



## Office of the Commissioner for Public Appointments in Scotland

### OCPAS STAFF GUIDANCE

#### DEALING WITH COMPLAINTS ABOUT OCPAS OR ITS SUB-CONTRACTORS OR ABOUT DECISIONS MADE BY THE COMMISSIONER

**Please note that this web version of OCPAS guidance does not include working hyperlinks to the range of model documents listed. These model documents are for the use of OCPAS staff only.**

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Date of last review: 31/03/2010

Date to be reviewed by: 31/03/2011

#### General Points

Please note that the hyperlinks (underlined words in blue) will take you to the relevant model letter or file. It is recommended that you work from the electronic version of these desk instructions and use the hyperlinks to direct you to the appropriate draft letter. You can review a [summary of the list of model documents](#) linked to from these instructions. A [flowchart that outlines the key steps to be followed](#) is also available. The references on the chart match those below.

- All complaints are handled in the way set out in section 39 of the Commissioner's Code of Practice for Ministerial Appointments to Public Bodies in Scotland.
- These detailed instructions include paragraphs in italics – these are there to clarify a particular step in the process.
- There are two stages in the process, each with numbered steps.
- The model letters are indicators only and should always be adapted to suit the circumstances of the case.
- Letters from the Commissioner must be sent out on the Commissioner's letterhead. Letters from OCPAS staff must be sent out on OCPAS letterhead.
- OCPAS only accepts complaints in writing. If a member of staff has to clarify anything by telephone with a complainant or department, they must ensure that they [record your conversation](#) in writing for the file. The complaints log in Access will allow staff to record the complaint or enquiry regardless of how it comes to OCPAS (see below).
- This procedure is for handling complaints about OCPAS or for cases where a complainant is unhappy with a Commissioner's decision. This procedure should also be used if a complainant is unhappy about the way in which a freedom of information request has been handled (effectively, the complainant is unhappy about a Compliance Manager's decision). For complaints about a public appointment or a public appointment process, see the [desk instructions for handling these](#).
- All documents (letters, notes of telephone calls and so on) pertinent to a given complaint should be printed out and placed in the relevant file. Electronic copies of documents should similarly be saved and placed in the relevant folder:



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[Complaints About Commissioner's Decisions](#)

[Complaints About OCPAS Staff Services Or Sub-Contractors](#)

All records must be handled in accordance with OCPAS's record management policy.



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### Stage One – Receipt of Complaints and first responses.

1.1. If the complainant telephones the office (or visits the office in person to complain), [take a note of the conversation](#) and ensure that the complainant is aware that the complaint must be put in writing. If the complainant visits in person, and requires assistance in making the complaint in writing, a staff member should assist them in drafting their concerns for the case file.

- A model letter ([example letter 1](#)) is provided in the instructions folder for staff to write to the complainant where the complaint is about OCPAS staff or services (including OCPAS's sub-contractors). **This should be sent within three days of receipt of the complaint.** This letter should be adapted accordingly if the complaint is about the way in which a freedom of information request has been handled. The Commissioner's decision on whether the complaint is upheld and any proposals for remedial action should be sent to the complainant within four weeks (see stage two).
- A second model letter ([example letter 2](#)) is provided in the instructions folder for staff to write to the complainant, enclosing a copy of the [Route Map](#), where the complaint is about a decision made by the Commissioner. **This should be sent within three days of receipt of the complaint.**

*You should note that example letter 2 reflects the Commissioner's policy position – OCPAS will not enter into protracted discussion with the complainant about the outcome of a complaint investigation and will not reopen the investigation unless relevant new evidence comes to light.*

- A third model letter ([example letter 3](#)) is provided in the instructions folder for staff to write to the complainant where the complaint is about a decision made by the Commissioner and new evidence regarding the original complaint has been provided. **This should be sent within three days of receipt of the complaint.** A Commissioner's decision on whether to reopen an investigation should be sent to the complainant within three weeks (see stage two).
- 1.2. If the complaint is not within OCPAS remit, a polite letter ([example letter C](#)\*) referring the complainant to the relevant agency should be sent.
- The [Route Map](#) will give details of relevant agencies in Scotland that handle complaints and should be enclosed. If possible, staff should refer the complainant to the relevant agency in the body of the letter – the example letter shows how.
- 1.3. In every case, the complaint must be entered in the [Contacts and Enquiries Log](#). The log should be used to record simple enquiries – even if they aren't complaints that OCPAS can deal with.
- Instructions for making a new entry in the Access Log:

*When directed to the database, click on the 'Forms' button on the left and double click on*

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\* Example C is used by this procedure as well as by the procedure for dealing with complaints about public appointments. That is why it is not 'Example 3' instead of 'Example C'.



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*the Contacts and Enquiries Log form to open it. Click on the 'insert new record' button on the top left of the form. Tab from field to field in the form and complete the fields as appropriate.*

- 1.4. If it is more than a simple enquiry, that is, if it is a genuine complaint regarding OCPAS or a Commissioner's decision, also enter the complaint in the [Word Complaints Log](#).

### Stage Two – Complaints that OCPAS has agreed to investigate

- 2.1. If it's a new complaint, an entry should have been made in the [Word Complaints Log](#) and in the [Contacts and Enquiries Log](#) at Stage One. If this hasn't already been done:

- Instructions for making a new entry in the Access Log:

*When directed to the database, click on the 'Forms' button on the left and double click on the Contacts and Enquiries Log form to open it. Click on the 'insert new record' button on the top left of the form. Tab from field to field in the form and complete the fields as appropriate.*

If it's an existing complaint from Stage One, for example a complainant who has returned to OCPAS because they are unsatisfied with the Commissioner's response, update the [Contacts and Enquiries Log](#) and the [Word Complaints Log](#) instead of making a new entry.

- Instructions for updating a record in the Access Log:

*When directed to the database, click on the 'Forms' button on the left and double click on the Contacts and Enquiries Log form to open it. Then go to the first field and enter the reference number for the complaint. The complaint details will appear and you can go on to make changes to the existing record. If you don't know the reference number, try entering the complainant's surname in the appropriate field or running a report on complaints from the bottom of the form..*

- 2.2. For new complaints, make up a hard copy complaints folder, inserting [an investigation file cover and summary](#) and [an investigation file document list](#). If it's an existing complaint, update the case file.

- Staff should be familiar with the OCPAS [Methodology for investigating complaints or examining public appointments](#) as this gives guidance as to the following steps.

*The methodology is only very general guidance on how OCPAS conducts an investigation of a complaint (third party) or looks at an appointment process that the Commissioner has concerns about. These desk instructions are more specific and will help staff to comply with the methodology that OCPAS has adopted.*

***If this is a complaint about a decision taken by the Commissioner, go to 2.3. If this is a complaint about OCPAS staff, sub-contractors or services, go to 2.4.***

- 2.3. This step should take no longer than **three weeks** from the date of the letter issued at stage one step one. Analyse the complaint. If it is a complaint about a decision that the Commissioner has already taken and where new evidence has been provided, assess the



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value of the new evidence against the Commissioner's report and the case file. Decide whether the new evidence would have been material to the Commissioner's original decision. Draft your findings in the form of a [brief report for the Commissioner to review](#). If the Commissioner decides not to reopen the case, send a letter to the complainant explaining why ([see example 4](#)) and enclosing a copy of the [Route Map](#). If the Commissioner decides to reopen the case, send a letter to the complainant outlining what the Commissioner plans to do next ([see example 5](#)).

- ***Once a case has been reopened, this complaints procedure is exhausted and you should refer back to the [procedures for handling complaints about public appointments](#).***

2.4. In the first instance, complaints should be handled by the Compliance Manager (CM) but our policy is to ensure that the complaint is passed to a member of staff that is not the subject of the complaint. Therefore, if the complaint concerns the conduct of the CM, the complaint should be passed to the Development Manager. The complaint handling officer should initiate an investigation into the complaint in keeping with the OCPAS methodology. This will usually involve gathering evidence on the substance of the complaint either in writing or at interview. The complaint handling officer should write to any party that they believe should be interviewed outlining the investigation process ([see model letter 6](#)) and also to the member of staff, sub-contractor or consultant being complained about ([see model letter 7](#)). These letters should be adapted accordingly if the complaint is about the way in which a freedom of information request has been handled. Staff should note that mishandling of freedom of information requests, due to the complexity of the regulations, are more likely to engender additional training rather than the invocation of a disciplinary procedure.

- It is the complaint handling officer's responsibility to set up the initial stage of the investigation and interview/s with the parties to the complaint. She or he will agree a set of initial questions for this interview ([see example](#)) with the Commissioner first.

2.5. She or he will then draft a minute of all of the interviews ([see example](#)) and send these to each of the interviewed parties asking them to confirm the factual accuracy of the record. Update the [Word Complaints Log](#) and the [Contacts and Enquiries Log](#) following interviews with the parties to the complaint. Look at the evidence and proceed to update [the investigation file cover and summary](#) and [the investigation file document list](#) for the Commissioner's review.

2.6. Once the minutes of the interviews have been returned, with any revisions or comments, the investigating officer will look carefully at the evidence and decide whether the complaint should be upheld. A presentation of the findings, in the form of a report ([see example](#)) should be drafted for the Commissioner to see.

- The documents opened in step 3 should be updated - [the investigation file cover and summary](#) and [the investigation file document list](#).

2.7. The presentation of findings must be revised to reflect the Commissioner's wishes regarding style.



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- 2.8. Prepare a letter for the complainant from the Commissioner with her conclusions ([see example 8](#)). This letter should be adapted accordingly if the complaint is about the way in which a freedom of information request has been handled. If a concern about mishandling of such a request is upheld, staff should recommence the OCPAS freedom of information procedure as requested documents may have to be provided to the complainant that were originally withheld.
- 2.9. Prepare a letter for the member of staff or sub-contractor from the Commissioner with her conclusions. ([see example 9](#)) This letter should be adapted accordingly if the complaint is about the way in which a freedom of information request has been handled.
- 2.10. This is the end of the complaints process as one of the following has now occurred:
  - a) The complaint was not upheld and the file is closed
  - b) The complaint was upheld and the disciplinary procedure has been invoked or a training need was identified
  - c) The complaint was upheld and the Commissioner will review the contract or Service Level Agreement as appropriate with the sub contractor or consultant.
  - d) The complaint was upheld and the freedom of information policy was invoked.
- 2.11. Update the complaints logs and the case files and close them showing which of options a, b, c or d were followed.