

Ethical Standards Commissioner

Complaints Handling Procedure

Guidance for Staff on Handling Complaints About Us

May 2021

CONTENTS

Foreword	3
Structure of the Complaints Handling Procedure	5
<u>Part 1: Overview of the CHP</u>	
Expected behaviours.....	7
<u>Part 2: When to use this procedure</u>	
What is a complaint?.....	9
Who can make a complaint?	11
Supporting the complainer	11
How complaints may be made	12
Time limit for making complaints	13
Particular circumstances	14
Complaints by (or about) a third party	14
Serious, high-risk or high-profile complaints.....	14
Anonymous complaints	14
What if the complainer does not want to complain?	15
Complaints involving more than one area or organisation.....	15
Complaints about contracted services	15
Complaints about senior staff.....	16
Complaints and other processes	16
Complaints and service requests	16
Complaints and disciplinary or whistleblowing processes	16
Contact from MPs, MSPs or Councillors.....	17
Complaints and compensation claims	17
Complaints and legal action	17
What to do if the CHP does not apply	18
Appendix 1 – Complaints.....	19
Appendix 2 – What is not a complaint?.....	20
<u>Part 3: The complaints handling process</u>	
The complaints handling process	Error! Bookmark not defined.

Resolving the complaint	22
What to do when you receive a complaint	23
Stage 1: Frontline response	25
Notifying staff members involved.....	25
Timelines	25
Extension to the timeline	25
Closing the complaint at the frontline response stage.....	26
Stage 2: Investigation	27
Acknowledging the complaint.....	27
Agreeing the points of complaint and outcome sought	27
Notifying staff members involved.....	28
Investigating the complaint.....	29
Alternative complaint resolution approaches.....	29
Meeting with the complainer during the investigation.....	30
Timelines	30
Extension to the timeline	30
Closing the complaint at the investigation stage	31
Signposting to the SPSO	32
Post-closure contact	33
Appendix 1 - Timelines	34
Appendix 2 – The complaint handling process (flowchart for staff).....	36
<u>Part 4 – Governance</u>	
Roles and responsibilities	Error! Bookmark not defined.
Recording, reporting, learning from and publicising complaints.....	39
Recording complaints	39
Learning from complaints	39
Reporting of complaints.....	40
Publicising complaints information	40
<u>Part 5 – How we handle complaints about us (leaflet for members of the public)</u>	

Foreword

Our Complaints Handling Procedure reflects the Commissioner's commitment to valuing complaints. It seeks to resolve dissatisfaction on the part of people who contact our office as close as possible to the point at which they raise concerns and to conduct thorough, impartial and fair investigations of their complaints so that, where appropriate, we can make evidence-based decisions on the facts of the case.

The procedure was first developed by the SPSO in consultation with relevant stakeholders. The Model Complaints Handling Procedures (MCHPs) were revised in 2019 by the SPSO in consultation with all sectors. This new edition includes a core text, which is consistent across all public services in Scotland, with some additional text and examples specific to this sector. As far as is possible we have produced a standard approach to handling complaints across Scotland's public services, which complies with the SPSO's guidance on a MCHP. Our Complaints Handling Procedure has been adapted to reflect the fact that the Commissioner fulfils statutory functions as opposed to providing a service to the public. This procedure aims to help us 'get it right first time'. We want quicker, simpler and more streamlined complaints handling with local, early responses by capable, well-trained staff.

All staff across the Commissioner's office must cover this procedure as part of their induction and must be given refresher training as required, to ensure they are confident in identifying complaints, empowered to resolve simple complaints on the spot, and familiar with how to apply this procedure (including recording complaints).

Complaints give us valuable information we can use to improve the way in which we fulfil the Commissioner's statutory functions, including how those with whom we come into contact view the work of the office. Our Complaints Handling Procedure will enable us to address dissatisfaction on the part of individuals who come into contact with us and may help us prevent the same problem from happening again. For our staff, complaints provide a first-hand account of people's views and experience, and can highlight problems we may otherwise miss. Handled well, complaints can give those who are unhappy a form of redress when things go wrong, and can also help us continuously improve on the work that we do.

Handling complaints early creates better relations with those who come into contact with us. Handling complaints close to the point at which someone becomes unhappy means we can deal with them locally and quickly, so they are less likely to escalate to the next stage of the procedure. Complaints that we do not handle swiftly can greatly add to our workload and are more costly to administer.

The Complaints Handling Procedure will help us do our job better, improve relationships with those who come into contact with us and enhance public perception of the Commissioner's office. It will help us keep the user at the heart of the process, while enabling us to better understand how to improve on the work that we do by learning from complaints.

Structure of the Complaints Handling Procedure

This Complaints Handling Procedure (CHP) explains to staff how to handle complaints. The CHP consists of:

- Overview (part 1)
- When to use the procedure (part 2) – guidance on identifying what is and what is not a complaint, handling complex or unusual complaint circumstances, the interaction of complaints and other processes, and what to do if the CHP does not apply.
- The complaints handling process (part 3) – guidance on handling a complaint through stages 1 and 2, and dealing with post-closure contact.
- Governance of the procedure (part 4) – staff roles and responsibilities and guidance on recording, reporting, publicising and learning from complaints.
- The public-facing CHP (part 5 – also published on our website as a standalone document) – information for those who come into contact with us on how we handle complaints.

When using the CHP, staff should also refer to the 'SPSO Statement of Complaints Handling Principles' and good practice guidance on complaints handling available on the SPSO website: www.spsso.org.uk.

PART 1 - Overview of the CHP

1. Anyone can make a complaint, either verbally or in writing, including face-to-face, by phone, letter or email.
2. We will try to resolve complaints to the satisfaction of the complainer wherever this is possible. Where this isn't possible, we will give the complainer a clear response to each of their points of complaint. We will always try to respond as quickly as we can (and on the spot where possible).
3. Our complaints procedure has two stages. We expect the majority of complaints will be handled at stage 1. If the complainer remains dissatisfied after stage 1, they can request that we look at it again, at stage 2. If the complaint is complex enough to require an investigation, we will put the complaint into stage 2 straight away and skip stage 1.

Stage 1: Frontline response	Stage 2: Investigation	Independent external review (SPSO or other)
<p>For issues that are straightforward and simple, requiring little or no investigation</p> <p>'On-the-spot' apology, explanation, or other action to put the matter right</p> <p>Complaint resolved or a response provided in five working days or less (unless there are exceptional circumstances)</p> <p>Complaints addressed by any member of staff, or alternatively referred to the appropriate point for frontline response</p> <p>Respond directly using the most appropriate method (telephone, MS Teams, email or face-to-face)</p> <p>We will tell the complainer how to escalate their complaint to stage 2</p>	<p>Where the complainer is not satisfied with the frontline response, or refuses to engage at the frontline, or where the complaint is complex, serious or 'high-risk'</p> <p>Complaint acknowledged within three working days</p> <p>We will contact the complainer to clarify the points of complaint and outcome sought (where these are already clear, we will confirm them in the acknowledgement)</p> <p>Complaint resolved or a definitive response provided within 20 working days following a thorough investigation of the points raised</p>	<p>Where the complainer is not satisfied with the stage 2 response from the Commissioner.</p> <p>The SPSO will assess whether there is evidence of maladministration not identified by the Commissioner</p>

4. For detailed guidance on the process, see [Part 3: The complaints handling process](#).

Expected behaviours

5. We expect all staff to behave in a professional manner and treat those who come into contact with us with courtesy, respect and dignity. We also ask complainers to treat our staff with respect. We ask complainers to engage actively with the complaint handling process by:
 - telling us their key issues of concern and organising any supporting information they want to give us (we understand that some people will require support to do this)
 - working with us to agree the key points of complaint when an investigation is required; and
 - responding to reasonable requests for information.
6. We have a policy in place for when these standards are not met which is our [Unacceptable Behaviour Policy](#).
7. We recognise that people may act out of character in times of trouble or distress. Sometimes a health condition or a disability can affect how a person expresses themselves. The circumstances leading to a complaint may also result in the complainer acting in an unacceptable way.
8. Complainers who have a history of challenging or inappropriate actions, or have difficulty expressing themselves, may still have a legitimate grievance, and we will treat all complaints seriously. However, we also recognise that the actions of some complainers may result in unreasonable demands on time and resources or unacceptable behaviour towards our staff. We will, therefore, apply our policies and procedures to protect staff from unacceptable actions such as unreasonable persistence, threats or offensive behaviour from complainers. Where we decide to restrict access to a complainer under the terms of our policy, we have a procedure in place to communicate that decision, notify them of their right of appeal, and review any decision to restrict contact with us. The policy is on file [here](#).
9. If we decide to restrict a complainer's contact, we will be careful to follow the process set out in our policy and to minimise any restrictions on the complainer's access to the complaints process. We will normally continue investigating a complaint even where contact restrictions are in place (for example, limiting communication to letter or to a named staff member). In some cases, it may be possible to continue investigating the complaint without contact from the complainer. Our policy allows us in limited circumstances to restrict access to the complaint process entirely. This would be as a last resort, should be as limited as possible (for a limited time, or about a limited set of subjects) and requires manager approval. Where access to the complaint process is restricted, we must signpost the complainer to the SPSO (see [Part 3: Signposting to the SPSO](#)).
10. The SPSO has [guidance on promoting positive behaviour and managing unacceptable actions](#).

Maintaining confidentiality and data protection

11. Confidentiality is important in complaints handling. This includes maintaining the complainer's confidentiality and confidentiality in relation to information about staff members, contractors or any third parties involved in the complaint.
12. This should not prevent us from being open and transparent, as far as possible, in how we handle complaints. This includes sharing as much information with the complainant (and, where appropriate, any affected staff members) as we can. When sharing information, we should be clear about why the information is being shared and our expectations on how the recipient will use the information.
13. We must always bear in mind legal requirements such as those set out in the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) and the [Scottish Parliamentary Standards Commissioner Act 2002](#), as well as data protection legislation. Staff must also be familiar with our policies on confidentiality and the use of complainer information.

PART 2 – When to use this procedure

What is a complaint

14. The Commissioner's definition of a complaint is: 'an expression of dissatisfaction by one or more members of the public about their or their office's action or lack of action, or about the standards of administration provided by or on behalf of the Commissioner.'
15. For clarity, where an employee also wishes to raise concerns about the work of the office as a member of the public, they may complain about that work.
16. A complaint may relate to the following, but is not restricted to this list:
 - failure or refusal to fulfil the statutory functions of the office, other than in cases in which the Commissioner has exercised their statutory discretion
 - inadequate quality or standards relating to fulfilling the statutory functions of the office, or an unreasonable delay in doing so
 - dissatisfaction with one of our policies or its impact on the individual
 - failure to properly apply law, procedure or guidance when fulfilling the statutory functions of the office
 - failure to follow the appropriate administrative process
 - conduct, treatment by or attitude of a member of staff or contractor (**except** where there are arrangements in place for the contractor to handle the complaint themselves: see **Complaints about contracted services**); or
 - disagreement with a decision, (**except** where there is a statutory procedure for challenging that decision).
17. **Part 2, Appendix 1** provides a range of examples of complaints we may receive, and how these may be handled.
18. A complaint **is not**:
 - a routine first-time request for the Commissioner to fulfil one of their statutory functions (see **Complaints and service requests**)
 - a request for compensation only (see **Complaints and compensation claims**)
 - issues that are in court or have already been heard by a court or a tribunal (see **Complaints and legal action**)
 - disagreement with a decision where there is a statutory procedure for challenging that decision (such as for freedom of information and subject access requests and issues that may be judicially reviewed).
 - a request for information under the Data Protection or Freedom of Information (Scotland) Acts
 - a grievance by a staff member or a grievance relating to employment or staff recruitment
 - a concern raised internally by a member of staff (which was not about a failure to fulfil a statutory function, such as a whistleblowing concern)
 - a concern about a child or an adult's safety

- an attempt to reopen a previously concluded complaint or to have a complaint reconsidered where we have already given our final decision.
- abuse or unsubstantiated allegations about our organisation or staff where such actions would be covered by our Unacceptable Behaviour Policy; or
- a concern about the actions or service of a different organisation, where we have no involvement in the issue (**except** where the other organisation is fulfilling our statutory functions on our behalf: see **Complaints about contracted services**).

19. **Part 2, Appendix 2** gives more examples of 'what is not a complaint' and how to direct complainers appropriately.

20. We will not treat these issues as complaints, and will instead direct complainers to use the appropriate procedures. Some situations can involve a combination of issues, where some are complaints and others are not, and each situation should be assessed on a case-by-case basis.

21. If a matter is not a complaint, or not suitable to be handled under the CHP, we will explain this to the complainer, and tell them what (if any) action we will take, and why. See **What if the CHP does not apply**.

Who can make a complaint?

22. Anyone who receives, requests, or is affected by the way in which we fulfil the statutory functions of the office can make a complaint. In this procedure these people are termed complainers regardless of whether they are or were asking the office to fulfil those functions.
23. We also accept complaints from the representative of a person who is dissatisfied with the way in which we fulfil our statutory functions. See **Complaints by (or about) a third party**.

Supporting the complainer

24. All members of the community have the right to equal access to our complaints procedure. It is important to recognise the barriers that some complainers may face complaining. These may be physical, sensory, communication or language barriers, but can also include their anxieties and concerns. Complainers may need support to overcome these barriers.
25. We have legal duties to make our complaints process accessible under equalities and mental health legislation. For example:
- the Equality Act (Scotland) 2010 – this gives people with a protected characteristic the right to reasonable adjustments to access the statutory functions of the office (such as large print or BSL translations of information); and
 - the Mental Health (Care and Treatment) (Scotland) Act 2003 – this gives anyone with a ‘mental disorder’ (including mental health issues, learning difficulties, dementia and autism) a right to access independent advocacy. This must be delivered by independent organisations that only provide advocacy. They help people to know and understand their rights, make informed decisions and have a voice.
 - Examples of how we will meet our legal duties are:
 - proactively checking whether members of the public who contact us require additional support to access the statutory functions that we fulfil
 - providing interpretation and/or translation services for British Sign Language users; and
 - helping complainers access independent advocacy
 - In addition to our legal duties, we will seek to ensure that we support vulnerable groups in accessing our complaints procedure. Actions that we may take include:
 - helping vulnerable complainers identify when they might wish to make a complaint (for example, by training frontline staff who come into contact with vulnerable groups)
 - helping complainers access independent support or advocacy to help them understand their rights and communicate their complaints (for example, through the Scottish Independent Advocacy Alliance or Citizen’s Advice Scotland).
26. These lists are not exhaustive, and we must always take into account our commitment and responsibilities to equality and accessibility.

How complaints may be made

27. Complaints may be made verbally or in writing, including face-to-face, by phone, letter, email or using our web-based complaints form.
28. Where a complaint is made **verbally**, we will make a record of the key points of complaint raised.
29. Complaint issues may also be raised on **digital platforms** (including **social media**).
30. Where a complaint issue is raised via a digital channel managed and controlled by us (for example an official twitter address or facebook page), we will explain that we do not take complaints on social media, but we will tell the person how they can complain.
31. We may also become aware that an issue has been raised via a digital channel not controlled or managed by us (for example a youtube video or post on a private facebook group). In such cases we **may** respond, where we consider it appropriate, by telling the person how they can complain.
32. We must always be mindful of our data protection obligations when responding to issues online or in a public forum. See [Part 1: Maintaining confidentiality and data protection](#).

Time limit for making complaints

33. The complainer must raise their complaint within six months of when they first knew of the problem, unless there are special circumstances for considering complaints beyond this time (for example, where a person was not able to complain due to serious illness or recent bereavement).
34. Where a complainer has received a stage 1 response, and wishes to escalate to stage 2, unless there are special circumstances they must request this either:
 - within six months of when they first knew of the problem; or
 - within two months of receiving their stage 1 response (if this is later).
35. We will apply these time limits with discretion, taking into account the seriousness of the issue, the availability of relevant records and staff involved, how long ago the events occurred, and the likelihood that an investigation will lead to a practical benefit for the complainer or useful learning for the organisation.
36. We will also take account of the time limit within which a member of the public can ask the SPSO to consider complaints (normally one year). The SPSO have discretion to waive this time limit in special circumstances (and may consider doing so in cases where we have waived our own time limit).

Particular circumstances

Complaints by (or about) a third party

37. Sometimes a prospective complainer may be unable or reluctant to make a complaint on their own. We will accept complaints from third parties, which may include relatives, friends, advocates and advisers. Where a complaint is made on behalf of a complainer, we must ensure that the complainer has authorised the person to act on their behalf. It is good practice to ensure the complainer understands their personal information will be shared as part of the complaints handling process (particularly where this includes sensitive personal information). This can include complaints brought by parents on behalf of their child, if the child is considered to have capacity to make decisions for themselves.
38. The provision of a signed mandate from the complainer will normally be sufficient for us to investigate a complaint. If we consider it is appropriate we can take verbal consent direct from the complainer to deal with a third party and would normally follow up in writing to confirm this.
39. In certain circumstances, a person may raise a complaint involving another person's personal data, without receiving consent. The complaint should still be investigated where possible, but the investigation and response may be limited by considerations of confidentiality. The person who submitted the complaint should be made aware of these limitations and the effect this will have on the scope of the response.
40. See also [Part 1: Maintaining confidentiality and data protection](#).

Serious, high-risk or high-profile complaints

41. We will take particular care to identify complaints that might be considered serious, high-risk or high-profile, as these may require particular action or raise critical issues that need senior management's direct input. Serious, high-risk or high-profile complaints should normally be handled immediately at stage 2 (see [Part 3: Stage 2: Investigation](#)).
42. We define potential high-risk or high-profile complaints as those that may:
- involve a death or terminal illness
 - involve serious maladministration
 - generate significant and ongoing press interest
 - pose a serious risk to an organisation's operations
 - present issues of a highly sensitive nature, for example concerning:
 - a particularly vulnerable person, or
 - child protection.

Anonymous complaints

43. We value all complaints, including anonymous complaints, and will take action to consider them further wherever this is appropriate. Generally, we will consider anonymous complaints if there is enough information in the complaint to enable us to make further enquiries. Any decision not to pursue an anonymous complaint must be authorised by an appropriate manager.

44. If we pursue an anonymous complaint further, we will record it as an anonymous complaint together with any learning from the complaint and action taken.
45. If an anonymous complainer makes serious allegations, these should be dealt with in a timely manner under relevant procedures. This may not be the complaints procedure and could instead be relevant child protection, adult protection or disciplinary procedures.

What if the person does not want to complain?

46. If a person has expressed dissatisfaction in line with our definition of a complaint but does not want to complain, we will explain that complaints offer us the opportunity to improve when things have gone wrong. We will encourage the person to submit their complaint and allow us to handle it through the CHP. This will ensure that the complainer is updated on the action taken and gets a response to their complaint.
47. If the complainer insists they do not wish to complain, we are not required to progress the complaint under this procedure. However, we should record the complaint as an anonymous complaint (including minimal information about the complaint, without any identifying information) to enable us to track trends and themes in complaints. Where the complaint is serious, or there is evidence of a problem with the way in which we fulfilled our statutory functions, we should also look into the matter to remedy this (and record any outcome).
48. Please refer to the example in **Part 2, Appendix 1** for further guidance.

Complaints involving more than one area or organisation

49. If a complaint relates to the actions of two or more areas within our organisation, we will tell the complainer who will take the lead in dealing with the complaint, and explain that they will get only one response covering all issues raised.
50. If a complainer complains to us about the service of another organisation or public service provider, but we have no involvement in the issue, the complainer should be advised to contact the appropriate organisation directly.
51. If a complaint relates to something that we have done or failed to do and the service of another organisation or public service provider, and we have a direct interest in the issue, we will handle the complaint about us through the CHP. If we need to contact an outside body about the complaint, we will be mindful of data protection. See [Part 1: Maintaining confidentiality and data protection](#).
52. Such complaints may include:
- Issues related to hearings conducted by the Standards Commission
 - Issues related to central or local government handling of a concern or complaint

Complaints about contracted services

53. Where we use a contractor to fulfil an element of our statutory functions on our behalf we recognise that we remain responsible and accountable for ensuring that this is done to an appropriate standard (including in relation to complaints). We will either do so by:
- ensuring the contractor complies with this procedure; or

- ensuring the contractor has their own procedure in place, which fully meets the standards in this procedure. At the end of the investigation stage of any such complaints the contractor must ensure that the complainer is signposted to the SPSO.

54. We will confirm that complainers are clearly informed of the process and understand how to complain. We will also ensure that there is appropriate provision for information sharing and governance oversight where required.

55. The Commissioner has discretion to investigate complaints about organisations contracted to fulfil functions on their behalf even where the procedure has normally been delegated.

Complaints about senior staff

56. Complaints about senior staff can be difficult to handle, as there may be a conflict of interest for the staff investigating the complaint. When serious complaints are raised against senior staff, it is particularly important that the investigation is conducted by an individual who is independent of the situation. We must ensure we have strong governance arrangements in place that set out clear procedures for handling such complaints.

Complaints and other processes

57. Complaints can sometimes be confused (or overlap) with other processes, such as disciplinary or whistleblowing processes. Specific examples and guidance on how to handle these are below.

Complaints and requests

58. If an individual asks the Commissioner to do something (for example, investigate a concern about an MSP or Councillor), and this is the first time the person has contacted us, this would normally be a routine request for the Commissioner to fulfil their statutory functions and not a complaint.

59. Such requests can lead to complaints, if the request is not handled promptly or the person is then dissatisfied with how we fulfilled the office's statutory functions.

Complaints and disciplinary or whistleblowing processes

60. If the issues raised in a complaint overlap with issues raised under a disciplinary or whistleblowing process, we still need to respond to the complaint.

61. Our response must be careful not to share confidential information (such as anything about the whistleblowing or disciplinary procedures, or outcomes for individual staff members). It should focus on whether the Commissioner failed to act appropriately and what we have done to improve things, in general terms.

62. Staff investigating such complaints will need to take extra care to ensure that:

- we comply with all requirements of the CHP in relation to the complaint (as well as meeting the requirements of the other processes)
- all complaint issues are addressed (sometimes issues can get missed if they are not also relevant to the overlapping process); and
- we keep records of the investigation that can be made available to the SPSO if required. This can be problematic when the other process is confidential, because SPSO will normally

require documentation of any correspondence and interviews to show how conclusions were reached. We will need to bear this in mind when planning any elements of the investigation that might overlap (for example, if staff are interviewed for the purposes of both the complaint and a disciplinary procedure, they should not be assured that any evidence given will be confidential, as it may be made available to the SPSO).

63. The SPSO's report [Making complaints work for everyone](#) has more information on supporting staff who are the subject of complaints.

Contact from MPs, MSPs or Councillors

64. Where a matter is being dealt with as a complaint, it must be handled in line with this CHP. Staff must not operate a 'two-tier' complaint system with preferential treatment for elected members.

Complaints and compensation claims

65. Where a complainer is seeking financial compensation only, this is not a complaint. However, in some cases the complainer may want to complain about the matter leading to their financial claim, and they may seek additional outcomes, such as an apology or an explanation. Where appropriate, we may consider that matter as a complaint, but deal with the financial claim separately. It may be appropriate to extend the timeframes for responding to the complaint, to consider the financial claim first.

Complaints and legal action

66. Where a complainer says that legal action is being actively pursued, this is not a complaint.
67. Where a complainer indicates that they are thinking about legal action, but have not yet commenced this, they should be informed that if they take such action, they should notify the complaints handler and that the complaints process, in relation to the matters that will be considered through the legal process, will be closed. Any outstanding complaints must still be addressed through the CHP.
68. If an issue has been, or is being, considered by a court, we must not consider the same issue under the CHP.

What to do if the CHP does not apply

69. If the issue does not meet the definition of a complaint or if it is not appropriate to handle it under this procedure (for example, due to time limits), we will explain to the complainer why we have made this decision. We will also tell them what action (if any) we will take (for example, if another procedure applies), and advise them of their right to contact the SPSO if they disagree with our decision not to respond to the issue as a complaint. The most common cause of dissatisfaction from complainers is that they disagree with the Commissioner's decision about their original complaint that the relevant Code of Conduct has not been complied with. Staff must make it clear to such complainers that their dissatisfaction with these decisions do not qualify as complaints about us. All such complainers should be sent a copy of the Commissioner's [post-decision fact sheet](#) which sets out the options available to them including recourse to judicial review. Staff are advised to refer to the [flowchart](#) which will help them to assess whether this is the nature of the complaint being made and how to direct the complaint appropriately.
70. Where a complainer continues to contact us about the same issue, we will explain that we have already given them our final response on the matter and signpost them to the SPSO. We may also consider whether we need to take action under our [Unacceptable Behaviour Policy](#).
71. The SPSO has issued a [template letter for explaining when the CHP does not apply](#) which staff may find it useful to refer to. Other resources for complaints handling are also available on the SPSO's website: <https://www.spsso.org.uk/how-we-offer-support-and-guidance>.

Appendix 1 – Complaints

Complaint	Possible actions
<p>A person expresses dissatisfaction that a member of staff spoke rudely to them during a telephone conversation.</p>	<ul style="list-style-type: none"> • Consider the complaint carefully; • Tell the person what action we have taken or propose to take. <p>Apologise where appropriate.</p>
<p>A person expresses dissatisfaction that we took too long to respond to requests for updates on the progress of an investigation into a complaint about a Councillor’s conduct.</p>	<ul style="list-style-type: none"> • Consider the complaint carefully; • Tell the person what action we have taken or propose to take. <p>Apologise where appropriate.</p>
<p>A person expresses dissatisfaction in line with the definition of a complaint, but says she does not want to complain – just wants to tell us about the matter.</p>	<ul style="list-style-type: none"> • We will tell the person that we value complaints because they help us to improve. We will encourage them to submit the complaint. <p>In terms of improving and learning from mistakes, it is important that feedback, such as this, is recorded, evaluated and acted upon. Therefore, if the person still insists that they do not want to complain, we will record the matter as an anonymous complaint. This will avoid breaching the complaints handling procedure. We will reassure the person that they will not be contacted again about the matter.</p>

Appendix 2 – What is not a complaint?

A concern may not necessarily be a complaint. For example, a person might make a routine first-time request for the Commissioner to provide information about the work of the office. This is not a complaint, but the issue may escalate into a complaint if it is not handled effectively and the person has to keep on asking for the information.

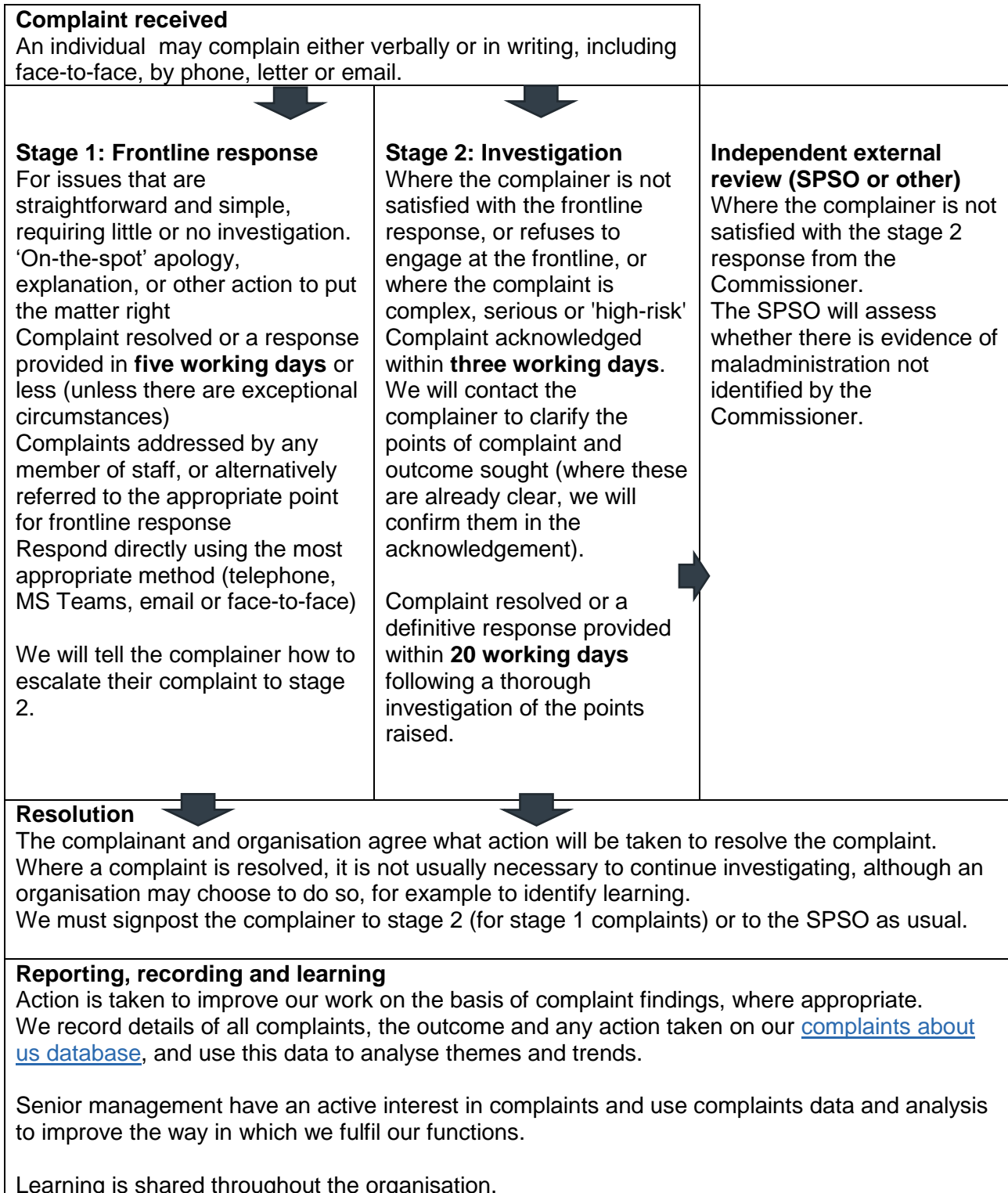
A complainer may also be concerned about a decision made by the organisation. These decisions may have their own specific review or appeal procedures, and, where appropriate, complainers must be directed to the relevant procedure. Examples of issues that do not qualify as complaints about us and that are not appropriate to be handled using the CHP are set out below.

- In relation to Standards, dissatisfaction with any decisions of the Commissioner whether, when or how to proceed with an investigation (as this is a quasi-judicial matter);
- In relation to Standards, dissatisfaction with any conclusions of the Commissioner following an investigation, as this is a quasi-judicial matter (and would also be prejudicial to the respondent);
- In relation to Standards, a review of the Commissioner/IOs work or decisions during the enquiries/investigation as this is a quasi-judicial matter;
- In relation to Standards, dissatisfaction with a matter related to an investigation that would require production of legally confidential information (section 12(2) of the 2000 Act) as this is a quasi-judicial matter;
- dissatisfaction about a typographical error (as this does not equate to maladministration).
- in relation to public appointments, a decision by the Commissioner on the outcome of a complaints investigation, unless new evidence is provided that has not been considered, as this is a statutory function of the Commissioner;
- in relation to public appointments, the Commissioner's interpretation of the code of practice for ministerial appointments to public bodies in Scotland, as this is a statutory function of the Commissioner.

Part 3 – The complaints handling process

The complaints handling process

72. Our Complaints Handling Procedure (CHP) aims to provide a quick, simple and streamlined process for responding to complaints early and locally by capable, well-trained staff. Where possible, we will **resolve** the complaint to the complainer’s satisfaction. Where this is not possible, we will give the complainer a clear and reasoned response to their complaint.



Resolving the complaint

73. A complaint is **resolved** when both the Commissioner's office and the complainer agree what action (if any) will be taken to provide full and final resolution for the complainer, without making a decision about whether the complaint is upheld or not upheld.
74. We will try to resolve complaints wherever possible, although we accept this will not be possible in all cases.
75. A complaint may be resolved at any point in the complaint handling process, including during the investigation stage. It is particularly important to try to resolve complaints where there is an ongoing relationship with the complainer or where the complaint relates to an ongoing issue that may give rise to future complaints if the matter is not fully resolved.
76. It may be helpful to use alternative complaint resolution approaches when trying to resolve a complaint. See **Alternative complaint resolution approaches**.
77. Where a complaint is resolved, we do not normally need to continue looking into it or provide a response on all points of complaint. There must be a clear record of how the complaint was resolved, what action was agreed, and the complainer's agreement to this as a final outcome. In some cases it may still be appropriate to continue looking into the issue, for example where there is evidence of a wider problem or potential for useful learning. We will use our professional judgment in deciding whether it is appropriate to continue looking into a complaint that is resolved.
78. In all cases, we must record the complaint outcome on our [complaints about us database](#) (resolved) and any action taken, and signpost the complainer to stage 2 (for stage 1 complaints) or to the SPSO as usual (see **Signposting to the SPSO**).
79. If the complainer and the Commissioner are not able to agree a resolution, we must follow this CHP to provide a clear and reasoned response to each of the issues raised.

What to do when you receive a complaint

80. Members of staff receiving a complaint should consider four key questions. This will help them to either respond to the complaint quickly (at stage 1) or determine whether the complaint is more suitable for stage 2:

What exactly is the complaint (or complaints)?

81. It is important to be clear about exactly what the individual is complaining about. We may need to ask the person for more information and probe further to get a full understanding.
82. We will need to decide whether the issue can be defined as a complaint and whether there are circumstances that may limit our ability to respond to the complaint (such as the time limit for making complaints, confidentiality, anonymity or the need for consent). We should also consider whether the complaint is serious, high-risk or high-profile.
83. If the matter is not suitable for handling as a complaint, we will explain this to the individual (and signpost them to SPSO). There is detailed guidance on this step in [Part 2: When to use this procedure](#).
84. In most cases, this step will be straightforward. If it is not, the complaint may need to be handled immediately at stage 2 (see **Stage 2: Investigation**).

What does the individual want to achieve by complaining?

85. At the outset, we will clarify the outcome the individual wants. Of course, the individual may not be clear about this, and we may need to probe further to find out what they expect, and whether they can be satisfied.

Can I achieve this, or explain why not?

86. If a staff member handling a complaint can achieve the expected outcome, for example by providing an on-the-spot apology or explain why they cannot achieve it, they should do so.
87. The individual may expect more than we can provide. If so, we will tell them as soon as possible.
88. Complaints which can be resolved or responded to quickly should be managed at stage 1 (see **Stage 1: Frontline response**).

If I cannot respond, who can help?

89. If the complaint is simple and straightforward, but the staff member receiving the complaint cannot deal with it because, for example, they are unfamiliar with the issues or area of work involved, they should pass the complaint to someone who can respond quickly.
90. If it is not a simple and straightforward complaint that can realistically be closed within five working days (or ten, if an extension is appropriate – please see paragraph 99 for detail on extensions), it should be handled immediately at stage 2. If the complainer refuses to engage at stage 1, insisting that they want their complaint investigated, it should be handled immediately at stage 2. See **Stage 2: Investigation**.

91. Our [flowchart](#) for assessing and handling complaints about us provides staff with more directions.

Stage 1: Frontline response

92. Frontline response aims to respond quickly (within five working days) to straightforward complaints that require little or no investigation.
93. Any member of staff may deal with complaints at this stage (including the staff member complained about, for example with an explanation or apology). The main principle is to respond to complaints at the earliest opportunity and as close to the point at which a complaint is raised as possible.
94. We may respond to the complaint by providing an on-the-spot apology where appropriate, or explaining why the issue occurred and, where possible, what will be done to stop this happening again. We may also explain that, as an organisation that values complaints, we may use the information given when we review the way in which we work in the future. If we consider an apology is appropriate, we may wish to follow the [SPSO guidance on apology](#).
95. **Part 2, Appendix 1** gives examples of the types of complaint we may consider at this stage, with suggestions on how to handle them.
96. Complaints which are not suitable for frontline response should be identified early, and handled immediately at **stage 2: investigation**.

Notifying staff members involved

97. If the complaint is about the actions of another staff member, the complaint should be shared with them, where possible, before responding (although this should not prevent us responding to the complaint quickly, for example where it is clear that an apology is warranted).

Timelines

98. Frontline response must be completed within **five working days**, although in practice we would often expect to respond to the complaint much sooner. 'Day one' is always the date of receipt of the complaint (or the next working day if the complaint is received on a weekend or public holiday).

Extension to the timeline

99. In exceptional circumstances, a short extension of time may be necessary due to unforeseen circumstances (such as the availability of a key staff member). Extensions must be agreed with an appropriate manager. We will tell the complainer about the reasons for the extension, and when they can expect a response. The maximum extension that can be granted is five working days (that is, no more than **ten working days** in total from the date of receipt).
100. If a complaint will take more than five working days to look into, it should be handled at stage 2 immediately. The only exception to this is where the complaint is simple and could normally be handled within five working days, but it is not possible to begin immediately (for example, due to the absence of a key staff member). In such cases, the complaint may still be handled at stage 1 if it is clear that it can be handled within the extended timeframe of up to ten working days.
101. If a complaint has not been closed within ten working days, it should be escalated to stage 2 for a final response.
102. **Part 3, Appendix 1** provides further information on timelines.

Closing the complaint at the frontline response stage

103. If we convey the decision face-to-face or on the telephone, we are not required to write to the complainer as well (although we may choose to). We must:
 - tell the complainer the outcome of the complaint (whether it is resolved, upheld, partially upheld or not upheld)
 - explain the reasons for our decision (or the agreed action taken to resolve the complaint (see **Resolving the complaint**)); and
 - explain that the complainer can escalate the complaint to stage 2 if they remain dissatisfied and how to do so (we should not signpost to the SPSO until the complainer has completed stage 2).
104. We will keep a full and accurate record of the decision given to the complainer. If we are not able to contact the complainer by phone, or speak to them in person, we will provide a written response to the complaint where an email or postal address is provided, covering the points above.
105. If the complaint is about the actions of a particular staff member/s, we will share with them any part of the complaint response which relates to them, (unless there are compelling reasons not to).
106. The complaint should then be closed and the complaints system and [database](#) updated accordingly.
107. At the earliest opportunity after the closure of the complaint, the staff member handling the complaint should consider whether any learning has been identified. See [Part 4: Learning from complaints](#). Any learning identified should also be captured on the [database](#).

Stage 2: Investigation

108. Not all complaints are suitable for frontline response and not all complaints will be satisfactorily addressed at that stage. Stage 2 is appropriate where:
- the complainer is dissatisfied with the frontline response or refuses to engage at the frontline stage, insisting they wish their complaint to be investigated. Unless exceptional circumstances apply, the complainer must escalate the complaint within six months of when they first knew of the problem or within two months of the stage 1 response, whichever is later (see [Part 2: Time limits for making a complaint](#))
 - the complaint is not simple and straightforward (for example where the complainer has raised a number of issues, or where information from several sources is needed before we can establish what happened and/or what should have happened); or
 - the complaint relates to serious, high-risk or high-profile issues (see [Part 2: Serious, high-risk or high-profile complaints](#)).
109. An investigation aims to explore the complaint in more depth and establish all the relevant facts. The aim is to resolve the complaint where possible, or to give the complainer a full, objective and proportionate response that represents our final position. Wherever possible, complaints should be investigated by someone not involved in the complaint (for example, a line manager or a manager from a different area).
110. Details of the complaint must be recorded on the complaints system. Where appropriate, this will be done as a continuation of frontline response. If the investigation stage follows a frontline response, the officer responsible for the investigation should have access to all case notes and associated information.
111. The beginning of stage 2 is a good time to consider whether complaint resolution approaches other than investigation may be helpful (see **Alternative complaint resolution approaches**).

Acknowledging the complaint

112. Complaints must be acknowledged within three working days of receipt at stage 2.
113. We must issue the acknowledgement in a format which is accessible to the complainer, taking into account their preferred method of contact.
114. Where the points of complaint and expected outcomes are clear from the complaint, we must set these out in the acknowledgement and ask the complainer to get in touch with us immediately if they disagree. See **Agreeing the points of complaint and outcome sought**.
115. Where the points of complaint and expected outcomes are not clear, we must tell the complainer we will contact them to discuss this.

Agreeing the points of complaint and outcome sought

116. It is important to be clear from the start of stage 2 about the points of complaint to be investigated and what outcome the complainer is seeking. We may also need to manage the complainer's expectations about the scope of our investigation.

117. Where the points of complaint and outcome sought are clear, we can confirm our understanding of these with the complainer when acknowledging the complaint (see **Acknowledging the complaint**).
118. Where the points of complaint and outcome sought are not clear, we must contact the complainer to confirm these. We will normally need to speak to the complainer (by phone, MS Teams or face-to-face) to do this effectively. In some cases, it may be possible to clarify complaints in writing. The key point is that we need to be sure we and the complainer have a shared understanding of the complaint. When contacting the complainer we will be respectful of their stated preferred method of contact. We should keep a clear record of any discussion with the complainer.
119. In all cases, we must have a clear shared understanding of:

- **What are the points of complaint to be investigated?**

While the complaint may appear to be clear, agreeing the points of complaint at the outset ensures there is a shared understanding and avoids the complaint changing or confusion arising at a later stage. The points of complaint should be specific enough to direct the investigation, but broad enough to include any multiple and specific points of concern about the same issue.

We will make every effort to agree the points of complaint with the complainer (alternative complaint resolution approaches may be helpful at this stage). In very rare cases, it may not be possible to agree the points of complaint (for example, if the complainer insists on an unreasonably large number of complaints being separately investigated, or on framing their complaint in an abusive way). We will manage any such cases in accordance with our [Unacceptable Behaviour Policy](#), bearing in mind that we should continue to investigate the complaint (as we understand it) wherever possible.

- **Is there anything we can't consider under the CHP?**

We must explain if there are any points that are not suitable for handling under the CHP (see [Part 2: What to do if the CHP does not apply](#)).

- **What outcome does the complainer want to achieve by complaining?**

Asking what outcome the complainer is seeking helps direct the investigation and enables us to focus on resolving the complaint where possible.

- **Are the complainer's expectations realistic and achievable?**

It may be that the complainer expects more than we can provide, or has unrealistic expectations about the scope of the investigation. If so, we should make this clear to the complainer as soon as possible.

Notifying staff members involved

120. If the complaint is about the actions of a particular staff member/s, we will notify the staff member/s involved (including where the staff member is not named, but can be identified from the complaint). We will:

- share the complaint information with the staff member/s (unless there are compelling reasons not to)
- advise them how the complaint will be handled, how they will be kept updated and how we will share the complaint response with them
- discuss their willingness to engage with alternative complaint resolution approaches (where applicable); and
- signpost the staff member/s to a contact person who can provide support and information on what to expect from the complaint process (this must not be the person investigating or signing off the complaint response).

121. If it is likely that internal disciplinary processes may be involved, the requirements of that process should also be met. Staff can access the relevant disciplinary policy [here](#). See also [Part 2: Complaints and disciplinary or whistleblowing processes](#).

Investigating the complaint

122. It is important to plan the investigation before beginning. The staff member investigating the complaint should consider what information they have and what they need about:

- what happened? (this could include, for example, records of phone calls or meetings, work requests, recollections of staff members or internal emails)
- what should have happened? (this should include any relevant policies or procedures that apply); and
- is there a difference between what happened and what should have happened, and is the Commissioner's office responsible?

123. In some cases, information may not be readily available. We will balance the need for the information against the resources required to obtain it, taking into account the seriousness of the issue (for example, it may be appropriate to contact a former employee, if possible, where they hold key information about a serious complaint).

124. If we need to share information within or outwith the organisation, we will be mindful of our obligations under data protection legislation. See [Part 1: Maintaining confidentiality and data protection](#).

125. Staff may wish to refer to the SPSO has resources for conducting investigations, including:

- [Investigation plan template](#)
- [Decision-making tool for complaint investigators](#)

Alternative complaint resolution approaches

126. Some complex complaints, or complaints where complainers and other interested parties have become entrenched in their position, may require a different approach to resolving the matter. Where we think it is appropriate, we may use alternative complaint resolution approaches such as complaint resolution discussions, mediation or conciliation to try to resolve the matter and to reduce the risk of the complaint escalating further. If mediation is attempted, a suitably trained and qualified mediator should be used. Alternative complaint resolution approaches may help

both parties to understand what has caused the complaint, and so are more likely to lead to mutually satisfactory solutions.

127. Alternative complaint resolution approaches may be used to resolve the complaint entirely, or to support one part of the process, such as understanding the complaint, or exploring the complainer's desired outcome.
128. The SPSO has [guidance on alternative complaint resolution approaches](#).
129. If the Commissioner's office and the complainer (and any staff members involved) agree to using alternative complaint resolution approaches, it is likely that an extension to the timeline will need to be agreed. This should not discourage the use of these approaches.

Meeting with the complainer during the investigation

130. To effectively investigate the complaint, it may be necessary to arrange a meeting with the complainer. Where a meeting takes place, we will always be mindful of the requirement to investigate complaints (including holding any meetings) within 20 working days wherever possible. Where there are difficulties arranging a meeting, this may provide grounds for extending the timeframe.
131. As a matter of good practice, a written record of the meeting should be completed and provided to the complainer. Alternatively, and by agreement with the person making the complaint, we may provide a record of the meeting in another format. We will notify the person making the complaint of the timescale within which we expect to provide the record of the meeting.

Timelines

132. The following deadlines are appropriate to cases at the investigation stage (counting day one as the day of receipt, or the next working day if the complaint was received on a weekend or public holiday):
 - complaints must be acknowledged within **three working days**
 - a full response to the complaint should be provided as soon as possible but not later than **20 working days** from the time the complaint was received for investigation.

Extension to the timeline

133. Not all investigations will be able to meet this deadline. For example, some complaints are so complex that they require careful consideration and detailed investigation beyond the 20 working day timeline. It is important to be realistic and clear with the complainer about timeframes, and to advise them early if we think it will not be possible to meet the 20 day timeframe, and why. We should bear in mind that extended delays may have a detrimental effect on the complainer.
134. Any extension must be approved by an appropriate manager. We will keep the complainer and any member/s of staff complained about updated on the reason for the delay and give them a revised timescale for completion. We will contact the complainer and any member/s of staff complained about at least once every 20 working days to update them on the progress of the investigation.
135. The reasons for an extension might include the following:

- essential accounts or statements, crucial to establishing the circumstances of the case, are needed from staff or others but the person is not available because of long-term sickness or leave
- we cannot obtain further essential information within normal timescales; or
- the complainer has agreed to alternative complaint resolution approaches as a potential route for resolution.

These are only a few examples, and we will judge the matter in relation to each complaint. However, an extension would be the exception.]

136. **Part 3, Appendix 1** provides further information on timelines.

Closing the complaint at the investigation stage

137. The response to the complaint should be in writing (or by the complainer preferred method of contact) and must be signed off by a manager or officer who is empowered to provide the final response on behalf of the Commissioner. The Commissioner's approval of final draft responses to complainers following an investigation is required **in all cases**.

138. We will tell the complainer the outcome of the complaint (whether it is resolved, upheld, partially upheld or not upheld). The quality of the complaint response is very important and in terms of good practice should:

- be clear and easy to understand, written in a way that is person-centred and non-confrontational
- avoid technical terms, but where these must be used, an explanation of the term should be provided
- address all the issues raised and demonstrate that each element has been fully and fairly investigated
- include an apology where things have gone wrong (this is different to an expression of empathy: see [the SPSO's guidance on apology](#))
- highlight any area of disagreement and explain why no further action can be taken
- indicate that a named member of staff is available to clarify any aspect of the letter; and
- indicate that if they are not satisfied with the outcome of the local process, they may seek a review by the SPSO (see **Signposting to the SPSO**).

139. Where a complaint has been **resolved**, the response does not need to provide a decision on all points of complaint, but should instead confirm the resolution agreed. See **Resolving the complaint**.

140. If the complaint is about the actions of a particular staff member/s, we will share with them any part of the complaint response which relates to them, (unless there are compelling reasons not to).

141. We will record the decision, and details of how it was communicated to the complainer, on the complaints system and [database](#).

142. Staff may wish to refer to the SPSO guidance on responding to a complaint:

- [Template decision letter](#)

- [Apology guidance](#)

143. At the earliest opportunity after the closure of the complaint, the staff member handling the complaint should consider whether any learning has been identified. See [Part 4: Learning from complaints](#).

Signposting to the SPSO

144. Once the investigation stage has been completed, the complainer has the right to approach the SPSO if they remain dissatisfied. We must make clear to the complainer:
- their right to ask the SPSO to consider the complaint
 - the time limit for doing so; and
 - how to contact the SPSO.
145. The SPSO considers complaints from people who remain dissatisfied at the conclusion of our complaints procedure. The SPSO looks at issues such as maladministration (administrative fault), and the way we have handled the complaint. There are some subject areas that are outwith the SPSO's jurisdiction, but it is the SPSO's role to determine whether an individual complaint is one that they can consider (and to what extent). All investigation responses must signpost to the SPSO.
146. The SPSO recommends that we use the wording below to inform complainers of their right to ask the SPSO to consider the complaint. This information should only be included on the Commissioner's final response to the complaint.

Information about the SPSO

The Scottish Public Services Ombudsman (SPSO) is the final stage for complaints about public services in Scotland. This includes complaints about the Commissioner. The SPSO is an independent organisation that investigates complaints. It is not an advocacy or support service (but there are other organisations who can help you with advocacy or support).

If you remain dissatisfied when you have had a final response from the Commissioner, you can ask the SPSO to look at your complaint. You can ask the SPSO to look at your complaint if:

- you have gone all the way through the Commissioner's Complaints Handling Procedure
- it is less than 12 months after you became aware of the matter you want to complain about, and
- the matter has not been (and is not being) considered in court.

The SPSO will ask you to complete a complaint form and provide a copy of this letter (our final response to your complaint). You can do this online at www.spsso.org.uk/complain or call them on Freephone 0800 377 7330.

You may wish to get independent support or advocacy to help you progress your complaint. Organisations who may be able to assist you are:

- Citizens Advice Bureau

- Scottish Independent Advocacy Alliance

The SPSO's contact details are:

SPSO

Bridgeside House

99 McDonald Road

Edinburgh

EH7 4NS

(if you would like to visit in person, you must make an appointment first)

Their freepost address is:

FREEPOST SPSO

Freephone: 0800 377 7330

Online contact www.spsso.org.uk/contact-us

Website: www.spsso.org.uk

Post-closure contact

147. If a complainer contacts us for clarification when they have received our final response, we may have further discussion with them to clarify our response and answer their questions. However, if the complainer is dissatisfied with our response or does not accept our findings, we will explain that we have already given them our final response on the matter and signpost them to the SPSO.

Appendix 1 - Timelines

General

1. References to timelines throughout the CHP relate to working days. We do not count non-working days, for example weekends, public holidays and days of industrial action where our usual activities have been interrupted.

Timelines at frontline response (stage 1)

2. We will aim to achieve frontline response within five working days. The date of receipt is **day one**, and the response should be provided (or the complaint escalated) on **day five**, at the latest.
3. If we have extended the timeline at the frontline response stage in line with the CHP, the response should be provided (or the complaint escalated) on **day ten**, at the latest.

Transferring cases from frontline response to investigation

4. If the complainer wants to escalate the complaint to the investigation stage, the case must be passed for investigation without delay. In practice this will mean on the same day that the complainer is told this will happen.

Timelines at investigation (stage 2)

5. For complaints at the investigation stage, **day one** is:
 - the day the case is transferred from the frontline stage to the investigation stage
 - the day the complainer asks for an investigation or expresses dissatisfaction after a decision at the frontline response stage; or
 - the date we receive the complaint, if it is handled immediately at stage 2

We may have to change the date of day one if the complainer's complaint about us is unclear and we have asked them for clarification that they have taken some time to provide. In such cases, **day one** will be the day on which the complainer clarifies the nature of their complaint.

6. We must acknowledge the complaint within three working days of receipt at stage 2 i.e. by **day three**.
7. We should respond in full to the complaint by **day 20**, at the latest. We have 20 working days to investigate the complaint, regardless of any time taken to consider it at the frontline response stage.
8. Exceptionally, we may need longer than the 20 working day limit for a full response. If so, we will explain the reasons to the complainer, and update them (and any staff involved) at least once every 20 working days.

Frequently asked questions

What happens if an extension is granted at stage 1, but then the complaint is escalated?

9. The extension at stage 1 does not affect the timeframes at stage 2. The stage 2 timeframes apply from the day the complaint was escalated (we have 20 working days from this date, unless an extension is granted).

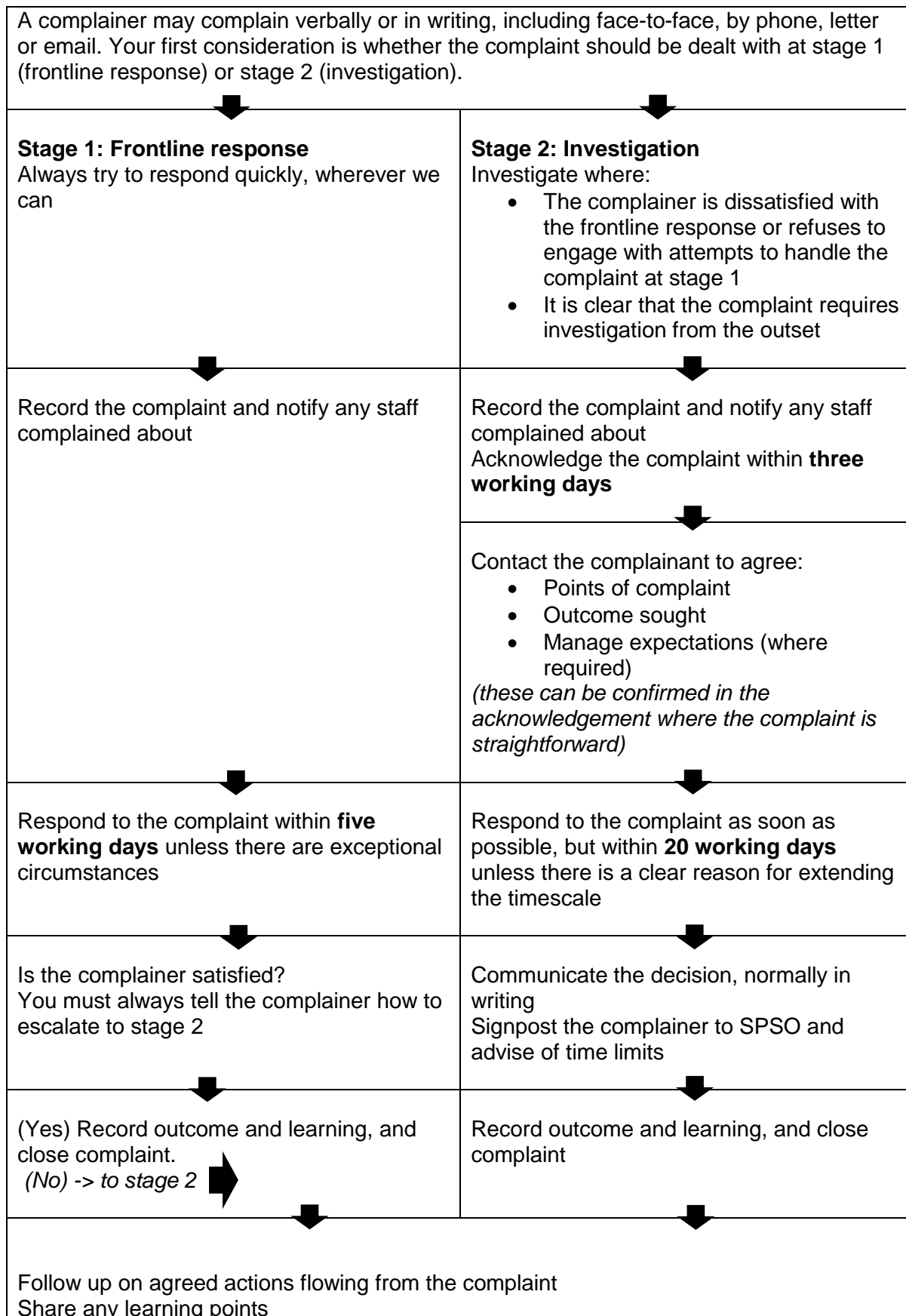
What happens if we cannot meet an extended timeframe?

10. If we cannot meet the extended timeframe at stage 1, the complaint should be escalated to stage 2. The maximum timeframe allowed for a stage 1 response is ten working days.
11. If we cannot meet the extended timeframe at stage 2, a further extension may be approved by an appropriate manager if there are clear reasons for this. This should only occur in exceptional circumstances (the original extension should allow sufficient time to realistically investigate and respond to the complaint). Where a further extension is agreed, we should explain the situation to the complainer and give them a revised timeframe for completion. We must update the complainer and any staff involved in the investigation at least once every 20 working days.

What happens when a complainer asks for stage 2 consideration a long time after receiving a frontline response?

12. Unless exceptional circumstances exist, complainers should bring a stage 2 complaint within six months of learning about the problem, or within two months of receiving the stage 1 response (whichever is latest). See [Part 2: Time limits for making a complaint](#).

Appendix 2 – The complaint handling process (flowchart for staff)



Part 4 - Governance

Roles and responsibilities

148. All staff will be aware of:

- the Complaints Handling Procedure (CHP)
- how to handle and record complaints at the frontline response stage
- who they can refer a complaint to, in case they are not able to handle the matter
- the need to try and resolve complaints early and as close to the point at which a concern is raised as possible; and
- their clear authority to attempt to resolve any complaints they may be called upon to deal with.

149. Training on this procedure will be part of the induction process for all new staff. Refresher training will be provided for current staff on a regular basis.

150. Senior management will ensure that:

- The Commissioner's final position on a complaint investigation is signed off by the Commissioner in order to provide assurance that this is the definitive response and that the complainant's concerns have been taken seriously
- it maintains overall responsibility and accountability for the management and governance of complaints handling (including complaints about contracted services)
- it has an active role in, and understanding of, the CHP (although not necessarily involved in the decision-making process of complaint handling)
- mechanisms are in place to ensure a consistent approach to the way complaints handling information is managed, monitored, reviewed and reported at all levels in the Commissioner's office; and
- complaints information is used to improve the work of the office, and this is evident from publications.

151. **The Commissioner:** The Commissioner provides leadership and direction in ways that guide and enable us to perform effectively across the organisation. This includes ensuring that there is an effective CHP, with a robust investigation process that demonstrates how we learn from the complaints we receive. The Commissioner may take a personal interest in all or some complaints, or may delegate responsibility for the CHP to senior staff. Regular management reports assure the Commissioner of the quality of complaints performance.

152. The Commissioner is also responsible for ensuring that there are governance and accountability arrangements in place in relation to complaints about contractors. This includes:

- ensuring performance monitoring for complaints is a feature of the service/management agreements between office and contractors

- setting clear objectives in relation to this complaints procedure and putting appropriate monitoring systems in place to provide the office with an overview of how the contractor is meeting its objectives
153. **The Senior Management Team:** The Commissioner's Senior Management Team are responsible for:
- managing complaints and the way we learn from them
 - overseeing the implementation of actions required as a result of a complaint
 - investigating complaints; and
 - deputising for the Commissioner on occasion.
154. They may also be responsible for preparing draft decisions for complainers, so they should be satisfied that the investigation is complete and their response addresses all aspects of the complaint. However, they may decide to delegate some elements of complaints handling (such as investigations and the drafting of response letters) to other staff. Where this happens, they will retain ownership and accountability for the management and reporting of complaints.
155. **Complaints investigators:** The complaints investigators are responsible and accountable for the management of the investigation. They will be involved in the investigation and in coordinating all aspects of the response to the complainer. This may include preparing a comprehensive written report, including details of any procedural changes recommended and identifying wider opportunities for learning across the organisation.
156. **The Corporate Services Team:** The business is responsible for ensuring all new staff receive training on the CHP as part of the induction process, and that refresher training is provided for current staff on a regular basis. It will also provide complaints information in an orderly, structured way within requested timescales, providing comments on factual accuracy on our behalf in response to SPSO reports, and confirming and verifying that recommendations have been implemented.

Recording, reporting, learning from and publicising complaints

157. Complaints provide valuable feedback. One of the aims of the CHP is to identify opportunities to improve the way in which the office fulfils its role. By recording and analysing complaints data, we can identify and address the causes of complaints and, where appropriate, identify training opportunities and introduce improvements.
158. We also have arrangements in place to ensure complaints about contractors are recorded, reported on and publicised in line with this CHP.

Recording complaints

159. It is important to record suitable data to enable us to fully investigate and respond to the complaint, as well as using our complaint information to track themes and trends. As a minimum, we will record on the [database](#) set up for this purpose:

- the complainer's name and contact details
- the date the complaint was received
- the nature of the complaint
- the issue the complaint refers to
- staff member responsible for handling the complaint
- action taken and outcome at frontline response stage
- date the complaint was closed at the frontline response stage
- date the investigation stage was initiated (if applicable)
- action taken and outcome at investigation stage (if applicable)
- date the complaint was closed at the investigation stage (if applicable); and
- the underlying cause of the complaint and any remedial action taken; and
- *the outcome of the SPSO's investigation (where applicable)*

If the complainer does not want to provide any of this information, we will reassure them that it will be managed appropriately, and record what we can.

160. Individual complaint files will be stored in line with our [records management policies and procedures](#).

Learning from complaints

161. We must have clear systems in place to act on issues identified in complaints. As a minimum, we must:
- seek to identify the root cause of complaints
 - take action to reduce the risk of recurrence; and
 - systematically review complaints performance reports to improve.
162. Learning may be identified from individual complaints (regardless of whether the complaint is upheld or not) and from analysis of complaints data.

163. Where we have identified the need for improvement in response to an individual complaint, we will take appropriate action. We will ensure that:
- the action needed to improve must be authorised by the Commissioner
 - a member of the Senior Management Team will be designated the 'owner' of the issue, with responsibility for ensuring the action is taken
 - a target date will be set for the action to be taken
 - the designated individual must follow up to ensure that the action is taken within the agreed timescale
 - where appropriate, performance in the area concerned should be monitored to ensure that the issue has been resolved; and
 - any learning points should be shared with relevant staff.
164. Senior management will review the information reported on complaints regularly to ensure that any trends or wider issues which may not be obvious from individual complaints are quickly identified and addressed. Where we identify the need for improvement, we will take appropriate action (as set out above). Where appropriate, performance in the area concerned should be monitored to ensure that the issue has been resolved.

Reporting of complaints

165. We have a process for the internal reporting of complaints information, including analysis of complaints trends. Regularly reporting the analysis of complaints information helps to inform management of where we need to improve.
166. We will report at least **quarterly** to senior management on:
- performance statistics, in line with the complaints performance indicators published by SPSO
 - analysis of the trends and outcomes of complaints (this should include highlighting where there are areas where few or no complaints are received, which may indicate either good practice or that there are barriers to complaining in that area).

Publicising complaints information

167. We publish on a **quarterly** basis information on complaints outcomes and actions taken to improve.
168. This demonstrates the improvements resulting from complaints and shows that complaints can help to improve the way in which we work. It also helps ensure transparency in our complaints handling and will help to show that we value complaints.
169. We will publish an **annual** complaints performance report on our website in line with SPSO requirements, and provide this to the SPSO on request. This summarises and builds on the quarterly reports we have produced about our work. It includes:
- performance statistics, in line with the complaints performance indicators published by the SPSO; and

- complaint trends and the actions that have been or will be taken to improve on what we do as a result.

170. These reports must be easily accessible to members of the public and available in alternative formats as requested.

PART 5 – How to make a complaint about us

Ethical Standards Commissioner - complaints procedure

We do not provide a public service but rather acquit statutory public functions. We are committed to performing our functions in an effective, efficient and professional manner. You can find out more about our purpose and our values by referring to our strategic plan.

We value complaints and use information from them to help us improve our work

1. If something goes wrong or you are dissatisfied with your interaction with us, please tell us. This leaflet describes our complaints procedure and how to make a complaint. It also tells you about how we will handle your complaint and what you can expect from us.

What is a complaint?

2. The Commissioner's definition of a complaint is: 'an expression of dissatisfaction by one or more members of the public about their or their office's action or lack of action, or about the standards of administration provided by or on behalf of the Commissioner.'

What can I complain about?

3. You can complain about things like:

171. A complaint may relate to the following, but is not restricted to this list:

- failure or refusal to fulfil the statutory functions of the office, other than in cases in which the Commissioner has exercised their statutory discretion
 - inadequate quality or standards relating to fulfilling the statutory functions of the office, or an unreasonable delay in doing so
 - dissatisfaction with one of our policies or its impact on the individual
 - failure to properly apply law, procedure or guidance when fulfilling the statutory functions of the office
 - failure to follow the appropriate administrative process
 - conduct, treatment by or attitude of a member of staff or contractor (**except** where there are arrangements in place for the contractor to handle the complaint themselves); or
 - disagreement with a decision, (**except** where there is a statutory procedure for challenging that decision).
4. Your complaint may involve more than one of the functions we fulfil or be about someone working on our behalf.

What can't I complain about?

5. There are some things we can't deal with through our complaints handling procedure. These include:
 - In relation to Standards, dissatisfaction with any decisions of the Commissioner whether, when or how to proceed with an investigation (as this is a quasi-judicial matter);

- In relation to Standards, dissatisfaction with any conclusions of the Commissioner following an investigation, as this is a quasi-judicial matter (and would also be prejudicial to the respondent);
 - In relation to Standards, a review of the Commissioner/Investigating Officer's work or decisions during the enquiries/investigation as this is a quasi-judicial matter;
 - In relation to Standards, dissatisfaction with a matter related to an investigation that would require production of legally confidential information (section 12(2) of the 2000 Act) as this is a quasi-judicial matter;
 - dissatisfaction about a typographical error (as this does not equate to maladministration).
 - in relation to public appointments, a decision by the Commissioner on the outcome of a complaints investigation, unless new evidence is provided that has not been considered, as this is a statutory function of the Commissioner;
 - in relation to public appointments, the Commissioner's interpretation of the code of practice for ministerial appointments to public bodies in Scotland, as this is a statutory function of the Commissioner.
 - a routine first-time request for the Commissioner to fulfil one of their statutory functions
 - a request for compensation only
 - issues that are in court or have already been heard by a court or a tribunal
 - disagreement with a decision where there is a statutory procedure for challenging that decision (such as for freedom of information and subject access requests and issues that may be judicially reviewed).
 - a request for information under the Data Protection or Freedom of Information (Scotland) Acts
 - a grievance by a staff member or a grievance relating to employment or staff recruitment
 - a concern raised internally by a member of staff (which was not about a failure to fulfil a statutory function, such as a whistleblowing concern)
 - a concern about a child or an adult's safety
 - an attempt to reopen a previously concluded complaint or to have a complaint reconsidered where we have already given our final decision.
 - abuse or unsubstantiated allegations about our organisation or staff where such actions would be covered by our Unacceptable Behaviour Policy; or
 - a concern about the actions or service of a different organisation, where we have no involvement in the issue (**except** where the other organisation is fulfilling our statutory functions on our behalf).
6. If other procedures or rights of appeal can help you resolve your concerns, we will give information and advice to help you.

Who can complain?

7. Anyone who receives, requests, or is affected by the way in which we fulfil the statutory functions of the office can make a complaint. This includes the representative of someone who is dissatisfied with our work (for example, a relative, friend, advocate or adviser). If you are making a complaint

on someone else's behalf, you will normally need their written consent. Please also read the section on **Getting help to make your complaint** below.

How do I complain?

8. You can complain in person at our office, by phone, in writing, by email or online via our complaints form:

<https://www.ethicalstandards.org.uk/investigation-process-ethical-standards-commissioner>

9. It is easier for us to address complaints if you make them quickly and directly to the area of the office concerned. So please talk to a member of our staff in the area you are complaining about. Then they can try to resolve the issue.

10. When complaining, please tell us:

- your full name and contact details
- as much as you can about the complaint
- what has gone wrong; and
- what outcome you are seeking.

Our contact details

Main address:

Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE

Main contact number and email address:

0300 011 0550

info@ethicalstandards.org.uk

Our instructions and form on our website for making a complaint about us:

<https://www.ethicalstandards.org.uk/investigation-process-ethical-standards-commissioner>

For concerns about our work on public appointments please contact:

0131 347 3897

appointments@ethicalstandards.org.uk

For concerns about our work investigating complaints please contact:

0300 011 0550

investigations@ethicalstandards.org.uk

British Sign Language (BSL) users can contact us by using [contactSCOTLAND-BSL](#).

contactSCOTLAND-BSL

How long do I have to make a complaint?

11. Normally, you must make your complaint within six months of:

- the event you want to complain about; or
- finding out that you have a reason to complain.

12. In exceptional circumstances, we may be able to accept a complaint after the time limit. If you feel that the time limit should not apply to your complaint, please tell us why.

What happens when I have complained?

13. We will always tell you who is dealing with your complaint. Our complaints procedure has two stages.

Stage 1: Frontline response

14. We aim to respond to complaints quickly (where possible, when you first tell us about the issue). This could mean an on-the-spot apology and explanation if something has clearly gone wrong, or immediate action to resolve the problem.

15. We will give you our decision at stage 1 in five working days or less, unless there are exceptional circumstances.

16. If you are not satisfied with the response we give at this stage, we will tell you what you can do next. If you choose to, you can take your complaint to stage 2. You must normally ask us to consider your complaint at stage 2 either:

- within six months of the event you want to complain about or finding out that you have a reason to complain; or
- within two months of receiving your stage 1 response (if this is later).

17. In exceptional circumstances, we may be able to accept a stage 2 complaint after the time limit. If you feel that the time limit should not apply to your complaint, please tell us why.

Stage 2: Investigation

18. Stage 2 deals with two types of complaint: where the person remains dissatisfied after stage 1 and those that clearly require investigation, and so are handled directly at this stage. If you do not wish your complaint to be handled at stage 1, you can ask us to handle it at stage 2 instead.

19. When using stage 2:

- we will acknowledge receipt of your complaint within three working days
- we will confirm our understanding of the complaint we will investigate and what outcome you are looking for
- we will try to resolve your complaint where we can (in some cases we may suggest using an alternative complaint resolution approach, such as mediation); and

- where we cannot resolve your complaint, we will give you a full response as soon as possible, normally within 20 working days.

20. If our investigation will take longer than 20 working days, we will tell you. We will tell you our revised time limits and keep you updated on progress.

What if I'm still dissatisfied?

21. After we have given you our final decision, if you are still dissatisfied with our decision or the way we dealt with your complaint, you can ask the Scottish Public Services Ombudsman (SPSO) to look at it.

The SPSO are an independent organisation that investigates complaints. They are not an advocacy or support service (but there are other organisations who can help you with advocacy or support).

You can ask the SPSO to look at your complaint if:

- you have gone all the way through the [organisation]'s complaints handling procedure
- it is less than 12 months after you became aware of the matter you want to complain about; and
- the matter has not been (and is not being) considered in court.

The SPSO will ask you to complete a complaint form and provide a copy of our final response to your complaint. You can do this online at www.spsso.org.uk/complain/form or call them on Freephone 0800 377 7330.

You may wish to get independent support or advocacy to help you progress your complaint. See the section on **Getting help to make your complaint** below. The SPSO's contact details are:

SPSO
 Bridgeside House
 99 McDonald Road
 Edinburgh
 EH7 4NS
 (if you would like to visit in person, you must make an appointment first)

Their freepost address is:
 FREEPOST SPSO

Freephone: 0800 377 7330
 Online contact www.spsso.org.uk/contact-us
 Website: www.spsso.org.uk

Getting help to make your complaint

22. We understand that you may be unable or reluctant to make a complaint yourself. We accept complaints from the representative of a person who is dissatisfied with our work. We can take complaints from a friend, relative, or an advocate, if you have given them your consent to complain for you.

23. You can find out about advocates in your area by contacting the Scottish Independent Advocacy Alliance:

Scottish Independent Advocacy Alliance

Tel: 0131 510 9410 Website: www.siaa.org.uk

24. You can find out about advisers in your area through Citizens Advice Scotland:

Citizens Advice Scotland

Website: www.cas.org.uk or check your phone book for your local citizens advice bureau.

25. We are committed to being accessible all members of the community. In line with our statutory equalities duties, we will always ensure that reasonable adjustments are made to help you to have access to the functions that the Commissioner fulfils. If you have trouble putting your complaint in writing, or want this information in another language or format, such as large font, or Braille, please tell us in person, or contact us using the details provided above.

We can also give you this leaflet in other languages and formats (such as large print, audio and Braille).

Quick guide to our complaints procedure

Complaints procedure

You can make your complaint in person, by phone, by email or in writing.

We have a **two-stage complaints procedure**. We will always try to deal with your complaint quickly. But if it is clear that the matter will need investigation, we will tell you and keep you updated on our progress.

Stage 1: Frontline response

We will always try to respond to your complaint quickly, within **five working days** if we can.

If you are dissatisfied with our response, you can ask us to consider your complaint at stage 2.

Stage 2: Investigation

We will look at your complaint at this stage if you are dissatisfied with our response at stage 1. We also look at some complaints immediately at this stage, if it is clear that they need investigation.

We will acknowledge your complaint within **three working days**.

We will confirm the points of complaint to be investigated and what you want to achieve.

We will investigate the complaint and give you our decision as soon as possible. This will be after no more than **20 working days** *unless* there is clearly a good reason for needing more time.

Scottish Public Services Ombudsman

If, after receiving our final decision on your complaint, you remain dissatisfied with our decision or the way we have handled your complaint, you can ask the SPSO to consider it.

We will tell you how to do this when we send you our final decision.

Ethical Standards Commissioner

