

Title/Subject: Scottish Government Consultations
Scottish Public Service Ombudsman
Amendment to Integration Joint Board Order

Meeting: Integration Joint Board

Date: 6th November 2015

Submitted By: Chief Governance Officer

Action: For Decision

1. INTRODUCTION

- 1.1 This report brings to the board's attention two consultation documents that have been issued by the Scottish Government and which link to the work of the board. The first of these concerns making the board subject to the powers of the Scottish Public Services Ombudsman. The second relates to a proposed amendment to the Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014 (the "IJB Order") in relation to declarations of interest at board meetings. The consultation documents are attached as appendices 1 and 2, respectively.

2. RECOMMENDATION

- 2.1 The board is asked to consider the consultation papers and the proposed responses to them.

3. SCOTTISH PUBLIC SERVICES OMBUDSMAN

- 3.1 The matter on which the board is being consulted is an Order proposed by the Scottish Government which would make Integration Joint Boards listed bodies for the purpose of the Scottish Public Services Ombudsman Act 2002. The effect of this would be to make the board a body which would be subject to the SPSO's investigatory powers. The board would also require to adopt a complaints handling procedure, with the SPSO as the final independent stage of that process.
- 3.2 It should be noted that the proposal relates to complaints against the board itself and not in relation to complaints in relation to service delivery which will continue to be made through the current council and health board arrangements. Members may wish to note that there is a separate consultation currently underway in relation to a proposed revision of the procedures for complaints about Social Work Services which, if implemented, would bring to an end Social Work Complaints Review Committees and bring

the substance social work decisions within the investigatory remit of the SPSO.

- 3.3 In relation to the consultation document before the board is it suggested that there would be merit in replying to the consultation in support of the proposal from the government. Although it is not anticipated there will be many complaints directed against the board itself, the board is nevertheless a public body and the SPSO should have the opportunity to investigate complaints against it in the same way as other public bodies.

4. PROPOSED MODIFICATION OF THE IJB ORDER

- 4.1 The IJB Order which sets out many of the procedural requirements for the operation of the board contained an obvious error. It required boards to include within their standing orders a provision which would have placed in the hands of the board as a whole the question of whether a member declaring an interest was to be prohibited from taking part in discussion or voting on the item of business. This is inconsistent with the approach required by the Codes of Conduct under which the current councillors and members of the health board serving on the board require to operate and will be inconsistent with this board's own Code of Conduct which it will, in due course, require to adopt. These codes place, or will place, the emphasis on the individual board member making that decision on his or her own behalf.
- 4.2 The government has recognised the concerns that have been raised in relation to its initial drafting. They propose instead to revise the mandatory provision for standing orders to reflect the position contained within current Codes of Conduct. It is suggested that the board welcome the recognition by the government that the approach contained in the IJB Order is not correct. It is also suggested that the Board responds by indicating that no mandatory provision is required in the IJB Order in relation to conflict of interest. It is a matter that will be dealt with within the board's Code of Conduct and it follows that there is no need to provide for this in standing orders.

Approved for Submission by: Colin Moodie, Depute Chief Governance Officer

Author – Colin Moodie, Depute Chief Governance Officer

Date: 27 October 2015

List of Background Papers

None

Health and Social Care Integration Directorate
Integration and Reshaping Care Division

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Chief Officers of Integration Joint Boards;
NHS Chief Executives (Territorial Boards);
Healthcare Improvement Scotland;
Local Authority Chief Executives;
SOLAR;
SOLACE;
COSLA;
Care Inspectorate;
Scottish Local Government Partnership;
Scottish Public Service Ombudsman.



14 October 2015

Dear Colleagues

Consultation letter

The Public Bodies (Joint Working) (Scotland) Act 2014¹ (the Act) puts in place arrangements for integrating health and social care, in order to improve outcomes for patients, service users, carers and their families. Integration Joint Boards will be new public bodies and as such they will not be covered by existing legislation in relation to complaints raised against their duties.

The Scottish Government has issued guidance on the Roles, Responsibilities and Membership of the Integration Joint Board². This details the arrangement and principles by which Integration Joint Boards are currently expected to handle complaints against them.

The Scottish Government however proposes to make an amendment to Schedule 2 of the Scottish Public Services Ombudsman Act 2002 ("the 2002 Act") to add Integration Joint Boards to the 'listed authorities' set out in Schedule 2 of the 2002 Act, which will mean there will be a legal requirement for Integration Joint Boards to establish a complaints procedure. This letter sets out the reasons for the proposal, explains the effect of the changes, and seeks views on the proposal.

Proposed Legislative changes

The Scottish Public Services Ombudsman Act 2002³ ("the 2002 Act") sets out, among other things, a list of public bodies [and persons] subject to investigation by

¹ [The Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#)

² [Roles, Responsibilities and Membership of the Integration Joint Board](#)

the SPSO. Investigation by the SPSO is, in the view of the Scottish Government, an appropriate final independent stage for an IJB complaints procedure. For an IJB to have a complaints procedure which complies with the SPSO model complaints procedure, it is necessary for complaints to be able to be referred to the SPSO.

As new bodies, Integration Joint Boards do not currently appear on the list of bodies, set out in Schedule 2 of the 2002 Act, which may be investigated by the SPSO. The Scottish Government are proposing to make an Order in Council under section 3(2)⁴ of the 2002 Act to amend this list. Adding Integration Joint Boards to Schedule 2 to the 2002 Act provides for the SPSO to have the investigatory powers set out in section 5(1)⁵ of the 2002 Act, subject to the restriction in section 7⁶.

Effect of the proposed legislative changes

The above changes will have the effect of providing for the SPSO to investigate actions of the Integration Joint Boards in carrying out its duties, or any service failure attributable to an Integration Joint Board. The SPSO cannot, however, investigate the merits of a decision taken within the Integration Joint Board's discretion, unless there has been maladministration in the taking of that decision.

Within these limitations it is expected that there will only be a small number of complaints against an Integration Joint Board that can be investigated by the SPSO – most issues raised about, for example, strategic planning, will likely be about the merits of a decision rather than in relation to carrying out a consultation.

Additionally, including Integration Joint Boards in Schedule 2 would also place a legal requirement on Integration Joint Boards to have a complaints handling procedure in place for complaint in relation to their duties (as required by section 16A (2)(a) of the 2002 Act). Currently there is no such legal requirement for Integration Joint Boards. The complaints procedure will also have to comply with the SPSO's principles on complaints handling procedures.

Views

We are taking this opportunity to invite comments on the proposal to add Integration Joint Boards to the list of the bodies set out in Schedule 2 of Scottish Public Services Ombudsman Act 2002 which will mean there will be a legal requirement for Integration Joint Boards to establish a complaints procedure.

You are asked to indicate whether or not you support the proposed amendment to the Scottish Public Services Ombudsman Act 2002 and the inclusion of Integration Joint Boards in the list of bodies set out in Schedule 2. If you do not support the proposals we would ask you to provide details outlining your concerns about the proposed amendment.

³ [The Scottish Public Services Ombudsman Act 2002](#)

⁴ [Section 3 and schedule 2 – Persons liable to investigation.](#)

⁵ [Matters which may be investigated](#)

⁶ [Matters which may be investigated: restrictions](#)

A full list of those who have been invited to respond has been set out at **Annex A**

I would be grateful if you could send your response, using the template provided at **Annex B** to the following e-mail address IRC@scotland.gsi.gov.uk by **12 November 2015**.

If you have any queries in relation to this letter please contact me via e-mail brian.nisbet@gov.scot or on 0131 244 3588.

Yours sincerely

Brian Nisbet
Integration and Reshaping Care Division

Annex A List of invited respondents

1. East Ayrshire Integration Joint Board
2. North Ayrshire Integration Joint Board
3. South Ayrshire Integration Joint Board
4. Argyll and Bute Integration Joint Board
5. East Dunbartonshire Integration Joint Board
6. East Lothian Integration Joint Board
7. East Renfrewshire Integration Joint Board
8. Edinburgh City Integration Joint Board
9. Inverclyde Integration Joint Board
10. Midlothian Integration Joint Board
11. North Lanarkshire Integration Joint Board
12. Renfrewshire Integration Joint Board
13. Shetland Islands Integration Joint Board
14. West Dunbartonshire Integration Joint Board
15. South Lanarkshire Integration Joint Board
16. West Lothian Integration Joint Board
17. Perth and Kinross Integration Joint Board
18. Dundee City Integration Joint Board
19. Angus Integration Joint Board
20. Dumfries and Galloway Integration Joint Board
21. Fife Integration Joint Board
22. Clackmannanshire and Stirling Integration Joint Board
23. Falkirk Integration Joint Board
24. Western Isles Integration Joint Board
25. Glasgow Shadow Integration Joint Board
26. Orkney Shadow Integration Joint Board
27. Scottish Borders Shadow Integration Joint Board
28. Moray Shadow Integration Joint Board
29. Aberdeen City Shadow Integration Joint Board
30. Aberdeenshire Shadow Integration Joint Board
31. NHS Ayrshire and Arran
32. NHS Borders
33. NHS Dumfries and Galloway
34. NHS Fife
35. NHS Forth Valley
36. NHS Grampian
37. NHS Highland
38. NHS Greater Glasgow and Clyde
39. NHS Lanarkshire
40. NHS Lothian
41. NHS Orkney
42. NHS Tayside
43. NHS Shetland
44. NHS Western Isles
45. Aberdeen City Council
46. Aberdeenshire Council
47. Angus Council
48. Argyll and Bute Council
49. City of Edinburgh Council
50. Clackmannanshire Council
51. Comhairle nan Eilean Siar
52. Dumfries and Galloway Council
53. Dundee City Council
54. East Ayrshire Council
55. East Dunbartonshire Council
56. East Lothian Council
57. East Renfrewshire Council
58. Falkirk Council
59. Fife Council
60. Glasgow City Council
61. Highland Council
62. Inverclyde Council
63. Midlothian Council
64. Moray Council
65. North Ayrshire Council
66. North Lanarkshire Council
67. Orkney Islands Council
68. Perth and Kinross Council
69. Renfrewshire Council
70. Scottish Borders Council
71. Shetland Islands Council
72. South Ayrshire Council
73. South Lanarkshire Council
74. Stirling Council
75. SOLAR
76. SOLACE
77. COSLA
78. Care Inspectorate
79. Healthcare Improvement Scotland
80. Scottish Local Government Partnership
81. Scottish Public service Ombudsman

Annex B – Consultation Response

Name:

Organisation:

Position:

Question 1: Do you support the proposal to add Integration Joint Boards to the list of the bodies set out in Schedule 2 of Scottish Public Services Ombudsman Act 2002 which will mean there will be a legal requirement for Integration Joint Boards to establish a complaints procedure.?

Please place an X in one of the boxes below to indicate your views on the proposal.

Yes		No	
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Question 2: If you do not support the proposed amendment, please outline the reasons for this below.

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Integration and Reshaping Care Division

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Local Authority Chief Executives
Health Board Chief Executives
Integration Joint Board Chief Officers
COSLA
Commissioner for Ethical Standards in Scotland
Standards Commission for Scotland
SOLAR

Dear Colleagues

Consultation letter

Executive Summary

The Scottish Government is considering making an amendment to the Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014 and to the Public Bodies (Joint Working) (Integration Joint Monitoring Committees) (Scotland) Order 2014, to resolve an existing conflict between the Integration Joint Board and Integration Joint Monitoring Committee Standing Orders, and the statutory Codes of Conduct for Councillors and members of devolved public bodies. This letter sets out in more detail the reasons for the proposed amendment, explains the effect of the changes and seeks views on the proposal.

Background

The Public Bodies (Joint Working) (Scotland) Act 2014 (the Act) put in place arrangements for integrating health and social care, in order to improve outcomes for patients, service users, carers and their families. The Act requires Health Boards and local authorities to work together effectively, to agree a model of integration to deliver quality, sustainable care services. Where partners agree to put in place a Body Corporate model, an Integration Joint Board will be established and will be responsible for the integrated arrangements and onward service delivery. Where partners have agreed a Lead Agency model, they are required to establish an Integration Joint Monitoring Committee for the purpose of monitoring the carrying out of the integration functions for the integration authority area.

Integration Joint Boards are “devolved public bodies” for the purposes of the Ethical Standards in Public Life (Scotland) Act 2000. As such members must discharge their duties in a manner that is seen to be honest, fair and unbiased and public bodies must ensure that conflicts of interest are identified and managed in a way that

maximises public confidence in the organisation's ability to deliver public services properly.

While Integration Joint Monitoring Committees are not independent entities in the same way as Integration Joint Boards are, any members who are Councillors or Health Board members will be required to comply with the Councillor's Code or a Health Board members Code.

Integration Joint Boards and Integration Joint Monitoring Committees are required to make standing orders for the regulation of their proceedings and business. Certain provisions which must be included in these standing orders are set out in the schedules to the Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014 and the Public Bodies (Joint Working) (Integration Joint Monitoring Committees) (Scotland) Order 2014. While these standing orders will govern the treatment of conflicts of interest, members may also be subject to the Councillors Code or a Health Board members Code. This results in a conflict between the standing orders for Integration Joint Boards and the Codes of Conduct for both Councillors and Health Board members.

Issue

The Model Code of Conduct for Devolved Public Bodies, on which Health Boards' Codes of Conduct for their members are based, places a requirement on members to declare any conflicts of interest and to apply the "Objective test" before taking a decision on whether they should have an involvement in discussions on the matter in question. The Councillors' Code of Conduct also takes this approach. Currently the Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014 and The Public Bodies (Joint Working) (Integration Joint Monitoring Committees) (Scotland) Order 2014 both require the standing orders of these bodies to include provision on members' conflicts of interest which place the decision making power on the other members of the Integration Joint Board. Accordingly, when a member of an Integration Joint Board or Integration Joint Monitoring Committee is also a Councillor, or a Health Board member, and faces a potential conflict of interest, they are subject to two different sets of rules as to how they should deal with this.

Proposed Legislative Changes

The Scottish Government intends to amend section 5, paragraph 2 of the Schedule to the Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014 and to section 5, paragraph 2 of the Schedule to the Public Bodies (Joint Working) (Integration Joint Monitoring Committees) (Scotland) Order 2014. These amendments will bring the required content of Integration Joint Board and Integration Joint Monitoring Committee standing orders into line with the provisions of the Councillors Code and Model Members' code. The amendments will be made by Order under section 12 of the Public Bodies (Joint Working) (Scotland) Act 2014.

Effect of the Proposed Legislative Changes

The legislative changes will have the effect of changing the process where a decision is taken with regards to a potential conflict of interests. A member who has

a potential conflict of interests will apply an “Objective test” to determine whether they can participate, as opposed to submitting the conflict for decision by the other members there present.

Views

We are taking this opportunity to invite comments and views on the proposal to bring the Integration Joint Board and Integration Joint Monitoring Committee standing orders into line with the Codes of Conduct for Councillors and members of devolved public bodies.

You are asked to indicate whether or not you support the proposed amendment to the Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014 and the Public Bodies (Joint Working) (Integration Joint Monitoring Committees) (Scotland) Order 2014. If you do not support the proposals we would ask you to provide details outlining your concerns about the proposed amendment.

A full list of those who have been invited to respond has been set out at Annex A.

I would be grateful if you could send your response to the email address below, by 9 November 2015.

Email: IRC@gov.scot

Yours sincerely

Lauren Glen
Integration and Reshaping Care Division

Annex A: List of invited respondents

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71. Shetland Islands Council
72. South Ayrshire Council
73. South Lanarkshire Council
74. Stirling Council
75. West Dunbartonshire
76. West Lothian
77. COSLA
78. Commissioner for Ethical Standards in Scotland
79. Standards Commission for Scotland
80. SOLAR