communities and individuals are empowered and supported to improve local outcomes and foster a sense of community SO24 The Council communicates effectively internally and externally and has an excellent reputation for customer care SO25 The Council has efficient and effective services
-------------------------	---

<b>Single Outcome Agreement</b>	SO2 Edinburgh's citizens experience improved health and wellbeing, with reduced inequalities in health. SO3 Edinburgh's children and young people enjoy their childhood and fulfil their potential
---------------------------------	---

<b>Appendices</b>	Appendix 1: Respondent form
-------------------	-----------------------------

# CONSULTATION ON DRAFT ORDER TO REVISE THE PROCEDURES FOR COMPLAINTS ABOUT SOCIAL WORK



## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately.

### 1. Name/Organisation

#### Organisation Name

The City of Edinburgh Council

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

#### Surname

Miller

#### Forename

Michelle

### 2. Postal Address

Chief Social Work Officer

Waverley Court

4E Market Street

Edinburgh

Postcode EH8 8BG

Phone 0131 553 8520

Email michelle.miller@edinburgh.gov.uk

### 3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

**Please tick ONE of the following boxes**

Yes, make my response, name and address all available

**or**

Yes, make my response available, but not my name and address

**or**

Yes, make my response and name available, but not my address

**Please tick as appropriate**

**Yes**  **No**

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

**Yes**

**No**

## Questions

**1) Do you agree that the Local Authority Complaints Review Committees should be replaced?**

Yes  No

(if responding electronically, please double click on one of the boxes above and select the default value as 'checked')

### Reason/s

The CRC process has become overly bureaucratic and time consuming; often lengthening the time cases can take to travel through the complaints journey. This can be frustrating for complainants who wish to see their issue resolved quickly.

As complainants have automatic recourse to a CRC, even when their complaints have been fully upheld by the local authority at stage 2, the process often only serves to duplicate and repeat the exercise unnecessarily.

CRCs are currently a barrier to the full alignment of local government and health complaint procedures as we move towards the integration of health and social care.

**2) Do you agree with the proposal to extend the functions of the Scottish Public Services Ombudsman (SPSO) to allow the SPSO to investigate stage 3 of complaints for social work?**

Yes  No

### Reason/s

The transfer to the SPSO of stage 3 of the complaints process will enable a far greater degree of consistency and continuity of practice with other council services and the NHS. Operating the standardised SPSO Model Complaint Handling Procedure across all council functions would promote and enable sharing of best practice and serve to streamline and improve complaint management processes, training and associated literature.

In cases where the complainant remains dissatisfied following the conclusion of the stage 2 investigation, they will continue to have recourse to an independent review of their complaint through the SPSO function.

Prior to implementation, further clarity and detail will be required regarding what the SPSO would establish as the parameters when defining social work complaints.

A key feature of the CRC function is that it allows the complainant to speak directly to the committee members. For the complainant this can represent an important and significant aspect of their right to appeal. The SPSO will need to consider carefully how it engages with complainants once it has reached this stage. Some complainants require additional support to make representations such as interpreters

and advocacy support, and may also require reassurance and more frequent contact to feel involved and informed about the progress of the investigation. These factors will need to be considered in conjunction with the availability of appropriate resources – in the form of professional social work advice – for the SPSO.

**3) Do you agree with the proposal to extend the role of the SPSO in relation to social work complaints to allow them to consider in their investigations matters of professional judgment of social work staff?**

Yes  No

**Reason/s**

The City of Edinburgh Council agrees with this proposal in principle, albeit with some reservations. It is imperative that with the extension of the SPSO's remit comes a commitment to ensure investigations and decisions into matters of professional judgement are subject to independent, professional social work advice.

The SPSO will be required to take into account the wider context when dealing with matters of professional judgment, including:

- professional social work assessments and recommendations informed by information gathered amidst changing circumstances and based on the 'balance of probability' principle
- decisions and recommendations based on multi-agency assessments (child/adult protection)
- powers that enable the SPSO to overturn social work decisions (decision making and professional judgement) without the recommendation being referred back to the relevant council committee, particularly in relation to decisions that relate to funding, eligibility criteria and the provision of services.

**4) Do you agree that the SPSO should be able to share information with the Care Inspectorate (Social Care and Social Work Improvement Scotland) and the Scottish Social Services Council in relation to social work?**

Yes  No

**Reason/s**

The City of Edinburgh Council agrees that powers to share information (where it is relevant, appropriate and within the public interest to do so) promote partnership working. A clear mandate will be required to ensure that information shared between organisations does not create unnecessary overlap or duplication, or subject individual social work practitioners to unreasonable scrutiny as a result of competing remits.

**5) Do you have any other comments on the proposals?**

Yes  No

**Comment/s**

The Council seeks greater clarity and a definitive position regarding other recommendations made by the Scottish Government Short-Life Working Group (June 2013), specifically the provision of extensions at stage 1 of the complaints procedure (Early/Frontline Resolution), which include the recommendation made to ministers that the timescales associated with stage 1 of the complaints process being extended from 5 to 15 working days. Given that social work complaints are known often to be more complex and complicated, such an increase will enable a greater degree of scrutiny applied to managing complaints, following initial point of contact, thus further reducing the volume of complaints escalated to investigation and the SPSO.

Please email your response to [adultsocialcare@gov.scot](mailto:adultsocialcare@gov.scot) or if you wish to post your response please send to: Adult Social Care Policy Team, Scottish Government, Room GE.18, St Andrew's House, Edinburgh, EH1 3DG.