



SPSO CHILD FRIENDLY COMPLAINTS FAQs

This document provides written responses to questions submitted to our Child Friendly Complaints launch event held on Tuesday 16 July 2024, where we launched our Child Friendly Complaints Handling Principles and Process Guidance.

Please note that this document is not official guidance from SPSO but a collection of answers to questions asked at the SPSO Child Friendly Complaints launch in the context of the questions and answers session.

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Centred on children's voices

1.	Would it be possible to give consideration to not starting the complaint until consent and advocates are in place? This might make it possible to meet the timescales	<p>It is inevitable that, in some cases, the time taken to seek informed consent may make it difficult to meet the target timescales. It is more important to involve the child/ young person and have meaningful conversation than artificially manipulate the process to meet a timescale that MCHPs already enable and give advice on extending.</p> <p>The important thing is to note extensions and the reasons for them on the complaint file and to prevent further unnecessary additional delay by taking action to follow-up. If a complaint were to be escalated to the SPSO we would take this into account.</p> <p>While we recognise that it might be tempting to delay the start, this increases the risk of delay that may not be in the Child's best interests as there may be other considerations this has to be balanced against and/ or immediate action needed.</p> <p>In the majority of cases, the child/ young person involved will support the complaint.</p> <p>If you had a scenario that you were not sure about, it is always open to you to contact us on ISE-CSA@sps.gov.scot for general advice.</p>
2.	Will consideration be given to extending response times, especially for stage 1, 5 days is tight as it is.	<p>See question 1 above.</p>



3.	Is it enough for the parent to confirm that they have the child's consent - or do we need it direct from child? And what if we only have the parents' word for it? Is process paused unless/until child's consent received?	<p>Generally, no, unless the parent can give a very good reason why it would not be in their child's best interests to confirm their informed consent directly.</p> <p>As mentioned under question 1 above, it is unlikely to be in a child's best interest to pause timescales in order to meet our own internal targets.</p>
4.	For GDPR informed consent is at 12, but in the example Angela is 10?	<p>GDPR is UK wide legislation that concerns the processing of personal data and is entirely separate to the complaints process. Sticking to the Child Friendly Complaints standards will help you meet your GDPR duties as they are more stringent in relation to consent of children/ young people 12 or over.</p> <p>It is inevitable that standards and process for consent will differ, and this is because consent refers to far more than processing of personal data; it refers to permission to take actions and ownership of a complaint on the child/ young person's behalf.</p>
5.	We have met with/linked in with Care Opinion and how they can support us with children being able to have their voices heard. Feel that this will be a very supportive platform for receiving children's feedback.	<p>What a great idea, this sounds like very good practice! We encourage everyone to share good practice examples at existing networks so that we can learn from one another as we implement in the coming months.</p> <p>We'd also love to hear from you about how it is going.</p>
6.	How would the SPSO view a case that the child doesn't consent to so a response is not issued to the parent/complainant?	<p>We would be looking to check the record of the consent that was refused and, assuming the proper considerations have taken place regarding Ownership, Capacity and Best Interests, we would likely support the discontinuation of the complaint.</p>
7.	The slide with the process was business as usual then Stage 1 with HT, if that then becomes a Stage 2 formally investigated by HQ staff, does the permission/agreement need to be repeated?	<p>As part of the informed consent process, we should be explaining the staged process to children so they know what to expect and who the different people are that might need to be involved. Asking them what level of contact/control they want going forward. If they have given permission for an adult to act on their behalf, as will happen in the majority of cases, you will not need to repeat the consent process to move to stage 2.</p>



8.	As an arm's length organisation who has very limited direct contact with children how do we go about getting informed consent? As an organisation we are concerned that by contacting children we could upset or distress when we need to reach out to them in order to seek their views.	The pilot showed that flexibility in this area was key. Many children chose to phone and leave a voicemail confirming their consent, or to email directly from their school email address. Very few chose to speak to people directly to provide this, so it is about offering a range of alternatives.
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Best Interests

9.	How is early resolution encouraged - slightly concerned that the focus on formal complaint may unintentionally encourage formal complaint rather than relationship based resolution?	<p>It is important to recognise from the guidance that the step to move to a formal complaint is a deliberate one. The section on Everyday Business highlights the important of early resolution as close to the time/ event as possible, as this is what children told us they wanted and what they considered was in their best interests.</p> <p>If Everyday Business does not resolve the matter, then we encourage you to read both this and MCHP guidance on resolution, or contact us for further guidance.</p> <p>The critical thing is to not let the pursuit of a resolution delay addressing the issue(s) or drag out overall timescales, as there are times when handling it as a formal complaint is the quickest way to put something right.</p>
10.	No one (we hope!) would disagree with best interest and importance of dealing with complaints quickly. Challenge is doing this when the complaints handlers are mainly professionals with an already full	<p>We hope so too! We appreciate the pressures complaints services are facing, irrespective of child friendly.</p> <p>Rather than focus on the word quickly we encourage you to think in terms of "timely" and applying the provisions already in MCHPs relating to timescales. The response to question 1 also touches on timescales.</p>



	day job. Not an excuse but it is a reality for public bodies.	Unavoidable delays will happen, but it is important to factor in and record Best Interests considerations when deciding how to prioritise workloads.
11.	How formally should the best interest assessment be captured / recorded?	Full guidance on the process for what should be considered in a Best Interests consideration is available in the Process Guidance. Ultimately, but it is a local decision how to record this, so long as this is done in a way that accurately captures your rationale. One way to approach it may be to record your rationale in such a way it could be shared with the child/ young person should you need to, and in anticipation it may be asked for by the SPSO.



Kind and supportive

12.	Will training be offered on writing an easy read letter for a young person? There is skill to writing a letter, making it easy read may be a challenge for some staff	<p>We know from children/ young people that they prefer to hear from someone they know and trust, and that this might sometimes be from a member of staff who is not used to responding to complaints at all.</p> <ol style="list-style-type: none"> 1. Is a letter the best, or only way to respond? A stage 1 response for example, might be better as a conversation (just make sure you keep a record). 2. What training does your organisation already give or have planned? Bear in mind that complaint handling is just one aspect of UNCRC compliance, and it is likely that many (if not all) staff, especially in child focused services, will need to write and communicate in child-friendly language. 3. Given it is a wider corporate responsibility to communicate in a child friendly way, we do not intend to provide specific training on this. We will consider whether there are tips we can give as part of phase 2 resources, but this is unlikely to be a high priority when compared to other resources.
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13.	Will there be guidance on how best to communicate "bad news" to children and to ensure they are supported with the news they receive.	By allowing children to choose who they speak to about their complaint, this directs such communication to the people already best placed to do this in a way that specific child is comfortable with.
14.	Who will provide any advocacy required?	We recognise that advocacy provision varies significantly based on location and subject matter of the complaint. Building good connections with local advocacy agencies or other parts of your organisation who can offer support to complainants in your sector is key. Ultimately though, even after doing this, it may not be possible to secure independent advocacy for a child. In this scenario we would encourage you to be particularly mindful of their needs and be supportive in the way you communicate with them.



Trusting and inclusive

15.	Determining a child's capacity to provide informed consent, may be challenging, as it can often be with adults. I note there is a section on this in the process guidance, however, in health complaints, we are not qualified to determine a child's capacity	<p>As the section on determining capacity within the Process Guidance says, it is usually safe to assume a child has capacity and seek informed consent, unless there are clear barriers that prevent them fully understanding the complaint.</p> <p>In complex cases, it is not for complaints handlers to determine a child's capacity in isolation, and this should be done in conversation with those who work with the child, and their responsible adult(s).</p> <p>In health, informed consent is likely to have been sought for medical treatment being provided to the child, which would have involved an assessment of capacity by the medical professional, so it may be possible to confirm capacity from the records.</p>
16.	I am concerned that this means it is a complaints officer's role to decide whether a child, particularly a very young child, has	See question 15 above.



	capacity to make a decision about consent or not and I am not sure how this would work in practice.	
17.	What do we do where the child says they don't want to go ahead but the parent is adamant? My understanding is that this hasn't been incorporated so isn't backed by legislation so a parent could overrule? I could be completely wrong!!	<p>As the Process Guidance sets out, there are a number of factors to consider and balance.</p> <ol style="list-style-type: none"> 1. Ownership of the complaint. Whoever you determine has ownership of the complaint should generally also be the person who has control. 2. Capacity. If the child/ young person cannot understand the complaint and its potential ramifications, and so cannot consent, then it is likely to be appropriate for their parent to have control. 3. The Child's Best Interests. Even if the child has ownership of a complaint, understands it and has capacity, yet they do not wish to proceed, you can still do so if it is determined to be in their Best Interests. The Process Guidance sets out what needs to be considered in this, but it is important to give child/ young person's voice significant weight in this consideration, so proceeding in this way would be rare. 4. If the balancing of rights leads you to the conclusion that the child/ young person's wish not to proceed should be respected (e.g. there are insufficient best interests arguments to overrule their wishes), whatever the parent's strength of feeling, it is the child's wishes that should be respected because failing to do so in those circumstances may breach a child's rights under Article 5 (which gives them the right to make decisions for themselves where these are manageable based on their evolving capacity). You should also remind the parent that they can escalate this as a complaint in their own right, which ultimately would give them the right to approach the SPSO about it. <p>Whatever your decision, it is good practice to document your reasoning so you can demonstrate how you have applied their rights.</p>
18.	What if the child doesn't consent?	See question 17 above.
19.	And if Angela does not consent to her parent taking it forward...	See question 17 above.



20.	What if the child doesn't give consent but the parent still wants to complain?	See question 17 above.
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Private and Confidential

21.	Determining a child's capacity to provide informed consent, may be challenging, as it can often be with adults. I note there is a section on this in the process guidance, however, in health complaints, we are not qualified to determine a child's capacity	<p>As the section on determining capacity within the Process Guidance says, it is usually safe to assume a child has capacity and seek informed consent, unless there are clear barriers that prevent them fully understanding the complaint.</p> <p>In complex cases, it is not for complaints handlers to determine a child's capacity in isolation, and this should be done in conversation with those who work with the child, and their responsible adult(s).</p> <p>In health, informed consent is likely to have been sought for medical treatment being provided to the child, which would have involved an assessment of capacity by the medical professional, so it may be possible to confirm capacity from the records.</p>
22.	Our complaints are peer reviewed and sometimes may involve our Chief Executive, so there can be a small number of colleagues who are normally required to have access to a complaint folder. Could you possibly outline how that may work in practice if we are required to get the child's permission to share their information?	<p>We refer you to question 23 below. We expect that details of this are explained to a child as and when this is relevant. We also encourage you to think about the following</p> <ul style="list-style-type: none"> • Can it be shared in a pseudonymised or anonymised way that does not identify the child? • Can you make access to files available purely on a need-to-know basis? • What training do the peer reviewers need? • Don't forget to remind them they can contact us for general advice.
23.	In relation to Record Keeping and Privacy, specifically the section that advises that - 'Records are stored in a way that they will	It is important that the child/ young person has trust in the system. This includes them having a voice in who can read and look at their complaint. The basic underlying principle is that only the people necessary to know about the details of the complaint and the child/ young person should have access



	<p>not be accessed by anyone other than those who have received the permission of the child'</p>	<p>to their records and complaint. This means you will need to tell the child/ young person that you will need to share information with other people and get their consent to do this.</p> <p>This will again be a balancing exercise sometimes (see Centred on Children's Voices for more questions focused on consent).</p> <p>For example, it may be necessary for a head teacher to speak to a class teacher, but that does not automatically mean the teacher, or other teachers should have access to complaint records.</p> <p>Other good principles to follow are only share the information necessary to investigate/ resolve a matter. That might, for example, mean sharing the circumstances of the complaint but not the child's name.</p> <p>If you are part of a complaint team, is it necessary for everyone in the team to have access to the complaint file(s)? For example, in SPSO, there are some cases we consider are too sensitive for general access and so only a specified group of people can access them.</p> <p>Of course, it is important to separate out sharing the complaint details from sharing the learning from complaints. Learning should be shared, but in an anonymised way.</p>
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For everyone under 18

<p>24.</p>	<p>How will we make children aware of their right to complain?</p>	<p>Children told us that they would not use the process if it felt like a formal process. Our focus is therefore on ensuring frontline staff know how to offer the complaints process in a way that feels safe and manageable as and when concerns are raised by children in everyday settings, as opposed to a large-scale awareness raising campaign for children. That said, we are developing materials for schools in co-operation with the Scottish Government and others.</p>
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Phase 2: Additional materials

25.	Will SPSO be issuing training on how to handle CFC?	Yes, we are currently working on a self-led online training module, similar to our Good Complaints Handling course. We will share further details of this towards the end of the calendar year.
26.	In terms of training, it would be good to have a health scenario especially as many of these can be complex and very sensitive and in most of these cases complaints handlers will have no relationship or previous contact with the child	<p>It is unlikely we will produce sector specific training, but we will consider including sector specific case studies and scenarios in some way.</p> <p>As said in response to other questions, any examples you could share with us (and others) would be great.</p>
27.	Some suggested scenarios and good practice outcomes for housing providers would be useful	See question 25 above.
28.	Guidance for parents will be necessary to explain this to them - especially if the child does not give consent and the complaint is not taken forward. This could cause a backlash for schools.	We are currently planning exactly what additional guidance materials we will be developing over the next year, but parent facing materials of the kind described here are very high on our list of priorities and we will share these as and when they become available.
29.	It would be good to have guidance for housing associations for staff, children of our customers and our customers.	The next phase of the project is being planned. This will include a further staff, child and customer facing materials though these may not be specific to the housing sector. If you think there are housing specific issues that would benefit from a specific resource, please let us know and we will factor this into our planning.



		What would be fantastic is if you could share some examples we could use as case studies (this goes for all sectors!)
30.	Accessible format of information for children and young people would be helpful	Child-facing materials aimed at a range of ages and abilities are a high-priority in the next phase of the project. We will share further details as they become available.
31.	A supplementary Child Friendly form for recording would be great - approved by SPSO	We are currently planning the additional materials that will be developed for the next phase of the project, and will include this suggestion in that consideration.
32.	Do you have a template excel doc for recording/ capturing the processes for each complaint received?	Thank you for this suggestion, we will consider it when planning phase 2 materials. If, in the meantime others already have something that could be easily adapted/ shared please get in touch with us.
33.	In Education, this will apply to 99% of complaints. Stage 1 investigation will be headteachers. Will there be specific advice for schools?	We are currently planning the additional materials that will be developed for the next phase of the project, and will include this suggestion in that consideration.





Other: Implementation

34.	Considering development, frontline staff training etc, what are the expectations on timescale from the Ombudsman to have this fully in place?	<p>The UNCRC (incorporation)(Scotland) Act is now law. For organisations under SPSO’s jurisdiction, the approval by Parliament of Child Friendly Complaints Principles has the effect of making complaint with them a legislative duty from 16 July 2024.</p> <p>Having said that, we recognise that this is new to all of us and is the first rights-based approach to complaint handling we are aware of. Our immediate expectations are</p> <ul style="list-style-type: none">• The process is shared with all staff immediately, and• Every reasonable effort will be made to be compliant.• Where things don’t go exactly to plan, you learn from complaints and adapt your approach accordingly. <p>However, drawing on our experience of introducing complaints handling processes and principles, we recognise that there is a learning curve for all of us, and will take this into account in any complaints escalate to us.</p> <p>Our ask of you, is that you share learning, challenges and issues, so we can share learning with our staff and others.</p>
35.	Will there be a review period, to see how well this is working and what the impacts have been?	<p>Monitoring will be an ongoing process and we expect to be updating the guidance in light of ongoing feedback and learning. To enable us to do this we are relying on you to feedback questions, successes, ideas and concerns.</p> <p>There will be a more formal review, but this is not likely to be for 18 months to two years to give the guidance time to bed in and be used.</p>



36.	Can anyone who has begun using this give us their take on how this as worked in practice?	If you contact us, we will try to put you in touch with organisations who have piloted the guidance and/ or with contacts in network groups.
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Other

37.	It would be good to have briefing about confidentiality and when that cannot be an absolute right - i.e. when a child or vulnerable adult is at risk of harm, abuse or neglect - a national guide linking to CP national guidance and ASP code of practice and other key documents	<p>As both the Principles and the Process Guidance state, the complaints process is not a replacement for Child Protection procedures. Our advice in the guidance is as follows:</p> <p>“Complaints procedures should not be used to handle any concerns that suggest significant harm might have been caused to a child or that a child might be at risk of harm. If, at any point, concerns are raised about possible harm to a child from abuse, neglect, or exploitation, these should always be shared with police or social work without delay, following local child protection procedures. Complaints can subsequently be raised about the handling of child protection investigations, and such complaints should follow this Procedure.”</p>
38.	If there is a child protection issue or anything of a criminal nature it would need to be referred to the police/social work	See question 37 above.
39.	We receive a large number of "concerns" which we do not have the remit to investigate - the responsibilities lie with the School or the LA so we have standard "responses" to adults who raise these types of concern to direct to the School/LA. Do we need to change our standard process to advise the adults following these changes?	If the complaint is fundamentally for another organisation, prompt signposting is key, so it is unlikely changes are required.

