

REGULATORY APPRAISAL

THE SOCIAL SERVICES COMPLAINTS PROCEDURE (WALES) REGULATIONS 2005

Background

1. There are currently two separate procedures for handling local authority social services complaints:
 - Children Act representations and complaints procedure: There is one procedure for representations, including complaints, about social services actions under Part III of the Children Act 1989. This is set out in the Representations Procedure (Children) Regulations 1991 and guidance; and
 - The Local Authority Social Services Act (LASS Act) complaints procedure: The NHS and Community Care Act 1990 introduced a second complaints procedure. This covers all complaints about social services for adults and children's services apart from those under Part III of the Children Act 1989. The requirements are set out in the Complaints Procedure Directions 1990 and guidance.
2. The Health and Social Care (Community Health and Standards) Act 2003 received Royal Assent on 20 November 2003. Chapter 9 to Part 2 of the Act deals with complaints procedures in social services for adults and - for the first time – this gives the Assembly powers to make Regulations in these areas.

Purpose and intended effect of the measure

3. The main changes are:
 - the separate children's and community care procedures have been brought more closely together into a common framework. To provide a single volume of guidance covering all complaints about social services. In the Regulations, unnecessary differences have been eliminated wherever possible, although of course the differences required by the two pieces of primary legislation have been retained;
 - the new Regulations extend the duties on local authorities to safeguard and promote the welfare of the service user in the way they handle complaints. There are new duties to ascertain and take into account the user's wishes and feelings;
 - both complaints procedures now have the same three-stage process. (This has been achieved by introducing into the children's procedure a clear, time limited first stage giving a chance for informal local resolution);
 - the Regulations put all of the time-scales for handling complaints on a statutory footing and require authorities to keep complainants informed about progress with their complaint;

- the Regulations provide arrangements for managing complex situations where there are concurrent investigations by, for instance, the police, the Care Standards Inspectorate for Wales (CSIW) or the Care Councils; and
 - in perhaps the biggest single change, the Regulations introduce an independent stage where local consideration has failed to secure resolution of the matter. Under the old arrangements, the local authority convened a panel hearing with, typically, one of the three members being independent. Under the new arrangements, complainants will still have the same right to a panel hearing, but both the membership and the convening arrangements will be wholly separate from the complained against authority.
4. It has been the intention since the passage of the 2003 Act to build clearer links between the social services and NHS procedures. The social services guidance sets out new arrangements for links between the two procedures, arrangements, which it is proposed will be given the force of Regulation when the NHS Regulations are made.
 5. The Regulations and guidance set out new arrangements for links between local authorities and the CSIW and, through the guidance, the same principles have been extended to cover links with other complaints procedures in local government. Together, these changes will represent a major step towards a seamless complaints service for users of public services in Wales.

Risk Assessment

6. Recent research commissioned by the Assembly, responses to a consultation carried out in 2001 and representations from service users have suggested a number of problems with the present regime:
 - people who use services see the arrangements as too complicated;
 - authorities have not always dealt with complaints promptly and sympathetically;
 - authorities have not always met the requirements on time-scales;
 - authorities have not always kept complainants informed about the handling of their complaint;
 - the separate arrangements for children and adults have created confusion;
 - there has been no framework for handling complaints that involve both social services and the NHS;
 - the lack of any independent stage to the procedure has undermined confidence among some service users; and
 - a small, but growing number of people have felt the need to take their concerns to the Public Services Ombudsman for Wales.

Options

7. There are three options:
 - Option 1: Do Nothing;
 - Option 2: Wait for the planned NHS Regulations currently on hold; and

- Option 3: Make the Legislation.

Option 1: Do Nothing

8. This would mean that the present arrangements would continue, with all of the risks and shortcomings outlined in the paragraph 7 above. In particular, the vulnerable people who rely on social services would still have no access to an independent panel hearing when the local authority's handling of the complaint has failed to resolve the issue.

Option 2: Wait for the NHS Complaints Procedure Regulations now on hold

9. This would mean that the health and social services drafts could be considered together. However, the issues for the two services are rather different. While the Assembly overhauled the NHS complaints arrangements in April 2003, the social services arrangements are still in the form in which they were first introduced for England and Wales in 1990 and 1991. The Assembly held its own major consultation on social services complaints in 2001 and has waited on Westminster legislation in 2002 and 2003 for the powers to make the changes proposed then. The Shipman recommendations, which have delayed what would have been the NHS Complaints Procedure Regulations 2005, do not have a direct bearing on the social services arrangements. And it will still be possible to build more of a seamless service across the NHS and local authorities by outlining the changes in guidance now and amending the social services Regulations when the NHS Regulations are finalised. There is little justification for delay on these grounds.

Option 3: Make the Legislation

10. The Assembly has an opportunity through recently acquired powers in the Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003 to reform complaints arrangements in social services. Making the legislation now means that the reforms in Wales can come into force at the same time as the matching reforms in England.

Benefits

11. The main beneficiaries of the new framework will be the vulnerable men and women who use social services. It will also benefit the family members and advocates who might need to pursue complaints on their behalf, because:

- the Regulations create unified and more coherent arrangements;
- the Regulations create duties on authorities to place the well being of the person using the service at the heart of their work on handling complaints;
- the Regulations put the time-scales for handling complaints on a statutory footing and place duties on authorities to keep complainants informed about the handling of their complaint;
- they provide arrangements for managing those complex situations where for instance the police, the CSIW or the Care Council are also investigating the matters raised in the complaint;
- most importantly, the Regulations give people who use the service, an opportunity to have an independent review of their concerns when the local authority's handling of the complaint has failed to resolve the issue; and

- if implemented successfully, the new framework should mean that fewer people with concerns about social services would feel the need to take their concerns to the Public Service Ombudsman for Wales.

12. The Regulations and guidance will also be of benefit to local authorities and their staff. It will give them a single, comprehensive framework of Regulations and guidance on complaints for the first time.

Costs

13. It is not anticipated that local authorities will need additional resources to meet their duties under these new Regulations. The overall intention is to secure improvements in practice within existing resources. Local authorities have had statutory duties to establish and operate complaints procedures since 1990. They have had duties since then to publicise the procedures among service users and the public - and they have had duties to train their own staff to use the procedures properly.

14. Under the new arrangements, authorities will no longer be responsible for operating the third or panel stage of the procedure. Local authorities will be able to re-deploy any modest savings they make at this stage to developing the quality of their practice in the two earlier stages.

15. This change creates limited financial implications for the Assembly, which will have responsibility under the Regulations for running the new independent panel stage. The Assembly has concluded an agreement with the NHS Business Services Centre that the role will be performed on its behalf by the existing Independent Review Secretariat for the NHS – albeit with a radically simpler procedure than the NHS one. This will have a recurrent cost from 2006-07 of £100k for the combined children's and adult's procedures. This will pay for the administrative costs of running the panel, as well as 'day fees' for the panel members. This funding will be found from within the Health and Social Care Main Expenditure Group.

Consultation

With Stakeholders

16. The draft Regulations, together with the guidance, would implement most of the main proposals to come out of the Assembly's wide-ranging consultation on complaints in 2001. The main findings of which were:
- there was "particular support" for the proposal to bring the two separate procedures into a common three-stage framework;
 - there was support for at least part of the procedure to be independent of the authority complained against;
 - respondents generally supported a greater emphasis on local resolution;
 - those who responded wanted stronger guidance on the need to defer or freeze decisions while complaints about them are considered;
 - those who responded wanted better follow-up of the undertakings given by authorities in response to complaints; and
 - respondents wanted to see clearer links between social services procedures and other processes in, for example, health, education and housing.
17. The present draft Regulations and the associated guidance were developed with the help of a Complaints and Representations Advisory and Implementation Group (CRAIG). This brought together a range of key interests to consider the main policy options, the drafting instructions for the Regulations and the draft guidance.
18. There has been extensive consultation with service users, local authority complaints officers and advocacy providers on how we can improve the arrangements for handling complaints and move towards a more seamless response across different services. This work informed the development of the draft Regulations and guidance.
19. In addition, a public consultation was carried out on the draft Regulations, draft Regulatory Appraisal and draft guidance between 16 May 2005 and 5 August 2005. (A list of respondents is attached at Annex 1.) 52 responses were received from relevant organisations, including bodies representing services users, local authorities and local health boards, the Public Services Ombudsman, the Children's Commissioner and the Care Council. While a number of helpful suggestions were made, there was overwhelming endorsement for most of the Welsh Assembly Government's proposals. Just one proposal was rejected - a suggestion that the Regulations should be amended to require all complaints officers to have a social work qualification. Respondents felt that in selecting the best people to be complaints officers, a local authority should be able to draw on a wider pool than social workers.
20. Alongside the more formal consultation, the Welsh Assembly Government worked with All-Wales People First to provide representatives of people with learning disabilities with a face to face opportunity to discuss the proposals. Working with Age Alliance Wales, a separate exercise was conducted to seek the views of individual older people and their local organisations, from which 96

responses were received. There was overwhelming support from both of these exercises for the proposed Regulations.

21. In the light of the consultations, a number of amendments were made to the drafts of the two sets of Regulations. These amendments will:

- adjust some of the time-scales for individual stages of the procedure;
- strengthen the requirements on authorities to keep complainants informed about their rights under the procedures;
- strengthen the requirements on authorities to keep complainants informed about the progress of their complaint; and
- make provision for cases where the Care Council may also be investigating the matter raised in a complaint.

With Subject Committee

22. The draft Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation on 3 March 2004 (HSS (2)-04-04 Paper 4a, item No: HSS27 (04)) and were identified for detailed scrutiny. The Committee scrutinised these Regulations at its meeting on 5 October 2005 (HSS (2)-10-05 (p.6)). No amendments were made or points of clarification raised and the draft Regulations were approved without amendment.

Review

23. The impact of the Regulations will be monitored systematically. The Regulations require each authority to produce an annual report on its work with complaints. The guidance associated with the Regulations specifies the scope of the report and it should include, at the minimum, data on:

- the numbers of complaints resolved at each stage - local resolution, formal consideration and independent review panel;
- adherence to time-scales;
- who made the complaints;
- what they were about;
- how they were resolved; and
- confirmation that promises made as part of the resolution have been kept.

24. The 22 annual reports should provide a good basis for compiling a clear picture of performance across Wales.

25. The independent panel hearings will create new opportunities to look at how well the local arrangements are working.

26. The Social Services Inspectorate for Wales (SSIW) will be including new indicators of the handling of complaints within the developing framework for Performance Management. Beyond this, it would be open to the Assembly to ask SSIW to inspect the handling of complaints. This could be done either as one of its regular thematic inspections - or as a one-off investigation if there was a local cause for concern.

Summary

27. The proposed Regulations will benefit vulnerable adults who use social services in Wales. Most importantly, they will give people who use services the chance to take their concerns to an independent panel hearing where the local authority's handling of the complaint has failed to resolve the issue.

**COMPLAINTS AND REPRESENTATIONS PROCEDURES IN LOCAL
AUTHORITY SOCIAL SERVICES: LIST OF RESPONDENTS TO THE
CONSULTATION HELD MAY TO AUGUST 2005**

Local Authorities

Blaenau Gwent County Borough Council
Bridgend County Borough Council
City & County of Cardiff
Carmarthenshire County Council
Ceredigion County Council
Conway County Borough Council
Denbighshire County Council
Flintshire County Council
Merthyr Tydfil County Borough Council
Monmouthshire County Council
Neath Port Talbot County Borough Council
Newport City Council
Pembrokeshire County Council
Powys County Council (2)
Rhondda Cynon Taf County Borough Council (2)
City & County of Swansea
Torfaen County Borough Council
Wrexham County Borough Council
Cyngor Sir Ynys Môn

Organisations representing service users and other voluntary bodies

Age Concern Cymru
All Wales People First
Barnardos Cymru
Cartrefi Cymru
Crossroads Wales
CWMPAS
Mencap Cymru
Mind Cymru
NCH and NCH Cymru
NSPCC
Parkinson's Disease Society of the UK
TGWU Retired Members Association
Torfaen Voluntary Alliance
Vale of Glamorgan Older People's Forum

Continued...

NHS bodies

Board of Community Health Councils in Wales
Bridgend Local Health Board
Cardiff Local Health Board
Conway and Denbighshire NHS Trust
Neath Port Talbot Community Health Council
Neath Port Talbot Local Health Board
North Glamorgan NHS Trust

Other bodies and individuals

All Wales Complaints Officer Group
Association of Directors of Social Services Cymru
Cardiff University – School of Social Science
Care Council for Wales
Children's Commissioner for Wales
An Independent Chair within the existing complaints procedure
An Independent Person within the existing complaints procedure
An Independent Person within the existing complaints procedure
Public Services Ombudsman for Wales