

### 3.9.2 Stage 2 – HSE Formal Investigation Process

(vii) Complaints that may be managed using the processes outlined in this Guidance Manual.

Table 2: Complaints that can be managed using Part 9 of the Health Act 2004

Details of Complaint/Allegation	Policy, Procedure, Guideline or legislation to be followed
Complaints about an action of the HSE or Service Provider that fall within the provisions of Part 9 of the Health Act 2004	Your Service Your Say, <i>The Management of Service User Feedback Policy for Comments, Compliments and Complaints, 2017</i> and associated Guidance Manual
Complaints in relation to access to services under Part 3 of the Disability Act 2005 (Access)	<p>Your Service Your Say, <i>The Management of Service User Feedback Policy for Comments, Compliments and Complaints, 2017</i> and associated Guidance Manual.</p> <p>Service users can make their complaint to any member of staff in the organisation and this complaint will be forwarded to a <b>National Disabilities Complaints Officer</b>.</p> <p>These complaints must be in writing and sent to:</p> <p><b>Email:</b> <a href="mailto:yoursay@hse.ie">yoursay@hse.ie</a></p> <p><b>Address:</b> HSE Oak House, Millennium Park, Naas, Co. Kildare.</p>
Complaints in relation to Clinical Judgment	<a href="#">Section 3.11, Guidance Manual (Link)</a>
Anonymous Complaints	<a href="#">Section 3.12, Guidance Manual (link)</a>
Vexatious or Malicious Complaints	<a href="#">Section 3.13, Guidance Manual (link)</a>

(viii) **Complaints that do not fall within the remit of this Guidance Manual** (and must be referred to the appropriate personnel to be addressed using the appropriate Policy, Procedure, Guidelines or Legislation as detailed in this table)

**Table 3: Complaints that cannot be managed using Part 9 of the Health Act 2004**

Details of Complaint/Allegation	Policy, Procedure, Guideline or legislation to be followed
<b>Incidents (clinical or non-clinical)</b>	Refer to relevant local policy developed in compliance with the requirements of the <b>HSE Safety Incident Management Framework</b>
<b>Allegation of abuse of a child</b>	Refer to Child Care Manager to deal with the complaint in line with the: Children's First, National Guidelines for the Protection and Welfare of Children, Sept 1999.
<b>Allegation of abuse made against staff members</b>  <b>Complaint by staff of any inappropriate behaviour of other staff at work</b>  <b>Complaint about bullying and harassment made against staff</b>	Refer to Line Manager/ Head of Discipline to deal with complaint in line with some or all of the following: <ul style="list-style-type: none"> <li>– <b>Trust in Care</b>, Policy for Health Service Employers on upholding the Dignity and Welfare of Patients/Clients and the Procedure for managing allegations of abuse against staff members, May 2005.</li> <li>– <b>Grievance and Disciplinary Procedures</b> for the Health Service, May 2004.</li> <li>– <b>Dignity at Work Policy</b> for Health Services, May 2004.</li> </ul>
<b>Professional Misconduct and Fitness to Practice Issues</b>	Referral to the appropriate Professional Regulatory Body for consideration under the relevant Act, e.g. IMC, NMBI, CORU, PSI, etc.
<b>Complaint against the HR/Recruitment process</b>	Refer to Line Manager / Head of Service to deal with complaint in line with some or all of the following: <ul style="list-style-type: none"> <li>– <b>Trust in Care</b>, Policy for Health Service Employers on upholding the Dignity and Welfare of Patients/Clients and the Procedure for managing allegations of abuse against staff members, May 2005.</li> <li>– <b>Grievance and Disciplinary Procedures</b> for the Health Service, May 2004.</li> <li>– <b>Dignity at Work Policy</b> for Health Services, May 2004.</li> <li>– HSE Recruitment SOP R2002</li> <li>– Utilise the appeal processes contained in the Recruitment Licenses and Codes of Practice specifically in line with Section 7 and Section 8 of the Codes of Practice.</li> </ul>

<p><b>Allegation of abuse of vulnerable adults include elder abuse</b></p>	<p>Refer to the General Manager / Manager of Older Persons Services to deal with the complaint in line with:</p> <ul style="list-style-type: none"> <li>- <b>Responding to Allegations of Elder Abuse:</b> HSE Elder Abuse Policy 2014</li> </ul> <p>Where the allegation relates to non-staff, refer to Manager of Older Persons Services to deal with complaint in line with:</p> <ul style="list-style-type: none"> <li>- <b>Protecting Our Future</b> (2002)</li> </ul>
<p><b>Complaint about entitlements under Part 3, Chapter 9 of the Social Welfare (Consolidation) Act 2005</b></p>	<p>Refer to Health Service Executive Appeals Process/Social Welfare Appeals Office in relation to Basic Payments and Supplements</p>
<p><b>Complaints in relation to decisions of Freedom of Information internal reviewers</b></p>	<p>Refer to <b>Office of the Information Commissioner</b> to deal with the complaint in line with the Freedom of Information Act 2014 <a href="mailto:info@oic.ie">info@oic.ie</a></p>
<p><b>Complaints in relation to breaches of Data Protection Rights</b></p>	<p>Refer to <b>Data Protection Commissioner</b> to deal with the complaint in line with the Data Protection Act 1988 and 2003: <a href="mailto:info@dataprotection.ie">info@dataprotection.ie</a></p>
<p><b>Complaints in relation to Environmental Issues</b></p>	<p>Refer to Local Environmental Health Office to deal with the complaint in line with some or all of the following:</p> <ul style="list-style-type: none"> <li>- <b>Food Safety Authority of Ireland Act 1998</b></li> <li>- <b>European Communities (Hygiene of Foodstuffs) Regulations 2006</b></li> <li>- <b>Food Hygiene Regulations 1950 - 1989</b></li> <li>- <b>Public Health (Tobacco) Acts 2002 &amp; 2004</b></li> </ul>
<p><b>Complaints in relation to Nursing Homes (Private)</b></p>	<p>Refer to Community Healthcare Organisation to deal with the complaint in line with the Health (Nursing Homes) Act 1993 <a href="#">Link to Ombudsman's Complaints about Private Nursing Homes Factsheet</a></p>
<p><b>Pre-School Services</b></p>	<p>Refer to the relevant <b>Tusla Childcare Manager</b> to deal with the complaint in line with the Childcare (Pre-school Services) Regulations 1996</p>
<p><b>Concerns that a number of people have been exposed to a specific hazard.</b></p>	<p>Refer to relevant local policy developed in compliance with the requirements of the <b>HSE Safety Incident Management Framework</b>.</p> <p>Refer to <b>Look back Review Guideline</b> (2015) to identify if any of those exposed have been harmed and what needs to be done to take care of them.</p>
<p><b>Concerns made to the Confidential Recipient (CR)</b></p>	<p>Refer to relevant <b>HSE National Director</b>.</p> <p>A preliminary written report is required within 15 working days from the relevant Community Healthcare Organisation, Chief Officer or Hospital Group, Chief Executive Officer from the date of receipt of the file from the CR. The preliminary report may indicate the need for a review/investigation under another policy/procedure.</p>
<p><b>Protected Disclosures and Good Faith Reporting</b></p>	<p>Made to the <b>Authorised Person</b> who will examine and decide based on the information available what form the investigation should take in line with the <b>Protected Disclosures Act 2014</b>.</p>

**Disability Act (Part 2, Assessment of Need, Service Statements and Redress).**

Reviews are referred to the Office of the Disability Appeals Officer, Department of Health. (<http://health.gov.ie/contact-us/the-disability-appeals-officer/>)(link)

**(ix) Matters excluded from right to complain under Part 9 of the Health Act 2004.**

A complaint is excluded under Part 9 of the Health Act 2004 if it is in relation to any of the following matters:

- a matter that is or has been the subject of legal proceedings before a court or tribunal;
- a matter relating **solely** to the exercise of clinical judgment by a person acting on behalf of either the Executive or a Service Provider;
- an action taken by the Executive or a service provider **solely** on the advice of a person exercising clinical judgment;
- a matter relating to the recruitment or appointment of an employee by the Executive or a service provider;
- a matter relating to or affecting the terms or conditions of a contract of employment that the Executive or a service provider proposes to enter into (includes terms or conditions relating to superannuation benefits, disciplinary procedures or grievance procedures);
- a matter relating to the Social Welfare Act;
- a matter that could be the subject of an appeal under section 60 of the Civil Registration Act 2004;
- a matter that could prejudice an investigation being undertaken by An Garda Siochana;
- a matter that has been brought before any other complaints procedure established under an enactment (e.g. complaints made under Part 2 of Disability Act, 2005 or the Mental Health Act 2001).

There may be times where a complaint contains both matters that can be investigated under Your Service Your Say and 'non-Part 9' matters. The issues that fall under Your Service Your Say can be investigated accordingly and the 'non-Part 9' matters are referred to the appropriate personnel to be addressed using the appropriate Policy, Procedure, Protocol, Guideline or Legislation.