



CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014:

**Government Response to the ‘Consultation on
Complaints Concerning Functions Relating to
the Named Person and Child’s Plan’**



**The Scottish
Government**
Riaghaltas na h-Alba

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Introduction

On 4 September 2015 the Scottish Government launched the 'Consultation on Complaints Concerning Functions Relating to the Named Person and Child’s Plan’. The consultation covered the powers of the Scottish Government to introduce a complaints procedure to cover the exercise of functions under Parts 4 and 5 of the Children and Young (People) Scotland Act 2014. It complemented the consultation on the statutory guidance on the functions of those two Parts of the Act, which was held between March and May of 2015. The consultation on the complaints procedure closed on 30 October 2015.

The findings of the consultation have been analysed and a report has been published on the Scottish Government website on 12 January 2016. This Scottish Government response sets out how Scottish Ministers have considered the findings of the consultation exercise in producing the Order setting out the consultation procedure for Parliamentary consideration, as well as the plans for developing and publishing guidance to accompany the Order.

Background

The Children and Young People (Scotland) Act 2014 (CYPA) allows for Scottish Ministers to make provision by Order about the making, consideration and determination of complaints concerning functions relating to the Named Person (Part 4) and Child's Plan (Part 5). The ability for such complaints to be made, considered and acted upon is a key complement to the development of the statutory guidance on how the functions of the Named Person and the Child’s Plan are to be carried out.

The development of the complaints procedure has been guided by several key principles.

- First, the intention has been to ensure alignment of the complaints procedure here with existing mechanisms as far as possible. Developing a wholly new and parallel set of complaints procedures would complicate an already complex complaints landscape. At the same time, it has been clear that complaints on issues not directly related to Parts 4 and/or 5 are to continue to be addressed through existing mechanisms.
- Second, the aim has been to make sure that there is an accessible, transparent and simple route for making complaints concerning functions relating to Part 4 and/or 5 for parents, children and young people. For that reason, the complaints procedure has been closely modelled on the Scottish Public Service Ombudsman (SPSO) model Complaints Handling Procedure ([SPSO Model Complaints Handling Procedure](#)).

The Scottish public sector complaints handling landscape has been subject to significant review in recent years. As a result, the Scottish Government and the Scottish Parliament agreed a broad programme of change to help drive improvements in public service complaints handling. This agreement led to new roles and responsibilities for the SPSO, as well as affecting how public bodies respond to complaints and to developments in complaint handling. These changes have been taken into consideration in the development of the procedures here.

Key Findings

The consultation 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 for health professionals, other national public sector bodies, faith groups, private sector organisations and campaign groups). Key points were as follows.

- 63% of organisational respondents and 27% of individual respondents thought that the making of complaints should be restricted to the child, young person and/or parent(s).
- Most organisations (96%) and individuals (90%) agreed that parent(s) and child should be entitled to request and authorise assistance from other people (i.e. third parties) in making their complaints.
- 82% of organisations and 73% of individuals agreed with the proposal that the SPSO provide the independent mechanism for reviewing cases where complainants are not content with the outcome of the local complaints process, although there were some caveats to some of the responses.
- Most organisational respondents (77%) expressed a preference for Option 2 for the management of complaints. Just under half (44%) of individuals also supported Option 2, with some raising concerns about both options. (For a description of the two Options, see the following section.)
- Irrespective of whether they supported Options 1 or 2, organisational respondents agreed with the principle that a child or parent should not have to contact multiple services to make a complaint. The complaints process in relation to Parts 4 and 5 of the CYPA should make use of existing complaints mechanisms and processes. To note that although respondents supported either option, many responses were accompanied with a number of caveats.

- Where the Named Person service provider or managing authority is acting as the complaints coordinator, and in situations where the complaints coordinator agrees with the complainant from the outset, organisational respondents highlighted the importance of resolving such complaints speedily and also commented that the scenario highlighted the potential complexity of multi-agency cases. Individual respondents had mixed views.
- There were calls 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.

The Scottish Government Response

The key findings to the consultation have shaped the development of the Order and will strongly inform the guidance that will accompany the Order. While there were a number of comments in the consultation that went beyond the scope of the specific issues around the complaints procedures, there was a range of clear views and specific suggestions on how to get the right complaints process in place that have proven very helpful in determining and refining the approach to be taken. The key issues to be addressed in developing the Order are set out in the section below, while the guidance is discussed in the next section.

Making complaints

With respect to who should be able to make complaints, the strength of response in the consultation – particularly among individuals – was clear that there should not be restrictions on the making of complaints to the child, young person and parent. There was a consistent view across many of the responses that the complaints process should be accessible to those who have clear responsibilities for – or can act on behalf of – children and young people affected by the Parts 4 and 5 functions.

To address these points, the Order will capture this in two ways.

- The definition of what is meant by a ‘parent’ – and those who can make a complaint – will ensure that those with significant caring responsibilities will be included. The Order will draw on the definition of ‘parent’ already in place in the CYPA, which in turn refers back to the definition in the Education Act 1980. This would include those with significant caring responsibilities for children and young people, and includes individuals such as foster and kinship carers. The guidance will give further detail on how this will operate in practice.

- The Order will also enable others to make complaints on behalf of a child or young person where they have been given express permission to do so. There was a clear view in the consultation on the right of complainants to request for assistance in making a complaint. The approach is to ensure that the ability to make use of others in assisting with complaints is in keeping with the existing approach for complaints set out in the SPSO model complaints procedure.

The role of the SPSO

The consultation set out a proposal for the SPSO to have a role in the complaints procedures for the functions under Parts 4 and 5 that is similar to their existing role in other complaints procedures. A clear majority of respondents in the consultation recognised that the SPSO should have a role in this complaints procedure, reflecting their clear expertise and experience in providing a higher level review of local complaints processes. The Order will set out the SPSO's powers to review the merits of a decision on complaints, as well as the process by which those decisions were reached.

This will require an extension of the SPSO's powers and consequent amendments to the 2002 Act setting out the SPSO's powers. The amendments are restricted in scope so as not to interfere with the SPSO's other powers, but will extend their reach in the exercise of those powers to cover the functions under Parts 4 and 5 of the CYPA.

Managing the complaints process

As well as asking for views on a number of procedural aspects relating to complaints, the consultation document outlined two options for the management of complaints relating to the provisions and functions of the Named Person and/or Child's Plan:

- a parent or young person/child will make a complaint to each organisation involved in a matter. This will mean that the complaint is investigated by the organisation or body whose performance is being complained about ('Option 1'); and
- a parent or young person/child will make a complaint to the organisation providing the Named Person or to the organisation acting as the managing authority for complaints made about the Child's Plan – the complaint, regardless of the number of organisations or issues involved, will be investigated by a single point of contact for the parent and child ('Option 2').

For both options, the consultation paper set out the local level processes and procedures to be followed, in line with the SPSO model complaints handling procedure.

In the responses to the consultation, while there were proponents and opponents of both options, there was clearer, stronger support for the second option. Several criticisms were made of Option 1, including:

- the scope for confusion and uncertainty among parents, children and young people;
- contradictory judgements coming from different services;
- shifting the burden of responding to the complaint unduly onto the complainant; and
- overall reduction in the accessibility of the complaints process.

Consequently, the approach to be adopted in the Order will be based on the second option. A number of issues were raised about how Option 2 might work in practice, so the approach has been revised from that set out in the consultation paper to ensure any potential concerns could be addressed.

- There will not be a named individual with responsibility to coordinate complaints, as originally proposed, but it will be the responsibility of relevant agencies to put in place coordinating mechanisms, to provide a better balance between the flexibility of ensuring coordination and being overly prescriptive in how it is to take place.
- There will be a requirement for clearer signposting to other complaints processes to ensure that there is no unnecessary confusion or duplication of processes.
- The first stage of the complaints procedure will be more clearly based on the frontline resolution stage of the SPSO model complaints procedures with a stronger emphasis on the flexibility of response to meet particular circumstances and needs of the complainant – this will enable a rapid resolution of issues without the need for a full investigative process if not required, and avoid undue prescription in terms of how this early stage should be carried out.
- The importance of taking into account exceptional circumstances in terms of timescales has been recognised with appropriate flexibility put into the process.

Development of Guidance

The Scottish Government has set out the intention of producing information and guidance in a variety of formats ahead of implementation. We want to ensure that parents, young people and children know how to make a complaint and what their rights are and what will happen when they make a complaint. At the same time it is important that every organisation and body involved in a complaint relating to Parts 4 and/or 5 are clear about their role and responsibilities regarding complaints. We want to develop a system where organisations and bodies can learn from complaints.

Work is already underway to develop guidance that will provide this clarity. This is being co-produced with key stakeholder groups, including local authority and health board representatives, third sector bodies and parent representative groups. The issues raised in the consultation questions – where greater clarity has been requested – will inform this work. For example, this will include detail on the application of timescales and mechanisms for resolving any inter-agency disagreements.

Conclusion and Next Steps

The Scottish Government intends to lay the Order before Parliament in early 2016. This is to enable its passage before the dissolution of Parliament for the May 2016 elections and support its commencement with the wider set of functions under Parts 4 and 5 on 31 August 2016.

As noted, there will be parallel development of supporting guidance with a view to publishing the guidance in summer 2016.



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