

# HM Prison and Probation Service Probation Standard Complaints Procedure

This instruction applies to:-		Reference:-	
Providers of Probation Services		PI 51/2014	
Issue Date	Effective Date	Expiry Date	
(Revised) 12 August 2021	27 June 2014	N/A	
Issued on the authority of	Operational Policy Sub-board		
For action by	<ul> <li>All staff responsible for the development and publication of policy and instructions</li> <li>☐ HMPPS HQ</li> <li>☑ Probation Service</li> <li>☑ Other Providers of Probation and Community Services</li> <li>☐ Heads of Groups</li> </ul>		
Instruction type	Legal Compliance		
For information	All staff in the National Probation Service and Community Rehabilitation		
	Companies		
Provide a summary of the policy aim and the reason for its development / revision	<b>Update 20.05.2019</b> – Minor amendments to paragraphs 2.28, the PPO's address and all references to NOMS replaced by HMPPS. The length of time to write to the PPO has increased from 1 month to 3 months on page 9 (Panel 4).		
	<b>Update 12.08.21</b> – Amendments to complaints processes and procedures requested at a national workshop; references to the CRCs in preparation for the unification model in July 2021; and amendments requested by the PPO to provide additional information and clarification regarding vexatious and persistent complaints.		
	This Instruction sets out the Secretary of State for Justice's directions with regard to the complaints scheme to be operated by the Probation Service. It is a set of minimum requirements to ensure that probation providers have an effective procedure for handling complaints with regard to the delivery of probation services, including the duty to ensure that each person who works for a public authority in a customer-facing role (including agency-employed staff) speaks fluent English. This Instruction includes guidance on the roles of the Prisons and Probation Ombudsman and the Parliamentary Ombudsman in relation to such complaints. It does not apply to internal staff-related complaints.		
Contact	Probation Service Business Strategy and Change nps.supplierservices@justice.gov.uk		

Associated	None	
documents		
Replaces the following documents which are hereby cancelled: Probation Circular 128/2001;		
NOMS Information Leaflet titled 'Making a Complaint' reference number NPD/001/2006		
Audit/monitoring: The Executive Director, Probation & Women and the Executive Director of		
HMPPS in Wales & Public Protection will monitor compliance with, and hold providers to account		
for delivery of, the mandatory requirements in this instruction.		
Introduces amendments to the following documents: None		
Notes: All Mandatory Actions throughout this instruction are in italics and must be strictly adhered to.		

# **CONTENTS**

Section	Subject	For reference by:
1	Executive Summary	
2	Complaints Procedure	Staff in Probation Service
Annex A	Template Probation Complaints Leaflet	

# 1. Executive Summary

## Background

- 1.1 This Instruction sets out the Secretary of State for Justice's directions in relation to the scheme to be operated for the handling of complaints only with respect to the delivery of probation services.
- 1.2 **Update**: It includes information (at paragraphs 2.5, 2.8 2.10 and Annex A) on the duty placed on public authorities by Part 7 of the Immigration Act 2016 to ensure that each person who works for a public authority in a customer-facing role speaks fluent English. N.B. Please note that this includes agency-employed staff in customer-facing roles.
- 1.3 This Instruction also highlights the role of the Prisons and Probation Ombudsman (PPO) and the Parliamentary and Health Service Ombudsman (referred to throughout as the Parliamentary Ombudsman) in the handling of complaints.
- 1.4 This instruction does not relate to staff-related complaints, or to an issue already subject to police investigation/courts/statutory tribunal/ parole Board/CPS or criminal review commission.

## **Desired outcomes**

1.5 This Instruction is designed as a set of minimum requirements with which the Probation Service must comply. This will ensure that probation providers have an effective means of considering and responding to complaints and are aware of the roles of the PPO and the Parliamentary Ombudsman in the complaints process.

## Application

1.6 Section 2 of this Instruction explains the probation complaints procedure with regard to the delivery of services. Senior staff in the Probation Service must ensure that all staff are familiar with this Instruction.

## Mandatory actions

1.7 Staff in the Probation Service must read the enclosed guidance in full and ensure that upto-date complaints leaflets are made available, using or based upon the template supplied with this Instruction at <u>Annex A</u>.

## Resource impact

- 1.8 This Instruction replaces Probation Circular 128, which was in place from 2001 and which set out the complaints procedure to be followed by probation providers under previous arrangements. The resource impact is essentially unchanged.
- 1.9 Any leaflets produced locally will need to reflect current HMPPS publication guidance. A template has been provided at <u>Annex A</u>. Providers may wish to adapt their complaints literature to reflect local requirements.

(Approved for Publication)

Sonia Flynn Executive Director, Probation & Women, HMPPS

# Probation Providers: Complaints Scheme

- 2.1 All bodies providing public services are required to ensure that they have a fair and robust complaints procedure, aligned with procedural justice (Link to guidance: <u>How procedural justice can help you HMPPS Intranet (gsi.gov.uk)</u>). This scheme sets out minimum requirements with which the Probation Service must comply with when handling complaints regarding the delivery of probation services.
- 2.2 The scheme also highlights the role of the Prisons and Probation Ombudsman (PPO) and of the Parliamentary and Health Service Ombudsman (referred to throughout as "the Parliamentary Ombudsman") in the handling of complaints.

# People eligible to make a complaint

- 2.3 Complaints relating to the delivery of probation services may be made by any person including, but <u>not</u> limited to, people on probation and victims of crime (or members of their family).
- 2.4 Complaints cannot be submitted on behalf of another person, unless there is an exceptional reason such as cognitive reasons, i.e. a member of public can complain about the delivery of probation services, but not on behalf of another person. A complaint in respect of someone who has died may be made by a member of the person's immediate family (for this purpose, "immediate family" means the parents, spouse, cohabitee, siblings or children of the deceased).
- 2.5 To be eligible for consideration, complaints must relate to the conduct or competence of an employee or employees of the Probation Service, or an agency employee or employees working for the Probation Service, with respect to the delivery of probation services. This includes their actions and decisions or failures to act or decide.
- 2.6 Anyone making a Stage 2 complaint under the arrangements described below must do so within 6 months of the action, decision or failure to act or decide, which is the subject of the complaint, or (if later) within 6 months of the time at which the complainant could reasonably have been expected to know of the matter of which he or she wishes to complain.
- 2.7 Complaints will not be eligible for investigation under the complaints procedure if the subject matter is under criminal investigation, or subject to the decision of a court, a statutory tribunal, the Parole Board, the Crown Prosecution Service or the Criminal Cases Review Commission or if the issue or issues that form the basis of the complaint have been determined by any of these.

# Fluency in English

- 2.8 Part 7 of the Immigration Act 2016, which came into effect on 21 November 2016, places on public authorities a duty to ensure that each person who works for a public authority in a customer-facing role speaks fluent English. Public authorities are required to operate an adequate procedure for enabling complaints about breaches of this requirement to be made and considered. A complaint about the accent, dialect, manner or tone of communication, origin or nationality of a public sector member of staff would not be considered a legitimate complaint about the fluency duty. Please note that this new requirement also applies to agency-employed staff who work for a public authority in a customer-facing role.
- 2.9 Aside from the new legislative requirement in relation to public authorities, complaints of the type described at paragraph 2.8 above are in any case within the scope of the standard complaint procedure directed by the Secretary of State.

2.10 Probation providers must ensure that complaints of the type described in paragraph 2.8, above, are properly investigated, in accordance with the standard complaints procedure set out below. This is important so that the complaints process is seen to be trustworthy and effective.

#### Stage 1 Complaints

- 2.11 All complainants should be encouraged to use the stage 1 of the procedure in the first instance but have the right to go straight to stage 2 if they wish.
- 2.12 An initial complaint regarding the delivery of probation services may be made in writing, by telephone or through direct personal contact. The aim, when receiving initial complaints, is to resolve them quickly (within 25 days) and at the lowest possible level. Therefore, those making complaints should be directed in the first instance to the local Probation Service office to speak to the person involved, his or her line manager or any other person responsible for the staff member whose actions or sphere of activity are the subject of the complaint. At the end of the stage 1 process, complainants must be sent a letter outlining the complaint and the outcome of the discussions that have taken place.
- 2.13 Where a complainant remains dissatisfied with the outcome of stage 1, he or she should make a stage 2 within the time limit in paragraph 2.6. Stage 2*complaints must be made in writing and should, where practicable, be signed by the person who is aggrieved, unless permission has been provided for another person to act on the complainant's behalf.*
- 2.14 Whether complainants use the stage 1 complaints process or proceed straight to stage 2, the stage 2 complaint must be made in accordance with the time limit in paragraph 2.6.

#### Stage 2 Complaints

- 2.15 All complaints concerning the delivery of probation services under this stage of the procedure should be addressed, as appropriate, to the Regional Probation Director with responsibility for the relevant Probation Service region or his or her designated officer. The relevant Regional Probation Director must ensure that the complaints procedure is complied with and that complaints and appeals are logged, acknowledged and monitored. , Regional Probation Directors must ensure that all complaints are logged on the national complaints database so that regular management reports can be produced.
- 2.16 Where a complaint relates to the actions, decisions or failures to act or decide of more than one provider of probation services, the normal approach will be for each provider to investigate the issues relating to it as a separate complaint and severally to reply to the complainant. Where, exceptionally, this approach does not appear appropriate, advice should be sought from the Directorate of Probation (see contact details at paragraph 0).
- 2.17 Where a provider receives a complaint which refers (either additionally, or because it has been wrongly directed) to the responsibilities of another provider, the recipient provider should seek advice from the Directorate of Probation (see contact details at paragraph 0).
- 2.18 Complaints relating to actions, decisions or failures to act or decide by a Regional Probation Directors should be directed to the Executive Director, Probation & Women, in England or the Executive Director of HMPPS in Wales & Public Protection (as appropriate), who will arrange for them to be investigated.
- 2.19 Complainants must be informed, within five working days of receipt of their complaint, whether it is eligible for consideration and, if so, the procedure under which it will be considered and the date by which they will receive a reply.

- 2.20 Regional Probation Directors should nominate a person to investigate. Wherever possible, this person will not be in the line management of, or be responsible for, the staff member or activity complained of.
- 2.21 The complaint will be investigated and the outcome, with reasons, sent in writing to the complainant within 25 working days of acknowledgement of the complaint. *If the Regional Probation Director exceptionally, needs more time, he or she must write to the complainant setting out the reasons for the delay.*
- 2.22 At the time they are notified of the outcome, complainants must be informed that, if they are not satisfied, they have 20 working days from the date of the reply in which to appeal (Stage 3), and that they must state the reasons for their dissatisfaction. There is no obligation to accept an appeal received outside this time limit, but the Probation Service has discretion to do so if there are exceptional circumstances or if satisfactory reasons are provided for the appeal's being late.

# Stage 3 Appeal

- 2.23 Stage 3 appeals must be made in writing to the relevant Regional Probation Director should be signed by the complainant wherever practicable. The Regional Probation Director must acknowledge receipt of the appeal within five working days.
- 2.24 The Regional Probation Director will convene an appeal panel of at least two people, to include senior staff who have not been involved in the subject of the complaint or its investigation.
- 2.25 The panel will establish the issues the appeal needs to address and whether it would assist the appeal to interview the complainant and the investigating officer. This will normally be to determine whether the original complaint investigation was sufficient and reasonable.
- 2.26 The outcome of the appeal will be sent in writing to the complainant within 20 working days of receipt of the appeal. *If, exceptionally, this requirement cannot be met, the complainant must be notified in writing of the reasons for the delay,* and the new date/deadline for the appeal outcome.

# Prisons and Probation Ombudsman

- 2.27 Complaints to the Prisons and Probation Ombudsman are limited to certain categories of people, listed at: <u>http://www.ppo.gov.uk/investigations/make-complaint/how-to-make-a-complaint-dvd/</u>. Anyone in these categories who remains dissatisfied with the outcome of his or her complaint, may, within three months of the issue of the appeal decision, put his or her complaint to the Prisons and Probation Ombudsman.
- 2.28 A complaint to the Prisons and Probation Ombudsman can be made by writing to: Prisons and Probation Ombudsman, 3<sup>rd</sup> Floor, South Colonnade, Canary Wharf, London, E14 4PU

# Parliamentary & Health Service Ombudsman

2.29 When the avenues of appeal described above have been completed (including investigation of the complaint by the Prisons and Probation Ombudsman in cases where the Prisons and Probation Ombudsman has jurisdiction), if the complainant is still dissatisfied with the way it has been dealt with, he or she may ask the Parliamentary Ombudsman to investigate. The Parliamentary Ombudsman investigates complaints from members of the public about Government Departments and other public bodies. This includes HM Prison and Probation Service.

- 2.30 The Parliamentary Ombudsman has powers to obtain evidence from the bodies complained about and to make recommendations about the cases it investigates. *Cases must be referred to the Parliamentary Ombudsman by a Member of Parliament.*
- 2.31 The Probation Service are obliged to co-operate with the Parliamentary Ombudsman when requested to do so and must provide any information which is reasonably required in connection with an investigation. Following any recommendations from the Parliamentary Ombudsman relating to the delivery of probation services, the Probation Service must review each suggestion. Furthermore, the Probation Service must confirm in writing how they will respond to and address any such recommendations.
- 2.32 The Parliamentary Ombudsman will normally only take on a complaint after the complainant has first tried to resolve the complaint with the organisation involved and has received a response from them. The Parliamentary Ombudsman believes that the organisation should be given a chance to respond and, where appropriate, try to put things right, before it becomes involved.
- 2.33 A complaint form which gives all the information needed to make a complaint to the Parliamentary Ombudsman can be found at <u>www.ombudsman.org.uk</u> or can be requested by calling 0345 015 4033.

# Publicising the scheme

- 2.34 The Probation Service must publicise the complaints scheme and explain the roles of the Prisons and Probation Ombudsman and the Parliamentary Ombudsman by providing posters or leaflets at all premises, including prisons where probation staff provide offender management services. Transparency of this kind can help to foster trust in the process and the seriousness with which we take complaints.
- 2.35 Information about the complaints scheme and about access to the Prisons and Probation Ombudsman and the Parliamentary Ombudsman must be included in the induction arrangements for people on probation each time they come under supervision.
- 2.36 A standard template complaints leaflet has been developed for adaptation as required at <u>Annex A</u>.

## Repeated or vexatious complaints

- 2.37 Nothing in this scheme requires the Probation Service to reconsider a complaint that it has already investigated (though, as always, reconsideration may be necessary if significant new information comes to light).
- 2.38 It is essential that complaints are properly investigated. However, if the Probation Service receives what appears to be a repeated complaint (i.e. identical, or very similar, to one that has already been fully investigated) or a vexatious complaint (with no reasonable grounds, where the purpose appears to be to cause inconvenience or annoyance), the complaint should be referred immediately to the Regional Probation Director, or an officer he or she has designated to oversee such issues.
- 2.39 The Regional Probation Director or the designated officer (if appointed) should ask a member of senior staff who has not been involved in the matter complained of, or its investigation, to review the case and determine whether or not the complaint does, in fact, fall into either of the above categories, and to decide how best to respond.

# Persistent Complaints and unreasonable complaint conduct

- 2.40 The Probation Service are committed to dealing with all complaints fairly and impartially and to making our service as accessible as possible. However, the nature or frequency of some complainants' contact with our service, and complainants' unreasonably behaviour can hinder the consideration of their own, or other complainants', complaints. Unreasonable complainant behaviour may include one or two isolated incidents, as well as 'unreasonably persistent behaviour', which is usually a build-up of incidents or behaviour over a longer period. Single incidents may also be unacceptable, but more often the difficulty is caused by unreasonably persistent behaviour that is time consuming to manage and interferes with proper consideration of the complaint.
- 2.41 The Probation Service considers, unreasonable and unreasonably persistent complainants are those complainants who, because of the nature or frequency of their contact with our service, hinder our consideration of theirs, or other complainant's, complaints i.e. service users bringing complaints to the Probation Service or ombudsman are 'persistent' because they feel the organisation has not dealt with their complaint properly and are not prepared to leave the matter there.
- 2.42 Some of the actions and behaviours which the Probation Service considers unreasonable conduct are:
  - 2.42.1 Refusing to specify the grounds of a complaint, despite offers of help.
  - 2.42.2 Refusing to cooperate with the complaints investigation process.
  - 2.42.3 Refusing to accept that certain issues are not within the scope of a complaints procedure.
  - 2.42.4 Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
  - 2.42.5 Making unjustified complaints about staff who are trying to deal with the issues and seeking to have them replaced.
  - 2.42.6 Changing the basis of the complaint as the investigation proceeds.
  - 2.42.7 Changing statements made at an earlier stage.
  - 2.42.8 Introducing trivial or irrelevant new information at a later stage.
  - 2.42.9 Raising many detailed but unimportant questions and insisting they are all answered.
  - 2.42.10 Submitting falsified documents.
  - 2.42.11 Pursuing parallel complaints on the same issue with various organisations'.
  - 2.42.12 Making excessive demands on the time and resources of staff with lengthy phone calls, emails to numerous Probation staff, or detailed letters every few days, and expecting immediate responses.
  - 2.42.13 Submitting repeat complaints with minor additions/variations the complainant insists make these 'new' complaints.
  - 2.42.14 Refusing to accept the decision; repeatedly arguing points with no new evidence.
- 2.43 The Probation Service will not tolerate deceitful, abusive, offensive, threatening or other forms of unacceptable behaviour from complainants. If it occurs, the Probation Service will take proportionate action to protect the wellbeing of our staff and the integrity of our processes.
- 2.44 Probation Service investigative staff manage a number of complaints at any one time, using their time and resources to best effect. They cannot do so if a complaint dominates their attention with frequent, lengthy contacts. This hinders the consideration of other complaints. Where necessary, the Probation Service will take action to restrict access to their service if unreasonable behaviour of this nature persists.
- 2.45 If the Probation Service considers a complainant's behaviour to be unreasonable, the Probation Service will explain why and ask the complainant to change it. The complainant will also be warned that if their behaviour continues, the Probation Service may take action

to restrict their contact with our offices. Where the behaviour is so extreme that it threatens the immediate safety and welfare of Probation Service staff, the Probation Service may report the matter to the police or consider taking legal action. In such cases, the Probation Service may not give the complainant prior warning.

# Information Management

- 2.46 Complaints are handled in accordance with the current information management requirements. At the time of writing this document they are the <u>Information Security Policy</u> <u>Framework and Records, Information Management and Policy PSI 04/2018.</u>
- 2.47 Two copies of all completed complaint forms must be kept. A copy of the complaint or appeal must be kept with the relevant file; service users (nDelius), Victims in the Victim Scheme (VCMS) and so on and retained for the relevant period. Centrally held copies must be retained for at least three years (as a corporate record) unless the complaint contains personal data and can only be retained for the period provided in above mentioned policy.
- 2.48 Initial contact can be made via email; however post initial contact the mode of communication will revert to postal services to maintain security measures, where secure email cannot be confirmed with the complainant (unless alternative secure means are agreed and approved by information security). Paper complaints will be locked away securely until transferred into digital storage.

# Further Information

2.49 Further information on this scheme can be obtained from the Probation Service Business Strategy and Change Team, email: <u>NPS.SupplierServices@justice.gov.uk</u>.

## Annex A

# **Template Probation Complaints Leaflet**

## PANEL ONE

## Making a Complaint

## PANEL TWO

We work to high standards and we hope this is reflected in your experience with us.

# That sound fine – but what if I have a complaint?

Complaints can be made by any person including, but not limited to:

- Supervised individuals
- victims of crime (or their family)
- members of the public.

To be considered, your complaint has to be about an action or decision, or failure to act or decide, on the part of the employees of the Probation Service.

We can't look into something that is already being investigated by the police or subject to a decision of the courts, statutory tribunal, Parole Board, Crown Prosecution Service or the Criminal Cases Review Commission.

Your complaint won't normally be considered if it is about something that happened more than 6 months ago, or that you could have known about 6 months ago.

#### It is best to talk

Face-to-face or over the telephone with the person involved can often be the solution.

If this is difficult, ask to discuss it with a more senior member of staff.

## PANEL THREE

## Pen to paper

You can make a complaint in writing to your local Probation Service office. If you are dissatisfied with the outcome you can put your complaint in writing to the Director of your Probation Service Region.

(Box inserted here with the contact details for the Regional Probation Directors and postal address)

Within five working days of receiving your letter the Regional Probation Director will explain how your complaint will be handled. He or she will give the date when you can expect the outcome.

If your complaint is about an issue involving the Regional Probation Director, you should address your letter to the Executive Director of Probation in England or the Executive Director of HMPPS in Wales.

# If you are not satisfied:

If you are not satisfied, and you have followed the complaints process but believe that Probation has not investigated your complaint appropriately. You can appeal within 20 working days of receiving the outcome. Write to the Regional Probation Director and explain why you want to appeal. They will acknowledge your letter within five working days of receiving it. A panel will look at your appeal to determine whether your investigation was sufficient and reasonable. They may ask to meet you and the investigating officer.

The outcome will be sent to you within 20 workings days of receipt of the appeal.

The panel will let you know if they need longer to make a decision.

The role of the internal appeal panel is to investigate whether you have been dealt with fairly, not to reinvestigate your original complaint.

# PANEL FOUR

# If we have been supervising you or preparing a report on you, and you have followed the complaints process but believe that Probation has not investigated your complaint appropriately:

You can write to the Prisons and Probation within one month of your appeal decision if you have:

- been under the supervision of the Probation Service
- been housed in probation accommodation
- had a report prepared about you for use in court.

Visit\_ Prisons and Probation Ombudsman Third Floor South Colonnade Canary Wharf London E14 4PU

# If you have taken these steps and are still dissatisfied with the decision:

The Parliamentary Ombudsman can consider your complaint. However, they will normally only take on a complaint after you have first tried to resolve the complaint and received a response.

If after your response from the Probation Service you are still unhappy, you will need to ask a Member of Parliament to refer the complaint to the Parliamentary Ombudsman for consideration.

A complaint form which gives all the information you would need can be found at or can be requested by calling **0345 015 4033**.