
Midlothian Integration Joint Board

Complaints Handling Procedure

Part 2: When to use this procedure

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What is a complaint?

1. Midlothian Integration Joint Board's definition of a complaint is: 'an expression of dissatisfaction by one or more members of the public about Midlothian Integration Joint Board's action or lack of action, or about the standard of service the Midlothian Integration Joint Board has provided in fulfilling its responsibilities as set out in the Midlothian Integration Scheme'.
2. The Midlothian Integration Scheme describes the aims and outcomes of the Midlothian Integration Joint Board (Midlothian IJB). It can be found at [\[link\]](#).
3. A complaint about Midlothian IJB may relate to the following, but is not restricted to this list
 - inadequate quality or standard of service, or an unreasonable delay in providing a service relating to the delivery of the responsibilities delegated to the IJB
 - failure or refusal to act in accordance with one of our policies
 - dissatisfaction with one of our policies or its impact on the individual
 - failure to properly apply law, procedure or guidance when undertaking IJB functions
 - failure to follow the appropriate administrative process
 - conduct, treatment by or attitude of an IJB Board member or staff member or contractor (**except** where there are arrangements in place for the contractor to handle the complaint themselves) or
 - disagreement with a decision, (**except** where there is a statutory procedure for challenging that decision, or an established appeals process followed throughout the sector).

This list is not exhaustive but describes the main areas likely to give rise to complaint. Other issues raised as complaints will be considered on a case-by-case basis in terms of whether they fall within the definition given above and are not excluded by virtue of the list set out below.

4. **Appendix 1** provides a range of examples of complaints we may receive, and how these may be handled.
5. A complaint is **not**:
 - a matter related to the delivery of health and social care services by staff employed by the partners of Midlothian IJB
 - an enquiry seeking an explanation of Midlothian IJB's processes or decisions, including enquires and other representations made by elected representatives on behalf of constituents
 - a request for compensation only (see **Complaints and compensation claims**)
 - issues that are in court or have already been heard by a court or a tribunal (see **Complaints and legal action**)
 - disagreement with a decision where there is a statutory procedure for challenging that decision (such as for freedom of information and subject access requests), or an established appeals process followed throughout the sector
 - a request for information under the Data Protection or Freedom of Information (Scotland) Acts
 - an issue raised by a staff member of a partner relating to their employment

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- a whistleblowing concern
 - a concern about a child or an adult's safety
 - an attempt to reopen a previously concluded complaint or to have a complaint reconsidered where we have already given our final decision
 - abuse or unsubstantiated allegations about the IJB where such actions would be covered by our *[Unacceptable Actions Policy or equivalent]*; or
 - a concern about the actions or service of a different organisation, where we have no involvement in the issue (**except** where the other organisation is delivering services on our behalf: see **Complaints about contracted services**).
6. We will not treat these issues as complaints, and will instead direct people making a complaint to use the appropriate procedures. Some situations can involve a combination of issues, where some are complaints and others are not, and each situation should be assessed on a case-by-case basis.
 7. Issues that are not covered by our complaint definition may be covered by the complaints handling procedures relating to health or social work services provided by Midlothian Council and NHS Lothian who are the partners of the Midlothian IJB.
 8. **Appendix 2** gives more examples of 'what is not a complaint' and how to direct complainants appropriately.
 9. If a matter is not a complaint, or not suitable to be handled under the CHP, we will explain this to the person making a complaint, and tell them what (if any) action we will take, and why. See **What if the CHP does not apply**.

Who can make a complaint?

10. Anyone who is or is likely to be affected by an act or omission of Midlothian IJB can make a complaint. In this procedure these people are referred to as 'the person making a complaint' or as a 'complainant'.
11. We also accept complaints from the representative of a person who is dissatisfied. See **Complaints by (or about) a third party**.

Supporting the person making a complaint

12. All members of the community have the right to equal access to our complaints procedure. It is important to recognise the barriers that some people may face complaining. These may be physical, sensory, communication or language barriers, but can also include their anxieties and concerns. Complainants may need support to overcome these barriers.
13. We have legal duties to make our complaints service accessible under equalities and mental health legislation. For example:
 - the Equality Act (Scotland) 2010 – this gives people with a protected characteristic the right to reasonable adjustments to access our services (such as large print or BSL translations of information); and
 - the Mental Health (Care and Treatment) (Scotland) Act 2003 – this gives anyone with a 'mental disorder' (including mental health issues, learning difficulties, dementia and autism) a right to access independent advocacy. This must be delivered by independent organisations that only provide advocacy. They help people to know and understand their rights, make informed decisions and have a voice.

Examples of how we will meet our legal duties are:

- proactively checking whether members of the public who contact us require additional support to access our services
 - providing interpretation and/or translation services for British Sign Language users; and
 - helping complainants access independent advocacy (the Scottish Independent Advocacy Alliance website has information about local advocacy organisations throughout Scotland).
14. In addition to our legal duties, we will seek to ensure that we support vulnerable groups in accessing our complaints procedure. Actions that we may take include:
 - helping vulnerable people identify when they might wish to make a complaint (for example, by training frontline staff who provide services to vulnerable groups)
 - helping complainants access independent support or advocacy to help them understand their rights and communicate their complaints (for example, through the Scottish Independent Advocacy Alliance or Citizen's Advice Scotland); and
 - providing a neutral point of contact for complaints (where the relationship between complainants and frontline staff is significant and ongoing).
 15. These lists are not exhaustive, and we must always take into account our commitment and responsibilities to equality and accessibility.

How complaints may be made

16. Complaints may be made verbally or in writing, including face-to-face, by phone, letter or email.
17. Where a complaint is made **verbally**, we will make a record of the key points of complaint raised. Where it is clear that a complex complaint will be immediately considered at stage 2 (investigation), it may be helpful to complete a complaint form with the complainant's input to ensure full details of the complaint are documented. However, there is no requirement for the person to complete a complaint form, and it is important that the completion of a complaint form does not present a barrier to people complaining.
18. Where a complaint issue is raised via a digital channel managed and controlled by the IJB (for example an official twitter address or facebook page), we will explain that we do not take complaints on social media, but we will tell the person how they can complain.
19. We must always be mindful of our data protection obligations when responding to issues online or in a public forum. See **Part 1: Maintaining confidentiality and data protection**.

Time limit for making complaints

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

Particular circumstances

Complaints by (or about) a third party

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

Serious, high-risk or high-profile complaints

28. We will take particular care to identify complaints that might be considered serious, high-risk or high-profile, as these may require particular action or raise critical issues that need senior management's direct input. Serious, high-risk or high-profile complaints should normally be handled immediately at stage 2 (see Part 3: Stage 2: Investigation).
29. We define potential high-risk or high-profile complaints as those that may:
- involve a death or terminal illness
 - involve serious service failure, for example major delays in providing, or repeated failures to provide, a service
 - generate significant and ongoing press interest
 - pose a serious risk to an organisation's operations
 - present issues of a highly sensitive nature, for example concerning:
 - a particularly vulnerable person, or
 - child protection.

Anonymous complaints

30. We value all complaints, including anonymous complaints, and will take action to consider them further wherever this is appropriate. Generally, we will consider anonymous complaints if there is enough information in the complaint to enable us to make further enquiries. Any decision not to pursue an anonymous complaint must be authorised by the Chief Officer.

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31. If we pursue an anonymous complaint further, we will record it as an anonymous complaint together with any learning from the complaint and action taken.
 32. If an anonymous complainant makes serious allegations, these should be dealt with in a timely manner under relevant procedures.

What if a person does not want to complain?

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

Complaints involving the Health & Social Care Partnership or more than one organisation

35. A complaint may relate to a decision that has been made by the Midlothian IJB, as well as a service or activity provided by the Midlothian Health & Social Care Partnership (Midlothian HSCP). Initially, these complaints should all be handled in the same way. They must be logged as a complaint, and the content of the complaint must be considered, to identify which services are involved, which parts of the complaint we can respond to and which parts are appropriate for the partners comprising the Midlothian HSCP to respond to. A decision must be taken as to who will be contributing and investigating each element of the complaint, and that all parties are clear about this decision. The final response must be a joint response, taking into account the input of all those involved.
36. Where a complaint relates to a decision made jointly by Midlothian IJB and NHS Lothian or Midlothian Council, the elements relating to the IJB should be handled through this CHP. Where possible, working together with relevant colleagues, a single response addressing all of the points raised should be issued.
37. Should a member of staff who represents the Midlothian HSCP receive a complaint in relation to the Midlothian IJB, and they have the relevant and appropriate information to resolve it, they should attempt to do so. If the staff member feels unable to offer a response, the complaint should be passed to the Midlothian IJB Chief Officer as early as possible for them to resolve.
38. If a person complains to Midlothian IJB about services of another agency or public service provider, but Midlothian IJB has no involvement in the issue, they will be advised to contact the appropriate organisation directly.
39. If a complaint relates to the Midlothian IJB and the service of another organisation or public service provider, and we have a direct interest in the issue, we will handle the complaint about Midlothian IJB through the CHP. If we need to contact an outside body about the complaint, we will be mindful of data protection. See **Part 1: Maintaining confidentiality and data protection**.

Complaints about contracted services

- 40. All independent contractors are required to have a complaints procedure. Where complaints are received about the service provided by an independent contractor the IJB will refer the complaint to the independent contractor in the first instance, either providing contact details or by passing the complaint on, depending on the preferred approach of the complainant. Complaints received about independent contractors will be recorded for contract monitoring purposes.
- 41. At the end of the investigation stage of any such complaints the contractor must ensure that the complainant is signposted to the SPSO.
- 42. We will confirm that service users are clearly informed of the process and understand how to complain. We will also ensure that there is appropriate provision for information sharing and governance oversight where required.
- 43. Midlothian IJB has discretion to investigate complaints about organisations contracted to deliver services on its behalf even where the procedure has normally been delegated.

Complaints about senior staff

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

Complaints and other processes

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

Complaints and service requests

- 46. If a person asks Midlothian IJB to do something (for example, provide a service or deal with a problem), and this is the first time the person has contacted us, this would normally be a routine service request and not a complaint.
- 47. Service requests can lead to complaints, if the request is not handled promptly or the person is then dissatisfied with how we respond to their request.

Complaints and disciplinary or whistleblowing processes

- 48. If the issues raised in a complaint overlap with issues raised under a disciplinary or whistleblowing process, we still need to respond to the complaint.
- 49. Our response must be careful not to share confidential information (such as anything about the whistleblowing or disciplinary procedures, or outcomes for individuals). It should focus on whether Midlothian IJB failed to meet our expected standards and what we have done to improve things, in general terms.
- 50. Staff investigating such complaints will need to take extra care to ensure that:

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- we comply with all requirements of the CHP in relation to the complaint (as well as meeting the requirements of the other processes)
 - all complaint issues are addressed (sometimes issues can get missed if they are not also relevant to the overlapping process); and
 - we keep records of the investigation that can be made available to the SPSO if required. This can be problematic when the other process is confidential, because SPSO will normally require documentation of any correspondence and interviews to show how conclusions were reached. We will need to bear this in mind when planning any elements of the investigation that might overlap (for example, if staff are interviewed for the purposes of both the complaint and a disciplinary procedure, they should not be assured that any evidence given will be confidential, as it may be made available to the SPSO).

51. The SPSO's report **Making complaints work for everyone** has more information on supporting staff who are the subject of complaints.

Contact from MPs, MSPs or Councillors

52. When complaints are brought by elected members (on behalf of constituents) they will be dealt with as a complaint and must be handled in line with this CHP.

Complaints and compensation claims

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

Complaints and legal action

54. Where a person making a complaint says that legal action is being actively pursued, this is not a complaint.

55. Where a person making a complaint indicates that they are thinking about legal action, but have not yet commenced this, they should be informed that if they take such action, they should notify the complaints handler and that the complaints process, in relation to the matters that will be considered through the legal process, will be closed. Any outstanding complaints must still be addressed through the CHP.

56. If an issue has been, or is being, considered by a court, we must not consider the same issue under the CHP.

What to do if the CHP does not apply

57. If the issue does not meet the definition of a complaint or if it is not appropriate to handle it under this procedure (for example, due to time limits), we will explain to the person making the complaint why we have made this decision. We will also tell them what action (if any) we will take (for example, if another procedure applies), and advise them of their right to contact the SPSO if they disagree with our decision not to respond to the issue as a complaint.
58. Where a complainant continues to contact us about the same issue, we will explain that we have already given them our final response on the matter and signpost them to the SPSO.
59. The SPSO has issued a template letter for explaining when the CHP does not apply.

Appendix 1 – Complaints

In the following table organisations should give organisational specific examples of complaints that may be considered at the frontline stage, and suggest possible actions.

Complaint	Possible actions
A person expresses dissatisfaction in line with the definition of a complaint, but says she does not want to complain – just wants to tell us about the matter.	<ul style="list-style-type: none">• Tell the person that we value complaints because they help to improve services. Encourage them to submit the complaint.• In terms of improving service delivery and learning from mistakes, it is important that feedback, such as this, is recorded, evaluated and acted upon. Therefore, if the person still insists that they do not want to complain, record the matter as an anonymous complaint. This will avoid breaching the complaints handling procedure. Reassure the person that they will not be contacted again about the matter.

Appendix 2 – What is not a complaint?

A concern may not necessarily be a complaint. For example, a person might make a routine first-time request for a service. This is not a complaint, but the issue may escalate into a complaint if it is not handled effectively and the person has to keep on asking for service.

A person may also be concerned about a decision made by the organisation. These decisions may have their own specific review or appeal procedures, and, where appropriate, people must be directed to the relevant procedure. *[Below, organisations should provide examples of the types of issues or concerns that must not be handled through the CHP. This is not a full list, and you should decide the best route for resolution based on the individual case.]*

Example 1:

Example 2:

Example 3:

Example 4:

Example 5:

Example 6: