

## SOCIAL SERVICES OF GENERAL INTEREST (SSGI) QUESTIONNAIRE: UK

### Field 1 – Description of social services

1. *Is the description of the social services as provided by the Commission appropriate and adequate?*

The UK does not legally define social services and we do not think that a definition at the EU level is necessary for the issue which is addressed by this questionnaire: namely, whether Member States have any significant problem with managing public service delivery and reform alongside EU competition law and regulations governing the internal market, including case law established by the European Court of Justice, and, if any significant problem does exist, whether it requires EU level action.

We can recognise the main categories defined by the Communication (replicated below for UK copy recipients). However, we do not believe that responses to the questionnaire in reference to its scope should be interpreted as supporting the development of a definition based on those categories (see Field 7). It should be sufficient for Member States to develop and manage their policies in connection with whatever they are committed to delivering in their national context.

We note that there is a separate instrument being developed to cover health services and that there remains an area of services within the remit of health ministries that also falls within the scope of the social services covered by the Commission Communication.

In the UK the distinction between Health and Social Care is a matter of law. The UK Parliament legislated for a National Health Service and for Social Services in separate and distinct acts. However, it is in many cases difficult in practice to distinguish so neatly between the delivery of health and social care, as individuals may require a combination of both.

It should also be noted that the distinction will be made in different ways in different Member States, which is entirely proper given the principle of subsidiarity: the same service may be regarded as 'health care' or 'social care' or indeed neither, according to the context of each Member State. For this reason any attempt to give a universally-applicable definition of what is meant by a 'social service' at a European level should be treated with great caution. See Field 2 for further UK views on definitions.

The categories described by the Commission Communication are:

- basic compulsory social security schemes based on the principle of national solidarity that do not carry out economic activities
- other schemes, especially complementary social security schemes, organised in various ways (mutual or occupational organisations), covering the main risks of life, such as those linked to health, ageing, occupational accidents, unemployment, retirement and disability;
- other essential services provided directly to the person as assistance in case of personal challenges or crises, to support social integration, to tackle long-term health or disability problems, or to support housing. These services that play a preventive and social cohesion role consist of customised assistance to facilitate social inclusion and safeguard fundamental rights.

2. *Could the description be improved or other (type of) services added?*

As recognised in the Commission Communication, there is a diversity of models across the EU and future developments may well increase this diversity. The problem with any attempt by the EU to encompass this diversity is that definitions may either be so broad as to lack purpose or be too detailed to fit all Member States e.g. they may exclude rather than be inclusive.

**Field 2 – Pertinence of the characteristics**

3. *Are the characteristics identified by the Communication sufficiently pertinent to gauge the specific features of social services of general interest as compared to other services (of general interest)?*

4. *Please provide, if needed, for concrete drafting suggestions for the formulation of the characteristics as they are currently presented by the Communication.*

5. *Are there characteristics to be added? Please provide for concrete drafting suggestions and examples of services concerned by these characteristics.*

6. *Please provide a maximum 3 relevant examples of social services representing one or more of the (additional) characteristics that could be taken as good example for the special nature. Please indicate which concrete element of the characteristics is clearly deducible from the example chosen.*

See Field 1 above for UK views on definitions of social services. Furthermore, the UK is not clear on what the context is for defining the specific features of social services of general interest as compared to other services (of general interest). What is envisaged as being the application in practice of any special feature? As set out in 2.2 of the Commission Communication, the concrete situations encountered by social service providers, which this consultation is addressing, all flow from any decision by public authorities to entrust delivery of a particular objective to an external partner. It is difficult to see at this stage, before any Member State has identified any problem with managing this process, how defining any specificity at the EU level adds any value to the process.

The Commission also clearly described in their Communication how the framework pertaining to Member States in these circumstances is already set down. Given the laws under the Treaty as it stands the UK believes it can both deliver necessary services to satisfy citizens' needs and modernise the delivery of those services within this framework, as set out under Field 3 and 5 below. See also our views on EU level action under Field 7.

For the purposes of the SPC debate following up this questionnaire, we believe that the limitations that we describe under Q2 of a definition of social services at the EU level would be particularly acute if SSGIs were defined by their characteristics. The UK would suggest that the purpose of SSGIs and the outcomes that they achieve are more important, and would provide a more straightforward basis for a common description than the set of characteristics as used by the Commission in their Communication. For an illustration of how this would fit the UK public service model, see Field 3 below.

If required, the UK could propose a description of the outcomes achieved by SSGIs at a later stage and if the SPC agreed that this was a path worth pursuing.

7. *How could these characteristics relate to the exclusion of specific social services from the scope of the Services Directive (Art. 2(2)(j) read together with the relevant Recital 27) as politically agreed on 29 May 2006 (Doc. 100003/06)?*

The precise scope of exclusions in the Services Directive is currently under consideration while the UK Government identifies domestic legislation that will need to be included in the exercise of transposition. It is therefore too early to use the Directive to inform the SSGI debate in reference to any definition of social services. However, the principles covered by the Services Directive in Article 2(2)(j) and recital 27 of the Services Directive are more in line with our concept of describing SSGIs by their purpose than the characteristics used in the Communication, as proposed under Q3-6 above, and so we would suggest that this is worth exploring further.

### **Field 3 – Use of characteristics by Member States**

8. *Please give a definition of what the "general interest" is in your country, and specify in which way (at national, regional or local level) it is defined or is intended to be defined in the future.*

9. *How can the characteristics be used by the Member States, at national, regional or local level, when defining the particular general interest mission of a social service and determining the arrangement for its performance and organisation?*

10. *Have there been problems in the past with giving a concrete mandate to fulfil the particular general interest mission of a social service?*

The UK does not legally define its SSGIs. The SPC should note that it is an EU term and not necessarily the language of Member States. However, the UK Government does set out political decisions on the aim and purpose of public services. These may be applicable to the alternative approach to describing SSGIs we propose under Q3-6 above. For example, in particular UK policies combat poverty and extend opportunity – see the example of UK Government Public Service Agreements below.

The core issue for this questionnaire concerns methods of delivery for social services. The Government has a clear vision: everyone should have access to public services that are efficient, effective, excellent, equitable, empowering and constantly improving. Achieving these goals supports the Government's wider objectives of building a fair and inclusive society through greater social justice and a higher quality of life for all. There is a particular priority in the UK to improve the equity of public service provision, as there is evidence of longstanding inequalities in public service provision with the most disadvantaged traditionally receiving poorer services than everyone else.

The policy direction in the UK is based on the belief that:

- standards in public service can only be delivered effectively by devolution of responsibility to the frontline;
- more flexibility is required for public service organisations to deliver the diversity of service provision needed to respond to wide range of customer aspirations; and
- public services need to offer expanding choice for the customer.

Where the Government uses competition to deliver these policy principles, it still specifies the required outcomes but suppliers should be free to deliver in innovative ways so as to improve customer service and produce value for money.

The Cabinet Office sets and regulates standards for services across the public sector. It is responsible for advising on standards, regulating services, supporting departments in meeting their standards and recognising quality in public services.

Government departments commit to a set of Public Service Agreements (PSAs), on a 3-year cycle, and are accountable for their performance against their PSA targets, on which they report annually. Several UK Government departments lead on policies which may be described as social services for the purpose of this questionnaire. The ministry with the responsibility for the majority of these is the Department for Work and Pensions (DWP).

To use the DWP as an illustration how PSAs work: the aims of the DWP are to promote opportunity and independence for all. In support of this aim, the DWP objectives are -

- I: Ensure the best start for all children and end child poverty by 2020.
- II: Promote work as the best form of welfare for people of working age, while protecting the position of those in greatest need.
- III: Combat poverty and promote security and independence in retirement for today's and tomorrow's pensioners.
- IV: Improve rights and opportunities for disabled people in a fair and inclusive society.
- V: Ensure customers receive a high quality service, including high levels of accuracy.

This framework effectively becomes the definition of the services provided.

For further information on how definition of services works in practice in the UK within the scope of Community law addressed by this questionnaire, see Field 5 below.

#### **Field 4 – Use of characteristics at EU level**

*11. Please indicate how (e.g. in a binding way or not), in your view, the organisational characteristics could/should be used at EU level (e.g. agreed checklist) in order to verify whether for a specific social service the applicable Community rules are respected?*

See UK views on EU level handling of any definition of social services in Fields 1 and 2 above, plus our view on EU level action on SSGIs under Field 7 below.

#### **Field 5 – Experiences with the application of Community law**

*12. Please indicate whether difficulties (may) still arise and if so in which legal areas and for which type of social services.*

*13. Please provide for concrete examples and experiences to illustrate these difficulties.*

14. *Please give an indication on the debate in your country/organisation on how these difficulties should be addressed (e.g. clarification of the non-applicability of state aid rules to different social services of general interest).*

As mentioned above, the ministry with responsibility for the bulk of social services is the UK Department of Work and Pensions (DWP). The DWP is not aware currently of any recent ECJ cases which have had, or are likely to have, a significant impact upon our policy delivery. All Government policy is subject to legal scrutiny, including social policy initiatives, and the advice received reflects current relevant EU law in the areas discussed in the Commission Communication.

When the policy decision is to use non-government provision then the Office of Government Commerce (OGC) is responsible for the implementation of relevant EU Directives. Revised Regulations covering England, Wales and Northern Ireland were brought into effect on 31 January 2006. Scotland has made its own Regulations. Where necessary these regulations are amended to account for ECJ judgements and these regulations also apply to regional and local authorities.

A key issue that the Commission Communication focuses on is the need to clearly define "the general interest". Under the process for UK public sector procurement, the specification of Business Requirements is carried forward from the early stage of inviting expressions of interest to final stages of contracting. This specification focuses on the organisation's strategic goals and describes business requirements in terms of output or outcome. These explicitly link with the business's strategic mission, vision, objectives and targets.

Therefore, because of the UK Government framework of Public Service Agreements as described under Field 3 above, it should be clear in the structure of the specification how the specific service fits into wider Government objectives.

These measures are supported by a full range of audits. There are both National Audit Office (NAO) and internal audits, including an in-house check on all procurement specifications by an expert who is independent of the process, and OGC also audits major procurements for compliance with legal requirements, including EU law. It is likely that where "social services of general interest" are contracted out that these would be regarded as sufficiently major procurements to be not only audited in this way but also be actually managed by a process that checks for compliance at each stage en route to agreeing the final contract.

In addition, the NAO scrutinises public spending on behalf of Parliament and is totally independent of Government. It audits the accounts of all central Government departments and agencies, as well as a wide range of other public bodies, and reports to Parliament on the economy, efficiency and effectiveness with which they have used public money. As well as providing accountability to Parliament, it aims to bring about real improvements in the delivery of public services. NAO reports are scrutinised by Parliament's Public Accounts Committee.

## **Field 6 – Social security schemes responding to the criteria deriving from the *Poucet and Pistre* case law**

15. *Please indicate whether the questions in the Fields 2, 3 and 4 could also have significance with regard to social security schemes responding to the criteria deriving from the *Poucet and Pistre* case law.*

16. *Please indicate whether there is a need for further and specific clarification on the application of Community rules as enumerated in Field 5 with regard to these social security schemes.*

The position and organisations in issue in *Poucet and Pistre* were specific to France. The case does not apply to the UK's social security system which is regulated by statute and is the responsibility of Ministers. However, some of the criteria identified are present in the UK's system e.g. social function, national solidarity and statutory benefits to meet certain social needs. The SPC and the Commission have full information on the UK's benefit and social security systems, through the OMCs to further demonstrate this shared relationship. Our response on the issue of any further clarification is covered under Field 7 below.

## **Field 7 – Future steps at Community level**

17. *Which expectations do you have concerning future steps at Community level?*

18. *In case further steps should be considered, what could be the content, but also the advantages or disadvantages of these, including in particular intensified exchange of information, open method of co-ordination, Commission's Communications but also a Framework Directive for social services?*

19. *Please indicate the expectations with regard to the monitoring and dialogue procedure in the form of biennial reports announced by the Communication.*

Subject to the outcomes from this consultation, the UK Government will want to ensure that it can continue to follow its principles for public service delivery and reform. The UK will want to maintain its freedom to use non-government provision, and to make use of limited and managed market forces, whilst being able to set specific policy objectives and support those objectives. If there is a significant public interest then public policy objectives need to be upheld.

We do not wish to see EU-level criteria applied to Member States social policy goals, beyond those that already exist in the Treaty. Member States must remain free to manage their own social services in the light of national policy goals and traditions. Any issues requiring clarity or legislation should be dealt with on a sectoral basis, mindful of the need to respect subsidiarity and Member States' freedom to organise their social services as they see fit.

This exercise should not be used to develop an EU-wide definition of social services or be used to bring national social services within a framework of cross-sectoral service obligations at EU level (excepting the rules governing economic activity). Without prejudicing the final outcome of the consultation, we currently see no evidence of any significant EU-wide problems, and no evidence that tests of competence, subsidiarity,

proportionality or Better Regulation would support an EU-wide legislative solution. Moreover, the points we made under Q2, on problems with definitions, apply to a Framework Directive for social services. Given the wide diversity of SSGs and their link to national traditions, it is difficult for the UK to envisage how such an instrument could be drafted and it could prove extremely difficult to reach agreement on one in a form that allows for its effective implementation in practice.

Instead, non-legislative measures such as exchanges of best practice are likely to be more effective than a framework directive in ensuring the autonomy of national authorities to provide quality services, suitably tailored to local populations. On this approach, some of the best areas for such exchanges that are relevant to SSGs are not relevant to the SPC, e.g. current work in improving best practice in public procurement, and within SPC's remit we would consider the streamlined OMC on social policy to be adequate for sharing models on social services.

On the issue of the biennial reports announced by the Communication, the Commission should clarify what use they intend to put the information within these reports. We note that, as the Communication positions these reports alongside the OMC, there is a commitment to minimise bureaucracy and burdens on Member States.