



## **Briefing note to DSFBs on Section 46D (Complaints procedure) of the Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (introduced by s24 of the Aquaculture and Fisheries (Scotland) Act 2013)**

### **Introduction**

Section 24 of the Aquaculture and Fisheries (Scotland) Act 2013 amends the 2003 Act to place a number of new duties on DSFBs relating to openness and accountability. The new section 46D requires a DSFB to:

*'maintain, and keep under review, proper arrangements for dealing with complaints made to the board about the way in which the board have carried out, or propose to carry out, their functions under this Act or any other enactment'*

Section 46D goes on to prescribe further detail about categories of complaints, who may make them and record keeping. Scottish Government have issued guidance in relation to the Good Governance obligations. Specific guidance relating to Annual Reports can be found in paragraphs 24-27.

This briefing is intended to assist Boards in ensuring that they can comply by providing a procedure for dealing with complaints which DSFB Clerks may wish to adopt. The procedure set out below is provided as a sample. The final, agreed procedure should be reproduced on the Board's website.

### **General statement on complaints**

- All complaints will be treated seriously, whether they are made by telephone, by letter, or by email.
- Complainants will be treated with courtesy and fairness at all times.
- All complaints will be treated in confidence within the Board\*.
- Complaints will be dealt with promptly. Written complaints will be acknowledged within five working days and a full reply within 20 working days of receipt. If a full reply cannot be provided within 20 working days of receipt, the reason will be explained and notification provided as to when a reply will be forthcoming.
- The number of complaints received, a statement as to the nature of each complaint and how it was disposed of will be published in our annual report.

\*All complaints received will be dealt with confidentially and in accordance with the requirements of the Data Protection Act 1998 (See Annex 1 for further guidance for DSFBs).

### **Complaints Procedure**

Any complaint should be addressed to the Clerk to the Board. Complaints can be made by:

- Telephone: <contact number>
- Email: <address – DSFBs might consider setting up a dedicated e-mail address for complaints>
- By letter: <address>

A two-stage complaints procedure is in place. At each stage it will help us to resolve your complaint quickly if you can give us as much clear detail as possible, including any documents and correspondence and stating that you are making a complaint in line with our procedure.

#### **Stage 1**

This is the first opportunity for the Board to resolve a complainant's dissatisfaction, and most complaints should be resolved at this stage. In the first instance, the clerk will investigate the nature of the complaint in conjunction with the convener of the board. This gives the Board the opportunity to resolve and correct any resulting disadvantage (upholding the complaint); or establish that the action of the Board was correct thereby enabling the Board to explain this to the complainant (not upholding the complaint).

#### **Stage 2**

If the complainant is dissatisfied with the stage 1 response they may request a review by the full board and it would be expected that this would be discussed at the next scheduled meeting of the Board. Given the confidential nature of complaints, the Board might elect to hold this meeting, or part thereof, in private. In this instance the complainant will be given the right to attend the meeting.

### Indicative timescales for handling a complaint

#### Stage 1 - maximum 20 working days

- Acknowledgement within 5 working days
- Full response within 20 working days

#### Stage 2 – timing will depend on the scheduling of the next Board meeting

- Acknowledgement within 5 working days, with notification of the date and location of the meeting at which the complaint will be discussed

### Extending time limits

We aim to complete all complaints within the timescales above; however, if a complaint is very complex it may occasionally be necessary to extend the time limit. If this is the case we will keep the complainant informed of progress with the investigation, the reasons for the delay, and inform them of the new deadline.

### Further advice on Complaints

A copy of the Board's complaints procedure should be submitted to Scottish Ministers by e-mail: [dsfbgoodgovernance@scotland.gsi.gov.uk](mailto:dsfbgoodgovernance@scotland.gsi.gov.uk).

It is recommended that the Board's Complaint's procedure is reviewed on an annual basis with a view to determining whether it is meeting local needs. If the complaints procedure is altered Scottish Government should be informed by e-mail. FMS would also recommend that DSFBs should consider including complaints, and how they have been handled, as a standing agenda item for all Board meetings.

The new legislative provisions relating to complaints allow Boards to make different provision for dealing with complaints made by different potential complainants. For example, if a complaint was received by a public body, this might involve a full Board meeting in the first instance, rather than following Stage 1 above. Equally, a formal complaint by another DSFB may require the involvement of FMS. If you believe that an individual complainant might be considered vexatious, please contact FMS for further guidance.

### Record keeping

A record should be maintained which sets out the number of complaints received; the nature of the complaints and the outcome of the complaints.

### Reporting

DSFBs are required to report the number of complaints and a statement as to the nature of each complaint and how it was disposed of as part of the annual report. A sample format is included below but the suitability of this format will depend on local circumstances.

**1. Complaints received:** During the last 12 months <XXX> DSFB received <X> complaints: <Y> were resolved at Stage 1 and <Z> were resolved at Stage 2. <XX> complaints are yet to be resolved [if applicable].

**2. Categories of complainant:** Of those <X> complaints, <A> were received by members of the public, <B> were received by proprietors of salmon fisheries in the board's district, <C> were received by salmon anglers in the board's district, <D> were received by tenant netsmen in the board's district, <E> were received by members of the board and <F> were received by other district salmon fishery boards.

### 3. How complaints were received:

Method	Proportion/Number
Letter	X%
e-mail	X%

Communication from advocate	X%
Telephone	X%
Fax	X%
Website	X%
Meeting/ face to face	X%
Other	X%

**4. Response to complaints:** X% of stage 1 complaints were responded to within the indicative timescale of 20 working days. Y complaints went to Stage 2 for review by the Board.

**5. Outcomes:** Of the <X> complaints received, <Y> were upheld, <Z> not upheld, <XX> partially upheld, and <XY> were not pursued by the complainant after initially registering the complaint.

**6. Details of the nature of each complaint:** The complaints received fell into the following categories/were as follows [depending on the number of complaints received the Board may elect either simply to briefly list the nature of each complaint, or to brigade groups of complaints into categories, for inclusion in a table].

**For further information please contact:**

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## Annex 1: The Data Protection Act 1998 (DPA)

Complaints to the Board may result in the processing by the DSFB of personal data.

Section 7 of the DPA gives an applicant a right of access to personal data which is held about themselves. Under this section, an individual is entitled to be informed by any 'data controller' whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller.

A 'data controller' is defined in the DPA as being a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.

'Personal data' is defined in section 1 of the Act as being '*data which relates to a living individual who can be identified from that data or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller*'. It includes any recorded expression of opinion by or about the individual and any recorded indication of the intentions in respect of the individual.

The definition of 'personal data' has been considered in the courts and subsequent judgements have concluded that data will only relate to an individual if '*it is information that affects a person's privacy, whether in his personal or family life, business or professional capacity*.' For information to affect a person's privacy, and therefore 'relate' to the individual, two points have to be considered:

- is the information biographical in a significant sense?
- does the information have the individual as the focus?

The Court also concluded that data must be held by a data controller in a 'relevant filing system' for the purposes of the DPA.

Taking account of these requirements, it is possible that some of the information supplied by complainants to the DSFBs will constitute either the proprietor's personal data or the personal data of any third parties. It is also possible that DSFBs will hold this personal data within 'a relevant filing system' for the purposes of the DPA.

To the extent that DSFBs processes an individual's personal data, they will be 'data controllers' for the purposes of the 1998 Act, given that each DSFB will determine the purposes for which and the manner in which any personal data are, or are to be, processed.

'Processing' in relation to information or data is defined in section 1 of the DPA. It means 'obtaining, recording, or holding the information or data or carrying out any operation or set of operation on the information or data, including-

- organisation, adaptation or alteration of the information or data
- retrieval, consultation or use of the information or data
- disclosure of the information or data by transmission, dissemination or otherwise making available, or
- alignment, combination, blocking, erasure or destruction of the personal data.

Section 17 of the DPA makes it is an offence to process personal data without the data controller being registered with the UK Information Commissioner.

To conclude, DSFBs will be data controllers and therefore bound by the provisions of the DPA if they process individuals' personal data and if the DSFBs, (either alone or jointly or in common with other persons) determine the purposes for which and the manner in which any personal data are, or are to be, processed.

**To the extent that the DSFBs fall within this definition and carry out such processing, the DSFBs should register immediately as data controllers with the Information Commissioner (if this has not already been done).**

Registration is relatively straightforward and may be undertaken [HERE](#)

Data controllers are obliged to act in accordance with the provisions of the DPA and specifically must not breach any of the eight data protection principles contained within it (listed [HERE](#)).