



# SWF Case Handling Guidance

January 2023

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## SWF independent reviews: overview

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### The Scottish Welfare Fund

1. The Scottish Welfare Fund (SWF) is a national scheme that is delivered by each of Scotland's councils. People apply to the council for:
  - 1.1. **Crisis Grants**, which provide a safety net in a disaster or emergency when there is an immediate threat to health and safety; and / or
  - 1.2. **Community Care Grants**, which enable people to live independently or continue to live independently preventing the need for institutional care. They also provide assistance to families facing exceptional pressure.<sup>1</sup>
2. Awards can be fulfilled by cash or in kind support and are aimed at supporting one-off needs, not continuing expenses.
3. Two pieces of legislation govern the SPSO's role with SWF:
  - 3.1. the [SPSO Act 2002](#) allows us to consider complaints of maladministration or service failure about the way councils handled SWF applications; and
  - 3.2. the [Welfare Funds \(Scotland\) Act 2015](#) (the SWF Act) allows us to independently review the council's actual decisions on SWF awards.
4. Before considering our roles under these pieces of legislation, it is important that staff recognise that many SWF applicants may be vulnerable people in desperate circumstances: by definition, many will be in crisis. Applicants should be treated with dignity and respect at all times, in line with our service standards.

### Delegated authority

5. CRs act on the Ombudsman's delegated authority. This is because:
  - 5.1. it would be impossible for the Ombudsman to personally handle every matter brought to this office; and
  - 5.2. both sets of legislation only give the Ombudsman legal powers.
6. The Ombudsman and each CR will sign a mandate which will mean that, when CRs determine independent reviews and complaints under delegated authority, their decisions will carry the status of Ombudsman decisions.

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<sup>1</sup> <http://www.gov.scot/Topics/People/fairerscotland/scottishwelfarefund>

## **Independent reviews (the SWF Act)**

7. Since 1 April 2016, SPSO has been the independent reviewer for SWF. We are part of the decision making process, as our decisions affect the award that an applicant can potentially receive
8. The [SWF Act](#) required us to outline our general approach to independent reviews in a Statement of Practice (SoP). Staff should familiarise themselves with our SoP. This explains that 'in considering the decisions made by the local authority we will in line with our powers in the legislation, consider whether a different decision should have been made by them'. In doing so, our powers, under s. 8 of the [SWF Act](#), allow us to:
  - 8.1. leave the decision unchanged;
  - 8.2. fully or partially overturn the council's decision; or
  - 8.3. refer the matter back to the council to remake their decision.
9. The Scottish Government issued guidance ([SG Guidance](#)) and [Regulations](#) which the council will use when making their decisions about SWF awards. SPSO staff will also refer to these documents when reviewing the council's decisions. In line with s. 6 (3) of the [SWF Act](#), we are one of the parties that SG must consult with before issuing, varying or revoking guidance.
  - 9.1. It is each staff member's responsibility to familiarise themselves with the SG Guidance and Regulations.
  - 9.2. Staff should also remember that this document may be amended over time and so printed copies may be out of date.

## **Complaints (the SPSO Act 2002)**

10. Although this guidance concerns independent reviews under the [SWF Act](#), it is important that staff understand that we also have the power to consider SWF complaints under the [SPSO Act 2002](#).
11. Examples of possible complaints of maladministration or service failure include:
  - 11.1. significant delays in processing an application;
  - 11.2. failure to provide a reasonable service;
  - 11.3. incorrect or misleading information or advice;
  - 11.4. staff attitude/poor communication;
  - 11.5. poor complaints handling;
  - 11.6. failure to consider a request for a reasonable adjustment
12. If, after investigating a complaint, we find that something has gone wrong, we may make recommendations to the council (for example, recommending an apology or a change to the council's procedures).

## Is it a complaint or an independent review?

13. If an applicant raises something with us that could both:
  - 13.1. be a complaint under the [SPSO Act 2002](#) (see the examples above); and
  - 13.2. alter the council's SWF decision.
14. We will normally consider this as a request for an independent review under the [SWF Act](#):<sup>2</sup> We will **not** normally also take forward a separate complaint under the [SPSO Act 2002](#)<sup>3</sup> although staff should explain to applicants that this is an option they can pursue should they choose to.
15. Possible exceptions would be where our independent review:
  - 15.1. would not cover significant aspects of the alleged maladministration or service failure; or
  - 15.2. would not address a potential, related injustice.
16. In those cases we **may** also take a complaint forward under the [SPSO Act 2002](#). Although it would be recorded and responded to as a complaint under the [SPSO Act 2002](#), the issue should, where possible, be addressed in our independent review decision (it would be clearly identified as relating to the complaint).
17. Finally, where the issue an applicant has raised would not, even if we upheld it, affect the decision about their award then we **may** take this forward as a complaint under the [SPSO Act 2002](#) alone (we would firstly confirm this with the applicant). If the applicant did not wish us to do so then we may, in line with our current process for people who contact us about complaints that are not taken further, still record and report that we received a complaint about a service aspect of SWF.<sup>4</sup>
18. Our approach will be on a case by case basis; CRs should remember that they can also make suggestions for improvement to councils as part of an independent review.

## Where we decide there is a complaint

19. Before taking complaints forward under the [SPSO Act 2002](#) it is our normal practice to tell people to complete the organisation's complaints process first so that the organisation has the opportunity to respond to, and learn from, complaints.
20. In terms of SWF, an applicant who also raises a complaint with us may not have complained about it to the council. They may only have completed the council's tier 1 decision review of their SWF award. Where an applicant has:

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<sup>2</sup> In line with the SPSO Act 2002, we would not normally consider complaints when the person also has a right of appeal to an independent body (for example, a court or tribunal).

<sup>3</sup> Section O, SoP

<sup>4</sup> Section O, SoP



- 20.1. completed the council's tier 1 decision review; and
  - 20.2. complained to us about maladministration or service failure by the council.
21. They should not automatically be told to complain to the council and staff should use their judgment. For example, if the applicant raised their concern(s) during the tier 1 review but the council did not respond then we may feel it would be unreasonable to ask them to go back to the council and do this. If we decide to take forward a complaint, we will respond in line with the SPSO's general complaints response timescales. Performance indicators outlining our targets for responding to complaints can be found on our website.
22. Alternatively:
- 22.1. if the applicant did not raise their concern(s) with the council we may consider it appropriate for them to have a chance to respond first and tell the applicant that they should make a complaint to the council; or
  - 22.2. a clear SWF complaint (ie where the council's decision is not contested) will be dealt with outwith the SWF review team, in line with SPSO's complaints process. Our Complaints and Investigation guidance fully outlines the complaints process.
23. Again, each should be considered on a case by case basis. It should always be made clear to the council what we are considering when we contact them.

### **Equality and reasonable adjustments**

24. We are committed to ensuring that everyone has an equal opportunity to access our service. We recognise our duties under the Equality Act 2010 to promote equality of opportunity for all.
25. It is important that we identify and consider equality and diversity issues. We have legal commitments to make reasonable adjustments for people for whom communication may be a barrier. As a public sector organisation, we understand that we need to take steps to eliminate unlawful discrimination, harassment and victimisation actively advance equality of opportunity and foster good relations between groups that share protected characteristics and those that do not. This includes taking steps to ensure that our information and services are understood and used by diverse communities.
26. These duties mean that we need to go beyond a 'one size fits all' approach and develop and deliver services to try to meet the needs of individual employees and service users. Bringing about equality for disabled people may mean changing the way in which services are delivered and / or removing physical barriers.
27. As the duty is anticipatory, we must think in advance (and on a continuing basis) about making adjustments to ensure our service is accessible to all. We should therefore

proactively ask applicants if they need us to make any reasonable adjustments to help them access the service. Details of any reasonable adjustments should be recorded in the 'additional information' section within the 'case parties' fields of Workpro. Further detail around record important information about an applicant or how we contact them can be found in the [Public Service Complaints guidance](#).

28. Should a need for a translator/interpreter be identified, information on how to book these services are available [here](#). These requests require Team Manager approval.

### **Prioritisation of cases**

29. Applicants to the fund frequently face challenging personal circumstances and either cannot meet their immediate living costs, or do not have essential items for their home. The majority of applicants are therefore experiencing pressing situations and require quick decisions. This urgency is reflected in our decision timescales.
30. On occasion, when we identify that an applicant is facing an unusually high level of risk or detriment, we may decide that it is appropriate to prioritise the case. Based on our experience, we anticipate that this will be a rare occurrence, and will only be applicable for community care grants as crisis grants are naturally prioritised due to their urgent nature. Some indicative examples are noted below to help illustrate the types of situations that may be prioritised where:
  - 30.1. an applicant cannot move without a grant and this is causing detriment, for example, rent arrears;
  - 30.2. there is a significant and immediate risk to an applicant's wellbeing related to their grant application, for example, serious mobility issues and trip hazards related to flooring that have caused falls; and
  - 30.3. an applicant is terminally ill.
31. This process covers only covers cases where the risk and/or detriment is deemed to be unusually high. Outside of this, case reviewers have autonomy to manage their regular caseloads in line with their case handling targets. Both the TA and CRs may identify potential cases for prioritisation. Decisions to prioritise cases will normally require TM or HOI approval.
32. Priority cases should be recorded in the special requirements/ information field. The case should simply be recorded as 'priority' with a file note being added explaining the decision to prioritise the case. This will also enable us to monitor the number of priority cases. If a case has been logged in this way, it will show in the case overview banner at the top of each case so CRs can easily identify these cases.

### **Confidentiality**

33. As a public body we are subject to both:
  - 33.1. the Freedom of Information (Scotland) Act 2002 (FOISA); and

- 33.2. the Data Protection Act 1998 (DPA)
34. Both acts impose certain obligations (depending on the specific circumstances) about disclosure of information. Again, details of our responsibilities under these acts can be found in our [Public Service Complaints guidance](#) and also in our [Information Governance handbook](#).
35. Our SoP explains our approach to management of information.<sup>5</sup>

### **Releasing information for health or safety reasons**

36. S.19 of the [SPSO Act 2002](#) allows us to release information on the above grounds. Put very broadly, this principally concerns situations where we are concerned that an individual's (in)actions could pose a risk to someone. This risk could be due to individuals who work for organisations, individuals who contact us or even third parties who are referred to in information received. Although independent reviews will be considered under the [SWF Act](#), the [SPSO Act 2002](#) has been amended so that this power also applies where people contact us about SWF.
37. Our Public Service Complaints guidance fully outlines our role in this area and, among other things, it details:
- 37.1. the appropriateness of using this power, where it sits with our Engagement Policy and our discretion in this area;
  - 37.2. our assessment of 'likelihood' of a threat;
  - 37.3. whom we have to inform that we are using these powers, if we do so; and
  - 37.4. the steps we should take when documenting our decision in this area.
38. The Public Service Complaints guidance is clear that all decisions to release information on this basis should involve the LT, failing which a manager. Staff should familiarise themselves with this document and refer to it directly.
39. Further guidance on responding to applicants who have expressed thoughts of suicide or self-harm is available [here](#).

### **What we will do with applications for independent review: overview**

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#### **Background**

40. This section outlines how we handle independent reviews and is based on:
- 40.1. the [SWF Act](#); and
  - 40.2. our SoP.
41. This guidance expands upon our SoP and should help staff interpret the [SWF Act](#). Staff should, however, bear in mind that it is the [SWF Act](#) – **not this guidance** – that

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<sup>5</sup> Section P, SoP

gives us our underlying legal power to consider independent reviews. This means that staff should remember to refer to the [SWF Act](#) directly.

42. Separately, if ever there is a conflict between our SoP, this guidance and the principles detailed in our SoP then staff should follow the principles, which are:

- 42.1. independent;
- 42.2. accessible;
- 42.3. fair;
- 42.4. proportionate;
- 42.5. timely; and
- 42.6. designed to ensure that applicants are treated with dignity and respect.

43. This is explained further in our SoP.<sup>6</sup>

### Standard checks

44. In line with s.8 of the [SWF Act](#), we will be considering if the council's decision about the SWF application was the decision that should have been made. To do this, we will consider:

- 44.1. our own remit/jurisdiction;
- 44.2. the council's decisions on:
  - 44.2.1. eligibility;
  - 44.2.2. qualifying criteria;
  - 44.2.3. priority.
- 44.3. The merits of the council's decision.<sup>7</sup>

45. Confirming our own remit / jurisdiction will require some initial checks on applications:

- 45.1. **maturity**, because an applicant **must** have completed the council's tier 1 review before coming to us for an independent review. The only exception is where the council have not carried out a tier 1 review despite the applicant asking them for one (see the section on tier 1 review not taken forward by the council). All subsequent references to our lack of discretion on maturity should be read with that in mind;
- 45.2. the **time** taken for an applicant to bring their review to us (generally no longer than one month); and
- 45.3. **consent** (we can take reviews from one person on behalf of another); and if the application has been **duly made**.

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<sup>6</sup> Section A, SoP

<sup>7</sup> Section I, SoP

46. Each is outlined briefly below and more detailed guidance is given later.

## **Maturity**

47. S.7(1) of the [SWF Act](#) says that an applicant can ask us for an independent review if they are dissatisfied with the outcome of the council's tier 1 review.

48. That is why our SoP says we will consider whether an applicant has:

- 48.1. applied to the council for an award;
- 48.2. received a response to that application from the council;
- 48.3. asked the council to review their decision; and
- 48.4. received a response to that review.<sup>8</sup>

49. Each of the above would be addressed if the applicant has received the council's tier one review response. We **cannot** take a review forward unless it is mature (subject to the section on tier 1 review not taken forward by the council).

## **Time**

50. S.7(4) of the [SWF Act](#) says:

- 50.1. '[t]he Ombudsman must not consider an application under subsection (2) made more than one month after the day on which the applicant first had notice of the outcome of the review by the local authority in pursuance of section 3, unless the Ombudsman is satisfied that there are circumstances which make it appropriate to consider an application made outwith that period.'

51. When making this assessment we should use the date on which the applicant was notified of the council's tier 1 decision in line with the [Regulations](#). We will consider an application made to us up to and including one month from the date of the council's written tier 1 review decision as submitted in time. However, the [Regulations](#) allow applicants to ask the council to notify them of their tier 1 decision other than in writing.<sup>9</sup> In those cases, we should use the date of that unwritten notification as the time bar date, however the council recorded it. The [SWF Act](#) does not define 'month' and staff should remember that they should always act fairly when making this assessment.

52. In addition, s.7(4) gives us discretion with late applications. It is **our** decision whether to use this discretion and, where applications are made outside this timescale, we should consider why there was a delay. Non-exhaustive examples could be:

- 52.1. a medical condition or a disability – either of which could be physical or mental - that affects daily living tasks and functioning;

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<sup>8</sup> Section C, SoP

<sup>9</sup> Regulation 14(7)

- 52.2. a period of illness, in-patient hospitalisation or recovery from medical treatment; and / or
- 52.3. bereavement.
53. A 'Timebar template letter' is available within Workpro and should be used for drafting decision letters concerning applications that have been made out of time.
54. Prior to the launch of the independent review service, councils were given standard signposting wording for their tier 1 decisions. They are not legally obliged to use **our** suggested wording, but they do have to tell applicants about their right to now come to us.<sup>10</sup> We would criticise a council for not clearly signposting to SPSO and any lack of signposting should be taken into account when considering time.
55. More generally, CRs should remember that there may be reasons for delays that are not always readily apparent. Applicants could come from various backgrounds:
- 55.1. a homeless applicant may have had mail sent to one address that was not automatically forwarded to another; or
- 55.2. there may be delays between a vulnerable applicant receiving papers and them being passed on to their advocate, with time then taken for their advocate to be able to act on the information.
56. Those non-exhaustive examples are illustrative only, because the key point is that people should **always** be given the chance and opportunity – which may come from the CR asking the appropriate questions - to put their best case forward to say why there was a delay.

## Consent

57. S.7(2) of the [SWF Act](#) says that requests for independent review can be made by the applicant or 'by a person authorised for the purpose by the applicant'. It is important for staff not to wrongly disclose sensitive information but, equally, not put up unnecessary barriers. In addition, staff should also be vigilant for potential fraud because SWF involves financial awards. There is more detailed guidance on consent later in this document.
58. We would **generally** correspond with the applicant's representative if they have submitted the application on the applicant's behalf. There may be cases where the CR feels it would be appropriate to also issue correspondence to the applicant directly, but that is a matter for the CR's judgment in the particular facts and circumstances. Clearly, we would do this if the applicant asked us / tailor our approach as necessary. If requested, we can also issue our decision to both parties.

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<sup>10</sup> Regulation 15(2)

## Duly made

59. S.7(5) of the [SWF Act](#) says it is for us to determine if an application 'has been duly made'. In line with our SoP, we will **not** reject an application under s.7(5) where the applicant has not explained **why** they think the council's decision was incorrect.<sup>11</sup>
60. We do, however, need a minimum amount of information and could **not** proceed without knowing:
  - 60.1. the applicant's name (and name at the time of the application, if different); and
  - 60.2. the relevant council.
61. We will also likely need at least **one** of the following:
  - 61.1. application number;
  - 61.2. the applicant's address at the time of the application;
  - 61.3. NI number; or
  - 61.4. the applicant's date of birth.
62. Staff should bear in mind that there may be exceptional cases where something beyond that which is listed above will suffice; more generally, we will work hard to be open and accessible to everyone. Staff should always look to communicate effectively and work in an open and fair way. Our service standards clearly outline the standards applicants can expect.

## What is a decision?

63. S.11(1) of the [SWF Act](#) says that we must notify the applicant and the council of our decision 'after conducting a review'. Our SoP explains that we will issue written decisions to both parties<sup>12</sup> and we may also telephone with our decision before sending it.
64. If an applicant telephones with a general enquiry or, alternatively, asks us for an independent review but confirms that it is premature (for example, they have not made an initial application to the council or, alternatively, have not asked for a tier 1 review) we should explain this to them and their next step. We do **not** need to put this in writing universally, although we clearly can if requested.
65. Where we do not take a review forward because of time elapsed, we **will** confirm this in writing. This counts as a 'decision' and the applicant can therefore request a reconsideration if they disagree with our decision. Clearly we can also communicate this to applicants in additional ways if requested / appropriate but, as with all decision letters, a copy should be sent to the applicant and the council.

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<sup>11</sup> Section C, SoP

<sup>12</sup> Section J, SoP

## Monitoring decisions

66. The number of cases that are premature, out of time or not duly made will be monitored by the Team Manager, and measures to address any arising issues will be considered where appropriate.

## Contact with applicants

67. It is important that staff take account of applicants' wishes when communicating with them; some people may prefer telephone contact, others may prefer to be contacted by email or by letter. This should be taken into account where this guidance refers to staff possibly contacting applicants over the telephone.<sup>13</sup>
68. In addition, there could be situations where extra steps should be taken with contact. For example, outgoing mail is normally franked with an SPSO logo and anyone who saw that envelope would know that the addressee had been in touch with us. There may be cases where that would be inappropriate and staff should consider their approach carefully (for example, possibly adding a case alert to Workpro). Further detail around how outgoing mail for prisoners should be processed can be found [here](#). If staff have any concerns about this they should speak to the Team Manager.

## How people will ask for independent reviews

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69. In line with s7(3) of the [SWF Act](#), people can apply for an independent review by:
- 69.1. telephoning;
  - 69.2. attending our office (this must be arranged in advance by telephoning 0800 014 7299 or by using our [online contact form](#));
  - 69.3. submitting a form (online or through the post); or
  - 69.4. writing to us with the details of their request (letter, email or fax).<sup>14</sup>

## Verbal requests: 0800 number generally

70. The Team Assistant (TA) will principally answer calls, although the Duty Case Reviewer (DCR) should answer if the TA is unavailable. A DCR Rota will be in place and will identify one CR each day who will have primary responsibility for answering calls when the TA is unavailable and for answering any enquiries outwith the TA's remit (for example time bar queries).
71. On the rare occasions where a call cannot be answered, there will be an option to leave a voicemail. The SWF Team will call Crisis Grant applicants back the same day (where the applicant called before 3pm). In all other cases, call backs will be done by the end of the next working day (although sooner, where possible). Those calls should be handled as any other.

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<sup>13</sup> Section J, SoP

<sup>14</sup> Section C, SoP



## **Verbal requests: 0800 number, more detail**

72. Our 0800 number has an IVR recorded message which directs customers to select the most appropriate option for their situation. Each option either provides information to signpost customers to the right place (in most cases their local council) or the opportunity to hold to speak to an adviser. The message includes the following information:
  - 72.1. we carry out final stage reviews on Scottish Welfare Fund applications once they have been through the council's application and review process;
  - 72.2. we can only review an application once it is mature; and
  - 72.3. information about how we will store and use applicants' data, and how our privacy notice can be viewed.
73. The TA will ask appropriate questions to enquire if the caller has a general enquiry or is requesting an independent review.
74. General queries should be handled in line with the general contact section below. If the person wants an independent review the TA should ask the applicant to confirm that, to the best of their knowledge:
  - 74.1. they have applied to the council for an award under SWF; and
  - 74.2. they received the council's tier 1 decision review within the last month.
75. If the applicant says they have not completed the council's tier 1 review process then the TA should explain that we cannot take the case forward and, where possible, outline the applicant's next step (for example, ask the council for a tier 1 review).
76. Where the applicant has not yet made an application to the council, this should be recorded as a signposting enquiry on Workpro. Similarly, if it is clear that an applicant has contacted us in error instead of the council at a later stage in the application process, this should also be recorded as a signposting enquiry.
77. This is because there is no need for us to make further enquires or record the applicant's personal details. Staff should use their discretion, and in cases where further enquiries need to be made, for example if it is unclear if a case is mature, or if an applicant has encountered difficulties with the application or first tier review process, it may be more appropriate to open a case on Workpro. A record should be made and closed as premature on Workpro (detailed in the general contact section below).
78. Where the applicant says they have completed the council's tier 1 review, the TA should let the applicant know that they will:
  - 78.1. take some time to complete the application;
  - 78.2. ask a series of detailed questions; and
  - 78.3. contact the council to obtain their file for review.

79. The TA should confirm the date of the applicant's tier 1 response (it is **not** for the TA to close a mature file on this basis of time elapsed). If it is over one month the TA should transfer the case to a CR to assess the case. The applicant should be given the chance to explain the reasons for the delay and told that we will take this into account and confirm if we will be taking the matter forward. The CR's approach to this – both in terms of discussing it with the applicant and then making their decision – should reflect the section on time.
80. More generally, the TA should gather a brief understanding of the circumstances of the application; the council's decision, and, where possible, why the applicant disagrees with the council's decision.<sup>16</sup> The CR will carry out a fuller assessment once the case has been allocated to help their subsequent consideration of the request.
81. This should be handled sensitively and appropriately and, although it is important to be helpful, accessible and supportive, staff should remember that we will be making an independent decision: we cannot tell an applicant what to say. Open questions should be asked without leading or influencing answers, although the aim should be to allow the applicant every chance to put their case forward as best they can.

**Verbal requests: when the applicant attends our office**

82. Applicants can attend the office for an in person appointment although, as highlighted above, these must be pre-arranged in advance.
83. If the applicant asks us to complete the form on their behalf, we would do so because this is no different to taking a verbal request over the telephone. They should be offered the chance of sitting in the meeting room located beside the reception desk to go through the form.
84. The CR should explain that:
  - 84.1. they will go through the questions as they appear on the form;
  - 84.2. it will take some time;
  - 84.3. we will have to contact the council to retrieve their file on the application; and
  - 84.4. they will have a choice about filling in the equalities form.
85. The CR should confirm the date of the applicant's tier 1 response from the council and handle it in the same way as is outlined above.
86. Staff should complete a paper application form on the applicant's behalf. As with telephone applications, it is important to be helpful, accessible and supportive but, as we will be making an independent decision, we cannot tell an applicant what to say. Open questions should be asked without leading or influencing answers, although the aim should be to allow the applicant every chance to put their case forward as best they can.
87. The file will now be handled in the same way as any other case.

### **Non-verbal requests for independent review: online forms**

88. Online applications will be in Workpro's 'SWF Pending web cases' section, which must be checked through the day by the TA (ie 9am, 12pm and 3pm as a minimum) to ensure applications are identified promptly.
89. When an application is identified in Workpro, the TA should select 'approve web case' and handle the file in the same way as any other case. In some cases, it may be necessary to contact the applicant for further information if there is insufficient information included in the web form. Applications received before 3pm should be actioned the same day. Applications received after 3pm need not be actioned until the following day.

### **Non-verbal requests for independent review: post**

90. SWF post should be scanned and sent to the SWF team inbox upon receipt.
91. Where an applicant has sent in supporting documents for an existing application, these should be logged on Workpro as 'incoming mail' by the TA and then passed to the CR assigned the case.
92. Most correspondence can be disposed of in the confidential mail box once it has been scanned and uploaded to Workpro. However, in some cases, it may be appropriate to return the original documents to the applicant, for example medical letters. The TA should check with the DCR and / or the TM if in doubt.
93. The TA will also process all other mail and alert case reviewers when mail has come in for one of their assigned cases. Postal applications will be processed by the TA in the same way as reviews received through other methods. The application forms will be scanned into Workpro by the TA. Crisis Grants should be prioritised and general correspondence received (for example, enquiry letters) should be treated in line with the general contact section below. It is anticipated that faxes for the team will rarely be received. However, there is a fax machine located behind the Assessment and Guidance team and they should alert the SWF team if a relevant fax is received.

### **Non-verbal requests for independent review: email**

All staff will have access to the SWF email inbox, which must be checked through the day (for example, 9am, 12pm and 3pm as a minimum) to ensure that applications are identified and acted upon promptly.

94. People could email us about various things, including general enquires, emailing an application or sending supporting documents for an existing application. Applications received by email (for example, an attached form or an email outlining the request) should be reviewed so that Crisis Grants can be prioritised. The TA should monitor the inbox (in whose absence the DCR will assume this role) so that applications can be identified and flagged to the relevant CR using the appropriate colour code (each CR

has a dedicated colour to flag emails). Where appropriate, for example, in urgent cases, the TA may also send a message via MS teams to alert the case reviewer that an urgent email has been received for them.

95. General correspondence received (for example, an emailed enquiry) should be treated in line with the general contact section below. If an applicant has emailed supporting documents for an existing case they should be forwarded to the relevant CR to acknowledge and take forward.
96. The email address will have an auto-reply that explains our role, and advises applicants that we will be in touch within one working day.

### **General contact: verbal and written**

97. A signposting enquiry should be set up on Workpro to record general contact that does not require follow up work, or for us to record the caller's personal details. Examples include:

- 97.1. queries about our process (for example, timescales, how we handle applications);
- 97.2. people who would like to request that a form be posted to them;
- 97.3. people having difficulty progressing their application with the council;
- 97.4. councils seeking general advice; and
- 97.5. people querying the difference between complaints and independent reviews.

98. General correspondence (for example, an enquiry letter or email) should be responded to by the end of the next working day. Posted correspondence should be logged as incoming mail received on Workpro and any written response should be marked as sent on Workpro, with non-SWF emails (that are for the SPSO) forwarded to ask@.
99. Our standard approach should be to make file notes of all calls, although there may be straightforward requests (for example, where someone has called us instead of the council in error) that would be identifiable from the closure code alone. Details for how to record signposting enquiries can be found [here](#).

### **Our Engagement Policy and Managing Difficult behaviours**

100. We aim to support everyone engaging with us to do so positively to help us provide them with the best possible level of service. In some circumstances, we need to take action to protect our staff or service from types of engagement which impact our ability to provide a service or the well-being of our staff. Our [Engagement Policy](#) sets out how we identify and respond to those types of engagement.
101. Examples of engagement that we need to manage include:
  - 101.1. violence towards staff or others;
  - 101.2. abuse of staff or others;

- 101.3. harassment of staff;
  - 101.4. excessive demands on our office;
  - 101.5. excessive levels of contact; and
  - 101.6. refusal to co-operate.
102. To protect themselves and the functioning of the office, all staff need to be able to identify such behaviour, appropriately deal with it, record this and, where appropriate enforce this policy. Staff should always discuss concerns they may have about possible problematic engagement with a manager at the earliest opportunity.
103. It is also important to note that we only need to manage engagement which impacts on our ability to work or operate effectively. Behaviour which is unusual or different is not an issue in itself. (We also need to be aware that some behaviours may be due to the individual having a disability which can impact on behaviour. Reasonable adjustments may need to be considered when making an approach about possible unacceptable behaviour.)
104. Detailed guidance around SPSO's approach to managing problematic engagement, including how to identify, report and record these contacts, and support for staff, can be found in the [Public Service Complaints guidance](#). Draft wording to help staff respond to challenging engagement can be found in the [SWF Timesaving Tool](#).

### **Checks to be done for all applications for independent review**

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105. Applications have to be checked for maturity, consent, time and whether it has been duly made before being taken forward. In some cases, these checks can only be done after contacting the council.
106. Staff should bear in mind that, where files are at least initially being taken forward, **we will request the council's file:**
- 106.1. for Crisis Grants, on the day of receipt (unless it was received after 3pm, in which case the next working day); and
  - 106.2. for Community Care Grants, the next working day.
107. These are our internal target timescales.

### **Maturity: written applications**

108. Maturity must be considered before time because we cannot take an application if it is not mature (subject to the section on tier 1 review not taken forward by the council).
109. In some cases this will be a straightforward assessment, for example an applicant may have sent an initial SWF application to us and not the council. In others it may be less clear, such as an email or letter asking for an independent review without either including a copy of the council's tier 1 review decision or confirming this has taken

place. There may also be times when the applicant has had a telephone call from the council about their tier 1 decision but they have not yet received the letter.

110. If the application relates to a Crisis Grant and it is not mature then the TA should contact the applicant using their preferred method of contact to explain that we cannot progress it. Sometimes the TA may consider additional steps appropriate (for example, where we cannot contact the applicant, possibly calling our liaison contact), but this can only happen where the application has been submitted:
  - 110.1. on our paper or online form (the forms say we will contact the council); or
  - 110.2. by another method and the applicant has confirmed they are happy for us to do this (this consent **must** be noted).
111. Written applications not being taken forward due to maturity should be set up as a new case on Workpro and closed with the appropriate code. A file note or quicknote of any telephone conversation should be added to Workpro and any email / letter (ie saying we will not be taking the file forward, returning any paperwork and enclosing a freepost envelope for any future application) should be marked as sent on Workpro. Original documents should **always** be returned to an applicant.
112. If we have contacted the council we should tell them we will not be taking the application forward.

### **Tier 1 review not taken forward by the council**

113. The Regulations say that the council are to arrange for a review of their decision if they are asked to do so within 20 working days of the applicant being notified of their decision (or where the council considers that there is good reason to act on a request outwith that period).<sup>15</sup> This means that there may be times where the council have **not** undertaken a tier 1 review despite being asked for one (for example, time bar) and the applicant then comes to us. CRs should **not** treat this as they would an applicant who has asked us for an independent review without first asking the council for a tier 1 review. This is because we would consider the council's refusal to undertake a tier 1 review as the 'outcome of a review' under s.7(1) of the SWF Act.
114. With such cases, our role would be to consider the appropriateness of the council's exercise of their time bar (in line with the Regulations). If, having considered the matter, we think the decision that should have been made was for the council to have considered the application, we should generally refer it back to the council to reconsider. The exception to this would be where, in the particular facts and circumstances, there was an urgent need for us to make the decision. Equally, we may consider that the council made the correct decision.

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<sup>15</sup> Regulation 14

## **Time: all applications**

115. Mature applications have to be assessed for time. This depends upon us either seeing a copy of the council's tier 1 decision or being told it has been received. Where the applicant:
- 115.1. **Has** provided a copy of their tier 1 decision and it is over a month old, CRs should contact the applicant if no reason was given / to give the applicant the chance to make their best case (as detailed in the section on time);
  - 115.2. **Has not** provided this information, CRs should - particularly with Crisis Grants – contact the applicant using their preferred contact method to explain our time limit. If the applicant confirms that more than one month has passed, the CR should handle this as detailed in the section on time above;
  - 115.3. **Does not know** when they got the council's tier 1 decision, the CR should explain why we need this information and explain that we will contact the council for their file before making our assessment.
116. As above, a decision to time bar an application will be put in writing (the CR may telephone the applicant in advance of sending this letter).
117. As with maturity, a record should be added to Workpro (already there for online forms) and closed with the appropriate closure code. A file note of any telephone conversation should be added to Workpro and any paperwork should be returned, with any letter marked as sent / email filed to Workpro.

## **Consent: all applications**

118. S.7(1) of the [SWF Act](#) says that applications for independent review can be made where the applicant is dissatisfied with the outcome of the council's review. In many cases this will be a straightforward assessment, although staff may, on occasion, have to ask the appropriate questions to confirm this.
119. The [SWF Act](#) also allows for a third party to bring an independent review to us on the applicant's behalf (i.e. a 'person authorised for the purpose').<sup>16</sup> This is not defined and we will have to satisfy ourselves that the applicant had authorised the third party to bring us the application. We have discretion to decide if the application has been 'duly made' for this purpose<sup>17</sup> and staff should take the steps needed to satisfy themselves about the applicant's consent.
120. Although the [SWF Act](#) does **not** say that such authorisation must be in writing, where it is (for example, a signed paper form or letter) then we could proceed on that basis. In

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<sup>16</sup> S.7(2)(b) of the SWF Act

<sup>17</sup> S.7(5) of the SWF Act

cases without such clear consent, we should tell the representative that we will need to confirm the applicant's consent by either:

- 120.1. sending a mandate to be signed and returned; or
- 120.2. telephoning the applicant to satisfy ourselves that:
  - 120.2.1. they are the applicant;
  - 120.2.2. they have authorised the third party to bring us their independent review;
  - 120.2.3. they agree to us getting and reviewing the council's file (which may have sensitive personal information);
  - 120.2.4. they accept that this information will likely be shared with the third party;
  - 120.2.5. the Third party will be able to make decisions on their behalf about the next steps including accessing further information;
  - 120.2.6. they can withdraw the consent at any time and we will proceed direct with them;
  - 120.2.7. we will send them a copy of our privacy notice and confirm we have accepted the third party as a representative.
121. Verbal consent **must** be file noted or noted in the 'comments on means of contact' box within the aggrieved section of Workpro.
122. Given the time pressures involved, a written mandate may only be appropriate for Community Care Grants. This will be a case by case decision, with a balance to be struck between not inappropriately disclosing sensitive information, being vigilant for potential fraud, the importance of accessibility and applicants' personal situations but also that this may be a crisis.
123. In addition, our SoP explains that if the applicant is unable to consent we will accept a request for independent review from a suitable representative.<sup>18</sup> Care must be taken where capacity (which can change and develop over time) is a potential issue and staff should use their judgment; more generally, if staff have any concerns about the suitability of the person bringing us an application for independent review they should discuss this with the Team Manager and/or Legal and Policy Officer as necessary. Note, consent to subsequently contact third parties is covered later in this document.

### **Duly made: all applications**

124. As detailed in the section relating to consent, it is for us to determine whether an application has been 'duly made'.<sup>19</sup>
125. We will **not** reject an application as not duly made simply because the applicant has not said why they think the council's decision was wrong. Equally, where an applicant

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<sup>18</sup> Section D, SoP

<sup>19</sup> S.7(5) of the SWF Act



**has** said why they disagree with the council we will inform the council of the reason when we request the council's file.

## **Taking an independent review forward: initial steps**

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126. Where an application has been submitted verbally there is no need to send the applicant a written acknowledgement, unless requested. The following should be explained on the telephone by the TA who will deal with all initial calls (supported by the DCR when unavailable):
  - 126.1. the timescale for us to contact the council and for them to respond;
  - 126.2. that we will share the information they have given us with the council (subject to below) when we request their full file;
  - 126.3. we will consider the council's response and may make additional enquiries;
    - 126.3.1. we will be in touch in advance of making our decision to gather further information about their circumstances.<sup>20</sup>
127. For non-verbal applications, staff should, ideally, acknowledge them at the same time as requesting the council's file. This should be done using the acknowledgement email template within Workpro.
128. We have set up SWF liaison contacts with councils. This is, among other things, to have a primary point of contact for requesting councils' files.
129. For both types of grants we will send a formal email request for the council's full file. For councils that we very rarely receive independent reviews for, we may choose to take additional steps, such as emailing additional contacts or telephoning in advance of sending files. The file request should be sent to the council's designated email address (this may be the liaison officer directly or a generic SWF address). This will also give the council a chance to confirm if the file is mature (ie where we have not seen their tier 1 decision) without then necessarily having to provide the full file (see below).
130. More generally, we have to give the council enough information to identify the relevant file. However, we must not inadvertently disclose any sensitive information the applicant does not want revealed, subject to the limitations that may cause our decision making.<sup>21</sup> We will, as far as we can, accommodate an applicant's specific request not to pass on information to the council or a third party, but we would have to let them know that our decision can only be based on information we can include in our decision letter (it will also be sent to the council).<sup>24</sup>
131. We should also ensure that we are sending the information request to the appropriate council to avoid data breaches. Some applicants may have moved between different local authorities and be unsure of the council they are currently resident in. Staff should

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<sup>20</sup> Section B, SoP

<sup>21</sup> Section K, SoP <sup>24</sup> Section P, SoP

also be mindful that applicant's may select the wrong local authority on our web form. Where it is unclear, we should carry out additional checks to ensure accuracy using the GOV.UK ['find your local council'](#) website.

### **Requesting the council's file**

132. We will request the council's file by email:

132.1. for Crisis Grants, on the day of receipt (unless it was received after 3pm, in which case it can be sent the next working day); and

132.2. for Community Care Grants, the next working day.

133. It is essential that councils provide the full file including all decision notes, letters and supporting documents when the initial request is made. Any subsequent information that should have been provided initially may not be taken into account if provided at a later date.

134. The email should:

134.1. state 'SPSO Crisis Grant' or 'SPSO Community Care Grant' in the subject;

134.2. attach the completed information request document, which will contain the applicant's reason (if provided) for seeking independent review (for example, the council wrongly ruled it out due to incorrect benefits information); and

134.3. use the appropriate template on Workpro, which advises councils to respond to the SPSO SWF Mailbox to prevent any delays due to unexpected staff absence.

135. The council's turnaround times for providing this information are:

135.1. for Crisis Grants, 24 hours; and

135.2. for Community Care Grants, four working days.

### **If the council does not respond in time**

136. Our SoP reserves the right to decide an application with the information we hold if the council do not provide their file by our deadline.<sup>22</sup> If this happens the CR should telephone the liaison contact to ask for the information as a matter of urgency. If this does not resolve the situation, the matter should be escalated by the Team Manager via the [Support and Intervention Policy](#) (SIP) if the council fail to provide the information urgently, a decision should be made as to whether we can proceed to determine the review. We should highlight in the decision letter and decision cover letter that the response timescales have not been met. Staff should use their discretion with this if the timescale has only been missed by a marginal amount.

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<sup>22</sup> Section F, SoP

## **Where the council change their decision at this point**

137. If the council want to fully change their own decision (ie to award the applicant what was sought) we should request emailed confirmation that they will they will take this forward with the applicant. We may, in those circumstances, decide not to progress the review. We should check with the applicant that they are happy with this approach and record our conversation with them (via a telephone note if verbally or by attaching the email conversation to Workpro). A copy should also be sent to the council and we should ask them for written confirmation that the award has been implemented in due course. The file should be closed with the appropriate code (solved – applicant satisfied).
138. If the council decide to make a partial award at this point **we may still take the application forward** because we will be considering if their decision was the one that should have been made.<sup>23</sup> An example would be where an applicant had requested two items and the council had refused both but, when we got in touch, the council decided to award one item. This would **not** mean that we would automatically no longer consider the application. We will ask the applicant if they are satisfied with the partial award or if they still wish to continue with the review of the decision in terms of the items that were not awarded.

## **If the council confirm that the case is not mature**

139. If the council confirm that the case is not mature then we should tell the applicant we will not be taking their application forward for this reason, and explain what they should do next. Where the applicant is experiencing difficulties (for example if they are unable to make their first tier review in writing due to communication barriers) we should assist where possible, by contacting the council on their behalf to explain the situation. The file should be closed with the appropriate code (for example, premature – applicant has not requested a Tier 1 Review).

## **When the council send their file**

140. The council's email should be filed to Workpro and any remaining jurisdictional issues should be clarified. The TA will then allocate the case to the Team Manager to highlight that a case is now ready for allocation. For community care grants, an allocation letter or email will be sent to outline that we have received the file back from the council, and their case will now be allocated to a case reviewer who will make contact with them. The Team Manager will then allocate the case to a CR at which point it becomes the CR's responsibility.
141. The CR **must** check the file and contact the applicant:
- 141.1. For Crisis Grants, the day we receive the file if received before 3pm. If received after 3pm, our target will be to contact them the next day. Where we

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<sup>23</sup> S.8 of the SWF Act

receive a file back from the council in advance of when it is due to be received, the target for when the file was expected to be returned will be applied. This helps us manage our workload during busy periods and ensures that applications are progressed fairly in line with the order in which they are received. It also ensures that CRs have time to review the case files prior to contacting the applicant.

- 141.2. For Community Care Grants, within five working days of receipt.
142. This is to see if a decision can now be made. The CR should attempt to contact the applicant / their representative in all cases for additional comments on the information provided (our SoP provides guidance on how we will make this assessment, both in terms of contacting the applicant and the council).<sup>24</sup> More generally, our overarching considerations will be judging, on a case by case basis, what is relevant information and whether sharing at this stage would reflect the principles of natural justice or ensure fairness in our process. The customer journey and urgency of the application should also be taking into account when considering whether to share information.
143. In addition, staff should be mindful of possible DPA and / or privacy issues and should consult our Public Sector Complaints guidance if they have any concerns.
- 143.1. For Crisis Grants, telephone contact may be appropriate (due to their urgent nature) and then file noted. However, as a general rule, we should contact applicants using their preferred method of contact. The objective is to ensure that the applicant has the maximum opportunity to discuss their case. Where attempts to contact the applicant have been unsuccessful, this should be file noted and referred to in the decision letter;
- 143.2. For Community Care Grants, CRs should take into account applicants' preferred contact method and whether or not they have a representative when contacting them to discuss their case. A record of the contact made should be file noted. If it has not been possible to contact the applicant by other means, a letter should be sent within three working days. If inviting comments in writing, the letter should generally give applicants one week to respond. CRs should consider alerting the applicant to this by telephone or email and, in cases, it may be appropriate to do this all verbally. Again, the overall aim is to ensure applicants have sufficient opportunity to discuss their case.
144. Staff should be mindful that applicants may select a preferred method of contact, for example, email, but it later becomes apparent that they are facing difficulties communicating in this way. These difficulties could be linked to a communication related disability or language barrier. It is therefore important that we explore alternatives to help these applicants access the service including offering a telephone

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<sup>24</sup> Section H, SoP

call or interpretation services. This is over and above the proactive questions we ask applicants about reasonable adjustments and communication needs at initial contact. If, following any comments, the CR can now make a decision the file should be progressed to stage 3 on Workpro (the date of the council's response should be added to Workpro when we are satisfied we do not need more from them). This will ensure that our decision making timescales apply.

145. The CR should make and issue their decision as soon as possible and in any event:

145.1. For Crisis Grants, the next working day; and

145.2. For Community Care Grants, within 21 working days.<sup>25</sup>

146. If the CR **cannot** make a decision they should consider how they will gather the evidence needed to do so.<sup>26</sup> The file should **not** be progressed to stage 3 on Workpro and a quicknote should be added outlining the proposed next steps.

### **Where applicants disengage from the review process**

147. In a small number of cases, applicants stop engaging with us at some point after they submit their request for review. This can result in wasted resources, and applicants receiving contact from us that they do not wish to receive. When this happens, we may choose to discontinue the review process. This will not apply to cases where we have sufficient information to change the council's decision based on the information already available. In these cases, we will proceed to a decision.

148. We recognise, that there may be good reasons why some applicants stop engaging with us, given the pressing situations they can often face. With this in mind, appropriate mechanisms have been built in to encourage contact, and provide flexibility.

149. If applicants do not respond to our initial contact attempt, we will make a further attempt to contact them. In this communication, we will advise the applicant that if we do not hear from them we will be unable to progress their review and the review will be withdrawn. The appropriate Workpro template should be used which sets out the timescales in which applicants should respond (12pm on day five of the case being open for crisis grants and five days after the initial contact attempt for community care grants).

150. If applicants do not respond to the second contact attempt, we will notify them that their review has been withdrawn using the appropriate Workpro template. This communication advises them that if they make contact within a week we can still make a decision. However, if we do not hear from them within a week, we are unlikely to be able to progress the review unless exceptional circumstances apply. At this stage, we

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<sup>25</sup> Section N, SoP

<sup>26</sup> Section E, SoP

will close the case at 'information gathering workflow stage' using the 'disengaged' code. We will notify the council using the appropriate Workpro template.

151. If the applicant makes contact outwith the timescale noted above, the CR will consider whether there are exceptional circumstances surrounding the delay, which mean that they should re-open the case. They will consider the examples noted around assessing late applications for review in paragraph 48 when making our assessment. If the CR decides there are no exceptional circumstances, they will write to the applicant to notify them that they will not be re-opening the review using the appropriate Workpro template.
152. The template sets out that an applicant can ask for a reconsideration of this decision and it will be considered by the TM or HOI. If the applicant requests a reconsideration and the TM / HOI disagrees with the CR's decision, they will advise the CR to re-open the case and proceed to making a decision. This ensures the applicant still has access to the reconsideration process beyond this. If the TM/HOI agrees with the CR's decision, they will advise the applicant in writing of this decision and the review will remain closed.

#### **Additional information needed: evidence gathering**

153. Although it is for us to decide what we need to do to make a fair decision, we will only look to confirm things **needed** for that decision. Depending on the point(s) to be confirmed, staff may wish to consider:

- 153.1. obtaining further information from the council, the applicant and / or a third party; or
- 153.2. arranging interview(s), visit(s) and/or an oral hearing.

154. Staff should make any additional enquiries promptly, in line with our SoP.<sup>27</sup>

#### **Obtaining further information from the council**

155. The CR should consider if our standard timescales for the council (ie 24 hours for Crisis Grants and four working days for Community Care Grants) would be appropriate. Non-exhaustive things to be taken into account include:

- 155.1. whether they should have provided this already;
- 155.2. whether it will be straightforward for them to provide; and
- 155.3. the matter's urgency.

156. If difficulties or delays are experienced gathering the information, CRs should consider whether it is appropriate to escalate via the [SIP](#). Staff should contact the liaison contact to let them know what we need. CR's should consider the most appropriate method of contact to gather this information. A quicknote should be added to Workpro

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<sup>27</sup> Section F, SoP

to note what information has been requested and the deadline given to the council for providing this. Once the council's response is received, the CR should consider whether the applicant's comments are needed.

### **Obtaining further information from the applicant**

157. Staff should consider the most appropriate way of contacting the applicant. The standard timescales for the applicant to provide the additional information will be:
  - 157.1. for Crisis Grants, 24 hours; and
  - 157.2. for Community Care Grants, one week.
158. A quicknote should be added to Workpro to note what information has been requested and the deadline for the applicant providing this. Once the applicant's response is received, the CR should consider whether the council's comments are needed.
159. Staff should remember that, as with time for an application received, an applicant's circumstances may well affect the appropriateness of the timescales above. Staff should always take the applicant's facts and circumstances into account and should discuss any amendment to our timescales with the Team Manager.

### **Obtaining third party information**

160. If third party information is needed, staff should generally discuss this with the applicant before making contact to ensure we have their agreement(see the SoP).<sup>28</sup> If this is refused we should decide the application with the information already held. Details of any third party enquiries (for example, to the applicant's GP) should be noted in a quicknote on Workpro to note what information has been requested and the deadline given for providing this.
161. If any party is having difficulty providing the information needed within our timescale, they should be told that we do have discretion around this. If it is the applicant or the council, they should be made aware that we can proceed to make a decision on the information we have if we cannot get the additional information. Staff should clearly handle this sensitively and appropriately with applicants.<sup>29</sup>

### **Interviews and visits**

162. It is for the CR and Team Manager, taking account of the relevant facts and circumstances (which would include the applicant's views and wishes), to decide if a visit or interview is required (interviews can be done over the telephone). This discretionary decision will be made on a case by case basis and, where we do so, Workpro should be updated so that our decision making timescales only apply when the file is moved to stage 3 (Review and Decision).

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<sup>28</sup> Section F, SoP

<sup>29</sup> Section F, SoP

163. We should notify both parties to explain what we wish to do and why we wish to do it. Our Complaints and Investigations guidance should be consulted where interviews and /or visits are proposed. More generally:
- 163.1. for visits or interviews that have to be done in person we will, where possible in the circumstances, aim to go to the applicant to avoid any unnecessary expense or inconvenience for them; and
  - 163.2. staff should ensure that interviews and/or visits are recorded as file notes promptly afterwards.
164. We may decide not to proceed with a visit / interview if we get the information we need before then,<sup>30</sup> although both parties should be notified where this happens.

### **Oral hearings (OH)**

165. If we decide, in the interests of fairness,<sup>31</sup> to hold an OH – following an applicant's request or otherwise - our Rules for Oral Hearings should be followed.
166. All decisions about OHs need the Ombudsman's approval (in whose absence, the Director or Head of Improvement, Standards and Engagement) and, if a request is refused, the reasons must be noted and communicated to the parties.
167. The OH Rules should be referred to directly. Some key points to note are that:
- 167.1. if one party asked for an OH then all parties must be given the chance to say in writing whether they think there should be an OH;
  - 167.2. if we decide there **will** be an OH then a staff member will be the clerk. We must give the parties written notice of various relevant issues;
  - 167.3. the clerk will issue a minute of the OH within seven days of the OH; and
  - 167.4. our decision can be made at the OH (that would be recorded in the minute).
  - 167.5. the decision can also be made after the oral hearing once all evidence has been considered.
168. If the point at issue is clarified in advance then we may decide not to proceed with the OH,<sup>32</sup> although both parties should be advised in writing. Where there is to be an OH then Workpro should be updated accordingly (i.e. to ensure our decision making timescales only apply when the file is moved to stage 3 (Review and Decision)).

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<sup>30</sup> Section G, SoP

<sup>31</sup> Section E, SoP / Rule 4(1)

<sup>32</sup> Section G, SoP



169. Where an OH is being held, staff should always be mindful of the applicant's individual circumstances and how we can try to be as unthreatening and accessible as is possible.

### **Travel expenses for an oral hearing, interview or site visit**

170. If there is to be an OH – and evidence is not going to be given electronically (e.g. MS Teams) – we will, subject to the individual circumstances, consider whether holding it in our office would be appropriate. If that is impractical (e.g. it is too far for someone to travel) or inappropriate in the circumstances we will try to hold it in a location near to the applicant.

171. Where the applicant incurs traveling expenses that reasonably and properly relate to a commute to an OH, interview or site visit they can be reimbursed. This should be made clear to applicants in advance so they are not put off because of possible cost, but it should be made equally clear that all such expenses **must** be proportionate and a decision about this will be at the SPSO's discretion.

172. More generally, this is an area where we will develop our experience, but we will always take account of the needs of the individual in the particular circumstances. Any decision about OHs requires the Ombudsman's authorisation (in whose absence, the Director or Head of Improvement, Standards and Engagement).

### **An OH, visit or interview is refused / we cannot clarify the issue**

173. Our SoP explains that if an applicant refuses to take part in an OH, interview or visit we will make our decision on the evidence that we have.<sup>33</sup> **CRs should neither allow this refusal, of itself, to affect their judgment nor draw a negative inference from it.**

174. Similarly, if the OH, visit or interview does not clarify the point at issue or provide the additional information sought, staff should consider what steps would be needed in terms of fairness.<sup>34</sup>

### **SPSO independent review: our decision making**

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175. Although this guidance aims to help staff consider applications fairly and consistently, it is important to be clear that each case should be decided on its own merits. The fact that we will make decisions independently and impartially - we cannot be arbitrary – should not stop us from giving applicants the chance to put their best case or arguments forward before we make our decision.

176. Our SoP<sup>35</sup> explains that, having considered our own remit/jurisdiction, we will review:

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<sup>33</sup> Section E, SoP

<sup>34</sup> Sections E & G, SoP

<sup>35</sup> Section I, SoP

- 176.1. The council's decisions on:
  - 176.1.1. eligibility
  - 176.1.2. qualifying criteria
  - 176.1.3. priority
  - 176.1.4. the merits of the council's decision
- 177. CRs should follow the same order the council would when making their decision (i.e. eligibility, qualifying criteria and priority) before considering the decision's merits. CRs should document their decision making process using the decision making template to ensure a clear audit trail.
- 178. More generally, our role is to consider if the council's decision was the one that should have been made.<sup>36</sup> We would only leave the council's decision in place where, after considering all of the evidence, facts and circumstances, we did not feel they should have made a different decision.

### **Evidence, facts and inquisitorial role**

- 179. The council should have considered the evidence and established the relevant facts on which to base their decision.
  - 179.1. **evidence** can be verbal, in writing or something else. It helps to prove or disprove a fact; and
  - 179.2. **facts** are pieces of information that have been established (on the basis of what is more likely).
- 180. As detailed in our SoP, we will only seek to establish facts that are needed for us to make our decision. In doing this, if there is new, relevant evidence that the council did not take into account but they should have (for example, had they made appropriate enquiries), we will take it into account.
- 181. Our SoP explains how we will consider evidence and the assumptions we will make (for example, about what the council should have known).<sup>37</sup> Staff should refer to the SoP when they are considering evidence.

### **Assessing evidence (more generally)**

- 182. More generally, staff should assess evidence on the basis of what is more likely.<sup>41</sup> When doing this it is important to be clear that:<sup>38</sup>
  - 182.1. Verbal evidence (ie what somebody tells us) is **not** automatically of less value than documentary evidence; and
  - 182.2. A lack of corroboration does **not**, of itself, mean there is no evidence.

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<sup>36</sup> S.8 of the SWF Act

<sup>37</sup> Section E, SoP

<sup>38</sup> Section E, SoP

183. For example, it would be wrong to say that an applicant who said their wallet had been stolen but had no crime reference number or witnesses had no evidence. However, we could – and should - question how **much** evidence there was before deciding if we accept, on the basis of what we think is more likely, that the applicant's wallet was stolen as a fact. Doing this may require additional enquiries to ensure that our decision is based on appropriate evidence;<sup>39</sup> the steps the council took to do this should be detailed in their file.
184. When assessing how much weight to give to evidence, staff should consider:
- 184.1. Is it first-hand and/or is the source impartial?
  - 184.2. Does it contradict itself, are there any ambiguities and/or is it incoherent?
185. Of course, in reality, evidence is seldom presented in an entirely clear way. CRs should not:
- 185.1. simply apply rules of thumb;
  - 185.2. work from assumptions; and / or
  - 185.3. dismiss something just because it was not expressed well.
186. CRs should not simply assume that an applicant's failure to disclose something – or an apparent inconsistency – is automatically due to an intention to mislead or confuse. An applicant's personal circumstances could contribute to how information is presented and, although evidential inconsistencies and conflicts should be tested (for example, with questioning), this should always be handled appropriately.
187. Finally, our decision can only be based on evidence that can be included in the decision letter that will be sent to both parties.<sup>40</sup>

### **Additional evidence needed?**

188. There may be times when we have to make additional enquiries.
189. CRs should remain impartial, not pre-judge the application and ensure that parties are treated fairly and transparently: we will be clear about what information we need and why.<sup>41</sup> Possible considerations when gathering evidence are:
- 189.1. Do I understand the review and what has happened?
  - 189.2. If I am unsure of any facts or there is conflicting information, what do I need to resolve this?
  - 189.3. What do the [Regulations](#), [SG Guidance](#) and/or any local council policy say?
  - 189.4. Do I need to speak to anyone or visit the site to obtain more information?

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<sup>39</sup> Section E, SoP

<sup>40</sup> Section P, SoP

<sup>41</sup> Sections E & F, SoP

190. Again, staff should refer to the SoP as it explains how we will consider evidence and the assumptions we will make.<sup>42</sup>

### Change in circumstances

191. Where there has been a material change of circumstances (for example, there is now evidence available that the council have not considered because it did not exist at that time), then it **may** be appropriate for the applicant to reapply to the council. However, staff should consider whether this stems from a new issue or is a development or progression of something that the council should have identified. In addition, this may be a situation when the council exercises its discretion to change its mind when we contact them.

192. If the applicant decides to make a new application we would still be able to independently review the council's decision on the historic application, if asked. The applicant could also seek an independent review by SPSO of any subsequent application made.<sup>43</sup>

### The merits of the council's decision

193. SWF is a discretionary scheme. For example, the [SG Guidance](#) says that people can apply for one type of grant but the council may award the other (for example, a Crisis Grant applicant could be awarded a Community Care Grant, if appropriate in the circumstances).<sup>44</sup> More generally, the [SG Guidance](#) explains that the council:

'Decision makers must clearly document the reasons for their decisions. This includes how they have used or evaluated the evidence to decide on whether the application meets eligibility, the qualifying criteria and priority level. The SWF is a discretionary fund and decision makers should detail their reasons for making decisions in case a review is requested, recording any reasons for deviating from the guidance.'<sup>45</sup>

194. This means that while councils can deviate from the [SG Guidance](#), their reasons for doing so should be documented. When assessing whether the council's decision was the one that should have been made,<sup>46</sup> CRs should use their judgment and discretion to consider, among other things, whether it was fair and reasonable. CRs should be able to follow the council's reasoning and should ask themselves if the evidence indicates that they:

194.1. Followed the [Regulations](#), [SG Guidance](#) and any relevant local policies (which should **not**, of course, contravene the [Regulations](#))? If not, is there a record why?

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<sup>42</sup> Section E, SoP

<sup>43</sup> Section M, SoP

<sup>44</sup> Paragraph 5.11 of the SG Guidance

<sup>45</sup> Paragraph 4.17 of the SG Guidance

<sup>46</sup> S.8 of the SWF Act

- 194.2. Considered information that was accurate, relevant and complete?
  - 194.3. Made appropriate enquiries to get that evidence?
  - 194.4. Worked from assumptions or took things for granted, meaning their decision was not based solely on relevant evidence?
195. The specific facts and circumstances of each application should have been taken into account. Although the scheme does allow for discretion, we will consider whether that discretion was allowed within the scheme and whether it was fair and reasonable in that individual case.
196. Even if the evidence indicates that the council took all relevant factors into account, they could still have made a decision so unreasonable that a CR may consider it went beyond their discretion, and was not the decision that should have been made. For example, the weight applied to certain evidence (whether too much or too little) may have undermined their overall decision. To be clear, we have the power to change the council's decision even where the [SG Guidance](#) gives them discretion.

### **Possible outcomes of an independent review**

197. It is a CR's responsibility to determine independent reviews under the Ombudsman's delegated authority.
198. Those decisions will be hugely significant for people and the CR, having given the matter careful consideration, will either:
- 198.1. leave the decision unchanged;
  - 198.2. fully or partially overturn the council's decision; or
  - 198.3. refer the matter back to the council to remake their decision.
199. We will take the steps that we consider appropriate in the individual situation: there is no one size fits all approach.
200. If we disagree with the council's decision – regardless of whether or not the applicant identified the underlying issue - and are clear about what decision should have been made, we may substitute the council's decision, particularly where speed would be appropriate to an applicant's urgent need.
201. In cases where we have gathered information which causes us to disagree with the council's decision, but where the council could not have reasonably gathered this information, we will record a finding of 'new information provided' if we progress to a decision. In other cases, we may refer the application back to the council to reconsider their decision, based on the new information. For example, where the council had requested information from the applicant but it was only made available at independent review stage. We will usually check with the applicant that they are happy with this approach.

202. This differs from cases where we assess that the council have failed to make enquiries to gather relevant information to arrive at a robust decision. In these cases, a finding of 'inquisitorial failure/ insufficient information' will be recorded if we proceed to a decision.
203. In some cases we may decide that the council should remake their decision. This decisions will be determined on a case-by-case basis and will take into account the customer journey and urgency of the application.

### **Suggestions for improvement**

204. Where a CR has identified an issue with the council's handling of an application (regardless of the CR's decision) they can make suggestions for improvement.<sup>47</sup> Examples of things that may arise include the council:
- 204.1. not following the guidance (for example, rejecting an application due to the reason for their crisis which is not relevant unless an applicant has received the normal maximum number of awards);
  - 204.2. not recording their decisions clearly and in line with the guidance;
  - 204.3. not providing sufficient information in decision letters; and
  - 204.4. failing to make appropriate enquiries.
205. We may highlight failings or make suggestions for improvement both in cases where we change the council's decision and in those where we do not change the council's decision.
206. To ensure consistency, our findings will be discussed at team meetings on an on-going basis. Findings which cause us to disagree with the council's overall decision are known as 'material findings' whereas suggestions for improvement are recorded as 'non material findings'. Findings should be highlighted in the decision letter (the applicant will therefore be made aware of the issue for transparency). These should also be clearly outlined in the decision cover letter to council. Both material and non material findings should be logged in Workpro with the appropriate code.

### **Decision letter: format**

207. Our decisions will be in writing and will be sent to both parties<sup>48</sup> (an email attachment will frequently be most appropriate for the council) and there is a local authority email template within Workpro that should be used for there purpose. This invites councils to contact us if they wish to discuss the case. Decision letters should normally be fully completed prior to calling the council and the applicant with the decision. CRs should

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<sup>47</sup> Section K, SoP

<sup>48</sup> Section J, SoP / S.11 of the SWF Act

use the template decision cover letter on Workpro, which should clearly and plainly outline:

- 207.1. our decision, reasoning and the information considered;
- 207.2. where relevant, any suggestion for improvement;
- 207.3. next steps (for example, council making an award / internal reconsideration);<sup>49</sup> and
- 207.4. if we have missed our decision making timescales, why this happened.<sup>50</sup>

208. The information we considered should reflect any relevant additional comments the applicant / council had if we shared information before making our decision.

### **Overtaken decision (fully or partially) / referred back to the council**

209. The CR should email the decision to the liaison contact first to let them make arrangements for the award prior to the applicant being notified of the decision. The email should highlight our findings categories including the reason we have changed the decision (material finding) together with any suggestions for improvement (non-material findings). Full details of our findings should then be provided in the attached cover letter. In our email, we should invite councils to contact us if they wish to have a discussion about the case.

210. The CR should then contact the applicant using their preferred method of contact to confirm that they have made their decision, that the council will process the award, and that our decision letter will be sent to both parties. A record of what we expect the council to do should be added as a recommendation in Workpro and can only be marked as complete when the council confirm the steps they have taken (for example, an email confirming payment).

211. Where we have changed the council's decision, we would expect them to implement it:

211.1. for Crisis Grants on the same day (unless there is a good reason, for example, the time of day would prevent payment) but, in any event no later than within one working day of being notified; and

211.2. for Community Care Grants, within one week of being notified.

212. We would expect councils to remake a decision we remitted back to them in line with the timescales for tier 1 decisions under the [SG Guidance](#).

213. This should be made clear to councils when we contact them.

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<sup>49</sup> Section K, SoP

<sup>50</sup> Section N, SoP

## **Need no longer present?**

214. There may, on occasion, be times where the council seek to implement an amended decision and find that the applicant's need is no longer present (for example, they have secured the item by other means).
215. The approach we take to this will be assessed on a case by case basis and CRs should speak to the Team Manager if / when this arises. Factors to consider include the timing of when the need was met and any detriment suffered. We will also give consideration to our role, which is to make the decision that should have been made.<sup>51</sup>

## **We do not overturn the council's decision**

216. The decision should be emailed to the council using the templates highlighted above. Any suggestions for improvement should be flagged in the cover email and further detail provided in the decision cover letter. Again, the email should invite councils to contact us if they wish to have a discussion about the case.
217. CRs should then contact the applicant using their preferred method of contact to confirm they have made their decision and that our decision letter will be sent to the applicant and the council.

## **Internal knowledge building and SMT reporting**

218. It is vital that the LT are kept aware of any significant issues that may arise. The Team Manager will meet with the Director once a month to ensure that the LT is kept aware of our SWF function, decisions that are being made, and to ensure they have appropriate input.

## **High risk or high profile cases**

219. The LT and Comms should be alerted to any high risk or high profile cases.
220. This is detailed more fully in our Complaints and Investigations guidance which gives several possible examples of such cases. These include (but are not limited to) cases involving:
- 220.1. a death or terminal illness;
  - 220.2. child protection issues;
  - 220.3. MP/MSP involvement;
  - 220.4. press interest; and / or
  - 220.5. a recurrent issue.
221. Our Complaints and Investigations guidance also mentions homelessness and cases involving vulnerable persons. These are clearly particularly applicable because SWF applicants may well meet either – if not both – of these criteria because they will be

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<sup>51</sup> S.8 of the Act



among the most vulnerable people in society. Staff should be mindful of this and alert the LT only to cases of particular crisis, need or distress (for example, where we have felt it appropriate to contact our liaison contact about possible support needs).

222. More generally, staff should use their judgment in assessing whether a case is high profile or high risk. Sometimes it may not be immediately obvious that a case is high risk or high profile because circumstances can change and develop over time. The key principle, however, is that when such a case is identified it must be flagged to the Team Manager as soon as it comes to the staff member's attention. Workpro must be updated accordingly an email sent to LT and Comms with a brief summary.
223. Staff should refer to our Public Service Complaints guidance for more detail.

### **When we close a file**

224. The vast majority of files will be worked electronically and so would only need to be closed on Workpro.
225. However, when any incoming mail is received, this should be scanned into Workpro to the relevant case. Depending on the nature of the mail, it may be appropriate to send original documents back to the applicant, such as GP correspondence. We expect these instances to be very rare, and the majority of the time, the paperwork can be disposed of in confidential mail once it has been scanned. If in doubt, staff should check with the TM.

### **Internal reconsideration of our decisions**

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#### **How we treat new information**

226. If new information is brought to us after we have made our decision, the CR should consider whether this would a) lead them to change their decision; or b) that the case should be reopened in order to make further enquiries. The CR is entitled to do this without putting the case into the reconsideration process. They can discuss this with the Team Manager in the first instance if they require any further guidance.
227. The case should be re-opened on Workpro on the date that the new information is received. The 'continue case' option should be selected and the new closure date entered once the decision has been made. If further evidence needs to be gathered to verify the new information, for example contacting an applicant's doctor to confirm a health condition, the case should be 'stopped' on Workpro and restarted on the date the evidence is received. This is to prevent us going over our target case handling times due to matters which are outwith our control. A new decision and cover letter should be produced, explaining what has happened. This should be communicated with the applicant and the council as per our normal practice.
228. The applicant will still have the right to ask for a reconsideration of the new decision.

## Reconsideration

229. As detailed in our SoP, both parties can ask us to reconsider our decision.<sup>52</sup>
230. Our decision letter will have standard wording about this process. We will also have relevant information on our website and an information leaflet about this process. These are some possible examples where we may reconsider our decision:
- 230.1. where it was based on a material error of fact, which can be shown using readily available information;
  - 230.2. where we have failed to apply guidance or legislation correctly;
  - 230.3. where we have acted unreasonably, disproportionately and/or shown bias in making our decision; or
  - 230.4. where we are made aware of new and material information that would change our original decision
231. Although parties may **ask** us to reconsider a decision without identifying one of these issues explicitly, **we** will decide if we will change our decision. In addition, a disappointed party's disagreement alone will **not**, of itself, cause us to change our decision. We may, however, use our discretion to either re-open or change a decision if we felt our original decision had been incorrect (regardless of whether either party had identified the issue). Nothing in this section would stop us from exercising our discretion in this way.
232. It is important to be clear that if the council challenge our decision successfully we will **not** claw an award back from an applicant. We will also only report publicly on the amended decision. The Team Manager will be responsible for carrying our reconsideration requests in whose absence, another staff member will be authorised for the purpose.

## Administrative steps

233. The way we will handle requests will depend upon whether it relates to a Crisis Grant or a Community Care Grant.
234. For either award, both parties will have one month from the date they were notified of our decision to submit their request. We will, however, use our discretion around this<sup>53</sup> as we do with time for initial applications. We can give an applicant our standard form for them to complete but, where someone has sent a letter or email to the same effect, we will also accept that.
235. If an applicant asks us to reconsider our decision on the telephone (for example, when we call to tell them our decision before posting / emailing it), we will **generally** require them to have at least received our decision letter before taking this forward. This

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<sup>52</sup> Section L, SoP

<sup>53</sup> Section L, SoP

means we will not automatically accept a request when we tell the applicant our decision on their independent review. This will ensure the applicant gets a chance to consider the reasons for our decision and will be in the best position to explain why they want us to reconsider it, if they decide to do so. However, staff should show appropriate flexibility on this point because it may not always be appropriate (for example, where we do not have a contact address). Again, this will be a question of fact and circumstance.

236. A request should be acknowledged in writing (unless submitted over the telephone, although we can if asked) and set up in Workpro by the TA. The Team Manager will issue our written response and the CR should, if available, be given the opportunity to read and comment on the draft letter. The TM may also choose to speak with the CR prior to issuing the decision for further information and / or to discuss any contentious points. In the Team Manager's absence, responses will be issued by the Director, with support from the Executive Casework Officers. Where the request was submitted over the telephone, the reasons given for the request should be noted.

### **Considering a request**

237. If we think, having considered the request, that there:
- 237.1. may be grounds to change our decision; or
  - 237.2. there is new and significant information that we think the other party should be given the chance to comment on.
238. Where appropriate, we should contact our liaison / the applicant and consider any comments they may have.
- 238.1. for Crisis Grants, this contact should normally be over the telephone. We would then issue our decision as we would a standard Crisis Grant decision; and
  - 238.2. for Community Care Grants, email / letter may be more appropriate but this is a matter of judgment. We would then decide whether the file should be reopened or if we can make a decision on it at that point.
239. It is important that we are demonstrably fair in all cases (the slight difference in our approach reflects the relative urgency of the types of award). We must respect that, in line with the approach detailed above, people have a right to be heard as part of this process. In either case, we will confirm the outcome in writing.
240. Where the challenge has been successful we will confirm the steps we will take and, where unsuccessful, that we have made our full and final decision. Our timescales are:
- 240.1. for Crisis Grants, 1 working day for applicants and 21 working days for councils;
  - 240.2. for Community Care Grants, 21 working days for both applicants and councils.

241. In both cases this will be from the point at which we have the information needed to make our decision.

## **Reporting and issues arising from casework**

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### **Reporting**

242. We recognise the importance of sharing learning. We will report on independent reviews annually and, consider additional reporting mechanisms as appropriate.

### **Quality assurance**

243. It is important that we ensure the quality of our decisions. Quality Assurance of casework will be carried out by the Executive Casework Officers (ECOs) using an SWF specific template to measure the quality of SWF decisions. The Team Manager will liaise with the ECOs and the team to ensure that suggestions for improvement are considered and followed up.

### **Customer service complaints**

244. Our commitments to service users are outlined in our service standards leaflet, which also outlines our [customer service complaints procedure](#). We also have a complaint form for users which should be provided on request, and is available within the templates on Workpro.

245. Staff should refer to our Complaints and Investigations guidance for further information.

### **Conflicts of interest**

246. Our Complaints and Investigations Guidance says that potential conflicts of interest arise:

246.1. 'when staff members enter into any official, professional or personal relationships which may, or could reasonably be perceived to, cause them inappropriately or unjustifiably to limit the scope, extent or rigour of their work or impair the objectivity of their judgement (Register of Interests Policy).'

247. It explains that there are also other areas where potential conflicts of interest could arise (for example, where a staff member has either worked with or knows an individual who brings an application to us); in addition it outlines, among other things, how a potential conflict of interest may only become apparent after some initial steps have been taken (for example, requesting the council's file). It is the staff member's responsibility to inform their manager of a potential conflict of interest immediately and they should refer to our Complaints and Investigations guidance for further information.

## **SPSO performance reporting**

248. We are committed to handling applications as efficiently as we can which is why we have put internal case handling timescales in place, beyond our decision making timescales. This is to ensure that we try to minimise any unnecessary delays.

249. We will continue to review our approach to handling as appropriate.