

CODE OF PRACTICE

The Handling, Consideration and Disposal of Complaints

The requirement for the Health & Social Care Ombudsman Body (HSCOB) to issue a Code of Practice governing its handling, consideration and disposal of complaints is set out under **Regulation 27(2)** of **Part 3** of the following:

- **National Health Service (Complaints) Regulations 2022**
- **Social Services (Complaints) Regulations 2022**
- **Social Services for Children (Complaints) Regulations 2022**

The prescribed practice that HSCOB must adopt and apply in its administration and processing of complaints is defined by **Regulation 27(3)(a-e)**, and **Regulation 27(4)** makes clear that HSCOB must give regard to the Code of Practice when reviewing a complaint. **Regulation 27(5)** provides for the Code to be revised ‘from time to time’.

This document constitutes the required Code of Practice and explains how HSCOB meets the statutory expectations of Regulation 27.

Furthermore, and as an independent body performing a key administrative justice function, the Code additionally embraces wider conduct and behaviours that are commonly accepted as being representative of best practice in public life. For ease of reference, the Code is therefore presented in four interrelated parts that provide the following comprehensive statement of intent:

- **The Seven Principles of Public Life**
- **Declarations of Interest**
- **Conflicts of Interest**
- **Regulation 27(3)(a-e)**

1. THE SEVEN PRINCIPLES OF PUBLIC LIFE

All public office-holders are both servants of the public and stewards of public resources. The Seven Principles of Public Life (also known as the Nolan Principles) apply to anyone who works as a public office-holder or who is elected or appointed to public office both nationally and locally. The Seven Principles of Public Life do not have statutory force, but are regarded as persuasive best practice and are commonly adopted across public institutions.

Selflessness

Holders of public office should always act solely in the public interest and conduct themselves in such a way as to advance that objective. Selflessness is to be concerned more with the needs and circumstances of others, above and beyond any considerations of self-interest. HSCOB members must act in a manner consistent with this principle at all times.

Integrity

Holders of public office should avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. HSCOB members must declare any potential conflicts of interest and recuse themselves from any involvement in a matter where such a perception could arise.

Objectivity

Holders of public office must act impartially and fairly, and use the best evidence without discrimination or bias. All matters must be considered on their merits, and any decisions must be appropriate to the circumstances and proportionate in scope. HSCOB members will be mindful at all times of the potential for unconscious bias and ensure that their judgements are evidentially defensible.

Accountability

Holders of public office are ultimately accountable to the public for their decision making and actions. HSCOB as an independent body will report its work and performance annually to Tynwald consistent with this principle. HSCOB members will work in a collegiate manner ensuring the peer to peer review and oversight and scrutiny of the Chairman with respect to all decisions of the Body.

Openness

Holders of public office should act and take decisions in an open and transparent manner, and HSCOB will promote the principle in its work. There will be a presumption in favour of candid disclosure, and information will not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful and act in such a way that their conduct and behaviour is beyond reproach can withstand fair scrutiny. For HSCOB members, this includes any comments, remarks, observations, statements and assertions made in the course of discharging their duties and responsibilities.

Leadership

Holders of public office should exhibit these principles in their own behaviour and treat others with dignity and respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs. HSCOB members work in a collegiate manner under the Leadership of the Chair and aspire to the highest standards in public office both individually and collectively.

2. DECLARATIONS OF INTEREST

As part of HSCOB's governance arrangements, the Chairman and Members are obliged to declare any interest they may have in the affairs of another organisation or entity, be that interest financial or otherwise.

Such declarations promote transparency and openness in the work of HSCOB and ensure that potential conflicts (real or perceived) are robustly addressed and that appropriate action is taken to mitigate matters.

This applies to all interests, be they business and commercial, public body, independent and voluntary sector, charitable or community based.

The obligation also extends to significant personal and professional relationships with parties in other organisations with whom HSCOB may at some point have contact or involvement.

3. CONFLICTS OF INTEREST

A conflict of interest may arise where in the course of HSCOB's work in the handling, consideration and disposal of complaints, the Chairman and/or a Member of the Body identifies that their direct involvement in a particular complaint may give rise to a potential conflict (be that real or perceived).

The conflict may relate to a previously declared interest, or arise purely as a consequence of a proximity of relationship to the complainant (e.g. an extended family member, neighbour or community based friendship or acquaintance, or from a prior involvement in the individual's circumstances related to the complaint or otherwise).

Additionally, the Chairman and Members of HSCOB will not accept gifts and hospitality whether in the consideration of a particular complaint or more generally in the discharge of their duties and responsibilities.

4. REGULATION 27(3)(a-e)

- (3) A code of practice issued by the Health and Social Care Ombudsman Body must be such as to ensure that—
- (a) complaints are welcomed in a positive way;
 - (b) complaints are dealt with speedily and efficiently;
 - (c) complaints are investigated thoroughly and fairly;
 - (d) complainants are treated with respect and courtesy; and
 - (e) complainants receive a timely and appropriate response and are given fair and accountable responses.

This specific regulation addresses the manner in which HSCOB must conduct its business and will be discharged through (1) compliance with the totality of the constituent regulations and (2) through the adoption of complaint handling practices recognised by the Ombudsman Association as representative of best practice across the UK jurisdictions (**Annex 1**).



Principles of good complaint handling

Introduction

The British and Irish Ombudsman Association (BIOA) has many kinds of bodies in membership including ombudsman schemes and review bodies. They range in size from large to small and from national to more local. Some are in the public sector; some in the private sector. Some are statutory and some are voluntary. But all are involved in complaint handling, and all seek to resolve disputes that two or more participating parties have previously been unable to resolve.

Every scheme has its own standards and procedures designed to meet the needs of the people and organisations that use them. In the main, these have developed as a result of individual experience. They all however aspire to the BIOA values of independence of judgement, fairness and impartiality, effectiveness and accountability.

This booklet seeks to distil the experience and expertise of BIOA's membership. It will help existing Ombudsmen and other complaint reviewers with self-audit and provide guidance for those contemplating new schemes or applying for BIOA membership. In this way it will support the objectives of BIOA, which include the aim to formulate and promote standards of best practice to be met by Ombudsmen in the performance of their duties. The booklet is not meant to be prescriptive or all-encompassing, as schemes vary in size and remit and there is no 'one-size-fits-all' model. BIOA schemes are always seeking to learn from others, so to that extent, the booklet will always be 'work in progress'.

In the rest of this booklet we will for convenience call Ombudsmen, commissioners and complaint reviewers, 'office holders' and their organisations 'schemes'.

Background

Office holders and their schemes investigate complaints against a wide range of government and commercial organisations. Complaints will usually already have been investigated by the organisation concerned. The reviewer's role is to resolve cases that get beyond this stage, where, after the organisation has given a properly considered view, differences still remain between the organisation and the complainant.

Sometimes there are shortcomings in how the complaint has been handled, so that when it reaches the scheme, the complainant's grievances may not have been understood or fully considered by the organisation concerned. In addition, the handling of the complaint may itself have become an issue. Sometimes the complainant has unrealistic expectations or an incomplete understanding of his or her rights and responsibilities and wishes to persist against all the evidence. Whatever the circumstances, the scheme will need to understand what has led to the referral.

Every scheme is different and deals with differing issues. There are however, many similarities in how we go about our work. In particular, schemes in BIOA membership recognise that to carry out our role effectively, complainants must have confidence that issues will be considered impartially and on their merits Introduction and that independent judgement will be brought to bear.

Process

The following basic stages are common to most schemes:

- receiving a complaint from a complainant
- seeking a response from the organisation being complained about
- trying to resolve the complaint as quickly as possible
- carrying out some sort of 'investigation' to identify the merits of the case, arrive at a conclusion and provide appropriate redress
- feeding the outcome of systemic findings into best practice within the organisation

Key Principles

BIOA member schemes are independent of management control from organisations within their remit and are committed to our key objectives, which include the need:

- to formulate and promote standards of best practice and
- to encourage efficiency and effectiveness

In furtherance of these objectives BIOA has identified seven key principles which support schemes in our work and which people can rely upon when using our services. These are: clarity of purpose, accessibility, flexibility, openness and transparency, proportionality, efficiency, and quality outcomes.

In many cases, it is not possible to satisfy completely the needs and wishes of complainants. Incorporating these principles into the complaint-handling process will minimise unresolved issues or feelings of grievance. It may also make the organisation complained against less defensive, and increase the likelihood of achieving both resolution and organisational learning for the future.

Clarity of purpose. A clear statement of the scheme’s role, intent and scope.

Accessibility. A service that is free, open and available to all who need it.

Flexibility. Procedures, which are responsive to the needs of individuals.

Openness and transparency. Public information, which demystifies our service.
Proportionality. Process and resolution that is appropriate to the complaint.

Efficiency. A service that strives to meet challenging standards of good administration.

Quality outcomes. Complaint resolution leading to positive change.

Each of these principles is covered in more detail in the chapters that follow.

Please note that commentary or points made in some chapters are repeated in others where it is necessary to emphasise matters that have relevance to more than one principle. Whenever this occurs, the text will include a cross-reference to other chapters.

CLARITY

A clear statement of our role, its intent and scope.

1:1 Introduction

All BIOA schemes are independent of management control from organisations within their remit, so that people can have confidence in their impartiality and in the way their complaints will be handled. Independence is fundamental to our role.

Many schemes are governed by statutory limitations on the types of complaints they can consider or how they can be referred. Some are limited by contractual or other arrangements which define the issues they can consider and when they can do so.

As a consequence, it is essential to explain why we exist and what we do, so that people know what to expect from their contact with us. The factors below all play a part in achieving this objective.

1:2 Understanding our role

The primary (or core) role of office holders and their schemes is to look into complaints in a proportionate and impartial manner, and bring matters to a fair and reasonable conclusion. In most cases, complaints will have defied earlier resolution by the organisation complained about.

Our role is wider than that of a regulator, with a statutory role in placing obligations on organisations within their remit, for example by setting service standards or placing financial limits on charges to customers. It is also wider than courts or tribunals, which will generally be limited to considering whether action is lawful. Our role is rather to consider and resolve individual complaints about poor service or unfair treatment.

This is not an easy task, as it requires the scheme to balance the views of the complainant against those of the organisation and, based on the merits of the case, achieve a just result for both.

However, we also have an important secondary role. As a result of our work, schemes are able to identify how organisations can improve the way they do things and reduce the likelihood of similar complaints arising in the future.

Schemes aim to strike a balance between these sometimes competing requirements (see Chapter 7 Quality Outcomes).

1:3 Leadership

Most schemes are led by an appointed office holder or a number of such individuals. As the public face of their own organisations, they need the necessary experience, skills and authority to engender confidence in them and their scheme. Their role is to promote the vision and values of the scheme and, in particular, to demonstrate the independence of thought and spirit that will promote public trust in their judgement.

Similarly, they must provide guidance and support for people within their schemes by setting clear goals, defining success criteria and developing an organisational culture, which facilitates a positive and enabling role in the settlement of complaints.

1:4 Clear objectives

A scheme's principal aim is to secure a just and proportionate result, which brings closure for the complainant and the organisation. For many schemes, this decision will be the complainant's last opportunity to settle the dispute.

A further purpose of the process is to identify the reasons why complaints arose and were not settled by the organisation concerned. This may highlight a weakness in an organisation's administrative or complaint-handling processes, which can be brought to the attention of senior managers, who are accountable for making appropriate changes and improvements.

Some schemes make decisions that are legally enforceable. Most do not. Even where it is not compulsory to do so, organisations within the scheme's remit should be encouraged to accept findings and implement recommendations made by, or on behalf of, the office holder. This is

necessary if the scheme is to have credibility in the eyes of complainants. Follow-up is essential, both to confirm that action has been taken, and to provide public assurance.

Whilst it is necessary to ensure that the scheme responds to people and situations in flexible and proportionate ways, the scheme must remain focused on achieving quality outcomes that lead to positive change (see Chapter 7 Quality Outcomes).

1:5 Clear communication

Clarity of purpose is achieved by communicating well. Public information should explain the scheme's vision and values, its objectives and service standards. All publications must be easy to obtain and simple to read, using plain language and avoiding technical jargon (see Chapter 4 Openness and Transparency).

Engagement with complainants and others should be designed to avoid doubt and misunderstanding about the reason for the contact and the information that is requested or provided.

Internal guidance should support the achievement of the scheme's objectives and articulate the standards against which the service will be judged.

1:6 Clear and consistent processes

Schemes should develop standard processes for responding to complaint referrals. They should be designed to meet complainants' needs but also to cope with unusual and complex cases (see Chapter 3 Flexibility). Complainants should be given a clear explanation of the criteria for accepting complaints and a step-by-step guide to the way they will be addressed, including what service standards they can expect in terms of speed, detail and staff behaviour.

Clarity about what can be achieved and what is not possible is vital to a complainant's understanding of the scheme's role. If the scheme cannot help someone, wherever possible that person should be given information about alternatives. It is especially important to make it clear when matters have been brought to a conclusion.

A final letter or report should set out a synopsis of the facts taken into account, describe the result of the review and, where appropriate, the reasons for decisions that have been reached. It should also direct the complainant to any further help he or she can get if the communication received is not fully understood or there is dissatisfaction with the service or outcome. This should include how to make representations against a decision.

Consistency must not equal complacency. The scheme's service should be regularly reviewed in the light of feedback from complainants and organisations within its remit, to ensure that it continues to meet changing demands and circumstances (see Chapter 6 Efficiency).

Schemes should continue to look for improvements in service provision and be prepared to learn from and assist others in BIOA membership.

ACCESSIBILITY

A service that is free, open and available to all who need it.

2:1 Introduction

Schemes must constitute realistic and usable ways of seeking independent redress. Therefore, for those who need to use them, they must be known about, free to use, open and available.

Methods of access to schemes will differ from one scheme to another. For example, whilst most referrals can be made by complainants or their personal representatives, some referrals must be made by Members of Parliament or other authorised representatives. However referrals are made, it is important that people have the information they need to be able to take this step within the appropriate time-frame, and that the organisation complained about does not 'filter' access.

A particular advantage that schemes offer a complainant in terms of accessibility is that the service available to them is free. This means that people do not need to worry about whether they can afford to have their complaints properly considered, in order to get an independent view of what has happened.

2:2 Awareness

A scheme should ensure that it takes all reasonable measures to make the general public aware of its role. Promotional material should be available at places where potential complainants are likely to gather or seek information. This includes any organisations covered by the scheme, Citizens Advice and other voluntary sector organisations, reference libraries, tribunals and courts.

Other means of advertising the existence of a scheme, such as telephone directories and links from relevant websites, should also be considered with the object of increasing public awareness. Logos should be displayed on letterheads and advertising material, so that the scheme is easily recognisable.

To ensure ease of access to all those who need it, the scheme must be well known within the organisations covered by its activities. Those organisations, should refer potential complainants to it as part of their own in-house complaint-handling procedures, and be able to give helpful information verbally as well as in complaints and other promotional literature.

2.3 General accessibility

It is important to make it as easy as possible for complainants to access schemes. Schemes should develop standard methods of responding to complainants, which will be appropriate in most situations, and support consistency (see Chapter 6 Efficiency). That should not prevent them from recognising and responding to the individual and unusual needs of some potential complainants or responding to contact in a proportionate manner.

Whilst accessibility to schemes will differ depending on size, location and remit, complainants must be given as many ways of contacting schemes and referring their complaints as is practically possible within legislative and other constraints. Most should be able to do so by letter, e-mail or telephone. It may also be helpful to consider other methods of communication commonly used by particular age or social groups, such as SMS text messaging.

Although most schemes welcome contact by telephone, it should be borne in mind that some people may find it hard to make phone calls during standard office hours.

It may therefore be helpful to offer out-of-hours contact or make other arrangements for people to complain. Where it is practicable, some schemes may be able to arrange for complainants to do so face to face.

Schemes should regularly check how easy complainants find it to access their services, for example, by issuing customer satisfaction surveys and consulting focus groups.

2.4 Special accessibility needs

It is important to identify potential barriers to bringing a complaint and ensure as far as is practicable, that the processes, principles and practices of the scheme are designed to mitigate them. For example, some people may need advocates or other representatives to act for them in referring their complaint. Others may need other practical assistance. For this reason, information should be available to help people obtain the help they need.

Schemes have a responsibility to provide a service that accommodates the special needs of different groups and individuals in the community. A complainant's personal situation and background should not be a barrier to bringing a complaint.

In each individual case, it is also important to ask individuals what specific help they need to express that complaint, rather than make assumptions. Although not a comprehensive list, some of the possible barriers to access are described below:

Literacy and language

Differing levels of literacy and uneven communication skills may result in some complainants not understanding the jargon used in complaint forms, or having difficulty in articulating abstract concepts. It is therefore important to ensure that documentation is written in plain language. A scheme may also consider helping complainants complete their documentation.

When English is not the first language of the complainant, even conversational fluency in English as a second language may not be sufficient to allow the complainant to communicate confidently and effectively in official language. Ways of mitigating this issue might include the translation of key documents into other commonly used languages and a phone-based translation service. Some countries have more than one official language and there may be statutory obligations on schemes in those countries to conduct business with complainants in languages other than English.

Socioeconomic differences

It may be appropriate to take account of the special needs of some potential complainants from particular backgrounds or communities.

Enabling wider accessibility may include diversity training to help staff identify concerns of people from different backgrounds and to understand when gender, age, race, culture etc. require particular consideration.

Wherever possible and practical, a scheme should consider the diversity of its own workforces and how far it reflects the diversity of the public they seek to serve.

Disability

Disability-awareness training for staff may help them to assist people with physical and mental disabilities and illnesses and to consider pragmatic individual solutions. For example, it may be necessary to arrange investigator visits for those who are housebound.

It is also important to question common assumptions. For example, publications in Braille might seem like the answer for people who are sight-impaired but many registered blind people do not read Braille. So dialogue with relevant consumer and voluntary groups is important.

2.5 Commitment

It is important for schemes to seek to do more than simply meet legal requirements relating to accessibility. A legalistic approach to this issue would concentrate only on compliance with the provisions of relevant legislation such as, for example, the UK Disability Discrimination Act or the Welsh Language Act.

A genuine commitment to accessibility is more than just a matter of ensuring disabled access, induction loops, providing leaflets in various languages etc. It is about proactively ‘opening up’ – widening access, literally and metaphorically – for all kinds of people who might not otherwise have the knowledge, confidence or ability to complain.

This may require significant political, behavioural and process changes right across an organisation.

FLEXIBILITY

Procedures that are responsive to the needs of individuals.

3:1 Introduction

Whilst there are some general principles for good complaint handling that should be applied firmly, there should also be some flexibility in the process of dealing with complaints. As such, “flexibility” is a principle in its own right.

BIOA believes that complaint-handling procedures should be designed to provide a range of options that can respond to the varied needs of complainants. However, it is accepted that not all schemes will need or be able to offer all possible options.

At all stages during a scheme’s complaint-handling process, there should be enough flexibility to allow each complainant to feel that they are being treated as an individual and that the complaint will be dealt with on its own merits.

3:2 Initial contact and expressing the complaint

Schemes should use a wide range of options for making the general public aware of their existence (see Chapter 2 – Accessibility).

Many potential complainants may not be sure if a scheme can address their particular problems. They should be able to make initial contact to check this out in a variety of ways, including telephone, letter, fax, or e-mail.

For most schemes, a complaint can usually be raised by the complainant personally, or by anyone authorised by them, including a legal representative. However, in some cases, referral must be through a Member of Parliament or other authorised representative. Although most complainants are able to make a complaint by themselves and in their own name, this must not be a precondition of referral (see Chapter 2 – Accessibility).

However complaints are referred, it is essential that the scheme is able to reach a clear, shared understanding with the complainant of the issues of concern to them.