

# **Consultation on Complaints Concerning Functions Relating to the Named Person and Child's Plan**

**September 2015**

# CONSULTATION ON COMPLAINTS CONCERNING FUNCTIONS RELATING TO THE NAMED PERSON AND CHILD'S PLAN

## Executive Summary

The [Children and Young People \(Scotland\) Act 2014](#) (CYPA) was passed by the Scottish Parliament on 19 February 2014, and received Royal Assent on 27 March 2014. The legislation is a key part of the Scottish Government's strategy for making Scotland the best place to grow up. By facilitating a shift in public services towards early intervention whenever a family, child or young person needs help, the legislation encourages preventative measures, rather than crises responses. Underpinned by the Scottish Government's commitment to the United Nations Convention on the Rights of the Child 1989 ([UNCRC](#)), and Getting It Right For Every Child ([GIRFEC](#)), the Act also establishes a new legal framework within which services are to work together in support of children, young people and families.

The Act places in statute key elements of GIRFEC. The key elements of GIRFEC are, in summary:

- every child and young person in Scotland is to have access to a Named Person
- a statutory Child's Plan should be prepared for every child who requires one as a result of their wellbeing needs
- a holistic explanation of wellbeing, which is set out in the Act

Every parent and child should have the right and confidence to complain if they feel something is unsatisfactory or unacceptable. Making a complaint can sometimes be daunting and confusing for the parent and child. That is why it is important that any complaint process for parents and children, where possible, is accessible, clear and straightforward. It is also important that parents and children have confidence in the process and are not put off making complaints due to overly complicated processes. This consultation paper sets out the proposals for the complaints process for Named Person and Child's Plan, referred to as Part 4 and Part 5 in the consultation paper. Named Person and Child's Plan are new duties under the Children and Young People (Scotland) Act 2014 which will come into force in August 2016.

It is our intention to produce information and guidance in a variety of formats ahead of implementation. We want to ensure that parents and children know how to make a complaint, what their rights are and what will happen (the process) when they make a complaint. At the same time we want to ensure that every organisation and body involved in a complaint relating to Parts 4 and/or 5 are clear about their role and responsibilities regarding complaints. We want to develop a system where organisations and bodies can learn from complaints.

The consultation paper sets out two options for consideration for the management of complaints relating to Parts 4 and/or 5 of the Act. Option One reflects existing complaints mechanisms with additional provisions on the process and procedure. Option Two looks to ensure that there is a coordinated, holistic approach taken (single point of contact) to the investigation of complaints relating to Part 4 and/or 5.

While both options could deal with complaints relating to Parts 4 and/or 5 and are intended to be child and parent friendly, we consider that Option two is more parent and child friendly because:

- It will introduce a complaints coordinator who can support and help the parent and child through the process;
- It will ensure that the parent or child needs only to lodge the complaint once, irrespective of how many elements there are to the complaint or how many bodies or organisations may be involved;
- It will provide a more straightforward and accessible process especially for complex complaints

## **Responding to this consultation**

The consultation will run for **8 weeks** and we are inviting written responses to this consultation by **Friday 30 October 2015**. Any responses received after Friday 30 October 2015 will be considered but cannot be included in the subsequent consultation analysis report or published on the Scottish Government website.

There are a number of consultation questions on which the Scottish Government would welcome views. Please do not feel obliged to answer all the questions. Equally, if you would like to comment on any other issues relating to complaints concerning the functions of the Named Person or Child's Plan, the Scottish Government would welcome your views.

We would be grateful if you could use the consultation questionnaire, provided at Appendix I, to answer the questions relating to the consultation paper.

We would be grateful for responses to be completed electronically and sent by email where possible. This will aid handling and analysis of all responses.

Please send your electronic responses with the completed Respondent Information Form to:

[GIRFECConsultations@scotland.gsi.gov.uk](mailto:GIRFECConsultations@scotland.gsi.gov.uk)

Or if sending a physical response:

*GIRFEC Team  
Scottish Government  
2A-North, Victoria Quay  
Edinburgh  
EH6 6QQ*

If you have any questions, please phone 0131 244 7412 or contact the dedicated mailbox at [GIRFECConsultations@scotland.gsi.gov.uk](mailto:GIRFECConsultations@scotland.gsi.gov.uk)

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>

## **IMPORTANT INFORMATION**

### **Handling your response**

We need to know how to handle your response and in particular, whether you are happy for it to be made public. The attached Respondent Information Form will ensure that we treat your response appropriately. If you ask for your response not to be published we treat it as confidential. Please ensure that all relevant sections of the form are completed before returning it.

You should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and must consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us achieve a final version of the draft Statutory Guidance. We intend that this will be made available in summer 2015.

If you have given permission for your response to be made public and after we have checked that it contains no potentially defamatory material, your response will be made available to the public in the Scottish Government Library and on the Scottish Government consultation web pages in 2015. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the contact details above.

## Introduction

1. The Children and Young People (Scotland) Act 2014 (CYPA) allows for Scottish Ministers to make provision by Order about the making, consideration and determination of complaints concerning functions relating to the Named Person (Part 4) and Child's Plan (Part 5). An Order is additional legislation to give further detail on what is required. It is the Scottish Government's intention to align the complaints procedure for the exercise of functions under Part 4 and/or 5 (see Appendix A) with existing mechanisms as far as possible. Complaints not concerning functions relating to Part 4 and/or 5 will continue to be addressed through existing mechanisms.

2. Our aim is that parents and children have an accessible, clear and straightforward route for making complaints concerning functions relating to Part 4 and/or 5. Where possible complaints should be resolved locally using stage 1 frontline resolution (a less formal process which needs little or no investigation, such as an on the spot apology or explanation) or stage 2 resolution (more formal investigation processes) when stage 1 is not adequate. These two stages must be in line with the Scottish Public Service Ombudsman (SPSO) model Complaints Handling Procedure [SPSO Model Complaints Handling Procedure](#). If the parent and/or child are not content with the outcome they should be able to escalate to an independent complaints mechanism, with the aim of achieving consistency across the different services (especially health and local authority) as far as possible. We propose that the independent complaints mechanism will go to SPSO, the SPSO is the organisation that considers complaints about most public services in Scotland. It is our intention that the independent complaints mechanism will include the merits of decision making in relation to the functions relating to Part 4 and/or 5, which is further detailed in paragraph 11.

3. The Scottish public sector complaints handling landscape has been subject to significant review in recent years. As a result, the Scottish Government and the Scottish Parliament agreed a broad programme of change to help drive improvements in public service complaints handling. This agreement led to new roles and responsibilities for the SPSO, as well as impacting on how public bodies respond to complaints and to developments in complaint handling. This landscape is set out in Appendix B.

4. There are two options, for consideration, for the management of complaints made in relation to Parts 4 and 5 of the Act. Option One is using the existing mechanisms with additional provisions on the process and procedure. Option Two looks to ensure that there is a coordinated, holistic approach taken (single point of contact) to the investigation of complaints relating to Part 4 and/or 5. For both options we have set out the local level process and procedures that should be followed, in line with the model complaints handling procedure, and that the independent complaints mechanism will include the merits of decision making in relation to the functions relating to Part 4 and/or 5. It is our intention to produce information and guidance in a variety of formats ahead of implementation. We want to ensure that parents and children know how to make a complaint and what their rights are and what will happen (the process) when they make a complaint. At the same time we want to ensure that every organisation and body involved in a complaint relating to Parts 4 and/or 5 are clear about their role and responsibilities

regarding complaints. We want to develop a system where organisations and bodies can learn from complaints.

## **Part 4 and 5 Complaints**

5. Under the Order a complaint would be a concern raised about the extent to which a function in Parts 4 and/or 5 has been exercised or how it has not been exercised, excluding issues that have been or should be taken to court or a tribunal. For example, there is a specific right to make a reference to the Additional Support Needs Tribunals for Scotland in relation to the failure of an education authority to provide, or make arrangements for the provision of, additional support set out in a co-ordinated support plan. In these circumstances there is a formal route of redress available which should be utilised rather than making a complaint in relation to the named person or child's plan provisions.

6. We propose that a complaint can be made by the child<sup>1</sup>, young person<sup>2</sup> or parent<sup>3</sup> in person, by phone, in writing or by email. The parent and child should be entitled to request and authorise the assistance of other persons in making their complaint.

7. We propose that in line with SPSO procedures a complaint may be made within 12 months of the issue in the complaint happening (unless there are special circumstances). Examples of special circumstances can be found on the SPSO website <http://www.spsso.org.uk/time-limit-making-complaints-spsso>

8. The complaints process should help ensure the wellbeing of the child and young person is promoted, supported and safeguarded. Our aim is that the outcome for the parent and child should be:

- that the views of the parent and child and all points of complaint were carefully and objectively considered;
- full and clear explanations of decisions and actions are provided in formats that are accessible to the parent and child;
- appropriate remedial action is taken where failings have been identified.

9. SPSO does not have directive powers but in practice its recommendations are adhered to in the vast majority of cases. If its recommendations are not followed by the public body the SPSO reports non-compliance to Parliament.

10. We propose extending the remit of the SPSO, with the intention that complaints about the exercise of functions under Parts 4 and/or 5, where not resolved locally to the satisfaction of the parent and child, can be considered by SPSO as the independent arbiter. The SPSO process would only be available once local mechanisms have been exhausted. The intention for resolution of Parts 4 and/or 5 complaints is that local mechanisms should be used first. Should disputes

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<sup>1</sup> Anyone under the age on 18

<sup>2</sup> Is defined in section 22(2) as a person who attained the age of 18 years while a pupil at a school, and has since attaining that age, remained a pupil at that or another school

<sup>3</sup> As set out in the Education (Scotland) Act 1980

not be resolved locally, we wish the parent and child to have the right to independent consideration of the complaint.

11. We consider that some amendment to the SPSO legislation will be necessary, so that the SPSO can investigate complaints about the exercise of functions under Parts 4 and/or 5. This would include consideration of whether functions had been exercised as required by the CYP A (including, where relevant, whether statutory guidance had been complied with and whether assessment of and decisions made about wellbeing had been carried out in line with section 96 and the statutory guidance requirements) and the merits of decision making in relation to the functions relating to Part 4 and/or 5. Cost and numbers which may apply to SPSO will be discussed during this consultation.

## **OPTIONS**

12. There are two options, for consideration, for the management of complaints made relating to Parts 4 and/or 5 of the Act. Option One reflects existing complaints mechanisms with additional provisions on the process and procedure. Option Two looks to ensure that there is a coordinated, holistic approach taken (single point of contact) to the investigation of complaints relating to Part 4 and/or 5. For both options we have set out the local level process and procedures that should be followed, in line with the model complaints handling procedure, and that the independent complaints mechanism will include the merits of decision making in relation to the functions relating to Part 4 and/or 5

### **Option One (existing complaints mechanisms with additional provisions)**

13. Option One would require the parent and child to make separate complaints to every organisation or body (e.g. Named Person Service, Managing Authority, Directing Authority, Relevant Authority, Listed Authority and Third Person organisation) which is involved in the matter(s) relating to the provisions and functions of Parts 4 and/or 5 which are being complained about. This could entail making complaints to one or more bodies, depending on the nature and scope of the complaint. (See examples 1 and 2 set out below.)

14. The organisation or body that carried out the function against which the complaint has been made would, on receiving the complaint, consider whether the complaint should be dealt with at stage 1 (frontline resolution) or stage 2 (investigation) see flow diagram at Appendix C. Stage 1 must always be considered as to whether this provides the best response to the complaint before a decision is made to investigate under stage 2. For both stage 1 and stage 2 resolutions the following considerations must be made:

- what sections of Parts 4 and/or 5 of the Act are being complained about. (Note: This is a critical stage. The organisation or body must assess the information provided by the parent and child to ascertain whether the matters complained about are competent to be considered as a complaint under Part 4 and/or 5. There must be clarity as to whether provisions of these Parts were exercised or not. Where the complaint is about matters not carried out under Part 4 and/or 5, the parent and child should be signposted to the most appropriate route to

have the complaint considered. Signposting will include advising the parent and child when their complaint would fall to be considered by a tribunal, such as a Children's Hearing or Additional Support for Learning Tribunal.)

- how the complaint is to be investigated, to ensure independence and objectivity, coordinated and how and when the outcome is to be communicated to the parent and child, in line with the framework and timescales to be set out in the Order.

15. When the consideration set out in paragraph 14 has been made the organisation or body will inform the parent and child in writing whether the matters are to be considered through stage 1 or stage 2 and giving timescales ie 5 days for stage 1 resolution and 20 days for stage 2. Matters set out in paragraph 14 will be set out in the Order. Each body or organisation involved will provide the parent and child with a complaints resolution letter. The complaint resolution letter, which must be in a format which is accessible to the parent or child, will set out:

- each element of the complaint;
- which bodies or organisations investigated;
- the findings and reasons for findings relating to each element including any action any of the body or organisation(s) will take, including appropriate remedial action where failings have been identified, as a consequence of having considered the complaint.
- how the parent and child can contact the SPSO to seek an independent review of the complaint if they are aggrieved about the way the complaint has been considered and/or about the outcome of such consideration.

Example 1 - See flow diagram at Appendix D.

*A parent and/or child is not satisfied with the child planning process. This could entail making multiple complaints about the same and or related issue to a number of organisations or bodies carrying out the functions under Part 5 for preparation and or delivery of the Child's Plan. For example, a parent complains that the preparation of the plan is flawed because:*

- *various organisations involved provided incomplete or incorrect information;*
- *the assessment relating to a child's wellbeing made by all organisations involved was flawed because of incomplete or incorrect information; and/or*
- *the delivery of a Child's Plan was compromised by all or some of the organisations involved in the delivery because a) identification of targeted interventions was flawed due to poor assessment and/or b) because the targeted intervention was insufficient or poor quality.*

*In this example a number of separate complaints would be made by the parent and child to a number of separate organisations with no requirement for coordination and or communication of the resolution process and outcomes.*



Example 2 – See flow diagram at Appendix E.

*A parent and/or child has a complaint about the Named Person with regard to the way he/she carried out the Named Person role because:*

- *they say that the Named Person did not seek or take account of their views with regard to sharing information about the child's wellbeing; and/or*
- *they believe that the Named Person has failed to help the parent or child access a service which they thought was necessary to promote, support and safeguard the child's wellbeing.*

*In this example the complaint would be made to the organisation responsible for providing the Named Person service (Health Board, Local Authority or Governing Body of Independent or Grant Aided School) which would be responsible for appointing a person not directly connected with the matter being complained about to provide a local, objective resolution to the complaint.*

16. Option One has a number of advantages, including ensuring that complaints are investigated by the organisation or body whose performance is being complained about and which can respond directly where that performance needs to be addressed. Communication between the parent and child and the body or organisation being complained about could be more straightforward than it may be where more than one organisation is involved in the investigation of the complaint. This option would not require consideration of coordination between different bodies and organisations, which may mean that complaints can be resolved more quickly.

17. However, there are disadvantages to Option One. The GIRFEC approach recognises that bodies and organisations often need to work together to support the wellbeing of children, young people and parents. Collaboration includes, for example, requests made by the Named Person service to other bodies or organisations to share information about children or young people under Part 4 of the Act. Under Part 5, a number of bodies or organisations may be involved in preparing and/or delivering a Child's Plan in collaboration with the managing authority. It follows that a high proportion of complaints which may be made about the way the duties set out in Parts 4 and 5 of the Act are carried out are likely to involve more than one body. Where that is the case, under Option One the parent and child would be required to make separate complaints about closely related matters to a number of different bodies. This may cause confusion for parent and child (about who to complain to with regard to what matters) and also disagreement about what is and isn't a complaint. Because a coordinated approach is not being taken, the same complaint may inadvertently be considered through a number of different routes. This option may not be in the best interests of the wellbeing of children and young people as it would inhibit a holistic, joined up approach where that is needed. This option could reduce the opportunity for interagency learning and development.

## **Option Two**

18. Under Option Two, the parent and child would make their complaint to the organisation providing the Named Person service for complaints made about Part 4 and/or to the organisation acting as the managing authority for complaints made

about the functions exercised by Part 5 of the Act. Whether the complaint related to one single aspect involving one single body or was more complex where a number of bodies or organisations could be involved, the complaint would be handled in a coordinated, holistic way with one point of contact for the parent and child. (See examples 3 and 4 below.)

19. The organisation providing the Named Person service and/or the managing authority on receiving the complaint would consider whether the complaint should be dealt with at stage 1 (frontline resolution) or stage 2 (investigation) – see flow diagram at Appendix F. Stage 1 must always be considered as to whether this provides the best response to the complaint before a decision is made to investigate under stage 2. For both stage 1 and stage 2 resolutions the following considerations must be made:

- which sections of Parts 4 and/or 5 of the Act are being complained about. (Note: This is a critical stage. The organisation must assess the information provided by the parent and child to ascertain whether the matters complained about are competent to be considered as a complaint under Part 4 and/or 5. There must be clarity as to whether provisions of these Parts were exercised or not. Where the complaint is about matters not carried out under either Part 4 or 5, the parent and child should be signposted to the most appropriate route to have the complaint considered. Signposting will include advising parent and child when their complaint would fall to be considered by a tribunal, such as a Children’s Hearing or Additional Support for Learning Tribunal.)
- which organisations or bodies are involved in the matters being complained about (these could include Named Person services, other service providers, managing authorities, listed authority, relevant authority, third person and directing authority)
- who is to act in the role of Complaint Coordinator, which would be an employee of either the organisation providing the Named Person service, with regard to complaints about Part 4 or an employee of the organisation providing the managing authority with regard to complaints about Part 5. This person’s role would be to identify whether or not the complaint is suitable for stage 1 or stage 2 resolution. The complaints coordinator will arrange either stage 1 or stage 2 resolution of the complaint. The complaint coordinator will coordinate complaint investigations where a multi-agency approach is needed, or investigate the complaint where only the Named Person service or the managing authority is involved.
- how the complaint is to be investigated, to ensure independence and objectivity, coordinated and how and when the outcome is to be communicated to the parent and child, in line with the framework and timescales to be set out in the Order.

20. When the consideration set out in paragraph 19 has been made the complaint coordinator will inform the parent and child in writing whether the matters are to be considered through stage 1 or stage 2 and giving timescales i.e. 5 days for stage 1 resolution and 20 days for stage 2. Matters set out in paragraph 19 will be set out in the Order.

21. The complaint coordinator will communicate with senior staff in the organisation(s) whose performance of functions under Part 4 and/or 5 of the Act have been complained about. We propose that the Order will require all bodies or organisations (such as bodies listed under Schedule 2 and 3 of the Act) to provide assistance and information to Named Person services and/or managing authorities for the purpose of addressing complaints made about the exercise of functions and/or provisions of Part 4 and/or 5 of the Act. While each organisation may conduct their own investigation into the performance of their organisation with regard to the matter complained about, they will inform the complaint coordinator of how the matter is to be investigated and keep to timescales (within 5 days for stage 1 and 20 days for stage 2). Where appropriate, as may be the case regarding complaints made which concern the performance of small scale Third Persons, or generally where bodies or organisations agree, the complaint coordinator may be directly involved in investigating elements of complaints and/or give advice about investigations which are about the performance of bodies or organisations which are not their direct employer. The complaint coordinator will normally directly investigate matters relating to Parts 4 and/or 5 in their own organisation.

Example 3 – see flow diagram at Appendix G

*The parent and/or child is not satisfied with the child planning process. This could entail making multiple complaints about the same and or related issue to a number of organisations or bodies carrying out the functions under Part 5 for preparation and/or delivery of Child's Plan. For example, the parent complains that:*

- *the preparation of the plan is flawed because various organisations involved provided incomplete or incorrect information;*
- *the assessment relating to a child's wellbeing made by all organisations involved was flawed because of incomplete or incorrect information; and/or*
- *the delivery of a child's plan was compromised by all or some of the organisations involved in the delivery because a) identification of targeted interventions was flawed due to poor assessment and/or b) because the targeted intervention was insufficient or poor quality.*

*In this example the complaint coordinator would identify the organisations and bodies involved in the complaint and work with them to coordinate the consideration or investigation of all of the aspects of the complaint ensuring the resolution process is joined up and that the parent and child does not need to lodge separate complaints with each of the organisations or bodies. The complaint coordinator would also communicate directly with the parent and child on the resolution process and outcomes.*

Example 4 – See flow diagram at Appendix H.

*A parent and/or child has a complaint about the Named Person with regard to the way he/she carried out the Named Person role because:*

- *they say that the Named Person did not seek or take account of their views with regard to sharing information about the child's wellbeing; and/or*

- *they believe that the Named Person has failed to help the parent or child access a service which they thought was necessary to promote, support and safeguard the child's wellbeing.*

*In this example the complaint would be made to the organisation responsible for providing the Named Person service (Health Board, Local Authority or Governing Body of Independent or Grant Aided School) which would be responsible for appointing a person not directly connected with the matter being complained about to provide a local, objective resolution to the complaint.*

22. The complaint coordinator will be responsible for collating written complaint outcomes from each body or organisation involved in investigating the complaint(s). The organisations or bodies concerned must submit to the complaint coordinator written responses to the complaints which concern their organisation's performance within the timescales set. The complaint coordinator will use such submissions to draft a single complaints resolution letter to the parent and child. The complaint resolution letter, which must be in a format which is accessible to the parent or child, will set out:

- each element of the complaint;
- which bodies or organisations investigated;
- the findings and reasons for findings relating to each element including any action any of the body or organisation(s) will take, including appropriate remedial action where failings have been identified, as a consequence of having considered the complaint.
- how the parent and child can contact the SPSO to seek an independent review of the complaint if they are aggrieved about the way the complaint has been considered and/or about the outcome of such consideration.

23. Prior to issuing the complaints resolution letter to the parent and child the complaint coordinator will agree its content with other organisations or bodies involved in the investigation. Matters which must be contained in the parent and child resolution letter will be set out in the Order.

24. Option Two has the advantage of ensuring that the parent and child needs only to lodge the complaint relating to Part 4 and/or 5 once, irrespective of how many elements there are to the complaint or how many bodies or organisations may be involved. The system described above will ensure that there is a coordinated, holistic approach taken to the investigation and reduce the likelihood of complaints being addressed through multiple routes. Option Two provides a common single framework and a single point of contact for investigating complaints made about Part 4 and/ or 5 of the Act which makes best use of the established complaints handling processes of each body or organisation concerned. The Order will set out the process and timescales which must be adhered to for the purposes of investigating complaints made about functions exercised under Parts 4 and/or 5 of the Act.

25. Option Two disadvantages include parent and child not always receiving responses to their complaints directly from the organisations involved. This option also requires organisations and bodies to adhere to the procedures. A further issue which may arise could concern where a parent and/or child complains that information has not been shared or that assistance has not been given by another

organisation or body, where the Named Person service provider or the managing authority effectively agree that this is the case. This raises the issue of whether it is or is not appropriate for an organisation to be coordinating the investigation of a complaint where they may agree with the parent and child from the outset.

### **Escalation (Option One and Option Two)**

26. For complaints made against public bodies, if the parent and child is not satisfied with the response to the complaint they can escalate to the SPSO. Complaints to the SPSO must have exhausted the local complaints handling process, as set out in Option One and Two, and be submitted to SPSO within 12 months of the response being issued.

### **Independent and Grant Aided Schools**

27. While generally the parent and child will have a right to escalate matters about complaints relating to Part 4 and/or 5 to the SPSO when they are not content with the response to a complaint, the SPSO has no powers to provide this function with regard to Independent and Grant Aided Schools which are Named Person service providers and managing authorities under the Act. We do not intend to change this current position because it is anticipated that Independent and Grant Aided schools will address complaints as is set out above. Under Option Two they will advise the parent and child that they can contact the school board, or relevant governing board, where they are not content with the response to the complaint and also that they can contact the SPSO for advice as to whether the SPSO can investigate any elements of the complaint about functions under Part 4 and/or 5 which directly concern organisations or bodies which SPSO have jurisdiction e.g. Health or Local Authorities. The school or governing board must review the complaint through a manner which is independent of the original complaint investigations.

### **Third Person**

28. Where third parties (which could be voluntary or private bodies or persons) are involved in delivering the Child's Plan or other functions under Part 4 and/ or 5, having been commissioned or grant aided to do so on behalf of local authorities and /or health boards, the managing authority will have a responsibility for providing advice and signposting the parent and child. It is proposed that the SPSO should be able to investigate complaints relating to Third Persons where they (the Third Person) are fulfilling Health or local authority functions relating to Part 4 and/or 5.

### **Summary**

29. As stated at the outset, our aim is that parents and children have an accessible, clear and straightforward route for making complaints concerning functions relating to Part 4 and/or 5. Where possible complaints should be resolved locally using stage 1 frontline resolution or stage 2 investigation processes when stage 1 is not adequate. Thereafter the parent and child should be able to access an independent complaints mechanism, with the aim of achieving consistency across the different services (especially health and local authority) as far as possible. It is our intention that the independent complaints mechanism will include the merits of decision making in relation to the functions relating to Part 4 and/or 5. We propose extending the remit of the SPSO, with the intention that complaints about the

exercise of functions under Parts 4 and/or 5, where not resolved locally to the satisfaction of the parent and child, can be considered by SPSO as the independent arbiter.

30. We have set out 2 options for consideration and welcome comments and feedback on the questions set out in Appendix I.

**Functions under Part 4 and 5 which may be subject of a complaint**

Part 4 (Named Person):

- Section 19 – Named Person Service. Named Person functions are set out in section 19(5) of the Act and are to do certain things (provide information, advice and support; help access a service or support; raise a matter with another service provider/relevant authority) where the Named Person considers it appropriate to promote, support and safeguard the wellbeing of the child or young person.
- Section 20 – Health board makes arrangements for provision of Named Person Service.
- Section 21 – Local Authority (Education), Directing Authority and SPS makes arrangements for provision of Named Person Service.
- Section 22 – Local Authority makes arrangements for provision of Named Person Service for children who continue to attend school beyond the age of 18.
- Section 23 – requirement to provide information where Named Person service provider changes. This includes considering what may be relevant to the future exercise of the Named Person functions, and could therefore involve a degree of judgement/decision making.
- Section 24 – Named Person service provider to communicate information about role of Named Person to child, young person and parent.
- Section 25 – The service provider could make a decision about the help required from another service provider, and the other service provider/relevant authority could also make a decision on whether to provide that help or not. A child, young person/parent could complain about the decision to request help or the outcome of the decision.
- Section 26 – Information sharing. Decisions are made in carrying out the duties in this section, about whether information is likely to be relevant, ought to be shared etc.
- Section 27 – sharing of information which is in breach of confidentiality. The Act allows information to be shared in breach of a duty of confidence, but provides a limitation on further disclosure.
- Section 28 – Service provider and relevant authority to have regard to any guidance issued by the Scottish Government about the exercise of functions in Part 4.
- Section 29 – Service provider and relevant authority to comply with any direction issued by Scottish Government about the exercise of functions in Part 4.

Part 5 (Child's Plan)

- Section 33 – requirement for a Child's Plan. If any disagreement on whether (or not) a child's plan is required, and also whether views (such as the Named Persons or child's/parent) have been taken into account 'as far as reasonably practicable'.

- Section 34 – content of a Child’s Plan. Parents/young person’s disagreement with the authority preparing the plan or providing the targeted intervention.
- Section 35 – Preparation of a Child’s Plan. Section 35 covers a decision/action taken (who to prepare the plan, timescale to prepare the plan). There may be disagreements about whether an authority has ascertained and had regard to the views of the child and parents ‘as far as reasonable practicable’.
- Section 38 – delivery of a Child’s Plan. The way in which the relevant authority delivers a targeted intervention could be disputed and challenged.
- Section 39 – Child’s Plan management. If the targeted intervention is still appropriate, if the outcome of the plan has been achieved and if the management of the plan should transfer to another relevant authority.
- Section 40 – Assistance in relation to a Child’s Plan. If a relevant authority or listed authority (schedule 3 bodies) did not provide a person who is exercising functions under Part 5, with information, advice or assistance or share information this may be subject of a complaint.
- Section 41 – Relevant authority and listed authority (schedule 3 bodies) to have regard to any guidance issued by the Scottish Government about the exercise of functions in Part 5.
- Section 42 – Relevant authority and listed authority (schedule 3 bodies) to comply with any direction issued by Scottish Government about the exercise of functions in Part 5.



## Complaints landscape and future developments

### Crerar Review

1. The Crerar Report (2007) identified complaints handling as an activity that played an important role in the scrutiny of public services, but also highlighted the need for improvement to the present arrangements in Scotland. A key finding was that public sector complaints handling processes are not fit-for-purpose, are not always accessible or easy to use, and are often complex and variable in their content.
2. The Report made a number of recommendations aimed at developing a standardised, simplified complaints handling system, to be introduced and overseen by the Scottish Public Service Ombudsman (SPSO).
3. The clear aims were to:
  - introduce improvements for the consumer, with a less complex and more easily accessed system and complaints dealt with quicker and more locally;
  - improve consistency and coordination across sectors, removing potential for duplication and overlap;
  - centralise the complaints handling system design drawing expertise from various sectors; and
  - allow the lessons learned from complaints to be applied more easily across all public services.
4. Any proposal for change to the delivery of public services in Scotland needs to be considered in the context of overall policy - including the need to maximise opportunities to deliver simpler more effective structures, removing areas of overlap and duplication. Effective, streamlined and proportionate external scrutiny is also essential to enable release of resource in a tight fiscal environment.

### *Complaint Handling Procedures (CHPs)*

5. The Public Services Reform (Scotland) Act 2010 (building on the work of the Crerar and Sinclair Reports) gave the SPSO the authority to lead the development of simplified and standardised complaints handling procedures (CHPs) across the public sector. Following consultation, a Statement of Complaints Handling Principles was developed by the SPSO. These Principles were approved by the Parliament and published in January 2011. SPSO have published their '**Guidance on a Model Complaints Handling Procedure**' which is the basis on which they will seek to develop, in partnership with public service providers, model complaints handling procedures for the areas of public services that they deliver.
6. The SPSO support public services in Scotland as they seek to develop CHPs which comply with the Principles and to build a culture across the public sector that values complaints as a driver of improvement in the delivery of public services.

## Scottish Public Service Ombudsman

7. The SPSO is the organisation that considers complaints about most public services in Scotland. This includes the NHS and local authorities. The powers, duties and responsibilities of the SPSO are set out in the Scottish Public Services Ombudsman Act 2002 as amended. The SPSO is independent and accountable to Parliament rather than government. They report to the Parliament and this includes anonymised reports of many of the individual cases they investigate. They can investigate allegations of maladministration and/or service failure but are normally excluded from considering the merits of decisions on the basis of their legislation which says they cannot question the merits of a discretionary decision made without maladministration (section 7 (1)). This is different for health complaints where they have been given the ability to consider clinical decisions (section 7 (2)). This means they can investigate complaints about clinical judgment and assess whether decisions were reasonable. They can usually only consider a complaint after it has completed the complaint process of the organisation complained about. (section 7 (9-10)) There is a 12 month time limit to bring a complaint to the SPSO from the date the person first had notice of the matter complained about. This can be extended if they find there are special circumstances which make it appropriate to consider the complaint outwith that period. (section 10) The SPSO only has the power to recommend but report very high compliance with their recommendations. If a recommendation is not complied with, they can issue a special report to the Parliament. (section 16) They have not yet had to do this.

8. As stated above, as well as complaint handling, the SPSO has a related role in setting complaint standards and has established complaint handling procedures which are now in use across Scotland. They can issue a declaration of non-compliance if an organisation fails to comply with a model process they have issued and also have a duty to promote best practice in complaint handling. (sections 16A-G)

### **Future developments in complaint handling**

#### NHS Scotland

9. The Patient Rights (Scotland) Act 2011 includes a specific legal right for people to complain, raise concerns, make comments and give feedback about the services they have received from the NHS. It also places a duty on NHS Scotland to encourage, monitor, take action and share learning from views received, and requires NHS boards to publicise their feedback and complaints processes. Boards must produce an annual report on the feedback, comments, concerns and complaints they have received, explaining how they are using the information to improve services.

10. In line with one of the recommendations of the Scottish Health Council's 'Listening and Learning' report, the Scottish Government has asked the Scottish Public Services Ombudsman's Complaints Standards Authority to lead on the development of a revised NHS complaints procedure, based on the Patient Rights (Scotland) Act 2011 and the Scottish Government's existing 'Can I Help You' guidance. The changes proposed as part of this revised procedure – including the introduction of a distinct, five working-day stage for early, local resolution of

complaints – will bring the NHS system more closely into line with that operating in other public service sectors through the SPSO’s model complaints handling procedure.

### Social Work

11. At present, there is a 4 stage process for social work complaints, with early resolution and investigation stages conducted by the local authority, followed by a Complaints Review Committee. This stage is an independent committee of the local authority which is able to make recommendations to the local authority on social work issues. The fourth stage of the process is referral to the SPSO. However, the SPSO is currently unable to consider complaints in relation to social work which are not as a result of maladministration.

12. In line with the recommendations of the Sinclair Report, Crerar Review, and those of the Scottish Government’s Social Work Complaints Working Group, which reported in 2014, Ministers have given approval for Stage 3 social work complaints procedures to be the responsibility of the SPSO, abolishing the Complaints Review Committee stage. The intention for social work is to bring social work complaints within a standard three stage complaints handling procedure approved by the SPSO, creating a more harmonised complaints system across health and social work. We are currently looking at the timetable for bringing forward legislation to accomplish this.

13. We intend to bring forward this legislation during the current Parliamentary session, and, if passed, it will bring social work complaints into line with complaints for health bodies, allowing for a harmonised complaints system in integrated bodies, and will allow SPSO to consider social work complaints raised where there is not a complaint purely on maladministration. It is also expected that secondary legislation will be brought forward in due course to add Integrated Joint Boards to the list of bodies which may be investigated by the SPSO.

### Additional Support for Learning

14. The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) provides specific dispute resolution mechanisms to resolve concerns in relation to the provision of additional support for learning. These include, mediation, independent adjudication, and the Additional Support Needs Tribunals for Scotland. These mechanisms will remain in place, and it is not the intention that they will be used to consider the matters which are the subject of this consultation, therefore where there is a need for dispute resolution for matters about additional support for learning [these mechanisms](#) would be used for these. This is a matter that will also be set out in guidance.

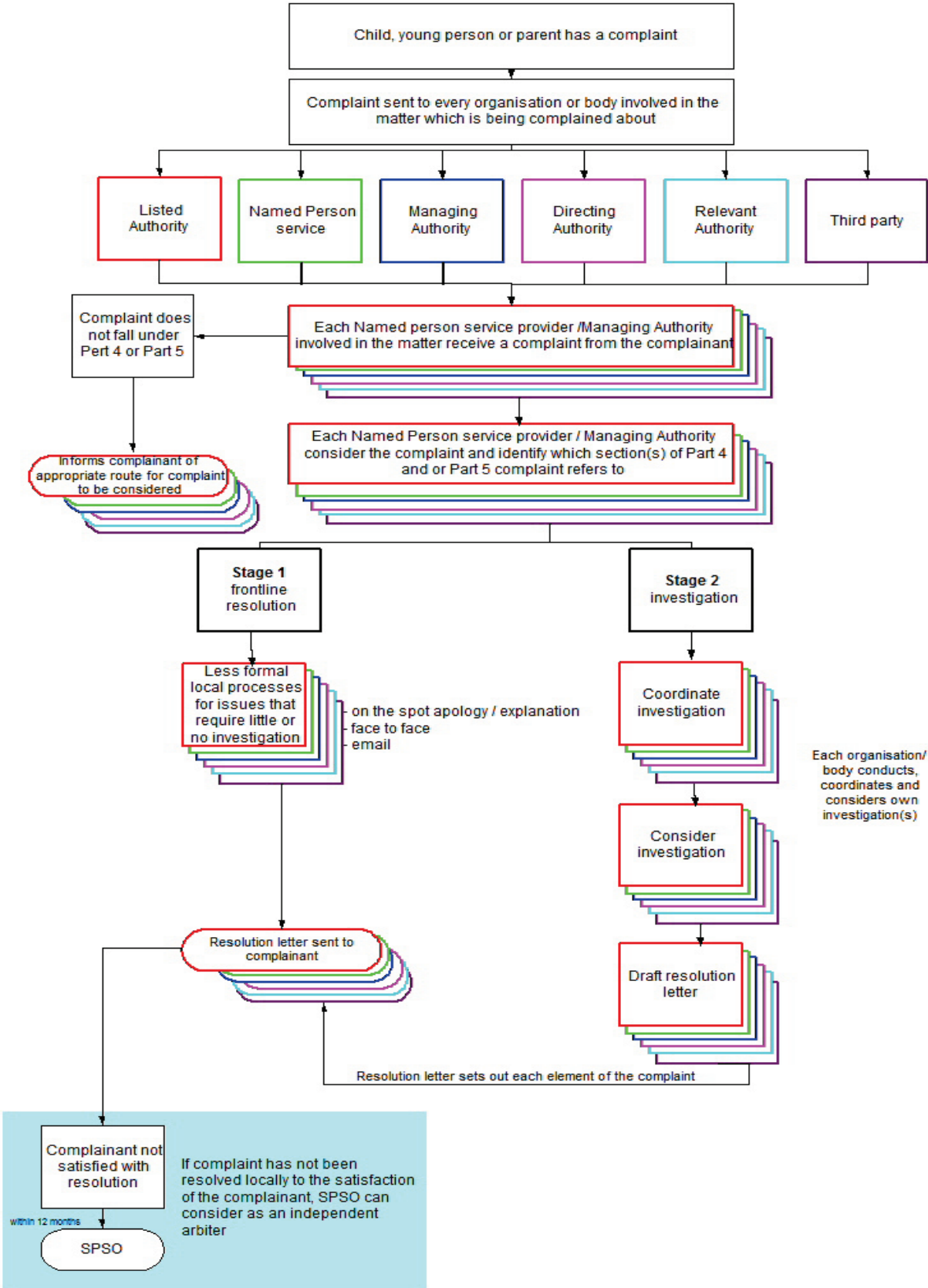
### Commissioner for Children and young people

15. The CYPA includes measures to extend the powers of Scotland’s Commissioner for Children and Young People specifically, to enable the Commissioner to handle individual complaints and carry out individual investigations. Part 2 of the Act seeks to address the recommendation of the UN Committee on the Rights of the Child in the 2008 UK Concluding Observations. The Committee

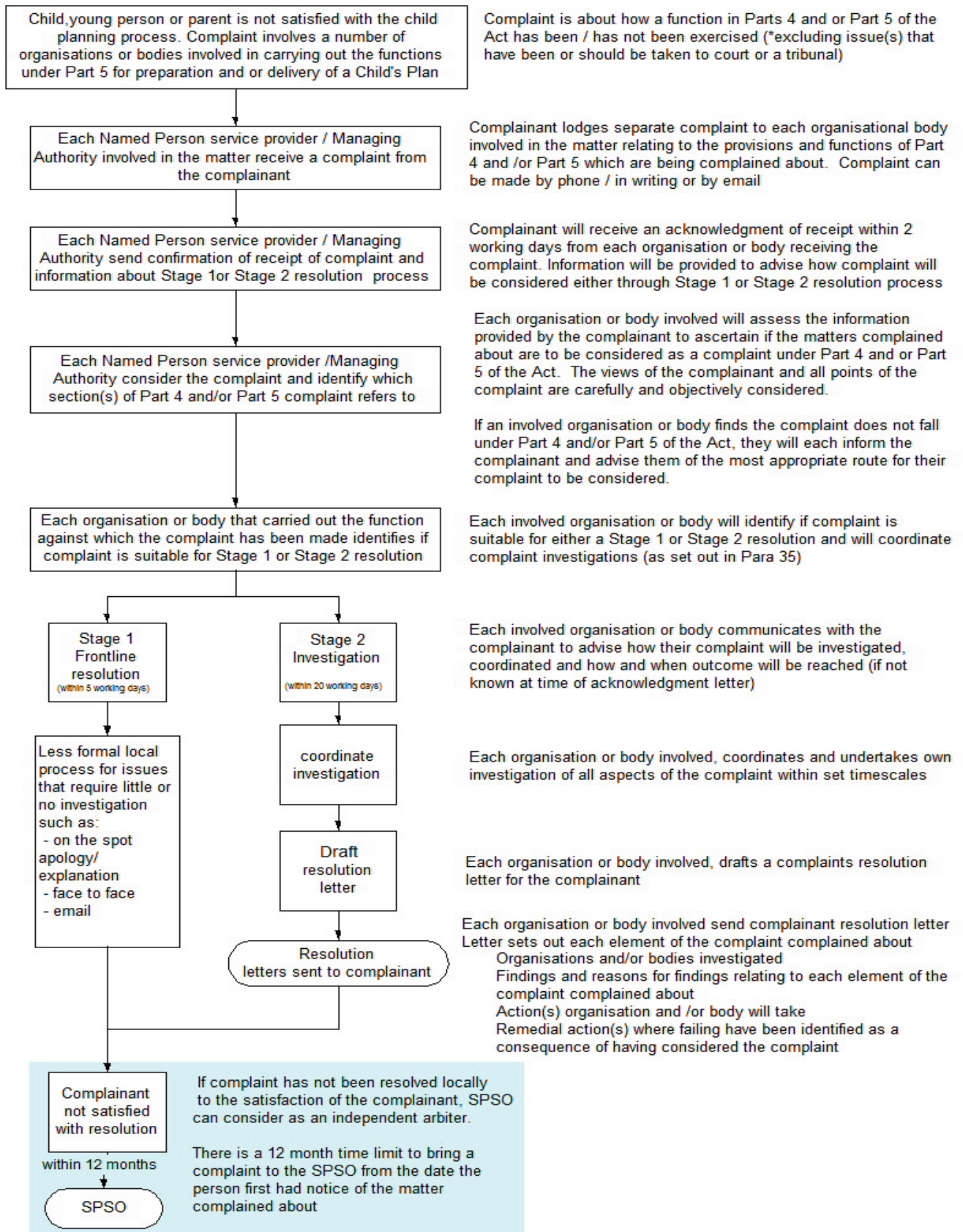
recommended that UK Commissioners be mandated to 'receive and investigate complaints from, or on behalf of, children concerning violations of their rights'.

16. The Commissioner may carry out an investigation only if the Commissioner, having considered the available evidence on, and the information received about, the matter, is satisfied on reasonable grounds that the investigation would not duplicate work that is properly the function of another person.

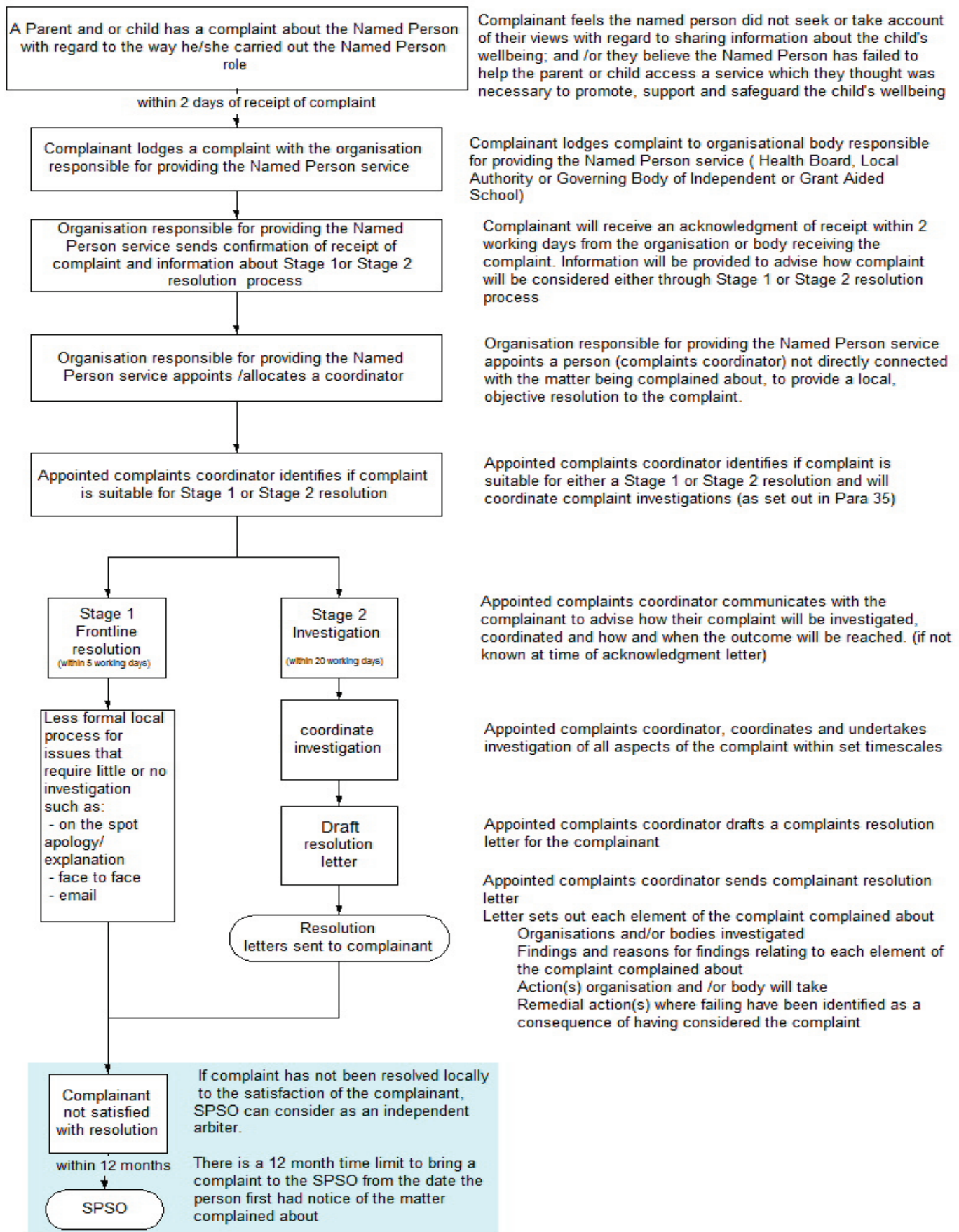
Option One Flow Diagram



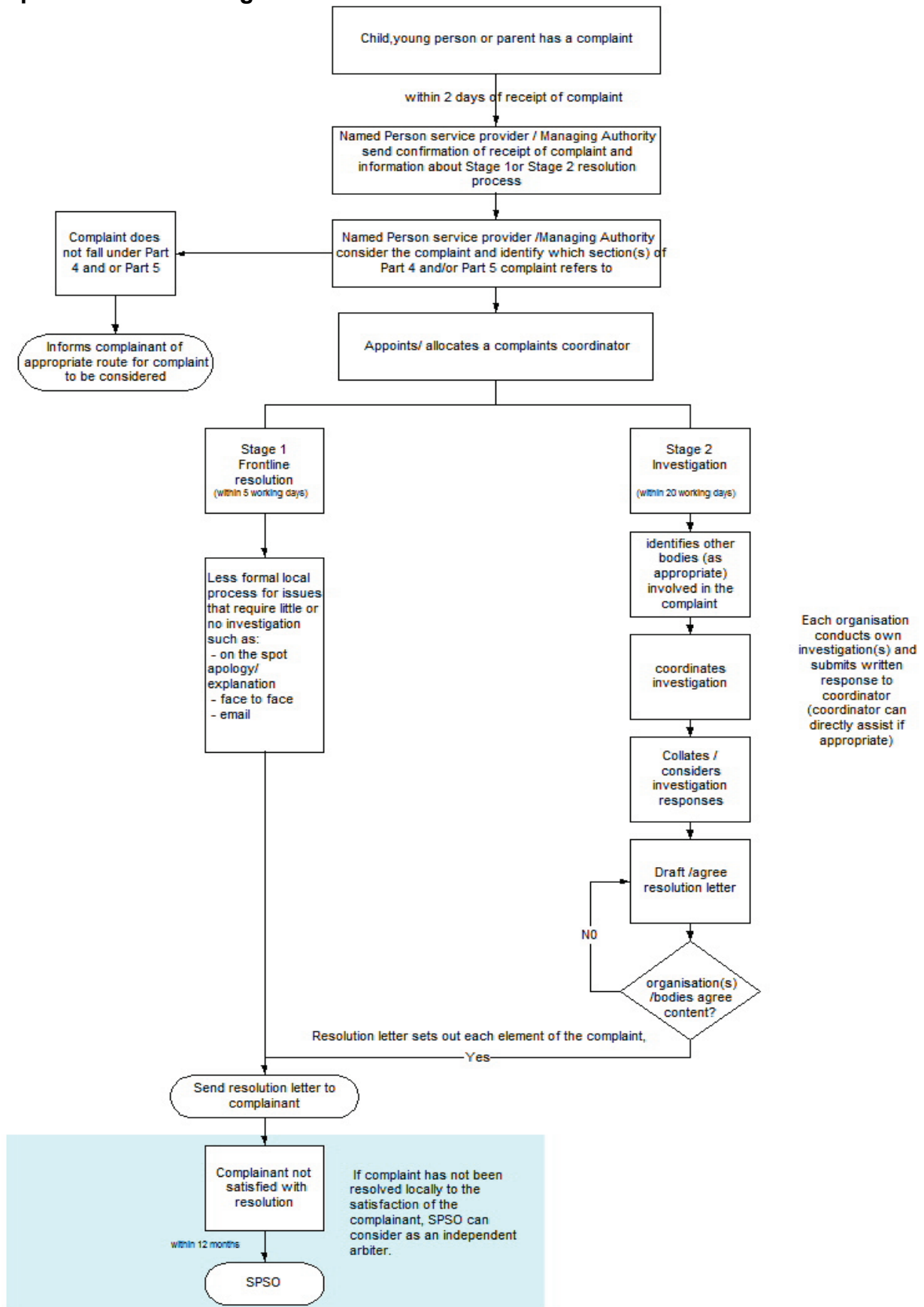
Option One Example 1



Option One Example 2

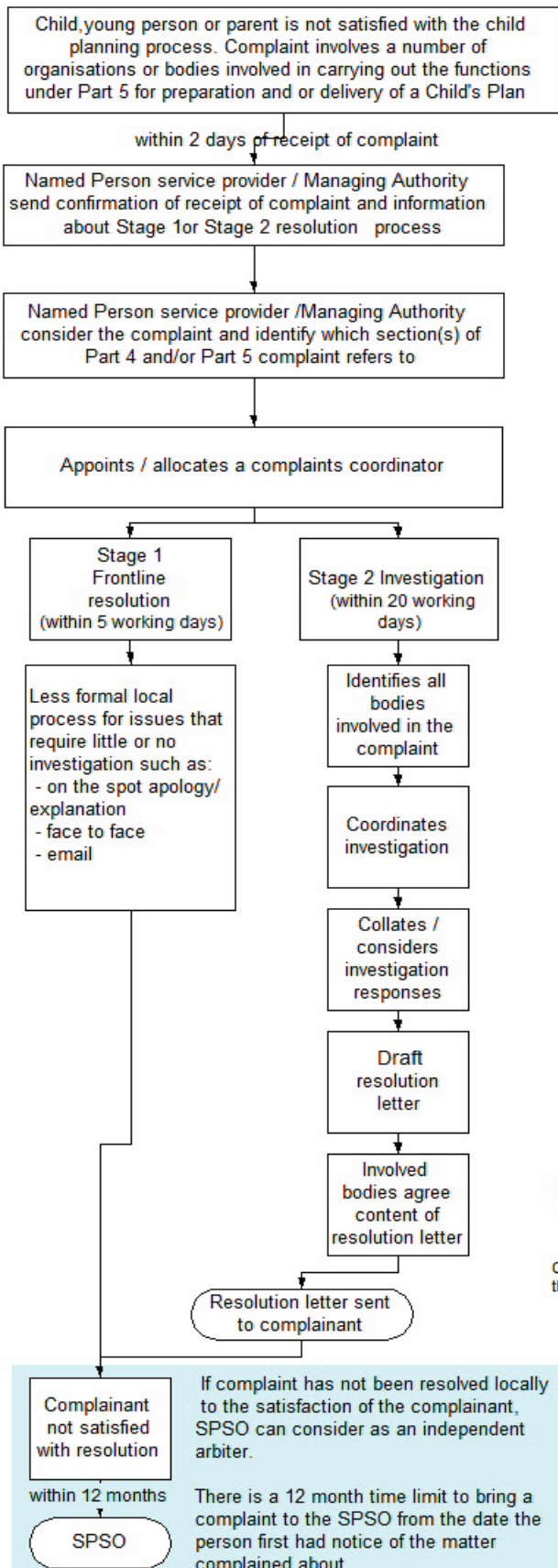


Option Two Flow Diagram





Option Two Example 3



Complaint is about how a function in Parts 4 and or Part 5 of the Act has been / has not been exercised (\*excluding issue(s) that have been or should be taken to court or a tribunal)

Complainant lodges complaint to the organisation providing the Named Person service and /or the managing authority. Complaint can be made by phone / in writing or by email

Complainant will receive an acknowledgment of receipt within 2 working days of the Named Person service provider / managing authority receiving the complaint. Information will be provided to advise how complaint will be considered either through Stage 1 or Stage 2 resolution process

Named Person service provider / managing authority assess the information provided by the complainant to ascertain if the matters complained about are to be considered as a complaint under Part 4 and or Part 5 of the Act. The views of the complainant and all points of the complaint are carefully and objectively considered.

If complaint does not fall under Part 4 and or Part 5 of the Act, complainant will be informed of the most appropriate route for their complaint to be considered

Organisation providing the Named Person service and /or the managing authority will appoint/ allocate a complaints coordinator (this will be an employee of the organisation providing the Named Person service and/or managing authority)

Complaints coordinator will identify if complaint is suitable for either a Stage 1 or Stage 2 resolution and will coordinate complaint investigations (as set out in Para 35

Complaints coordinator communicates with the complainant to advise how their complaint will be investigated, coordinated and how and when outcome will be reached (if not known at time of acknowledgment letter)

Complaints coordinator identifies and communicates with all the organisations and/ or bodies involved in the complaint. These could include Named Person services, managing authorities, listed authorities, relevant authorities, third person and directing authority. Complainant does not need to lodge separate complaints with each organisation or body involved

Complaints coordinator works with all the organisations and/or bodies involved to coordinate the consideration or investigation of all aspects of the complaint to ensure resolution process is joined up.

Complaints coordinator collates written complaint outcomes from each organisation or bodies involved in investigating the complaint(s). Each organisation and/or bodies involved must submit written responses to the complaints coordinator within timescales set for resolution process

Complaints coordinator uses collated submissions to draft a single complaints resolution letter to the complainant.

Complaints coordinator will draft and agree the content of the resolution letter with organisations and /or bodies involved in the investigation.

Complainants resolution letter sent out to complainant. Letter sets out each element of the complaint

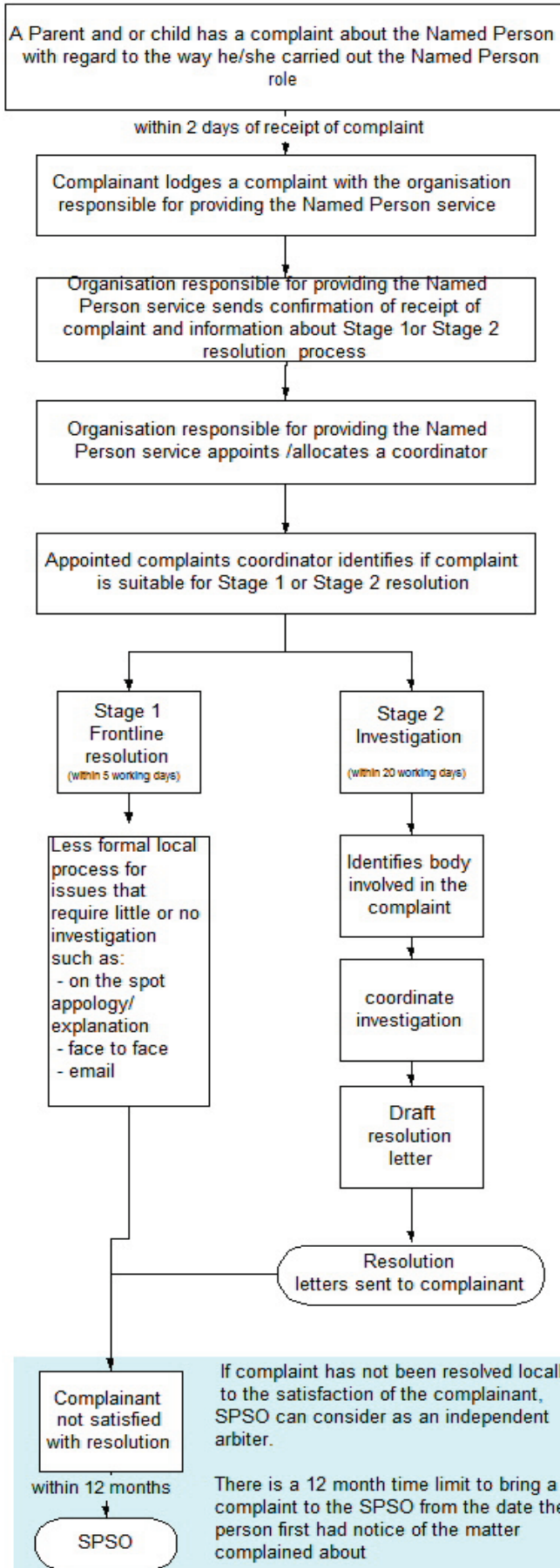
- Organisations and/or bodies investigated
- Findings and reasons for findings relating to each element of the complaint
- Action(s) any of the organisations and /or bodies will take
- Remedial action(s) where failing have been identified as a consequence of having considered the complaint

If complaint has not been resolved locally to the satisfaction of the complainant, SPSO can consider as an independent arbiter.

There is a 12 month time limit to bring a complaint to the SPSO from the date the person first had notice of the matter complained about

## Option Two Example 4

## APPENDIX H



Complainant feels the named person did not seek or take account of their views with regard to sharing information about the child's wellbeing; and /or they believe the Named Person has failed to help the parent or child access a service which they thought was necessary to promote, support and safeguard the child's wellbeing

Complainant lodges complaint to organisational body responsible for providing the Named Person service ( Health Board, Local Authority or Governing Body of Independent or Grant Aided School)

Complainant will receive an acknowledgment of receipt within 2 working days from the organisation or body receiving the complaint. Information will be provided to advise how complaint will be considered either through Stage 1 or Stage 2 resolution process

Organisation responsible for providing the Named Person service appoints a person (complaints coordinator) not directly connected with the matter being complained about, to provide a local, objective resolution to the complaint.

Appointed complaints coordinator identifies if complaint is suitable for either a Stage 1 or Stage 2 resolution and will coordinate complaint investigations (as set out in Para 35)

Appointed complaints coordinator communicates with the complainant to advise how their complaint will be investigated, coordinated and how and when the outcome will be reached. (if not known at time of acknowledgment letter)

Appointed complaints coordinator, identifies and communicates with the body involved in the complaint (Health Board, Local Authority or Governing Body of Independent or Grant Aided School)

Appointed complaints coordinator, coordinates and undertakes investigation of all aspects of the complaint within set timescales

Appointed complaints coordinator drafts a complaints resolution letter for the complainant

Appointed complaints coordinator sends complainant resolution letter

Letter sets out each element of the complaint complained about  
Organisations and/or bodies investigated  
Findings and reasons for findings relating to each element of the complaint complained about  
Action(s) organisation and /or body will take  
Remedial action(s) where failing have been identified as a consequence of having considered the complaint

If complaint has not been resolved locally to the satisfaction of the complainant, SPSO can consider as an independent arbiter.

There is a 12 month time limit to bring a complaint to the SPSO from the date the person first had notice of the matter complained about

**Questions**

**1) Should making complaints concerning functions relating to the Part 4 and/or Part 5 be restricted to a child, young person and parent (as defined by the CYPA)**

Yes  No

(if responding electronically, please double click on one of the boxes above and select the default value as 'checked')

**Reason/s**

**2) Should the parent and child be entitled to request and authorise the assistance of other persons in making their complaint.**

Yes  No

**Reason/s**

**3) Should the merits of decision making about functions, as set out in Appendix A, under parts 4 and 5 be looked at by SPSO**

Yes  No

**Reason/s**

**4) Should complaints concerning functions relating to the Part 4 and/or Part 5 be considered as set out in Option 1**

Yes  No

**Reason/s**

**5) Should complaints concerning functions relating to the Part 4 and/or Part 5 be considered as set out in Option 2**

Yes  No

**Reason/s**

**6) We invite comments on what should happen in situations where the Named Person service provider or the managing authority are coordinating the investigation of a complaint involving other bodies where they may agree with the parent and child at the outset. (See paragraph 25.)**

**Response**

**Reason/s**

**7) We invite comments/suggestions on what information and guidance on the complaints process would help parents and children.**

**Response**



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