



MINISTRY OF HEALTH
KENYA HEALTH PROFESSIONS OVERSIGHT AUTHORITY
(Transforming Health Professions for Quality and Ethical Health Care)

**INTEGRATED GUIDE ON HANDLING
COMPLAINTS AND DISPUTES**

*A guide to complaint handling for KHPOA and Health
Facilities*

November 2024

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Complaint Management Policy Statement

Procedures for handling of complaints received by health facilities, regulatory bodies and the Kenya Health Professions Oversight Authority shall be guided by provisions in:

1. The Health Act No. 21 sections 48 (d) and 14 (1) read together as “facilitate resolutions of complaints from patients, aggrieved parties and regulatory bodies” and “Any person has a right to file a complaint about the manner in which he or she was treated at a health facility and have the complaint investigated appropriately”.
2. Article 43, 1, a, of The Constitution of Kenya, (Economic and social rights)
“Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care”.

This integrated Guide aims to establish, implement and maintain effective and transparent procedures for prompt handling and resolution of complaints or grievances received from the public and maintaining updated records of each complaint or grievances, including the measures taken.

Preamble

In today's dynamic and interconnected world, the health sector inevitably encounters challenges and discrepancies. How these challenges are addressed and resolved speaks volumes about the sector's commitment to integrity, accountability, and customer satisfaction.

This document serves as a comprehensive resource for health facilities and regulatory bodies alike, aiming to foster effective resolution processes and uphold the highest standards of care delivery.

In healthcare settings, complaints can arise from various sources, ranging from dissatisfied patients and their families to concerns raised by staff members or regulatory bodies. Each complaint represents an opportunity to improve quality, enhance patient satisfaction, and strengthen the trust between healthcare providers and the communities they serve.

This guide is designed to provide practical strategies, best practices, and ethical principles to navigate the complexities inherent in addressing complaints within health regulatory bodies and hospitals. By promoting transparency, accountability, and patient-centered approaches, we aim to facilitate fair and timely resolution while preserving the dignity and rights of all involved parties.

Throughout this guide, emphasis is placed on fostering a culture of open communication, empathy, and continuous improvement. By engaging stakeholders in constructive dialogue and implementing evidence-based interventions, health facilities can proactively address issues, mitigate risks, and cultivate a culture of safety and excellence.

Forward

In the ever-evolving realm of healthcare, effective management of complaints is paramount to ensuring patient safety, maintaining trust, and upholding the integrity of healthcare systems. As regulatory bodies and health facilities navigate the complexities of modern healthcare delivery, the ability to address complaints with diligence, empathy, and transparency becomes increasingly vital.

Complaints within healthcare settings are not merely administrative burdens; they are opportunities for growth, reflection, and transformation. By embracing a proactive approach to complaint management, health facilities can identify systemic issues, address root causes, and implement sustainable solutions that enhance the quality of care and elevate patient experiences. By integrating this Guide's principles into daily practice, health facilities can navigate challenging situations with confidence and compassion, ultimately strengthening the bonds of trust between providers and the communities they serve.

We extend our sincere appreciation to the contributors, reviewers, and stakeholders who have contributed their expertise and insights to the development of this guide. It is our hope that this resource will serve as a valuable companion for health facilities and regulatory bodies alike, empowering them to navigate the complexities of complaint handling with integrity, empathy, and professionalism.

Together, let us embark on this journey towards excellence in complaint management, as we strive to fulfill our shared commitment to delivering patient-centered care of the highest caliber.

CHAPTER 1

Introduction

Kenya Health Professions Oversight Authority (KHPOA) is a body corporate established by the Health Act No. 21 of 2017 under Part VI, Section 45. The Authority's mandate is to provide oversight in health care services; training, registration and licensing of health professionals; coordinate joint health inspections; receive and facilitate resolution of complaints and arbitrate disputes and conflicts; ensure compliance of health professionals standards and monitor execution of respective mandates and functions of health regulatory bodies.

The Constitution of Kenya has provided access to health care as a right based issue. This is in the backdrop of an increasing trend in the number of complaints raised by patients/ users against health institutions and professions regarding the way they are treated as they seek health services.

The Health Act no.21 of 2017 section 48 (d) mandates the Kenya Health Professions Oversight Authority to receive and facilitate the resolution of complaints from patients, aggrieved parties and regulatory bodies.

Further, section 48 (f) provides for the Authority to arbitrate disputes between statutory regulatory bodies, including conflicts or dispute resolution amongst Boards and Councils.

The Authority has developed this Guide to harmonize and standardize the process of receiving and handling complaints by the respective health facilities. It is envisaged that the Authority shall receive primary complaints and facilitate resolution by sorting and transferring to responsible health facility or regulatory body while handling other complaints involving more than one discipline. Further, health facilities shall also receive complaints directly from consumers of health care and shall follow procedures provided in this guide in handling and facilitating resolutions of reported complaints. Consequently, each of the above institution shall acknowledge receipt to the complainant within 3 working days and initiate the resolution process to facilitate determination of the complaint in a transparent manner and provide feedback to the complainant on the outcome of the inquiry within 3 months after receipt of the complaint.

Legal and policy framework

In developing this Guide, the following legal and policy framework was considered

- i. The Constitution of Kenya 2010
- ii. The Health Act No. 21 of 2017
- iii. Kenya Health Professions Oversight Authority (Complaints Handling Regulations 2024)
- iv. Integrated Code of Professional Conduct and Ethical Practice
- v. Commission on Administrative Justice No. 23 of 2011
- vi. The Fair Administrative Action Act No. 4 of 2015

- vii. Acts of Parliament creating regulatory institutions
- viii. Ministry of Health National patients' rights charter, 2013
- ix. Kenya Health Policy 2014-2030

Definition of terms

Complaint: An expression of dissatisfaction by a person or persons or a group, institution or organization 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, organization or institution making a complaint within the meaning of this guide.

Respondent: A public or state officer or a public or private 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 entity.

Private institution: Any establishment other than a public institution operated or maintained by any individual, association, corporation, or other organization.

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.

Scope

The user guide applies to the Kenya Health Professions Oversight Authority and all health facilities (Public, Private and Faith Based). It outlines the process and procedures to be followed in the event that a user/patient or aggrieved party lodges a complaint within the Authority or health facility.

This Guide does not substitute other existing laws and guidelines.

Objectives of the guide

- i. To provide fair, accessible, transparent and efficient mechanism for receiving and handling complaints
- ii. To recognize, promote and protect consumer or user/patient rights
- iii. To collect data and monitor complaint resolution processes for the purpose of improving quality of health service delivery and patient health outcome

Guiding principles

The complaints management and resolution system outlined in this Guide is underpinned by seven guiding principles. These principles can be incorporated as core component of health service delivery and shall be understood by staff at all levels. The seven principles are:

- i. Quality improvement
- ii. Open disclosure
- iii. Commitment
- iv. Accessibility
- v. Responsiveness
- vi. Transparency and accountability
- vii. Privacy and confidentiality

Quality improvement

Quality improvement in health care is a systematic process by which the quality of patient care is continually evaluated and improved. Lessons learnt from complaints are used to identify changes needed in order to avoid the same problems occurring again.

Open disclosure

The health facility or regulatory body shall have a policy of open disclosure in relation to adverse events and complaints. It is critical for the managements to ensure that those involved in providing information to patients shall have adequate training and to be fully informed and aware about all issues involved in open disclosure.

Commitment

The health facility or Regulatory body shall remain fully committed to an integrated complaints management system and to provide the necessary support for it to operate effectively. All staff need to be willing to participate actively in resolution of complaints as part of their everyday work and to embrace change where necessary. Staff shall be given the necessary training and support to do so.

Accessibility

The complaints handling procedures shall be visibly displayed and accessible throughout the health facility to any person accessing the facility and staff. It shall be made clear how patient or aggrieved parties can lodge a complaint and how the facility shall give feedback or determination. Further, the complaint handling process shall be accessible for people who speak languages other than English and for people with physical or intellectual impairments.

Responsiveness

Complaints shall be seen as an important source of constructive feedback and shall be treated as a matter of priority. All complaints should be treated seriously, even if at first some seem unreasonable or trivial. The aim of the system is intended to make it easy for consumers of services to give feedback or ask questions regarding their experience as they interact with health care delivery.

Transparency and accountability

The complaints process shall be clearly articulated, open and accountable. The health facility or Regulatory body shall clearly provide the steps involved in the process of handling complaints, including other options available for resolution. The complainant shall be kept informed about the status of the complaint throughout the process. The receiving institutions shall give feedback to the complainant regarding decision arrived at.

Privacy and confidentiality

All complaints shall be treated confidentially, with information used only for the primary purpose for which it was obtained. Complainant information shall be stored separately from the medical records of patients.

CHAPTER 2

COMPLAINT HANDLING BY HEALTH FACILITIES

Introduction

The Constitution of Kenya has provided access to health as a right based issue. Further, the Health Act No. 21 section 14 (1) states “Any person has a right to file a complaint about the manner in which he or she was treated at a health facility and have the complaint investigated appropriately”.

As part of the process to enhance accountability in health service delivery, the National and County governments shall require all public and private health facilities to develop complaints handling mechanisms. These mechanisms shall include setting up complaints handling committees, visible display of service charters, banners on complaint lodging and complaints boxes.

This section provides a guide to harmonize and standardize the process of handling complaints by health facilities (Public, Private and Faith Based) in a more appropriate and timely manner. Moreover, it outlines the process which shall be followed in the event that a complainant lodges a complaint within the health facility.

Types of complaints

Complaints can be grouped into three broad categories. However, some complaints will move through all the three categories, namely;

- i. **Informal (Point of Service):** These are straightforward complaints which can be dealt with promptly at the point of service delivery and to the satisfaction of the complainant.
- ii. **Formal:** More complex matters or unresolved complaints which may need investigation. This may involve different levels within the health facility.
- iii. **Unresolved:** These are complaints that are not resolved to the satisfaction of the complainant. These unresolved complains shall be referred to the Kenya Health Professions Oversight Authority for resolution.

4.1 Informal complaints

Most of these complaints involve an acknowledgement of the consumer’s perspective and an explanation.

If the complaint is made to staff at the point of service, they should first assess whether it can be dealt with at this level (informal or straightforward complaint) or whether they need to refer it to the next level (immediate supervisor or In -charge of the facility).

If staff at point of service delivery decide to deal with the consumer’s concerns, the following actions can be taken to resolve complaints:

- i. Listen carefully to what the complainant is reporting in order to ensure the concern or complaint is clearly understood.
- ii. Give an explanation of what happened – but ONLY if you do know why it happened.
- iii. Offer an apology if warranted- This acknowledges that the consumer has been listened to.
- iv. If the complaint is relating to a clinical issue, the staff can encourage the user to discuss it with the relevant health professional.
- v. The user or patient can lodge a complaint if not satisfied with above using the prescribed format.

When to refer a complaint

Complaints shall be referred to the next level if they:

1. Are unresolved,
2. Involve serious consequences,
3. Involve complex medical issues or a number of different staff,
4. Need action that is beyond the responsibility of the staff at point of service,
5. Need to be dealt with by someone with more authority.

4.2 Formal complaints

Formal complaints involve more complex matters that may need to be referred to a complaints officer or senior management.

There shall be a complaints unit or department in the health institution which shall be responsible for complaint handling.

The following steps shall apply in complaint handling process for formal complaints:

- Step 1: Lodging complaint
- Step 2: Receiving complaint and acknowledgment
- Step 3: Review and classification of the complaint
- Step 4: Action
- Step 5: Investigation
- Step 6: Resolution
- Step 7: Case closure
- Step 8: Implementation
- Step 9: Maintain a complaints register

Step 1: Lodging complaint

A person/s can lodge a complaint in their own name or on behalf of another person or aggrieved parties. A group, organization or institution can also lodge a complaint. The health institution shall provide designated places/offices/persons where complaints will be lodged. These, including steps to be followed shall be displayed and made visible or available to users or patients.

Complaints shall be lodged through the following modes:

- In person (for those who are able)
- Assisted lodge of complaints (Organizations, persons unable to read or write, deceased persons, Minors, Elderly, or with known disability)
- Online platforms

Step 2: Receiving complaint and acknowledgment

Upon receipt of a complaint, the complaint handling officer shall acknowledge receipt of the complaint. No institution shall charge any fee for lodging /receiving and determination of complaints. Acknowledgement can be done in writing (by means of posting or e-mailing acknowledgment letter to the complainant) or telephonically (date on which acknowledgment is done should be recorded).

The received complaint shall be assigned a protocol number which shall be made known to the complainant for tracking purposes and shall be entered into the facility's Complaints Register.

The health facility 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.

Step 3: Review and classification of the complaint

An initial assessment of the nature and magnitude of the complaint shall be made to allow for prioritization and categorization of complaint.

After assessment, the complaint shall be classified accordingly in order to determine whether the case will be allocated to an action officer or referred to the relevant bodies or institutions.

As much as possible, complaints shall be dealt with by the unit involved, with support from the complaints manager/officer. However, for more serious matters or those with broader implications, senior management or complaint handling committee will need to be notified at least and possibly to facilitate the resolution.

Step 4: Action

Upon determination of admissibility of a complaint, the file shall be allocated to an action officer.

An inquiry into the complaint will then be conducted to verify the facts, investigate where possible to generate other details or evidence of the complaint before action is taken.

At this stage the respondent should be contacted to give a response to the lodged complaint via notice of inquiry (NOI)

Step 5: Investigation

Investigating a complaint shall entail developing an investigation plan which shall involve:

- Set timelines at the outset to avoid case dragging.
- Collecting relevant facts: interviewing all people involved in the complaint, collecting relevant records, accessing policy and procedure documents and examining equipment;
- Analyzing and collating information collected;
- Drawing findings about the events and the underlying causes of the complaint; and
- Making determinations/resolutions and recommendations for improvements.

There shall be established a complaint handling team or committee in each health facility. This team or committee shall be responsible for initiating the investigation process.

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

Ensure that all relevant people are consulted about the complaint, while protecting the confidentiality of those involved.

Upon conclusion of investigations, the committee or team shall prepare a report with details of proceedings and resolution options. This may include recommendations for changes to clinical, management, administrative or environmental systems to minimize the likelihood of a similar incident occurring in future. It may also recommend actions like discipline, surcharge, warning, etc.)

When analyzing what went wrong or why a complaint was raised, the organization's systems shall be examined to see how changes can be introduced and individual staff supported to prevent recurrence.

The health facility shall cause to keep accurate records of the steps in the investigation, including all discussions, information or data and conclusions or determination reached.

Step 6: Resolution/outcome

Once the investigation of a complaint has been concluded, the complainant shall be redressed in an amicable manner with the aim of reaching a fair and reasonable resolution.

The remedies for addressing the complaints will be clearly set out and the parties made aware of the possible solutions. These can include one or more of the following:

- i. An apology, explanation or an acknowledgement of responsibility
- ii. Remedial action that may include:
 - a. the review or changing of a decision on the service or care provided to an individual patient
 - b. revising published material, including revising a procedure to prevent the recurrence of a wrong event/ incident
 - c. the training of staff members or strengthening of their supervision; or any combination of the above.
 - d. Suspending operations until the health facility is investigated
 - e. Warning or admonishing of the staff involved.

A written letter or report on the outcome of the investigation shall be provided to the complainant within a period of three months from the date the complaint was lodged, of the action taken or decision made regarding the complaint. In cases where the complainant does not honor an appointment that was made for a redress meeting, a letter on the outcome of the investigation shall be sent via a known postal, electronically or representative.

The complainant shall be informed that if dissatisfied by the committee's decision may forward the complaint or grievances within thirty (30) days from the date of the decision to the Kenya Health Professions Oversight Authority for further investigation and/or redress.

Step 7: Case closure

Once a complaint has been resolved, a comprehensive report shall be prepared by the complaints handling committee and recommendations therein shall be implemented to ensure improvement in health service delivery.

The complaints database shall be updated by the officer who received the complaint initially in the health facility to reflect the decision made by the committee.

Step 8: Implementation

The health facility shall ensure that determination of complaint resolution is clearly communicated to the user or patient, staff and management, and that it is integrated into quality improvement systems.

While ensuring compliance, the following steps shall be followed and adhered to:

- Enter the resolution/outcome into the relevant complaints data collection tool.
- Implement any action (s) recommended as part of the resolution with clear timelines.
- Provide information on complaints and outcomes to the management, including the Board.
- Monitor effectiveness of actions implemented.

It is also important for the health facility to report back to the complainant. They should be informed about any specific changes that the health facility has made as a consequence of their complaint.

Step 9: Maintenance of a complaints register

Every complaint shall be entered into a register and shall comprise of at least the following particulars:

- Name
- Address
- Contact details
- Age
- Gender
- County
- Protocol number
- Nature of complaint
- Parties involved
- Dates
- Chronology of actions taken

4.3 Unresolved complaints

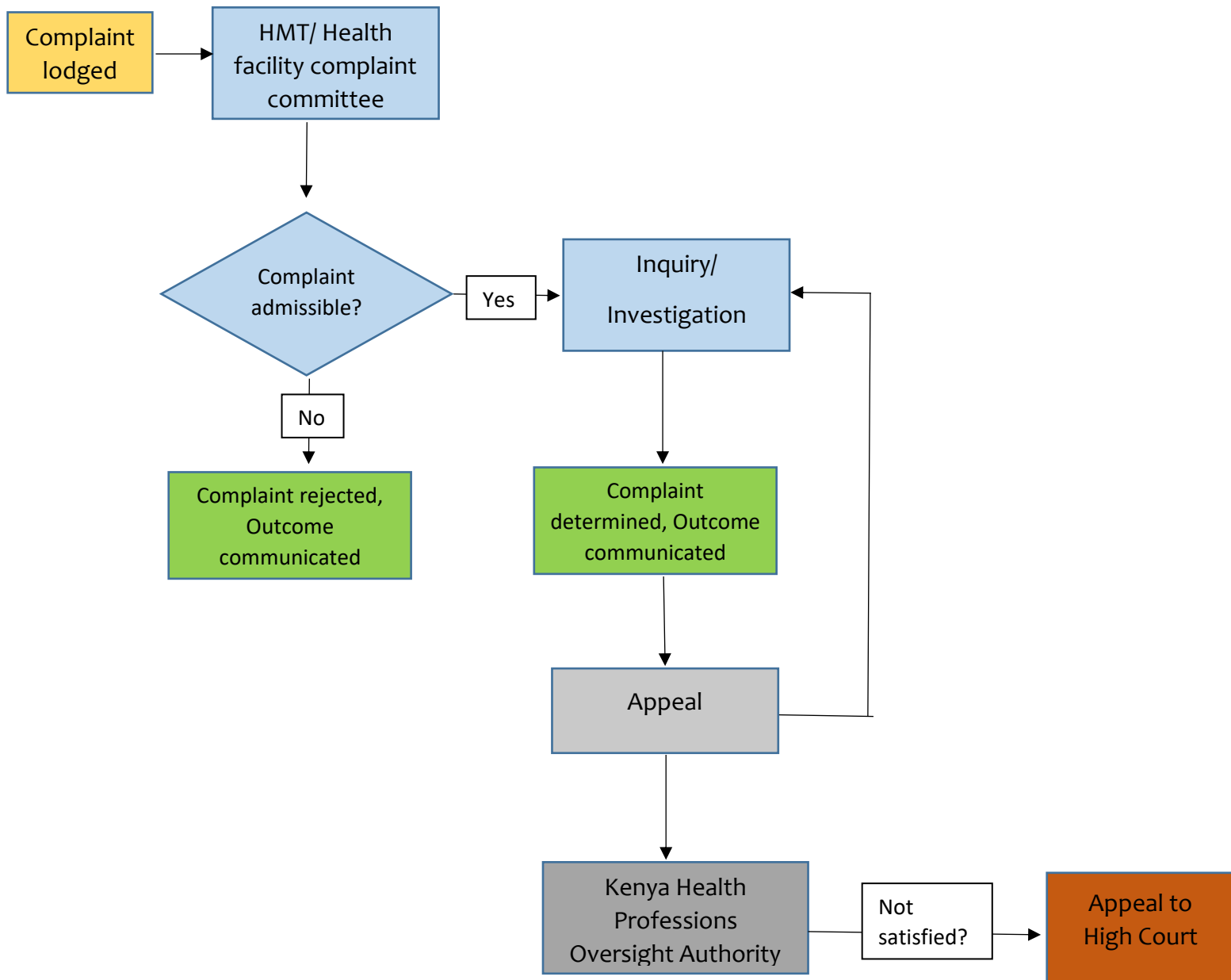
Occasionally, a complaint may be beyond the resolution capabilities of the health facility i.e complaints that are multidisciplinary in nature. In such cases, the complaint shall be referred to the Kenya Health Professions Oversight Authority.

In the event that a complainant will go directly to the Authority without first having complained to the health service provider, the Authority shall refer the complainant to the health facility or respective regulatory body for receipt and handling.

The process for lodging a complaint to the Authority is outlined in chapter 3 of this Guide.

The figure below illustrates the process of complaint handling at the health facility.

Complaint handling process: Health facilities



CHAPTER 3

COMPLAINTS HANDLING BY KENYA HEALTH PROFESSIONS OVERSIGHT AUTHORITY

This section of the Guide elaborates on the standard procedures to be followed by the Complaint and Arbitration Department when receiving and handling complaints. It identifies five key elements for effective complaints handling, namely:

- An enabling culture
- Principles of Quality improvement, Open disclosure, Commitment, Accessibility, Responsiveness, Transparency and accountability; Privacy and confidentiality fairness, efficiency and integration
- Skilled and professional people
- A seven-stage process of complaint lodging, acknowledgement, assessment, action, investigation, resolution and closure
- continuous analysis of organizational review and improvement

This Guide emphasizes 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.

Lodging Complaints

A person/s can lodge a complaint in their own name or on behalf of another person. A regulatory body can also lodge a complaint against another Regulatory body or a health facility. The complainant shall be required to complete a Complaint Lodging Form and to send it to the Authority through the following means:

- By filling the complaints lodging form on KHPOA website (www.khpoa.go.ke) or via e-citizen platform khpoa.ecitizen.go.ke
- By sending the completed form via an e-mail with a brief explanation of the subject of complaint to complaints@khpoa.go.ke
- By sending the completed form via registered mail to Kenya health Professions Oversight Authority P.O. Box 34422-00100 Nairobi, 3rd floor, Kenya Medical Practitioners and Dentists Council Plaza, or
- Presenting the completed form to the Complaints and Arbitration Directorate of the Authority.

This form can be obtained from the Complaints and Arbitration Department of the Authority or downloaded from the Authority's website

For Complainants who cannot read or write, they shall be assisted to make their complaints where the secretariat will help fill in the form.

Own motion matters

The Authority may consider initiating investigation on matters that are relevant to its mandate, for instance health related issues reported through the media.

Anonymous

Any anonymous complaint within the Authority's mandate shall be treated as a complaint to the Authority and shall follow due process.

Receiving Complaints and acknowledgment

Upon receipt of the complaint, the Authority through the Complaints and Arbitration Directorate shall acknowledge receipt within **3 working days** to the complainant.

Acknowledgement can be done in writing (by means of posting or e-mailing acknowledgment letter to the complainant) or telephonically (date on which acknowledgment is done should be recorded).

The received complaint shall be assigned a **protocol number** and entered into the Complaints Register maintained by the Authority.

Review and classification of the complaint(Assessment)

The Complaints and Arbitration Directorate shall review the complaint and determine whether it is within the Authority's mandate for action. It will then be assessed using the **Complaints Assessment Matrix** to identify the severity/risk and the appropriate course of action that needs to be taken.

The officer responsible shall make recommendations for either action by the Authority or referral to the relevant regulatory body, health facility or institution.

Action

The responsible officer(s) shall use the admissibility criteria in the assessment of each complaint lodged to the Authority.

After assessment for admissibility of a complaint, the matter shall be allocated to an action officer or referred to the relevant body or institution.

A notice of inquiry (NOI) into the complaint shall then be issued to the respondent.

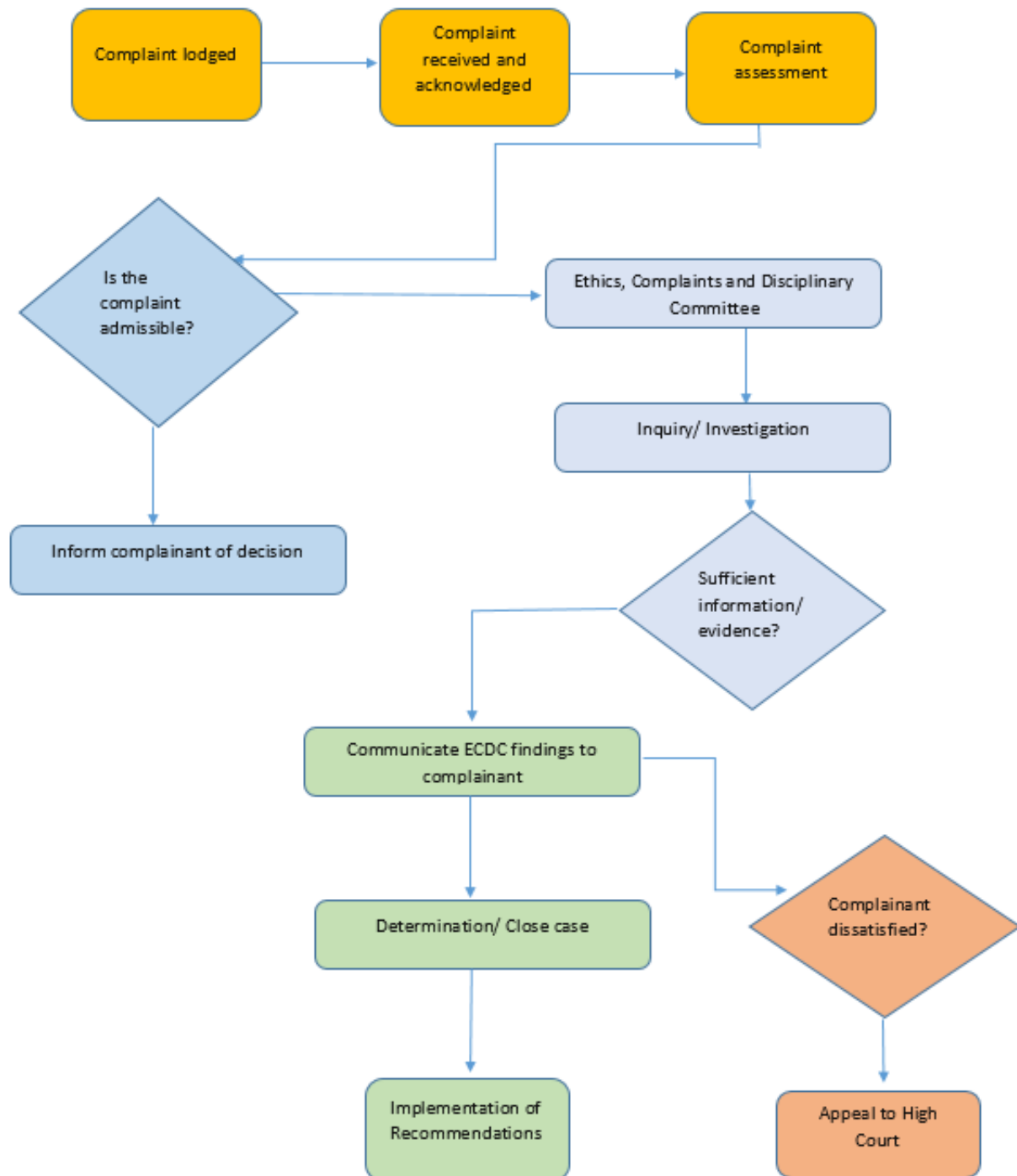
The respondent shall be contacted to give a response to the lodged complaint or appear to give evidence before the Ethics, Complaints and Disciplinary Committee (ECDC).

The Authority shall, where necessary, carry out independent investigation if evidence provided by the complainant is not sufficient or adequate to make a determination.

All complaints that cannot be satisfactorily resolved at the front desk or alternative dispute resolution, shall be investigated before presentation to the ECDC for deliberation. These complaints may already have been considered at the frontline resolution stage, or they may have been identified from the start as needing immediate investigation.

The flow chart below illustrates the steps in handling complaints received by the Authority.

Complaint Handling Process at the Authority



Investigation protocol

This protocol shall be used as a reference tool at the Authority or health facility level.

The allegation(s) contained in the complaint shall be written down in order to determine the specific issue(s) to be investigated as well as the facts that need to be determined/obtained.

An investigative plan shall be developed to assist or guide the process of gathering more evidence to facilitate resolution of complaint. It shall be properly planned with a clear indication of the nature or type of investigation, expected output, timelines and resources required.

The following will clearly be outlined:

1. Matter to be investigated (WHAT)
2. Evidence to be gathered (WHAT)
3. Key people to be interviewed (WHO)
4. Relevant documents to be recovered (WHICH)
5. The most effective strategy for conducting the investigation (HOW)
6. The expectations of the complainant

Further, special considerations shall be taken into account, including confidentiality.

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, if any. The parties shall be given adequate opportunity to be heard before the committee. All matters shall be handled in a manner that complies with the Constitution and the laws of Kenya.

Resolving the complaint

Once the investigation of a complaint has been concluded the complaint will be redressed with an aim of reaching a fair and reasonable resolution in an amicable manner.

The remedies for addressing the complaints will be clearly set out and the parties made aware of the possible solutions, which may include one or more of the following:

- i. An apology, explanation or an acknowledgement of responsibility
- ii. Remedial action that may include;
 - a. the review or changing of a decision on the service or care provided to an individual patient
 - b. recommend revision of published material
 - c. recommend revision of a procedure to prevent the recurrence of a wrong event/ incident
 - d. recommend the training of staff members or strengthening of their supervision; or any combination of the above.

A written letter/report on the outcome of the investigation shall be provided to the complainant. In cases where the complainant does not honor an appointment that was made for a redress meeting, a letter on the outcome of the investigation shall be sent via known postal or e-mail address.

The complainant may place an appeal to the courts if dissatisfied with the outcome of the investigation or decision by the Authority.

Closing the case

Once a complaint has been resolved or determined, a report shall be prepared by the ECDC and the recommendations therein shall be implemented to ensure improvement in health services delivery for better patient outcomes.

The complaints database shall be updated through the register by the Complaints and Arbitration Directorate to reflect the decisions made by the Board.

Timelines

The following timelines are appropriate to cases at the investigation stage:

1. Complaints receipt shall be acknowledged within 3 working days. The appointed officer in the Complaints and Arbitration Directorate shall provide a full response to the complainant, as provided in the health Act 2017 section 14 (1) “Every complainant has a right to be informed, in writing and within a period of three months from the date the complaint was lodged, of the action taken or decision made regarding the complaint.”
2. The Authority shall upon receipt of a complaint serve the Respondents within seven days
3. The Respondent shall within seven days of service, file a substantive response.
4. If there are clear and justifiable reasons for extending the timeline for complaint investigation, the Chief Executive Officer (CEO) shall set time limits on any extended investigation; the complainant shall be informed of the extension and the reasons for such action. The reasons for an extension of investigation may include the following;
 - i). The appointed officer cannot obtain further essential information within normal timescales, but have a reasonable expectation of doing so if there was an extension.
 - ii). Operations are disrupted by unforeseen or unavoidable events, for example industrial action or severe weather or pandemic episodes, among others.

- iii). The complainant has agreed to mediation as a potential way of resolution.

Handling anonymous complaints

The Authority will consider an anonymous complaint if it gives sufficient information to make further inquiries. In the absence of this, the Authority may decide not to pursue the complaint, and shall be recorded as a complaint in the complaints register. The Complaints and Arbitration Directorate shall prepare a report on such complaints with clear recommendations and a decision not to pursue an anonymous complaint shall be authorized by the Director, Complaints and Arbitration.

If the Authority pursues an anonymous complaint, it shall be recorded as an anonymous complaint in the complaints register. This will ensure the completeness of the complaints data and allow the Authority to take corrective action.

Records and other measures

The Authority shall keep a record of each complaint as well as the measures taken for the complaint's/grievance's resolution.

The Complaints and Arbitration Directorate shall maintain updated register of all complaints, keep record of all relevant correspondence and documents related to complaints, for a **minimum period of five years.**

The Director, Complaints and Arbitration shall prepare quarterly reports to the ECDC of all complaints/ grievances received and the progress achieved in resolving them.

CHAPTER 4

DISPUTE RESOLUTION

This chapter prescribes the alternative dispute resolution (ADR) processes by the Authority between the regulatory Bodies and Councils as prescribed in the Health Act , section 48 (f) “arbitrate disputes between statutory regulatory bodies, including conflicts or dispute resolution amongst Boards and Councils”.

In terms of the Complaints handling regulations, the Authority may, either on the application of the parties or on its own motion, refer a dispute to ADR mechanisms.

In ADR proceedings parties shall agree that each party will bear their own costs and expenses and the parties will share the costs of any third party involved in facilitating the resolution of the dispute (example, arbitrator, conciliator or mediator).

Arbitration

Arbitration is governed by the Constitution of Kenya 2010, the Arbitration Act 1995 and the Nairobi Centre for International Arbitration Act 2013.

Arbitration agreements

The arbitration agreement must be in writing. It will be considered to be in writing if it is:

- A document signed by the parties.
- An exchange of letters, electronic mail or other means of telecommunication providing a record of the agreement.
- An exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by the other party.

Arbitrators

The following apply when determining the number of arbitrators:

- The number of arbitrators will be chosen by the parties.
- If there is a failure to determine, there will be one arbitrator.
- Where an arbitration agreement provides there will be two arbitrators, unless a contrary intention is expressed in the agreement, the two arbitrators will appoint a third arbitrator after their appointment.

The necessary qualifications will also be determined by the parties and set out within the agreement.

Procedure

Commencement

The parties' consensus will dictate the date of commencement. However, where there is no consensus, the arbitration will be deemed to have commenced on the date the respondent receives a request to refer the matter to arbitration (section 22, Arbitration Act).

Applicable procedural rules

The Arbitration Act sets out the following rules:

- The tribunal will follow the procedure agreed on by the parties.
- Where there is no consensus between the parties, the tribunal can conduct the arbitration as it considers appropriate, having regard to the desire to avoid unnecessary delay or expense, while affording the parties a fair and reasonable opportunity to present their cases.
- The power of the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence and to determine at what point an argument or submission in respect of any matter has been fairly and adequately put or made.
- Every witness giving evidence and every person appearing before a tribunal will have at least the same privileges and immunities as witnesses and advocates in proceedings before a court.
- The tribunal can direct that a party or witness will be examined on oath or affirmation and can administer or take the necessary oath or affirmation.

Evidence and disclosure

- The parties can agree on the arbitral procedure for the tribunal to follow. If the parties do not agree, the tribunal proceeds as it deems fit. In doing so, it has the power to determine the admissibility, relevance, materiality and weight of any evidence. Evidence that is adducible includes witness evidence. Witnesses have the same privileges and immunities as those before a court (section 20, Arbitration Act). Documentary evidence can be adduced, accompanied by translations into the language agreed on by the parties (section 23(4), Arbitration Act).
- If a party fails, without showing sufficient cause, to produce documentary evidence, the tribunal can make its award on the evidence before it. The tribunal, or a party with the approval of the tribunal, can request the High Court's assistance in taking evidence. Experts report to the tribunal on issues determined by it. After delivery of the report, the expert is required to participate in an oral hearing where the parties have an opportunity to put questions to the expert and present expert witnesses to testify on the points at issue. Where experts are in conflict, the arbitrator decides the position.

Appeals

A party can appeal on a point of law arising in the course of the arbitration or out of the award to the High Court under section 39 of the Arbitration Act. However, this recourse to the High Court is subject to the parties' agreement that such an appeal can be made.

Grounds and procedure

A party makes an application to the High Court for the award to be set aside within three months of receipt of the award (section 35(3), Arbitration Act). The grounds for challenge include:

- A party to the arbitration agreement was incapacitated.
- The agreement is not valid under the law it is subject to.
- The applicant was not given enough notice of appointment of the arbitrator.
- The award deals with a dispute not contemplated or not falling within the terms of reference to arbitration.
- The composition of the tribunal or arbitral procedure was not in accordance with the agreement.
- The making of the award was induced or affected by fraud, bribery, undue influence or corruption.
- The subject matter cannot be subjected to arbitration.
- The award is in conflict with Kenyan public policy.

Mediation

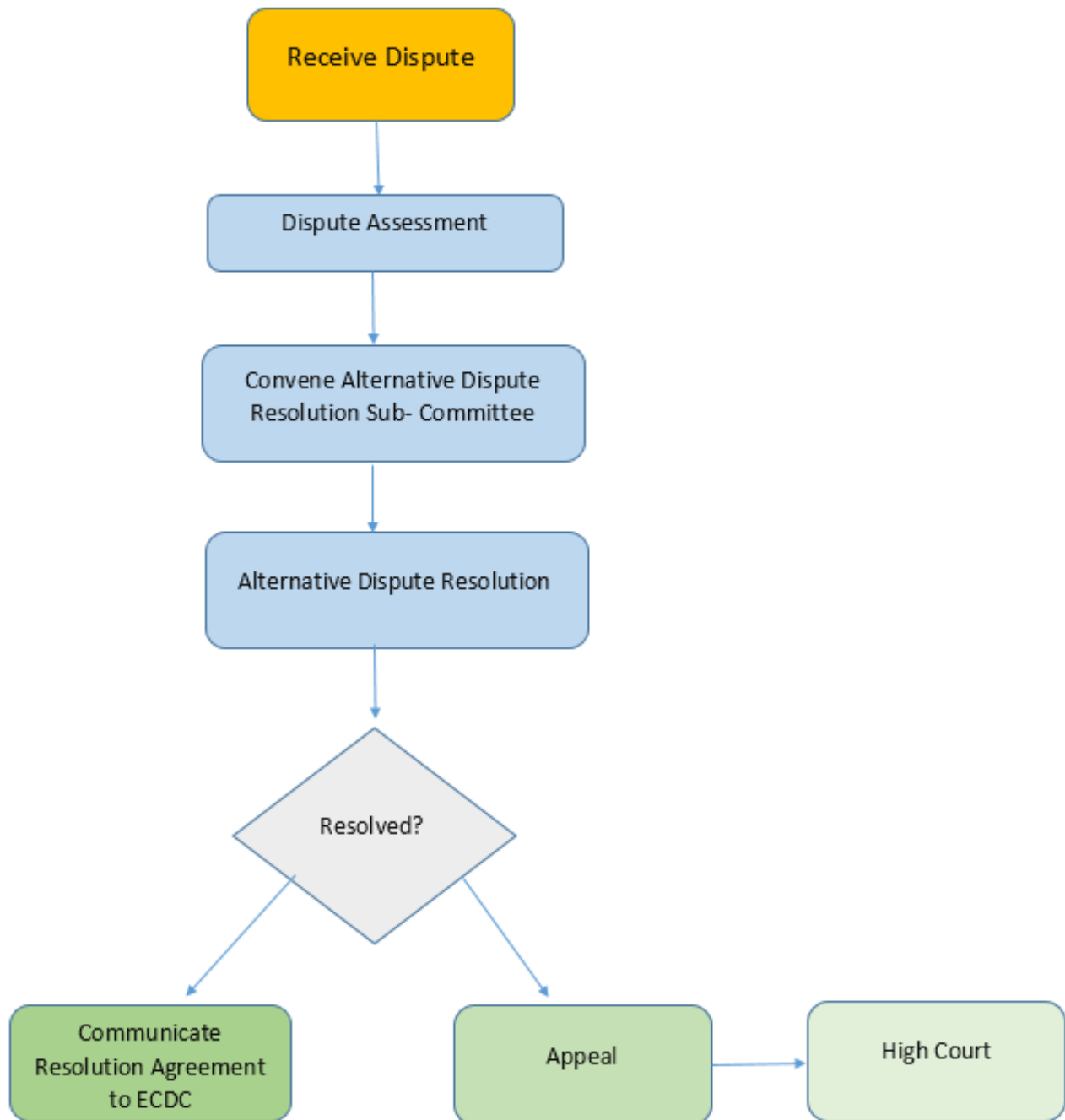
Upon designing the mediation process, the process shall take place in the following prescribed format:

- i. **Screening of Files:** In this stage, the file shall be presented before the alternative dispute resolution sub-committee which determines which cases shall be referred for Mediation. The matters referred for mediation are those with disputes relating to facts and not of law, few disputed facts and those that are not complex in nature.
- ii. **Parties Notified of the Decision:** When the ECDC makes a decision for a case to be referred for mediation, the secretariat shall notify the parties in writing of this decision within seven (7) days.
- iii. **Case Summaries:** The parties shall within 7 days of receipt of notification file Case summaries to the Authority.
- iv. **Nomination of Accredited Mediators:** The ECDC shall nominate three (3) mediators among a list of accredited mediators and notify the parties of their names.
- v. **Parties Respond:** All parties shall respond in writing within seven (7) days upon receipt of list of names of mediators. The ECDC will appoint a mediator among a list of three (3) to handle the case.

- vi. **Notification of Appointed Mediator:** The ECDC shall within 7 days of receipt of notice of acceptance of mediators appoint a mediator and notify the parties.
- vii. **Appointed Mediator responds:** Upon receipt of the notification, the mediator shall be expected to file response and willingness to mediate.
- viii. **Mediation Begins:** The appointed mediator shall schedule a date for initial mediation and notify the parties of the date, time and place. The mediation proceedings will be concluded within sixty (60) days from the date it is referred for mediation. However, this period may be extended for a further ten (10) days.
- ix. **Filing of report:** Upon completion of mediation, the mediator is expected to file a report which indicates whether or not a Mediation Settlement Agreement was reached.
- x. The mediator shall file a certificate of non- compliance where a party fails to comply with any of the mediator's directions or constantly fails to attend mediation sessions.

The figure below illustrates the alternative dispute resolution process by the Authority:

Alternative Dispute Resolution by the Authority



CHAPTER 5

APPENDICES

- 1. Steps in complaint management**
- 2. Complaint lodging form**
- 3. Complaint register**
- 4. Admissibility criteria**

Appendix 1: Steps in complaint management

1. Complaint reported in the customer care or complaints department
2. Registered by frontline complaint handler.
3. Assigned a complaint number or protocol.
4. Complaint handler to resolve complaint locally.
5. If unresolved locally, complaint referred to supervisor/senior management/committee/Board
6. Complaint investigated.
7. Resolution/outcomes determined.
8. If unresolved or complainant dissatisfied with outcome, refer to Kenya Health Professions Oversight Authority.
9. Provide information on outcomes to complainant, staff, executive management and quality improvement teams.

Appendix 2: Complaint lodging form



MINISTRY OF HEALTH
KENYA HEALTH PROFESSIONS OVERSIGHT AUTHORITY
(Transforming Health Professions for Quality and Ethical Health Care)
COMPLAINTS LODGING FORM

Protocol Number: _____

Date of Receipt of Complaint _____

SECTION A: COMPLAINANT INFORMATION

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

Name (Dr/Mr/Mrs/Ms)	
ID Number	
Postal address	
Physical address	
Mobile Number	
Email address	
County	
Nationality	

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

Name of the Ministry/department/agency	
Postal Address	
Physical Address	
Email Address	
Name of contact person	
Mobile Number	

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

☐ Yes

☐ No

4. If yes, which one?

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

☐ Yes

☐ No

6. Please give a brief summary of your complaint and attach all supporting documents [clearly indicate the person being complained against and the nature of the complaint. Include all the particulars of what happened, where it happened and when it happened.]

7. Declaration

I solemnly and sincerely declare that the information given above is true to the best of my knowledge and belief

Signature of complainant/Representative _____ Date _____

SECTION B: OFFICIAL USE ONLY

Appendix 3: Complaints register

S / N O	Date Complaint Received	Protocol Number	Complainant Name	Complainant contacts	Respondent	Nature of complaint	Means of Complaint (Phone, Email, Letter)	Acknowledge complaint (Date)	Complaint classification	Complaint forwarded to CEO (Date)	Complaint forwarded to Department/Officer (Date)	Outcome of preliminary investigations	Inquiry to Complaint Committee decision	Board decision	Decision communicated to complainant (Date)	Referral (Date)

Appendix 4: Complaint admissibility criteria

Complaints that can be admitted by the Authority

1. Generally, the Authority shall admit secondary complaints; that have been unresolved by the Health facilities and Regulatory Bodies
2. Complex primary complaints touching on the conduct of the health facility or regulatory body's management.
3. Appeals from complainants dissatisfied with the decisions of the Health Facility or Regulatory Body.
4. Complaints that involve serious consequences
5. Complaints lodged by staff against health facility or regulatory body management.
6. Complaints that involve complex medical issues or multiple health professional discipline
7. Where the complainant for known reasons (documented) is unwilling to have the complaint referred and handled at the health facility or regulatory body.
8. Repetitive complaint on health care or manner of treatment by a patient in a health facility involving multiple health professionals

Complaints that cannot be admitted by the Authority

The Authority shall not admit the following complaints:

1. Any matter which is pending before a Court of law, or a matter that has been decided upon on merit by a court or any other competent tribunal. The Authority may inquire into the process but not the merit of the case if determination of an ongoing case/matter has been inordinately delayed.
2. Matters that for the time being are under investigation by any other body established under the Constitution or any written law. However, the Authority may inquire into the process, and the merit of the case if an ongoing case/matter has been inordinately delayed, or there are sufficient reasons or evidence to believe that the complainant will not get justice.
3. Written complaints that are trivial or frivolous. This will depend on the nature of the case hence an officer will advise the complainant immediately.

Appendix 5: References

1. Commission on Administrative Justice Kenya. The Kenya Public Sector Complaints Handling Guide. 2016. Available from: <https://test.ombudsman.go.ke/download/caj-complaints-handling-guide/>
2. Ministry of Health Kenya. User Guide to Discipline Process in Public Health Sector. 2016. Available from: <https://cog.go.ke/cog-reports/category/104-hrh-policies-and-guidelines-moh-guidelines?download=299:user-guide-to-discipline-process-in-public-health-sector>
3. Government of Western Australia, Department of Health. Complaints Management Guideline. Available from: <https://www.health.wa.gov.au/About-us/Policy-frameworks/Clinical-Governance-Safety-and-Quality/Mandatory-requirements/Complaints-Management-Policy#:~:text=Description%3A%20The%20purpose%20of%20the,on%20behalf%20of%20a%20consumer.>
4. Health Professions Act of Zimbabwe. 2004. Available from <https://www.mdpcz.co.zw/acts/1679478637Health-Professions-Act.pdf>
5. National Department of Health, South Africa. National Guideline to Manage Complaints, Compliments and Suggestions in the Public Health Sector of South Africa. 2017. Available from: <https://knowledgehub.health.gov.za/elibrary/national-guideline-manage-complaints-compliments-and-suggestions-health-sector-south>

