
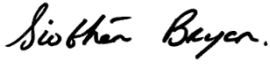


# Muiriosa Foundation

## **Title: Policy & Procedure for the Management of Complaints**

Issue No:	4	
No. of Pages (including front page)	120	
No. of Appendices:	15	
Prepared by:	Regional Directors	Date: December 2014
Implementation by:	Local Managers Persons in Charge Area Directors Complaints Officers	Date: January 2015
Reviewed by:		Date: January 2019
Most recent review	Regional Directors <i>No changes issued (No. 4)</i>	Date: February 2022
Next Review Due:		Date: February 2025
Reviewed by:		Date:
Reviewed by:		Date:
Agreed and Signed By:	 _____ Director of Nursing Sheila O'Neill	Date: 28.02.22
Agreed and Signed By:	 _____ Chief Executive Officer Siobhán Bryan	Date: 28.02.22



**Policy & Procedure**

**For the**

**Management of Complaints**

**in Muiriosa Foundation**

**Section 1 - POLICY**

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## Foreword Complaints Policy, Brendan Broderick, CEO, Wednesday, 20/08/2014

As your service provider, we are heavily dependent on your feedback as to whether we are getting it right, were we are getting it right, and where we are getting it wrong. If you have any concern or confusion, do not hesitate to pick up the phone or to make an appointment with the person best positioned to deal with your concern. We have stressed with all our staff members how important such contact is and have urged them to be as attentive and as thorough as possible in how they respond to such queries. Never think that we will view such queries from you as bothersome, irritating, interfering or inconsequential. Banish especially any thoughts or anxieties you might have that you might be viewed as “ungrateful” or “difficult” because of concerns you have raised. Service users and their families must not feel in any way beholden to the service provider because of the service they are receiving – or feel that there is a risk of jeopardising this service if the service user or family raises a question or complaint.

Our general advice to you is to **raise your concern at the most local level** – to the key worker, if one has been formally nominated, or to the immediate line-manager/Person-in-Charge. If you do not get satisfaction at this level, do not hesitate to move it to the next level.

If your efforts to resolve the matter locally and informally do not work to your satisfaction, please raise the matter with the Senior Manager. Alternatively, **you may wish to raise a formal complaint**. This policy document will explain to you how to go about making a complaint.

**N.B.** There will be some issues which are so serious or which require such immediate attention (or both) wherein formally logging a complaint may be the most appropriate means of bringing the matter to our attention.

Muiriosa Foundation are funded by the HSE to provide agreed services and support to people with intellectual disability. The formal agreement we sign with HSE each year is called a *Service Arrangement*. Within this *Service Arrangement* we report back regularly to HSE on the complaints we have received. This in turn enables HSE to monitor the extent to which we are providing the agreed services and the extent to which we are meeting our commitment to provide responsive and person-centred services.

**Signed:**        **Brendan Broderick**  
                    **CEO**

## **1.0 Key Messages**

- See a complaint as an opportunity to improve the service
- Do your best to resolve complaints to the satisfaction of the person
- Record complaints in the Complaints Log Book
- Seek advice from your line manager
- Report complaints of a serious nature immediately to your line manager
- Attend training sessions on 'Managing Complaints' and co-operate with investigations
- Follow the steps outlined in the manual

## 2.0 Introduction

It is the right of service users to comment, compliment or complain about any of the services provided by the Muiriosa Foundation. Responding effectively to comments, compliments and complaints received and learning from them is a key aspect to providing a high quality person centred service.

The Muiriosa Foundation aims to create an environment where service users feel comfortable and have the opportunity to provide feedback about services experienced and equally where staff feel comfortable about taking ownership of this process. All staff members have a responsibility to participate and take responsibility in managing consumer feedback. Openness and accountability are key elements in service provision and this is a philosophy adopted in relation to managing consumer feedback.

Where standards of care, treatment and practice are perceived to fall short of what is acceptable service users should have ease of access to an effective and fair system to deal with their complaint. The Muiriosa Foundation, in accordance with Part 9 of the Health Act 2004 and SI 365 of Health Act 2007 is committed to providing a system for the management of complaints that facilitates effective feedback from and to all service users.

It is important to acknowledge that both the service user and the service provider have an equal voice and are of equal importance in this process. Co-operation with the investigation of a complaint is essential and the use of a standardised approach is of benefit to complainants and to staff. The emphasis is on the swift and positive resolution of complaints at local level where possible. Sympathy and willingness to listen may be all that is necessary in some cases. The Muiriosa Foundation will provide staff with the necessary training and support to facilitate this process.

It is important to note that the Muiriosa Foundation Policy and Procedure for the management of consumer feedback is complementary to other existing procedures e.g. disciplinary procedures, grievance procedures, Trust in Care, Children First Guidelines etc. Matters appropriate for these other procedures will continue to be treated in the same manner and in accordance with these agreed procedures.

The procedures to support the implementation of this policy are detailed in Section 2 Procedure which accompanies this document.

The Management Executive Team is committed to appropriately managing any form of feedback, including compliments, and is responsible for developing systems to support such feedback.

### **3.0 Policy Statement**

The Muiriosa Foundation welcomes comments, compliments and complaints from service users, carers, visitors and the community about the services provided by the Muiriosa Foundation. Any compliments or complaints will be viewed as an opportunity to inform service provision, to continuously improve the quality of the services that is provided and to learn lessons so as to prevent similar occurrences in the future.

Complaints, criticisms or suggestions, whether oral or written will be taken seriously, handled appropriately and sensitively. The essential elements of the Muiriosa Foundation complaints system are those that ensure:

- coherent and comprehensive coverage;
- consistent approach;
- customers and service provider focus;
- fairness and impartiality;
- accessibility, flexibility and transparency;
- a quality and safe service;
- optimum leadership, culture and governance;
- the provision of just remedies;
- improvements in service as a result of learning from complaints from service users;

The Muiriosa Foundation commits to safeguarding the rights and dignity of the service user and staff members in the implementation of this policy and associated supporting documents.



## 4.0 Muiriosa Foundation Complaints Management Policy

### Policy

**It is the policy of the Muiriosa Foundation that the complaints management process will:**

- Address the needs of the consumer.
- Demonstrate consumer satisfaction with the way their complaint was handled.
- Uphold the rights and protect the dignity of staff.
- Improve public confidence in the service.
- Prevent, where possible, complaints from further escalation, which can be very time consuming and costly to resolve.
- Enable information about complaints to contribute to quality improvement and organisational learning.
- **The Muiriosa Foundation commits to**
  1. A complaints management process that is fair, transparent, non-prejudiced, non-recriminatory and impartial.
  2. A complaints process that ensures that complainants are not victimised and will not suffer any retribution from the service.
  3. Safeguarding the rights of the complainant and the staff member/service against whom the complaint was made to a fair and impartial investigation of the complaint.
- There will be designated Complaints Officers, in accordance with Part 9 of the Health Act 2004, to ensure the effective management of complaints.
- All staff in the Muiriosa Foundation will be enabled and empowered to appropriately handle complaints. Each individual staff member is accountable to the service users and has a responsibility to respond to concerns that they raise in an appropriate manner.
- Area Directors will take responsibility for complaints pertinent to their area of work. They must take a strong participatory role in the investigation of complaints about their area of responsibility and must ensure that they make improvements to their service where required as a result of the findings and recommendations arising from the complaint investigation. They must also ensure that their staff are appropriately supported throughout the process.
- Information will be widely available to service users and their families on the Complaints Management Process.
- Guidance will be available to staff for managing complaints. These documents will outline:
  - Roles and responsibilities
  - Processes for the management of complaints
  - Timeframes
  - Referral mechanisms
  - Review mechanisms
- Staff will be provided with the necessary skills and knowledge to appropriately manage any complaints they receive and to resolve minor complaints wherever possible at the first point of contact.
- Effective communication systems will be in place to ensure service users and service providers are aware of and understand the complaint management processes.
- The Muiriosa Foundation will not tolerate vexatious or malicious complaints and will put processes in place to deal with such complainants.
- Access to impartial, internal review and independent review mechanisms will be available to all complainants.
- While the complainant will be informed of their right to the review of their complaint by the Ombudsman/Ombudsman for Children, the Muiriosa Foundation will endeavour to resolve all complaints as close to the point of contact as possible.

- Complaints will be recorded appropriately to facilitate the effective tracking of complaints and the effective monitoring and evaluation of the complaints management process.
- Mechanisms are in place for regular evaluation to check that the process works from both the consumer's and organisation's perspective.
- Complaints will be collated in a manner that allows analysis to identify patterns and trends.
- There will be regular reporting to relevant senior management.
- Inherent to the complaints management process will be a process of organisational improvement.

### **Complaints Officers**

Complaints Officers will be designated by the Muiriosa Foundation for the purpose of dealing with complaints made to it in accordance with Part 9 of the Health Act 2004.

Within the Muiriosa Foundation the Person in Charge, in each designated centre, the local managers, the Area Directors and the lead clinician from each discipline are the designated complaint officers.

## 5.0 Scope

This policy and procedure relates to complaints made by consumers about services provided or omitted by the Muiriosa Foundation.

The scope of this document incorporates the Regulations set out in SI 367 of 2013 Health Act 2007 and may be amended in light of future developments in contractual agreements and legislative requirements.

Not all complaints received by the Muiriosa Foundation can be investigated using the procedures set out in this document. The Complaints Officer must, upon initial examination of the complaint, determine if the complaint or aspects of the complaint requires management under other established Policies, Procedures or Guidelines. Details of the relevant Policies, Procedures and Guidelines to be used in particular circumstances are included in: **Section 2: 7.4.6 Process upon completion of the Pre-Investigation.**

Table 1: Complaints that may be managed using the processes outlined in this Procedure Manual

Table 2: Complaints that do not fall within the remit of this Procedure Manual and must be referred to the appropriate personnel to be addressed using the appropriate Policy, Procedure, Guidelines or Legislation as detailed in this table.

## 6.0 Purpose

The purpose of this document is to detail the guiding principles, statutory requirements and the policy of the Muiriosa Foundation in relation to the management of consumer feedback including comments, compliments and complaints.

*The Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with disabilities) Regulations 2013 (Part 10) sets out the regulations on complaints that the provider is bound to abide by. The Health Act 2004 states that a **Complaint** means a complaint made about any action of the Executive, or a Service Provider that, it is claimed, does not accord with fair or sound administrative practice, and adversely affects the person by whom, or on whose behalf, the complaint is made.*

An action does not accord with fair and sound administrative practice if it is:

- taken without proper authority,
- taken on irrelevant grounds,
- the result of negligence or carelessness,
- based on erroneous or incomplete information,
- improperly discriminatory,
- based on undesirable administrative practice, or
- in any other respect contrary to fair or sound administration

All complaints will be received and considered by the Muiriosa Foundation however, the Health Act 2004 details a number of complaints that are not included under Part 9 of the Health Act. These complaints are in relation to:

- a matter that is or has been the subject of legal proceedings before a court or tribunal;
- a matter relating solely to the exercise of clinical judgment by a person acting on behalf of the Muiriosa Foundation
- an action taken by the Muiriosa Foundation solely on the advice of a person exercising clinical judgment
- a matter relating to the recruitment or appointment of an employee by the Muiriosa Foundation.
- a matter relating to or affecting the terms or conditions of a contract of employment that the Muiriosa Foundation proposes to enter into (includes terms or conditions relating to superannuation benefits, disciplinary procedures or grievance procedures)
- a matter relating to the Social Welfare Act;
- a matter that could be the subject of an appeal under section 60 of the Civil Registration Act 2004;
- a matter that could prejudice an investigation being undertaken by the Garda Síochána;
- a matter that has been brought before any other complaints procedure established under an enactment.

In the instance where complaints fall into the categories outlined, the Muiriosa Foundation will either proceed to investigate the complaint using the appropriate procedures as outlined in the procedure manual (Section 2) or will inform the complainant of the appropriate channels through which their complaint should be referred.

## **7.0 Statutory Framework**

This policy is guided by the following statutory requirements:

- Health Act 2004, Part 9
- Health Act 2004 (Complaints) Regulations 2006
- Health Act 1970
- Mental Health Act 2001
- Disabilities Act 2005
- Health and Social Care Professionals Act 2005
- Medical Practitioners Act 1978
- Nurses Act 1985
- Comhairle (Amendment) Bill 2004
- Freedom of Information Acts 1997, 2003 and 2014
- Data Protection Act 1988 and 2003
- Defamation Act 1961
- Ombudsman's Act 1980 – 1984
- Ombudsman for children Act, 2002
- Equal Status Acts 2000 – 2004
- Health and Safety at Work Act 2005
- Misuse of Drugs Act, 1977.
- Health Act 2007 SI No 367

## 8.0 Definition

**Clinical Judgement:** The Health Act 2004 defines Clinical Judgement as being “*a decision made or opinion formed in connection with the diagnosis, care or treatment of a patient*”.

**Close Relative:** Section 45 of the Health Act 2004 defines “Close Relative” as a person who:

- Is a parent, guardian, son, daughter or spouse of the other person, or
- Is cohabiting with the other person.

**Complaint:** The Health Act 2004 defines a complaint as follows:

“**A Complaint** means a complaint made about any action of the Executive, or a Service Provider (see definition below) that, it is claimed, does not accord with fair or sound administrative practice, and adversely affects the person by whom, or on whose behalf, the complaint is made”.

In the Health Act 2004 **Action** is defined as:

“..anything done or omitted to be done by the Executive, or by a Service Provider in connection with the provision of a health or personal social service that is the subject of an arrangement under Section 38 of the Act, or a service in respect of which assistance given under Section 39 of the Act”

**Complainant:** Person(s) making the complaint. Persons entitled to complain are detailed in the Procedure Manual for the Management of Complaints in the HSE.

**Complaints Officer:** A person designated by the HSE for the purpose of dealing with complaints made to it in accordance with procedures established under section 49 (1) of the Health Act 2004 or a person designated by a Service Provider with whom the HSE has an arrangement under section 38 of the Health Act 2004 or given assistance under section 39 of the Health Act 2004.

**Malicious:** Spiteful, intentionally destructive, hateful, nasty, cruel.

**Review Process:** A Review Process for complaints is one which gives the complainant an opportunity to have the recommendations made after the investigation of their complaint reviewed either internally by Review Officers or externally by the Ombudsman or Ombudsman for Children.

**Service Provider (external to HSE)** Part 7, Section 38 of the Health Act 2004 defines a Service Provider as a person with whom the Executive enters into an arrangement for the provision of a health or personal social service on behalf of the Executive, e.g. Nursing Homes, non-statutory Residential/Respite Homes/Centres etc.

**38. (1)** *The Executive may, subject to its available resources and any directions issued by the Minister under section 10, enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of a health or personal social service by that person on behalf of the Executive.*

Part 7, Section 39 of the Health Act 2004 refers to any person or any body that provides or proposes to provide a service similar or ancillary to a service that the Executive may provide, and to whom the Executive has given, or proposes to give, assistance.

Assistance is defined in Section 39 as including:

- *contributing to the expenses incurred by the person or the body*
- *permitting the use by the person or the body of premises maintained by the Executive, and where requisite, executing alterations and repairs and supplying furniture and fittings for such premises providing premises (with all requisite furniture and fittings) for use by the body or the person*

**Vexatious:** Troublesome, disagreeable, upsetting, worrisome

## 9.0 Eligibility of Complainant to make Complaint

- The Complaints Officer cannot investigate the complaint if, in accordance with Section 46, Part 9 of the Health Act 2004, the person who made the complaint is not entitled to do so.
- In accordance with Section 46, Part 9 of the Health Act 2004, the following are entitled to make a complaint
  - Individuals who are receiving or have received health care services.
  - Individuals who are seeking or have sought services from the HSE (**For the purpose of this policy both statements above relate to services provided by Muiriosa Foundation**)
- If a person is entitled to make a complaint but is unable to do so because of age, illness or disability, the complaint may be made on that person's behalf by:
  - a close relative or carer of the person,
  - any person who, by law or by appointment of a court, has the care of the affairs of that person,
  - any legal representative of the person,
  - any other person with the consent of the person, or
  - any other person who is appointed as prescribed in the regulations.
- If a person who would otherwise have been entitled to make a complaint is deceased, a complaint may be made by a person who, at the time of the action in relation to which the complaint is made, was a close relative, or carer of that person. A close relative is defined in Section 45 of the Health Act, 2004 as being a parent, guardian, son, daughter, spouse or someone who is cohabiting with the person on whose behalf the complaint is being made.

## 10.0 Grounds of Complaint

In order to investigate the complaint, the Complaints Officer must determine if the complaint discloses a ground of complaint provided for in Part 9, section 46 of the Health Act 2004 and detailed as follows:

- A complaint can be made about any action of the “*Muiriosa Foundation*” that:
  - it is claimed, does not accord with fair and sound administrative practice, and
  - adversely affects or affected that person
- As defined in the Health Act 2004, an action does not accord with fair and sound administrative practice if it is:
  - taken without proper authority,
  - taken on irrelevant grounds,
  - the result of negligence or carelessness,
  - based on erroneous or incomplete information,
  - improperly discriminatory,
  - based on undesirable administrative practice, or
  - in any other respect contrary to fair or sound administration.

## **11.0 Receiving a Complaint**

### **11.1 Who can receive a complaint made to the Muiriosa Foundation?**

A complaint may be received by any member of Muiriosa Foundation staff who must then determine the most appropriate process for dealing with the complaint.

All Muiriosa Foundation staff have a responsibility to accept any complaint received by them and to endeavour to manage and resolve the complaint at the point of contact or, where more appropriate, to refer the complaint to the Complaints Officer for management in line with this procedure.

A complaint may also be made directly to a designated Complaints Officer.

### **11.2 How can a complaint be made to the Muiriosa Foundation?**

#### **11.2.1 General Process**

- The Muiriosa Foundation will be flexible in receiving complaints. Complaints may be made to the Muiriosa Foundation either verbally or in written format.
- Complaints may also be made electronically by Email.
- Complaints that may be resolved at the point of contact may be made verbally, face to face or by telephone.
- Complaints may also be made by completing the Complaints, Comments and Compliments form.
- If the complaint cannot be resolved at the point of contact and must be investigated, due to the difficulty in accurately interpreting the facts of a complaint made by phone, the complainant must be encouraged to make the complaint in writing or electronically.
- Staff members must be sensitive to complainants who may have poor literacy and/or language skills and must provide assistance and support where required to enable the effective recording of the complaint.
- Complainants must be allowed the flexibility to lodge a complaint with any staff member or with the Complaints Officer.
- Communication strategies for local services must ensure that all users of the service are aware of all of the methods by which they can make a complaint.
- Complaint forms, websites, literature etc must be highly visible, accessible, easy to use and as far as possible suitable for all users of the service.
- Each service will adapt one of the samples outlined in Appendices 15a or 15b for their local service and insure it is displayed in a prominent place in each location.
- The person-in-charge and keyworkers must strive to ensure that each service user knows 'how to make a complaint'

#### **11.2.2 Complaints about a named staff member**

Where a complaint made against a named staff member is not resolved at the point of contact, it must be put in writing and signed by the party making the complaint giving specific details such as dates and locations in order to allow the Complaints Officer to check the veracity of the complaint.



Where a complaint is made about a staff member and the complainant does not provide contact details to enable the validation of the complaint, the complaint will not be investigated in the interest of procedural fairness.

### **11.3 Timeframes involved once a complaint is received.**

Every effort should be made to resolve a verbal complaint immediately or within 24 hours of receiving the verbal complaint if it is deemed appropriate to manage the complaint, with a view to resolution, at the first point of contact.

### **11.4 Time limits for making a complaint**

**The Complaints Officer must determine if the complaint meets the timeframes as set out in Section 47, Part 9 of the Health Act 2004 which requires the complaint to be made within 12 months:**

- of the date of the action giving rise to the complaint; or
- of the complainant becoming aware of the action giving rise to the complaint.

**A Complaints Officer may extend the time limit for making a complaint if in the opinion of the Complaints Officer special circumstances make it appropriate to do so. These special circumstances include but are not exclusive to the following:**

- if the complainant is ill or bereaved;
- if the new relevant, significant and verifiable information relating to the action becomes available to the complainant;
- if it is considered in the public interest to investigate the complaint;
- if the complaint concerns an issue of such seriousness that it cannot be ignored;
- diminished capacity of the service user at the time of the experience e.g. mental health, critical/ long-term illness;
- where extensive support was required to make the complaint and this took longer than 12 months; or
- if the complainant was living abroad and unable to make the complaint within the 12 month timeframe.

Where reasons other than the above are provided by the complainant for making a complaint after the 12 month period, the Complaints Officer will make a decision as to whether or not to extend the timeframe after consultation with the Regional Director.

### **Decision to extend/not extend the 12 month timeframe**

Where a decision has been made to either extend or not to extend the 12 month timeframe, the Complaints Officer will inform the complainant within **5 working days** of the decision having being made.

Where the decision has been made by the Complaints Officer not to extend the 12 month timeframe, the complainant may request a review of this decision to the Regional Director.

## 11.5 Additional Pre-investigation Criteria

As part of the pre-investigation process, the Complaints Officer must determine that:

- the subject matter of the complaint is not trivial,
- the complaint is not vexatious,
- the complaint is made in good faith, and
- the complaint has **not** already been resolved.

Where the above criteria is not met, either during the pre-investigation or the investigation, the Complaints Officer may decide not to investigate or further investigate the complaint.

## 12.0 Advocacy

1. All complainants have a right to appoint an advocate to assist them in making their complaint and to support them in any subsequent processes in the management of that complaint.
2. The National Advocacy Service (NAS) was set up to provide independent, representative advocacy services for people with disabilities. It is organised and managed on a regional basis by the Boards of five Citizens Information Services and is supported by the Citizens Information Board. People with disabilities may get in touch with the advocacy service directly. Enquiries from family, friends or services on behalf of people who may be unable to make a request for support from the NAS are also welcomed.
3. The National Advocacy Service for People with Disabilities (NAS) is available to all individuals using the service (App 14) (Details are available in every location throughout the services).
4. Staff must ensure that each Individual has access to National Advocacy Services for the purposes of making a complaint (App 14)
5. A staff member or a trusted person may also be an advocate for service users wishing to make a complaint if it is possible to do so within the principles of advocacy as listed below. The Citizen Information Board (2005) outlines the principles of advocacy as:
  - Empowerment of the person where possible
  - Respect for the person and his/her wishes
  - Acting in the person's best interest
  - Acting independently
  - Maintaining confidentiality
  - Acting with diligence and competence
- Before deciding to advocate on behalf of a complainant, staff must ensure that they are in a position to advocate impartially and fairly.
- Staff acting as advocates should have no previous involvement in the actions complained of, or in the examination/investigation of the complaint.
- Staff should not feel compelled to act as an advocate where they do not feel competent or supported to do so and must ensure that they direct the service user to appropriate advocacy supports.
- Any form of advocacy used must be agreeable to both the complainant and the Muiriosa Foundation.

## **13.0 Roles and Responsibilities**

### **13.1 Role of the CEO/Management Executive Team**

It is the responsibility of the CEO and Management Executive Team:

- To ensure that a comprehensive system for the management of complaints is in place and being implemented in the Service.
- To ensure that appropriate personnel are appointed throughout the service to effectively manage complaints including the appointing of Complaints Officers
- To ensure that the service is compliant with Part 9 of the Health Act 2004 and SI 367 of 2013.
- To ensure that all Managers and staff are aware of and comply with the complaints management policy and procedures.
- To ensure that there is effective monitoring and evaluation of the complaints system on an agreed routine basis.
- To ensure that organisational improvements are implemented in response to complaints received as far as is reasonably practicable and in line with the requirements of Part 7 of the Health Act 2004
- To ensure an effective communication process is in place to inform the consumer/service user of the complaints management processes.
- To ensure an effective process for the monitoring and evaluation of complaints in the service and to ensure this information is communicated throughout the service.
- To ensure that appropriate reporting systems are in place between the service and the HSE.
- To prepare a general report on complaints and reviews for inclusion in the annual report to the HSE.

### **13.2 Role of Complaints Officers**

#### **Statutory roles and responsibilities**

- Identify non-excluded matter of complaint and investigate.
- Inform relevant parties of decision to extend or not extend time frame.
- To find resolution of the complaint using any necessary tools such as mediation where appropriate and practicable, endeavour to resolve the complaint with the consent of both parties, using approaches such as mediation.
- Investigate and conclude within 30 working days or inform complainant of delay and update every 20 days.
- Request documents and communicate with such persons to assist with investigation of the complaint.
- If findings in the report adversely affect a person - provide the opportunity for their response
- May make recommendations.
- Provide Complainant, Area Director and Regional Director with a report of the complaint.
- Where a complaint is then withdrawn the Complaints Officer may bring to the attention of the Regional Director to determine if investigation should continue.

#### **Best practice**

- Ensure timeliness, quality and consistency in complaints management
- Acknowledge a complaint being received by or assigned to him/her within 5 working days.
- Conduct a pre-investigation of the complaint to determine the validity of the complaint in accordance with section 50 of the Health Act, 2004.

- Determine if a complaint falls within the scope of this Standard Operating Procedure or if it requires management under alternative processes.
- Alert the Regional Director and the CEO to possible major and catastrophic complaints as they arise.
- Prepare a report at the conclusion of the investigation or at any time during the investigation if requested by the Regional Director/CEO

#### **Communication**

- Ensure that consumer-friendly information on how to make a complaint is widely available throughout service locations.

#### **Development**

- Ensure that the standardised service procedures for complaint management are being implemented and adhered to in their area of responsibility.
- Monitor the implementation of the complaints management procedures.
- Ensure that the rights and the legitimate interests of service users, families and service staff are being protected in the implementation of the Muiriosa Foundation Complaints Management Policy and associated procedures.

#### **Supporting staff and service providers**

- Ensure that all Managers and staff within the service are supported to effectively manage complaints at the first point of contact.
- Support the implementation of the complaints management process.
- Co-ordinate education and training for staff in complaints handling

#### **Monitoring, evaluation and reporting**

- Ensure that standardised letters, forms etc are being used locally.
- Determine the overall effectiveness of the complaints management procedures within their area of responsibility
- Participate in the evaluation of service users' perception of the complaints management process.
- Co-ordinate the collection of complaints data from all locations and to record on the Muiriosa Foundation Complaints Reporting Template as Appendix 12
- Submit monthly reports to the CEO via the Muiriosa Foundation Complaints Reporting Template, App 12.

#### **Organisational learning**

- Facilitate organisational improvement and learning through strong linkages with senior staff in the organisation.

### **13.3 Role of Internal Review Officers**

The role of the internal review officer will be held by the Regional Director

Upon an application for review being made, the Regional Director will review the recommendations made by Complaints Officers after the investigation of a complaint. It is the role of the Internal Review Officer to:

- Determine the appropriateness of the recommendations by reviewing the processes used to investigate the complaint and having regard to all aspects of the complaint and its investigation.
- Accept the original recommendation or make another recommendation if he or she determines it appropriate to do so.

- Prepare a report on the review at the conclusion of the review, forward it to the complainant, the complaints officer who investigated the complaint and the CEO.

### **13.4 Role of Managers**

It is the role of all Muiriosa Foundation Senior/ Local Managers/Person in Charge to:

- Be aware of and to implement the procedures outlined in this document and the regulation outlined in SI 367 of the Health Act 2007 (Appendix 16)
- Report on the complaints management process within their area to the Regional Director.
- Hold responsibility for, and have an understanding of, effective complaints management and to effectively communicate these processes to their staff.
- Ensure that staff receive training, education and support in the complaints handling processes.
- To co-operate with and take a pro-active approach in the local resolution/investigation of complaints that involves their service.
- Liaise with Complaints Officers in the resolution/investigation and reporting of complaints
- Provide evidence that lessons have been learned and improvements have been made to their service as a result of complaints.
- Ensure that they delegate the above functions to a named staff member who will fulfil these roles in their absence.
- Complete the Organisation Complaints Reporting Template (App 12) on a monthly basis.
- Develop a local guide on “making a complaint” (Sample outlined in App 15a & 15b) in line with service users age and nature of his or her disability.
- Ensure complainant is assisted to understand the complaints procedure including making a complaint (Appendix 15a & 15b)
- Organise education / information sessions for service users on the complaints process that is in an accessible and age appropriate format
- Ensure that Complaints are included in the standing orders for all meetings.

### **13.5 Role of Staff**

All Muiriosa Foundation staff have an obligation to effectively deal with complaints made to them, either through dealing with the complaint at the point of contact in line with the local complaints management systems where appropriate or forwarding the complaint to the Complaints Officer for their area for management.

In addition, it is the role of staff to:

1. Be aware of and to implement the procedures outlined in this document and of the regulation SI 367 of Health Act, 2007 (Appendix 16)
2. Participate in Complaints Management Training.
3. To co-operate with and take a pro-active approach in the local resolution/investigation of complaints that involves their service.
4. Ensure complainant is assisted to understand the complaints procedure including making a complaint (Appendix 15a & 15b)
5. Organise education / information sessions for service users on the complaints process that is in an accessible and age appropriate format
6. Be involved in improvement initiatives within their service.
7. Provide data relevant to complaints to service managers.

## 14.0 Principles of Best Practice Complaints Management

The following are the principles of best practice on complaints management that the Muiriosa Foundation aspires to deliver.

- **Organisational Commitment**

All persons within the Muiriosa Foundation must embrace and be committed to the effective management of complaints and be committed to ensuring corporate learning and quality improvements as a result of complaints.

- **Leadership**

The Muiriosa Foundation management is committed to demonstrating strong leadership in all aspects of the complaints handling process. Senior and Local Managers/Person in Charge must demonstrate leadership by ensuring that complaints are dealt with at local level where possible.

- **The rights of service users to complain**

All service users must know of their right to complain and of their rights throughout the complaints management process. The Muiriosa Foundation has a responsibility to ensure that people are aware of their rights. A written complaints procedure will be available and will be publicised across the services. A guide on making complaints (App 15a&15b) and a Complaints Comments and Compliments form (App 9) is available in all locations.

- **Fair**

The complaints handling process should be implemented without fear, favour or prejudice towards the complainant, the person or service about which the complaint was made. Neither the complainant nor the subject of the complaint should have a **fear of recrimination** of any kind at any stage of the process. Any staff member found, after proper investigation, to be engaging or have engaged in victimising, punishing or exacting retribution on any complainant will be subject to serious disciplinary sanctions.

- **Equity**

A consistent and standardised approach will be adopted for the management of all complaints.

The complainant and the service provider have an equal voice and are of equal importance in this process.

- **Accessibility**

The complaints system must be well publicised and be accessible to service users, their families and representatives. Special attention must also be paid to the needs of people with special requirements (special groups) e.g. older people, children, people with physical and sensory disability, literacy issues and disadvantaged groups.

- **Effective**

The complaints system must endeavour to effectively resolve all complaints for both the complainant and those who deliver the service about which the complaint was made.

- **Efficiency**

The emphasis must be on resolving complaints effectively and in a timely manner without compromising other principles.

- **Impartiality**

It is essential that all complaints are dealt with in an impartial manner. Complainants must have the opportunity to be heard and the complaints must be investigated without prejudice to either the complainant or staff member/service.

- **Appropriateness**

The complaints procedure must have the capacity to deal appropriately with all complaints being lodged with any Muiriosa Foundation service.

The complaints management process must be flexible enough to be applicable to any type of complaint in whatever manner it is presented e.g. verbal, written etc., taking in to account language, literacy levels, disabilities etc.

- **Responsiveness**

The service acknowledges all complaints and concerns and responds promptly and sensitively. The practice must be responsive to the complainant's needs and must seek to try and achieve, where possible, service user satisfaction and issue resolution as close to the source of the complaint as possible.

Complaints need to be dealt with in a timely manner ensuring that the timeframes identified for dealing with the complaint take cognisance of the complexity of the factors involved in the complaint. All staff will be provided with the level of training appropriate to their needs to effectively respond to complaints.

- **Confidentiality**

All information obtained through the course of complaint management must be treated in a confidential manner and meet the requirements of the Data Protection Acts 1988 and 2003 and the Freedom of Information Act 1997 and 2003. The complaints process must facilitate the gathering of essential and appropriate information to ensure the effective management of the complaint and the education of the organisation without compromising the rights to confidentiality of both the complainant and the service about which the complaint was made.

To facilitate the effective management of complaints, the Muiriosa Foundation must ensure that consent to access service users confidential information is obtained or acceptably implied from the complainant or the person on whose behalf the complaint was made where applicable.

- **Farsighted**

The complaints process must be flexible to adjust to future demands and legislative requirements. It must be able to meet the needs of changing service user expectations.

- **Accountability**

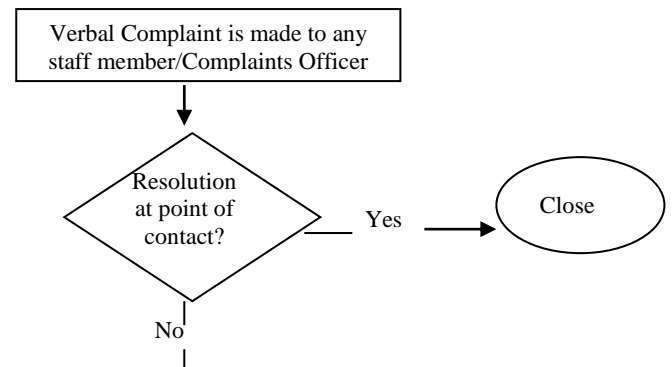
Procedures should be transparent to the complainant during the process of complaint investigation. Staff responsibility in the management of complaint procedures must be emphasised. The complaints processes must ensure that, where warranted, action is taken on complaints to address the specific complaints, to prevent similar occurrences in the future and to inform service provision. Where action is not justified, the complainant must be advised as to why action should not be taken. A process of monitoring and evaluation will be implemented at all levels of the process and organisation to ensure that the processes are being adhered to and complaints are appropriately managed.



## 15.0 Complaint Management Process

### Stage 1: Local Resolution at the Point of Contact

**Timeframes:**  
**Acknowledge** verbal  
complaints immediately or within  
24 hours

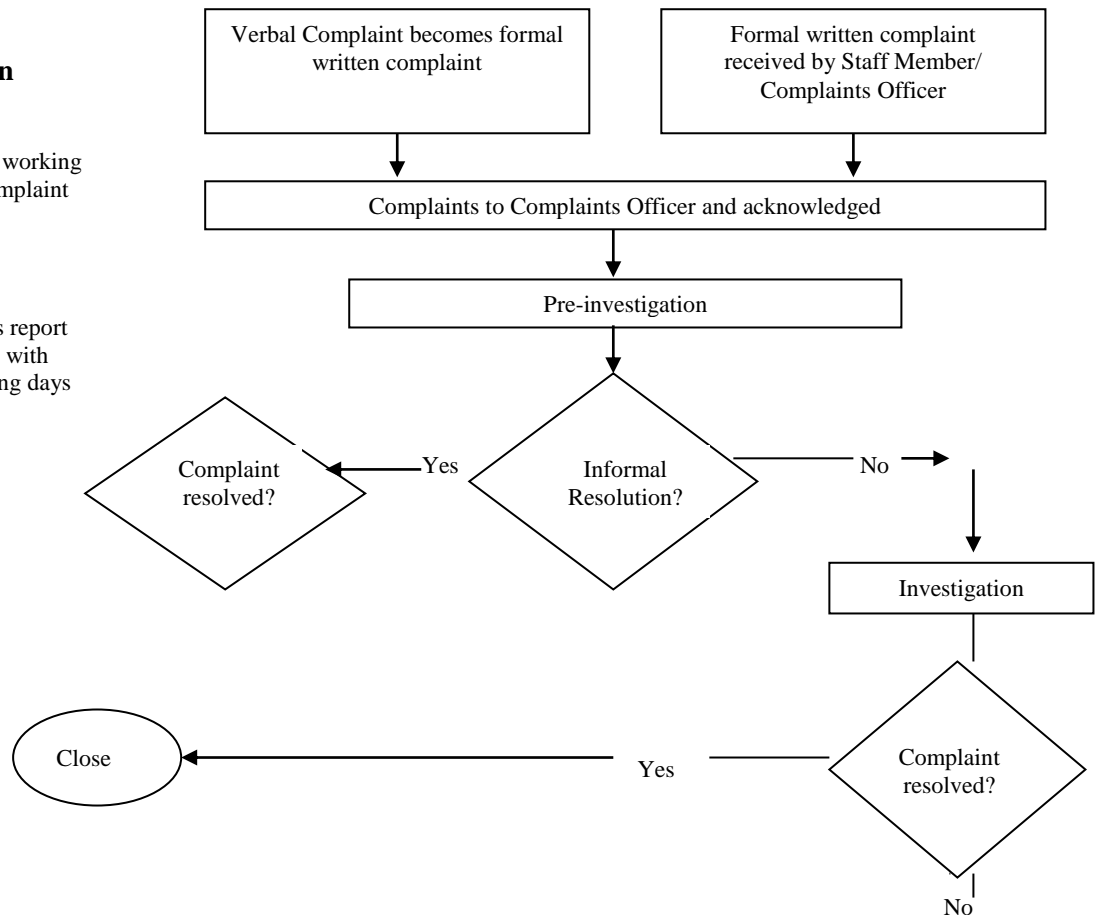


### Stage 2: Local Investigation

**Timeframes:**  
**Acknowledge** within 5 working  
days from receipt of complaint

**Investigate** within  
30 working days or

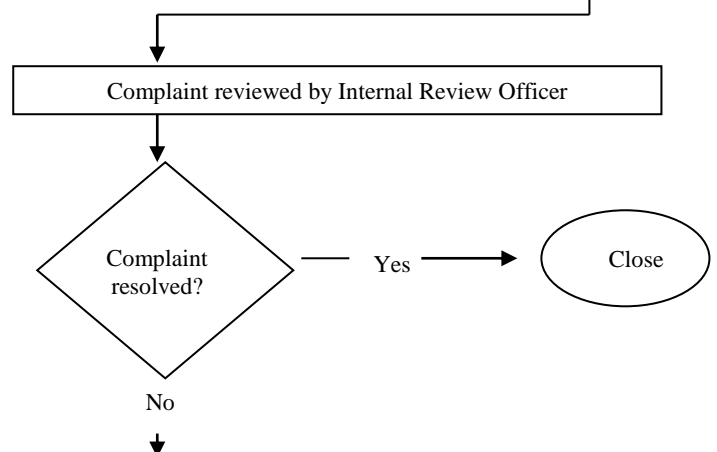
**Communicate** progress report  
within 30 working days with  
updates every 20 working days



### Stage 3 Internal Review

**Timeframes:**  
Complainant to seek a review of complaint  
within 30 working days of the final report of  
stage 2 being signed and dated.

Review to be concluded within 20 working  
days of receipt of the request for review of  
progress report within 20 working days with  
update every 20 working days thereafter.



### Stage 4 Independent Review

Complainant advised to seek a review by the Office of the Ombudsman/Ombudsman  
for Children if they remain dissatisfied following the internal review at Stage 3

**15.1 The process for the management of complaints consists of four distinct stages:**  
**Stage 1: Management of a Verbal Complaint at the Point of Contact.**  
**Stage 2a: (Informal Resolution) and Stage 2b (Formal Investigation)**  
**Stage 3: HSE internal Review**  
**Stage 4: Independent Review**

**Stage 1: Management of a Verbal Complaint at the Point of Contact**

- Staff have clear delegations to resolve verbal complaints at first point of contact wherever possible.
- Staff must record the complaint in the Complaints, Comments, Compliments Logbook (App 10)
- Where a complaint is resolved at the point of contact, the complaint must be examined to identify any quality improvements that should be implemented as a result.
- Where complaints cannot or should not be resolved at the first point of contact due to their seriousness or complexity, these complaints must be referred to the Complaints Officer for investigation at Stage 2.
- Complainants may not accept the outcome of the management of the complaint at the point of contact and may seek a review of their complaint at Stage 2 of the process.

**Stage 2a (Informal Resolution) and Stage 2b (Formal Investigation)**

- Complaints that could not be resolved at Stage 1 or should not be resolved at the first point of contact due to their seriousness or complexity are then passed to a Complaints Officer for resolution by informal means or through a formal investigation.
- The Complaints Officer will carry out a pre-investigation to check the validity of the complaint and the appropriate processes to be used to manage the complaint. Some complaints will not be suitable for investigation by the Complaints Officer and must either be referred to the appropriate body for investigation or returned to the complainant with an explanation as to why the complaint cannot be investigated or with details of the correct process for the management of their complaint.
- The Complaints Officer may consider whether it would be practicable, having regard to the nature and the circumstance of the complaint, to seek the consent of the complainant and any other person to whom the complaint relates to finding an informal resolution of the complaint by the parties concerned.
- Mediation may be used to attempt resolution of the complaint at Stage 2 if both parties agree. Where informal resolution was not attempted or was not successful, the Complaints Officer will initiate a formal investigation of the complaint.
- The Complaints Officer is responsible for carrying out the formal investigation of the complaint at Stage 2 but may draw on appropriate expertise, skills etc as required. Staff have an obligation to participate and support the investigation of any complaint where requested.
- Where the investigation at Stage 2 fails to resolve the complaint, the complainant may seek a review of their complaint by Internal Review at Stage 3.

**Stage 3: Internal Review**

- The complainant may seek a review of the outcome of the investigation at Stage 2 by the Internal Review Process.
- The Review Officer will review the processes used to carry out the investigation of the complaint and the findings and recommendations made post-investigation.
- The Review Officer will either uphold, vary or make a new finding and recommendation.
- The Review Officer may carry out a new investigation of the complaint or recommend that a local re-investigation of the complaint be carried out by a Complaint Officer independent of the initial investigation team.

- The complainant will be informed of any decision of the Review Officer and may accept the recommendations made or can seek a review of the complaint by the Office of the Ombudsman/Ombudsman for Children.

#### **Stage 4: Independent Review**

- If the complainant is not satisfied with the outcome of the Muiriosa Foundation Complaints Management Process he/she may seek a review of the complaint by the Office of the Ombudsman/Ombudsman for Children.
- The Muiriosa Foundation must inform the complainant that they have a right at all times to have their complaint reviewed by the Office of the Ombudsman/Ombudsman for Children. However, they must be made aware that the Office of the Ombudsman/ Ombudsman for Children will, in most cases, require that the Muiriosa Foundation complaints management process be exhausted before they will initiate a review of the complaint.

### **15.2 Implementation of this policy**

The HSE requires that all Service Providers, as described by section 38 and 39 of the Health Act 2004 (see definitions), establish local complaints management procedures that comply with and complement the procedures developed by the Executive in accordance with Part 9 of the Health Act 2004.

### **15.3 Reporting of Complaints Data**

The Complaints Officers will submit complaints data reports to the Regional Director on a monthly basis. The Regional Director will submit complaints data reports to the CEO on a monthly basis. (App 12)

### **15.4 Annual Reporting on Complaints and Reviews**

#### **Service Provider Annual Report**

The CEO will provide the H.S.E. with a general written report on the complaints received by the service provider during the previous calendar year. (Appendix 12) This report is to include:

- The total number of complaints received
- The nature of the complaints
- The number of complaints resolved by informal means
- The outcome of any investigations into the complaints

(Further information may be required at the discretion of the Head of Consumer Affairs who will inform Service Providers of data required).

## **16.0 Frequency of Review of Operation of the Policy**

The policy will be reviewed every three years or more frequently if required.

## **17.0 What can the Muiriosa Foundation do?**

### **17.1 Redress System**

An effective complaints system which offers a range of timely and appropriate remedies will enhance the quality of service to the service users and families of the Muiriosa Foundation. It will have a positive effect on staff morale and improve the Muiriosa Foundation's relations with the public. It will also provide useful feedback to the Muiriosa Foundation and enable it to review current procedures and systems which may be giving rise to complaints.

Redress should be consistent and fair for both the complainant and the service against which the complaint was made. The Muiriosa Foundation should offer forms of redress or responses that are appropriate and reasonable where it has been established that a measurable loss, detriment or disadvantage was suffered or sustained by the claimant personally.

This redress could include:

- Apology
- An explanation
- Admission of fault
- Change of decision
- Correction of misleading or incorrect records
- Technical assistance
- Recommendation to make a change to a relevant policy

### **17.2 Ombudsman's recommendations for redress by Public Bodies**

The following section outlines the Ombudsman's recommendations for redress by Public Bodies:

- Even where people are not entitled to a particular service or benefit, they are entitled to be told the reasons why they do not qualify and be informed of alternative services, where possible.
- Where they may be entitled to the service or benefit but a delay in the decision cannot be avoided, they should be informed when the decision is likely to be made.
- In cases of need, other possibilities for short-term relief may have to be examined. Public service providers must always bear in mind that citizens usually do not have the option of taking their business elsewhere. Citizens are entitled to proper, fair, impartial and expeditious treatment by public bodies. Where there is a shortfall in these standards, and the fault lies with the public body, it should remedy the shortfall through the provision of redress. The general rule of thumb should be to put the person back into the position he/she would have been in if the public body had acted properly.



**Policy & Procedure**

**For the**

**Management of Complaints**

**in Muiriosa Foundation**

**Section 2 - PROCEDURE**

## **1.0 Purpose**

The purpose of this Procedure Manual is to describe the Standard Operating Procedures (SOPs) to be used by all staff in the Muiriosa Foundation in managing consumer feedback.

This section includes the procedures for receiving and handling complaints, comments and compliments and investigating, recording and reporting of complaints as well as the review processes.

This manual is designed to provide quality and consistent responses to complaints so that there may be a concerted effort by all staff in the Muiriosa Foundation to endeavour to resolve complaints as close to the point of contact as possible. This manual also describes the process for the monitoring and evaluation of the complaints management process.

In line with best practice the Muiriosa Foundation will assess all complaints to establish the most appropriate process for managing the complaint. Where complaints fall into distinct categories, the Muiriosa Foundation will refer the complaint to the appropriate service/authority. This document is not an appropriate mechanism for dealing with certain complaints such as allegations of physical or sexual abuse, bullying or harassment, issues for which other procedures exist.

## **2.0 Comments and Compliments**

Comments and compliments received from service users will be logged, followed up and monitored where appropriate. A letter of thanks will acknowledge families comments that include a name and address. The Regional Director or Local Manager/Person in Charge in the particular location is responsible for ensuring that this happens.

Compliments that focus on individual members of staff or service units will be logged. A letter of thanks will be sent to the staff member or department head to ensure that they are aware of the compliment. A letter of acknowledgement will be sent to the service user/families to thank them for taking time to compliment the service and inform them that the staff member has been made aware of the feedback. The Regional Director or Local Manager/Person in Charge in the particular location is responsible to ensure that this happens.

The Service has developed a Complaints, Comments and Compliments form (App 9) which is available in all locations and on the Muiriosa Foundation website. [www.muiriosa.ie](http://www.muiriosa.ie)

## **3.0 Receiving a Complaint**

### **3.1 Who can receive a complaint made to the Muiriosa Foundation?**

A complaint may be received by any member of Muiriosa Foundation staff who must then determine the most appropriate process for dealing with the complaint. All Muiriosa Foundation staff have a responsibility to accept any complaint and to endeavour to manage and resolve the complaint at the point of contact or, where more appropriate, to refer the complaint to the Complaints Officer for management in line with this standard operating procedure. A complaint may also be made directly to a designated Complaints Officer.

### **3.2 How can a complaint be made to the Muiriosa Foundation?**

#### **3.2.1 General Process**

- The Muiriosa Foundation will be flexible in receiving complaints. Complaints may be made to the Muiriosa Foundation either verbally or in written format.
- Complaints may also be made electronically by Email.
- Complaints that may be resolved at the point of contact may be made verbally, face to face or by telephone.
  - Complaints may also be made by completing the Complaints, Comments and Compliments form.
- If the complaint cannot be resolved at the point of contact and must be investigated, due to the difficulty in accurately interpreting the facts of a complaint made by phone, the complainant must be encouraged to make the complaint in writing or electronically.
- Staff members must be sensitive to complainants who may have poor literacy and/or language skills and must provide assistance and support where required to enable the effective recording of the complaint.
- Complainants must be allowed the flexibility to lodge a complaint with any staff member or with the Complaints Officer.
- Communication strategies for local services must ensure that all users of the service are aware of all of the methods by which they can make a complaint.
- Complaint forms, websites, literature etc must be highly visible, accessible, easy to use and as far as possible suitable for all users of the service.
- Each service will adapt one of the samples outlined in Appendices 15a or 15b for their local service and insure it is displayed in a prominent place in each location.
- The person-in-charge and keyworkers must strive to ensure that each service user knows 'how to make a complaint'

#### **3.2.2 Complaints about a named staff member**

- Where a complaint made against a named staff member is not resolved at the point of contact, it must be put in writing and signed by the party making the complaint giving specific details such as dates and locations in order to allow the Complaints Officer to check the veracity of the complaint.
- Where a complaint is made about a staff member and the complainant does not provide contact details to enable the validation of the complaint, the complaint will not be investigated in the interest of procedural fairness.



### **3.2.3 Children wishing to make a Complaint**

- Children of sufficient, age, reason and understanding may make a complaint about any aspect of the service they have received from the Muiriosa Foundation. Their complaints must always be taken seriously and responded to appropriately.
- Suitable communication tools must be developed to enable children to be fully aware of their rights to complain and to inform them of the complaints process.
- Children must be made aware of the right to complain to the Ombudsman for Children or to have the outcome of their complaint reviewed by the Ombudsman for Children (see section 10.1 on the Ombudsman for Children). Under the Ombudsman for Children Act, 2002, the Ombudsman for Children may accept complaints directly from Children up to and including 18 years of age.
- Children are to be made aware by the Muiriosa Foundation of any appropriate advocacy supports. At all times, care must be taken to ensure that children are appropriately assisted and supported to make a complaint and to partake in the management of the complaint. The level of support required will be dependent on the age and ability of the child.
- The welfare of the child is paramount at all times and when the recipient of a complaint from a child is concerned about the safety and wellbeing of the child, that person must ensure that they act appropriately in the best interest of the child and to appropriately implement Children First, National Guidance for the Protection and Welfare of Children (2011).
- The process for dealing with complaints from children will follow the same procedures as outlined in this SOP. However, a formal procedure may not always be the most appealing way for Children to air grievances. Therefore local complaints procedures must place adequate emphasis on informal ways of dealing with complaints from children where required.
- Where the complaint cannot be resolved at the point of contact and the complaint was made by a child on his/her own behalf, if an investigation is required, the Complaints Officer must inform the parent(s)/ legal guardian of the complaint and the intention to investigate and involve the parent(s) / legal guardian of the child in the investigation process.
- If the child disagrees with the involvement of the parent(s)/legal guardian, the Complaints Officer must try to establish any underlying issues and identify the best approach for managing the complaint that is in the best interest of the child while having regard to the rights of the parents as enshrined in the Articles of the Constitution dealing with the Rights of the Family.
- Timelines are the same as outlined in this document but may need to be reviewed or extended depending on the complexity and sensitivity of the complaint. The expedient management of a complaint made by or on behalf of a child is advised.
- The Ombudsman for Children may intervene at any stage of the complaints process (even if Muiriosa Foundation procedures have not been exhausted) if the complaint has been referred to them by the complainant and if the Ombudsman for Children feels that the complainant has taken reasonable steps to rectify their complaint.

**Complaints made in respect of the services delivered by the HSE led - Network Disability Teams may be dealt with under the HSE Complaints Management Process.**

### **3.2.4 Advocacy –**

- All complainants have a right to appoint an advocate to assist them in making their complaint and to support them in any subsequent processes in the management of that complaint.
- The National Advocacy Service (NAS) was set up to provide independent, representative advocacy services for people with disabilities. It is organised and managed on a regional basis by the Boards of five Citizens Information Services and is supported by the Citizens Information Board. People with disabilities may get in touch with the advocacy service directly. Enquiries from family, friends or services on behalf of people who may be unable to make a request for support from the NAS are also welcomed.
- The National Advocacy Service for People with Disabilities (NAS) is available to all

- individuals using the service (App 14) (Details are available in every location throughout the services).
- Staff must ensure that each Individual has access to National Advocacy Services for the purposes of making a complaint (App 14)
- A staff member or a trusted person may also be an advocate for service users wishing to make a complaint if it is possible to do so within the principles of advocacy as listed below.
- The Citizen Information Board (2005) outlines the principles of advocacy as:
  - Empowerment of the person where possible
  - Respect for the person and his/her wishes
  - Acting in the person's best interest
  - Acting independently
  - Maintaining confidentiality
  - Acting with diligence and competence
- Before deciding to advocate on behalf of a complainant, staff must ensure that they are in position to advocate impartially and fairly.
- Staff acting as advocates should have no previous involvement in the actions complained of, or in the examination/investigation of the complaint.
- Staff should not feel compelled to act as an advocate where they do not feel competent or supported to do so and must ensure that they direct the service user to appropriate advocacy supports.
- Any form of advocacy used must be agreeable to both the complainant and the Muiriosa Foundation.

## **4.0 Managing Complaints and Privacy and Confidentiality**

### **4.1 Data Protection Act 1988 and 2003**

Maintaining privacy and confidentiality of consumer information is a basic principle of complaints management. It is the role of all Muiriosa Foundation staff to ensure that consumer privacy and confidentiality is maintained. The Data Protection Acts 1988 and 2003 place an obligation on the Muiriosa Foundation and staff to safeguard the right of individuals in relation to the processing of their personal data.

Processing means performing any operation or set of operations on data, including: obtaining, recording or keeping data, collecting, organising, storing, altering or adapting the data; retrieving, consulting or using the data; disclosing the data by transmitting, disseminating or otherwise making it available; aligning, combining, blocking, erasing or destroying the data. Personal data is defined as data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or likely to come in to the possession of the data controller.

Under the Data Protection Act, personal information should only be used or disclosed for the purpose for which it was collected for or another directly related purpose.

### **4.2 Confidentiality and Disclosure**

Complainants must be assured that their complaint and their personal details will be treated in confidence to the greatest extent possible consistent with the public interest and the right to privacy. Complaints information required for reporting and statistical purposes will be anonymised and all identifiable data will be removed.

However, where the screening and /or investigation of the complaint indicates that there is a requirement to disclose some or all of the details of the complaint e.g. there is evidence of abuse that must be reported in accordance with the Children First Guidelines, the complainant will be informed immediately and the information will be directed to the appropriate personnel.

### **4.3 Access to Personal Confidential Information**

For the purpose of accessing service users' confidential information as part of the investigation of a complaint, the Muiriosa Foundation must ensure that it has the consent of the complainant to do so (or the person about whom the complaint was made if it is not the same person).

Consent may be obtained in three ways:

- The complainant may give consent on the Muiriosa Foundation complaints form. This provides the Muiriosa Foundation with permission to access service users confidential information to investigate the complaint.
- If the complaint was not made on the Muiriosa Foundation complaints form, the acknowledgement letter must outline the process that will be used to manage the complaint and the complainant will be asked to contact the relevant Complaint Officer within 5 working days from the date on the acknowledgement letter if they do not wish their confidential information to be accessed during the process of the investigation.
- If a verbal complaint is made to a staff member/Complaints Officer who proceeds to record the complaint for the purposes of a formal investigation, the staff member must ask the complainant to give consent to access the relevant service users' confidential information. The staff member must record this consent and have the complainant sign the consent where possible.
- It is important to note that the above consent only allows access to the information in the record that is relevant to the complaint.

- Complainants must be informed that refusing or restricting access to relevant service users' confidential information may impede the proper investigation of the complaint.
- The complaints management process must ensure that the details of the complaint and information gathered or received through the investigation of the complaint are only viewed by relevant personnel and that the dissemination of this information is restricted to a need to know basis only.
- For the purpose of gathering and publishing statistics and for educational purposes, all service users' identifiable data and personal data must be removed from the complaint and the complaint identified using a designated code. Care must be taken to ensure that specific locations and individuals cannot be identified when using this data for these purposes.

#### **4.4 Complaints on behalf of a Third Party and access to Personal Confidential Information**

- When a complaint is made on behalf of a third party the Muiriosa Foundation must endeavour to ensure that the complaint is being made with the consent of the third party.
- When accepting a complaint on behalf of a third party, the Muiriosa Foundation must ensure that it is appropriate for the complainant to make a complaint as detailed in section 46 (3) and (4) of the Health Act 2004 and section 7.4.2 of this SOP, and that the identity of the complainant is validated.
- When a complaint is made on behalf of an incapacitated person, the Muiriosa Foundation must ensure that this person who, by law or by appointment of a court, has the care of the affairs of that person.
- An objectively reasonable approach to this issue will usually prevail with each situation being considered on an individual basis.
- Where the Complaint Officer has a concern about the consent of the third party the Complaints Officer will make every effort to get the consent of the third party before progressing with the complaint.

#### **4.5 Service User consent and Public Representatives**

**Refer to Appendix 4 for Standard Operating Procedure - Dealing with the Provision of Information to Elected Public Representatives (TD's, Senators, MEP's and Local Representatives)**

#### **4.6 Staff Member and rights to Confidentiality**

Particular care, caution and sensitivity must be exercised in certain circumstances, where for example, the good name, reputation and rights under natural justice of a staff member may arise in the context of an initial and as yet unsubstantiated complaint.

In such circumstances the person receiving the complaint and / or the complaints officer must consider the right to confidentiality of the staff member against whom the complaint appears to be made in the first instance.

Confidentiality, privacy and similar rights must also be protected, pending the outcome of initial checking and validation. Where a complaint has been made about a named staff member, the line manager/ head of discipline must be informed of the complaint, once the matter/s are deemed, after careful checking and consideration to have substance as a valid complaint under Part 9 of the 2004 Health Act.

Therefore, where a complaint has yet to be substantiated and the Complaints Officer is of the opinion that the confidentiality of the staff member/service involved should be protected until the complaint has been substantiated, the Complaints Officer must use his/her discretion to this effect.

## **4.7 The Freedom of Information Acts 1997, 2003 and 2014**

The Freedom of Information Act confers on all persons the right of access to information held by public bodies, to the greatest extent possible, consistent with the public interest and the right to privacy. It is imperative that all staff are cognisant of the right of the complainant to access any information held by the Muiriosa Foundation in relation to the management of their complaint. Therefore, staff must ensure that they adhere to the principles of the Data Protection Act 1988 and 2003, that consent to access patient confidential information is obtained where required and that decisions made during the complaint management process are supported by facts and evidence.

The Freedom of Information Acts 1997 and 2003 also contain two further statutory rights which may arise where a complaint investigation report has been provided to the complainant. These rights are:

- have personal information amended where such information is incomplete, incorrect or misleading.
- be given reasons for decisions taken by public bodies that affect them.

## **4.8 Requests for access to complaints under Freedom of Information or Data Protection legislation**

- Each access request under FOI or DP must only be processed and decided on by the delegated FOI & DP Decision Maker in whose area the request arises.
- Muiriosa Foundation staff who hold files relevant to an access request must provide such files to the responsible FOI or DP Decision Maker.
- Further detailed information on access rights may be obtained from the Freedom of Information Office in the MF.

## **5.0 Managing Complaints in the Muiriosa Foundation: General Overview**

The issue of procedural fairness must be considered at all times when investigating any complaint.

Procedural fairness must ensure that:

- Complaints handling allows all parties involved in the complaint (including the service user, the service and specified employees) the opportunity to respond.
- Where an action could adversely affect somebody, the person that may be affected must have the chance to state their point of view before the action is taken.
- The process should be fair to all parties. The Complaints Officer must be impartial, prejudice free and unbiased in their decision making.

### **5.1 Stages in the Muiriosa Foundation Complaints Management Process**

The Muiriosa Foundation complaints management process has four distinct stages:

**Stage 1:** Local Resolution of verbal complaints at the point of contact

**Stage 2a:** Informal Resolution of the complaint

**Stage 2b:** Local Investigation of written complaints

**Stage 3:** Internal Review

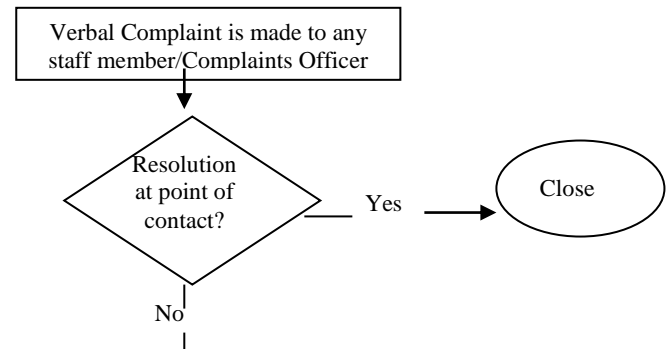
**Stage 4:** Independent Review

The following diagram outlines the general process flow of a complaint through the Muiriosa Foundation complaints management process. Each stage is then described in greater detail in the subsequent sections of this Standard Operating Procedure.

**Figure 1.0: General Overview of Muiriosa Foundation Complaints Management Process**

**Stage 1:  
Local Resolution at the  
Point of Contact**

**Timeframes:**  
**Acknowledge** verbal  
complaints immediately or within  
24 hours

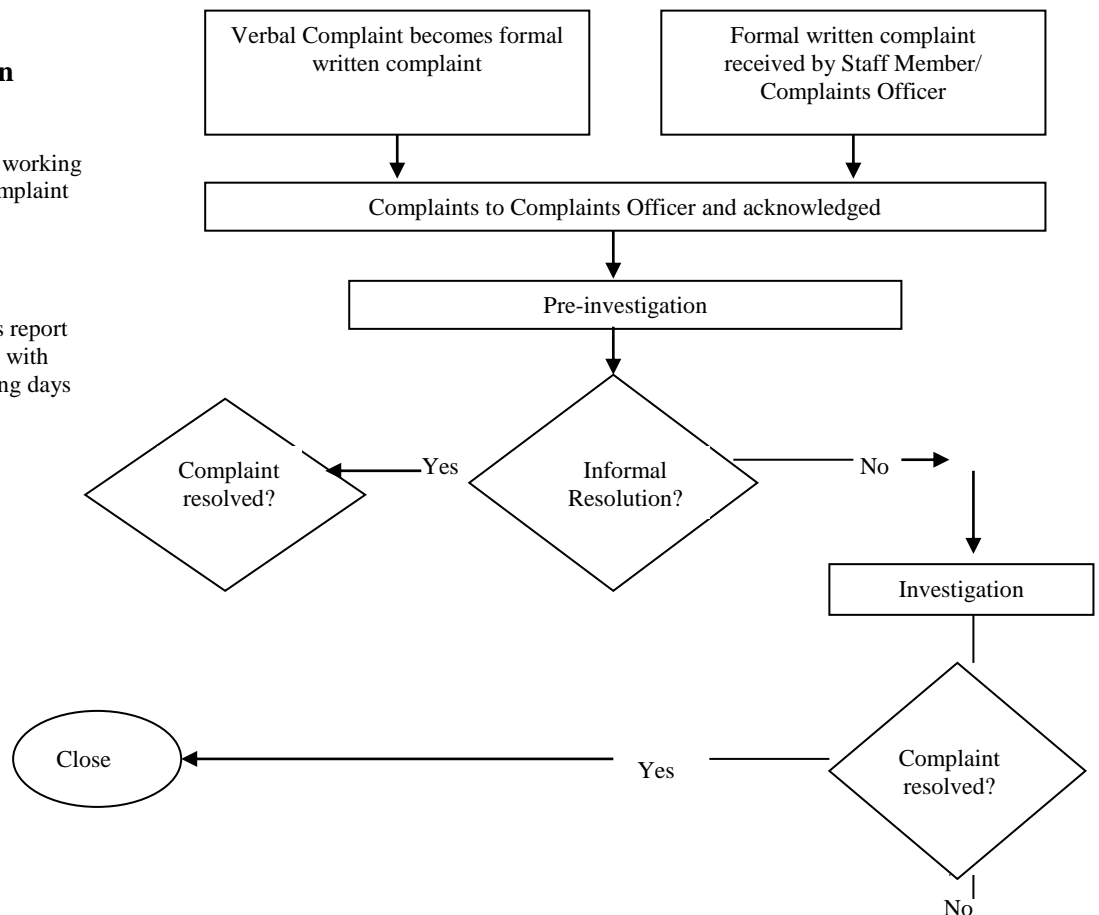


**Stage 2:  
Local Investigation**

**Timeframes:**  
**Acknowledge** within 5 working  
days from receipt of complaint

**Investigate** within  
30 working days or

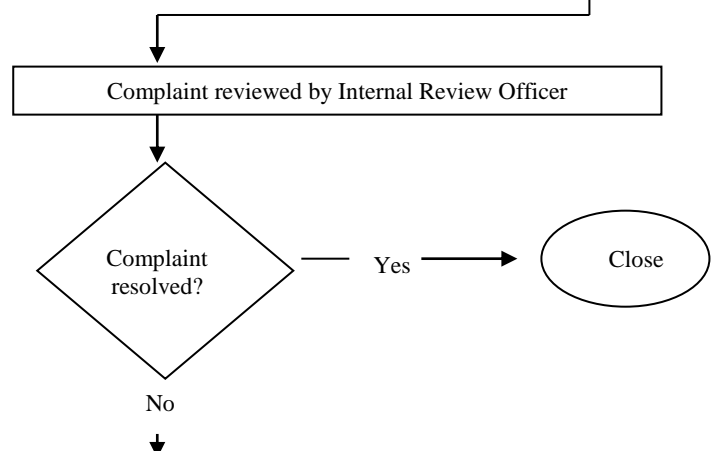
**Communicate** progress report  
within 30 working days with  
updates every 20 working days



**Stage 3  
Internal Review**

**Timeframes:**  
Complainant to seek a review of complaint  
within 30 working days of the final report of  
stage 2 being signed and dated.

Review to be concluded within 20 working  
days of receipt of the request for review of  
progress report within 20 working days with  
update every 20 working days thereafter.



**Stage 4  
Independent Review**

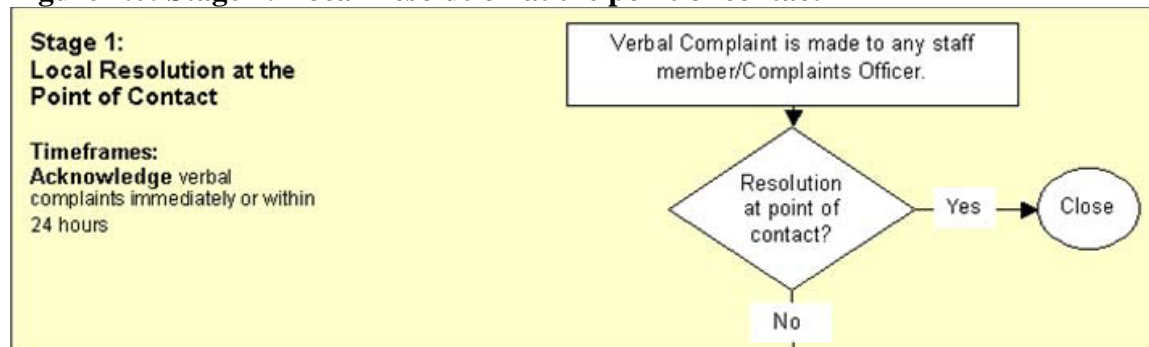
Complainant advised to seek a review by the Office of the Ombudsman/Ombudsman  
for Children if they remain dissatisfied following the internal review at Stage 3

## 6.0 Receiving and Managing a Verbal Complaint: Stage 1, Local Resolution at the Point of Contact

Stage 1 of the complaints management process is the stage of the process where the recipient of a **verbal** complaint endeavours to manage and resolve the complaint at the **point of contact**.

All Muiriosa Foundation staff can receive a verbal complaint about any aspect of the service at any time. A practical approach must be adopted to verbal complaints which are usually more frequent, of a less serious nature than written complaints and are often resolvable on the spot.

**Figure 2.0: Stage 1: Local Resolution at the point of contact**



Stage 1 emphasises strong participation by Local Managers / Persons in Charge and staff in the early and local resolution of complaints where possible.

Complaints Officers and Local Managers / Persons in Charge must ensure that staff support and partake in the process of local resolution where possible and that they follow standard procedures for doing so.

Local resolution is to be encouraged and supported by raising awareness amongst staff that each individual provider is accountable to the consumer/ service user and has a responsibility to respond to concerns that they raise and where possible, provide an apology and/or explanation.

To achieve this aim:

- All Local Managers / Persons in Charge must ensure that all employees have access to detailed standard procedures on the receipt and management of complaints and their role in the resolution of complaints at local level.
- All staff must be adequately trained to effectively manage complaints to the highest standard

### 6.1 Receiving a Verbal Complaint

When receiving a verbal complaint from a complainant, the recipient of the complaint should:

- be respectful and helpful towards the complainant
- give the complainant his / her individual attention
- not attempt to lay blame, be defensive or argue
- remain positive
- not take anger as a personal attack

**Note:** In the course of receiving a verbal complaint a staff member is not expected to tolerate personal abuse or aggressive behaviour from the complainant.



## Figure 2.1: The Listen Approach

Use the LISTEN approach to assist you when receiving a verbal complaint (See Figure 2.0):

### **Listen:**

- Listen carefully to the issues being raised by the complainant

### **Identify:**

- Identify if there are multiple issues relevant to the complaint and separate each issue. Attempt to identify any hidden or underlying issues that may exist.
- Summarise the issues to clarify and check that you understand what the person is telling you.
- Ask the complainant to confirm that they agree with your interpretation of their complaint.
- Find out from the complainant what they want to happen as a result of their complaint.

### **Summarise:**

- Summarise the issues to clarify and check that you understand what the person is telling you.
- Ask the service user to confirm that they agree with your interpretation of their complaint.

### **Thank the person**

- Thank the person for taking the time to make the complaint

### **Empathise and Explain:**

- Empathise and acknowledge the feelings of the complainant.
- Explain to the complainant that there will be no negative repercussions
- Explain what will happen next e.g. you may need to contact your manager

### *Expression of regret or apology:*

- An early expression of regret or apology can minimise the possibility of a verbal complaint becoming a formal written complaint
- Training for staff must deal with the area of expression of regret and apology. Staff must also be given the skills to recognise when a complaint can or cannot be resolved at first point of contact and when the complaint needs to be referred to Complaints Officers for appropriate management.

### **Now Act:**

- Assess the verbal complaint
- Once a verbal complaint is received by the Muiriosa Foundation, the person receiving the complaint must ensure that they get as much information as possible about the complaint to assist them in assessing the seriousness and/or the complexity of the complaint. This in turn assists staff in determining if the complaint should be resolved at the point of contact or if the complaint should be referred to the Complaints Officer for management at Stage 2 of the complaint management process.

**Staff should only attempt to manage complaints received at the point of contact if due care has been taken to establish that all issues can be addressed appropriately at the point of contact.**

## **Determine the appropriate options for the management of the complaint:**

The person receiving the complaint must determine the most appropriate process for the management of the complaint. These options are:

1. The complaint is received by front line staff member/Local Manager/Person in Charge who determines that it is appropriate to manage the complaint at the point of contact with a view to resolving the complaint.
2. The complaint is received by the Complaints Officer who determines that the complaint may be managed with a view to resolution at the point of contact and links with the relevant Local Manager/Person in Charge to appropriately manage the complaint.
3. The complaint is received by the Complaints Officer who determines that the complaint may be managed with a view to resolution, at the point of contact without requiring the involvement of other personnel/ Local Manager/Person in Charge etc.
4. Any staff member/ Local Manager/Complaints Officer who receives the verbal complaint decides that the complaint cannot be resolved or should not be resolved at the point of contact and the complainant is advised to submit their complaint as a formal written complaint for investigation. (App 9)

## 6.2 Timeframes for the Management of a Verbal Complaint

Every effort should be made to resolve a verbal complaint immediately or within 24 hours of receiving the verbal complaint if it is deemed appropriate to manage the complaint, with a view to resolution, at the first point of contact.

## 6.3 When should a complaint not be managed at Stage 1?

**There are a variety of reasons why a complaint should not be managed at Stage 1 of the process. The key reasons include:**

- The complaint involves too many issues to resolve at the point of contact.
- The complaint was a result of harm/incident or a near miss and requires further investigation to identify and eliminate the root causes.
- The complaint was as a result of deviations from quality standards that requires further investigating to identify the reasons for the deviation and if there are any system improvements required.
- The complaint involves multi-disciplines and multi-locations and involvement of all parties is required to effectively and fairly investigate the complaint.

## 6.4 Complaints that cannot be resolved at Stage 1

If it is not possible to resolve the complaint to the satisfaction of the complainant at the first point of contact, the person receiving the complaint must advise the complainant:

- the reasons why the complaint cannot be resolved at the point of contact
- that they may submit the complaint as a formal written complaint
- the process for submitting a formal written complaint
- what will happen with their complaint in the Muiriosa Foundation complaints management process

**Note: The complainant is to be advised that a formal investigation of the complaint may not take place unless the complainant provides contact details to enable the Muiriosa Foundation to validate the complaint and to liaise with the complainant in the course of the investigation of the complaint (see section 11.2 on Anonymous Complaints).**

If requested by the complainant, the staff member/ Complaints Officer may provide assistance to the complainant to make a written complaint.

## 6.5 Recording Verbal or Informal Complaints

- Best practice complaints management indicates that both verbal and informal complaints should be documented. (App 10)
- Verbal or informal complaints should be documented as far as is reasonably practicable (App 10) In particular, where a verbal or informal complaint indicates that a particular trend is emerging, where there is a risk to service user and staff health and safety, and/or where possible quality improvements are required, these complaints should be documented and analysed to identify the root causes of the subject matter of the complaint and actions that are required for improvement.
- This data should be collated and submitted by the Complaints Officer on a monthly basis to the Regional Director.
- Complaints Officers should maintain a record of all verbal complaints to inform local quality improvement initiatives (App 10)

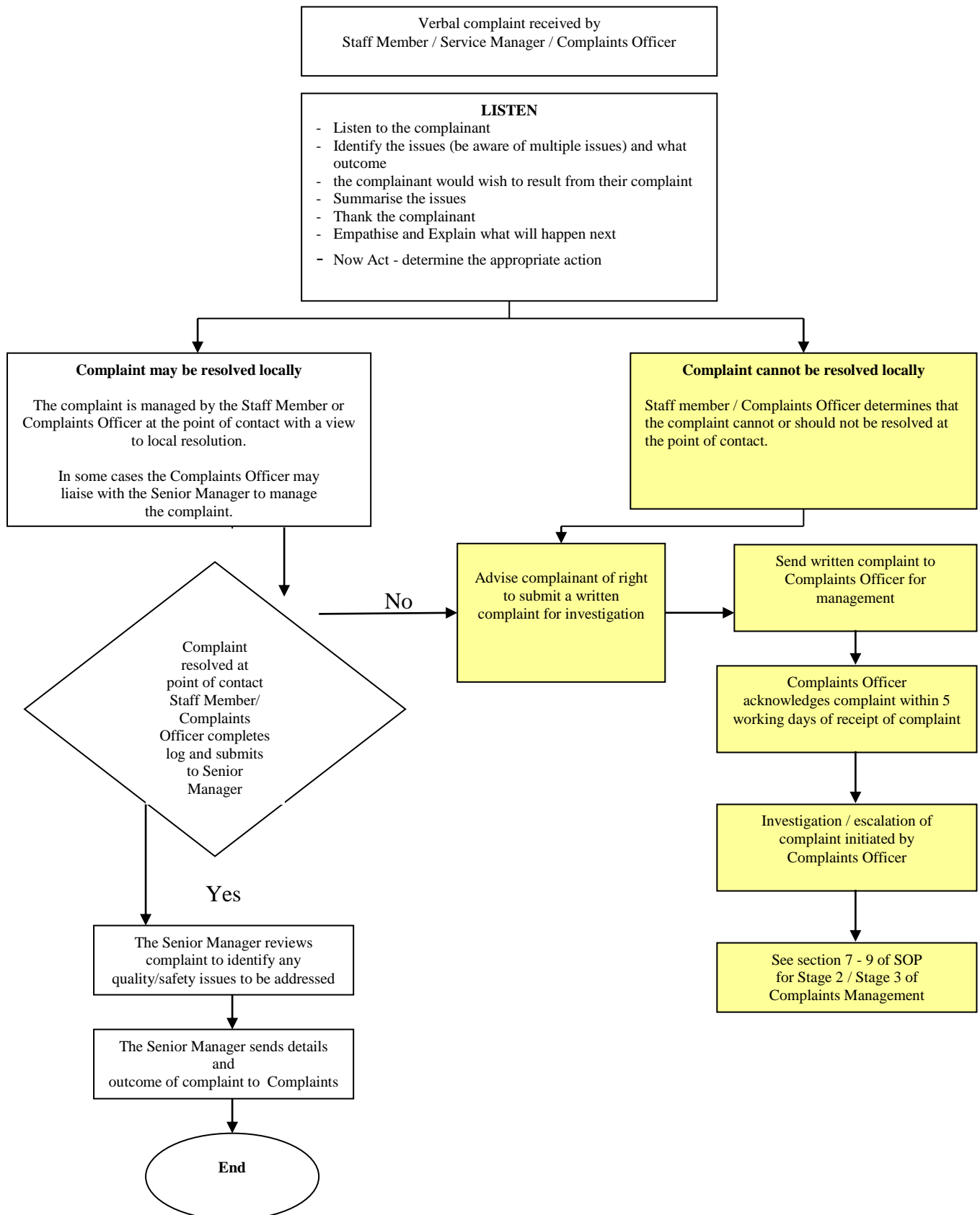
## **6.6 Summary**

In general, many complaints can be resolved at the point of contact with information and/or an explanation, together with an apology and recognition of the effect the situation had on the person. However, Complaints Officers must ensure that the local resolution process upholds and protects the rights of both the service/staff members and the complainant.

Complainants may also want an undertaking that action will be taken to prevent the problem recurring. Complaints Officers must ensure that complaints received are dealt with appropriately and that any learning from complaints resolved at an early stage is incorporated in to the learning for the organisation.

Some complaints, however, cannot be resolved at the point of contact and will require management and investigation at Stage 2 of the process.

**Figure 2.2: Stage 1: Local Resolution at the Point of Contact**



## **7.0 Managing a Written Complaint: Stage 2**

Written complaints may originate from two sources:

1. Where a verbal complaint cannot or should not be resolved at the point of contact and the complainant has been advised to submit the complaint as a written complaint for investigation;  
or
2. the first contact from the complainant is in the form of a written complaint.

Written complaints may be directed to any member of staff including front line staff and Complaints Officers.

At Stage 2, the Complaints Officer has two options:

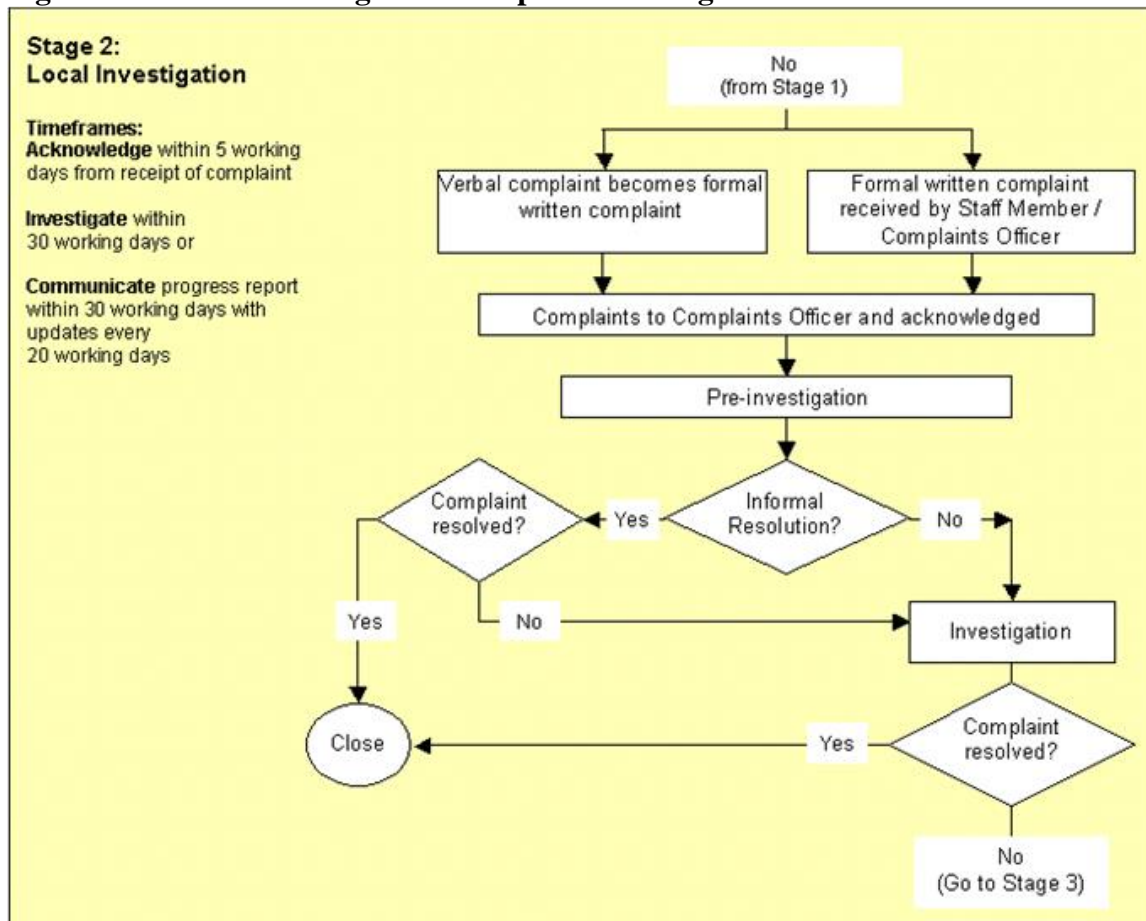
1. To consider whether it would be practicable, having regard to the nature and the circumstance of the complaint, to seek the consent of the complainant and any other person to whom the complaint relates to finding a resolution through informal means.
2. To commence a formal investigation of the complaint.

### **Complaints involving a number of disciplines**

Where the complaint involves a number of disciplines or services, the Complaints Officer who receives the complaint will co-ordinate the investigation of the complaint between the various disciplines and services.

The management of written complaints at Stage 2 of the complaints management process is summarised in Figure 3.0 as follows:

**Figure 3.0: Outline of Stage 2 of Complaints Management Process**



## 7.1 Receiving a written complaint

- Any written complaints received by a staff member must be brought immediately to the attention of their relevant Line Manager/Person in Charge. The relevant Person in Charge must ensure that the complaint is given immediately to the appropriate Complaint's Officer if he / she is not available then a nominated Complaints Officer.
- Written complaints may also be directed by the complainant directly to a Complaints Officer.
- The Complaints Officer will proceed to carry out a pre-investigation of the complaint as detailed in the following sections.
- See section 7.7 on transferring the management of the complaint to another Complaints Officer.

## 7.2 Acknowledging a Complaint

(See also section 15.1 on Quality and Effective Correspondence to Complainants)

- An acknowledgement letter must be sent within 5 working days of receipt of the complaint.
- When acknowledging a written complaint:
  - Acknowledge the receipt of the complaint, acknowledging the date it was written and informing the complainant of the date it was received by the organisation.
  - Discuss the Muiriosa Foundation's appreciation of consumer feedback as a means of improving systems and service delivery.
  - Express regret for any inconvenience or difficulties that the complainant experienced.
  - Advise the complainant when the Muiriosa Foundation's will contact them again and that they will be kept informed of their complaint process.
  - Inform the complainant that service user confidential files may have to be accessed by authorised personnel to fully investigate the complaint.

- Inform the complainant that they must contact the Complaints Officer immediately (within 5 working days) if they do not wish for service user confidential files to be accessed. If the Complaints Officer does not receive any contact from the complainant within 5 working days (complainant may be on holidays) he/she should endeavour to contact the complainant.
- Offer the opportunity for the complainant to contact you to discuss any of the matters above.
- Close the letter.

**Note:** Research shows that letters personally signed by staff are received better than letters electronically signed or signed by support staff on behalf of somebody.

## 7.3 Timeframes for Stage 2

### 7.3.1 Timeframes for the Investigation of the complaint

- Where the Complaints Officer determines that the complaint does not meet the criteria detailed in 7.4.1 to 7.4.5, the Complaints Officer will inform the complainant in writing, **within 5 working days** of making the decision/determination, that the complaint will not be investigated and the reasons for it.
- Where the complaint will be investigated, the Complaints Officer must endeavour to investigate and conclude the complaint within **30 working days** of it being acknowledged.
- If the investigation cannot be investigated and concluded within 30 working days then the Complaints Officer must communicate this to the complainant and the relevant service/staff member **within 30 working days** of acknowledging the complaint and give an indication of the time it will take to complete the investigation.
- The Complaints Officer must update the complainant and the relevant staff/ service member **every 20 working days**.
- The Complaints Officer must endeavour to investigate complaints within 30 working days. However, where the 30 working days timeframe cannot be met despite every best effort, Complaints Officers must endeavour to conclude the investigation of the complaint within **6 months** of the receipt of the complaint.

If this timeframe cannot be met, the Complaints Officer must inform the complainant that the investigation is taking longer than 6 months, give an explanation why and outline the options open to the complainant. He/She should encourage the complainant to stay with the local Muiriosa Foundation complaints management process while informing them that they may seek a review of their complaint by the internal reviewer or the Office of the Ombudsman/ Ombudsman for Children.

### 7.3.2 Timeframes for obtaining further information from the Complainant

- Where it has been indicated to the Complaints Officer prior to or during the investigation that further information is required from the complainant to enable the full and proper investigation of the complaint, the Complaints Officer must contact the complainant immediately, outlining the information required and request a response from the complainant **within 10 working days** of receipt of the letter.
- When the required information is not received within this time period, the Complaints Officer may extend the time limit for receipt of the information by a further 10 working days.
- The complainant must be informed that if he/she fails to comply with this request for further information, the Complaints Officer may decide to invalidate the complaint if the information required is essential for the further processing and management of the complaint. See section 15 on Quality and Effective Correspondence to Complainants.

### **7.3.3 Timeframes for eliciting responses from staff member(s)**

- Where there is a response required from staff members in relation to issues raised by the complaint, the Complaints Officer may inform the relevant manager and the staff members of the issues to which a response is required. The Manager is then responsible for ensuring the staff member provides a response to the issues raised.
- Where the Complaints Officer is of the opinion that the matter does not warrant the involvement of the Manager, he/she may contact the staff member directly (see section 4.6 on Staff Member and Rights to Confidentiality).
- The Complaints Officer must record the date of the notification.
- The relevant staff member(s) is required to respond **within 10 working days** of receiving notice of the complaint.
- See section 15.4, Communication by the Complaints Officer with staff member involved in the complaint investigation.

### **7.3.4 Timeframes for eliciting responses from persons no longer employed by the Muiriosa Foundation**

- When a complaint involves a staff member who is no longer employed by the service, the Complaints Officer must endeavour to contact the relevant ex-staff member immediately, to inform them of the complaint and to invite a response from that staff member to the issues raised within the timeframes as outlined above.
- Every effort is to be made to comply with the timeframes as outlined above. However, there may be special circumstances where timeframes cannot be met due to the unavailability of the ex-staff member or the current location of the ex-staff member. These issues must be brought to the attention of the complainant and the complainant must be assured that the management of the complaint is progressing as quickly as possible.
- If, after all reasonable efforts, the Complaints Officer is unable to obtain a response from any persons no longer employed by the Muiriosa Foundation, the Complaints Officer must endeavour to investigate the complaint to the best of his/her ability with the information available to him/her.

## **7.4 Pre-investigation of the Complaint**

The Complaints Officer will carry out a pre-investigation of the complaint where he/she will firstly determine if the complaint is included or excluded under Part 9, Section 48 of the Health Act 2004 (see 7.4.1 below). The subject matter of complaints excluded under Part 9 of the Act will be discussed further under section 11 of this SOP.

If the Complaints Officer is satisfied that the complaint subject matter falls within the provision of Part 9 of the Health Act, the complaint will be managed in accordance with section 7 of this SOP. The Complaints Officer will continue with the pre-investigation of the complaint to determine if the complaint is substantiated and also if it meets the criteria set out in Part 9 of the Health Act for determining if a complaint may be investigated (as detailed in sections 7.4.2 - 7.4.5).

**Requesting information from the complainant (see also section 7.3.2 in relation to timeframes):** Where required, the Complaints Officer may request further information from the complainant about the complainant to:

- Satisfy himself or herself of the identity of the person concerned and where the person making the complaint is not the complainant, satisfy himself or herself that that person is entitled to do so (see section 7.4.2).



#### **7.4.1 Matters excluded from right to complain under Part 9 of the Health Act 2004**

A complaint is excluded under Part 9 of the Health Act 2004 if it is in relation to any of the following matters:

- a matter that is or has been the subject of legal proceedings before a court or tribunal;
- a matter relating **solely** to the exercise of clinical judgment by a person acting on behalf of the Muiriosa Foundation;
- an action taken by Muiriosa Foundation; **solely** on the advice of a person exercising clinical judgment;
- a matter relating to the recruitment or appointment of an employee by the Muiriosa Foundation;
- a matter relating to or affecting the terms or conditions of a contract of employment that the Executive or a service provider proposes to enter into (includes terms or conditions relating to superannuation benefits, disciplinary procedures or grievance procedures);
- a matter relating to the Social Welfare Act;
- a matter that could be the subject of an appeal under section 60 of the Civil Registration Act 2004;
- a matter that could prejudice an investigation being undertaken by the Garda Síochána;
- a matter that has been brought before any other complaints procedure established under an enactment (e.g. complaints made under Part 2 of Disability Act, 2005 or the Mental Health Act 2001).

Where the subject matter of the complaint is not included under part 9 of the Health Act 2004, these complaints are termed “non-Part 9 complaints”. The Complaints Officer must either investigate the complaint according to the processes described in section 11 of this SOP or will notify the complainant of where the complaint might more appropriately be referred (See Table 1 and Table 2 within section 7.4.6 for details of the appropriate processes for the management of various types of complaints).

**Where a complaint relates only in part to an excluded matter** the Complaints Officer will assess the non-excluded part of the complaint to assess its eligibility under the following criteria (7.4.2 - 7.4.5) and where appropriate investigate that part of the complaint in accordance with the procedures described under this section (section 7). The complainant will be advised of this decision.

**The following subsections apply only to those complaints that fall within the provision of Part 9 of the Health Act 2004.**

#### **7.4.2 Eligibility of Complainant to make Complaint**

- The Complaints Officer cannot investigate the complaint if, in accordance with Section 46, Part 9 of the Health Act 2004, the person who made the complaint is not entitled to do so.
- In accordance with Section 46, Part 9 of the Health Act 2004, the following are entitled to make a complaint
  - Individuals who are receiving or have received health care services.
  - Individuals who are seeking or have sought services from the Muiriosa Foundation
- If a person is entitled to make a complaint but is unable to do so because of age, illness or disability, the complaint may be made on that person’s behalf by:
  - a close relative or carer of the person,
  - any person who, by law or by appointment of a court, has the care of the affairs of that person,
  - any legal representative of the person,
  - any other person with the consent of the person, or
  - any other person who is appointed as prescribed in the regulations.
- If a person who would otherwise have been entitled to make a complaint is deceased, a complaint may be made by a person who, at the time of the action in relation to which the complaint is made, was a close relative, or carer of that person. A close relative is defined in

Section 45 of the Health Act, 2004 as being a parent, guardian, son, daughter, spouse or someone who is cohabiting with the person on whose behalf the complaint is being made.

### **7.4.3 Grounds of Complaint**

In order to investigate the complaint, the Complaints Officer must determine if the complaint discloses a ground of complaint provided for in Part 9, section 46 of the Health Act 2004 and detailed as follows:

- A complaint can be made about any action of the Muiriosa Foundation that:
  - it is claimed, does not accord with fair and sound administrative practice, and
  - adversely affects or affected that person
- As defined in the Health Act 2004, an action does not accord with fair and sound administrative practice if it is:
  - taken without proper authority,
  - taken on irrelevant grounds,
  - the result of negligence or carelessness,
  - based on erroneous or incomplete information,
  - improperly discriminatory,
  - based on undesirable administrative practice, or
  - in any other respect contrary to fair or sound administration.

The Special Report of the Ombudsman (2006) outlines the standards required from an effective complaints management system. Examples of fair and sound administrative practice are included in this document.

### **7.4.4 Time limits for making a complaint**

**The Complaints Officer must determine if the complaint meets the timeframes as set out in Section 47, Part 9 of the Health Act 2004 which requires that complaint must be made within 12 months:**

- of the date of the action giving rise to the complaint; or
- of the complainant becoming aware of the action giving rise to the complaint.

**A Complaints Officer may extend the time limit for making a complaint if in the opinion of the Complaints Officer special circumstances make it appropriate to do so. These special circumstances include but are not exclusive to the following:**

- if the complainant is ill or bereaved;
- if the new relevant, significant and verifiable information relating to the action becomes available to the complainant;
- if it is considered in the public interest to investigate the complaint;
- if the complaint concerns an issue of such seriousness that it cannot be ignored;
- diminished capacity of the service user at the time of the experience e.g. mental health, critical/ long-term illness;
- where extensive support was required to make the complaint and this took longer than 12 months; or
- if the complainant was living abroad and unable to make the complaint within the 12 month timeframe.

Where reasons other than the above are provided by the complainant for making a complaint after the 12 month period, the Complaints Officer will make a decision as to whether or not to extend the timeframe after consultation with the Regional Director.

## Decision to extend/not extend the 12 month timeframe

Where a decision has been made to either extend or not to extend the 12 month timeframe, the Complaints Officer will inform the complainant within **5 working days** of the decision having being made.

Where the decision has been made by the Complaints Officer not to extend the 12 month timeframe, the complainant may request a review of this decision through the Regional Director.

### 7.4.5 Additional Pre-investigation Criteria

As part of the pre-investigation process, the Complaints Officer must determine that:

- the subject matter of the complaint is not trivial,
- the complaint is not vexatious,
- the complaint is made in good faith, and
- the complaint has **not** already been resolved.

Where the above criteria is not met, either during the pre-investigation or the investigation, the Complaints Officer may decide not to investigate or further investigate the complaint.

### 7.4.6 Process upon completion of the Pre-Investigation

Where the Complaints Officer determines that the complaint does not meet the criteria detailed in 7.4.1 to 7.4.5, the Complaints Officer will inform the complainant in writing, **within 5 working days** of making the decision/determination, that the complaint will not be investigated and the reasons for it.

Where alternative complaint processes are appropriate for the management of such complaints, the Complaints Officer will either investigate the complaint using the alternative process or will refer the complaint directly to the appropriate personnel for management under the relevant policy, procedure or guideline.

The complainant is to be informed of where the complaint is being referred to and why. Alternatively, the Complaints Officer will inform the complainant of the relevant channels through which the complainant may direct their complaint.

Table 1 and 2 detail the appropriate channels through which complaints must be managed.

**Table 1: Complaints that may be managed using the processes outlined in this Procedure Manual.**

Details of Complaint/Allegation Policy,	Procedure or Guideline to be followed
<b>Complaints that fall within the provision of Part 9 of the Health Act 2004</b>	
Complaints about an action of the Muirosia Foundation that fall within the provisions of Part 9 of the Health Act 2004	Section 2 of the MF Policy and Procedures for the Management of Complaints
Complaints in relation to access to services under Part 3 of the Disability Act 2005 (Access)	Section 2 of the MF Policy and Procedures for the Management of Complaints
<b>Complaints that do not fall within the provision of Part 9 of the Health Act 2004</b>	
Complaints in relation to entitlements to Services under Part 2 of the Disability Act 2005 (Assessment)	Section 2 of the MF Policy and Procedures for the Management of Complaints
Complaints in relation to the decision of a Complaints Officer under Part 2 of the Disability Act 2005	Section 2 of the MF Policy and Procedures for the Management of Complaints
Complaints in relation to Clinical Judgement	Section 2 of the MF Policy and Procedures for the Management of Complaints
Anonymous Complaints	Section 2 of the MF Policy and Procedures for the Management of Complaints
Vexatious or Malicious Complaints	Section 2 of the MF Policy and Procedures for the Management of Complaints

**Table 2: Complaints that do not fall within the remit of this Procedure Manual and must be referred to the appropriate personnel to be addressed using the appropriate Policy, Procedure, Guidelines or Legislation as detailed in this table.**

Details of Complaint/Allegation	Policy, Procedure, Guideline or legislation to be followed
<b>Complaints that do not fall within the remit of this Procedure Manual</b>	
Allegations of abuse of a child	Refer to the Complaints Officer to deal with the complaint in line with the: <b>Children First</b> , National Guidance for the Protection and Welfare of Children, (2011).
Allegations of abuse made against staff members Professional Misconduct and Fitness to Practice Issues. Complaints by staff of any inappropriate behaviour of other staff at work	Refer to Line Manager/ Head of Discipline to deal with complaint in line with some or all of the following: <ul style="list-style-type: none"> <li>• <b>Trust in Care</b>, Policy and Procedures (2014)</li> <li>• <b>Grievance and Disciplinary Procedures for the Muiriosa Foundation</b> May 2013</li> <li>• <b>Dignity at Work Policy for Muiriosa Foundation</b> 2014</li> <li>• <b>Health and Social Care Professionals Act</b> Amendment 2012</li> <li>• <b>Medical Practitioners Act</b> 2007</li> <li>• <b>Nurses Act</b> 2013</li> </ul>
Complaints against the HR/Recruitment process	Refer to Line Manager/ Head of Discipline/Human Resources to deal with complaint in line with some or all of the following: <ul style="list-style-type: none"> <li>• <b>Dignity at Work Policy for Muiriosa Foundation</b> 2014</li> <li>• <b>Grievance and Disciplinary Procedures for the Muiriosa Foundation</b> 2013</li> </ul>
Complaints about bullying and harassment made against staff	Refer to Line Manager/ Head of Discipline/ Human Resources to deal with complaint in line with some or all of the following: <ul style="list-style-type: none"> <li>• <b>Trust in Care Policy 2014</b></li> <li>• <b>Dignity at Work Policy for Muiriosa Foundation</b> 2014</li> <li>• <b>Grievance and Disciplinary Procedures for the Muiriosa Foundation</b> 2013</li> </ul>
Complaints in relation to decisions of Freedom of Information internal reviewers	Refer to Office of the Information Commissioner to deal with the complaint in line with the Freedom of Information Act 1997 and 2003 <a href="mailto:info@oic.ie">info@oic.ie</a>
Complaints in relation to breaches of Data Protection Rights	Refer to Data Protection Commissioner to deal with the complaint in line with the Data Protection Act 1988 and 2003 <a href="mailto:info@dataprotection.ie">info@dataprotection.ie</a>
Complaints in relation to Environmental Issues	Refer to Local Environmental Health Office to deal with the complaint in line with some or all of the following: <ul style="list-style-type: none"> <li>• Food Safety Authority of Ireland Act 1998</li> <li>• European Communities (Hygiene of Foodstuffs) Regulations 2006</li> <li>• Food Hygiene Regulations 1950 - 1989</li> <li>• Public Health (Tobacco) Acts 2002 &amp; 2004</li> </ul>
Elder Abuse Guidelines	Refer to the Complaints Officer, refer to Trust in Care 2014

## **7.5 Review of the outcome of the Pre-investigation Process**

The complainant will be informed that where he/she is not satisfied with the outcome of the pre-investigation process, he/she may request a review of the complaint through the internal reviewer or alternatively he/she may request a review of the complaint by the Office of the Ombudsman/Ombudsman for Children.

## **7.6 Complaints about named staff members**

Complaints received about named staff members must be investigated in conjunction with Trust in Care Policy.

## **7.7 Transfer of a Complaint for investigation by an alternative Complaints Officer**

The Complaints Officer who has responsibility/assigned responsibility for investigating a particular complaint may determine that the complaint warrants management by another Complaints Officer in the first instance if the first Complaints Officer feels that he/she is not in a position to investigate the complaint due to reasons such as:

- difficulty in remaining impartial and non-biased in the investigation of the complaint
- extensive previous knowledge of the complaint or the parties involved
- previous poor interpersonal or working relationships with the parties involved
- the complaint is one:
  - in relation to catastrophic outcomes
  - in relation to the death of a service user
  - which may have particular significance for the organisation or which have the potential to acquire significance
  - that involves a large number of Muiriosa Foundation locations and services that may attract considerable media attention

The complainant must be informed immediately upon the new assignment of a Complaints Officer to investigate the complaint.

## **7.8 Stage 2a: Informal Resolution of the Complaint**

• If it is demonstrated that the complaint is valid and meets the criteria outlined in section 7.4 and where a formal investigation of the complaint may proceed, the Complaints Officer will consider whether it would be practicable, having regard to the nature and the circumstances of the complaint, to seek the consent of the complainant and any other person to whom the complaint relates to finding a resolution to the complaint by the parties concerned.

- The Complaints Officer must determine the most appropriate informal resolution approach for a particular complaint, e.g., contacting the complainant with a view to resolving the complaint informally or arranging a meeting between the parties concerned.
- Where resolution is achieved through this informal process, the Complaints Officer must create a report outlining the details of the complaint, the resolution process and the outcome of the resolution process including any recommendations made. The process for the development and management of the report is described in section 7.10.
- Where the complaint is not resolved by informal resolution approaches, the Complaints Officer will record the details of the informal resolution process attempted and the reasons why the approach failed to resolve the complaint and will inform the complainant of the process for the formal investigation of the complaint.

- The complainant must be given the opportunity to agree or object to the Complaints Officer who was involved with the informal resolution of the complaint, proceeding with the formal investigation of the complaint.
- When the complainant objects to the continued involvement of the Complaints Officer, the Complaints Officer must inform the Area Director or the Regional Director of the requirement to assign an alternative Complaints Officer to carry out the formal investigation of the complaint.

Or

- where there is only one Complaints Officer in a particular location, the Regional Director must be notified of the requirement to assign an alternative Complaints Officer to investigate the complaint.
- The Complainant will be notified of the details of the newly assigned Complaints Officer immediately.

### **7.8.1 Mediation**

As part of the investigation process and where deemed appropriate by the Complaints Officer, mediation should be considered as a means of achieving resolution where both parties agree to the process. The decision to offer mediation must be made by the Complaints Officer on a case by case basis.

Mediation is described as a process in which the parties to a dispute, with the assistance of a neutral agreed third party (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement.

(Queensland Health, Complaint Co-ordinators Handbook).

Mediation is collaborative and allows mutual satisfactory outcomes to be negotiated. Both parties involved in the dispute agree to use a neutral third party to help solve the dispute. The terms of the agreement are decided between the parties with the help of the mediator. Generally, decisions made in mediation are not legally binding but they can be made so if both parties agree to it.

#### **When would mediation be an option?**

- Resolution at the point of service is inappropriate or if previous attempts to resolve an issue have failed.
- All people involved agree to participate in the mediation process.
- The complainant requires an explanation of what happened and why.
- Advice on whether or not mediation might be appropriate is available from the Complaints Officer.

#### **Mediation Process**

- The Complaints Officer will identify if mediation is an option for the possible resolution of the complaint.
- The Complaints Officer will identify if both parties to the complaint agree to mediation
- If both sides agree, the Complaints Officer will appoint an agreed mediator to facilitate the process.
- A mediator must be selected from a list of qualified and Muiriosa Foundation approved mediators provided by the Human Resources Dept.
- The mediation process must be carried out in accordance with best practice mediation.
- The mediator will advise the Complaints Officer if the outcome of the mediation process was successful or not.
- Any improvements to service highlighted during the mediation process will be reported to the Complaints Officer.
- The resolution of the complaint through mediation can not include payment of any financial compensation.

## **7.9 Stage 2b: Process for Formal Investigation of a Written Complaint**

If it is demonstrated that the complaint is valid and meets the criteria outlined in section 7.4, where a formal investigation is required and appropriate and where informal resolution is not appropriate or was not successful, the Complaints Officer will initiate the investigation of the complaint.

Relevant managers must actively assist in the investigation of this complaint and in the implementation of any improvements recommended for the service as a result of the investigation findings.

The process for local investigation of a written complaint is summarised in figure 3.1.

### **7.9.1 Initiating the Investigation**

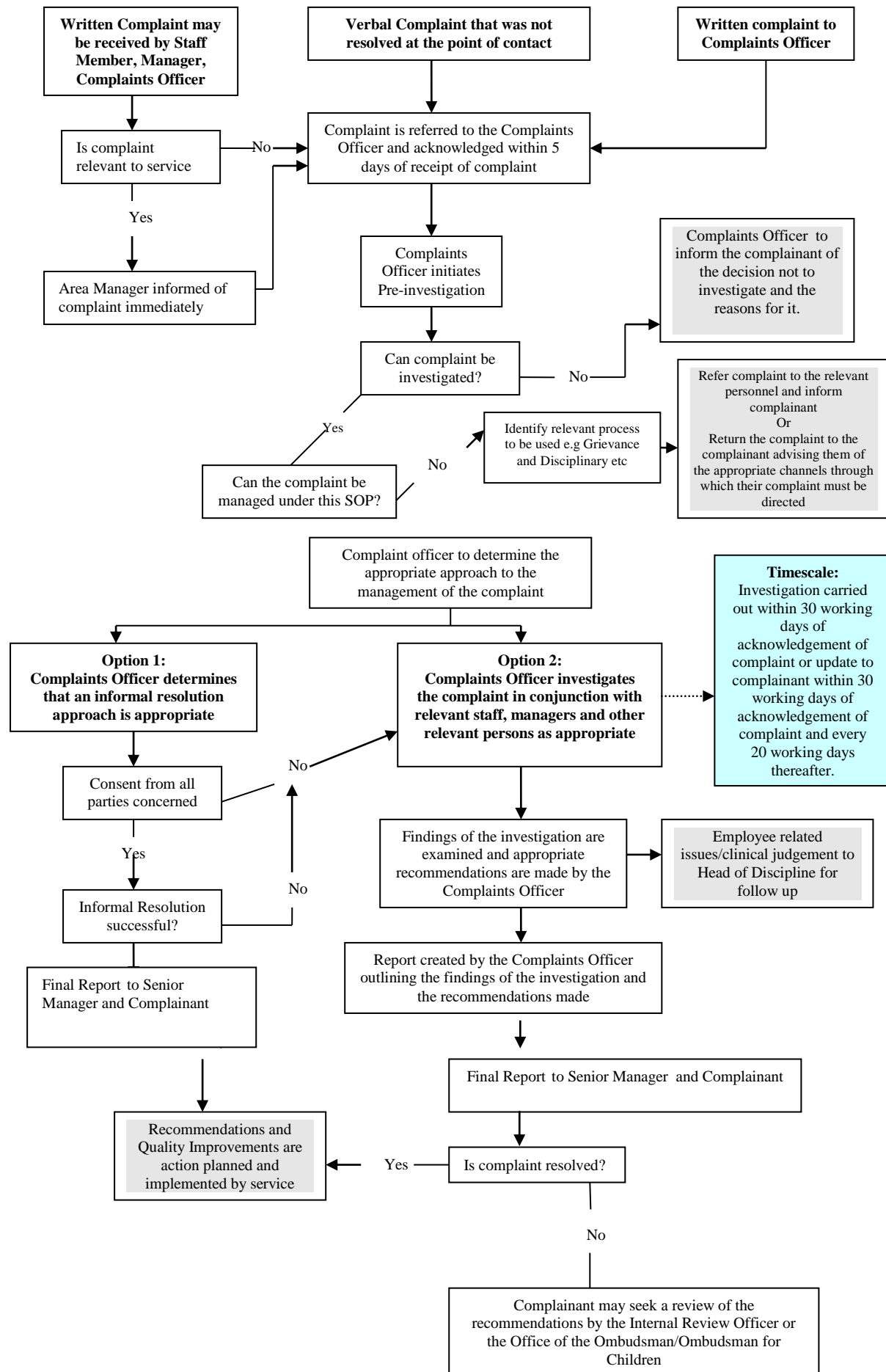
The Complaints Officer will initiate the investigation of the complaint once all steps have been taken to remove or treat any immediate harm caused by the action about which the complaint is being made.

- The investigation will be carried out by the Complaints Officer who will liaise with all relevant parties as required (refer to section 7.3 on timeframes).
- A Complaints Officer may request any documents and communicate with any persons he or she believes can assist with the investigation of the complaint (refer to section 7.3 on timeframes).
- The Complaints Officer may also request further information about the complaint from the complainant to enable a full and proper investigation of the complaint (refer to section 7.3 on timeframes).
- In addition, a Complainant may make written representations in support of his/her complaint and such representations will be considered by the Complaints Officer.
- Where deemed appropriate by the Complaints Officer, he/she will establish and lead an investigation team, consisting of all relevant persons and staff with expertise and knowledge to carry out the investigation. The size and membership of this investigation team will be dependent on each complaint and will be determined by the Complaints Officer.
- The investigation team will identify the terms of reference of the team and this will be signed by all persons involved. The terms of reference determine the objectives of the investigation team and the limits of its responsibility and authority.
- All information obtained by the Complaints Officer (and investigation team where appropriate) in the course of investigating a complaint will be deemed to be confidential information.

(Health Act 2004 (Complaints) Regulations 2006).

## 7.9.2 Complaints Management Process

Figure 3.1: Details Stage 2 of the Complaints Management Process





The investigation will be conducted thoroughly and objectively with due respect for the rights of the complainant and the rights of the service/staff members to be treated in accordance with the principles of natural justice.

- The Complaints Officer will have the necessary expertise to conduct an investigation impartially and expeditiously. Where appropriate, the Complaints Officer may request appropriately qualified persons to carry out clinical assessments, validation exercises etc.
- Confidentiality will be maintained throughout the investigation to the greatest extent consistent with the requirements of fair investigation.
- A written record will be kept of all meetings and treated in the strictest confidence.
- The Complaints Officer may interview any person who they feel can assist with the investigation. Staff are obliged to co-operate fully with the investigation process and will be fully supported throughout the process.
- Staff who participate in the investigation process will be required to respect the privacy of the parties involved by refraining from discussing the matter with other work colleagues or persons outside the organisation.
- It will be considered a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness or to attempt to obstruct the investigation process in any way.

### **7.9.3 The Investigation Process**

The following are the steps in the investigation process:

The Complaints Officer will:

- Identify all parties involved in the complaint (i.e. complainant & staff members/local managers about whom the complaint is being made).
- Advise all parties involved in the complaint of the decision to carry out a formal investigation.
- Determine if an investigation team is required to support the investigation of the complaint.
  - Identify the members of the investigation team
  - Ensure that all members of the investigation team can support the investigation in an unbiased and unprejudiced manner
  - Develop terms of reference with the investigation team members
- Gather all relevant evidence to support the investigation process
- As part of the investigation, both the complainant and the service/staff members about whom the complaint was made will be provided with the opportunity to give their version of events and to provide evidence/explanations in relation to their actions.
- Inform all parties of their right to be accompanied by a support person / trade union representative etc. at any meetings.
- Give the complainant the opportunity to identify what they would like to happen as a result of making the complaint.
- Ensure that the expectations of the complainant are managed and that the complainant is clear about what can and cannot be achieved through the investigation.
- Ensure that the investigation determines the sequence of events leading to the complaint and the root causes of the complaint.
- Ensure that conclusions about a complaint are not made unless there is a logical flow to the evidence supporting the complaint.
- Permit a Complainant to make written representations in support of his/her complaint and such representations will be considered by the Complaints Officer in the course of the investigation of the complaint.
- Where the investigation highlights employee related issues, those issues will be referred to the relevant Head of Discipline and HR for appropriate follow-up (see section 7.9.4).
- Not make a finding or a criticism in his or her report, adverse to a person without having afforded the person concerned the opportunity to consider the proposed findings or criticism and to make representations in relation to it.

- Decide on any recommendations to be made as a result of the findings of the investigation. These recommendations to include:
  - redress for the complainant where deemed appropriate by the investigation, - action to be taken to remove the causes of the complaint or its likelihood for re-occurrence as far as is reasonably possible where deemed necessary by the investigation.
- Post investigation of the complaint the Complaints Officer will prepare a signed and dated report (see section 7.10) which will include:
  - his/her findings,
  - any recommendations which he or she considers appropriate, and - the reasons for such findings and recommendations.

#### **7.9.4 Employee Related Issue**

Where the investigation of the complaint highlights that the complaint or part of the complaint indicates an employee related issue then this issue is referred by the Complaints Officer to the Area Director /Head of Discipline for appropriate action (in conjunction with designated personnel in the Human Resources Department) under the relevant processes detailed in Table 2 of 7.4.6 of this Procedure Manual.

#### **7.9.5 Prioritising of recommendations**

To assist in determining the prioritisation of recommendations, the Complaints Officer must determine the severity of the impact of the causes of the complaint that was made and the likelihood of that causative factor occurring again. (Refer to Muiriosa Foundation Guidance on the Management of Risk and the Individual Service User 2014)

#### **7.9.6 Restrictions on the types of recommendations Complaints Officers may make**

The Complaints Officer will endeavour at all times to make recommendations designed to resolve the complaint, and to ensure effective quality improvements.

However, the Health Act, 2004, places some restrictions on the recommendations a Complaints Officer can make post investigation of a complaint, as follows:

A Complaints Officer may not, following the investigation of a complaint, make a recommendation the implementation of which would require or cause:

- a) the Muiriosa Foundation to make a material amendment to its approved service plan, or*
- b) Muiriosa Foundation and the Health Service Executive to make a material amendment to an arrangement under section 38 of the Health Act 2004.*

#### **7.10 Preparation of a report post-investigation**

- Post investigation of the complaint the Complaints Officer will prepare a signed and dated report which will include:
  - his/her findings
  - any recommendations which he or she considers appropriate
  - the reasons for such findings and recommendations
- In detail, the contents of the report should include:
  - A description of the complaint.
  - Reason(s) for actions resulting in the complaint.
  - A description of the investigation process to assure the complainant that their complaint has been fully and fairly investigated.
  - The Complaints Officer's findings
  - An apology when the investigation showed that the Muiriosa Foundation was at fault.

- If the investigation showed that there were no legitimate grounds for the complaint and the complaint was not substantiated, the report will outline the reasons why this decision was reached.
  - Where the complaint was substantiated, the report will detail recommendations considered appropriate by the Complaints Officer to:
    - Prevent re-occurrence of the causes of the complaint and for quality improvement.
    - Details of any redress to be provided to the complainant where appropriate.
  - The Complaints Officer will forward the report as soon as practicable to the complainant, the Area Director, Regional Director, Line Manager, Staff Member and to the CEO or designated officer.
  - The report forwarded to the complainant will also advise that he/she may request a review of the outcome of the investigation of their complaint and will provide the complainant with the details of how to request the review (See section 9.0).
  - The recipients of the report will be invited to contact the Complaints Officer to clarify any issues in the report.
  - Where a staff member against whom a complaint has been made is unhappy with the recommendations they may evoke the Grievance & Disciplinary procedures.
- \*At all times, when issuing a report, the Complaints Officer must be cognisant of confidentiality requirements for both the complainants and the staff members about whom the complaint was made (see section 4.0 on Privacy and Confidentiality). The Complaints Officer may need to consider anonymising parts of the report to protect the identity of the complainant or the staff member when deemed appropriate by the Complaints Officer. Where there is uncertainty as to the proper identification and management of confidentiality issues, the Complaints Officer should contact their Human Resource's Dept for advice on any FOI or Data Protection issues.

## **7.11 Withdrawal of Complaints**

- A complainant may, at any time, withdraw a complaint made and, on advice of such withdrawal, the Complaints Officer may cease to investigate or review the complaint.
- However, where the Complaints Officer has reasonable grounds for believing that public interest would best be served by the continuation of the investigation or review, he or she must refer the matter to the Regional Director for a decision on the matter.

## 8.0 Implementation of Recommendations made by Complaints Officers

- The Complaints Officer will forward a report of the investigation to the Regional Director at the same time as the complainant, Area Director and staff member
- Within **30 working days** of receiving the report from the Complaints Officer, the Regional Director shall take such steps as are reasonable to give effect as soon as practicable and to the greatest extent practicable to any recommendation of the complaints officer, provided that he or she is satisfied that it is within the functional remit of the Muiriosa Foundation.
- Where a recommendation the implementation of which would require or cause the Muiriosa Foundation to make a material amendment to its approved service plan, the Muiriosa Foundation may amend the recommendation in such a manner as makes the amendment to the applicable service plan or arrangement unnecessary or reject the recommendation and take such other measures to remedy, mitigate or alter the adverse effect of the matter to which the complaint relates as the relevant person considers appropriate.
- Where the recommendation is being amended or rejected or where alternative measures are being taken, the Regional Director in consultation with the CEO must give the reasons for their decisions.
- The CEO must agree the action plan in place with the implementation of the recommendations of the investigation. The action plan, persons responsible and timeframes are to be identified and recorded.
- Where a complainant has requested a review of the outcome of the investigation, the Regional Director will suspend the implementation of a recommendation and will notify the complainant of this suspension.
- If after a period of time recommendations made are not implemented and the complainant is dissatisfied, they should be advised to contact the Regional Director.

## 9.0 Internal Review: Stage 3

Where a complainant is dissatisfied with recommendations made by a Complaints Officer (Stage 2), he/she may apply for a review of the recommendations to the Internal Review Officer. This review process is summarised in figure 4.0 below.

**Figure 4.0: Review Process**

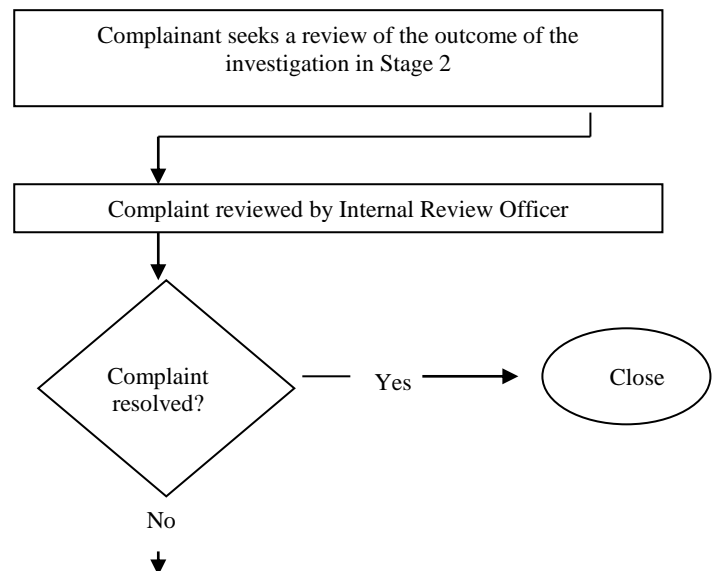
### Stage 3

#### Internal Review

##### Timeframes:

Complainant to seek a review of complaint within 30 working days of the final report of stage 2 being signed and dated.

Review to be concluded within 20 working days of receipt of the request for review of progress report within 20 working days with update every 20 working days thereafter.



## 9.1 General Review Process

- Where a complainant is dissatisfied with recommendations made by a Complaints Officer (Stage 2), he/she may apply for a review of the recommendations to the Internal Review Officer **within 30 working days** of the date on which the report was signed and dated by the Complaints Officer.
- Where a request for a review is received beyond the period specified above, the Internal Review Officer may extend the time limit for requesting a review if he/she determines that special circumstances make it appropriate to do so.
- Where it is decided that the time limit for requesting a review will not be extended, the Internal Review Officer will notify the complainant in writing of this decision within **5 working days** of the decision having been made and recorded.
- Where the request for a review is accepted, the Internal Review Officer will conduct a review and inform the complainant within **5 working days** of the application for review being received.
- The Internal Review Officer shall determine the procedures to be followed in conducting a review. However, the Internal Review Officer must ensure that the procedures are fair and meet with two overarching constitutional principles, i.e. the right to be heard and avoidance of bias.
- The functions of the Internal Review Officer are twofold:
  - (1) To determine the appropriateness of a recommendation made, having regard to two elements:
    - a) all aspects of the complaint and
    - b) the investigation of the complaint
  - (2) Having determined the appropriateness of the recommendation to uphold it, vary it, or make a new recommendation if he/she considers it appropriate to do so.

- It is clear from the above that more than a simple paper review of the complaint is contemplated, and that often a fresh examination of files and papers together with fresh interviews with relevant parties to the complaint is required.
- The Internal Review Officer may request all documentation relevant to the complaint and communicate with any person that he/she reasonably believes can assist with the review of the complaint.
- A complainant who has requested a review may make written representations in support of his or her complaint and such representations will be considered by the Internal Review Officer.
- The Internal Review Officer must endeavour to conduct and conclude the review **within 20 working days** of the request being received. However, where the review cannot be concluded within this timeframe, the Internal Review Officer must inform the complainant of this fact and indicate the additional time necessary to complete the review.
- Upon conclusion of a review the Internal Review Officer shall prepare a signed and dated report on the review.
- The Internal Review Officer will not make a finding in his/her report, adverse to a person, without first having afforded the person concerned with the opportunity to consider the finding or criticism and to make representations in relation to it.

## 9.2 Post-Review Report

Upon conclusion of a review, the Internal Review Officer will, as soon as is practicable forward a report on the review to the complainant, the complaints officer who investigated the complaint, Local Manager, Area Director and CEO. The contents of the report to include:

- The name(s) of the Internal Review Officer.
- Details of the process used by the Internal Review Officer to review the investigation of the complaint and the recommendations made. If the Internal Review Officer feels that the complaint had been fully and fairly investigated in Stage 2, he/she will recommend acceptance by the complainant of the outcome of the local investigation.
- Where the review showed that the local investigation did not adequately investigate the complaint, the Internal Review Officer's report will outline where the investigation was not adequate.
- The report will outline if the recommendations from the investigation are being upheld, if the recommendations are being varied or the report will detail new recommendations made by the Review Officer. The reason for the decision of the Internal Review Officer will be provided in the report.
- The report must also outline to the complainant their right to a review by the Office of the Ombudsman/Ombudsman for Children (Stage 4).

## 10.0 Independent Review: Stage 4

At all stages of the process, complainants must always be made aware by the Muiriosa Foundation of their right to an independent review of their complaint by the Office of the Ombudsman/Ombudsman for Children.

The process used by the Office of the Ombudsman or Ombudsman for Children is not described in this procedure but this information may be sourced through the following website

[www.ombudsman.ie](http://www.ombudsman.ie) or [www.oco.ie](http://www.oco.ie).

**Figure 5.0: Stage 4: Independent Review**



### 10.1 Ombudsman

Complainants must always be made aware of their right to an independent review of their complaint by the Ombudsman (unless the complaint was made by a child or on behalf of a child where the complaint may be referred to the Ombudsman for Children).

The Ombudsman may decide not to investigate a complaint if sufficient steps were not taken by the complainant to try to seek local investigation and redress from the Muiriosa Foundation. The Ombudsman will use his/her own discretion in this respect.

In addition, the Ombudsman cannot investigate:

- a) The actions of private companies or individual private practitioners, dentists, opticians, pharmacists, etc. However, when a complaint is made about a private practitioner who was providing a service on behalf of the Muiriosa Foundation, the Ombudsman would have jurisdiction to investigate that complaint.
- b) Actions taken in connection with clinical judgement.
- c) Complaints relating to recruitment, pay and conditions of employment.
- d) Court decisions, matters which are already the subject of court proceedings, the actions of the Gardai or actions taken in the running of prisons.
- e) Where there is an alternative right of appeal to an independent tribunal or appeal body although the Ombudsman does have discretion to accept complaints even when the foregoing applies.

## 10.2 Ombudsman for Children

The Ombudsman for Children is the independent review process for complaints made by or on behalf of children up to and including the age of 18 in accordance with the Ombudsman for Children Act 2002.

The Ombudsman for Children may decide not to investigate a complaint if there were not sufficient steps taken by the complainant to seek local investigation and redress from the Muiriosa Foundation. The Ombudsman for Children will use his/her own discretion in this respect.

In addition, in accordance with the Ombudsman for Children Act, 2002, the Ombudsman for Children will not investigate if:

a) The action is one in relation to which:

- civil legal proceedings have been initiated on behalf of the child affected by the action and have not been dismissed; or

- the child affected by the action has a right of appeal, reference or review to or before a court in the State or before a person other than a public body.

b) If the action relates to or affects national security or military activity or arrangements regarding participation in organisations in states or governments.

c) If the action relates to recruitment or appointment to any office or employment.

d) If the action relates to the terms and conditions upon which a person holds any office or of a contract for service.

e) If the action is one taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship. If it involves the exercise of the right or power referred to in Article 13.6 of the constitution. If it relates to court decisions or if the action is one taken in the administration of the prisons or other places for the custody or detention of children.

f) If the action relates to the results of an examination.

g) If the complaint is not made to the Ombudsman for Children within 2 years of the action leading to the complaint or 2 years from the time the child or person making the complaint on behalf of the child became aware of the action.

h) If the action was taken before the Ombudsman for Children Act, 2002 or is not one that may be subject to a complaint under the Act of 1980.



## 11.0 Complaints that do not come under the Provision of Part 9 of the Health Act 2004

There are a number of matters excluded under Section 48, Part 9 of the Health Act 2004. Table 2 in Section 7.4.6 details non-Part 9 complaints that will be addressed in this section of the SOP.

The processes for managing these complaints are as follows:

### 11.1 Complaints in relation to Clinical Judgement

- Where there is a possibility that the complaint may include an element of clinical judgement, that complaint must be assessed by the Complaints Officer to determine if the complaint or parts of the complaint may be clearly defined as clinical judgement.
- Where a complaint is not **solely** related to clinical judgement a local investigation of the complaint is to be carried out by the Complaints Officer to identify the root causes of the complaint and to identify those aspects of the complaint that do not relate to clinical judgement.
- Where a complaint concerns clinical judgement, it must be referred to the CEO. He/she will immediately inform the consultant/head clinician. The consultant will look into the clinical aspects and in conjunction with the Regional Manager try to resolve the complaint and if necessary meet with the patient and family members to discuss the matter.
- **Clinicians are to be provided with the opportunity to be part of an investigation that will endeavour to resolve the complaint as close to the point of contact as possible.**
- Where a complaint relates to clinical judgement exercised by any of the other clinical professions where a consultant is not involved it must be referred to the Regional Director. He/she will immediately inform the clinical professional or head of department. The clinical professional will look into the clinical aspects and in conjunction with the Regional Director will try to resolve the complaint and if necessary meet with the patient/service user and family members to discuss the matter.
- If the investigation indicates that there is an employee related issue, then this issue is referred by the Complaints Officer to the Head of Discipline for appropriate action (in conjunction with designated personnel in the Human Resources Department) under the relevant processes detailed in Table 2 of 7.4.6 and section 7.9.4 of this Procedure Manual.

### 11.2 Anonymous Complaints

- All anonymous complaints, both written and verbal, should be documented on the appropriate Muiriosa Foundation complaint reporting forms and brought to the attention of the relevant line manager for a decision as to whether quality improvements are required on the basis of the complaint.
- It is the policy of the Muiriosa Foundation that complainants must provide contact details when making a complaint against the Muiriosa Foundation to enable appropriate validation, follow up and investigation of that complaint unless there is a good and sufficient reason for withholding this information.
- Anonymous complaints will not normally be investigated as there is always a possibility that they are vexatious or malicious and the anonymity of the complainant does not enable the principles of natural justice and procedural fairness to be upheld. Notwithstanding the fact the anonymous complaints cannot be the subject of a formal investigation unless there is supporting evidence, management should assure themselves that the systems in place are robust and the welfare of clients is not at risk.
- If the complaint is made by phone, or by person, the member of staff taking the complaint should encourage the caller to provide a name and telephone number at which they may be contacted.

- The caller should be advised that unless they provide their name and contact details, it may not be possible to investigate the complaint if the disclosure of identity is regarded as essential to facilitate a full and proper investigation of the complaint.
- If a complainant makes a complaint in confidence, the identity of the complainant will only be known to the recipient of the complaint and the Complaints Officer. If the investigation of the complaint requires the identity of the complainant to be disclosed, the consent of the complainant must be obtained to disclose this information. In this case, the complainant must be informed that it may not be possible to carry out a full and proper investigation of the complaint without their consent to disclose their identity.
- If an anonymous complaint provides details that enable the identification of individual staff members, these details must be anonymised and there must be no record of an anonymous complaint on the file of any individual staff members.
- The Complaints Officer is responsible for dealing with anonymous complaints within his/her area of responsibility and for providing the Regional Director with this information.

### **11.3 Vexatious or Malicious Complaints**

- If found to be frivolous or vexatious, the Muiriosa Foundation will not pursue the complaint any further.
- However, this does not remove the complainant's right to submit their complaint to independent agencies such as the Ombudsman/Ombudsman for Children.
- If a complaint is found to be vexatious or malicious, there will be no record of the complaint in the file of the staff member / service about which the complaint was made.
- Before the complaint is deemed vexatious the Complaints Officer must bring it to the attention of the Regional Director.

## **12.0 What can the Muiriosa Foundation do?**

### **12.1 Redress System**

An effective complaints system which offers a range of timely and appropriate remedies will enhance the quality of service to the consumers of the Muiriosa Foundation. It will have a positive effect on staff morale and improve the Muiriosa Foundation's relations with the public. It will also provide useful feedback to the Muiriosa Foundation and enable it to review current procedures and systems which may be giving rise to complaints.

Redress should be consistent and fair for both the complainant and the service against which the complaint was made. The Muiriosa Foundation should offer forms of redress or responses that are appropriate and reasonable where it has been established that a measurable loss, detriment or disadvantage was suffered or sustained by the claimant personally.

This redress could include:

- Apology
- An explanation
- Admission of fault
- Change of decision
- Correction of misleading or incorrect records
- Technical assistance
- Recommendation to make a change to a relevant policy

### **12.2 Ombudsman's recommendations for redress by Public Bodies**

The following section outlines the Ombudsman's recommendations for redress by Public Bodies:

- Even where people are not entitled to a particular service or benefit, they are entitled to be told the reasons why they do not qualify and be informed of alternative services, where possible.
- Where they may be entitled to the service or benefit but a delay in the decision cannot be avoided, they should be informed when the decision is likely to be made.
- In cases of need, other possibilities for short-term relief may have to be examined. Public service providers must always bear in mind that citizens usually do not have the option of taking their business elsewhere. Citizens are entitled to proper, fair, impartial and expeditious treatment by public bodies. Where there is a shortfall in these standards, and the fault lies with the public body, it should remedy the shortfall through the provision of redress. The general rule of thumb should be to put the person back into the position he/she would have been in if the public body had acted properly.

#### **Apologies and explanations**

When it turns out that the service or benefit has been wrongly denied or delayed, the public body should always give a detailed explanation and/or apology. Explanations and apologies should include the following:

- the reasons why the public body got it wrong;
- an apology for any hurt, inconvenience or hardship caused;
- an acceptance of responsibility for the fault which has occurred;
- an acceptance that, where time limits apply, any undue delay on the part of the public body will be discounted where possible.

(Office of the Ombudsman, 2001)

## **13.0 Supports for Complainants and Staff**

### **13.1 Support for complainant**

The Muiriosa Foundation must ensure that support is provided to the complainant in the form of:

- Facilitation with the complaints process.
- Availability of appropriate policies, procedures and guidelines for the management of complaints.
- Assistance with completion of forms etc.
- Information about advocacy services.
- Continuous feedback and updates.
- Information about mediation

### **13.2 Support for staff member(s)/service**

Sensitivity must be shown to staff that are the subject of a service-user complaint:

- The staff member's line manager must ensure that he / she is supported and assisted in every way possible during the investigation of a complaint. The staff member must also be advised of their right to representation and to be informed of any support networks and people available to assist them in responding to complaints. For example, union officials/ local representatives, professional bodies, human resource managers, the Employee Assist Programme.
- The complaints officer must assure the subject(s) of the complaint that the complaint management processes are fair and transparent and must ensure that support is provided to the subject(s) of the complaint in the form of:
  - Time to deal with and respond to the complaint.
  - Unbiased forum for giving their side of story and an opportunity to be accompanied by an appropriate person during the course of the investigation of the complaint.
  - An emphasis on resolution as opposed to blame.
  - Emphasis on process improvement.
  - Knowledge of their rights.
  - Employee Assistance.

## **14.0 Documentation of Complaints**

### **14.1 Documenting complaints (recording and tracking)**

- All written complaints must be documented by the Complaints Officer.
- Verbal complaints are to be documented by the recipient of the complaint as far as is reasonably practicable. In particular, verbal complaints that indicate a particular trend or where quality improvements are required, should be documented and must be forwarded to the Complaints Officer via the Local Manager, Local Complaints Logbook.(Appendix 10)
- Any complaint documentation must include the initial complaint and written evidence of the interaction between any people in relation to the complaint. This would include the complainant, the service involved, any external agencies etc.
- Documentation must also include the desired outcomes for the complainant and the reports and the documented outcomes (including action plans for quality improvement) from each stage of the complaints management process.

### **14.2 General Content of the Documentation**

The general content of documentation includes:

- Document the complaint objectively
- Document all discussions with people in relation to the complaint including telephone calls, reminder calls, meetings etc.
- Document all dates of correspondence, discussions and interactions accurately
- Document the progress, actions to be taken, complaint outcomes and changes to current practice
- Document any relevant information from significant others

### **14.3 Recording Complaints**

All formal written complaints and where practicable, verbal complaints must be recorded for statistical and performance indicator purposes on the Local Complaints Logbook (Appendix 10)

- Systems must be available to allow for the recording of verbal complaints at the point of contact where practicable.
- In the case of a verbal complaint, the following details should be recorded by the recipient of the complaint on the Local Complaints Logbook (Appendix 10)
  - Name, address, contact details, age of complainant
  - Details of the complaint
  - Date the complaint was made
  - The desired outcomes for the complainant
  - Department/ Service about which the complaint was made
  - Names of personnel involved in managing the complaint
  - If resolution was achieved at the point of contact, the details of the resolution process and recommendations for action as a result of the complaint
  - If resolution was not achieved at the point of contact, the reasons why.
  - If complainant was informed of the process for submitting a formal written complaint.
- To support the management of a written complaint, the Complaints Officer or designated officer will record the following:
  - Name, address/ contact details/ age of complainant
  - Details of the complaint
  - Date complaint was made
  - Date complaint was received by Muiriosa Foundation
  - How the complaint was made (i.e. letter, email etc)

- If this complaint was previously a verbal complaint
- Date of acknowledgement of the complaint
- The desired outcome for the complainant
- Department/ Service about which the complaint was made
- Result of the pre-investigation of the complaint by the Complaints Officer
- If informal resolution was attempted, what process was used and if it was successful.
- Outcome of the informal resolution
- If formal investigation of the complaint was initiated
- Result of the risk assessment of the actions that gave rise to the complaint
- Details of the recommendations for action made as a result of the investigation of the complaint
- Details of the action plan for organisational improvement (including responsibility and timeframes)
- Date report sent to complainant and Regional Director
- Date report sent to relevant Local Manager(s)/ staff member(s)
- If investigation at Stage 2 was completed within 30 working days
- If no, if progress reports were sent to the complainant and service/staff member at 30 working days and every 20 working days thereafter
- If complaint was investigated within 6 months
- If resolution of the complaint was achieved as a result of the local investigation (Stage 2)
- If mediation was offered and if it was accepted
- Outcome of mediation process
- If resolution was not achieved by formal investigation and the reasons why.
- If complainant was informed of the review process
- The Complaints Officer has a responsibility for ensuring the above information is recorded.
- Local Managers must fully support and assist the Complaints Officer in recording and collating the above data.

## **14.4 Reporting by Internal Review Officer**

Internal Review Officer will complete their reports in line with the standards outlined above.

## 15.0 Best Practice Communication in Complaints Management

### 15.1 Quality and Effective Correspondence to Complainants

The Complaints Officer has an important role to ensure that local Muiriosa Foundation services provide quality responses to consumer complaints.

The response must be prompt, clear and accurate ensuring that the information can be understood and in a way in which the service intended.

**The following principles must be considered in any communication with the complainant:**

- **Timely:** Communication must be timely. Redress and improvements resulting from the complaint investigation must also be addressed in a timely manner.
- **Apology:** Where appropriate, an apology must be made to the complainant immediately and sincerely. Where the fault clearly lies with the service in question, an assurance that all steps will be taken to ensure that lessons will be learned and improvements put in place to assure the complainant that the complaint will not happen again.
- **Facilitation and Support:** This relates to the availability of policies and procedures to deal with complaints handling. The availability of appropriate personnel to deal with complaints as quickly as possible. The complainant must receive any required support through the complaint process.
- **Credibility:** the complainant needs to see the appropriateness and validity of the complaints handling process and agree with the process. There must be clarity and credibility to any communication with the complainant.
- **Attentiveness:** refers to the care and attention received by the customer from an organisation or its representatives. Attentiveness comprises four main areas:
  - Respect
  - Empathy
  - Effort
  - Willingness to listen to customer
- **Standardised forms, reports, letters etc.**
- **Clear procedures:** All complaint handling procedures must be clear, easily implemented and transparent.
- **Regular feedback:** The Complainant must be kept informed on an agreed routine basis of the progress of their complaint.
- **Involvement:** Involvement of complainant or advocates in the investigation process as far as is reasonably possible.
- **Confidentiality:** All communication is treated in a confidential manner.

### 15.2 Written Communications

Written communications must be structured in a “consumer friendly” approach. This may be achieved by:

- Anticipating or being mindful of the readers questions or expectations
- Using formatting styles to communicate the message (headings, titles etc.)
- Arranging information to be reflective of your communication goal e.g. do you want the recipient to make a decision, take action, or just to know something.
- Being courteous, warm and empathetic, using a personal tone and a simple writing style.
- Never indicate the complainant is “wrong”.
- Providing accurate information clearly and concisely.
- Providing a brief overview of the investigation undertaken and focus on the resolution.
- Providing realistic expectations.
- Avoiding:

- Jargon and bureaucratic language
- Detailed medical information when responding to complaints
- Extracts from the patient/clients health care record
- Abbreviations and acronyms

In general, when responding to a complainant in writing it is important to:

- Express the service's interest in the complaint and in meeting their needs.
- Explain why you are writing to the complainant.
- Include details and information about the complaint, suggested action(s), information as to why the actions were or will be taken and any limitations to resolving the complaint to the complainant's satisfaction.
- Offer the opportunity for the complainant to contact you to discuss the matter.

### **15.3 Communication strategies for different types of complaints**

It is essential that staff receive adequate training in dealing with all types of complaints including the following:

- 15.3.1 Managing Angry and Aggressive Complaints
- 15.3.2 Repetitive Complaints/Persistent Complainer
- 15.3.3 Unresolvable Complaints

#### **15.3.1 Managing Angry and Aggressive Complaints**

- Staff training in dealing with these challenges will help to achieve a good outcome for the complainant and the staff.
- It is important that staff try to understand why the complainant is being angry and aggressive e.g. frustration, grief etc., and to address the situation by:
  - Being respectful and helpful
  - Giving the complainant your individual attention
  - Not attempting to lay blame, be defensive or argue
  - Remaining positive
  - Not taking anger as a personal attack

#### **15.3.2 Repetitive Complaints/Persistent Complainer**

- When frequently receiving complaints from the same people it is important that their complaint is not dismissed and that each complaint is appropriately dealt with by Muiriosa Foundation procedures for managing complaints.
- Even if complaints are being received from a persistent complainer, they may each be a valid complaint and must be managed to ensure the validity of each complaint and to obtain any possible learning and quality improvement as a result of the complaint.

#### **15.3.3 Unresolvable Complaints**

- The Muiriosa Foundation must determine a point at which the complaint is closed if all avenues for resolution have been explored, including an external review of the complaint by the Ombudsman/Ombudsman for Children, and resolution of the complaint cannot be achieved.
- This will be decided on by the relevant Complaints Officer in conjunction with the Regional Director and the complainant will be informed of the decision.
- The complainant will be informed that for any further investigation of their complaint to take place, they must provide the Complaints Officer with new and substantiated evidence in writing.



## **15.4 Communication by the Complaints Officer with staff member involved in the complaint investigation**

- Communication with the staff member/service involved may be made by the Complaints Officer through the Local Manager or by the Complaints Officer directly (see section 4.6 on Staff Member and Rights to Confidentiality).
- Communication with the staff member/service involved in the complaint should include:
  - A statement indicating that a complaint has been received and giving the date and service areas referred to in the complaint.
  - Enclose details of the complaint together with summary points the complainant wishes to have addressed.
  - Request a written report that addresses the key points raised.
  - Date by which the report should be returned to the Complaints Officer (i.e. within 10 working days).
  - Every effort must be made to comply with the timeframe as outlined above. However, there may be special circumstances where the Complaints Officer will extend the timeframe due to the unavailability of staff member, e.g. on annual leave.
  - Invite the relevant staff member to take part in a local investigation of the complaint.
  - Inform them of their right to be accompanied by a relevant support person (e.g. trade union, staff association representative, work colleague etc.).
  - Invitation to contact the Complaints Officer to discuss details.
  - Give assurances in relation to confidentiality.
  - Provide support, advice and help, particularly where allegations of a serious nature are made.
  - Staff should always be kept informed and updated on progress of complaint investigation.

## 16.0 Complaint Driven Organisational Improvement

The Muiriosa Foundation will ensure that **organisational improvement** is a key objective of their complaints management processes. All complaints must be viewed as an opportunity for quality improvement and risk management. It is important to assure complainants that all valid complaints will be used by the organisation to identify corrective actions that need to be taken to ensure that the action about which the complaint was made, will be remedied.

To achieve this objective, all Muiriosa Foundation staff will accept and recognize complaints as a means of improving the services provided by the organisation. The Muiriosa Foundation will ensure that there is cultural acceptance of consumer complaints throughout the organisation.

### 16.1 Building cultural acceptance of consumer complaints

In a positive complaints culture, a positive attitude is adopted to complaints, mistakes are readily admitted and apologies are readily given.

There are three main components that contribute to the complaints culture of an organisation:

- Attitude of staff to complaints
- Staff skills in complaint handling
- Organisational complaints process

#### Attitude of staff to complaints

Evidence suggests that staff sometimes may not display a positive attitude to complaints because they feel that complaints:

- get in the way of other work, causing delays,
- reflect badly on their performance, or
- are unjustified.

A consumer-friendly approach to complaints relies on a positive attitude of staff towards consumer complaints. In order to improve the cultural acceptance of complaints all staff:

- Must be shown how complaints can be viewed as opportunities for service improvement
- Need to understand the benefits that complaints can bring. This can be done by communicating the positive feedback received which reflects the service strengths, together with the complaints received which provide information about areas for service improvement, so that there is a balance of positive and negative feedback
- Can be helped to consider complaints from a personal perspective e.g. how would they like to be treated if they had to make a complaint?

When a complaint is received it is fundamental that complaint handlers can: • look at the complaint from the point of view of the complainant, and • accept immediately that the complainant is concerned about something and to see what can be done about it - even if all that can be done is to provide a clear explanation or apologise for any misunderstanding.

#### Staff Skills in complaint handling

- Skills in complaint handling are essential for staff so that they can feel empowered to appropriately handle complaints.
- Staff training in all elements will be provided to all staff as part of the induction training, when there are changes in the policy and procedure and every two years or more frequently as required.

### **Organisational Complaints Process**

The complaints processes and staff knowledge of the complaints process are vital contributions to the “complaints culture”.

The complaints processes need to:

- Be well known. There must be wide dissemination of information about the processes.
- Be easy to follow and use with roles and referral processes clearly identified.
- Ensure information is provided to staff about complaints received and actions taken.
- Be fair and transparent.
- Support a no-blame culture as far as is reasonably possible.
- Build opportunities for staff to adequately respond to a complaint into the processes.
- Be supported by easily accessible complaints handling training.
- Provide support for the complainant and the staff named in complaints.
- Encourage and empower staff to resolve complaints promptly at the point of service delivery wherever appropriate.
- Be reviewed on a regular basis to ensure that staff are complying with the agreed processes and that the processes are effective for the purposes they are intended for.

## **16.2 Assessing progress**

The progress of implementing an efficient and effective complaints management process may be assessed by analysing data such as:

- Staff skills, knowledge and culture
- The satisfaction of consumers with the complaints management process
- General consumer perception about the accessibility of the complaint handling process
- The ability of the Muiriosa Foundation to use consumer information for organizational change

## **16.3 Complaint Data and Organisational Change**

Monitoring complaints information on a routine basis can identify areas for improvement. Collating complaints information can also assist in detecting variation in the types of complaints being received. It can also assist the Muiriosa Foundation to learn from each other by comparing information in benchmarking activities. Data to be collected as part of the management of the complaint is outlined in part’s 14 and 19 of this procedure manual.

## **17.0 Staff Training and Development**

- Education and training in the management of complaints will be provided to all Muiriosa Foundation staff to enable them to effectively implement the complaints handling processes.
- Training will be provided on an incremental basis depending on the needs of the complaints system and on resource availability.
- Local Managers must ensure that staff receive relevant complaints management training.

The key objectives of complaints management training are to:

- Raise staff awareness of the Muiriosa Foundation complaints management policy
- Raise staff awareness of service level complaints management procedures
- Inform staff of their role and responsibilities in complaints management
- Provide staff with the skills to communicate effectively with complainants
- Provide staff with the skills to manage complaints including verbal and written complaints, vexatious, aggressive, repetitive complaints etc.
- Increase staff confidence in complaint handling

### **17.1 Evaluation**

Regular evaluation of the training must be carried out to assess the effectiveness of all levels of training.

Evaluation of the training should entail:

- An evaluation of the training day, programme content and trainers by the course attendees,

## **18.0 Frequency of Review**

This Procedure Manual will be reviewed every three years or more frequently as required.

## **19.0 Method used to review the complaints management system**

### **19.1 Review of the Muiriosa Foundation complaints management system**

Key to the effective implementation and success of the Muiriosa Foundation complaints management system is a system of reviewing the complaints management processes.

A review of how the system is working will help to ensure it is:

- operating efficiently and effectively;
- is responsive to changing circumstances and needs;
- will identify problems and the level of user satisfaction; and
- will provide information to help to improve the service.

To review the Muiriosa Foundation complaints management system, the Muiriosa Foundation must monitor the performance of the system against key performance standards.

There is one performance indicator for the Muiriosa Foundation complaints management process at present.

This performance indicator data will be collected at regional level by Regional Directors and at organizational level by the CEO.

This performance indicator data will be submitted by the CEO to the HSE.

### **19.2 Performance Indicators and Performance Standards**

The key performance indicator is to identify the percentage and number of complaints dealt with within 30 working days. The target is to deal with 85% of complaints within 30 days.

Monthly data on a total number of complaints will be collected and used as an activity measure.

#### **Complaints Management Performance Standards:**

- 1. Consumer feedback is actively encouraged and promoted.**
- 2. Consumer and staff rights are upheld throughout the complaint management process.**
- 3. Local processes support best practice in complaint handling.**
- 4. Complaints information is integrated into organisational improvement activities.**

#### **Performance Standard 1**

##### **Consumer feedback is actively encouraged and promoted.**

##### **Criteria**

- Signage in all facilities informs consumers about how they can make complaints.
- Complaint forms are clearly visible and widely available.
- All written complaint information is easy to understand and information is provided verbally when requested.
  - Both oral and written complaints are accepted and acted upon.
- Additional assistance to lodge a complaint is provided as required (e.g. interpreter services, advocacy).
- Consumers are involved in the development of consumer information.
- Consumers are involved in an annual review of the complaints management process.
- Anonymised information about complaints received is supplied to the HSE. Information about complaints includes at least: number, seriousness category and outcome.
- Staff actively encourage both positive and negative feedback.

#### **Performance Standard 2**

##### **Consumer and staff rights are upheld throughout the complaint management process**

##### **Criteria:**

- The principles of procedural fairness are adhered to in the management of complaints.
- Consumers are treated respectfully and with consideration to privacy, religion and cultural background.
- Consumers are not discriminated against or victimised as a result of lodging a complaint.

- Staff are not victimised as a result of being involved in a complaint.
- All complaints are treated as legitimate and actively addressed.
- All parties involved in a complaint are involved in the investigation of the complaint.
- All parties involved in a complaint are advised of the outcome of the complaint.
- All information regarding and arising from a complaint is treated confidentially.
- No reference to the lodging of a complaint is made in a service user's record.
- Each area has one central location with restricted access, for the storage of all documentation relating to a complaint.
- All reports provided to staff and the community on consumer complaints contain only anonymised information.

### **Performance Standard 3**

Local processes support best practice in complaint handling

#### **Criteria:**

- Procedures on managing complaints are implemented in accordance with the Policy principles.
- Procedures for managing complaints are reviewed yearly with staff and consumer input.
- Outcomes from reviews carried out at a local level are fed to the CEO for consideration in future development of the complaints management process.
- A Complaints Officer is designated for each area.
- The orientation/induction program raises awareness of complaint handling procedures.
- All staff receive training on complaint handling in accordance with the Standard Operating Procedure.
- Complaints are resolved at the point of contact wherever possible and appropriate.
- Written complaints are acknowledged within 5 working days of receipt.
- At least eighty percent of complaints are resolved within 25 working days.
- Complainants are advised of the progress of the complaint every 20 days until resolved.
- All parties involved in the complaint are informed of the outcome of the complaint.
- All complaints are documented.
- Complaints are collated in a manner that allows analysis to identify patterns and trends.

### **Performance Standard 4**

Complaints information is integrated into organisational improvement activities.

#### **Criteria:**

- Aggregated complaints information, including at least the number, issue, seriousness categories and outcomes of complaints, are reviewed no less than annually with a view to identifying possible areas for service improvement.
- Senior management and other relevant staff consider reports on feedback obtained through the complaint process.
- Complaints data is used for decision making including but not limited to, strategic planning, operational planning and quality planning and review.
- Information obtained from complaints is considered as part of the Muiriosa Foundation's quality improvement and risk management processes.
- Organisation wide improvements result from both aggregated and individual complaint information.
- All staff receive anonymised information about complaints relevant to their work area and their location.
- The processes for collecting, analysing and presenting complaints data are reviewed at least yearly for quality, efficiency, usefulness and timeliness.

### **19.3 Complaints Officer Reports**

Complaints Officers must submit complaints data reports to the Regional Director. This report is to include the following information:

- The total number of complaints pending at end of last month
- The total number of complaints received in a given month
- Complaints excluded under Part 9 of the Health Act 2004
- Anonymous complaints
- Complaints dealt with informally
- Complaints withdrawn
- Complaints dealt with within 30 working days at Stage 2
- Complaints that took longer than 30 days to deal with
- Complaints resolved through mediation
- Comments/suggestions
- Positive feedback
- The types of the complaints received:
  - Treatment/Service delivery
  - Communication
  - Staff attitude/manner
  - Infection control
  - Facilities/buildings
  - Accommodation/food
  - Cancellation of appointments
  - Delays/waiting times
  - Clinical judgement
  - Vexatious complaints
  - Trust in Care
  - Other

### **19.4 Muiriosa Foundation Service Provider Annual Report**

The Muiriosa Foundation will provide the HSE with a general report on the complaints received by them during the previous year indicating:

- The total number of complaints received
- The nature of the complaints
- The number of complaints resolved by informal means
- The outcome of any investigations into the complaints

The Office of the Head of Consumer Affairs will liaise with Service Providers in relation to details of reports to be provided to the Executive.

## References

- H.S.E Complaints Policy
- Health Act 2007, SI No. 367 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013.



## Appendices

- Appendix 1: Part 9 of the Health Act 2004
- Appendix 2: Health Act 2004 (Complaints) Regulations 2006. SI 652 of 2006
- Appendix 3: Disability Act 2005
- Appendix 4: SOP Dealing with the Provision of Information to Elected Public Representatives (TD's, Senators, MEP's and Local Representatives)
- Appendix 5: Risk Assessment Tool
- Appendix 6: Human Resources Support
- Appendix 7: Sample of Letters
- Appendix 8: Complaints Comments & Compliments Form (*printed in booklet format*)
- Appendix 9: Local Complaints Logbook.
- Appendix 10: Record of Complaints to be made by the Complaints Officer
- Appendix 11: Complaints Reporting Template
- Appendix 12: Matters excluded from right to complain under Part 9 of the Health Act 2004.
- Appendix 13: Citizen Information National Advocacy Service for People with Disabilities (NAS)
- Appendix 14: Sample of Local Guide on making a complaint
- Appendix 15: SI 367 of 2013 (Part 10)

**Part 9, Health Act 2004**

Complaints **45.**—In this Part— “action” means anything done or omitted to be done—

(a) by the Executive, or  
(b) by a service provider in connection with the provision of— (i) a health or personal social service that is the subject of an arrangement under *section 38*, or (ii) a service in respect of which assistance is given under *section 39*; “close relative”, in relation to another person, means a person who—

(a) is a parent, guardian, son, daughter or spouse of the other person, or  
(b) is cohabiting with the other person;

“complaints officer” means a person designated—

(a) by the Executive for the purpose of dealing with complaints made to it in accordance with procedures established under *section 49(1)(a)*, or

(b) by a service provider for the purpose of dealing with complaints made to the service provider in accordance with procedures established under *section 49(1)(a)* or (2); “complaint” means a complaint made under this Part about any action of the Executive or a service provider that—

(a) it is claimed, does not accord with fair or sound administrative practice, and

(b) adversely affects the person by whom or on whose behalf the complaint is made;

“complainant” means a person who is entitled under *section 46* to make a complaint under this Part on the person’s own behalf or on behalf of another.

**46.**—

(1) Any person who is being or was provided with a health or personal social service by the Executive or by a service provider or who is seeking or has sought provision of such service may complain, in accordance with the procedures established under this Part, about any action of the Executive or a service provider that—

(a) it is claimed, does not accord with fair and sound administrative practice, and

(b) adversely affects or affected that person.

(2) For the purposes of this Part, an action does not accord with fair and sound administrative practice if it is—

(a) taken without proper authority,

(b) taken on irrelevant grounds,

(c) the result of negligence or carelessness,

(d) based on erroneous or incomplete information,

(e) improperly discriminatory,

(f) based on undesirable administrative practice, or

(g) in any other respect contrary to fair or sound administration.

(3) If a person entitled under this section to make a complaint is unable to do so because of age, illness or disability, the complaint may be made on that person’s behalf by—

(a) a close relative or carer of the person,

(b) any person who, by law or by appointment of a court, has the care of the affairs of that person,

(c) any legal representative of the person,

(d) any other person with the consent of the person, or

(e) any other person who is appointed as prescribed in the regulations.

(4) If a person who would otherwise have been entitled under this section to make a complaint is deceased, a complaint may be made by a person who, at the time of the action in relation to which the complaint is made, was a close relative or carer of that person.

**47.**—

(1) A complaint must be made within the specified period or any extension of that period allowed under *subsection (3)*.

(2) The specified period is 12 months beginning before or after the commencement of this section, but not later than—

(a) the date of the action giving rise to the complaint, or

(b) if the person by whom or on whose behalf the complaint is to be made did not become aware of that action until after that date, the date on which he or she becomes aware of it.

(3) A complaints officer may extend the time limit for making a complaint if in the opinion of the complaints officer special circumstances make it appropriate to do so.

**48.—**

(1) A person is not entitled to make a complaint about any of the following matters:

(a) a matter that is or has been the subject of legal proceedings before a court or tribunal;

(b) a matter relating solely to the exercise of clinical judgment by a person acting on behalf of either the Executive or a service provider;

(c) an action taken by the Executive or a service provider solely on the advice of a person exercising clinical judgment in the circumstances described in *paragraph*

(b);

(d) a matter relating to the recruitment or appointment of an employee by the Executive or a service provider;

(e) a matter relating to or affecting the terms or conditions of a contract of employment that the Executive or a service provider proposes to enter into or of a contract with an adviser that the Executive proposes to enter into under *section 24*;

(f) a matter relating to the Social Welfare Acts;

(g) a matter that could be the subject of an appeal under section 60 of the Civil Registration Act 2004;

(h) a matter that could prejudice an investigation being undertaken by the Garda Síochána;

(i) a matter that has been brought before any other complaints procedure established under an enactment.

(2) *Subsection (1)(i)* does not prevent a complaints officer from dealing with a complaint that was made to the Ombudsman or the Ombudsman for Children and that is referred by him or her to a complaints officer.

(3) In relation to a contract referred to in *subsection (1)(e)* “terms or conditions” includes terms or conditions relating to superannuation benefits, disciplinary procedures or grievance procedures.

**49.—**

(1) Subject to *subsection (2)* and any regulations under *section 53*, the Executive shall establish procedures for—

(a) dealing with complaints against the Executive or a service provider, and

(b) reviewing, at the request of a complainant, any recommendation made by a complaints officer following the investigation of a complaint.

(2) Any service provider may, with the agreement of the Executive, establish procedures, in place of the procedures established under *subsection (1)(a)*, for dealing with complaints against the service provider.

(3) The Executive may agree to a service provider establishing such procedures if satisfied that they will be of a comparable standard to the procedures established by the Executive under *subsection (1)(a)*.

(4) Subject to any regulations under *section 53*, the Executive may assign to another body the Executive’s functions in relation to reviewing, and establishing procedures for reviewing, any recommendation made by a complaints officer.

**50.—**(1) A complaints officer shall not investigate a complaint if—

(a) the person who made the complaint is not entitled under *section 46* to do so either on the person’s own behalf or on behalf of another,

(b) the complaint is made after the expiry of the period specified in *section 47(2)* or any extension of that period allowed under *section 47(3)*.

(2) A complaints officer may decide not to investigate or further investigate an action to which a complaint relates if, after carrying out a preliminary investigation into the action or after proceeding to investigate such action, that officer—

(a) is of the opinion that—

(i) the complaint does not disclose a ground of complaint provided for in

*section 46,*

(ii) the subject-matter of the complaint is excluded by *section 48,*

(iii) the subject-matter of the complaint is trivial, or

(iv) the complaint is vexatious or not made in good faith,

or

(b) is satisfied that the complaint has been resolved.

(3) A complaints officer shall, as soon as practicable after determining that he or she is prohibited by *subsection (1)* from investigating a complaint or after deciding under *subsection (2)* not to investigate or further investigate a complaint, inform the complainant in writing of the determination or decision and the reasons for it.

**51.—**(1) A complaints officer may not, following the investigation of a complaint, make a recommendation the implementation of which would require or cause—

(a) the Executive to make a material amendment to its approved service plan, or

(b) a service provider and the Executive to make a material amendment to an arrangement under *section 38.*

(2) If, in the opinion of the relevant person, such a recommendation is made, that person shall either—

(a) amend the recommendation in such manner as makes the amendment to the applicable service plan or arrangement unnecessary, or

(b) reject the recommendation and take such other measures to remedy, mitigate or alter the adverse effect of the matter to which the complaint relates as the relevant person considers appropriate.

(3) Pending the outcome of a review, the relevant person may suspend the implementation of a recommendation made by a complaints officer if satisfied that, in the interests of fair and sound administration, it is appropriate to do so.

(4) In this section “relevant person” means—

(a) in relation to a complaint dealt with by the Executive in accordance with the procedures established under *section 49(1)*, the chief executive officer, and (b) in relation to a complaint dealt with in accordance with the procedures established by a service provider under *section 49(2)*, the service provider.

**52.—**(1) It is a condition of any arrangement under *section 38* with a service provider that the service provider will—

(a) adhere to the complaints procedures established by the Executive in accordance with *section 49(1)* and any regulations under *section 53*, or (b) establish the procedures agreed under *section 49(2)* and adhere to those procedures.

(2) In addition, it is a condition of such arrangement that the service provider will cooperate with the Executive, or with any body to which the Executive assigns its functions under *section 49(4)*, in any review of a recommendation made by a complaints officer following the investigation of a complaint against the service provider.

(3) The Executive shall exercise any rights or remedies available to it under such arrangement if the service provider concerned does not fulfil any of the applicable conditions specified in *subsections (1)* and *(2)*.

**53.—**(1) The Minister may make regulations for the purposes of this Part.

(2) Regulations under this section may, among other things, make provision for the following matters:

(a) requirements to be complied with by complainants;

(b) the appointment of persons as complaints officers and the functions of complaints officers;

(c) the procedure to be followed in investigating complaints;

(d) the making of recommendations by complaints officers following the investigation of complaints and the nature of the recommendations that, subject to *section 51*, they are authorised to make;

(e) the implementation of recommendations made by complaints officers;

(f) the appointment of persons as review officers and the functions of those officers;

(g) the procedure to be followed in undertaking reviews;

- (h) the making of recommendations by review officers following the review of a complaint and the nature of the recommendations that they are authorised to make;
- (i) the implementation of recommendations made by review officers;
- (j) the assignment by the Executive of the review functions referred to in *section 49(4)* to any other body or person.

**54.—**

- (1) Nothing in this Part prohibits or prevents any person who is dissatisfied with a recommendation made or step taken in response to a complaint under this Part or with a review under this Part from referring the complaint to the Ombudsman or the Ombudsman for Children.
- (2) For the purposes of the Ombudsman Acts 1980 to 1984 and the Ombudsman for Children Act 2002, any action taken by a service provider in relation to a health or personal social service in respect of which the service provider has entered into an arrangement under *section 38* or received assistance under *section 39* is deemed to have been taken by the Executive.

**55.—**

- (1) The Executive shall submit to the Minister, as part of the Executive's annual report, a general report on the performance of its functions under this Part during the previous year containing such information as the Executive considers appropriate or as the Minister may specify.
- (2) A service provider who has established a complaints procedure by agreement with the Executive shall in each year, at such time and in such manner as the Executive may determine, provide the Executive with a general report on the complaints received by the service provider during the previous year indicating—
  - (a) the total number of complaints received,
  - (b) the nature of the complaints,
  - (c) the number of complaints resolved by informal means, and
  - (d) the outcome of any investigations into the complaints.
- (3) If the Executive assigns its functions under *section 49(4)* to another body, that body shall in each year, at such time and in such manner as the Executive may determine, provide the Executive with a general report on the reviews conducted by it during the previous year indicating—
  - (a) the total number of reviews,
  - (b) the nature of the reviews, and
  - (c) the outcome of the reviews.

**Health Act 2004 (Complaints) Regulations 2006**

**STATUTORY INSTRUMENTS S.I. No. 652 of 2006**

**HEALTH ACT 2004 (COMPLAINTS) REGULATIONS 2006 PUBLISHED BY THE STATIONERY OFFICE, DUBLIN**

**HEALTH ACT 2004 (COMPLAINTS) REGULATIONS 2006 - S.I. No. 652 of 2006.**

I, Mary Harney, T.D., Minister for Health and Children, in exercise of the powers conferred on me by sections 53 and 78 of the Health Act 2004 (No. 42 of 2004) hereby make the following regulations:

**Citation and Commencement**

1. (1) These Regulations may be cited as the Health Act 2004 (Complaints) Regulations 2006.
- (2) These Regulations come into operation on 1 January 2007.

**Interpretation**

2. (1) In these Regulations- “the Act” means the Health Act 2004 (No.42 of 2004); “confidential information” has the meaning assigned to it by section 26(3) of the Act; “excluded matter” means any of the matters referred to in section 48(1) of the Act subject to subsection (2) of that section; “investigation” includes a preliminary investigation as referred to in section 50(2) of the Act; and “review officer” means a person appointed to carry out a review under section 49. (2) In these Regulations- (a) a reference to a regulation is a reference to a regulation in these Regulations; a paragraph or sub-paragraph which is not otherwise identified is a reference to a (b) paragraph or sub-paragraph in the regulation in which the reference occurs; (c) a reference to a section in an Act which is not otherwise identified is a reference to the Act.

**Assignment of review functions by the Executive**

3. (1) The Executive may assign its functions under section 49(4) either generally or in relation to specified complaints.
- (2) Any such assignment shall be in writing and shall include any such information, conditions and requirements as appear to the Executive to be appropriate.
- (3) The Executive may, at any time, revoke any assignment made under Paragraph (1) or amend the information, conditions and requirements imposed under Paragraph (2).
- (4) Any body to whom or person to which the Executive has assigned its functions under Paragraph (1) shall provide to the Executive on request-
  - (a) such information as may be requested by the Executive, and in such manner as may be indicated, and
  - (b) the information specified in section 55(3).

**Requirements to be complied with by persons making a complaint**

4. (1) A complaint shall be made in writing or electronically or otherwise as set out in procedures established by the Executive or service providers in accordance with section 49 (1)(a) and for the purposes of these Regulations a complaint is treated as being made on the date on which it is received by the Executive or service provider, as appropriate. (2) A person making a complaint may be required by the complaints officer, either at the time the complaint is made or subsequently, to provide him or her with such information and assistance as he or she may reasonably require in order to:

- (a) satisfy himself or herself of the identity of the person concerned and, where the person making the complaint is not the complainant, satisfy himself or herself that the person is entitled to do so under section 46(3) or (4), as appropriate,
- (b) carry out a proper investigation of the complaint made.

### **Complaints officers and review officers**

5. (1) The Executive and service providers shall appoint such and so many persons, as considered appropriate, as complaints officers.
- (2) The Executive or any body to whom or person to which it has assigned its functions under section 49(4) shall appoint such and so many persons, as appropriate, as review officers.
- (3) A person appointed under Paragraph (1) or Paragraph (2) shall be independent in the exercise of his or her functions under these Regulations.

### **Functions of complaints officers**

6. (1) A complaints officer shall investigate, subject to section 50(2), all complaints received or assigned to him or her for investigation after having satisfied himself or herself that the complaint falls within the provisions of Part 9 of the Act.
- (2) Having concluded his or her investigation, the complaints officer shall make a finding as to whether the complaint is-
- (a) upheld in whole or in part, or
  - (b) not upheld
- and on the basis of that finding he or she may make such a recommendation, subject to section 51(1), that he or she is satisfied is fair and reasonable having regard to all the facts and circumstances of the complaint.
- (3) A complaints officer shall prepare a report on the investigation-
- (a) at the conclusion of the investigation, and
  - (b) at any time during the investigation, if requested by the Executive or service provider, as appropriate.
- (4) A complainant may, if he or she so wishes, make written representations in support of his or her complaint and such representations shall be considered by the complaints officer.

### **Acknowledgement of complaints**

7. (1) Upon a complaint being received by or assigned to the complaints officer (including a referral under section 48(2)), he or she shall notify, within 5 working days, the complainant, in writing, that the complaint has been so received or assigned and outline the steps that he or she proposes to take in investigating the complaint and the time limits for the completion of the investigation.
- (2) Where a complaints officer decides that a complaint is not one to which Regulation 6(1) applies, he or she shall notify, in writing, the person concerned, within 5 working days, of his or her decision and the reasons for it.
- (3) Where the reason for the decision under Paragraph (2) is that the complaint relates to an excluded matter, the notification under that Paragraph shall, where appropriate and to the extent possible, advise the person where the complaint might more properly be referred.
- (4) Where a complaint made relates only in part to an excluded matter, the complaints officer shall investigate, in the normal way, that part of the complaint that is not so excluded and his or her notification to the complainant under Paragraph (2) shall so advise.
- (5) Where, under section 47(3), a complaints officer extends or determines not to extend the time limit for making a complaint he or she shall notify, in writing, the parties to the complaint of his or her decision and the reasons relating thereto within 5 working days of the decision having been made.

## **Procedure to be followed in investigating complaints**

- 8.** (1) Subject to these Regulations, the complaints officer shall investigate the complaint.
- (2) (a) Notwithstanding Paragraph (1) above, the complaints officer shall consider whether it would be practicable, having regard to the nature and circumstances of the complaint, to seek the consent of the complainant and any other person to whom the complaint relates to finding a resolution to the complaint by the parties concerned and where such consent is forthcoming such an approach shall be used.
- (b) Where an approach under (a) is used and found to be-
- (i) successful, the complaint shall be regarded as resolved,
- (ii) unsuccessful, the complaint shall be investigated in accordance with Paragraphs 3 to 10 by the complaints officer who has been involved in dealing with the complaint unless the complainant objects to his or her further involvement.
- (c) The resolution of the complaint under this Paragraph shall not include the payment by any person who is a party to the complaint of any financial compensation.
- (3) A complaint shall be investigated and concluded within 30 working days of it being acknowledged by the complaints officer but where the complaints officer is unable to conclude his or her investigation within that period he or she shall notify, in writing, the Executive or service provider, as appropriate, and the complainant of that fact and indicate the additional time that he or she considers necessary for completion
- (4) A person who has made a complaint and who is requested to provide information or assistance by a complaints officer shall be advised at the time the request is made of any time limit set by the complaints officer for compliance and that failure to comply by the due date may, subject to the decision of the complaints officer, invalidate the complaint.
- (5) An investigation by a complaints officer shall be conducted in private.
- (6) A complaints officer may request such documents and communicate with such persons as he or she reasonably believes can assist with the investigation of the complaint.
- (7) All information obtained by a complaints officer in the course of investigating a complaint shall be deemed to be confidential information and he or she may not discuss, communicate or disclose it except as is necessary for the proper investigation of a complaint or otherwise provided for in these Regulations or required by law.
- (8) A complaints officer shall not make a finding or criticism in his or her proposed report, adverse to a person, without first having afforded the person concerned the opportunity to consider the finding or criticism and to make representations, which shall be considered, in relation to it.
- (9) Upon conclusion of an investigation, a complaints officer shall, as soon as practicable, prepare a signed and dated report (referred to in Regulation 6(3)(a)) which shall include-
- (a) his or her findings,
- (b) any recommendation which he or she considers appropriate,
- (c) the reasons for such findings and recommendations, and forward it, as soon as practicable, to the complainant, the Executive and service provider, as appropriate.
- (10) The report forwarded to the complainant under Paragraph (9) shall also advise that he or she may request that the recommendation made be reviewed and provide such information as is necessary to assist with requesting a review.

## **Implementation of recommendations made by complaints officers**

- 9.** (1) Subject to Paragraph (2), the Executive or service provider, as appropriate, shall take such steps as are reasonable to give effect as soon as practicable and to the greatest extent practicable to any recommendation of the complaints officer, provided that he or she is satisfied that it is within the functional remit of the Executive or service provider, as appropriate, to do so.
- (2) The Executive or service provider, as appropriate, shall, within 30 working days, of receipt of the report referred to in Regulation 8(9) notify, in writing, the complainant and complaints officer of the steps being taken to implement any recommendation made. Where it is proposed, under section



51(2) or otherwise, to amend or reject the recommendation or take alternative measures the reasons for this decision should be set out.

(3) Where, pending the outcome of a review, a relevant person suspends the implementation of a recommendation by a complaints officer, he or she shall, within 5 working days, so notify the complainant, in writing, of that suspension.

### **Time limit for requesting a review**

**10.** (1) Subject to Paragraph (2), a complainant who is dissatisfied with a recommendation made by a complaints officer may apply for a review of that recommendation and this shall be done within 30 working days of the date on which the report was signed and dated by the complaints officer.

(2) Where a request for a review is received beyond the period specified in Paragraph (1), the Executive or the body to whom or person to which it has assigned its functions under section 49(4), as appropriate, may extend the time limit for requesting a review if it determines that special circumstances make it appropriate to do so.

(3) Where a decision is taken under Paragraph (2) to extend or not extend the time limit for requesting a review, the complainant shall be so notified, in writing, of the decision and the reasons relating thereto within five working days of the decision having been made and recorded.

### **Requirements to be complied with by persons requesting a review**

**11.** (1) A request for a review shall be made in writing or electronically or otherwise as set out in procedures established by the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4) and for the purposes of these Regulations a request for a review is treated as being made on the date on which it is received by the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate.

(2) A person requesting a review may be required by the review officer, either at the time the review is requested or subsequently, to provide him or her with such information and assistance as he or she may reasonably require in order to:

(a) satisfy himself or herself of the identity of the person concerned and, where the person requesting the review is not the complainant, satisfy himself or herself that the person is entitled to do so under section 46(3) or (4), as appropriate,

(b) carry out a proper review.

### **Appointment of review officer to carry out review**

**12.** Upon an application for review being made, the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4) shall assign a review officer to review the recommendation made and shall notify, in writing, the complainant of the person appointed within 5 working days of the application for review being received.

### **Functions of review officers**

**13.** (1) A review officer shall determine the appropriateness of a recommendation made having regard to all aspects of the complaint and its investigation and in so doing he or she shall not vary the original recommendation or make another unless he or she deems it appropriate to do so.

(2) A review officer shall prepare a report on the review-

(a) at the conclusion of the review, and

(b) at any time during the review, if requested by the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate.

(3) A complainant who has requested a review may, if he or she so wishes, make written representations in support of his or her complaint and such representations shall be considered by the review officer.

## **Procedure to be followed in reviewing complaints**

**14.** (1) Subject to these Regulations, the review officer shall determine the procedure to be followed in conducting a review.

(2) A review shall be conducted and concluded within 20 working days of the request being received but where the review officer is unable to conclude his or her investigation within that period he or she shall notify, in writing, the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate, and the complainant of that fact and indicate the additional time that he or she considers necessary for completion.

(3) A person who has applied for a review and who is requested to provide information or assistance by a review officer shall be advised at the time the request is made of any time limit set by the review officer for compliance and that failure to comply by the due date may, subject to the decision of the review officer, invalidate the complaint.

(4) A review shall be conducted in private.

(5) A review officer may request such documents and communicate with such persons as he or she reasonably believes can assist with the review of the complaint.

(6) All information obtained by a review officer in the course of reviewing a complaint shall be deemed to be confidential information and he or she may not discuss, communicate or disclose it except as is necessary for the proper review of a complaint or otherwise provided for in these Regulations or required by law.

(7) A review officer shall not make a finding or criticism in his or her proposed report, adverse to a person, without first having afforded the person concerned the opportunity to consider the finding or criticism and to make representations, which shall be considered, in relation to it.

(8) Upon conclusion of a review, the review officer shall, as soon as practicable, prepare a signed and dated report on the review and forward it, as soon as practicable, to the complainant, the complaints officer who investigated the complaint, the Executive and the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate, and where the review related to a service provider the report shall be forwarded to the service provider concerned at the same time as it is forwarded to the other parties mentioned in this paragraph.

## **Making of recommendations by review officers**

**15.** (1) On the basis of the review, the review officer shall, as he or she considers appropriate-

(a) uphold the original recommendation,

(b) vary it or make a new recommendation, subject to the proviso that in no case shall the implementation of the varied or new recommendation require or cause either of the matters referred to in section 51(1)(a) or (b).

(2) The reason for the decision under Paragraph (1) shall be set out by the review officer in the report referred to in Regulation 13(8).

## **Implementation of upheld, varied or new recommendations made by review officers**

**16.** (1) Subject to these Regulations, the Executive or service provider, as appropriate, shall take such steps as are reasonable to give effect as soon as possible and to the greatest practicable extent to any upheld, varied or new recommendation made by the review officer, provided that he or she is satisfied that it is within the remit of and appropriate for the Executive or service provider to so do.

(2) The Executive or service provider, as appropriate, shall, within 30 working days of receipt of the report from the review officer, notify, in writing, the complainant, complaints officer and review officer of the steps being taken or proposed to be taken or not to be taken to implement the recommendation and where it is proposed not to implement some or all of the recommendation the reasons for this decision should be set out.

## **Ombudsman and Ombudsman for Children**

**17.** Any notification, under these Regulations (other than one under Regulation 7(1) or 12), or reports forwarded to a person who has made a complaint shall advise that nothing in Part 9 of the Act prohibits or prevents any person who is dissatisfied with a recommendation made or step taken in response to a complaint or a review that the matter may be referred by him or her to the Ombudsman or the Ombudsman for Children, as appropriate.

## **Records**

**18.** The Executive, service providers and bodies to whom or persons to which the Executive has assigned its functions under section 49(4) shall establish and keep, in such format as is most appropriate, such records as are necessary to enable them to meet their requirements under these Regulations and section 55.

## **Public awareness of complaints procedures**

**19.** The Executive, service providers and bodies to whom or persons to which the Executive has assigned its functions under section 49(4) shall make publicly available information on their complaints and review procedures, as appropriate, including-

- (i) the names and contact details of all complaints officers,
- (ii) the names of all review officers
- (iii) the procedures, if any, available under Regulation 8 (2), and
- (iv) advice on all matters relevant to making a complaint or seeking a review.

## **Assistance to persons making a complaint**

**20.** The Executive, service providers and bodies to whom or persons to which the Executive has assigned its functions under section 49(4)-

- (a) shall offer or otherwise arrange for such practical assistance to a complainant, as is necessary, for the person to-
  - (i) make a complaint, in the required way,
  - (ii) request a review in a case where he or she is dissatisfied with a recommendation made, or
  - (iii) refer the matter to the Ombudsman, or where appropriate, the Ombudsman for Children under section 54(1); and
- (b) may, where appropriate, assist a person making or seeking to make a complaint, subject to his or her agreement, to identify another person who could assist with the making of the complaint.

GIVEN under my Official Seal, this 15 day of December, 2006.

**L.S.**

MARY HARNEY T.D.,  
Minister for Health and Children

## ***Explanatory Note***

***(This note is not part of the Instrument and does not purport to be a legal interpretation.)***

***These Regulations, made under Part 9 of the Health Act 2004 (No.42 of 2004), make provision for complaints by persons to the Health Service Executive and service providers and require the establishment and operation of procedures and arrangements intended to achieve a fair and reasonable resolution of such complaints.***

**HEALTH ACT 2004 (COMMENCEMENT) ORDER 2006 S.I. No. 651 of 2006.**  
**HEALTH ACT 2004 (COMMENCEMENT) ORDER 2006**

I, MARY HARNEY, T.D., Minister for Health and Children, in exercise of the powers conferred on me by section 3 of the Health Act 2004 (No. 42 of 2004), hereby order as follows:

1. This Order may be cited as the Health Act 2004 (Commencement) Order 2006.
2. The 1st day of January 2007 is appointed as the day on which Part 9 of the Health Act 2004 (No. 42 of 2004) comes into operation.

GIVEN under my Official Seal, this 15 day of December, 2006.

**L.S.**

MARY HARNEY T.D.,  
Minister for Health and Children

***Explanatory Note***

***(This note is not part of the Instrument and does not purport to be a legal interpretation.) This Order brings Part 9 of the Health Act, 2004 into operation on and from 1 January 2007.***

**Disability Act 2005**

**14. -** (1) An applicant may, either by himself or herself or through a person referred to in *section 9(2)*, make a complaint to the Executive in relation to one or more of the following:

- (a) a determination by the assessment officer concerned that he or she does not have a disability;
- (b) the fact, if it be the case, that the assessment under *section 9* was not commenced within the time specified in *section 9(5)* or was not completed without undue delay;
- (c) the fact, if it be the case, that the assessment under *section 9* was not conducted in a manner that conforms to the standards determined by a body referred to in *section 10*;
- (d) the contents of the service statement provided to the applicant;
- (e) the fact, if it be the case, that the Executive or the education service provider, as the case may be, failed to provide or to fully provide a service specified in the service statement.

(2) A complaint under *subsection (1)* shall be made by the applicant concerned or a person referred to in *section 9(2)* as soon as reasonably may be after the cause of the complaint has arisen and in any case within such time (if any) as may be prescribed under *section 21*.

**15. -** (1) The Executive shall authorise such and so many employees of the Executive as it considers appropriate (referred to in this Part as “Complaints Officers”) to perform the functions conferred on Complaints Officers by this Part.

(2) A Complaints Officer shall be independent in the performance of his or her functions.

(3) Following the receipt by the Executive of a complaint under *section 14*, he or she shall refer the matter to a Complaints Officer as soon as may be but not later than 10 working days after such receipt.

(4) Where a complaint has been referred to a Complaints Officer under *subsection (3)*, he or she shall consider the complaint and, if he or she is of opinion that it is frivolous or vexatious, he or she shall not entertain the complaint and he or she—

(a) shall prepare a report in writing of the reasons for his or her opinion and furnish a copy of it to—

- (i) the applicant concerned,
- (ii) if appropriate, the assessment officer concerned and the liaison officer concerned, and (iii) the Executive.

(5)(a) Where a Complaints Officer is not of opinion that the complaint is frivolous or vexatious, he or she shall, having made such inquiries (if any) as appear to him or her to be necessary, consider whether the complaint is suitable for informal resolution and, if it is, he or she shall undertake the resolution of the complaint.

(b) Where a complaint is resolved under this subsection, a record shall be kept of the resolution arrived at and of the manner of such resolution and a copy thereof shall be sent to the applicant, the Executive and, if appropriate, the assessment officer concerned, the liaison officer concerned and the head of the education service provider concerned.

(c) Where a complaint is not resolved under this subsection, the Complaints Officer shall keep a record of the matter and send a copy thereof to the Executive who shall refer the matter to another Complaints Officer for investigation.

(6) Where a Complaints Officer is of opinion that a complaint is not suitable for such resolution as aforesaid, he or she shall investigate the complaint and shall give the applicant concerned and, if appropriate, the assessment officer concerned, the liaison officer concerned, the education service provider concerned and any other person having an interest in the matter, an opportunity to be heard by him or her and to present to him or her any evidence relating to the complaint and shall prepare a report in writing in relation to it setting out his or her findings and recommendations and shall furnish a copy of the report to the applicant, the Executive and, if appropriate, the assessment officer concerned, the liaison officer concerned and the head of the education service provider concerned.

(7) In addition to any other matter to which a Complaints Officer may, as he or she considers appropriate, have regard to in the performance of his or her functions, he or she shall have regard to the matters referred to in *section 11(7)*.

(8) A report of a Complaints Officer may contain one or more of the following:

(a) a finding that the complaint was or, as the case may be, was not well founded whether in part or in whole;

(b) if the report contains a finding that the Executive failed to commence an assessment within the period specified in *section 9(5)* or to complete an assessment without undue delay, a recommendation that the assessment be provided and completed within the period specified in the recommendation;

(c) if the report contains a finding that the person may have a disability, a recommendation that the person be the subject of a further assessment under *section 9* within the period specified in the recommendation;

(d) if the report contains a finding that the Executive failed to carry out an assessment under *section 9* in conformity with the standards referred to in *section 10*, a recommendation that the Executive cause the assessment or a specified part of it to be carried out in conformity with those standards within the period specified in the recommendation;

(e) if the report contains a finding that the contents of the service statement concerned are inaccurate or incorrect, a recommendation that the statement be amended, varied or added to by the liaison officer concerned within the period specified in the recommendation;

(f) if the report contains a finding that the Executive or an education service provider failed to provide or to fully provide a service specified in the service statement, a recommendation that the service be provided in full by the Executive or the education service provider or both as may be appropriate within the period specified in the recommendation.

(9) Proceedings under this section before a Complaints Officer shall be conducted otherwise than in public.

(10) By notice in writing to the parties, a Complaints Officer may correct any mistake (including an omission) of a verbal or formal nature in a recommendation under this section.

**16.-** (1) (a) There shall be a person, who shall be appointed by the Minister, and who shall be known, and is referred to in this Act, as “the appeals officer”, to consider and determine appeals under this Part.

(b) The appeals officer shall perform the functions conferred on him or her by this Act.

(2) The appeals officer shall be independent in the performance of his or her functions under this Act.

(3) The provisions of the Schedule shall have effect in relation to the appeals officer.

**17. -** The appeals officer shall not later than 6 months after the end of each year beginning with the year in which the first appeals officer is appointed, submit a report in writing to the Minister in relation to the performance of his or her functions under this Act during that year and the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

**18.-** (1) An applicant or a person referred to in *section 9(2)* may appeal to the appeals officer in the prescribed manner against a finding or recommendation under *section 15(8)* or against the non-implementation by the Executive or a head of an education service provider of a recommendation of a Complaints Officer and, if he or she does appeal, the appeals officer shall give the parties an opportunity to be heard by him or her and to present to him or her any evidence relevant to the appeal.

(2) The Executive or the head of an education service provider may appeal to the appeals officer in the prescribed manner against a finding or recommendation specified in *paragraph(f)* of *section 15(8)* and, if such an appeal is brought, the appeals officer shall give the parties an opportunity to be heard by him or her and to present to him or her any evidence relevant to the appeal.

(3) Subject to *subsection (4)*, an appeal under this section shall be initiated by a person referred to in *subsection (1)* or (2) within 6 weeks of the date on which the finding or recommendation to which it

relates was communicated to the person, by furnishing a notice in writing in the prescribed form or in a form to the like effect to the appeals officer specifying the grounds of appeal.

(4) The period referred to in *subsection (3)* may be extended by the appeals officer concerned (at the request in writing of a person referred to in *subsection (1)* or *(2)*) for a further period not exceeding 12 weeks if the appeals officer is satisfied that the person has given reasonable cause for the extension.

(5) The appeals officer shall make a determination in writing in relation to the appeal affirming, varying or setting aside the finding or recommendation concerned and shall communicate the determination (including the reasons therefore) to the applicant, the Executive and, if appropriate, the head of the education service provider concerned who shall comply with the determination.

(6) The appeals officer may, for the purpose of his or her functions under this Part require a Complaints Officer, an assessment officer or a liaison officer of the Executive to make such further inquiries and to furnish him or her with the result of such inquiries or to furnish him or her with such further information as he or she considers necessary within such period as may be specified by him or her, and the officer shall comply with the requirement.

(7) The appeals officer may, for the purposes of an appeal under this section—

(a) require any person who, in the opinion of the appeals officer, is in possession of information, or has a record in his or her power or control, that, in the opinion of the appeals officer, is relevant to the purposes aforesaid to furnish to the appeals officer any such information or record that is in his or her possession or, as the case may be, power or control and, where appropriate, require the person to attend before him or her for that purpose, and (b) examine and take copies in any form of, or of extracts from any record that, in the opinion of the appeals officer, is relevant to the appeal and for those purposes take possession of any such record and retain it in his or her possession for a reasonable period.

(8) The appeals officer may for the purposes of an appeal under this section enter any premises occupied by a public body or the provider of a health or education service and there—

(a) require any person found on the premises to furnish him or her with such information in the possession of the person as he or she may reasonably require for the purposes aforesaid and to make available to him or her any record in his or her power or control that, in the opinion of the appeals officer, is relevant to those purposes, and (b) examine and take copies of, or of extracts from, any record made available to him or her as aforesaid or found on the premises and remove it from the premises and retain it in his or her possession for a reasonable period.

(9) Subject to *subsection (10)*, no enactment or rule of law prohibiting or restricting the disclosure or communication of information shall preclude a person from furnishing to the appeals officer any such information or record, as aforesaid.

(10) A person to whom a requirement is addressed under this section shall be entitled to the same immunities and privileges as a witness in a court.

(11) Subject to the provisions of this Act, the procedure for conducting an appeal under this section shall be such as the appeals officer considers appropriate in all the circumstances of the case and, without prejudice to the foregoing, shall be as informal as is consistent with the due performance of the functions of the appeals officer.

(12) The appeals officer may, where appropriate, hold an oral hearing for the purpose of an appeal under this section.

(13) (a) For the purposes of an oral hearing (if any) under this section, the appeals officer may—

(i) direct in writing any person whose evidence is required by him or her to attend before him or her on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing in his or her possession or control specified in the direction,

(ii) direct any such person to produce any specified document or thing in his or her possession or control,

(iii) direct in writing any person to send to the appeals officer any document or thing in his or her possession or power specified in the direction, and

(iv) give any other directions for the purpose of an appeal that appear to him or her reasonable and just.

(b) The appeals officer shall enable the applicant concerned or, where appropriate, a person referred to in *section 9(2)* and the Executive and, if appropriate, the head of the education service provider concerned or a person nominated by him or her and the assessment officer, liaison officer and Complaints Officer concerned to attend the hearing and present their case to him or her in person or through a representative.

(14) If a person gives false evidence before the appeals officer he or she shall be guilty of an offence.

(15) A witness whose evidence has been or is to be given before the appeals officer shall be entitled to the same privileges and immunities as a witness in a court.

(16) An oral hearing under this section shall be held in private.

(17) The following shall be absolutely privileged:

(a) documents of the appeals officer and documents connected with the appeals officer or his or her functions, wherever published;

(b) reports or determinations of the appeals officer, wherever published;

(c) statements made in any form at meetings or oral hearings of the appeals officer or by his or her officials and such statements wherever published subsequently.

(18) An applicant shall not be required to attend before the appeals officer under this section if, in the opinion of the appeals officer, such attendance might be prejudicial to his or her mental health, well-being or emotional condition.

(19) A person who—

(a) fails or refuses to comply with a requirement under this section or who hinders or obstructs the appeals officer in the performance of his or her functions,

(b) having been directed under *subsection (13)* to attend before the appeals officer, without just cause or excuse disobeys the direction,

(c) being in attendance before the appeals officer pursuant to a direction under *subsection (13)*, refuses to take the oath on being required by the appeals officer to do so or refuses to answer any question to which the appeals officer may legally require an answer or to produce any document or thing in his or her possession or power legally required by the appeals officer to be produced by the person, (d) without just cause or excuse disobeys a direction under *subsection (13)(a)*, or (e) does any other thing in relation to the proceedings before the appeals officer which, if done in relation to proceedings before a court by a witness in the court, would be contempt of that court, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \3,000 or to imprisonment for a term not exceeding 12 months or to both.

(20) Before deciding an appeal under this section the appeals officer shall consider the following:

(a) the relevant notice under *subsection (3)*;

(b) any relevant information obtained pursuant to *subsection*

(6), (7) or (8);

(c) the evidence presented and any representations made at an oral hearing (if any);

and

(d) the matters referred to in *section 11(7)*.

(21) By notice in writing to the parties, the appeals officer may correct any mistake (including an omission) of a verbal or formal nature in a determination under this section.

(22) A copy of every determination of the appeals officer under this Part shall be printed and made available by the appeals officer for inspection by the public at such times and places as he or she may determine.

(23) The contents of any document which is published or made available by virtue of this section shall be protected by absolute privilege.

**19.-** (1) The appeals officer may authorise such and so many members of his or her staff as he or she may determine (referred to in this Act as “mediation officers”) to perform the functions conferred on mediation officers by this section.

(2) If at any time after an appeal has been initiated under *section 18*, the appeals officer is of opinion that the appeal could be resolved by mediation, he or she shall inform the person who initiates the appeal concerned of that opinion and, subject to *subsection (3)*, refer the matter for mediation to a mediation officer.



(3) If an applicant objects to his or her appeal being dealt with by mediation, the appeals officer shall deal with the matter under *section 18*.

(4) Mediation shall be conducted otherwise than in public.

(5) Where an appeal is resolved by mediation—

(a) the mediation officer concerned shall prepare a written record of the resolution arrived at, and

(b) the record aforesaid shall be signed by the applicant and the Executive and, if appropriate, the head of the education service provider concerned, or both of them, and a copy thereof shall be retained by the appeals officer and shall be sent to the applicant concerned and the Executive and, if appropriate, the assessment officer concerned, the liaison officer concerned and the head of the education service provider concerned.

**20.-** An appeal to a court shall not lie against a determination of the appeals officer other than an appeal on a point of law to the High Court.

**21. -** The Minister may make regulations for the purpose of enabling this Part to have full effect and, in particular, but without prejudice to the generality of the foregoing, regulations under this section may make provision in relation to any or all of the following:

(a) applications for assessments and the procedure for and in relation to such assessments including—

(i) different periods within which an assessment is to be carried out or subsequently reviewed,

(ii) different such periods in respect of—

(I) different categories of disability, or

(II) persons of different ages,

(iii) the categories of skills and expertise required to carry out an assessment,

(iv) matters relating to the determination and approval of standards to be applied in relation to the carrying out of an assessment,

(v) matters relating to the nomination by the Council of a person or persons with appropriate expertise to assist in carrying out an assessment in relation to educational services,

(b) in relation to a service statement—

(i) the form of the statement and any matter to be contained in it,

(ii) matters relating to the determination of eligibility under the Health Acts 1947 to 2004,

(iii) any other matters referred to in *section 11(7)*,

(iv) matters relating to the amendment of a service statement,

(v) the procedures for and in relation to the review with the applicant or a person referred to in *section 9(2)* by liaison officers of the provision of services specified in service statements, including the intervals at which such reviews shall be undertaken either generally or with reference to—

(I) a particular category or categories of disability, or

(II) categories of persons of a particular age,

(c) the procedures for and in relation to the making of complaints including the time within which a complaint must be made, the procedures for the granting of an extension of time where reasonable cause is shown for such an extension, and the form in which the complaint must be made, including procedures to be observed in the informal resolution of complaints,

(d) appeals under this Part and the procedures for and in relation to such appeals (including procedures for mediation), and (e) the manner of determining the person (other than a personal advocate assigned by Comhairle) to represent an applicant who by reason of his or her disability or age is unlikely to be able to represent himself or herself in relation to specified matters arising under this Part.

**22. - (1) (a)** If the Executive or the head of the education service provider concerned fails—

(i) to implement in accordance with its terms a determination of the appeals officer in relation to an appeal under *section 18*, or

(ii) to give effect to a resolution arrived at under *section 19*, or

(iii) to implement in full a recommendation of a Complaints Officer, within 3 months from the date on which the determination, resolution or recommendation is communicated to him or her or, where

the determination, resolution or recommendation specifies a date for the provision of a service, within 3 months from the date specified in the determination, resolution or recommendation for such provision, then, the applicant concerned, a person referred to in *section 9(2)* or the appeals officer may apply to the Circuit Court on notice to the Executive or the head of the education service provider concerned for an order directing him or her to implement the determination or recommendation in accordance with its terms or to give effect to the resolution, as the case may be.

(b) The reference in *paragraph (a)* to a determination of the appeals officer or a recommendation of a Complaints Officer is a reference to a determination or recommendation in relation to which, at the expiration of the time for bringing an appeal under *section 18* or *section 20*, as the case may be, no such appeal has been brought or if such an appeal has been brought it has been abandoned and the reference to the date on which the determination or recommendation, as the case may be, is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of such abandonment.


(2) The jurisdiction conferred on the Circuit Court by this section may be exercised by the judge of the court for the time being assigned to the Dublin circuit or, at the option of the applicant, or a person referred to in *section 9(2)*, by the judge of the circuit in which the applicant ordinarily resides or carries on any profession, business or occupation.

**23.-** (1) If a judge of the District Court is satisfied, by information on oath of the appeals officer or one of his or her officers, that there is reasonable cause for suspecting that any records, books, documents or other things containing material information are to be found at any premises and that such information is required for the performance by the appeals officer of his or her functions under this Part, the judge may issue a search warrant under this section.

(2) A search warrant under this section shall operate to authorise the person named in the warrant, accompanied by such other persons as the named person thinks necessary, to enter (if need be by force), at any time or times within one month from the date of the issue of the warrant, on production if so required of the warrant, the premises named in the warrant, and seize anything or to inspect and copy or take copies of extracts from any records, books, documents or other things found at the premises that he or she believes on reasonable grounds may be required by him or her for the performance of his or her functions under this Part.

(3) A person who obstructs or attempts to obstruct a person acting under the authority of a warrant under this section, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a period not exceeding 6 months or to both.

## SOP Dealing with the Provision of Information to Elected Public Representatives (TD's, Senators, MEP's and Local Representatives)

 Feidhmeannacht na Seirbhíse Sláinte Health Service Executive	<b>Feidhmeannacht na Seirbhíse Sláinte</b> <b>Standard Operating Procedure</b>	<b>SOP No:</b> XXX001 <b>Revision No:</b> 0 <b>Page:</b> 108 <b>No of Pages:</b> 3 <b>Date:</b> November 2007.
	<b>SOP Title:</b> Dealing with the Provision of Information to Elected Public Representatives (TD’s, Senators, MEP’s and Local Representatives)	
<b>Written by: Ray Mitchell</b>		<b>Title: Director – Regional Health Office, HSE Dublin North-East and Head of Parliamentary Affairs</b>
<b>Written by: Mary Culliton</b>		<b>Title: Head of Consumer Affairs</b>
<b>Approved by: Mr. Tommie Martin</b>		<b>Title: National Director in the CEO’s Office.</b>

### 1.0 Purpose

The Data Protection Commissioner has issued a guidance document which sets out how data controllers including public organisations should deal with Oireachtas members with regard to the disclosure of information to public representatives in the context of data protection legislation. The Data Protection Commissioner's guidance document is available widely and should be read in conjunction with this SOP.

### 2.0 Scope

The main purpose of this SOP is to ensure that we understand the Data Protection Commission's Guide Document, handle sensitive personal data carefully and at the same time provide an efficient and effective service to Oireachtas members as required under the Health Act 2004.

### 3.0 Definitions and Abbreviations

#### Sensitive Personal Data:

Means personal data as to:

- a) the racial or ethnic origin, the political opinions or the religious or philosophical beliefs of the data subject,
- b) whether the data subject is a member of a trade-union,
- c) the physical or mental health or condition or sexual life of the data subject,
- d) the commission or alleged commission of any offence by the data subject, or
- e) any proceedings for an offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such proceedings.

#### Data Controller:

Means a person who, either alone or with others, controls the contents and use of personal data.

## 4.0 Responsibilities and Procedures

In order to further assist the HSE organisation, the following standard operating procedure should be used when dealing with public representatives and their representations or (Oireachtas members) parliamentary questions.

1. Where the HSE receives parliamentary questions or a representation from a public representative which requests information on behalf of a constituent and this information is of a routine nature such as when Mrs. X will get her medical card or where on the waiting list is Mrs. X or what disability services Mr. Y is entitled to etc., these should be answered in line with the Data Protection Commissioner's guidance document (*"We advise that, where a public representative makes a written representation on behalf of a constituent, the organisation can generally assume that the constituent has given consent for the release of personal data necessary to respond to the request"* Data Protection Commission, November 2007).
2. Where a HSE Data Controller is not clear as to whether the information being requested by the public representative is of a more sensitive personal nature and is not sure as to whether to release the information to the public representative, the data controller should in the first instance check with their Line Manager to clarify the matter and then proceed as guided.
3. When the HSE receives a PQ or a representation from a public representative on behalf of a constituent and the information requested is **determined to be of a sensitive personal nature** (e.g. *What procedure did Mrs X have, what illness does she have, how much is Mr Y receiving*) the Data Controller should check with the patient or client that he/she has given consent for the information to be released to the public representative. If the client or patient can not be contacted the Data Controller in agreement with the Line Manager should contact the public representative's office to check if the public representative has consent from the patient or client to obtain the requested sensitive personal data. The details should be noted on the file, inter alia, including the date on which the contact was made, by whom and the name of the person confirming the information. When this procedure is used it needs to be handled in a sensitive manner.
4. Where after consulting local management, there is still doubt with regard to the sensitive nature of the data being requested in Parliamentary Questions or Representations that are issued from the Central PAD, the Data Controller contact the Parliamentary Affairs Division (PAD) on (01) 6352527 or [pad@hse.ie](mailto:pad@hse.ie) to clarify matters.
5. Where after consulting local management there is still doubt with regard to the sensitive nature of the data being requested in representations that are issued from the Consumer Affairs Department, the Data Controller should contact the Consumer Affairs Department, 045/880455 or email [valerie.kavanagh1@hse.ie](mailto:valerie.kavanagh1@hse.ie)
6. If staff have any further questions or require further clarification they can contact the PAD at (01) 6352527 or [pad@hse.ie](mailto:pad@hse.ie) OR Consumer Affairs at 057-9357876 or email [donal.devery@mailq.hse.ie](mailto:donal.devery@mailq.hse.ie)

## **5.0 Frequency of Review**

To be updated as is required.

## **6.0 Method used to review operation of Standard Operating Procedure**

Performance indicator (data collected on a routine basis to demonstrate level of performance) etc.

## **7.0 References**

Data Protection Act 1988

Data Protection (Amendment) Act 2003

## **8.0 Appendices**

**Risk Assessment**

1. IMPACT TABLE	Negligible	Minor	Moderate	Major	Extreme
<b>Injury</b>	Adverse leading to no apparent injury or minor injury not requiring first aid.	Minor injury or illness, first aid treatment required <3 days absence <3 days extended hospital stay Emotional Distress	Significant injury requiring medical treatment e.g. Fracture and/or counseling. Agency reportable e.g. HAS, Gardai (violent and aggressive acts). >3 days absence 3-8 Days extended hospital stay Emotional Trauma	Major injuries/long term incapacity or disability (loss of limb/requiring medical treatment and/or counseling.  Physical/emotional disability.	Incident leading to death or major permanent incapacity. Event which impacts on large number of patients or member of the public (Emotional/Physical trauma)
<b>Patient Experience</b>	Reduced quality of patient experience related to inadequate provision of information.	Unsatisfactory patient experience related to less than optimal treatment and/or inadequate information, not being talked to & treated as an equal or not being treated with honesty, dignity & respect – readily resolvable.	Unsatisfactory patient experience related to less than optimal treatment resulting in short term effects (less than 1 week)	Unsatisfactory patient experience related to port treatment resulting in long term effects.	Totally unsatisfactory patient outcome resulting in long term effects, or extremely poor experience of care provision.
<b>Compliance with Standards (Statutory, Clinical, Professional &amp; Management)</b>	Minor non compliance with internal standards. Small number of minor issues requiring improvement	Single failure to meet internal standards of follow protocol. Minor recommendations which can be easily addressed by local management	Repeated failure to meet internal standards or follow protocols. Important recommendations that can be addressed with an appropriate management action plan.	Repeated failure to meet external standards. Failure to meet national norms and standards/Regulations (e.g. Mental Health, Child Care Act etc). Critical report or substantial number of significant findings and/or lack of adherence to regulations.	Gross failure to meet external standards. Repeated failure to meet national norms and standards/regulations.  Severely critical report with possible major reputational or financial implications.
<b>Objectives Projects</b>	Barely noticeable reduction in scope, quality or schedule	Minor reduction in score, quality or schedule	Reduction in scope or quality of project objectives or schedule	Significant project over-run.	Inability to meet project objectives. Reputation of the organization seriously damaged.
<b>Business Continuity</b>	Interruption in a service which does not impact on the delivery of patient care or the ability to continue to provide service.	Short term disruption to service with minor impact on patient care.	Some disruption in service with unacceptable impact on patient care. Temporary loss of ability to provide service.	Sustained loss of service which has serious impact on delivery of patient care resulting in major contingency plans being involved.	Permanent loss of core service or facility. Disruption to facility leading to significant 'knock on' effect.
<b>Adverse publicity /Reputation</b>	Rumours, no media coverage. No public concerns voiced. Little effect on staff morale. No review investigation necessary	Local media coverage – short term. Some public concern. Minor effect on staff morale/public attitudes. Internal review necessary.	Local media – adverse publicity. Significant effect on staff morale & public perception of the organization. Public calls (at local level) for specific remedial actions. Comprehensive review investigation necessary.	National medical adverse publicity, less than 3 days. News stories & features in national papers. Local media – long term adverse publicity. Public confidence in the organization undermined, HSE use of resources questioned. Minister may make comment. Possible questions in Dail. Public calls (at national level) for specific remedial actions to be taken possible HSE review/investigation.	National International media adverse publicity > than 3 days. Editorial follows days of news stories & features in National papers. Public confidence in the organisation undermined. HSE use of resources questioned. CEO's performance questioned. Calls for individual HSE officials to be sanctioned. Taoiseach/Minister forced to comment or intervene. Questions in the Dail. Public calls (at national level) for specific remedial actions to be taken. Court action. Public (independent) Inquiry.
<b>Financial Loss</b>	<€1K	<\$1K - €10K	€10 - €100K	€100K - €1M	>€1M
<b>Environment</b>	Nuisance Release	On site release contained by organisation	On site release contained by organisation	Release affecting minimal off-site area requiring external assistance (fire brigade, radiation, protection service etc)	Total release affecting off-site with detrimental effect requiring outside assistance.

**2. LIKELIHOOD SCORING**

2. LIKELIHOOD SCORING										3. RISK MATRIX					
Rare/Remote		Unlikely		Possible		Likely		Almost Certain			Neg	Minor	Mod	Major	Extreme
Actual Frequency	Prob	Actual Frequency	Prob	Actual Frequency	Prob	Actual Frequency	Prob	Actual Frequency	Prob	Almost Certain	5	10	15	20	25
May occur every 5 years or more	1%	May occur every 2-5 years	10%	May occur every 1-2 years	50%	Bi-monthly	75%	At least monthly	99%	Likely	4	8	12	16	20
										Possible	3	6	9	12	15
										Unlikely	2	4	6	8	10
										Rare/Remote	1	2	3	4	5

## **Human Resources Support**

The Muiriosa Foundation will provide advice and guidance to Managers in dealing with staff welfare issues.

Counselling services are available on a needs basis to staff on work related issues.

Managers can seek advice from the Human Resource Department on how and when to access counselling services.

The Employee Assist Programme is available to staff. Contact the line manger or HR Department for details.

## **Sample of letters**

### **1. Letter acknowledging receipt of complaint**

Should include:

- ◆ Thank you for letter of complaint
- ◆ Regret that the complainant is dissatisfied with service.
- ◆ Appointment to meet with you should the complainant wish to do so.
- ◆ Inform complainant that they may have someone accompany them to meeting.
- ◆ Inform complainant about patient advocacy service.
- ◆ Invite complainant to contact you if they have special needs.
- ◆ Include your contact details.
- ◆ Enclose summary of complaints procedure.

### **2. Letter to staff member involved in incident**

Should include:

- ◆ Statement to indicate that a complaint has been received giving date and service area referred to in complaint.
- ◆ Enclose details of complaint with summary of points the complainant wishes the organisation to address.
- ◆ Request for a written report that addresses the key points raised.
- ◆ Date by which report should be returned to you (within 2 weeks).
- ◆ Invitation to contact you to discuss details.

### **3. Letter of response to complainant following investigation of complaint**

Should include:

- ◆ Regret that complainant was dissatisfied.
- ◆ Statement to indicate that investigation has been completed.
- ◆ Enclose report of investigation.
- ◆ Invite complainant to contact you to discuss the report.
- ◆ Paragraph to indicate further options:
- ◆ “If you are not satisfied with the interpretation of events, the outcome of the investigations or if you wish to pursue the matter further you can request an independent review of your complaint to be carried out by an independent reviewer through the Chief Executive’s Office. If you are still dissatisfied with the outcome of the independent review you can refer your complaint to the Ombudsman’s Office.”

If the organisation or a member of staff is at fault you should also include:

- ◆ An apology.
- ◆ An indication of the action taken to ensure such an event does not reoccur.





## **Complaints, Comments & Compliments Form**

*If you are unhappy about any aspect of our service, have a suggestion for improvement or wish to make a comment about a good service, then please complete this form.*

*Ask a staff member or at reception for contact details for the local Complaints Officer in your area.*

*Or email: [comments.complaints@muiriosa.ie](mailto:comments.complaints@muiriosa.ie)*

**Details of person making complaint/comment:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

If you are not the individual who uses the service  
please state relationship: \_\_\_\_\_

First Language: \_\_\_\_\_

Contact Phone Numbers: Work \_\_\_\_\_ Mobile \_\_\_\_\_ Home \_\_\_\_\_

**Individual who uses the service (*If different from above*)**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contact Phone Numbers:

Work \_\_\_\_\_ Mobile \_\_\_\_\_ Home \_\_\_\_\_

First Language: \_\_\_\_\_

**Do you have any special needs e.g. wheelchair access, sign language, need for interpreter etc.  
that you would like us to facilitate:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[illegible]

**In the event of a complaint/concern:**

**What were the specific events leading to the complaint/concern?**

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**Have you attempted to resolve the matter prior to this?**

*Please tick,*

**Yes**

☐

**No**

☐

**If Yes, what happened?**

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**Details of person contacted:**

**Date:** \_\_\_\_\_

**Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

**What are your main concerns about the situation now?** \_\_\_\_\_

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**What are you hoping to achieve by making this complaint / raising this concern?**

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**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## ***Local Complaints/Comments/Compliments Logbook***

***Summary record of verbal, informal and formal complaints, concerns and compliments***

**Designated Centre/Location:** \_\_\_\_\_

**Region:** \_\_\_\_\_

Date complaint, concern and compliment received: \_\_\_\_\_

Name of person making the complaint: \_\_\_\_\_

Address: \_\_\_\_\_

Contact number: \_\_\_\_\_

If complainant is not the service user please state relationship: \_\_\_\_\_

Details of complaint, concern and compliment received: \_\_\_\_\_

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Desired outcome of the complainant:

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If resolution was achieved at the point of contact, give the details of the resolution and recommendations for action:

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If resolution was not achieved please state why:

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Action taken (including quality improvements):

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Was complainant informed of the process for submitting the formal complaint: Yes ☐ No ☐

If yes, please give date informed and by whom: Date: \_\_\_\_\_ Name: \_\_\_\_\_

If no, please state reason(s) why: \_\_\_\_\_

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**Section A to be completed by the Person in Charge:**

Was complainant satisfied with the outcome: Yes ☐ No ☐

If no, was the complaint referred to the Area Director: Yes ☐ No ☐

If yes, please give date referred and by whom: Date: \_\_\_\_\_ Name: \_\_\_\_\_

Signature of Person in Charge: \_\_\_\_\_ Date: \_\_\_\_\_

---

**Section B to be completed by the Area Director:**

After referral to the Area Director was complainant satisfied with the outcome: Yes ☐ No ☐

If no, was the complaint referred to the Regional Director: Yes ☐ No ☐

If yes, please give date referred and by whom: Date: \_\_\_\_\_ Name: \_\_\_\_\_

Action taken: \_\_\_\_\_

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Signature of Area Director: \_\_\_\_\_ Date: \_\_\_\_\_

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**Section C to be completed by the Regional Director/Reviewing Officer:**

After referral to the Regional Director/Reviewing Officer was complainant satisfied with the outcome: Yes ☐ No ☐

If no, was the complainant advised that they could refer their complaint to the Ombudsman: Yes ☐ No ☐

If yes, please give date referred and by whom: Date: \_\_\_\_\_ Name: \_\_\_\_\_

Action taken: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature of:

Regional Director/Reviewing Officer: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

***Copy of Logbook to be submitted to the  
Regional Director/Reviewing Officer on the 1<sup>st</sup> day of each month***

**Record of complaints to be made by the Complaints Officer**

*Details to include the following information:*

- Name, address/ contact details/ age of complainant
  - Details of the complaint
  - Date complaint was made
  - Date complaint was received by Muiriosa Foundation
  - How the complaint was made (i.e. letter, email etc)
  - If this complaint was previously a verbal complaint
  - Date of acknowledgement of the complaint
  - The desired outcome for the complainant
  - Department/ Service about which the complaint was made
  - Result of the pre-investigation of the complaint by the Complaints Officer
  - If informal resolution was attempted, what process was used and if it was successful.
  - Outcome of the informal resolution
  - If formal investigation of the complaint was initiated
  - Result of the risk assessment of the actions that gave rise to the complaint
  - Details of the recommendations for action made as a result of the investigation of the complaint
  - Details of the action plan for organisational improvement (including responsibility and timeframes)
  - Date report sent to complainant and designate of CEO
  - Date report sent to relevant Local Manager(s)/ staff member(s)
  - If investigation at Stage 2 was completed within 30 working days
  - If no, if progress reports were sent to the complainant and service/staff member at 30 working days and every 20 working days thereafter
  - If complaint was investigated within 6 months
  - If resolution of the complaint was achieved as a result of the local investigation (Stage 2)
  - If mediation was offered and if it was accepted
  - Outcome of mediation process
  - If resolution was not achieved by formal investigation and the reasons why.
  - If complainant was informed of the review process
- The Complaints Officer has a responsibility for ensuring the above information is recorded.
  - Local Managers must fully support and assist the Complaints Officer in recording and collating the above data.



Service Provider Return Sheet	Analysis of Complaints 2014											Comments & Compliments	
	(i) Complaints received at end of last month	(ii) Complaints received this month	(iii) Total Complaints on hand current month	(iv) A full complaints excluded under Part 9 of the Health Act 2004	(v) Anonymous Complaints	(vi) Complaints dealt with informally	(vii) Complaints Withdrawn	(viii) Written complaints dealt within 30 working days at Stage 2	(ix) Written complaints that took longer than 30 days to deal with	(x) Complaints Pending at end of Month	(xi) Complaints resolved through Mediation	(xii) Comments/ Suggestions	(xiii) Positive Feedback
January	0		0							0			
February	0		0							0			
March	0		0							0			
April	0		0							0			
May	0		0							0			
June	0		0							0			
July	0		0							0			
August	0		0							0			
September	0		0							0			
October	0		0							0			
November	0		0							0			
December	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0	0	0	0	0
Jan - June	0	0	0	0	0	0	0	0	0	0	0	0	0
July - December	0	0	0	0	0	0	0	0	0	0	0	0	0

Complaints by Type [Please see below for samples of each heading.]

Please note: the total number of complaints under all categories for a particular month will not add up to the total number of complaints. One complaint could raise a number of different issues and should therefore be included in different categories, e.g. a complaint about waiting time for a certain procedure and staff attitude/manner.																
Complaints by Type [Please see below for samples of each heading.]																
	1. Access	2. Dignity and Respect	3. Safe and Effective Care	4. Communication and Information	5. Participation	6. Privacy	7. Improving Health	8. Accountability	9. Other	10. Clinical Judgement	11. Vexatious Complaints	12. Nursing homes /residential care for older people (65 and over)	13. Nursing homes and residential care age 64 and under	14. Pre-school inspection services	15. Trust in Care	16. Children First
January																
February																
March																
April																
May																
June																
July																
August																
September																
October																
November																
December																
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Jan - June	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
July - December	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Complaints Reporting Template

## **Matters excluded from right to complain under Part 9 of the Health Act 2004**

A complaint is excluded under Part 9 of the Health Act 2004 if it is in relation to any of the following matters:

- a matter that is or has been the subject of legal proceedings before a court or tribunal;
- a matter relating **solely** to the exercise of clinical judgment by a person acting on behalf of either the Executive or a Service Provider;
- an action taken by the Executive or a service provider **solely** on the advice of a person exercising clinical judgment;
- a matter relating to the recruitment or appointment of an employee by the Executive or a service provider;
- a matter relating to or affecting the terms or conditions of a contract of employment that the Executive or a service provider proposes to enter into (includes terms or conditions relating to superannuation benefits, disciplinary procedures or grievance procedures);
- a matter relating to the Social Welfare Act;
- a matter that could be the subject of an appeal under section 60 of the Civil Registration Act 2004;
- a matter that could prejudice an investigation being undertaken by the Garda Síochána;
- a matter that has been brought before any other complaints procedure established under an enactment (e.g. complaints made under Part 2 of Disability Act, 2005 or the Mental Health Act 2001).

Where the subject matter of the complaint is not included under part 9 of the Health Act 2004, these complaints are termed “non-Part 9 complaints”. The Complaints Officer must either investigate the complaint according to the processes described in Section 2 of this procedure or will notify the complainant of where the complaint might more appropriately be referred (See Section 2 - point 7.4.6 - Table 1 and Table 2, pages 57 and 58) for details of the appropriate processes for the management of various types of complaints).

**Where a complaint relates only in part to an excluded matter** the Complaints Officer will assess the non-excluded part of the complaint to assess its eligibility under the following criteria (See Section 2 - point 7.4.2 - 7.4.5, pages 55-56) and where appropriate investigate that part of the complaint in accordance with the procedures described under this section (Section 2, Part 7). The complainant will be advised of this decision.

**The National Advocacy Service for People with Disabilities can be contacted on the new national number 0761 07 3000.**

***Local Advocates for each region are:***

Christine Guilfoyle	<a href="mailto:christine.guilfoyle@advocacy.ie">christine.guilfoyle@advocacy.ie</a>	Offaly/ Laois
Rachel Bergin	<a href="mailto:rachel.bergin@advocacy.ie">rachel.bergin@advocacy.ie</a>	Kildare
Martina Larkin	<a href="mailto:martina.larkin@advovacy.ie">martina.larkin@advovacy.ie</a>	
Mary Chapman	<a href="mailto:mary.chapman@advocacy.ie">mary.chapman@advocacy.ie</a>	Westmeath/ Longford

## **MAKING A COMPLAINT**

**NOT HAPPY**



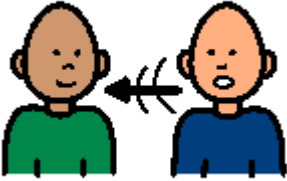

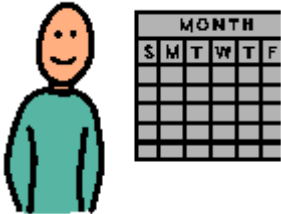
**Talk to the**





**Person in Charge**

**INSERT  
PHOTO**

## A complaint in Muiriosa Foundation

	<p>We want you to tell us if we could do better.</p>
	<p>You can make a complaint, or your family member or advocate can do it for you.</p>
<p>PHOTO</p>	<p>If you or someone else is unhappy, you can speak to one of the staff. Or you can speak or write to (<i>insert name</i>), Person in Charge.</p>
	<p>Tell us as soon as you can about the problem.</p>

	<p>We will try to fix the problem right away if we can.</p>
	<p>If your complaint is complicated it will take a bit longer. The Person in Charge will write to you and talk to you about what will happen next.</p>
	<p>We will tell you what we found when your complaint was investigated.</p>
	<p>If you think your complaint was not handled fairly you can telephone <i>(insert name)</i>, Area Director on <i>(insert no.)</i></p>



**If you remain  
unsatisfied you can  
contact, (*insert  
name*), Internal  
Review Officer  
on (*insert no.*)  
or  
the Office of the  
Ombudsman  
on 01 6395600 or  
Children's  
Ombudsman on 01  
8656800**

**Part 10, SI No 367 of 2013****COMPLAINTS PROCEDURES**

34. (1) The registered provider shall provide an effective complaints procedure for residents which is an accessible and age appropriate format and includes an appeals procedure, and shall-

- (a) ensure that the procedure is appropriate to the needs of residents in line with each resident's age and the nature of his or her disability;
- (b) make each resident and their family aware of the complaints procedure as soon as is practicable after admission
- (c) ensure the resident has access to advocacy services for the purposes of making a complaint; and
- (d) display a copy of the complaints procedure in a prominent position in the designated centre

(2) The registered provider shall ensure that-

- (a) a person who is not involved in the matters the subject of complaint is nominated to deal with complaints by or on behalf of residents;
- (b) all complaints are investigated promptly;
- (c) complainants are assisted to understand the complaints procedure;
- (d) the complainant is informed promptly of the outcome of his or her complaint and details of the appeals process;
- (e) any measure required for improvement in response to a complaint are put in place; and
- (f) the nominated person maintains a record of all complaints including details of any investigation into a complaint, outcome or a complaint, any action taken on foot of a complaint and whether or not the resident was satisfied.

(3) The registered provider shall nominate a person, other than the person nominated in paragraph 2(a), to be available to residents to ensure that:

- (a) all complaints are appropriately responded to; and
- (b) the person nominated under paragraph (2)(a) maintains the records specified under paragraph (2)(f)

(4) The registered provider shall ensure that the resident who has made a complaint is not adversely affected by reason of the complaint having being made.