SHETLAND
ISLANDS COUNCIL

Complaints Handling Procedure

Part 2:

When to use this procedure

Document Information			
Document Name/Description		Complaints Handling Procedure – Part 2: When to use this procedure	
Version Number		V1.2	
Author		Performance and Improvement Adviser	
Lead Officer/Manager		Executive Manager - Executive Services	
Final Approval Date		15 March 2021	
Approved by		Policy & Resources Committee	
Review Frequency		Every 3 years	
Date of next planned review start		March 2029	
Summary of changes to document			
Date	**Version updated**	**New version number**	**Brief description of changes**
30/10/2026	V1.1	V1.2	Updated SPSO links

.Contents

What is a complaint? 11

Who can make a complaint? 13

Supporting the customer 13

How complaints may be made 15

Time limit for making complaints 16

Particular circumstances 17

Complaints by (or about) a third party 17

Serious, high-risk or high-profile complaints 17

Anonymous complaints 18

What if the customer does not want to complain? 18

Complaints involving more than one area or organisation 18

Complaints relating to a social work service and another service 19

Complaints about contracted or commissioned services / ALEOs 19

Commissioned social work services 20

Complaints about senior staff 20

Complaints and other processes 20

Complaints and service requests 20

Complaints and disciplinary or whistleblowing processes 20

Complaints and compensation claims 21

Complaints and legal action 21

Social work complaints and appeals 21

Social Work Complaints and the Duty of Candour 22

Complaints for the Care Inspectorate 22

Complaints about Personal Assistants 22

Complaints relevant to other agencies 23

What to do if the CHP does not apply 24

Appendix 1 – Complaints 25

Appendix 2 – What is not a complaint? 30

Appendix 3 – Complex social work scenarios 32

What is a complaint?

17. The Council's definition of a complaint is: 'an expression of dissatisfaction by one or more members of the public about the Council's action or lack of action, or about the standard of service provided by or on behalf of the Council.'

18. For clarity, where an employee of the Council also receives a service from the Council as a member of the public, they may complain about that service.

19. The Council has a set of published service standards which can be viewed here:

    https://www.shetland.gov.uk/ourvalues

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

    - failure or refusal to provide a service
    - inadequate quality or standard of service, or an unreasonable delay in providing a service
    - dissatisfaction with one of our policies or its impact on the individual
    - failure to properly apply law, procedure or guidance when delivering services
    - failure to follow the appropriate administrative process
    - conduct, treatment by or attitude of a member of staff or contractor (**except** where there are arrangements in place for the contractor to handle the complaint themselves: see **Complaints about contracted services**); or
    - disagreement with a decision, (**except** where there is a statutory procedure for challenging that decision, or an established appeals process followed throughout the sector).

21. **Appendix 1** provides a range of examples of complaints we may receive, and how these may be handled.

22. A complaint **is not**:

    - a routine first-time request for a service (see **Complaints and service requests**)
    - a first-time report of a fault (for example, potholes or street lighting)
    - a request for compensation only (see **Complaints and compensation claims**)
    - issues that are in court or have already been heard by a court or a tribunal (see **Complaints and legal action**)
    - disagreement with a decision where there is a statutory procedure for challenging that decision (such as for freedom of information and subject access requests), or an established appeals process followed throughout the sector – such as council tax, planning, or a parking ticket appeal (see also **Complaints and social work appeals**)
    - disagreement with decisions or conditions that are based upon social work recommendations, but determined by a court or other statutory body, for example decisions made by a children's panel, parole board or mental health tribunal
    - a request for information under the Data Protection or Freedom of Information (Scotland) Acts
    - a grievance by a staff member or a grievance relating to employment or staff recruitment

- a concern raised internally by a member of staff (which was not about a service they received, such as a whistleblowing concern)
- a concern about a child or an adult's safety
- an attempt to reopen a previously concluded complaint or to have a complaint reconsidered where we have already given our final decision
- abuse or unsubstantiated allegations about our organisation or staff where such actions would be covered by our Unacceptable Actions Policy; or
- a concern about the actions or service of a different organisation, where we have no involvement in the issue (**except** where the other organisation is delivering services on our behalf: see **Complaints about contracted services**).

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

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

25. **Appendix 2** gives examples of more complex complaints, some of which are not appropriate for this CHP (**Appendix 3** gives examples specific to social work). The section on **Complaints relevant to other agencies** provides information about some of the other agencies that may be able to assist customers if their complaint is not appropriate for this CHP.

Who can make a complaint?

26. Anyone who receives, requests, or is affected by our services can make a complaint. This is not restricted to 'service users' and their relatives or representatives, but may also include people who come into contact with or are affected by these services, for example people who live in close proximity to a social work service provision, such as a care home or day centre. In this procedure these people are termed 'customers', regardless of whether they are or were using a service.

27. We also accept complaints from the representative of a person who is dissatisfied with our service. See **Complaints by (or about) a third party**.

Supporting the customer

28. All members of the community have the right to equal access to our complaints procedure. It is important to recognise the barriers that some customers may face complaining. These may be physical, sensory, communication or language barriers, but can also include their anxieties and concerns. Customers may need support to overcome these barriers.

29. We have legal duties to make our complaints service accessible under equalities and mental health legislation. For example:

    - the Equality Act (Scotland) 2010 – this gives people with a protected characteristic the right to reasonable adjustments to access our services (such as large print or BSL translations of information); and
    - the Mental Health (Care and Treatment) (Scotland) Act 2003 – this gives anyone with a 'mental disorder' (including mental health issues, learning difficulties, dementia and autism) a right to access independent advocacy. This must be delivered by independent organisations that only provide advocacy. They help people to know and understand their rights, make informed decisions and have a voice.

30. Examples of how we will meet our legal duties are:

    - proactively checking whether members of the public who contact us require additional support to access our services
    - providing interpretation and/or translation services for British Sign Language users; and
    - helping customers access independent advocacy (the Scottish Independent Advocacy Alliance website has information about local advocacy organisations throughout Scotland).

31. In addition to our legal duties, we will seek to ensure that we support vulnerable groups in accessing our complaints procedure. Actions that we may take include:

    - helping vulnerable customers identify when they might wish to make a complaint (for example, by training frontline staff who provide services to vulnerable groups)
    - helping customers access independent support or advocacy to help them understand their rights and communicate their complaints (for example, through Advocacy Shetland, the Scottish Independent Advocacy Alliance or Citizen's Advice Scotland); and
    - providing a neutral point of contact for complaints (where the relationship between customers and frontline staff is significant and ongoing).

32. These lists are not exhaustive, and we must always take into account our commitment and responsibilities to equality and accessibility.

How complaints may be made

33. Complaints may be made verbally or in writing, including face-to-face, by phone, letter or email.

34. Where a complaint is made **verbally**, we will make a written record of the key points of complaint raised.

35. Where a complaint issue is raised via a digital channel managed and controlled by the Council (for example our official twitter account), we will explain that we do not take complaints on social media, but we will tell the person how they can complain.

36. We must always be mindful of our data protection obligations when responding to issues online or in a public forum. See **Part 1: Maintaining confidentiality and data protection**.

Time limit for making complaints

37. The customer must raise their complaint within six months of when they first knew of the problem, unless there are special circumstances for considering complaints beyond this time (for example, where a person was not able to complain due to serious illness or recent bereavement).

38. Where a customer has received a stage 1 response, and wishes to escalate to stage 2, unless there are special circumstances they must request this either:

    - within six months of when they first knew of the problem; or
    - within two months of receiving their stage 1 response (if this is later).

39. We will apply these time limits with discretion, taking into account the seriousness of the issue, the availability of relevant records and staff involved, how long ago the events occurred, and the likelihood that an investigation will lead to a practical benefit for the customer or useful learning for the organisation.

40. We will also take account of the time limit within which a member of the public can ask the SPSO to consider complaints (normally one year). The SPSO have discretion to waive this time limit in special circumstances (and may consider doing so in cases where we have waived our own time limit).

Particular circumstances

Complaints by (or about) a third party

41. Sometimes a customer may be unable or reluctant to make a complaint on their own. We will accept complaints from third parties, which may include relatives, friends, advocates and advisers. Where a complaint is made on behalf of a customer, we must ensure that the customer has authorised the person to act on their behalf. It is good practice to ensure the customer understands their personal information will be shared as part of the complaints handling process (particularly where this includes sensitive personal information). This can include complaints brought by parents on behalf of their child, if the child is considered to have capacity to make decisions for themselves.

42. The provision of verbal consent, or a signed mandate from the customer will normally be sufficient for us to investigate a complaint. If we consider it appropriate, we can take verbal consent direct from the customer to deal with a third party and would normally follow up in writing to confirm this.

43. In certain circumstances, a person may raise a complaint involving another person's personal data, without receiving consent. The complaint should still be investigated where possible, but the investigation and response may be limited by considerations of confidentiality. The person who submitted the complaint should be made aware of these limitations and the effect this will have on the scope of the response.

44. See also **Part 1: Maintaining confidentiality and data protection**.

Serious, high-risk or high-profile complaints

45. We will take particular care to identify complaints that might be considered serious, high-risk or high-profile, as these may require particular action or raise critical issues that need senior management's direct input. Serious, high-risk or high-profile complaints should normally be handled immediately at stage 2 (see **Part 3: Stage 2: Investigation**).

46. We define potential high-risk or high-profile complaints as those that may:

- involve a death or terminal illness
- involve serious service failure, for example major delays in providing, or repeated failures to provide, a service
- generate significant and ongoing press interest
- pose a serious risk to our operations
- present issues of a highly sensitive nature, for example concerning:
    - immediate homelessness
    - a particularly vulnerable person
    - child protection, or
    - adult protection.

Anonymous complaints

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

48. If we pursue an anonymous complaint further, we will record it as an anonymous complaint together with any learning from the complaint and action taken.

49. If an anonymous complainant makes serious allegations, these should be dealt with in a timely manner under relevant procedures. This may not be the complaints procedure and could instead be relevant child protection, adult protection or disciplinary procedures.

What if the customer does not want to complain?

50. If a customer has expressed dissatisfaction in line with our definition of a complaint but does not want to complain, we will explain that complaints offer us the opportunity to improve services where things have gone wrong. We will encourage the customer to submit their complaint and allow us to handle it through the CHP. This will ensure that the customer is updated on the action taken and gets a response to their complaint.

51. If the customer insists they do not wish to complain, we are not required to progress the complaint under this procedure. However, we should record the complaint as an anonymous complaint (including minimal information about the complaint, without any identifying information) to enable us to track trends and themes in complaints. Where the complaint is serious, or there is evidence of a problem with our services, we should also look into the matter to remedy this (and record any outcome).

52. Please refer to the example in **Appendix 1** for further guidance.

Complaints involving more than one area or organisation

53. If a complaint relates to the actions of two or more areas within our organisation, we will tell the customer who will take the lead in dealing with the complaint, and explain that they will get only one response covering all issues raised.

54. If a customer complains to us about the service of another organisation or public service provider, but we have no involvement in the issue, the customer should be advised to contact the appropriate organisation directly.

55. If a complaint relates to our service and the service of another organisation or public service provider, and we have a direct interest in the issue, we will handle the complaint about the Council through the CHP. If we need to contact an outside body about the complaint, we will be mindful of data protection. See **Part 1: Maintaining confidentiality and data protection**.

56. Such complaints may include:

- a complaint made to us about a claim for housing benefit where the customer's dissatisfaction relates to the service we have provided and the service the DWP has provided, or

- a complaint made to us about anti-social behaviour where the customer's dissatisfaction relates to the service we have provided and the service the housing association has provided.

Complaints relating to a social work service and another service

57. A complaint may relate to a social work service (provided by the local authority or a HSCP) and another service provided by the same organisation. Examples are:

    - a social work service and a care service both provided by a HSCP
    - a social work service and a housing service both provided by the local authority.

58. In such cases, a joint response must be given following the guidance above.

59. Alternatively, a complaint may involve services from different organisations. Examples are:

    - a complaint about a social work service provided by a HSCP and a care service provided by the local authority
    - a complaint about a social work service provided by the local authority and a housing service provided by a housing association.

60. The aim with such complaints is still to provide a joint response (particularly where the organisations are linked, eg. NHS providers), though this may not always be possible. Contact must be made with the customer to explain that their complaint partly relates to services which are delivered by another organisation, and that to respond to their complaint, we will need to share information with this organisation. Staff must check whether specific consent is needed from the customer before we can share their information with the other services, and take appropriate action where necessary, bearing in mind any data protection requirements. See **Part 1: Maintaining confidentiality and data protection**.

61. If it is possible to give a joint response, a decision must be taken as to which service will lead the process. We must ensure that all parties are clear about this decision. The response must cover all parts of the complaint, explain the role of both services, and (for investigation stage complaints) confirm that it is the final response from both services.

62. If a joint response is not possible, you should explain to the person making the complaint the reasons why they will receive two separate responses, and who they can get in contact with about the other aspects of their complaint. You must also write to both the customer and the other services involved, setting out which parts of the complaint you will be able to respond to.

Complaints about contracted or commissioned services / ALEOs

63. We may use Arm's Length External Organisations (ALEOs) to deliver certain services. They are 'arm's-length' because the council retains a degree of control or influence, usually through a funding agreement, and 'external' because they have a separate identity to the council. An example might be a charitable organisation delivering leisure and culture services on our behalf.

64. Where we use an ALEO or contractor to deliver a service on our behalf we recognise that we remain responsible and accountable for ensuring that the services provided meet Shetland Islands Council standard (including in relation to complaints). We will either do so by:

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

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

66. The Council has discretion to investigate complaints about organisations contracted to deliver services on its behalf even where the procedure has normally been delegated.

Commissioned social work services

67. Where social work services are commissioned on behalf of the Council, customers can make complaints under this CHP in relation to the assessment of need, the commissioning or recommendation process, and any element of the service that has been publicly funded. Complaints about any part of service that has been privately funded cannot be considered through this CHP.

68. These services may also be registered as a care service with the Care Inspectorate to deliver a care or support service. If this is the case, customers have the right to complain directly to the Care Inspectorate or to make use of the provider's CHP and thereafter make a complaint to the Care Inspectorate: see **Complaints for the Care Inspectorate**.

Complaints about senior staff

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

Complaints and other processes

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

Complaints and service requests

71. If a customer asks the Council to do something (for example, provide a service or deal with a problem), and this is the first time the customer has contacted us, this would normally be a routine service request and not a complaint.

72. Service requests can lead to complaints, if the request is not handled promptly or the customer is then dissatisfied with how we provide the service.

Complaints and disciplinary or whistleblowing processes

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

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

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

- we comply with all requirements of the CHP in relation to the complaint (as well as meeting the requirements of the other processes)
- all complaint issues are addressed (sometimes issues can get missed if they are not also relevant to the overlapping process); and
- we keep records of the investigation that can be made available to the SPSO if required. This can problematic when the other process is confidential, because SPSO will normally require documentation of any correspondence and interviews to show how conclusions were reached. We will need to bear this in mind when planning any elements of the investigation that might overlap (for example, if staff are interviewed for the purposes of both the complaint and a disciplinary procedure, they should not be assured that any evidence given will be confidential, as it may be made available to the SPSO).

76. The SPSO's report **Making complaints work for everyone** has more information on supporting staff who are the subject of complaints.

Complaints and compensation claims

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

Complaints and legal action

78. Where a customer says that legal action is being actively pursued, this is not a complaint.

79. Where a customer indicates that they are thinking about legal action, but have not yet commenced this, they should be informed that if they take such action, they should notify the complaints handler and/or manager and that the complaints process, in relation to the matters that will be considered through the legal process, will be closed. Any outstanding complaints must still be addressed through the CHP.

80. If an issue has been, or is being, considered by a court, we must not consider the same issue under the CHP.

Social work complaints and appeals

81. While some social work decisions may be reviewed under alternative arrangements at a local level (for example through appeal or peer review), the SPSO has the power to consider professional social work decisions. The customer should not be required to seek a reconsideration of a decision under both appeal and complaint processes, nor should they be required to make further complaint if dissatisfied with the outcome of an appeal.

82. Therefore, whilst we have discretion to operate appeals procedures, these must be regarded as a special form of complaint investigation (stage 2 of this CHP). Such appeals processes must be compliant with this procedure in terms of the rigour and documentation of the process, must be concluded within 20 working days where possible with a written response to the customer, and must be recorded as a stage 2 complaint on the relevant complaints database (unless recorded elsewhere as an appeal). If the customer raises additional issues of dissatisfaction as well as challenging a professional decision, then the process must consider and respond to every element of the customer's dissatisfaction so that no additional complaint process is required.

83. The final response letter must provide relevant text advising the customer of their right to refer the matter to the SPSO for independent consideration. The SPSO will then investigate matters in full, in line with their standard procedures.

Social Work Complaints and the Duty of Candour

84. In some cases, a complaint may be prompted by a duty of candour disclosure, or a complaint investigation may itself prompt a disclosure. In such cases, we must comply with both this CHP and our duty of candour requirements.

85. It will often be possible to conduct a single review for the purposes of both the complaint investigation and the duty of candour. We should, however, take care to ensure that all the issues raised in the complaint are dealt with (including any that are not relevant to the duty of candour disclosure).

Complaints for the Care Inspectorate

86. Local Authorities and any contractors that provide care services must be registered with the Care Inspectorate. This is the independent scrutiny and improvement body for care and social work across Scotland, which regulates, inspects and supports improvement of care services.

87. The Care Inspectorate has a procedure for receiving information, concerns and investigating complaints from members of the public, or their representatives, about the care services they use. The Care Inspectorate's complaints procedure is available even when the service provider has an alternative complaints procedure in place.

88. The Care Inspectorate encourages people to complain directly to the organisation they receive a service from. However, some people are not comfortable doing this and to support them, the Care Inspectorate may take complaints about care services directly.

89. When complaints are brought to us about registered care services, we have the right to share complaint information about the registered care provider with the Care Inspectorate, to decide who is best placed to investigate the complaint. We can also share the outcome of complaints about contracted and registered services with the Care Inspectorate.

> Contact details for the Care Inspectorate can be found on their website:
>
> **https://www.careinspectorate.com/**

Complaints about Personal Assistants

90. Where an individual directly employs a Personal Assistant to provide their support, using a Direct Payment (as part of a Self-directed Support package), the Personal Assistant is not

subject to registration with the Care Inspectorate under the Public Services Reform (Scotland) Act 2011, its regulations and amendments. The individual directly employing the Personal Assistant remains responsible for the management of their employee, including their performance management. The Care Inspectorate would only be able to take complaints about such support workers if they work for a registered care agency.

Complaints relevant to other agencies

91. Customers may raise concerns about issues which cannot be handled through this CHP, but which other agencies may be able to provide assistance with or may have an interest in. This may include:

    The Mental Welfare Commission:

    Website: **www.mwcscot.org.uk**

    The Children and Young People's Commissioner Scotland:

    Website: **www.cypcs.org.uk**

    The Scottish Social Services Council:

    Website: **www.sssc.uk.com**

92. This list is not exhaustive, and it is important to consider the circumstances of each case, and whether another organisation may also have a role to play.

What to do if the CHP does not apply

93. If the issue does not meet the definition of a complaint or if it is not appropriate to handle it under this procedure (for example, due to time limits), we will explain to the customer why we have made this decision. We will also tell them what action (if any) we will take (for example, if another procedure applies), and advise them of their right to contact the SPSO if they disagree with our decision not to respond to the issue as a complaint.

94. Where a customer continues to contact us about the same issue, we will explain that we have already given them our final response on the matter and signpost them to the SPSO. We may also consider whether we need to take action under our Unacceptable Actions Policy.

95. The SPSO has issued a **template letter for explaining when the CHP does not apply**.

Appendix 1 – Complaints

The following tables give examples of complaints that may be considered at the frontline stage, and suggest possible actions. For ease of reference, examples of social work complaints are provided in a separate table.

Complaint	Possible actions
The customer complains that her council tax direct debit has been set up wrongly.	Apologise to the customer and update the direct debit details.
The customer has provided evidence to verify his claim for benefits, but the Benefits Service has not updated his case records with this information.	• Apologise to the customer. • Update the customer's benefit record to record receipt of evidence. • Check that the benefit award is corrected from the appropriate date.
The customer complains that a workman did not attend to carry out a housing repair as we had agreed.	• Speak to the workman, the service or the service manager to explain the customer's complaint and to agree how to address the issue, for example by arranging a new time and date to do the repair. • Explain the reasons for the failed appointment and apologise to the customer.
The customer complains that the quality of a repair done by us or our contractor is not satisfactory.	• Ask the service department to examine the repair to assess whether or not it is acceptable. • If appropriate, agree that the service department should do more work. • Explain and apologise to the customer. • Obtain a report from the service or contractor to confirm that the repair is now complete. • Feedback the lessons learned from the complaint into a service improvement plan.
The customer complains that a road which is on our winter gritting route has not been gritted despite previous assurances that it would be.	• Confirm if the roads are on our agreed gritting routes.

Complaint	Possible actions
	• If assurance had been provided that the road would be gritted, check to confirm if this action occurred, and when. • Where appropriate, provide an explanation and apologise to the customer. • Obtain confirmation from the service to confirm when the road will be gritted • Feedback the lessons learned from the complaint into a service improvement plan.
The customer complains that his home carer turned up late and was smoking.	• Contact the care service to discuss the matter with a service manager. • The care service should check the timetable for visits and discuss with the home carer the complaint about smoking. The care service should let you know the outcome. • You in turn contact the customer to explain the policy, confirm the timing of visits (for example between 08:00 and 12 noon) and, where appropriate, apologise for the inconvenience.
The customer complains that a night-working refuse collector woke her up by making excessive noise.	• Explain our policy on refuse collection, in particular the approach to night working. • Tell the customer that you will pass on details of the complaint to the service to highlight the noise issue and ask the service to do what they can to control noise. • Apologise to the customer for the inconvenience.
The customer expresses dissatisfaction in line with the definition of a complaint, but says she does not want to complain – just wants to tell us about the matter.	• Tell the customer that we value complaints because they help to improve services. Encourage them to submit the complaint. • In terms of improving service delivery and learning from mistakes, it is important that customer feedback, such as this, is recorded, evaluated and acted

Complaint	Possible actions
	upon. Therefore, if the customer still insists that they do not want to complain, record the matter as an anonymous complaint. This will avoid breaching the complaints handling procedure. Reassure the customer that they will not be contacted again about the matter.

Social work complaint	Possible actions
A service user complains that a social worker did not turn up for a planned visit.	• Apologise to the service user • Explain that you will look into the matter • Contact the social worker/manager to find out the reason for the missed appointment, then • Explain the reasons and offer a new appointment.
A member of the public complains that a home carer parked in a private resident's car parking place.	• Take the customer's details and explain that you will look into the matter • Contact the home care service to find out if this is the case • If so, request that this does not happen again, and • Contact the customer, apologise and advise that the worker has been asked to find alternative parking.
A member of public complains that his neighbours (residents of a children's house) have been playing football in the street where they live and are being abusive to passers-by.	• Explain to the customer that you will look into the matter and call them back • Contact the manager of the children's house to verify the facts • Request that the manager meet with the neighbour to apologise and engender good relations, then • Call back the customer to update them.
A complaint about a service provider commissioned by social work services.	• Discuss with the customer the different ways for this complaint to be handled, ie by a complaint to the Care Inspectorate or through the provider's own CHP, and • Ensure, whatever process is agreed, that the customer is clear how they can progress their complaint to the next stage, should they remain

	dissatisfied. This may be within the provider's CHP, to the Council, or to the Care Inspectorate. The customer should be advised that they can come back to the Council for further advice if they need to at any stage.
A service user complains that their care needs assessment does not accurately reflect their needs, or that the care package proposed would not meet the needs identified in their assessment.	• Clarify with the customer whether the complaint relates to an assessment of needs or a proposed care package. Establish specifically what the customer is complaining about and what has happened so far. Ask them what they are seeking from their complaint, and explain that you will look into the matter • Make internal enquiries to establish what stage the assessment and care planning processes are at • While considering the complaint, if the team indicate that a new assessment or care planning meeting may be offered, pass this offer onto the customer, and ask the team to contact the customer to take this forward, and • If the team are not prepared to look at the matter again, explain why the assessment or care package decision is considered to be adequate, and signpost to the next stage of the CHP.
A customer complains about social work services impacting on their discharge from hospital.	• Check with the hospital social work team about the customer's care planning in relation to discharge from hospital, and the timing of medical decisions and social work input • It may become apparent at that stage that the discharge process was complicated by a range of issues, in which case it may be appropriate to escalate the complaint to investigation • It may also become apparent that the customer is still in hospital, and may or may not be considered ready for discharge. If they are ready, then pass the complaint onto the team directly involved to respond to as quickly as possible • If the situation is not current, and there were delays from social work services, find out why these happened, and • Respond to the customer by their preferred method, to inform them of the outcome of their complaint. Offer an apology if appropriate, and

	outline what steps have been put in place to prevent a recurrence of the situation.

Appendix 2 – What is not a complaint?

1. A concern may not necessarily be a complaint. For example, a customer might make a routine first-time request for a service. This is not a complaint, but the issue may escalate into a complaint if it is not handled effectively and the customer has to keep on asking for service.

2. In some cases a measure of discretion or further clarification is required in determining whether something is a complaint that should be handled through this procedure or another matter which should be handled through another process. There are also some specific circumstances when complaints should be handled in a particular manner.

3. The following paragraphs provide examples of the types of issues or concerns that must not be handled through the complaints handling procedure. This is not a full list, and you should decide the best route based on the individual case.

Planning

4. Customers may express dissatisfaction after the refusal of planning or other related permissions. An example would be dissatisfaction with a condition of consent or an enforcement action.

5. Planning applicants, or their agent, have the right to appeal to Scottish Ministers on planning or related matters determined by Committee or decided under delegated powers. Appeals are usually, but not always, decided by a Reporter from the Directorate of Planning and Environmental Appeals and can be considered on the basis of written submissions or by a hearing or public inquiry. The Reporter appointed to consider the appeal will manage the whole process and consider how to gather enough information to make a decision.

6. Customers who are dissatisfied with one of our planning decisions, and who have a right to appeal to Scottish Ministers, should be directed to this service. However, some complaints about planning matters are from third parties such as neighbours. These customers do not have the right of appeal to Scottish Ministers. These complaints should, therefore, be considered through the CHP.

Benefits

7. A customer may be dissatisfied or disagree with a decision about their housing or council tax benefit claim. This is not a complaint. The customer may ask us to review the decision. If they remain dissatisfied at the outcome of the review or reconsideration of their claim, they may also appeal against our decision to an independent appeal tribunal. Where they want to do so, you should direct them appropriately.

Claims for compensation

8. A customer may seek compensation from us if they consider us liable. This includes issues such as personal injury or loss of or damage to property. Claims for compensation only are not complaints, so you must not handle them through the complaints handling procedure. You should be clear, however, that where a customer wants to complain about the matter leading to their request for compensation, for example workmen damaging their home, or the condition of a public road causing damage to a motor vehicle, you may consider that matter as a complaint, but deal with the request for compensation separately. You may decide to suspend complaint action pending the outcome of the claim for compensation. If you do this, you must notify the customer and explain that the complaint will be fully considered when the compensation claim has been decided.

9. If you receive a compensation claim, you should explain to the customer the process for claiming compensation in line with our policy on these claims.

Licence decisions

10. We are responsible for issuing various licences, including public entertainment, HMO (houses in multiple occupation), liquor and taxi licences. These have their own legal redress. Customers who are dissatisfied with these decisions will have to pursue this through the correct procedure for the type of licence they want.

School exclusions and placing requests

11. Decisions on appeals against a pupil's exclusion from school or a refusal of a school placing request are made by Committee. Once the Committee has ruled, the customer cannot then use the complaints process to continue their case.

School exam results

12. Schools have devolved authority to offer examinations on the awarding body's behalf. In most cases this will be the SQA. If a customer is dissatisfied with the result of an exam, or the process by which an award is given e.g. through an alternative certification model, the customer should make representation to the school in the first instance, who may then refer it to the local authority or awarding body.

13. Remember that although there may be an alternative form of redress for the customer as detailed above, you must consider carefully whether or not a customer's representations should be managed within the complaints handling procedure. Dissatisfaction with certain local authority decisions may simply require an explanation and directing to the correct route. If, however, a customer says they are dissatisfied with the administrative process we have followed in reaching a decision, you may consider that dissatisfaction through the complaints handling procedure. An example may be a complaint from a customer who is dissatisfied with a decision and alleges that we failed to follow or apply the appropriate guidance in reaching that decision.

Appendix 3 – Complex social work scenarios

Child or adult protection concerns

14. Customers may express concerns that a child or adult is at risk, but frame their concern in terms of dissatisfaction that 'nothing has been done about this'. The member of staff will need to consider whether the person is authorised to make complaints on behalf of the child or adult in question, whether they expect the matter to be handled as a complaint and whether the professional view is that these matters are best addressed through initiating the applicable protection procedures. Where the need to initiate protection procedures and investigate concerns within those procedures is identified, the complaint should be closed. The person making the complaint should be advised of this and signposted to the SPSO.

15. Where a complaint is received about some aspect of protection processes that have already been initiated, for example in relation to the way the processes was applied, this should be considered a complaint, and progressed within the complaints handling procedure.

Complaints about professional social work decisions

16. A customer may wish to complain about or appeal against a social work decision. Such decisions must be considered in line with the timescales for complaints as specified in the CHP.

17. Some decisions may be considered through an internal appeal procedure. However, any such appeal route must be considered as constituting a special form of stage 2 of this procedure, in that it will result in a thorough response **to all concerns** and onward referral to the SPSO. See also **Social work complaints and appeals.**

Legal action

18. Legal action takes several forms and each must be handled in a distinctive way:

    (a) Judicial Review: If a person wishes to seek judicial review of a decision then they should be encouraged to seek legal advice.

    (b) Litigation: Where a customer says that they are seeking compensation and that legal action is being actively pursued, this is not a complaint. Where a customer indicates that they intend to litigate but have not yet commenced legal action, they should be informed that if they take such action, they should notify the complaints handler and/or the Complaints Manager and that the complaints process, in relation to the matters that will be considered through the legal process, will be closed. If it becomes apparent that legal action is being pursued, the complaints handler must clarify with the customer if all the issues they have raised will be considered through legal action; any outstanding issues must still be addressed through the CHP.

    (c) Legal tribunals, etc: Sometimes the matter complained of may be the subject of ongoing consideration by a relevant legal body, for example where a customer complains of lack of contact with their child who is being looked after by the Council when that matter falls to be determined by the Children's Panel. In such cases the customer should be directed to raise the matter either directly or through their legal representatives within that other defined process and the matter should not be accepted as a complaint.

This is distinct from a complaint that the Council and its staff have failed to properly carry out their roles and responsibilities. In the example above, a Children's Panel may have set contact frequency but it is not being properly facilitated by social work staff due to staffing shortages or some other factor. That is a matter of legitimate complaint under this procedure.

Complaints about the content of social work reports submitted to legal bodies

19. The Council may receive complaints about the accuracy of reports by professional social work staff submitted to Courts or other bodies such as Children's Panels, Parole Boards or Mental Health Tribunals. In such circumstances, the report is provided as a service to the court or tribunal, not as a service to the customer. The customer has no right to veto such reports or insist that content is subject to their approval but they can complain about the content of the report.

20. The Council should consider each complaint and it will usually be necessary to undertake a short screening process to establish whether the issue is appropriate for the CHP. This will depend on the nature and seriousness of alleged inaccuracy, and the status of the report in relation to the progress of court or other proceedings. In particular the Council should consider whether the complaint relates to accuracy of facts, to opinion or to the standard and quality of the work carried out by the professional concerned, and should take one of three actions accordingly:

    a. advise the customer that, due to the timescales involved, the issue should be raised when the report is presented in court/to the relevant body, as that is the appropriate forum for deciding on the matter

    b. advise the customer that the complaint raises issues that will be considered under the CHP (such as issues of fact), and progress accordingly, or

    c. advise the customer that the complaint raises a mixture of issues that will be considered under the CHP and other issues that should be raised within the relevant forum when the report is submitted.

21. If you refuse to consider some or all issues as per (a) or (c) above and direct the customer to raise the matter within the legal process, you must still provide clear information about the reason for this decision, and signpost the customer to the SPSO for access to a review of this decision.

22. The Council should also consider whether the complaint relates to a breach of data protection legislation, in which case it must be processed accordingly. See **Part 1: Maintaining confidentiality and data protection**.

Campaigns

23. The introduction of a new policy or changes in service, such as the closure of a facility, may lead to a high volume of complaints being received. These should be handled under this procedure on an individual basis on their merits, addressing the issue of how that particular customer is affected by the change. It may be appropriate to provide information about the process that led to the changes, or when the policy may next be reviewed.

24. Occasionally, however, such complaints are evidently part of an organised campaign. Indicators may be that all complaints have identical content or are on a 'form' letter or that all

complainers are known to be members of a pressure group that has made separate representations through petitions or to elected members.

25. The Council should not accept an unreasonable burden on its complaints processes produced by an organised campaign. Instead, the Council may either issue a single 'form' response or may ask the organisers to nominate a single person to make a single complaint on behalf of the group. In such circumstances it would be important to be clear that all the complaints being brought to the Council are identical, and setting out clearly what issues are being considered under the complaint. Any other additional concerns that individuals may have would need to be handled as new complaints.

Persons under investigation

26. The Council is likely to have a role in investigating the actions of individuals towards other, more vulnerable people, for example those suspected of child or adult abuse or Guardians and Powers of Attorney who are allegedly misusing their powers.

27. Those individuals are still customers as defined within this procedure and any complaint from them must be considered on its individual merits. For example, a complaint about an improper exercise of investigative procedures should be looked into as a complaint. Any response should take into account any confidentiality issues, and this should be explained to the customer.

28. However, if it is evident that the person is not complaining about the process or the actions of staff, but is complaining that they are under investigation, this should not be accepted as a complaint. Instead it should be explained to the customer that the Council has a statutory obligation to investigate such matters, and this is not conditional upon their agreement or approval. Their objection to the process is not considered to be a complaint, though they may be directed to seek appropriate legal advice to protect their rights.

Looked after and accommodated children/adults under local authority guardianship

29. The Council has a special duty of care to children in its care or adults for whom it exercises decision-making powers. Special care should be taken when investigating complaints made by or on behalf of those individuals.

30. Artificial barriers of confidentiality should not be imposed to prevent people with a relevant interest in the affairs of an incapacitated adult from complaining on their behalf.

31. Children who are looked after by the Local Authority may complain. They may have little in the way of a support network and may be estranged from their family. It may also be inappropriate for the family to represent the child’s interests. Particular care, therefore, should be taken to ensure that the child's complaint is understood and, particularly for younger children, that the response is understood by them.

32. In both cases, the need for personal contact with the customer, and the possible involvement of advocacy services, should be actively considered. We must also always bear in mind our obligations under data protection information. See **Part 1: Maintaining confidentiality and data protection**.

Allegations of fraud/criminality/professional malpractice or incompetence

33. Discretion is required where the complaint is so serious as to immediately merit investigation under disciplinary processes or referral to another agency.

34. If it is determined that the complaint falls into this category, you should be careful to follow the CHP and mindful of our obligations under data protection legislation. See **Part 1: Maintaining confidentiality and data protection**.

Complaints brought by foster carers

35. Complaints brought by foster carers can relate to the support services they receive from the Council, the way our staff engage with them, or services a child in their care is or was receiving or has requested from us.

36. Any complaint brought by a foster carer on behalf of a foster child in the care, or formerly in their care, should be considered under this CHP. Where possible, the views of the child should also be taken into account.

37. Foster carers who are recruited and supported by us may bring complaints about these services. However, approval and de-registration of the carer by the Council may be considered through alternative appeal mechanisms. As noted under **Social work complaints and appeals**, these appeals must be handled in line with the CHP timescales, where possible, and end with signposting to the SPSO.

38. Complaints from foster carers supported by private agencies will not be addressed within this CHP if the complaint is wholly about their own circumstances and support rather than those of the child. Such complaints should be directed to the complaints process of the relevant agency.

39. An agency foster carer may still complain about the way our staff have interacted with them or about any element of service that they might reasonably expect to be provided by the Council, for example invitations to meetings, provision of information about the child in their care or the manner and content of communications with the Council. This list is not exhaustive and such complaints should be carefully considered in terms of the role of the Council's staff, before directing them to pursue their complaint with their fostering agency.

40. Where a complaint cannot be considered in part or in whole by the Council, the customer must be given a clear explanation as to why this is, what (if any) parts of their complaint will be investigated and how they may refer the matter to the SPSO.