

**CONFIDENTIAL**

Judith Robertson  
Chair, SHRC

Date 11 June 20

By email to: [Judith.Robertson@scottishhumanrights.com](mailto:Judith.Robertson@scottishhumanrights.com)

Dear Judith

**Suspension of Complaints Procedures in Scottish Local Authorities**

1. Thank you for your letter of 10 June 2020.
2. Before addressing the issues you raise, I thought it may be helpful to clarify my position in respect of public bodies' complaints handling requirements during the COVID-19 pandemic.
3. Through communications on our website, and writing directly to Chief Executives I have acknowledged that organisations are facing significant resource pressures as they focus on responding to COVID-19 and the delivery of essential services. I have recognised pressures on resources will require them to introduce their own contingency arrangements, and to make difficult decisions about the essential work they prioritise at this time.
4. In saying this, I recognise that there may be delays in complaints handling in some cases. Equally, however, I have been clear that organisations still need to comply with the model complaint handling procedure, which allows for timescales to be extended in appropriate circumstances (keeping complainers up-to-date, of course). I am on record as saying that we expect to see an increased use of these extension arrangements (which is of course compliant with the requirements of the model complaints handling procedure), and we expect to see an approach which prioritises essential complaints.
5. Turning now to the issue you raise in respect of '*a number of local authorities*' having fully suspended their complaints procedure. At the start of the pandemic I asked my 'Standards' team to monitor the impact of COVID-19 on complaints handling across the public sector. We do this in a number of ways including scanning the complaints environment, our direct interface with public bodies and by taking account of feedback from stakeholders. As a result of this monitoring activity, we were already aware of the concerns about three of councils you named. Additionally we also had concerns about



a fourth local authority, where it appeared that the complaints process may have been suspended.

6. I will now detail the actions I have already taken.
7. I asked my 'Head of Improvement, Standards and Engagement' (John Stevenson) to lead on this matter. On my behalf, he contacted the four councils in question. On my behalf, he wrote to the Chief Executives of the three councils you named, and he spoke (by phone), at a senior level with the fourth council. It transpired that the fourth council had not suspended its complaints process and verification was provided to confirm this. It is fair to say that information on this council's web site may have been viewed as ambiguous in respect to the council's current approach to complaints. This was updated following our contact.
8. In writing (last week) to Midlothian Council, East Dunbartonshire Council and North Lanarkshire Council, we reminded them (as you also alluded to in your letter) that they have an ongoing legislative requirement (under the SPSO Act 2002 (as amended)) to adopt and comply with the SPSO model complaints handling procedure. We asked for confirmation of each council's current position in respect of receiving complaints from the public, and where appropriate, the basis for any decision to suspend the complaints service.
9. To date, I have not received a response from East Dunbartonshire Council. This will be followed up if no response has been received within a week. I have, however, had responses from Midlothian and North Lanarkshire, which I summarise below.
10. In replying to our letter, Midlothian Council confirmed that in its response to the COVID-19 public health emergency the council moved to the delivery of critical services only. The council said that, in doing so it published a statement advising that it was suspending responses to enquiries and complaints, but also acknowledged that a more accurate reflection would have been to add "within the usual timeframes" to this statement. The council also confirmed that it had continued to receive and respond to complaints throughout the COVID-19 period. While reduced resource capacity may have impacted on timescales, it has continued to adopt and comply with the SPSO model complaints handling procedure. Finally, the council confirmed that it would take appropriate action to update the information on its web site.
11. In responding to our letter, North Lanarkshire Council explained that COVID-19 had produced a substantial negative impact on council staff. In excess of 1,000 staff were categorised as having a "shielding" requirement or responsibility. The impact of this, and of the pandemic on council services was also significant. Over 50 council services were reduced or withdrawn. The council confirmed, however, that it was still taking complaints and the process had not been suspended. While the council had closed the online portal for complaints, in discussion with my office, it has confirmed that the portal will reopen early next week. In summary, the council told us that it has taken complaints throughout the COVID-19 period, and will continue to do so.
12. Before closing, I thought it might be helpful to address a couple of other issues that you raised.



13. Firstly, your concern that any decision to suspend a complaints procedure may negatively impact on complainants, given the need to complete one part of the complaints process before being able to escalate it further, thus affecting access to justice. Such an impact, or barrier to justice, would also concern me greatly. Were this to happen (and I would hope not, as organisations should not suspend the complaints process) my office would work with the body in question to encourage it to deal with the complaint to a conclusion. If, for any reason, this was not possible, it is important to reflect that my legislation allows me to take complaints that have not been handled through a complaints process, or indeed complaints which have been considered through a complaints process but have not reached a conclusion. Complaints such as these are considered on the specific merits of each case.
14. Secondly, you suggest that a more proportionate approach by local authorities would be to accept and triage complaints, so that, for example, those which potentially engage absolute rights such as Articles 2 and 3 of the ECHR are addressed swiftly. I encourage organisations to take a 'resolution' approach to such complaints, and as a response to COVID-19, I have also produced additional guidance for bodies. This advises them, where possible, to continue screening incoming complaints to identify any that fall into the category of 'essential work'. I have suggested these may include complaints that concern COVID-19 or its impact and relate directly to current service provision for vulnerable people, and complaints where we believe there is a real and present risk to public health and safety.
15. Public bodies can, and do develop their own criteria in this respect. I have encouraged organisations to progress these essential complaints where possible. Where this is not possible I have advised that public bodies should explain to the complainant that they are not able to look into the matter at this time and provide an indication of when they may be able to do so. Importantly, they should also signpost the complainant to SPSO.
16. I hope that the information I have supplied regarding the specific councils you raised concerns about, and my views on complaints handling during COVID-19 is helpful. I would be happy to discuss in more detail any part of my response if required..
17. Thank you for taking the time to provide feedback. It would be very helpful if you could let me know if there are any other councils that feature in 'a number of local authorities' that I may not currently be aware of, and of any further organisations you become aware of, and I will follow these up.
18. I hope you and your team are keeping safe well.

Best wishes

Rosemary Agnew  
**Scottish Public Services Ombudsman**