



# Report

## Scottish Government Consultation response: Ombudsman Integration Joint Board

20 November

### Recommendations

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1. The IJB approves the consultation response to the proposed amendment of the Scottish Public Services Ombudsman (SPSO) Act 2002 to add Integration Joint Boards to the 'listed authorities' set out in Schedule 2 of the 2002 Act.

### Background

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2. The Scottish Government wrote to all Chief Officers in early October consulting on a proposed amendment to the Scottish Public Services Ombudsman Act 2002 to add 'Integration Joint Boards to the 'listed authorities' set out in Schedule 2. The letter is provided in Appendix 1.

### Main report

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3. The effect of the proposed amendments will mean that the SPSO will be able to investigate actions of the Integration Joint Boards in carrying out its duties, or any service failure attributable to an Integration Joint Board.
4. The SPSO cannot, however, investigate the merits of a decisions taken within the Integration Joint Board's direction unless there has been a maladministration in the taking of that decision.
5. It will also mean that there would be a legal requirement for Integration Joint Boards to have a complaints handling procedure in place for a complaint in relation to their duties and that this procedure complies with the SPSO's principles on complaints handling procedures.
6. It is expected that there will be only a small number of complaints against an Integration Joint Board that can be investigated by the SPSO.
7. Both NHS Boards and local authorities are currently subject to the Act in question and it would seem reasonable to include the Integration Joint Boards, as new public bodies.

8. It should also be relatively straightforward to adapt and / or adopt the current NHS Lothian and / or Council complaints procedures for the Edinburgh Integration Joint Board.
9. As a result it is recommended that the Edinburgh Integration Joint Board supports the proposed amendment

## Key risks

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10. There are no risks associated with this report.

## Financial implications

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11. There are no financial implications associated with this report, however there will be resource implications in the design of a complaints procedure once this becomes law.

## Involving people

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12. Key officers have been consulted in the consultation on this matter.

## Impact on plans of other parties

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13. There are no impacts on the plans of other parties.

## Background reading/references

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**Appendix 1: Consultation Letter from Scottish Government**  
**Appendix 2: Proposed Response: Proforma**

## Report author

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## Links to priorities in strategic plan

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**Person  
Centred  
Care**

It is important that individuals who are dissatisfied with the services they receive have an independent route to investigate their complaints and concerns.

DRAFT

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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.



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14 October 2015

Dear Colleagues

### **Consultation letter**

The Public Bodies (Joint Working) (Scotland) Act 2014<sup>1</sup>(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 Board<sup>2</sup>. 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 2002<sup>3</sup> (“the 2002 Act”) sets out, among other things, a list of public bodies [and persons] subject to investigation by

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<sup>1</sup> [The Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#)

<sup>2</sup> [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)<sup>4</sup> 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)<sup>5</sup> of the 2002 Act, subject to the restriction in section 7<sup>6</sup>.

### 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.

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<sup>3</sup> [The Scottish Public Services Ombudsman Act 2002](#)

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

<sup>5</sup> [Matters which may be investigated](#)

<sup>6</sup> [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](mailto: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](mailto:brian.nisbet@gov.scot) or on 0131 244 3588.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brian Nisbet', is enclosed in a thin black rectangular border.

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.

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



## Annex B – Consultation Response

Name: Robert McCulloch-Graham

Organisation: Edinburgh Integration Joint Board

Position: Chief Officer

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.

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