

# Complaints Handling - Part 2: When to use the procedure

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## What is a complaint

1. The University of the Highlands and Islands partnership's definition of a complaint is: 'an expression of dissatisfaction by one or more members of the public about the University partnership's action or lack of action, or about the standard of service provided by or on behalf of the University partnership.
2. For clarity, where an employee also receives a service from the University partnership as a member of the public, they may complain about that service.
3. A complaint may relate to the following, but is not restricted to this list:
  - the admissions process
  - the disciplinary process
  - a request for a service or for information which has not been actioned or answered
  - wrong information about academic programmes or college services
  - the quality and availability of facilities and learning resource
  - accessibility of our buildings or services
  - failure or refusal to provide a service
  - inadequate quality or standard of service, or an unreasonable delay in providing a service
  - the quality of facilities or learning resources
  - dissatisfaction with one of our policies or its impact on the individual (although it is recognised that policy is set at the discretion of the institution)
  - failure to properly apply law, procedure or guidance when delivering services
  - failure to follow the appropriate administrative process
  - conduct, treatment by or attitude of a member of staff or contractor (except where there are arrangements in place for the contractor to handle the complaint themselves: see Complaints about contracted services); or
  - disagreement with a decision, (except where there is a statutory procedure for challenging that decision, or an established appeals process followed throughout the sector).
4. A complaint is not:
  - a request for information or an explanation of policy or practice
  - a disagreement with academic judgment
  - a concern about student conduct (see Complaints and student conduct procedures)
  - a routine first-time request for a service (see Complaints and service requests)
  - a request for compensation only (see Complaints and compensation claims)
  - an insurance claim
  - issues that are in court or have already been heard by a court or a tribunal (see Complaints and legal action)
  - disagreement with a decision where there is a statutory procedure for challenging that decision (such as for freedom of information and subject access requests), or an established appeals process followed throughout the sector (such as an appeal about an academic decision on assessment or admission – see Complaints and appeals)
  - a request for information under the Data Protection or Freedom of Information (Scotland) Acts, or the Environmental Information Regulations
  - a grievance by a staff member or a grievance relating to employment or staff recruitment

- a concern raised internally by a member of staff (which was not about a service they received, such as a whistleblowing concern)
  - concerns about services outwith the institution’s delegated responsibilities (e.g. conference and accommodation services to commercial clients)
  - a concern about a child or an adult’s safety
  - an attempt to reopen a previously concluded complaint or to have
  - a complaint reconsidered where we have already given our final decision
  - abuse or unsubstantiated allegations about our institution or staff where such actions would be covered by our Unreasonable complainant behaviour guidance; or
  - a concern about the actions or service of a different organisation, where we have no involvement in the issue (except where the other organisation is delivering services on our behalf: see Complaints about contracted services).
5. We will not treat these issues as complaints and will instead direct people to use the appropriate procedures. Some situations can involve a combination of issues, where some are complaints and others are not, and each situation should be assessed on a case-by- case basis.
6. If a matter is not a complaint, or not suitable to be handled under the CHP, we will explain this to the complainant, and tell them what (if any) action we will take, and why. See What if the CHP does not apply.

### Who can make a complaint?

7. Anyone who receives, requests, or is affected by our services can make a complaint.
8. This includes, although is not limited to:
- a student’s experience during their time at the institution (all referred to as ‘students’ through the remainder of this document);
  - members of the public, where they have a complaint about matters which are (or which were at the time the issue arose) the
  - responsibility of the institution; and
  - members of the public who are applying for admission to the institution and whose complaint does not relate to academic judgement.
9. The basic processes for investigating complaints are the same for students, members of the public and applicants to the institution – however appeals/ complaints regarding a decision not to admit an applicant will be dealt with through admissions procedures.
10. We also accept complaints from the representative of a person who is dissatisfied with our service. See Complaints by (or about) a third party.

### Supporting the complainant

11. Everyone has the right to equal access to our Complaints procedure. It is important to recognise the barriers that some people may face complaining. These may be physical, sensory, communication or language barriers, but can also include their anxieties and concerns. Complainants may need support to overcome these barriers.
12. We have legal duties to make our complaints service accessible under equalities and mental health legislation.

For example:

- the Equality Act (Scotland) 2010 – this gives people with a protected characteristic the right to reasonable adjustments to access our services (such as large print or BSL translations of information); and
  - the Mental Health (Care and Treatment) (Scotland) Act 2003 – this gives anyone with a ‘mental disorder’ (including mental health issues, learning difficulties, dementia and autism) a right to access independent advocacy. This must be delivered by independent organisations that only provide advocacy. They help people to know and understand their rights, make informed decisions and have a voice.
13. Examples of how we will meet our legal duties are:
- proactively checking whether members of the public who contact us require additional support to access our services
  - providing interpretation and/or translation services for British Sign Language users; and
  - helping complainants access independent advocacy (the Scottish Independent Advocacy Alliance website has information about local advocacy organisations throughout Scotland).
14. In addition to our legal duties, we will seek to ensure that we support vulnerable groups in accessing our complaints procedure. Actions that we may take include:
- helping vulnerable people identify when they might wish to make a complaint (for example, by training frontline staff who provide services to vulnerable groups)
  - helping complainants access independent support or advocacy to help them understand their rights and communicate their complaints (for example, through the Scottish Independent Advocacy Alliance or Citizen’s Advice Scotland); and
  - providing a neutral point of contact for complaints (where the relationship between complainants and frontline staff is significant and ongoing).
15. These lists are not exhaustive, and we must always take into account our commitment and responsibilities to equality and accessibility.

#### How complaints may be made

16. Complaints may be made verbally or in writing, including face-to-face, by phone, letter or email.
17. Where a complaint is made verbally, we will make a record of the key points of complaint raised.
18. Where a complaint issue is raised via a digital channel managed and controlled by the University partnership (for example an official Twitter address or Facebook page):
- we will normally respond by explaining that we do not normally take complaints on social media and telling the person how they can complain;
  - in exceptional circumstances, we may respond to very simple complaints on social media. This will normally only be appropriate where an issue is likely to affect a large number of people, and we can provide a very simple response (for example, an apology for the late cancellation of a class).
19. We may also become aware that an issue has been raised via a digital channel not controlled or managed by us (for example a YouTube video or post on a private Facebook group). In such cases we may respond, where we consider it appropriate, by telling the person how they can complain.

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

### Time limit for making complaints

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

### Particular circumstances

#### Complaints by (or about) a third party

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

#### Serious, high-risk or high-profile complaints

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

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30. We define potential high-risk or high-profile complaints as those that may:
- an allegation of corruption against an employee
  - a claim of dereliction of duty by an employee
  - a claim of personal injury that has incapacitated the customer
  - a potentially significant risk to the institution's operations
  - a claim of discrimination, with due regard to protected characteristics as set out in section 149(7) of the Equality Act 2010
  - an allegation of significant harm or abuse or where there is a suspicion that someone may suffer significant harm
  - serious service failure, for example major delays in providing, or repeated failures to provide, a service; or
  - significant and ongoing press interest
  - involve a death or terminal illness
  - involve serious service failure, for example major delays in service provision or repeated failures to provide a service
  - generate significant and on-going press interest
  - pose a serious operational risk to the institution; or
  - present issues of a highly sensitive nature.

#### Anonymous complaints

31. We value all complaints, including anonymous complaints, and will take action to consider them further wherever this is appropriate. Generally, we will consider anonymous complaints if there is enough information in the complaint to enable us to make further enquiries. Any decision not to pursue an anonymous complaint must be authorised by an appropriate manager.
32. If we pursue an anonymous complaint further, we will record it as an anonymous complaint together with any learning from the complaint and action taken.
33. If an anonymous complainant makes serious allegations, these should be dealt with in a timely manner under relevant procedures. This may not be the complaints procedure and could instead be relevant child protection, adult protection or disciplinary procedures.

#### What if the person does not want to complain?

34. If someone has expressed dissatisfaction in line with our definition of a complaint but does not want to complain, we will explain that complaints offer us the opportunity to improve services where things have gone wrong. We will encourage them to submit their complaint and allow us to handle it through the CHP. This will ensure they are updated on the action taken and get a response to their complaint.
35. If the person insists they do not wish to complain, we are not required to progress the complaint under this procedure. However, we should record the complaint as an anonymous complaint (including minimal information about the complaint, without any identifying information) to enable us to track trends and themes in complaints. Where the complaint is serious, or there is evidence of a problem with our services, we should also look into the matter to remedy this (and record any outcome).

#### Complaints involving more than one area or organisation

36. If a complaint relates to the actions of two or more departments / faculties / schools, we will tell the complainant who will take the lead in dealing with the complaint and explain that

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they will get only one response covering all issues raised. The nature of the complaint may also require parallel procedures to be initiated (such as academic appeal or disciplinary procedures). See Complaints and appeals.

37. If we receive a complaint about the service of another organisation or public service provider, but we have not been involved in the issue, the complainant should be advised to contact the appropriate organisation directly.
38. If a complaint relates to our service and the service of another organisation or public service provider, and we have a direct interest in the issue, we will handle the complaint about the University partnership through the CHP. If we need to contact an outside body about the complaint, we will be mindful of data protection. See Part 1: Maintaining confidentiality and data protection.
39. The 'joint-service' complaints may be about such things, for example:
  - a complaint made in relation to provision of third-party services, for example IT systems
  - a complaint made about a service that is contracted out, such as catering services; or
  - a complaint made to the institution about a student loan where the dissatisfaction relates to the service we have provided and the service the Student Awards Agency for Scotland has provided.
  - property maintenance, where the complainant's dissatisfaction relates to our service and that of an external facilities body
  - accommodation not directly under our ownership

#### Complaints involving more than one academic partner

40. If a complaint is received that involves more than one academic partner of the University partnership, we will tell the complainant who will take the lead in dealing with the complaint and explain that they will only get one response covering all issues raised.
41. When a complaint involving more than one academic partner is received, the complaint handlers in the academic partners involved will liaise to discuss the issue. In some cases, they may need additional support or facilitation provided by the University. If this is required, this support may include assigning a complaint investigator from the University itself. The University complaints handler will then conduct a complaints investigation via the CHP.

#### Complaints about contracted services

42. Where we use a contractor to deliver a service on our behalf, we recognise that we remain responsible and accountable for ensuring that the services provided meet the University partnership's standard (including in relation to complaints). We will either do so by:
  - ensuring the contractor complies with this procedure; or
  - ensuring the contractor has their own procedure in place, which fully meets the standards in this procedure. At the end of the investigation stage of any such complaints the contractor must ensure that the complainant is signposted to the SPSO.
43. We will confirm that service users are clearly informed of the process and understand how to complain. We will also ensure that there is appropriate provision for information sharing and governance oversight where required.
44. The University partnership has discretion to investigate complaints about organisations contracted to deliver services on its behalf even where the procedure has normally been delegated.

### Complaints about senior staff

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

### Complaints and other processes

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

### Complaints and appeals

47. In some cases, an issue may be raised as a complaint which should be considered under alternative arrangements (for example, an academic appeal or fitness to practise appeal), or vice versa. Complaints and appeals are handled under separate processes. It is not appropriate for the same issue to be considered under both procedures.
48. Where the complaint and appeal issues can be clearly distinguished, we will identify the points to be investigated as a complaint and progress those in line with this procedure. This will include confirming the points of complaint and outcomes sought. We will also identify and set out the issues of appeal.
49. In determining which process applies, we may need to clarify our approach with the complainant (for example, where the complainant is focussed solely on the appeal outcome, they may not wish to also pursue a complaint). However, we will not normally ask the complainant to resubmit issues they have already raised (for example, to reframe part of their appeal as a complaint).
50. We may also decide to complete consideration under one procedure before considering residual issues under another procedure (for example, we may delay consideration of any complaint until the academic appeal has been concluded, or vice versa). This would normally only be appropriate where it is difficult to distinguish which issues should be dealt with under which procedure.
51. In all cases, we will explain to the student which issues have been considered under which process, and signpost them to the appropriate independent review.

### Complaints and student conduct procedures

52. A concern about the conduct of another student is not a complaint and should be handled under the academic partner's student code of conduct procedures. However, the person may wish to complain about how the University partnership handled the situation (for example, where a teacher allowed a student's behaviour to disrupt a class or exam). Where the complaint is about our service, we will consider it under the CHP.

### Complaints and service requests

53. If someone asks the University partnership to do something (for example, provide a service or deal with a problem), and this is the first time they have contacted us, this would normally be a routine service request and not a complaint.
54. Service requests can lead to complaints, if the request is not handled promptly or the person is then dissatisfied with how we provide the service.

### Complaints and staff disciplinary or whistleblowing processes

55. If the issues raised in a complaint overlap with issues raised under a staff disciplinary or whistleblowing process, we still need to respond to the complaint.
56. Our response must be careful not to share confidential information (such as anything about the whistleblowing or disciplinary procedures, or outcomes for individual staff members). It should focus on whether the University partnership failed to meet our service standards and what we have done to improve things, in general terms.
57. Staff investigating such complaints will need to take extra care to ensure that:
  - we comply with all requirements of the CHP in relation to the complaint (as well as meeting the requirements of the other processes)
  - all complaint issues are addressed (sometimes issues can get missed if they are not also relevant to the overlapping process); and
  - we keep records of the investigation that can be made available to the SPSO if required. This can be problematic when the other process is confidential, because SPSO will normally require documentation of any correspondence and interviews to show how conclusions were reached. We will need to bear this in mind when planning any elements of the investigation that might overlap (for example, if staff are interviewed for the purposes of both the complaint and a disciplinary procedure, they should not be assured that any evidence given will be confidential, as it may be made available to the SPSO).
58. The SPSO's report [Making complaints work for everyone](#) has more information on supporting staff who are the subject of complaints.

### Complaints and compensation claims

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

### Complaints and legal action

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

### What to do if the CHP does not apply

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

64. Where a complainant continues to contact us about the same issue, we will explain that we have already given them our final response on the matter and signpost them to the SPSO. We may also consider whether we need to take action under our Unreasonable complainant behaviour guidance.
65. The SPSO has issued a template letter for explaining when the CHP does not apply. This has been contextualised to Perth College UHI and a copy is held in CHP Toolkit.