

# Public Document Pack



## EXECUTIVE COMMITTEE TUESDAY, 21 MARCH 2017

A MEETING of the EXECUTIVE COMMITTEE will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS, TD6 0SA on TUESDAY, 21 MARCH 2017 at 10.00 am

J. J. WILKINSON,  
Clerk to the Council,

14 March 2017

<b>BUSINESS</b>		
1.	<b>Apologies for Absence</b>	
2.	<b>Order of Business</b>	
3.	<b>Declarations of Interest</b>	
<b>EDUCATION BUSINESS</b>		
4.	<p><b>Achieving Excellence &amp; Equity - Closing the Attainment Gap - Pupil Equity Funding</b> (Pages 1 - 10)</p> <p>Consider report by Service Director Children and Young People outlining the drive to raise attainment for all Borders children and to close the attainment gap between the most and least disadvantaged (copy attached).</p>	10 mins
5.	<p><b>Early Learning and Childcare - Expansion to 1140 Hours</b> (Pages 11 - 20)</p> <p>Consider report by Service Director Children and Young People on the proposed strategic approach to the delivery of 1140 hours funded Early Learning and Childcare (copy attached).</p>	10 mins
6.	<b>Any Other Education Items Previously Circulated</b>	
7.	<b>Any Other Education Items which the Chairman Decides are Urgent</b>	
	<b>Education Theme Additional Membership of Committee:- Mr G. Donald, Mr G. Jarvie, Jeanette Aitchison (Parent Representative), Alison Ferahi (Parent Representative), Pupil Representatives.</b>	
<b>OTHER BUSINESS</b>		
8.	<b>Minute</b> (Pages 21 - 26)	2 mins

	Minute of Meeting of Executive Committee of 7 March 2017 to be approved and signed by the Chairman (copy attached).	
9.	<b>Final Revenue Virements and Earmarked Balances 2016/17</b> (Pages 27 - 36)  Consider report by Chief Financial Officer (copy attached).	10 mins
10.	<b>Housing Benefit Overpayment and Debt Recovery Policy</b> (Pages 37 - 66)  Consider report by Service Director Neighbourhood Services (copy attached).	20 mins
11.	<b>Additional Funding from Sustrans</b> (Pages 67 - 70)  Consider report by Service Director Regulatory Services providing details on additional funding from Sustrans for cycling and walking related projects (copy attached).	10 mins
12.	<b>Annual Report on the Social Work Statutory Complaints Procedures from 1 January 2016 to 31 December 2016 and New Social Work Complaints Handling Process</b> (Pages 71 - 130)  Consider report by Chief Social Work Officer and Service Director Neighbourhood Services (copy attached).	15 mins
13.	<b>Any Other Items Previously Circulated</b>	
14.	<b>Any Other Items which the Chairman Decides are Urgent</b>	
15.	<b>Private Business</b>  Before proceeding with the private business, the following motion should be approved:-  "That under Section 50A(4) of the Local Government (Scotland) Act 1973 the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in the relevant paragraphs of Part 1 of Schedule 7A to the aforementioned Act".	
16.	<b>Housing Benefit and Council Tax Reduction Verification Policy</b> (Pages 131 - 144)  Consider report by Service Director Neighbourhood Services.	15 mins

## NOTES

1. **Timings given above are only indicative and not intended to inhibit Members' discussions.**
2. **Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.**

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**Membership of Committee:-** Councillors D. Parker (Chairman), S. Aitchison, S. Bell, C. Bhatia, J. Brown, M. J. Cook, V. M. Davidson, G. Edgar, J. G. Mitchell, D. Moffat, D. Paterson, F. Renton and R. Smith.

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Please direct any enquiries to Fiona Walling    Tel:- 01835 826504  
Email:- [fwalling@scotborders.gov.uk](mailto:fwalling@scotborders.gov.uk)

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**ACHIEVING EXCELLENCE & EQUITY**  
**Closing the Attainment Gap – Pupil Equity Funding**

**Report by Service Director Children and Young People**

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**EXECUTIVE COMMITTEE**

**21 March 2017**

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**1 PURPOSE AND SUMMARY**

**1.1 The report outlines the drive to raise attainment for all Borders children and to close the attainment gap between the most and least disadvantaged. It sets out:**

- (a) the national context
- (b) the introduction of Pupil Equity Funding and the expectations of Scottish Government
- (c) what research tells us makes the biggest difference in terms of raising attainment
- (d) the strategic approach and management for Closing the Attainment Gap in Scottish Border's schools from April 2017.

**2 RECOMMENDATIONS**

**2.1 I recommend that the Executive Committee:**

- (a) Note the strong focus on raising attainment for all and reducing the attainment gap, particularly for those children and young people who face barriers to their learning due to the impact of poverty**
- (b) Agree that a report on progress is brought back to the Executive in March 2018**

### 3 BACKGROUND

For a number of years Scottish Government has prioritised removing the link between poverty, lower attainment and lower life chances.

#### 3.1 SCOTTISH ATTAINMENT CHALLENGE

3.1.1 Four years ago Scottish Government introduced the Scottish Attainment Challenge (SAC) to sharpen the focus on narrowing the poverty-related attainment gap in schools. The SAC was launched with seven of the most deprived local authorities across Scotland. In 2014, the Scottish Attainment Challenge was extended to eighty primary schools across a greater number of authorities. In August 2015, St Margaret's PS and Burnfoot Community Primary School in Hawick became SAC schools, and Hawick High School took up the offer to join in August 2016.

3.1.2 Each school received a sum of money to finance the improvement of the learning provision and bring about improved outcomes in Literacy, Numeracy and Health & Well-being. Each school was supported by the Attainment Advisor allocated to the Local authority.

#### 3.2 EXCELLENCE & EQUITY IN SCOTTISH EDUCATION

3.2.1 In January 2016, Scottish Government published the *National Improvement Framework* (NIF) which sets out the vision for Scottish education. The vision is to achieve excellence through raising attainment for all, and to achieve equity by ensuring every child has the same opportunity to succeed, with a particular focus on closing the poverty-related attainment gap. The key priorities of the National Improvement Framework are:

- Improvement in attainment, particularly in literacy and numeracy;
- Closing the attainment gap between the most and least disadvantaged children;
- Improvement in children and young people's health and well-being; and
- Improvement in employability skills and sustained, positive school-leaver destinations for all young people.

3.2.2 In June 2016, *Delivering Excellence & Equity in Scottish education* was published which outlines how Scottish Government will work with education providers to achieve excellence and equity. It has a strong focus on closing the attainment gap and draws on the findings of the OECD report (2015), *Improving Schools in Scotland* stating:  
*Be rigorous about the gaps to be closed and pursue relentlessly "closing the gap" and "raising the bar" simultaneously.*

3.2.3 The Excellence & Equity delivery plan and the National Improvement Framework place a duty on all schools from August 2016 to have a strategy for closing the attainment gap within their context.

- 3.2.4 Nationally, £120 million has been provided by Scottish Government to help schools raise attainment with a focus on supporting those children and young people who face barriers to their learning due to the impact of poverty. This is referred to as Pupil Equity Funding (PEF).

### 3.3 PUPIL EQUITY FUNDING

- 3.3.1 From April 2017 Pupil Equity Funding will be issued direct to schools, to the sum of £1200 per P1 to S3 pupil eligible and registered for free school meals. The funding will be available from 2017/18 and is reported as being available each year for the next three years.
- 3.3.2 Borders schools will receive a total of £1.8 million for 2017/18. The sum that schools will receive varies considerably from £1,200 to £130,000. Two primary schools will not receive any Pupil Equity funding – Heriot PS and Fountainhall PS (shared headship). The allocation to schools is provided in appendix 1.
- 3.3.3 The planning for the funding is a partnership between Scottish Government, the Local Authority and schools with the headteachers leading the planning process.
- 3.3.4 It is essential that headteachers are supported to make intelligent decisions about how best to use Pupil Equity Funding in their context. Scottish Government has provided clear guidance as to what is considered acceptable. It is not about buying hardware or adding 'extras' around the edges; it is what you can do in classrooms and in schools with adult support.
- 3.3.5 Scottish Government stipulate headteachers should work in partnership to agree the use of their funding, and should involve parents/carers, children and young people, and partners in the planning process. Headteachers are encouraged to collaborate within and across schools, and within and across local authorities to pool the money or to deliver very specific targeted work.
- 3.3.6 The headteacher will be accountable for the use of Pupil Equity Funding within their school. Schools are required to incorporate their plans into reporting processes to parents. HMIe inspection and internal review processes will evaluate how well schools are using their funding to improve outcomes.
- 3.3.7 Each school's plan will identify the issues to be addressed, the target pupils or groups of pupils for the interventions, the data used to identify these pupils, the expected outcomes, timescales, how and when data will be collected and reported and how progress will be measured over time.
- 3.3.8 National standardised assessments being introduced from August 2017 will be used to measure progress at individual pupil level.

### 3.4 WHAT MAKES A DIFFERENCE?

Attainment is complex and many factors contribute to success, however, we do know that the greatest impact on attainment lies within classrooms. Dylan Williams is clear that: *Very high quality teaching and learning closes gaps. Average learning and teaching*

*doesn't* (2016). The Education Endowment Foundation highlights some low cost, high impact strategies such as Metacognition, Effective feedback and marking, Skilled questioning, Informed Task Design, Collaborative Learning, Memorability and Expectation (growth mindset). National foundation for Educational Research (NFER) identified strategies common to schools which are successful in raising attainment for disadvantaged pupils:

- i. **Whole school ethos of attainment for all** – avoid stereotyping disadvantaged pupils as all facing similar barriers and having less potential to succeed.
- ii. **Address behaviour and attendance** – effective behaviour strategies are in place, response is quick to poor attendance and strong social and emotional support is available.
- iii. **High quality teaching for all** – emphasis is on quality teaching first, provide consistently high standards by setting expectations, monitoring performance and sharing best practice.
- iv. **Clear responsive leadership** – senior leaders set high aspirations and lead by example. All staff are held accountable and are supported through excellent CPD
- v. **Data driven and responsive to evidence** – using data to identify review and evaluate learning, use evidence to make decisions.
- vi. **Deploying staff effectively** – use the best teachers to work with those who need the most support.
- vii. **Meeting individual learners needs** – identification of needs and individualised, specific programmes and targets.

#### **4 SBC STRATEGY TO SUPPORT SCHOOLS TO CLOSE THEIR ATTAINMENT GAP**

##### **4.1 STRATEGIC GROUP**

Scottish Borders Council Children and Young People's Services directorate has established a strategic group to focus on raising attainment and closing the attainment gap. The group comprises volunteer headteachers, two Senior officers – one from each of education and psychological services, and an attainment advisor from Education Scotland.

The work of the strategy group will have two main dimensions:

- a) Universal approaches for raising attainment for all
- b) Targeted interventions to achieve equity for learners and close any attainment gaps.

The strategic group are preparing engagement and learning sessions for Head teachers. All schools will participate in a learning collaborative aimed at action researching their 'closing the gap' strategy including the monitoring of progress in pupil attainment.



## 4.2 CLOSING THE GAP OFFICERS FOR PRIMARY AND SECONDARY

Scottish Government will support schools in how to use the Pupil Equity Fund through materials, events and online forums as well as through the Local Authority's nominated attainment advisor. However, it is recognised that headteachers and schools will need greater input if they are to achieve the impact expected from Scottish Government.

A dedicated Closing the Gap officer for each of primary and secondary is required to take this forward. As well as supporting schools with planning, monitoring, measuring and reporting, they will also train staff and share best practice in terms of learning and teaching strategies to raise attainment.

Given the close links with quality improvement, assessment and use of data, the Closing the Gap Officers would be managed by the Senior Lead Officer responsible for Quality Improvement and Assessment.

## 4.3 MEASURES OF SUCCESS

The key measure of success is evidence of improvement through attainment data. We want:

- a) Expected progress for all
- b) Excellent progress for many
- c) All SIMD bands proportionately represented in the 'excellent'  
– no pattern of lower attainment for children in lower SIMD bands

However, we also want pupils to benefit from teachers who:

- i. Systematically reflect on and evaluate their practice.
- ii. Feel confident and supported in adopting innovative practice.
- iii. Adapt their methodology to meet the needs of learners.
- iv. Consistently use Assessment for Learning strategies to inform their practice.
- v. Ensure relevant development of literacy, numeracy and health and well-being across the curriculum.
- vi. Use active learning approaches to support learners in their development of creative and critical thinking strategies.
- vii. Gather a range of evidence of individual and learning group's progress in order to record and report on it.
- viii. Make purposeful use of professional collaboration in school and beyond.
- ix. Regularly share information with parents, carers and relevant others in a range of ways.
- x. Use local and national policies and guidance to inform their practice.
- xi. Access professional development related to the needs of the learner, the teacher and their establishment.

## 5 IMPLICATIONS

### 5.1 FINANCIAL

To ensure the greatest impact from the Pupil Equity Funding of £1.8 million from Scottish Government:

- (a) Two people will be seconded, one from the primary sector, and one from the secondary sector, to work with schools on planning,

monitoring, measuring and evaluating the specific strategies to ensure improved outcomes.

- (b) These posts will be funded through school carry-forwards.

## **5.2 Risk and Mitigations**

- (a) The risk of not closing the attainment gap is that some children and young people will not achieve their full potential and may not go on to a positive and sustained destination beyond school. Close monitoring and tracking could mitigate this risk.
- (b) There is a risk that headteachers' may not focus on the right interventions, or use the pupil equity funding wisely. This could result in limited improvement in attainment as well as reputational risk. Careful planning, training in raising attainment strategies and regular monitoring of impact should mitigate the risk.

## **5.3 Equalities**

Reducing attainment inequality is a key feature of the Closing the Gap work. It is anticipated that there will be no adverse implications as a result of this report.

## **5.4 Acting Sustainably**

There are no significant effects on acting sustainability arising from this report.

## **5.5 Carbon Management**

There are no significant effects on carbon emissions arising from this report.

## **5.6 Rural Proofing**

There are no significant effects on carbon emissions arising from this report.

## **5.7 Changes to Scheme of Administration or Scheme of Delegation**

There are no changes to be made to either the Scheme of Administration or the Scheme of Delegation as a result of this report.

# **6 CONSULTATION**

- 6.1** The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council will be consulted and any comments received will be incorporated into the final report.

**Approved by**

**Donna Manson**  
**Service Director Children & Young People**

**Signature.....**

**Author(s)**

Name	Designation and Contact Number
Michelle Strong	Chief Officer Education

**Appendix 1: Pupil Equity Fund – School Allocations 2017-18**

**Background Papers:** Delivering Excellence and Equity in Scottish Education;  
Scottish Government June 2016

**Previous Minute Reference:** N/A

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Donna Manson can also give information on other language translations as well as providing additional copies.

Contact us at Donna Manson, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, 01835 824000, 01835 826742, [Donna.Manson@scotborders.gcsx.gov.uk](mailto:Donna.Manson@scotborders.gcsx.gov.uk)

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Local Authority	Seed Code	School	Stage	Allocation	Manual adjustment applied due to lack of data	Notes
Scottish Borders	5630029	Ancrum Primary School	Primary	£ 3,600		
Scottish Borders	5645026	Ayton Primary School	Primary	£ 10,800		
Scottish Borders	5618320	Balmoral Primary School	Primary	£ 22,800		
Scottish Borders	5633222	Broomlands Primary School	Primary	£ 30,000		
Scottish Borders	5600227	Broughton Central P School	Primary	£ 6,000		
Scottish Borders	5618428	Burgh Primary School	Primary	£ 33,600		
Scottish Borders	5630525	Burnfoot Community School	Primary	£ 130,800		
Scottish Borders	5616026	Channelkirk Primary School	Primary	£ 3,600		
Scottish Borders	5645220	Chirnside Primary School	Primary	£ 37,200		
Scottish Borders	5618126	Clovenfords Primary School	Primary	£ 6,000		
Scottish Borders	5645328	Cockburnspath Primary School	Primary	£ 4,800		
Scottish Borders	5645425	Coldingham Primary School	Primary	£ 8,400		
Scottish Borders	5645522	Coldstream Primary School	Primary	£ 36,000		
Scottish Borders	5630223	Denholm Primary School	Primary	£ 8,400		
Scottish Borders	5630622	Drumlanrig St Cuthbert's Primary School	Primary	£ 39,600		
Scottish Borders	5645824	Duns Primary School	Primary	£ 45,600		
Scottish Borders	5620724	Earlston Primary School	Primary	£ 18,000		
Scottish Borders	5600324	Eddleston Primary School	Primary	£ 3,600		
Scottish Borders	5631629	Edenside Primary School	Primary	£ 72,000		
Scottish Borders	5630320	Ednam Primary School	Primary	£ 3,600		
Scottish Borders	5647827	Eyemouth Primary School	Primary	£ 90,000		
Scottish Borders	5615127	Fountainhall Primary School	Primary	£ -		
Scottish Borders	5618827	Glendinning Terrace Primary School	Primary	£ 8,400		
Scottish Borders	5646227	Gordon Primary School	Primary	£ 6,000		
Scottish Borders	5646324	Greenlaw Primary School	Primary	£ 20,400		
Scottish Borders	5601029	Halyrude Primary School	Primary	£ 15,600		
Scottish Borders	5615224	Heriot Primary School	Primary	£ -		
Scottish Borders	5631424	Howdenburn Primary School	Primary	£ 33,600		
Scottish Borders	5600529	Kingsland Primary School	Primary	£ 48,000		
Scottish Borders	5619122	Kirkhope Primary School	Primary	£ 3,600		
Scottish Borders	5619424	Knowepark Primary School	Primary	£ 34,800		
Scottish Borders	5620627	Langlee Primary School	Primary	£ 105,600		
Scottish Borders	5616220	Lauder Primary School	Primary	£ 25,200		
Scottish Borders	5620023	Lilliesleaf Primary School	Primary	£ 6,000		

Scottish Borders	5620120	Melrose Primary School	Primary	£	21,600
Scottish Borders	5631726	Morebattle Primary School	Primary	£	6,000
Scottish Borders	5631823	Newcastleton Primary School	Primary	£	13,200
Scottish Borders	5600928	Newlands Primary School	Primary	£	2,400
Scottish Borders	5620228	Newtown Primary School	Primary	£	9,600
Scottish Borders	5631521	Parkside Primary School	Primary	£	36,000
Scottish Borders	5619327	Philiphaugh Community School	Primary	£	44,400
Scottish Borders	5601126	Priorsford Primary School	Primary	£	28,800
Scottish Borders	5646820	Reston Primary School	Primary	£	13,200
Scottish Borders	5632226	Sprouston Primary School	Primary	£	2,400
Scottish Borders	5620325	St Boswells Primary School	Primary	£	15,600
Scottish Borders	5619521	St Joseph's RC Primary School	Primary	£	3,600
Scottish Borders	5618622	St Margaret's RC Primary School (Galashiels)	Primary	£	13,200
Scottish Borders	5630827	St Margaret's RC Primary School (Hawick)	Primary	£	2,400
Scottish Borders	5618924	St Peter's Primary School	Primary	£	33,600
Scottish Borders	5600421	St Ronan's Primary School	Primary	£	25,200
Scottish Borders	5633125	Stirches Primary School	Primary	£	18,000
Scottish Borders	5615321	Stow Primary School	Primary	£	2,400
Scottish Borders	5647029	Swinton Primary School	Primary	£	12,000
Scottish Borders	5630924	Trinity Primary School	Primary	£	33,600
Scottish Borders	5620424	Tweedbank Primary School	Primary	£	24,000
Scottish Borders	5601622	Walkerburn Primary School	Primary	£	3,600
Scottish Borders	5601827	West Linton Primary School	Primary	£	9,600
Scottish Borders	5647126	Westruther Primary School	Primary	£	2,400
Scottish Borders	5631025	Wilton Primary School	Primary	£	58,800
Scottish Borders	5619629	Yarrow Primary School	Primary	£	1,200
Scottish Borders	5632420	Yetholm Primary School	Primary	£	14,400
Scottish Borders	5647339	Berwickshire High School	Secondary	£	50,400
Scottish Borders	5616530	Earlston High School	Secondary	£	54,000
Scottish Borders	5647436	Eyemouth High School	Secondary	£	48,000
Scottish Borders	5619734	Galashiels Academy	Secondary	£	69,600
Scottish Borders	5632536	Hawick High School	Secondary	£	86,400
Scottish Borders	5632730	Jedburgh Grammar School	Secondary	£	27,600
Scottish Borders	5632838	Kelso High School	Secondary	£	39,600
Scottish Borders	5601932	Peebles High School	Secondary	£	56,400
Scottish Borders	5619831	Selkirk High School	Secondary	£	36,000

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## **EARLY LEARNING AND CHILDCARE – EXPANSION TO 1140 HOURS**

### **Report by Service Director Children and Young People**

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### **EXECUTIVE COMMITTEE**

**21 March 2017**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 **This report proposes to update and gain approval from the Executive Committee on the proposed strategic approach to the delivery of 1140 hours funded Early Learning and Childcare (ELC) for all three and four year olds and eligible two year olds in communities across the Scottish Borders by 2020. In addition, this report shares information on the trial of extended flexible ELC currently underway at Philiphaugh Community School Nursery, funded by the Scottish Government.**
- 1.2 Nationally by 2020 all three and four years, and around 27% of two year olds, will be entitled to 1140 hours of free Early Learning and Childcare provision – almost double current levels of entitlement.
- 1.3 The current entitlement of 600 hours ELC is provided with varying levels of flexibility by 46 school nurseries, commissioning arrangements with 28 partner providers and 2 childminders (who are part of a pilot project until June 2017) for three and four year olds. Two year old provision is delivered through 7 school nurseries, 13 partner providers and 5 childminders.
- 1.4 The majority of school nurseries deliver the entitled hours as morning or afternoon session of 3 hours 10 minutes, five days per week, 38 weeks of the year (term time only). 9 school nurseries offer extended opportunities through lunchtime 'wraparound' and 'top up' sessions which parents pay for.
- 1.5 The focus over the forthcoming financial years will be the strategic development of our school nursery provision encompassing both capital and revenue investment. This will include property, the workforce, demographics and the needs of our most vulnerable families.
- 1.6 These will be underpinned by both national and local principles and priorities to ensure we take a strategic approach whilst delivering:
  - (a) Improved outcomes for all children, especially those who will benefit most.
  - (b) Support the wider programme of work to close the attainment gap as set out in Delivering Excellence and Equity in Scottish Education: A Delivery Plan for Scotland.
  - (c) Increased flexibility of provision to support parents to work, train or study, especially those who need routes into sustainable

employment.

- (d) High quality ELC learning environments which contribute to closing the attainment gap.
- (e) A key contribution to our ambition to reduce child poverty.
- (f) An ELC estate best placed to deliver across Scottish Borders Council's statutory duties.
- (g) A future-proofed ELC estate which is both sustainable and flexible in meeting current and future needs.
- (h) Affordable and accessible services within the capacity of the estate.
- (i) A scaling up of the ELC workforce with a focus on creating Modern Apprenticeships and through supporting people transitioning into the ELC workforce within Scottish Borders Council.

## **2 RECOMMENDATIONS**

### **2.1 I recommend that the Executive Committee:**

- (a) Agree to the proposed strategic approach.**
- (b) Note the update provided on the trial and agree continuation.**
- (c) Agree the allocation of the Early Years capital budget to the build of a new ELC provision in St Boswells Primary School.**
- (d) Give permission to proceed with a full options appraisal regarding the identification of priorities for early learning and childcare building investment and bring recommendations to a future meeting.**



### 3 BACKGROUND

#### 3.1 Legislation

- 3.1.1 Children and Young People (Scotland) Act 2014 ('the Act') introduced a new concept of early learning and childcare (ELC). This term is seen as helping to remove an artificial divide between pre-school for 3 and 4 year olds; and, childcare for 0 – 3 year olds; or, pre-school and wraparound for 3 and 4 year olds; whereby pre-school is the educational element delivered in short blocks tied to a certain number of hours in a day; topped up by childcare or wraparound which can be seen as less important to learning.
- 3.1.2 Early Learning and Childcare is defined in Section 46 of the Act as a service consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting. This will enable more holistic and integrated provision which supports learning and development in caring and nurturing environments for all young children; and which can encompass any further expansion across all young children.
- 3.1.3 Part 6 of the Act requires Local Authorities to ensure flexible ELC services are available to allow parental choice in accessing services.

#### 3.2 National and Local Vision and Priorities

- 3.2.1 *"Make Scotland the best place in the world to grow up in by improving outcomes and reducing inequalities for all babies, children, mothers, fathers and families across Scotland to ensure that **all children have the best start in life** and are ready to succeed"* (Children and Young People (Scotland) Act 2014).
- 3.2.2 Develop high quality, flexible early learning and childcare (ELC) which is affordable and accessible for all.
- 3.2.3 Extended flexible ELC means:
- (a) Extending the number of hours available from 600 to 1140 a year.
  - (b) Offering more flexibility and choice across a cluster area.
  - (c) Moving away from traditional 3 hour 10 minute morning or afternoon session over 38 weeks term time to more flexible options to meet a variety of needs across a cluster area including up to 50 weeks in a year.
  - (d) Continuing to operate within a framework to ensure a manageable and affordable service.
- 3.2.4 Scottish Borders Council sets out, within the context of national and local policies, what it is aiming to achieve in terms of raising levels of achievement and attainment and improving educational outcomes for all children and young people in the key priorities set out in our Business Plan and our Integrated Children and Young People's Services Plan.
- 3.2.5 As part of a multi-agency partnership, we have identified the following priorities within our Integrated Children and Young People's Plan:

- (a) Raising attainment and achievement for all and closing the attainment gap between the lowest and highest achievers.
- (b) Promoting the health and wellbeing of all children and young people and reducing health inequalities.
- (c) Keeping children and young people safe.
- (d) Improving the wellbeing and life chances of our most vulnerable children and young people.

### 3.3 Early Years Action Plan 2016-17 – 2017-18

Highlights the intention to support the quality, accessibility and affordability of childcare and review support currently available through:

- 3.3.1 Developing a workforce plan as we move towards 1140 hrs (by 2020).
- 3.3.2 Updating staffing roles to reflect current and modern Early Years practice nationally and the roles and responsibilities document.
- 3.3.3 Continue provision for eligible 2 year olds.
- 3.3.4 Planning for extending ELC provision from 600 to 1140hrs by 2020.
- 3.3.5 Aiming for a service provision which is flexible in supporting families into sustainable employment and out of poverty by linking with welfare benefits, Job Centre and CLD.

## **4 STRATEGIC OBJECTIVE**

- 4.1 Develop high quality, flexible ELC which is affordable and accessible for all; taking into account social, demographic and geographic needs of children and families and also ensuring that the delivery of 1140 hours is manageable and affordable within its resources. Providing an effective and sustainable structure within available resources (people, revenue and capital) enabling maximum efficiency and service delivery ensuring statutory obligations continue to be met.
- 4.2 This will be a five year phased approach, with the current session as Phase 1.
- 4.3 Phase 2 will be implemented from August 2017. The provision of extended hours will be located in our identified areas of disadvantage and rurality in support of the needs of our most vulnerable children, families and communities. Hours will be flexible to meet the needs of families ; section 5.5.3 of this report outlines the range of flexible hours families will be able to access. The following areas in 2016 statistics have the highest levels of deprivation and will offer extended flexible hours from August 2017: Burnfoot, Langlee, Philiphaugh, Eyemouth, Greenlaw, Coldstream and Kirkhope.
  - 4.3.1 Burnfoot (FSM 45%)  
Langlee (FSM 35%)  
Eyemouth (FSM 26%)  
Philiphaugh (Phase 1: 37%)
  - 4.3.2 Greenlaw (Remote Rural FSM 13%)  
Coldstream (Accessible Rural FSM 27%)  
Kirkhope (Accessible Rural FSM 18%)
- 4.4 The phased approach will utilise learning and data gathering to inform planning for future phases/development of our Service Delivery Plan (SDP)

required by Scottish Government.

- 4.5 Re-allocation of Capital spend for 2017-18 will provide a new ELC provision in St Boswells Primary School (our largest Primary currently without ELC) and no sustainable ELC partner provider
- 4.6 There are 10 schools without ELC provision: Swinton, Ayton, Heriot, St Margaret's Hawick, St Margaret's Gala, Ancrum, Yetholm, St Joseph's, Yarrow and Eddleston owing to the size of the pupil roll ie all are under 50 pupils. Families can currently access ELC in nearby partner or neighbouring schools. As plans are progressed each of these schools will be assessed to see if there are any viable options For ELC.
- 4.7 The Council currently has commissioning arrangements with partner providers and childminders as detailed in section 1.3 of this report. As part of the assessment and planning process for 2020 delivery of the 1140 ELC hours entitlement, work will be carried out with these partners to consider future partnership and commissioning arrangements which fulfil the aims set out in section 1 of this report.

## 5 PROPOSAL

- 5.1 To develop a cluster approach to provision of 1140 hours. Each (high school) cluster will have an Early Learning and Childcare Hub which will offer full day care, 50 weeks per year. Other school nurseries within the cluster will offer extended hours over 38 weeks per year, with the option to extend/access hours at the ELC Hub during holiday periods. There will also be the opportunity for parents to access affordable additional hours beyond the 1140 entitlement should this be required. Schools with no current provision will be considered.
- 5.2 The 'hub' approach will bring a new concept of provision which would allow different patterns of delivery through extending the length of day, number of days in the week and number of weeks in the year required, allowing for a responsive and flexible delivery of ELC to meet the needs of families from across Scottish Borders. A 'hub' initially will be an existing school/early years centre. However, in the future it could develop as a new stand-alone provision or through the utilisation of under used space in an existing property.
- 5.3 As nursery admissions are not catchment area based, this approach offers equity in choice, accessibility and affordability for parents.  
  
An options appraisal of all provision needs to be undertaken to identify locations for each level of provision as described in the guiding principles (5.5).

### 5.5 Guiding Principles for Development of ELC

The aim of this strategy is to deliver on the vision and the outcomes set out in 1.5 above. In addition, the following principles will guide us in identifying the areas of phased development as we move towards full statutory implementation of 1140 hours by 2020.

- 5.5.1 **We will continue to prioritise the investment in our school nursery provision.** Through asset management planning, prioritisation criteria will be developed for capital and revenue investment ensuring resources are targeted to the highest priority areas.
- 5.5.2 **We will promote sustainability in the school nursery provision.** This includes effective implementation and monitoring of the nursery admissions process and associated capacity

arrangements; efficient deployment of the ELC workforce; energy efficient measures and renewable technologies in the design of new, extension or repair works for nursery buildings.

**5.5.3 We will introduce flexibility across the cluster:**

- (a) ELC Hubs – one in each cluster area which will offer full day care, 50 weeks of the year.
- (b) Asymmetric - school nurseries will extend hours to offer the asymmetric week pattern 38 weeks of the year (term time).
- (c) Asymmetric plus - offers the asymmetric pattern with further flexible options/extension of hours, where there is more than one town in the cluster and a need is identified.
- (d) Asymmetric and asymmetric plus will have the option to extend/access hours at the ELC Hub during holiday periods.
- (e) This will enable access to 1140 hours or any part thereof for those parents not wishing to access the full entitlement.

**5.5.4 We will monitor and review the overall quality of provision and delivery to ensure it remains effective, efficient and affordable.** A programme of facility reviews is planned, with the aim of improving the effective use of school nursery provision in the cluster areas.

**5.5.5 We will actively pursue the development the workforce.** A review of the current ELC resource against anticipated growth to meet expansion and identify workforce gap and plan to address this with a focus on creating Modern Apprenticeships and through supporting people transitioning into the ELC workforce within Scottish Borders Council.

**5.5.6 We will engage with users** on an ongoing basis to ensure that provision meets local needs and in line with statutory requirements (currently every two-three years).

**5.5.7 We will future proof the school nursery** estate to enable a flexible and adaptable environment taking into account planning consents, future opportunities and roll projections. In addition to any new government guidance on good design for new and existing ELC provision.

**5.6 Phase 1: Trialling Extended Flexible ELC – Philiphaugh Nursery**

5.6.1 In January 2016 the First Minister announced that a series of trials would be run to test a variety of models for delivering the ELC expansion to 1140 hours, stating that "By trialling different methods with Local Authorities and child care providers, we will be better able to understand what parents and children need and want, and what is actually working. This will be crucial as we move forward with our transformational expansion of childcare."

5.6.2 An expression of interest submitted by the Early Years' Service was successful in being chosen. The trial at Philiphaugh Community School Nursery started on 9 January 2017. This is an expansion of an existing approach with an increase in the number of hours of ELC provided Monday to Friday during term time and ELC provision during the holiday periods to meet parent demand. The Council

operates an out of school club in the school and there is an Early Years Centre in the school.

5.6.3 What the Trial is testing:

Models of delivery which are scalable and sustainable, can be replicated in a variety of provision types; offer quality, choice, flexibility, accessibility, affordability across the Scottish Borders:

- (a) Widening opportunities for economic and social wellbeing for families.
- (b) Prospects of flexible work patterns and for ELC workforce.
- (c) New and extended learning and development opportunities for children.
- (d) Versatility of infrastructure (systems and processes) to support flexibility of provision e.g. NAMs, SEEMiS, Parent Pay.

5.6.4 What we might learn:

- (a) Identification of issues, strengths and benefits, barriers and solutions encountered in the transition from 600 to 1140 hours.
- (b) Impact on parents, children, workforce, premises, processes and system.
- (c) Cost effectiveness and viability of flexible models.
- (d) Potential and sustainable options for holistic service delivery.
- (e) Best practice models of delivery of enriched learning experiences for children within flexible models.
- (f) Ways in which learning environments can be adapted and flexible to meet ELC Needs.

5.6.5 Learning to date:

- (a) Parents, children and workforce are positive about the change.
- (b) Services have worked together to deliver a positive implementation.
- (c) Flexible options are possible within a school nursery environment.
- (d) Enables a good foundation for transition to Primary 1.
- (e) Implications for system upgrades/changes required nationally to be able to cope with mixed options of extended flexibility.
- (f) Implications for school meal options regarding differing nutritional needs of Under Fives.

## 5.7 Increasing Physical ELC Building Capacity to deliver 1140 hours- a planned approach

5.7.1 There are a range of solutions to being able to provide additional capacity for those families who will take up the entitlement of 1140 hours as we progress towards 2020. The following range of opportunities will be explored to ensure Scottish Borders Council can provide the physical learning space for every entitled child to experience 1140 hours of ELC. The physical space required will be determined by:

- (a) Families wishing the 1140 hours within the school term year either in an extended ELC day or in the regular school week
- (b) Families wishing the 1140 hours across the whole calendar year in an extended ELC day or in a regular school week

5.7.2 The choices made by families will impact upon what the Council will have to do in delivering appropriate physical learning spaces. There are a range of options available to the Council which will impact upon the physical environment and build programme:

- (a) Provide extended hours in the existing ELC footprint for same number of children – no build or alterations required e.g. Kirkhope, Gordon
- (b) Provide extended hours in the existing school footprint for more children – with minor changes to the organisation of the existing learning spaces within the school ; alterations such as relocation of P1 class or change of registered ELC area – i.e. physical space is available within the whole building foot print e.g. Earlston
- (c) Expand the building footprint through minor build works to accommodate more children within current school physical capacity e.g. Morebattle
- (d) Share provision in existing building or community ELC learning space – e.g. Duns Primary share space with an out of school club
- (e) Add extensive additional physical capacity ie new wing including some primary 1 provision to provide extensive additional ELC learning space within the cluster where there will be significant pressure upon space due to limitations in local provisions e.g. Priorsford
- (f) Projects underway or in planning and taking account of 1140 requirements : Langlee, Broomlands , St Boswells
- (g) Idea of hub model for 1140+ delivery – create a new ELC provision which may serve a range of families and communities e.g. possibility of making links to the use of the railway and create a standalone facility at Tweedbank and Stow

- 5.7.3 The Council is currently in the process of assessing every school building and analysing the range of possibilities in order to create a programme of change which details the minor works and capital investment which will enable the Council to deliver an 1140 hours ELC programme by 2020 enabling families to take up their entitlement locally .
- 5.7.4 The Council is fully involved in liaison and partnership activity with Scottish Government ELC programme officers in drafting up a programme which will deliver the 1140 hours and meet the criteria for investment in the capital monies being allocated to the Council by the Scottish Government.
- 5.7.5 In 2017 £ 1.5 M is currently identified in the capital plan. St Boswells has been identified as a priority for ELC investment because it is the only large school without an ELC provision or sustainable local ELC partner provider .The Council has been notified that an additional £600 k will be received for ELC capital investment for 2017/2018.Details of how this will be allocated will be forthcoming once the full building assessment process has been completed ( expected April 2017) and lessons learned from the Philiphaugh trial regarding possible parent preferences.

## **6 IMPLICATIONS**

### **6.1 Financial**

In 2017 the Early Years revenue budget is £6.435M. A saving of £100k has been identified. An additional revenue grant of £400 k has been intimated in a notification from the Scottish Government to support the expansion of ELC hours. These monies will enable the Council to expand provision as detailed in section 4 of this report.

In 2017 there is 1.5M already allocated to the Early Years capital budget. This paper has prioritised that £ 750 k of this fund will be allocated to provide an ELC extension at St Boswell's Primary School. The remaining monies and the additional £600 k intimated in a notification from the Scottish Government for ELC expansion will be prioritised following the completion of the ELC building expansion assessment (currently being carried out).Further details of the remaining spend will be included in a further report.

### **6.2 Risk and Mitigations**

A strategic approach to delivery of the 1140 hours in School Nursery is required to ensure there is a long term approach to provision which offers improves outcomes for children and ensures quality, flexibility, accessibility and affordability.

### **6.3 Equalities**

An Equalities Impact Assessment will be carried out as part of the ELC 1140 hours Implementation plan to mitigate against any adverse equality implications.

### **6.4 Acting Sustainably**

There are no significant impacts on the economy, community or environment arising from the proposed engagement with families and communities as proposed within this report. However, any capital development will be in line with the School Estate Strategy to ensure sustainability, which will be considered as proposals come forward.

#### 6.5 **Carbon Management**

There are no significant effects on carbon emissions arising from the proposals contained in this report. However, any capital development will be in line with the School Estate Strategy and will seek to promote environmental responsibility and effective carbon management as part of any proposals that come forward within this review of the School Estate.

#### 6.6 **Rural Proofing**

Particular regard will be paid to the issue of rurality and rural nursery provision as it is a key component of ELC development in Scottish Borders Council.

#### 6.7 **Changes to Scheme of Administration or Scheme of Delegation**

There are no changes to be made to either the Scheme of Administration or the Scheme of Delegation as a result of this report.

### **7 CONSULTATION**

- 7.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and any comments received will be reported at the Executive Committee Meeting.

#### **Approved by**

**Donna Manson**

**Service Director Children & Young People**

**Signature .....**

#### **Author(s)**

Name	Designation and Contact Number
Grace Frew	Senior Lead Officer (01835 824000 Ext 5476)

**Background papers: N/A**

**Previous Minute Reference: N/A**

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Donna Manson can also give information on other language translations as well as providing additional copies.

Contact us at Council Headquarters, Newtown St Boswells, Melrose TD6 0SA.



**SCOTTISH BORDERS COUNCIL  
EXECUTIVE COMMITTEE**

MINUTE of Meeting of the EXECUTIVE COMMITTEE held in the Council Chamber, Council Headquarters, Newtown St Boswells, TD6 0SA on Tuesday, 7 March 2017 at 10.05 a.m.

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Present:- Councillors D. Parker (Chairman), S. Aitchison, S. Bell (from para.3), C. Bhatia, J. Brown, M. J. Cook, V. Davidson, G. Edgar (to para.8), J. Mitchell, D. Moffat, D. Paterson, F. Renton, R. Smith.

Also Present:- Councillors G. Garvie, I. Gillespie, S. Marshall, W. McAteer,  
In Attendance:- Chief Executive, Depute Chief Executive (Place), Chief Financial Officer, Corporate Transformation and Services Director, Service Director Regulatory Services, Service Director Neighbourhood Services, Service Director Assets and Infrastructure, Chief Officer Roads, Chief Officer Economic Development, Clerk to the Council, Democratic Services Officer (K. Mason).

1. **MINUTE**

The Minute of meeting of the Executive Committee of 14 February 2017 had been circulated.

**DECISION**

**APPROVED for signature by the Chairman.**

2. **PROPOSED AFFORDABLE HOUSING AT FORMER EARLSTON HIGH SCHOOL SITE**

There had been circulated copies of a joint report by the Service Director Regulatory Services and Service Director Assets and Infrastructure seeking approval to dispose of the Council owned allocated Housing Site at the former Earlston High School to Eildon Housing Association in order that it may be re-developed to provide affordable housing. The report also proposed that the Council used available Affordable Housing Investment Budget funding to fund the difference between the market valuation sought by the Council and the affordable housing valuation determined by the District Valuer. The site had been identified as a prioritised affordable housing site in the Council's Strategic Housing Investment Plan 2017-22 which was recently agreed by Council in November 2016 and subsequently submitted to Scottish Government. The Group Manager Housing Strategy and Services advised that in paragraph 4.1 (e) in the report, the figure of £350,000 should read £250,000. Concern was raised in relation to the infrastructure for the development and it was confirmed that development of the Council's site would comply with the Council's Planning Brief which meant that that the new roadway to serve the housing development would also link to a bridging point to enable developer-led construction of a new vehicular and pedestrian bridge over the Turfford Burn at some time in the future, thereby safeguarding future access to the adjoining site. In response to a question raised about Scottish Borders Council building its own houses, the Group Manager Housing Strategy and Services advised that there had been a business case exploring the Council building its own houses but this had not proven cost effective. As the site was an expensive one to develop, this proposal had proven to be the best option. It was noted that the Council would benefit through the payment of Council Tax on the proposed new homes. A request was made for a monitoring report on carbon emissions/tax to be brought to a future meeting and the Chief Financial Officer advised that this would be provided through the regular performance monitoring reports brought to the Executive Committee.

**DECISION**

**AGREED to:-**

- (a) **delegate authority to the Council's Head of Assets and Infrastructure to dispose of the allocated Housing Site at the former Earlston High School to Eildon Housing Association on the basis of affordable housing valuation of £450,000 for the development of affordable housing; and**
- (b) **delegate authority to the Chief Financial Officer to transfer £250,000 from the Council's Affordable Housing Investment Budget to the Council's Capital budget as a contribution towards meeting the market valuation of the site.**

**MEMBER**

Councillor Bell joined the meeting during discussion of the following item.

**3. CAPITAL PROGRAMME – 2017/18 – BLOCK ALLOCATIONS**

There had been circulated copies of a report by the Chief Financial Officer seeking approval for the proposed individual projects and programmes within the various block allocations in the 2017/18 Capital Financial Plan. Appendices A – X in the report contained proposals for various projects to be allocated resources from the block allocations within the 2017/18 Capital Financial Plan. Not all projects had been fully identified at this point and as and when this information was available this would be brought to the Executive Committee for consideration. Officers were in attendance to answer Members' questions as they considered systematically the 2017/18 Block Allocations detailed in Appendices A – X to the report. In relation to Appendix U – Sports Infrastructure, Officers undertook to provide Members with more detailed information relating to Teviotdale Leisure Centre Redevelopment. In relation to Appendix V – Cultural and Heritage, Officers undertook to provide Members with more detailed information relating to the seating in the Volunteer Hall, Galashiels. Discussions took place relating to the issue of a press release to ensure members of the public were made aware of good news stories detailed in the Capital Programme and it was agreed that Communications would action this using a localities approach.

**DECISION**

**AGREED to approve the block allocation breakdowns contained in Appendices A – X to the report.**

**DECLARATION OF INTEREST**

Councillor Mitchell declared an interest in the following item of business in terms of Section 5 of the Councillors Code of Conduct and left the Chamber during the discussion.

**4. COMMUNITY GRANT SCHEME – GENERIC BUDGET 2016/17**

There had been circulated copies of a report by the Service Director Neighbourhood Services recommending an application for funding from the Community Grant Scheme Generic Budget. The purpose of the application from Just Cycle Ltd was to contribute towards the cost of rental of the premises at 5 Tweedbank Craft Centre, Tweedbank. Just Cycle Ltd had been running for just under a year and was successful in securing start-up funding of £9,900 from Awards for All in 2016 to cover running costs to March 2017. The organisation had been successful in generating some income from the sale of refurbished bicycles but was still working towards sustainability and unable to cover all its annual running costs. A grant of £1,000 would assist with rental costs. The Service Director Neighbourhood Services and the Funding Officer explained why the grant was eligible in terms of the scheme for the Generic Budget as it offered a Borders-wide service. A request was made that Just Cycle Ltd be made aware of other similar businesses in the area to ensure that they would not encroach on them.

## DECISION

**AGREED to grant £1,000 to Just Cycle Ltd, conditional on the organisation revising its fundraising plans to bridge this gap in future years.**

### 5. **SBC COMMUNITY GRANT SCHEME – YEAR END POSITION 2016/17**

There had been circulated copies of a report by the Service Director Neighbourhood Services presenting information of the estimated year end balances in the Community Grant Scheme (CGS) for 2016/17 and recommending a carry forward into 2017/18, in line with the agreed CGS process. The current budget position of the CGS 2016/17 and estimated year end balances were as follows:-

<b>Budget Heading</b>	<b>Total Budget 2016/17</b>	<b>Expenditure to Date</b>	<b>Applications Pending</b>	<b>Estimated year end balance as at end Jan 2017</b>
Berwickshire	£22,236	£22,076	£0	£160
Cheviot	£20,984	£20,894	£0	£90
Eildon	£40,867	£35,081	£0	£4,536
Teviot & Liddesdale	£22,271	£20,572	£0	£1,699
Tweeddale	£37,368	£33,056	£4,312	£0
Generic	£12,696	£10,770	£1,000	£926
<b>Totals</b>	<b>£156,422</b>	<b>£142,449</b>	<b>£5,312</b>	<b>£7,411</b>

The CGS had awarded grants totalling £142,449 to end of January 2017. If the recommendations of the report were approved, the estimated year-end balance of £7,411 would be detailed as a virement request for ear-marking in the Financial Services report to Executive Committee in March 2017. It was noted that year end balances were estimated as at end January 2017 and final carry forwards as at end March 2017 were expected to be lower. There was currently one application undergoing assessment at present which, if approved, would use up the existing budget in Eildon area. It was confirmed that any funds carried forward would do so within their localities.

## DECISION

**AGREED to:-**

- (a) note the estimated year end balances for 2016/17; and
- (b) approve the carry forward of any year-end balance into 2017/18.

### 6. **UNION CHAIN BRIDGE**

There had been circulated copies of a report by the Depute Chief Executive – Place providing an update on the progress of the project prior to the submission of the Stage 1 application to Heritage Lottery Fund in April 2017. Union Chain Bridge had substantial historical significance because it was the longest suspension bridge in the world when opened in 1820 and was currently the oldest operational suspension bridge in the world to have been designed to carry wheeled vehicles. It was a Grade 1 structure in England and a Category A listed building in Scotland the highest designations. Northumberland County Council and Scottish Borders Council were working in partnership to pursue Heritage Lottery Funding for a restoration project to repair and continue the usable lifespan of the bridge. Additional work had been undertaken in advance of the Stage 1 Heritage Lottery Fund application, but it had not altered the programme aspiration of completing the works for the 200<sup>th</sup> anniversary in 2020. Members welcomed the report and hoped that the new Members

appointed after the Local Government Election in May 2017 would continue to support the project.

**DECISION  
AGREED:-**

- (a) to note the progress of the project to date; and
- (b) that a report be presented to Council prior to the submission of the Stage 2 Heritage Lottery Fund in May 2018, to approve final budgets (capital and revenue) and the delivery programme.

**7. SCOTTISH BORDERS WALKING FESTIVAL 2018 TO 2020**

There had been circulated copies of a report by the Service Director Regulatory Services seeking to agree the locations of the Scottish Borders Walking Festival in 2018, 2019 and 2020. The Scottish Borders Walking Festival (SBWF) was held during the first week of September and moved around the Border towns on an annual basis. The Department's Countryside Access Team was tasked with ensuring that the event took place each year and had been held in the Scottish Borders since 1995. The Walking Festival was due to take place in Peebles in September 2017. All Community Councils had been invited to tender an interest in hosting the event in 2018, 2019 and 2020 and expressions of interest were received from six communities. Following an assessment, it was proposed that the communities of Hawick, Ettrick and Yarrow (along with Selkirk) and Jedburgh (along with Ancrum) should host the event between 2018 and 2020. Councillor Davidson expressed disappointment that the report advised that accommodation provision was poor in the valleys of Ettrick and Yarrow, submitting that the accommodation provided was of the highest quality.

**DECISION**

**AGREED that the Scottish Borders Walking Festival should be hosted by Hawick in 2018, Ettrick and Yarrow and Selkirk 2019 and Jedburgh and Ancrum in 2020.**

**MEMBER**

Councillor Edgar left the meeting during discussion of the following item.

**8. TOWN CENTRE REGENERATION ACTION PLAN**

With reference to paragraph 3 of the Minute of the Executive Committee of 4 October 2016, there had been circulated copies of a report by the Corporate Transformation and Services Director seeking to agree a rolling three year action plan focusing on priority towns, as part of the Council's new approach to town centre regeneration. Town centres were recognised for the important role they played in the local economy in the Scottish Borders Economic Strategy 2023. Action to support our town centres was identified as a priority in the Council Administration's Manifesto, Ambitious for the Borders. In response to the challenges that some of our towns faced, specific action plans had been developed including, most recently, the Hawick Action Plan. Town centres were also likely to be an important issue for the proposed new South of Scotland Enterprise and Skills vehicle to address. In October 2016, a report was presented to the Council's Executive Committee on a new approach to Town Centre Regeneration. Recognising the importance of town centres, there was agreement that a targeted use of resources would be more effective, particularly for those town centres which had significant challenges. The Council agreed to establish a rolling three-year Town Centre Regeneration Action Plan with a focus on priority towns. The new approach to Town Centre Regeneration included a priority approach utilising a 'Town Centre Index'. The Index was based on a range of statistics to better understand the situation in each town and to provide an objective basis for prioritising public sector interventions and investment in town centres. For the Town Centre Regeneration Action Plan, the Council agreed to focus on the

least resilient towns, which were currently: 1= Hawick; 1= Jedburgh; 3 Eyemouth; 4 Galashiels; and 5 Selkirk. The Town Centre Regeneration Action Plan was set out in Annex 1 to the report. The Action Plan focused on projects and activities which aimed to have a significant economic impact and benefit within the respective town centres. Members discussed the issues relating to various town centres including the impact of supermarkets and the internet on shopping habits and footfall, vacancy levels, housing in town centres, and tourism.

**DECISION  
AGREED:-**

- (a) to approve the Town Centre Regeneration Action Plan 2017/2018 and the key actions identified, as set out in Annex 1 to the report;**
- (b) to note the actions that were already resourced and those for which resources were still to be identified; and**
- (c) that the Action Plan would be monitored by the Economic Development Executive on a regular basis and presented for approval on an annual basis, no later than 31 March each year.**

**9. SCOTTISH GOVERNMENT ENTERPRISE AND SKILLS REVIEW – PHASE 2 PROGRESS**

With reference to paragraph 14 of the Minute of Scottish Borders Council of 22 December 2016, there had been circulated copies of a report by the Corporate Transformation and Services Director on the progress of Phase 2 of the Scottish Government's Enterprise and Skills Review. The report outlined officer current views on the proposed South of Scotland Enterprise and Skills Vehicle. The report sought Member agreement for this position, and its further development, to ensure that the Council was able to formally respond to the Phase 2 Review. Scottish Government confirmed that a Phase 2 report would be progressed to develop detail on the establishment of a new Enterprise and Skills Vehicle for the South of Scotland and had encouraged Councils, and relevant agencies and stakeholders, to engage in this process. Scottish Government had asked the Council (and other stakeholders) to consider a response to four key issues related to the proposed new 'Vehicle'. These were: Geographic boundary; Role and remit; Governance framework; and Resources. The geographic area for the new 'Vehicle' should be the administrative boundary of Scottish Borders and Dumfries and Galloway. The role and remit of South of Scotland Enterprise and Skills Vehicle needed to recognise the scale of the challenges facing the area. The 'Vehicle' needed to be able to increase the economic capacity of the region and to tackle its structural economic weaknesses in an inclusive and sustainable way. Officers believed that the fundamental imperative for the remit of the new 'Vehicle' would be to have a Relentless Emphasis on Geography and Place. This recognised that inclusive economic growth could only be generated within the towns and rural communities of the South of Scotland through a new approach. The opportunity to establish a specific South of Scotland Enterprise and Skills Vehicle was a once in a generation opportunity to improve the level of investment in economic growth, enterprise, skills and innovation. Building on the Scottish Government's position in the Phase 1 Report, the governance framework to be put in place to underpin the new 'Vehicle' should demonstrate clear accountability at local and national level. It also must facilitate the step change required for the new 'Vehicle' to be established on a bespoke basis that met the ambitions of the South of Scotland stakeholders. The currently preferred governance framework was also described in the report. It was recognised that the ambition to transform the economy of the South of Scotland would not be achieved without a significant uplift in resources and investment. South of Scotland met on Friday 3 March 2017. They considered in detail the Enterprise and Skill review, the work undertaken by officers to date, the outcome of the stakeholder meeting on 17 February 2017 and the proposed way forward following a wide ranging discussion they fully endorsed the proposed

way forward. Councillor Bell proposed to add an additional recommendation as (e) in the following terms “notwithstanding recommendations (c) and (d) emphasise that this Council would be ambitious and flexible in all its discussions and would seek to achieve the maximum potential of the new South of Scotland Vehicle”. Recommendations (e) and (f) would be renumbered (f) and (g) respectively. Councillor Bell’s additional recommendation was unanimously accepted.

## **DECISION**

### **AGREED:-**

- (a) to note the progress made in developing Phase 2 of the Scottish Government Enterprise and Skills Reviews;**
- (b) to note that South of Scotland Alliance considered the content of the report at its meeting on 3 March 2017 and fully endorsed the progress and way forward;**
- (c) the Council’s position as set out in the report, which had been developed in collaboration with Dumfries & Galloway Council;**
- (d) to submit the Council’s position to the Cabinet Secretary for Economy, Jobs and Fair Works as a working proposal from the Council;**
- (e) notwithstanding (c) and (d) above, to emphasise that this Council would be ambitious and flexible in all its discussions and would seek to achieve the maximum potential of the new South of Scotland Vehicle;**
- (f) to note that the Chief Executive would continue to engage with the Scottish Government and stakeholders in order to develop a detailed proposal for a South of Scotland Enterprise and Skills Vehicle in line with recommendation (c); and**
- (g) to receive a future report as proposals developed further.**

*The meeting concluded at 12 noon.*

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## **FINAL REVENUE VIREMENTS AND EARMARKED BALANCES 2016/17**

**Report by the Chief Financial Officer**

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### **EXECUTIVE COMMITTEE**

**21 MARCH 2017**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 **This report seeks approval for the final 2016/17 Budget Virements and approval to carry forward identified earmarked budgets to 2017/18.**
- 1.2 The monitoring of the General Fund Revenue Budget at the end of January has identified the final virements and earmarked balances for 2016/17. These include routine virements in Appendix 1 and earmarked balances in Appendix 2 where it has been identified that budget is required to be carried forward to support expenditure in 2017/18.

#### **2 RECOMMENDATIONS**

- 2.1 **It is recommended that the Executive Committee:**
  - (a) **approves the virements in Appendix 1, and**
  - (b) **approves the earmarked balances in Appendix 2.**

### **3 BACKGROUND**

3.1 During 2016/17, and most recently at the meeting held on 14 February 2017, the Executive Committee approved a number of Revenue Budget virements. The original projections on which the February virements were based were made in January 2017, based on actual spend to 31 December 2016. Since then, further work on projected expenditure and income has identified the requirement for further virements.

### **4 VIREMENTS REQUIRED**

4.1 These fall into two categories as follows:

(a) **2016/17 – Routine Virements (Appendix 1)**

These supplement the virements approved by Executive during the financial year, including those approved on 14 February 2017, and are detailed in Appendix 1. They comprise virements to reflect:

- budget transfers to address projected pressures in Services from available budget in other Services.

(b) **Earmarked Balances (Appendix 2)**

These supplement the earmarked balances approved by the Executive Committee during 2016/17 to date. These virements are detailed in Appendix 2 and earmarking is generally required:

- where projects or initiatives will be completed in 2017/18;
- to earmark schools DSM budget as per the approved DSM scheme.

### **5 IMPLICATIONS**

5.1 **Financial**

There are no additional costs attached to any of the recommendations contained in this report.

5.2 **Risk and Mitigations**

The main risk is that after the earmarked balances are carried forward into 2017/18, the Services do not come within budget at year-end, this is mitigated by year-end adjustments which will reduce earmarked balances in relevant services where there are budget pressures to ensure the annual budget provision is not exceeded.

5.3 **Equalities**

It is anticipated there will be no adverse impact due to race, disability, gender, age, sexual orientation or religion/belief arising from the proposals contained in this report.

5.4 **Acting Sustainably**

There are no economic, social or environmental effects.



## 5.5 Carbon Management

There are no effects on carbon emissions.

## 6 CONSULTATION

- 6.1 Directors and their relevant staff have been involved in and agreed the compilation of the final virements. These and the overall reported position have been agreed by the Corporate Management Team.
- 6.2 The Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit & Risk, the Chief Officer HR and the Clerk to the Council have been consulted and any comments reflected in the report.

### Approved by

**David Robertson**  
**Chief Financial Officer**

**Signature .....**

### Author(s)

Name	Designation and Contact Number
Suzy Douglas	Financial Services Manager

### Background Papers:

**Previous Minute Reference:** - Executive Committee, 14<sup>th</sup> February 2017

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Finance can also give information on other language translations as well as providing additional copies.

Contact us at: Suzy Douglas, Financial Services Manager, Financial Services, Chief Executive's, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA.

Telephone – 01835 824000 X5881

e-mail – [sdouglas@scotborders.gov.uk](mailto:sdouglas@scotborders.gov.uk)

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**Budget Virement Requirement**                      **People**    **No. of Virements**    **1**

**1 Virement is required from**

Department	People	2016/17	2017/18	2018/19
Service	Secondary Schools	£	£	£
Budget Head	Income	(70,000)	0	0

**To**

Department	People	2016/17	2017/18	2018/19
Service	Central Schools	£	£	£
Budget Head	Employee Costs	70,000	0	0

**Because**

To transfer additional insurance income from Secondary PPP schools to temporarily cover Financial Plan savings in Central Schools pending service review in 2017/18.
--

**Budget Virement Requirement**                      **Place**    **No. of Virements**    **1**

**1 Virement is required from**

Department	Place	2016/17	2017/18	2018/19
Service	Assessor & Electoral Registration Officer	£	£	£
Budget Head	Employee Costs	(40,809)	0	0

Service	Legal Services	£	£	£
Budget Head	Employee Costs	(8,486)	0	0

**To**

Department	Place	2016/17	2017/18	2018/19
Service	Infrastructure Asset Management	£	£	£
Budget Head	Third Party Payments	27,540	0	0
Budget Head	Premises Related Expenditure	21,755	0	0

**Because**

Transfer of underspends in Assessors & Electoral Registration & Legal Services to cover pressure in Infrastructure Asset Management due to Town Traffic Count Surveys and Street Lighting Electricity pressure.
---

**Budget Virement Requirement      People      No. of Virements    4**

**1 Virement is required from**

Department	People	2016/17	2017/18	2018/19
Service	Primary Schools	£	£	£
Budget Head	Employee Costs	239,650	(239,650)	0
	Supplies & Services	27,094	(27,094)	0
<b>Total</b>		<b>266,744</b>	<b>(266,744)</b>	<b>0</b>

**To**

Department		2016/17	2017/18	2018/19
Service		£	£	£
Budget Head	General Fund Reserve - Earmarked Balances	(266,744)	266,744	0

**Because**

To adjust the earmarking of the projected Primary DSM carry forward including staffing, cash and externally funded projects from 2016/17 into 2017/18. This virement will bring the total Primary projected carry forward to £272k.

**2 Virement is required from**

Department	People	2016/17	2017/18	2018/19
Service	Secondary Schools	£	£	£
Budget Head	Employee Costs	(18,291)	18,291	0
	Supplies & Services	(44,559)	44,559	0
<b>Total</b>		<b>(62,850)</b>	<b>62,850</b>	<b>0</b>

**To**

Department		2016/17	2017/18	2018/19
Service		£	£	£
Budget Head	General Fund Reserve - Earmarked Balances	62,850	(62,850)	0

**Because**

To earmark the projected Secondary DSM carry forward including staffing, cash and externally funded projects from 2016/17 into 2017/18. This virement will bring the total Secondary projected carry forward to £938k.

**3 Virement is required from**

Department	People	2016/17	2017/18	2018/19
Service	Safer Communities	£	£	£
Budget Head	Employee Costs	(4,698)	4,698	0

**To**

Department		2016/17	2017/18	2018/19
Service		£	£	£
Budget Head	General Fund Reserve - Earmarked Balances	4,698	(4,698)	0

**Because**

To earmark budget into 2017-18 for Community Justice Plan due for implementation on 1 April 2017.

**4 Virement is required from**

Department	People	2016/17	2017/18	2018/19
Service	Safer Communities	£	£	£
Budget Head	Third Party Payments	(9,000)	9,000	0

**To**

Department		2016/17	2017/18	2018/19
Service		£	£	£
Budget Head	General Fund Reserve - Earmarked Balances	9,000	(9,000)	0

**Because**

To earmark non recurring budget into 2017-18 for Advanced Young Drivers.
--

**Budget Virement Requirement                      Place    No. of Virements    1**

**1 Virement is required from**

Department	Place	2016/17	2017/18	2018/19
Service	Housing Strategy & Services	£	£	£
Budget Head	Third Party Payments	(49,200)	49,200	0

**To**

Department		2016/17	2017/18	2018/19
Service		£	£	£
Budget Head	General Fund Reserve - Earmarked Balances	49,200	(49,200)	0

**Because**

To earmark one off budget into 2017/18 to fund consultancy costs associated with the formation of the Borders wide employability strategy. Confirmation around the final scope of work has been delayed to ensure the work is aligned to the national direction of devolved powers around employability and welfare reform.

**Budget Virement Requirement      Other      No. of Virements    1**

**1 Virement is required from**

Department	Other	2016/17	2017/18	2018/19
Service	Corporate Transformation	£	£	£
Budget Head	Third Party	(125,250)	125,250	0

**To**

Department		2016/17	2017/18	2018/19
Service		£	£	£
Budget Head	General Fund Reserve - Earmarked Balances	125,250	(125,250)	0

**Because**

Available budget within Corporate Transformation due to the timing of the Railway Blueprint project delivery to be earmarked into 2017/18 to allow further development of land and destinations surrounding the Borders Railway.
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## **HOUSING BENEFIT OVERPAYMENT AND DEBT RECOVERY POLICY**

**Report by Service Director Neighbourhood Services**

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### **EXECUTIVE COMMITTEE**

**21 March 2017**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 This report outlines and seeks approval of the Housing Benefit Overpayment and Debt Recovery Policy.**
- 1.2 In administering Housing Benefit on behalf of the Department for Work and Pensions (DWP), the Council has a responsibility to recover any Housing Benefit which has been overpaid.
- 1.3 It is essential for the Council to demonstrate that it carries out administration and recovery of Housing Benefit efficiently, effectively and fairly and follows the guidance issued by the DWP.
- 1.4 The policy has been based on the DWPs recommended model and replaces the policy which was agreed by Committee in June 2000.
- 1.5 It provides clarity on how the Council will interact with claimants and their agents in the administration of Housing Benefit overpayments and sets out a clear debt recovery strategy.

#### **2 RECOMMENDATIONS**

- 2.1 I recommend that the Committee approves the Housing Benefit Overpayment and Debt Recovery Policy attached in Appendix 1 to take effect from 1 April 2017.**

### **3 BACKGROUND**

- 3.1 The Council administers Housing Benefit on behalf of the DWP to help customers on a low income pay their rent. The Council also administers Council Tax Reduction on behalf of the Scottish Government to help customers on a low income pay their Council Tax.
- 3.2 During 2015/16 the Council administered in the region of 2500 new applications and the number of active Housing Benefit cases at any one time is approximately 9,000.
- 3.3 The Council pays out in the region of £30m in Housing Benefit each year.
- 3.4 During 2015/16 Housing Benefit overpayments totalling approx. £1.2 million were created as a result of fraud and error.
- 3.5 Housing Benefit applications and change of circumstance notifications are assessed by Customer Services staff. In some instances, the assessments will result in overpayments of Housing Benefit.
- 3.6 An overpayment of Housing Benefit is any amount which has been paid out, but to which there was no entitlement. It occurs when there is no entitlement or reduced entitlement on either the original decision or a revision/supersession. The benefit assessor must identify each decision made during the overpayment period and revise or supersede those decisions to create an overpayment decision.
- 3.7 It is essential that overpayments are identified and a decision made on whether an overpayment is recoverable as there are consequences concerning the rights of the claimant and other affected parties.
- 3.8 The recovery of Housing Benefit overpayments is undertaken from within various sections of Customer Services. This includes sending invoices and reminders, discussing payment options, making payment arrangements and monitoring debt recovery while ensuring staff follow the customer charter.
- 3.9 The Council receives subsidy for Housing Benefit expenditure but the rate depends on a number of circumstances.

### **4 PROPOSED HOUSING BENEFIT OVERPAYMENT AND DEBT RECOVERY POLICY – Attached at Appendix 1**

- 4.1 When an overpayment is identified the council will :
  - Establish the cause of the overpayment;
  - Identify the period involved and calculate the amount of the overpayment;
  - Classify and record the overpayment so the correct rate of recovery can be made;
  - Decide whether or not the overpayment is recoverable;
  - Decide from whom the overpayment should be recovered;
  - Notify any 'person affected'

- 4.2 Overpayments will be classified as Fraudulent, Claimant error, Local Authority error, Admin Delay DWP error or Other error. Classifying an overpayment is an essential but basic step and should be carried out at the outset when an overpayment is identified.
- 4.3 Overpayments can be recovered by :
- Deductions from ongoing Housing Benefit entitlement
  - Raising a debtor invoice
  - Applying for deductions from certain DWP benefits
  - Recovery from Housing Benefit paid to a landlord/agent for another tenant if the landlord is responsible for the overpayment
  - Direct earnings attachment
  - Transferring homeless tenant overpayments to the tenants rent account
  - Diligence by debt collection agents.
- 4.4 An overpayment is recoverable if :
- It arose because of an 'official error' by the claimant, or someone acting on his or her behalf;
  - the payee could reasonably have been expected to know it was an overpayment;
  - It is due to an error (or fraud) of the claimant or a third party; or
  - It is no one's fault.
- 4.5 When the Council decides that a recoverable overpayment has occurred, a decision will be issued to any person the overpayment is legally recoverable from, even if the Council has decided to recover from someone else (for example landlord/agent).
- 4.6 The claimant can ask for a reconsideration or appeal against a decision. Should an appeal be received from the customer in respect of an overpayment calculation, it will be handled first as a request for reconsideration.
- 4.7 In certain circumstances Scottish Borders Council can decide to write off an overpayment. Papers backing up each individual debt should be submitted and approved by the Service Director – Neighbourhood Services (or equivalent) as defined in the Scheme of Delegation.
- 4.8 Overpayments can be costly to recover. The money lost through reduced subsidy and the costs of recovering overpayments comes from the Councils overall budget, therefore not limiting costs here means there are fewer funds available for other services. It is important to ensure that in addition to preventing overpayments occurring, every effort is made to recover them.

## **5 IMPLICATIONS**

### **5.1 Financial**

There are no costs attached to any of the recommendations contained in this report.

## 5.2 Risk and Mitigations

There is a risk that overpayments may not be recovered in a fair and consistent way to minimise losses to the Council, without the formalisation of our procedures and practices.

## 5.3 Equalities

An Equalities Impact Assessment has been carried out on this proposal and it is anticipated that there are no adverse equality implications.

## 5.4 Acting Sustainably

This policy is intended to ensure Customer Services Staff provide a consistent approach and demonstrate a quality service to customers taking into account individuals circumstances.

## 5.5 Carbon Management

This policy will have no impact on the Council's carbon emissions.

## 5.6 Rural Proofing

This policy will have no impact on Rural proofing.

## 5.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes to be made to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report.

## 6 CONSULTATION

6.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

6.2 The Chief Social Worker Officer, the Service Director Neighbourhood Services and the Lead Homelessness Officer have also been consulted and any comments received have been incorporated into the final report.

### Approved by

**Jenni Craig**

**Service Director Neighbourhood Services Signature .....**

### Author(s)

Name	Designation and Contact Number
Clare Easson	Customer Services Development Officer 01835 824000

**Background Papers:** None

**Previous Minute Reference:** Policy and Resources Committee / Property and Finance Sub-Committee - 5 June

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Clare Easson can also give information on other language translations as well as providing additional copies.

Contact us at : Customer Services Development Team, Council Headquarters, Newtown St Boswells, TD6 0SA, Tel : 01835 824000, Fax : 01835 825011, Email : [CSDevelopmentTeam@scotborders.gov.uk](mailto:CSDevelopmentTeam@scotborders.gov.uk)

## HOUSING BENEFIT OVERPAYMENT AND DEBT RECOVERY POLICY

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Version	Changes	Date	Owner
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Draft_V2	Suggestions made by P Clark	10/08/16	Clare Easson
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Draft_V4	Formatting and suggestions made by L Grant & A Riddle	13/10/16	Clare Easson
Draft_final	Additional suggestions made by L Grant, T Beattie & G Murdie	26/10/16	Clare Easson
Final	Additional changes made by Jenni Craig	03/03/17	Clare Easson

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## **1. INTRODUCTION**

- 1.1 In administering Housing Benefit on behalf of the Department for Work and Pensions (DWP), the Council has a responsibility to recover any Housing Benefit which has been overpaid.
- 1.2 This policy document sets out Scottish Borders Council's commitment to the recovery of Housing Benefit overpayments as laid down by The Housing Benefit Regulations 2006.
- 1.3 The Council aims to comply wherever possible with guidance issued by the DWP such as the Housing Benefit overpayments guide and as such undertakes to review this policy in order to incorporate and update for best practice as and when necessary.
- 1.4 In all cases, staff will act in accordance with relevant legislation, treat all citizens fairly and encourage people to pay promptly and regularly.

## **2 WHY WE NEED A POLICY**

- 2.1 It is essential for the Council to demonstrate that it carries out administration and recovery of Housing Benefit overpayments efficiently, effectively and fairly. By doing so the Council:
- (i) provides Revenue for the Council;
  - (ii) helps reduce the cost caused by lower Housing Benefit subsidy receipts from DWP on overpayments;
  - (iii) deters fraud and error;
  - (iv) demonstrates commitment to accuracy;
  - (v) demonstrates a provision of a quality service to customers.

## **3. AIMS OF THE POLICY**

- 3.1 The main aim of this policy is to set out how Scottish Borders Council, Customer Services, interact with our claimants and their agents in the administration of Housing Benefit overpayments and the subsequent recovery and to set out a clear debt recovery strategy.
- 3.1.1 Ensure that all staff involved in the recovery of overpayments operate a fair and consistent process;
  - 3.1.2 Set out a clear debt recovery strategy;
  - 3.1.3 Demonstrate the Council's commitment to the delivery of quality services to our customers;
  - 3.1.4 Minimise losses to the Council from overpayments.

## **4. CUSTOMER CHARTER**

- 4.1 The Councils Customer Charter in respect of recovery of overpayments of Housing Benefit is as follows:
- 4.1.1 Good work practices will help avoid or minimise overpayments;
  - 4.1.2 Debtors will be given clear and prompt information about Housing Benefit overpayments;
  - 4.1.3 Debtors will be treated courteously, efficiently and with empathy;
  - 4.1.4 Information will be treated as confidential within Customer Services unless regulations and/or data protection guidance allows the sharing of information with other Council services and/or external organisations;
  - 4.1.5 Debtors will be offered, when required, a private interview with Customer Services staff;
  - 4.1.6 Customer Services staff will follow guidance on debt collection;

- 4.1.7 An income & expenditure assessment may be carried out to establish any excess income the customer has each week;
- 4.1.7 Any payment arrangement made will be realistic and reflect the ability to pay as well as the level of debt owed;
- 4.1.8 Staff will be sensitive to debtor's individual circumstances, for example, if money is owed to other creditors the debtor is likely to be under stress, this will be taken into account;
- 4.1.9 Flexible and convenient methods of payment will be provided;
- 4.1.10 No debtor will be subject to discrimination;
- 4.1.11 When appropriate, debtors will be directed to a relevant advice agency (such as Welfare Benefits, Citizen's Advice Bureau);
- 4.1.12 Debtors who are unhappy with the service or treatment they have received will be advised on the Council's Complaints procedure;
- 4.1.13 Generally, the minimum amount of an instalment following a payment arrangement would be equal to the amount which could be obtained by deductions from the customer DWP state benefit.

## **5. HOUSING BENEFIT AND OVERPAYMENT ADMINISTRATION**

- 5.1 Housing Benefit applications and change of circumstance notifications are assessed by Customer Services staff; as a result, overpayments can be calculated by any member of staff within the service. Customer Services are responsible for actioning all change of circumstances on claimants accounts, electronic changes reported via the DWP, changes resulting from Real Time Information downloads, Fraud, Error and Reduction Improvement Service and changes notified through the DWP Fraud and Error Service
- 5.2 The recovery of Housing Benefit overpayments is undertaken from within various sections of Customer Services. This includes sending invoices and reminders, discussing payment options, making payment arrangements, monitoring debt recovery while ensuring staff follow the customer charter.

## **6. IDENTIFICATION OF OVERPAYMENTS**

### **6.1 What is a Housing Benefit overpayment?**

- 6.1.1 An overpayment of Housing Benefit is any amount which has been paid out, but to which there was no entitlement. This includes any amount of rent rebate or rent allowance paid in excess of entitlement.
- 6.1.2 DWP guidance indicates that an assessor must identify each decision made during the overpayment period and revise or supersede those decisions in order to create an overpayment decision.

#### Example

A claimant received maximum Housing Benefit from 4 January 2016.

On 7 May 2016 his adult daughter, who is in full time employment, comes to live with him.

The claimant fails to inform the Council of this change until 4 July 2016.

The Council decide a non-dependant deduction should have been made for the daughter from benefit week starting 9 May 2016, the date the change of circumstances should have taken effect.

The claimant received maximum benefit entitlement up to and including week ending 3 July 2016.



An overpayment occurred for 8 weeks reducing his entitlement from £65.00 to £50.00 from 9 May 2016 to 3 July 2016 resulting in an overpayment of £120.00.

## 6.2 What causes a Housing Benefit Overpayment?

### 6.2.1 Overpayments can occur as a result of :

- (i) Claimant error, for example, the claimant fails to notify the authority of a change in circumstances which he or she has a duty to report, such as the end of entitlement to Jobseekers Allowance(Income Based);
- (ii) Local Authority error, for example, the Council fails to act on a notice of change of circumstances provided by the claimant;
- (iii) DWP official error, for example, a mistake made by DWP staff when processing an award of Income Support, Employment and Support Allowance (Income Related), Jobseekers Allowance (Income Based) or Pension Credit guarantee credit ends;
- (iv) Third party error, for example, a landlord in receipt of Housing Benefit notifies an incorrect rent increase;
- (v) Fraud, for example, the claimant fails to declare a person in the household, capital, income, etc;
- (vi) An administrative delay, e.g. a delay by the LA in processing a change of circumstances.

This is not a comprehensive list.

### 6.2.2 It is important that the cause of an overpayment is established as soon as possible as this information must be taken in to account:

- (i) when classifying overpayments;
- (ii) when deciding if the overpayment is recoverable;
- (iii) when deciding who to recover from.

## 7. **REPORTING CHANGE OF CIRCUMSTANCES**

7.1 Claimants, their appointees/agents, or landlords to whom a direct payment is being made, must report to Council's all change of circumstances they could reasonably be expected to know, which may affect entitlement to HB. <sup>1</sup>

7.2 A person who has a duty to notify the Council about a change of circumstances must be informed by the Council about:

- (i) the kind of changes likely to affect HB entitlement, and
- (ii) the need to report the changes when they occur.<sup>2</sup>

7.3 Claimants, or those acting on their behalf, are usually notified about these obligations in the declaration part of the HB application form. However we have a duty to include such information in benefit decision notices, ensuring landlords are informed of their responsibilities before setting up direct payments.

7.4 Claimants **do not have to** report changes in:

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<sup>1</sup> HB Reg 88 & (SPC) 69, Reg 3 (D&A Regs)

<sup>2</sup> HB sch 9, part 2, 3 & 4 and (PC) Sch 8

- (i) the age of the claimant;
- (ii) the age of any member of the claimants family;
- (iii) the age of any non-dependants;
- (iv) the HB regulations;
- (v) circumstances which affect the amount of Employment and Support Allowance (Income Related), Jobseekers Allowance (Income Based), Income Support or Pension Credit payable.

7.5 A claimant, in deciding whether they should report a change, must also consider the list below. Claimants **must report to the Council** when :

- (i) their entitlement to ESA(IR), IS, JSA(IB) ends;
- (ii) a member of their family ceases to be a child or young person;
- (iii) a young person leaves full time education;
- (iv) child Tax Credit (CTC) or Child Benefit (CB) ceases;
- (v) if the CL/PT stops being entitled to Carers Allowance or Underlying Entitlement to Carers Allowance;
- (vi) if they stop paying for Child Care;
- (vii) someone moves in to or out of the household ;
- (viii) their rent changes.

7.6 The DWP will pass to each Council, details of any change of circumstances for claimants in receipt of a DWP benefit or Tax Credits that have been reported to them, and should have been reported to the Council.

7.7 The legal responsibility for reporting change of circumstances remains with claimants. Overpayments may occur when the Council are not notified about a change of circumstances.

7.8 It is important to stress the importance of reporting change of circumstances to all claimants and people who are required to notify a change of circumstances, and advise them how, when and whom they should report the change to and what may/will happen if they fail to do this. Customer Services will include advice on application forms, benefit decision notices, Council Tax bills, SBC website and regular media campaigns to publicise their duty.

7.9 Benefit decision notices and the Housing Benefit application form details the claimant's responsibility to notify the Council of any change of circumstances.

7.10 The Council will also send any details it becomes aware of that may affect the claimants entitlement to ESA(IR), IS, JSA(IB) or PC to the DWP.

## **8. WHERE TO REPORT A CHANGE OF CIRCUMSTANCES**

8.1 The regulations provide that if the Council does not give details of where a claimant must report changes of circumstances to (a designated office), and just uses terms such as 'us', 'council', or 'local authority' in its communications, a claimant may report a change of circumstances to any department in the Council.

8.2 By doing so, they will have satisfied their duty to report change of circumstances as prescribed by regulations.

8.3 If there is no designated office, any overpayment from when the claimant reports the change of circumstances to the Council up to when the change of circumstances is processed, would be classified as LA official error or Admin delay (depending on whether the overpayment was caused by a delay and whether that delay was caused by a mistake).

- 8.4 If, however the Council makes it clear in its communication that a specific department/address is the 'designated office' to which a claimant must report a change of circumstances, then the claimant must report changes to that designated office in order to satisfy the regulations.
- 8.5 If the claimant reports a change of circumstances to a different department/address, any overpayment would be classified as claimant error up until:
- (i) the claimant notifies the designated office of the change; or
  - (ii) the Council stops the overpayment from continuing (suspends the claim or processes the change)<sup>3</sup>
- 8.6 The Councils designated offices can be found at [www.scotborders.gov.uk/contactcentres](http://www.scotborders.gov.uk/contactcentres)

## **9. CLASSIFICATION OF OVERPAYMENTS**

9.1 When an overpayment is identified, the Council will :

- (i) establish the cause of the overpayment;
- (ii) identify the period and calculate the amount of the overpayment;
- (iii) classify and record overpayments so the correct rate of recovery can be made;
- (iv) decide whether or not the overpayment is recoverable;
- (v) decide from whom the overpayment should be recovered;
- (vi) notify any 'person affected'.

### 9.2 Classifying an overpayment

9.2.1 Overpayments can be costly to recover. Money lost through reduced subsidy and the costs of recovering overpayments comes from the Council's overall budget, therefore not limiting costs here means there are fewer funds available for other services.

9.2.2 It is important to ensure that in addition to preventing overpayments occurring, every effort is made to recover them.

### 9.3 Explanation of the classifications

9.3.1 Overpayments will be classified as Fraudulent, Claimant error, Local Authority Official error, Admin Delay, DWP error or Other error.

9.3.2 Classifying an overpayment is an essential but basic step in the overpayment process, and should be carried out at the outset when an overpayment is identified.

### 9.4 Fraudulent overpayments

9.4.1 Fraudulent overpayment means an overpayment in respect of a period falling wholly or partly after 31 March 1993, when the claimant has, in respect of the overpayment:

- 9.4.1.1 been found guilty of an offence whether under statute or otherwise;
- 9.4.1.2 made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit; or
- 9.4.1.3 agreed to pay a penalty under section 115A of the Social Security Administration Act and the agreement has not been withdrawn.

<sup>3</sup> HB Reg 88, & (PC) 6

- 9.4.2 Admission after caution in Scotland means an admission after caution has been administered, such admission being duly witnessed by two persons.
- 9.4.3 LA's receive 40% subsidy from DWP for this overpayment classification.<sup>4</sup>
- 9.4.4 Any HB overpayment classified as fraud can be recovered at a higher recovery rate. Also, overpayments classified as fraud can be treated differently, for recovery purposes, when the claimant is involved in insolvency procedures.

Example

The Council receive anonymous information suggesting that a claimant is receiving benefit as a single person however they have someone living with them. After investigating, it is identified that the claimant has had a partner living with him for the last 2 years who is in full time employment.

Calculate the changes in the normal way. The overpayment should be classified as fraud.

9.5 Claimant error overpayments

9.5.1 Claimant error overpayment means an overpayment which is caused by:

- (i) the claimant;
- (ii) a person acting on the claimants behalf;
- (iii) any other person to whom the payment was made including landlords/agents; and
- (iv) the person fails to provide information in accordance with HB Reg 83(1) or 86, PC 64(1) or 67; or
- (v) fails to report a change of circumstances in accordance with HB Reg 88, PC 69; and
- (vi) it is not a fraudulent overpayment.

9.5.2 The Council receives 40% subsidy from DWP for this classification

Example

A change occurs in the claimant's earnings on 14 January 2016. The claimant fails to report the change until 29 January 2016. The Council actions the change on 29 January 2016. The overpayment is classified as follows.

18 January 2016 – 31 January 2016: claimant error

9.6 LA official error and admin delay overpayments

- 9.6.1 LA official error overpayments means an overpayment caused by a mistake, whether in the form of an act or omission, made by the Council or someone acting on their behalf. The claimant, a person acting on the claimant's behalf, or the person to whom the benefit was paid, did not cause or materially contribute to that mistake, act or omission.<sup>5</sup>
- 9.6.2 Admin delay overpayment means an overpayment arising when the Council is notified of a change of circumstances and has sufficient information and evidence to make a revision or supersession decision, and the :

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<sup>4</sup> HB Reg 102 & (PC) 83

<sup>5</sup> HB Reg 100 (PC) 81

- (i) Council does not make the decision before the claimants next pay day; and
- (ii) delay was not caused by a mistake, whether in the form of an act or omission made by the Council; and
- (iii) delay was not caused or materially contributed to by the claimant, a person acting on the claimant's behalf, or any other person to whom the benefit was paid.

9.6.3 Council's receive subsidy from DWP of :

- (i) 100% subsidy (less than or equal to the lower threshold);
- (ii) 40% subsidy (more than the lower, up to and including the upper threshold);
- (iii) nil subsidy is received on any overpayment above the upper threshold.

9.7 LA Official error or admin delay – which classification is appropriate?

- 9.7.1 When all the information to process a change in circumstance is provided to the Council, and the change would result in a reduction to the claimants HB entitlement, the Council must action it before the claimants next pay day. If it is not actioned before the next pay day, any overpayment from the first day of the benefit week following receipt of all the information should be classified as admin delay.
- 9.7.2 If the delay in processing the change of circumstances was due to something out of the Council's control, for example staff shortage due to sickness, or if they had prioritised their workload, but were unable to process it because of a backlog, the overpayment will be classified as admin delay.
- 9.7.3 If the overpayment is classified as an admin delay, the overpayment is recoverable.
- 9.7.4 If the delay in processing the change of circumstances was caused by a mistake, for example the Council put the change of circumstances information to one side and forgot to process it, the overpayment should be classified as LA official error.
- 9.7.5 If the overpayment is classified as LA official error, the Council must then make a decision on whether it is recoverable.
- 9.7.6 In order to determine if an overpayment is recoverable, the Council must ask itself if the claimant, person acting on their behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.
- 9.7.7 If the answer is no, the overpayment is not recoverable. If the answer is yes, the overpayment is recoverable.
- 9.7.8 All overpayments of HB are recoverable except certain official errors. As the Council has made a decision that the overpayment was not caused by a mistake and is therefore not LA official error, the overpayment is recoverable.
- 9.7.9 The decision as to whether the overpayment is LA official error or admin delay must be made by the Council based on the individual circumstances of each case. If the claimant appeals against the overpayment decision, for example the Council has classified the overpayment as an admin delay and the claimant thinks that it was caused by official error, the Council must be able to justify their decision.
- 9.7.10 It should also be noted that if the LA's decision is that the overpayment is recoverable because it is not an official error, a tribunal or a court might take a different view. There should therefore

be a record of the decision, outlining why the delay in processing the change of circumstances was not caused by a mistake by the Council.

## 9.8 DWP Official Error

9.8.1 This is an overpayment which arises from a mistake, whether in the form of an act or omission, made by an officer of :

- (i) the DWP;
- (ii) the commissioners of Her Majesty's Revenue and Customer; or
- (iii) a person acting on behalf of any of the above.<sup>6</sup>

9.8.2 This classification is not relevant when the person affected caused or contributed to the mistake, act or omission.

9.8.3 A DWP official error is only recoverable when the person affected, at the time of receipt of the payment or any notice relating to that payment, could have reasonably been expected to realise that it was an overpayment.

9.8.4 Recovered DWP official error overpayments, or any part of Departmental official error overpayments which are recovered, are not eligible for subsidy.

## 9.9 Other error overpayments

9.9.1 'Other' overpayment means any overpayment which does not fit in any of the other classifications. Examples could be when:

- (i) A Council makes a payment in good faith, but a change, such as an adverse decision in judicial review results in an overpayment; or
- (ii) An award of benefit does not take in to account any income subsequently paid as arrears, for instance when a claimants earnings increase retrospectively and they receive a lump sum payment of arrears, or as a result of entitlement to another benefit commencing or increasing.

9.9.2 However, if there has been a delay in processing a benefit and it is due to a mistake made by the DWP, the overpayment can be classified as DWP official error.

9.9.3 Council's receive 40% subsidy from DWP for this classification.

### Example

An employed earner who is paid monthly is entitled to a pay increase from April, but the arrears are not paid until November.

As there was entitlement to the pay increase from April, the arrears of pay would be taken in to account for the period over which they should have been paid if the increase in pay had been processed on time.

Calculate the overpayment in the normal way. This should be classified as other.

## 10. EXPECTED ACTION TO MINIMISE OVERPAYMENTS

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<sup>6</sup> HB Reg 100 & (PC) 81

- 10.1 Regulation 11 of the Housing Benefit (Decision and Appeals) Regulations 2001 states that a Council may suspend HB, in whole or part, if there is an issue regarding the conditions of entitlement on a claim or if the Council suspects an overpayment is occurring. The decision to suspend is discretionary.
- 10.2 In a case where the claimant reports a change of circumstances, but does not provide sufficient information and the Council has not suspended benefit, a decision will have to be made on whether the Council were justified in not suspending the HB and whether the claimant has contributed to the overpayment.
- 10.3 The classification of the overpayment will also depend on how long HB is paid when the Council is aware there are issues around conditions of entitlement or a suspected overpayment. The Council should not pay HB indefinitely whilst awaiting further information from the claimant.
- 10.4 Sufficient information provided by a third party
- 10.4.1 If the Council has sufficient information to be able to process a change of circumstances irrespective of where that information has come from, any overpayment from the Monday following the date that information is received would be classified as LA official error or admin delay, depending on whether the delay in processing was caused by a mistake.
- 10.4.2 From the point that the Council has sufficient information, the claimant is no longer contributing to the mistake. This is because nothing further is needed from the claimant.
- 10.4.3 If a third party does not provide sufficient information for example when the Council receives an Automated Transfer to Local Authority Systems (ATLAS) notification from the DWP stating the claimant has started work, further information would be needed from the claimant and therefore the overpayment would continue to be classified as claimant error until the claim is suspended or the information is received.
- 10.5 This is because the claimant has not :
- (i) Satisfied their legal duty to notify a change of circumstances that they might reasonably be expected to know might affect their entitlement to benefit.<sup>7</sup>
  - (ii) Provided the evidence and information needed to process any questions arising out of the claim<sup>8</sup>
- 10.6 The claimant is therefore contributing towards the overpayment.

## 11. CLAIMANTS IN RECEIPT OF PENSION CREDIT

- 11.1 There are certain change of circumstances that claimants who are also in receipt of Pension Credit (PC) can report to The Pension Service (TPS) and by doing so, have satisfied their duty of reporting the change to the Council. In these cases, the Council is reliant on receiving the information from TPS.

## 12. WHICH OVERPAYMENTS ARE RECOVERABLE

- 12.1 An overpayment is recoverable if :
- (i) it arose because of an 'official error' by the claimant, or someone acting on his or her behalf;
  - (ii) the payee could reasonably have been expected to know it was an overpayment;
  - (iii) it is due to an error (or fraud) of the claimant or a third party; or

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<sup>7</sup> HB Reg 88 & (PC) 69

<sup>8</sup> HB Reg 86 & (PC) 67

(iv) it is no one's fault.

12.2 An overpayment is not recoverable if :

- (i) it arose because of 'official error' by a relevant authority; and
- (ii) the claimant, someone acting on their behalf, or the payee could not reasonably have been expected to know it was an overpayment.

12.3 An official error is a mistake whether in the form of an act or omission, made by the authority, the DWP or HMRC – or someone on their behalf. It does not include cases when a claimant, someone acting on their behalf, or payee, caused or materially contributed to that error.

12.4 The question of whether an overpayment is recoverable is separate from the question of whether to recover it. However, it can be a difficult decision to make. There are a number of further issues that must be considered, such as, did the people affected:

- (i) receive the decision notices?
- (ii) read and understand the decision notices?
- (iii) know which change of circumstances must be reported to the Council?

12.5 Also, could the people affected 'reasonably' have:

- (i) known an overpayment occurred, from the information the Council provided?
- (ii) expected a change in the amount of HB they receive, having notified the Council of a change of circumstances?
- (iii) expected an overpayment to occur if they has previously has a similar change, which caused a change in the amount of HB they receive?

12.6 'Reasonably have been expected to know' can be interpreted in the person affected's favour, if :

- (i) you consider, because of their age, intelligence or mental condition, that they were genuinely unaware of the official error overpayment; or
- (ii) they state they were wrongly advised by an official source, however the onus of the proof will be on the person affected. In such cases a statement should be taken from all parties concerned and a decision made on the balance of probabilities.

12.8 Any recoverable overpayment may be recovered at the Council discretion. If it is established an overpayment is recoverable, it does not mean it must be recovered. The decision that an overpayment is recoverable must be separate to recovering it. Due regard should be given to the circumstances relating to individuals cases, when deciding whether or not recovery is appropriate.

12.9 The Council is not obliged to recovery overpayments. Each individual case should now be decided on its own merits, i.e. a blanket policy for recovery must not be applied. If the Council is unreasonable or irrational, it could be subject to judicial review. The Council must satisfy itself that it is reasonable to recover in each individual case.

### **13. DECISION MAKING ON RECOVERABILITY**

13.1 Correct decision making regarding whether or not there is an overpayment and whether or not it is recoverable is essential because there are consequences concerning the rights of claimants and other affected persons. If the overpayment is recoverable, then the claimant or the other affected person can be pursued for the debt. If it is unrecoverable, then the Council will have to consider writing the debt off and bearing the cost of this.



- 13.2 Overpayment classification and recoverability decisions can provide an indication of the levels of fraud and error compared with efficiency in the Council's benefit administration. For example if a large amount of the Council's total overpayment error is classed as LA error as described in Section 9 then it may bring into question the quality of the Benefit Assessment decisions being undertaken by staff. If LA error levels exceed predefined thresholds then the Council may also be hit with a significant financial penalty.
- 13.3 Whether a recoverable overpayment is recovered or not, is at the discretion of the Council. Regard will be given to individual circumstances when deciding whether recovery is appropriate. Care will be taken where the debtor is deemed to be 'vulnerable' and staff should ensure that they are fully aware of all options open to them.
- 13.4 The term 'vulnerable' person would apply to one of the following :
- (i) a customer with learning difficulties;
  - (ii) a disabled customer;
  - (iii) a customer suffering mental health problems;
  - (iv) a pregnant customer;
  - (v) a person under 21 years old;
  - (vi) a customer perceived as being vulnerable for any other reason, i.e. race, sexual orientation, etc.
- 13.5 This is not an exhaustive list and it is a matter for officers to decide based on the circumstances of each case

#### **14. NOTIFICATION OF AN OVERPAYMENT**

- 14.1 When the Council decides that a recoverable HB overpayment has occurred, a decision notice will be issued to any person the overpayment is legally recoverable from, even if the Council has decided to recover from someone else. For example, if the debt is to be recovered from the landlord, the decision notice must be issued to both the claimant and the landlord. When the decision has been made that an overpayment is recoverable, a decision notice will be sent within 14 days of the decision being made, or as soon as is reasonably practical thereafter.
- 14.2 The decision notice will provide information as to how payment should be made and who to contact regarding any enquiries.

#### **15. METHOD OF RECOVERY OF HOUSING BENEFIT OVERPAYMENTS**

- 15.1 Once an overpayment has been correctly classified and the correct person identified for recovery, the overpayment will either be recovered by:
- (i) deductions from ongoing HB;
  - (ii) by raising a debtor invoice;
  - (iii) by applying for deductions from certain DWP benefits;
  - (iv) by recovery from HB paid to a landlord/agent for another tenant if the overpayment is recoverable from the landlord, i.e. where the landlord has been classed as responsible for a debt (known as 'blameless tenant' recovery);
  - (v) Direct Earnings Attachment (DEA);
  - (vi) transferring homeless tenant overpayments to the tenants rent account; or
  - (vii) diligence by debt collection agents.
- 15.2 Recovery from ongoing benefit

- 15.2.1 Where the claimant is still entitled to HB, the overpayment can be recovered from their ongoing HB entitlement. The Government sets the weekly rate each year that Councils can recover. There is a standard overpayment recovery rate and a fraudulent overpayment recovery rate.
- 15.2.2 An additional 50% of any earned income disregards, disregarded regular charitable or voluntary payments, the £10 disregard of war pensions for bereavement or disablement can also be recovered from either classification.
- 15.2.3 The fraudulent deduction amount can be levied where the debtor :
- (i) has been found guilty of an offence whether under statute or otherwise;
  - (ii) made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit; or
  - (iii) agreed to pay a penalty under section 115A of the Social Security Administration Act and the agreement had not been withdrawn.
- 15.2.4 Where the overpayment is to be recovered from on-going HB, details of this are shown on the decision notice. If the debtor is still in receipt of HB but the amount in payment is not enough to allow the normal recovery rate to be taken, the Council will recover all but £0.50 per week. Alternatively, it may be decided to invoice the claimant in circumstances where there is evidence to suggest that the claimant is vulnerable and deductions from on-going benefit would not be in their best interests.
- 15.2.5 In cases where a debtor or a person acting on the debtor's behalf, indicates that they are unable to pay the standard deduction amount, an income and expenditure form will be issued in order to consider reducing the weekly deduction amount. Completion of an income and expenditure form allows maximum recovery whilst taking essential expenditure into account. Debtors are expected to review their outgoings to make additional income available and to reduce non priority expenses.
- 15.2.6 All reduced deduction cases are periodically reviewed on a case by case basis which includes consideration of claimants income and expenditure. It should be noted that recovery from on-going benefit is recovery from the claimant, not the landlord. Consequently the landlord is not a person affected and cannot apply for a revision of the decision or appeal against it. The claimant must make up the shortfall in their rent in order to avoid any arrears. If a rent arrears situation does develop, then this is not an issue for the Council, it is up to the landlord to deal with this.

### 15.3 Recovery by debtor invoice

- 15.3.1 If there is no on-going benefit entitlement, the debt will be recovered by raising an invoice.
- 15.3.2 If payment is not received, recovery action against the customer in line with recovery procedures will commence. Customer Services are responsible for ensuring that final notices are issued in accordance with the recovery timetable. Customer Services staff will also oversee the process dealing with telephone and written correspondence regarding any recovery action, and make payment arrangements with customers, where possible.

### 15.4 Methods of payment of debtor invoice

- 15.4.1 It is essential to provide flexible and convenient methods of payment. At present the Council can accept payment by the following means:
- (i) Online (payments can be made online at [www.scotborders.gov.uk/pay](http://www.scotborders.gov.uk/pay) The invoice number will need to be provided.)

- (ii) By telephone using debit or credit card (a payment line is available by dialling 08450 758517 and select option 3 or by calling Customer Services on 0300 100 1800. The claimant will need their invoice number to pay in this way.)
- (iii) By standing order (a standing order mandate can be sent to the customer by calling 0300 100 1800 or by visiting their local Contact Centre/Library Contact Centre. This allows the customer to present it to their bank. The mandate must detail the invoice number.)
- (iv) At a Paypoint outlet or Post Office (a barcoded invoice can be issued for payment to be made at a Paypoint Outlet or Post Office. This can be obtained by calling Customer Services on 0300 100 1800 or by visiting their local Contact Centre/Library Contact Centre.)
- (v) In person (Cheque, Credit or Debit Card can be used to pay face to face at any Council Contact Centre/Library Contact Centre. The customer will need to provide their invoice number.)
- (vi) By post (Cheque or Postal Order with the invoice number, name and address written on the reverse of the cheque or postal order and sent to Scottish Borders Council, Council Headquarters, Newtown St Boswells, TD6 0SA.)
- (vii) Contact Centre/Library Contact Centre locations and opening hours can be found at [www.scotborders.gov.uk/contactcentres](http://www.scotborders.gov.uk/contactcentres)

## 15.5 Instances of non-payment

15.5.1 If payment or an arrangement for payment is not made, a reminder will follow the invoice requesting payment be made within 14 days. If payment or an arrangement for payment is still not made, a final demand will follow the reminder. This requests payment within 7 days.

15.5.2 If no reconsideration or appeal is received 4 weeks after the customer is notified of the overpayment, we will check if DWP payments are in place and request recovery via DWP if appropriate. If deductions via DWP are not an option we will check existing data to identify employer information in order to consider a Direct Earning Attachment (DEA), see section 15.8 monitoring arrangements and 15.11 recovery using a direct earnings attachment.

## 15.6 Recovery from DWP benefits

15.6.1 If no appeal is received, the debt is not paid or no reasonable payment arrangement is made, deductions from certain prescribed DWP benefits can be made. The list of prescribed benefits is extensive and it is easier to identify the DWP benefits where deductions cannot be made; these are :

- (i) Child Benefit
- (ii) Working Tax Credit
- (iii) Child Tax Credit
- (iv) Guardians Allowance
- (v) Disability Living Allowance/Personal Independent Payment
- (vi) Carers Allowance

15.6.2 In these instances, the Council will request that the DWP implement deductions. The regulations state that the DWP will recover overpayments from social security benefits where :

- (i) It is requested by the Council to do so;
- (ii) They are satisfied that the overpayment arose as a result of a misrepresentation or failure to disclose a material fact by, or on behalf of, the claimant, or by some other person to whom payment has been made; and
- (iii) That person is receiving sufficient amounts of one or more benefit to enable deductions to be made.

#### 15.7 Payment arrangement

15.7.1 If the debtor cannot pay the overpayment invoice in full then the Council will encourage them to make contact immediately, as it may be possible to make a payment arrangement.

15.7.2 Each case will be considered on its own merits, taking the amount due and personal and financial circumstances into account. There are no rules limiting the maximum amount that can be asked for. The aim is to agree a realistic arrangement to collect unpaid debts within a reasonable time, without the need for more serious recovery action.

15.7.3 It may be necessary to issue an Income and Expenditure form in order to obtain a clear picture of the person's financial circumstances and thereby act as a basis for reaching a mutually acceptable instalment plan. Completion of an Income and Expenditure form allows maximum recovery whilst taking essential expenditure into account. Debtors are expected to review their outgoings to make additional income available and to reduce non priority expenses.

15.7.4 Once the arrangement is agreed, a letter confirming the details is issued. A payment arrangement may be reviewed at a future date.

#### 15.8 Monitoring arrangements

15.8.1 If the claimant defaults on their arrangement a reminder or final notice, whichever is appropriate, will automatically be issued. When a final notice is issued, the instalment plan/arrangement is cancelled and the debtor is asked to make payment in full.

#### 15.9 Further recovery action

15.9.1 Where payment has not been made in accordance with an arrangement or no payment has been made at all a decision on further action will be made based on the circumstances of each case. See sections 15.10, 15.11 and 15.12 below for further information on the type of action that may be taken.

#### 15.10 Recovery from landlord payment

15.10.1 When an overpayment is recoverable from the landlord and payment is not made by the invoice due date, the debt can be deducted from the landlord's next HB payment.

15.10.2 The landlord cannot seek to recoup these monies from any tenant other than the one whose tenancy the overpayment arose under. The rent liability in respect of all other tenants covered by the HB payment is discharged to the full amount of their HB.

#### 15.11 Recovery using a direct earnings attachment (DEA)

15.11.1 The Welfare Reform Act 2012 supported by the Social Security (Overpayments and Recovery) Regulations 2013 introduced Direct Earnings Attachments (DEAs) from April 2013. A DEA allows for recovery of overpaid benefit directly from a debtor's earnings without having to apply

via the court system. The Regulations also allow Councils to recover overpayments of Housing Benefit using a DEA.<sup>9</sup>

#### 15.12 Recovery by Diligence

15.12.1 Where Customer Services have been unable to recover the overpayment, the debt may be referred to debt collection agents for further action.

15.12.2 Before pursuing recovery via the courts, the Council should:

- (i) allow the appeal rights' period to expire (at least one month), and
- (ii) allow any outstanding appeal to be fully determined

15.12.3 Good practice would be to issue at least two letters requesting repayment. The Council should consider an interview and the cost effectiveness of a home visit.

15.12.4 Further good practice is to ensure that procedures are in place to check that the claimant is receiving all the HB and any other benefits that they may be entitled to (with the aim of reducing the overpayment or recovering the overpayment from their benefit entitlement).

15.12.5 Legal proceedings should only be considered after attempts to achieve recovery by other means have failed and there is good reason to believe the debtor can afford to make repayments.

## 16. SEQUESTRATION

16.1 There are two methods of sequestrating a debtor; by debtor application to the Accountant in Bankruptcy or by petition to the Sheriff Court.

16.2 A petition for the sequestration of a debtor may be brought (amongst others) by one or more qualified creditors. The sequestration is administered by a trustee, who could be the Accountant in Bankruptcy or an insolvency practitioner.

16.3 In cases where the amount owed to the Council is £3000 or greater, Scottish Borders Council can apply by petition to the Sheriff Court to have the debtor sequestrated. Sequestration involves the transfer of the debtor's assets and property to the trustee for the benefit of the creditors. The trustee has a duty to sell the assets/property. The trustee may also seek a voluntary contribution from the debtor's income, if in regular employment.

16.4 If a debtor applies for their own sequestration, they will normally be discharged one year after the date the order was awarded. If a creditor petitioned for the sequestration, discharge will be one year after the date that the court issued the warrant citing the debtor to appear at a hearing. If a debtor does not co-operate with the trustee, the trustee can ask the sheriff to delay the discharge by up to two years at a time.

16.5 Like bankruptcy, discharge from sequestration will release the debtor from all debts that pre-dated the date of sequestration. However there are exceptions, such as debts arising from fraud (Fraudulent overpayments), certain crimes and fines, and debts incurred after the date of sequestration (overpayment decisions that were made after the date of sequestration). These exceptions can continue to be recovered after discharge and any recovery methods can be utilised.

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<sup>9</sup> *Social Security (Overpayments & Recovery) Regulations 2013 Part 6*  
SSAA 71ZD  
HB Regs 2016 Para 106A, HB (SPC) Regs Para 87

16.6 Overpayments that were decided prior to sequestration can only be recovered during the period of insolvency, by making deductions from ongoing HB or prescribed benefits and only up to the date of discharge. Any amounts outstanding must be written off on discharge (excluding Fraudulent overpayments)

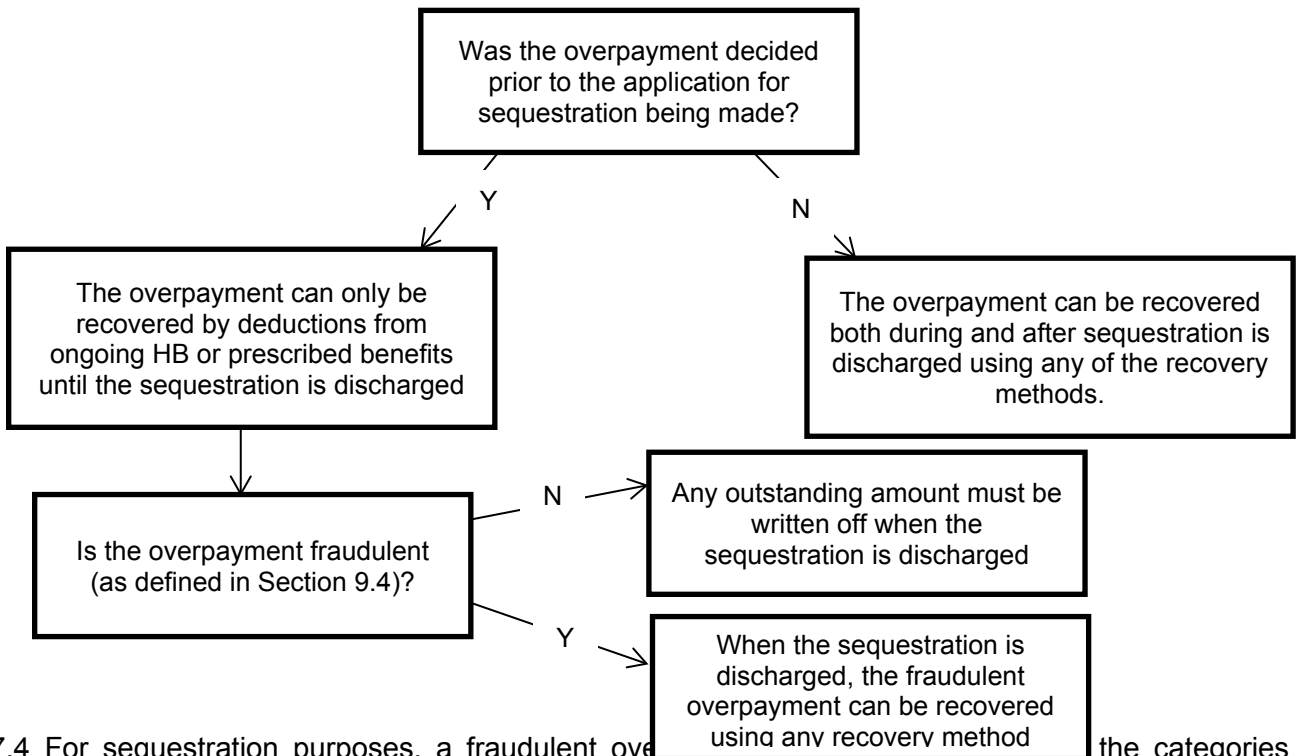
16.7 Recovery when a debtor has been sequestrated

16.7.1 It should be noted (per Section 75 of the Social Security Administration Act 1992):

“As Housing Benefit is always recoverable from prescribed benefits, and benefits cannot be transferred to new ownership, the power to recover from such benefits is outside the laws of insolvency. As a result of this, a Local Authority may recover the overpayment by making deductions from any ongoing Housing Benefit entitlement or certain prescribed DWP benefits”.

16.7.2 This is due to the fact a claimant is entitled to benefit net of deductions.

16.7.3 The flow chart below shows the sequestration overpayment recovery process.



16.7.4 For sequestration purposes, a fraudulent overpayment in the categories listed below falls out-with the laws of sequestration and can continue to be collected after the date of discharge. The claimant must have:

- (i) been found guilty of an offence whether under statute or otherwise;
- (ii) made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit; or
- (iii) agreed to pay a penalty under Section 115A of the Social Security Administration Act 1992 and the agreement has not been withdrawn. Administrative Penalties do not fall within the judgement, as discharge does not release the bankrupt from any liability in respect of a fine imposed for an offence.

**17. CHANGE OF ADDRESS AND “GONE AWAYS”**

- 17.1 If correspondence is returned undelivered and marked “Gone Away”, or similar, and a forwarding address is not already known, every effort is made to find a new address for the debtor.
- 17.2 The Council will make all legally allowable checks on different records, systems and tracing agents where appropriate, to trace the individual and continue to recover the debt.
- 17.3 Cases where an individual has not been traced will be prepared to consider for write off.

## **18. DEBTS NOT RECOVERED**

- 18.1 In certain circumstances, Scottish Borders Council can decide to write-off an overpayment and this will be done in line with the Scheme of Delegation. Examples include:
- (i) any instance where the Council cannot prove the debt for legal challenge purposes;
  - (ii) circumstances where an official error has resulted in an overpayment being classed as unrecoverable;
  - (iii) the customer is deceased and has left no estate with which to clear the debt;
  - (iv) the customer has gone away and the Council has been unable to trace them;
  - (v) the customer has been sequestrated; (exception to this is fraud op)
  - (vi) in certain circumstances where a deminimis level is set;
  - (vii) where it is uneconomical to pursue the debt any further;
  - (viii) other exceptional circumstances.

## **19. AUTHORISATION FOR WRITE-OFF**

- 19.1 Write offs generally fall in to three categories:

- (i) non-recoverable write offs
- (ii) discretionary write-offs
- (iii) standard write offs

### 19.2 Non recoverable write-offs

19.2.1 These overpayments are caused by an official error, LA or DWP, when the claimant could not reasonably have been expected to know that they were being overpaid. They are therefore deemed to be non recoverable by the Council.

19.2.2 In this circumstance, the Council would notify the claimant of the overpayment and the fact that they are not going to pursue its recovery.<sup>10</sup>

19.2.3 Once these overpayments are written off, they would not normally be resurrected and pursued.

### 19.3 Discretionary write-offs

19.3.1 A recoverable overpayment can be considered for write off if the Council uses its discretion and decides not to recover it. These types of write offs are called discretionary write offs.

19.3.2 Fraudulent overpayments will not be considered for a discretionary write off.

19.3.3 Scenarios for considering an overpayment for a discretionary write off will be on financial or hardship grounds. However the medical condition of the claimant or family may be relevant and should always be recorded to assist such a decision being made.

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<sup>10</sup> HB Sch 9 & (SPC) Sch 8

19.3.4 Recovery of an overpayment below specified amounts deemed not to be cost effective to recover will therefore be written off. This level will be agreed with the Service Director - Neighbourhood Services annually.

19.3.5 Discretion cannot be prescriptive and there are no rules or examples that can be given. Each case must be decided on its own merits. However the following situations may be relevant when considering discretionary write offs:

- (i) financial hardship;
- (ii) terminal illness;
- (iii) senility or learning disability;
- (iv) severe medical conditions;
- (v) health and welfare; or
- (vi) all other relevant factors.

19.3.5 In order to establish if a claimant is suffering financial hardship, an Income and Expenditure form must be completed and where necessary, an interview should take place between a representative from Customer Services and the claimant. Hardship is proven when the income, minus the debts, gives a figure of more than £10.95 below the applicable amount. This figure is annually updated and is based on the maximum that the DWP recovers from IS/JSA(IB) in non-fraud cases.

19.3.6 Priority debts include :

- (i) rent, Council Tax, utilities (e.g. gas, electric, water), any arranged weekly payment of arrears
- (ii) fines – any weekly amounts
- (iv) medical expenses

19.3.7 Other factors to be considered in such a scenario are :

- (i) the health of the claimant and members of the household;
- (ii) any savings the claimant has;
- (iii) the level of disposed income in comparison to people receiving IS;
- (iv) whether they have tried to make an arrangement for minimum repayment;
- (v) whether they have any debt priorities;
- (vi) whether a non-dependant can contribute to other household expenses;
- (vii) whether it would be feasible to postpone repayment of the debt rather than write is off or writing off part of the overpayment rather than all of it;
- (viii) whether the claimant has contacted their other creditors to reduce repayments in order to repay this debt.

Note : This list of not prescriptive or exhaustive.

19.3.8 If hardship is proven, the Council will consider the overpayment for a discretionary write off in extreme circumstances and the claimant will be notified in writing.

19.3.9 Once these types of overpayments are written off, and claimants notified of the decision, they would not normally be resurrected and pursued.

#### 19.4 Standard write offs

19.4.1 The Council within its Bad Debts Provision, hold some money back for writing off debts, where all recovery methods have been exhausted. This is because the claimant cannot be traced or



all methods of recovery have been tried and have been unsuccessful. These overpayments will only be considered for write off if there are no further methods that can be pursued.

19.4.2 Examples of such overpayments are:

- (i) a debtor who cannot be traced;
- (ii) debts which could become non-recoverable through the courts due to the Limitations Act 1980 (Scotland)<sup>11</sup>;
- (iv) debts when all action has been considered/taken and it is decided not to pursue any further;
- (v) the debt cannot be substantiated.

19.4.3 Even though an overpayment has been written off, if the claimant has not been notified of the write-off, it can be resurrected and recovered at a later date. For example if a claimant cannot be traced, the overpayment can be written off. The claimant will not be notified of the write-off as their whereabouts are not known. If they apply for HB/CTR at a later date, the overpayment can be resurrected and recovered.

19.5 Prior to any debt being recorded for write-off, the appropriate process, documentation and authorisation will be followed and recorded.

## **20. APPEALS**

20.1 The claimant can ask for a reconsideration or appeal against a decision. Should an appeal be received from the customer in respect of an overpayment calculation it will be handled firstly as a request for reconsideration.

20.2 Reconsideration is carried out by a member of Customer Services and this must be someone other than the person that calculated the original overpayment. A check will be carried out to ensure that Underlying Entitlement was offered to the claimant and that all information has been applied to the claim. If the reconsideration does not result in any change of decision the reconsideration will be passed to a higher graded officer.

20.3 Appeals must be made according to the review procedures and not to the courts. The courts will not accept a dispute regarding the fact that there is a recoverable overpayment or from whom it should be recovered. This is a matter that can only be taken up by applying for a revision or by appealing to the Council. The Council should have allowed one month for appeal rights and so disputes should have been raised before pursuing the debt in court.

20.4 If an overpayment decision notice is defective or the appeal rights have been ignored by the Council, then an application can be made to the court for them to set aside the order.

## **21. HOUSING BENEFIT OVERPAYMENT DECISION NOTICES**

21.1 Matters to be included in overpayment decision notices

21.1.1 When a decision is made that the overpayment is recoverable, a decision notice must be issued to any person the overpayment is legally recoverable from, even if we decide to recover the overpayment from someone else.

### Example

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<sup>11</sup> Must notify the claimant within 6 years of the overpayment being created

If the Council decides to recover from the landlord, but both the landlord and the claimant have misrepresented or failed to disclose information, an identical decision notice must be issued to both the claimant and the landlord.<sup>12</sup>

21.1.3 The Council must send the decision notices :

- (i) within 14 days of the decision being made; or
- (ii) as soon as reasonably practical thereafter.<sup>13</sup>

21.1.4 A decision notice should provide the person it is issued to with enough :

- (i) detail to check the factual basis of the Council's decision; and
- (ii) information to decide if they want to request a reconsideration/appeal of the overpayment decision, for example, it is not sufficient to just say there has been an overpayment because of a change in the claimant's circumstances.

21.1.5 The decision notice(s) should be issued to all affected parties who the Council could legally recover the HB overpayment from. This could be:

- (i) the claimant;
- (ii) a person acting on behalf of the claimant, e.g. an appointee; or
- (iii) any person to whom the overpayment was paid, e.g. the landlord/agent who received direct payment of HB.

21.1.6 HB Reg 101(2)/(SPC) 82 (2) was amended in April 2006 to state that an overpayment caused by a misrepresentation or failure to provide information is recoverable from the person or persons who actually misrepresented or failed to disclose that information. In cases where the HB is paid direct to the landlord, the Council would only need to issue a decision notice to the landlord if they had misrepresented or failed to disclose information.

21.1.7 If the overpayment was caused by an official error, the overpayment is recoverable from the person/persons who could reasonably have been expected to realise they were being overpaid. In cases when the HB is paid direct to the landlord, this could be the claimant, landlord or both.

21.1.8 A decision notice should only be issued to the person/persons who could reasonably have been expected to realise they were being overpaid, for example, a landlord

21.1.9 If the overpayment was not caused by a misrepresentation, failure to disclose information or an official error, and the HB is paid direct to the landlord, the overpayment is recoverable from the claimant and the landlord. A decision notice should be issued to both the claimant and the landlord.<sup>14</sup>

## 21.2 Information that must be on the overpayment decision notice

21.2.1 The following information is the minimum that should be included in a decision notice<sup>15</sup> :

- (i) that there is a recoverable overpayment;
- (ii) the reason there is a recoverable overpayment. (It is not sufficient to just say there has been a change of circumstances);
- (iii) the period of the overpayment;

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<sup>12</sup> HB Sch 9 & (SPC) Sch 8

<sup>13</sup> HB Reg 90 & (SPC) 71

<sup>14</sup> HB Reg 101(2) & (SPC) Sch 8

<sup>15</sup> HB Reg Sch 9 & (SPC) Sch 8

- (iv) the amount of the recoverable overpayment and how the amount was calculated;
- (v) who the overpayment is legally recoverable from and why;
- (vi) who the Council has decided to recover the overpayment from and why;
- (vii) the method of recovery, for example, ongoing HB payments, and the amount of the deduction;
- (viii) the person's right to request written statement setting out the Council's reasons for its decision on any matter stated in the decision notice and the manner and timescale in which to do so;
- (ix) the person's right to apply for a reconsideration of the decision or appeal against it and the manner and time in which to do so; and
- (x) anything else that the Council thinks is appropriate, for example, matters relating to the person's health and financial circumstances.

21.2.2 The Council is also expected to include an invitation to make either a full repayment of the debt or negotiate some other arrangement within one month from when the decision notice was issued. This actually equates to one month and a day, for example if it is issued on the 28 March, they have until 28 April to respond.

## **22. HOUSING BENEFIT (DECISION AND APPEALS) REGULATIONS 2001**

- 22.1 A person from whom the overpayment is recoverable has a right of appeal against the HB overpayment decision.
- 22.2 Overpayment decision notices must be issued to all parties the overpayment is legally recoverable from (even if you have decided to recover from someone else). This could be:
- (i) the claimant;
  - (ii) in the case of a person who is unable, for the time being, to act :
    - a Court Appointed Deputy, these are appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on their behalf;
    - in Scotland, a tutor, curator or other guardian acting or appointed in terms of law administering that person's estate;
    - an attorney with general power, or power to receive benefit appointed by the person liable to make those payments under the Power of Attorney Act 1971 or Enduring Power of Attorney Act 1985 or Mental Capacity Act 2005;
  - (iii) a person appointed by the Council to act for the claimant; or
  - (iv) a person from whom the Council determines that an overpayment is recoverable from the landlord or agent, when a decision has been made by the Council under regulation 95 or 96 or [(SPC) 76 or 77] of the Housing Benefit Regulations.

## **23. THE DISPUTE PROCESS<sup>16</sup>**

- 23.1 If a 'person affected' disagrees with a decision they may query it or ask for a written statement of reasons. Before offering an explanation or issuing a written statement of reasons, it is good practice for the Council to check that the decision is correct. If the 'person affected' still does not accept the decision, they have one calendar month in which to dispute it. The dispute period starts on the day following the date of the decision notice. This period can be extended in specified circumstances, including when a written statement of reasons has been requested. During this time the 'person affected' may ask for the decision to be reconsidered or appeal against it immediately.
- 23.2 The process of looking again at a decision is known as 'reconsideration'. To make sure that the decision is correct the original decision maker will look again at the evidence, including any evidence that may be

<sup>16</sup> For the remainder of this section, 'person affected' refers to anyone who could appeal the overpayment decision.

offered by the 'person affected' at the explanation stage, and also the facts and law. A different officer to the person who made the original decision will carry out the reconsideration.

- 23.3 If, following reconsideration, the original decision is not revised, and the 'person affected' does not appeal the original decision, the Council should notify them of the decision not to revise. They then have a further month (from the date the decision not to revise is issued) in which to appeal. If they have already appealed, the Council should tell them that the decision has been reconsidered, but not revised and that the appeal will proceed.
- 23.4 If the decision is revised to the claimant's advantage or disadvantage, the Council will notify the 'person affected' of the revised decision. Everyone who the overpayment is legally recoverable from should also receive a revised decision. The new decision carries fresh appeal rights and the 'person affected' has a further month to appeal.
- 23.5 If a 'person affected' appeals on receipt of a decision it is good practice to carry out a reconsideration. However, some decisions, mainly administrative ones, do not carry a right of appeal, such as the ones listed earlier in this section (section 23.3). The legal right of the 'person affected' to appeal to an independent and impartial tribunal is one of the fundamental elements of the Decision Making and Appeals process. It is for this reason that if the 'person affected' appeals immediately on receipt of a decision, and the Council is unable to revise the decision to their advantage, the appeal together with a submission from the Council setting out the facts of the case and the reasons for their decision, should be sent to the Tribunal Service Scotland (TSS).
- 23.6 A copy must also be sent to the "person affected" and their representative.
- 23.7 The TSS must hold an oral hearing, before making a decision on the appeal unless each party to the appeal has consented to or not objected to the matter being decided without a hearing and the TSS considers it can decide the appeal without a hearing.
- 23.8 If there is an oral hearing, then the Council may decide to send a Presenting Officer to represent them. Following the hearing, the tribunal's decision is notified to the 'person affected' and the Council. If the Council or the 'person affected' feels that the decision of the TSS is erroneous in law, then there is the option to seek leave to appeal to the Upper Tribunal. It is important to note that TSS/ Upper Tribunal rules are statutory and have the same statutory regulations. They are not guidance.
- 23.9 The dispute process cannot exceed 13 months.

## **24. WHAT OVERPAYMENT DECISIONS CAN BE APPEALED AGAINST**

- 24.1 A person who has received an overpayment decision notice has a right of appeal to a First Tier Tribunal against some relevant decisions (whether as originally made or as revised or superseded) that the Council makes on a claim, or on an award of HB.
- 24.2 Examples of overpayment decisions that have a right of appeal are:
- (i) whether the overpayment is in fact a recoverable overpayment, for example, if the Council has decided that an official error overpayment is recoverable because the claimant, a person acting on their behalf or any other person to whom the payment is made, contributed to the mistake, act or omission;
  - (ii) the decision to recover an overpayment caused by a misrepresentation or failure to disclose information, if the person chosen to repay the overpayment does not feel they have misrepresented or failed to disclose information;

- (iii) the decision to recover an official error overpayment, if the person chosen to repay the overpayment, does not feel they could reasonably have been expected to realise they were being overpaid;
- (v) the calculation of the overpayment;
- (vi) the period of the overpayment;
- (vii) the calculation of diminution of capital; or
- (viii) the calculation of underlying entitlement.

24.3 Examples of overpayment decisions that do not have a right of appeal are:

- (i) who the Council has decided to recover the overpayment from, if it is legally recoverable from more than one person;
- (ii) whether the overpayment should be recovered;
- (iii) the recovery rate (although a 'person affected' may ask you to look at this due to hardship); or
- (vi) the method of recovery.

## **25. APPEALS AND RECOVERY**

25.1 There is no legislative requirement to halt overpayment recovery if an appeal is lodged but it is considered good practice to do so. Recovery action will be suppressed in respect of any overpayment that is appealed until a decision is made, as soon as it is practicable after receipt.

## **26. TIME LIMITS FOR RECOVERING OVERPAYMENTS**

26.1 Any obligation to repay overpaid HB is extinguished (and therefore must be written off) 20 years after the date the overpayment decision was made by the Council, as per The Prescription and Limitation (Scotland) Act 1973 (s7), if:

26.1.1 there has been no 'relevant claim' made against the debt (for example, the Council has not brought any action in the courts to recover the overpaid benefit, such as pursuing a method of diligence or initiating/claiming in sequestration proceedings),

26.1.2 there has been no acknowledgment of the debt (for example, the Council has not received part payment of the debt or a written admission of the debt from the debtor. Part payment of the debt could include a deduction taken from benefits payable to the debtor)

26.2 If a decision is made to pursue through the Court, this must be brought within five years, although if there is a later acknowledgement by the debtor of that debt, in whatever form, the time limit starts again,

26.3 The 20 year time limit starts again, as per The Prescription and Limitation (Scotland) Act 1973 (s7), when :

26.3.1 the Council brings action in the courts to recover the overpaid benefit (e.g. pursuing any method of diligence or initiating/claiming in sequestration proceedings), or

26.3.2 the debtor acknowledges the debt (e.g. makes a part payment of the debt, such as a deduction from benefits, or a written admission of the debt).

26.4 The Prescription and Limitation (Scotland) Act 1973 is different to The Limitation Act 1980 (which applies in England and Wales), as The Limitation Act just limits the period within which court action can be taken. Section 7 of The Prescription and Limitation (Scotland) Act 1973 (extinction of obligations by prescriptive periods of twenty years) applies the 20 year period to obligations to repay debts, including repaying overpaid benefits under sections 75 and 76 of the Social Security Administration Act 1992.



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## **ADDITIONAL FUNDING FROM SUSTRANS**

**Report by Service Director Regulatory Services**

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### **EXECUTIVE COMMITTEE**

**21 March 2017**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 **This report provides details on additional funding from Sustrans for cycling and walking related projects in the Scottish Borders.**
- 1.2 Sustrans has allocated £140k in additional spend for cycling and walking related projects for the Scottish Borders area which will be allocated into the current financial year and the 2017/18 financial year.
- 1.3 There are seven projects throughout the Scottish Borders that will benefit from this allocation:
- Path construction - Duns High School – Match Funded;
  - Feasibility Work - Hawick Flood Defence Scheme – Match Funded;
  - Detailed Design – Kelso – Sprouston – Fully Funded;
  - Detailed Design – Kelso – Roxburgh – Fully Funded;
  - Detailed Design - Earlston – Leaderfoot – Fully Funded;
  - Detailed Design – Peebles – Eddleston – Fully Funded; and
  - Path Construction – Lauder – Fully Funded.

#### **2 RECOMMENDATIONS**

- 2.1 **It is recommended that the Executive Committee:**
- (a) **Notes the additional funding of £140k allocated to Scottish Borders Council from Sustrans for cycling and walking related projects.**
  - (b) **Agrees the spending allocations as detailed in Table 4.1**
  - (c) **Approves virement in 2016/17 and 2017/18 as detailed in Table 4.1.**

### 3 BACKGROUND

- 3.1 The Sustainable Transport Charity Sustrans are one of Scottish Borders Council's key funding partners in relation to cycling and walking related projects.
- 3.2 Sustrans is very supportive of the work we are undertaking throughout the Scottish Borders and has made a significant contribution to a number of projects throughout the Scottish Borders over a number of years.

### 4 PROPOSED FUNDING

- 4.1 Sustrans has allocated Scottish Borders Council £140k to be spent on a total of seven projects throughout our area. An element of this financial allocation will be delivered within the current financial year and the majority of the allocation will be delivered within 2017/18.
- 4.2 Five projects have been provided with a full financial allocation to undertake the required works and two of the projects require match funding.
- 4.3 Match funding is allocated to the value of £15k from within the Cycling, Walking, Safer Streets budget to allow works to the value of £30k and match funding is allocated to the value of £5k from within the Hawick Flood Prevention Scheme budgets to allow works to the value of £10k. These works will be undertaken within 2016/17.
- 4.4 Table 4.1 provided below provides details of the proposed projects and an indication of the proposed spend allocation.

Project	Allocation	Spend 2016/17	Spend 2017/18
	£,000	£,000	£,000
Duns High School Link - Path Construction	15 (Match Funded)	15	
Hawick Flood Defence Scheme - Feasibility	5 (Match Funded)	5	
Kelso - Sprouston - Detailed Design	10 (Full allocation)	2	8
Kelso - Roxburgh - Detailed Design	10 (Full allocation)	2	8
Earlston - Leaderfoot - Detailed Design	30 (Full allocation)		30
Peebles - Eddleston - Detailed Design	40 (Full allocation)	5	35
Lauder - Path Construction	30 (Full allocation)	30	
<b>Total</b>	<b>140</b>	<b>59</b>	<b>81</b>

**Table 4.1 – Spend Allocation for Sustrans Projects**

### 5 IMPLICATIONS

#### 5.1 Financial

Approves an increase in the budget allocation to Cycling, Walking, Safer Streets of £59k in 2016/17 and £81k in 2017/18, fully funded by Sustrans.

#### 5.2 Risk and Mitigations

There are no specific risks associated with this funding allocation.



5.3 **Equalities**

There are no Equalities or Diversity issues associated with this report.

5.4 **Acting Sustainably**

The development of more walking and cycling routes will be beneficial for sustainability.

5.5 **Carbon Management**

The development of more walking and cycling routes will help to reduce carbon emissions.

5.6 **Rural Proofing**

This report will help to promote the rural environment.

5.7 **Changes to Scheme of Administration or Scheme of Delegation**

No changes to the Scheme of Administration or Delegation are required as a result of this report.

**6 CONSULTATION**

- 6.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR, and the Clerk to the Council have been consulted on this report and their comments incorporated.

**Approved by**

**Service Director Regulatory Services      Signature.....**

**Author(s)**

Name	Designation and Contact Number
Graeme Johnstone	Lead Officer for Access and Transport, 01835 825138

**Background Papers:** None

**Previous Minute Reference:**

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Corporate Management Support can also give information on other language translations as well as providing additional copies.

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**ANNUAL REPORT ON THE SOCIAL WORK STATUTORY COMPLAINTS PROCEDURES FROM 1 JANUARY 2016 TO 31 DECEMBER 2016; and NEW SOCIAL WORK COMPLAINTS HANDLING PROCESS**

**Report by Chief Social Work Officer and Service Director  
Neighbourhood Services**

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**EXECUTIVE COMMITTEE**

**21 March 2017**

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**1 PURPOSE AND SUMMARY**

- 1.1 This report provides information on the number and types of complaints received by Social Work from 1 January 2016 to 31 December 2016, summarising the changes arising from 113 complaints, and improvement actions.**
- 1.2 This report also outlines the new statutory social work complaints provisions introduced by the Scottish Public Services Ombudsman (SPSO) and seeks approval of the revised Social Work complaints handling procedure (SW CHP).

**2 RECOMMENDATIONS**

**2.1 I recommend that the Committee approves**

- (a) the annual report information on Social Work Statutory Complaints procedures from 1 January 2016 to 31 December 2016**
- (b) the Social Work Model Complaint Handling Procedure (SW CHP), as detailed in Appendix 1, for all complaints relating to Social Work services whether they are delivered through Scottish Borders Council, ALEOs or the Health and Social Care Partnership from 1 April 2017**
- (c) the changes to the Council's customer facing complaint handling procedure and the standard complaint handling procedure as detailed in Appendix 2 from 1 April 2017**
- (d) disbanding the Social Work Complaint Review Committee once all social work care complaints raised before the 1 April 2017 have been completed.**

### 3 BACKGROUND

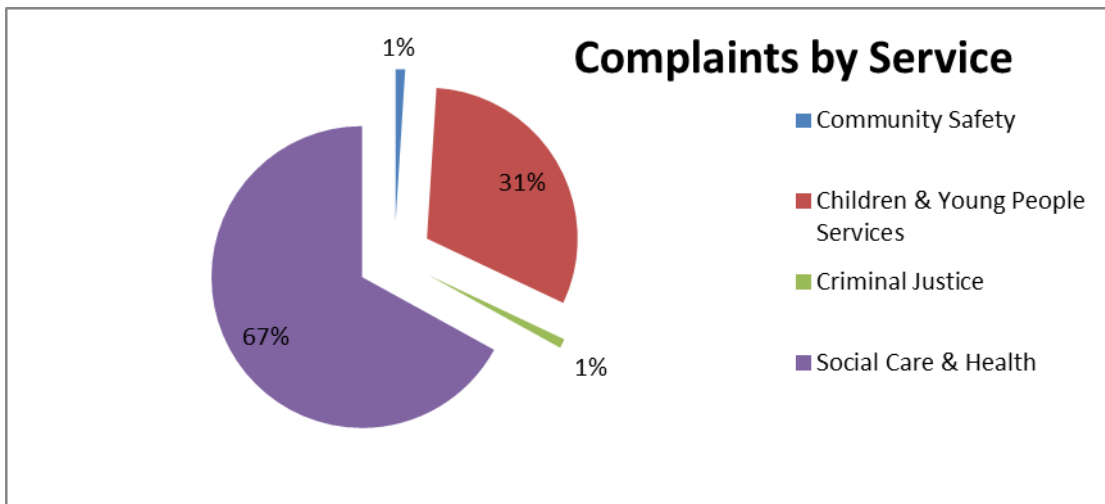
- 3.1 The Social Work Complaints annual report concentrates on those complaints processed under the National Health Service and Community Care Act 1990. This requires local authorities to have procedures for considering complaints that are made with respect to their Social Work functions. The statutory Social Work complaints procedure is a legal entitlement, restricted to service users, their representatives and those refused a service to which they have a statutory entitlement.
- 3.2 The Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016 (the Order) brought Social Work complaint handling into line with other local authority complaint handling by bringing it under the remit of the Public Services Reform (Scotland) Act 2010. Accordingly, future operation, monitoring and annual reporting of Social Work complaints will be done as part of a wider SBC approach to complaints across all services.

### 4 SOCIAL WORK COMPLAINTS ANNUAL REPORT

- 4.1 Many complaints are resolved quickly and informally at the point of service delivery by staff and managers. When complainants wish their complaint dealt with on a formal basis an Investigating Officer is appointed who reports their findings to the appropriate member of Senior Management. A response is then sent from the Senior Manager to the complainant. Where the service has fallen below standard, apologies are given with an outline of what the Department is proposing in order to improve practice and the service provided.
- 4.2 In line with its current statutory requirements, the Council operates a 3 stage social work complaints procedure:
- Stage 1 – Complaint dealt with directly at the point of service  
Stage 2 – Complaint requires formal investigation and response  
Stage 3 – Complaint Review Committee (CRC)
- 4.3 113 Complaints were received between 1 January 2016 and 31 December 2016, an increase of 22.82% from the previous year. The outcome of all complaints received is shown in the table below.

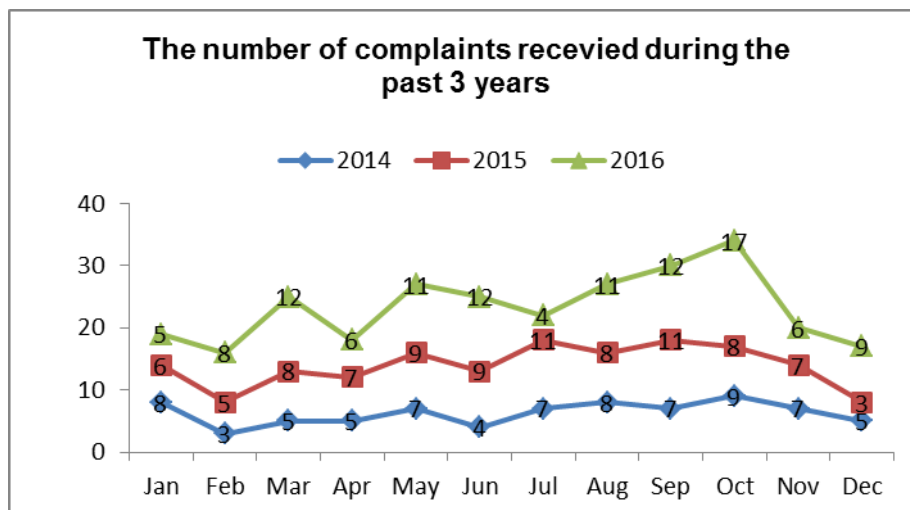
<b>Outcome of Complaints 2016</b>	<b>No. of Complaints</b>	<b>% of Complaints</b>
Not Upheld	36	33
Upheld	25	22
Partially upheld	25	22
Complaint withdrawn	9	8
Invalid	13	11
Complaint refusal to engage	4	3
Ongoing	1	1
<b>Totals</b>	<b>113</b>	<b>100</b>

4.4 The breakdown of complaints by service is shown below



4.5 There were a number of issues highlighted during this year and these are as follows

- A number of complaints highlighted delays in people being assessed and delays in being allocated a care manager
- There has also been a big increase in the number of complaints being submitted by relatives/friends of people known to Social Services without the individual's consent. These complaints are forwarded to relevant staff for their attention and subsequent action.
- The number of complaints has increased steadily each year, partly because people are aware of the complaints process and people's expectations of the department and having to wait to be assessed for a service.



- 4.6 The number of complaints received each month for the past 3 years are shown in the table below

<b>Month</b>	<b>Year</b>		
	<b>2014</b>	<b>2015</b>	<b>2016</b>
January	8	6	5
February	3	5	8
March	5	8	12
April	5	7	6
May	7	9	11
June	4	9	12
July	7	11	4
August	8	8	11
Sept	7	11	12
October	9	8	17
November	7	7	6
December	5	3	9
<b>Total</b>	<b>75</b>	<b>92</b>	<b>113</b>

- 4.7 Statutory timescales were met in all cases regarding the acknowledgement of complaints; indeed most were acknowledged on the day of receipt. Like most other Local Authorities in Scotland it has been a challenge to respond to most complainants within the expected timescale of 28 days.

- 4.8 The number of complaints acknowledged on time, within 2 working days, and answered on time within 20 working days are shown in the table below.

<b>2016</b>	<b>Q1 Jan-Mar</b>	<b>Q2 Apr-Jun</b>	<b>Q3 Jul- Sep</b>	<b>Q4 Oct- Dec</b>	<b>Annual Total</b>
<b>Complaints received</b>	25	29	27	32	113
<b>Complaints acknowledged within 2 working days</b>	25 (100%)	29 (100%)	27 (100%)	32 (100%)	113 (100%)
<b>Complaints completed within 20 working days</b>	14 (56%)	22 (76%)	10 (37%)	21 (66%)	67 (59%)

4.9 108 Complaints were investigated and the nature of the complaints is shown below:

	<b>Total</b>	<b>Upheld</b>	<b>Partially Upheld</b>	<b>Not Upheld</b>	<b>Invalid</b>	<b>With drawn</b>
<b>Actions of staff</b>	38	6	3	19	6	4
<b>Attitude of staff</b>	5		3	2		
<b>Contracted Services</b>	1					1
<b>Communication /quality of information provided</b>	5	2		1	1	1
<b>Decision Making</b>	6	1		3	1	1
<b>Delay in service delivery</b>	11	4	3	2	1	1
<b>Difficulty in accessing service</b>	8	2	1	3	2	
<b>Financial</b>	8	1	4	1	1	1
<b>Provision of service</b>	21	7	10	3	1	
<b>Quality of service</b>	1	1				
<b>Refusal of service</b>	4	1	1	2		
<b>Totals</b>	<b>108</b>	<b>25</b>	<b>25</b>	<b>36</b>	<b>13</b>	<b>9</b>

4.10 Examples of some of the complaints investigated under stage 2 are as follows:

- Difficulty in accessing service
- Provision of service
- Delay in service
- Actions of professional
- Disagree with financial assessment
- Delays in decision making

4.11 One of the strengths of the system is that all responses to formal complaints are signed by the Director or senior managers who have the authority to ensure that any lessons to be learned are taken on board and implemented to improve the service. Examples implemented in 2016 include:

- (i) Review the use of the duty and case work system to provide timely support when required
- (ii) That the process for dealing with reports of equipment failure will be fully reviewed to ensure improved response, management and allocation of resources
- (iii) The department is also currently reviewing training needs for the whole of Social Work and are ensuring all staff working within the mental health service are up to date with the necessary training to enable them to provide the best support to their clients.
- (iv) That people are contacted before any adjustments are made to any contributions paid to the Council via a direct debit

4.12 Improvements identified for 2017 arising from complaints-based intelligence include:

- implement the complaint process in regard to the integration of Social Care and Health;
- review the Council website in regard to Social Work complaints;
- review the process for complex complaints for Social Work to ensure timescales are met; and
- align processes and resources for Social Work complaints with those for other complaints across SBC.

4.13 Of the 113 complaints received, 27 were received by telephone, 44 by letter, 30 by email, 6 by postcard, and 6 complaints came from a third party.

4.14 During this past year a number of complainants have been supported in making their complaint and this was provided by Borders Carer Centre, MSP's, MP's, lawyers and Borders Independent Advocacy Service (BIAS).

4.15 SBC monitors to ensure that there are no barriers to the complaints process by virtue of ethnicity. Of the 113 complaints that were received 3 were anonymous, 36 were received from White Scottish Males, 58 from White Scottish Females, 5 from White English Males, and 11 from white English Females.

4.16 Letters are also received from clients/families thanking staff employed by the department for the services they received. These letters praise the staff for the commitment they showed and the professional way they carried out their duties, in particular their kindness to the people being cared for.

4.17 There was one meeting of the Complaints Review Committee, requested, and the outcome was that the complaint was not upheld.

4.18 During the last year one complainant contacted the Ombudsman; no further action was taken by the Ombudsman.

4.19 A sample of people who made a complaint during 1 January 2016 to 31 December 2016, were contacted for their views about how their complaint was handled and to ask if they were happy with the outcome of their complaint. This has enabled complaints handling to be continuously improved.

4.20 The results of complaints investigations, including any actions taken are made available to the public by way of this report. This is displayed in Social Work offices and is available on the Internet on the Council's website.

## **5 SOCIAL WORK MODEL COMPLAINT HANDLING PROCEDURE**

5.1 The Public Services Reform (Scotland) Act 2010 (the Act) gave the Scottish Public Services Ombudsman (SPSO) the authority to lead the development of a standardised Complaints Handling Procedure (CHP) for the public sector. The Act also places a duty on specified authorities to comply with the relevant CHP.



- 5.2 In 2011 the SPSO published their Model Complaints Handling Procedure which Scottish Borders Council (SBC) agreed to adopt in its entirety as their standard CHP in November 2012. The procedure applied to all complaints with the exception of Social Work care complaints.
- 5.3 The Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016 (the Order) brought Social Work complaint handling into line with other local authority complaint handling by bringing it under the remit the Act.
- 5.4 On 16 December 2016 - following a period of consultation - the SPSO published 'The Social Work Model Complaints Handling Procedure' together with associated guidance for implementation. This will provide a standard approach to handling customer complaints about Social Work services across Scotland, whether provided by local authorities, ALEOs or by health and social care partnerships.
- 5.5 Adoption and implementation of the standardised SW Model CHP is required from 1 April 2017 and will coincide with the implementation of a new National Health Service Model CHP bringing both social work and National Health Service (NHS) services into line with the existing local authority standard CHP. A new SBC SW Model CHP is attached at Appendix 1. It follows in its entirety the SPSO SW Model CHP.
- 5.6 From 2017/18 the requirement will be to assess social work complaint handling performance against the SPSO complaints performance indicators. Reporting will be in line with current governance arrangements.
- 5.7 There is no requirement for a new customer facing CHP for Social Work services. This is because the only differences between the standard Local Authority Model CHP and the NHS/SW Model CHPs are within the sections providing staff guidance, particularly in relation to information on extensions to timescales and specific guidance on issues which are more likely to arise with Social Work complaints.
- 5.8 Although there is no requirement for a new customer facing CHP, SBC will need to update their current customer facing CHP to remove all reference to a separate SW complaints process and to update contact details for the Care Inspectorate, the SPSO, the Scottish Independent Advocacy Alliance and for Customer Services.
- 5.9 The SW Model CHP is designed to:
- make it easier for service users to complain;
  - give staff and customers confidence in complaint handling;
  - encourage the organisation to identify lessons and learn from complaints.
- 5.10 The SW Model CHP removes the complexity from the existing SW complaints process providing an easy to understand and much quicker process.

- 5.11 The differences between the existing SW complaints process and the new SW Model CHP are as follows:
- a) Moving from a 3 or 4 stage process to a 2 stage process
  - b) At Stage 1:
    - no acknowledgement is required
    - the response time changes from 28 working days to 5 working days
    - where there was no provision for a timescale extension, there will now be an extension of up to 10 working days
  - c) At Stage 2:
    - the acknowledgement will be required within 3 working days rather than 5 working days
    - the response time changes from 28 working days to 20 working days
    - a timescale extension in exceptional circumstances will be available of up to 20 working days, whereas previously there was no limit to the extension, it was granted on agreement with the customer
- 5.12 This change benefits the customer as the response time at this stage, even including the 10 working day extension period reduces from 28 working days to 15 working days.
- 5.13 The differences between the new SW Model CHP and the local authority model CHP are:
- a) At Stage 1:
    - the timescale extension for the local authority model CHP is up to 5 working days, whereas the SW model CHP has an extension of up to 10 working days
  - b) At Stage 2:
    - the timescale extension for the local authority model CHP is up to 5 working days, whereas the SW model CHP has an extension of up to 10 working days
- 5.14 The reason for the difference in extension timescale is to take account of the complexity of Social Work complaints
- 5.15 Any organisation commissioned by SBC to provide social care on the Council's behalf must meet the requirements of the SW Model CHP. Work is underway to ensure that commissioned providers have a procedure in place that complies with the SW Model CHP and that mechanisms are in place to identify and act on any complaint handling performance issues that may arise.
- 5.16 Complaints that were received but not completed prior to 1 April 2017 will be concluded under the current SW CHP.
- 5.17 These new arrangements will allow for all complaints procedures across SBC and the deployment of related resources to be more consistent and efficient. Internal Audit have been asked to assist this process with a short review, which will lead to improvements over the coming year. This will be reported back to elected members as part of future corporate complaints updates.

## **6 IMPLICATIONS**

### **6.1 Financial**

There are no costs attached to the recommendation contained in this report although it is hoped that streamlined processes may contribute to a reduction in back office costs.

### **6.2 Risk and Mitigations**

Failure to provide a report would be contrary to guidance issued by the Scottish Office in 1996. (SWSG 5/1996)

If Scottish Borders Council does not implement the SW Model CHP there is a risk of reputational damage if the SPSO were to lay a disparaging report before the Scottish Parliament.

### **6.3 Equalities**

An Equalities Impact Assessment has been carried out on this proposal and it is considered that there are no adverse equality implications.

Information recorded for complaints is regularly monitored to consider whether groups with protected characteristics are under represented in communications/ access to social work services.

### **6.4 Acting Sustainably**

It is considered that there will be no economic, social or environmental effects caused by implementing this procedure.

### **6.5 Carbon Management**

It is considered that there are no effects on the Council's carbon emissions arising from the report recommendation.

### **6.6 Rural Proofing**

There is no requirement for any action.

### **6.7 Changes to Scheme of Administration or Scheme of Delegation**

The Scheme of Administration will need to be amended to remove the Social work Complaints Review Sub Committee once all complaints outstanding at 1<sup>st</sup> April 2017 are completed.

## 7 CONSULTATION

- 7.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council are being consulted and any comments received will be incorporated into the final report:
- 7.2 The Depute Chief Executive People, the Chief Social Work Officer, the Customer Services Manager, the Senior Manager Business Strategy and Resources, the Business Support Officer - Chief Executives and the Senior Policy Planning and Performance Officer are also being consulted.

### Approved by

**Elaine Torrance**  
**Chief Social Work Officer**

**Signature .....**

**Jenni Craig**  
**Service Director**  
**Neighbourhood Services**

**Signature .....**

### Author(s)

Name	Designation and Contact Number
Sylvia Mendham	Senior Business Services Officer Tel; 01835 825080
Carole Douglas	Development Officer, Customer Services Ext 8880

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Carole Douglas can also give information on other language translations as well as providing additional copies.

Contact Carole Douglas, Scottish Borders Council Headquarters, Newtown St Boswells, Melrose, Tel 01835 82400 Ext 8880, [cdouglas1@scotborders.gcsx.gov.uk](mailto:cdouglas1@scotborders.gcsx.gov.uk)



# **The Social Work Model Complaints Handling Procedure**



## **The Social Work Complaints Handling Procedure**

### **Foreword**

By Tracey Logan, Scottish Borders Council Chief Executive

Scottish Borders Council values feedback from customers. A robust complaints handling procedure is an essential component of how we engage with customers and seek to address their concerns. Our complaints handling procedure seeks to resolve customer dissatisfaction as close as possible to the point of service delivery and to conduct thorough, impartial and fair investigations of customer complaints so that, where appropriate, we can make evidence-based decisions on the facts of the case.

The procedure has been developed by social work experts and third sector organisations working closely with the Scottish Public Services Ombudsman (SPSO). This procedure has been developed specifically for our social work services so that staff have all the information they need to handle social work complaints effectively. The procedural elements tie in very closely with those of the Local Authority and National Health Service complaints handling procedures, therefore, where complaints cut across services, they can still be handled in much the same way as other complaints.

As far as is possible, we have produced a standard approach to handling complaints across local government and the NHS, which complies with the SPSO's guidance on a model complaints handling procedure. This procedure aims to help us 'get it right first time'. We want quicker, simpler and more streamlined complaints handling with local, early resolution by capable, well-trained staff.

Good complaints handling includes providing joint responses to complaints whenever they relate to more than one service. This procedure gives our staff information and guidance on how and when to do this, to ensure that our customers get a comprehensive response to their complaints whenever this is possible.

Complaints give us valuable information we can use to improve service provision and customer satisfaction. Our complaints handling procedure will enable us to address a customer's dissatisfaction and may help us prevent the same problem from happening

again. For our staff, complaints provide a first-hand account of the customers' views and experience and can highlight problems we may otherwise miss. Handled well, complaints can give our customers a form of redress when things go wrong, and can also help us continuously improve our services.

Resolving complaints early creates better customer relations. Handling complaints close to the point of service delivery means we can resolve them locally and quickly, so they are less likely to escalate to the next stage of the procedure. Complaints that we do not resolve swiftly can greatly add to our workload and are more costly to administer.

The complaints handling procedure will help us do our job better, improve relationships with our customers and enhance public perception of Scottish Borders Council. It will help us keep the user at the heart of the process, while enabling us to better understand how to improve our services by learning from complaints.



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## **How to use this Model Complaints Handling Procedure**

This document explains to staff how to handle complaints. A separate document provides information for customers on the complaints procedure. Together, these form our social work complaints handling procedure (CHP).

It is designed to be an internal document for council to adopt. It contains references and links to more details on parts of the procedure, such as how to record complaints, and the criteria for signing off and agreeing time extensions. These explain how to process, manage and reach decisions on different types of complaint. The language used reflects its status as an internal document. So 'we' refers to Scottish Borders Council, not the SPSO.

When using this document, please also refer to the 'SPSO Statement of Complaints Handling Principles' and best practice guidance on complaints handling from the Complaints Standards Authority at the SPSO.

[www.valuingcomplaints.org.uk](http://www.valuingcomplaints.org.uk)

## What is a complaint?

Scottish Borders Council's definition of a Social Work complaint is:

**'An expression of dissatisfaction by one or more members of the public about the social work service's action or lack of action, or about the standard of service provided by or on behalf of Scottish Borders Council.'**

Any complaints about other services will be handled under Scottish Borders Council's standard complaints handling procedure (CHP).

A complaint may relate to the following:

- failure or refusal to provide a service
- inadequate quality or standard of service
- dissatisfaction with one of our policies or its impact on the individual
- failure to properly apply law, procedure or guidance when delivering services
- failure of administrative processes
- delays in service provision
- treatment by or attitude of a member of staff
- disagreement with a decision made in relation to social work services.

This list does not cover everything.

**Appendix 1** provides a range of examples of complaints we may receive, and how these may be handled.

A complaint is not:

- a routine first-time request for a service
- a claim for compensation only
- a disagreement with decisions or conditions that are based upon social work recommendations, but determined by a court or other statutory body, for example decisions made by a children's panel, parole board or mental health tribunal
- an attempt to reopen a previously concluded complaint or to have a complaint reconsidered where we have already given our final decision.

You must not treat these issues as complaints, and should instead direct customers to use the appropriate procedures.

**Appendix 2** gives examples of more complex complaints, some of which are not appropriate for this CHP. The section on **Complaints relevant to other agencies** provides information about some of the other agencies that may be able to assist customers if their complaint is not appropriate for this CHP.

### **Who can make a complaint?**

Anyone who receives, requests, or is affected by Scottish Borders Council's social work services can make a complaint. This is not restricted to 'service users' and their relatives or representatives, but may also include people who come into contact with or are affected by these services, for example people who live in close proximity to a social work service provision, such as a care home or day centre. In this procedure these people are termed 'customers', regardless of whether they are or were using a service.

Sometimes a customer may be unable or reluctant to make a complaint on their own. We will accept complaints from third parties, which may include relatives, friends and advocates. The third party should normally obtain the customer's consent. This can include complaints brought by parents on behalf of their child, if the child is considered to have capacity to make decisions for themselves. However, in certain circumstances, the third party may raise a complaint without receiving consent, such as when there are concerns over someone's wellbeing. The complaint should still be investigated, but the response may be limited by considerations of confidentiality. You must ensure that you follow Scottish Borders Council's policies on gaining consent and information sharing.

Independent advocates may bring complaints on behalf of social work service users or other customers, if they are unable to raise an issue themselves, or if they are unable to identify when something is wrong. More information about using advocates to support customers is available in the section on **Supporting the customer**.

If you have concerns that a complaint has been submitted by a third party without appropriate authority from the customer, you should seek advice from a more senior member of staff. The provision of a signed mandate from the customer will normally be

sufficient for us to investigate a complaint. However, the timing of when we require this mandate may vary depending on the circumstances. If the complaint raises concerns that require immediate investigation, this should not be delayed while a mandate is sought. It will, however, be required before the provision of a full response to the third party.

### **Handling anonymous complaints**

Scottish Borders Council values all complaints. This means we treat all complaints, including anonymous complaints, seriously and will take action to consider them further, wherever this is appropriate. Generally, we will consider anonymous complaints if there is enough information in the complaint to enable us to make further enquiries. If, however, an anonymous complaint does not provide enough information to enable us to take further action, we may decide not to pursue it further. Any decision not to pursue an anonymous complaint must be authorised by a senior manager.

If an anonymous complaint makes serious allegations, these should be dealt with in a timely manner under relevant procedures. This may not be the complaints procedure and could instead be relevant child protection, adult protection or disciplinary procedures.

If we pursue an anonymous complaint further, we will record the issues as an anonymous complaint on the CRM system. This will help to ensure the completeness of the complaints data the Council records and allow us to take corrective action where appropriate.

### **What if the customer does not want to complain?**

If a customer has expressed dissatisfaction in line with our definition of a complaint but does not want to complain, tell them that we do consider all expressions of dissatisfaction, and that complaints offer the Council the opportunity to improve services where things have gone wrong. Encourage the customer to submit their complaint and allow us to handle it through the CHP. This will ensure that the customer is updated on the action taken and gets a response to their complaint.

If, however, the customer insists they do not wish to complain, you should record the complaint as an anonymous complaint. This will ensure that the customer's details are not recorded on the CRM system and that they receive no further contact about the matter. It

will also help to ensure the completeness of the complaints data recorded and will still allow us to fully consider the matter and take corrective action where appropriate.

### **Supporting the customer**

All members of the community have the right to equal access to our complaints procedure. It is important to recognise the barriers that some customers may face complaining. These may be physical, sensory, communication or language barriers, but can also include their anxieties and concerns. Customers may need independent support to overcome these barriers to accessing the complaints system.

Customers who do not have English as a first language, including British Sign Language users, may need help with interpretation and translation services. Other customers may need other forms of communication support, including documents written in accessible language such as easy read format. Some may need support workers or advocates to help them understand their rights, and help them to communicate their complaints.

We must always take into account our commitment and responsibilities to equality. This includes making reasonable adjustments to ensure that all customers can access our services.

The Mental Health (Care and Treatment) (Scotland) Act 2003 gives anyone with a 'mental disorder' (including mental health issues, learning difficulties, dementia and autism) a right to access independent advocacy. This legislation says that independent advocacy must be delivered by independent organisations that only provide advocacy. They help people to know and understand their rights, make informed decisions and have a voice. The Scottish Independent Advocacy Alliance website has information about local advocacy organisations throughout Scotland.

Wherever possible we will identify what additional needs a customer may have and help them find appropriate support or refer them to their local independent advocacy organisation to help them in pursuing a complaint.

## **Complaints and appeals**

While some social work decisions may be reviewed under alternative arrangements at a local level (for example through appeal or peer review), the SPSO has the power to consider professional social work decisions. The customer should not be required to seek a reconsideration of a decision under both appeal and complaint processes, nor should they be required to make further complaint if dissatisfied with the outcome of an appeal.

Therefore, whilst we have discretion to operate appeals procedures, these must be regarded as a special form of complaint investigation (stage 2 of this CHP). Such appeals processes must be compliant with this procedure in terms of the rigour and documentation of the process, must be concluded within 20 working days with a written response to the customer, and must be recorded as a stage 2 complaint on the relevant complaints database. If the customer raises additional issues of dissatisfaction as well as challenging a professional decision, then the process must consider and respond to every element of the customer's dissatisfaction so that no additional complaint process is required.

The final response letter must provide relevant text advising the customer of their right to refer the matter to the SPSO for independent consideration. The SPSO will then investigate matters in full, in line with their standard procedures.

## **Complaints involving social work services and another service or organisation**

A complaint may relate to the Council's social work service and another service provided by Scottish Borders Council, or provided by another organisation, such as a health and social care partnership, the NHS or a housing association. Initially, these complaints should all be handled in the same way. They must be logged as a complaint, and the content of the complaint must be considered to identify which services are involved, and what parts of the complaint the Council can respond to and which parts are appropriate for another organisation. How these complaints are then handled will depend on delegation arrangements and on the other organisation involved, as follows:

## **Complaints relating to a social work service and another service provided by Scottish Borders Council**

Where a complaint relates to two services provided by the Council, these services must work together to resolve the complaint. A decision must be taken as to which service will



lead on the response. You must ensure that all parties are clear about this decision. It is important to give a joint response from the lead service, and also ensure that both services contribute to this.

**Complaints relating to a social work service and another service provided by another organisation, such as a separate NHS organisation or a housing association**

The aim with such complaints is still to provide a joint response (particularly where the organisations are linked, eg. NHS providers), though this may not always be possible. Contact must be made with the customer to explain that their complaint partly relates to services which are delivered by another organisation, and that to resolve their complaint, we will need to share information with this organisation. You must check whether you need specific consent from the customer before you can share their information with the other services, and take appropriate action where necessary, bearing in mind any data protection requirements.

If it is possible to give a joint response, a decision must be taken as to which service will lead the process. We must ensure that all parties are clear about this decision. The response must cover all parts of the complaint, explain the role of both services, and (for investigation stage complaints) confirm that it is the final response from both services.

If a joint response is not possible, you should explain to the person making the complaint the reasons why they will receive two separate responses, and who they can get in contact with about the other aspects of their complaint. You must also write to both the customer and the other services involved, setting out which parts of the complaint you will be able to respond to.

Remember, if you need to make enquiries to another organisation in relation to a complaint, always take account of data protection legislation and our guidance on handling our customers' personal information. The Information Commissioner has detailed guidance on data sharing and has issued a data sharing code of practice.

### **Complaints about services commissioned by Scottish Borders Council**

As part of the service provider's contractual obligations, they must provide a robust complaints process which complies with this CHP, and this obligation must be set out in their contract. This applies to all contracted services, including care services. The expectations around complaints handling by the provider should also be explained to service users in their service agreement with the provider. At the end of the investigation stage of any such complaints the provider must ensure that the customer is signposted to the SPSO, as with any other complaint made to Scottish Borders Council

Contracts with commissioned services should reflect the following good practice:

It is important that a complaint is resolved as quickly as possible and as close as possible to the time when the event being complained about occurred. The contracted service provider should be given the opportunity to respond to a complaint first, even if the customer has initially approached Scottish Borders Council unless there is good reason why this would not be appropriate. However, the Council will have discretion to investigate complaints about providers contracted to deliver services on its behalf.

These services may also be registered as a care service with the Care Inspectorate to deliver a care or support service. If this is the case, customers have the right to complain directly to the Care Inspectorate or to make use of the provider's CHP and thereafter make a complaint to the Care Inspectorate, regardless of any investigations undertaken by Scottish Borders Council.

Where services are commissioned on behalf of the Council customers can make complaints under this CHP in relation to the assessment of need, the commissioning or recommendation process, and any element of the service that has been publicly funded. Complaints about any part of service that has been privately funded cannot be considered through this CHP.

Service providers who are not registered with the Care Inspectorate as a care or support service but who are contracted to deliver other services on behalf of Scottish Borders Council must still comply with this CHP.

## Complaints for the Care Inspectorate

Local authorities and any contractors that provide care services must be registered with the Care Inspectorate. This is the independent scrutiny and improvement body for care and social work across Scotland, which regulates, inspects and supports improvement of care services.

The Care Inspectorate has a procedure for receiving information, concerns and investigating complaints, from members of the public or their representatives, about the care services they use. The Care Inspectorate's complaints procedure is available even when the service provider has an alternative complaints procedure in place.

The Care Inspectorate encourages people to complain directly to the organisation they receive a service from. However, some people are not comfortable doing this and to support them, the Care Inspectorate will take complaints about care services directly.

When complaints are brought to us about registered care services, we have the right to share complaint information about the registered care provider with the Care Inspectorate, to decide who is best placed to investigate the complaint. We can also share the outcome of complaints about contracted and registered services with the Care Inspectorate.

Contact details for the Care Inspectorate can be found on their website:

[www.careinspectorate.com/](http://www.careinspectorate.com/)

Or:

telephone 0345 600 9527

fax 01382 207 289

complete an online complaints form at [www.careinspectorate.com/](http://www.careinspectorate.com/) or

email [enquiries@careinspectorate.com](mailto:enquiries@careinspectorate.com)

## Complaints about Personal Assistants

Where an individual directly employs a Personal Assistant to provide their support, using a Direct Payment (as part of a Self-directed Support package), they are not subject to registration with the Care Inspectorate under the Public Services Reform (Scotland) Act 2011, its regulations and amendments. The employer remains responsible for the

management of their employee, including their performance management. The Care Inspectorate would only be able to take complaints about such support workers if they work for a registered care agency.

### **Complaints relevant to other agencies**

Customers may raise concerns about issues which cannot be handled through this CHP, but which other agencies may be able to provide assistance with or may have an interest in. This may include:

The Mental Welfare Commission:

Email: [enquiries@mwscot.org.uk](mailto:enquiries@mwscot.org.uk)

Tel: 0800 389 6809 (service users and carers only)

Website: [www.mwscot.org.uk](http://www.mwscot.org.uk)

The Children's Commissioner:

Email: [inbox@cypcs.org.uk](mailto:inbox@cypcs.org.uk)

Tel: 0800 019 1179

Website: [www.cycps.org.uk](http://www.cycps.org.uk)

The Scottish Social Services Council:

Email: via their website

Tel: 0345 60 30 891

Website: [www.sssc.uk.com](http://www.sssc.uk.com)

Customers may also raise concerns that information has not been provided in line with information sharing and data protection legislation, in which case they should be signposted to Scottish Borders Council's Information Management Team. Any correspondence they have received from the Council will also specify the next steps to take if there are ongoing concerns, including signposting to the Information Commissioner:

Email: [scotland@ico.org.uk](mailto:scotland@ico.org.uk)

Tel: 0131 244 9001

Website: [www.ico.org.uk](http://www.ico.org.uk)

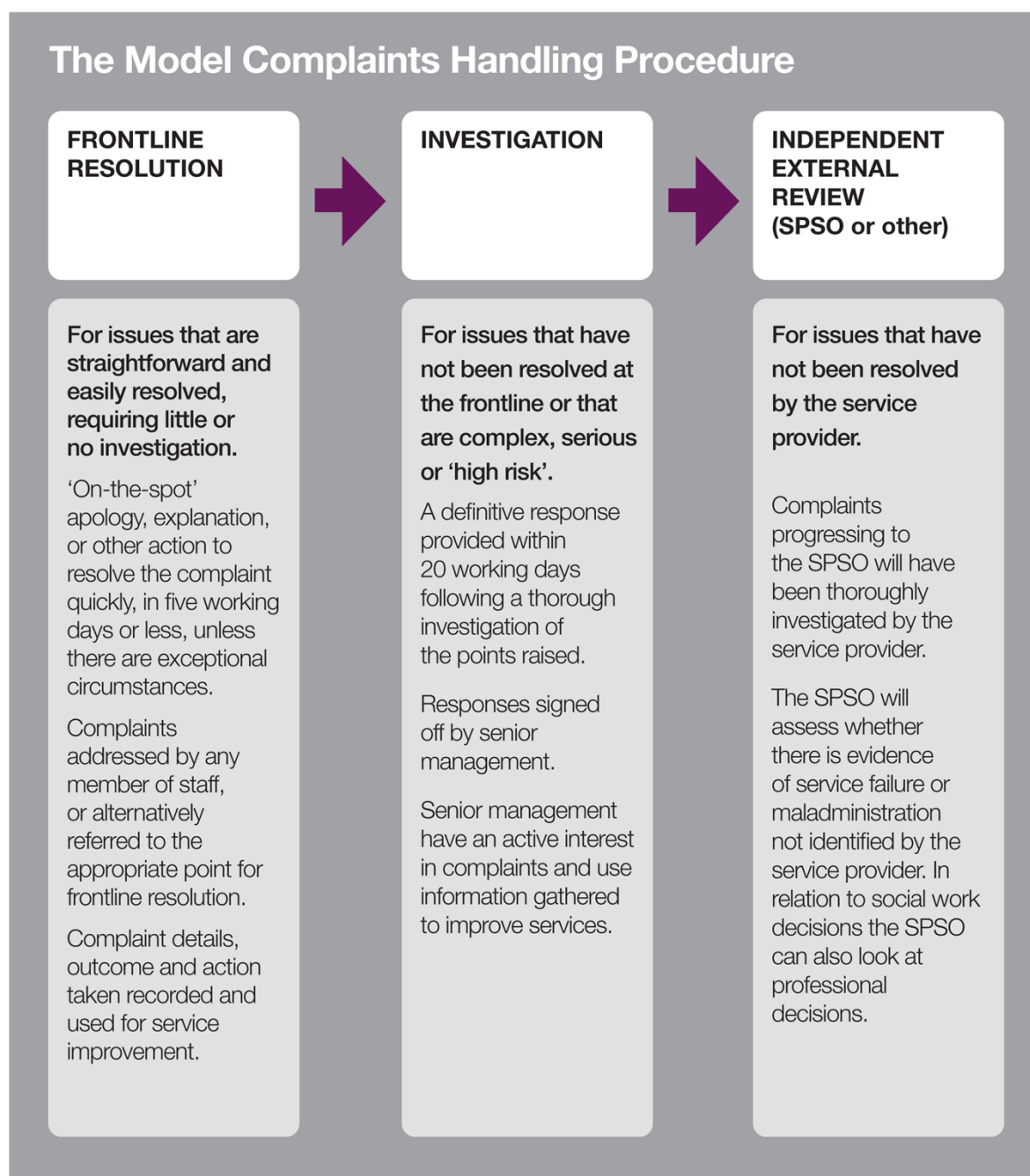
This list is not exhaustive, and it is important to consider the circumstances of each case, and whether another organisation may also have a role to play.

## The complaints handling process

Scottish Borders Council's CHP aims to provide a quick, simple and streamlined process for resolving complaints early and locally by capable, well-trained staff.

The Council's complaints process provides two opportunities to resolve complaints internally:

- **frontline resolution**, and
- **investigation**.



For clarity, the term 'frontline resolution' refers to the first stage of the complaints process. It does not reflect any job description within the Council but means seeking to resolve complaints at the initial point of contact where possible.

### **Stage one: frontline resolution**

Frontline resolution aims to quickly resolve straightforward customer complaints that require little or no investigation. Any member of staff may deal with complaints at this stage.

The main principle is to seek early resolution, resolving complaints at the earliest opportunity and as close to the point of service delivery as possible. This may mean a face-to-face discussion with the customer, or asking an appropriate member of staff to handle the complaint.

[Appendix 1](#) gives examples of the types of complaint we may consider at this stage, with suggestions on how to resolve them, as well as those that may be more appropriate to escalate immediately to the investigation stage.

In practice, frontline resolution means resolving the complaint at the first point of contact, wherever possible, or within five working days of this contact. This may be taken forward by the member of staff receiving the complaint or, where appropriate, another member of staff.

In either case, you may resolve the complaint by providing an on-the-spot apology where appropriate, or explaining why the issue occurred and, where possible, what will be done to stop this happening again. You may also explain that, as an organisation that values complaints, we may use the information given when we review service standards in the future.

A customer can make a complaint in writing, in person, by telephone, by email or online, or by having someone complain on their behalf. You must always consider if it is appropriate to attempt frontline resolution, regardless of how you have received the customer's complaint.

## What to do when you receive a complaint

- 1 On receiving a complaint, you must first decide whether the issue can be defined as a complaint. The customer may express dissatisfaction about more than one issue. This may mean you treat one part as a complaint, while directing the customer to pursue another part through an alternative route (see [Appendix 2](#)).
- 2 If you have received and identified a complaint, record the details on our CRM system at the earliest opportunity. The date of receipt of the complaint is always 'day 1', regardless of when the complaint is recorded.
- 3 Decide whether or not the complaint is suitable for frontline resolution. Some complaints will need more extensive investigation before you can give the customer a suitable response. You must escalate these complaints immediately to the investigation stage.
- 4 Where you think frontline resolution is appropriate, you must consider four key questions:
  - what exactly is the customer's complaint (or complaints)?
  - what does the customer want to achieve by complaining?
  - can I achieve this, or explain why not? and
  - if I cannot resolve this, who can help with frontline resolution?

### **What exactly is the customer's complaint (or complaints)?**

It is important to be clear about exactly what the customer is complaining about. You may need to ask the customer for more information and probe further to get a full understanding.

### **What does the customer want to achieve by complaining?**

At the outset, clarify the outcome the customer wants. Of course, the customer may not be clear about this, and you may need to probe further to find out what they expect, and whether they can be satisfied.

### **Can I achieve this, or explain why not?**

If you can achieve the expected outcome, for example by providing an on-the-spot apology or explain why you cannot achieve it, you should do so. If you consider an apology is appropriate, you may wish to follow the SPSO's guidance on the subject:

[SPSO guidance on apology](#)

The customer may expect more than we can provide. If so, you must tell them as soon as possible. An example would be where the customer is very dissatisfied that their child has not been assigned to the social worker they were expecting, when this worker is no longer available.

You are likely to have to convey the decision face-to-face or on the telephone. If you do so face-to-face or by telephone, you are not required to write to the customer as well, although you may choose to do so. It is important, however, to keep a full and accurate record of the decision reached and given to the customer.

**If I cannot resolve this, who can help with frontline resolution?**

If you cannot deal with the complaint because, for example, you are unfamiliar with the issues or area of service involved, pass the complaint to someone who can attempt to resolve it.

**Timelines**

Frontline resolution must be completed within **five working days**, although in practice we would often expect to resolve the complaint much sooner.

You may need to get more information to resolve the complaint at this stage. However, it is important to respond to the customer within five working days, either resolving the matter or explaining that their complaint is to be investigated.

**Extension to the timeline**

In exceptional circumstances, where there are clear and justifiable reasons for doing so, you may agree an extension of up to ten working days with the customer. This must only happen when an extension will make it more likely that the complaint will be resolved at the frontline resolution stage.

When you are considering an extension, you must get authorisation from the appropriate manager, who will decide whether you need an extension to effectively resolve the complaint. Examples of when this may be appropriate include staff or contractors being temporarily unavailable, or when awaiting responses from third parties or commissioned



services. If it is clear from the outset that the complaint is so complex that it clearly cannot be resolved as a frontline complaint (in five working days), it should be handled directly at the investigation stage. Where an extension is authorised, you must tell the customer about the reasons for the extension, and when they can expect a response.

All attempts to resolve the complaint at this stage must take no longer than **15 working days** from the date you receive the complaint. The proportion of complaints that exceed the five working day timeline will be evident from reported statistics, and should be kept to a minimum. These statistics must go to our senior management team on a quarterly basis.

[Appendix 3](#) provides further information on timelines.

### **Closing the complaint at the frontline resolution stage**

When you have informed the customer of the outcome, you are not obliged to write to the customer, although you may choose to do so. You must ensure that our response to the complaint addresses all areas that we are responsible for, explains the reasons for our decision and explains what the customer should do if they remain dissatisfied. It is also important to keep a full and accurate record of the decision reached and given to the customer. The complaint should then be closed and the complaints system updated accordingly.

### **When to escalate to the investigation stage**

A complaint **must** be escalated to the investigation stage when:

- frontline resolution was tried but the customer remains dissatisfied and requests an investigation into the complaint. This may be immediately on communicating the decision at the frontline stage or could be some time later
- the customer refuses to take part in the frontline resolution process
- the issues raised are complex and require detailed investigation, or
- the complaint relates to serious, high-risk or high-profile issues.

When a previously closed complaint is escalated from the frontline resolution stage, the complaint should be reopened on the complaints system.

Take particular care to identify complaints that might be considered serious, high risk or high profile, as these may require particular action or raise critical issues that need senior management's direct input. The SPSO defines potential high-risk or high-profile complaints as those that may:

- involve a death or terminal illness
- involve serious service failure, for example major delays or repeated failures to provide a service
- generate significant and ongoing press interest
- pose a serious risk to our operations
- present issues of a highly sensitive nature, for example concerning:
  - immediate homelessness
  - a particularly vulnerable person
  - child protection
  - adult protection.

### **Stage two: investigation**

Not all complaints are suitable for frontline resolution and not all complaints will be satisfactorily resolved at that stage. Complaints handled at the investigation stage of the complaints handling procedure are typically complex or require a detailed examination before we can state the Council's position. These complaints may already have been considered at the frontline resolution stage, or they may have been identified from the start as needing immediate investigation.

An investigation aims to establish all the facts relevant to the points made in the complaint and to give the customer a full, objective and proportionate response that represents our final position.

### **What to do when you receive a complaint for investigation**

It is important to be clear from the start of the investigation stage exactly what you are investigating, and to ensure that both the customer and the service understand the investigation's scope.

It is often necessary to discuss and confirm these points with the customer at the outset, to establish why they are dissatisfied and whether the outcome they are looking for sounds realistic. In discussing the complaint with the customer, consider three key questions:

1. What specifically is the customer's complaint or complaints?
2. What does the customer want to achieve by complaining?
3. Are the customer's expectations realistic and achievable?

It may be that the customer expects more than we can provide. If so, you must make this clear to the customer as soon as possible.

Where possible you should also clarify what additional information you will need to investigate the complaint. The customer may need to provide more information to help us reach a decision.

You should find out the person's preferred method of communication, and communicate by this means where reasonably practicable.

Details of the complaint must be recorded on the CRM system. Where appropriate, this will be done as a continuation of frontline resolution. The details must be updated when the investigation ends.

If the investigation stage follows attempted frontline resolution, you must ensure the officer responsible for the investigation has full access to all case notes and associated information, and record that you have done so.

### **Timelines**

The following deadlines are appropriate to cases at the investigation stage:

- complaints must be acknowledged within **three working days**
- you should provide a full response to the complaint as soon as possible but not later than **20 working days** from the time you received the complaint for investigation.

### **Extension to the timeline**

It is important that every effort is made to meet the timeline, as failure to do so may have a detrimental effect on the customer. Not all investigations will be able to meet this deadline. For example, some complaints are so complex that they require careful consideration and detailed investigation beyond the 20 working day timeline. However, these would be the exception and you must always try to deliver a final response to a complaint within 20 working days.

If there are clear and justifiable reasons for extending the timeline, senior management will agree an extension and set time limits on any extended investigation. You must keep the customer updated on the reason for the delay and give them a revised timescale for completion. The reasons for an extension might include the following:

- essential accounts or statements, crucial to establishing the circumstances of the case, are needed from staff, customers or others but the person you must contact cannot help because of long-term sickness or leave
- you cannot obtain further essential information within normal timescales, or
- the customer has agreed to mediation as a potential route for resolution.

These are only a few examples, and you must judge the matter in relation to each complaint. However, an extension would be the exception and you must always try to deliver a final response to the complaint within 20 working days.

If a joint response is being prepared to a complaint that covers more than one service, the lead service must inform the customer of the reasons for any delay and when they can expect a response, even if the delay relates to input from the other service.

As with complaints considered at the frontline stage, the proportion of complaints that exceed the 20 working day timeline will be evident from reported statistics, which are provided to senior management on a quarterly basis.

[Appendix 3](#) provides further information on timelines.

### **Alternative resolution and mediation**

Some complex complaints, or complaints where customers and other interested parties have become entrenched in their position, may require a different approach to resolving the matter. Where appropriate, you may consider using services such as mediation or conciliation, using suitably trained and qualified mediators to try to resolve the matter.

Mediation will help both parties to understand what has caused the complaint, and so is more likely to lead to mutually satisfactory solutions.

If you and the customer agree to mediation, an extension to the timeline will need to be agreed.

### **Closing the complaint at the investigation stage**

You must let the customer know the outcome of the investigation, in writing or by their preferred method of contact. The Council's response to the complaint must address all areas that we are responsible for and explain the reasons for our decision, taking an appropriate approach to any confidential information. You must record the decision, and details of how it was communicated to the customer, on the CRM system. You must also make clear to the customer:

- their right to ask the SPSO to consider the complaint
- the time limit for doing so, and
- how to contact the SPSO.

### **Signposting to the SPSO**

Once the investigation stage has been completed, the customer has the right to approach the SPSO if they remain dissatisfied.

The SPSO considers complaints from people who remain dissatisfied at the conclusion of our complaints procedure. The SPSO looks at issues such as service failure and maladministration (administrative fault), and the way we have handled the complaint. In relation to social work decisions, they can also look at professional judgement.

The SPSO recommends that you use the wording below to inform customers of their right to ask SPSO to consider the complaint.

### **Information about the SPSO**

The Scottish Public Services Ombudsman (SPSO) is the final stage for complaints about public services in Scotland. This includes complaints about local councils and the NHS in Scotland. If you remain dissatisfied when you have had a final response from Scottish Borders Council, you can ask the SPSO to look at your complaint. The SPSO cannot normally look at complaints:

- where you have not gone all the way through the council's complaints handling procedure
- more than 12 months after you became aware of the matter you want to complain about, or
- that have been or are being considered in court.

The SPSO's contact details are:

SPSO

4 Melville Street

Edinburgh

EH3 7NS

Their freepost address is:

FREEPOST SPSO

Freephone: 0800 377 7330

Online contact [www.spsso.org.uk/contact-us](http://www.spsso.org.uk/contact-us)

Website: [www.spsso.org.uk](http://www.spsso.org.uk)

## **Governance of the complaints handling procedure**

### **Roles and responsibilities**

Overall responsibility and accountability for the management of complaints lies with the Chief Executive and the senior management team.

The Council's final position on the complaint must be signed off by an appropriate senior officer and we will confirm that this is our final response. This ensures that our senior management own and are accountable for the decision. It also reassures the customer that their concerns have been taken seriously.

**Chief Executive:** The responsibility and accountability for the management of complaints sits with the Chief Executive. The Chief Executive has endorsed this complaints handling procedure in order to ensure that there is an effective complaints handling process for social work complaints, with a robust investigation process that demonstrates that organisation learning is in place.

**Chief Social Work Officer:** The Chief Social Work Officer (CSWO) has an important role in the consideration of complaints information and, on occasion, the content of individual complaints. Their role in overseeing the effective governance of social work services and monitoring these arrangements includes complaints about social work services. The CSWO should also take appropriate account of complaints information in fulfilling their obligations to promote continuous improvement and best practice. Furthermore, the CSWO or their delegated officers may have specific interest in complaints relating to individuals for whom they have decision-making responsibilities.

**Service Directors:** Service Directors have responsibility for corporate governance and accountability and it is important that Directors receive assurance that the complaints handling procedure is working effectively within their departments. They are therefore responsible for ensuring proper arrangements are in place within their department for the governance of this complaints handling procedure and monthly reporting of the levels, types and severity of complaints being received. Directors will review and sign off all investigation stage complaint final outcomes. Directors will also agree individual extensions to complaints handling timelines for the investigation stage.

**Complaints Officer:** Each department will appoint sufficient departmental Complaints Officers and have in place suitable deputies. They will take day to day responsibility for complaints recording, investigation and monitoring both within their department and to corporate levels. They will be involved in the investigation process and the co-ordination of all aspects of the responses to the customer which may include preparing a comprehensive written report, including details of any procedural changes in service delivery resulting in opportunities for wider organisational learning.

**All line managers:** Line managers at all levels have a particular responsibility to ensure their staff are suitably trained to carry out their duties and do so to an acceptable level. This includes ensuring they have a full appreciation of the standards of customer service which are expected from them and how to respond to complaints raised with them by customers.

**All council staff:** A complaint may be made to any member of staff in the Council, therefore, all staff must be aware of the complaints handling procedure including how to deal with and record complaints at the frontline resolution stage of the complaints procedure and/or to whom a complaint should be referred in the event that they are not able to personally deal with the matter. All staff must attempt to resolve complaints early, as close to the point of service delivery as possible and quickly to prevent escalation. All Council employees are responsible for complaint identification, handling and resolution and in doing so identifying improvement and changes which improve customer service across the Council.

**SPSO Liaison Officer:** The Customer Services Manager will act as the SPSO liaison officer and will provide complaints information in an orderly, structured way within requested timescales and provide comments on factual accuracy on behalf of the Council in response to SPSO reports, confirm recommendations have been implemented and provide evidence to verify this. The Chief Executive Complaints Officer will deputise in the absence of the Customer Services Manager.



## **Complaints about senior staff**

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

Staff receiving such a complaint should seek advice from their line manager on the appropriate action to be taken prior to logging the matter within the CRM system. If in doubt as to the next steps the relevant line manager will seek advice through the appropriate member of the Directorate or Chief Executive and/or seek advice from Human Resources directorate staff.

## **Recording, reporting, learning from and publicising complaints**

Complaints provide valuable customer feedback. One of the aims of the CHP is to identify opportunities to improve services across Scottish Borders Council. We must record all complaints in a systematic way so that we can use the complaints data for analysis and management reporting. By recording and using complaints information in this way, the Council can identify and address the causes of complaints and, where appropriate, identify training opportunities and introduce service improvements.

## **Recording complaints**

To collect suitable data it is essential to record all complaints in line with SPSO minimum requirements, as follows:

- the customer's name and address
- the date the complaint was received
- the nature of the complaint
- how the complaint was received
- the service the complaint refers to
- the date the complaint was closed at the frontline resolution stage (where appropriate)
- the date the complaint was escalated to the investigation stage (where appropriate)
- action taken at the investigation stage (where appropriate)
- the date the complaint was closed at the investigation stage (where appropriate)

- the outcome of the complaint at each stage, and
- the underlying cause of the complaint and any remedial action taken.

We have structured systems for recording complaints, their outcomes and any resulting action. These provide a detailed record of services that have failed to satisfy customers.

### ***Reporting of complaints***

Details of complaints are analysed for trend information to ensure we identify service failures and take appropriate action. Regularly reporting the analysis of complaints information helps to inform management of where services need to improve.

We publish on a quarterly basis the outcome of complaints and the actions we have taken in response. This demonstrates the improvements resulting from complaints and shows that complaints can influence our services. It also helps ensure transparency in our complaints handling service and will help to show our customers that we value their complaints.

We must:

- publicise on a quarterly basis complaints outcomes, trends and actions taken
- use case studies and examples to demonstrate how complaints have helped improve services.

The information should be reported regularly and at least quarterly to the Council's Executive Committee. In addition the information will be reported regularly and at least on a monthly basis to the Corporate Management Team based on the complaints performance figures.

### ***Learning from complaints***

At the earliest opportunity after the closure of the complaint, the complaint handler should always make sure that the customer and staff of the department involved understand the findings of the investigation and any recommendations made.

Senior management will review the information gathered from complaints regularly and consider whether our services could be improved or internal policies and procedures updated.

As a minimum, we must:

- use complaints data to identify the root cause of complaints
- take action to reduce the risk of recurrence where possible
- record the details of corrective action in the complaints file, and
- systematically review complaints performance reports to improve service delivery.

Where we have identified the need for service improvement:

- the action needed to improve services must be authorised
- an officer (or team) should be designated the 'owner' of the issue, with responsibility for ensuring the action is taken
- a target date must be set for the action to be completed
- the designated individual must follow up to ensure that the action is taken within the agreed timescale
- where appropriate, performance in the service area should be monitored to ensure that the issue has been resolved
- we must ensure that staff learn from complaints.

### **Publicising complaints performance information**

We also report on our performance in handling complaints annually in line with SPSO requirements. This includes performance statistics showing the volumes and types of complaint and key performance details, for example on the time taken and the stage at which complaints were resolved.

### **Maintaining confidentiality**

Confidentiality is important in complaints handling. This includes maintaining the customer's confidentiality and explaining to them the importance of confidentiality generally. We must always bear in mind legal requirements, for example data protection legislation, as well as internal policies on confidentiality and the use of customer information.

## **Managing unacceptable behaviour**

People may act out of character in times of trouble or distress. The circumstances leading to a complaint may result in the customer acting in an unacceptable way. Customers who have a history of challenging or inappropriate behaviour, or have difficulty expressing themselves, may still have a legitimate grievance.

A customer's reasons for complaining may contribute to the way in which they present their complaint. Regardless of this, we must treat all complaints seriously and properly assess them. However, we also recognise that the actions of customers who are angry, demanding or persistent may result in unreasonable demands on time and resources or unacceptable behaviour towards our staff. We will, therefore, apply our policies and procedures to protect staff from unacceptable behaviour such as unreasonable persistence, threats or offensive behaviour from customers. Where we decide to restrict access to a customer under the terms of an unacceptable actions policy, we have a procedure in place to communicate that decision, notify the customer of their right of appeal, and review any decision to restrict contact with the Council. This will allow the customer to demonstrate a more reasonable approach later.

## **Time limit for making complaints**

This CHP sets a time limit of six months from when the customer first knew of the problem, within which time they may ask the Council to consider the complaint, unless there are special circumstances for considering complaints beyond this time.

We will apply this time limit with discretion. In making decisions we will take account of the Scottish Public Services Ombudsman Act 2002 (Section 10(1)), which sets out the time limit within which a member of the public can normally ask the SPSO to consider complaints. The limit is one year from when the person first knew of the problem they are complaining about, unless there are special circumstances for considering complaints beyond this time. All decision to refuse to investigate a complaint must be agreed by the Chief Executive.

If it is clear that a decision not to investigate a customer's complaint will lead to a request for external review of the matter, we may decide that this satisfies the special

circumstances criteria. This would enable us to consider the complaint and try to resolve it, without the complaint going straight to the SPSO.

## Appendix 1 – Frontline resolution complaints

The following tables give examples of complaints that may be considered at the frontline stage, and suggest possible actions to achieve resolution.

Complaint	Possible actions to achieve resolution
A service user complains that a social worker did not turn up for a planned visit.	<ul style="list-style-type: none"> <li>• Apologise to the service user</li> <li>• explain that you will look into the matter</li> <li>• contact the social worker/manager to find out the reason for the missed appointment, then</li> <li>• explain the reasons and offer a new appointment.</li> </ul>
A member of the public complains that a home carer parked in a private resident's car parking place.	<ul style="list-style-type: none"> <li>• Take the customer's details and explain that you will look into the matter</li> <li>• contact the home care service to find out if this is the case</li> <li>• if so, request that this does not happen again, and</li> <li>• contact the customer, apologise and advise that the worker has been asked to find alternative parking.</li> </ul>
A member of public complains that his neighbours (residents of a children's house) have been playing football in the street where they live and are being abusive to passers-by.	<ul style="list-style-type: none"> <li>• Explain to the customer that you will look into the matter and call them back</li> <li>• contact the manager of the children's house to verify the facts</li> <li>• request that the manager meet with the neighbour to apologise and engender good relations, then</li> <li>• call back the customer to update them.</li> </ul>
A complaint about a service provider commissioned by social work services.	<ul style="list-style-type: none"> <li>• Discuss with the customer the different ways for this complaint to be handled, ie by a</li> </ul>

	<p>complaint to the Care Inspectorate or through the provider's own CHP, and</p> <ul style="list-style-type: none"> <li>• ensure, whatever process is agreed, that the customer is clear how they can progress their complaint to the next stage, should they remain dissatisfied. This may be within the provider's CHP, to the Council, or to the Care Inspectorate. The customer should be advised that they can come back to the Council for further advice if they need to at any stage.</li> </ul>
<p>A service user complains that their care needs assessment does not accurately reflect their needs, or that the care package proposed would not meet the needs identified in their assessment.</p>	<ul style="list-style-type: none"> <li>• Clarify with the customer whether the complaint relates to an assessment of needs or a proposed care package. Establish specifically what the customer is complaining about and what has happened so far. Ask them what they are seeking from their complaint, and explain that you will look into the matter</li> <li>• make internal enquiries to establish what stage the assessment and care planning processes are at</li> <li>• while considering the complaint, if the team indicate that a new assessment or care planning meeting may be offered, pass this offer onto the customer, and ask the team to contact the customer to take this forward, and</li> <li>• if the team are not prepared to look at the matter again, explain why the assessment or care package decision is considered to be adequate, and signpost to the next stage of the CHP.</li> </ul>

<p>A customer complains about social work services impacting on their discharge from hospital.</p>	<ul style="list-style-type: none"><li>• Check with the hospital social work team about the customer's care planning in relation to discharge from hospital, and the timing of medical decisions and social work input</li><li>• it may become apparent at that stage that the discharge process was complicated by a range of issues, in which case it may be appropriate to escalate the complaint to investigation</li><li>• it may also become apparent that the customer is still in hospital, and may or may not be considered ready for discharge. If they are ready, then pass the complaint onto the team directly involved to respond to as quickly as possible</li><li>• if the situation is not current, and there were delays from social work services, find out why these happened, and</li><li>• respond to the customer by their preferred method, to inform them of the outcome of their complaint. Offer an apology if appropriate, and outline what steps have been put in place to prevent a recurrence of the situation.</li></ul>
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## **Appendix 2 - Complex social work scenarios**

A concern may not necessarily be a complaint. In some cases a measure of discretion or further clarification is required in determining whether something is a complaint that should be handled through this procedure or another matter which should be handled through another process. There are also some specific circumstances when complaints should be handled in a particular manner. Issues that commonly arise include:

### **1. Child or adult protection concerns**

Customers may express concerns that a child or adult is at risk, but frame their concern in terms of dissatisfaction that 'nothing has been done about this'. The member of staff will need to consider whether the person is authorised to make complaints on behalf of the child or adult in question, whether they expect the matter to be handled as a complaint and whether the professional view is that these matters are best addressed through initiating the applicable protection procedures. Where the need to initiate protection procedures and investigate concerns within those procedures is identified, this will usually represent the council's final response to the complaint, and the complaint should be closed. The person making the complaint should be advised that this is the outcome of the complaint and signposted to the SPSO.

Where a complaint is received about some aspect of protection processes that have already been initiated, for example in relation to the way the processes was applied, this should be considered a complaint, and progressed within the complaints handling procedure.

### **2. Complaints about professional decisions**

A customer may wish to complain about or appeal against a social work decision. Such decisions must be considered in line with the timescales for complaints as specified in the CHP.

Some decisions may be considered through an internal appeal procedure. However, any such appeal route must be considered as constituting a special form of stage 2 of this procedure, in that it will result in a thorough response **to all concerns** and onward referral to the SPSO.

### **3. Legal action**

Legal action takes several forms and each must be handled in a distinctive way:

- (a) **Judicial Review:** If a person wishes to seek judicial review of a social work decision then they should be encouraged to seek legal advice.
  
- (b) **Litigation:** Where a customer says that they are seeking compensation and that legal action is being actively pursued, this is not a complaint. Where a customer indicates that they intend to litigate but have not yet commenced legal action, they should be informed that if they take such action, they should notify the complaints team and that the complaints process will be closed. If it becomes apparent that legal action is being pursued, the complaints team must clarify with the customer if all the issues they have raised will be considered through legal action; any outstanding issues must still be addressed through the CHP.
  
- (c) **Legal tribunals, etc:** Sometimes the matter complained of may be the subject of ongoing consideration by a relevant legal body, for example where a customer complains of lack of contact with their child who is being looked after by Scottish Borders Council, when that matter falls to be determined by the Children's Panel. In such cases the customer should be directed to raise the matter either directly or through their legal representatives within that other defined process and the matter should not be accepted as a complaint.

This is distinct from a complaint that Scottish Borders Council and its staff have failed to properly carry out their roles and responsibilities. In the example above, a Children's Panel may have set contact frequency but it is not being properly facilitated by social work staff due to staffing shortages or some other factor. That is a matter of legitimate complaint under this procedure.

### **4. Complaints about the content of reports submitted to legal bodies**

Scottish Borders council may receive complaints about the accuracy of reports by professional social work staff submitted to Courts or other bodies such as Children's Panels, Parole Boards or Mental Health Tribunals. In such circumstances, the report is provided as a service to the court or tribunal, not as a service to the customer. The

customer has no right to veto such reports or insist that content is subject to their approval but they can complain about the content of the report.

Scottish Borders Council should consider each complaint and it will usually be necessary to undertake a short screening process to establish whether the issue is appropriate for the CHP. This will depend on the nature and seriousness of alleged inaccuracy, and the status of the report in relation to the progress of court or other proceedings. In particular the Council should consider whether the complaint relates to accuracy of facts, to opinion or to the standard and quality of the work carried out by the professional concerned, and should take one of three actions accordingly:

1. advise the customer that, due to the timescales involved, the issue should be raised when the report is presented in court/to the relevant body, as that is the appropriate forum for deciding on the matter
2. advise the customer that the complaint raises issues that will be considered under the CHP (such as issues of fact), and progress accordingly, or
3. advise the customer that the complaint raises a mixture of issues that will be considered under the CHP and other issues that should be raised within the relevant forum when the report is submitted.

If you refuse to consider some or all issues as per 1 or 3 above and direct the customer to raise the matter within the legal process, you must still provide clear information about the reason for this decision, and signpost the customer to the SPSO for access to a review of this decision.

Scottish Borders Council should also consider whether the complaint relates to a breach of data protection legislation, in which case it must be processed accordingly, with a potential referral to the Information Commissioner.

## **5. Campaigns**

The introduction of a new policy or changes in service, such as the closure of a facility, may lead to a high volume of complaints being received. These should be handled under

this procedure on an individual basis on their merits, addressing the issue of how that particular customer is affected by the change. It may be appropriate to provide information about the process that led to the changes, or when the policy may next be reviewed.

Occasionally, however, such complaints are evidently part of an organised campaign. Indicators may be that all complaints have identical content or are on a 'form' letter or that all complainers are known to be members of a pressure group that has made separate representations through the Council's petitions or elected members.

Scottish Borders Council should not accept an unreasonable burden on its complaints processes produced by an organised campaign. Instead, the Council may either issue a single 'form' response or may ask the organisers to nominate a single person to make a single complaint on behalf of the group. In such circumstances it would be important to be clear that all the complaints being brought to the Council are identical, and setting out clearly what issues are being considered under the complaint. Any other additional concerns that individuals may have would need to be handled as new complaints.

## **6. Persons under investigation**

Scottish Borders Council is likely to have a role in investigating the actions of individuals towards other, more vulnerable people, for example those suspected of child or adult abuse or Guardians and Powers of Attorney who are allegedly misusing their powers.

Those individuals are still customers as defined within this procedure and any complaint from them must be considered on its individual merits. For example, a complaint about an improper exercise of investigative procedures should be looked into as a complaint. Any response should take into account any confidentiality issues, and this should be explained to the customer.

However, if it is evident that the person is not complaining about the process or the actions of staff, but is complaining that they are under investigation, this should not be accepted as a complaint. Instead it should be explained to the customer that the Council has a statutory obligation to investigate such matters, and this is not conditional upon their agreement or approval. Their objection to the process is not considered to be a complaint, though they may be directed to seek appropriate legal advice to protect their rights.

## **7. Looked after and accommodated children/adults under local authority guardianship**

Scottish Borders Council has a special duty of care to children in its care or adults for whom it exercises decision-making powers. Special care should be taken when investigating complaints made by or on behalf of those individuals.

Artificial barriers of confidentiality should not be imposed to prevent people with a relevant interest in the affairs of an incapacitated adult from complaining on their behalf.

Children who are looked after by the Local Authority may complain. They may have little in the way of a support network and may be estranged from their family. It may also be inappropriate for the family to represent the child's interests. Particular care, therefore, should be taken to ensure that the child's complaint is understood and, particularly for younger children, that the response is understood by them.

In both cases, the need for personal contact with the customer, and the possible involvement of advocacy services, should be actively considered.

## **8. Grievances/Staff complaints**

This procedure is for external customers of Scottish Borders Council to complain about services received by them or affecting them or to complain on behalf of others. It is not an appropriate procedure for the handling of complaints by staff, which should be routed through the usual HR/Personnel processes.

## **9. Allegations of fraud/criminality/professional malpractice or incompetence**

Discretion is required where the complaint is so serious as to immediately merit investigation under disciplinary processes or referral to another agency.

If it is determined that the complaint falls into this category, you should always try to respond to the complaint within the CHP timescales. Even where the outcome of the complaint leads to further internal procedures being followed, the customer can still be advised of this as an outcome, and the complaint closed, with signposting to the SPSO.

However, in some cases, particularly where the police are involved, you may have to await the outcome of another process before you can decide on the outcome of the complaint. Where such a decision is made you must inform the customer and advise them of their right to come to the SPSO if they are dissatisfied with this approach.

## **10. Complaints brought by foster carers**

Complaints brought by foster carers can relate to the support services they receive from Scottish Borders Council the way our staff engage with them, or services a child in their care is or was receiving or has requested from us.

Any complaint brought by a foster carer on behalf of a foster child in the care, or formerly in their care, should be considered under this CHP. A foster carer has sufficient interest in the wellbeing of a child to complain on their behalf. Where possible, the views of the child should also be taken into account and if they are different from the views of the foster carer, this should be referred to in the response.

Foster carers who are recruited and supported by us may bring complaints about these services. However, approval and de-registration of the carer by the Council may be considered through alternative appeal mechanisms. As noted under the section 'Complaints and appeals', these appeals must be handled in line with the CHP timescales and end with signposting to the SPSO.

Complaints from foster carers supported by private agencies will not be addressed within this CHP if the complaint is wholly about their own circumstances and support rather than those of the child. Such complaints should be directed to the complaints process of the relevant agency.

An agency foster carer may still complain about the way our staff have interacted with them or about any element of service that they might reasonably expect to be provided by the Council for example invitations to meetings, provision of information about the child in their care or the manner and content of communications with Scottish Borders Council. This list is not exhaustive and such complaints should be carefully considered in terms of the role of the Council's staff, before directing them to pursue their complaint with their fostering agency.

Where a complaint cannot be considered in part or in whole by Scottish Borders Council the customer must be given a clear explanation as to why this is, what (if any) parts of their complaint will be investigated and how they may refer the matter to the SPSO.

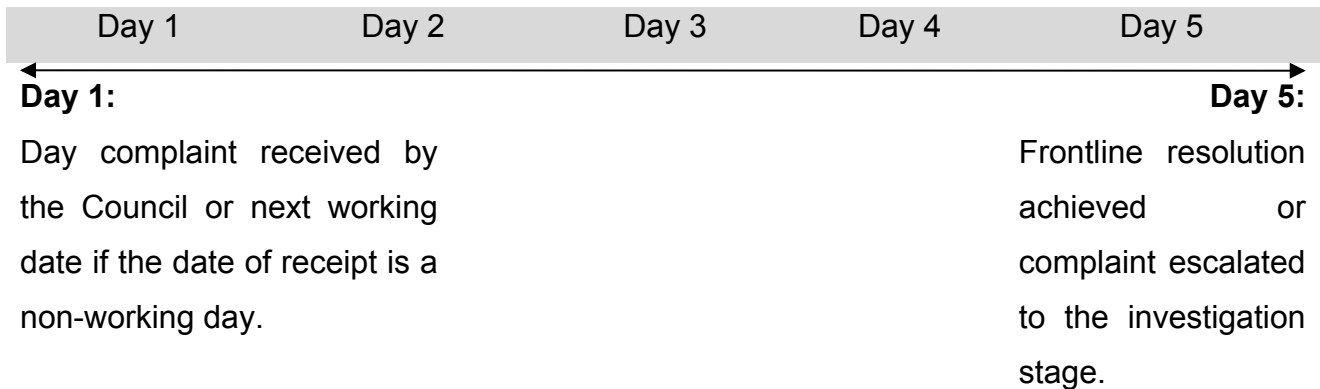
**Appendix 3 - Timelines**

**General**

References to timelines throughout the CHP relate to working days. When measuring performance against the required timelines, we do not count non-working days, for example weekends, public holidays and days of industrial action where our service has been interrupted.

**Timelines at frontline resolution**

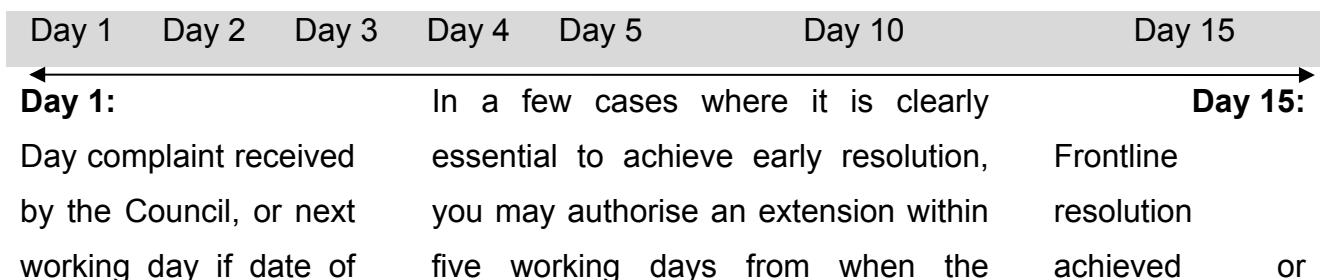
You must aim to achieve frontline resolution within five working days. The day you receive the complaint is day 1. Where you receive it on a non-working day, for example at the weekend or on a public holiday, day 1 will be the next working day.



**N.B. If a complaint is received after 5pm Monday to Thursday or after 3.45pm on a Friday the first day is the next working day which will be day 1.**

**Extension to the five-day timeline**

If you have extended the timeline at the frontline resolution stage in line with the CHP, the revised timetable for the response must take no longer than 15 working days from the date of receiving the complaint.





receipt is a non-working day. complaint was received. You must conclude the frontline resolution stage within 15 working days **from the date of receipt**, either by resolving the complaint or by escalating it to the investigation stage. complaint escalated to the investigation stage.

### **Transferring cases from frontline resolution to investigation**

If it is clear that frontline resolution has not resolved the matter, and the customer wants to escalate the complaint to the investigation stage, the case must be passed for investigation without delay. In practice this will mean on the same day that the customer is told this will happen.

### **Timelines at investigation**

You may consider a complaint at the investigation stage either:

- after attempted frontline resolution, or
- immediately on receipt if you believe the matter to be sufficiently complex, serious or meriting a full investigation from the outset.

### **Acknowledgement**

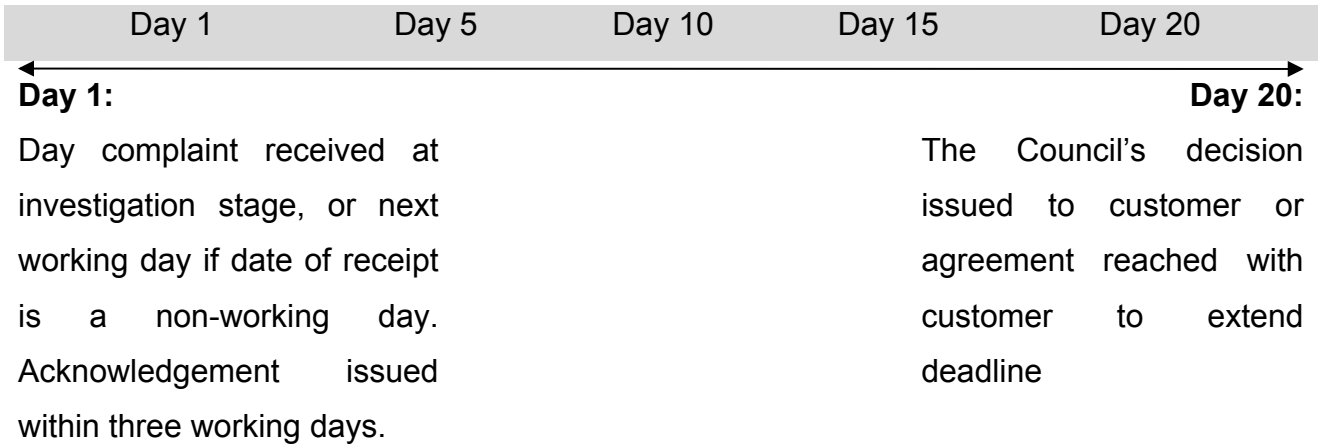
All complaints considered at the investigation stage must be acknowledged within **three working days** of receipt. The date of receipt is:

- the day the case is transferred from the frontline stage to the investigation stage, where it is clear that the case requires investigation,
- the day the customer asks for an investigation after a decision at the frontline resolution stage. You should note that a customer may not ask for an investigation immediately after attempts at frontline resolution, or
- the date you receive the complaint, if you think it sufficiently complex, serious or meriting a full investigation from the outset.

### **Investigation**

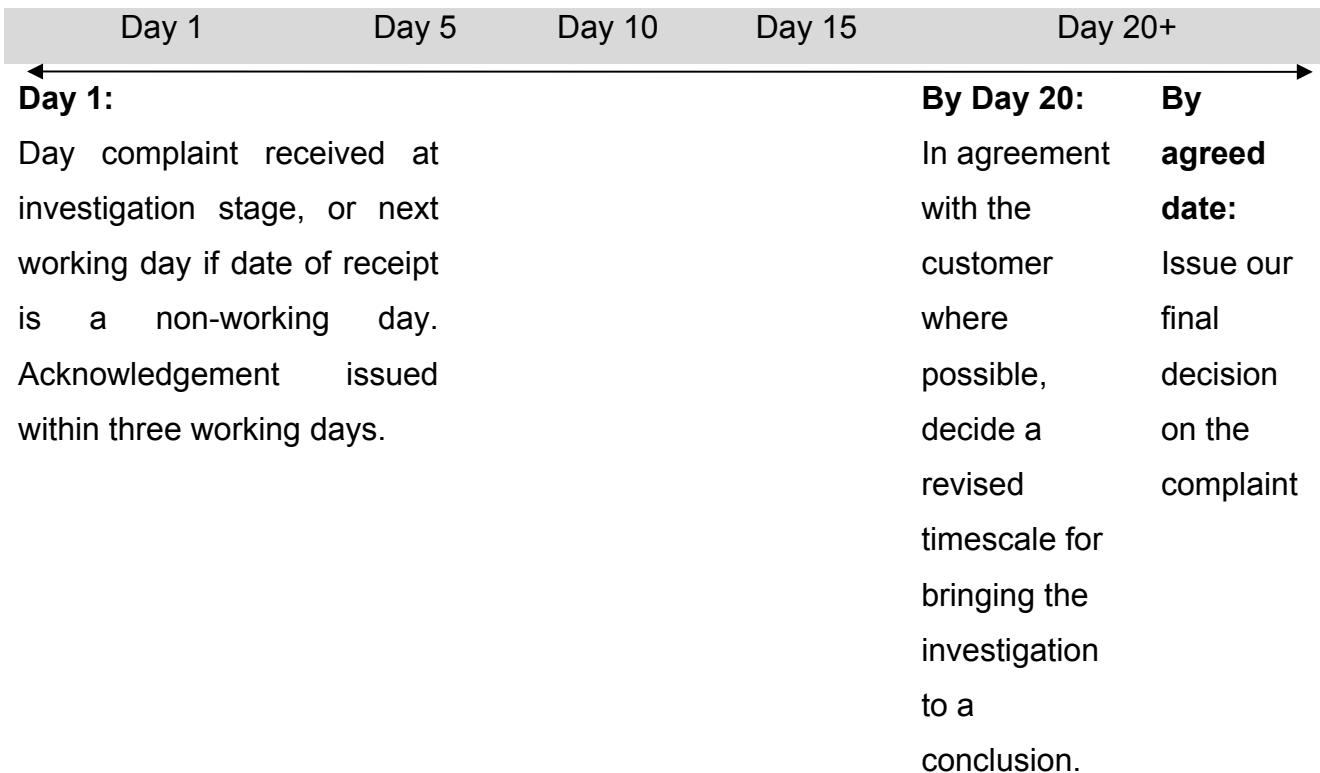
You should respond in full to the complaint within **20 working days** of receiving it at the investigation stage.

The 20 working day limit allows time for a thorough, proportionate and consistent investigation to arrive at a decision that is objective, evidence-based and fair. This means you have 20 working days to investigate the complaint, regardless of any time taken to consider it at the frontline resolution stage.



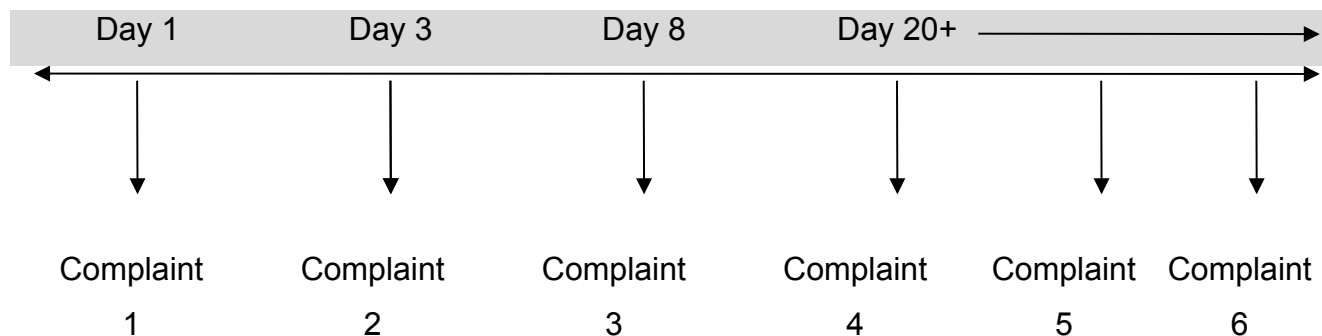
**N.B. If a complaint is received after 5pm Monday to Thursday or after 3.45pm on a Friday the first day is the next working day which will be day 1.**

Exceptionally you may need longer than the 20-day limit for a full response. If so, you must explain the reasons to the customer, and agree with them a revised timescale.



## Timeline examples

The following illustration provides examples of the point at which we conclude our consideration of a complaint. It is intended to show the different stages and times at which a complaint may be resolved.



The circumstances of each complaint are explained below:

### Complaint 1

Complaint 1 is a straightforward issue that may be resolved by an on-the-spot explanation and, where appropriate, an apology. Such a complaint can be resolved on day 1.

### Complaint 2

Complaint 2 is also a straightforward matter requiring little or no investigation. In this example, resolution is reached at day three of the frontline resolution stage.

### Complaint 3

Complaint 3 refers to a complaint that we considered appropriate for frontline resolution. We did not resolve it in the required timeline of five working days. However, we authorised an extension on a clear and demonstrable expectation that the complaint would be satisfactorily resolved within a further ten working days. We resolved the complaint at the frontline resolution stage in a total of eight days.

### Complaint 4

Complaint 4 was suitably complex or serious enough to pass to the investigation stage from the outset. We did not try frontline resolution; rather we investigated the case immediately. We issued a final decision to the customer within the 20-day limit.

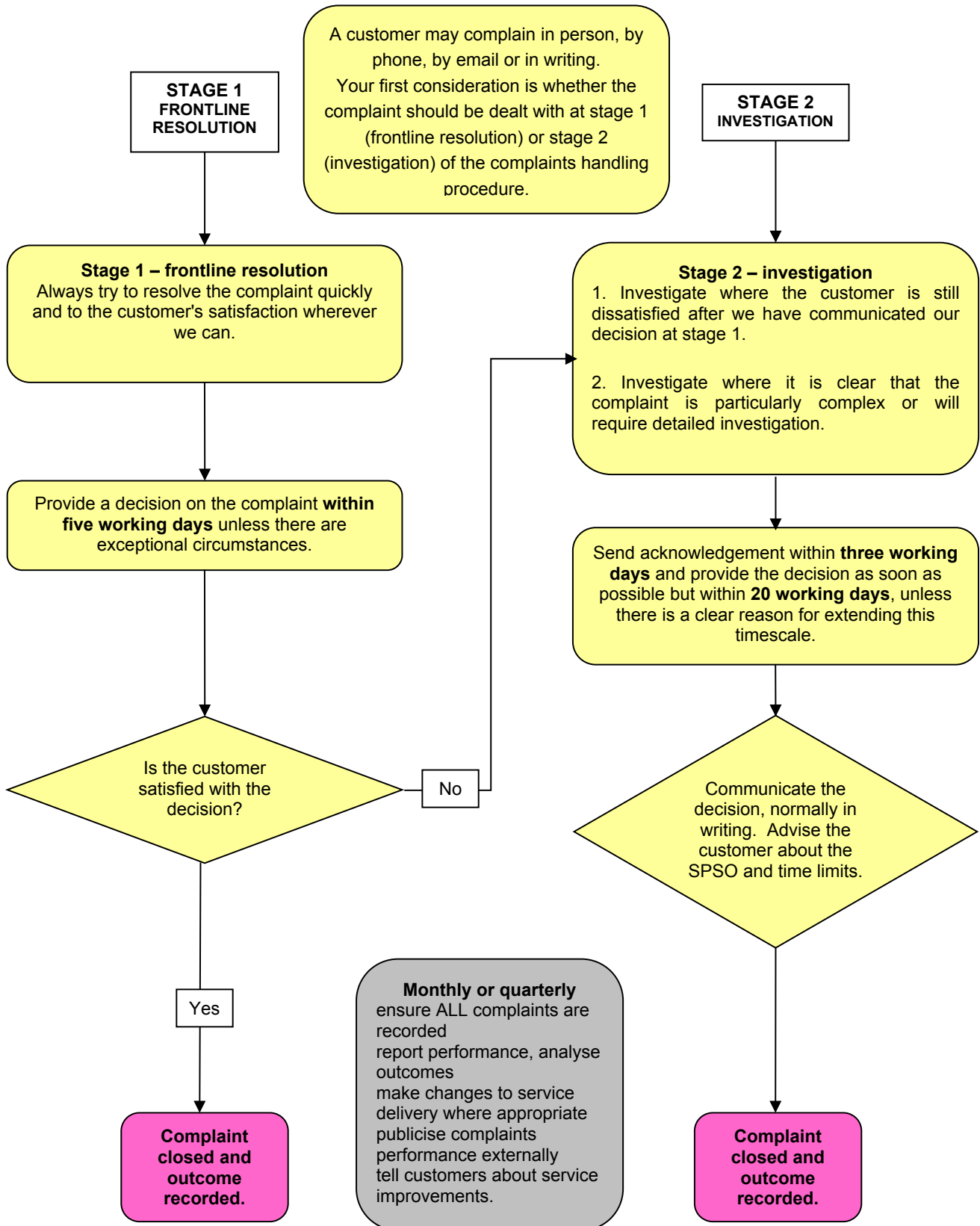
### **Complaint 5**

We considered complaint 5 at the frontline resolution stage, where an extension of ten working days was authorised. At the end of the frontline stage the customer was still dissatisfied. At their request, we conducted an investigation and issued our final response within 20 working days. Although the end-to-end timeline was 30 working days, we still met the combined time targets for frontline resolution and investigation.

### **Complaint 6**

Complaint 6 was considered at both the frontline resolution stage and the investigation stage. We did not complete the investigation within the 20-day limit, so we agreed a revised timescale with the customer for concluding the investigation beyond the 20-day limit.

## Appendix 4 - The complaints handling procedure



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