

Consultation on Complaints Concerning Functions Relating to the Named Person and Child's Plan:

An Analysis of Responses

January 2016

**CONSULTATION ON
COMPLAINTS CONCERNING
FUNCTIONS RELATING TO
THE NAMED PERSON AND
CHILD'S PLAN: AN
ANALYSIS OF RESPONSES**

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Abbreviations

The following abbreviations are used throughout this report:

CYPA: The Children and Young People (Scotland) Act 2014

SPSO: Scottish Public Services Ombudsman

EXECUTIVE SUMMARY

1. The Scottish Government undertook a public consultation on the procedure to be put in place for dealing with complaints under Parts 4 and 5 of the Children and Young People (Scotland) Act 2014 (CYPA). Views were invited on the process for handling complaints at local level (with particular reference to two options outlined in the consultation paper); those who should be able to raise complaints; the process for referring the outcome of a complaint for review; and the assistance, information and guidance that should be available to those wishing to pursue a complaint.
2. The consultation ran from 28 August 2015 to 30 October 2015 and received 225 responses – 65 from organisations and 160 from individuals. Organisational respondents comprised local authorities and local partnership bodies, third sector organisations, NHS organisations, education bodies and ‘other’ organisations (including royal colleges, other national public sector bodies, faith groups, private sector organisations and campaign groups).
3. Analysis of the responses focused on those which addressed the consultation questions. Comments outwith the scope of the consultation were noted, but were not included in the analysis.

Making complaints (Questions 1 and 2)

4. The consultation invited views on whether only the child, young person and / or parent(s) should be able to make complaints in relation to the functions set out in Parts 4 and 5 of the CYPA. Sixty-three percent of organisational respondents and 27% of individual respondents thought that the making of complaints *should* be restricted in this way. Local authorities and local partnership bodies, in particular, were generally in favour of this restriction.
5. Those who thought that the making of complaints should be restricted to the child, young person and parent(s) gave three reasons: (i) only the child and parent(s) would be the *recipients* of the service provided by the Named Person and the Child’s Plan; (ii) only the child and parent(s) would be *affected* by these functions; and (iii) only the child and their parents would be entitled to *redress*.
6. The main caveat to this view was that anyone acting in a parental or caring capacity for a child / young person – kinship carers, foster carers or other guardians, or ‘corporate parents’ (such as a residential care service) – should also be able to make a complaint. Local authorities and partnership bodies generally believed that the definition of ‘parent’ in the CYPA encompassed these groups. However, others queried this, or asked for clarification.
7. The consultation also asked if the parent(s) and child should be entitled to request and authorise assistance from other people (i.e. third parties) in making their complaints. Most respondents – both organisations (96%) and individuals (90%) – agreed that they should.

8. There was general agreement that the availability of such assistance would make the complaints process more accessible and would facilitate better communication and understanding. The point was also made that the provision of such support and assistance to those who need it is good practice.
9. Respondents thought advocacy services could play a particularly important role. Others, however, thought that parents may prefer to ask for help from other sources, including from a legal representative. The role of specialist third sector organisations (e.g., Down's Syndrome Scotland, and the Enquire service managed by Children in Scotland) was also noted. Some individuals thought that parents and children should be able to request assistance from any person or organisation chosen by them.
10. However, there was also a question about what was meant by 'assistance' – both in terms of the type and purpose of assistance – and some organisations asked for clarification about who would provide such assistance, how it would be accessed, and how it would be funded.

The role of the Scottish Public Services Ombudsman (SPSO) (Question 3)

11. The consultation paper asked for views on proposals for the SPSO to provide the independent mechanism for reviewing cases where complainants are not content with the outcome of the local complaints process. Under the proposals, the SPSO would have the power to review the merits of the decision as well as the process pursued in reaching that decision.
12. Altogether, 82% of organisations and 73% of individuals agreed with the proposal. The SPSO was seen to be the appropriate body to take on this role because of its independent and impartial status, and its existing experience and expertise. Extending the role of the SPSO to include review of the merits of decision making was seen as logical and in line with procedures operating in other parts of the public sector.
13. However, respondents also argued that: (i) the SPSO did not have the power to enforce decisions and, indeed, did not have jurisdiction over all organisations – e.g. independent schools; (ii) the SPSO would need to be properly equipped for the new role in terms of resourcing and staff training; and (iii) appropriate timescales for review should be established.

Managing the complaints process (Questions 4 and 5)

14. The consultation paper described two possible approaches to the management of complaints relating to Parts 4 and / or 5 of the CYPA. Option 1 would require a child or parent to make separate complaints to every organisation involved in the matter being complained about. Option 2 would require a child or parent to make their complaint to the Named Person Service Provider (for complaints relating to Part 4) and to the Managing Authority (for complaints relating to Part 5). Respondents were invited to give their views on these two options.

15. Most organisational respondents (77%) expressed a preference for Option 2. Just under half (44%) of individuals also supported Option 2. However, it should also be noted that not all organisational respondents were in favour of one option or the other. Some raised concerns about both options.
16. Irrespective of whether they supported Option 1 or Option 2, organisational respondents agreed with the principle that a child or parent should not have to contact multiple services to make a complaint. Respondents also generally thought that the complaints process in relation to Parts 4 and 5 of the CYPA should make use of existing complaints mechanisms and processes.
17. Those who supported Option 1 (mostly local authorities and partnership bodies) thought that this was more closely aligned with existing processes. This group also noted that: (i) most complaints relate to a specific service or individual, and can be dealt with quickly and effectively from within a single organisation, and (ii) it is preferable for complaints to be investigated by the organisation whose performance is being complained about. Moreover, even where a complaint might relate to multiple services across different agencies, information sharing arrangements would allow the complaints investigating officer to contact other agencies and share information for the purposes of resolving the complaint.
18. Those who supported Option 2 thought that this option would result in a better, more coordinated approach to complaints handling. However, this group also emphasised the importance of integrating the procedures with existing complaints procedures in public bodies. Concerns were voiced that the proposals set out in the consultation document appeared to be creating an *additional* process. Respondents also queried the timescales for complaints handling set out in the consultation document, which were not consistent with those recommended by the SPSO.

Where there is agreement with the complainant at the outset (Question 6)

19. In relation to multi-agency complaints where the Named Person service provider or managing authority is acting as the complaints coordinator, the consultation paper noted that there may be situations where the complaints coordinator agrees with the complainant from the outset. Views were sought on how such a situation should be handled.
20. Organisational respondents highlighted the importance of resolving such complaints speedily, but also thought it was important to investigate the complaint before reaching a decision, and for the process to be impartial and / or independent. Respondents also commented that the scenario highlighted the potential complexity of multi-agency cases. They thought that complaints coordinators would have a difficult role, and would require sufficient time, resources and expertise to undertake their investigations.
21. Individual respondents had mixed views, and different respondents expressed support for expediting the process in such a situation; for allowing the complaint to proceed; and for ensuring that the complainant's views were taken into account in deciding how the issue should be dealt with.

Information and guidance (Question 7)

22. The consultation invited views on the information and guidance which should be made available to parents and children about the complaints procedure.
23. Organisational respondents called for simple, jargon free information suitable for a wide range of audiences (in particular, children and young people). Specific comments were made in relation to the content, accessibility and presentation of information and guidance.
24. Individual respondents made many of the same points as organisations, but also thought that any information produced should give due emphasis to the roles and responsibilities of parents. They also highlighted the importance of the *process itself* being simple and straightforward for complainants to navigate, and for assistance to be available for those wishing to make a complaint.

Other comments

25. Some respondents made comments that did not directly specifically address any of the individual consultation questions, but which were about the broad issue of the complaints process. Organisational respondents asked for clarity about how the process would link with other organisations and processes, and how inter-agency complaints would be handled (i.e. where one agency makes a complaint about another). There were some concerns about the potential cost and time implications of the proposed complaints process.
26. Individual respondents stated that the proposed complaints processes (options 1 and 2) seemed to be too complex, and emphasised the importance of a robust, straightforward and speedy complaints process.
27. Both organisational and individual respondents highlighted the importance of transparency in the complaints process, and called for collection, analysis and publication of national statistics on complaints.

1 INTRODUCTION

- 1.1 This is a report of the findings from a public consultation undertaken by the Scottish Government on the procedure to be put in place for dealing with complaints under Parts 4 and 5 of the Children and Young People (Scotland) Act 2014.¹ The consultation ran for eight weeks from 28 August 2015 to 30 October 2015 and received 225 responses.

Background

- 1.2 The Children and Young People (Scotland) Act 2014 (hereafter referred to as CYPA) is a wide-ranging piece of legislation which brings together measures related to different aspects of the wellbeing of children and young people in Scotland. Key elements of the CYPA under Parts 4 and 5 include the introduction of a Named Person for every child in Scotland and a Child's Plan as a mechanism for coordinating services for children and young people. These provisions and others in the legislation represent a shift towards early intervention to support children and families when they need it, rather than when a crisis has occurred.
- 1.3 The current consultation focuses on the introduction of a procedure for dealing with complaints relating to these sections of the CYPA (Parts 4 and 5). Complaints relating to other aspects of the CYPA will be dealt with via existing mechanisms. The consultation invited views on the process which might be put in place to manage and respond to such complaints.
- 1.4 The consultation paper noted an overall aim of providing a complaints procedure which is accessible and straightforward for parents and children to use. The paper indicated the intention of building on existing complaints mechanisms as far as possible. It also provided information on recent wider reforms to processes for handling public sector complaints which are intended to support organisational learning and improvement.

The consultation

- 1.5 The proposals set out in the consultation paper involved a process offering two resolution stages at local level (stage one resolution is a less formal process for cases needing little investigation; stage two resolution is for more complex cases needing fuller investigation) with systems to be designed in line with the Scottish Public Services Ombudsman (SPSO) Model Complaints Handling Procedure. Those unhappy with the outcome of the local complaint process would be able to refer the matter to the SPSO for further review. Parents or children would be able to make complaints, information on the complaints processes would be produced, and complainants would have access to assistance in making their complaint.

¹ <http://www.gov.scot/Publications/2015/09/4656>.

- 1.6 The consultation paper set out in some detail two different options for how complaints might be managed and processed at local level, along with a summary of the advantages and disadvantages associated with each.
- 1.7 Views were invited on the following: the process for handling complaints at local level (with particular reference to the two options outlined); those who should be able to raise complaints; the process for referring the outcome of a complaint for review; and the assistance, information and guidance that should be available to those wishing to pursue a complaint.
- 1.8 The consultation paper was published on the Scottish Government website and hosted on the Scottish Government's Citizen Space Consultation Hub which offered the option of completing an online questionnaire.
- 1.9 The consultation paper contained seven questions – five two-part questions (Questions 1 to 5) comprising a closed tick-box (yes / no) question followed by a space for providing reasons for the answer given; and two open questions (Questions 6 and 7) (with Question 6 providing two separate boxes for 'response' and 'reasons').

The analysis

- 1.10 Both quantitative and qualitative analysis of the responses were undertaken, with the emphasis on the latter. The qualitative analysis focused on identifying the main themes and the full range of views submitted in response to each of the consultation questions.
- 1.11 Frequency analysis was carried out in relation to all the closed questions and the results of this are presented in tables throughout the report.
- 1.12 Not all respondents answered all questions, and some respondents made comments in relation to a question without ticking a response at an initial closed question. Where it was clear from a respondent's comments what their answer to the closed question was, the response to the closed question has been imputed and included in the quantitative tables. However, if the respondent expressed mixed or unclear views on a proposal, the tick-box question was left blank.
- 1.13 The focus of the qualitative analysis was on the consultation questions set. Some comments were also received about the role of the Named Person in the CYPA. These have been noted, but are not included in the report as they were not relevant to the consultation.

2 THE CONSULTATION RESPONSES AND RESPONDENTS

2.1 This section provides information about the respondents to the consultation.

Number of responses received

2.2 The consultation received 225 responses – 65 from organisations and 160 from individuals. See Table 2.1.

Table 2.1: Number of respondents

Type of respondent	Number of respondents	%
Organisations	65	29%
Individuals	160	71%
Total	225	100%

2.3 Table 2.2 below provides a breakdown of the number and type of organisational respondents who participated in the consultation.

Table 2.2: Number of organisational respondents

Type of respondent	Number of respondents	%
Local authorities and local partnership bodies	27	42%
Third sector organisations	18	28%
NHS organisations	5	8%
Education bodies	5	8%
Other organisational respondents	10	15%
Total	65	100%

*Other organisational respondents include: Royal Colleges, other national public sector bodies, faith groups, private sector organisations and campaign groups.

2.4 The two largest groups of organisational respondents were local authorities / local partnership bodies (such as community planning partnerships and health and social care partnerships) and third sector organisations. The 'Other' organisational respondents included a response from the Scottish Public Services Ombudsman (SPSO) who would have responsibilities in relation to the proposals set out in the consultation document.

2.5 Most of the organisational respondents were based in Scotland. However, two organisations were based in England.

2.6 A complete list of organisational respondents is included at Annex 1.

Standard, non-standard and campaign responses

2.7 Around two-thirds of respondents (149 out of 225) submitted their response using the standard consultation questionnaire provided. Of these, 38 submitted responses through the online facility.

2.8 Around a third of respondents submitted free-text responses (i.e. non-standard responses). These comprised short emails and letters from individuals, as well as some lengthier responses from organisations. Where these responses included comments relating to one or more of the consultation questions, the relevant text was included in the analysis for those questions. Comments not relating to *any* of the consultation questions were noted, but not included in the analysis.

2.9 Full details of the numbers responding to individual questions are shown at Annex 2. The number of respondents answering each question ranged from 44% for Question 5 to 57% for Question 7. However, these figures should be treated with caution. Around two-thirds of all respondents did not answer any of the consultation questions posed. Rather these respondents (mainly individuals) made general statements about the broad issue of a complaints process, or statements expressing opposition to the Named Person function. In addition, because the consultation questionnaire did not provide a space for 'any other comments', respondents who used the questionnaire but who also wanted to make other comments could only do so by sending an accompanying free-text response by email or letter, or by entering their free-text comments into one of the spaces provided in the consultation questionnaire (usually Question 7).

Campaign responses

2.10 This consultation received campaign responses. The campaign group No2NP (No to Named Persons) encouraged its members to take part in the consultation and provided a pro forma response that people could use as the basis for their own responses. This included the following statements which were relevant to Questions 3 and 4:

- Whatever body acts as the independent arbiter of complaints needs to be able to look at all aspects of a Named Person's actions, including their decision making.
- The idea that separate complaints would have to be made to the various possible bodies involved is clearly ridiculous. It is difficult to take Option 1 seriously.

2.11 Where these statements were identified in a response, a 'yes' was imputed to Question 3 and a 'no' to Question 4 for these respondents. This is reflected in the tables in Chapters 4 and 5. Annex 3 contains the complete No2NP campaign text.

3 MAKING COMPLAINTS

- 3.1 The first two questions in the consultation invited views about the process of *making* complaints. In particular, respondents were asked whether only the child, young person and / or parent(s) should be able to make complaints in relation to the functions set out in Parts 4 and 5 of the CYPA. Secondly, they were asked if the parent(s) and child should be entitled to request and authorise assistance from other people (i.e. third parties) in making their complaints.

Question 1: Should making complaints concerning functions relating to the Part 4 and/or Part 5 be restricted to a child, young person and parent (as defined by the CYPA)? (Yes / No) (Reason/s)

Question 2: Should the parent and child be entitled to request and authorise the assistance of other persons in making their complaint? (Yes / No) (Reason/s)

Who should be able to make complaints?

- 3.2 Altogether, 108 respondents (48 organisations and 60 individuals) replied to Question 1. Table 3.1 shows that, overall, organisational respondents thought that the making of complaints *should* be restricted to the child, young person and parent(s) – with 63% replying ‘yes’ to this question. However, this finding is largely due to the response from local authorities and partnership bodies, most of which supported this restriction. All other organisational respondents were divided in their views on this question.
- 3.3 Individual respondents were generally *not* in favour of restricting the making of complaints to the child, young person and parent – with 73% replying ‘no’ to this question.

Table 3.1: Should making complaints be restricted to a child, young person and parent (as defined by the CYPA)?

	Yes	%	No	%	Total	%
Local authorities and partnership bodies	16	80%	4	20%	20	100%
Third sector organisations	7	54%	6	46%	13	100%
NHS organisations	2	40%	3	60%	5	100%
Education-related bodies	2	50%	2	50%	4	100%
Other organisational respondents	3	50%	3	50%	6	100%
Total organisations	30	63%	18	37%	48	100%
Total individual respondents	16	27%	44	73%	60	100%

- 3.4 A total of 106 respondents made comments at Question 1. Of these, 26 respondents made comments that were not related either to the specific question asked, or to the broader issue of how to manage complaints about the Name

Person and Child's Plan. Thus, the analysis below is based on comments submitted by 80 respondents.

Views from respondents in favour of restriction

- 3.5 The following reasons were given by respondents who thought that the making of complaints should be restricted to the child, young person and parent(s):
- Only the child and parent(s) are the *recipients* of the service provided by the Named Person and the Child's Plan.
 - Only the child and parent(s) are *affected* by these functions.
 - Only the child and their parents are entitled to *redress*.

Caveats

- 3.6 Those who replied 'yes' to this question often added caveats to their support. The main one was that anyone acting in a parental or caring capacity for the child / young person should also be able to make a complaint on their behalf. This would include a kinship carer, a foster carer or other guardian, or 'corporate parents' (such as a residential care service). In general, local authorities and partnership bodies believed that the definition of 'parent' in the CYPA encompassed these additional groups. However, others queried this, or asked for clarification.

Other comments made by those in favour of restricting complaints to the child, young person and parent

- 3.7 Other comments made by this group of respondents, less often, were that:
- Any individual acting *on behalf of* the child or parent (and with their consent) – for example a solicitor – should be able to make a complaint for them.
 - Anyone with a genuine interest in the child's welfare should be able to make a complaint on the child's behalf if the child's parents are not acting in the child's best interests.
 - The Named Person should be able to make complaints about the Child's Plan.
 - Provision should be made to assist a child / young person who may not have capacity.
 - The consultation discusses complaints about *functions*; however, there may also be a breakdown in service provision due to 'personality clashes' or a breakdown in relationships.

Views from respondents not in favour of restriction

- 3.8 Respondents who thought that the making of complaints should *not* be restricted only to the child, young person or parent often made comments that echoed the

main caveat above. In particular, this group thought that any adult acting in a caring capacity for the child or young person (such as a kinship carer, foster carer or other legal / corporate guardian) should also be able to make a complaint about the Named Person service or Child's Plan. This might include grandparents, aunts or uncles, or other siblings in situations where the child's biological parent is not his / her primary care giver, or where the parent is not acting (or able to act) in the child's best interests.

- 3.9 The other *main* group which these respondents thought should have the right to complain were other professionals / agencies working with the child or family. However, other respondents disagreed, arguing that the processes set out in the consultation document should not be used by other professionals / agencies to make complaints. This latter group thought other professionals should use existing mechanisms (or a different mechanism) to complain about or challenge the support provided by the Named Person or the Child's Plan. A third view, expressed occasionally, was that other professionals should be able to raise their concerns directly with the child, young person or parent, to enable the child / parent to make an informed decision about whether to raise a complaint. There were frequent calls to clarify the question of how agencies could raise concerns about the failings of other agencies, and there was a general view that the existing mechanisms for this were not always adequate.
- 3.10 There were also suggestions, less often, that the following individuals or organisations should be able to complain about the Named Person service or Child's Plan:
- A solicitor or advocate acting on the child or parent's behalf and with their consent.
 - A union or other body not directly involved in implementing the CYPA.
- 3.11 There was also a suggestion that a 'whistle blower' capability should be built in to the process.
- 3.12 Some individual respondents (as opposed to organisational respondents) in this group suggested that 'any interested party', or any 'anyone', including 'a member of the public', should be able to complain if they have any cause for concern about either the Named Person or the Child's Plan.
- 3.13 The main reasons given by these respondents for wanting a wider range of people to have the right to complain were that:
- It would increase transparency and openness.
 - Parties other than the child or parent may have legitimate concerns about either the Named Person or the Child's Plan.

Other issues

3.14 Other points made by respondents included that:

- Complaints handlers should have the skills needed to work effectively with children, to ensure that the wellbeing of the child and young person is promoted and supported.
- The ability of parents / children to engage with a complaints process could depend on their age and capacity.
- It would be preferable (and could facilitate a more positive system) if the legislation used more neutral language, for example, by referring to 'dispute resolution', rather than 'complaints'.

3.15 Concern was voiced that the consultation document had not discussed the specific needs that children and young people might have in taking part in a complaints process, or set out what the process would be for handling complaints made by children.

3.16 There were also questions about: (i) the process that would be used if a child and their parent wish to make complaints independent of each other; and (ii) whether a more mature young person (for example, one aged 18) should have the 'sole right' to make a complaint.

3.17 Some individual (as opposed to organisational) respondents wanted safeguards to be built into the complaints process to ensure that complainants were not intimidated or disadvantaged as a result of making a complaint.

Entitlement by complainants to request assistance in making a complaint

3.18 The second consultation question (Question 2) asked respondents whether they thought the parent and child should be entitled to request or authorise the assistance of other persons in making their complaint.

3.19 Altogether, 125 respondents (52 organisations and 73 individuals) replied to this question. Table 3.2 below shows that most respondents – both organisations and individuals – agreed that complainants should be able to ask for and authorise assistance from others.

Table 3.2: Should the parent and child be entitled to request and authorise the assistance of other persons in making their complaint?

	Yes	%	No	%	Total	%
Local authorities and partnership bodies	19	90%	2	10%	21	100%
Third sector organisations	14	100%	–	0%	14	100%
NHS organisations	5	100%	–	0%	5	100%
Education-related bodies	4	100%	–	0%	4	100%
Other organisational respondents	8	100%	–	0%	8	100%
Total organisations	50	96%	2	4%	52	100%
Total individual respondents	66	90%	7	10%	73	100%

3.20 A total of 114 respondents made comments at Question 2. Of these, 20 comments were not relevant to the question asked, or to the wider issue of the complaints process. Thus, the analysis below is based on comments from 94 respondents.

Views in support of the complainants' right to request assistance

3.21 Respondents gave the following reasons for saying that parents or children should be entitled to request and authorise assistance from other persons in making a complaint:

- **Having support would make the complaints process more accessible.** Respondents highlighted a range of barriers that some parents or children may face in engaging with the complaints process. These included:
 - Communication, reading or writing difficulties
 - Lack of fluency in English
 - Disability, vulnerability or lack of capacity
 - Lack of confidence or skills to take forward a complaint
 - Perceived power imbalances between professionals and families.
- **Having support would facilitate better communication and understanding.** Respondents thought that assistance from an advocate, for example, could help parents and children not only to formulate their complaint, but also help to understand and navigate the processes available to them, and ensure that their voices were heard in any subsequent discussion.
- **It is considered to be good practice.** Respondents commented that it is considered to be good practice to provide support and assistance to those who need it to make a complaint. Organisational respondents also often noted that parents / children already have the right to seek the support of an advocate or legal professional in making complaints about other services, and it would,

therefore, be consistent with existing practice to allow this type of support in relation to the Named Person or Child's Plan functions.

Types of assistance

- 3.22 Respondents suggested that children and parents should be able to request and authorise assistance from a range of individuals / services in making their complaint.
- 3.23 Organisational respondents identified the importance of advocacy services, in particular, and some suggested that not only should children and parents be able to ask for help from advocacy services, but that advocacy should be proactively offered. Others thought that some parents may prefer to ask for help from other sources, including from a legal representative.
- 3.24 The point was also made that certain third sector agencies offer advocacy or similar support for particular groups – for example, Down's Syndrome Scotland, and the Enquire service managed by Children in Scotland (which provides an advice service for families whose children need additional support for learning). It was suggested that it may be appropriate to sign-post children and parents to such services.
- 3.25 Some respondents also noted that the use of mediation can be helpful in situations where there are disagreements between different parties.
- 3.26 Individual respondents identified a wider range of individuals / organisations – in addition to advocacy services – that they thought should be able to assist children and parents in making complaints. These included:
- Family or friends
 - Church members
 - Any person (or organisation) trusted by the parent or child and chosen by them.
- 3.27 Some individual respondents suggested that parents should be able to access *free* legal advice.

Other points and requests for clarification

- 3.28 Local authority and partnership bodies queried what was meant in the consultation document by 'assistance' – both in terms of the type and purpose of assistance. Other organisations asked for clarification about who would provide such assistance, how it would be accessed, and how it would be funded.
- 3.29 Other points made, less often, by respondents in favour of children and parents having the right to request and authorise assistance included the following:

- Separate advocacy services should be provided for children and for parents.
- Some third sector organisations (for example, the National Parent Forum of Scotland) offered to assist in raising awareness of the complaints process among parents.

Views opposed to complainants' right to request assistance

3.30 As shown in Table 3.2 above, two organisations and seven individuals said they were not in favour of a child or parent being entitled to request assistance in making a complaint. The two organisational respondents made the following comments:

- 'This would be difficult to manage and would have resource implications.'
- The complaints process for Parts 4 and 5 of the CYPA should be handled in the same way as the complaints process for other public services.

3.31 Comments were made by five of the seven individual respondents who ticked 'no' at Question 2. However, only three of these made comments that addressed the question, and one of these made a comment which suggested that this individual did, in fact, support the right for parents and children to request support. The other two individuals expressed concerns about: (i) the cost of providing support to parents / children to complain, and (ii) information sharing with third parties.

4 THE ROLE OF THE SPSO

- 4.1 The consultation paper set out proposals for the SPSO to provide the independent mechanisms for reviewing cases where complainants (children and young people or parents) are not content with the outcome of the local complaints process. Under the proposals the SPSO would have the power to review the merits of the decision as well as the process pursued in reaching that decision. This new role for the SPSO would require some amendment of relevant legislation.
- 4.2 The consultation asked for views on the proposed system for independent review:

Question 3: Should the merits of decision making about functions, as set out in Appendix A, under parts 4 and 5, be looked at by SPSO?

- 4.3 Altogether 109 respondents (43 organisations and 66 individuals) answered this question. Table 4.1 below shows that 82% of organisations and 73% of individuals agreed with the proposal. Among the organisational respondents, local authority and partnership bodies and 'Other' organisation respondents were most likely to disagree.

Table 4.1: Should the merits of decision making about functions, as set out in Appendix A, under parts 4 and 5, be looked at by SPSO?

	Yes	%	No	%	Total	%
Local authorities and partnership bodies	14	70%	6	30%	20	100%
Third sector organisations	10	91%	1	9%	11	100%
NHS organisations	5	100%	–	0%	5	100%
Education-related bodies	4	100%	–	0%	4	100%
Other organisational respondents	2	67%	1	33%	3	100%
Total organisations	35	82%	8	19%	43	100%
Individual respondents	48	73%	18	27%	66	100%

* Not all percentages total 100% due to rounding.

- 4.4 Table 4.1 shows that around a third of local authority and local partnership bodies disagreed with the proposal, and accounted for all but two of the organisations who disagreed.
- 4.5 A total of 120 respondents made comments at Question 3. Of these, 10 comments were not relevant to the question asked. Thus, the analysis below is based on comments from 110 respondents.
- 4.6 The comments from those answering the question indicate that respondents had interpreted this question in different ways: some focused on whether the review

function should include consideration of the merits of the decision (whoever carried out the function), while others concentrated on whether SPSO was the appropriate body to carry out the review function, without always explicitly addressing the issue of the proposed expanded role.

- 4.7 The views of organisations and individuals are presented in the following sections. For organisations, the views of those agreeing and disagreeing are separated out. The views of those offering comments but not indicating agreement or disagreement at the closed question are not presented separately as the points they raised were also raised by other respondents.

Views of organisations

Agreement that the merits of decision making should be looked at by SPSO

- 4.8 Organisations that agreed with the proposal made the following common points:
- The SPSO was the appropriate body to take on this role because of its respected independent and impartial status. It was also in a good position to take on the role because of its existing experience and expertise. The involvement of the SPSO would bring reassurance to the process.
 - The powers of the SPSO should be extended to include review of the merits of decision making. This represented a logical extension of the SPSO's powers and would be in line with procedures operating in other parts of the public sector – the SPSO's role in relation to health service complaints was particularly noted.
- 4.9 A few respondents in this group also suggested additional functions for the SPSO: providing a review function for Part 12 of the CYPA; monitoring the CYPA complaints process; and reviewing the CYPA complaints process.
- 4.10 Alongside their general support, respondents offered some caveats and concerns. These include the following:
- The SPSO did not have the power to enforce decisions and, indeed, did not have jurisdiction over all organisations – e.g. independent schools –which might be involved in the Named Person service or in delivering a Child's Plan.
 - The SPSO needed to be properly equipped for any new role in terms of resourcing and staff training and expertise. There was a concern to ensure that any new role in this area did not impact on existing SPSO functions.
 - The SPSO's role – including the interface with other organisations and systems – needed to be clear.
 - Procedures needed to incorporate adequate timeframes to allow review functions to be carried out.

- The option of judicial review should also be available as a further step in the process.

Disagreement that the merits of decision making be looked at by SPSO

- 4.11 As shown in Table 4.1, those disagreeing with the proposals came largely from the local authority / partnership body sector. The comments from these respondents – along with the comments from one ‘other’ respondent – indicated that were generally content with the SPSO fulfilling a review role, but did not wish to see this function extended to include consideration of the merits of decisions made. They offered the following points in setting out their views on the proposal:
- The SPSO’s role should be restricted to reviewing how the complaints process had been carried out, and additional powers were not required.
 - SPSO staff would not have the knowledge and understanding of local services and systems to fulfil the role effectively.
 - The proposed role would result in duplication of function and increased bureaucracy. There would also be training and resource implications for the SPSO. This was not justified, particularly when the volume and nature of complaints was not yet known.
 - There was potential for confusion in how the SPSO’s role interfaced with other organisations. In addition the SPSO did not have jurisdiction over all relevant (non-public sector) bodies.
 - The move may encourage people to seek SPSO review of decisions and would undermine the local resolution of disputes.
 - There was insufficient information provided about the proposed role.
- 4.12 Respondents in this group occasionally expressed a preference for other models such as referral back to the original body for reconsideration of the decision; referral on from the SPSO to a separate independent arbiter; or a tribunal system – existing arrangements in relation to Additional Support Needs were noted as a possible model.
- 4.13 As Table 4.1 showed, one third sector organisation disagreed with the proposal. This organisation agreed that the merits of decisions should be open to review, but did not want this function to go to the SPSO because it did not have powers to enforce its judgements.

Views of individuals

- 4.14 Regardless of whether they indicated agreement or disagreement at the closed question, there was a high degree of consensus in the points made by individual respondents. Individuals consistently agreed that all aspects of decision making should be open to review, but there was scepticism about the SPSO taking on that

role because it did not have the power to enforce its decisions. Thus, some respondents agreed with the question because they wanted the merits of decisions to be open to scrutiny *whichever body* fulfilled the review function, while others disagreed because of the concerns about the perceived limited powers of the SPSO. Respondents argued for a strong independent arbiter ‘with teeth’.

4.15 Individual respondents offered a limited number of additional comments, including the following:

- They expressed concern about the potential volume of complaints which could be referred for review.
- They noted the need for SPSO staff to be trained for the role.
- They indicated a lack of confidence in the role of the SPSO and the procedures for pursuing public sector complaints generally.

5 MANAGING THE COMPLAINTS PROCESS

5.1 The consultation document described two possible approaches to the management of complaints relating to Parts 4 and / or 5 of the Act. These are briefly summarised here.

Option 1

5.2 Option 1 would require a child or parent to make separate complaints to every organisation or body involved in the matter being complained about. Thus, depending on the nature and scope of the complaint, separate complaints might have to be made to different organisations in relation to the Named Person service, the Managing Authority, the Directing Authority, the Relevant Authority and the Listed Authority, as well as any third party organisation.

Option 2

5.3 Option 2 would require a child or parent to make their complaint to:

- The organisation providing the Named Person service for complaints made in relation to Part 4 of the Act (i.e. complaints about the provision of the Named Person service), OR
- The Managing Authority for complaints made in relation to functions exercised under Part 5 of the Act (i.e. complaints about the preparation, delivery and management of the Child's Plan).

5.4 The consultation asked respondents whether they preferred Option 1 or Option 2:

Question 4: Should complaints concerning functions relating to the Part 4 and / or Part 5 be considered as set out in Option 1? (Yes / No)

Question 5: Should complaints concerning functions relating to the Part 4 and / or Part 5 be considered as set out in Option 2? (Yes / No)

5.5 There was a great deal of overlap in respondents' comments to these two questions, with some respondents setting out their views for or against each option in reply to either question. Thus, the analysis of responses to these two questions is presented together in this section.

5.6 Tables 5.1 and 5.2 below show that most organisational respondents supported Option 2 over Option 1. Just 15% of organisations (and 16% of individuals) were in favour of the approach set out in Option 1. By contrast, more than three-quarters of organisations (77%) and just under half (44%) of individuals indicated support for the Option 2 approach.

Table 5.1: Should complaints concerning functions relating to the Part 4 and/or Part 5 be considered as set out in Option 1?

	Yes	%	No	%	Total	%
Local authorities and partnership bodies	7	29%	17	71%	24	100%
Third sector organisations	–	0%	14	100%	14	100%
NHS organisations	1	20%	4	80%	5	100%
Education-related bodies	–	0%	3	100%	3	100%
Other organisational respondents	–	0%	8	100%	8	100%
Total organisations	8	15%	46	85%	54	100%
Total individual respondents	11	16%	56	84%	67	100%

Table 5.2: Should complaints concerning functions relating to Part 4 and/or Part 5 be considered as set out in Option 2?

	Yes	%	No	%	Total	%
Local authorities and partnership bodies	15	63%	9	38%	24	100%
Third sector organisations	14	100%	–	0%	14	100%
NHS organisations	4	80%	1	20%	5	100%
Education-related bodies	3	75%	1	25%	4	100%
Other organisational respondents	5	83%	1	17%	6	100%
Total organisations	41	77%	12	23%	53	100%
Total individual respondents	17	44%	22	56%	39	100%

- 5.7 Those supporting Option 1 comprised 7 out of 24 local authorities and partnership bodies, and one NHS organisation, together with 11 out of 67 individual respondents. None of the third sector respondents were in favour of Option 1.
- 5.8 All third sector respondents, and nearly all NHS, education-related bodies and ‘Other’ organisational respondents expressed support for Option 2. Local authorities and partnership bodies also generally favoured Option 2.
- 5.9 However, it should also be noted that not all organisational respondents were in favour of one option or the other. Some raised concerns about both options and these are discussed below.

Views in relation to Option 1

Views in support of Option 1

- 5.10 Those who indicated support for Option 1 generally argued that complaints in relation to Parts 4 and 5 of the CYPA should make use of existing mechanisms

and processes for handling complaints, and that Option 1 was more closely aligned with existing processes. Thus, Option 1 was considered to be the most straightforward mechanism, not only for children and parents, but also for staff. This group of respondents – most of which were local authorities and local partnership bodies – often stated that they were not in favour of a child or parent having to contact multiple services to make a complaint. However, they made the following points:

- Many local authorities (and NHS Boards) have well established complaints procedures which have been agreed with the SPSO. Moreover, members of the public are familiar with these procedures. Introducing a new, separate procedure for complaints related to Parts 4 and 5 of the CYPA would cause confusion.
- The vast majority of complaints relate to a central issue and to a specific service or individual; these complaints can be dealt with quickly and effectively from within a single organisation.
- It is rare that a complaint would relate to a number of services across different agencies. In such situations, current arrangements give the complaints investigating officer (for example, in Education or Children’s Services) the authority and ability to contact other agencies if necessary. Information sharing is normal in these circumstances (i.e. for the purposes of resolving a complaint).
- It is preferable for complaints to be investigated by the organisation whose performance is being complained about. This is more straightforward, and avoids duplication of effort (i.e. different organisations and services becoming involved in something that they cannot resolve).

5.11 This group of respondents repeatedly emphasised that agencies *already* work together to provide a coherent and coordinated response where more than one agency is involved in a complaint. Furthermore, with the integration of health and social care services, these processes will only be strengthened further. Thus, the ‘disadvantages’ of Option 1 as stated in the consultation document, for example in relation to a lack of coordination and difficulties with information sharing, were considered to be unfounded. One local authority respondent commented:

“The point made about information sharing is a red herring. Many functions currently executed by local authorities and health boards involve a degree of information sharing between themselves and with others. Where there is a problem in that information sharing, the complainer usually targets the body they hold to be primarily responsible for any error. Such complaints seldom lead to several simultaneous complaints to all bodies sharing the information.” (Local authority)

5.12 There were comments among this group that the way in which Option 1 was described in the consultation document (i.e. children, young people and their

parents would have to submit individual complaints to each agency involved in the Child's Plan) was misleading and bore little resemblance to what happens in practice. Furthermore, there was a view that, in most cases, the child, young person or parent would know which the responsible agency was – and thus who the complaint should be directed to.

- 5.13 It was suggested by some in this group that (in rare cases) where a complaint did genuinely relate to two or more services involved in the delivery of a Child's Plan, then it would be appropriate for the Named Person service provider to take on the coordinating function in resolving the complaint.

Advantages of Option 1

- 5.14 Respondents highlighted advantages of Option 1 as follows:

- It would not require any change to existing processes and procedures, or any additional resources related to the coordination of complaints.
- It would remove the need for double-handling of complaints that only relate to a single organisation (i.e. most complaints).
- It would be less complicated for the investigating agency as they would only need to undertake an investigation within their own organisation, which could result in shorter timescales for responses.

Views of individual respondents

- 5.15 Eleven individual respondents also indicated support for Option 1. These individuals saw the following advantages of Option 1: (i) it would reduce the likelihood that a conflict of interest could arise between different organisations in handling complaints, and (ii) it would allow different agencies to take different views of an issue, which was considered to be positive and more likely to protect the interests of children and parents.

Other points made by those in favour of Option 1

- 5.16 Some local authorities and partnership bodies pointed out inconsistencies and contradictions in the discussion of Option 1. For example, in the Option 1 flow diagram, once a Stage 1 frontline resolution is completed, if the complainant remains dissatisfied, there should be recourse to a Stage 2 resolution. This was thought to be unclear in the flow diagram. Thus the procedure set out in the flow diagram appears to contradict the statement in the consultation document that, 'the SPSO process would only be available once local mechanisms have been exhausted'.

Views opposed to Option 1

- 5.17 Those who were not in favour of Option 1 thought this approach to complaints handling would work well in the context of single-agency service provision, but would be problematic in cases where families were supported by a number of different agencies. Respondents also thought that the Option 1 approach seemed contrary to the spirit of integrated service provision for children and families.
- 5.18 This group highlighted potentially adverse impacts for parents and children, and for the organisations involved in the complaints handling process, as presented below.

Potential adverse impacts for parents and children

- 5.19 Respondents who identified potential adverse impacts for parents and children thought that the approach set out in Option 1 would be ‘cumbersome’, ‘bureaucratic’, ‘onerous’, and ‘frustrating’ for parents and children. In their comments, respondents often echoed statements made in the consultation document regarding Option 1. The following points were made:
- Option 1 would cause confusion and uncertainty for parents and children as different organisations would likely deal with the same issue in a different manner and to different timescales.
 - It may result in different services not agreeing or not jointly upholding the outcome of a complaint.
 - It places too much responsibility on the complainant to respond to investigations carried out by different organisations.
 - It would be complicated and not consistent with the concept of ‘seamless children’s services’.
 - It would create a barrier to submitting a complaint in the first place, thus leaving the matter unresolved and the potential complainant dissatisfied. This in turn could affect the complainant’s relationship with services in the future, to the detriment of the child’s wellbeing.

Potential adverse impacts for organisations

- It would not support multi-agency service improvement, since any learning that emerged from the findings of each complaint may not be shared between agencies.
- It would be costly and time-consuming, and would risk duplication of effort across different agencies.

5.20 The following quote illustrates the comments opposed to Option 1:

“We do not believe this approach fits with the spirit or nature of multi-disciplinary working enshrined in the Children and Young People Act and would create additional barriers to children, young people and families, exercising their right to complain about functions of Parts 4 and/or 5 of the Act.” (Third sector respondent)

Caveats

5.21 Respondents who were opposed to Option 1 often concluded in their responses that they were therefore in favour of Option 2. However, some local authorities / partnership bodies who were not in favour of Option 1 instead thought there was merit in using *existing* mechanisms within organisations for dealing with complaints. The point was made that agencies have processes to identify who is best placed to investigate a complaint, to share information when appropriate, and to work together to provide joint responses to complaints.

Views in relation to Option 2

5.22 Respondents' views in relation to Option 2 were often the reverse of their views on Option 1. Moreover, those who were *not* in favour of Option 2 frequently made similar comments to those who were not in favour of the Option 1 approach – suggesting that respondents had different understandings of what each of these options was proposing, and how they would work in practice.

Views in support of Option 2

5.23 Those who were in favour of Option 2 supported the principle of complainants having a single point of contact. This group emphasised the importance of complaints handling being carried out in a coordinated fashion. Those who supported Option 2 generally thought that this approach achieved those aims.

5.24 Option 2 was described as ‘more holistic’ and ‘streamlined’ than Option 1, and it was suggested that it would promote interagency learning. Some local authority respondents said that their current complaints procedures were similar in some respects to that outlined in Option 2.

Caveats

5.25 However, respondents often expressed caveats to their general support for Option 2. The main one, raised repeatedly, echoed the concerns highlighted by those who opposed Option 2 (see below): namely, that complaints regarding Parts 4 and 5 of the CYPA should be integrated (some said, better aligned) with existing complaints procedures in public bodies. Concerns were voiced that the proposals

set out in the consultation document appeared to be creating an *additional* complaints process in an already complex complaints handling landscape.

- 5.26 A second significant caveat related to the timescales for complaints handling. While some respondents thought the Option 2 approach would make it easier to meet the timescales for complaint handling, it was more common for respondents to highlight concerns about the timescales. Some described them as ‘ambitious’; other suggested they were ‘not feasible’ given the capacity problems in some local authorities. Specific points were that:
- Stage 1 complaints are likely to take more than five days to resolve if multiple agencies are involved. Indeed, in complex cases involving multiple agencies at Stage 2, a 20-day target can also be difficult to meet.
 - There was also a view that an acknowledgement within two days was unnecessary for a five-day process, and was not in line with the SPSO’s recommended complaints handling timescales for public sector bodies.
- 5.27 Occasionally, concerns were raised by respondents who supported Option 2, including that:
- The Option 2 approach would put a great deal of responsibility on the complaint coordinator.
 - Complainants may not receive a response directly from the organisation or agency responsible for delivering the service complained about. This was seen to be problematic, particularly where the complaint was serious enough to result in an investigation (for example, staff misconduct).
 - Current complaints handling processes differ between health and local authority services, and therefore, there could be significant systems and process changes that would need to be developed and implemented before services could undertake a new complaints handling process.
- 5.28 Other respondents suggested that certain aspects of Option 2 required clarification. The following questions were raised:
- What mechanism will be used for the recording of complaints?
 - Regarding timescales for handling complaints, is Day 1 considered to be the day the complaint is received, or the following day?
 - Must responses to complaints always be written? Complaints at Stage 1 can often be dealt with simply and effectively by a telephone conversation.
 - Guidance is needed on how to proceed if agencies cannot agree on the outcome / resolution of the complaint.
 - For complaints forwarded on to the SPSO for resolution, will the recommendations from the SPSO state which agency would have responsibility for implementation?

- How would any complaints directed at GP services be dealt with under the umbrella of a single point of contact where a complaint might relate to information provided by a GP for the creation of a Child's Plan?

5.29 Individual respondents who indicated support for Option 2 often expressed the view that, while this approach appeared to be better than Option 1, nevertheless, it was still too complicated and required further simplification.

Views opposed to Option 2

5.30 Respondents who opposed Option 2 set out several arguments. The main ones were that:

- The approach set out in Option 2 is not the same as the standard complaints process set by the SPSO for Scottish public sector bodies. This concern was also raised by the SPSO in their response. In particular:
 - Option 2 suggests two written stages, whereas the recommended early resolution stage generally involves one (or more) phone calls and does not require a separate acknowledgement stage within 2 days.
 - Paragraph 19 of the consultation document appeared to suggest that one organisation would decide whether a complaint should be dealt with as a Stage 1 or Stage 2 response. However, the SPSO's recommended model indicates that this should be the decision of any front-line member of staff who should also be empowered to resolve simple issues on behalf of all organisations involved without the need for complicated discussions or lengthy processes.
- The proposed approach set out in Option 2 would require significant resources to create a new complaints coordination process. This was seen to be unnecessary, impractical, and unhelpful given that current complaints procedures (which relate to a large variety of public sector functions) were well established and understood by staff and members of the public.

5.31 The following comment illustrates the range of issues raised by this group of respondents:

“The introduction of a new and additional complaints procedure will be difficult to implement given capacity and resource issues within our Local Authority. It is possible that the introduction of a separate and radically different system for complaints under Parts 4 and 5 will create greater confusion and complexity to the process. This could result in less accessible processes. Staff may find it difficult to advise children, young people and families about how to access the new complaints procedure and inform them how this new complaints systems works. This could lead to inconsistencies in practice and service provision and lead to frustration for children, young people and their families.”

The creation of another channel to make complaints relating to Education and Children Services will lead to confusion in terms of the separation of what would be considered a complaint that relates to provisions within the 2014 Act and duties that are set out in other legislation relating to children and their families. For example, complaints relating to the Named Person Service could also be associated with a complaint relating to the adequacy or sufficiency of the learning and teaching environment in a school.

Our view that there is the potential for a precedent being set in terms of providing separate complaints procedures for individual provisions (Parts 4 and 5) with the 2014 Act as this has not been taken forward with the commencement of other significant Parts of the Act.” (Local authority respondent)

5.32 Further concerns with Option 2, voiced less often, were that:

- Respondents thought it was not clear what would happen if there were disagreements between different organisations over the response to a complaint. This would be particularly problematic in cases where the complaint related to the (lack of) coordination and communication between different organisations. It also raised the question of which organisation would be most appropriate to investigate a multi-agency complaint, where there were disagreements between organisations.
- Certain organisations (for example, independent schools) currently have no authority to investigate complaints made against external agencies.

Other general comments about Option 2

5.33 Respondents made a range of other general points in relation to Option 2.

- It may be unrealistic to expect a complaints process to have two tiers in some smaller schools.
- Training will be required for staff to ensure knowledge and familiarity with the complaints procedures.
- The SPSO response highlighted a need for further work on definitions and responsibilities before detailed guidance could be produced.

Concerns about both options

5.34 Four organisations – including two local authorities, an education agency and the SPSO – voiced disagreement with both options set out in the consultation paper. Concerns raised by these respondents have already been discussed in the points made above.

- 5.35 Respondents (in general) also commented that whatever complaints process is used, it must allow agencies adequate time to determine whether the complaint related to a CYPA Part 4 / 5 issue, or a more general practice issue. Moreover, further consideration is needed about the process for handling complaints that may relate to other issues, as well as Parts 4 and 5 issues. The point was also made that it could be difficult for complainants, or indeed, a complaint investigator, to distinguish which elements of a complaint related to functions under Parts 4 and 5 of the Act, and which related to other specific (or more general) duties, functions and responsibilities of a wider service for children and families.
- 5.36 Related to this latter point, some organisational respondents made the point that the consultation document had not clearly defined what is meant by 'a complaint' in relation to Parts 4 and 5 of the CYPA. It was noted that this question must be resolved before any consideration can be given to the process for handling complaints.
- 5.37 Respondents also made the point that the complaints process should be focused on the delivery of the Named Person service, rather than on the individual acting as the Named Person.
- 5.38 Some respondents thought that the processes described in both Options 1 and 2 seemed to make the complaints process more complicated and more serious than it may need to be. The point was made that concerns voiced by children or parents can often be resolved very quickly through discussion. Other respondents specifically called for a less formal 'dispute resolution' process, rather than the formal complaints process set out in the consultation.

Other general issues raised about the complaints handling process

- 5.39 Occasionally, respondents suggested that both options should be available to children and parents, and that they should be able to choose the process that is best for them. For example, if a complaint concerns only one organisation or person, the child and parent should be free to complain directly to that organisation.
- 5.40 The point was also made that the complaints process may take longer to be dealt with during the school holiday period.
- 5.41 Consideration needs to be given to safeguarding organisations in relation to 'serial complainants', and the impact such behaviour could have on the wellbeing of a child.
- 5.42 The point was made that the SPSO does not have jurisdiction in independent / grant-funded schools.

6 WHERE THERE IS AGREEMENT WITH THE COMPLAINANT AT THE OUTSET

- 6.1 The consultation paper highlighted a potential issue that may arise in relation to Option 2. This related to possible instances involving multi-agency cases where the Named Person service provider or managing authority is acting as the complaints coordinator and effectively agrees with the complainant from the outset. The consultation paper sought views on how such a situation should be handled:

Question 6: We invite comments on what should happen in situations where the Named Person service provider or the managing authority are coordinating the investigation of a complaint involving other bodies where they may agree with the parent and child at the outset?

- 6.2 Altogether 98 respondents provided comments at Question 6. However, of those, 26 respondents made more general comments on the complaints process or on the provisions of the CYPA. This chapter focuses on the comments from the 72 respondents who addressed the question.

Views of organisations

- 6.3 Organisations offered a range of views on how such a situation should be handled. Common points from the approaches suggested are summarised below:
- **Frontline resolution:** Respondents emphasised the importance of dealing with such issues without delay and empowering frontline staff to resolve such complaints speedily. They highlighted the importance of cross-agency partnership working – which was fundamental to the GIRFEC approach – in ensuring this happened in a timely and effective way. Respondents thought that it was not in the best interests of the child or family to follow the complaints process unnecessarily.
 - **Responding within the proposed framework:** Respondents indicated that such a situation could be dealt with within proposed procedures. They emphasised: (i) the importance of investigating all complaints before reaching a decision, and the rights of families to have a proper investigation undertaken; (ii) the need for the complaints coordinator to be trained to deal with complex multi-agency situations; and (iii) the need to have a mechanism in place within the wider complaints process to deal with such situations – escalating to senior staff was one suggestion.
 - **Delegation and referral to third parties:** Respondents thought that the potential for such a situation highlighted the need for the complaints process to be impartial and / or independent. For some this meant that the complaints coordinator should act impartially in all instances; for others this indicated the

need to delegate within the organisation or appoint a third party arbiter (e.g. the SPSO), or that the option to do this should be available.

- Transfer of complaint to the implicated organisation: A less commonly suggested option was for the matter to be transferred to the organisation implicated in the complaint for it to be dealt with via their existing complaints procedures.

6.4 A range of respondents also commented that the scenario highlighted the potential complexity of multi-agency cases. They thought that the complaints coordinator would have a difficult role, and would require sufficient time, resources and expertise to undertake their investigations. Respondents drew attention to the following:

- The need for clarity about roles and responsibilities across agencies in such situations
- Possible legal, procedural and professional barriers to one organisation investigating the conduct of colleagues at another organisation
- The need for a final response to be agreed by all agencies before it was issued, and the difficulties this might pose
- The need for individual organisations to be accountable for responding to the findings of complaints
- The potential impact on ongoing collaborative working between agencies.

6.5 Some thought this scenario – dealing with a complaint where the complaints coordinator agreed with the complainant from the outset, and the potential difficulties involved in doing so – represented an argument against the approach set out in Option 2 (see Chapter 5).

Views of individuals

6.6 As with organisations, individual respondents had mixed views on how complaints should be handled if the complaints coordinator agreed with the complainant from the outset.

6.7 Some thought that, in this situation, the process should be expedited in some way. This group suggested that such complaints should be resolved speedily, without going through a full investigative process. They argued that it was not in the best interests of the family to proceed through a formal complaints process unnecessarily, and / or that it would be a waste of time and money.

6.8 Others thought the complaint should proceed in the same way as any other complaint since this would: (i) ensure consistency; (ii) allow all the evidence to be examined so that a proper decision could be reached; or (iii) offer the possibility for the Named Person to act as an ‘ally’ to the family in such a situation.

- 6.9 A third view was that the wishes of the complainant should be taken into account in any decision about whether, and how, to proceed with the complaint. The point was made that the family's views should be paramount in how the issue was dealt with.
- 6.10 Less frequently, individuals made general comments about the implications of such a situation arising. They noted a number of issues – reflecting some of the points raised by organisations – which they thought needed to be considered:
- The potential for conflicts of interests within the Named Person service
 - Jurisdictional, legal or procedural issues with one organisation investigating another
 - Issues of individual organisational accountability in responding to complaints investigated by other agencies.
- 6.11 Some respondents felt that the scenario presented was an argument for establishing an impartial, independent complaints process.

7 INFORMATION AND GUIDANCE

- 7.1 The consultation paper noted the intention to provide information and guidance in a range of formats to ‘ensure that parents and children know how to make a complaint, what their rights are, and what will happen (i.e. the process) when they make a complaint’. The final question included in the consultation questionnaire invited views on the information and guidance which should be made available to parents and children.

Question 7: We invite comments / suggestions on what information and guidance on the complaints process would help parents and children.

- 7.2 Altogether 128 respondents made a comment at Question 7. However, the consultation questionnaire did not include an option to provide ‘any other comments’ and many respondents used Question 7 to provide more general comments about the proposed complaints process or the provisions of the CYPA more generally. Such comments are covered in Chapter 8. Thus, this chapter presents the views of the 81 respondents who commented on *information and guidance* at Question 7.
- 7.3 Question 7 was an open question (i.e. there was no initial tick-box question) and views are presented below. Organisational views are covered first; the views of individuals then follow.

Views of organisations

- 7.4 Most commonly, organisational respondents called for simple, jargon free information suitable for a wide range of audiences – children and young people were highlighted most frequently. The more specific comments from organisations related to three broad themes: content, accessibility, and presentational issues.

Content

- 7.5 Respondents put forward a wide range of points that they thought should be addressed in information and guidance. Most commonly, respondents emphasised the need for clear information on:
- Who could make a complaint, including clarity about the definition of a ‘parent’
 - The process, for example, how to make a complaint; who to complain to; what would happen in the course of complaint; timescales, etc.
 - What a complaint could be about, the grounds for complaining and the evidence required

- How the process linked to other routes for complaints and investigation (including the role of Scotland’s Commissioner for Children and Young People)
 - Signposting to further information and assistance.
- 7.6 Respondents emphasised that the information provided should allow a potential complainant to navigate the system and let them know what to expect.
- 7.7 Less often, respondents also suggested that information should be available about the review process and / or the role of the SPSO; and that it should provide assurances about confidentiality and impartiality.

Accessibility

- 7.8 Respondents stressed the need for information to be available in different formats to meet the needs of different groups. There was particular concern that children and young people had adequate access to appropriate guidance. Respondents also highlighted the needs of those who did not have English as a first language, and those with communication and other special needs.
- 7.9 Respondents also wished for information to be widely available, in printed form and online.

Presentational suggestions

- 7.10 There were a range of calls for information to include flowcharts, diagrams, templates, examples, case studies and ‘Frequently Asked Questions’.

Other points made

- 7.11 The following points were made, less frequently:
- Information should emphasise the routes for pursuing informal resolution to disputes and concerns.
 - Information should be routinely and widely available and not just provided at the point a complaint arose.
 - There should be a national communication campaign.
 - Any specific information should build on information currently available about existing complaints procedures.
 - Staff in relevant agencies would need good consistent information about the complaints process, and be able to provide information on the complaints process to families.
 - Potential complainants – especially children and young people and those with special needs – should have access to assistance in making a complaint.

- The process needed to be open and transparent with good communication provided to the family throughout the process and at its conclusion.

Views of individuals

- 7.12 Individuals mentioned many of the same points as organisations relating to the need for simple, easy to understand information in a range of formats suitable for a range of audiences. They were, however, keen that any information produced should also give due emphasis to the roles and responsibilities of parents.
- 7.13 Additionally, they were particularly likely to stress the need for the *process itself* to be simple and straightforward for complainants to navigate, and for assistance to be available for those wishing to make a complaint.

8 OTHER COMMENTS

8.1 This chapter presents a summary of points raised by respondents that did not directly address any of the individual consultation questions. The consultation paper did not include a question inviting 'comment on any other issues', but many respondents included such comments in their answers to individual questions, or in separate letters and emails.

Points raised by organisations

8.2 Common themes in the comments from organisations included the following:

- Adhering to GIRFEC (or public sector reform) principles: Some public sector respondents stressed that the complaints process should reflect GIRFEC principles in prioritising the interests of children and young people and promoting frontline dispute resolution through ongoing communication and partnership working. There were suggestions for the process to be badged as 'dispute resolution', rather than a formal complaints process.
- The interface with other organisations and complaints processes: Respondents highlighted the need for clarity about how the complaints process would link with other organisations and processes – e.g. Scotland's Commissioner for Children and Young People; the Children's Hearing system; the Additional Support Needs tribunal service; and organisations' existing internal complaints processes – and suggested that there may be some scope for confusion. It was also common for respondents to call for the process to mirror and / or align with existing systems.
- Organisational considerations in carrying out the complaints function: There were some concerns about the potential cost and time implications of the proposed complaints service. Respondents also noted the demands that would be placed on those carrying out the complaints function in terms of skills and expertise, particularly when dealing with complex multi-agency cases.
- The role of the Named Person: Respondents sought clarity on the role of the Named Person in the complaints process.
- Inter-agency complaints: Respondents offered a range of views on whether complaints from other organisations or professionals should be dealt with through the proposed complaints process or through a separate process. Some were happy for the complaints process to be used in this way, while others saw a need for a separate process, or suggested that such disputes should be resolved via ongoing partnership working. The priority for some respondents was clarity on how this would be handled.
- Dealing with complex situations: Respondents highlighted a number of situations which they thought would pose challenges for those dealing with

complaints or which they felt were not addressed in the current proposals. These included cases involving a Named Person and lead professional in different organisations; and cases relating to the (valid) variation in local service delivery.

- 8.3 There was a separate set of views put forward by a small number of organisational respondents who were opposed to the introduction of the Named Person service. These organisations thought the proposed complaints process was complex and / or unclear, and that it would be difficult for parents to make complaints due to a perceived power imbalance between individuals and organisations, and unequal access to information.

Points raised by individuals

- 8.4 Individual respondents often indicated opposition to or concern about the introduction of the Named Person service or made more general comments about the proposals for handling complaints under Parts 4 and 5 of the CYPA. They frequently stated that the proposed complaints processes – either option – were too complex. They argued that the process had to be robust, simple, straightforward and speedy to allow parents and families proper opportunity for redress. They were concerned that individuals would be at an inherent disadvantage in making a complaint to a large organisation, and they wished to see a system which put the interests of parents and children first. They expressed particular concerns about the handling and outcome of complaints focusing on the conduct of a Named Person.
- 8.5 Individuals also sought clarification about a number of specific issues: situations where parents and children / young people don't agree about pursuing a complaint; situations involving multiple similar complaints; and the interface with other organisations and complaints systems.
- 8.6 Many of the other points made by individuals did not directly address the issue under consultation (i.e. the development and implementation of an effective complaints process) and reflected the points included within the NO2NP statement on the complaints process (see Annex 3).

Monitoring and oversight

- 8.7 Both organisational and individual respondents highlighted the importance of transparency in the complaints process, and called for collection, analysis and publication of national statistics on complaints. The need for independent auditing of complaints was a less frequent suggestion. Respondents also noted that learning from complaints could be used positively in service improvement.

ANNEX 1: RESPONSE RATE FOR INDIVIDUAL CONSULTATION QUESTIONS

	Consultation question	Number of responses received	% of total 225 responses
Q1	Should making complaints concerning functions relating to the Part 4 and/or Part 5 be restricted to a child, young person and parent (as defined by the CYPA)? (Yes / No)	108	48%
	Reasons	106	47%
Q2	Should the parent and child be entitled to request and authorise the assistance of other persons in making their complaint?	126	56%
	Reasons	115	51%
Q3	Should the merits of decision making about functions, as set out in Appendix A, under parts 4 and 5 be looked at by SPSO? (Yes / No)	109	48%
	Reasons	120	53%
Q4	Should complaints concerning functions relating to the Part 4 and/or Part 5 be considered as set out in Option 1? (Yes / No)	121	54%
	Reasons	121	54%
Q5	Should complaints concerning functions relating to the Part 4 and/or Part 5 be considered as set out in Option 2? (Yes / No)	91	40%
	Reasons	100	44%
Q6	We invite comments on what should happen in situations where the Named Person service provider or the managing authority are coordinating the investigation of a complaint involving other bodies where they may agree with the parent and child at the outset.	98	44%
	Reasons	51	23%
Q7	We invite comments / suggestions on what information and guidance on the complaints process would help parents and children.	128	57%

ANNEX 2: ORGANISATIONAL RESPONDENTS

Local authorities and local partnership bodies (27)

- Aberdeen City Council, on behalf of the Integrated Children's Services Board
- Aberdeenshire Council, Education and Children's Services
- Angus Council
- Argyll and Bute Community Planning Partnership
- City of Edinburgh Council
- Clackmannanshire and Stirling Education Service
- Dumfries and Galloway, Children's Services
- Dundee City Council, Children and Families Service
- East Ayrshire Health and Social Care Partnership
- East Dunbartonshire Council
- East Lothian Council
- East Renfrewshire Council and Health and Social Care Partnership
- Fife Council
- Glasgow Children's Service Planning
- Highland Council
- Inverclyde Council
- Midlothian Council
- Moray Council
- North Ayrshire Council, Education and Youth Employment Directorate
- North Ayrshire Health & Social Care Partnership
- North Lanarkshire Council
- Perth and Kinross Council
- Renfrewshire Community Planning Partnership
- Scottish Borders Council and NHS Borders - joint response
- South Ayrshire Council and Health and Social Care Partnership – joint response
- South Lanarkshire Council
- West Dunbartonshire Health and Social Care Partnership and West Dunbartonshire Council - joint response

Third sector agencies (18)

- Aberlour, Barnardo's and Children 1st - joint response
- Article 12 in Scotland
- Children in Scotland
- Down's Syndrome Scotland
- East Park
- Eighteen And Under
- ENABLE Scotland
- Enquire at Children in Scotland
- Family Education Trust
- Glasgow Council for the Voluntary Sector (GVS)

- Health and Social Care Alliance Scotland (the ALLIANCE)
- LGBT Youth Scotland
- Mindroom
- National Deaf Children's Society
- Scottish Independent Advocacy Alliance
- The Christian Institute
- Who Cares? Scotland
- Young ME Sufferers Trust (Tymes Trust)

NHS bodies (5)

- Child Protection NMAHP Scotland
- NHS Forth Valley
- NHS Lanarkshire
- NHS Lothian
- NHS National Services Scotland

Education-related bodies (5)

- National Parent Forum of Scotland
- Schoolhouse HEA
- Scottish Council of Independent Schools
- Scottish Parent Teacher Council
- Scottish Secondary School Teachers Association

Other (10)

- ASN Mediation Service Providers Scotland
- Care Inspectorate
- No to Named Persons (NO2NP)
- Police Scotland
- Royal College of General Practitioners (RCGP) Scotland
- Royal College of Nursing (RCN) Scotland
- Scottish Government, Disabled Children and Young People Advisory Group (DCYPAG)
- Scottish Public Services Ombudsman (SPSO)
- United Free Church of Scotland Church & Society Committee
- Voice Scotland

Total number of organisational respondents: 65

ANNEX 3: CAMPAIGN TEXT FROM NO2NP RESPONDENTS

- Many parents do not want a Named Person at all. The legislation needs amending to allow them to opt out. In the meantime, the scheme must have a mechanism for requesting a change of Named Person, not just complaining about the way they carry out their functions.
- The appeal system for when a complaint about a Named Person is not dealt with properly needs to have teeth. The Scottish Public Service Ombudsman does not have the power to enforce its decisions so what is the point of appealing?
- Guidance on the complaints process should emphasise that the Government recognises that parents are primarily responsible for their children, not the State.
- The Named Person is legally obliged to monitor wellbeing (defined in Government guidance as 'happiness'). This threshold is so low and vague it is inevitable that Named Persons will interfere in ordinary family life. The complaints system therefore needs to be robust and straightforward to give parents some way of defending themselves against unwarranted intrusion and abuse of power by Named Persons.
- Under current practice, a parent refusing to accept the advice of Named Persons is likely to be treated as 'non-engagement', resulting in further escalation of state involvement. What will the safeguards be to make sure that a complaint about a Named Person isn't used as an excuse for more interference?
- If a complaint is made about a Named Person then the relationship between the parent and Named Person has broken down. Will there be an automatic change of Named Person as a result and is there a guarantee that the previous Named Person will no longer have access to confidential data on the family?
- (In answer to consultation question 3:) Whatever body acts as the independent arbiter of complaints needs to be able to look at all aspects of a Named Person's actions, including their decision making.
- (In answer to consultation question 4:) The idea that separate complaints would have to be made to the various possible bodies involved is clearly ridiculous. It is difficult to take Option 1 seriously.



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