

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Social Work and Health

Social Work & Health Improvement Committee

19 March 2008

Subject: Social Work Complaints Review Sub-Committee

1. Purpose

- 1.1** This report advises Committee of the requirements to put in place a Complaints Review Committee (CRC) and details any relevant issues around the formation, structure and remit of a CRC.
- 1.2** The report also requests Committee to make a decision on the most appropriate model for West Dunbartonshire.

2. Background

- 2.1** The Social Work and Health Improvement Committee considered proposals regarding a complaints review sub committee on 21 January and requested a further report be presented to Committee on 19 March 2008. This report would summarise the composition, remit and structure of CRCs in other local authorities.
- 2.2** Section 52 of the *National Health Service and Community Care Act 1990* inserted section 5B into the *Social Work (Scotland) Act 1968* giving the Secretary of State powers to require local authorities to establish procedures for considering complaints with regard to the discharge of their social work functions. The *Social Work (Representations Procedure) (Scotland) Order 1990 (No 2519 (s213))* was made by the Secretary of State on 8 December 1990 requiring local authorities to establish such procedure in respect of all their social work functions whether now or in the future, including those for children.
- 2.3** The social work complaints process is a 3 stage one:
 - In the first informal problem solving stage, every attempt is made to mediate and resolve the complaint;
 - In the second stage unresolved complaints are formally recorded and investigated by senior officers. Where a complaint is upheld, we endeavour to resolve the issue amicably and reach an agreed outcome; and

- In the final stage the formal Complaints Review Committee (CRC) should aim to bring an objective and independent eye to bear on complaints to give the public additional safeguards that their wishes and needs are being fairly considered and their complaints properly investigated. This requires a level of objectivity and independence in the membership of CRCs. Complaints should only be referred to the CRC when all avenues of redress have been explored. This requirement is detailed in paragraph 10 (2) of the directions.

3. Main Issues

3.1 Information was sought from all other Local Authorities re Scotland and responses were received from 8.
On the basis of the responses received and investigation of legislative guidance the following was established.

3.2 The Role of the CRC

3.2.1 The role of CRC is to examine objectively and independently the facts as presented by the complainer and by the local authority and to make a recommendation to the appropriate local authority committee.

3.2.2 In doing this, the CRC should be aware of local authority policies, priorities, and resources and should recognise where professional judgement has been exercised.

3.2.3 The CRC may express disagreement with any of these in relation to a case under review.

3.2.4 The strength of CRCs is in their independence and objectivity and the fact that they are not comprised of professionals and officials from the department to which the complaint relates.

3.3 General process

The general process can be summarized as follows:

- Formal, minuted, hearing with oral representation by both sides and written submissions (witnesses can be called and complainants can be represented);
- The process is conducted formally, in accordance with natural justice. It should attempt to reach a resolution;
- It should meet and report within 56 days of a written referral (which must itself be within 28 days of the original response);
- A report with recommendations from the CRC should go to the relevant Committee responsible for Social Work matters (a CRC may be a sub-committee of a council committee);
- The Committee should only reject recommendations of CRC 'in exceptional circumstances'; and
- The Local Authority should notify complainant of agreed actions within 42 days of the recommendations.

3.4 Composition/membership of CRC

The following should apply to CRC composition/membership:

- The CRC should have three members with the Chair and at least one of the other two members an 'independent person';
- Members cannot be or have been within last 12 months an employee or official of any local authority or the spouse of an employee;
- They cannot be employed by another organisation to whom Local Authority Social Work functions have been delegated;
- The Chair should have knowledge of Social Work functions and tribunals/review bodies. The other members must have some knowledge of one of these;
- A non-voting official from the Local Authority should be present to provide advice on policy, procedure and legislation;
- There is no statutory duty to have the CRC as a sub-committee or to have elected members as part of panel;
- Most CRCs do not have elected members on them, but there are exceptions (e.g. Stirling has two elected members). If there is Elected Member representation they cannot be, or have been in the previous 12 months, a member of the ruling administration; and
- CRCs may be shared between local authorities, or training of members may be shared but there is evidence to suggest that does not happen often.

3.5 Previous analyses of CRC's, including these undertaken by the Commissioner for Local Administration in Scotland (now SPSO) and through the Social Work (Representation) Procedure (Scotland) Directions, indicate that public confidence in CRC's is enhanced if membership is seen to be wholly independent. This would therefore be the preferred option for West Dunbartonshire.

3.6 The local authority is also represented on the CRC by a non-voting officer, who will provide advice on policy procedure and legislation.

3.7 The Scope of the CRC

The following are the types of matters considered to be within the scope of the CRC:

- the provision or non-provision of services;
- the quality and extent of services;
- the operation of services and allied issues;
- the manner in which decisions are arrived at; and
- decisions themselves (including financial assessments).

Matters considered to be outwith the scope of the CRC include:

- Grievances raised by staff;
- Disciplinary matters;

- Where the subject of the complaint is subject to other statutory procedures (e.g. children's panels);
- Where the subject of complaint is being pursued through legal action;
- Matters already fully disposed of or unreasonably persistent or vexatious complainers;
- Where confidentiality issues prevent CRC accessing information to reach a decision;
- Orchestrated campaigns; and
- People financing their own care arrangements.

Local Authorities may have alternative appeals procedures for defined matters at their discretion, the appellant retains right to refer to a CRC at any point if they wish.

3.7 Those eligible to be included:

Sect 5B of the 1968 Act provides for complaints made by or on behalf of:

- a person for whom the local authority provides a service either directly or indirectly;
- a person whose request for such a service has been refused by the authority;
- other persons whose need or possible need for a service, which the local authority has a power or a duty to provide, has come to the authority's attention; and
- excludes non service-users (unless legally entitled to a service) and self-appointed representatives (other than parents and carers).

3.7 Recruitment to a CRC can be through the Local Press and administered by the Legal and Administrative service of the Local Authority. Nominations from members may also be sought.

4. Personnel Issues

4.1 The main implication for personnel will be the requirement to comply and follow the approved complaints procedure and to organise and attend any meetings of the Complaints Review Sub Committee.

5. Financial Implications

5.1 It is expected that the only financial implication arising from the above would be the payment of travel expenses and loss of earnings to members of the CRC.

6. Risk Analysis

6.1 No risk has been identified as a result of this review as the Council requires to set-up a CRC. There is a reputational risk if a CRC is not set-up or if the CRC

which is set-up is not seen as being objective and independent from the Council.

7. Integrated Impact Assessment

- 7.1** An Integrated Impact Assessment has been completed and the only issues to arise can be covered within staff guidance.

8. Conclusions

- 8.1** There is a legal requirement for Social Work Authorities to consider any complaints made in the discharge of their statutory functions.
- 8.2** A requirement exists for an Independent Complaints Review Sub Committee to be established which will deal with Stage 3 complaints.

9. Interim Committee

- 9.1** There is presently one complaint to be heard by the Social Work Complaints Review Sub-Committee, of which the Scottish Public Service Ombudsman is aware. In order for this complaint to be heard expeditiously, the Committee is asked to agree to setting up a Pro Tempore Committee, comprising of members of the existing Education Appeal Committee who have been contacted and have agreed to hear this particular complaint should the Committee so agree.

10. Recommendations

- 10.1** Committee is asked to agree the establishment and composition of an independent Complaints Review Sub Committee.
- 10.2** The completed Review Sub Committee membership should not include elected members.
- 10.3** Committee is asked to agree to the establishment of a Pro Tempore Committee to hear an outstanding complaint.

William W. Clark,
Executive Director of Social Work and Health

Person to Contact: Moira Swanson, Section Head, Strategy, 7 Bruce Street, Clydebank, G81 1TT, 0141 951 6124

Appendices: None

Background Papers:

Wards Affected: None