



Office of the Commissioner for Public Appointments in Scotland

OCPAS STAFF GUIDANCE AND PROCEDURE *for* DEALING WITH COMPLAINTS ABOUT PUBLIC APPOINTMENTS AND INITIATING INVESTIGATIONS OR EXAMINATIONS

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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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 flowchart references match those below for stages in the process.

- 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 made in writing. If anything must be clarified by telephone with a complainant or directorate, staff will [record their conversation](#) in writing for the file. The contacts and enquiries log in Access will allow staff to record the complaint or enquiry regardless of how it comes to OCPAS (see below).
- The appointment process has to have been within the last twelve months. To check this, staff will ask the complainant, the directorate concerned and/or check with the OCPAS Office Manager who can refer to the allocations database.
- The Public Body has to be within OCPAS's remit (staff must check the [Schedule](#) if unsure).
- The subject of the complaint has to be within Commissioner's remit that is it must be about the appointment process and there must be evidence of non-compliance with one or more of the principles and practices outlined in the Code of Practice. A polite letter to complainants whose complaint is outwith OCPAS's remit is provided at stage one, step two below. Occasionally, complaints about the office itself or about a Commissioner's decision will be received. For these, refer to the [OCPAS procedure for dealing with such complaints](#).
- 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 in the Office Manager's office. Electronic copies of documents should similarly be saved and placed in the relevant NDPB folder:

[Economy](#)
[Environment](#)
[Justice and Communities](#)

[Education](#)
[Health](#)



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Stage One – Complaints not raised with the relevant sponsor directorate and Complaints outwith OCPAS remit.

- 1.1. If the complainant telephones the office (or visits the office in person to complain), staff will [take a note of the conversation](#) and ensure that the complainant is aware that they must complain to the directorate first and that their complaint must be put in writing. If the complainant has not made a complaint to the directorate and has written to OCPAS instead, staff should write to the directorate on their behalf. Before doing so, it is imperative that staff first obtain the permission of the complainant (a form has been created for this purpose). If the complaint is about the Office or the Commissioner, refer to OCPAS's internal procedure.
 - A model letter ([example letter A](#)) is provided in the instructions folder for staff to write to the complainant. **This should be sent within three days of receipt of the complaint and should be accompanied by the form (with the letter) and a return addressed and stamped envelope.**
 - Another model covering letter ([example letter B](#)) is provided for staff to write to the directorate when forwarding the complaint to it for action.
 - Once a member of staff has written to the directorate, that person must ensure that he or she has set a reminder to themselves for three weeks hence to ask the directorate if they have successfully dealt with the complaint.
- 1.2. If the complaint is not within OCPAS's remit, a polite letter ([example letter C](#)) referring the complainant to the relevant agency should be sent. When these letters are sent, the correspondence should be kept in the short term complaints folder and an entry made on the [covering sheet](#) for OCPAS's records. Because such complaints and OCPAS's responses are not relevant to the work of the office, they should be disposed of after two weeks in accordance with our records management policy.
 - The [Route Map](#) will give details of relevant agencies in Scotland that handle complaints and should be enclosed. If possible, the complainant should be referred to the relevant agency in the body of the letter – the example letter shows how.
- 1.3. In every case, the complaint or complaints enquiry will be entered in the [Contacts and Enquiries Log](#). The log will 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 the ContactsAndEnquiriesLogForm to open it. Click on the 'insert new record button'. 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 complaint that may be within OCPAS remit or that might require further action, also enter the complaint in the [Word Complaints Log](#).

Stage Two – Complaints that OCPAS may be able to deal with

- 2.1. Staff must ensure that the complaint has already been addressed by the directorate. If this is not made clear in the complainant's initial letter of complaint, OCPAS staff must contact them by [telephone](#) or post to clarify that it has before sending the letter.



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- If the complaint has not been addressed by the directorate, go back to [stage one](#) above.
- If the directorate has dealt with the complaint and the complainant is still dissatisfied, staff will acknowledge the complainant's letter within 3 days of receipt using the model acknowledgement letter ([example letter D](#)). This letter also seeks the complainant's permission for OCPAS to request files from the Scottish Government using a [consent form](#). The form and a stamped addressed envelop for OCPAS must therefore be enclosed. These will not be required if the relevant permission has already been obtained at stage 1.1 ([example letter A](#)).

2.2. If it's a new complaint, staff will enter the complaint in the [Word Complaints Log](#) and in the [Contacts and Enquiries Log](#).

- 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 ContactsAndEnquiriesLogForm to open it. Click on the 'insert new record button'. 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 that has been referred to the directorate and who has returned to OCPAS because they are unsatisfied with the response, staff will update the [Contacts and Enquiries 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 ContactsAndEnquiriesLogForm to open it. Then go to the appropriate field and enter the reference number for the complaint. The complaint details will appear and staff can make changes to the existing record. If the reference number isn't known, try entering the complainant's surname in the surname search field. You can also use the report facility at the bottom of the form to display all existing complaints and then make changes to the relevant record.

- The following steps should also be used for an examination that has been instigated by the Commissioner. In such cases, letters to the complainant clearly should not be sent and references to the complaint and complainant in the model letters will be changed to reflect the Commissioner's concerns about the process instead.

2.3. Staff will make up a hard copy complaints folder, inserting [an investigation file cover and summary](#) and [an investigation file document list](#). OCPAS has a naming convention for creating the reference of a complaint. The first part of the complaint reference is generated automatically by the Access Contacts and Enquiries Log form. This is the first field on the form which generates a Unique Reference Number (URN) for each contact with the office. The second part of the complaint reference is the year in which the complaint arises. So, for example, a complaint with a URN of 525 reported to OCPAS in 2007 will have a complaint reference of 525/2007.

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



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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. Commissioner's decisions that have been changed following the submission of new evidence and a review of a complaint should also be handled in the following manner. Example letters and the procedure must be adapted to reflect such circumstances.

- 2.4. Staff will analyse the complaint and ensure that there are no grounds for preventing OCPAS from dealing with it. If there are grounds for OCPAS not to complete a complaint investigation, such as a conflict of interest, the Commissioner will be asked to consider the use of external auditors. If external auditors are used, they will be expected to work to this procedure and OCPAS's methodology for investigations.
- 2.5. If OCPAS is going to handle the complaint, staff must contact the OCPAS Assessor involved in the appointment round to request their view of the complaint and add their comments to the case file.
 - If it appears that there has been an instance of material non compliance with the Code see the [guidance for dealing with these](#). Once the guidance has been reviewed, staff should continue as follows for complaints. There are detailed instructions on what can be considered to be an instance of material non-compliance in the [OCPAS Code of Practice folder](#). There are also [several examples of instances of potential non-compliance with the Code](#) that staff can refer to.
- 2.6. Staff will draft a letter (see examples E and F below) for the Commissioner's signature to send to the Complainant. The letter sets out what is known as the statement of complaint. All letters from the Commissioner will be printed on the Commissioner's letterhead. Where letters refer to the [OCPAS complaints leaflet](#) this should also be enclosed.
 - If the complainant has not yet given OCPAS written permission to access information held by the Scottish Government, staff must use [model letter E](#) and enclose a copy of the [consent form](#) and a stamped, addressed envelope.
 - If the complainant's written permission has been forwarded to the office, staff will use [model letter F](#).
 - Staff must adapt the letters to reflect the Commissioner's view as to whether or not there has been material non-compliance with the Code. The model letters give both options.
- 2.7. Staff will draft a letter to the directorate for the Commissioner's signature ([see model letter G](#)). The letter will be to the head of directorate if it appears to the Commissioner that there has been material non-compliance with the Code of Practice. Model letter G gives both options. The Commissioner will consider whether or not the appointment process concerned should be halted at this stage and during the following stages.
 - If it does not appear to the Commissioner that there has been an instance of material non-compliance, go to step 9, otherwise complete step 8.



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As a general rule of thumb, investigations of possible instances of material non-compliance with the code (serious breaches) will mean a fuller investigation involving interviews with members of directorate and potentially the relevant Minister and head of directorate too. Such investigations will normally culminate in a full written report (see step 13). The Commissioner will determine at the start if she believes that the breach may be material but may change her mind if, for example, a directorate doesn't cooperate with an investigation of what initially appears to be a non material breach. In such cases, this will usually mean going back to stage two, step 8. If in doubt, check with the Commissioner.

- 2.8. If it appears to the Commissioner that there has been material non-compliance with the Code of Practice a letter must also be sent by the Commissioner to the relevant Minister ([see model letter H](#) and the [template letter drafted by DLA Piper relating to reports to Parliament](#)) and another must be sent to the directorate to initiate stage one of the investigation by the Compliance Manager ([see model letter I](#)).
 - It is the Compliance Manager's responsibility to set up the initial stage of the investigation and interview with the member of directorate dealing with the complaint. He will agree a set of initial questions for this interview ([see example](#)) with the Commissioner first. The Commissioner will assign responsibility for setting up interview dates with the Minister and head of directorate.
- 2.9. Staff will draft a letter to the Permanent Secretary of the Scottish Government for the Commissioner's signature to tell him she is carrying out an investigation ([see model letter J](#)). The letter should make it clear if the Commissioner is investigating what appears to be an instance of material non-compliance with the Code (the example letter gives both options). As well as providing information on the complaint itself, directorates will be asked to provide information on the context in which the appointment is being made and to make the office aware of any additional information that it considers to be appropriate for consideration by the Commissioner (see model letters).
- 2.10. Staff will update the [Word Complaints Log](#) and the [Contacts and Enquiries Log](#) and wait for a response from the directorate. In the case of an ordinary complaint (no instance of material non-compliance), if the directorate advises that it cannot reply within OCPAS's deadline, staff will inform the complainant.
- 2.11. On receipt of the response from the directorate staff will 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.
 - In the case of an instance of material non compliance, following the Compliance Manager's interview with the directorate and the Commissioner's interviews with the head of directorate and Minister, staff will draft a minute of all of the interviews ([see example](#)) and send these to each interviewee with a covering e mail ([see example](#)) asking them to confirm the factual accuracy of the record.
- 2.12. Once the minutes of the interviews have been returned, with any revisions or comments, staff will look carefully at the evidence and decide whether a breach of the Code has occurred. Staff will draft a presentation of the findings for the Commissioner to see.
 - Staff will update the documents that were opened in step 3 to do this - [the investigation file cover and summary](#) and [the investigation file document list](#).



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- 2.13. Staff will update the complaints logs and, if for an investigation of an instance of material non-compliance, also produce a first draft report of the investigation for the Commissioner to review ([see example](#)).
- 2.14. The report must be revised to reflect the Commissioner's view. A copy of the report at this stage must then be sent to the Chair of the selection panel inviting their views ([see example](#)). Please note that the report must comply with OCPAS's publications scheme. We anonymise documents such that individuals are not named in our reports. However, we do provide detail on the name of the directorate and body concerned. Our publication scheme does not exclude the publication of information about a public appointments process which may lead to the identification of one or more of the people appointed as a result of that process.
- 2.15. Staff will prepare a letter for the complainant from the Commissioner with her conclusions ([see example K](#)).
- 2.16. Staff will prepare letters to the directorate ([see example L](#)) and the Permanent Secretary ([see example M](#)).
- If the investigation concerned an instance of material non-compliance with the code, staff will also draft a letter to the Minister for the Commissioner's signature ([see example N](#)).
 - The final draft report ([see example](#)) outlining her conclusions and any action she requires the directorate to undertake should also be produced and agreed with the Commissioner and included along with the letter sent to the Minister.
 - If the Commissioner has identified an instance of material non-compliance with the Code, staff will refer to the [guidance for dealing with these](#) as the Commissioner may have to revert to DLA Piper for advice on the final draft letters and report.
 - All reports are published on the OCPAS website once they have been provided to the relevant stakeholders.
- 2.17. In the case of material non-compliance the report must be provided to the Clerk of the Parliament (currently Paul Grice). If the Commissioner intends to do so, it is good practice to advise the Clerk of the Standards, Procedures and Public Appointments Committee to ensure that the committee can schedule a review of the report. [Full procedural guidance](#) is available on the OCPAS shared drive. Please note that OCPAS's annual report is assigned a report reference number before laying each year so it is important to check that you are using the correct reference number before submitting the report.
- 2.18. Staff will update the complaints logs and the case files and ensure that any debate by the Standards and Public Appointments Committee and the Parliament are included.