



## THE STATE HOSPITALS BOARD FOR SCOTLAND

### COMPLAINTS AND FEEDBACK POLICY AND PROCEDURE

(Incorporating the NHS Scotland Model  
Complaints Handling Procedure & the SPSO  
Unacceptable Actions Policy)

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Staff are advised to always check that they are using the correct version of any policy/ procedure/ guidance rather than referring to locally held copies.

The most up to date version of all State Hospital policies/ procedures/ guidance can be found on the intranet: <http://intranet.tsh.scot.nhs.uk/Policies/Policy%20Docs/Forms/Category%20View.aspx>

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## **NHS Scotland Complaints Handling Procedure**

### **Foreword**

This policy reflects The State Hospital's (TSH) commitment to welcoming all forms of feedback, including complaints, using this data to act on feedback in a person-centred way, respecting the rights of everyone involved. Adopting this procedure will support our staff to resolve negative feedback shared, including complaints, as close as possible to the point of service delivery, responding thoroughly, impartially and fairly, by providing evidence based decisions, based on factual information.

The national procedure has been developed by NHS complaints handling staff working closely with Person-centred Leads and those responsible for the equality agenda, supported by the Scottish Government Person-centred Team and the Scottish Public Services Ombudsman (SPSO). This work was further informed by colleagues from Information Statistics Division (ISD) and NHS Education for Scotland (NES). This procedure aims to help us 'get it right first time'. We want quicker, simpler and more streamlined local, early resolution driven by staff that understand and value the learning opportunities which arise from all forms of feedback.

The procedure supports us to meet the requirements of the Patient Rights (Scotland) Act 2011, and associated Regulations and Directions. It has been developed to take account of the SPSO Statement of Complaints Handling Principles and best practice guidance on complaints handling from the Complaints Standards Authority at the SPSO, <http://www.valuingcomplaints.org.uk>.

We aim to provide the highest quality services possible through the delivery of safe, effective and person-centred care. Whenever the care we provide can be improved, we must listen and act. All forms of feedback give us valuable information we can use to continuously improve our services. First-hand accounts of people's experiences of our services help us to identify areas of concern, achieve resolution wherever possible and take action so that the same problems do not happen again.

It is our responsibility to ensure that we enable all of our patients and carers to share their views effectively. Barriers to communication including language, mental health presentation, sensory impairment and a learning disability must be acknowledged, with support mechanisms provided to ensure everyone has equal opportunity to provide feedback and understand their rights in relation to the process.

Our complaints handling procedure helps us to build positive relationships with people who use our service and rebuild trust when things go wrong. It puts the person providing the feedback and their carers, at the heart of the process. We will act on all feedback effectively, resolving issues as early as we can, and learning from them where we can so that we can improve our services for everyone.

**Gary Jenkins**  
**Chief Executive**

## Background

The Patient Rights (Scotland) Act 2011, together with supporting legislation, introduced the right to provide feedback and to make complaints about NHS services. It also places a duty on NHS boards to actively encourage, monitor, take action and share learning from the feedback they receive. The Scottish Health Council's 2014 report *Listening and Learning - How Feedback, Comments, Concerns and Complaints Can Improve NHS Services in Scotland* [http://www.scottishhealthcouncil.org/publications/research/listening\\_and\\_learning.aspx](http://www.scottishhealthcouncil.org/publications/research/listening_and_learning.aspx) recommended that a revised, standardised complaints process for NHS Scotland should be developed, incorporating the requirements of the legislation, and previous national guidance for handling and learning from feedback, and complaints.

Our aim is to ensure that:

- people using our services are aware of how they can share feedback and/or make a complaint, and the support that is available for them to do so;
- our own staff and service providers are aware of this procedure, and know how to respond to complaints and feedback locally;
- we are able to demonstrate that learning opportunities emerge from feedback and complaints which directly influences service improvement.

This policy explains the processes we will adopt in response to complaints and feedback, based on the human rights principles of:

- participation: everyone has the right to participate in decisions which affect them, including issues of accessibility and the provision of information that people can understand.
- accountability: service providers have a duty to the public, patients and staff to investigate complaints and seek effective remedies.
- non-discrimination and equality: the complaints process is accessible to everyone and vulnerable or marginalised groups are supported to participate in the process.
- empowerment: everyone should be aware of their rights, how to engage in the complaints process and be meaningfully involved in reaching a satisfactory outcome.
- legality: the complaints process identifies and upholds the human rights of staff, patients, carers and others, and is in accordance with the requirements of all relevant legislation. It aims to provide a streamlined process for resolving complaints early and locally by empowered staff adopting a consistent process.

Within TSH, the Person Centred Improvement Team (PCIT) handle stakeholder feedback, with the Person Centred Improvement Lead tasked with demonstrating improvements emerging as a direct result of information shared. The Director of Nursing, AHPs and Operations is accountable for ensuring stakeholders are supported to share feedback and, as a result, meaningfully engage in service design. The Complaints Officer is responsible for all aspects of the complaints procedure which is managed by the Board Secretary. The organisation is required to demonstrate that any form of feedback, including complaints, is embraced as a learning opportunity and subsequently used to inform the improvement of service delivery.

## Definition of a Complaint

A complaint is defined as ‘an expression of dissatisfaction by one or more members of the public about the organisation’s action or lack of action, or about the standard of service provided by or on behalf of the organisation.’

Resolving complaints early and locally helps to minimise costs as well as resolving a person’s dissatisfaction. It is important, at the outset, to determine how the complainant wishes TSH to communicate with them and that this information is shared with everyone involved.

A complaint may relate, however is not limited to:

- care and/or treatment; delays;
- failure to provide a service; inadequate standard of service;
- dissatisfaction with the organisation’s policy;
- attitude or conduct of a member of staff;
- environmental or domestic issues;
- operational and procedural issues;
- transport concerns, to or from the TSH e.g. Sacro Bus, and within TSH environment;
- the organisation’s failure to follow the appropriate process;
- lack of information about changes to services.

**Appendix 1** provides a range of examples of complaints we may receive, and how these may be handled. It may not be possible for TSH to resolve all issues. In cases where a person is dissatisfied with standards of conduct, ethics or performance by an individual health professional, it may be that the respective professional body requires to investigate e.g. Nursing and Midwifery Council, General Medical Council, Health and Care Professions Council. Where serious concerns about a registered healthcare worker are identified, a referral to the appropriate professional regulator should be made by the Chief Executive.

Issues may be raised with TSH which require to be addressed, however are not appropriate for investigation under the auspices of this policy as set out in the legislation:

- a complaint raised by one NHS body about the functions of another NHS body;
- a complaint raised by a service provider about any matter connected with the contract or arrangements under which that service provider provides health services;
- a complaint raised by an employee of an NHS body about any matter relating to that employee’s contract of employment;
- a complaint about which the person making the complaint has commenced legal proceedings (whether or not these have been concluded), or where the Complaints Manager considers that legal proceedings are so likely that it would not be appropriate to investigate the complaint under this procedure:
- a complaint which is being, or has already been investigated by, the SPSO;
- a complaint arising out of an alleged failure to comply with a request for information under the Freedom of Information (Scotland) Act 2002(a);
- a complaint about which an NHS body is taking or proposing to take disciplinary proceedings against the person who is the subject of the complaint;
- subject matter which has previously been investigated and responded to as a complaint.

In these cases, there is another procedure available which is better placed to carry out the investigation. If a complaint is raised which is within one of the above categories, a written response must be sent to the individual, explaining the reason that this policy does not apply and providing details of the procedure the individual should use to raise the matter with the appropriate person or body. This explanation may be sent electronically, provided that the complainant has consented to this in writing, and has not withdrawn their consent.

TSH should offer to resolve a complaint using this procedure, even where the person has stated (in writing or otherwise) that they intend to take legal proceedings.

The Central Legal Office (CLO) responds to all legal cases on behalf of the TSH.

**When the procedure should not be applied:**

- to consider a routine first-time request for a service (e.g. a GP appointment, a change of medication, procurement order/refund, bank refund);
- in the case of a request for a second opinion in respect of care or treatment;
- for matters relating to private health care or treatment (e.g. patient has funded treatment at external private facility);
- in respect of matters relating to services not provided by or funded by the TSH (e.g. legal matters, Court business, Prison services, DWP/benefits).

These issues must not be treated as complaints. Our role in such cases is to explain how the matter will be handled, and where appropriate, direct the person raising the issue to the relevant procedure, where this exists.

**Valuing all types of Feedback**

TSH encourages all types of feedback, positive and negative, and uses this information continuously to improve service delivery. The Patient Rights (Scotland) Act 2011 introduced a right for people to share feedback and/or comment, including concerns and/or complaints with, TSH and other service providers.

Staff must be able to distinguish between feedback, (including comments and concerns) and complaints, to ensure that any issues raised are handled through the appropriate procedures. Where an issue raised is clearly not a complaint, staff should ensure the feedback is shared with the Person Centred Improvement Team (PCIT), either via the ward comment/suggestion boxes, through the Patient Partnership Group (PPG) the Person Centred Improvement Steering Group, the PCIT telephone line or directly with the Patient Involvement Facilitator, Person Centred Improvement Advisor or the Person Centred Improvement Lead. The PCIT is responsible for ensuring that the person raising the issue receives individual feedback, where personal details have been provided. Responses to anonymous feedback are shared via the ward notice boards/Carers' Newsletter and the Carers' Support Group.

*Feedback*

Feedback may be in the form of views expressed orally or in writing as part of a survey, patient questionnaires, through the Patients' Advocacy Service (PAS), PCIT or the Patient Advice and Support Service (PASS), or initiatives such as patient experience surveys or via stakeholder electronic portals. The feedback may describe the person or carer's individual experience of using NHS services and may include suggestions on things that could have been done better or identify areas of good practice.

### *Comments*

Comments may be comments, compliments, feedback or observations offered orally or in writing for example on ward or hospital suggestion cards or through PASS, which reflect how someone felt about the service.

### *Concerns*

Concerns may be expressed in relation to proposed treatment or about any aspect of the service, from timing of appointments to getting to hospital for the proposed treatment or the actual treatment received. An example may be where someone has been referred to a consultant and is concerned about what this means. Concerns of this nature fall short of a complaint, as the person is not expressing dissatisfaction, but wishes to be fully informed about what is to happen, (**Appendix 2**)

People may need reassurance and/or further explanation and/or information to help them understand why TSH is suggesting a particular course of action. Staff should be alert to this and ensure that explanations are given and advice about additional support services is available in an accessible format for that person.

It is particularly important for staff to use their discretion and judgement in supporting people to decide whether a matter is a concern or a complaint. The best way to do this is by talking to the person raising the issue to explain how concerns and complaints are handled and responded to. There may be circumstances where the nature of the concern is sufficiently serious to warrant full investigation under this complaints procedure. Even where the person states that they do not want to complain, if staff are satisfied that the matter is clearly a complaint, it should be recorded as such. If staff are in any doubt, advice should be sought from the Complaints Officer.

The manner in which the matter is communicated to TSH will often help you to decide if it is a concern or a complaint. A matter may be communicated in a matter of fact way, for example 'I am a little surprised at being in a mixed sex ward. I think you should put me in an all-female ward'. This is likely to be recorded as a concern. However, the same matter may be reported as 'I am very angry that you have put me in a ward with all these men. I feel humiliated and I refuse to accept this. Get me into an all-female ward now or I will call my son to come and take me home'. Given the way this matter is reported; you may decide that it is a complaint. [Appendix 3](#) includes a 'Feedback, Comments, Concerns or Complaints Assessment Matrix' which can be used where necessary to help you differentiate between these and decide how to proceed.

A concern must be responded to within 5 working days. It is important that, where staff determine that a matter is a concern (rather than a complaint) and the person raising the issue remains unhappy with the response, that any subsequent action is handled as a complaint. As there has already been an attempt to resolve the person's concern, the early resolution stage of this procedure is not an appropriate stage to consider the matter further. The issue should, therefore, be handled directly at the investigation stage of the complaints procedure.

### **Publication**

In accordance with the Complaints Directions, TSH must publish annual summaries of the action which has been or is to be taken to improve services as a result of complaints, comments and concerns received that year. TSH publishes quarterly 'Learning from Feedback' reports via the Clinical Governance Group, Clinical Governance Committee, the Senior Management Team (SMT) and Person Centred Improvement Steering Group. The TSH Complaints and Feedback Annual Report is also widely published in addition to being available on the TSH website and intranet.



## Primary Care Service Providers

TSH Primary Care service providers, e.g. GP, Podiatry, and Dental are also required to resolve complaints quickly and at the point of contact, wherever possible. Early resolution is the most effective way of resolving the majority of complaints. However, where the patient feels unable to make direct contact with the Primary Care service provider, the complaint can be made to TSH Complaints Officer or via the PAS.

## Financial Compensation

The NHS complaints procedure does not provide for financial compensation. PAS may be able to advise patients who may be seeking compensation, where to get information about specialist solicitors who handle negligence claims.

It may also be appropriate to advise those who seek financial compensation that they may contact Action Against Medical Accidents (AvMA) or the Law Society of Scotland. AvMA provides free independent advice and support to people affected by medical accidents, while the Law Society of Scotland can provide contact details of law firms that specialise in claims for medical compensation.

## Handling Anonymous Complaints

All anonymous complaints should be forwarded to the Complaints Officer and are dealt with in accordance with this procedure. The Director responsible for the service should make a decision about appropriate action to take, based on the nature of information provided about the complaint and any other relevant factors e.g. consent issues. If, however, an anonymous complaint does not provide enough information to enable TSH to take further action, the Complaints Manager may decide that it is not possible to complete the investigation. The Complaints Officer should be advised of any decision not to investigate an anonymous complaint, along with the rationale for this decision.

Available information about, and decisions made regarding all anonymous complaints will be recorded on Datix and shared with the responsible service lead to enable consideration of any necessary action. If an anonymous complaint is pursued, all information, including actions taken and resulting outcome will be recorded. This will help to ensure that the organisation is learning from all complaints data, enabling TSH to identify trends and themes, taking appropriate action.

## Whistleblowing

Whistleblowing is defined in the Public Services Reform (Scottish Public Services Ombudsman) Healthcare Whistleblowing Order 2020 as:

*"when a person who delivers services or used to deliver services on behalf of a health service body, family health service provider or independent provider (as defined in section 23 of the Scottish Public Services Ombudsman Act 2002) raises a concern that relates to speaking up, in the public interest, about an NHS service, where an act or omission has created, or may create, a risk of harm or wrong doing."*

This includes an issue that:

- has happened, is happening or is likely to happen;
- affects the public, other staff or the NHS provider (the organisation) itself.

Anyone who provides services for or on behalf of the NHS can raise a concern, i.e. speaking up or whistleblowing. This includes current (and former) employees, agency workers (and others on short or insecure contracts such as locums and bank staff), contractors (including third-sector

service providers), trainees and students, volunteers, non-executive directors, and anyone working alongside NHS staff, such as those in health and social care partnerships. A person raising a whistleblowing concern has usually witnessed an event, but they may have no direct personal involvement in the issue they are raising.

Whistleblowing concerns raised within the NHS must be handled in line with the [National Whistleblowing Standards](#). These Standards have the same function for whistleblowing as the NHS Complaints Handling Procedure has for complaints. The SPSO also has the role of Independent National Whistleblowing Officer (INWO), and provides the third stage, independent review for whistleblowing concerns.

It is important to identify where a non-whistleblowing issue is raised by someone who provides services for the NHS; i.e. the issue is about their experience as a service user / patient or where they are raising an issue on behalf of a service user / patient. We should consider carefully whether the issue more properly falls under the definition of a complaint (*an expression of dissatisfaction about the NHS organisation's action or lack of action, or about the standard of service provided by or on behalf of the organisation*) and should be handled under the complaints handling procedure (CHP).

Where an issue raised in a complaint overlaps with issues raised under the whistleblowing process, we still need to respond to the complaint through the CHP.

The complaint response must not share confidential information (such as anything about the whistleblowing procedure, personal data of anyone involved, or outcomes for individual staff members). It should focus on whether we failed to meet service standards, where relevant, or expected standards and what we have done to improve things, in general terms.

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

- they comply with all requirements of the CHP in relation to the complaint (as well as recognising if they also, or alternatively, meet the requirements of the whistleblowing process)
- all complaint issues are addressed (sometimes issues can get missed if they are not also relevant to the overlapping whistleblowing process); and
- records of the complaint investigation are kept and can be made available to the SPSO if required. Consideration must be given to whether there is confidential whistleblowing related information. If there is, but it is also relevant to the complaint, SPSO will still normally require details of any correspondence and interviews to show how conclusions were reached. Staff will need to bear this in mind when planning and recording the service complaint investigation, especially elements that might overlap with the whistleblowing process (for example, if staff are interviewed for the purposes of both the complaint and the whistleblowing process, they should be told that any evidence given may be made available to both the SPSO and/ or the INWO).

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

## **Significant Adverse Events Review (SAER)**

Healthcare Improvement Scotland (HIS) defines an adverse event as an event that could have caused (a near miss), or did result in, harm to people or groups of people. The response to each adverse event should be proportionate to its scale, scope, complexity and opportunity for learning. TSH has its own procedures in place to manage adverse events, and in the case of 'multi board' adverse events HIS has developed a guidance tool to sit within the national adverse events framework toolkit.

A complaint handled at the investigation stage may clearly meet TSH criteria for managing significant adverse events e.g. where the complaint is about safety of care, the organisation has a duty to proceed with an adverse event review, irrespective of whether a complaint has been made. Where, based on a complaint, it is deemed appropriate to undertake a SAER, the complainant will be advised of this decision.

The Chief Executive will decide whether the complaint investigation should continue in parallel with the SAER, or whether it is appropriate to allow the SAER to take account of the complaint(s) as part of the review. It is important to note that the SAER does not replace the complaints investigation, although the investigation timeline may have to be extended.

The complainant will be provided with the rationale used to make this decision, and the revised timelines. We will also advise the complainant that they have the right to ask the SPSO to consider their complaint further if they remain dissatisfied at the conclusion of the adverse event review process. The complainant will be advised of the outcome of the review, taking account of best practice guidance for closing a complaint at the investigation stage. All the details will be recorded on the electronic Datix system used for recording all feedback, including complaints.

## **Care Opinion**

This national system enables service users to share feedback electronically about the care experience, which they may do anonymously. Discussions have taken place with external colleagues responsible for the spread of this system in recognition of the value of enabling people to share their views in this way. However, due to the specific nature of our environment which impacts on access to web based feedback systems such as Care Opinion, in addition to the need to safeguard the privacy of our patients and carers, we are unable to adopt this method in its existing format. We are awaiting evaluation of a pilot project currently being tested within another high secure environment and will make a decision in due course as to whether this tailored approach should be considered within TSH.

## **Who can submit a Complaint?**

Anyone who is or is likely to be affected by the services provided by TSH can make a complaint. Sometimes a person making the complaint may be unable or reluctant to do so on their own. We will accept complaints brought by third parties, as long as the complainant has authorised (provided consent) for the person to act on their behalf. **Appendix 4** is a list of the national descriptors determined by ISD Scotland of the type of people likely to submit a complaint.

Where a complaint is made on behalf of another person, in accordance with the common law duty of confidentiality and data protection legislation, we must ensure that, in addition to authorising another person to act on their behalf, the complainant has also consented to their personal information being shared as part of the complaints handling process. In circumstances where no such consent has been given, the organisation will take this into account when handling and responding to the complaint (and is likely to be constrained in what it can do in terms of investigating any such complaint).

## **What if the person raising the issue does not want to complain?**

If a person expresses dissatisfaction in line with the definition of a complaint but does not want to complain, they should be advised that we do consider all expressions of dissatisfaction, and that complaints offer us the opportunity to improve services where things have gone wrong. The person raising the issue should be encouraged to submit a complaint enabling us to deal with it through the complaints procedure. This will ensure the complainant is updated on the action(s) taken and receives a response to their complaint.

If the person insists they do not wish to complain, the issue should be recorded as being resolved at the early resolution stage of this procedure. This will ensure the data is recorded, enabling us to fully consider the matter and take corrective action where appropriate. Adopting this approach will also ensure that the person has the opportunity to pursue the complaint at the investigation stage of the procedure should they subsequently raise the matter again.

## **Complaints involving more than one NHS Service or Organisation**

If someone complains about the service of another NHS Board or Primary Care service provider, and TSH has no involvement in the issue, the complainant should be advised to contact the Complaints Officer, who will provide support to progress the matter externally.

Where the complaint spans two (or more) NHS bodies, e.g. TSH and NHS Lanarkshire, the complainant will be advised that TSH will take the lead to ensure data relating to the complaint is incorporated within our systems to support wider learning. The complainant will be advised that they will receive one response from TSH covering all of the issues raised.

## **Overlap with other duties on NHS bodies**

TSH is subject to a range of other duties in respect of honesty and openness about the services and care we provide. The Apologies (Scotland) Act 2016 is intended to encourage apologies to be made by making it clear that apologising is not the same as admitting liability. An apology means any statement made indicating that the person is sorry about, or regrets an act, omission or outcome. It also makes explicit an undertaking to look into what happened, with a view to preventing it reoccurring. In meeting the requirements of this procedure, the organisation will apologise, where appropriate, ensuring that we are open and honest with people if an unintended or unexpected incident resulting in death or harm occurs.

Most apologies made in the course of provision of NHS services, or in the course of resolving or investigating a complaint about an NHS service, will be subject to the provisions of the Apologies (Scotland Act) 2016.

The Duty of Candour procedure (due to be implemented in April, 2018), may also be applied in circumstances which give rise to a complaint. This procedure requires TSH to ensure that people have an account of what happened, receive an apology and are advised about what will be done in response to the issue raised and what actions will be taken to prevent a future recurrence.

Apologies which are made in accordance with the Duty of Candour procedure will, by virtue of section 23 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, also not amount to an admission of negligence or breach of duty.

### **Complaints that span Health and Social Work Services**

From 1 April 2017 the health and social work complaints handling procedures have been aligned with those of the NHS and therefore reflect the same stages and timelines, with the exception of timescale extensions.

Where these services are integrated, as in TSH, we will work together to resolve the complaint. A decision must be taken, (following the procedure that the health and social care partnership has in place), as to whether TSH or the local authority will lead on the response. It is our responsibility to ensure that all parties are clear about this decision. It is important, wherever possible, to give a single response from the lead organisation, though ensure both organisations contribute to informing this communication.

However, in complex cases, where a single response is not feasible, you should explain to the complainant the reasons why they will receive two separate responses, and who they can get in contact with about the social work aspect(s) of their complaint.

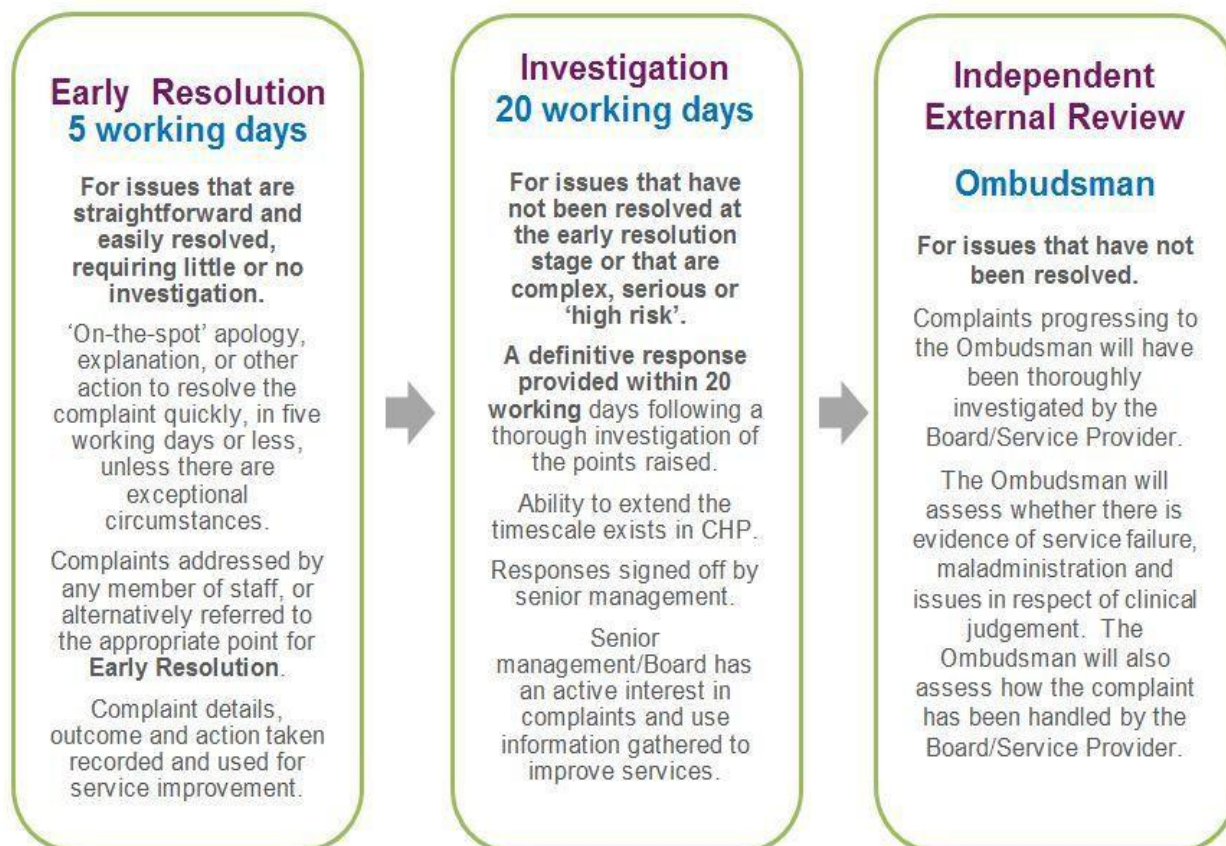
## The Complaints Handling Procedure

The complaints handling procedure aims to provide a quick, simple and streamlined process for resolving complaints early and locally by capable, well-trained staff.

The process provides two opportunities to resolve complaints internally:

- early resolution; and
- investigation

## The NHS Model Complaints Handling Procedure



The term ‘early resolution’ refers to the first stage of the complaints process in which all staff are expected to engage, with a view to resolving complaints at the initial point of contact where possible.

### *What to do should you receive a complaint*

1. You must first decide whether the issue can indeed be defined as a complaint. The complainant may express dissatisfaction about more than one issue. This may mean you treat one element as a complaint, while directing the person to pursue another element through an alternative route.
2. If you have received and identified a complaint, record the details on our Datix system.
3. Decide whether or not early resolution is an appropriate route to take. Some complaints will need to be fully investigated before you can provide a response. These complaints must be handled immediately at the investigation stage.
4. Where early resolution is deemed appropriate, you must consider the following:

**What exactly is the person's complaint(s)?**

It is important to be clear about exactly what the person is complaining about and you may need to ask for more information and probe further to get a full picture. Determine the facts and if you are unfamiliar with the issues or area of service involved, advise the person and share details of the complaint with the manager of that service by e-mail with a copy to [tsh.complaintsandfeedback@nhs.scot](mailto:tsh.complaintsandfeedback@nhs.scot). In this case, keep the complainant informed about what has happened to their complaint and who is responsible for taking it forward. When the issue has been passed on to another member of staff, it becomes the responsibility of the person subsequently dealing with the complaint to resolve the issue and update the system.

**What does the person want to achieve by complaining?**

At the outset, clarify the outcome the person wants. Of course, they may not be clear about this, and you may need to probe further to find out what they want, and whether the expected outcome can be achieved. It may also be helpful to signpost patients who complain to PAS at this point to help patients think about their expectations and what is a realistic/reasonable outcome to expect.

**Can aspirations realistically be achieved? If not, why not?**

If the aspiration cannot be achieved, provide an apology at that point and explaining why this is not possible. The complainant may expect more than can be achieved, in terms of a form of resolution that is disproportionate to the issue e.g. they want the Chief Executive to be sacked so, they must be advised as soon as possible. You should share the decision in person or by telephone. If you do this, it is unnecessary to write to the person as well, although you may choose to do so. It is important, however, to record full and accurate details of the decision reached, including rationale, to ensure that the person understands the outcome.

You must also advise them of their right to have the complaint escalated to stage 2 of this procedure if they are dissatisfied with the outcome at the early resolution stage.

**Stage One: Early Resolution**

Early resolution aims to resolve straightforward complaints that require little or no investigation at the earliest opportunity. Any member of staff may (and should) deal with complaints at this stage. In practice, early resolution means resolving the complaint at the first point of contact with the complainant. This could mean a face-to-face discussion with the person, or asking an appropriate member of staff to deal directly with the complaint. In either case, you may settle the complaint by providing an apology at that point, where appropriate, or explaining why the issue occurred and, where possible, what will be done to prevent this from reoccurring. You should also explain that, as an organisation that values complaints, TSH may use the information provided when reviewing service standards in the future.

Anyone likely to be affected by the services delivered by TSH can make a complaint. They may do so in writing, in person, by telephone, by \*e-mail/\*online (\*patients may use these methods via PAS), or by having someone complain on their behalf. Early resolution must always be considered, regardless of how the complaint has been received.

### *Timelines (Appendix 5)*

Early resolution must be completed within **5 working days**, although in practice we would often expect to resolve the complaint much sooner.

#### *Extension to the Timeline*

In exceptional circumstances, where there are clear and justifiable reasons for doing so, you may agree an extension of no more than 5 additional working days with the complainant. This practice must only be adopted when an extension will make it more likely that the complaint will be resolved at the early resolution stage e.g. additional information is required from other services to resolve the complaint at this stage. However, a response must be shared with the complainant within the agreed timeline, either resolving the matter and agreeing with the person that this has been achieved, or explaining that their complaint is to be investigated.

If an extension to the timeline is requested, the relevant Director will determine whether an extension is required to effectively resolve the complaint e.g. staff being temporarily unavailable. The complainant must be advised of these reasons, and when they can expect a response.

Extensions to the timeline must not become the norm. All attempts to resolve the complaint at this stage must take no longer than **10 working days** from the date the complaint is received. The proportion of complaints that exceed the 5 working days' timeline at the early resolution stage are included within complaints data reporting.

Where issues are complex, and it is clear that they cannot be resolved within an extended 5-day period, the complaint should be escalated immediately to Stage 2, investigation.

#### *Closing the Complaint at the Early Resolution Stage*

When you have informed the person making the complaint of the outcome at early resolution, you are not obliged to write to them, although you may choose to do so. You must ensure that our response to the complaint addresses all areas that we are responsible for and explains the reasons for our decision. It is also important to keep a full and accurate record of the decision reached and given to the person. The details of the complaint, what you have done to resolve it and the outcome should then be emailed to [tsh.complaintsandfeedback@nhs.scot](mailto:tsh.complaintsandfeedback@nhs.scot) so the information can be record on Datix. The date the complaint is closed is the date that the outcome of the complaint at the early resolution stage is communicated to the person making the complaint.

#### *When to Escalate to the Investigation Stage*

A complaint must be handled at the investigation stage when:

- early resolution was attempted however the complainant remains dissatisfied. This may be immediately on communicating the decision or sometime later; or
- satisfactory early resolution is not possible as the complainant has insisted that an investigation be conducted.

Complaints should be handled at the investigation stage, without first attempting early resolution, when:

- the issues raised are complex and require detailed investigation; or
- the complaint relates to serious, high-risk or high-profile issues.



When a complaint is closed at the early resolution stage, but is subsequently escalated to Stage 2, the investigation stage of the procedure, the complaint outcome must be updated on the Datix system. A new complaint should not be recorded.

It is also important to take account of the time limit for making complaints when a person requests an investigation after early resolution has been attempted. The timescale for accepting a complaint, as set out in the legislation, is within 6 months from the date on which the matter relating to the complaint is identified by the complainant. While attempting early resolution, particular care should always be given to identifying complaints that, on fuller examination, might be considered serious, high-risk or high-profile, as these may require particular action or raise critical issues that need the direct input of the relevant Director.

## **Stage Two: Investigation**

Not all complaints are appropriate for early resolution processes and therefore satisfactorily resolved at that stage. Complaints handled at the investigation stage of the procedure are typically serious or complex, and require a detailed examination before we can comment on our position. Such complaints may already have been considered at the early resolution stage, or they may have been identified from the start as requiring immediate investigation. An investigation aims to establish all the facts relevant to the points made in the complaint and to provide the complainant with a full, objective and proportionate response that represents our final position.

### *What to do when a Complaint is Received for Investigation*

The complainant's preferred method of communication should be established at this stage. Where reasonably practicable, this means must be adopted for all communications. It is important to be clear from the start of the investigation stage exactly what is being investigated and to ensure that both the complainant and the service understand the scope of the investigation. If this has not been considered at the early resolution stage, these points should be discussed and confirmed with complainant at the outset, to establish why they are dissatisfied and whether the outcome they are looking is achievable.

This discussion may take place over the telephone or it may be more appropriate to arrange a meeting between relevant staff and the complainant. This will provide the opportunity to explain how the investigation will be conducted, and to manage the person's expectations in regard to the outcomes sought.

It may be that the complainant expects more than can be achieved. If so, this must be made clear to the person as soon as possible. Additional information required to investigate the complaint fully should also be clarified, which may call for the complainant to provide more evidence to help the decision making process.

Details of the complaint must be recorded on the Datix system. Where applicable, this will be done as a continuation of the record created at early resolution. The details must be updated when the investigation ends. If the investigation stage follows attempted early resolution, all case notes and associated information considered at the early resolution stage must be considered as part of the process. You must also record that this information has been obtained.

### *Timelines*

- complaints must be acknowledged within 3 working days; and
- a full response must be provided to the complainant as soon as possible, but not later than 20 working days, unless an extension has been agreed.

### *Acknowledgements*

The written acknowledgement of a complaint must be issued in a format which is accessible to the complainant, as previously agreed, and must include:

- the Complaints Officer's contact details;
- details of advice and support available including PAS/PASS;
- information on the role and contact details for the SPSO,
- a statement confirming that the complaint will normally be investigated, and a response will be sent within 20 working days, or as soon as reasonably practicable;
- a statement advising that, should it not be possible to respond within 20 working days, the complainant will be provided with an explanation for delay and, where possible, provided with a revised timetable for the investigation

When advising that if the complainant remains dissatisfied at the end of the complaints process, they can ask the SPSO to look at their complaint, and that further information about this will be provided with the final decision about the complaint.

When issuing the acknowledgement letter it should be issued in a format which is accessible to the persons making the complaint. You should consider including the following points, where relevant to the complaint:

- a statement thanking the complainant for raising the matter;
- a summary of your understanding of the complaint made and the outcome being sought;
- where appropriate express empathy and acknowledge the distress caused by the circumstances leading to the complaint;
- outline the proposed course of action to be taken or indicate the investigation currently being conducted, stressing the rigour and impartiality of the process;
- offer the opportunity to discuss issues either with the person leading the investigation, Complaints Officer or, if appropriate, the relevant service lead;
- request that a consent form is completed where necessary;
- provide information about alternative dispute resolution services and other support services e.g. PAS
- provide a copy of the 'Public Facing Complaints Handling Procedure' if not already issued.

### *Meeting with the Complainant during the Investigation*

To effectively investigate the complaint, it may be necessary to arrange a meeting with the complainant. Where a meeting takes place, we will always be mindful of the requirement to investigate complaints within 20 working days where possible. There is no flexibility within the Patient Rights (Scotland) Act 2011 to 'stop the clock' in the complaints handling process. This means that meetings must always be held within 20 working days of receiving the complaint where possible. As a matter of good practice, where meetings take place, a written record of the meeting must be completed and provided to the complainant.

Alternatively, and by agreement with the complainant, a record of the meeting may be provided in another format, to suit their communications needs and preferences. A discussion must take place with the complainant agreeing the timescale within which the record of the meeting will be shared.

#### *Extension to the Timeline*

It is important that every effort is made to meet the timeline as failure to do so may have a detrimental effect on the complainant. It may not always be possible to meet this deadline, however, and the legislation allows an extension, where it is necessary, in order to complete the investigation. Some complaints are so complex that they require careful consideration and detailed investigation beyond the 20 working day limit. However, these would be the exception and you are required to provide a response within 20 working days.

If there are clear and justifiable reasons for extending the timeline, the Chief Executive will set time limits on any extended investigation, as long as the complainant agrees. The complainant must be kept updated about the reason for the delay and given a revised timeline for completion. If the complainant does not agree to an extension but it is unavoidable, the Chief Executive must consider and confirm the extension. Each case must be judged according to its individual circumstances.

The reasons for an extension might include, however are not limited to:

- essential accounts or statements, crucial to establishing the circumstances, are required from staff, patients or others however are not forthcoming due to long-term sickness or leave;
- additional essential information cannot be obtained within normal timelines;
- the process is disrupted by unforeseen or unavoidable operational circumstances, e.g. industrial action or severe weather conditions; or
- the complainant has agreed to mediation as a potential route for resolution.

As with complaints considered at the early resolution stage, the proportion of complaints that exceed the 20-day limit will be evident from data reporting. If a complaint spans health and social care services, and the health aspects have been resolved however the social care aspects require an extension to continue investigation, the complainant must be advised that the organisation is not yet in a position to respond to all aspects of the complaint and a timeline provided as to when the outcome will be shared.

#### *Mediation*

Some complaints which are complex, or complaints where the complainant and/or other interested parties have become entrenched in their position, may require a different approach to resolution. Where appropriate, consideration should be given to the use of services such as mediation or conciliation, using suitably trained and qualified mediators to try to resolve the matter and to reduce the risk of the complaint escalating further. Mediation will help both parties to understand what has caused the complaint, and so is more likely to lead to mutually satisfactory solutions. It can be particularly helpful in the context of complaints about primary care providers.

The legislation requires that TSH must provide alternative dispute resolution services in these circumstances, if the complainant about a primary care provider, and the person subject to the complaint, agree it should be provided. If you and the complainant agree to mediation, an extension to the investigation period is likely necessary and, revised timelines should be agreed.

### *Closing the Complaint at the Investigation Stage*

The complaints process should always be completed by the Complaints Manager (or someone authorised to act on his/her behalf) who has reviewed the case to ensure that all necessary investigations and actions have been taken. Where the complaint involves clinical issues, the draft findings and response must be shared with the relevant Director to ensure factual accuracy. Where this is appropriate, due regard must be given to ensuring adherence to timescales within which the decision must be issued.

The Chief Executive must complete the process by approving the outcome.

You must advise the complainant of the outcome of the investigation, in writing, and also, if applicable, by their preferred alternative method of contact. The response to the complaint must address all areas within TSH remit and explain the rationale for the decision. The decision, and details of how it was communicated to the complainant, must be recorded on the Datix system. In accordance with legislation, the response must include the conclusions of the investigation and information about any remedial action taken and/or proposed as a consequence of the complaint. The response must be signed by the Chief Executive or another member of the Executive Team. The quality of the response is very important and in terms of best practice should:

- be clear, easy to understand, person-centred and non-confrontational;
- avoid technical terms, (where these must be used to describe a situation, events or condition, an explanation of the term should be provided);
- address all issues and demonstrate each element has been fully and fairly investigated;
- include an apology where things have gone wrong;
- highlight any area of disagreement and explain why no further action can be taken;
- indicate that the Complaints Officer is available to clarify any aspect of the letter; and
- indicate that if the complainant is dissatisfied with the outcome of the local process, they may seek a review by the SPSO;
- include details of how to contact the SPSO.

### *Post decision communication with the Complainant*

A request for a meeting may be received once the complainant receives the decision about their complaint because the person:

- requests further explanation and/or clarification of the decision and/or suggests a misunderstanding of the complaint in terms of the response;
- disagrees with some, or all of the response in terms of the investigation's findings and/or conclusions and/or the outcome;
- suggests the complaint has not been fully understood, and the decision is erroneous, even in the aspects that have been properly considered.

It should be made clear that the purpose of such a meeting is to support understanding of the outcome and not an opportunity to engage in a reinvestigation or reopening of the complaint.

## Independent External Review

Once the investigation stage has been completed, the complainant has the right to approach the SPSO who will consider complaints from people who remain dissatisfied.

The SPSO considers issues such as service failures and maladministration (administrative fault), clinical decisions and the way in which TSH has handled the complaint.

The wording below should be used to inform people of their right to ask the SPSO to consider the complaint:

The Scottish Public Services Ombudsman (SPSO) is the final stage for complaints about Public Services in Scotland. This includes complaints about the NHS. If you remain dissatisfied with the State Hospital or service provider after the complaints process has concluded, you can ask the SPSO to consider your complaint:

The SPSO cannot normally look at complaints:

- where the full complaints handling procedure has not been concluded,
- more than 12 months after you became aware of the matter you want to complain about, or
- that have been, or are being considered in court.

The SPSO's contact details are as follows:

SPSO  
Bridgeside House  
99 McDonald Road  
Edinburgh  
EH7 4NS

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

Their freepost address is:      FREEPOST SPSO

Freephone:                      **0800 377 7330**

Online:                          [www.spsso.org.uk/contact-us](http://www.spsso.org.uk/contact-us)

Website:                        [www.spsso.org.uk](http://www.spsso.org.uk)

## **Governance of the Complaints Handling Procedure**

### **Roles and Responsibilities**

TSH staff are trained and empowered to make decisions about complaints at the early resolution stage of this procedure. Our final position on a complaint, following a stage 2 investigation, must be signed off by the Chief Executive, who will confirm that this is our final response. This practice ensures that our senior management own and are accountable for the decision. It also reassures the complainant that their concerns have been taken seriously.

As it is important that feedback is shared with any member of TSH staff, all staff must be aware of the procedure and how to handle and record all feedback at the early resolution stage. They should also be aware of whom to refer a complaint or feedback to in case they are not able to personally handle the matter. We encourage all staff to try to resolve complaints and feedback early, as close to the point of service delivery as possible.

#### *Chief Executive*

Overall responsibility and accountability for the management of complaints lies with the Chief Executive. The Chief Executive provides leadership and direction in ways that guide and enable us to perform effectively across all services. The Chief Executive has delegated the role of Complaints Manager to the Board Secretary, whose role it is to ensure that there is an effective complaints handling procedure, with a robust investigation process that demonstrates how we learn from the complaints we receive.

Relevant Directors are responsible for:

- managing complaints and the way we learn from them;
- overseeing the implementation of actions required as a result of a complaint;
- investigating complaints; and, or
- deputising for the Chief Executive and/or Board Secretary, in this respect, on occasion.

However, Directors may decide to delegate some elements of complaints handling (such as investigations and the drafting of response letters). Directors must retain ownership and accountability for the management and reporting of complaints. They may also be responsible for drafting and signing decision letters. Directors should therefore be satisfied that a robust investigation has been undertaken and the response addresses all aspects of the complaint.

#### *Feedback and Complaints Manager*

Each relevant NHS body must appoint a Feedback and Complaints Manager, in accordance with the 2012 Regulations. The Feedback and Complaints Manager is responsible for ensuring compliance with the requirements of this procedure. In particular, they are responsible for ensuring that feedback, comments, concerns and complaints are monitored with a view to improving performance, and that action is taken as necessary following the outcome or any feedback, comment, concern or complaint. This function must be performed by the Chief Executive of the relevant NHS body or by an appropriately senior person authorised by the relevant NHS body to act on their behalf.

The paragraph below sets out how TSH currently manages this locally.

## **Managing Feedback and Complaints**

Whilst the Board Secretary is responsible for the management and handling of complaints, the TSH Board have allocated responsibility for the management of feedback to the Person Centred Improvement Lead. On behalf of the Chief Executive, The Board Secretary, as Complaints Manager, is responsible for ensuring compliance with the requirements of this procedure in respect of complaints. The Person Centred Improvement Lead assumes this role in relation to all other feedback. These managers are specifically tasked with ensuring complaints and feedback is monitored, with a view to improving performance and taking necessary actions following the outcomes.

### *Feedback and Complaints Officer*

According to the 2012 Regulations, each responsible body (including relevant NHS bodies and their service providers) must appoint a Feedback and Complaints Officer to manage the arrangements. The Feedback and Complaints Officer is responsible for the management and handling of feedback, comments, concerns and complaints operationally. This post holder(s) should be of sufficient seniority to be able to deal with any feedback, comments, concerns and complaints quickly and effectively without needing to refer, in all but the most exceptional circumstances, to the Complaints Manager. Feedback and complaints officers should be readily accessible to patients, the public and staff. It is important that arrangements are made so that the role of the complaints officer is not interrupted by one individual's annual or sick leave.

### **Feedback and Complaints Staff**

The Complaints Officer, responsible for the operational handling/processing of all complaints, works in conjunction with the PCIT, whose role it is to deal with all other forms of feedback.

Feedback and Complaints staff undertake key duties including but not limited to:

- working across the organisation to develop mechanisms for encouraging fast, effective and efficient patient/carer feedback, including the use of emerging technology as appropriate;
- operationally implementing this policy and procedure, ensuring that:
  - feedback and complaints recording systems are in place, maintained and developed on an ongoing basis;
  - organisational learning from the operation of the feedback and complaints process is captured and reported;
- considering, in conjunction with the Complaints Manager, whether a complaint is one which should not be investigated under the procedure because of the likelihood that legal action will be raised in respect of the same issue;
- providing advice and support to patients, carers, staff and others to support engagement in this process;
- contributing to development and delivery of local training, education and awareness raising in conjunction with the Complaints Manager and Person Centred Improvement Lead;
- accessing advice and support in relation to associated issues, e.g. patient consent, confidentiality, the operation of related legislation e.g. the Data Protection Act, access to medical records, Freedom of Information protocols;
- having an understanding of the role of partner organisations e.g. PAS and working with them to ensure that there is a symbiotic relationship through which feedback, comments, concerns and complaints are incorporated within local reporting structures, including identification of themes and trends, which support service improvement.

## **All staff in the Organisation**

A complaint may be made to any member of staff in the organisation. All staff must therefore be aware of this procedure, including how to handle and record complaints at the early resolution stage. Staff should also be aware of whom to refer a complaint to if unable to personally handle the matter. We encourage all staff to try to resolve complaints early, as close to the point of service delivery as possible, and, quickly to prevent escalation.

## **SPSO Liaison Officer**

The Complaints Officer fulfils the role of liaising with the SPSO, including providing complaints information in an orderly, structured way, within requested timescales. The Complaints Manager works closely with the Complaints Officer to comment on factual accuracy in response to SPSO reports and is responsible for confirming and verifying that recommendations have been implemented.

## **Complaints about Senior Staff**

Complaints about senior staff can be difficult to handle, as there may be a conflict of interest for 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. The Complaints Manager, in conjunction with the HR Director, will make a decision in respect of allocating responsibility to an appropriately skilled and experienced investigator who is independent of the service area.

## **Recording, Monitoring, Reporting, Learning from and Publicising Complaints**

TSH are required to record all complaints in a systematic way so that we can use this data effectively for analysis and management reporting. By recording and using complaints information in this way, we can identify and address the causes of complaints and, where appropriate, identify learning opportunities including training and staff development to enhance service delivery. TSH has structured systems for recording complaints and feedback, their outcomes and any resulting action. This data provides a detailed record of services that have failed to satisfy people, and the actions we have taken to improve services as a result.

### *Recording Complaints*

Certain information must be recorded by virtue of the legislation, and to comply with SPSO guidance on minimum requirements. All complaints must be recorded, including those resolved at the early resolution stage. To collect relevant data, it is essential to include the following: the person's name, address (or email address if preferred method of communication);

- the patient's name and Community Health Index number (CHI);
- where the complainant is making the complaint on behalf of another person, whether that other person has given consent for the complaint to be made on his or her behalf;
- the date the complaint was received;
- the subject matter of the complaint and the date on which it occurred;
- how the complaint was received;
- the service the complaint refers to;
- the date the complaint was closed at the early resolution stage (where appropriate);
- the date the complaint was escalated to the investigation stage (where appropriate);
- action taken at the investigation stage (where appropriate);
- the date the complaint was closed at the investigation stage (where appropriate);
- the outcome of the complaint at each stage;
- the underlying cause of the complaint and any remedial action taken.



If the complaint is referred to the SPSO, this may result in a request for all relevant papers and other information to be provided to the Ombudsman's office. Complaints records should be kept separate from health records, due to the need to only record information which is strictly relevant to the patient's health in their health record. These documents must be managed with regard to the current Scottish Government Records Management Code of Practice.

An increase in the number of complaints should not in itself be viewed as a negative reflection in respect of service delivery. It could mean that our arrangements for handling feedback, comments, concerns and complaints are becoming more responsive.

### *Monitoring and Reporting Complaints*

In accordance with legislation, TSH has a responsibility to gather and review information from all service providers on a quarterly basis in relation to complaints. Service providers; GPs, Dentists etc. have a duty to supply this information to TSH at the end of the three-month period to which it relates. In order to ensure that feedback arising from complaints relating to such partner service providers is incorporated within processes supporting Hospital wide learning, the Complaints Officer contacts each organisation on a quarterly basis prompting the sharing of same.

TSH has a robust reporting structure in place through which the quarterly 'Learning from Feedback' report is discussed by the Person Centred Improvement Steering Group, SMT and Clinical Governance Group, prior to approval by the Clinical Governance Committee.

The 'Learning from Feedback' report demonstrates improvements resulting from feedback and demonstrates how such information can influence our services. It also helps ensure transparency in our complaints handling and supports us to demonstrate to stakeholders that we value all forms of feedback. The use of case studies and examples to demonstrate how complaints have helped improve services is incorporated within this report.

Performance Indicators (**Appendix 7**) include:

- changes and/or improvements to services as a result of complaints/feedback;
- feedback about the complainant experience in relation to the complaints service provided;
- data relating to the number and roles of staff who have engaged in training about responding to complaints;
- total number of complaints received and the number of complainants involved;
- complaints closed at stage 1 and stage 2, as a percentage of all complaints closed;
- complaints upheld, partially upheld and not upheld at each stage, as a percentage of complaints closed in full at each stage;
- average time, in working days, for a full response to complaints at each stage of this procedure;
- number and percentage of complaints at each stage which were closed in full within the set timelines of 5 and 20 working days;
- number of complaints at stage 1 where an extension was authorised, as a percentage of all complaints at stage 1;
- number of complaints at stage 2 where an extension was authorised, as a percentage of all complaints at stage 2.

The Person Centred Improvement Lead and Complaints Manager are tasked with reviewing the relevant sections of the 'Learning from Feedback' report, with a view to identifying areas of concern, agreeing remedial action and demonstrating improvements. Where appropriate, the review must also consider any recommendations made by the SPSO in relation to the investigation of TSH complaints. Outcomes form part of the quarterly reporting format.

#### *Learning from Complaints and Feedback*

At the earliest opportunity after the closure of the complaint, the complainant and staff working within the service involved should be given feedback and understand the findings of the investigation and any recommendations made.

As a minimum, we must:

- use complaints data to identify the contributory factors to complaints;
- take action to reduce the risk of recurrence;
- record the details of corrective action in the complaints file;
- systematically review complaints performance reports to improve service delivery.

Where we have identified the need for service improvement:

- an action plan should be developed where appropriate;
- the action needed to improve services must be prioritised for implementation;
- a designated person must be allocated responsibility for ensuring the action is taken;
- a deadline must be explicit by which time the action must be taken;
- where appropriate, ongoing performance monitoring must take place to ensure that the issue has been resolved;
- we must be able to demonstrate that staff learn from complaints and feedback;
- we should be able to demonstrate sustained improvement directly relating to information shared.

The General Medical Council's education standards set out the requirements of TSH, in terms of the organisation and provision of medical education and training. It places particular emphasis on the need for the learning environment and organisational culture to value and support education and training, so that learners are able to demonstrate the responsibilities, values, behaviours and learning outcomes required. Where appropriate, we will ensure appraisers place emphasis on the role of learning from complaints and feedback in individual appraisals to identify where we can develop or change our approach to improve patient care.

#### *Publishing Complaints and Feedback Performance*

TSH must publish an annual complaints and feedback report which must be easily accessible to members of the public and available in alternative formats as requested. This document must include details of the numbers and types of complaints and information about the stage at which complaints were resolved, the time taken to do so, and actions that have been/will be taken to improve services as a result. We are required to share this information with Scottish Ministers, the PASS, Healthcare Improvement Scotland, SPSO, and where appropriate the Scottish Prison Service. Annual complaints statistics must be submitted to the ISD for national monitoring purposes within three months of the year end. The information must be in an appropriate format to allow collation and publication of national complaints statistics.

## **Maintaining Confidentiality**

Confidentiality is important in complaints handling. This includes maintaining the person's confidentiality and explaining to them the importance of confidentiality generally. We must always bear in mind legal requirements, for example, data protection legislation, as well as internal policies relating to confidentiality and the use of personal information.

## **Data Protection Legislation**

This complaints procedure may be used for complaints arising from rights given by the General Data Protection Regulation and the Data Protection Act (2018). If this route is chosen, the matter should be taken forward in conjunction with the Senior Information Risk Owner (SIRO), Caldicott Guardian or any other person nominated by the Chief Executive who takes decisions on what information is stored and how it is processed by TSH or other health service provider. Where a complainant is unhappy with the outcome of local resolution they should be advised to contact the UK Information Commissioner.

## **Dealing with Unacceptable Behaviour**

People may act out of character when distressed, which may mean that the circumstances surrounding a complaint may result in the person acting in an unacceptable way. People who have a history of challenging or inappropriate behaviour, or have difficulty expressing themselves, may still have a legitimate complaint. Behaviour should not be viewed as unacceptable just because the complainant is forceful or determined. Being persistent can be a positive advantage when pursuing a complaint. However, the actions of complainants who are angry, demanding or persistent may result in unreasonable demands on time and resources or unacceptable behaviour towards staff.

### *Aggressive or Abusive Behaviour*

Violence is not restricted to acts of aggression that may result in physical harm. It also includes behaviour or language (oral or written) that may cause staff to feel afraid, threatened or abused. Examples of behaviours grouped under this heading include threats, physical violence, personal verbal abuse, derogatory remarks and rudeness. Inflammatory statements and unsubstantiated allegations are also considered to be abusive behaviour. We expect our staff to be treated courteously and with respect. Violence or abuse towards staff is unacceptable. We understand the difference between aggression and anger and that anger felt by many complainants involves the subject matter of their complaint. However, it is unacceptable when anger escalates into aggression directed towards our staff.

### *Unreasonable Demands*

Complainants may make what we consider unreasonable demands on our staff through the amount of information they seek, the nature and scale of service they expect or the number of approaches they make. What amounts to unreasonable demands will always depend on the circumstances surrounding the behaviour and the seriousness of the issues raised by the complainant and will be considered on an individual basis. Examples of actions grouped under this heading include demanding responses within unreasonable timescales, insisting on seeing or speaking to a particular member of staff, continual phone calls/letters/emails, repeatedly changing the substance of the complaint and/or raising unrelated issues. Such demands are unacceptable and unreasonable if they start to impact substantially on staff, such as taking up an excessive amount of staff time to the disadvantage of other complainants or functions.

### *Unreasonable Persistence*

We recognise that some complainants will not or cannot accept that TSH is unable to assist them further or provide a level of service other than that already provided. Complainants may persist in disagreeing with the action and/or decision taken in relation to their complaint or make contact persistently about the same issue. Examples of actions grouped under this heading include persistent refusal to accept a decision made in relation to a complaint, persistent refusal to accept explanations relating to what the TSH can or cannot do, and continuing to pursue a complaint without presenting any new information. The way in which these complainants approach TSH may be entirely reasonable, however it is their persistent behaviour in continuing to do so that is not. We consider the actions of persistent complainants to be unacceptable when they take up what the TSH regards as being a disproportionate amount of time and resources.

### *The Local Context*

In defining what may be determined as unreasonable and/or unacceptable behaviour generated by TSH patients who share feedback/complaints, the Person Centred Improvement Lead / Complaints Manager will liaise with the Responsible Medical Officer, recording the details supporting this decision. The relevant Director will be appraised of the rationale and will assume responsibility for how this situation is managed. We acknowledge that fluctuating mental health presentation may impact on behaviour in this respect. It is therefore important that each issue is dealt with in isolation, as we would wish to support all patients to share their views where meaningful engagement is possible.

### *Managing Unacceptable Actions*

There are relatively few complainants whose actions we would consider unacceptable. How we aim to manage these actions depends on their nature and extent. If it adversely affects our ability to provide a service to others, we may need to restrict complainant contact in order to manage the unacceptable action. We aim to do this in a way wherever possible, that allows a complaint to progress to completion through our complaints process.

We may restrict personal contact, limiting interactions to telephone, letter (and e-mail for carers) or by any combination of these. We will however try to maintain at least one form of contact. In extreme situations, we will advise the complainant in writing that their name is on a 'no personal contact' list. This means that they must restrict contact with TSH to either written communication or through a third party.

The threat or use of physical violence, verbal abuse or harassment towards staff is likely to result in the ending of all direct contact with the complainant. Incidents may be reported to the police. This will always be the case if physical violence is used or threatened.

We do not deal with correspondence that is abusive or contains allegations that lack substantive evidence. When this happens the complainant will be advised that we consider their language offensive, unnecessary and unhelpful. They will be asked to cease the use of such language and will be advised that we will not respond to their correspondence if they do not stop. In this situation, we may require future contact to be through a third party.

TSH staff will terminate telephone calls if the caller is considered aggressive, abusive or offensive. The staff member taking the call has the right to make this decision, tell the caller that the behaviour is unacceptable and end the call if the behaviour does not stop. Where a complainant repeatedly phones, makes personal contact, sends irrelevant documents or raises the same issues, we may decide to:

- only take telephone calls at set times/days and only one member of staff deals with all calls and/or correspondence from the complainant;
- an appointment is required to see a named member of staff, or contact is in writing only;
- return documents to the complainant or, in extreme cases, advise the complainant that further irrelevant documents will be destroyed;
- take other action that we consider appropriate. We will, however, always tell the complainant what action we are taking and why.

Where a complainant continues to correspond on a wide range of issues and this action is considered excessive, the complainant will be advised that only a certain number of issues will be considered in a given period and asked to limit or focus their requests accordingly. Complainant action may be considered unreasonably persistent if all internal review mechanisms have been exhausted and the complainant continues to dispute the Chief Executives decision relating to the complaint. The complainant will be informed that no future phone calls will be accepted or meetings agreed regarding the complaint and future contact about this issue must be in writing. Future correspondence will be read and filed but only responded to if new information is provided.

#### *Deciding to Restrict Complainant Contact*

TSH staff who directly experience aggressive or abusive behaviour from a complainant have the authority to deal immediately with that behaviour in a manner they consider appropriate to the situation, in line with this policy. With the exception of immediate decisions taken at the time, decisions to restrict contact are only taken after careful consideration by the responsible Director. Wherever possible, the complainant will be given the opportunity to modify their behaviour before a decision is taken. Complainants will be informed in writing why a decision has been made, the restricted contact arrangements and, if relevant, the length of time the restrictions will be in place.

#### *Appealing a Decision to Restrict Contact*

A complainant can appeal a decision to restrict contact. A senior member of staff who was not involved in the original decision will consider the appeal with a Non-Executive Director. They will advise the complainant in writing that either the restricted contact arrangements still apply or whether a different course of action has been agreed.

#### *Recording and Reviewing a Decision to Restrict Contact*

We record all incidents of unacceptable behaviour by complainants. Where it is decided to restrict complainant contact, an entry noting this will be made in the relevant file. A decision to restrict contact may be reconsidered if the complainant demonstrates a more acceptable approach. The Complaints Officer reviews restricted contact arrangements on a regular basis.

## **Supporting the Complainant**

The Board are committed to ensuring that, as defined within the Equality Act (2010), all stakeholders have the right to equal access to our complaints handling procedure. Individually tailored care and treatment plans inform the need for support where required e.g. translator, interpreter, use of talking mats in terms of making reasonable adjustments where appropriate.

## **Patients' Advocacy Services (PAS)**

The PAS, based within the Hospital, is available to all patients. The PAS can be contacted by any patient via the telephone. The PAS provide a ward outreach service, in addition to drop in sessions held in the Skye Centre Atrium. The PAS promotes an awareness and understanding of the rights and responsibilities of patients and offer advice/support to patients who wish to share feedback, including complaints. Where patients are unable to express dissatisfaction themselves, the PAS will make a complaint on their behalf. All feedback resolved by PAS at stage 1 must be shared via [tsh.complaintsandfeedback@nhs.scot](mailto:tsh.complaintsandfeedback@nhs.scot). All stage 2 complaints received by the PAS should be directed to the Complaints Officer. This practice will ensure that thematic analysis of all feedback, including complaints, contributes to learning, which supports service improvement.

## **Patient Advice and Support Service (PASS)**

The Patient Rights Act provided for the establishment of the PASS who operates independently of the NHS, and provides free, confidential information, advice/support to anyone who uses the NHS. The service promotes awareness and understanding of the rights and responsibilities of patients and can support people who wish to give feedback or make a complaint. Further information can be found on the PASS web site: [www.patientadvicescotland.org.uk](http://www.patientadvicescotland.org.uk)

## **Time Limit for Making Complaints**

It is recognised that it is not always possible to make a complaint immediately. In clinical complaints, a complication or other issue may not become apparent for some time after the procedure. Similarly, the grief associated with the death of someone may make it difficult for their family to deal with a complaint in the period immediately after the death. Given the difficulties that the passage of time can make the timescale for accepting a complaint as set out in the regulations is within six months from the date on which the matter of the complaint comes to the person's notice, provided that this is also no later than 12 months after the date on which the matter of the complaint occurred.

The timescale for acceptance of a complaint may be extended if the Complaints Manager, in conjunction with the relevant Director, considers it would be reasonable in the circumstances. Where a decision is taken not to extend the timelines, a clear explanation of the basis for the decision should be provided to the person making the complaint, and the person should be advised that they may ask the SPSO to consider the decision.

**Format**

The State Hospitals Board recognises the need to ensure all stakeholders are supported to understand information about how services are delivered. Based on what is proportionate and reasonable, we can provide information / documents in alternative formats and are happy to discuss with you the most practical and cost effective format suitable for your needs. Some of the services we are able to access include interpretation, translation, large print, Braille, tape recorded material, sign language, use of plain English / images.

If you require information in another format, please contact the Person Centred Improvement Lead on 01555 842072.

**Review**

The review of this policy will be determined nationally.

## Appendix 1: Complaints

The following table gives examples of complaints that may be considered at the early resolution stage, and suggests possible actions to achieve resolution:

Complaint	Possible actions to achieve resolution
<p>The complaint relates to staff attitude. It was alleged that when asked to explain why access to the grounds had been delayed, the nurse was rude, insensitive to the patient's needs and did not explain the reason for the delay.</p>	<p>Thank the patient for bringing the complaint to your attention. Apologise, recognising that they feel the nurse did not respond appropriately to the enquiry. Make sure that you provide a full response to the patient's request for information about the reasons for delay.</p> <p>Explain that you will record the complaint and ensure that staff are made aware of the need to respond fully and appropriately. Discuss the complaint with appropriate staff, to understand the issue from their perspective. If and where appropriate, provide support to staff to respond appropriately.</p>
<p>The complaint relates to patient catering services. The patient is unhappy that, despite notifying nurses that he is a vegetarian, the alternative meal was not provided. He was advised that the kitchen was unable to provide one, and was offered a salad sandwich as an alternative.</p>	<p>Thank the patient for bringing the complaint to your attention. Apologise, acknowledging that there has been a failing, empathising with the patient.</p> <p>Explain the normal protocol for ensuring all dietary requirements are met, and the action that you will now take to ensure that a vegetarian meal is always provided for him.</p> <p>Thereafter, follow up with him to ensure that the situation has been satisfactorily resolved and his dietary needs are being appropriately met.</p>
<p>The complaint relates to property. The patient alleges that an item of clothing was removed from his bedroom, and is now missing.</p>	<p>Thank the patient for bringing the matter to your attention. Apologise, recognising the distress that the loss of the item has caused. Explain the action you will take to try and locate the item, and where appropriate, signpost to the process for claiming for lost property.</p>



## Appendix 2: Concerns

Examples of feedback that would be considered as concerns:

<b>Concern</b>	<b>Suggested action</b>
A patient said that his CPA Review letter was sent in an unsealed envelope, and he just wanted the Hospital to be aware of this.	Apologise to the patient, and explain that staff will be reminded to ensure that all letters are properly sealed before sending.
A patient suffers from a recurring problem with chest infections. This has been the case for several years. He is unhappy that the GP has refused to prescribe him another course of antibiotics.	The GP meets with the patient to understand the reasons for his dissatisfaction, and to explain the basis for the decision not to continually prescribe antibiotics.
A patient expressed concerns about changes to the breakfast cereal portion sizes. He states that patients were unaware of the change.	The Hospital recently changed the practice of supplying large boxes of cereal to individual boxed portion sizes to reduce waste, and to ensure value for money. This action supports common practice across all NHS hospitals. Meet with the Catering Manager to explain the process of engaging patients prior to the introduction of changes to existing practice.
A carer queried why some hubs have social events and others have none.	Contact Lead Nurses/SCNs to discuss opportunities to share this practice.

### Appendix 3: Feedback, Comments, Concerns or Complaints Assessment Matrix

The person bringing the issue to your attention may be very clear from the outset that they do not want to complain. If, however, the matter meets the definition of a complaint, the person should be offered an explanation that complaints provide valuable information that allow organisations to learn and improve services. Where it is not clear, after discussion with the person bringing the matter, whether it should be recorded as feedback, a comment, a complaint, or a concern, the matrix below may help you to arrive at the appropriate decision.

	Insignificant or None	Minor	Moderate	Significant or Certain
Your assessment of the rigour and extent of dissatisfaction expressed	Feedback or Comment	Concern	Concern	Complaint
The way in which the person raising the issue expresses their level of dissatisfaction	Feedback or Comment	Concern	Complaint	Complaint
Your assessment of the likely impact on patient care	Feedback or Comment	Concern or Complaint	Complaint	Complaint
Your assessment of the risks to the patient, patients or others	Feedback or Comment	Concern or Complaint	Complaint	Complaint
Your assessment of the risks to the NHS body	Feedback or Comment	Concern	Complaint	Complaint
The learning opportunities that may arise as a result of looking at the matter raised	Feedback or Comment	Concern	Complaint	Complaint

It is expected that you will use professional judgement in deciding whether an issue can be looked at as a 'Concern' or whether it is appropriate to handle the matter through the complaints handling procedure. Where an issue is looked at as a 'Concern' and the person raising the matter remains dissatisfied with your response, you must then investigate the matter as a complaint, at stage 2 of the complaints handling procedure.

#### Appendix 4: Who can submit a Complaint (ISD Descriptors)

<b>Code</b>	<b>Description</b>
Patient	Patient or former patient
Kin	Next of Kin
Partner	Partner
Parent	Parent
Child	Child
Sibling	Sibling
Relative	Other relative
Carer	Carer
Friend	Friend
Neighbour	Neighbour
Minister	Minister
GP	General Practitioner (GP)
Media	Media
Councillor	Local Councillor
Parliament	MP/MSP
Solicitor	Solicitor
Cab	Member of CAB (PASS worker)
Advocate	Advocate
Visitor	Visitor to the NHS
Public	Member of the public
Veteran	Person who has worked in the Armed Forces
Other	Other

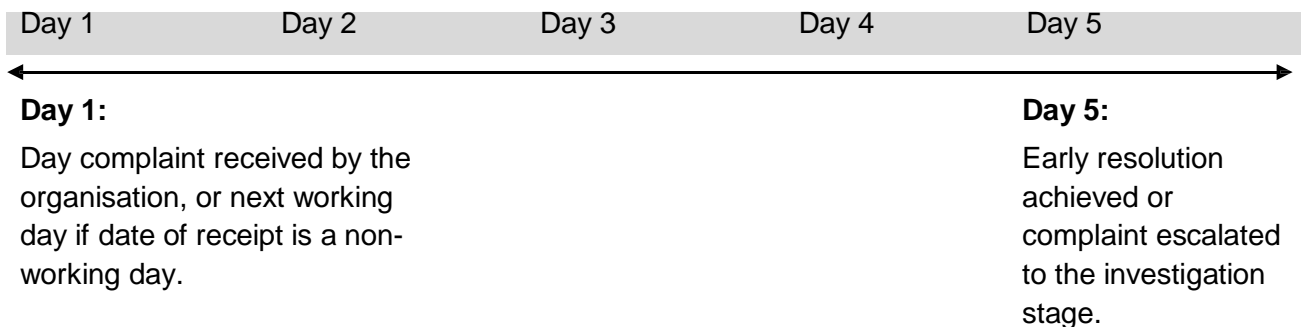
## Appendix 5: Timelines

### General

References to timelines throughout this policy relate to working days. When measuring performance against the required timelines, non-working days are not counted, e.g. weekends, public holidays and days of industrial action where the service has been interrupted.

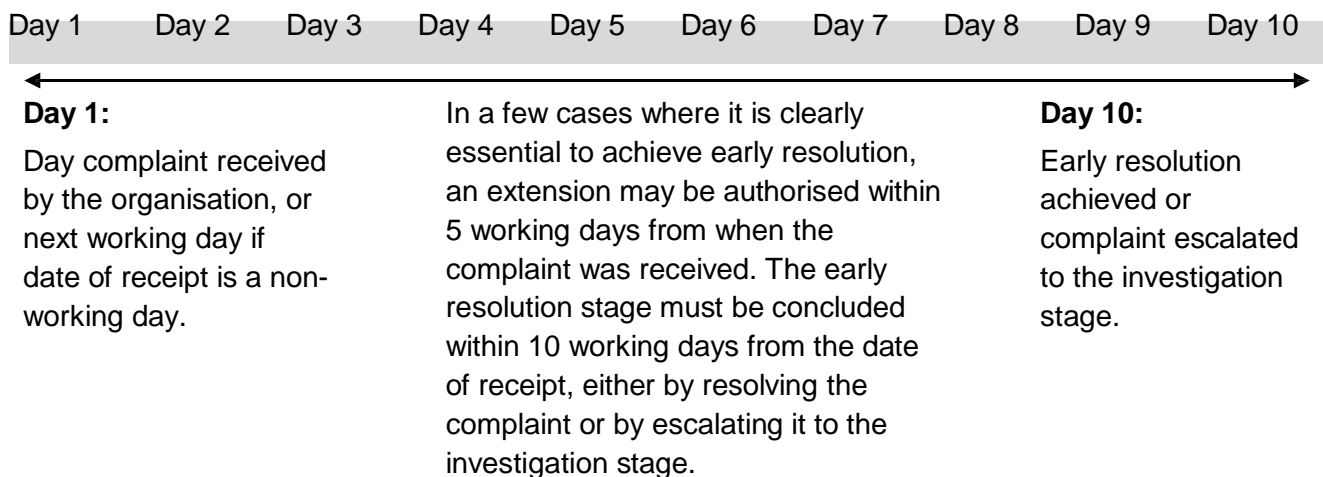
### Timelines at the Early Resolution stage (Stage 1)

You must aim to achieve early resolution within 5 working days. The day you receive the complaint is day 1. Where you receive it on a non-working day, for example at the weekend or on a public holiday, day 1 will be the next working day. In respect of complaints handling within TSH, the working day is considered to be Monday to Friday 8.30am-4.30pm.



### Extension to the 5-day timeline

If you have extended the timeline at the early resolution stage in line with the procedure, the revised timetable for the response must take no longer than 10 working days from the date of receiving the complaint.



## Transferring cases from Early Resolution to Investigation

If it is clear that early resolution has not resolved the matter, and the complainant wants to escalate the complaint to the investigation stage, the case must be allocated for investigation without delay. The aim is for this action to be taken on the same day that the complainant is advised this will be actioned.

## Timelines at Investigation (Stage 2)

A complaint may be considered at the investigation stage either:

- after attempted early resolution, or
- immediately on receipt if the matter appears to be sufficiently complex, serious or appropriate to merit a full investigation from the outset.

## Acknowledgement

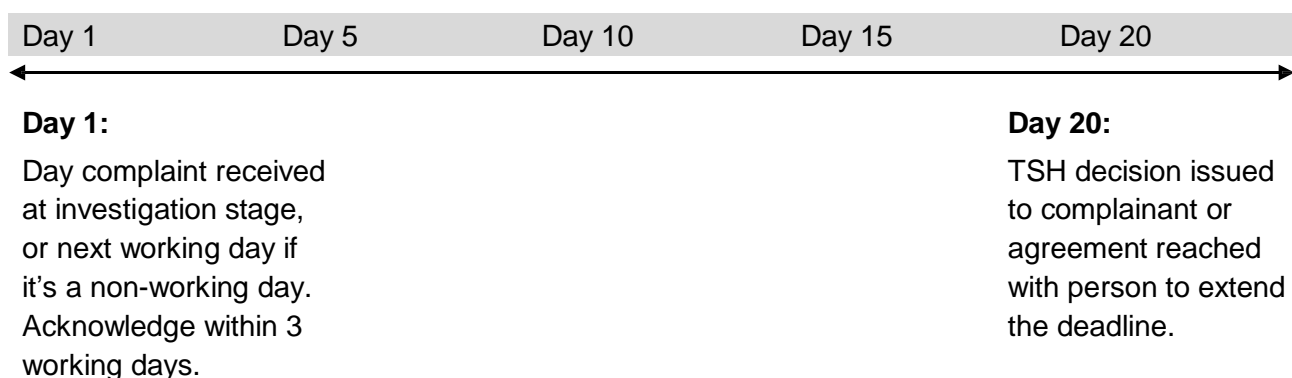
All complaints considered at Stage 2 the investigation stage must be acknowledged within **3 working days** of receipt. The date of receipt is:

- the day the case is transferred from the early stage to the investigation stage, where it is clear that the case requires investigation; or
- the day the complainant asks for an investigation following the decision at the early resolution; or
- the date the complaint is received, if sufficiently complex, serious or appropriate to merit a full investigation from the outset.

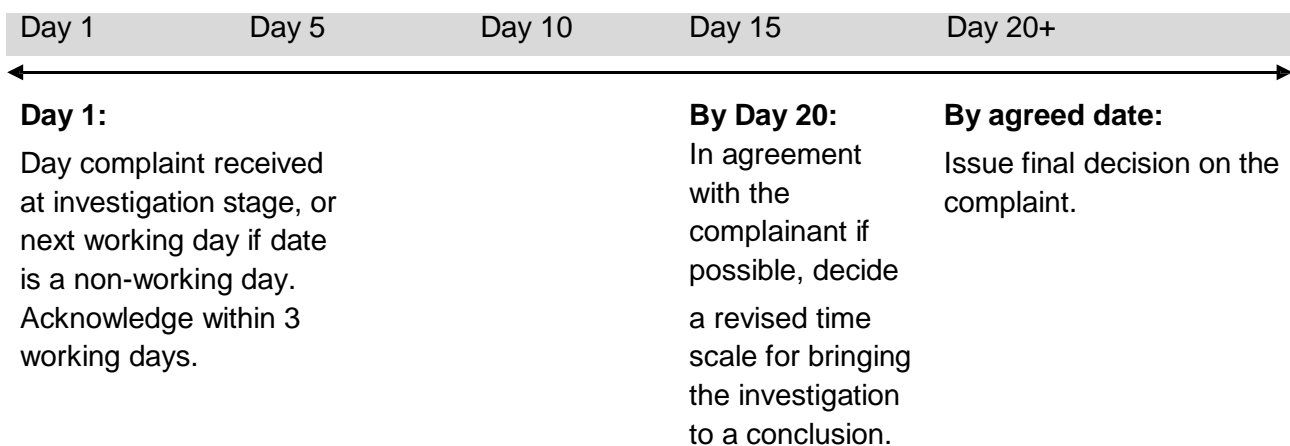
## Investigation

A response is required in full to the complaint within 20 working days of receiving it at the investigation stage. The 20 working day limit allows time for a thorough, proportionate and consistent investigation to arrive at a decision that is objective, evidence-based and fair. This means TSH has 20 working days to investigate the complaint, regardless of any time taken to consider it at the early resolution stage.

## Timelines

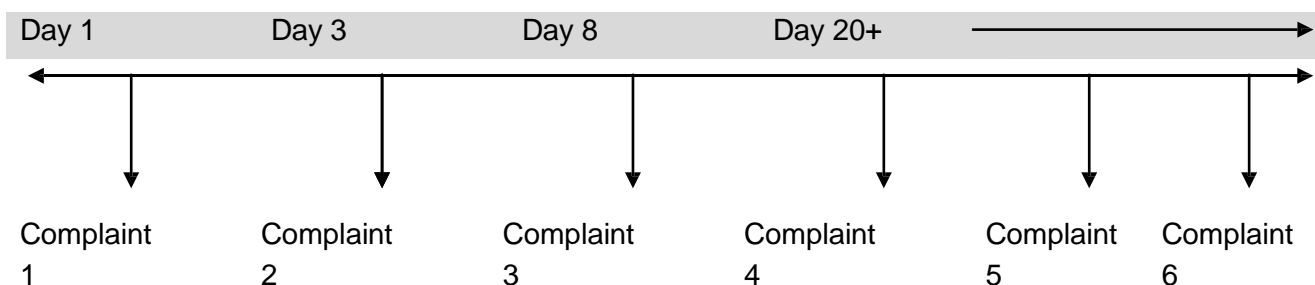


Exceptionally, the 20-day limit may require to be extended for a full response. If so, the rationale must be shared with the complainant, and agreement reached in respect of a revised timescale.



**Timeline examples**

The following illustration provides examples of the point at which consideration of a complaint is concluded, including the different stages and times at which a complaint may be resolved:



Complaint 1: a straightforward issue that may be resolved by an explanation at the initial point of contact and, where appropriate, an apology. Such a complaint can be resolved on day one.

Complaint 2: is also a straightforward matter requiring little or no investigation. In this example, resolution is reached at day three of the early resolution stage.

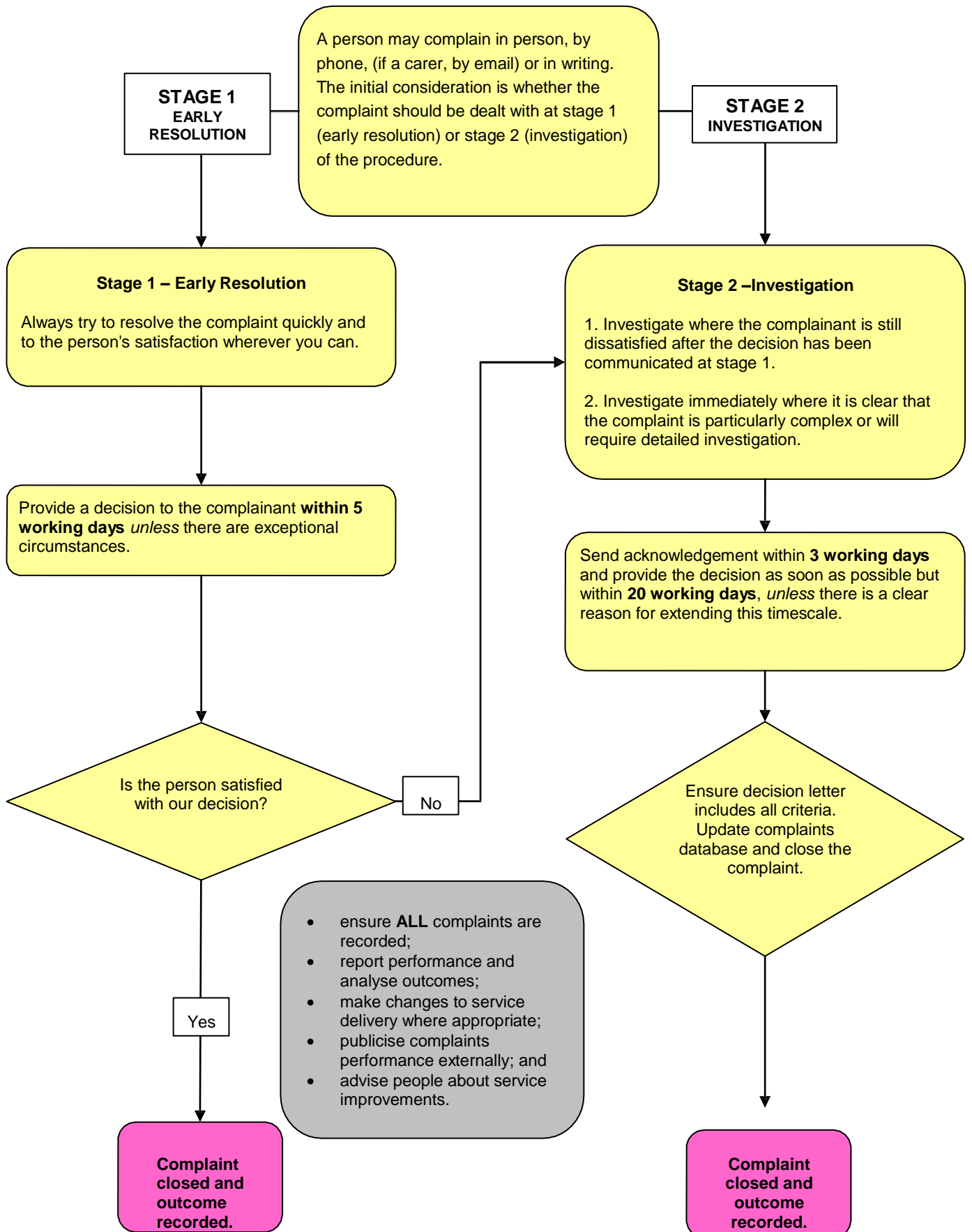
Complaint 3: refers to a complaint considered appropriate for early resolution; however, it was not resolved in the required timeline of 5 working days. An extension was authorised based on a clear and demonstrable expectation that the complaint would be satisfactorily resolved within a further 5 days. The complaint was resolved at the early resolution stage in a total of 8 days.

Complaint 4: was suitably complex or serious enough to pass to the investigation stage from the outset. Early resolution was not attempted as the decision was made to investigate the case immediately. A final decision was issued to the complainant within the 20-day limit.

Complaint 5: was considered at the early resolution stage, where an extension of 5 days was authorised. At the end of the early resolution stage the complainant was still dissatisfied. At their request, an investigation was conducted and the final response issued within 20 working days. Although the end-to-end timeline was 30 working days, the time targets for investigation were still met.

Complaint 6: was considered at both the early resolution stage and the investigation stage. The investigation was not completed within the 20-day limit, so a revised timescale was agreed with the complainant for concluding the investigation beyond the 20-day limit.

## Appendix 6: The NHS Complaints Handling Procedure Flowchart



## **Appendix 7: Complaints Key Performance Indicators**

### ***Indicator One: Learning from complaints***

A statement outlining any changes/improvements to services/procedures as a result of consideration of complaints or feedback, including matters arising under the duty of candour. This should form part of the quarterly 'Learning from Feedback' report and the annual external reporting process and should include:

- the use of a combination of quantitative and qualitative data to detail themes, trends and actions, together with a summary of information communicated to stakeholders. Reporting can also include complaints where an explanatory meeting was offered, and if this was accepted, the outcome of such meetings in terms of lessons learned, as well as the percentage of persons making the complaints who wished to have an explanatory meeting after the complaint was resolved;
- information about changes to service delivery as a result of feedback and complaints, including rationale;
- actions taken to reduce the risk of reoccurrence, as well as details of how this has been communicated across the Board;
- details of feedback, concerns and comments, including compliments, actions arising and evidence of how this data is used to improve service delivery.

### ***Indicator Two: Complaint Process Experience***

TSH should seek feedback from the complainant about their experience of the process, using the semi-structured questionnaire which incorporates national criteria, **Appendix 7**. Where required, support must be provided to enable the complainant to share their views. The Complaints Manager is responsible for analysing and acting on feedback shared. This information will form part of the 'Learning from Feedback' report.

### ***Indicator Three: Staff Awareness and Training***

A statement to report on levels of staff awareness and training. This may also cover those staff who have been trained in mediation (for example) and how many times mediation is used in any given year. Training on adverse events and duty of candour may also be included under this heading, as well as training on root cause analysis and human factors. Suggested headings for providing information under this indicator are:

- how often internal communications are issued relating to complaints and training and the take up of training after such communications;
- the number of staff, including managers, senior managers and Board members to complete mandatory or bespoke training;
- evidence of learning from complaints incorporated within senior manager objectives.

### ***Indicator Four: The Total number of Complaints Received***

A consistent benchmark report measuring the number of complaints received against the average patient population and other relevant specifics e.g., the number of pharmacy scripts written, the number of dental appointments.



**Indicator Five: Complaints Closed at each Stage**

The term “closed” refers to a complaint where the complainant has received a response and at the time no further action is required (regardless at which stage it is processed and whether any further escalation takes place). This indicator will report the number of complaints:

- closed at stage 1, as a % of all complaints;
- closed at stage 2, as a % of all complaints;
- closed at stage 2, after escalation, as a % of all complaints.

**Indicator Six: Complaints Upheld, Partially Upheld and Not Upheld (formal outcome)**

There is a requirement for a formal outcome to be recorded for each complaint, reported as:

- upheld at stage 1 as a % of all complaints closed at stage 1;
- not upheld at stage 1 as a % of all complaints closed at stage 1;
- partially upheld at stage 1 as a % of all complaints closed at stage 1;
- upheld at stage 2 as a % of all complaints closed at stage 2;
- not upheld at stage 2 as a % of all complaints closed at stage 2;
- partially upheld at stage 2 as a % of all complaints closed at stage 2;
- escalated and upheld at stage 2 as a % of all escalated complaints closed at stage 2;
- escalated and not upheld at stage 2 as a % of all escalated complaints closed at stage 2;
- escalated and partially upheld at stage 2 as % of all escalated complaints closed at stage 2.

**Indicator Seven: Average Response Times**

The average time in working days to close complaints at stage 1 and stage 2, reported as:

- the average time in working days to respond to complaints at stage 1
- the average time in working days to respond to complaints at stage 2
- the average time in working days to respond to complaints after escalation.

**Indicator Eight: Complaints Closed in full within the Timelines**

This indicator will report the number of complaints closed:

- at stage 1 within 5 working days, as a % of total number of stage 1 complaints;
- at stage 2 within 20 working days, as a % of total number of stage 2 complaints;
- escalated and closed within 20 working days, as % of total number of escalated stage 2 complaints.

**Indicator Nine: Number of cases where an Extension is authorised**

This indicator will report the number of complaints closed at:

- stage 1, where extension was authorised, as a % all complaints at stage 1;
- stage 2, where extension was authorised, as a % all complaints at stage 2.

## Appendix 8: Complaints Experience Feedback Form

We would value your feedback about what went well and where you think we can improve our complaints service. It would be really helpful if you could complete this form sharing your recent experience of making a complaint. If you need any support to share your views, please contact the Person Centred Improvement Team on the PCIT number on your phone list.

		Yes	No
1	Finding information about how to make a complaint was easy	<input type="checkbox"/>	<input type="checkbox"/>
2.	Making a complaint was easy	<input type="checkbox"/>	<input type="checkbox"/>
3	Staff were helpful, polite and professional	<input type="checkbox"/>	<input type="checkbox"/>
4	Staff listened and understood my complaint	<input type="checkbox"/>	<input type="checkbox"/>
5	Staff asked me what I expected to happen as a result of making the Complaint	<input type="checkbox"/>	<input type="checkbox"/>
6	Staff explained the complaints process to me	<input type="checkbox"/>	<input type="checkbox"/>
7	My complaint was handled promptly and I was kept informed of any Delays	<input type="checkbox"/>	<input type="checkbox"/>
8	All my issues were answered	<input type="checkbox"/>	<input type="checkbox"/>
9	I understood the final decision made about my complaint	<input type="checkbox"/>	<input type="checkbox"/>
10	The letter advising me of the decision was easy to read and Understandable	<input type="checkbox"/>	<input type="checkbox"/>
11	I raised concerns about how my complaint was handled	<input type="checkbox"/>	<input type="checkbox"/>
12	These concerns were dealt with professionally	<input type="checkbox"/>	<input type="checkbox"/>

You don't need to tell us your name, however, if you've experienced any issues during the complaints process which you've shared with us above, it would be very helpful for us to be able to contact you to get more information which would help us to improve the service. If you feel able to do this, please complete the details below:

Patients Name: ..... Ward: .....

### Anyone else who has used the complaints service

Name: ..... Contact telephone no: .....

*The Hospital uses this information to identify ways of improving the complaints service, which means your feedback is discussed by a number of different groups. We are required **to share** complaints feedback with external organisations e.g. Scottish Public Services Ombudsman, Scottish Health Council as part of annual reports, however, your name will not be included in any reports shared.*

## **Appendix 9: Consent**

Where someone other than the person to whom the complaint relates, or their authorised agent, (including MPs, MSPs and local Councillors), wishes to make a complaint on behalf of a person, we will ensure that any such complaint is handled in accordance with the common law duty of confidentiality and data protection legislation.

In such circumstances we will ascertain whether consent has been received from the complainant for the complaint to be made on their behalf. In the event that consent has not been received, we will take this into account when handling and responding to the complaint. In such circumstances we are likely to be constrained as to what we can do in terms of investigating, or in terms of the information which can be included in the report of such an investigation.

In circumstances where the person does not have the capacity to consent to the complaint being made on their behalf, it is likely to be relevant (for example) to check that the person making the complaint on the person's behalf has a legitimate interest in the complainant's welfare and that there is no conflict of interest. We must keep the patient on whose behalf the complaint is being made, informed of the progress of any investigation into the complaint, in so far as that is possible and appropriate.

### **Children and Young People**

TSH operates clear policies in relation to obtaining consent, including where the person who is the subject of a complaint is a child. These procedures should reflect any guidance or advice that may be issued by the Commissioner for Children and Young People in Scotland. The principles in that guidance will be equally relevant to local operation of this policy. A number of information leaflets for young people are available on NHS inform including *Confidentiality – Your Rights*.

Generally, a person with parental responsibility can pursue a complaint on behalf of a child where TSH or other health service provider judges that the child does not have sufficient understanding of what is involved. While in these circumstances, the child's consent is not required (nor is the consent of the other parent), it is considered good practice to explain the process to the child, in so far as this is reasonable and appropriate, and inform them that information from their health records may need to be disclosed to those investigating the complaint.

Where TSH or other health service provider judges that a child has sufficient maturity and understanding, the child can either pursue the complaint themselves or consent to it being pursued on their behalf by a parent or third party of their choice. TSH should obtain the child's, written consent, where possible, to information from their health records being released.

**Adults who cannot give consent**

Where a person is unable to give consent TSH or other health service provider can agree to investigate a complaint made on their behalf by a third party.

However, before doing so they should satisfy themselves that the third party has:

- no conflict of interest; and
- a legitimate interest in the person's welfare, e.g. a welfare attorney acting on behalf of an individual covered by the Adults with Incapacity Act (2000).

## Appendix 10: Consent Form



The State Hospital  
Carstairs  
Lanark  
ML11 8RP

### Consent to release patient information to a third party

I hereby authorise The State Hospital to disclose personal information relating to my healthcare to the person named below for the purposes of replying to a complaint.

#### Name and address of person to whom disclosure is to be made:

Name	
Address	

#### Patient's details:

Name	
Address	
Date of Birth	

I understand that to ensure a comprehensive response to my complaint, staff, who are bound by a code of confidentiality, may have to refer to my medical records, and I have no objection to this.

Signature	
Date	