

# Handling Complaints

(procedures and guidance notes)



West Lothian Council **Social Work Services**

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**UK Council  
of the Year  
2006**



**West Lothian  
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# introduction

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This document provides a full description of complaints procedures within West Lothian Council's Social Work Services as of 1 January 2003.

This document is divided into four sections for ease of reference:

## Section 1.

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The Framework: Definitions & Legislative Requirements. This section defines what constitutes a complaint, who may make complaints and the rights of complainants within the statutory framework.

## Section 2.

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Responding to Complaints: Customer Care. This section outlines key considerations in the handling of complaints that ensure the process is transparent and the outcome acceptable to clients. The information and training available to staff and public information is also outlined.

## Section 3.

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Handling Complaints: The Process. This section describes the process of receiving, investigating and responding to complaints. It also looks at arrangements for further review where the complainant remains dissatisfied. Systems of recording, analysing and reporting complaints are outlined.

## Section 4.

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Guidance Notes: Non-standard Complaints. This section gives more detail of handling difficult or unusual complaints. These include handling complaints from children and adults with incapacity, dealing with anonymous, vexatious, abusive or persistent complainers and dealing with complaints involving representatives, third party providers or other agencies such as Health Boards and the Commission for Regulation of Care.

**All staff should be familiar with the full complaints procedure**

## Source Legislation and Related Reference Material:

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Social Work (Scotland) Act 1968 Section 5B.  
NHS and Community Care Act 1990 Section 52.  
Social Work (Representations Procedure) (Scotland) Order 1990 (NO 2519 (s213) and

Directions 1996 (Circular SWSG5/1996).  
Children (Scotland) Act 1995.  
Adults with Incapacity Act 2000.

## 1

# the framework: definitions and legislative requirements

## 1.1 Definitions

A **'complaint'** is any expression of dissatisfaction with the services provided by, or on behalf of, West Lothian Council Social Work Services ('SWS').

A **'complainant'** is any person who submits a complaint. A complainant may be a client (see 1.1.3), authorised representative (1.1.4) or any other person.

If a complainant is not a client or authorised representative, they have no entitlement to have their complaint dealt with as a statutory complaint (see 1.1.11).

A **'client'** is a person, including a person under the age of 18:

- for whom SWS provides a service either directly or indirectly.
- whose request for such a service has been refused by SWS.
- whose need or possible need for a service, which SWS has a power or a duty to provide, has come to the authority's attention.

1.1.4 An **'authorised representative'** is a person with a statutory entitlement, locally recognised authority or an explicit mandate to complain on behalf of a client including:

- A person providing care to a client without being employed for that purpose ('private carer').

**For clients under the age of 18:**

- The client's parents;
- A person with parental rights and responsibilities towards the client
- A local authority foster parent caring for the client
- Any other person appearing to SWS to have sufficient interest in the client's wellbeing to warrant their making representations on the client's behalf.
- A person appointed by court of law as having power of attorney for a client.
- A person appointed as a proxy decision maker under the adults with incapacity act 2000.
- An elected Councillor, MP, MSP or MEP.
- A professional or citizen advocate from an organisation recognised by SWS to be a provider of independent advocacy.
- Any person with a written mandate to represent a client in the matter of complaint.
- A mandate is required before a person can represent a client in the matter of a complaint, unless they are a person covered under points (a) - (f) above.

**'Staff'** are persons employed by SWS, or by a third party providing services to clients on SWS behalf, or other West Lothian Council employees designated to receive complaints on behalf of Social Work Services.

### Means of submission.

Complaints may be submitted by any reasonable means:

- verbally (in person or by telephone) or in writing (via letter, complaints leaflet, e-mail or other electronic format).

**1.1.7** are commonly referred to as formal complaints and informal complaints. This is misleading, as staff may assume that a written complaint is a 'formal complaint' and a verbal complaint 'informal'. It is important to note that all complaints should be dealt with in the same way, regardless of the means of submission. We should more properly Complaints refer to formal and Informal responses.

**1.1.8** A formal response is a written response replying to all issues raised in the complaint and outlining the rights of the complainant to appeal if dissatisfied with the response. If the formal response is requested by a person entitled to access the statutory procedures (see 1.1.3 & 1.1.4) then a copy of the written response should also be sent to the complaints officer.

**1.1.9** An informal response is one where the complainant makes an informed choice to accept a verbal response to their complaint, waiving the requirement for a written response and any subsequent rights of review of that response. Any informal response should also outline the steps open to the complainant if they are unhappy with the verbal response. This means advising the complainant that, if they have changed their mind about accepting an informal response, they can re-submit their complaint for formal written response, which may then be progressed through the review system.

**1.1.10** Informed choice means the complainant had been advised of their rights under the complaints procedure before deciding between formal and informal response. They may be advised verbally by staff or given a copy of the relevant complaints leaflet. It is the duty of Staff to inform complainants of their rights and the right of complainants to decide how a complaint should be responded to. This is not at the discretion of Staff. If a complainant has not made an informed choice to waive their rights to a formal response then it should be assumed that the complainant requires a formal response.

**1.1.11** A statutory complaint is one that falls within the definition outlined in the Social Work (Representations Procedure) (Scotland) Directions 1996 [hereafter referred to as The Directions'] as summarised in section 1.2 below. It is important to note that not all complaints fall within these procedures and need not be responded to in the same manner, within the same time-scales or with the same rights of review.

All statutory complaints requiring a formal response must be logged by the Designated Complaints Officer and copies of formal responses sent by the respondent to the DCO. There is no requirement to log complaints where an informal response has been accepted, even if the complainant is entitled to access the statutory complaint procedure, unless the decision to accept an informal response is made by the complainant after the complaint has already been logged.

**1.1.12** Authorised Respondents. Complaints may be submitted to any staff and responded to by any staff where an informal response has been agreed or where the statutory complaints procedure is not available to the complainant. Complaints requiring formal response under the statutory procedures may be submitted to any staff but must be forwarded to one of the following persons to ensure correct acknowledgement, recording and response:

- (a) Designated Complaints Officer for Social Policy Services.
- (b) Staff designated to receive complaints within the West Lothian Customer Service Centre.
- (c) Services Managers.
- (d) Managers of third party units providing services under contract to SWS.

## 1.2 Statutory complaints procedures

**1.2.1** The statutory complaints procedures allow individual service users, and authorised representatives, to raise concerns about the quality of service delivered to them by, or on behalf of, SWS. It is not an appropriate process for:

- (i) Campaigning for new or amended services, or increased resources for groups of service users or potential service users.
- (ii) Challenging legislation or judicial decisions underpinning service delivery, (iii) Bringing allegations of criminal behaviour to the attention of SWS.
- (iv) Applying for compensation or damages arising from alleged actions or inaction by SWS.

These are matters for the relevant democratic and legal processes. Complainants should be advised to consult with the relevant legal services or their elected representatives in relation to these issues.

**1.2.2** Any complaint made by a client or authorised representative must be treated as a statutory complaint, providing the subject of the complaint covers one of the issues described in paragraph 1.2.3 and is not exempt by virtue of a reason listed in paragraph 1.2.4 or 1.2.5.

**1.2.3** Statutory complaints may be made in reference to any of the following issues as they relate to the discharge of SWS functions in respect of an individual client according to legislated powers and duties.

- (a) Failure to discharge such functions.
- (b) Delay in the discharge of such functions.
- (c) Failure to properly assess the needs of clients and their carers during the discharge of such functions.
- (d) Failure to give due consideration to the needs and wishes of individual clients and their carers when making decisions about service provision.
- (e) Failure to follow SWS procedures when making a decision or delivering a service in relation to an individual client.
- (f) Failure to give due consideration to SWS guidance

when making a decision or delivering a service in relation to an individual client.

- (g) Providing a service that quantitatively or qualitatively fails to meet the reasonable expectation of a client.
- (h) Poor attitude and performance of staff in discharging their duties.
- (i) Failure to properly investigate complaints, advise clients of their rights or respond within identified timescales in relation to complaints.

**1.2.4** The directions make clear that statutory complaints procedure should not be initiated in the following circumstances:

- (a) The subject of the complaint is being pursued through legal action. If a complaint has already been initiated under the statutory procedures then the process should be suspended until the final outcome of legal action. There is no requirement to suspend the complaints process if the complainant is simply seeking legal advice, or is taking legal action against SWS on a matter not directly related to the complaint, or has instructed their lawyer to represent them only in the matter of the complaint.
- (b) The subject of the complaint is itself a matter determined by judicial body. For example, dispute with conditions of access imposed by a children's hearing. The complainant should in these cases be referred back to the body in question, unless the complaint refers to SWS application of the decision.
- (c) The complaint involves allegations against staff of a serious nature, for example professional incompetence, dishonesty or criminal behaviour. In such cases, a relevant senior manager may determine that other processes should be used to deal with the complaint, for example child protection procedures, formal disciplinary procedures or criminal investigation.
- (d) The subject of the complaint is the behaviour of an individual who is not employed by SWS, nor employed by a third party contracted to provide services on behalf of SWS, nor in receipt of payment from SWS to provide a service.

**(e)** A complaint is in relation to a third party contracted to provide care services on behalf of SWS and the client is wholly financing their own care. In such cases the complainant will be directed to the complaints procedures of the third party.

**(f)** A complaint is in relation to a third party contracted to provide general services to the public (e.g. advice centres). In such cases the complainant will be directed to the complaints procedures of the third party.

**1.2.5** The advice of the Senior Officer Communities & Information should be sought, before a complaint is responded to within the statutory procedures in the following instances, where a degree of local discretion is required:

**(a)** The complainant wishes to remain completely anonymous.

**(b)** The complaint is on behalf of a group of service users.

**(c)** The same complaint is received from a number of individuals in such a way as to suggest an organised campaign.

**(d)** The complainant is abusive or makes threats to staff in the course of submitting the complaint.

**(e)** The complainant appears to be a persistent or vexatious complainant.

**(f)** The complaint appears to be substantively indistinguishable from one that has already been submitted by, or on behalf of, the same client and formally responded to through the statutory procedure.

**1.2.6** Directions require a clear procedure for dealing with complaints made to elected members. These are outlined in section 4.1.3.

## 1.3 Acknowledging statutory complaints

**1.3.1** Statutory complaints requiring a formal response must be acknowledged in writing within 5 calendar days of receipt.

**1.3.2** The complainant must be sent a copy of West Lothian Council complaints information leaflet.

**1.3.3** The acknowledgement must identify, by name or title, the person who will arrange the investigation and response to the complaint.

**1.3.4** The acknowledgement must identify the date by which the complainant can expect a formal response to his or her complaint.

## 1.4 Investigating statutory complaints

**1.4.1** An investigating officer cannot be a subject of the complaint, or line managed by a person who is a subject of the complaint.

## 1.5 Responding to statutory complaints

**1.5.1** Statutory complaints must be responded to within 28 calendar days of receipt of the complaint, regardless of whether a formal or informal response is required. It is expected that informal responses will be given well within that time-frame. The date in question is date of receipt by SWS, as identified in the letter of acknowledgement. It is not the date the complaint was passed to the relevant investigating officer.

**1.5.2** Where it has been necessary to request a written mandate for a representative to make a complaint on behalf of a client then the date of complaint will be taken as the date of receipt of the mandate, rather than the initial complaint.

**1.5.3** If it is not possible to provide a substantial response to a complaint within 28 days then the complainant must be advised of the circumstances and their agreement to extend the deadline must be obtained. If more than 28 days is required for an informal response, the investigating officer should reflect on whether a formal response is required in addition to the informal response requested by the complainant. Such a timescale for informal responses to complaints may indicate complexity and the need for more formal recording of the complaint for management purposes.

## 1.6 Internal Review arrangements

**1.6.1** The directions specify that a senior officer must have overall responsibility for the organisation and effectiveness of the complaints procedure. Within SWS, this is the Senior Officer Communities & Information. The role of this person is to:

- (a) Receive complaints and attempt informal resolution.
- (b) Forward unresolved complaints to the relevant team or unit for formal investigation and response.
- (c) Develop complaints procedures and train staff in their application.
- (d) Support complainants in accessing the complaints procedures and promote awareness of the rights of complainants under the procedures.
- (e) Respond to queries from staff as to the operation of complaints procedures and their application to individual circumstances.
- (f) Prepare general information for the public on the complaints procedure, facilitate access and ensure availability of such information.
- (g) Maintain systems for logging and monitoring all formal statutory complaints,
- (h) Review complaints to ensure consistency and quality of response.

(i) Prepare reports for Head of Social Policy on the performance of SWS against targets and relevant issues arising from complaints.

**1.6.2** SWS has internal review arrangements to ensure fair and full consideration of the complainants' case. These are reviewed by Complaints Officer (see 3.4) and review by Senior Manager (see 3.5).

**1.6.3** Internal review arrangements are not a statutory requirement but are permitted within the discretion allowed to local authorities.

**1.6.4** The review of responses to complaints by the Complaints Officer will be operated for all formal statutory complaints. Review by Senior Manager will be offered to all complainants who express dissatisfaction with a formal response to a statutory complaint.

## 1.7 The Complaints Review Committee (CRC)

**1.7.1** The Complaints Review Committee exists to examine, objectively and independently, facts presented by the complainant and SWS in relation to a complaint or the circumstances in which a complaint has been submitted. This is an additional safeguard to ensure that the needs and wishes of the complainant are being fairly considered and the complaints properly investigated.

**1.7.2** The CRC consists of three persons, only one of whom will be an elected member of West Lothian Council. Persons currently employed by, or within the preceding 12 months, employed by third party organisations providing Social Work Services under contract to Social Work Services, spouses of employees are also excluded from membership of CRC.

**1.7.3** The chair of the CRC should be an independent person as defined at 1.7.2 above and should further have knowledge of both social work matters and the conduct of proceedings before a review body or tribunal. The remaining members of CRC should have knowledge of at least one of these areas.

**1.7.4** The CRC performs two broad functions:

**a)** The review of a complaint where all avenues of redress have been explored by the local authority and the complainant remains dissatisfied with the response.

**b)** The review of circumstances whereby SWS declares itself unable or unwilling to perform a full investigation or respond fully to a complaint and the complainant is not satisfied with the explanation given by SWS for this decision. This can occur when:

- i** SWS maintains that the complainant is a vexatious complainant and that special dispensation should be given to allow it to refuse to respond to complaints.
- ii** SWS maintains that the complaint is part of an organised campaign that places an unreasonable burden on the complaints system.

**1.7.5** In relation to function 1.7.4 (a) the CRC will meet in formal session and receive both written and verbal submissions from the complainant, or their representative, and a representative of SWS. Requests for referral to CRC under this provision may only be made by complainants.

**1.7.6** In relation to function 1.7.4 (b) the CRC will meet in closed session and review written submissions from SWS and the complainant. Requests for referral to CRC under this provision may only be made by SWS.

**1.7.7** Once a complainant has received a formal response to a statutory complaint, and having exhausted the investigation by a Senior Manger (see 1.6.4) they may request review by the CRC. The complainant must refer the matter within 28 days of receipt of the formal response from SWS. If they fail to do so, Committee Services may either refuse to accept the referral or exercise discretion to accept the referral with due regard to circumstances.

**1.7.8** In considering evidence, CRC may obtain independent professional opinion before reaching a determination. This may be before, during or after the session where evidence is presented.

**1.7.9** Complainants may obtain their own professional opinion and present this as part of their submission, providing they meet the costs of this themselves. Where complainants wish to be represented at CRC, this is allowed, but Complainants should be encouraged to be in attendance.

**1.7.10** The CRC is empowered to consider any and all matters that are referred to it but would not usually consider new issues, i.e. those not previously mentioned by the complainant or SWS during initial complaint, investigation, response or review of the complaint. Should either party seek to raise new issues at CRC, then CRC may decline to consider such evidence and may instruct the complainant that a new complaint must be submitted.

**1.7.11** During the course of the CRC hearing, every effort should be made to resolve the complaint and the CRC should not adopt a degree of formality or inflexibility which may inhibit this primary purpose. This consideration may, at the discretion of the Committee, supersede the consideration outlined at 1.7.10.

**1.7.12** In making a determination, CRC should take into account West Lothian Council and SWS policies, the priorities and resources in place and the professional judgement exercised by SWS staff in individual circumstances. CRC may however express disagreement with any of these.

**1.7.13** Where a complaint is upheld in part or entirety, the determination of CRC may include recommendations for:

- a) An apology to be given by the Head of Social Policy on behalf of SWS.
- b) Re-assessment of the client's circumstances.
- c) Development of procedures or guidelines which are absent or lacking.
- d) Financial recompense to the complainant.
- e) Review of a contract with a Third Party Provider of Social Work Services
- f) Other steps necessary to offer the complainant redress other than those specified in 1.7.14 below:

**1.7.14** The CRC may pass comment on, but not make specific recommendations in relation to the following courses of action:

- a) Disciplinary action in relation to individual members of SWS staff.
- b) A change to policy that would result in SWS being in breach of legislation.
- c) Provision of a service that Social Work Services has a power, but not a duty, to provide, unless it has been shown that SWS has acted contrary to its own stated procedures in failing to provide the service.

**1.7.15** Within 56 days of the date the complainant requested reference to it, CRC must make recommendations to the relevant council committee. In the case of West Lothian Council, this is the Health and Care Committee.

**1.7.16** The Health and Care Committee will consider the determination of the CRC, advise the outcome and make recommendations of action to the Head of Social Policy. The Committee will have due regard to the independent status of CRC and only reject its determination in exceptional circumstances (for example where acting in accord with the determination would place SWS in breach of legislation). If rejecting the determination of CRC then the Committee will publish the reasons in the minutes of the committee.

**1.7.17** The Local Authority must agree actions and notify the complainant in writing of their decisions within 42 days of the date CRC makes its recommendations. The notification will advise reasons for any disregard of CRC determination and will advise what further steps the complainant may take if they remain dissatisfied (for example referral to the Commissioner for Local administration in Scotland).

**1.7.18** The deadlines specified in 1.7.15 and 1.7.17 may only be extended with the agreement of the complainant.

**1.7.19** At the end of the process specified above, the statutory complaints procedure is concluded. If the complainant remains dissatisfied with the outcome or conduct of this procedure and has evidence of maladministration by SWS, then they may refer the complaint to the Commissioner for Local Government. Otherwise, they should be advised to seek independent legal advice.

# responding to complaints: customer care

## 2

### 2.1 Key Principles

- (a)** All staff should be familiar with complaints procedures.
- (b)** Staff should facilitate access to the complaints procedure for clients expressing dissatisfaction with services. This will assist managers and elected members in monitoring the quality of service and achievement of service objectives.
- (c)** All complaints should be acted upon.
- (d)** Complaints should be resolved as close to the point of service delivery as possible.
- (e)** Complaints should be dealt with quickly. The 28-day statutory response time should be taken as the maximum, not the standard, period for response.
- (f)** In dealing with complaints, staff should avoid delay, maintain confidentiality and keep the complainant properly informed.
- (g)** Complainants should be offered every opportunity for quick and informal resolution of their complaint but this should not be imposed. Informal resolution must be a positive choice made by complainants once advised of their rights to a formal investigation and response.
- (h)** Upon receipt of any complaint, the focus of the complaint and required redress should be clarified and, for formal complaints, noted in writing.
- (i)** Complainants should be reassured that their complaint will be treated in confidence and will in no way affect future service delivery. Information on complaints should be recorded in separate logs and not stored in the personal records of clients.
- (j)** No officer should be involved in investigating a complaint relating to his or her own behaviour.
- (k)** The investigation should, except in the most straightforward of circumstances, involve meeting or conversing with the complainant. Formal complaints should not usually be responded on the basis of internal investigation alone.
- (l)** Unless the complainant has agreed to informal resolution, or withdrawn the complaint, all complaints should culminate in a written response.
- (m)** Formal responses should address all issues raised by the complainant in the original complaint and during the course of the investigation.
- (n)** Formal responses should comment on whether it has been possible to offer the redress requested by the complainant.
- (o)** Where the complaint has been upheld, formal responses should include a clear and unequivocal apology.
- (p)** Formal responses should indicate how the complainant might proceed if they remain dissatisfied with the response.
- (q)** All responses to formal statutory complaints should be copied to the Complaints Officer for quality assurance review, logging and annual report to committee.

## 2.2 Information for the public

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**2.2.1** Notice should be displayed in all Social Work Offices advising service users of their right to complain and giving details on how a complaint may be submitted.

**2.2.2** Complaints leaflets should be available in all Social Work Offices and all facilities where social work services are provided under contract to SWS.

**2.2.3** Complaints leaflets should contain the following information:

- a)** The title, address and telephone number for the lead officer in the complaints section.
- b)** A clear statement that making a complaint will not result in discrimination and that, if discrimination occurs, the complainant should make a further complaint directly to the lead officer for complaints.
- c)** The investigative procedures which SWS will follow.
- d)** How confidentiality will be maintained.
- e)** How conclusions will be reached and recommendations made.

**2.2.4** 'Comments, Complaints and Concerns on West Lothian Council Services' is an example of such leaflets for general clients and is attached to these procedures (Appendix 3) and can be made available in languages other than English on request.

**2.2.5** Upon making a complaint, a complainant should be given a copy of the relevant complaints leaflet. If none is available, then staff receiving the complaint should advise clients of the main points of the complaints procedures and offer to forward a copy of the complaints procedure to the complainant within five days, or to enclose one with the acknowledgement of a formal complaint.

**2.2.6** Copies of complaints leaflets should be distributed to all local groups who represent clients, particularly providers of independent advocacy.

**2.2.7** Where the client has difficulty in communicating, or in accessing or comprehending written information, staff should consider the needs of clients for representation or assistance in making a complaint. Offering to arrange such assistance is the first step towards resolving the complaint.

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## 2.2 Training for staff

**2.3.1** Training on the general principles of complaints handling and main points of the SWS procedure will be offered to all staff as part of Customer Care Training.

**2.3.2** Training on the procedures will be given as a matter of course to Managers and senior staff likely to be involved in investigating or responding to Statutory Formal Complaints (Team Leaders / Senior Officers).

# responding to complaints: the process

## 3

### 3.1 Receipt and Acknowledgement

**3.1.1** Upon receipt of a written or oral complaint, staff will firstly determine whether informal resolution of the complaint may be attempted. This requires that the redress sought by the complainant may be offered by staff without undue delay (for example where only an explanation or apology is required by the complainant). It also requires that the complainant has been informed of their rights to a formal written response but have indicated that they will accept an informal verbal response.

**3.1.2** To resolve a complaint informally, staff must have a clear understanding of the issues raised within the complaint and the redress required by the complainant. They must also be prepared to commit a reasonable amount of time to looking into the matters raised and resolving the issue within a few hours or a period of time acceptable to both staff and complainant. This is usually apparent in the case where the complaint is submitted verbally in person or by telephone. For written complaints, staff should consider carefully whether they have the time available to initiate contact with the complainant and attempt informal resolution. If not, then the complaint should be forwarded to an authorised respondent for formal investigation and response.

**3.1.3** If a complainant complains orally but requires a formal response to the complaint then staff receiving the complaint should.

- a)** Make a written note of the complaint or, if the complainant prefers, suggest that the complainant put the complaint in writing.
- b)** Agree this note with the complainant and ensure that a full record has been made of the issues raised in the complaint and the redress sought by the complainant.
- c)** Advise the complainant that the complaint will be forwarded to the appropriate authorised respondent who will acknowledge it in writing.

**3.1.4** The decision as to whether a complaint is a statutory complaint rests with Social Work Services. This is determined by the identity of the complainant or representative (as outlined in 1.1.3 and 1.1.4) and the issues raised (as outlined in 1.2).

**3.1.5** It is for complainants, not staff, to decide whether a complaint is formal or informal. The role of staff is to advise complainants of their rights with regard to complaints and then receive and respond appropriately to the complaint as directed by the complainant and within the procedures outlined in this document.

**3.1.6** Staff receiving a complaint should first ascertain whether informal or formal response is indicated, using the guidelines above. They should then ascertain whether it is a statutory or non-statutory complaint in reference to the guidance in section 1.1 and 1.2 of these procedures.

**3.1.7** Informal complaints should be dealt with as indicated. There is no requirement for a record of this to be maintained centrally and staff should consult their relevant manager as to local arrangements in place for recording informal complaints.

**3.1.8** Complaints where the complainant requires a formal response, but where SWS have determined that the complainant is not entitled to access the statutory procedures should be acknowledged and passed to an appropriate manager for response (see 4.8).

**3.1.9** Formal statutory complaints should be acknowledged in writing within 5 calendar days of receipt as per legislative requirements (see 1.3). A copy of the complaint and acknowledgement letter should be forwarded to the Complaints Officer for registration, together with a copy of form CT1 with section A completed.

## 3.2 Investigation

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**3.2.1** On receipt of a formal statutory complaint, the relevant manager should nominate a senior officer as investigating officer.

**3.2.2** Complaints about a senior member of staff should normally be passed in the first instance to the person's line manager, though the investigation may be dealt with by another person subject to the stipulation in 1.4.1.

**3.2.3** If a complaint is received about the actions of the Head of Social Policy in person then this should be forwarded to the Senior Officer Communities and Information, who will make suitable arrangements.

**3.2.4** It is an important feature of complaints resolution that the complainant is given every opportunity to fully state their views on the circumstances of the complaint. This assures the complainant that the complaint is being investigated thoroughly and avoids additional issues being raised during review of the response or referral to Complaints Review Committee.

**3.2.5** The investigating officer should make the following initial determinations:

- a)** Are the issues clearly outlined in the complaint?
- b)** Is the redress required by the complainant also clear?
- c)** Will it be possible to fully explore the circumstances of the complaint and, if upheld, offer the complainant the redress required without further reference to the complainant?

If all these conditions are met then the investigating officer may proceed to investigate and respond to the complaint. In these circumstances, there is an expectation that the matter will be disposed of well within the 28 day deadline.

**3.2.6** If the conditions in 3.2.5 above are not met, then the investigating officer should, at the earliest opportunity, arrange to contact the complainant by telephone or in person to clarify the issues, redress or circumstances of the complaint.

**3.2.7** If it is not possible to commence an investigation within 10 working days of receipt of the complaint then the investigating officer should contact the complainant to explain the delay and keep them informed as to the progress of the complaint. Delay in commencing an investigation is not a valid reason for excluding the complainant from the investigative process.

**3.2.8** The directions allow for an extension of the 28-day deadline with the complainant's agreement. If it is clear that the investigation cannot be completed and a substantive response sent within 28 days then the complainant must be contacted and their agreement to an extension obtained.

**3.2.9** When contacting the complainant, the investigating officer should keep a formal note of the outcome of this contact, with particular regard to additional issues arising and the seeking and obtaining of consent to extension of the response deadline.

**3.2.10** When contacting the complainant, the investigating officer should offer the complainant the option of informal resolution where appropriate, but should not apply pressure to persuade the complainant to withdraw their complaint or accept an informal response.

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### 3.3 Response

**3.3.1** On conclusion of investigation the investigating officer should forward a formal written response to the complainant. This response should contain:

- (a) A response to all issues raised by the complainant in the original complaint and during the course of the investigation.
- (b) A comment on whether it has been possible to offer the redress requested by the complainant.
- (c) Where the complaint has been upheld, a clear and unequivocal apology.
- (d) An indication of how the complainant might proceed if they remain dissatisfied with the response.

**3.3.2** In relation to 3.3.1(d) above, this should be an offer to have the case reviewed by a named senior officer and an instruction to submit such requests to the complaints section. The complainant should also be advised that they have the right to refer the matter to CRC by writing to Committee Services.

**3.3.3** A copy of the response should be forwarded to the DCO together with form CT1 with section B completed.

**3.3.4** There is no requirement to complete form CT1 in respect of complaints that are non-statutory, or where the complainant has made it clear from the outset that they wish only an informal response. Any arrangements for recording such complaints are at the discretion of the area team / service unit / business unit involved. However, these should not be recorded in the client database.

**3.3.5** Where a complainant has initially requested a formal response but has subsequently accepted an informal resolution, or has withdrawn the complaint altogether, staff dealing with the complaint should notify the DCO of this fact by completing and returning form CT1. There is no need to provide any additional paperwork.

### 3.4 Review by complaints officer

**3.4.1** On receipt of the response and form CT1, the Senior Officer Complaints will review the response and check that:

- (a) The complaint has been acknowledged and responded to within statutory timescales or an extended timescale agreed with the complainant.
- (b) All issues have been responded to.
- (c) Apologies and explanations have been offered as appropriate.
- (d) The complainant has been advised of how to proceed should they remain dissatisfied.

**3.4.2** If conditions (b), (c) or (d) above are not met, the Senior Officer Complaints may instruct the Investigating Officer to send an amended response rectifying the oversight in question.

**3.4.3** If no copy of response has been received by the Complaints Officer within 24 days of receipt of the complaint, the Complaints Officer will send a written memo to the investigating officer. This memo will remind the officer of their statutory obligation and prompt them to either reply within the remaining 4 days or gain the consent of the complainant to an extension.

**3.4.4** If no copy of response has been received by the Complaints Officer within 56 days of receipt of the complaint, the Complaints Officer will review the case and contact the investigating officer. If necessary, the complaints officer will contact the complainant directly and advise them of their right to move to the next stage of the complaints process. This would either involve a request for the appropriate senior manager to review the complaint or a request for immediate referral to a Complaints Review Sub-committee on the grounds that Social Work Services has failed to respond or seek consent for an extension of timescales.

## 3.5 Review by Senior Manager

**3.5.1** If the complainant is dissatisfied with the formal response, they are entitled to request review by a senior officer (usually the line manager of the investigating officer). To initiate this, the complainant must write to the Complaints Officer.

**3.5.2** Upon receipt of such a request, the Complaints Officer will clarify with the complainant where

necessary the reasons for dissatisfaction with the response and then forward to an appropriate senior manager for review and response within 28 days.

**3.5.3** As per 3.4.4 above, the Complaints Officer will advise the complainant when it is possible to request such a review in the absence of an initial response.

## 3.6 Referral to Complaints Review Committee (CRC)

**3.6.1** Any complainant who has requested a formal response and is entitled to access statutory complaints procedures has a right to request a referral to Complaints Review Sub-Committee at any stage after receipt of the formal response. In some cases, such a referral may be made in the absence of a formal response (see 3.4.4 above).

**3.6.2** Such a request must be in writing and must be submitted to the address below within 28 days of receipt of the formal response. Failure to submit a request within 28 days, may result in Committee Services declining to arrange a Complaints Review Committee, although a measure of discretion would usually be exercised in this regard. Any request submitted out of time will be assessed on an individual basis. If such a request is received by SWS staff then it should be forwarded to the Committee Services Section of West Lothian Council within one working day of receipt.

Head of Support Services  
West Lothian Council  
West Lothian House  
West Lothian EH54 6QP

**3.6.3** Upon receipt of a referral, Committee Services will contact both Complainant and SWS to ensure that all avenues of redress have been explored. In particular, they will check that the complainant has been offered internal review of his or her complaint by SWS. A complaint will only be accepted by CRC when either:

- (a) A review has been undertaken and both complainant and SWS agree that all avenues of redress have been explored.
- (b) Both SWS and the complainant agree that all avenues have been explored and that a review would serve no purpose.
- (c) SWS maintain that further review of the complaint

would be productive, but the complainant does not wish to co-operate.

In the case of (c) above, Committee Services will suspend the arrangement of a CRC for a period of 21 days to allow SWS to conduct its own internal review of the complaint and provide an amended written response to the complainant if appropriate. Committee Services will then confirm with the complainant whether they still wish the matter referred to CRC in light of the amended response. It will not be possible for SWS to refuse to review a complaint following a referral to CRC unless either conditions 3.6.3 (a) or (b) are met. The Presenting Officer, representing SWS at CRC, will usually be a Senior Manager. This presenting officer would usually be the line manager of the investigating officer and would have responsibility for reviewing the complaint, regardless of whether such a review had been requested by the complainant. The presenting Officer will prepare a written submission for CRC on a date identified by Committee Services, not less than five working days before the date of the CRC hearing. Committee Services will advise the complainant of their responsibility to submit papers within the same timescale.

### The Senior Complaints Officer will:

- Identify the presenting officer to Committee Services in good time.
- Assist the presenting officer with preparation of the written submission if requested to do so.
- Ensure that all relevant Social Work Officers who have information pertinent to the submission receive a copy and have an opportunity to comment prior to submission to Committee Services.
- Ensure that the written submission is received by Committee Services on the Date Stipulated.

## 3.6 Referral to Complaints Review Committee (CRC)

**3.6.10** The terms of reference for the operation of the CRC are outlined in 1.7 above. The precise process of presentation to CRC is as outlined below:

- (i)** The Chair will ensure that proper introductions are made.
- (ii)** The Chair will summarise the complaint as presented by the complainant or his/her representative, and ensure that the complainant is in agreement that the complaint has been correctly described.
- (iii)** The Chair will indicate to all, that the proceedings will be conducted as informally as possible, standing the committee's obligations to ensure that the rules of natural justice are observed throughout.
- (iv)** The complainant or his/her representative will then present his/her case and present any witnesses.
- (v)** The Head of Social Policy or his representative and any members of the sub-committee may ask questions of any witness, which should be only to obtain information or clarify facts.
- (vi)** Thereafter the Head of Social Policy or his representative will present his case and present any witnesses.
- (vii)** The complainant or his/her representative and any member of the sub-committee may then ask any questions of him/her but again these should be only to obtain information to clarify facts.
- (viii)** At the conclusion of the evidence both parties will be given the opportunity to summarise their case and make any arguments they feel appropriate.
- (ix)** Having ensured that parties are satisfied that they have had full opportunity to present their cases, the Chair will ask the social work officers and the complainant or his/her representative to leave.
- (x)** The sub-committee will consider the presentations (including any written evidence or representation) and proceed to prepare its report with recommendations to the Health and Care Committee.
- (xi)** The complainant should be advised that the decision of the sub-committee will require to be considered by the Health and Care Committee and therefore he/she cannot be advised that day of the decision. They should also be advised that they will be given the opportunity to comment in writing on the report and recommendations of the sub-committee and any such comments will be considered by the Health and Care Committee at the same time as the Sub-committee's report.

## 3.7 Recording, Analysing and Reporting Complaints

**3.7** Recording, Analysing and Reporting Complaints  
The Complaints Officer will maintain a log of all formal statutory complaints including copies of the original complaint, investigation notes and final response. The monitoring form CT1 will be used to facilitate the compilation of statistical data. The senior Officer for Complaints will prepare an annual report to committee outlining performance of complaints management against statutory timescales and the actions taken to redress complaints and improve services.

The Senior Officer for Complaints will also report performance by Business unit / Team and focussing on these indicators:

Responses within 28 days.  
Failure to Respond / Outstanding Responses.  
First responses requiring amendment.  
Issues Raised / Actions taken.

## 4

## guidance notes: non-standard complaints

### 4.1 Representatives and advocates

**4.1.1** Upon receipt of a complaint from a complainant who is not a client (see 1.1.3), staff need to ascertain the status of that person. They should consider:

- a)** Are they an authorised representative of the client (see 1.1.4)? If so, then the complaint should be dealt with as a statutory complaint and the response sent to the complainant.
- b)** Are they a person who is not a client or an authorised representative but nevertheless wish to make a complaint on their own behalf? If so, then the complaint should be dealt with as a non-statutory complaint.
- c)** Do they claim to be an authorised representative but are unable or unwilling to provide satisfactory evidence, e.g. a written mandate? If so, then the matter should be referred to the Senior Complaints Officer, who will advise accordingly.

**4.1.2** Upon receipt of a complaint from a solicitor or other legal representative, then staff should ascertain the following:

- a)** Is the complaint being made in the context of legal action against SWS? If so, the complaints procedure must be suspended pending the outcome of legal action (see

#### 1.2.4

**a)** and correspondence should be forwarded to the senior officer for complaints who will advise the complainant as to the procedures in place.

**b)** Is the complainant simply representing the client in relation to a statutory complaint?

If so then staff should write to the complainant requesting a written mandate from the client before proceeding unless

**c)** below applies.

**c)** Is the complainant known to have represented the client in past dealings with SWS? If so, a mandate will not be necessary as SWS can be assured that the complainant is authorised to represent the client. To request a written mandate in such circumstances would be an unnecessarily obstructive measure.

**4.1.3** Upon receipt of correspondence or verbal contact from an elected councillor, M.S.P, M.P, or M.E.P, concerning an issue of service delivery to an individual client, the authorised respondent should:

- a)** Clarify with the elected member's office, if necessary, whether the matter in question is an enquiry, requiring only a response to the elected member, or a complaint requiring a response to both elected member and complainant.
- b)** Unless otherwise indicated, treat the matter as a formal complaint requiring a response in writing to the complainant and a copy to the elected member.
- c)** Send an acknowledgement to the elected member within one working day of receipt, indicating the anticipated timescale for response. If this is likely to be more than ten working days then the reason for any delay should be stated.
- d)** Notify the office of the Head of Social Policy within one working day of the contact, clarifying whether the matter is an enquiry or a complaint, the action to be taken and the likely timescale for response. Forward a copy of all papers by the quickest means available to the Head of Social Policy's Office.
- e)** For complaints, appoint an investigating officer and send an acknowledgement to the complainant within five calendar days as per statutory procedures (see 1.3).
- f)** For complaints, notify the Complaints Officer as per (d) above.
- g)** Where the complainant makes an informed choice to accept informal resolution of the complaint during the course of the investigation, notify the elected member accordingly and advise outcome of the complaint.

## 4.2 Anonymous Complaints

**4.2.1** A complainant may request that their identity is not disclosed when a complaint is made.

Except where informal non-statutory responses are required, this anonymity cannot be total, since SWS has to determine the status of complainants or their representatives in relation to their rights to access statutory complaints procedures and must have a contact for provision of a formal written response.

**4.2.2** If staff receive complaints from complainants who wish to remain anonymous, they should politely decline to deal with them. The complainant should be directed to contact the Senior Complaints Officer, who will explain to the complainant the operation of the complaints procedures and either:

- a) Arrange for the complaint to be dealt with as a non-statutory complaint.
- b) Agree with the complainant the measures to ensure anonymity that can be afforded to the complainant under the statutory procedures.

**These might include:**

- I. The identity of the complainant being disclosed only to the Senior Complaints Officer and Investigating Officer.
- II. No identifying details being recorded in the complaints log.
- III. Any formal response to be sent directly from the Complaints Officer, with copies held by the section in a separate and secure file.

**4.2.3** The Senior Complaints Officer will advise the complainant that the requirements of anonymity may restrict the ability of SWS to properly investigate the complaint and may have implications for the right of the complainant to have their complaint reviewed or referred to CRC.

## 4.1 Abusive Complainants

**4.3.1** An abusive complainant is one who submits complaints in terms that are threatening, racist, sexist, profane, or employ violent or sexual imagery outwith the context of the complaint.

**4.3.2** If a complainant submits a verbal complaint and is abusive, staff should advise the complainant that staff are not required to tolerate such abuse and politely request that the complainant moderate their language.

**4.3.3** If the complainant ignores a request to moderate their language then staff should advise the complainant that they may terminate the exchange if the complainant continues to be abusive. If this still fails to produce the required reduction in abuse then staff should terminate the exchange.

**4.3.4** If staff have terminated an exchange with an abusive complainant and have already taken full details of the complaint then these should be forwarded to an authorised respondent with an attached note as to the nature of the exchange.

**4.3.5** If staff have terminated an exchange with an abusive complainant without taking full details of the complaint then they should write to the complainant, where possible, enclosing a complaints

leaflet and asking the complainant to re-submit their complaint in writing to the Complaints Officer.

**4.3.6** Where written complaints are submitted in abusive terms, the acknowledgement of the complaint should make reference to this and advise that staff are not required to tolerate such abuse and that, if repeated, this may limit the ability of staff to investigate and respond to complaints.

**4.3.7** Repeated abuse by a complainant (whether verbal or written) should be notified to the Senior Officer for Complaints who will review the case and take the following actions where necessary:

- a) Write to the complainant requesting that they modify their language in future or otherwise face limitations on the investigation of their complaint.
- b) Instruct the investigating officer to investigate and respond to the complaint without contacting the complainant for further information or clarification of the complaint and advise the complainant accordingly.
- c) Advise the complainant that in future, complaints will only be accepted if submitted in writing to the Complaints Officer and that staff will not engage in dialogue with the complainant.

**4.3.8** The actions outlined in 4.3.7 must be taken for all complainants in the order presented i.e. (c) may only be taken after prior use of (b) and (b) after (a).

**4.3.9** If action 4.3.7 (c) is taken then relevant staff will be advised not to accept further complaints from the complainant and to terminate the exchange once the identity of the complainant is known.

**4.3.10** Since none of these measures prevent the complainant from submitting a complaint to SWS and having the issues raised investigated and formally responded to then a referral to CRC is not necessary.

**4.3.11** If, after instituting all measures outlined at 4.3.7, the Senior Officer for Complaints feels that even written complaints are so abusive as to place an unreasonably onerous burden on staff within the Complaints Office, then a written submission will be prepared for consideration by CRC with a view to declaring the complainant a vexatious complainant (see 4.5).

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## 4.2 Anonymous Complaints

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**4.2.1** A complainant may request that their identity is not disclosed when a complaint is made. Except where informal non-statutory responses are required, this anonymity cannot be total, since SWS has to determine the status of complainants or their representatives in relation to their rights to access statutory complaints procedures and must have a contact for provision of a formal written response.

**4.2.2** If staff receive complaints from complainants who wish to remain anonymous, they should politely decline to deal with them. The complainant should be directed to contact the Senior Complaints Officer, who will explain to the complainant the operation of the complaints procedures and either:

**a)** Arrange for the complaint to be dealt with as a non-statutory complaint.

**b)** Agree with the complainant the measures to ensure anonymity that can be afforded to the complainant under the statutory procedures. These might include:

**I.** The identity of the complainant being disclosed only to the Senior Complaints Officer and Investigating Officer.

**II.** No identifying details being recorded in the complaints log.

**III.** Any formal response to be sent directly from the Complaints Officer, with copies held by the section in a separate and secure file.

**4.2.3** The Senior Complaints Officer will advise the complainant that the requirements of anonymity may restrict the ability of SWS to properly investigate the complaint and may have implications for the right of the complainant to have their complaint reviewed or referred to CRC.

## 4.3 Abusive Complainants

**4.3.1** An abusive complainant is one who submits complaints in terms that are threatening, racist, sexist, profane, or employ violent or sexual imagery outwith the context of the complaint.

**4.3.2** If a complainant submits a verbal complaint and is abusive, staff should advise the complainant that staff are not required to tolerate such abuse and politely request that the complainant moderate their language.

**4.3.3** If the complainant ignores a request to moderate their language then staff should advise the complainant that they may terminate the exchange if the complainant continues to be abusive. If this still fails to produce the required reduction in abuse then staff should terminate the exchange.

**4.3.4** If staff have terminated an exchange with an abusive complainant and have already taken full details of the complaint then these should be forwarded to an authorised respondent with an attached note as to the nature of the exchange.

**4.3.5** If staff have terminated an exchange with an abusive complainant without taking full details of the complaint then they should write to the complainant, where possible, enclosing a complaints leaflet and asking the complainant to re-submit their complaint in writing to the Complaints Officer.

**4.3.6** Where written complaints are submitted in abusive terms, the acknowledgement of the complaint should make reference to this and advise that staff are not required to tolerate such abuse and that, if repeated, this may limit the ability of staff to investigate and respond to complaints

**4.3.7** Repeated abuse by a complainant (whether verbal or written) should be notified to the Senior Officer for Complaints who will review the case and take the following actions where necessary:

**a)** Write to the complainant requesting that they modify their language in future or otherwise face limitations on the investigation of their complaint.

**b)** Instruct the investigating officer to investigate and respond to the complaint without contacting the complainant for further information or clarification of the complaint and advise the complainant accordingly.

**c)** Advise the complainant that in future, complaints will only be accepted if submitted in writing to the Complaints Officer and that staff will not engage in dialogue with the complainant.

**4.3.8** The actions outlined in 4.3.7 must be taken for all complainants in the order presented i.e. (c) may only be taken after prior use of (b) and (b) after (a).

**4.3.9** If action 4.3.7 (c) is taken then relevant staff will be advised not to accept further complaints from the complainant and to terminate the exchange once the identity of the complainant is known.

**4.3.10** Since none of these measures prevent the complainant from submitting a complaint to SWS and having the issues raised investigated and formally responded to then a referral to CRC is not necessary.

**4.3.11** If, after instituting all measures outlined at 4.3.7, the Senior Officer for Complaints feels that even written complaints are so abusive as to place an unreasonably onerous burden on staff within the Complaints Office, then a written submission will be prepared for consideration by CRC with a view to declaring the complainant a vexatious complainant (see 4.5).

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## 4.4 Persistent Complainants

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**4.4.1** A persistent complainant is one who makes a complaint that is the same as, or substantively indistinguishable from, one that has already been submitted by, or on behalf of, the same client and formally responded to through the statutory procedure.

**4.4.2** SWS is not required to respond to a complaint that has already been considered and disposed of through the formal statutory procedures.

**4.4.3** If staff receive a complaint which they consider has already been considered and disposed of then the matter should be referred to the Senior Officer for Complaints who will advise either:

**a)** That the complaint is a new complaint and should be investigated and responded to as normal.

**b)** That the complaint need not be re-investigated but should be responded to again. In these circumstances, the complainant should be clearly advised that the complaint has been dealt with before and that the complainant should exercise their rights to have the complaint reviewed or referred to the Complaints Review Committee should they remain dissatisfied with the response on this occasion.

**c)** That the complaint need not be re-investigated or responded to, but that the Complaints Officer will write to the complainant stating the matter has been disposed and will not be responded to again, whilst confirming the rights of the complainant to submit complaints on other issues in future.

**4.4.4** The action outlined in 4.4.3 (c) may only be taken after prior use of 4.4.3 (b) in respect of the same complaint.

**4.4.5** The above paragraphs should not be construed as restricting the rights of complainants to make similar complaints about repeated failures of SWS to deliver services on different occasions, unless staff believe that the complainant is a vexatious complainant (see 4.5 below).

**4.4.6** Since none of these measures prevent the complainant from submitting a new complaint to SWS then a referral to CRC is not necessary. The directions are clear that SWS has no obligation to consider complaints previously considered and disposed of.

## 4.5 Vexatious Complainants

**4.5.1** A vexatious complainant is one who makes a complaint in order to pursue aims, or satisfy needs, unrelated to the actual issues raised in the complaint. They may be a client or an authorised representative.

**4.5.2** Such a complainant may have a personal grievance against SWS and derive satisfaction from the process of submitting complaints. The complainant may believe that submission of a sufficiently large number of complaints, or complaints covering an extensive range of issues, will so demoralise SWS staff, or consume sufficient resources, as to make SWS amenable to granting the complainant the outcome they actually desire.

**4.5.3** To characterise a complainant as being vexatious requires a subjective judgement by SWS staff. Even if a complainant were vexatious they are unlikely to admit this and would simply state, and perhaps believe, that there had been a large number of failures by SWS in relation to delivery of services to them or the client they represent.

**4.5.4** It is of course possible that staff would falsely accuse a complainant of being vexatious in order to disguise their own repeated failure to deliver services of acceptable quality.

**4.5.5** Because a vexatious complainant cannot be objectively characterised in the way that a persistent or abusive complainant may be (see 4.3, 4.4), a careful consideration of the case is required.

**4.5.6** Where Staff feel that a complainant is vexatious, the matter should be referred to the Senior Officer for Complaints who will assess the case based upon:

- a)** The number of complaints submitted by the complainant within a defined time period.
- b)** The types of issues raised by the complainant.
- c)** The number of times complaints have been upheld.
- d)** The number of times the complainant has requested review and/or referral to CRC and the findings of those reviews.

**4.5.7** The Senior Officer for Complaints will submit a report to the Head of Social Policy recommending either:

- a)** That the complainant is clearly not vexatious and no special measures should be employed.
- b)** That there is insufficient evidence of vexatious intent at this time, but that the situation should be monitored.
- c)** That the complainant is not vexatious but is either abusive or persistent and the relevant measures at 4.3.7 or 4.4.3 should be employed.
- d)** That there is sufficient evidence to suggest that the complainant is vexatious.

**4.5.8** If recommendation 4.5.7 (d) is made then the complainant will be notified that SWS consider them to be a vexatious complainant and intend to present evidence to CRC substantiating this claim.

**4.5.9** The Senior Officer for Complaints will refer the matter to Committee Services who will convene a Complaints Review Committee to review written submissions on the matter. Committee Services will advise the complainant of the matters under review and offer them the opportunity to present a written submission to CRC.

**4.5.10** If the CRC uphold the judgement of SWS then the complainant will be advised that they are considered a vexatious complainant and may only have future complaints considered subject to the following conditions:

- a)** Complaints may only be submitted in writing to a designated Senior Officer.
- b)** The designated Senior Officer will make a determination, on a case by case basis, of whether new complaints raise issues that merit response.
- c)** If the Senior officer does not consider the complaint merits a response then the complaint will be neither acknowledged nor responded to.

**4.5.11** Alternatively, if the CRC do not uphold the judgement of SWS then they will instruct SWS on how future complaints from this complainant should be dealt with.

## 4.6 Complaints by Groups / Organised Campaigns

**4.6.1** Complaints can be made by, or on behalf of, a group of clients, but not if this is a campaign which places an unreasonable burden on the complaints procedure.

**4.6.2** Whenever a complaint is received on behalf of a group of clients, the matter should be referred to the Senior Officer who will consult with senior managers and advise whether the complaint should be dealt with as a formal statutory complaint or by other means.

**4.6.3** If the same complaint is submitted by a number of individuals in circumstances which suggest that they are campaigning as an organised group, then advice should be sought as per 4.6.2 above.

**4.6.4** In order for a group complaint to be dealt with under the formal statutory complaints procedures then it is necessary that the group should appoint a single point of contact to whom the response will be sent and who will assume responsibility for distributing

the response to the group. If the group is unable to nominate such a person then the complaint will not be dealt with as a formal statutory complaint.

**4.6.5** If the Senior Complaints Officer decides that the complaint should not be dealt with as a formal statutory complaint and complainants are dissatisfied with the alternative suggested, then they have a right to refer the matter to the Complaints Review Committee, who will uphold or overturn this decision based on consideration of written submissions from SWS and the complainants.

**4.6.6** Should complainants wish the matter referred to CRC then they must advise the Senior Complaints Officer within 28 days of notification of his decision. The Senior Complaints Officer will make the necessary arrangements via Committee Services. The Senior Complaints Officer may not refuse to refer the matter to CRC unless the request is received outwith the 28-day period.

## 4.7 Disclosure of Confidential Information

**4.7.1** Occasionally, it may not be possible to fully investigate or respond to a complaint without disclosing confidential information which:

- a)** Relates to a third party who has not consented to disclosure.
- b)** Is sensitive information relating to the client and cannot be disclosed to the authorised representative.
- c)** May cause serious harm to the client or another person if disclosed.
- d)** Has implications for the prevention, detection or prosecution of a crime.

**4.7.2** In the circumstances outlined in 4.7.1, the investigating officer should make every effort to proceed with the complaint investigation by;

- a)** Seeking the permission of third parties to disclose information to the complainant or their representative.
- b)** Seeking the permission of the client to disclosure of

sensitive information to the authorised representative.

- c)** Explaining the difficulties to the complainant and seeking their agreement to deal with the complaint within the imposed limits of confidentiality.

**4.7.3** If agreement is reached under 4.7.2 (c) above then the investigating officer must make it clear that the limits will also apply to review of the complaint by CRC.

**4.7.4** If it is not possible to provide a full response due to the imposed limits of confidentiality and it has not been possible to reach an agreement with the complainant on a limited response then the complaint should be suspended and the complainant advised to take one of the following courses of action:

- a) Make a subject access request under the provisions of the Data Protection Act (1998).
- b) Refer the matter to the Commissioner for Local Administration in Scotland.
- c) Refer the matter to the Information Commissioner.
- d) Seek legal advice and/or action for redress.

**4.7.5** Should the complainant take one of the actions outlined in 4.7.4 and thereby gain access to the

information in question, then the suspension of the complaint should be lifted and investigation and response proceed without further undue delay.

**4.7.6** If advice is required in relation to this issue then staff should consult the relevant senior officer with responsibility for Data Subject Access.

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## 4.8 Non-Statutory complaints

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**4.8.1** If a complaint is made by a person who is not a client (see 1.1.3) or an authorised representative (see 1.1.4) then they are not entitled to access the statutory complaints procedures.

**4.8.2** The main effect of complaining outwith statutory procedures is that the complainant will be unable, if dissatisfied with the response to their complaint, to demand a review by a more senior officer or to progress matters to a Complaints Review Sub-Committee. The complainant will, if dissatisfied with the response, be able to request a review by a senior officer or to make a referral to the Local Government Commissioner where they feel there has been maladministration in relation to the matters raised.

**4.8.3** Otherwise, Staff receiving such a complaint should follow the same broad principles in dealing with a non-statutory complaint. That is to say, they should determine the focus of complaint and redress required, investigate matters fully and respond either informally or formally as required by the complainant.

**4.8.4** An additional effect of complaining outwith statutory entitlements is that there is no automatic right to have complaints acknowledged and responded to within the defined timescales of 5 days and 28 days respectively. Notwithstanding this statutory underpinning however, Staff should endeavour to acknowledge and respond to the complaint as quickly as possible, using the statutory timescales as a guide to good practice.

## 4.9 Complaints against Third Party Providers

**4.9.1** The directions clearly state that Services provided by third parties on behalf of the local authority remain functions of the local authority. The complaints procedures which authorities operate thus necessarily extend to those social work services which voluntary organisations or other persons or bodies undertake to provide under contract to the local authority.

**4.9.2** Local authorities may however delegate the handling of initial complaints (including responsibility for investigating as well as receiving complaints) to the service provider along with the provision of the service itself.

**4.9.3** Specific requirements govern such delegation:

**(i)** It remains responsibility of the local authority to ensure that information on how to complain is available to service users.

**(ii)** Where the authority has given responsibility for investigating and considering complaints to a third party acting on its behalf, the complaints and responses must still be logged through the local authority complaints system.

**(iii)** The local authority should establish very clearly what the limit of any delegation will be in relation to receipt of complaints, the handling of investigations and the provision of responses.

**(iv)** The extent of the duties so defined should be indicated to the third party and should form a part of the contract or other arrangement for the provision of service.

**(v)** Third Party providers will have no role in referring complaints to the Complaints Review Sub-Committee, but service users will still have the right to make such a referral.

**4.9.4** The Complaints Officer will work with staff in legal services and contracts to ensure that these requirements are written into future service level agreements and contracts with effect from January 2003. The procedures will be updated to reflect the outcome of this work when available.

## 4.10 Complaints by Children

**4.10.1** Special considerations apply to complaints made by children in person. These procedures include specific information on the arrangements for children in foster care and residential care. Staff should familiarise themselves with these procedures.

**4.10.2** When a complaint is received by a young person, a decision must be made by staff receiving the complaint, on the basis of issues in the complaint, as to whether the complaint should be dealt with through Child Protection Procedures or the statutory complaints procedures.

**4.10.3** The main points in relation to handling via complaints procedures are as follows:

**(i)** The emphasis should be on problem resolution within a participatory culture where relationships of trust and openness are encouraged.

**(ii)** Complaints made by young people which are related to issues that can be resolved by staff who work directly with those young people, should be dealt with in-house, e.g. at the team or in the unit by staff who receive the complaint. These may be individual issues or collective concerns.

**(iii)** Where an informal resolution cannot be achieved, or the young person is dissatisfied with the outcome, or the young person expresses the wish to have the complaint dealt with more formally, then the young person can:

- Make a complaint to the Complaints Officer;
- Raise concerns with another worker who can instigate the complaints procedure on the young person's behalf
- Raise concerns with another adult who can advocate on his/her behalf.

**(iv)** Where a complaint is made directly to the Area Team/Care Section, the Complaints Officer must be notified by the person responsible for managing the investigation process.

**(v)** All complaints should be recorded, even if the complaint is withdrawn, and outcomes should be monitored. Pro-formas are included in the complaints and allegations procedures for completion by staff for the logging of all complaints.

## 4.11 Complaints on behalf of Adults with Incapacity

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**4.11.1** Where persons have been appointed proxy decision makers under the Adults With Incapacity Act 2000, they will be automatically accorded the status of authorised representative in the context of complaints under the statutory procedures. Social Work Services will respond to complaints by these persons on behalf of the client without requesting any further mandate.

**4.11.2** In other cases where a person seeks to represent an adult with incapacity in the matter of a complaint, staff receiving the complaint will satisfy themselves as to the basis of authority by which that person seeks to act, with due reference to section 1.1.4 of this procedure.

Should there be any doubt about this, the advice of the Senior Complaints Officer should be sought on a case-by-case basis.

**4.11.3** Local Authorities have, under the act, a duty to investigate complaints made on behalf of clients against persons appointed as proxy decision makers. In such cases, these will not be dealt with within the complaints procedure but will be referred to the Head of Service (adult) who will appoint an appropriate investigating officer and subsequently outline procedures to the complainant.

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## 4.12 Shared Investigation with other Agencies

**4.12.1** Protocols remain to be developed in relation to joint working protocols with Health Boards, the Commission for the Regulation of care and the Scottish Social Services Council.

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## Appendices

**appendix 1: complaint record form ct1**

**appendix 2: standard letters**

**appendix 3: complaints leaflet (public)**

**appendix 4: complaints quick reference guides (staff**

