

NCO response to the Scottish Parliament Local Government, Housing and Planning Committee: Scrutiny of Scottish Public Services Ombudsman

Introduction

The National Carer Organisations (NCO) welcome the opportunity to comment on the call for evidence from the Scottish Parliament Local Government, Housing and Planning Committee: Scrutiny of Scottish Public Services Ombudsman.

The National Carer Organisations are Carers Trust Scotland, Carers Scotland, the Coalition of Carers in Scotland, MECOPP, Shared Care Scotland, and the Scottish Young Carers Services Alliance.

Together we have a shared vision that all of Scotland's unpaid carers will feel valued, included and supported as equal partners in the provision of care. The National Carer Organisations aim to achieve this through the representation of unpaid carers and amplifying their voices at a national level.

We believe we can deliver more for unpaid carers by working together to share our knowledge and experience, and by focusing our collective efforts on achieving improvements in areas of policy and practice that are of greatest concern to unpaid carers.

Is the SPSO performing its functions in such a way as to encourage complaints from all areas of society? Could more be done to broaden access to the complaints process?

Unpaid carers from BME communities often have barriers to access various public services. There is significant work that must take place to help resolve these issues.

A lack of awareness of rights in regards to the work of the SPSO is a key issue for many BME unpaid carers. MECOPP has significant outreach work with the Gypsy/Traveller community across Scotland. For many in this community, particularly those living on local authority-run Gypsy/Traveller sites, the only point of contact that is used for complaints has been site managers. There have been instances where complaints have been made about local authorities and the Scottish Ambulance Service and there has been no further contact regarding this. Examples of concerns raised by the community include:

"The communication was failing severely. It wasn't the warden, but the seniors. We were passed over, they weren't interested."

"Nobody is listening."¹

It is evident from the concerns raised by the community that there is a lack of awareness of the existence of the SPSO for many, and indeed navigating complaints processes from individual public

¹ MECOPP (2024), 'Gypsy/Traveller Accommodation Paper 1: Maintenance on Local Authority Sites', https://static1.squarespace.com/static/62f4f5fa696d570e19a69429/t/66c5acc65deeb725916008f3/1724230854500/MECOPP_GT_Paper_01_Maintenance_LA_Sites.pdf

services is already a challenge, let alone escalating them to the SPSO. Often support in escalating complaints relies on support provided by Third Sector organisations as a final attempt to deal with complaints.

There are a number of barriers for BME unpaid carers in Scotland, leading to a lack of awareness of rights in regards to accessing public services. This includes communication barriers (particularly for those with limited English or literacy levels), digital barriers, fears of racism/discrimination, culturally inappropriate services and a lack of a diverse workforce in many instances².

In regards to broadening access to the complaints process, enhancing the accessibility of information is vital for encouraging an inclusive complaints process. This involves providing information materials in multiple formats and languages, which can help bridge communication gaps for those who may have language barriers or struggle with traditional resources.

Tailoring communication strategies to meet the unique needs of various community groups is essential. This includes creating resources that are easy to understand for individuals with low literacy levels and ensuring that those who are digitally excluded have alternative means to access information. MECOPP for instance has made significant use of audio-visual resources, such as the #SameRightsForAll resources aimed at the Gypsy/Traveller community³.

It is also important to establish clear pathways to advocacy organisations that can offer culturally appropriate support, such as MECOPP. By directing individuals to these resources, the SPSO can help ensure that everyone has the assistance they need to navigate the complaints process effectively. Where advocacy organisations are providing support, there should be consideration in providing these organisations with training regarding the role of the SPSO and how to access it, how to refer complaints to it, and how to support clients through their procedures. It's important, for example, that staff are trained in how to support clients with SPSO processes and are given information by them regarding accessing it. This is particularly important in the context of supporting BME unpaid carers who have specific barriers that may require additional support in the form of advocacy.

A streamlined process that is straightforward and user-friendly can encourage more diverse groups to engage with the system, is not time intensive and that can be easily translated into various languages. Simplifying the process, avoiding jargonistic language and ensure accessibility will support those from accessing the system. Clear information and advice about the SPSO should be given to complainants from the outset of any complaints procedure.

Is the remit of the SPSO and the delineation of that remit from other bodies sufficiently clear?

As noted later in this response, the remit of the SPSO is unclear to many individuals making a complaint nor is the fact that the decisions are non-binding. The SPSO's own website says that "*the SPSO looks into complaints about most organisations providing public services in Scotland. Our job is to give an independent and impartial decision on complaints.*" This could give an impression that a decision will be made but it is less clear that, where a complaint is upheld, that such a decision may not result in a positive change for the individual.

² MECOPP (2017), 'Informal caring within Scotland's Black and Minority Ethnic Communities',

<https://static1.squarespace.com/static/62f4f5fa696d570e19a69429/t/6397558e2f0aca3c17eed4f5/1670862226396/Briefing+sheet+03.pdf>

³ MECOPP (2024), '#SameRightsForAll launches at the Scottish Parliament', <https://www.mecopp.org.uk/blog/same-rights-for-all>

In addition, young carers must be recognised and valued for the immense contribution they make to the lives of the people they care for and to society, and they must be more proactively identified across public services. Their views and expert knowledge of the care needs of their cared for person should be heard and respected. It is essential that young carers are appropriately supported and are informed on their ability - and how - to raise a complaint, especially when their rights have been breached or if they have been treated unfairly through support or services. Young carers and the incorporation of UNCRC (Incorporation) (Scotland) Act 2024 aims to deliver a proactive culture of everyday accountability for children's rights across public services in Scotland. We welcomed SPSO recently publishing new guidance to support Scottish public services to take a more 'Child Friendly' approach to complaints. But more needs to be done to help children and young to be more aware and supported to raise complaints when relevant. More awareness raising would also be welcomed around what support is available through Children and Young People's Commissioner Scotland and SPSO to support young carers in complaints processes.

Does the SPSO have all the powers it needs to perform its role effectively and how do its powers compare with ombudsman in other countries? Would there be benefit in the SPSO having a power to initiate investigations?

A simple response, the SPSO does not have all the powers it needs. The National Carer Organisations has, over many years, noted the difficulties unpaid carers report with the complaint process and in obtaining redress.

This primarily relates to complaints about social work services. Despite improvements, the process remains difficult to navigate and unpaid carers have little or no meaningful resolution or redress. Whilst individuals can complain to the SPSO if they are dissatisfied with the response to their complaint to the local authority, unpaid carers do not feel that the SPSO has sufficient power to change the situations they face. Beyond this, they have few choices: they could take action through the legal system but such a step requires financial means and time that few unpaid carers have.

When we responded to past changes to the powers of the SPSO, including the provision of a simplified complaints process, we highlighted that without a real means of redress that is both easily accessible and delivers positive outcomes that replace the decisions that are subject of the complaint, there was little hope that anything would meaningfully change for unpaid carers and those they care for. This remains our position.

The National Carer Organisations in our evidence on the National Care Service Bill noted that we are disappointed that amendments at Stage 2 do not respond to these concerns of people who use services and unpaid carers.

It is important to make the complaints system and the SPSO as accessible as possible, including to addressing the barriers faced by many communities as we noted earlier in this response. However, fundamentally, the current system lacks both trust and transparency, is often unnecessarily adversarial and leaves people who use services and unpaid carers with issues unresolved. It is important that, before resorting to the complaints process, unpaid carers and supported people should be able to enter into an open and transparent process of discussing, negotiating and agreeing their support plan, rather than being informed of a decision where their only recourse is to complain.

Furthermore, to bring about a trusted complaints procedure, we have recommended that a completely new complaints process for health and social care is developed to enable complaints to be assessed against the principles of relevant legislation including: the National Care Service Bill, Carers (Scotland) Act 2016 and the Social Care (Self-Directed Support) Act 2013, alongside human rights and equality legislation, the UN Conventions for the Rights of Disabled People and the Rights of Children.

Complaints handling processes should not just consider the procedural aspects of a decision, but also whether fundamental rights were protected and that there was due regard to the rights holders' dignity throughout. This could include:

- Has the decision/issue negatively impacted about the realisation of human rights for the individual or their unpaid carer?
- Has the decision resulted in a detriment to carers with one or more protected characteristics?
- Has the decision/issue impacted upon an individual or their unpaid carer's ability to flourish and reach their potential?

To provide for real resolution, this must include a right for individuals and their unpaid carers to complain about the allocation of social care resources, assessment of eligibility and whether they have been able to have the choice and control they wish over how their needs and outcomes are met. The SPSO would require extended powers to be able to fulfil this aspiration including to provide for binding decisions.

The National Carer Organisations also believe that the SPSO should have the power to initiate investigations. This is an area of work, where potentially significant concerns over practice, policy or service delivery could be explored, challenged and addressed.

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