



**Department of
Community
Services**



Social Work Complaints Policy and Procedures

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Introduction

This document provides a full description of complaints procedures in relation to Social Work complaints within Moray Council Community Services Department.

The policy and procedures are consistent in ethos and timescales with the Moray Council Corporate Complaints Policy but differ in that Social Work must have a statutory complaints procedure that conforms to specific statutory Directions.

Section A: Definitions and Statutory Framework

Definitions

1. **A complaint** is any expression of dissatisfaction with the Council's procedures, charges, employees, agents or quality of service (Moray Council Corporate Complaints Policy) however presented i.e. in writing - letter, email, text - or verbal.
2. **A complainant** is any person who submits a complaint. A complainant may be a service user, authorised representative or any other person with an interest. (This list is not exhaustive). If a complainant is neither service user nor authorised representative, s/he has no entitlement to have the complaint dealt with as a statutory complaint.
3. **A service user** is a person, including a person under the age of 16:
 - for whom the Department provides a service either directly or indirectly.
 - whose request for such a service has been refused by the Department.
 - whose need or possible need for a service, which the Department has a power or a duty to provide, has come to the Authority's attention.
4. **An authorised representative** is a person with a statutory entitlement, locally recognised authority or an explicit mandate to complain on behalf of a service user including:
 - a) A person providing care to a service user without being employed for that purpose.
 - b) For service users under the age of 18:
 - A person with parental rights in respect of a child under 16,
 - A person with parental responsibilities in respect of a young person 16-18 years,
 - A local authority foster parent caring for the child,

- Any other person appearing to the Department to have sufficient interest in the child/young person's wellbeing to warrant them making representations on her/his behalf.
- c) A person appointed as a proxy decision-maker under the Adults with Incapacity (Scotland) Act 2000.
 - d) An elected Councillor, MP, MSP or MEP (mandate required).
 - e) A professional or citizen advocate from an organisation recognised by the Department to be a provider of independent advocacy (mandate required).
 - f) Any other person with a written mandate to represent a service user re the complaint
5. **Staff** are persons employed by the Department or by a third party providing services to clients on its behalf, or other Moray Council staff designated to receive complaints on behalf of the Department.
 6. **A formal complaint** requires a written response replying to all issues raised in the complaint and outlining the right of the complainant to appeal if dissatisfied with the response. A formal complaint can be a statutory complaint or a non-statutory complaint.
 7. **An informal complaint** is one where the complainant makes an informed choice to accept an informal response to the complaint, waiving the requirement for a written response and any subsequent rights of review of that response. An informal complaint can later be treated as a formal complaint if circumstances dictate..
 8. **Informed choice** means the complainant had been advised of her/his rights under the complaints procedure before deciding between formal and informal process.
 9. **A statutory complaint** is one that falls within the scope of the Social Work (Scotland) Act 1968 Section 5B as amended by NHS and Community Care Act 1990 Section 52 and the Social Work (Representations Procedure) (Scotland) Order 1990. Circular SWSG5/1996, consisting of Directions and Guidance, gives comprehensive information on this and is attached at *Appendix vii* for information.
 10. **A non-statutory complaint** is one that is not a statutory complaint.

Statutory Complaints - The Context

11. The statutory complaints procedures allow individual service users, and authorised representatives, to raise concerns about the quality of service delivered to them by, or on behalf of, the Department.
12. Any complaint made by a service user or authorised representative **must** be treated as a statutory complaint, providing the subject of the

complaint covers one of the issues described below and is not exempt under any of the reasons listed in paragraph 14 or 15.

13. Statutory complaints may be made in reference to any of the following issues in respect of an individual service user or authorised representative according to legislated powers and duties:

- a) Failure to discharge such duties.
- b) Delay in the discharge of such duties.
- c) Failure to properly assess the needs of the service user and carers during the discharge of such duties.
- d) Failure to give due consideration to the needs and wishes of individual service users and their carers when making decisions about service provision.
- e) Failure to follow Departmental procedures when making a decision or delivering a service in relation to an individual service user.
- f) Failure to give due consideration to Departmental guidance when making a decision or delivering a service in relation to an individual service user
- g) Provision of a service that quantitatively or qualitatively fails to meet the reasonable expectation of a service user.
- h) Poor attitude and performance of staff in discharging their duties.
- i) Failure to properly investigate complaints, advise service users of their rights or respond within identified timescales in relation to complaints.

14. The Circular makes clear that the statutory procedure should **not be initiated in the following circumstances:**

- a) The issue or subject of the complaint is being pursued through legal action. If a complaint has already been initiated under the statutory procedures the process should be suspended until the final outcome of legal action.
- b) The subject of the complaint is itself a matter determined by judicial body (e.g. a children's hearing.) The complainant should be referred back to the judicial body unless the complaint refers to the Department's application of the decision.
- c) The complaint involves allegations of a serious nature against staff. In such cases, a relevant senior manager may determine that other formal processes should be used to deal with the complaint.
- d) The issue of the complaint concerns the behaviour of an individual who is neither employed by the Department

nor employed by a third party contracted to provide services on behalf of the Department, nor in receipt of payment from the Department to provide a service.

- e) The complaint is in relation to a third party contracted to provide care services on behalf of the Department and the service user is wholly financing her/his own care. In such cases the complainant will be directed to the complaints procedures of the third party.
- f) The complaint relates to a third party contracted to provide general services to the public (e.g. advice centres). In such cases the complainant will be directed to the complaints procedures of the third party.

15. The procedure is also **not** an appropriate process for:

- a) Campaigns for new or amended services, or increased resources for groups of service users or potential service users.
- b) Challenges about legislation or judicial decisions underpinning service delivery.
- c) Bringing allegations of criminal behaviour to the attention of the Department.
- d) Applying for compensation or damages arising from alleged actions or inaction by the Department.
- e) Appealing charging decisions as appeals will go through the Charging Appeals process. Where, however, the service user is still unhappy with the appeals decision, s/he has the right to enter the complaints process at Stage 2 (Director's review).
- f) Investigating complaints made on behalf of service users against persons appointed as proxy decision-makers. Under the Adults with Incapacity (Scotland) Act 2000, Local Authorities have a duty to investigate such complaints but these will be referred to the Head of Service (Community Care) who will appoint an appropriate investigating officer and subsequently outline procedures to the complainant; they will not be dealt with within the complaints procedure.

16. The advice of the Head of Service should be sought, before a complaint is responded to in the following instances, where a degree of local discretion is required:

- The complainant wishes to remain completely anonymous.
- The complaint is on behalf of a group of service users.
- The same complaint is received from a number of individuals in such a way as to suggest an organised campaign.
- The complainant is abusive or threatening to staff in the course of submitting the complaint.

- The complainant appears to be a persistent or vexatious complainant.
- The complaint appears to be substantially indistinguishable from one that has already been submitted by or on behalf of, the same complainant and formally responded to through the statutory procedure.

17. The Circular requires a clear procedure for dealing with complaints made to elected members. This is outlined in Section C.

Timescales

18. Complaints requiring a formal response must be acknowledged in writing within **2 working days** of receipt.

19. All complaints **must** be responded to within **20 working days** of receipt of the complaint regardless of whether formal or informal. Informal complaints should be responded to well within that timeframe. (The date in question is date of receipt by the organisation, as identified in the letter of acknowledgement or complaints form).

20. Where it has been necessary to request a written mandate for a representative to make a complaint on behalf of a client then the date of complaint will be taken as the date of receipt of the mandate, rather than the initial complaint.

21. If a substantive response to a complaint cannot be provided in time, the complainant must be advised of the circumstances and her/his agreement obtained to extend the deadline. If more than 20 days is required for an informal complaint, this may indicate a complexity requiring a formal response.

Departmental Responsibilities

22. The Circular requires a senior officer to have overall responsibility for the organisation and effectiveness of the complaints procedure. In Moray, this responsibility is held by the Chief Social Work Officer in relation to Social Work complaints.

23. The responsibility of the Chief Social Work Officer is to:

- a) Ensure good quality general information for the public is available on the procedure and that access to the complaints process is facilitated.
- b) Ensure systems are maintained for logging and monitoring all complaints whether the corporate database or departmental system.

- c) Ensure staff are knowledgeable and trained in the procedure.
- d) Prepare reports for relevant Committees on the performance of the Department against targets and on relevant issues arising from complaints.
- e) Review the operation of the complaints procedure and revise as appropriate.

24. Heads of Service are responsible for:

- a) Responding to queries from staff about the operation of the complaints procedure and its application to individual circumstances.
- b) Receiving complaints and attempting informal resolution if appropriate.
- c) Forwarding unresolved complaints to the relevant local manager for formal investigation.
- d) Ensuring that complaints are logged and monitored in the corporate complaints database and that individual complaints forms are completed.
- e) Ensuring that complaints have been properly investigated and that responses cover all the issues before signing off the response.

The Complaints Review Committee

25. This Committee exists to examine, objectively and independently, facts presented by the complainant and the Department in relation to a complaint or the circumstances in which a complaint has been submitted.

26. The Complaints Review Committee performs two broad functions:

- a) The review of a complaint where all avenues of redress have been explored by the local authority and the complainant and the complainant remains dissatisfied with the response.
Requests for referral to the Committee under this provision may only be made by complainants.
- b) The review of circumstances whereby the Department declares itself unable or unwilling to perform a full investigation or respond fully to a complaint and the complainant is not satisfied with the explanation given by the Department for this decision.
Requests for referral to the Committee under this provision may only be made by the Department.

27. The Care Commission

If a complaint concerns a service registered by the Care Commission, the complainant can send it directly to the Commission at their local office. (Contact details are given in Appendix vi).

Section B: The Complaints Process

CORE PRINCIPLES

28. All staff should be familiar with the complaints procedures.
29. All complaints should be acted upon.
30. Complaints may be submitted by any reasonable means: verbally (in person or by telephone) or in writing (via letter, complaints leaflet, fax, e-mail or other electronic format).
31. Staff should facilitate access to the complaints procedure for service users who are expressing dissatisfaction with services.
32. Complaints should be resolved as close to the point of service delivery as possible.
33. Every complainant should be given a copy of the complaints leaflet. If none is available, staff should advise complainants of the main points of the complaints procedure and enclose one with the acknowledgement of a formal complaint. See also Appendix iii.
34. Where the complainant has difficulty in communicating, in accessing or comprehending written information, staff should consider the need for representation or assistance in making a complaint. Offering to arrange such assistance is the first step towards resolving the complaint.
35. Complaints should be dealt with quickly. The 20-day response time should be taken as the maximum, not the standard, period for response.
36. In dealing with complaints, staff should avoid delay, maintain confidentiality and keep the complainant properly informed.
37. Complainants should be offered every opportunity for quick and informal resolution of their complaint but this should not be imposed.
38. Complainants should be reassured that their complaint will be treated in confidence and without prejudice to their future service delivery.
39. No officer should be involved in investigating a complaint relating to her/his own behaviour.
40. Except in the most straightforward of circumstances, the investigation should involve meeting or conversing with the complainant. Formal complaints should not normally be responded to on the basis of internal investigation alone.

41. Unless the complainant has agreed to informal resolution, or has withdrawn the complaint, all complaints should culminate in a written response.
42. Formal responses should address all issues raised by the complainant in the original complaint and during the course of the investigation and should comment on whether it has been possible to offer the redress requested by the complainant.
43. Where the complaint has been upheld, formal responses should include a clear and unequivocal apology.
44. Formal responses should indicate how the complainant might proceed if they remain dissatisfied with the response.

PUBLIC INFORMATION

45. Notices should be displayed in all Social Work offices advising service users of their right to complain and giving details on how a complaint may be submitted.
46. Complaints leaflets should be available in all Social Work service units and offices and in all facilities where social work services are provided under contract to the Department. Complaints leaflets should also be distributed to all local groups who represent service users, particularly providers of independent advocacy.

PROCEDURE: GENERAL

47. On receipt of any complaint, the focus of the complaint and required redress should be clarified and logged in the corporate database. An individual complaints form should be completed for each complaint.
48. Staff receiving a complaint should find out whether the complainant wishes the complaint to be dealt with formally or informally.
49. The decision as to whether a complaint is formal or informal rests with the complainant. The role of staff is to advise complainants of the difference between formal and informal process – ie no right of review or appeal – and to respond appropriately to the complaint as directed by the complainant and within the procedures.

PROCEDURE: STAGE 1

STEP 1: INFORMAL COMPLAINTS

50. To resolve a informal complaint, there must be clear understanding of the issues raised and the redress required. They must still be recorded in the complaints database and an individual complaints form completed.
51. Informal complaints should be dealt with quickly, if not immediately, and certainly disposed of well within the 20 working day deadline.
52. If the complaint appears complex, the complainant should be advised that a formal response would be more appropriate. If agreed it should be dealt with as formal below.
53. Normally there will be no further review.

PROCEDURE: STAGE I

STEP 2: FORMAL COMPLAINTS

Receipt and Acknowledgement

54. All formal complaints should be acknowledged in writing within 2 working days of receipt.
55. The acknowledgement should identify, by name or title, the person who will arrange investigation and response to the complaint.
56. The acknowledgement must identify the date by which the complainant can expect a formal response to the complaint.
57. The complainant must be sent a copy of the complaints information leaflet.

Investigation and Response

58. On receipt of a formal complaint, the Head of Service will nominate a senior officer as investigating officer.
59. Complaints about a senior member of staff should normally be passed in the first instance to the person's line manager.
60. If a complaint is received about the actions of the Director of Community Services it should be forwarded to the Chief Executive, who will make suitable arrangements.

61. The complainant should be given every opportunity to fully state her/his views on the circumstances of the complaint. This can avoid additional issues being raised during review of the response or referral to the Complaints Review Committee.
62. The investigating officer should make the following initial determinations:
- Are the issues clearly outlined in the complaint?
 - Is the redress being sought by the complainant clear?
 - Will it be possible to fully explore the circumstances of the complaint and, if upheld, offer the complainant the redress required without further reference to the complainant?
- If all these conditions are met then the investigating officer may proceed to investigate and respond to the complaint. In these circumstances, there is an expectation that the matter will be disposed of well within the 20 day deadline.
63. If the conditions above are not met, the investigating officer should, at the earliest opportunity, arrange to contact the complainant by telephone or in person to clarify the issues, redress or circumstances of the complaint.
64. If it is not possible to commence an investigation within **10 working days of receipt** of the complaint the investigating officer should contact the complainant to explain the delay and keep her/him informed as to the progress of the complaint. Delay in commencing an investigation is not a valid reason for excluding the complainant from the investigative process.
65. The Circular allows for an extension of the deadline with the complainant's agreement. If it is clear that the investigation cannot be completed and a substantive response sent within 20 days, the complainant must be contacted and their agreement to an extension obtained.
66. When contacting the complainant, the investigating officer should
- keep a formal note of the outcome of this contact, with particular regard to additional issues arising and the seeking and obtaining of consent to extension of the response deadline.
 - offer the complainant the option of informal resolution where appropriate.
67. On conclusion of the investigation the Head of Service should forward a formal written response to the complainant. This response should contain:
- a) A response to all issues raised by the complainant in the original complaint and during the course of the investigation.
 - b) A comment on whether it has been possible to offer the redress requested by the complainant.
 - c) Where the complaint has been upheld, a clear and unequivocal apology.

- d) An indication of how the complainant might proceed if they remain dissatisfied with the response.

68. For statutory complaints the complainant should be advised that they have the right to have their case reviewed by the Director of Community Services and to refer the matter to the Complaints Review Committee. The decision as to whether a complaint is a statutory one rests with the Head of Service and is determined by whether the complainant is the service user or authorised representative.

69. For non-statutory complaints there should be an offer to have the case reviewed by the Chief Executive.

70. If the complaint is upheld fully or partially, the Head of Service will arrange for the Complaint Analysis form to be completed and passed to the Corporate Complaints Officer and the Research and Information Officer.

PROCEDURE: STAGE II - REVIEW

71. If the complainant is dissatisfied with the formal response, s/he is entitled to request a review.

72. For statutory complaints this is undertaken by the Director of Community Services. Upon receipt of such a request, the Head of Service will clarify with the complainant where necessary the reasons for dissatisfaction with the response. The complaint will be passed to the Director of Community Services for review and response within 20 working days.

73. For non-statutory complaints, the review will be passed to the Chief Executive for signing off.

PROCEDURE: STAGE III – REFERRAL to COMPLAINTS REVIEW COMMITTEE

74. Any complainant who has requested a formal response and is entitled to access the statutory complaints procedure has a right to request a referral to the Complaints Review Committee at any stage after receipt of the formal response.

75. Such a request must be made in writing and submitted to The Chief Legal Officer, Moray Council HQ, High Street, Elgin IV30 1BX within **28 calendar days** of receipt of either the first formal response or the review response. If s/he fails to do so, the Committee may either refuse to accept the referral or exercise discretion to accept the referral with due regard to circumstances.

76. On receipt, the Chief Legal Officer will contact both the complainant and the Department to ensure all avenues of redress have been explored. In particular, the legal office will check that the complainant has been offered review of his/her complaint by the Department. The Chief Legal Officer will then proceed, if necessary, to establish a Complaints Review Committee
77. Within **56 calendar days** of the date the complainant requested reference to it, the Committee must make recommendations to the appropriate Committee (*either Children and Young Persons Services Committee or Health and Social Care Services Committee*) which will consider the determination, and direct actions to be taken by the Director of Community Services. The deadline specified may be extended only with the agreement of the complainant.
78. The Local Authority must agree actions and notify the complainant in writing of their decisions within **42 calendar days** of the date the Complaints Review Committee makes its recommendations. The deadline specified may be extended only with the agreement of the complainant. It will advise what further steps the complainant may take if still dissatisfied e.g. referral to the Scottish Public Services Ombudsman (see Appendix vi for contact details) or independent legal advice.
79. This signifies the end of the statutory complaints procedure.

Section C: Non-standard Complaints

Whilst Section B of this document deals with processes for straightforward complaints, this Section deals with complaints arising from more unusual sources or circumstances requiring special attention or varied responses.

Information on all non-standard complaints will be included in the reporting processes outlined in Appendix v.

Representatives and Advocates

80. On receipt of a complaint from a complainant who is not the service user, staff must consider:

- a) Is s/he an authorised representative of the service user? If so, the complaint should be dealt with as a statutory complaint and the response sent to the complainant.
- b) If the complainant is neither service user nor authorised representative does s/he nevertheless wish to make a complaint on her/his own behalf? If so, the complaint should be dealt with as a non-statutory complaint.
- c) If s/he claims to be an authorised representative but is unable or unwilling to provide satisfactory evidence, (e.g. a written mandate) the matter should be referred to the Head of Service.

81. On receipt of a complaint from a solicitor or other legal representative staff should ascertain:

- a) Is the complaint being made in the context of legal action against the Department? If so, the complaints procedure must be suspended pending the outcome of legal action and correspondence should be referred by the Head of Service to the Chief Legal Officer who will advise the complainant as to the procedures in place.
- b) Is the complainant simply representing the service user in relation to a statutory complaint? If so staff should write to the complainant requesting a written mandate from the service user before proceeding unless (c) below applies.
- c) Is the complainant known to have represented the service user in past dealings with the Department? If so, a mandate will not be necessary.

82. On receipt of correspondence or verbal contact from an elected representative concerning an issue of service delivery to an individual service user, the Head of Service should:

- a) Clarify with the elected member's office, if necessary, whether the matter in question is an enquiry, requiring only a response to the elected member, or a complaint requiring a response to both elected member and service user. If a complaint, then a mandate is required.

- b) Unless otherwise indicated, treat the matter as a formal complaint requiring a response in writing to the complainant and a copy to the elected member.
- c) Send an acknowledgement to the elected member as soon as possible after receipt, and certainly within 2 working days indicating the anticipated timescale for response. If this is likely to be more than 10 working days the reason for any delay should be stated.
- d) Notify the office of the Director of Community Services clarifying whether the matter is an enquiry or a complaint, the action to be taken and the likely timescale for response. A copy of all papers should be forwarded to the Director's office.
- e) When the matter is clarified as a complaint, appoint an investigating officer and send an acknowledgement to the complainant within 2 working days.
- f) Where the complainant makes an informed choice to accept informal resolution of the complaint during the course of the investigation, notify the elected member accordingly and advise the outcome of the complaint.

Anonymous Complaints

83. A complainant may request that her/his identity is not disclosed when a complaint is made. Except where informal non-statutory complaints are being made, this anonymity cannot be total, as the Department has to determine the status of complainants or their representatives in relation to their rights to access the statutory complaints procedures and must have a contact for receipt of a formal written response.
84. If staff receive such complaints they should direct the complainant to the Head of Service who will explain to the complainant the operation of the complaints procedures and either:
- a) Arrange for the complaint to be dealt with as a non-statutory complaint.
 - b) Agree with the complainant those measures to ensure anonymity that can be afforded under the statutory procedures.
85. The Head of Service will advise the complainant that the requirements of anonymity may restrict the ability of the Department to properly investigate the complaint and may have implications for the right of the complainant to have their complaint reviewed by or referred to the Complaints Review Committee.

Abusive Complainants

86. An abusive complainant is one who submits complaints in terms that are threatening, racist, sexist, profane, or employs violent or sexual imagery outwith the context of the complaint.
87. For verbal complaints, staff should advise the complainant that they are not required to tolerate such abuse and request that the complainant moderate their language.

88. If the complainant ignores this request staff should advise the complainant that they may terminate the exchange if the complainant continues to be abusive. If this fails staff should terminate the exchange.
89. If staff have terminated an exchange with an abusive complainant and have already taken full details of the complaint these should be forwarded to the Head of Service with an attached note as to the nature of the exchange.
90. If staff have terminated an exchange with an abusive complainant without taking full details of the complaint they should write to the complainant, where possible, enclosing a complaints leaflet and asking the complainant to re-submit their complaint in writing to the Head of Service.
91. Where written complaints are submitted in abusive terms, the acknowledgement of the complaint should advise that staff are not required to tolerate such abuse and if repeated, it may limit the ability of staff to investigate and respond.
92. Repeated abuse by a complainant (whether verbal or written) should be notified to the Head of Service who will review the case and take the following actions where necessary:
- a) Write to the complainant requesting that they modify language in future or otherwise face limitations on the investigation of the complaint.
 - b) Instruct the investigating officer to investigate and respond to the complaint without contacting the complainant for further information or clarification of the complaint and advise the complainant accordingly.
 - c) Advise the complainant that in future, complaints will only be accepted if submitted in writing to the Head of Service and staff will not engage in dialogue with the complainant.
93. The actions outlined above must be taken for all complainants in the order presented: i.e. c) after prior use of b) and b) after a).
94. If action c) is taken relevant staff will be advised not to accept further complaints from the complainant and to terminate the exchange once the identity of the complainant is known.
95. If, after instituting all measures outlined, the Head of Service feels that even written complaints are so abusive as to place an unreasonably onerous burden on staff, a written submission will be prepared for consideration by the Complaints Review Committee with a view to declaring the complainant a vexatious complainant (see below).

Persistent Complainants

96. A persistent complainant is one who makes a complaint that is the same as (or substantially indistinguishable from) one that has already been submitted by, or on behalf of, the same service user and formally responded to through the statutory procedures.
97. The Department is not required to respond to a complaint that has already been considered and disposed of through the formal statutory procedures.
98. If staff receive a complaint which they consider has already been dealt with and disposed of they should refer the matter to the Head of Service who will advise either:
- a) that the complaint is new and should be investigated and responded to as normal either in whole or in part as regards issues not previously dealt with.
 - b) that the complaint need not be re-investigated but should be responded to again. In these circumstances, the complainant should be clearly advised that the complaint has been dealt with before and that the complainant should exercise their rights to have the complaint reviewed or referred to the Complaints Review Committee should they remain dissatisfied with the response on this occasion.
 - c) that the complaint need not be re-investigated or responded to, but that the Department will write to the complainant stating the matter has been disposed of and will not be responded to again, whilst confirming the rights of the complainant to submit complaints on other issues in future.
99. The action outlined in c) may only be taken after prior use of b) in respect of the same complaint.
100. The above paragraphs should not restrict the rights of complainants to make similar complaints about repeated failures of the Department to deliver services on different occasions, unless staff believe that the complainant is a vexatious complainant (see below).
101. Since none of the measures in this section prevent the complainant from submitting a new complaint to the Department a referral to the Complaints Review Committee is not necessary. The Directions are clear that the Department has no obligation to consider complaints previously considered and disposed of.

Vexatious Complainants

102. A vexatious complainant is one who makes a complaint which is intended or likely to have the effect of subjecting staff to inconvenience, harassment or expense disproportionate and/or unrelated to the actual issues raised in the complaint. They may be a service user or an authorised representative.

103. Where staff feel that a complainant is vexatious, they should refer it to the Head of Service who will assess the case based upon:
- a) the number of complaints submitted by the complainant within a defined time period;
 - b) The complainant's stated intention, if stated;
 - c) the types of issues raised by the complainant including any which may reasonably be characterised as obsessive;
 - d) the number of times complaints have been upheld;
 - e) the number of times the complainant has requested review and/or referral to the Complaints Review Committee and the findings of those reviews.
104. The Head of Service will submit a report to the Director of Community Services recommending either:
- a) the complainant is clearly not vexatious and no special measures should be employed, or
 - b) there is insufficient evidence of vexatious intent at this time, but that the situation should be monitored, or
 - c) the complainant is not vexatious but is abusive or persistent and the relevant measures for such complainants should be employed, or
 - d) there is sufficient evidence to suggest that the complainant is vexatious.
105. If recommendation (d) is made the complainant will be notified that the Department considers them to be a vexatious complainant and intends to present evidence to the Complaints Review Committee substantiating this claim.
106. The Director of Community Services will refer the matter to the Chief Legal Officer for the Complaints Review Committee to review written submissions on the matter. The complainant will be advised of the matters under review and the opportunity offered to present a written submission to the Committee.
107. If the Committee upholds the judgement of the Department the complainant will be advised that they are considered a vexatious complainant and may only have future complaints considered subject to the following conditions:
- a. Complaints may only be submitted in writing to a designated senior officer.
 - b. The designated officer will make a determination, on a case by case basis, of whether new complaints raise issues that merit response.
 - c. If the officer does not consider the complaint merits a response then the complaint will be neither acknowledged nor responded to.
108. Alternatively, if the Committee does not uphold the judgement of the Department it will instruct the Department on how future complaints from this complainant should be dealt with.

109. Once a complainant has been classified as vexatious, this status will be kept under review by the Head of Service. If the complainant subsequently demonstrates a more reasonable approach, then the Head of Service in consultation with the Director of Community Services may revoke the vexatious classification. In such cases, normal contact with the complainant and application of the Complaints Procedure will be resumed.

Complaints by Groups/Organised Campaigns

110. Complaints can be made by, or on behalf of, a group of service users, but not if a campaign which places an unreasonable burden on the complaints procedure.

111. Whenever such a complaint is received, the matter should be referred to the Director of Community Services who will consult with senior managers and advise whether the complaint should be dealt with as a formal statutory complaint or by other means.

112. If the same complaint is submitted by a number of individuals in circumstances which suggest that they are campaigning as an organised group, then advice should be sought as above.

113. In order for a group complaint to be dealt with under the formal statutory complaints procedures the group should appoint a single point of contact to whom the response will be sent for distribution. If the group is unable to do this, the complaint will not be dealt with as a formal statutory complaint.

114. If the Director decides the complaint should not be dealt with as a formal statutory one and complainants are dissatisfied with the alternative suggested, they have a right to refer the matter to the Complaints Review Committee.

115. Should complainants wish the matter referred to the Complaints Review Committee they must advise the Chief Legal Officer within 28 calendar days of notification of their decision. The Chief Legal Officer may not refuse to refer the matter to the Committee unless the request is received outwith the 28-day period.

Disclosure of Confidential Information

116. Occasionally, it may not be possible to fully investigate or respond to a complaint without disclosing confidential information which:

- a) Relates to a third party who has not consented to disclosure.
- b) Is sensitive information relating to the service user and cannot be disclosed to the authorised representative.
- c) May cause serious harm to the service user or another person if disclosed.
- d) Has implications for the prevention, detection or prosecution of a crime.

117. In such circumstances, the investigating officer should make every effort to proceed with the complaint investigation by;
- a) Seeking the permission of third parties to disclose information to the complainant or their representative.
 - b) Seeking the permission of the service user to the disclosure of sensitive information to the authorised representative.
 - c) Explaining the difficulties to the complainant and seeking her/his agreement to deal with the complaint within the imposed limits of confidentiality.
118. If agreement is reached as above the investigating officer must make it clear that the limits will also apply to review of the complaint by the Complaints Review Committee.
119. If it is not possible to provide a full response due to the imposed limits of confidentiality and it has not been possible to reach an agreement with the complainant on a limited response, the complaint should be suspended and the complainant advised to take one of the following courses of action:
- a) Make a subject access request under the provisions of the Data Protection Act (1998).
 - b) Refer the matter to the Scottish Public Services Ombudsman, (Appendix vi).
 - c) Refer the matter to the Information Commissioner (Appendix vi).
 - d) Seek legal advice and/or action for redress.
120. Should the complainant take one of the actions outlined above and thereby gain access to the information in question, the suspension of the complaint should be lifted and investigation and response proceed without further undue delay.

Complaints against Third Party Providers

121. The Circular clearly states that services provided by third parties on behalf of the local authority remain functions of the local authority. Complaints procedures operated by local authorities thus extend to those social work services which independent organisations, persons or bodies undertake to provide under contract to the local authority.
122. Local authorities may however delegate the handling of initial complaints (including responsibility for investigating as well as receiving complaints) to the service provider along with the provision of the service itself.
123. Specific requirements govern such delegation:
- a) It remains the responsibility of the local authority to ensure that information on how to complain is available to service users.
 - b) Where the authority has given responsibility for investigating and considering complaints to a third party acting on its behalf, the

complaints and responses must still be logged through the local authority complaints system.

- c) The local authority should establish very clearly what the limit of any delegation will be in relation to receipt of complaints, the handling of investigations and the provision of responses.
- d) The extent of the duties so defined should be indicated to the third party and should form a part of the contract or other arrangement for the provision of service.
- e) Third Party providers will have no role in referring complaints to the Complaints Review Committee, but service users will still have the right to make such a referral. In relation to those areas where the Department might make referral to the Committee (eg vexatious complaints), the Department may make such referrals to the Committee on behalf of third party providers

Complaints by Children

124. Due to their vulnerability, special considerations apply to complaints made by children including those who are Looked After & Accommodated by the local authority or by another organisation under contract.

125. When a complaint is received by a young person, a decision must be made by staff receiving the complaint (in consultation with the Head of Service), on the basis of issues in the complaint, as to whether the complaint should be dealt with through Child Protection Procedures or the complaints procedures.

126. Children are likely to require extra support and guidance to use the complaints procedure. The emphasis should be on problem solving in an open and trusting culture. The involvement of the Children and Young Person's Rights Worker at an early stage can be helpful.

127. Complaints relating to issues that can be resolved by staff who work directly with those young people, should be dealt with informally, by staff who receive the complaint. These may be individual issues or collective concerns. These complaints should be recorded.

128. Where an informal resolution cannot be achieved, or the young person is dissatisfied with the outcome, or expresses the wish to have the complaint dealt with more formally, s/he can:

- Make a complaints within the formal procedures.
- Raise concerns with another worker who can instigate the complaints procedure on the young person's behalf. This could be the Children and Young Person's Rights Worker, Who Cares? Scotland or Childline Scotland.
- Raise concerns with another adult who can advocate on her/his behalf.

129. Children in out of area placements and secure care require particular assistance to voice complaints about the care and controls exercised

over them. They should be given written information about the complaints procedure at their reviews and verbal reinforcement by their social worker on admission and at visits. They should be given access to a telephone to contact the Children and Young Person's Rights Worker or their own social worker if they wish to complain.

130. For issues relating to Child Protection Case Conferences, see Integrated and Interagency Working below.

131. All complaints should be recorded, even if the complaint is withdrawn, and outcomes should be monitored.

Foster Carers

132. There is scope for 3 types of complaints in relation to foster care:

- a) foster carers complaining on behalf of children;
- b) foster carers being complained about by children (see above and particularly paragraph 128);
- c) foster carers complaining about services they receive from social work services.

Complaints on behalf of Adults with Incapacity

133. Where persons have been appointed proxy decision makers under the Adults with Incapacity (Scotland) Act 2000, they will automatically be accorded the status of authorised representative in the context of complaints under the statutory procedures.

134. In other cases where a person seeks to represent an adult with incapacity, staff receiving the complaint will satisfy themselves as to the basis of authority by which that person seeks to act. Should there be any doubt, the advice of the Head of Service should be sought on a case-by-case basis.

135. Under the Adults with Incapacity (Scotland) Act 2000, Local Authorities have a duty to investigate complaints made on behalf of service users against persons appointed as proxy decision-makers. In such cases, these will not be dealt with within the complaints procedure but will be referred to the Head of Service (Community Care) who will appoint an appropriate investigating officer and subsequently outline procedures to the complainant.

Interagency and Integrated Working

136. Where the Department is working in partnership with other agencies, under the terms of the complaints procedure, the Local Authority can only be held responsible for complaints arising from its actions or that of a third party acting on its behalf.

137. Where inter-agency working is involved, consultation with partners will be required where a complaint relates to matters for which those other

partners have responsibility. This will include response timescales. A specific response to the complaint received by the Department will be made.

138. In relation to Child Protection Case Conferences where parents have concerns about the actions of a social work employee, that concern should be referred to the line manager of the staff member to be progressed through the complaints procedures. Where the concern relates to the decision of the Case Conference, then this should be referred back to the Conference Chair.

139. Enquiries on any of the above issues should be made to the relevant Head of Service, who will give advice on a case-by-case basis.

Section D: A Quick Guide

STAGE I: ACKNOWLEDGE, INVESTIGATE & RESPOND

STEP 1 – INFORMAL COMPLAINTS

- Deal with quickly and certainly well within **20** working days.
- Complete complaint form and log complaint and outcome in database.
- If complaint is complex, discuss with complainant a formal response and deal with as below.
- No review normally allowed.

STEP 2 -FORMAL COMPLAINTS

- Wherever received, acknowledge in **2 working days**, complete complaints form.
- Send to HofS for input on database and appointment of investigating officer.
- Investigate complaint and draft response to HofS in time for response in **20 working days** (or agreed timescale).
- If complaint upheld in part or whole, HofS completes Complaints Analysis Form.

STAGE II: REVIEW

- If complainant dissatisfied with formal response, s/he is entitled to request a review.
- For statutory complaints, review undertaken by Director. When review requested, HofS to clarify with the complainant, if necessary, reasons for dissatisfaction. Complaint passed to Director for review and response within 20 working days.
- For non-statutory complaints, review passed to the Chief Executive for signing off.
- N.B. Statutory complaints have right of referral to CRC after first response.

STAGE III: COMPLAINTS REVIEW COMMITTEE

- If still not resolved, complainant can refer to the CRC within **28 calendar days** of Director's final response.
- The CRC makes recommendations to appropriate Committee within **56 calendar days** of the complainant's referral to CRC.
- Council agrees actions and responds to complainant within **42 calendar days** of making recommendations

FINAL STAGE: EXTERNAL BODIES

- Complainants have a right of appeal to the Scottish Public Services Ombudsman normally within 12 months of the date of the original complaint.
- For services registered by the Care Commission, complaints can be sent directly to the local Care Commission Office.

Appendices

i. Legislative references

- *Social Work (Scotland) Act 1968 Section 5B*
- *NHS and Community Care Act 1990 Section 52*
- *Social Work (Representations Procedure) (Scotland) Order 1990 (NO 2519 (s213) and Directions (Circular SWSG5/1996)*
- *Children (Scotland) Act 1995*
- *Adults with Incapacity (Scotland) Act 2000*
- *Data Protection Act 1998.*

ii. The Complaints Review Committee

The Complaints Review Committee exists to examine, objectively and independently, facts presented by the complainant and the Department in relation to a complaint or the circumstances in which a complaint has been submitted. This is an additional safeguard to ensure that the needs and wishes of the complainant are being fairly considered and the complaints properly investigated.

The Committee consists of 3 persons. The chair must be an independent person and have knowledge of both social work matters and the conduct of proceedings before a review body or tribunal. The remaining members must have knowledge of at least one of these latter areas.

*An independent person is defined in the Circular as a **person who is not:***

- ® *a member of the political party forming the ruling group on the council or an officer of any local authority, and who has not been such a member or officer during the period of one year prior to being appointed to the Committee.*
- ® *a person who is a member of, or employed by organisations to which the local authority has delegated any social work functions*

The Committee performs two broad functions:

- a) *The review of a complaint where all avenues of redress have been explored by the local authority and the complainant remains dissatisfied with the response.*
- b) *The review of circumstances whereby the Department declares itself unable or unwilling to perform a full investigation or respond fully to a complaint and the complainant is not satisfied with the explanation given by the Department for this decision. This could be for example when the Department maintains the complainant is vexatious and that special dispensation should be given to allow it to refuse to respond to complaints, or the Department maintains that the complaint is part of an organised campaign placing an unreasonable burden on the complaints process.*

In relation to function a), the Committee will meet in formal session and receive both written and verbal submissions from the complainant, or her/his representative, and representative of the Department.

Requests for referral to the Committee under this provision may only be made by complainants.

In relation to function b), the Committee may decide to meet in closed session depending on the circumstances and review written submissions from the Department and the complainant. Requests for referral to the Committee under this provision may only be made by the Department.

Once a complainant has received a formal response to a statutory complaint, s/he may request review by the Complaints Review Committee. The complainant must refer the matter within 28 calendar days of receipt of the formal response from the Department. If they fail to do so, the Committee may either refuse to accept the referral or exercise discretion to accept the referral with due regard to circumstances.

In considering evidence, the Committee may obtain independent professional opinion before reaching a determination. Parties will be given a right of reply regarding any such opinion evidence obtained on behalf of the committee.

Complainants may obtain their own professional opinion and present this as part of their submission, providing they meet their own costs. Complainants can be represented at the Committee, but should be encouraged to be in attendance themselves.

The Committee is empowered to consider any and all matters that are referred to it but would not usually consider new issues, i.e. those not previously mentioned by the complainant or the Department during initial complaint, investigation, response or review of the complaint. Should either party seek to raise new issues at the Committee, it may decline to consider such evidence and may instruct the complainant that a new complaint must be submitted.

During the course of the Committee hearing, every effort should be made to resolve the complaint and the Committee should not adopt a degree of formality or inflexibility which may inhibit this primary purpose. This consideration may, at the discretion of the Committee, supersede the considerations outlined above.

In making a determination, the Committee should take into account Moray Council and the Department's policies, the priorities and resources in place and the professional judgement exercised by departmental staff in individual circumstances.

Where a complaint is upheld in part or whole, the determination of the Committee may include recommendations for:

- a) *An apology to be given by the Director of Community Services on behalf of the Department.*
- b) *Re-assessment of the service user's circumstances.*
- c) *Development of procedures or guidelines which are deficient or absent.*
- d) *Financial recompense to the complainant.*
- e) *Review of a contract with a Third Party Provider of social work services.*
- f) *Other steps necessary to offer the complainant redress other than those specified below.*

The Committee may pass comment on, (but not make specific recommendations in relation) to the following courses of action

- a) *Disciplinary action in relation to individual members of departmental staff.*
- b) *A change to policy that would result in the Department being in breach of legislation.*
- c) *Provision of a service that the Department has a power, but not a duty, to provide, unless it has been shown that the Department has acted contrary to its own stated procedures in failing to provide the service.*

Within 56 calendar days of the date the complainant requested reference to it, the Complaints Review Committee must make recommendations to the relevant Committee (either Children and Young Persons Services Committee or Health and Social Care Services Committee) which will consider its determination, and direct that actions be taken by the Director of Community Services. The Committee will have due regard to the independent status of the Complaints Review Committee and only reject its determination in exceptional circumstances (for example where acting in accord with the determination would place the Department in breach of legislation). If rejecting the determination of the Complaints Review Committee the Committee will publish the reasons in its minutes.

The Local Authority must agree actions and notify the complainant in writing of the decisions within 42 calendar days of the date the Complaints Review Committee makes its recommendations. The notification will advise reasons for any disregard of the Committee's determination. It will advise what further steps the complainant may take if still dissatisfied e.g. referral to the Scottish Public Services Ombudsman (see Appendix vi for contact details) or independent legal advice.

The deadlines specified above may be extended only with the agreement of the complainant.

iii. Public information

Notices should be displayed in all Social Work offices advising service users of their right to complain and giving details on how a complaint may be submitted.

Complaints leaflets should be available in all Social Work service units and offices and in all facilities where social work services are provided under contract to the Department.

Complaints leaflets should also be distributed to all local groups who represent service users, particularly providers of independent advocacy

On making a complaint, a complainant should be given a copy of the complaints leaflet. If none is available, staff should advise clients of the main points of the complaints procedure and offer to forward a copy of the complaints procedure to the complainant within five days, or to enclose one with the acknowledgement of a formal complaint.

Where the complainant has difficulty in communicating, in accessing or comprehending written information, staff should consider the need for representation or assistance in making a complaint. Offering to arrange such assistance is the first step towards resolving the complaint.

iv. Training

Training on the general principles of complaints handling and the main points of the procedure will be offered to all staff as part of Induction Training.

Training on the procedures will be given as a matter of course to all managers and staff likely to be involved in investigating or responding to formal statutory complaints.

v. Recording

All complaints will be recorded on the corporate database and on the individual complaints form.

The Complaints Analysis Form will be completed for every complaint part or wholly upheld.

Complaints analysis, outcomes, and targets will be reported to the Departmental Management Team on a quarterly basis.

Annual monitoring report will be submitted to the appropriate Service Committee and then to Audit and Performance Committee.

This report will identify:

- (a) Pattern of complaints e.g. volume; route and method of submission; representation; volume by ethnicity, location, service and client group and issue.*

- (b) *Outcomes i.e. early resolution; non-completion; findings; redress and reviews*
- (c) *Performance Measures: acknowledgements; response times and right of appeal.*

vi. Useful Contacts

*Chief Executive's Office,
Moray Council,
High Street,
Elgin
IV30 1BX
01343 563003*

*Director of Community Services,
Moray Council,
High Street
Elgin
IV30 1BX
01343 563531*

*Chief Legal Officer.
Moray Council,
High Street,
Elgin
IV30 1BX
01343 563011*

*Information Commissioner's Office-
Scotland
28 Thistle Street,
Edinburgh
EH12 1EN
0131 225 6341
scotland@ico.gsi.gov.uk*

*Scottish Public Services Ombudsman
4 Melville Street
Edinburgh EH3 7NS
0800377 7330
ask@spsso.org.uk*

*Care Commission, (local office)
Phoenix house,
1 Wards Road
Elgin IV30 1QL
01343 541734*

*Care Commission, (regional office)
Johnstone House,
Rose Street,
Aberdeen,
AB10 1UD
01224 793870
Lo-call 0845 600 8322*

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CIRCULAR NO SWSG5/1996 Desk Officer 5389

Replaces: SWSG5/91, Index Ref: F5

March 1996

Chief Executives: Unitary Authorities

Copy to: Chief Executives: Regional and Islands Councils

General Managers: Health Boards

General Manager: Common Services Agency

General Manager: State Hospital

Chief Executives: NHS Trusts

Directors of Social Work: Regional and Island Councils

Directors of Social Work and Chief Social Work Officers:

Unitary Authorities

Appropriate Professional and Voluntary Bodies

Holders of SWSG Guidance Package

Dear Sir/Madam

LOCAL AUTHORITY COMPLAINTS PROCEDURES

Summary

1. Guidance and Directions on the operation of complaints procedures in respect of social work functions were set out in Circular SW5/1991 of 20 February 1991. My letter of 30 June 1995 set out proposals to improve the procedures. Following thorough consideration of the comments on these proposals Annex A to this circular identifies changes which are required to improve the original procedures. Annex B contains the guidance in SW5/1991 amended as set out in Annex A. Annex C is the new Directions.

Action

2. This circular revokes SW5/1991. Authorities should make arrangements to implement the Directions set out in Annex C by 1 April 1996. They should take full account of the guidance provided in Annex B.

Authorities must inform Social Work Services Group by 31 May about the organisational arrangements established for complaints review committees (see paragraph 43 of Annex B) and provide contact details for a senior officer with responsibility for the complaints procedures (see paragraph 17 of Annex B).

Contact Point

3. Any enquiries about the terms of this circular or requests for advice should be directed to Mr Neil Rennick, Room 48c, at the above address or by telephone (0131 244 5389) [To holders of the SWSG Circulars and Guidance Package: This Circular should be placed in Section F5 of the volume containing "F, Community Care (Sections 3-10)" Circulars.] .

Yours faithfully

GAVIN ANDERSON

ANNEX A

THE SOCIAL WORK (REPRESENTATIONS PROCEDURE) (SCOTLAND) DIRECTIONS 1996 AMENDMENTS AND ADDITIONS TO GUIDANCE NOTES

1. The purpose of this guidance is to improve the operation of complaints procedures and particularly arrangements for Complaints Review Committees (CRCs). Aspects of the complaints procedure on which revised Directions and guidance have been considered necessary are set out below with reference to the relevant paragraphs in the guidance in Annex B.

Complaints Review Committee

2. Complaints procedures should involve 3 stages. In the first informal problem solving stage, every attempt should be made to mediate and resolve the complaint. In the second stage unresolved complaints should be formally recorded and investigated by specially designated staff. Where a complaint is upheld, authorities should endeavour to resolve the issue amicably. In the final stage the formal Complaints Review Committee (CRC) should aim to bring an objective and independent eye to bear on complaints to give the public additional safeguards that their wishes and needs are being fairly considered and their complaints properly investigated. This requires some element of objectivity and independence in the membership of CRCs. Complaints should only be referred to the CRC when all avenues of redress have been explored. The revised Directions and guidance address aspects of the status, membership and conduct of CRCs:

Status of Reviews and Local Government Reorganisation

3. The Scottish Office is concerned that CRCs should not develop a degree of formality or inflexibility which might inhibit resolutions being reached. Annex B provides guidance on the conduct of CRCs. (See paragraphs 39-41). Guidance is also provided on the status of CRCs with particular reference to the new local authority structures following the full implementation of local government reorganisation on 1 April 1996. (See paragraphs 42-43).

4. The question of whether complainers should be present at reviews, or if a voluntary organisation or other advocate might represent them is also considered. (See paragraph 46).

Membership, Experience and Training of Review Committees

5. The Social Work Services Inspectorate monitoring report "18 Months On" published in 1993, reviewed the appointment of independent persons to CRCs. The criteria used for selecting independent people varied considerably between authorities as did the process for selection. Some authorities have chosen professional social work staff from other authorities as their independent persons. Such persons are independent within the definition of the current Directions, but may not be seen as independent by complainers or the public at large. They may have a useful specialist contribution to make to the review process. However, if nominated as "independent persons", they may be construed as reflecting the interests of the employment body or the social work profession. Good practice is more likely to be achieved if more obviously independent persons are nominated. The Directions and guidance address this. (See paragraph 44).

6. Revised guidance is also provided on the experience and knowledge which CRC members should have and the importance of on-going training. (See paragraph 45).

General Issues

7. In addition to guidance on the arrangements for Complaints Review Committees the revised Directions and associated guidance respond to a number of more general issues and concerns raised about the operation of the complaints procedures.

Local Authority Response Times

8. In light of experience and a fuller understanding of the processes involved, it is now considered unreasonable to deal effectively with complaints within the times detailed in the original Directions. The attached Directions, therefore, introduce new time limits by which notification of substantive action must have been made. (See paragraph 32).

Confidentiality

9. The need to safeguard information that is subject to confidentiality, whether it relates to the complainer, a member of staff or a third party, is a vital feature of the complaints procedures. Additional guidance on confidentiality during the complaints process is provided in Annex B. (See paragraph 34).

Complaints Procedure Eligibility

10. Clarification has been sought on whether people who have made private arrangements for their care (eg self-financing the care costs in a private nursing home) and those receiving services from independent organisations under contract from a local authority are eligible to use the authority' formal complaints procedures. This is addressed in the guidance. (See paragraph 55).

Judicial Actions - Postponement of Reviews

11. Concern has been expressed about proceeding with complaints where the subject of the complaint is being pursued through legal action. The revised Directions and guidance address this question. (See paragraph 47).

Persistent Complainers and Orchestrated Campaigns

12. Local authorities have expressed concern about the difficulty of responding to unreasonably persistent complainers and the pressure which orchestrated campaigns can put on the complaints procedure. Guidance is provided in Annex B on responding to persistent and multiple representations. (See paragraphs 36-37).

Information to Complainers

13. The provision of information on the operation of the complaints procedures will assist complainers in being aware of how their complaint will be considered and will assist them in judging whether they have a sound basis for complaining. The revised Directions extend the range of information which local authorities should make available to complainers. (See paragraph 24).

Compensation

14. The question of whether or not compensation should be offered to complainers where the complaints procedure has found in their favour has been raised. This is addressed in the guidance. (See paragraph 48).

Publishing Results of Complaints

15. Service users and their carers need to have confidence in the complaints procedures. Publishing the results of complaints and the action taken will assist authorities in demonstrating that they deal with complaints seriously and fairly. Guidance on the publication of the results of complaints is provided in Annex B. (See paragraph 49).

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ANNEX B

NATIONAL HEALTH SERVICE AND COMMUNITY CARE ACT 1990 LOCAL AUTHORITIES COMPLAINTS PROCEDURES

Purpose

16. This Annex provides advice to local authorities on the operation of a complaints procedure in respect of their social work functions. The guidance amplifies the revised Directions issued by the Secretary of State (attached at Annex C) and additional matters raised in Annex A.

Statutory Background and Commencement

17. Section 52 of the National Health Service and Community Care Act 1990 inserted section 5B into the Social Work (Scotland) Act 1968 giving the Secretary of State powers to require local authorities to establish procedures for considering complaints with regard to the discharge of their social work functions. The Social Work (Representations Procedure) (Scotland) Order 1990 (No 2519 (s213)) was made by the Secretary of State on 8 December 1990 requiring local authorities to establish such procedure in respect of all their social work functions whether now or in the future, including those for children.

18. Section 5B provides for complaints to be made by or on behalf of:

18.1 a person for whom the local authority provides a service either directly or indirectly;

18.2 a person whose request for such a service has been refused by the authority;

18.3 other persons whose need or possible need for a service, which the local authority has a power or a duty to provide, has come to the authority's attention.

19. The entitlement of persons to complain or make other representations on behalf of others is intended to cover, inter alia, the position of private carers providing care to persons for whom authorities have a power or duty to provide social work services. (A private carer is defined in section 5A of the 1968 Act, as inserted by section 52 of the 1990 Act, as a person who provides care which he is not employed to provide.) An entitlement to complain on behalf of children in care, under supervision, in receipt of some other social work service or in possible need of such a service from the local authority, is expressly given to the child's parents and other persons mentioned in section 5B(4).

20. The guidance contained in this circular relates to the Social Work (Representation Procedure) (Scotland) Directions 1996, attached at Annex C, which revoke the previous Directions issued in 1990. Local authorities should establish procedures for dealing with complaints within the mandatory framework provided by the Directions. The guidance does not add to, or detract from the Directions themselves, but describes the approach which local authorities should follow in giving effect to them.

Complainant's Rights

21. The existence of the complaints procedure does not affect any rights an individual might have under Part II of the Local Government (Scotland) Act 1975. The Local Government Commissioner may therefore investigate a complaint about local authority maladministration where the complainer is not satisfied with the conduct or outcome of the authority's own investigation. He is not, however, empowered to investigate the policy adopted by a local authority or the merits of any decision taken by it without evidence of maladministration.

Local Government Reform

22. The new unitary authorities will inherit responsibility for resolutions of individual complaints on the basis of the geographic location of the service user at the time to which the complaint relates.

Authorities should aim to have as few unresolved complaints as possible outstanding at 31 March 1996. Where there are unresolved complaints, the new authorities must make complainers aware of this transfer of responsibility. Where a continuing complaint is referred to a Complaints Review Committee after 31 March 1996, the new arrangements set out in this guidance and Directions should apply. (See paragraph 38).

23. A number of local authorities will already have established complaints procedures and many social work staff will be experienced in handling complaints. The arrangements which authorities develop in response to the revised Directions and guidance should form a natural extension or adaptation of existing arrangements.

Definitions

24. In this circular:

"complainer" means the person from whom representations or a complaint is received whether he is acting on his own behalf or on behalf of another person. The term has legal connotations. It is used in the directions and has therefore been adopted throughout;

"complaints procedure" refers to the arrangements authorities make in response to the requirements of section 5B of the Social Work (Scotland) Act 1968 and directions made by the Secretary of State;

"nominated officer" means the officer responsible for looking into the complaint in accordance with paragraph 19. The choice of person for such appointments is considered in that paragraph;

"representations" include complaints and may relate to matters which do not directly affect the person who makes them ie where they are made on behalf of someone else. The circular refers in the main to complaints but extends to other representations as well; for the sake of simplicity, the term "representations" is not mentioned alongside "complaints" on each occasion where that term is used in this circular. (The directions and order refer solely to "representations" which are defined in the directions to include "complaints");

"social work committee" refers to the committee established by local authorities with principal responsibility for dealing with social work matters.

Informal Complaints

25. The procedures which local authorities develop in response to this circular and Directions will only deal with complaints or other representations which are made in writing or orally under the terms of paragraph 8 of the Directions. Local authorities should have in place suitable arrangements for responding to informal representations as referred to in paragraph 3 of the Directions. Where a person making a complaint chooses not to take the matter further or shows willingness to have the matter resolved through informal discussion, such representations should nevertheless be treated seriously with a record being made of the withdrawal of the complaint or such other exchanges as may occur.

26. The terms of the directions and of this guidance allow local authorities a wide measure of discretion in developing procedures which can be operated flexibly on an administrative basis. General arrangements may require to be adjusted to fit particular local circumstances, so long as the rights of the complainer to fair and full consideration of his or her case are maintained. There will be occasions, for example, where the circumstances of the case require that some stage in the customary procedure should be bypassed, or possibly a quite different route taken. Where, for example, serious allegations are made, eg ones implying dishonesty or professional incompetence, senior staff must be involved at the outset. Where such allegations suggest that a criminal offence may have been committed the police should be informed.

Subjects Covered by Complaints Procedures and Review Arrangements

27. People with social care needs and their carers are entitled to have a second look at assessments, service decisions and the way in which matters have been handled. It is a clear aim of Government policy, reflecting the Citizen's Charter, to expose procedures and professional decision-making to more scrutiny than hitherto and it would be inconsistent with that policy to restrict the types of case to which complaints procedures relate. Local authorities can have alternative appeals arrangements for responding to certain types of complaints. However, complainers must have the right to refer their complaint to the formal complaints procedure at any stage, and should be made fully aware of this right.

28. The complaints which will form the material for the procedures to which the directions and guidance will apply will in the main be made by or on behalf of users or carers about the provision or non-provision of services, the quality and extent of services, the operation of services and

allied issues. Such matters should not be confused with ones that fall to be dealt with under:

- grievance procedures, which concern staff issues, ie conditions of service, management and support; or

- disciplinary procedures which apply to the actions of staff in relation to failure to comply with codes of conduct, practice, instructions or other relevant professional or administrative guidance.

29. Guidance on complaints about services which are provided by a third party on behalf of a local authority is provided at paragraphs 51-55 below.

Procedural Requirements

Key Principles

30. The amended or new procedures and other arrangements which local authorities establish to respond to complaints regarding their social work functions should extend fully to each of the elements dealt with in the Directions and the further points included in this guidance. Whether establishing new procedures or adapting existing arrangements, local authorities should follow the principles set out below:

30.1 there should be ease of access to enable clients or their representatives to make their views known;

30.2 there should be clearly indicated means of challenging decisions on service provision/non-provision or other matters of concern to service users;

30.3 complaints should be acted upon;

30.4 no officer should be involved in investigating a complaint relating to his or her own actions or judgement;

30.5 complaints should be resolved as quickly and as close to the point of service delivery as possible;

30.6 the procedures should inform local authority managers and the committee with principal responsibility for social work matters about the extent to which quality assurance and service objectives are being achieved.

Consultation on Proposals

31. Complaints procedures should be developed and introduced in ways that will ensure that they are equally well understood and accepted by staff, elected members, service users and their representatives alike as well as by health care workers and others who are in close contact with the persons receiving or in need of social work services. Plans for considering and implementing the necessary arrangements should take account of the need for consultation with staff at all levels and with voluntary and other organisations with an interest (including organisations representing carers). Adherence to the principles of the Race Relations Act 1976 and other equal opportunities legislation will be essential: the need to deliver services with proper regard to the cultural diversity of certain areas will require consultation with appropriate community groups.

Staff Appointments

32. Whatever the range of appointments or designations made under paragraph 4 of the Directions a senior officer of the social work department should always be given overall responsibility for the organisation and effectiveness of the authority's complaints procedure. The duties of this post might include responsibilities for:

32.1 the appointment of other officers for purposes of receiving and investigating representations and the co-ordination of responses (paragraph 4 of the Directions);

32.2 the setting up, resourcing and monitoring of the procedure;

32.3 the direction and oversight of the arrangements made for informing staff of the complaints procedure (paragraph 5 of the Directions) and for more general training;

32.4 the preparation and dissemination of information to the public in accordance with paragraph 6 of the Directions;

32.5 the collation of data on the operation of the complaints system and the provision of data to the appropriate local authority committee and to line managers (see paragraph 50).

33. Paragraph 4 of the Directions allows that any number of appointments can be made for the purposes indicated in paragraph 17.1 above. The bulk of appointments are likely to be of officers who are able to receive complaints. In all cases it will be important that the organisation of the Social Work Department allows for the establishment of clear links between the management of the complaints procedure, operational management and responsibility for inspection work and other elements of the quality assurance system.

34. Complaints should be investigated by an officer nominated for the purpose, whether for a general category of complaint or for a specific occasion. (In many cases where the action or decision of a particular officer is concerned the task may fall to the line manager). In serious cases the nominated officer may be a more senior officer than would normally be involved or even an officer from a different area or a person from outside the local authority.

Training

35. Authorities should ensure, through appropriate training, that all staff understand the complaints procedure which is to be brought into operation in their area and the responsibility it places on them, and should seek to secure their commitment to it. Staff with special responsibility for the operation of the procedure will include those likely to be called on to support complainers and may require special training in the skills they will need to do their job effectively.

36. Authorities should also ensure that all elected members and social work staff who may have contact with service users are aware of where information on the complaints procedures can be accessed and a contact location for registering complaints.

Position of Elected Members Receiving Complaints

37. The complaints procedure should not affect in any way the right of individuals or organisations to approach their local councillors for advice or assistance. The procedure should, however, indicate clearly how complaints made to councillors which cannot be resolved on the spot should be handled. It is preferable that complaints are investigated in the first instance by the agency providing the service.

Information About Complaining

38. Paragraphs 6 and 8 of the Directions deal with the accessibility of complaints procedures. All local authorities should ensure that information about how and where complaints can be made is available for people who are either directly or indirectly receiving a social work service, or have been refused such a service or the carers or other representatives of such persons. Notices should be displayed in authorities' offices and leaflets should be widely available giving the name, address and telephone number of an officer nominated in terms of paragraph 17.1 above, or of the person responsible for oversight of the procedure as a whole.

39. As local complaints procedures give full consideration to whether procedures or actions complained against have been carried out in a proper manner, it is important that complainers are made aware of the procedures which are followed. Local authorities, on receipt of complaints, should provide all complainers with leaflets which set out the following:

39.1 the investigative procedures which the authority will follow including how confidentiality will be maintained, how conclusions will be reached and recommendations made;

39.2 a clear statement that making a complaint will not result in discrimination and that if discrimination does occur that they should make a further complaint.

Where it is relevant to the complaint, information should also be provided on:

39.3 the procedure for assessing a person's care needs;

39.4 the procedure for devising a care plan for a person's assessed care needs; and

39.5 information on how an independent advocate can be made available.

Such information will assist complainers in being aware of the procedures and they will be better placed to consider whether they have a sound basis for complaining.

40. Supplies of all relevant leaflets should be provided to all organisations providing social work services under contract from the local authority (including those located in other areas) and to other independent organisations to which individual service users might turn to for advice. Authorities should consider whether versions of leaflets should be made available in minority languages, on tape or in braille.

41. Authorities may wish to discuss with voluntary organisations and other local groups how information about the complaints procedure should be made available to persons who might have difficulty in gaining access to a written explanation of the procedure or in understanding it. Particular attention should be given to the information needs of children, persons with sensory handicaps, the housebound and people who may have reading problems.

Dealing with Complainers

Oral Complaints

42. Paragraph 8 of the Directions allows for formal complaints or other representations to be

submitted either orally or in writing. Oral representations should, therefore, be treated seriously. If it appears that an oral complaint is being made which cannot readily be resolved by informal means the officer receiving the complaint should suggest that the matter is recorded. This can be done by the complainer or the person receiving the complaint putting it in writing. Unless it is clearly impossible to do so, the text of a complaint recorded on behalf of complainers should be fully agreed with them.

Assistance to Complainers

43. There will be occasions where a complainer (or potential complainer) will need help, advice or support from another individual or from an outside agency in framing or pursuing a complaint. An offer of support and the opportunity to explain and discuss a concern may help resolve complaints more quickly than might otherwise be the case. Authorities may particularly wish to arrange support where language or other difficulties impede communication.

Complaints on Behalf of other Persons

44. It should be possible for representations to be accepted on matters other than those directly affecting the person making them and for representations to be made by or on behalf of a group of persons, provided this is not a campaign which places an unreasonable burden on the complaints procedure (see paragraph 37 below). Where someone seeks to act with or on behalf of another person the authority will wish to ascertain their status and the authority on the basis of which the person seeks to act. In any case involving the possibility of legal representation a decision will have to be made whether the complaint can properly be subsumed within the complaints procedure or dealt with in some other way. While regard should always be had to the duty under paragraph 7 of the Directions to provide appropriate help to a person in making representation this need not extend expressly to assistance with the selection of a representative.

45. It will be necessary for clear decisions to be reached on whether the complaint being made is a new one or an attempt to revive one that has already been considered and disposed of. Complaints should only be registered once it is clear that the complainer wishes to embark on the complaints procedure.

46. The aim at all stages in the procedure should be to avoid delay, maintain due confidentiality and to keep the complainer properly informed. Where a complaint is recorded a member of staff might offer to discuss it with the complainer at an early opportunity in order to clarify when and how the authority may respond. A prompt initial response will increase the possibility of the local authority reaching a final outcome which is satisfactory both to the complainer and the authority.

Local Authority Response Times

47. The attached Directions, introduce new time limits (in calendar days) by which written notification of substantive action must have been made, namely:-

47.1 an acknowledgement that the complaint has been received and is being considered within 5 days of receipt of the complaint. (See paragraph 10(1) of the Directions);

47.2 a response on the substance of complaints within 28 days of receipt of the complaint (see paragraph 10(2) of the Directions);

47.3 review committee to make recommendations within 56 days from the date the complainer requested reference to it (see paragraph 10(4) of the Directions);

47.4 local authority to agree actions and to notify the complainer in writing of such decisions within 42 days from the date of recommendation by the Complaints Review Committee (CRC) (see paragraph 10(5) of the Directions).

Any extensions to the above deadlines must be agreed between the complainer and the local authority.

48. The requirement in paragraph 10 of the Directions that the local authority should have arrangements for informing the complainer in writing about the outcome of its investigations is without prejudice to any similar notification which the local authority may consider it appropriate to give to others who have a legitimate interest in a complaint. Such persons could include members of staff who may be involved in providing services to the client or who may themselves be the subject of the complaint. The authority will need to bear in mind the rights of staff including the need to observe confidentiality in respect of their interest.

Confidentiality

49. Complainers may request that their identity is not disclosed when a complaint is made. Authorities should provide in their procedures for complainers being aware of their right to request anonymity other than from the officers investigating their complaints. Complainers should be

made aware of the implications of retaining such anonymity on the ability of authorities to investigate complaints adequately.

50. During the course of investigating a complaint a local authority may have to consider the (sometimes) conflicting requirements of the need to make information available to the complainer and the need to safeguard information that is subject to confidentiality. When an authority is asked to disclose information which is confidential it should explain carefully to the complainer what information is confidential, why it cannot be disclosed and what remedies the complainer has available. These include pursuing the complaints procedure without access to the confidential information (and to which the members of the CRC will have no access), referring the matter to the Commissioner for Local Administration in Scotland or seeking a legal remedy to the complaint. Complainers may request access to their personal files to enable them to pursue their complaint. In responding to complainers seeking access to their personal files, authorities are reminded that:

50.1 The complainer has no right of access to personal information held on personal files about a third party, unless the third party has given consent.

50.2 The intentions of the social work department, in respect of any individual to whom the complaint refers, are not "personal information"; they are not subject to the Code on Confidentiality of social work records.

Restrictions on the disclosure of information about a third party may prevent sufficient information being made available to allow a CRC to make an informed decision about a complaint. The Directions allow for the suspension of a complaint in such circumstances. Any such decision must be referred to a CRC for ratification. Detailed guidance on confidentiality and access to personal records should be consulted if preparation of investigation of a complaint may conflict with confidentiality requirements [SWSG SW1, Code on Confidentiality of Social Work Records, 6 February 1989 SWSG SW2, Access to Personal files (Social Work) (Scotland) Regulations 1989, 10 February 1989] . Any personal Information which is provided should be in a form which reflects the complainer's needs (eg Braille or minority language).

Unreasonably Persistent Complainers

51. Paragraph 3.58 of the Citizen's Charter Complaints Task Force Report "Putting Things Right" states:

"Guidance on handling continual and vexatious complainants should be set out in the formal complaints procedures of the organisation... There has to be a cut-off point, though this should only be reached after careful review of the complainant's case and with management support. Any continuing correspondence should be checked to ensure that it does not contain new issues which merit a response and that the complainant must be told of the next stage of the review of their complaint (if there is one)."

Authorities are expected to take this sort of action in dealing with unreasonably persistent complainers, ensuring that they can justify a decision to put a complainer into this category. Details of all cases in which such action is taken should be referred to a CRC. Persistent complainers should also be informed of how they can progress their complaint further (eg through the Local Government Ombudsman or the Courts).

Complaints Campaigns

52. Complaints should be "individual" and treated as such. Authorities should refuse orchestrated campaigns which would put unfair pressure on their complaints procedures. Details of decisions to refuse orchestrated campaigns should be passed to a CRC for ratification. Authorities should also consider alternative arrangements for responding to such complaints.

Review Arrangements

53. Paragraph 10(2) of the Directions requires that where a complainer is not satisfied with the response he receives in respect of a complaint and wishes the matter to be referred to a review committee this should be done forthwith. The role of CRCs is to examine objectively and independently the facts as presented by the complainer and by the local authority, then to make a recommendation to the appropriate local authority committee. In doing this, the CRC should be aware of local authority policies, priorities, and resources and should recognise where professional judgement has been exercised. The CRC may express disagreement with any of these in relation to a case under review. The strength of CRCs is in their independence and objectivity and the fact that they are not comprised of professionals and officials from the department to which the complaint relates. On professional matters the CRC may sometimes

wish to obtain an independent professional opinion before coming to a view about the reasonableness of the complaint. Complainers are free to call for, and meet the costs of, their own professional opinion. However, it is preferable if a single independent professional opinion can be agreed.

Status of Reviews

54. CRCs must be conducted formally and have regard to generally accepted procedures which accord with natural justice. They should, while considering the basis of a complaint, take any opportunities which arise to resolve it. CRCs should not, therefore, develop a degree of formality or inflexibility that may inhibit the objective of facilitating a resolution.

55. CRCs should consider not only the manner in which decisions have been arrived at, but also decisions about assessment and service provision made on the basis of local authority policies or the professional judgement of local authority staff. Where independent professional advice has been sought by the CRC, details of this should be provided to the committee responsible for social work with their recommendations.

56. In considering recommendations from CRCs, local authority Committees responsible for social work matters should have regard to the standing of CRCs and only reject recommendations in exceptional circumstances. Where such a local authority committee does disregard the recommendations of a CRC the local authority must ensure that the reasons are published in the committee minutes and given to the complainer in writing with advice on what further steps may be taken with regard to the complaint eg reference to the Commissioner for Local Administration in Scotland.

Local Government Reorganisation

57. The Local Government etc (Scotland) Act 1994 repealed the statutory requirement placed upon local authorities to establish social work committees but they will nevertheless be required to set up appropriate organisational and management structures to meet statutory obligations in relation to the social work function. Local authorities will wish to ensure that CRCs fit into these structures - for example, by making the CRC a sub-committee of the committee established to deal with social work matters. Some authorities may have few references to a CRC. Authorities should consider with neighbouring authorities the feasibility of joint training and of having a single CRC covering more than one council area. A representative, official or member from the local authority involved in each complaint might attend to provide advice on the authority's policies, priorities and resources (but not to vote).

58. Authorities should be clear, however, that under the new arrangements for local government, and under the terms of the attached Directions, there is no statutory duty placed upon them to make CRCs formal sub-committees of the social work committee or other committee set up to deal with social work matters or the full Council itself. Authorities can be flexible, therefore, in determining committee structures but, in line with a Scottish Office commitment to monitor the new arrangements, authorities should inform Social Work Services Group by 31 May 1996 of the specific organisational arrangements put into place. Authorities should note that where a CRC is to be a sub-committee of a formal committee established to deal with social work matters, there is no statutory requirement that membership should include elected members.

Independent Representation on Review Committees

59. The Directions set out requirements on the appointment of "independent persons" to CRCs. Independent persons should not currently be, or have been in the one year prior to being appointed to the review committee, a member or official of any local authority. People who are employed by organisations to which the local authority have delegated any of their social work functions cannot act as independent persons and the spouses of such members, officials or employees are similarly restricted. There is no restriction on 2 or all 3 members of a CRC being independent persons, but paragraph 14(2) of the Directions requires that CRC chairpersons must be independent persons. These arrangements should encourage complainers' confidence in the impartiality of CRC proceedings.

Membership, Experience and Training of Review Committees

60. In view of the need to promote client confidence, it is important that Chairpersons of CRCs should be, and should be seen to be, independent of the local authority. Public advertising for independent members and announcements of appointees' backgrounds will increase this confidence. Chairpersons should have knowledge of social work matters and the conduct of proceedings before a review body or tribunal. Members of CRCs should have experience of at

least one of these areas. Chairpersons of CRCs should not be current elected Members of the ruling group in the council or Officials of any local authority nor have been so during the year prior to taking up their appointment. These measures are addressed in the Directions and should help service users and their carers to be confident in the impartiality and expertise of CRCs. Authorities should provide ongoing training to Chairpersons and Members where necessary. Public confidence is a vital component if a complaints procedure is to be successful.

Complainer Representation at Review Committees

61. Some voluntary groups wish to represent complainers at CRCs without the complainer being present. The Scottish Office considers that it is generally desirable for complainers to be present, even if some form of advocacy is necessary because of a client's degree of disability or sensory impairment. Independent advocacy should be promoted, in keeping with the intended impartiality of these reviews.

Judicial Actions - Postponement of Complaints

62. It would generally be inappropriate for a complaint procedure to continue when it became clear that the subject of a complaint is being pursued through legal action, for example, claims for custody of children or an action for damages. Similarly, it would be inappropriate to proceed with a CRC, where other statutory procedures are being followed in dealing with the complaint, for example, a children's hearing. The Directions allow postponement or suspension of CRC in such circumstances. Complainers should be informed at the outset of their complaint that the pursuit of legal action may result in their complaint being suspended. Where this occurs the complainer must be informed.

Compensation

63. Under Section 83 of the Local Government (Scotland) Act 1973, local authorities have the power to incur expenditure in appropriate circumstances, subject to overall restrictions. This power may be used to make payments on an ex gratia basis. Such payments would not, however, create a general precedent for the payment of compensation under the complaint procedures. The Scottish Office would not wish to encourage procedures based on compensation. With a conciliatory approach, it should be possible, in most cases, to reach conclusions acceptable to the complainers. Whether, on the basis of the findings, an authority agrees to offer compensation in a particular case where this seems justified and the level of the compensation are matters for the authority.

Publishing Results of Complaints

64. Authorities need to be able to demonstrate that they deal with complaints seriously and fairly. Publishing the results of complaints and the action taken to put things right as a result, can help to show that authorities are willing to admit when they are in the wrong. Publication can take the form of listings giving brief descriptions of complaints, results and actions where appropriate and these should be available for inspection in public offices of the authority. However, authorities must ensure that the identity and location of complainers remain confidential. The Directions specifically address publication of reasons why a CRC recommendation is to be disregarded. The actual arrangements for publication should be notified in the general leaflets describing authorities' complaints procedures.

Monitoring

65. The operation and effectiveness of complaints procedures should be subject to carefully planned monitoring. Systems should be devised locally to provide for:

- the dissemination of information about the numbers and types of complaints received;
- the use of the information as a measure of performance and means of quality control;
- the referral of data on complaints about services subject to particular forms of regulation to that part of the local authority with relevant oversight responsibilities. This could include the authority's inspection unit or, in the case of services purchased under contract, the unit responsible for monitoring the contract.

Information about representations that are resolved informally will also be of relevance to the monitoring process.

66. Where representations raise policy, resource management or staffing issues, line managers should be informed. Reports on the use made of the complaints procedure and the outcome of complaints should be made to the social work committee, and will be open to inspection by members of the public in terms of the Local Government (Access to Information) Act 1985.

Complaints about services provided by third parties on behalf of the local authority

67. Services provided by third parties on behalf of the local authority remain functions of the local authority. The complaints procedures which authorities are required to establish will thus necessarily extend to those social work services which voluntary organisations or other persons or bodies undertake to provide under contract to the local authority. Local authorities will however be able to delegate the handling of initial complaints (including responsibility for investigating as well as receiving complaints) to the service provider along with the provision of the service itself: in such cases the authority's complaints procedure should have regard to arrangements which the service provider has established for dealing with complaints about his own services.

68. Direction 12 imposes certain specific requirements on the local authority in such cases so as to integrate the third party's procedures with those of the authority itself. These requirements are:

68.1 that the local authority shall itself ensure that information on the third party's arrangements for the handling of complaints is made available to actual and prospective service users. (Paragraph 12(2) of the Directions);

68.2 that, where the authority has given responsibility for investigating and considering complaints to a third party acting on its behalf, the complaints made and the response in each case provided should nevertheless be reported to the authority (paragraph 12(3) of the Directions); and

68.3 that where complaints are dealt with by a third party as in sub-paragraph 53.2 above, arrangements should be made as necessary and practicable, irrespective of the precise responsibility of the third party for dealing with the complaint, for the receipt and onward transmission of the complaints to the local authority and for assistance to be given by the third party to persons wishing to make complaints (paragraph 12(4) of the Directions).

69. These requirements are made so as to give local authorities the necessary degree of flexibility in the arrangements they will have to make for the handling of complaints in respect of the services provided by third parties if they decide to delegate any responsibilities in the way described in paragraph 52 above. It will be essential in all cases that the local authority should establish very clearly what the limit of any delegation will be in relation to receipt of complaints, the handling of investigations and the provision of responses. The extent of the duties so defined should be indicated to the third party and should form a part of the contract or other arrangement for the provision of service. It will not, of course, be possible for third parties to have any role in the referral of a complaint to a review committee under paragraphs 10(2) of the Directions and this point should be made clear in the publicity which the local authority, or any third party acting on its behalf, gives about this element of the complaints procedure.

People Financing Their Own Care Arrangements

70. Unless the arrangements have been made by a local authority (paragraph 12 of the Directions) or the complaint relates to a failure by the local authority to make appropriate arrangements, it is clear that a person financing his or her own care, whether residential or not, can only use the providing organisation's complaints procedure. Local authorities may wish to consider whether it may be appropriate to make it a condition of registration that providing organisations have in place appropriate procedures for complaints. Where residential care or nursing care is involved, he or she can raise the problem, if relevant, with the local registration authority (Health Board for private nursing homes). Notification to a registration authority would not allow access to the local authority's or Health Boards' formal complaints procedures but would be dealt with as a matter for inspection, if relevant.

Complaints to the Mental Welfare Commission

71. Individuals with a mental disorder have statutory rights to local authority services under the Mental Health (Scotland) Act 1984. Complaints to an authority made by, or on behalf of, such an individual may also be referred to the Mental Welfare Commission for Scotland. The Mental Welfare Commission will normally not consider such cases until the appropriate local authority procedures have been completed.

Special Cases

(a) Interagency Assessments

72. The assessment of community care needs on an inter-agency basis may raise particular issues as regards the notification of decisions and any complaints or other representations arising in this connection. Similar issues may arise in relation to the inter-disciplinary assessment of children. Consultation between statutory or other agencies may be called for where a complaint concerns a decision reached following an assessment in which the second authority or agency

was involved and which dealt with matters for which that other body has some responsibility.

(b) Criminal Justice Social Work Services Funded 100% by Central Government

73. Where a complaint relates to services in the criminal justice system provided by a local authority with the full cost reimbursed by the Secretary of State (community services orders, probation supervised attendance, parole and other supervision of offenders and the preparation of social enquiry and other reports to the courts), the normal complaints procedures established for the purpose of Section 5B will, except in respect of Breach Proceedings, apply. In cases where the offender has been advised that breach action has been initiated he/she may only raise any complaints they have regarding such breach action or procedure with the court. In such circumstances the local authority complaints procedure may not be invoked. To assist the Secretary of State in monitoring performance in relation to the National Objectives and Standards for these services, the local authority should send to SWSG Criminal Justice Social Work Services Branch at quarterly intervals -

- a. a copy of each complaint received in writing, or recorded on the complainer's behalf;
- b. a copy of the letter notifying the complainer of the outcome; and
- c. where the complainer is dissatisfied with the outcome, notification of that fact and of the result of any review of the decision which then takes place.

(c) Prison-based Social Work Services

74. Complaints about prison-based social work services will be progressed through the social work department's standard complaints procedure, but social work managers must bear in mind the particular sensitivities of the prison setting. The Governor of an establishment must, therefore, be advised of any complaint which may have implications for prison security, discipline or good order, and any complaint involving allegations of criminal conduct. It should be noted that apart from those individuals and bodies who have a legal right of access, Governors retain the right to exclude individuals from entry to the prison and may choose to exercise this right in respect of any local authority staff member who is the subject of a complaint.

ANNEX C

THE SOCIAL WORK (REPRESENTATIONS PROCEDURE) (SCOTLAND) DIRECTIONS 1996

The Secretary of State, in exercise of the powers conferred on him by section 5B(6) of the Social Work (Scotland) Act 1968 [1968 c.49. Section 5B was inserted by section 52 of the National Health Service and Community Care Act 1990 (c.19) and will be amended from 1 April 1996 by the Local Government etc (Scotland) Act 1994.] and all other powers enabling him in that behalf, hereby gives the following directions to local authorities:-

Citation and Commencement

75. These Directions may be cited as the Social Work (Representations Procedure) (Scotland) Directions 1996 and shall come into force on 1 April 1996.

Procedure to be Adopted

76. The procedure shall conform to the requirements specified in these Directions, and otherwise shall be such as local authorities may determine.

Saving for Informal Representations

77. The procedure shall not prejudice any right of persons to make representations to any officers or members of the local authority, or to any right of such officers or members to deal with representations by other methods evolved by the local authority outwith the formal complaints procedure.

Designation of Officers to Deal with Representations

78. The local authority shall designate -

- (a) an appropriate number of officers for the purpose of receiving representations; and
- (b) one or more officers for the purpose of investigating representations and co-ordinating consideration of, and response to, representations.

Informing Staff of the Procedure

79. The local authority shall ensure that their officers concerned with the discharge of their social work functions are informed about the procedure and are able to give information about the procedure to persons who may wish to make representations.

Informing Service Users of the Procedure

80. The local authority shall take steps to make information about the procedure available to persons specified in section 5B(2) of the Act and to persons who may advise or act on behalf of such persons. This shall be available in an accessible form, such as a leaflet and shall include details in general terms about the investigative procedures which the authority should follow. It should contain information on advocacy services and make clear complaining will not lead to discrimination.

Help in Relation to Making Representations

81. (1) Where upon informal representations by any person specified in section 5B(2) of the Act, or acting on behalf of such a person, a matter is not dealt with to the satisfaction of the person who made the informal representations, the local authority shall advise him of the right to make representations and how they can be made, including the addresses and telephone numbers of premises where they can be received.

(2) A local authority shall offer advice and guidance on the use of the procedure to persons specified in section 5B(2) of the Act, or acting on behalf of such persons, who wish to make representations and where appropriate shall help them in formulating and writing down representations.

(3) This Direction is subject to Direction 12(4) where it applies.

Form and Submission of Representation

82. Representations shall be made in writing or orally and shall (subject to Direction 12(3) where it applies) be submitted to the local authority at such place or places as the local authority shall designate.

Records

83. A local authority shall keep a record of the submission, the contents and the disposal of representations. Written records of initial oral complaints should be agreed with complainers or their representatives.

Matters to be Included in the Procedure

84. Local authorities shall ensure (subject to Direction 12(5) where it applies) that the procedure includes provision to the following effects:-

(1) that an acknowledgement in writing that a representation has been received and is being considered shall be issued within 5 days after receipt of the representation;

(2) that a response in writing to the substance of any representations shall be issued to the complainer as soon as reasonably practicable and within 28 days after receipt of the representations;

(3) that if a complainer within 28 days of receiving a response in writing to the substance of his representations informs the local authority in writing that he is not satisfied with the response and wishes the matters to be referred to a review committee the matter will be referred forthwith to a review committee for review;

(4) that the review committee shall make recommendations in writing to the social work committee or other responsible committee of the local authority as soon as is reasonably practicable and within 56 days after the complainer has requested reference to it;

(5) that the local authority shall as soon as is reasonably practicable and within 42 days of receiving the review committee's recommendations decide what action to take and notify the complainer in writing of that decision and, where a review committee recommendation has been disregarded, the reasons for doing so;

(6) that where a local authority disregards a recommendation of the complaints review committee, the reason for the decision are given to the complainer in writing accompanied with any relevant advice and also appear in full in the minutes of the relevant meeting of the responsible committee of the local authority and are made available for public scrutiny;

(7) that where a local authority or a complainer wishes to extend the period for completing any of the above procedures, this must be agreed by both the local authority and the complainer.

85. Local authorities shall further ensure that the procedure in relation to a referral of a matter to a review committee includes provision to the following effects:-

(1) that the local authority may suspend a review committee for relevant reasons, such as where it has received notice that the matter to be reviewed is the subject of legal action against the authority for custody of children, or where other statutory procedures have been instigated to deal with the complaints or where restrictions on the disclosure of information relating to third parties

will not allow for sufficient information to be available to enable a review committee to make an informed decision. Where requested to do so by the complainer following the conclusion of the legal proceedings or other statutory procedures or where such reasons are no longer relevant, the authority shall arrange for the review of the matter to be held or continued. The review committee should be informed of the details of the complaint and the reason for it being suspended prior to such action being taken. Complainers will be informed in writing of any decisions to suspend reviews.

Arrangements Where Service Provided by a Third Party

86. (1) Where a local authority in exercise of their social work functions make arrangements for any service to be provided by a voluntary organisation or other person, these Directions shall apply subject to the following paragraphs.

(2) Without prejudice to the generality of Direction 6, the local authority shall take such steps as they think appropriate to make information about the procedure available to persons who receive or may need to receive the service.

(3) The local authority may arrange for submission of representations under Direction 8 relevant to provision of the service to be made to the organisation or person which provides the service, and for the organisation or person to receive them on behalf of the local authority and transmit them to the local authority.

(4) The local authority may arrange in respect of representations relevant to provision of the service for their functions under Direction 7 to be performed on their behalf by the organisation or person which provides the service.

(5) The local authority may arrange for the organisation or person which provides the service to act on their behalf in investigating and considering representations relevant to the provision of the service and in responding to them in accordance with Direction 10(2). Where the local authority so arrange, they shall also arrange for any such representations and the response to them to be reported to the local authority.

Interpretation

87. (1) In these Directions, unless the context otherwise requires -

"the Act" means the Social Work (Scotland) Act 1968;

"complainer" means a person specified in section 5B(2) of the Act, or anyone acting on behalf of such a person, who makes representations;

"person" bears its normal meaning and is not restricted to persons specified in section 5B(2) of the Act;

"the procedure" means the procedure established by local authorities in accordance with section 5B of the Act and the Social Work (Representations Procedure) (Scotland) Order 1990 [SI1990/2519];

"representations" includes complaints, and means representations submitted in accordance with the procedure; and

"social work functions" means functions under the Act or any of the enactments referred to in section 5(1B) of the Act.

(2) The expression "review committee" in these Directions means any responsible committee of the local authority which -

(a) is appointed for the purpose of reviewing any matter in accordance with the procedure;

(b) consists of 3 persons, a chairperson and 2 members, the former having knowledge of -

(i) social work matters; and

(ii) the conduct of proceedings before a review body or tribunal,

the latter having experience in at least one of these areas;

(c) has an independent person appointed as its chairperson;

(d) is drawn from a panel of persons (who may be independent persons or members or officers of the local authority but not officers of the department responsible for social work matters) which is appointed by the local authority for the purpose of persons on the panel acting when required as members of such committees.

(3) For the purposes of paragraph (2) above the expression "independent person" means a person who is not -

(a) a member of the political party forming the ruling group on the Council or an officer of any local authority, and who has not been such a member or officer during the period of 1 year prior to being appointed to the review committee;

(b) a person who is a member of or employed by an organisation to which the local authority have delegated any of their social work functions; or

(c) a spouse of any such member, officer or person.

Revocation

88. The Social Work (Representations Procedure) (Scotland) Directions 1990 are hereby revoked.

GAVIN ANDERSON

A Grade 4 Officer in The Scottish Office Home Department

Social Work Services Group

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