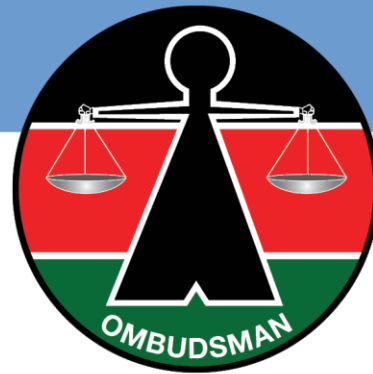


THE KENYA PUBLIC SECTOR COMPLAINTS HANDLING GUIDE



Complaint
received

Assessment
of complaint

Action

Investigation

Review

Response

**Commission on Administrative Justice
Kenya**

THE COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"



Hata Mnyonge ana Haki

THE KENYA PUBLIC SECTOR COMPLAINTS HANDLING GUIDE

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ABBREVIATIONS

| | |
|--------|---|
| ADR | Alternative Dispute Resolution |
| AOMA | African Ombudsman and Mediators Association |
| CAJ | Commission on Administrative Justice |
| CMIS | Complaints Management Information System |
| IAU | Internal Affairs Unit |
| ICT | Information and communications technology |
| KNCHR | Kenya National Commission on Human Rights |
| KNHREC | Kenya National Human Rights and Equality Commission |
| MDAs | Ministries, departments and agencies |
| NGEC | National Gender and Equality Commission |

FOREWORD

Complaints about the way public service providers operate are nothing new. Nobody likes receiving complaints yet the way a public institution responds to criticism has a major impact on its operational effectiveness and its image in the public eye.

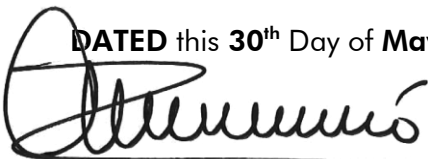
In Kenya, the public service has been undergoing reforms since the early 1990s with a view to improving the way public organisations operate, to increase their effectiveness and encourage accountability. This was given greater impetus by the Constitution of Kenya, 2010, under which independent commissions were created. The Commission on Administrative Justice (CAJ), also known as the Office of the Ombudsman, was established to provide oversight against the abuse of power so as to ensure that government authority is exercised equitably.

As part of public sector reform, the commission has required ministries, departments and agencies of government to develop complaints management systems, such as providing service charters, installing complaints boxes and setting up committees and institutional ombudsmen. But while the majority of institutions now have complaints management infrastructure, there has been no systematic process of documenting, analysing and internally resolving the complaints received.

The CAJ has produced this guide to streamline and standardise the process of handling complaints in the public sector. The steps in successful complaints management are clearly explained and templates are provided to ensure all relevant information is captured. One lesson learnt from the study of best practices around the world is that the commitment of senior officers is crucial to manage complaints effectively. When perceived criticism is handled fairly, transparently and in a timely manner, an organisation's reputation and image are enhanced, staff morale improves, and public confidence in government grows.

In the spirit of effective complaints management, we at CAJ welcome your feedback on the contents of this guide.

DATED this 30th Day of **May** 2016



DR OTIENDE AMOLLO, EBS
CHAIRPERSON OF THE COMMISSION

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Many individuals have contributed their time and experience to make this guide possible. The Commissioners of CAJ, Chairperson Dr Otiende Amollo, Vice Chairperson Dr Regina Mwatha, and Commissioner Saadia Mohamed provided their vision, leadership and policy guidance in establishing the complaint handling guidelines.

The CAJ Commission Secretary, Leonard Ngaluma, provided technical leadership as head of the CAJ Secretariat, while Messrs. Yuvinalis Angima and Vincent Chahale of CAJ worked tirelessly from inception of the idea to its realisation.

We are grateful to the *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH* for their resource and technical support, particularly to Opimbi Osore and Sylvia Aluoch who walked with CAJ every step of the way, and for the input of Gichira Kibara and Sarah Makena of the Capacity Development Institute, the consultants to this programme.

Last but not least, we thank our many stakeholders for their continued support and encouragement.

DEFINITION OF TERMS

Complaint

An expression of dissatisfaction by a person or persons or a group, institution or organisation about an unsatisfactory or unacceptable situation, including an act or omission, or about the standard of a service; whether the action was taken or the service provided by the person, the institution itself or a body acting on behalf of the public institution.

Complainant

A person, group of persons, organisation or institution making a complaint within the meaning of this guide.

Respondent

A public or state officer or a public institution against which the complaint is made.

Public institution

Any institution of the national or county government, constitutional or statutory commission, tribunal, bodies or committee, a parastatal or state corporation or any other institution funded directly from the government Consolidated Fund or receiving money provided by Parliament.

Lodging

For the purpose of this guide, lodging is the making of a formal or official complaint about a public institution or a public officer.

Resolution

A situation where an institution has provided sufficient information or a remedy or solution to the satisfaction of the complainant, or where the complainant is unsatisfied and the public institution has taken the complaint through due process and made a just decision.

Complaints mechanism

For the purpose of this guide, a complaints mechanism refers to the institution, procedure and process that has been adopted by a public institution to handle complaints.

Root cause

The primary source or basis of the complaint.

CHAPTER ONE

Background and overview

1.1 Purpose

The purpose of this guide is to provide a simplified roadmap to effective complaints handling in the public sector. The guide is informed by the identified needs of the public sector as well as good practices from other countries with similar public sectors. The guide also seeks to standardise the process of handling public complaints, with a view to enhancing sectoral coordination and collaboration as well as easing the process of monitoring and evaluation. It is expected that the public sector will use this guide while developing, applying, reviewing or strengthening their complaints handling mechanism.

The guidelines spelt out herein apply to all public sector institutions including ministries, departments and agencies (MDAs) at the national and county levels of government, constitutional commissions, independent offices, Parliament and the Judiciary. The guide provides benchmarks against which public institutions will be assessed to ensure compliance with the public service delivery standards set out in the Constitution of Kenya, 2010. The guide provides the following information:

- i. Clear policy considerations for effective complaint handling in the public sector,
- ii. Elements of effective complaint handling, including the cultural environment,
- iii. Principles of complaint handling,
- iv. Skills required in handling public complaints,
- v. Analysis of complaints,
- vi. Nature and main sources/causes of the complaints, and
- vii. Key challenges and opportunities in effective complaint handling.

1.2 The nature and role of the public sector

The public sector consists of agencies, enterprises and other entities that deliver public programmes, goods or services. The primary role of the public sector is to provide goods, works and services that are necessary for the government to discharge its administrative responsibilities and also to provide certain public goods and services that cannot be effectively provided by the private sector (commercial or business enterprises). These services include policing and law enforcement, defence, public planning, public roads, immigration, regulatory services, arbitration of disputes, public administration, education and health. A key characteristic of public goods and services is that they are directed at all members of society rather than just those who can afford to purchase

them. They are also expected to be accessible in an equitable manner to all members of the society. The public sector is comprised of both elected and appointed staff/officers. Both the elected and appointed staff/officers are bound by the national values and principles of governance (Art.10 of the Constitution) and the public service values and principles (Art.232).

1.3 The policy rationale for responsive public services: a requirement of democracy for responsible and responsive government

All over the world, governments are established by society in order to deliver public goods and services and to administer the policies and laws that are beneficial to society. In a constitutional democracy such as Kenya, the society expresses its vision, aspirations and goals through the Constitution and the government is deemed to have entered a social contract with the society to pursue and achieve them. In the preamble to the Constitution, Kenyans express their aspirations ‘for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law’. Under the Constitution of Kenya, 2010, sovereign power belongs to the people and can only be exercised in accordance with the Constitution Art.1(1). The people can exercise sovereign power either directly or through their democratically elected representatives [Art.1(2)]. The people through the Constitution have, however, delegated their sovereign power to the three arms of government¹ in order that they may provide goods and services to the public [Art.1(3)].

The Constitution has set out guidelines on the conduct of public and state officers and for the standards of service expected from the public service in Art.10, Art.232 and Chapter 6. Laws have also been enacted to elaborate on the expected conduct and the standards of public service. These include the Public Officers Ethics Act, the Leadership and Integrity Act and the Public Service (Values and Principles) Act. The complaints handling constitutional and legal framework is anchored on:

- The Constitution of Kenya 2010
- Commission on Administrative Justice Act
- The Fair Administrative Justice Act
- Acts of Parliament creating regulatory institutions

To ensure that the power delegated to government is exercised in accordance with the Constitution’s values, objects and purposes, the Constitution has also established

¹ The three arms of government are the national executive and the executive structures in the county governments, Parliament and the legislative assemblies in the county governments, and the Judiciary and independent tribunals.

independent commissions and offices to protect the sovereignty of the people, secure the observance of democratic values and principles by all state organs, and promote constitutionalism. The commissions are given specific mandates to support the work of the government, amongst them providing oversight and checks against any abuse of power. The Commission on Administrative Justice, popularly known as the Ombudsman, is one of the constitutional commissions.

1.4 Constitutional and legal entitlement to efficient, accessible and effective public services and administrative justice

The Constitution and the laws of Kenya provide for the right to public services. The government is required to provide one form or other of public service in order for the rights and/or liberties contained in the Bill of Rights to be realised. The government is required to develop policies, laws and institutions, or undertake programmes to promote, protect or fulfil them. The Constitution has set out the principles of public service, which include:

- high standards of professional ethics,
- efficient, effective and economic use of resources,
- responsive, prompt, effective, impartial and equitable provision of services,
- involvement of the people in the process of policy making; accountability for administrative acts,
- transparency and provision to the public of timely, accurate information,
- fair competition and merit as the basis of appointments and promotions,
- representation of Kenya's diverse communities, and
- affording adequate and equal opportunities for appointment, training and advancement, at all levels of public service.

These principles supplement the national values and principles set out in Article 10. Article 10 values and principles bind all institutions and persons in Kenya while those in Art.232 only apply to the public service. The national values are:

- patriotism, national unity, sharing and devolution of power,
- the rule of law, democracy and participation of the people,
- human dignity, equity, social justice, inclusiveness, equality,
- human rights, non-discrimination and protection of the marginalised,
- good governance, integrity, transparency and accountability, and
- sustainable development.

1.5 Benefits of effective handling of complaints and the cost of poor handling

Effective complaints handling is a crucial part of quality service delivery in any institution. Complaints help institutions to identify weak areas and create the motivation for continual improvement. Handling of complaints provides an opportunity for the organisation to understand its customers and ensure that the issues they raise are quickly resolved. Proper handling of complaints improves the reputation and image of the institution. Complaints also provide management with information on how its staff treat customers, thus promoting accountability for both the institution and its staff.

1.6 Emerging practices and lessons learnt in complaints handling

The public service has been undergoing reforms since the early 1990s with a view to fostering a performance-oriented culture that seeks to revamp the process through which public organisations operate, in order to increase efficiency and effectiveness, and to inculcate a culture of client-oriented, mission-driven, and quality-enhanced management. To engender more efficient and effective service delivery, a results-based approach to management has been adopted that includes performance contracting for all chief executives in the public sector. The performance contract assesses various results including complaints handling, customer satisfaction and ethics, and prevention of corruption.

To ensure better response to customer needs, the ministries, departments and agencies (MDAs) of government have developed various complaints handling systems, including the provision of service charters, installation of complaints boxes and the establishment of internal complaints handling mechanisms and institutional ombudsmen. The Judiciary and Egerton University, for example, have institutional ombudsmen who are mandated to receive and process complaints on behalf of the respective institutions. The National Police Service is also in the process of establishing an Internal Affairs Unit (IAU), which will be the equivalent of the police ombudsman. The majority of MDAs have complaints mechanisms of one sort or another, but many of these are weak and lack some of the basic essentials to be effective. Most of the MDAs in the sector do not have dedicated complaints handling units, staff or resources. While complaints boxes are common, there is no systematic process of receiving, documenting, analysing, resolving and reviewing the complaints received. A number of public institutions, however, have fairly well developed complaints handling systems and have also obtained ISO certification, which requires clear complaints handling mechanisms.

Some of the lessons learnt in handling of complaints in Kenya include the following:

- i. There is need for adequate public awareness,
- ii. Complaints handling mechanisms must have capacity in order to be effective,
- iii. Impunity is a great obstacle to complaints handling,
- iv. There is need for an effective legal framework,
- v. Political will is a prerequisite,
- vi. Sufficient funding is essential,
- vii. Frequent transfers of staff undermines complaints handling in the public service,
and
- viii. Manual systems are inefficient in complaints handling.

CHAPTER TWO

Nature of public complaints

2.1 Introduction

This section explains the nature of public complaints, in particular the objectives of complaints handling, its characteristics, causes and benefits.

2.2 Objectives of complaints handling

Complaints handling in the public service should aim to achieve the following objectives:

- Ensure continuous improvement of the services rendered by the public institution,
- Provide a user-friendly feedback system for the institution,
- Promote both internal and external accountability for the institution and the public office,
- Promote public participation in the delivery of public goods and services, and
- Resolve any issues raised by complainants who are dissatisfied with the services rendered by the public institution.

2.3 Values and principles

An effective complaints handling system should be founded on the basic values and principles of fairness, accessibility, efficiency, responsiveness, confidentiality and flexibility. The essence of these values is described below.

Fairness

Every complainant must be treated fairly in terms of how the complaint is received, processed and resolved. This requires a transparent system where the complainant is able to follow the complaint as it goes through the various stages. It also requires a system that provides for impartial non-discriminatory service. Complaints should be treated with an open mind, without the agency being defensive or seeking to disprove the complaint. Respondents must also be treated fairly by being accorded adequate opportunity to respond to the complaints and being protected from malicious complainants and complaints.

Accessibility

Members of the public should be made aware of the complaints handling mechanism and the process of handing the complaint. The institution should publicise its complaints

handling mechanism as widely as possible through its website, service charter, posters, radio programmes and public outreach activities. In publicising its complaints handling mechanism the institution should, among others, inform the public on:

- How a complaint can be lodged, including where the complaint form can be availed,
- The timeframe within which the complaint will be addressed,
- The powers of the mechanism to deal with the complaints,
- How the decision of the complaint mechanism can be appealed against or reviewed,
- The cost implications of the complaint mechanism,
- The impartiality of the system and an encouragement to those dissatisfied to lodge complaints without fear of victimisation
- The confidentiality safety mechanisms in place
- Options available for lodging complaints — telephone (preferably a toll-free number), SMS, email (preferably a dedicated line), in person or by post, and
- Indicate the responsible officer or department/office for ease of follow up.

Responsiveness/flexibility

The complaints system should be responsive to the needs of customers/the public including those with special needs, such as the disabled, illiterate persons and culturally disadvantaged groups. Staff should be well trained to handle vulnerable persons. They should also be able to handle difficult clients, including those who are rude, aggressive and stubborn.

Effectiveness

The complaints handling system must be able to give real solutions for the complaints lodged. The unit charged with the responsibility of managing complaints should be empowered to take action once the complaint is authenticated. Often public institutions delegate complaint handling to junior officers who have limited capacity to effectively address the complaint. Effective complaints handling requires commitment from the highest level of the institution to deal with all issues raised.

Efficiency

Complaints should be handled in an efficient manner that ensures clients are not discouraged from complaining or fatigued by long drawn-out processes. The complaints should be resolved immediately or as soon as is practically possible. Simple complaints should be disaggregated from complex complaints that require more time to resolve. There should be clear guidelines with timed processes dealing with receipt of the complaint, initial assessment, allocation of responsibility to deal with it, investigation, resolution and review, and monitoring of the system.

Customer focused

The organisation should be committed to effective complaint handling and value feedback through various appropriate channels.

Confidentiality

Personal information related to complaints should be kept confidential.

Accountability

Accountabilities for complaint handling should be clearly established, and complaints and responses to these complaints monitored and reported to management and other stakeholders.

Transparency

The organisation and the complaints handling officer should exercise openness. In the complaints handling process there should be free sharing and access to information by all parties involved.

Continuous improvement

Complaints are a source of improvement for organisations.

Simplicity

The complaints handling procedure should be simple and straightforward.

2.4 Causes of complaints

The following are some of the common causes of the complaints received by public institutions that ultimately affect service delivery:

- *Inappropriate policies, laws or regulations:* ambiguous, obscure, contradictory, obstructive or unsuitable laws cause complaints because of their inherent weaknesses including discrimination, bias and injustice,
- *Complex procedures, processes and routine:* the need for meticulous, careful, cautious, correct administration of social services; ensuring that taxpayers' money is spent properly results in complicated procedures and routines,
- *Inadequate capacity of government officers:* if the level of ability of government officials is lower than it should be for the tasks they are to perform, administrative errors occur,
- *Mistake of law:* incorrect interpretation or application of the law or ignorance of the law,
- *Mistake of fact:* decisions or actions based on information that is factually wrong, or misinterpretation or omission of important facts,

- Lack of awareness about the applicable procedures and requirements of vital documents,
- Weak and ineffective complaints handling mechanisms,
- Inaccessibility of the officers and absenteeism,
- Corruption and impunity,
- Poor terms and conditions of service, and
- Poor leadership and decision making.

2.5 Benefits of good complaints handling

- It provides for a timely and cost-effective means of resolving complaints,
- It provides information that can lead to improvements in service delivery, and
- Where complaints are handled properly, a good system can improve the reputation of an organisation and strengthen public confidence in an organisation's administrative processes.

CHAPTER THREE

Complaints handling framework

3.1 Definition and nature of the ombudsman institution

Ombudsman institutions have been established in many countries to promote good governance and responsive government.

The following are some of the definitions of an ombudsman:

- ▶ An agency whose existence is based on the constitution or legal provisions, made up of high-level officeholders with political neutrality and given authority by the legislative body, capable of publishing reports or having power to investigate civil complaints about abuse of government agencies or officials and offer remedies for them.
- ▶ The ombudsman is a person or an institution to offer remedies for citizens suffering from government commissions or omissions, able to resist the abuse, unfair use, or maladministration of government power, protect civil rights, make the administrative body transparent, and strengthen accountability of government and government officials for citizens.
- ▶ The ombudsman is an independent, impartial public official with authority and responsibility to receive, investigate or informally address complaints about government actions and, when appropriate, make findings and recommendations, and publish reports.

For an institution to qualify as an ombudsman, it should exhibit some basic characteristics, including:

- independence from those it investigates
- accessibility
- fairness
- public accountability
- effectiveness
- impartiality
- objectivity

Traditionally ombudsmen function by undertaking investigations regarding the matter complained about and making appropriate recommendations to public institutions or authorities to address the subject matter of the complaint. Their recommendations or decisions are not coercive and their force emanates from their persuasive authority, their legitimacy and the public confidence the institution enjoys.

3.2 Origin of the ombudsman

The word Ombudsman originated in Sweden in the early 1800s, literally meaning ‘commission man’ in reference to the office of the *Justitieombudsmannen* as an office or public official to receive grievances from the citizenry against the government and the bureaucracy of the government. That classic form of an ombudsman had subpoena powers and was empowered to do investigations, render decisions and issue findings although it never had the ability to overturn decisions by the government. That classic ombudsman model is still in practice to certain degrees in Europe and parts of the United States as well.

The success of the ombudsman in Sweden led to the establishment of similar institutions across the world with Finland adopting it in 1919, Norway in 1952, Denmark in 1953, New Zealand in 1962, Guyana in 1966, the United Kingdom in 1967 and Tanzania in 1968. Currently there are more than 150 ombudsmen institutions in the world.

It is however important to note that the ombudsman institution has been changing and adapting to the needs of various countries as it has been transplanted to the different jurisdictions. The South African, Kenyan and Gambian ombudsmen are empowered to ‘take remedial action’ not just advise or recommend, and the Gambian ombudsman decisions have the status of a court decision.

The report of the African Ombudsmen Conference held in September 2013 observes that:

“In relation to the concept of the Ombudsman, it was noted that the institution had evolved both quantitatively and qualitatively, from the traditional institution dealing with maladministration and making only recommendations, to one with a broader mandate and coercive powers. This was noted to have taken place in Africa in the last three decades, occasioned by the continent’s unique circumstances.”

3.3 Ombudsman in Kenya: The Commission on Administrative Justice (CAJ)

In Kenya, the need for an ombudsman was first officially recognised in 1971 by the Commission of Inquiry into the Public Service Structure Remuneration Commission, commonly known as the Ndegwa Commission, which recommended that an office be established to deal with maladministration in the public service. The commission recommended the establishment of an ombudsman to deal with the negative effects of allowing civil servants to engage in business. It had proposed that civil servants be allowed to engage in business subject to certain conditions, one of which was the establishment of an ombudsman. Over the years there was sustained advocacy for the

establishment of the ombudsman by governance and human rights advocacy organisations.

3.4 Establishment and mandate

The Commission on Administrative Justice is established pursuant to the provisions of Art.59 of the Constitution under Section 3 of the Commission on Administrative Justice Act (Cap.102A of the Laws of Kenya). It is the successor to the Public Complaints Standing Committee previously established under the gazette notice no. 5826 of 2007. The CAJ is one of the three institutions fashioned out of the Kenya National Human Rights and Equality Commission (KNHREC) and created under Art.59 of the Constitution along with the Kenya National Commission on Human Rights (KNCHR) and the National Gender and Equality Commission (NGEC), together popularly referred to as the 'Article 59 commissions'.

The relevant constitutional mandate areas hived off from KNHREC to CAJ include:

- investigating any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice,
- investigating complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct,
- reporting on complaints investigated and taking remedial action, and
- performing any other functions prescribed by legislation.

Under the CAJ Act, the Commission has been given the following functions:

- To investigate any conduct in state affairs, or any act or omission in public administration by any state organ, state or public officer in national and county government that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice,
- To investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector,
- To report to the National Assembly bi-annually on the complaints investigated under Section 8, paragraphs (a) and (b), and the remedial action taken thereon,
- To inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service,
- To facilitate the setting up of, and build complaint handling capacity in, the sectors of public service, public offices and state organs,
- To work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration,

- To recommend compensation or other appropriate remedies against persons or bodies to which this Act applies,
- To provide advisory opinions or proposals on improvement of public administration, including review of legislation, codes of conduct, processes and procedures,
- To publish periodic reports on the status of administrative justice in Kenya,
- To promote public awareness of policies and administrative procedures on matters relating to administrative justice,
- To take appropriate steps in conjunction with other state organs and commissions responsible for the protection and promotion of human rights to facilitate promotion and protection of the fundamental rights and freedoms of the individual in public administration,
- To work with the Kenya National Commission on Human Rights to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration, and
- To perform such other functions as may be prescribed by the Constitution.

3.5 Other institutions that handle complaints in Kenya

Other institutions that handle complaints may be classified into the following categories:

- i. Constitutional commissions
- ii. Statutory bodies
- iii. Regulatory bodies /authorities
- iv. Administrative bodies
- v. Judicial and administrative tribunals

3.6 Complaints under the performance contracts

CAJ is responsible for overseeing the implementation of the 'resolution of public complaints' indicator in the public service performance contracts. To facilitate implementation of the indicator, the Commission has issued performance contracting guidelines clearly setting out the monitoring and reporting process, sanctions and penalties for defaulting, indicator evaluation criteria, and the activities MDAs are expected to undertake to satisfy the indicator. Under the performance contracting guidelines, MDAs are required to report on the resolution of public complaints annually. Annual reporting is aggregated from quarterly reports made by MDAs. The indicator requires all public institutions to promptly address and resolve public complaints lodged with and against them. They are required to establish mechanisms for resolving the complaints in consultation with the Commission. The Commission monitors this indicator by assessing and certifying MDAs against established criteria. While there is substantial

compliance with the reporting requirements for complaints handling in the performance contracting process, there are also a high number of defaulters.

3.7 Regional and international best practices

The ombudsman institution has existed in various regions of the world for many years. This section highlights some best practices that can be adopted for the Kenyan ombudsman system.

The best practices involve the principles that define a good ombudsman and the elements that need to be included for it to properly function.

Principles that have evolved include fairness, accessibility, responsiveness, efficiency, integration, customer focus, visibility, objectivity, confidentiality, remedy, review, accountability and continuous improvement.

Institutions that have developed best practices include the European Ombudsman, the African Ombudsman and Mediators Association (AOMA), the Ombudsman Western Australia, the British Standards Institution Guide and the Commonwealth Ombudsman.

EUROPEAN OMBUDSMAN

The European Ombudsman investigates complaints about maladministration in the institutions and bodies of the European Union, with the exception of the Court of Justice in its judicial role, either on its own initiative or in response to complaints. The ombudsman is completely independent in the performance of its duties.

Every citizen of the EU has the right to complain to the ombudsman. Residents, companies and associations may also complain.

If a complaint is justified, the ombudsman seeks a friendly solution whenever possible. This may involve a suitable remedy, such as changing a decision, offering an apology, or providing compensation. The ombudsman cannot compel an institution to put maladministration right but if an institution fails to comply with its recommendations, it can be criticised publicly. If the issue is serious enough, a special report may even be made to the European Parliament.

As well as providing an independent and impartial service to complainants, the ombudsman also works proactively to improve the quality of administration and encourage full respect for citizens' rights.

Five guiding principles constitute the framework for all its activities, internal and external:

- **Integrity:** deals with complaints objectively and impartially
- **Fairness:** aims to strike a reasonable and fair balance between conflicting rights and interests of all involved
- **Accountability:** works as openly as possible by explaining its decisions and giving reasons for the same
- **Dialogue:** open-minded, listens carefully and respectfully to others and sees things from their point of view
- **Service:** it is conscious that the ombudsman exists to serve citizens, thus aims to provide the highest possible quality of service

THE AFRICAN OMBUDSMAN AND MEDIATORS ASSOCIATION (AOMA)

The AOMA Draft Code of Conduct provides that an entity seeking to perform the role of an ombudsman should be established by a statute that is available to the public and clearly sets out its role, powers and jurisdiction and which empowers the institution as follows:

1. Receives complaints about alleged acts, omissions, maladministration, improprieties, and systemic problems within the ombudsman’s jurisdiction as defined in the legislative enactment establishing the scheme
2. Exercises discretion to accept or decline to act on a complaint
3. Operates by fair and timely procedures to aid in the just resolution of a complaint or problem
4. Gathers or demands relevant information
5. Resolves issues at the most appropriate level of the entity
6. Functions by such means as:
 - a. conducting an inquiry
 - b. investigating and reporting findings
 - c. facilitating, negotiating, and mediating
 - d. making recommendations for the resolution of an individual complaint or a systemic problem to those persons who have the authority to act upon them
 - e. identifying complaint patterns and trends
 - f. educating
 - g. issuing public reports annually
7. Initiates litigation to enforce or protect the authority of the office as defined by the legislative enactment, as otherwise provided by these standards, or as required by law

OMBUDSMAN WESTERN AUSTRALIA

The Ombudsman Western Australia Guidelines (2010) identifies various components for the effective handling of complaints.

The benefits of good complaint handling:

- It resolves issues raised by a dissatisfied person in a timely and cost-effective way.
- It provides information that can lead to improvements in service delivery.
- Where complaints are handled properly, a good system can improve the reputation of an organisation and strengthen public confidence in its administrative processes.

Key principles have been identified for effective complaints handling, namely:

- **Customer focus:** The organisation is committed to effective complaint handling and values feedback through complaints.
- **Visibility:** Information about how and where to complain is well publicised to customers, staff and other interested parties.
- **Accessibility:** The process of making a complaint and investigating it is easy for complainants to access and understand.
- **Responsiveness:** Complaints are acknowledged in a timely manner, addressed promptly and according to order of urgency, and the complainant is kept informed throughout the process.
- **Objectivity and fairness:** Complaints are dealt with in an equitable, objective and unbiased manner. This will help to ensure that the complaint handling process is fair and reasonable. Unreasonable complainant conduct is not allowed to become a burden.
- **Confidentiality:** Personal information related to complaints is kept private.
- **Remedy:** If a complaint is upheld, the organisation provides a remedy.
- **Review:** There are opportunities for internal and external review and/or appeal about the organisation's response to the complaint, and the complainants are informed about these avenues.
- **Accountability:** Accountabilities for complaint handling are clearly established, and complaints and responses to them are monitored and reported to management and other stakeholders.
- **Continuous improvement:** Complaints are a source of improvement for organisations.

THE BRITISH STANDARDS INSTITUTION GUIDE

The British Standards Institution (BSI 2004) has developed an international standards guide on complaints handling that may be a good reference point in the development of the complaints handling guide for the public service in Kenya. It identifies nine principles for effective complaints handling schemes — visibility, accessibility, responsiveness, objectivity, no charges for complaint handling, confidentiality, a customer-focused approach, accountability (within the organisation) and continual improvement. Some of these are elaborated here:

- **Visibility:** Information about how and where to complain should be well publicised to customers, personnel and other interested parties.
- **Accessibility:** A complaints handling system should be easily accessible to all complainants. Information should be made available of the details of making and resolving complaints. The complaints handling process and supporting information should be easy to understand and use, with instructions given in clear language. Information and assistance in making a complaint should be made available in the languages or formats that the products were offered or provided in, including alternative formats, such as large print, Braille or audiotape, so that no complainants are disadvantaged.
- **Responsiveness:** Receipt of each complaint should be acknowledged to the complainant immediately. Complaints should be addressed promptly in accordance with their urgency. The complainant should be treated courteously and be kept informed of the progress of their complaint through the complaints handling system.
- **Charges:** Access to the complaints handling process should be free of charge.
- **Confidentiality:** Personally identifiable information concerning the complainant should be available where needed, but only for the purposes of addressing the complaint within the organisation and should be actively protected from disclosure, unless the customer or complainant expressly consents to its disclosure.
- **Customer-focused approach:** the organisation should adopt a customer-focused approach, should be open to feedback, including complaints, and should show commitment to resolving complaints by its actions.
- **Objectivity:** Each complaint should be addressed in an equitable, objective and unbiased manner through the complaints handling process.

COMMONWEALTH BETTER PRACTICES GUIDE

The Commonwealth *Better Practice Guide for Complaints Handling* identifies five key elements for effective complaints handling, namely:

- an enabling culture
- principles of fairness, accessibility, responsiveness, efficiency and integration
- skilled and professional people
- a seven-stage process of acknowledgement, assessment, planning, investigation, response, review and consideration of systemic issues
- continuous analysis of organisational review and improvement

The guide emphasis is that unless the institution values the resolution of complaints against it, it will be difficult for the complaints handling system to work. The institution must adopt a culture that is friendly to the lodging, investigation and resolution of complaints.

It identifies the following as the benefits of effective complaints handling:

- Complaints highlight weaknesses in the institutions' programmes, policies and service delivery.
- Complaints stimulate an improvement in the institution's performance.
- It reassures clients/customers that the institution is committed to resolving problems, improving relations and building loyalty.
- It improves accountability and transparency.
- From the complaints an organisation is able to improve its services, review its policies and reorganise its programmes to be more efficient and effective.

CHAPTER FOUR

Establishment of a public complaints handling mechanism

A complaints handling mechanism should be established in every public institution to ensure that complaints are given the necessary attention, with a view to improving the delivery of services. Even where complaints are integrated into the service delivery process, there should be a clearly designated section, office or unit that bears the primary responsibility for the handling of complaints in the institution. Good practice indicates that a dedicated unit, office or department with committed staff is likely to be more effective in complaints handling. It also underscores the need for all public institutions to establish clearly delineated complaints handling mechanisms that are part and parcel of service provision to the public. It is further desirable, as much as possible, to have the complaints handling mechanism headed by senior and respected persons to ensure that resolution of complaints receives the necessary support and goodwill.

Complaints handling mechanisms to be established by all public sector institutions can take the following forms:

- i. Desk
- ii. Department
- iii. Institutional ombudsman
- iv. Committees (standing and ad-hoc)
- v. Officer

It is important to emphasize that a public complaints handling mechanism must be given adequate independence, authority, resources and necessary support and commitment by the leadership of the institution in order for it to be effective.

Appropriate measures should be put in place to protect all complainants from intimidation, enticement and compromise by those against whom complaints are made. Officers in charge of complaints must be reasonably senior and competent enough to command respect within the institution. They must also enjoy the unqualified support of the chief executive and other senior staff. They should be accessible to the complainants and to top management.

Beyond the independence and authority of the complaints handling mechanism, the mechanism must be integrated into the functions of the institution. In other words, the complaints should be considered an integral part of service delivery rather than a nuisance, necessary evil or a peripheral function. Institutional and individual

performance evaluation and appraisal should therefore always reflect the level and nature of complaints and the steps taken to address and pre-empt them. This requires the deliberate and systematic cultivation of institutional cultures that encourages complaints from all persons who are dissatisfied with the services or goods offered by the institution.

The composition of the complaints handling mechanism should be reflective of the face of the institution in terms of gender and regional balance, amongst other considerations. It should also be possible to co-opt membership into the mechanism on specific cases for purposes of ensuring fair administration of justice.

4.1 Terms of reference

A complaints handling mechanism for a public institutions should, among others, address the following:

- i. Promote the sensitisation of staff and other stakeholders on complaints handling,
- ii. Advise management on complaints handling,
- iii. Receive, process and oversee the resolution of complaints,
- iv. Monitor the trends of complaints and recommend remedial action,
- v. Prepare regular reports to management on complaints handling,
- vi. Coordinate complaints handling activities in the organisation,
- vii. Ensure the integration of complaints handling in the organisation,
- viii. Ensure compliance with the guidelines of the Commission on resolution of public complaints, as may be issued from time to time,
- ix. Monitor, evaluate and review complaints handling activities in the organisation,
- x. Where appropriate refer complaints to the appropriate authorities including the CAJ.

4.2 Resources

A complaints mechanism shall be provided with adequate resources for the effective discharge of its mandate.

4.2.1 Human resources

As far as possible the complaints mechanism should have full time and dedicated staff and the staff should be knowledgeable and well-versed in the affairs of the organisation.

Staff deployed on the mechanism should be persons of the highest integrity and, as far as possible, the mechanism should be headed by a senior officer. Complaints

handling personnel should also be persons with the right skills and attitudes, including active listening, warmth, empathy, patience and self-control.

4.2.2 Training and capacity development of complaints handling staff

The office handling public complaints should have adequate and competent staff. The staff should be specifically trained in relevant complaints handling areas, such as communication skills, public relations and customer care, to enable them to discharge their responsibilities effectively.

The training should, among others, equip the officers with thorough knowledge of the role of the public service in democratic governance, the national values and principles of governance, the values and principles of the public service, best practices in complaints handling, and the fundamentals of an effective complaints handling system. Training for complaints officers should be well structured, regular and continuous to ensure that officers are equipped to handle the new and emerging types of complaints and the changing needs/demands of the public. The institution should liaise with CAJ in order to undertake training needs assessment and develop an effective training strategy/ programme.

There should also be continuous capacity building of the complaints handling officers on alternative dispute resolution (ADR), investigation, counselling, and information and communications technology (ICT).

4.2.3 Financial resources

The complaints mechanism should have a clearly identifiable budget, sufficient to execute its mandate.

This should be made possible by ensuring that complaints handling is incorporated in the strategic plan and work plans of the institutions.

4.2.4 Offices and equipment

The mechanism shall be provided with adequate office space and equipment. As much as practicable the mechanism shall leverage on technology to make its operations efficient and effective.

In addition, the institution will decentralise the complaints handling services to the nearest possible points of service to the customer. The decentralised facility should be empowered to resolve complaints.

4.3 Public awareness and participation

A public complaints mechanism is only useful if members of the public are aware of its existence and are able to access and use it. It is therefore not enough to establish the complaints mechanism — the institution must publicise it adequately through means capable of reaching all potential users. The complaints mechanism may also be publicised through the publications of the institutions. Outreach programmes should also be designed to ensure all key sectors or areas served by the institution are reached. They may include open days, radio programmes, social media, posters and newsletters. The mechanism should be designed in such a manner that it encourages public participation and engagement. It should elicit feedback on its effectiveness from the public and respond to the comments received.

4.4 Reporting and accountability

Complaints handling staff should have clear job descriptions and performance targets linked to actual satisfactory resolution of claims. The accountability for the resolution of claims should be clear to both the public and the staff, from the front office staff up to the chief executive. Regular progress reports should be an integral part of the complaints system. It is recommended that monthly, quarterly and annual reports be made to management against clear realistic targets. Institutions should also compile and publicise data on complaints handling, demonstrating its effectiveness by clearly setting out the nature and number of complaints received during the period, number of complaints resolved, complaints referred to other agencies, the rate of settling complaints, timelines for processing and completion of cases, achievements and challenges, and proposed reforms.

CAJ may from time to time review the guidelines with a view to enhancing the efficacy of complaints handling.

CHAPTER FIVE

Complaints management

5.1 Lodging of complaints

A person/s can lodge a complaint in their own name or on behalf of another person. A group, organisation or institution can also lodge a complaint. The institution should provide designated places or offices or persons where complaints will be lodged.

Complaints can be lodged through the following modes:

- In person (persons with disability will be assisted to lodge the complaints)
- Complaints on behalf of persons unable to lodge complaints
- Online via email, website, web posting, or a complaints management information system (CMIS) if it is available
- Telephone/fax
- In writing, including Braille
- Text messages
- Social media
- Any other mode as may be determined by the institution

Apart from the complaints lodged through the modes stated above, institutions are expected to also take up the following complaints:

- i. *Own motion matters*
Institutions may consider picking up own motion matters that are relevant to their mandate, for instance issues exposed through the media.
- ii. *Anonymous complaints*
Anonymous complaints shall be treated as complaints to the institutions.
- iii. Complaints originating from reports, including social audits.

Note:

- Complaints received must be recorded in a register.
- All complaints that are not in writing shall be recorded in writing by the receiving officer.
- All complaints received must be acknowledged appropriately within seven days.
- A public institution shall not charge any fee for lodging /receiving and determination of complaints unless expressly permitted to do so by law.

A COMPLAINT LODGING FORM IS ATTACHED TO THIS GUIDE AS APPENDIX 1

5.2 Receipt and acknowledgement of complaints

Upon receipt of a complaint, the complaint handling officer shall assign it a reference number, which should be made known to the complainant for tracking purposes.

5.3 Documentation of the complaint

A record shall be created for every complaint and shall comprise of at least the following: particulars of the complainant (name, address, contacts, next of kin, age, gender, county, reference number of relevant file or matter (if any), the nature of the complaint (what, who, when, where etc.), parties involved, relevant dates and action taken.

Accompanying documents must also be recorded and indexed.

The institution shall establish a database of complaints containing particulars of the complainant, the nature of the complaint, parties involved, relevant dates, action taken and any other details related to the specific complaint.

All documents relating to complaints shall be kept in safe custody and a record of the chain of custody shall be maintained.

Complaints records shall be maintained for at least six years.

5.4 Assessing the complaint

An initial assessment of the nature and gravity of the complaint should be made by the receiving or front office officer to allow for categorisation and prioritisation. This avoids the lumping together of simple, easy-to-resolve complaints with complex time-consuming ones. It also allows an effective allocation of complaints to the most relevant officers, leading to faster processing and resolution of the matter.

Admissibility

Complaints will be reviewed to determine whether they are within the mandate (functions, conduct, services) of the institution. Other factors that may be considered to determine admissibility would be:

- whether a complaint is already being handled by another competent institution, e.g. the courts, and
- the period within which a complaint is lodged, based on the timelines that may be determined by the institution.

5.5 Action

- After assessment for admissibility of a complaint, the file will be allocated to an action officer or referred to the relevant bodies or institutions.
- An inquiry into the complaint will then be conducted to verify the facts and other details of the complaint before action is taken.
- At this stage the respondent should be contacted to give a response to the lodged complaint.

5.6 Investigation

Where investigation is required, it should be properly planned with a clear indication of the time and resources required.

The planning should clearly establish what is to be investigated, what evidence will be gathered, who is to be interviewed, documents to be recovered, the expectations of the complainant and also whether the complaint has special considerations to be taken into account — issues such as the security of the complaint, confidentiality, or available evidence that should be dealt with at the planning stage.

The investigation should be for the purposes of establishing the facts and exploring options for resolution. The investigation itself should be carried out in an impartial manner. Confidentiality should be maintained and great care taken to ensure the complainant's privacy is protected and their safety is not imperilled through exposure of his or her identity.

5.7 Review/ authentication of evidence

Both the complainant and respondent must be treated fairly and given the chance to advance/respond to claims/allegations and/or produce any relevant evidence. The parties shall be given adequate opportunity to be heard before the designated complaints officer. Parties may object to the hearing of their complaints by officer/s that they suspect may be biased against them. All matters shall be handled in a manner that complies with the Constitution and the laws of Kenya.

5.8 Responding to/resolving the complaint

Resolving the complaint involves addressing the issue(s) complained about and offering the best possible remedy in the circumstances. The complaint should be dealt with in an equitable and objective manner. An officer who has any interest in the matter shall disqualify themselves from handling the case. Complex matters may involve mediation,

negotiation or conciliation. The complaints handling officer should have an open mind and examine the evidence objectively.

The remedies for addressing the complaints should be clearly set out and the parties should all be aware of the possible solutions. The complaints handling officers should be empowered to provide the remedies at the appropriate levels, i.e. front office. The complainant should be informed of the decision reached and reasons should be given for the decision by the complaints officer. Any decision reached shall be communicated within 30 days. The complaints mechanism should have an appeal or review provision for those who are dissatisfied with the decision of the complaints officer of first instance. The appeal or review process should also be simple and fast.

Recommendation for resolution by others

Where another institution is better positioned to provide a remedy to the complaint under consideration, the institution shall refer the complaint to that other institution. Institutions may collaborate in providing a remedy to the complaint.

Root cause

The action officer shall document what they consider to be the root cause of the complaint.

5.9 Closing the file

Once a decision is arrived at, it shall be communicated to the complainant and the respondent and other interested parties.

The complaints database shall be updated to reflect the decision made.

THE DATABASE UPDATE FORM IS ATTACHED AS APPENDIX 2

5.10 Audit and review of the system

5.10.1 Root cause analysis

The institution shall undertake a root cause analysis of complaints to identify systemic problems and take remedial action.

A TEMPLATE FOR CONDUCTING THE ROOT CAUSE ANALYSIS IS ATTACHED AS APPENDIX 3

5.10.2 Monitoring and evaluation

A monitoring and evaluation mechanism shall be developed by the institution to provide regular reports, including monthly reports to management, and quarterly and annual reports to stakeholders. Management should conduct random checks on the system.

5.10.3 Customer satisfaction surveys

Annual customer service surveys shall be conducted on complaints resolution.

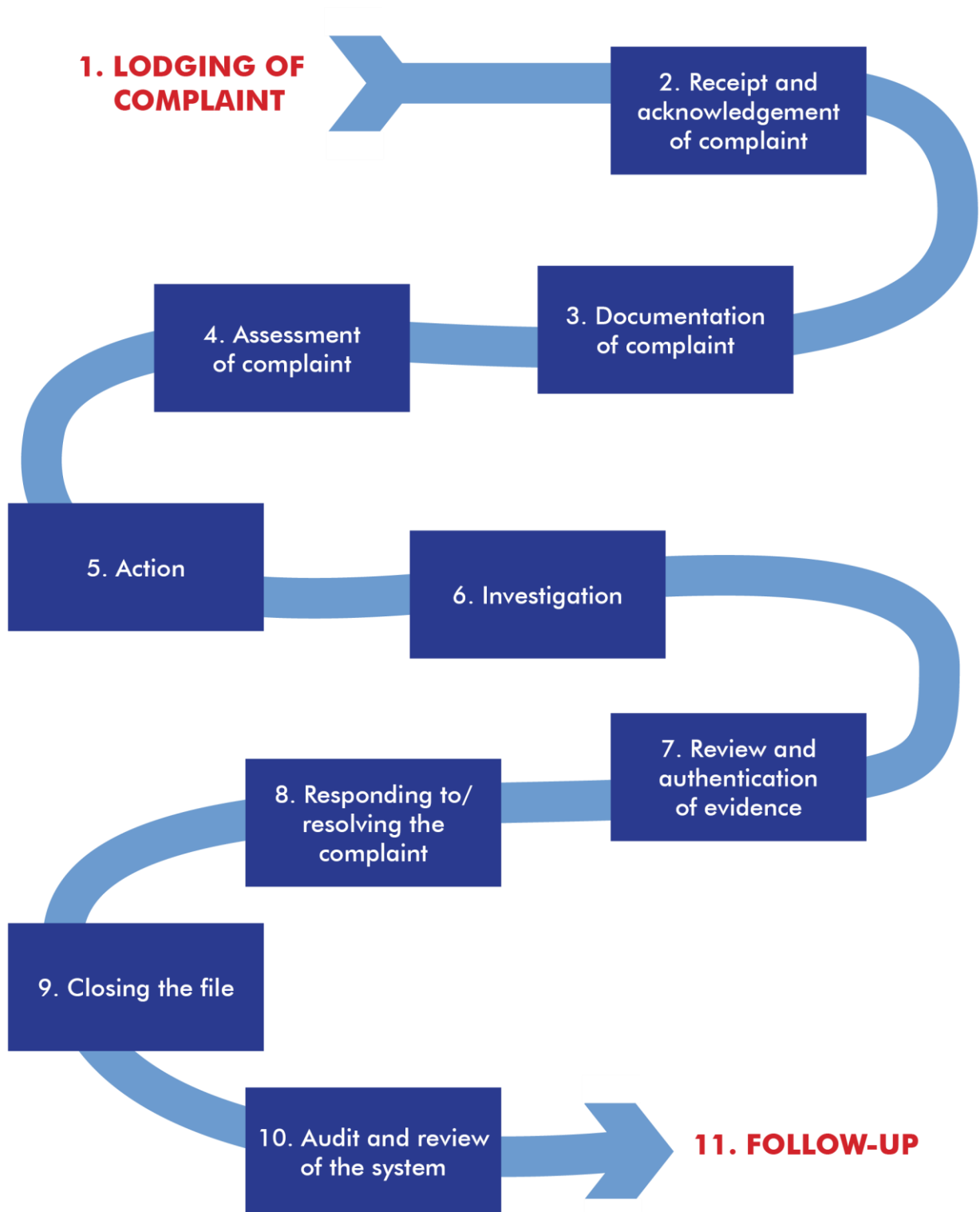
5.10.4 Reports and recommendations

Monitoring and evaluation and statutory reports shall be prepared by the institution and the recommendations therein shall be implemented to ensure improvement in the delivery of services and in complaints handling.

5.11 Follow-up

Once the complaint is addressed, there should be a follow-up on the implementation of the decision to ensure the issue is resolved with finality. The follow-up should also identify and address the root cause of the problem to ensure there is no recurrence.

STAGES OF THE COMPLAINTS MANAGEMENT PROCESS



APPENDICES

- 1. Complaints lodging form**
- 2. Database form**
- 3. Root cause analysis template**
- 4. Monitoring and evaluation template**

APPENDIX 1

Complaints lodging form

Ref. no _____

1. Complainant's Details (all information given is voluntary)

Name (Dr / Mr / Mrs / Ms)

ID Number _____

Postal address _____

Mobile _____

Email _____

County _____

Age _____

2. How did you get to know about the institution's complaints mechanism?

Newspaper

TV/Radio

Referral by friend

Other (please specify) _____

3. Which public institution or public officer are you complaining about?

Ministry/department/agency:

4. Have you reported this matter to any other public institution/ public official?

Yes

No

5. If yes, which one?

6. Has this matter been the subject of court proceedings?

Yes No

7. Please give a brief summary of your complaint and attach all supporting documents
[Note to indicate all the particulars of *what* happened, *where* it happened, *when* it happened and by *whom*]

8. What action would you want to be taken?

Signature _____

Date _____

APPENDIX 2

Database form

Ref. no _____

1. Complainant's details

Name (Dr / Mr / Mrs / Ms)

ID Number _____

Postal address _____

Mobile _____

Email _____

County _____

Age _____

2. Respondent's details

Name (Dr / Mr / Mrs / Ms)

Staff ID _____

Public Institution _____

Mobile _____

Email _____

County _____

Age _____

3. Details of the complaint

4. The facts of the complaint

5. The decision reached by the complaints officer

6. Root cause of the complaint

APPENDIX 3

Root cause analysis template

| Complaint e.g. non-issuance of ID | Officer/ department complained against | Nature of complaint/ service issue, e.g. delay | Type of cause – physical (e.g. system failure), human (e.g. inefficient officers, slow, unresponsive) or organisation (e.g. policies, procedures, regulations) | Remedy granted | Corrective/ preventive action to be taken |
|--------------------------------------|---|---|--|-------------------|---|
| | | | | | |
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APPENDIX 4

Monitoring and evaluation template

| No. of complaints received | Mode complaint lodged | No. of complaints resolved | No. of complaints pending | Duration taken to resolve, e.g. spot resolution, 1 day, 7 days, 14 days, 1 month, quarterly, annual | Recommendations for system improvement |
|----------------------------|-----------------------|----------------------------|---------------------------|---|--|
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