

Consultation on a Statement of Complaints Handling Principles and Guidance on a Model Complaints Handling Procedure

16 June 2010

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Ombudsman's Foreword

Creating a culture that values complaints

This consultation is the culmination of many years of hard work by different individuals and groups in Scotland, who seek to improve the way complaints are handled in the public sector. The Crerar Review and Sinclair Report laid the groundwork for the legislation passed earlier this year in the Public Services Reform Act. The provisions of the Act give the SPSO the authority to lead the development of simplified and standardised complaints handling procedures across the public sector.

The legislation requires the Ombudsman to publish a set of principles, based on the SPSO's Valuing Complaints initiative, to be consulted on, and approved by the Parliament. It also provides the SPSO with the power to publish model complaints handling procedures. The principles and guidance are designed to provide broad direction and support to public service providers in improving their own procedures. To fulfil our duties under the legislation, we will establish a complaints standards authority (CSA). This will allow us to work in partnership with individual public sector areas to oversee the process of developing model complaints handling procedures for each sector. The CSA will be in place later this year and ready to start to implement the project early in 2011.

I recognise that this is a time when all bodies in the public sector are facing difficult economic challenges. The Sinclair Report made clear that as complaints escalate the costs of dealing with them increase disproportionately. The provisions in the Public Services Reform Act present real opportunities to achieve greater efficiencies through better complaints handling.

Handled well, complaints can be invaluable to the public and to service providers. They provide the user of a service with a form of redress and with direct input to the continuous improvement of services. For the people providing services, complaints provide a first-hand account of a service from the experience and perspective of the user. Complaints can highlight problems in service delivery that may otherwise go undetected, and so provide an opportunity for change.

The right complaints culture can pay dividends: restoring trust between the service user and provider, improving public services, and cutting costs to the public purse.

In order for the positive benefits of complaints to be harnessed, it is important that the right procedures are in place to receive, investigate and resolve complaints. For the procedures to be effective, leaders of public services must create a culture where complaints are valued and trained and empowered staff are enabled to deal with complaints simply, consistently, quickly and locally.

This consultation marks the next step in a journey towards better complaints handling across the public sector in Scotland. I invite you to consider and respond to the principles and guidance in this consultation, and look forward to working with you to implement the changes in the months and years ahead.

Jim Martin
Scottish Public Services Ombudsman
June 2010

Executive Summary

The Public Services Reform (Scotland) Act 2010 gives the Ombudsman the role of leading the development of standardised public service complaints handling systems.

The Act requires the Ombudsman to publish a statement of principles on which all public service complaints handling procedures should be based. Following the consultation, the statement will be sent to the Scottish Parliament for approval in autumn 2010. The statement of principles is laid out below.

Principles

An effective complaints handling process is:

User focused: it puts the service user at the heart of the procedure whilst managing occasional difficult behaviour.

Accessible: it is clearly communicated, easily understood and available to all.

Quick and simple: it has as few steps as necessary within an agreed and transparent timeframe.

Objective and transparent: it is evidence-based and driven by facts, not assumptions. It is impartial, independent and accountable.

Fair, proportionate and consistent: it treats complainants equally, striking a balance between the need for consistency and the individual circumstances of each complaint.

... and should:

Seek early resolution: it aims to resolve complaints at the earliest opportunity, to the service user's satisfaction wherever possible and appropriate.

Deliver improvement: it is driven by the search for improvement, using analysis of outcomes to support service delivery and drive service improvements.

The Act also provides the Ombudsman with the power to publish model complaints handling procedures (CHPs). The guidance on model CHPs is intended to provide broad direction and support to public service providers. It lays out the high level components of an effective CHP and should be used by service providers to inform continuous development of their own procedures. The guidance aims to move service providers towards quicker, simpler and more streamlined CHPs with a strong focus on local, early resolution by empowered and well trained staff.

This consultation provides a means for feedback on the principles and the guidance, on the basis of which the Ombudsman will establish a complaints standards authority (CSA). Working in partnership with individual public sector areas, the CSA will oversee the process of developing simplified and standardised model complaints handling procedures for each sector.

Introduction and Background

- 1 Following publication of The Crerar Report¹, the Scottish Government established a Fit for Purpose Complaints System Action Group (FCSAG) to take forward their response to the Crerar recommendations on complaints handling. The report of this group (The Sinclair Report²) made a series of recommendations to simplify public service complaints handling procedures and streamline the landscape of complaints handling bodies in Scotland.
- 2 A crucial part of the report was the recommendation that the Scottish Public Services Ombudsman ('the Ombudsman') take on the role of 'design authority' in leading the development of standardised procedures to help simplify and improve complaints handling across the public sector. Specifically the report recommended that:

A set of principles based on the present SPSO guidance (Valuing Complaints) founded on consumer focus and simplification should form the basis of all public service complaints handling processes, which will be developed in partnership between the SPSO and service providers.

There should be a standardised complaints handling process for each public service sector based on these principles – so that, for example, all care homes have a process in common and all registered social landlords have their own common process.

[The SPSO should]...develop and approve, for each sector, standardised public service complaints handling systems which include realistic but challenging timescales and processes to keep all parties informed of progress.
- 3 The Public Services Reform (Scotland) Act 2010 ('The Act'), passed by the Scottish Parliament in March 2010, gives the Ombudsman the lead role in developing these standardised systems in line with the Sinclair recommendations. This consultation is an important first step towards implementing the provisions of the Act, which links improved complaints handling with supporting the drive for greater public sector efficiency and effectiveness.

Statement of Principles

- 4 The Act requires the Ombudsman to publish a statement of principles on which all public service complaints handling procedures should be based. It requires public service providers under the Ombudsman's jurisdiction to ensure that they have complaints procedures which comply with this statement of principles. The first part of this consultation document outlines the Ombudsman's draft statement of principles. The Act requires the Ombudsman to consult on this and to submit a final version to the Scottish Parliament for approval.

The aim of the **statement of principles** is to guide public service providers towards a common view of complaints procedures, which puts the service user at the heart of the process, and values complaints as tools for feedback, learning and improvement.

1 Report on 'The Crerar Review: The Report of the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland', September 2007

2 Fit For Purpose Complaints System Action Group – Report to Ministers, July 2008

Introduction and Background

Model Complaints Handling Procedures

- 5 The Act also provides the Ombudsman with the power to publish model complaints handling procedures (referred to in the Act and this consultation document as ‘model CHPs’). Model CHPs must comply with the statement of principles. The Ombudsman may publish different model CHPs for different purposes and may specify to which listed authority a model applies. In practice the Ombudsman will work with the different public service sectors to enable them to implement appropriate and effective model CHPs.
- 6 Service providers will have an obligation under the Act to ensure that they have a complaints handling procedure that complies with the relevant model CHP. The Ombudsman will monitor compliance, with the power to make a declaration that the complaints handling procedure of the provider does not comply with the model CHP. In such cases he may specify modifications he considers necessary.

The **guidance on model complaints handling procedures** is intended to provide broad direction and support to public service providers. It lays out the high level components of an effective complaints handling procedure and should be used by service providers to inform continuous development of their own procedures. The guidance aims to move service providers towards quicker, simpler and more streamlined complaints handling procedures with a strong focus on local, early resolution by empowered and well trained staff.

- 7 Following the consultation, the finalised statement of principles will be laid before the Scottish Parliament for approval. The approved statement of principles and the guidance on model CHPs will be published on the SPSO’s Valuing Complaints website. The website will act as a resource and reference point for public service providers to support them in ensuring that their procedures comply with the principles and are in line with the guidance.

Statement of Complaints Handling Principles

Principles

An effective complaints handling procedure is:

User focused: it puts the service user at the heart of the process whilst managing occasional difficult behaviour.

Accessible: it is clearly communicated, easily understood and available to all.

Quick and simple: it has as few steps as necessary within an agreed and transparent timeframe.

Objective and transparent: it is evidence-based and driven by facts, not assumptions. It is impartial, independent and accountable.

Fair, proportionate and consistent: it treats complainants equally, striking a balance between the need for consistency and the individual circumstances of each complaint.

... and should:

Seek early resolution: it aims to resolve complaints at the earliest opportunity, to the service user's satisfaction wherever possible and appropriate.

Deliver improvement: it is driven by the search for improvement, using analysis of outcomes to support service delivery and drive service improvements.

User focused – A complaints procedure should put the service user at the heart of the process whilst managing occasional difficult behaviour.

Service providers should recognise the different needs of individuals and be flexible and responsive to those needs where possible and appropriate.

Service users should be heard, understood, respected and treated with dignity. They should be listened to and made to feel comfortable about bringing a complaint.

Service users should be treated sensitively and in a way that takes account of their needs.

Service users have a responsibility to act with respect towards service providers and their staff.

Accessible – A complaints procedure should be clearly communicated, easily understood and available to all.

Complaints should be welcomed by informed and empowered staff.

A complaints procedure should be well publicised.

A complaints procedure should be easily understood without any specialist knowledge.

A complaints procedure should be designed with regard to the needs of minority and vulnerable groups. Where appropriate, service providers should make available material and support to help people access and use the procedure.

Statement of Complaints Handling Principles

Quick and simple – A complaints procedure should have as few steps as necessary within an agreed and transparent timeframe.

The process of dealing with complaints should be speedy and involve as few steps as possible. Timescales should be clear, publicised and adhered to.

Objective and transparent – A complaints procedure should be evidence-based and driven by the facts, not assumptions. It should be impartial, independent and accountable.

All relevant facts should be gathered and analysed in an impartial manner.

Conclusions should be based on an analysis of the evidence and this should be clearly demonstrated.

As far as possible, staff who have been the subject of, or involved in handling, a complaint should not be appointed to investigate it.

Service providers should develop detailed performance standards for the quality and timeliness of complaints handling. These should also describe what action will be taken if these standards are not met.

The standards should be well publicised both to service users and staff. Staff should be aware of the standards and of what is expected of them in the event of a complaint.

Fair, proportionate and consistent – A complaints procedure should, as far as possible, treat complainants equally, striking a balance between the need for consistency and the individual circumstances of each complaint.

There should be flexibility in the method of investigating and resolving the complaint and these should be appropriate to the individual circumstances.

Investigation, outcomes and redress should be consistent from one complaint to another whilst being flexible in meeting the needs of individual complainants.

A complainant should only be treated differently to other complainants if this is justified by the individual circumstances of the case.

Seeks early resolution – A complaints procedure should aim to resolve complaints at the earliest opportunity, to the service user's satisfaction wherever possible and appropriate.

Staff should be trained and empowered to resolve complaints at the earliest opportunity, starting with the first point of contact with service users.

The outcome the service user wants should be clarified at the outset and, where possible and appropriate, satisfied.

Delivers improvement – A complaints procedure should be driven by the search for improvement, using analysis of outcomes to support service delivery and drive service improvements.

The complaints procedure should reflect and enhance the culture of good service delivery.

Complaint outcomes should be publicly available and should be used to demonstrate improvement and share best practice in service delivery.

Data from complaints should be used to measure performance, identify trends and highlight problems so that they can be solved before they have a chance to escalate.

Consultation questions on the Principles

For all responders:

- 1** Are the seven principles identified appropriate and proportionate? If not, please outline why not.
- 2** Should other, or additional, principles be considered?

For public service providers:

- 3** Are the principles relevant to your area of public services?
- 4** Do you consider that these principles will make complaints handling processes in your area of public services better?

For members of the public:

- 5** As a service user, do you consider that these principles will improve public service complaints handling procedures?

Guidance on a Model Complaints Handling Procedure

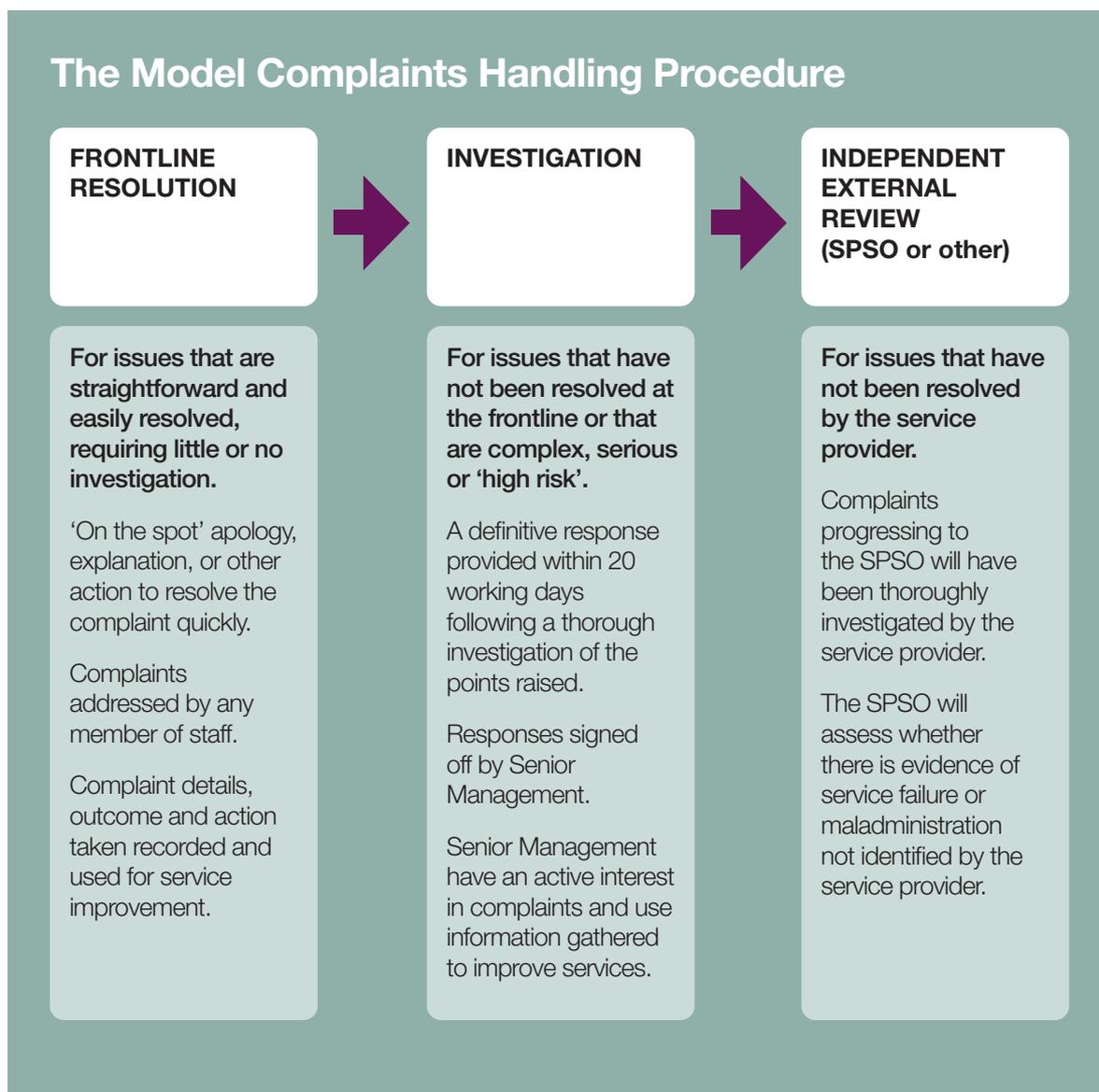
Introduction

- 1** This guidance has been designed in line with the SPSO statement of complaints handling principles. While recognising that most public service providers already have good complaints procedures in place and highly committed staff, the guidance seeks to simplify and streamline those procedures and consequently improve the quality of public services. It aims to provide broad direction and support to public service providers by bringing about a common, user-focused approach to complaints handling across the public sector in Scotland.
- 2** Underpinning the guidance is the ethos of 'Getting it Right First Time'. The emphasis is firmly on addressing customer dissatisfaction by providing a quick, fair and considered response to complaints, explaining clearly the reasons for any disagreement with the service user's position, and using the lessons learned from complaints to improve service delivery issues.
- 3** While recognising that each service provider has their own way of working and has unique staffing and operational considerations, the guidance is designed to be followed by all service providers. The SPSO expect senior management of public service providers to visibly support good complaints handling and develop a culture within their organisation that values complaints.

The Model Complaints Handling Procedure

Section 1: Process and Accountability

- 4 This section provides guidance on the process to be followed in a model CHP and who should be accountable at each stage. The aim of the model CHP is to provide a quick, simple and streamlined process with a strong focus on local, early resolution by empowered and well trained staff. The SPSO's recommended model is outlined below. This model provides organisations with two opportunities to deal with complaints internally: frontline resolution and investigation.



Frontline resolution

- 5 Service providers should take every opportunity to resolve service users' complaints at the first point of contact if at all possible. Complaints may be received by different means such as a letter or email, over the telephone or in person. Accordingly, all staff members who could potentially be the first point of contact for a service user wishing to raise a complaint should be equipped to deal with the issues raised and to resolve the complaint there and then, wherever possible. In a practical sense, this means frontline staff should be empowered to deal with and resolve complaints and should be given the training and authority required to do so.
- 6 Complaints resolved at the frontline of service provision are an effective tool in terms of minimising costs as well as resolving customer dissatisfaction. Where the service provider is unable to meet the service user's request or does not agree that the complaint is valid, a swift, factual explanation from an informed member of staff should prevent the matter from escalating or being drawn out longer than is necessary. Similarly, if the complaint is valid, a dissatisfied service user will be grateful for early acknowledgement of the problem and prompt action being taken to resolve it. The fewer people that are involved in responding to a complaint, and the quicker a response is given, the lower the cost of that complaint to the service provider in terms of resources and potential redress.

When is frontline resolution appropriate?

- 7 As a matter of course, any staff member being presented with a complaint (regardless of whether that complaint has been submitted in writing, in person or by telephone) should be seeking to resolve the issue that has been raised. Not all complaints will be suitable for frontline resolution, however, and the service provider should establish some basic guidelines for staff as to what type of issues should be handled at the frontline. This will vary depending on the service being provided, but the following examples are typical of the type of issues that the SPSO would expect frontline staff to address.

Examples of issues suitable for frontline resolution

- > A service that should have been provided has not been provided
- > A service has not been provided to an appropriate standard
- > A request for a service has not been answered/actioned
- > A complaint that a staff member was rude or unhelpful
- > A staff member or contractor failed to attend a scheduled appointment

- 8 As a general rule of thumb, the SPSO would expect frontline staff to respond to all complaints that they identify as appropriate for immediate resolution. The member of staff receiving the complaint should consider three key questions:

What is the complaint?

What does the service user wish to achieve by complaining?

Can I achieve this, or provide an explanation as to why not?

- 9 It is the nature of the complaint (i.e. non-complex/non-contentious), rather than the means by which it is presented, that should determine whether a complaint is handled at the frontline stage. A complaint in writing, therefore, can be resolved at the frontline.
- 10 The service user should, however, have the right at any time to request that their complaint be considered not at the frontline, but at the investigation stage of the complaints procedure.

Who responds to complaints at the frontline stage?

- 11 Anyone – the key to successful frontline resolution is embedding a culture of valuing complaints, where all staff are aware of the organisation’s approach to complaints and have the appropriate training and authority to handle issues that arise. Any frontline member of staff who could potentially be approached by a service user wishing to raise a complaint should be empowered to respond.

Identifying complaints

- 12 A crucial part of the work at the frontline resolution stage is to identify that a complaint is being made. There should be a clear distinction made between complaints and requests for a particular service to be provided. For example, a service user may contact their housing association to ask that a repair is carried out on their home. This is a request for maintenance, rather than a complaint about the condition of their property. However, if the matter is not addressed and the service user has to make contact again, it may escalate into a complaint about the repair service not being provided.
- 13 Frontline staff should be able to identify when a complaint is being made so that appropriate action can be taken in accordance with the CHP. To help staff make such decisions, service providers should be clear about what a complaint is and what issues will be considered through their CHP. This distinction may vary among public service sectors, but each provider should define the meaning of a complaint within their CHP so that it is clear both to staff and service users. It is particularly important that frontline staff understand that definition as they have the responsibility for initially identifying complaints and advising service users.
- 14 Most definitions of a complaint are similar to the following:
A complaint is an expression of dissatisfaction by one or more members of the public about an organisation’s action or lack of action, or about the standard of service provided by or on behalf of the organisation.
- 15 To prevent confusion and unrealistic expectations, it is helpful to tell service users what is **not** considered to be a complaint. Examples of these would be an initial request for service (for example, a repair), asking for explanation of a policy or an appeal against a decision.

Timescales for frontline resolution

- 16 The aim of frontline resolution is to provide a quick, informed response to a complaint without the need for a detailed investigation of the points raised. The issues are by definition those that can mostly be addressed ‘on-the-spot’ by staff responsible for a service. In this context it is likely that resolution will take place face-to-face or on the telephone.

- 17** It will occasionally be necessary for the staff member to find out more about the points raised by a service user before establishing the organisation's position on the matter. Frontline staff should take no longer than three working days to go back to the service user either with a response that resolves the matter or with advice that the service user takes their grievance to the investigation stage.

Recording, learning and accountability

- 18** Senior management should take an active interest in the volume and nature of all complaints received by their organisation, but there is no need for their direct involvement at this stage. Line managers should take responsibility for frontline complaints handling within their departments and record and report to senior management on a regular basis. Recording can be a relatively simple matter of listing complaint details, outcomes and any action taken. Line managers should also ensure that learning from complaints is circulated appropriately to relevant staff.

Frontline resolution – key points

- > All frontline staff are responsible for dealing with complaints
- > Frontline staff should be empowered to resolve, and trained to deal with, complaints
- > Senior management should produce a guide as to what issues should be handled by frontline staff
- > The service user may request that their complaint is handled at the investigation stage
- > The emphasis should be on providing an immediate response, or a response within three working days where a staff member need to find out more before responding
- > Telephone or face-to-face contact is encouraged

Investigation

- 19** Not all complaints are suitable for frontline resolution and not all complaints will be satisfactorily resolved at this stage. Service users may request that their complaint bypasses the frontline stage and is considered at the investigation stage. Complaints handled by investigation are typically those that are complex or require a certain amount of examination to establish the relevant facts before the service provider can state their position.
- 20** At the investigation stage, staff should also be aiming to 'Get it right first time'. Their goal is to establish all of the facts relevant to the points raised and provide a full, honest and proportionate response that represents the service provider's definitive position. Decisions reached at this stage of the procedure should communicate the views of the Chief Executive or other senior executive.

When is investigation appropriate?

- 21** Senior management should establish clear guidelines to help staff identify the type of issues appropriate to the investigation stage. These will vary according to the service provided. Particular attention should be given to identifying complaints that would be considered serious or high risk/high profile, as these may require particular attention or may raise critical issues requiring direct input from senior management. Some examples of complaints that should be considered at the investigation stage include:

Examples of issues suitable for investigation

- > Frontline resolution was attempted, but the service user remains dissatisfied
- > The service user requests that their complaint be considered at investigation
- > The issues raised are complex and will require detailed investigation
- > The complaint relates to issues that have been identified as serious or high risk/high profile

Potential serious or high risk/high profile complaints:

- > there has been press interest
- > involves a death or terminal illness
- > involves homelessness
- > involves a vulnerable person
- > involves child protection issues
- > involves major delays in service provision or repeated failure to provide service
- > a risk to the organisation has been identified

Who responds to complaints at the investigation stage?

- 22** It is for each service provider to decide who should investigate and respond to complaints. This will depend largely on the size of the organisation and the level of direct involvement that the Chief Executive wishes to have in the complaints handling procedure. There are, however, some basic requirements that the SPSO expect all service providers to meet.
- 23** Service users should have a single point of contact for their complaint. Not only does this provide reassurance for the service user that someone is attending to their complaint, it also ensures that one individual within the organisation has taken responsibility for investigating the points raised and responding to the service user. The service user should be provided with the name and contact details of the person dealing with their complaint as early as possible after the decision to consider the matter at investigation.
- 24** The staff member (or team) responding to the complaint is responsible for establishing what information is required, for gathering that information from the relevant department and for ensuring that the information gathered is of a suitable quality and accuracy to enable a full and informed response to be issued.
- 25** Wherever possible, service providers should avoid appointing staff that have been involved in the issues complained about to the task of investigating and responding to the complaint.

- 26** The staff member selected for investigating and responding to a complaint should have sufficient internal credibility and independence to ask difficult questions and recommend changes to policy or procedures in response to the complaint. Staff with responsibility for investigating complaints should have a thorough understanding of the CHP and a reasonable knowledge of the procedures of the department or function under investigation. They should be fully trained in how to plan and conduct investigations, including how to obtain and analyse evidence. They should have the authority to resolve complaints within pre-determined boundaries and should have the support of senior management to do so. It is important that there is a direct reporting line to the senior management team and investigators should also be able to seek advice about the conduct or findings of an investigation whenever necessary.

Timescales for investigation

- 27** It is for each service provider to set their own timescales for dealing with complaints at the investigation stage. However, the following deadlines represent the **minimum** requirements of the model CHP:

Complaints should be acknowledged within **3 working days**

A full response should be provided within **20 working days**

If the response will be delayed, the service user should be told and given a revised timescale

Accountability

- 28** The response provided at this stage of the CHP should be the service user's definitive response based on the facts gathered by a thorough investigation of the points raised by the service user. The response will represent the formal conclusions of the service provider and should be signed off by the Chief Executive, or other senior executive, who is the person ultimately accountable for the decision reached.
- 29** It is for the senior management of each service provider to determine the level of direct involvement that they wish to have in the CHP. That said, senior management have a vested interest in any complaints about the service that their organisation provides, and any procedural changes or financial losses resulting from those complaints. The Chief Executive and other senior personnel should, therefore, ensure that they are aware of all complaints considered under the investigation stage of the CHP and that they are involved in matters that require their individual attention.
- 30** The service provider's final position on the complaint should be communicated by the Chief Executive or other senior executive. This ensures senior management ownership of the CHP. As well as giving reassurance to the service user that their concerns have been taken seriously, it provides a means of accountability and potential for learning for individuals leading organisations.

Investigation – key points

- > Senior management should produce a guide as to what issues should be considered at investigation stage
- > The outcome of an investigation should be a single definitive decision, signed off by the Chief Executive, or other senior executive, following a thorough investigation
- > The organisation should provide a full written response within 20 working days
- > Senior management must take ownership of decisions reached

The Model Complaints Handling Procedure

Section 2: Tools for Investigation, and Redress

31 This section provides further detail to help organisations develop tools for effective complaints management.

Establishing the complaint

32 Where possible, complaints to be considered at the investigation stage of the CHP should be submitted in writing. It is important, however, that this does not present a barrier to the complainant and that they do not feel that it is being used as such. Where the service user cannot provide the complaint in writing, the service provider's staff should write the complaint for them. They should read it back to the service user to ensure that an accurate record of the complaint has been taken. Where possible, the service user should endorse the complaint form or letter to show that it has been agreed. At this early stage, multiple complaints relating to the same subject can be grouped together or summarised.

33 On receiving a complaint, the complaint handler should address three key questions:
 What is the complaint?
 What does the service user wish to achieve by complaining?
 Whether the service user's expectations are realistic and achievable?

34 The answer to these questions should be established and agreed by the service provider and service user at the outset. In many cases the answers will be clear, but where they are not, the service provider should ask the service user directly for clarification. Once the specific points of complaint and the desired outcome are established, the complaint handler can use these to focus the investigation, including the collection of evidence.

35 There will be occasions where a service user is unable, or reluctant, to make a complaint on their own. Service providers should accept complaints brought by third parties as long as they obtain appropriate consent from the service user. Steps should also be taken to ensure as far as possible that individuals are able to make and pursue complaints regardless of accessibility issues.

Investigating complaints

36 To establish the facts behind the complaint and the service provider's definitive position, it is essential that a tailored investigation is carried out which is thorough but also proportionate to the issues that have been raised. It is for the complaint handler to decide what information is required and where that information should be gathered from.

37 Staff of all departments should be made aware of the complaint handler's role and should be asked to cooperate by providing any information requested, quickly and in full.

38 A proper investigation starts with a thorough review of the circumstances being complained about.

39 When undertaking an investigation it is important that investigative staff have the authority to obtain relevant evidence and have full access to people, records and specialist advice if necessary. Relevant evidence will normally include the service user's records, notes of conversations with the service user and details of the complaint itself as well as any supporting correspondence or documentation, including relevant policies and procedures. Once the evidence is collated it is good practice to prepare a chronology or history of the circumstances and events leading to the complaint. If there are gaps in the information these should be identified and further evidence collected.

- 40** Investigative staff can use various tools to establish the facts that they need to reach a decision. Staff should be given the resources to conduct interviews, make site visits and obtain independent professional advice as and when required. It is good practice when investigating a complaint to speak to the staff who were originally involved in the issues being complained about. Investigative staff should not, however, simply accept the account of departmental staff without question. Where appropriate, and particularly where accounts differ, they will need to question explanations given by colleagues. They should, therefore, have the authority to do so.
- 41** The scale of the investigation should be proportionate to the alleged wrong and to any loss suffered.
- 42** The complaint handler should seek to establish:
 What should have happened?
 What did happen?
 What led to any identified failings?
 What can be done to rectify any failings?
- 43** The conclusion reached must be based on an objective analysis of the evidence and should provide a clear explanation of this analysis. It is essential that all points raised by the service user and agreed at the start of the investigation are properly and fully considered in the service provider's response. Multiple subjects of complaint relating to a similar issue can be grouped together or summarised.
- 44** The complaint handler should aim to resolve the complaint by either meeting the service user's expectations or, where this is not appropriate, providing a full explanation of the service provider's position.

Using alternative dispute resolution

- 45** Some types of complaint are not easily resolved through written correspondence. Complaints handling staff should be aware of the different forms of dispute resolution available. They should be encouraged to use services such as mediation, which can be a very effective tool in resolving service user dissatisfaction and which can defuse problems before they escalate.
- 46** Where parties agree, mediation can be used to facilitate communication between the service user and the person or organisation that they are complaining about, helping all concerned to get to the real issues and underlying concerns. Mediation allows service users to voice their concerns in a safe and respectful setting, while also offering those complained about the opportunity to explain their actions and offer an apology where appropriate. Mediation is increasingly used to deal with complaints and concerns and has a very successful track record.

The benefits of mediation

- > It provides an efficient and fair process
- > It enables both parties to understand what is driving the complaint
- > It is more likely to result in mutually satisfactory solutions being reached or special arrangements being made and put in place quickly
- > It often resolves complaints without the need for a formal ruling by the organisation
- > It often results in improved relationships and increased customer satisfaction rates

Communicating the decision

- 47** At the end of the investigation, the service provider's decision should be formally communicated to the service user in writing. However, literacy should not be assumed, and the use of telephone contact may be appropriate if the service user has special needs, or where the subject matter to be communicated is sensitive. In these cases, it is good practice to communicate the information by telephone, followed by a letter.
- 48** Correspondence should be clear and easy for the recipient to understand. Complaint handlers should take into account the specific needs of service users and provide material in a suitable format and in languages other than English if appropriate. Technical language and jargon such as medical terms should be avoided, or explained in lay terms.
- 49** When responding to correspondence from a service user, it is good practice to fully respond to the issues raised by them. If, for any reason, certain points are not to be responded to (for example, if they have already been addressed or are not relevant to the complaint), then this should be explained to the service user.
- 50** Responses should be based on the facts established by the investigation, and a full explanation should be given about how those facts were used to inform the conclusions reached.
- 51** The complaint handler should always satisfy themselves that the service user and staff of the department being investigated understand the findings of the investigation and any decisions made.
- 52** Where an investigation identifies a service failure and the service provider proposes to take action to resolve the service user's dissatisfaction, the correspondence should include details of what will be done and when.
- 53** The decision letter should tell the service user about their right to complain to the SPSO should they be dissatisfied with the outcome of their complaint.

What if the service user remains dissatisfied?

- 54** A thorough investigation leading to a full, honest response to the service user's complaints, endorsed by senior management, will ensure that the service provider's definitive position has been established. Should the service user remain dissatisfied, further investigation by the service provider will not change that decision.
- 55** The service provider's decision letter will have given the SPSO's contact details. The SPSO will consider complaints from service users and may carry out their own investigation where there are indications that there may have been maladministration or service failure by the service provider. The service provider should ensure that complaints correspondence and details of their own investigation are available for review by the Ombudsman if required. The SPSO recommend that service users keep accurate records of their investigation and of any interviews or meetings held to discuss the complaint.

Unacceptable behaviour by complainants

- 56** People may act out of character in times of trouble or distress. If there have been upsetting or distressing circumstances leading up to a complaint, in a small number of cases this can lead to a service user acting in an unacceptable way. Examples of behaviour that may be considered unacceptable include: persistent refusal to accept a decision made in relation to a complaint; persistent refusal to accept explanations relating to what can or cannot be done about the complaint, and continuing to pursue a complaint without presenting any new information. The way in which these service users approach service providers may be entirely reasonable, but it is their persistent behaviour in continuing to do so that is not.
- 57** Behaviour should not be viewed as unacceptable just because a service user is forceful or determined. In fact, being persistent can be a positive advantage when pursuing a complaint. However, the actions of service users who are angry, demanding or persistent may result in unreasonable demands on time and resources or unacceptable behaviour towards staff. Service providers should have policies and procedures in place³ to protect staff from unacceptable behaviour such as unreasonable persistence or offensive behaviour from the service user.
- 58** If a service user's behaviour causes a problem, they should be clearly told. How unacceptable behaviour is managed depends on its nature and extent. If a service user's behaviour adversely affects staff's ability to do their work and provide a service to others, that user's contact may need to be restricted. Wherever possible, this should be done in a way that allows a complaint to progress through the CHP. For example, a service user's contact may be restricted to written or third party correspondence, preventing them from directly contacting staff with repeated telephone calls or emails.
- 59** The threat or use of physical violence, verbal abuse or harassment towards staff may result in the ending of all direct contact with the service user. It may be appropriate to report incidents to the police. Incidents where physical violence is used or threatened should always be reported.
- 60** Service providers should develop an unacceptable actions policy and communicate it to their staff. It should authorise complaints handling staff to deal immediately with unacceptable behaviour from service users in a manner they consider appropriate to the situation.
- 61** The unacceptable actions policy should allow for a review of the restrictions imposed on a service user if they are later able to demonstrate a more reasonable approach to their contact with staff.

Tools for investigation – key points

- > Appoint a single point of contact to manage the investigation and respond to the service user
- > Clarify the complaint and desired outcomes with the service user
- > Provide relevant staff with the authority to investigate and the skills and resources to do so effectively
- > Staff should be aware of and use methods of alternative dispute resolution
- > Establish an unacceptable actions policy

³ See, for example, the SPSO's Unacceptable Actions Policy <http://www.spsso.org.uk/files/Unacceptable%20Actions%20Policy%20Leaflet.pdf>

Redress

- 62** Redress can come in a number of forms and it is important that service providers are not overly prescriptive in their approach⁴. The service user may propose a form of redress that will resolve their complaint. Service providers should always consider the service user's wishes and, if it is reasonable to meet them, complaints handling staff should be encouraged to make the desired arrangements.
- 63** The service user's wishes will not always be reasonable and there will, of course, be limits to the service provider's powers to provide certain remedies. Redress is normally only considered where it has been established that the service provider has in some way failed to provide the service that they should have provided. This failure should be acknowledged and remedied quickly and fairly and in a way that best reflects the extent of the problems encountered by the service user. It is for the service provider to propose appropriate redress which could include:
- An apology
 - An explanation
 - Correcting the error
 - Financial redress (including ex-gratia payments and refunds for services not provided)
- 64** Generally, where service failings have been identified, service providers should attempt, if possible, to put the service user back in the position they were in before the error occurred. If this is not possible then other forms of redress need to be considered such as providing an explanation and apology.
- 65** Service providers should undertake to improve procedures or systems or implement staff training to address service failures where this is appropriate. The complainant should be told about action taken, although it is not appropriate to share specific details that affect individual staff members.
- 66** In many cases, the service user will simply want the service provider to acknowledge their shortcomings and apologise. Apologies should be unequivocal and the service provider should not apportion blame on the service user⁵.

Redress – key points

- > Senior management should develop a clear policy on redress
- > The approach to redress should be consistent, but adaptable to the specific circumstances of the complaint – a variety of redress options should be available to complaint handling staff
- > Suggestions made by service users should be considered and met if appropriate

⁴ See, for example, the SPSO's Policy on Redress <http://www.spsa.org.uk/files/Policy%20and%20Guidance%20on%20Redress.pdf>

⁵ See, for example, the SPSO's Guidance on Apology at <http://www.spsa.org.uk/files/SPSO%20Guidance%20on%20Apology.pdf>

The Model Complaints Handling Procedure

Section 3: Publicising, Recording, Learning and Improvement

67 This section provides support for organisations in ensuring that CHPs are readily available to the public, and that they have in place policies for providing appropriate and flexible redress and mechanisms for recording complaints information that will enable them to share the learning from complaints effectively both internally and externally. It also outlines the benefits of staff training and support for frontline and investigative staff to handle complaints well.

Publicising the complaints handling procedure

68 It is important that the CHP can be easily accessed by service users. Service users who are already concerned about the service that they are receiving will not appreciate obstacles in the way of their attempts to complain. This will make the provider's task of resolving dissatisfaction more difficult. Information about the CHP should be clearly described as such. For example, complaints should be called 'complaints' rather than 'feedback' or 'comments'. That said, service users will not always use the term 'complaint'. Service providers and their staff should be aware of this and should ensure that any expressions of dissatisfaction fitting the agreed definition of a complaint are handled via the CHP.

69 Service providers should ensure that all of their service users have access to the information they need. Service providers should consider the most effective ways to ensure maximum accessibility, such as online access to the CHP. Traditional methods such as leaflets can be helpful and service providers should consider where these can most effectively be displayed. Service providers should take into account special needs, such as for people with learning difficulties, the visually impaired and non-English speakers. All publications relating to the CHP should meet equality and diversity requirements. All staff should be able to provide details of the CHP to a service user.

70 Service users should be made aware of who to complain to. It is sufficient to put the name of the department or an individual's job title, rather than their personal contact details. The time limits for each stage should be clearly communicated and the deadlines for acknowledgement and final response explained. Time limits should be achievable but testing, and should take into account the effects of an unresolved complaint on the service user.

- 71** Online information about the CHP should be easily found on the front page of the service provider's website and within the 'Contact Us' section. Information about the CHP should be easily accessible at all times, not just made available when a service user wishes to complain.

Publicising the complaints handling procedure – key points

- > A complaint is a 'complaint' – not 'feedback' or 'comments'
- > The CHP should be easily found in the service provider's public information
- > The CHP should be presented online and offline and in formats that recognise the varying needs of service users
- > Details of where to complain, who will deal with the complaint and how long it will take should be made clear
- > The full CHP should be readily available

Recording and learning from complaints

- 72** Service providers that value complaints will take advantage of the opportunities that result from them. There are obvious lessons to be learned where service failures are identified and remedial action can be taken to ensure that similar mistakes are avoided in the future. However, close monitoring of service user complaints and feedback can highlight opportunities for operational improvements even where the service was initially delivered properly.

Recording the complaint

- 73** Complaints can be received into an organisation in a number of ways and handled at different stages. Service providers should maintain complete and accurate records of all contact regarding complaints and ensure that this information is easily accessible, preferably in a single location.
- 74** It is good practice for a complaint file to be created, containing basic information such as the service user's details, the issues raised and any action taken to date. It should also contain any complaints correspondence, notes of meetings and telephone calls, email correspondence with the service user and any internal communications about the investigation.
- 75** Complaints information should be recorded and handled in a way that satisfies Data Protection requirements. Complaints handling staff should be trained in Data Protection law and practice and should be aware of the expectations of the public in respect of their information.
- 76** The information recorded about complaints received should be sufficiently detailed to allow follow-up action to be taken to improve services and prevent a recurrence of any issues identified.

Recording complaints data

77 Service providers should ensure that they have a system in place to record all relevant data about a complaint. As a minimum this would include:

the category or nature of the complaint (e.g. complaint about staff attitude, complaint about service provision)

the service or area of the organisation complained about

the outcome of the complaint

what action was taken to resolve the complaint

whether the service user was satisfied with the outcome

78 The information gathered should then be used by the organisation to identify any trends and to proactively improve the efficiency of the services that they provide. To ensure the quality of information, it is important that there is consistency in the data captured within organisations and, where possible, within sectors. Within organisations, all complaints details should be recorded in a common format, on a single system where possible, and should be accessible by staff from different departments. Within sectors, the categories of complaints should be consistent to allow direct comparisons between organisations.

79 As discussed in the Frontline Resolution section, it is important that information from complaints handled at the frontline resolution stage is also recorded and used to inform service improvements.

Learning from complaints

80 An organisation-wide, structured system for recording complaints, their outcomes and any resulting action will quickly build a detailed record of services that are not being provided to the service users' satisfaction, or that are causing confusion for service users. It is vital that this information is reviewed and used to improve service delivery, whether in response to highlighted faults or as a proactive measure to increase efficiency and service user satisfaction.

81 Departmental and senior management should take an active interest in complaints and review the information gathered on a regular basis. To support this, they should be provided with regular reports detailing complaints information relevant to their area. This will ensure that any trends or wider issues that may not be obvious from individual complaints are identified quickly and addressed.

82 When reviewing complaints information, senior management should consider whether there is potential to improve their services or a need to update internal policies and procedures.

83 Senior management should ensure that their organisation has procedures in place to act on any service delivery issues that are identified. Those procedures should include the following:

An individual or team should be designated the 'owner' of the issue, with responsibility for ensuring that any identified action is taken

Agreement should be reached as to what action should be taken to improve services

A deadline should be set for the action to be implemented

The designated individual should follow up to ensure that the action is taken within the agreed timescale

Complaints data should be monitored for a set period to ensure that the issue has been resolved

84 Service providers with elected members – for example local authorities (and from summer 2010 some health boards) – should ensure that learning from complaints is relayed to their members.

85 It is important to communicate learning externally as well. It is good practice for organisations to let those who have complained and other service users know what the organisation has done in response to complaints, for example, through newsletters, Annual Reports and websites. This should include a regularly published summary of the numbers and types of complaints received, outcomes, and actions taken.

86 Lessons learned from complaints may be helpful to other service providers both within the same sector and across other areas of public service provision. Where appropriate, service providers should actively seek to share their experiences and the lessons learned with other organisations to promote service improvements.

Recording and learning from complaints – key points

- > Common cross-department system to be set up to record complaint subject, outcome and action taken
- > Complaints information to be recorded for frontline and investigated complaints
- > Within sectors the categories of complaints should be consistent to allow direct comparisons between organisations
- > A file to be created for each complaint to hold all relevant correspondence and contact records in one place
- > Departmental and senior management to receive and act on regular reports detailing complaints information
- > Processes to be in place to ensure appropriate service delivery improvements are agreed, actioned and reviewed
- > Consideration to be given to sharing sector-wide learning to inform improvement

Staff training

- 87** A model CHP requires service providers to commit to building a culture within their organisation that values complaints. Public service providers need to ensure that they maximise the authority that staff have to resolve complaints. Frontline staff should be empowered to deal with complaints which have been identified as suitable for frontline resolution. Likewise, investigative staff should have a clear remit to access any information necessary and to effectively investigate and reach a robust decision on more complex issues. This requires clear direction from senior management on the extent and limits of discretion and responsibilities in resolving complaints, including the ability to identify failings, take effective remedial action and apologise.
- 88** Staff should be provided with the appropriate skills and resources. Public service bodies should regularly review the training needs of front line employees and investigative staff to ensure they have the skills and confidence to use the authority delegated to them.
- 89** Full training should be provided to all staff who could potentially be approached by a service user wishing to complain. Staff training should include the following:
- A full understanding of the CHP and the individual's role in handling complaints
 - A full understanding of the service provider's policy about which complaints are suitable for frontline resolution and which for investigation
 - Customer service and complaints handling training
 - Data protection and FOI training
 - Training on the different types of redress available to resolve complaints and options for alternative dispute resolution
 - A full understanding that they are empowered to resolve complaints, and that they have the authority to do so
 - Training in investigation and interview skills, and in a range of skills suited to gathering and evaluating evidence (investigative staff only)
 - Specialist training for staff who may have to deal with service users who are vulnerable, or who have specific needs

Consultation Questions on the Model CHP

For all responders:

- 6** Is the model CHP guidance appropriate? If not, please outline why not.
- 7** Are there any other areas that you consider should be included in the guidance?

For public service providers:

- 8** Will the model CHP guidance improve complaints handling in your area of public services?
- 9** Do you have any suggestions for improvement to specific areas of the guidance?

For members of the public:

- 10** As a service user, will the model CHP guidance improve how complaints are dealt with in the public sector?
- 11** Do you have any suggestions for improvement to specific areas of the guidance?

Responding to the Consultation

Responses are invited from public service providers and their representative groups, MSPs, Scottish Ministers, professional regulatory bodies and others with an interest in public service improvement. Service users are, of course, a key stakeholder and the main beneficiaries of improvements to complaints handling procedures. Their views will also be sought.

The consultation will run from 16 June to 8 September 2010. The SPSO intends to submit the draft statement of principles to the Scottish Parliament in the autumn.

You can email submissions to **consultation@spsa.org.uk**. You are required to fill out the respondent information form which is available on the SPSO's Valuing Complaints website or by request. Please do not feel restricted to answering the questions; feedback is invited on all aspects of the document. Responses will be subject to release under Freedom of Information legislation. The SPSO may also quote from responses in the consultation analysis, which will be made public.

For further background and information see **www.valuingcomplaints.org.uk**.

Thank you in advance for contributing to this important development in improving complaints handling in Scotland.

Summary of Consultation Questions

Principles

- 1** Are the seven principles identified appropriate and proportionate? If not, please outline why not.
- 2** Should other, or additional, principles be considered?

For public service providers:

- 3** Are the principles relevant to your area of public services?
- 4** Do you consider that these principles will make complaints handling processes in your area of public services better?

For members of the public:

- 5** As a service user, do you consider that these principles will improve public service complaint handling processes?

Model Complaints Handling Procedure

- 6** Is the model CHP guidance appropriate? If not, please outline why not.
- 7** Are there any other areas that you consider should be included in the guidance?

For public service providers:

- 8** Will the model CHP guidance improve complaints handling in your area of public services?
- 9** Do you have any suggestions for improvement to specific areas of the guidance?

For members of the public:

- 10** As a service user, will the model CHP guidance improve how complaints are dealt with in the public sector?
- 11** Do you have any suggestions for improvement to specific areas of the guidance?

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