

## **Internal Only Guidance/procedure on the Management of Complaints**

It is important that the Department of Education, Sport and Culture's ('DESC') services are developed in a culture that values and welcomes concerns or complaints as a way of putting things right and improving the service we provide. When providing services for the public, it is highly likely that DESC will receive some concerns or complaints, and we should adopt a rigorous procedure to ensure that learning from concerns or complaints can be used to support the improvement of our services.

It is in everyone's interest that concerns or complaints are resolved at the earliest possible stage. The experience of the first contact between the complainant and the service can be crucial in determining whether the complaint will escalate. If a member of the public has a problem with one of our services, the matter should normally be resolved through informal discussion with the appropriate member of staff.

All members of staff should take informal concerns seriously and make every effort to resolve the matter as quickly as possible. In many situations, this may include an agreed course of action, or in some cases an apology where that is appropriate.

This guidance is in relation to complaints from members of the public only. Any staff concerns should follow the appropriate staffing procedure. Please contact OHR for advice and to ensure the correct staffing procedure is followed.

Complaints regarding staff will be dealt with under the Department's internal disciplinary procedures, if appropriate. Complainants will not be informed of any action taken against a staff member as a result of a complaint. However, the complainant will be notified that the matter is being addressed.

In reviewing any complaint, all members of staff should ensure that the procedure used is: -

- is simple to understand;
- is impartial;
- is non-adversarial;
- enables a full and fair investigation;
- where necessary respects confidentiality;
- addresses all the points at issue and provides an effective response and appropriate redress, where necessary;
- provides information to the senior leaders so that services can be improved; and
- demonstrates sensitivity to the feelings of those involved.

### **The difference between a 'concern' and a 'complaint'**

A concern may be defined as 'an expression of worry or doubt over an issue considered to be important for which reassurances are sought'.

A complaint may be defined as 'an expression of dissatisfaction, however made, about actions taken or a lack of action'.

A complaint may be made: -

- in person, by telephone or in writing (including email)
- by a third party acting on behalf of the complainant and with their explicit consent.

### **Complaints received by Schools and UCM outside of term time**

Complaints received by schools and UCM outside of term time or within a few days prior to the start or end of term will be considered to have been received on the first day after the holiday period.

### **Anonymous Complaints**

It is usually proper to disregard anonymous complaints, unless somebody is prepared to substantiate them. However, if any child protection issues are raised within an anonymous complaint, then these should be investigated.

### **Duplicate Complaints**

After a complaint has been resolved, a similar complaint may be received from a close contact or relative of the original complainant. If the complaint is about the same subject and there are no new aspects to consider, the new complainant can be informed that the complaint has already been considered, and the process is complete.

### **Large Numbers of Complaints**

Occasionally, DESC may receive a large volume of complaints that are: -

- all based on the same subject.
- from complainants not directly affected by an issue.

In such circumstances, 'template' responses may be issued and either sent to complainants or posted on the relevant website.

### **Malicious Complaints**

Where a complaint has been received and investigated by DESC and in the opinion of DESC the complaint is malicious or vexatious, DESC will consider taking further action against the person who has submitted the complaint – see **Section 3** Vexatious Complaints, Unreasonable and Abusive Behaviour Policy.

### **Complainant leaves the Island during the complaints process**

Should the complainant leave the Island while an investigation is ongoing, the Complaints Officer will review and advise accordingly as to what should happen next.

**Head of Service**

A Head of Service is the Senior Officer responsible for the management of an individual Division or service within DESC.

These include:

- Headteacher or Principal – Primary, Secondary School & UCM
- Head of Sport, Recreation & Youth – Sport, Recreation & Youth Division
- Head of Culture & Arts – Culture Division
- Director of the Education, Advice & Support Division – Education, Advice & Support Division
- Deputy Chief Officer – Policy, Strategy & Governance Division

## **DESC Complaints Procedure**

### **Section 1 - Complaints not about the Head of Service**

Complaints can be made directly to the service or any member of staff, and on occasion they are sent straight to DESC and the Minister.

In the first instance if the complaint is **not** about the Head of Service, the complaint will be referred back to the relevant Head of Service to review in order to try and resolve the issue and de-escalate the situation. The Head of Service may nominate another staff member to deal with the complaint on their behalf.

If the initial attempts to resolve the issue informally have been unsuccessful, the complainant should be sent a **formal acknowledgement email/letter within 5 working days and as part of that email/letter** make clear what will be investigated (i.e. the complainant's concerns) and by when.

The complainant should also be advised that their complaint will be dealt with by the Head of Service (or a nominated staff member on their behalf) and that a full **response will be sent within 28 working days**.

The Head of Service should record the date the complaint is received and acknowledged. If a full response cannot be sent within 28 working days, the Head of Service will explain in writing why and also inform the DESC Complaints Officer.

#### **Stage 1 Process**

##### **A. Finding out what has happened**

The Head of Service (or a nominated staff member on their behalf) will gather facts to find out what has happened, including if the complaints procedure has been adhered to. The Head of Service will follow their usual procedures for investigating incidents brought to their attention.

The Head of Service will seek to clarify the nature of the complaint, ask what remains unresolved and what they believe went wrong. The Head of Service can consider whether a face to face meeting is the most appropriate way of doing this.

- If the complaint is regarding a safeguarding or child protection matter and there is an immediate risk of harm, please follow the services Child Protection and Safeguarding Policy immediately. If the Head of Service has any queries please seek advice from the Department's Child Protection & Safeguarding Officer.
- If the complaint is regarding a safeguarding allegation against a member of staff, please follow the Managing Allegations Against Staff procedure.
- If the complaint is against the Head of Service themselves, report it directly to the Complaints Officer at DESC and DESC will carry out the stage 1 process.

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If the complaint is not a safeguarding, child protection issue or about them, the Head of Service should continue their fact finding and determine if there is evidence to formally investigate a complaint using the thresholds below: -

- a. Has there been any discrepancy in any of the fact finding?
- b. Is the complaint serious enough to warrant an investigation?
- c. Is there partial evidence to suggest something **may** have occurred?

If any of these points are answered yes, then the formal investigation route should be taken and the following investigation procedure should be used:

<https://hr.gov.im/media/1883/investigating-officers-guide-2017-review-v-2-w-flowchart.pdf>

If there has been a previous investigation into the matter, the Head of Service will determine, with the staff members involved, if previous statements can be used in order to avoid duplication of reports.

If, after the Head of Service has investigated, and there are disciplinary and capability implications, they should contact OHR for advice and to ensure the correct process is adhered to.

If during the fact find there is no evidence to suggest any discrepancy or evidence to substantiate the complaint, then no formal investigation should be completed and the complainant to be informed of the outcome.

### **B. Terms of Reference**

If there is evidence to formally investigate a complaint using the thresholds above, the Head of Service will need to form a Terms of Reference (TOR). It should not be copied and pasted from the complaint, however it should set out the scope and limitations of the investigation as well as making clear what will be investigated and by when.

Further guidance in relation to forming a Terms of Reference can be found in the Investigating Officers Guide:

<https://hr.gov.im/media/1883/investigating-officers-guide-2017-review-v-2-w-flowchart.pdf>

As the Head of Service carries out the investigation, it is recommended that a file note be taken of any telephone communication with the complainant or witnesses and an email should be sent following the telephone communication if necessary, outlining what was discussed.

### **C. Making and sharing the outcome of your investigation**

It is vitally important that, once the Head of Service has a clear understanding of what has happened to cause the complaint, they respond in writing to the complainant and provide them with the outcome of the investigation. This should refer directly to the complainant's concerns.

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When considering any final decisions, evaluate any responses the service has already given. Ensure before the final response is sent to the complainant that it is clear, professional and of good quality.

A response should state: -

- what happened, with reference to the evidence;
- what should have happened, quoting any relevant guidance, and if it was followed;
- if relevant, why there is a difference between what happened and what should have happened;
- what the decision is for example, if the complaint has been upheld or not upheld and clearly set out any action you will take; and
- the complainant's next steps if they are not content with the decision.

If the Head of Service found something went wrong and the complaint is upheld, include: -

- a suitable apology;
- an offer to put things right if that's possible;
- explanations of what lessons have been learnt; and
- details of how the organisation will put matters right for other service users.

If the complaint has not been upheld, explain why and that the service considers the matter closed.

### **D. Timescales**

It's important that complainants are given reasonable expectations of the time it will take to investigate a complaint. Where further investigations are necessary and it is clear timescales cannot be met, it is strongly recommended that the Head of Service: -

- sets new time limits;
- sends the complainant details of the new deadline and explain the delay;
- allows a reasonable timeframe for complaints to be raised after an incident arises.

### **E. Investigation Reports**

Any parties who are the subject of an investigation may be sent a copy of the final report, however the Head of Service should consider redacting supporting evidence (emails, letters, screen grabs etc.) to remove any personal data for data protection purposes. The same would apply for any external investigation reports.

**Stage 2 Process**

If the complainant believes the Head of Service did not handle their complaint in accordance with the published complaints procedure, or they acted unlawfully or unreasonably in the exercise of their duties, they can contact the DESC Complaints Officer after completion of **stage 1 process** of the complaints procedure.

The Complaints Officer will consider whether the Head of Service has handled the complaint in accordance with the published complaints procedure and has addressed the complaint. A full reinvestigation of the complaint will not normally be necessary and decisions by the Head of Service typically not overturned unless it is found that they did not handle the complaint in accordance with the published complaints procedure and has not addressed the complaint.

If the complainant remains dissatisfied once DESC has carried out the stage 2 process to their complaint, the complainant will be advised to contact the Tynwald Commissioner for Administration, for their consideration.

## **Section 2 - Complaints about the Head of Service**

### **Stage 1 Process**

If the complainant has a complaint against the Head of Service, they can contact the DESC Complaints Officer who will carry out a review into the complaint in accordance with the complaints procedure.

The Complaints Officer will contact the service area to fact find and if necessary, ask the service area for further information and determine if there is evidence to formally investigate a complaint using the thresholds below: -

- a. has there been any discrepancy in any of the fact finding?
- b. is the complaint serious enough to warrant an investigation?
- c. Is there partial evidence to suggest something **may** have occurred?

If any of these points are answered yes, then the Complaints Officer will investigate using the Investigating Officers Guide:

<https://hr.gov.im/media/1883/investigating-officers-guide-2017-review-v-2-w-flowchart.pdf>

If during the fact find there is no evidence to suggest any discrepancy or evidence to substantiate the complaint, then no formal investigation should be completed, and the complainant will be informed of the outcome by the Complaints Officer.

Once the Complaints Officer has investigated, they will liaise with the service and respond to the complainant with the outcome of the investigation.

### **Stage 2 Process**

If the complainant wishes to appeal the DESC stage 1 decision they will need to write to the Complaints Officer, explaining the reasons for appealing. A review of the decision made by DESC will be carried out by either a senior officer of DESC who has not previously dealt with the complaint (which may include an officer outside of DESC), or by an external investigator who would be authorised by the Chief Officer or Deputy Chief Officer before commencing.

The DESC Complaints Officer will keep the service and complainant updated on the commencement of and the progress of any stage 2 appeal or external investigation.

The purpose of the stage 2 appeal process is to identify whether DESC handled the complaint in accordance with the published complaints procedure and has addressed the complaint.

Once DESC has made its final response, they will not comment on the matter further unless there are new aspects to consider.

If the complainant remains dissatisfied once DESC has carried out the stage 2 process to their complaint, the complainant will be advised to contact the Tynwald Commissioner for Administration, for their consideration.

## **Section 3 - Vexatious Complaints, Unreasonable and Abusive Behaviour Policy**

### **Vexatious or Repetitive Complaints**

On occasions DESC receive complaints which can be deemed vexatious or repetitive. Some of these complaints can be costly to handle; or responding to them may be a disproportionate use of staff's time.

Deciding whether a complaint is vexatious requires us, in each case, to take into account the context and history of the complaint. We will consider whether the complaint is likely to cause unjustified distress, disruption or irritation. In particular we will consider the following issues: -

- Could the complaint fairly be seen as obsessive?
- Is the complaint harassing or causing distress to staff?
- Does the complaint appear to be designed to cause disruption or annoyance?
- Does the complaint lack seriousness or value?

We will take into consideration the following factors (which are not an exhaustive list) when determining whether a complaint is vexatious: -

- Where the complainant requests information which has already been provided.
- Where the nature and extent of the complainant's correspondence with us suggests an obsessive approach to disclosure.
- Where the tone adopted in correspondence by the complainant is confrontational and demonstrates that the purpose is to argue and not really to obtain information or resolution.
- Where the correspondence could reasonably be expected to have a negative effect on the health and wellbeing of our staff.
- Where the complaint, viewed as a whole, appears to be intended simply to re-open issues which have been disputed several times before, and is, in effect, the pursuit of a complaint by alternative means.
- Where it is not a 'one-off' complaint, but a case of the same complaints having been made repeatedly, or where on repetition, the particulars of the complaints have been varied making it difficult to know exactly what the complainant is seeking and making it less likely that the request can be satisfied.

No single one of the above factors would lead to a finding by itself that a complaint was vexatious. However, based on the strength of the various factors, taken together with the history and context of a complaint, a complaint may be deemed vexatious by DESC.

Complaints can sometimes become a vehicle for individuals to try to reopen previous issues. Although we recognise that people are not always satisfied with the responses they receive, the raising of complaints is not a solution for problems that have not been resolved through other channels. Continued complaints after the underlying complaint has been addressed, go beyond the reasonable pursuit of resolution.

Our staff have the right to undertake their work free from abuse, threats and harassment, or vexatious and repetitive complaints. We expect our staff to be treated with courtesy and respect. DESC has a duty to protect the welfare and safety of its staff and considers threats

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or abuse toward staff as unacceptable. Staff are also expected to treat complainants with courtesy, respect and fairness.

We also consider that inflammatory statements and unsubstantiated allegations can amount to abusive behaviour.

Where complaints are deemed vexatious, the complainant will be notified in writing that no further correspondence will be entered into on the matter in question.

Where unreasonable or abusive behaviour is determined, the complainant will be notified in writing that no further contact will be undertaken, and this will apply to all DESC contacts. A decision to restrict contact will be reconsidered if the complainant subsequently demonstrates more reasonable behaviour.

If appropriate, incidents of harassment or aggression will be documented and if felt necessary will be reported to the Police.