

A consultation on the Investigations Manual of the Ethical Standards Commissioner's office

The Scottish Social Services Council is the regulator for the social work, social care and early years workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce.

We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action. We:

- publish the national codes of practice for people working in social services and their employers
- register people working in social services and make sure they adhere to the SSSC Codes of Practice
- promote and regulate the learning and development of the social service workforce
- are the national lead for workforce development and planning for social services in Scotland
- are an ONS statistics provider.

Questions

Q1 – When a complaint is received by the Commissioner's office, the complaint is assessed against certain criteria for admissibility. If a complaint is assessed and considered inadmissible, a dismissal letter is prepared setting out the reasons why and sent to the Complainer. Should Councillors and Members also be notified when a complaint against them is dismissed because it has been assessed and considered inadmissible?

The SSSC believes that Councillors and Members should be notified when a complaint against them is dismissed on the grounds of inadmissibility, subject to the considerations we highlight in our response to question 3

Q2 – If so, would a copy of the dismissal letter sent to the Complainer (with contact details redacted in accordance with data privacy protection rules) be sufficient notification?

N/A

Q3 – Please provide reasons for your responses to Q1 and Q2.

The SSSC does not believe that it would be appropriate to apply the same process to all inadmissible complaints. Consideration should be given to the need for transparency in dealing with inadmissible complaints. However, this should be balanced against the potential impact notification may have on the individual subject to the complaint, particularly in the case of malicious or spurious complaints.

We believe one reason it could be appropriate to notify those subjects to an inadmissible complaint is that this may increase their awareness of the subject matter of the complaint. Making sure those subject to complaints are aware of the subject matter may increase their understanding of the Code and could lead to increased compliance with the Code.

We also believe that notifying Councillors and Members may be beneficial as the fact that public bodies may be holding information and making decisions about them without their knowledge could damage their trust in those public bodies, or their confidence in their transparency.

In some cases it might be appropriate to take a different approach to informing Councillors or Members of complaints or their substance. For example, where a complaint is inadmissible on the grounds that the conduct occurred more than a year before complaint was raised. In such circumstances we believe it might be more useful or appropriate to provide Councillors or Members with guidance and/or a reminder of the relevant provisions of the Code.

On balance, we believe that Councillors and Members should be notified when a complaint against them is considered as inadmissible. However, thought should be given to:

- How that notification is framed to ensure that the fact the complaint is inadmissible is clear at the start
- What arrangements are put in place for holding/destroying the information and the extent to which it may or may not be used in the future.
- What support mechanisms are made available to Members and Councillors following notification. This is particularly important in the case of malicious complaints.
- What information will and will not be provided about the complainant or their complaint

Q4 – At times, the Commissioner’s office may receive a complaint which the complainer subsequently requests to withdraw. Should the Commissioner take forward complaints which are withdrawn, if there is a public interest in investigating and reporting on the complaint?

Yes

Q5 – If so, what considerations should the Commissioner account for when deciding a complaint is in the public interest to investigate and report, even where that complaint has been withdrawn?

We believe that where the substance of the complaint is sufficiently serious or indicates a pattern of behaviour contrary to the Code that would lead to a sanction if proven, should be considered.

Q6 – Please give reasons for your responses to Q4 and Q5.

The SSSC believes there is a public interest in investigating and reporting complaints. Once a complaint has been made, it should be properly considered. If the complaint was made maliciously that should become clear during the investigation. The withdrawal of a complaint may be because of pressure being put on the complainant to do so, which would be a concern.

Once an investigating body is aware of information, it cannot unknow it. It has a duty to consider that information and if it meets its thresholds for investigation, it must investigate. The non-cooperation of a complainant may mean that an investigation cannot ultimately make a finding. However, in such a circumstance, the matter will have been looked at and a record will have been kept as with any other complaint.

Q7 – Investigations take time and require cooperation from the Complainer, Respondent and any witnesses. The Commissioner’s investigative team will contact parties for information to progress with the investigation and will provide an update, currently every 3 months, on the progress of the investigation.

(a) How often should the investigative team be in touch with parties to update on the progress of investigation?

The SSSC would recommend that progress updates on investigations should be provided at least every eight weeks.

(b) How much time should the investigative team provide for parties to respond to the investigative team’s requests for documentary or other relevant evidence?

The SSSC believes that this varies depending on the information being requested.

(c) At times, no response is received despite repeated requests. Where no response is received for a prolonged period of time and after repeated requests for information, should the Commissioner's office proceed to conclude the investigation without the requested input?

Yes.

Q8 – Please given reasons for your responses to Q7(a), (b) and (c)

a). Being under investigation has a significant impact on the person being investigated. For this reason, they should be given updates on the investigation every eight weeks. If possible, these updates should be by phone to allow a meaningful exchange that can go far to put the person at ease. For the complainant, we believe the update period could be longer. This should be decided on a case by case basis, considering the nature of the complaint and the impact updates may have on the complainant. The update period should be agreed with the complainant. Having an appropriate case management system to manage this will be important.

b). We believe this depends on the information being requested. Any deadline for providing documents/evidence must take account of the volume and complexity of gathering it. Providing deadlines that cannot be met is not helpful to the person providing the information, particularly if there is no statutory means of securing their compliance. A cooperative relationship is likely to be more productive. Checking in by phone after requesting the information and discussing if the timeframe will be met is a sensible approach if resources allow.

c). The SSSC believe there is a duty to investigate in public interest, as stated in our response to Q6

Q9 – Interviews can be an integral part of the investigative process. The Manual proposes that an interviewee may be contacted in writing by the Investigating Officer in order to confirm any substantive statements shared during the interview or a witness statement prepared from what is discussed at the interview. The interviewee will be invited to respond to the Investigating Officer to confirm or correct the accuracy of such substantive interview statements or witness statements. The interviewee may also be invited to review an interview or witness statement based on the interview, and to sign it to confirm that it

is a true reflection of what was said during the interview. Should this proposed approach form a part of the investigative process and are there circumstances in which it should be essential, rather than optional?

It is our belief that witnesses should always be asked to confirm and sign their statement as this is an crucial way to ensure accuracy.

Q10 – If so, should all other witnesses be provided with a copy of the interview or witness statement?

No

Q11 – Please give reasons for your responses to Q9 and Q10.

9- Signing their statements can help witnesses reflect on what they have said and make sure it is accurate. Further, witnesses may not be willing or able to participate in a hearing at a later date and a signed statement has more evidential value than an unsigned one, though affidavits should be sought if it is known that the witness will not appear.

10 -Witness statements should be shared with the person under investigation in order that they know the case against them. They should not be shared with other witnesses as this may taint their own evidence. Propositions can be put to them, but it is important not to influence their statements which might prejudice the investigation.

Q12 – At the end of an investigation, the Commissioner’s office will produce an investigative report (the Report) setting out the background to a complaint, the investigation, the investigative outcomes and an explanation of the Commissioner’s views as to whether a breach of the Code has taken place. The Manual proposes that all Reports, either breach or no breach, are shared with all parties to a complaint (specifically, the complainer, the respondent and the local authority/public body). Should this proposed approach be taken?

No

Q13– Please give reasons for your views.

We think there is an important distinction between the investigation report and the outcome letter (which should be tailored for the recipient).

Our investigation reports contain legal advice to assess the strength of the evidence in support of an allegation about a registered worker. In order to maintain legal privilege and not prejudice the regulator’s ability to impartially investigate and assess the merits of a case, the report itself should remain confidential.

There should be a document issued which sets out the allegations investigated and reasons for the decision including the rationale for the ESC decision without disclosing the full report.

Q14 – The Manual proposes a set of proposed timescales and targets for each stage of complaint handling. Should these proposed timescales and targets be adopted or do you feel that others are more appropriate for consideration?

No

Q15– Please give reasons for your views.

We think it would be difficult to have proposed or target timescales as each case is different, so putting a target on individual stages would be problematic and set unrealistic expectations.

The SSSC, for example, benchmarks cases based on average turnarounds and has set internal goals based on overall case progression rather than individual stages.

Q16 – Are there any other issues relating to Councillors / Members' complaints handling processes which you wish to raise?

No

Complaints about MSPs

Q17 – The Manual proposes a set of proposed timescales and targets for each stage of complaint handling. Should these proposed timescales and targets be adopted or do you feel that others are more appropriate for consideration?

The SSSC has no view on this.

Q18– Please give reasons for your views.

The SSSC has no view on this.

Q19 – Are there any other issues relating to MSP complaints handling processes which you wish to raise?

The SSSC has no view on this.

Q20 – Are there any other issues relating to the Manual you wish to raise?

The SSSC has no view on this.