

Chapter 2 – Social Services, Care, Health & Well-Being

Social services, care services and health are all devolved areas to the Scottish Parliament. There are, however, some bodies which interact within these areas which are UK-wide.

Major changes have occurred in these areas in Scotland, notably the integration of health and social care – and with it, the creation of Integrated Joint Boards to take responsibility for the management and delivery of these services. This Chapter will set out the social services and health landscape. This will take into account social work services, the health services, mental health services, adult and child protection and gender recognition.

First Instance Decision Making Body	Remit
Local Authorities – Social Work Departments	Social Work departments have a broad remit, responsible for service provision in the areas of: community care; alcohol and substance misuse; children and families; criminal justice.
NHS Scotland Services – Regional NHS Boards and Special NHS Boards	Manages the publicly funded healthcare system in Scotland. Provision of services is managed by fourteen regional health boards and a number of nationwide special health boards.
Integrated Joint Boards – Health & Social Care	Integrated Joint Boards are partnerships of Local Authorities and Health Boards to integrate the provision and delivery of health and social care services.
The Mental Health Tribunal for Scotland	Determines applications for compulsory treatment orders under the Mental Health (Care and Treatment) (Scotland) Act 2003, and hears appeals against compulsory measures under the same Act.
Children’s Panels	Hears referrals about children and young people who may be in need of compulsory measures of supervision as a result of serious problems in their lives.
The Gender Recognition Panel	Hears applications to have a change of gender legally recognised.

Health and Social Care Integration

The Public Bodies (Joint Working) (Scotland) Act 2014 mandated the creation of integrated joint boards for the purposes of providing health and social care services. The joint boards comprise members from both Health Boards and Local Authorities. The three key areas which must currently, as a minimum, be managed by the joint boards are: adult social care services; adult community health services; and adult acute services. The Act gives discretion to the boards to decide whether to integrate children's services "now or in the future".

The joint boards for each of Scotland's local authority areas were required to be established by April 1st 2015. Whilst this has changed the landscape in terms of service provision, the Act did not mandate the integration of complaints services. As such, the social work complaints procedures and the NHS complaints procedures remain separated. This presents a potentially complex administrative justice landscape – a challenge by a user will require to be broken down in order to be routed through the correct complaint process, and in cases where the challenge relates to both the social work and NHS elements of the service, this could potentially require two separate complaints. These would progress through different procedures and take different lengths of time.

Social Work Departments

The following section will outline the main services provided by social work departments of Local Authorities. The three broad areas of social work relevant here are: community or social care; children and families; and alcohol and substance misuse. Challenges to social work decisions must follow a staged statutory process – this is outlined at the end of this section.

The services detailed under section a) Adult Services are now the responsibility of Joint Integrated Boards. Those under b) Children's Services, and particularly Children and Families Units, may be coordinated by Integrated Joint Boards, but this is not mandatory.

a) Adult Services

Social Care

The care services provided to adults in the community are organised by the social work departments of Local Authorities. This area falls within the remit of the **Integrated Joint Boards**. The needs of the service user may require the provision of services from both the social work department and the health board.

Some Services available in Social Care

Care and Support at Home – Social Workers and/or NHS Workers

Short Term support after a Hospital stay

Day Care

Care Home Residency

Personal Care – including hygiene and dressing

Provision of Meals

Provision of Domestic Help

Home Adaptations

Provision of Equipment for easier day-to-day living

The social work departments will carry out community care needs assessments to assess the needs of service users. This will be used to formulate a Support Plan. The department will also carry out a financial assessment to work out how much a service user may have to pay towards the cost of the services offered. The assessment, the assessment results, the Support Plan and the financial assessment are all open to challenge.

Adult Protection

Social Work departments are also responsible for the protection of vulnerable persons over 16 years of age within its council area it deems to be an “adult at risk”. The Council must assess whether action or the provision of services is required to prevent harm to the person’s well-being, property or finances. The Local Authority may deem that they can offer services to the adult which could prevent the harm from occurring. These can include day care or educational services. The Local Authority can also, with the agreement of the adult, involve a medical professional to assess their needs.

Alcohol and Substance Misuse Services

Social Work departments also take an active role in the area of alcohol and substance misuse. Local Authorities can provide rehabilitation services, supported housing, counselling and social worker visits to persons who are struggling with addiction or alcohol or drug problems. Social Workers can also offer services provided by the NHS.

b) Children’s Services

Children and Families in Need of Services

Local Authorities are under a duty to protect and promote the welfare of children within its council area. The social work department must provide services if it believes these are required to: maintain a reasonable standard of health and development for the child;

prevent harm to the child's health or development; support a disabled child or child who is affected by another family member's disability.

In cases of child disability, or the disability of a family member, the Local Authority must carry out a needs assessment if the family request one. This will determine which services the child requires. This could include: help at home, day care or family centres, respite or financial assistance.

“Looked After” Children

Local Authorities will often require to look after children. This often happens in cases where the child's parents are no longer in a position to do so themselves or have been neglecting the child, or where the child has been involved in a criminal offence. The Local Authority may be looking after the child in local authority accommodation through a voluntary arrangement with the child's parents, or by way of a compulsory order granted by a **Children's Hearing** or court.

The Local Authority is under a duty to create a Care Plan for each child it is looking after. The child and the child's parents, if they still retain parental rights and responsibilities, should be involved in creating the plan. An assessment will be carried out to assess the child's needs and the Care Plan will detail the services to be provided.

Fostering

Local Authorities can only place children with a foster carer registered with the **Care Inspectorate**. The Local Authority will use a fostering panel to approve potential foster carers.

Social Work Complaints

Complaints against social work departments follow a statutory procedure – set out in the Social Work (Representation Procedures) (Scotland) Directions 1996. Whilst these are called “complaints”, they entail a review of the decision and process followed by the department and can result in the recommendation of a different decision. The table below outlines the process for complaints against all social work department services.

The Social Work Complaints Process	
Stage One	Frontline Resolution: an informal stage where the service user complains to their social worker or other frontline staff, and the Council will try to resolve the dispute.
Stage Two	Formal Complaint: the service user complains in writing to the social work department. Designated staff will try to resolve the dispute.
Stage Three	Complaint Review Committee: a quasi-independent committee set up by the Council will assess the complaint and can look at the professional judgement of the social workers involved. The CRC can make recommendations to the Council to resolve the matter, including to change the decision.
Stage Four	SPSO: the final step in the procedure if the CRC fails to resolve the dispute. The SPSO cannot look at the professional judgement of social workers, but will look at the process and take into account maladministration and service failure. The SPSO can make recommendations to the Council to resolve the dispute.

The National Health Service

NHS Scotland is the nation's publicly funded healthcare system. The organisation is divided into 14 regional Health Boards and 7 national Special Boards which are responsible for service coordination and provision. As mentioned above, the regional Health Boards have integrated with Local Authorities to provide and coordinate integrated services in Health and Social Care. Challenge mechanisms, however, remain separated.

Key Areas of NHS Decision Making
Registration and De-registration with a GP Practice Carrying out a specific Assessment Specific forms of treatment The offer of specific drugs Diagnosis Continuing treatment Continuing Care Assessment Access to top-up services

Consultant or specialist involvement
Discharge
Waiting List Priority
Patient access to medical reports and health records

The NHS operates a specific staged complaints process, which is outlined below. Similarly to the social work complaints process, whilst these are called “complaints”, the process can involve a review of the decisions taken. The final stage involves review by the **SPSO**. In contrast to the SPSO’s usual role, the SPSO is empowered in health cases to take into account and scrutinise clinical judgement. The SPSO uses a “reasonableness” test in health cases – questioning whether the decision or treatment given was reasonable under the circumstances.

The NHS Complaints Procedure	
Stage One	Frontline Resolution: an informal stage where the service user complains directly to frontline staff – such as Doctors or Nurses – who are providing the care or treatment, or refusing to provide a service. They will try to resolve the dispute.
Stage Two	Formal Complaint: the service user complains in writing to the organisation concerned – the Health Board , GP Practice, or Ambulance Service, for example. The organisation will have designated staff who will try to resolve the dispute.
Stage Three	SPSO: the final step in the procedure, and only available if the first two stages have been completed without resolution. The SPSO will look at all the circumstances surrounding the dispute, including clinical judgement. This can involve looking at the service user’s medical records. The SPSO can make recommendations to resolve the dispute.

Mental Health

The **Mental Health Tribunal for Scotland** was established by the Mental Health (Care and Treatment) (Scotland) Act 2003. The Tribunal acts as a first instance decision maker in that it determines applications for the detention in hospital and compulsory treatment of people with mental disorders, made under the 2003 Act. The Tribunal grants and also undertakes periodical review of such compulsory measures.

There is a right of appeal from the Tribunal to the Sheriff Principal, unless the case involves restricted and high risk patients, in which case the appeal goes to the Court of Session.

Children's Hearings

The Children's Hearings system in Scotland was established by the Children's Hearings (Scotland) Act 2011. The Hearings system concerns both welfare and justice for children and young people. This section considers only the welfare function of the system.

Children or young people who are giving cause for concern with some aspect of their lives can be referred to the Children's Reporter who will decide if a hearing is necessary. Anyone can make a referral but most come from the Police, Social Work and Education Authorities.

The Hearing considers whether compulsory measures of supervision are required to ensure the welfare of the child or young person. If these are made, they can specify where the child should live (including with the Local Authority), and who the child can see and when.

An "relevant person" or the child or young person can appeal against the decision of the Hearing. This is to the Sheriff Court, where the Sheriff may decide to discharge the case, order another hearing take place or substitute his or her own decision.

The Gender Recognition Panel

The Gender Recognition Panel is administered by the UK HM Courts and Tribunals Service. It assesses applications from transsexual people to gain legal recognition of a gender change. Applications can only be made if:

- a) You have or previously had gender dysphoria
- b) You have lived for a minimum of two years in your acquired gender
- c) You intend to live permanently in your acquired gender

The Panel may award a Gender Recognition Certificate. There is a right of appeal to the Court of Session, but this is only allowed on a point of law.

Complaints about the conduct of Social Work or NHS Staff

The supply of professional workers in social services and health is highly regulated. National regulatory bodies monitor and register workers which grants them a “licence” to practice. Removal from the registers will prevent that person from being employed as a social services or NHS professional. Such bodies take complaints regarding the fitness to practice of their members from service users.

a) The Scottish Social Services Council

The SSSC can investigate complaints against registered social services workers if it considers that the actions taken, or lack of action taken, is so serious that it calls into question that workers suitability to be registered.

The SSSC conducts hearings for registered workers where it could be decided that:

- a) a warning should be issued and kept on the worker’s record for a period of time
- b) conditions should be placed on the worker’s registration
- c) suspend the worker from the register for a period of time
- d) a combination of a) – c)
- e) remove the worker from the register (“strike them off”)

b) The General Medical Council, the General Dental Council and the Nursing and Midwifery Council

The GMC, GDC and NMC are all UK-wide bodies that regulate the conduct of doctors, nurses and midwives across the UK. Both can take referrals from service users regarding the fitness to practice of their members which call into question their registration.

The three bodies operate in a very similar way to the SSSC, and can result in the health professional being “struck off” their registers, and therefore banned from working anywhere in the UK.

The role of Regulators and Scrutiny Bodies in Social Services, Health and Well-Being

There are a number of regulators which take an active role in monitoring and regulating this sector.

a) The Care Inspectorate

The Care Inspectorate in Scotland is responsible for the regulation and scrutiny of all registered care services against the National Care Standards. These services span adoption

agencies to care homes to supported accommodation for people with drug and alcohol problems.

The Care Inspectorate takes complaints from service users about the standards of care services directly, as well as performing a monitoring function in inspecting such services, often unannounced. Uniquely for complaints, the Care Inspectorate does not require that local complaints procedures be exhausted before it can investigate the situation.

The Care Inspectorate is empowered to take action following its investigations. This can take the form of imposing requirements on the service to make improvements, or could even result in the service's registration being cancelled.

b) The Mental Welfare Commission

The Mental Welfare Commission for Scotland is responsible for monitoring the care and treatment of people under the Mental Health (Care and Treatment) (Scotland) Act 2003 and the welfare part of the Adults with Incapacity (Scotland) Act 2000.

The Commission performs its own monitoring function of providers of these services and conducts its own monitoring visits. It also operates a national advice and issues service where service users can report issues to them directly.

If the Commission identifies any issues with a particular service, it is empowered to investigate and report on them. It can produce a report with recommendations to improve the services and this will be served upon the relevant organisations.

The Social Services, Care, Health & Well-Being Landscape

