

PAPER 2.5.2 - DRAFT SCENARIOS

1. Housing scenario

X is a single man in his 20s who is in part-time employment. His landlord is threatening to take him to court, seeking a decree of eviction for rent arrears. He has been withholding rent because the roof in his house is leaking and urgent repairs are required, but his landlord has refused to carry these out. He also receives some housing benefit, and has received a letter from the council saying that his benefit has been overpaid by more than £500, and asking him to pay it back. The council says this happened because his working hours increased several months ago and he did not notify them of this, but he told them straightaway and wishes to challenge the decision. If the court grants a decree of eviction against him, and he applies to the council to be housed, it is likely that the council will find him to be intentionally homeless because he was evicted for non-payment of rent.

This scenario raises a number of different administrative justice issues, as set out in more detail below.

1. Repairs

The redress routes here will depend on whether X has a social tenancy or a private tenancy ([volumes of social tenants and private tenants](#)), as follows:

a) Scottish secure tenancy (social landlord)

Roof repairs of this nature are unlikely to be covered by the right to repair scheme, as they would probably cost more than £350.

If the landlord refuses to carry out the repair, the tenant can make a complaint through the council or housing association's complaints procedure ([volumes of complaints](#)). If the landlord is a housing association, it may also be possible to get help from the council's environmental health department in certain circumstances.

If the tenant is unhappy with the outcome of the landlord's official complaints procedure, s/he can take their complaint to the Scottish Public Services Ombudsman ([volumes of complaints to the SPSO re landlords official complaints procedure](#)). The Ombudsman can look into the way the landlord dealt with the request for repairs to make sure that they acted fairly and followed the correct procedures. If the Ombudsman decides in the tenant's favour, it can recommend that the landlord looks at the repair situation again, and possibly also that it should pay compensation to the tenant.

It may also be possible to take the landlord to the sheriff court seeking a decree of implement/abatement order/compensation.

b) Short assured tenancy (private landlord)

The tenant can make an application to the private rented housing panel to determine whether the property meets the repairing standard [\(prhp volumes\)](#). The case may be referred to a private rented housing committee to determine whether the property meets the repairing standard, or it may be referred to the panel's mediation service. If the committee decided that the property does not meet the standard, it will issue a Repairing Standard Enforcement Order requiring the landlord to bring the property up to the repairing standard. If the tenant is unhappy with the committee's decision, s/he can appeal to the sheriff. If s/he is unhappy about the way in which the panel has handled the complaint, s/he can use the panel's complaints procedure. If s/he is still unhappy, s/he can make a complaint to the SPSO.

As in the case of a social tenancy, it may also be possible to take the landlord to the sheriff court seeking a decree of implement/abatement order/compensation.

2. Housing benefit

The tenant can ask the council for a review of the housing benefit decision [\(volumes from HMCTS data. I'm not sure if this can be broken down to Scotland only though\)](#). If the council decides not to change its decision, the tenant can appeal the decision to the Social Security and Child Support Tribunal [\(volumes from HMCTS data for HB tribunals\)](#). If s/he is unhappy with the tribunal's decision, s/he can ask the First Tier Tribunal for permission to appeal to the Upper Tribunal. There is also a route of appeal from the Upper Tribunal to the Court of Session- again this requires the permission of the Upper Tribunal judge.

If the tenant is unhappy with the way his or her claim has been handled, s/he can make a complaint using the council's formal complaints process. If the tenant is not satisfied with the outcome of that process, s/he may be able to take the complaint to the Scottish Public Services Ombudsman.

3. Homelessness

If the council makes a decision that someone is intentionally homeless [\(the SG may have data on this\)](#), the person involved can ask for a review of that decision.

If they believe the council failed to follow the correct procedure or acted unfairly when it assessed their homelessness application, they may also be able to complain to the Scottish Public Services Ombudsman [\(SPSO data\)](#) in certain circumstances.

The tenant may also be able to make an application to the court for judicial review, to challenge the way in which the decision was made by the council.

2. Education scenario

Mr and Mrs Y have two school age children and live in a rural area. The local authority has announced its decision to consult on closure of the local primary school due to falling pupil numbers, and they are determined to try and stop the closure going ahead. Meanwhile, they have made a placing request to the local authority in respect of the older child, who is due to go to secondary school next year. The local authority has refused the request. At the same time, Mr and Mrs Y are campaigning against a planning application which has been made by a large supermarket chain to build a store in their nearest village.

This scenario raises a number of different administrative justice issues, as set out in more detail below.

1. Rural schools closures

Under the Schools (Consultation) (Scotland) Act 2010, the local authority must carry out a consultation process before making a decision about whether to close a school, and must have regard to any viable alternative to closure, the likely effect on the local community if the school were to close, and the likely effect of different travelling arrangements occasioned by the closure.

Once a closure decision has been made, it is possible for Scottish Ministers to 'call in' a decision to close a school in certain circumstances. After the local authority has taken its decision to close a school there is a three week period within which anyone can make representations to Ministers requesting the case to be called in. There is then a further three week period for Ministers to reach a decision on whether or not to call in the case. Once a decision has been reached, the local authority in question and each individual who had requested a call in will be notified of the decision. If Ministers decide that a case should be called in, a full investigation will then commence.

Note: the Scottish Government is currently considering changes to the law on school closure consultations. This includes the establishment of a new independent referral body (possibly called the school closure review body) to review closure decisions once these have been called in by Scottish Ministers. It is proposed that its decisions would be appealable only on a point of law.

2. Placing request

The parents can formally appeal to an independent education appeal committee set up by the local authority. If the appeal committee confirms the authority's decision to refuse the request, they can appeal to the sheriff.

If they are unhappy with the way in which the local authority or the committee handled the request, they may also be able to complain to the SPSO.

3. Planning decisions

To be added

Scenario 4 – social work, social care and health

Mrs A's mother (Mrs B) was discharged from hospital following a lengthy period of illness. Mrs B suffers slightly from dementia and was assessed by a multi-disciplinary team (involving both local authority social work and health representatives) as requiring long-term care and was discharged to a nursing home (local authority-run).

Mrs C was unhappy about a number of aspects of this decision:

- The timing of the discharge. Mrs A feels that her mother would have benefited from a longer stay in hospital which would have helped her recover and may have meant she did not require to be discharged to a home.
- The choice of home she was discharged to. Mrs A states that Mrs B and her family would have liked to have had more input into the choice of nursing home and been able to assess other options.
- The way that the decision to discharge was communicated to Mrs B and her family by the NHS member of staff.

[This could technically be handled under either the NHS or the local authority social work complaints procedure [\(volumes of NHS/LA complaints of this nature\)](#) because of the involvement of both in the decision to discharge. A complaint taken to both would probably be considered separately by both agencies and then, potentially, come to SPSO separately. The NHS procedure includes a 20 working day timescale and then to the SPSO.

The LA social work complaints would currently involve a local procedure and then 'appeal' to a Complaints Review Committee [\(CPR volumes\)](#) who could recommend reconsideration of elements of the decision. This would be followed by signposting to SPSO who would normally look more at the CRC's handling of the complaint. Under proposed arrangements the CRCs would be abolished and the complaint would be dealt with internally in line with the standardised local authority CHP and then onto

SPSO who would be able to recommend changes to the decision (as per the CRCs and as per the SPSO's powers in health).]

She is also unhappy about elements of the care her mother has received in the nursing home, including complaints about the quality of that care and the frequency with which she is attended. *[Complaint to be taken through the care home's local procedure then to the Care inspectorate (care inpectorate volumes of this nature). Can complain to SPSO about the CI's handling of the complaint but not about the original complaint].*

Separate to this she is unhappy about elements of the care she had when in hospital and wants to make a number of complaints about aspects of the care and treatment that her mother received in hospital. These included the actions of the hospital in relation to medication, observation and monitoring, staffing levels, charting and record-keeping and the standard of bathroom facilities. *[Complaint about NHS – one stage of 20 working days then referral to SPSO. SPSO would have, in relation to clinical aspects, statutory power to consider and make recommendations on the clinical judgement] (SPSO recommendations on clinical judgements).*

Scenario 5 – social work, social care and health

Mrs C cares for her husband, Mr D who has cancer. They are both under 60. Mr A gets a limited number of hours home care at the moment (assessed by local authority social work) and also a driver to take them to appointments. Mrs C and her husband feel that he needs (and is entitled to) more help than this. Mrs C has seen the local authority assessment and believes that it has a number of errors within it which have led to a wrong decision. The couple have also now been told they will have to pay for all the care Mr D receives. Mrs C has said they can't afford this and wanted to know whether the council should have done a financial assessment. *[Complaint would be taken through the local authority social work complaints procedure with referral to a CRC (volumes of complaints/CRC referrals) if unhappy with their response. The local authority could change the decision on the assessment of level of care or the CRC could recommend a change in the assessment of level of care provided. The complainant would be signposted to the SPSO who, at the moment, would be able to look at whether the decision was*

based on factual errors or whether the process itself or policy has been misapplied (maladministration). Issues of judgment in the assessment would not be matters for SPSO. We could look at the criteria set for exercising this judgment -- we would consider whether this was in line with legislation and any national guidance.

They are unhappy with the carer who provides the home care (a third party provider) who they believe is inattentive and has made a number of errors. *[a complaint here could be taken through the CI or through the local authority route if framed around the local authority's handling/monitoring of the contract with the third party care provider].*

They are also unhappy with elements of the medical care being provided by Mr D's GP, in particular the choice of medication prescribed to treat side effects of his treatment which they feel is not suitable and is increasing the level of care support Mr D needs. *[Complaint about GP prescription and general care through the NHS procedure and onto the SPSO (volumes of complaints of this nature) who could make recommendations related to the prescription provided. Complaint about the effect of this on the level of care support provided would be tied up in the complaint above through the local authority social work procedure.]*