

The logo for TúsLA, featuring the word 'TúsLA' in a bold, white, sans-serif font. The 'ú' has a dot above it, and the 'L' is stylized with a horizontal bar. The background of the entire page is a vibrant blue-to-green gradient with various abstract geometric patterns, including concentric circles, wavy lines, and small dots.

An Ghníomhaireacht um
Leanaí agus an Teaghlach
Child and Family Agency

A white speech bubble with a tail pointing towards the bottom right, containing the text 'TELL US' in a bold, white, sans-serif font.

Procedures for Complaint Review Officers

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Introduction & Overview

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Introduction & Overview

1.0 Introduction

Part 9 of the Child and Family Agency Act, 2013, enshrines the right of service users to request a review of any recommendations made by a Complaint Officer following the investigation of their complaint. It also places responsibility on Tusla for establishing effective processes for dealing with reviews of recommendations at the request of the complainant.

Complaints received by Tusla from our service users (and other people affected by the services we provide) represent an important way in which our service users can make their voices and views heard. Effective and positive management of complaints allows us to demonstrate our commitment to accountability, transparency and good governance. It also represents an opportunity for quality assurance and quality improvement.

As a Tusla Complaint Review Officer, you are essential to ensuring that complaint reviews are managed fairly and impartially, in accordance with fair procedures and due process, and treating all parties to the complaint review with courtesy, respect and consideration throughout the entire process.

Our approach to complaint management is one of resolution, not blame. At all times we seek to learn from complaints so that we can improve our services for all children, families, individuals and communities that we engage with. As a Complaint Review Officer, your findings and recommendations will contribute to learning and improvement for the whole organisation.

1.1 Purpose

The purpose of this document is to provide Complaint Review Officers with knowledge, advice and guidance that will improve and strengthen the skills of those officers to respond confidently, competently, and consistently to all complaint reviews dealt with under Stage 3 of the *Tell Us* policy.

1.2 Scope

This procedure document is for the benefit of a range of people listed below:

- Tusla Complaint Review Officers
- Service providers that have been contracted to carry out a complaint review investigation on behalf of Tusla
- All staff members

1.3 Legislation, related policies and standards

- Part 9, Child and Family Agency Act, 2013
- *Tell Us*: Feedback and Complaints Policy
- *Tell Us, You Say, We Listen*: How to give Feedback and make Complaints to Tusla: A guide for Children and Young People
- *Tell Us, You Say, We Listen*: Dealing with Unreasonable Complainant Behaviour: Guidance for Staff
- *Tell Us*: Procedure for Complaint Officers

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1.4 Core values

All actions and decisions taken as part of the complaint management process will reflect our vision, mission statement and core values to keep children safe and properly cared for.

Our Values & Behaviours



Trust



Respect



Kindness



Empowerment

Support our service users

We will support children, young people, families and individuals (and any other people affected by Tusla services) to express their views about our services in ways that feel safe and are transparent.

Encourage feedback

We will make it easy for children, young people and their families (and any other people affected by Tusla services) to express their views.

We will listen and respond to these views and act on them when appropriate.

Keep people up to date

After people complain or give us feedback, we will keep them up to date on how we are handling it.

Manage complaint information

We will record all complaints on the Tusla complaints section of the National Incident Management System (NIMS).

Manage complaints well

By managing complaints well, we aim to:

- increase trust in our services
- protect staff morale
- build public confidence in our services.

If anyone complains to us, it will not adversely affect the service that we give them.

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Fair procedures and due process



It is your responsibility as Complaint Review Officer to ensure that fair procedures and due process are adhered to throughout the complaint review process. If this is not done, the rights of all parties to the complaint review are infringed and the entire complaint review is undermined. It is also relevant for Complaint Review Officers to be able to observe that fair procedure and due process were in evidence during the complaint investigation stage in relation to any recommendations made by the Complaint Officer.

The principles of natural justice must be applied, including adequate notice, a fair hearing and evidence-based decision-making.

This is covered in more detail in the e-learning module *Understanding Complaint Investigations*.

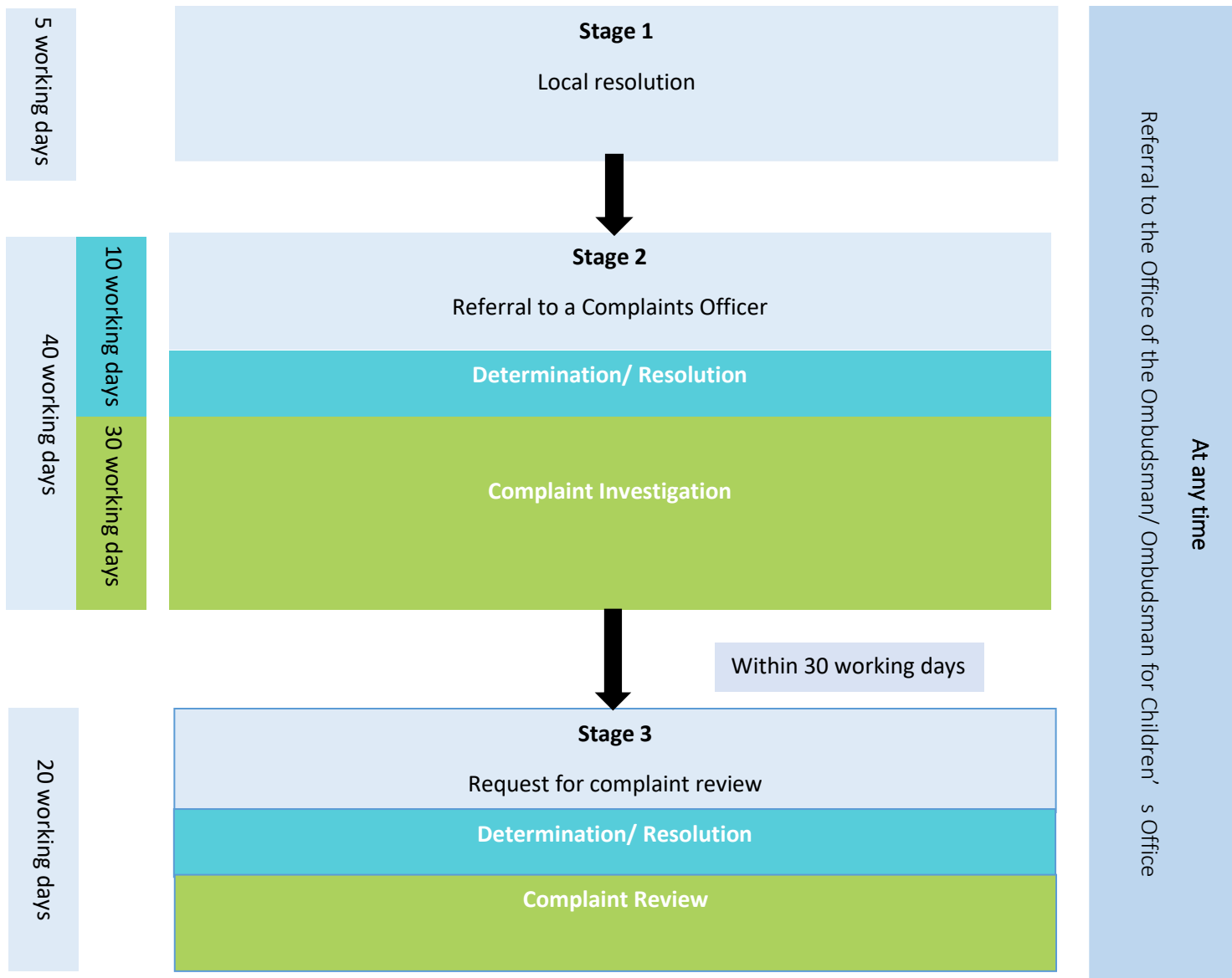
1.5 Role of the Complaint Review Officer

The Complaint Review Officer is responsible for carrying out their duties in a manner that is consistent with the principles defined above.

The role of the Complaint Review Officer is clearly defined in Appendix One of the *Tell Us* policy.

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1.6 Overview of the complaints process



All steps of the complaint review **must** be completed within 20 working days of the complaint review request being received.

It is important to note here that although only 20 working days are provided for stage 3, these are in addition to a possible 45 days already having passed (assuming all timelines were met) for the complainant.

In exceptional circumstances, it may not be possible to meet this time frame. In these circumstances, once the 20 working day timeframe has passed, you **must** provide the parties to the complaint with an update in writing on the progress of the complaint review every **20 working days**.

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1.7 Legal basis for processing data

When a complaint is received by Tusla, the basis for proceeding is a legal one, so consent is not sought. However, Tusla seeks to be collaborative with complainants at all times in line with its value base.

Data processing in complaints can include access to sensitive information, such as case files. Data processing also includes recording a complaint to NIMS.

The legal basis for processing data relating to complaints is Article 6.1(c) of the General Data Protection Regulation (GDPR):

Processing is necessary for compliance with a legal obligation to which the controller is subject.

The legal basis for processing sensitive personal data is Article 9.1(g) of the GDPR:

Processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

These Articles of the GDPR apply because Section 64(1) of the Child and Family Agency Act, 2013, requires us to establish procedures for dealing with complaints:

Subject to subsection (2) and any regulations under section 68, Tusla shall establish procedures for—

(a) dealing with complaints against the Agency or a service provider, and

(b) reviewing, at the request of a complainant, any recommendation made by a Complaint Officer following the investigation of a complaint.

The processing of data, including sensitive personal data, in order to enable us to investigate complaints about Tusla is of substantial public interest because it enables us to establish the facts, offer redress if appropriate, learn from mistakes and try to avoid the same situation from arising again. It is an important part of the governance of our services and helps to ensure openness and transparency.

1.8 Complaints received from children and young people

Children have a right to be heard, listened to and taken seriously. Taking account of their age and understanding, they should be consulted and involved in all matters and decisions that may affect their lives.

Parents, guardians and carers have a right to respect, and should be consulted and involved in matters that concern their family.

A proper balance must be struck between protecting children and respecting the rights and needs of parents/carers and families.

Where a complainant is a minor under the age of 18 years, they are free to request a complaint review without the support of an adult. However, it is best practice to advise parents/guardians of any interaction you plan to have with a child or young person. You will need to explain this to the young person and make the relevant contacts prior to beginning your work.

There may be certain exceptions, such as where informing the child or young person's parent or guardian will place the child at risk in some way.

Tusla's safeguarding statement should be adhered to in respect of working with children and young people.

2.0 Overview of determination phase

This step of the complaint review process involves determining whether the request for complaint review meets the criteria to proceed to review and/or whether it is possible to resolve the complaint without proceeding to complaint review stage.

It will involve engagement with the complainant and any staff member subject to the complaint in order to clarify the grounds on which the complaint review is sought, explore possible resolution of the issues, and come to a decision about the best way to proceed.

In order to complete this step, you will need to read the complaint investigation report and the complaint review request, including the grounds specified. You may also wish to view case files or speak with some of the staff members who have been involved in managing the complaint. It is important to be clear that this is not a formal interview regarding the complaint review, but rather an information-gathering step to help you decide how best to go forward.

Once you have made your determination, you must send the complainant a letter advising them of your decision to proceed to complaint review, or your decision not to proceed and the reason for the decision (see template letters).

Please note that the determination step is included in the 20 working day timeframe allowed for completion of the complaint review. Where it takes time to clarify a complainant's grounds for review it is reasonable to start the clock on the 20 days from the date the review request was clarified. However, this must be explained to the complainant in writing.

2.1 Determine whether a referral to an alternative Complaint Review Officer is necessary

The management of complaint reviews must be free from actual bias and also from the **perception** of bias.

This means that, in certain circumstances, where a party to the complaint review may perceive a bias, it is not advisable for an individual Complaint Review Officer to manage the complaint review. This can occur even when the Complaint Review Officer is confident in their ability to set aside any potential bias.

This determination must be made as early as possible in the management of the complaint review, to ensure fairness to the complainant, any staff members involved in the complaint review, and the Complaint Review Officer themselves. However, bear in mind that additional information may come to light at any stage during the management of a complaint that may have an impact on this, so the decision may need to be revisited at a later stage.

Factors to consider when determining whether a referral to an alternative Complaint Review Officer may be necessary include:

1. Have I had personal involvement in the management of this case?
2. Have I been responsible for supervision of staff during their management of this case?
3. Have I been responsible for sign-off of decisions about the management of this case?
4. Have I had close involvement with the staff or service involved (this may include personal or working relationships, both positive and negative)?
5. Are there any personal circumstances which might make it difficult for me to be impartial in managing this complaint?
6. Could the complainant, a staff member involved in the complaint, or a neutral observer have a reasonable belief that I cannot be impartial in managing this complaint (even if this is untrue)?

If the answer to any of the above questions are 'Yes', then serious consideration must be given to referring this complaint to an alternative Complaint Review Officer.

This must be discussed with the person who allocated you to manage the complaint review, and/or the person who is in the position to re-allocate the complaint to an alternative Complaint Review Officer, at the earliest possible opportunity.

2.2 Determine whether the person making the complaint review request is eligible to do so

Section 3.5 of the *Tell Us* policy outlines who is eligible to make a complaint.

Where a person is making a request for a complaint review on their own behalf, you may request photo ID, proof of address or similar documents in order to satisfy yourself of their identity. This is **essential** where sensitive documents such as case files will need to be accessed in order to investigate the complaint, or where sensitive personal data will be shared with the complainant in the course of carrying out the complaint review.

Complaint review requests made on behalf of another person due to age, illness or disability

If a person who is entitled to request a complaint review cannot do so because of age, illness or disability, and another person is making the request on their behalf, you must satisfy yourself of the following:

1. The person is not able to request a complaint review on their own behalf due to age, illness or disability, **and**
2. The person making the request for a complaint review falls under one of the categories listed as eligible to request a complaint review on their behalf.

Complaint review requests made on behalf of a deceased person

If a person who was entitled to request a complaint review cannot do so because they are deceased, and another person is making the request on their behalf, you must satisfy yourself of the following:

1. The person is deceased, **and**
2. The person making the request for a complaint review is a close relative, carer, or family member.

Evidence requested may include birth, marriage or death certificates, photo ID, proof of address, proof of registered Enduring Power of Attorney and similar documents.

Complaint review requests made on behalf of another person with their authority to act on their behalf

Where the person is making a request for a complaint review on behalf of another person, you must satisfy yourself that they have that person's authority to act on their behalf. They may have demonstrated this at Stage 2 of the complaint process (the complaint investigation stage), however, as you are undertaking a new process, this **must** be demonstrated again before proceeding to a complaint review.

For authority to act on another person's behalf to be considered valid under the *Tell Us* policy, the following conditions must have been met:

1. Sufficient information has been given to the person about the process to be undertaken. This includes information about which files and information may be accessed, and what information may be shared with the person making a complaint on their behalf.
2. The authority to act was freely given (i.e., not given under duress).
3. The person has the capacity to give authority to another person to act on their behalf.
4. The authority to act has been given in writing or in circumstances where this is not possible, should be documented to the satisfaction of the complaint review officer.

Complaint review requests made by another person on behalf of a child or young person

Where a request for complaint review is made on behalf of a child or young person by any of the following, no authority to act on their behalf is required:

- A parent of the child or young person.
- A guardian of the child or young person.
- A foster carer of the child or young person (provided the child or young person is still in their care).
- The child or young person's Guardian Ad Litem.

Children have a right to be heard, listened to and taken seriously. Taking account of their age and understanding, they should be consulted and involved in all matters and decisions that may affect their lives.

2.3 Determine whether grounds for a complaint review are present

Provision is made in Section 64 (1) (b) of the Child and Family Agency Act, 2013 for reviewing, at the request of a complainant, any recommendation made by a Complaint Officer following the investigation of a complaint.

Before proceeding to carry out a complaint review, you must ensure that the complaint issues have already been investigated and recommendations have been made by the Complaint Officer.

Where the complainant has raised new complaint issues that have not already been investigated, these should be referred to Stage 2 of the complaints process for examination by a Complaint Officer. This ensures that both the service user and staff members have the opportunity for full and fair procedure.

Where the complaint issues have been investigated but **no** recommendations have been made, the complaint should be referred back to the original Complaint Officer to make recommendations based on their investigation of the complaint. This ensures that Stage 2 of the process is fully concluded before proceeding to Stage 3.

Under Section 3.12 of the *Tell Us* policy, a Complaint Review Officer can review a recommendation if, it is claimed:

- a) It was made without proper permission or authority.
- b) It was made for unnecessary reasons.
- c) It was based on wrong or incomplete information.
- d) it was discriminatory.
- e) It was based on unfair or unsound findings.
- f) It was not consistent with the findings.
- g) The decision was unfair or unsound.
- h) There was a conflict of interest at the complaint investigation stage.
- i) The complaint process was not followed
- j) Due process was not followed.

These grounds are based on the grounds for complaints set out in legislation and the Ombudsman's Guide to Standards of Best Practice for Public Servants, 2002.

In some cases, a request for a complaint review may be vague or general, without identifying a specific recommendation(s) or grounds for a complaint review. In these cases, you must engage with the complainant as early as possible to clarify and agree these aspects of their request for a complaint review.

2.4 Determine whether the complaint review request has been made within the required timeframe

According to Section 3.13 of the *Tell Us* policy, a complaint review request must be made within 30 working days of the provision of the complaint investigation report.

A Complaint Review Officer may extend the time limit for requesting a complaint review in special circumstances or if they consider it to be in the public interest to do so.

If a complaint review is requested outside the timeframe, you **must** consider whether there are any grounds to extend the time limit.

This decision rests with the Complaint Review Officer.

Factors to consider when deciding whether to extend the timeframe include the following:

1. Is the complainant a young adult who is requesting a complaint review relating to their contact with us during their childhood?
2. Has the complainant been unwell?
3. Has the complainant recently had a bereaved?
4. Has Tusla been timely in its own dealings with the complainant (i.e., could we be seen to be holding the complainant to a higher standard than we hold ourselves)?
5. Is the matter of such seriousness that it merits a complaint review despite being made outside the timeframe?
6. Is there a possibility that the matter has also affected other service users?
7. Other mitigating circumstances.

2.5 Determine whether the complaint can be resolved without proceeding to complaint review

Before proceeding to review stage, you **must** consider whether it is possible to resolve the complaint.

In resolving a complaint, you seek to correct or mitigate, as far as reasonably practicable, the adverse effect on the complainant.

This will involve direct engagement with the complainant to determine what they would like to happen, and consideration of reasonable actions that may be taken. It should also involve engagement with staff members in the service concerned in order to put in place a resolution. You must ensure that any individual staff members who are named in the complaint are kept informed of and are agreeable to any planned resolution, thus ensuring fair procedure. Where staff are not agreeable to a proposed resolution the matter will progress to review.

When engaging directly with a complainant to discuss the possibility of resolution, you should follow the LEARN communication model detailed in module one of the e-learning programme, *Complaint Handling in Tusla*.

Some questions to consider asking when engaging with a complainant include:

1. What happened?
2. What effect did this have for you?
3. What is most important to you at the moment?
4. What would you like to happen next?

If the action the complainant wants is reasonable and practicable, you should try to work with the service concerned to put this in place. However, in some cases, you may need to reach a compromise that both the complainant and the service can agree is reasonable and will resolve the complaint.

Some examples of potential resolutions to a complaint could include rescheduling of appointments, a letter of apology, or a facilitated meeting with relevant staff members to discuss what happened and what is planned going forward.

In determining whether a potential resolution is reasonable, you should consider the following factors:

1. Would this resolution put the complainant back in the position they would have been in, had the action or inaction not taken place?
2. Will the service be able to deliver this resolution? This includes consideration of service capacity, staffing and funding.
3. Does this resolution place an undue burden on the complainant or on staff members?

This type of resolution is categorised as 'Informal resolution' for data collection purposes.

2.6 Decision to proceed to complaint review

Where the following criteria have been met, you should proceed to complaint review:

1. There is no risk of bias or reasonable perception of bias regarding your role as Complaint Review Officer.
2. The person making the request for review is eligible to do so.
3. There are grounds for a complaint review under the Tell Us policy (including taking account of exclusions).
4. The request for review was made within the time limit or there are grounds to extend the time limit.
5. The complaint has not been resolved and a facilitated resolution is not possible or is not suitable.

In this instance, you must write to the complainant to inform them of your decision to proceed. Your letter should include the following information:

1. The steps that will/ may be taken to carry out the complaint review.
2. The date by which the complainant can expect to receive the complaint review report.
3. Information about what will happen if it is not possible to provide a response by the expected date.
4. Information about the complainant's right to contact the Office of the Ombudsman/ the Ombudsman for Children's Office.

3.0 Overview of complaint review

In undertaking a complaint review, you seek to:

1. Establish whether the recommendations in the complaint investigation report addresses all matter(s) complained of.
2. Establish whether the recommendations in the complaint investigation report relate to and address the findings and decisions in the complaint investigation report.
3. Establish whether the recommendations were arrived at appropriately.

Throughout the complaint review process your focus should be on resolution of the complaint issues and not assigning blame.

Timeframes

A complaint review should be completed within **20 working days** of receipt of the request for review.

In exceptional circumstances, it may not be possible to meet this time frame. In these circumstances, once the 20 working day time frame has passed, you **must** provide the parties to the complaint with an update in writing on the progress of the complaint review every **20 working days**.

3.1 Notifying staff members

Once you have made the decision to proceed to complaint review, you should advise the relevant Complaint Officer of your determination to proceed to review and the rationale for same. You should also advise managers who are responsible for the implementation of recommendations made in the original complaint investigation report, as these may have to be paused until the complaint review is completed.

Staff members have a right to be informed when a recommendation made in a complaint investigation report about the work they have carried out on behalf of Tusla is under review. Having a complaint made about work they have carried out can be very stressful for staff members and it is important that you bear this in mind when notifying them of a complaint review. Consider what might be the best way for the staff member to be notified. For some people, this might be through their line manager, or informally in person or via phone in the first instance. Others might prefer to receive formal written communication only.

In all cases the staff member should ultimately receive written advice from the Complaint Review Officer that a complaint review is being undertaken.

Line managers must be informed when a complaint review is to be undertaken about work carried out by one of their staff members, as this will enable them to provide support to the staff member throughout the process. The Complaint Review Officer can use their own judgement on the appropriate sequencing of this advice depending on the situational context.

Support for staff members

It is important to note that complaints made are about actions or inactions by Tusla as a whole, even where an individual staff member is named in the complaint. In practice this may feel different to staff members, so it is important that they know that when we carry out complaint reviews, we are looking for ways to resolve the issue and ways in which we can help the system to improve by identifying points in processes where there are gaps or weaknesses.

It is important to stress that a complaint review is not a disciplinary process. We are not seeking to assign blame to any individual for any gaps, weaknesses or flaws in the system. Any recommendations made about work carried out by individuals will be constructive, contextualised, and will seek to resolve matters.

Staff members must always be informed of the supports that are available to them throughout the process which includes support from line management, Employee assistance programme and from trade union representation (*Tell Us* policy, Section 3.18).

Matters of professional misconduct and disciplinary matters are not within the scope of the complaint investigation or complaint review process. Where an issue arises that may need to be addressed between a staff member and their line manager, this will be separate from the complaint review process.

It is also recognised that, if warranted, the recommendations of a complaint investigation or complaint review may include referral to other agency processes e.g., line management, grievance or disciplinary processes

Communication

All staff members are required, under the terms of their contract of employment, to adhere to Tusla policies and procedures which have particular application to their role. This includes the *Tell Us* policy, which has application to the role of every staff member in Tusla.

While we ask and expect all staff members to participate in the complaints process, in some instances staff members do not engage with the process. In these cases, it is important to advise staff members that the complaint review will continue and that the findings will be based on the evidence that is available to you and that their lack of engagement will be referred to their line manager.

Where staff members have not provided a response or have refused to participate in the complaints process, this should be noted with their line manager in writing.

It is important to note that, even where staff have chosen not to participate in the complaints process, they must be provided with the opportunity for factual accuracy checks and the opportunity to respond to any provisional findings or recommendations which relate to work they have carried out on behalf of Tusla.

As the Complaint Review Officer, you must ensure that relevant staff members are kept informed about the progress of the complaint review and are advised of any change to the expected date that the review will be completed.

You must ensure that all correspondence relating to a complaint review is marked **Strictly Confidential** as per the Tusla *Information Classification and Handling* policy.

3.2 Pausing recommendation(s) made as part of the original complaint investigation

Section 3.13 of the *Tell Us* policy states that, where a complaint review is requested, generally Tusla will not implement the recommendation(s) from the original complaint investigation until the review is completed, unless the complainant requests otherwise and the Complaint Review Officer and relevant staff agree.

The decision to pause implementation of the original recommendation(s) should be taken in consultation with the manager responsible for the implementation of the recommendations, as there may be an additional operational need to implement a specific action, outside of the original complaint.

Whether the decision taken is to pause implementation of the original recommendations, or to continue with implementation, the complainant and relevant staff must be informed of the decision and the rationale in writing by the manager responsible for the implementation of the recommendation.

3.3 Gathering information

During the determination step of managing the complaint review request, you will have engaged with the complainant to clearly define what they are seeking to have reviewed and why.

During the complaint review, you will gather the information and evidence which will form the basis for your findings and any alteration to or additional recommendations when you write the complaint review report.

The data sources for a complaint review are typically similar to those used in a complaint investigation.

All guidance offered in the *Procedure for Complaint Officers* in respect of requesting and gathering information from a party to the complaint, providing time for response, and ensuring staff members have access to appropriate support like line management or trade union representation should be referenced in this phase (see *Procedure for Complaint Officers, V2.0*).

At all times the right of reply and factual accuracy in respect of new information should be given due regard.

4.0 Analysing the information you have gathered

Once you have gathered as much information as you require, you will need to analyse the information to arrive at your findings and any new or altered recommendations.

You may find it useful to map out the following:

1. Do the recommendations in the complaint investigation report address all the matter(s) complained of by doing one or more of the following?
 - a. Correcting any adverse impact to the complainant which has been demonstrated in the complaint investigation report.
 - b. Mitigating any adverse impact to the complainant demonstrated in the complaint investigation report, as far as is reasonably possible.
 - c. Preventing a recurrence of the circumstances which led to the action/inaction.
2. Is there a clear link in the complaint investigation between the recommendations and:
 - a. the findings?
 - b. the decisions?
3. Were the recommendations (and the findings and decisions which underpin them) arrived at appropriately (i.e., not in a manner that was contrary to fair and sound administrative practice)?

Throughout the complaint review process your focus should be on resolution of the complaint issues and not assigning blame.

5.0 Complaint review findings

Your findings will be findings of fact and also conclusions reached on the basis of those facts.

In a complaint review you are focused on the recommendations in the complaint investigation report and the grounds for review.

You must arrive at a finding as to whether the recommendations made in the complaint investigation report were contrary to fair and sound administrative practice. A recommendation in a complaint investigation report is contrary to fair and sound administrative practice if:

- a) It was made without proper permission or authority.
- b) It was made for unnecessary reasons.
- c) It was based on wrong or incomplete information.
- d) it was discriminatory.
- e) It was based on unfair or unsound findings.
- f) It was not consistent with the findings.
- g) The decision was unfair or unsound.
- h) There was a conflict of interest at the complaint investigation stage.
- i) The complaint process was not followed.
- j) Due process was not followed.

Your findings must include and be supported by a reasoned analysis of the issues and a coherent and compelling rationale for the findings reached.

6.0 Complaint review recommendations

The following options are available to a Complaint Review Officer:

1. **Uphold** the original recommendation
2. **Vary** the original recommendation
3. Make (a) **new** recommendation(s)

In deciding which option to avail of, you may wish to ask yourself the following questions:

1. Was the recommendation appropriate (having regard to the grounds for complaint review outlined in the *Tell Us* policy)?
2. Does the recommendation comprehensively address the matter(s) complained of?

If the answer to all of the above is 'yes', then you must **uphold** the original recommendation.

If the answer to only one or some of the above is 'yes', then you should consider **varying** the recommendation in order that it is both appropriate and addresses the matter(s) complained of.

If you have identified a gap, where the recommendation does not address either the matter(s) complained of or issues identified in the Complaint Officer findings, you should consider making (a) **new** recommendation(s) in order to address the gap.

When varying or making new recommendations, all guidance regarding recommendations provided in the *Procedure for Complaints Officers* is relevant and should be referred to.

6.1 Recommending a new complaint investigation

In exceptional circumstances, it may become evident while conducting the review that the original complaint investigation was undermined. In these exceptional circumstances, you may find it necessary to recommend that the complaint is referred to a Complaint Officer for a new complaint investigation to be carried out.

7.0 Composing the complaint review report

When composing the complaint review report, you should use the Complaint Review Report Template provided.

You should detail the methodology used and steps undertaken to undertake the review.

You should write in plain English, using clear language and avoiding jargon or technical terms where possible. Ensure you explain any abbreviations you use.

Ensure that the complaint review report includes information about the complainant's right to contact the Office of the Ombudsman/ Ombudsman for Children's Office.

Ensure that the complaint review report includes information about who is/ are the responsible service manager(s) in relation to the implementation of the recommendation(s) made. This is important to allow for the implementation of recommendations to be tracked and accounted for. Ensure that you include information that the complainant will receive an update on the recommendations which have been made within **30 working days** from the responsible manager identified. It is appropriate to provide agreed contact details for those staff members to allow the complainant to follow up on progress directly.

7.1 Naming conventions in complaint review reports

The approach to report writing will focus accountability on the agency and appreciates the personal data rights of staff. Complaint reports are not published but cease to be internal documents once issued to complainants. The approach taken by Tusla is that staff job titles and not personal names are utilised in complaint review reports. However, it is appreciated that some latitude to adapt the naming convention may be needed in a specific case if considered appropriate by the complaint review officer.

Where there is more than one staff member with the same title is reference in the report the use of a number and a service area will ensure that the report remains clear. For example, “*Social Worker 1 from fostering services and Social Worker 2 from child protection and welfare services both attended this meeting*”

Using this approach also makes it clear that it is the role and function (not the name) of a staff member that is of relevance in respect of any actions they took or did not take on behalf of Tusla.

Likewise, the name of the complainant or other service users/ members of the public must not be used in complaint review reports. Designations such as *Complainant*, *Service User*, or *Member of the Public* may be used. Again, where more than one individual is referred to, it is acceptable to add a number to the designation.

In order to support internal management of the complaint review, recommendations arising out of the review, and the implementation of recommendations and learning, a separate document which identifies the name, job title and work contact details of each staff member and manager referenced in the report **must** be created. This document, referred to as a ‘key’, **must** be included in the complaint file and saved to NIMS. It will not be issued to any party in the complaint, apart from those who are responsible for the implementation of recommendations, where knowledge of the identity of the parties concerned is required in order to implement the recommendations.

The review report should use the same job titles and that were used in the complaint investigation report at Stage 2 of the process. This will assist in ensuring the complaint review report remains meaningful for the complainant and those tasked with implementing recommendations.

8.0 Provisional findings, including adverse findings

A provisional adverse finding occurs if, following a complaint review, you are minded to make a finding or recommendation relating to the work carried out on behalf of Tusla by an individual or service which highlights information which could be interpreted as critical to that individual or service.

Where **any** provisional finding relates to the work carried out by an individual staff member on behalf of Tusla, including a Complaint Officer, you must provide a draft of the provisional findings and/ or relevant recommendation(s) to the staff member concerned. They must be provided with the opportunity to respond. This is in the interest of both factual accuracy and of providing a right of reply to the staff member.

You must allow the staff member sufficient time to consider the provisional findings, decision and recommendation(s). Depending on the circumstances, a timeframe of **5 working days** will usually be sufficient. Where necessary this can be extended if required.

You must clearly indicate to the staff member the date by which a response will be required. You must advise the staff member that if no response is received by that date, then the staff member will be understood to have no comment. Under these circumstances, no changes will be made to the draft report and it will issue as is.

The staff member may share the provisional findings with their line manager or trade union representative should they wish, for the purposes of support. In general, however, the line manager does not have a right of reply to provisional findings relating to the staff member.

You must consider any response provided by the staff member. Based on the response, you may decide to add to the findings, alter the recommendation(s), or not to make any alteration. Whatever your decision, the response of the staff member to the original draft should be integrated into the final complaint review report.

The final complaint review report must be sent to the staff member.

If the staff member remains dissatisfied with the final complaint review report, you should advise them of their option to pursue the matter further, through the HR grievance procedure. You must also advise the staff member that the complaint review report will still issue and is not delayed by the taking of a grievance procedure.

9.0 Issuing the complaint review report

When the complaint review report is finalised and ready for issue, you should issue a copy of it to the relevant stakeholders including the complainant, the original Complaint Officer, the service manager for the service that the complaint refers to, relevant staff, and those responsible for implementing recommendations. Where appropriate, other stakeholders may also be issued with a copy.

When providing stakeholders with a copy of the report, each copy of the document should be individualised with a watermark which identifies the stakeholder by title (e.g., *Complainant Copy* or *Social Worker 1 Copy*).

When issuing a document to a complainant, consideration should be given to whether a meeting is required to ensure the contents of the document are understood, particularly where they have additional needs or are a minor, or where the complaint review has been especially complex.

It is important to note that complaint review reports are not published (i.e., they are not placed on a publicly available platform). However, they are issued, in full, to all parties to the complaint.

Complaint review reports can be and are used for learning from complaints, and learning documents containing non-identifying information may be published.

All data protection obligations must be met both during the report writing process and at the time of issue.

Appendix 1: Schedule of templates and tools

Relevant tools and templates available on the Tusla HUB

Reference	Stage	File name	Summary
RTB1	Determination	RTB1 - Determination checklist	Determination checklist for Complaint Review Officers
RTB2	Investigation	RTB2 - Chronology of events for Complaint Review Officers	Chronology of events template for Complaint Review Officers
RTB3	Investigation	RTB3 - Interview plan and notes for Complaint Review Officers	Interview plan and notes template for Complaint Review Officers
RTB4	Investigation	RTB4 - Mapping tool for Complaint Review Officers	Mapping tool for Complaint Review Officers
RTB5	Investigation	RTB5 - Fishbone analysis for Complaint Review Officers	Fishbone analysis template for Complaint Review Officers
RTB6	Investigation	RTB6 - SMART recommendation template for Complaint Review Officers	SMART recommendation template for Complaint Review Officers
RRK	Investigation	CRK - Key for complaint review report	Template key to record names, job titles and contact details of individuals referenced in report, along with the designation given in the report
RAA	Determination	CAA - Authority to act form	Authority to act form for a complaint made on behalf of another person
RTL1	Determination	RTL1 - Excluded under policy	Determination that the matter is excluded from investigation under the Tell Us policy, but has been referred to an alternative process within Tusla.
RTL2	Determination	RTL2 - Excluded under legislation	Determination that the matter is excluded from investigation under the legislation.
RTL3	Determination	RTL3 - No grounds for complaint review	Determination that grounds for a complaint review are not present.
RTL4	Determination	RTL6 - Complaint Review Officer resolution	Complaint Review Officer resolution letter
RTL5	Determination	RTL5 - Requesting identity docs	Letter requesting photo ID, proof of address, or similar documents to confirm identity of eligible person

RTL6	Determination	RTL6 - Requesting authority to act	Letter requesting signed authority to act on behalf of the person on whose behalf the request for complaint review is being made
RTL7	Determination	RTL7 - Age, illness, disability - eligibility	Letter requesting evidence that the person is unable to make the complaint on their own behalf, and that the complainant falls into one of the categories entitled to make a request for complaint review on their behalf
RTL8	Determination	RTL8 - Deceased - eligibility	Letter requesting evidence that the person is deceased, and that the complainant falls into one of the categories entitled to make a request for complaint review on their behalf
RTL9	Determination	RTL9 - Not eligible	Decision not to proceed on the grounds that the person making the request for complaint review is not/ has not provided evidence that they are eligible to do so
RTL10	Determination	RTL10 - Outside timeframe	Decision not to proceed on the grounds that the request for complaint review has been made outside the time frame
RTL11	Determination	RTL11 - Decision to proceed	Decision to proceed to complaint review
RTL12	Review	RTL12 - Letter to complainant advising of extension	Letter to complainant/ relevant staff member(s) when expected completion date will not be met
RTL13	Review	RTL13 - Letter to staff member advising of extension	Letter to complainant/ relevant staff member(s) providing update on status of complaint review
RTL14	Review	RTL14 - Letter to staff member advising of complaint review	Letter advising a staff member of a complaint review
RTL15	Review	RTL15 - Letter to line manager advising of complaint review	Letter advising a line manager of a complaint review
RTL16	Review	RTL16 – Letter to manager responsible for original recommendations	Letter advising a manager who was responsible for the implementation of the recommendations made at Stage 2 of the process that a complaint review is being carried out
RTL17	Review	RTL17 - Letter requesting written submission	Letter requesting a written response
RTL18	Review	RTL18 - Letter inviting to interview	Letter inviting a staff member/ complainant/ other relevant person to interview

RTL19	Review	RTL19 - Letter with draft interview notes	Letter including draft interview notes
RTL20	Review	RTL20 - Letter with finalised interview notes	Letter including finalised interview notes
RTL21	Review	RTL21 - Letter with provisional findings and factual accuracy	Letter to individual staff member when findings in the complaint review report refer to work carried out by them on behalf of Tusla
RTL22	Review	RTL22 - Letter advising of right to HR grievance	Letter informing staff member of their right to pursue the matter through the HR grievance procedure/ decision to issue the complaint review report
RTL23	Review	RTL23 - Cover letter to complainant	Template cover letter to complainant when issuing complaint review report
RTL24	Review	RTL24 - Cover letter to line manager	Template cover letter to service manager when issuing complaint review report
RTL25	Review	RTL25 - Cover letter to staff member	Template cover letter to individual staff member when issuing complaint review report
RTL26	Review	RTL26 – Cover letter to manager responsible for original recommendation	Template cover letter when issuing complaint review report to a manager who was responsible for the implementation of recommendations made at Stage 2 of the process
RTR	Review	RTR - Complaint Review Report	Template complaint review report

Appendix 2: Definitions and interpretations

In this procedure document, the following terms have the following meanings:

Action

Section 60 of the Child and Family Act 2013 defines 'action' as meaning anything done or failed to be done.

An action can be an act or a decision.

Adverse finding

An adverse finding is a finding that may be viewed as unfavourable to the individual or service it relates to.

Advocate

An advocate supports or represents the views of anyone looking for information, giving feedback or making a complaint to Tusla.

They do so with the authority of the person concerned.

Clinical judgment

Clinical judgment means a decision made or opinion formed in connection with the diagnosis, treatment and care of a patient.

The person making a clinical decision or forming an opinion in connection with the diagnosis, care or treatment of a patient must be suitably qualified and registered with a Professional Body.

See Section 48 (1) (c) of the Health Act, 2004.

Close relative

A close relative is a person who is cohabiting with the other person or is their:

- parent
- guardian
- son
- daughter
- spouse
- civil partner

The above is included in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010.

Complainant
The person making the complaint to Tusla.
Complaint investigation
<p>The process where the Complaint Officer gathers and assesses information. They do this to find out if Tusla has done, or not done, something which:</p> <ul style="list-style-type: none"> • was contrary to fair and sound procedure • had an adverse effect on someone.
Complaint review
<p>A complaint review is where the Complaint Review Officer considers the relevant recommendations arising from the complaint investigation.</p> <p>They decide if they have been arrived at correctly and if they address the issues complained about.</p>
Complaint Officer (CO)
A Complaint Officer is responsible under the Child and Family Agency Act, 2013, for investigating complaints received by Tusla.
Complaint Review Officer (CRO)
A Complaint Review Officer is responsible under the Child and Family Agency Act, 2013, for conducting complaint reviews.
Compliment
A compliment is when a member of the public or a service user praises, commends or admires an action of Tusla or a Tusla staff member.
Comment
A comment is when a service user or member of the public makes a verbal or written remark in relation to an action of Tusla or a Tusla staff member.
Authority to act in relation to a complaint on behalf of someone else
Authority to act on another person's behalf in relation to a complaint means a freely given, specific and informed agreement which is written or documented to the satisfaction of the relevant staff member.

Decision

In a complaint investigation, the decision could be to:

- uphold the complaint
- partially uphold the complaint, or
- not uphold the complaint.

In a complaint review, the decision could be to:

- uphold the original recommendation or recommendations
- vary the original recommendation or recommendations, or
- make new recommendation or recommendations.

These decisions are made by the Complaint or Review Officers respectively.

Determine

To 'determine' means to find out if the complaint meets the criteria for being processed under the Policy.

This step fulfils the requirements of preliminary investigation as outlined in Part 9 of the Child and Family Agency Act, 2013.

Due process

Due process means that all legally based procedures must be fair.

Fair procedure

Fair procedure means no one should be judged without a fair hearing. Each party should be given the chance to respond to the evidence against them.

Findings

Findings are the information found or the conclusions reached based on that information.

Feedback

Feedback is any information provided by service users and the public that can help improve the quality of the service provided. Feedback includes comments, compliments and complaints.

NIMS

Tusla uses the National Incident Management System (NIMS) to record and manage all complaints. NIMS is a highly secure, GDPR-compliant web-based platform hosted by the State Claims Agency.

Recommendation

A recommendation in this policy is when we suggest an act or course of action.

When the Complaint Officer or Complaint Review Officer suggests action to:

- remedy the situation
- prevent it from recurring, or
- to improve services.

Resolution

A resolution in this policy is when we settle, or find a solution to, a problem or a contentious matter.

Right of reply

Right of reply means that when a staff member has had a complaint made about their work, or a potentially negative/adverse finding about their work, they have the right to see and respond to it.

Service provider

A 'service provider' is someone who arranges under section 56 or 58 of the Child and Family Agency Act, 2013, to provide services for or on behalf of Tusla.

Service user

A service user is someone who has received, is receiving, has sought or is seeking a service from Tusla or one of our service providers.

'We', 'us' or 'our'

Means 'The Child and Family Agency (Tusla)'.

Appendix 3: LEARN model for local resolution of complaints

L ISTEN	<ul style="list-style-type: none"> Let the caller tell you what has happened in their own words. Summarise what they have said to make sure you have understood fully. 	<ul style="list-style-type: none"> “Can you tell me what has happened?” “Am I right in saying that your complaint is XXXXX?”
E MPATHISE	<ul style="list-style-type: none"> Show the caller that you understand how they are feeling – try to see the situation from their point of view 	<ul style="list-style-type: none"> “I understand that this call was difficult for you to make.” “I can hear that this is frustrating for you.”
A POLOGISE	<ul style="list-style-type: none"> Saying sorry to someone for their negative experience is not an acceptance of blame. Saying sorry when it is clear that we are at fault is a very important part of complaints handling. 	<ul style="list-style-type: none"> “I am really sorry to hear that you are having a negative experience.” “I am sorry that I did not call you back when I said I would.”
R ESOLVE	<ul style="list-style-type: none"> Identify what the caller is looking to achieve – if it is appropriate and realistic, you should offer this. Manage expectations and offer solutions that are realistic. If you agree to do something (e.g. call back within a certain timeframe), follow through! 	<ul style="list-style-type: none"> “What would you like to happen next?” “Unfortunately, that is not something that is possible, but what I can offer is to arrange for a telephone call from the XXX team.”
N OTIFY	<ul style="list-style-type: none"> Make sure you have recorded all the actions you have taken. Make sure you contact everyone who needs to know about the complaint. 	



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