

PE1844/E

SPSO submission of 5 February 2021

1. PE1844 calls for an independent health complaints-handling regulator. In drafting this submission we have reviewed the petition, related submissions and the comments made during the Committee meeting.
2. Having done so, the call for a new regulator is not one we could support. The SPSO already fulfils many of the functions sought as both an independent investigator and the Complaints Standards Authority (CSA). We are also mindful of the commitment by the current government to introduce a Patient Safety Commissioner which would amplify the patient voice indicating that changes to NHS oversight are already underway.

The current landscape

3. The Scottish Government response sets out the current extensive statutory underpinning to the existing NHS complaints process. The SPSO role ensures there is an independent complaints-handling body for NHS complaints by:
 - 3.1. being completely independent decision-makers
 - 3.2. **not being limited to complaints handling.** Our legislation allows us to investigate *any action* of a health body and this means we can (and do) comment directly on clinical judgement. We can consider the **substance** of health complaints. In 2019/2020 we:
 - 3.2.1. received 1,562 health complaints
 - 3.2.2. took expert clinical advice on 821 cases
 - 3.2.3. conducted 386 in-depth investigations
 - 3.2.4. upheld 55% of all health cases investigated
4. While we would not describe ourselves as a regulator, in our CSA role, the SPSO is not limited to making recommendations. Organisations **must** comply with model procedures and we have powers to issue an enforceable notice of non-compliance if procedures (including requirements around data collection and reporting) do not meet the standards.
5. In individual investigations we make recommendations about clinical and complaint-handling matters. We have powers to report failure to comply with our recommendations directly (and publicly) to Parliament. To date, we have not used this significant power, having managed to achieve compliance with our recommendations by public bodies.

The NHS complaints process

6. There is a single NHS procedure which organisations are required to follow. The process can be adapted locally (in a limited way) to ensure organisations take

ownership of the process. For example local branding on documents so it is clear that this is the procedure they operate. This may have caused some confusion that there is more than one procedure but we can confirm that there is only one NHS complaints procedure in Scotland.

7. The two-stage NHS procedure requires organisations to investigate complaints and capture and act on learning from them. SPSO is the final stage if there is dissatisfaction with the local response.
8. Experience shows the best way to encourage and support effective complaint-handling is for the initial response to come from the organisation responsible for the service. We would not support an approach that removes that responsibility by moving the responsibility for initial investigations to an external regulator.
9. This does not mean there is no oversight or accountability within the complaints process.
 - 9.1. there is a legal requirement to signpost to SPSO and we can and do undertake independent investigations.
 - 9.2. we have a duty to monitor complaint-handling and have a Support and Intervention policy setting out how we identify trends/issues and provide support with proportionate intervention.
 - 9.3. the Duty of Candour is a legal obligation requiring organisations to be open to patients and families when harm has occurred.
 - 9.4. other scrutiny organisations can and do consider our standards when undertaking systemic scrutiny of health service bodies.

Continuous improvement

10. Dissatisfaction and a lack of trust in any complaints system can be driven by dissatisfaction with the experience/outcome of individual investigations.
11. Actions we take to improve the service we provide include:
 - 11.1. publishing service standards which we share with all complainants
 - 11.2. having a complaints process that meets CSA standards, but where the final stage is an independent customer complaints reviewer we appointed to consider complaints about our service
 - 11.3. have a robust process in place to review decisions when complainants are unhappy
 - 11.4. providing training, guidance and materials on best practice, self-assessment and improvement
 - 11.5. quality assuring cases.

12. We are currently reviewing the fitness of our legislative basis light of recent European and UN-approved standards for Ombudsman. Initial indicators are that Scotland performs well against many of the standards but that, after nearly 20 years there is need for modernisation of the role. We intend to pursue this in the next Parliament. One significant aspect where we are increasingly out of step with international practice is SPSO's inability to investigate complaints on our own initiative (when no individual complaint has been received). This power would improve trust in the SPSO by enabling us to pursue areas where we are seeing potential systemic failings, particularly for vulnerable groups. Changes are also needed to improve access to SPSO as the final stage.