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# Current Developments

Edited by Iain McDonald

## **Proposals to transfer complaints Panels to the Commission for Social Care Inspection – throwing the baby out with the bath water?**

**Abstract:** *This article considers proposed changes to the social services complaints procedure. The Health and Social Care (Community Health and Standards) Act 2003 makes provision for complaints Panels to be taken away from local authorities. The suggestion is that in future the Commission for Social Care Inspection (CSCI) should be responsible for running all Panels. We argue that this proposal is not grounded in a satisfactory rationale, is not the best solution to any concerns about Panels and could lead to problems for all concerned: complainants, Panel members, complaints officers and the CSCI itself.*

**Keywords:** *Social services; Complaints Panels; CSCI; Consultation proposals.*

### **Introduction**

A crucially important policy change, which directly affects local authorities and the provision of social services, was contained in a Department of Health (DoH) publication, *NHS Complaints Reform - Making Things Right*, published in February 2003. This document was based on an earlier consultation document, *Reforming the NHS Complaints Procedure: a listening document*, which was issued for consideration by Health Authorities in September 2001. The reasons lying behind the NHS documents are well known. There had been considerable dissatisfaction with complaints procedures in the Health Service.

Subsequently, a new Health Service complaints procedure has been drawn up. Under this new procedure, where complainants are not satisfied with attempts to bring about resolution of their complaint at local level they will have the right to a new second stage of the procedure. The job of reviewing complaints has been removed from local NHS bodies and given to an independent organisation, the Healthcare Commission. Legislation has been introduced, the Health and Social Care (Community Health and Standards) Act 2003, and the details of the legal framework for the new procedure is set out in Regulations published by the DoH in July 2004.

However, tucked away in the original consultation document in 2001 were proposals that will now have a major impact on all social services complaints procedures. The proposal was to remove the responsibility of local authorities for the Panel (final) stage of the social services complaints process. Despite serious concerns being raised at the time about this proposal, plans went ahead and it is now proposed in three consultation documents - *Learning from Complaints*, issued by the DoH, *Getting the Best from Complaints*, issued by the Department for Education and Skills (DfES), and *An Independent Voice*, issued by the Commission for Social Care Inspection (CSCI) - that Panels be transferred to the CSCI.

The original underlying rationale for including social services complaints in the NHS reform plans was the desirability of making complaints which cross service boundaries between health and social services easier to handle. Thus the initial reason for amending the social services procedure had nothing to do with either the running or success of that procedure. It might therefore be assumed that, as the new NHS reforms do not, in fact, make detailed provision for such complaints, the plans

surrounding social services would be abandoned. However, this has not proved to be the case.

### **Early objections to the proposal**

Back in 2001 there was no consultation with local authorities before the changes were proposed in the NHS document. On the proposals being published, objectors, who included complaints officers, Independent Persons and elected members, could not see any clear advantage to the changes. It appeared that the local authority process had been swept up in NHS reforms without sufficient thought being given to the consequences. On the issue of cross-border complaints, the reason for including social services in the first place, objectors argued that better ways of dealing with these could be achieved by other means, including regulations setting a framework for information-sharing and joint investigations.

Local authority social services complaints procedures had also been the subject of consultation by the DoH and *Listening to People - A Consultation on Improving Social Services Complaints Procedures* came to a conclusion in June 2000. However, this document did not contain either a basis for, or a recommendation for, the change now proposed. Objectors therefore argued that there was no evidence, or other firm basis, in the DoH publications or elsewhere that the change would improve local authority handling of complaints. There was certainly no research basis for the change, although the DoH was aware of some very detailed research on the social services Panel process that was then being undertaken (see Ph.D by Katy Ferris, forthcoming) and it was suggested by the objectors that, if changes were to be made, then proper research should inform such changes.

Unfortunately, objections to the proposed new procedure failed to bring a halt to the plans and the Health and Social Care (Community Health and Standards) Act 2003 not only amends the Health Service procedure but section 114 makes provision for review Panels to be removed from local authorities. Section 114 states:

... (2) Regulations under subsection (1) may provide for a complaint to be considered by one or more of the following-

- (a) the local authority in respect of whose functions the complaint is made;
- (b) the CSCI;
- (c) an independent panel established under the regulations;
- (d) any other person or body.

It can be seen that the Act does not simply transfer the functions of the Panel stage to the CSCI and therefore there is no necessity to do so, but subsequent consultation has proceeded on the basis that all review Panels will henceforth be run by the CSCI.

### **Variations in practice**

One of the stated aims of the newly formed CSCI is to improve complaints handling. There is detailed research evidence (Ferris, forthcoming) that there are considerable variations in practice between different local authorities in the way that complaints are handled and in the way that Panels operate. It is also a commonsense observation, since the Regulations (the Representations Procedure (Children) Regulations 1991, SI No. 894) and Guidance (the Children Act Guidance, Volume 3 Family Placements, chapter 10 and Volume 4 Residential Care, chapter 5) surrounding the complaints

procedure are very lacking in detail. Some local authorities have struggled to know how best to operate the procedure in view of the lack of clear direction and it is evident that some sort of national standards, with which all local authorities should comply, are required.

Complaints are a vital function and should be taken very seriously. Not only do complainants themselves potentially benefit from bringing a complaint, but so too do other service users. One of the rationales for a complaints procedure is that it should be used to inform policies, practices and procedures. Recommendations from investigations into complaints and from Panel hearings, when of general application, should give rise to a better service. Therefore, if the system is not functioning as well as it should then reform is called for. However, it is argued here that the solution being proposed, transferring Panels to the CSCI, is not the appropriate response to the problem.

## **Concerns about the basis for change**

### **The rationale for change**

The proposed changes to the system contained in the three consultation documents do not explain why the system should alter. There is no longer any attempted justification that it is to make cross-boundary complaints easier to handle. However, both the DoH and the CSCI documents outline what is now said to be the basic underpinning to the changes.

The DoH consultation paper makes an absolutely fundamental statement in paragraph 1.1.2, which explains and justifies the proposals for change. This statement is repeated by the CSCI at [25] under the heading ‘What’s wrong with the current procedure?’ However, we argue that this fundamental statement is inaccurate and that it does not provide a good basis on which to make decisions. Paragraph 1.1.2 states:

Concerns about the membership, independence and decision making of Social Services Complaints Review Panels were highlighted in a Department of Health consultation exercise, *Listening to People*.

When this statement is analysed it can be found that it simply does not represent the true situation.

**(a) *Listening to People***

Nowhere in the document *Listening to People* are there any critical statements about the quality of Panels. In fact, very little is said about Panels at all. The mere fact that they exist is referred to in paragraphs 3.2, 3.5, 6.9 (where it is a suggested requirement that the Chair should always be an independent person, which in practice is the case) and 7.7. Section 10 is the only part of the document that contains more than a passing reference to Panels. Paragraph 10.1 does express concern about the implementation of Panel decisions and is followed with comments about how better to monitor implementation in paragraphs 10.2 and 10.3, but these paragraphs are not critical of the Panels themselves. Then, in paragraph 10.4, practically the reverse of the alleged concern is written, as the document states:

the Ombudsman noted that Review Panels are not always made the best use of. From their knowledge of a case they may be best placed to propose suitable remedies.

Thus it can be seen that the alleged negative comments about Panels simply do not exist in *Listening to People*.

### **(b) The Local Government Ombudsman**

A vital source of material as to whether there are truly ‘concerns about the membership, independence and decision making’ of Panels is, of course, the Local Government Ombudsman (LGO), since, if a complainant is dissatisfied with the outcome of a Panel, he has the right to have his complaint referred to the LGO. However, the LGOs do not express such concerns, either in their feedback to *Listening to People* or in their Annual Reports. As noted above, they made a positive comment about Panels in paragraph 10.4, which then continued:

The Ombudsman recommends that Directors of Social Services should ensure that Review Panels should in future propose the remedies they think appropriate.

In other words, the LGO, far from criticising Panels, were actually placing their faith in them.

From an examination of LGO Annual Reports, one can see that very little has been said about Panels since the inception of the complaints procedure in 1991. In the Annual Reports for 1997/98 and 1998/99, one of the LGOs did make the same criticism two years running. This was that ‘some Review Panels had not adequately

analysed what harm the complainants had suffered as a result of fault and recommended an appropriate remedy'. A different LGO, in 2000/01, found 'investigation had revealed major flaws in the support given to Panels' in one local authority, but went on to say that the authority had agreed to fundamentally overhaul its arrangements. That is the sum total of criticism of Panels in all of the Annual Reports from 1991 to the present day. It cannot seriously be argued that these very minor criticisms justify a radical overhaul of an entire system.

**(c) Case law**

The comment about the lack of independence of Panel members is not explained in either the DoH or CSCI documents, but the overwhelming likelihood is that this comment is directed at the use of local authority elected members on Panels. It is undoubtedly the case that elected members are widely used as the other two members on Panels. In her research, Ferris found this to be the practice in a large majority of local authorities. Of the 47 authorities she surveyed, 23 authorities had an independent Chair plus two elected members and a further 15 authorities used elected members as one of the two wing members. The argument surrounding elected members is that not only are they are not independent people but they also have a vested interest in the outcome of Panels. Ultimately, these members take decisions about the budget of their local authority. Therefore, it is argued, they have an interest in preserving funds and will take decisions according to their own financial priorities.

The fact that elected members sit on Panels did not, in fact, give rise to any adverse comment in *Listening to People*. However, the negative view of their use could stem from the decision in *R (On the application of Christopher Beeson) v the Secretary of*

*State for Health* [2002] EWCA Civ 1812. In *Beeson* the local authority had alleged that Mr Beeson had deliberately deprived himself of his assets, his house, in order to avoid paying for his residential accommodation. This decision was challenged by Mr Beeson's son, to whom the house had been transferred, who invoked the statutory complaints procedure. The complaint went to stage 3 of the procedure, the Panel stage. Sitting on the Panel was an independent Chair and two local authority elected members. The Panel found that Mr Beeson had deprived himself of assets for the purpose of avoiding payment for accommodation and, as a consequence, the appeal against placing a legal charge on the property was not upheld. This finding was confirmed by the Director of Social Services, the decision-maker at stage three. This decision was then challenged in judicial review.

At first instance Richards J, in the Administrative Court ([2001] EWHC Admin 986), quashed the decision of Dorset County Council. He did so on the basis that Article 6 of the European Convention (the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950) applied to the Panel and that, where there is only one truly independent member of the Panel, the complaints procedure was inadequate to secure the requisite degree of independence and impartiality required by Article 6. However, on appeal the Court of Appeal held that the Panel process, culminating in recommendations to the Director who takes the decision and coupled with the availability of judicial review, does meet the Article 6 standard.

The Court of Appeal commented on two particular matters of importance for the purposes of Panels in general. One was the matter of the financial considerations of the elected members. The Court said:

In this present case we have seen no evidence that the Panel could not or would not arrive at a fair and reasonable recommendation. It is by no means to be assumed that the two Council members would have entertained, even subconsciously, a disposition towards the protection of Council funds. (at [30])

The comment by the Court of Appeal that, without evidence, there was no reason to suppose even a subconscious bias is of central importance. It is this that makes it acceptable to use elected members without fear of being immediately challenged either for breach of Article 6 or for breach of the rules of natural justice.

The second and even more important comment by the Court of Appeal concerned the use of 'non-independent' people on complaints Panels. The Court recognised that elected members have to take decisions which involve competing interests and thus competing access to funding. On this the Court said:

In our judgment the scheme here is exactly of the kind where the first decisions are properly confided (sic) within the public body having responsibility for the scheme's administration. Difficult issues of judgment will arise; and difficult balances will have to be struck. We acknowledge that in this particular case issues of credibility arose for decision, and were important to the decision. It is plain however that that circumstance will not of itself require, as the price of compliance with the Art 6 standard, the addition of a strictly independent adjudicative process empowered to re-decide the facts. (At [33])

Subsequently the decision in *Beeson* has been confirmed by the House of Lords in *Runa Begum v Tower Hamlets London Borough Council* [2003] 2 AC 430. The *Begum* case did not involve a complaints Panel, but was concerned with a homeless claimant who rejected an offer of accommodation. An officer of the local authority reviewed the offer and concluded that it had been reasonable. At this point the claimant appealed the decision to the County Court under the Housing Act 1996, section 204. The relevance of this decision to the *Beeson* case is that once again the application of Article 6 was called into question. Lord Bingham commented:

The importance of this case is that it exposes more clearly than any earlier case has done, the interrelation between the Article 6(1) concept of civil rights on the one hand and the Article 6(1) requirement of ‘an independent and impartial tribunal’ on the other.” (At [5])

The House of Lords were clear that, whilst there was no reason to doubt the impartiality of the reviewing officer, ‘I do not see how she can sensibly be said to be independent ... She was an officer of the very Council which was alleged to owe the duty ... The want of independence is manifest.’ (Lord Millett at [96]). However, assuming, without deciding, that Runa Begum’s ‘civil right’ was engaged, and therefore that Article 6 was applicable, such a decision might properly be made by a tribunal which did not itself possess the necessary independence to satisfy the requirements of Article 6(1). This was acceptable provided measures were in place to safeguard the fairness of the proceedings and the decision was subject to ultimate judicial control by a court with jurisdiction to deal with the case as its nature required.

As a result of these two decisions, it can be seen that the courts have established that it is fully within the remit of local authorities to set up Panels with varied membership, including elected members, and that this is a perfectly sensible, and indeed correct, way for them to proceed. The approach of the courts can also be backed up by Ferris's research. She found that a very strong message being reported back to Complaints Officers was that complainants really wanted to have an elected member on the Panel. They wanted members to hear what had gone on, as they identified them as someone who could learn from the experience and 'do something.'

### **Concerns about the proposed scheme**

In January 2005 CSCI published feedback on its consultation document (see Commission for Social Care Inspection, 12<sup>th</sup> January 2005, Complaints Review Service (CRS) Implementation Progress Report). It is recorded that there were 140 responses to the consultation document and it is evident from the Report that considerable concern and reservations have been widely expressed about the proposed changes concerning Panels. Paragraph [11] of the Report notes that strong reservations had been expressed to CSCI about the fundamental premise and basis for the transfer of the review function, as well as other aspects of the change, and the Report lists a number of issues giving rise to concern. Paragraph [13] lists more specific matters of concern, or need for clarification, relating to the particular proposals for delivery of the new function. These concerns are now considered below.

#### **(a) Difficulties the complainant will face**

We detailed above critical commentary on the basis for change, which is recognised in the CSCI feedback. However, there are also a number of important objections that

can be raised about the mechanics of the proposed scheme. The first objection is that the new system will give rise to difficulties on the part of complainants, one of which is actually highlighted in all of the consultation documents. Currently, if a complainant is still dissatisfied after the Panel hearing and Director's decision, he has the right to complain to the LGO, who may or may not take up the case. However, under the new system, where the CSCI are running Panels, if a complainant is dissatisfied he will still have the right to refer his substantive complaint about the local authority's actions and decisions to the LGO, but if he is dissatisfied with the actions of the Panel itself, that will then be subject to independent scrutiny by the Parliamentary Commissioner for Administration (PCA). This would mean that instead of the current system, whereby a complainant has a maximum of two bodies to deal with when making a complaint - the local authority and the LGO - under the new system the complainant (who will fairly typically be a child struggling with making a complaint, a vulnerable adult or an elderly person) may now have to contact, first of all, the local authority, then ask to proceed to the CSCI, then possibly make two further complaints to both the LGO and the PCA. Quite apart from the obvious difficulty for the complainant of disentangling complaints which are due to actions or decisions of the Panel from complaints about the actions of the local authority, as was said in the LGO Annual Report of 2001/02 by one of the LGOs: 'It is absurd that a citizen might need to complain to two Ombudsmen to allow all elements of a complaint to be properly investigated'.

It is obviously the case that the LGO are the ones who have the most experience and expertise in dealing with social services complaints and that the LGO are more local to the complainant than the PCA. It would seem sensible to confine all issues relating

to complaints to those with this expertise, but there is a further serious drawback for the complainant under the proposed scheme. Throughout the consultation, there is an emphasis on timescales and on the need to resolve matters relatively quickly.

However, introducing different bodies into the process will inevitably increase the time taken for resolution or exhaustion of the complaints procedure, to the detriment of the complainant.

Another change which will impact adversely on complainants is the suggestion that CSCI will have the option of informing them no further action will be taken.

Currently, all complainants can, if they wish, take their complaint to Panel. That is their right. Under the new scheme, the declared object of the CSCI is ‘resolution for the complainant by a focus upon their desired outcomes.’(at [41]). Therefore, they state, where those outcomes cannot reasonably be achieved and where local action has been appropriate, the CSCI can decide that no further action be taken. This has the potential to be in breach of the rules of natural justice, by deciding in advance of a hearing what the outcome will be (*Glynn v Keele University* [1971] 2 All ER 89; *R v Marylebone Magistrates Court ex parte Perry* 156 JP 696, 7 February 1992). Also, some complainants understandably like to have their ‘day in court’. Even if the ultimate outcome is the same as at the investigation stage, many complainants will feel that at least they have been listened to if they have been allowed to proceed to Panel.

### **(b) Independence**

Another fundamental objection to the proposed change concerns the issue of independence; which is, of course, one of the reasons given for change. Under the

new scheme, the CSCI will have a multi-functional role. The main duties of the CSCI are listed in the consultation document at [3] and are: to register services that meet national minimum standards; to carry out inspections of all social care organisations, public, private and voluntary, measured against national standards; to carry out inspections of local social services authorities; to publish an annual report to Parliament; to validate all published performance assessment statistics on social care; and to publish the star ratings for social services authorities. Reviewing complaints will be a new function and, as the CSCI consultation document states at [4], ‘with 1.6 million people using local authority social services every year, this additional responsibility will represent a significant area of work for the Commission’. The document suggests that when a complaint comes in there will be four alternative courses of action: the CSCI could set up a Panel, could mount their own investigation, could refer straightaway to the LGO or could judge that there should be no further action as the local response is satisfactory.

The CSCI document at [58] stipulates the circumstances when mounting an investigation may occur. It says it ‘may commonly include situations where the presenting facts of the complaint give strong cause for concern about either the substantive issue of complaint, or local complaints process.’ Objections can be raised to this. Firstly, it has the potential to be a waste of time and expense if the reason for investigation is the substantive issue, as it could be a repeat of what has gone before. However, more importantly from the point of view of independence, in either of the two examples given, the CSCI will be prejudging the case and not having the benefit of a balanced Panel of three. Furthermore, there is the potential that by virtue of commissioning an investigation the CSCI will inevitably be compromising its own

independence and raising a conflict of interest. The way in which this could arise would be if there are unresolved issues stemming from its investigation. In these circumstances, the CSCI will be reviewing its own decisions; those it has made itself in relation to the investigation and its findings.

On top of the above, the CSCI propose that when running a Panel the Panel members, having drawn up their findings and conclusions and, in conjunction with the CSCI representative at Panel, drafted their recommendations, should then e-mail the recommendations to the Complaints Review Service (CRS) of the CSCI. The recommendations will then be subjected to tiered scrutiny by a relevant case manager, who will make any comments and observations and pass them on to the relevant team leader for approval or amendment. The team leader, where necessary, will liaise with the Chair to agree any changes. Finally, the document will be submitted to the Head of Complaints & Service Improvement for formal approval and signing off.

The first thing that can be noted about the process described above is that, once again, an element of delay is introduced into the procedure, contrary to the CSCIs own emphasis on timescales. More significantly, the net result of all this is that the CSCI can be seen as having the role of enforcer, registrar, investigator and reviewer of its own actions and decisions. All of these different roles are simply not compatible. The proposals for Panels are completely unwarranted. Currently, Panels are not interfered with in this way. They are responsible for sending their findings and recommendations to the Director of Social Services without checking by any third party. There is no justification given as to why they should be subject to this scrutiny by members of the CSCI complaints team. The proposal is that membership of Panels

will be the result of the recruitment of suitable people by the CRS. If they are suitable, surely they, having been present at Panel and having heard all of the evidence and arguments, should be left to make and sign off their own decisions?

**(c) Risk of increased litigation**

Following sign-off, the proposal is that the CRS will issue the Panel's recommendations to both the complainant and the local authority. The authority will then make its decision. Thereafter, any subsequent monitoring and implementation of any recommendations will be undertaken by the CRS. Thus, unlike at present, there is no possibility of dialogue between the Panel Chair and the decision-maker. The Chair also loses any control over implementation of panel recommendations. This gives rise to the potential for increased litigation and, thus, expense. Currently, the Chair can talk through any recommendations about which the Director of Social Services is doubtful. Wording can be amended, in the light of these discussions, to ensure that what is perhaps designed as a response to an individual complaint does not tie the authority's hands in an unintended or unacceptable way. However, if the opportunity to discuss the ramifications of a recommendation is lost this could lead to Directors refusing to accept recommendations. This is likely to lead to reference to at least the LGO and may well lead to litigation in the courts by an aggrieved complainant.

That a recommendation might be too widely worded is not a demonstration of poor quality on the part of Panels. Any person not intimately involved in the actual running of a procedure may inadvertently make a recommendation without appreciating the full extent of the ramifications of that recommendation. That dialogue on these matters can be very helpful can be demonstrated by considering case law. The courts

themselves have, on occasion, rapidly clarified their approach after a decision has led to alarm on the part of local authorities because of its potential implications. For example, after the House of Lords ruling in *Re C (Interim Care Order: Residential Assessment)* [1997] AC 489 that the court did have power, in interim care proceedings, to order a residential assessment under the Children Act, section 38(6), there were justifiable fears on the part of local authorities about the possible cost implications if the decision were to be applied in too widespread a fashion. However, subsequently the courts were quick to reassure local authorities that the decision was not intended to be interpreted and applied too widely, and provided clarity to the effect that the resource implications of such an order, both human and financial, should be borne in mind and that such applications should not be encouraged (*Re W (Assessment of Child)* [1998] 2 FLR 130; *Re M (Residential Assessment Directions)* [1998] 2 FLR 371; *Re B (Psychiatric Therapy for Parents)* [1999] 1 FLR 701).

#### **(d) Legal advice**

Although the complaints process ‘should be uncomplicated and accessible to those who might wish to use it’ (Guidance, Vol 4, at 5.36) and the aim is to try to keep the Panel procedure as informal as is reasonably practicable and consonant with the procedure (see Guidance, Vol 4, at 5.46), inevitably some complaints do involve legal issues. A number of cases, for example *Beeson* (above), which have started out as complaints have progressed through to proceedings in court (Williams, 2002). While Panels are not routinely faced with questions which might involve legal interpretation, at the same time it is not rare for a legal issue to crop up. Currently, if a Panel requests assistance a legal advisor may be appointed to advise the Panel. It is up to the local authority as to whom they appoint as adviser. Some authorities will always use in-

house lawyers and some will go outside. However, whichever is used, just as in court proceedings the lawyer's role is to advise the client (here the Panel), not to be an advocate for either the local authority or the complainant. Panels, of course, are not the only ones who might consider that they require legal assistance. Such assistance can also be sought by the complainant. Complainants are not entitled to legal aid for the purposes of bringing a complaint and, of course, Panel hearings are meant to be informal in nature. Because of this, it is unusual for complainants to bring a legal representative to Panel. The local authority, if requiring advice, has access to its own lawyers, who will normally brief the member of staff attending the Panel in advance. Again, it is very unusual for the authority to send any sort of legal representative to the actual hearing. Overall, it is in a minority of cases that lawyers are present at a Panel hearing. However, on occasion it is necessary and extremely helpful to have a lawyer present.

Access to legal assistance at Panel will change under the proposed procedure. Instead of the Panel being able to ask for an advisor to attend, the CRS 'will take appropriate legal advice in advance on any contentious issues upon which the Panel may need to be advised and informed' (at [121]). However, there is no intention that the CSCI will provide a legal representative on the day. Complainants who reasonably wish to bring a legal representative will continue to be able to do so. No mention is made in the document of the position of the local authority.

The declared position of the CSCI of having 'no intention to provide a legal representative' seems unnecessary and to have the potential to give rise to problems. Whilst with most complaints it may appear to be clear what, if any, legal issues are

liable to arise, Panel hearings should be organised on the basis that if it is clear in advance there is a contentious legal matter then advice may be necessary on the day. This is especially so in view of the recognition in the CSCI document that a complainant might want to bring a legal advisor to Panel and that this could put the Panel in the position that they are faced with a legal argument that they are simply unable to cope with or respond to. It is very important for Panels to be in a position to ask the right questions and to be given an accurate interpretation of the law.

### **(e) Funding**

It is a trite observation that most local authority social services departments are very short of funding. Social services are a 'Cinderella' service, rarely attracting sympathetic coverage in the media. In contrast to health and education, governments do not announce with delight their intention of increasing spending on social services. In light of this, the question of the financing of the new system is of crucial importance. The implication of what is proposed is that the system will cost a substantial amount more than is currently the case, yet no reference is made in any of the documents to any extra funding being provided to local authorities.

Under the new proposals, there will be no reduction in the work of Complaints Officers that could lead to savings. Indeed, there is likely to be an increase in such work. Complaints Officers will still be required to attend Panel hearings and, on top of this, with the implementation of the Adoption and Children Act 2002 more areas of complaint are now to be covered by the complaints procedure. No longer will it be confined to complaints under Part III of the Children Act; certain sections in Parts IV and V will also be brought within the remit of the procedure. Additionally, adoption

complaints, which were previously not covered, now will be. Complaints Officers will also be responsible for assisting children in finding advocates when they make a complaint.

Elected members will no longer be used on Panels, but local authority funds will be top-sliced in some way to pay for Panels. This will be an extra expense for the authority, which currently does not have to pay for councillor Panel members. It is also curious that elected members are being ditched from the process. In the CSCI proposals, when outlining membership of Panels it is stated that the 'wing' independent persons on the Panel will provide 'a regional and/or local knowledge base'. Surely this is exactly what elected members currently provide.

With the proposals for the CSCI to undertake a review in certain cases, there is an obvious potential for duplication of the work of the Complaints Unit. There is also a confusion between the roles of the CSCI and that of the LGO, who may undertake an investigation if a complaint is successfully referred to them. All of this will inevitably impact on the local authority, which will end up bearing the cost of these extra investigations.

#### **(f) Confidentiality**

A major issue for some complainants is that of confidentiality. Currently, many complainants are anxious that their complaints should not be seen by anybody other than those who are strictly necessary to the procedure. There is, of course, a duty of confidentiality on all complaints staff, investigators and Panel members. With the introduction of the CSCI, many more people than is currently the case will now have

access to the complaint. This will result not just in more people knowing about an individual's complaint, but also gives rise to attendant fears of breaches of confidentiality and introduces what could be argued as an embedded breach of a person's confidentiality. Currently, within both social services and complaints units, information is only shared on a 'need to know' basis. However, the proposed scheme includes a case manager, team leader and head of complaints at the CSCI who will all have access to a person's complaint. There should, surely, be some strong justification for expanding the need to know principle in this way, yet none is given in the document. It is simply stated that this is what will happen.

## **Conclusion**

Even at this late stage, there is no necessity to transfer Panels to the CSCI. Section 114 of the Health and Social Care (Community Health and Standards) Act 2003 does not transfer Panels to the CSCI, but is simply an enabling section which provides for a number of alternatives. In particular, the reference to both '(c) an independent panel established under the regulations' and '(d) any other person or body' leaves open the possibility of leaving Panels under the control of the local authority.

It would be perfectly easy to introduce new regulations about the composition and running of Panels without taking drastic steps. Perhaps the most obvious suggestion would be to make it a requirement that membership of the Panels should consist of at least two independent people, with only one elected local authority member as a wing member. This would go a very long way towards satisfying the reasons given for introducing change. It would also ensure that vital local knowledge of what is happening at Panels is maintained. Moreover, it would be considerably cheaper and

easier to administer and would mean the continuation of dialogue between Chairs and Directors of social services.

It is clear that the CSCI have, rightly, got a hugely important role in monitoring the performance of local authority social services. Should it take over the role of running Panels, there will be no independent body to ensure that this function is carried out properly. Surely this is what CSCI should be doing, not getting involved in running the actual procedure.

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