



Great Yarmouth Borough Council

CORPORATE POLICY and OPERATIONAL GUIDANCE ON THE USE OF WARNING MARKERS ON SERVICE USER'S RECORDS

Approved Version

Endorsed by Great Yarmouth Borough Council – Heads of Department Meeting on 14 May 2007

Policy due for review: July 2008

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CORPORATE POLICY and OPERATIONAL GUIDANCE

THE USE OF WARNING MARKERS ON SERVICE USER'S RECORDS

1. INTRODUCTION

Warning Markers, placed on a service user's manual or computerised record, have long been used as a means of alerting staff of situations or to circumstances that they need to be aware of when dealing with person.

The term "Warning Marker" is all too often synonymous with the risk of a potentially violent person, but Warning Markers can be used in a multitude of situations for example:

- i) that the person has been the subject of abuse;
- ii) that only female officers to visit the person;
- (iii) address not to be disclosed etc.
- (iv) that the service user may be disabled i.e. blind or deaf, and may wish to have special visiting arrangements in place.

The use of Warning Markers, for whatever reason, must comply with the requirements of the Data Protection Act 1998 and the Human Rights Act 1998. Failure to comply with these Acts can lead to criminal or civil proceedings that may result in prosecution corporately or individually. In addition, an individual who is affected by such failure may be awarded damages.

The Office of the Information Commissioner has issued guidance on the use of Warning Markers in the public sector.

The Health and Safety at Work Act 1974 places a duty on every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees. The Act also places a duty upon every employee while at work to take reasonable care for the health and safety of themselves and other persons who may be affected by their acts or omissions.

This policy will ensure that Great Yarmouth Borough Council complies with its legal obligations.

2. DEFINITIONS

Warning Marker	Any means, appended to a manual or computerised record containing personal data, of drawing staff attention to a situation or circumstance that they should be aware of when dealing with a customer/service user.
Personal Data	Information which relates to a living person who may be identified from that information.
Sensitive Data	Personal data consisting of information as to the:- a) racial or ethnic origin of the data subject, b) political opinions of the data subject; c) data subject's religious beliefs or beliefs of a similar nature; d) data subject's physical or mental health or condition; e) sexual life of the data subject; f) commission or alleged commission by the data subject of any offence; g) proceedings for any offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or sentence of any court in such proceedings.
Data Subject	The person who is the subject of the information.
Record(s)	Personal data held in any manual or computerised systems.
Data Controller	Each Service Unit Manager is The Data Controller (jointly and in common with other Service Unit Managers) who determines the purpose which and the manner in which any personal data are, or are to be, processed e.g. Great Yarmouth Borough Council
Authorising Manager	Each Service Unit Manager or the person appointed by them to make the decision with regard to the warning marker being placed or removed is the Authorising Manager (jointly and in common with other Service Unit Managers)

3. POLICY STATEMENT

3.1. General

3.1.1. In order for Great Yarmouth Borough Council to meet its legal obligations under the Data Protection Act 1998 and the Human Rights Act 1998 this document sets out the corporate policy with respect to the use of Warning Markers on service user's records.

3.2. Scope

3.2.1. This policy applies to all council services. It does not apply to any other body who is a Data Controller within their own right.

3.3. Policy

3.3.1. The term Warning Marker will be used to describe any means, appended to a manual or computerised record containing personal data, for the purpose of drawing staff attention to a situation or circumstance that they should be aware of when dealing with a customer/service user.

3.3.2. Staff should be made aware of certain situations or circumstances when dealing with some customers/service users. This is necessary to either minimise any potential risk to themselves or others, or to prevent distress to the customer/service user.

3.3.3. Consistent with the Council's principle of transparency and respect for the service user, the accompanying operational guidance will make explicit the procedures under which Warning Markers will be applied.

3.3.4. The Executive Board will have the overall responsible for the operation of the Policy, and will ensure that audits are undertaken of the records within the Service Units on at least a yearly basis.

3.3.5. Each Head of Department will produce an operational management practice and procedures in respect of the use of Warning Markers for those Service Units within her/his responsibility, in accordance with this policy and accompanying operational guidance, which shall be submitted to the Corporate Management Team for approval.

3.3.6. Each Service Unit Manager will be responsible for appointing someone who will be responsible for monitoring, reporting and compliance with this Warning Marker Policy.

3.3.7. The Data Protection Controller will be responsible for regularly reviewing this policy and the accompanying operational guidance to ensure compliance with the relevant legal obligations placed upon Great Yarmouth Borough Council.

3.3.8. Each Service Unit Manager will appoint someone who will provide advice, guidance and training for staff where necessary.

OPERATIONAL GUIDANCE

4.1. Types of Warning Markers

- 4.1.1. For the purpose of this policy, no distinction will be made between categories of Warning Marker(s) e.g. Potentially Violent Person (PVP); Cautionary Message or person with special requirements i.e. someone who is blind or deaf may leave special instructions for home visits.
- 4.1.2. Service Unit Managers may define categories of Warning Markers used and these should be consistent within the Council and communicated to all other Service Unit Managers, who will communicate with their staff.
- 4.1.3. All Service Unit Managers will include a 'Temporary' Warning Marker in any list of types or categories in order to cater for emergency situations where the normal decision making process may not be available – see 4.7. Temporary Warning Markers.
- 4.1.4. Due to the wide range of manual and computer systems in use, each Service Unit Manager will be responsible for deciding on who should be put on the list which will then be recorded on the spreadsheet held on the 'I' Drive under Warning Markers and the physical format of the Warning Marker will be left to individual Service Managers. Whatever symbol or colour code marker is used, these should be consistent within the Service Unit and communicated to all staff.

4.2. Requesting A Warning Marker

- 4.2.1. Any member of staff who encounters a situation, or is aware of circumstances which may give rise to concern for the safety and welfare of staff, customer/service user or others, may make a request for a Warning Marker to be placed on an individual's record.
- 4.2.2. All requests for a Warning Marker to be placed on an individual's record should be made by the member of staff to their line manager at the earliest opportunity using a Warning Marker request form (see Appendix 2).
- 4.2.3. In the event of the line manager not being available, the request may be passed to a senior manager.
- 4.2.4. The only exception to making a request for a Warning Marker to be placed on an individual's record is when the individual concerned is already placed on a statutory register e.g. Child Protection Registration; Vulnerable Adult; Schedule 1 Offender etc.

Note:- The above exception will only apply in the case of a statutory registration. If the individual is subsequently found for example to be potentially

violent then the normal Warning Marker procedure must be used to cover the approval of any subsequent or additional Warning Marker.

The above exception will only apply to the individual and not to other family members or other persons unless these persons have been specified in the register.

4.3. Authorisation Of Warning Markers

- 4.3.1. Authorisation for a Warning Marker to be placed on, amended or removed from an individual's record will only be made by a manager who has been nominated by the Service Unit Manager.
- 4.3.2. All Service Unit Managers will ensure that the names and designations of their authorised managers are made available to all staff within the Service Unit
- 4.3.3. On receipt of a Warning Marker request form from a member of staff, the authorising manager will decide, based upon the information provided, if a Warning Marker should or should not be placed on an individual's record.

Note: It is appreciated that no two situations or set of circumstances are likely to be the same with respect to requests made for a Warning Marker to be applied to an individual's record. However, it is essential that GYBC is consistent in its approach to the application of Warning Markers. Authorising managers may wish to consult with the Health & Safety Advisor or their counterparts both within their Directorate and within other Directorates.

- 4.3.4. If the authorising manager's decision is that:
 - a) a Warning Marker is not appropriate, he/she must record all relevant reasons for his/her decision and inform the member of staff making the request of his/her decision. The request form and all related documentation must be retained on the individual's record;
 - b) there is sufficient cause for concern but further enquiries may be necessary, the manager may authorise a temporary Warning Marker (see 4.7. Temporary Warning Markers) pending the outcome of the enquiries;
 - c) a Warning Marker is appropriate, he/she may authorise that a Warning Marker be placed on the individual's record.
- 4.3.5. If the authorising manager decided that a warning Marker is appropriate he/she must:-
 - a) Record all relevant reasons for his/her decision on the Warning Marker request form,

- b) Set up the details on the Spreadsheet held on the 'I' Drive, and record a review date (see 4.4. Warning Marker Reviews),
- c) Send an email to all other Service Unit Managers and each Service Unit Manager will arrange for the Warning Marker to be applied to the individual's record(s),
- d) Arrange for a letter to be sent to the individual notifying them that a Warning Marker has been applied and the reasons why (see 4.5. Notification), and
- e) Ensure that the Warning Marker request form together with all other supporting documentation is retained on the individual's record.
- f) At the review date contact all other Service Unit Managers to agree whether to keep or remove the Warning Marker

4.4. Warning Marker Reviews

- 4.4.1. All Warning Markers applied to an individual's record must be reviewed on a regular basis in order to ensure that the information is accurate and up to date (4th Principle of the Data Protection Act).
- 4.4.2. All Warning Markers should be reviewed by the Authorising Manager at regular intervals in order to determine that the use of the Warning Marker is still appropriate. It is recommended that the maximum review period should not exceed six months.
- 4.4.3. The only exception to the regular review of Warning Markers will be in such cases where the individual is on a special register e.g. Child Protection, Vulnerable Adult, Schedule 1 Offender etc.

Where an individual has been placed on a special register, such registers will specify the length of time that the individual will remain on the register. Arrangements must therefore be made for a Warning Marker review to take place on the expiry of time given on the special register.

- 4.4.4. Service Unit Managers will set in place such systems that will facilitate advanced notification of the need to review particular Warning Markers, and will carry out each April a review of the 'I' Drive Spreadsheet to ensure that their Warning Markers have been reviewed by the authorising manager and the correct steps have been taken.
- 4.4.5. If the authorising manager decides that the Warning Marker is still appropriate, (after consultation with other authorising managers) he/she must:-
 - a) Record all relevant details for his/her decision, and

- b) Set a new review date (4.4.2.) on the 'I' Drive Spreadsheet, and
- c) Ensure that all documentation regarding his/her decision is retained on the individual's record.

4.4.6. If the authorising manager decides that the Warning Marker is no longer appropriate, after consultation with other authorising managers, he/she must:-

- a) Record all relevant details for his/her decision, and
- b) Arrange for the Warning Marker to be removed from the individual's record as soon as possible, by informing all other Service Unit Managers, and
- c) Ensure that the 'I' Drive Spreadsheet is updated and all documentation regarding his/her decision is retained on the individual's record.

4.5. Notification

4.5.1. Although it is not a statutory requirement under the Data Protection Act 1998 to notify the individual concerned that a Warning Marker has been applied to their record, the Information Commissioner recommends that notification should take place.

4.5.2. Great Yarmouth BC will, as good practice, notify an individual that a Warning Marker has been applied to their record. They will also be informed:-

- a) The reason(s) why the marker has been applied, and
- b) When the Warning Marker application will be reviewed.
- c) That Great Yarmouth BC may share this information within the Council and other agencies/organisations, and
- d) Details of how the individual may appeal (see Appendix 3).

4.5.3. It is appreciated that there will be situations or circumstances where it may not be desirable or expedient to notify the individual that a Warning Marker has been applied to their record e.g. serious risk of harm (physical or mental) or continuing investigations by statutory body (police etc).

4.5.4. The decision not to inform an individual that a Warning Marker has been applied to their record must not be the norm.

4.5.5. If an authorising manager decides not to notify the individual concerned that a Warning Marker has been applied to their record, he/she must obtain permission from her/his Head of Department and record her/his reasons, which must be retained on the individual's record.

4.5.6. Heads of Department must regularly review their decision not to notify the individual concerned and should arrange for notification to take place as soon as circumstances permit. It is recommended that the maximum review period should not exceed one month.

4.6. Appending, Modifying or Removing a Warning Marker

4.6.1. The physical process of creating, modifying or removing a Warning Marker on an individual's record should only be undertaken by a limited number of persons who have been authorised to do so by an authorising manager.

4.6.2. Service Unit Managers will ensure that all staff are made aware that only authorised staff may create, modify or remove a Warning Marker.

4.6.3. A record should be made of who undertook the creation, modification or removal of the Warning Marker and the date that such action was undertaken and recorded on the 'I' Drive Spreadsheet. This information must also be retained on the individual's record.

4.7. Temporary Warning Markers

4.7.1. It is appreciated that a situation may arise when:-

a) A request for a Warning Marker has been made but further investigations may be necessary, or

b) The normal authorising manager is unavailable.

4.7.2. Under such circumstances, and if there are sufficient concerns, the authorising manager or a person acting on his/her behalf, may approve that a Temporary Warning Marker be placed on the individual's record pending the outcome of any investigation or final decision.

4.7.3. Temporary Warning Markers should be clearly distinguishable as a temporary marker. Any details associated with a temporary marker should be limited to the name and telephone number of a contact who may provide additional details if necessary.

4.7.4. Notification, as detailed in 4.5. above, shall not be deemed to be necessary in the case of a Temporary Warning Marker.

4.7.5. Temporary Warning Markers must be reviewed on a weekly basis and should not have a 'life' of more than one month from the date that the marker was applied.

4.7.6. All decisions relating to a Temporary Warning Marker must be recorded in the same manner as a normal marker and such documentation must be retained on the individual's record.

4.8. Sharing Warning Marker Information

Note:

For the purpose of this policy, the sharing of Warning Marker information will cover both the giving and the receiving of such information.

- 4.8.1. The Data Protection Act 1998 does not prevent the sharing of information (including Warning Markers) with other agencies or organisations provided that the normal principles of the Act are complied with.
- 4.8.2. The sharing of Warning Marker information with external agencies or organisations will not be the norm, e.g. bulk transfer of such information. The sharing of Warning Marker information will only be considered on a case by case basis.
- 4.8.3. Information relating to a Temporary Warning Marker will not be disclosed outside of Great Yarmouth BC unless there is sufficient evidence to indicate that not doing so may place another person at risk.
- 4.8.4. Great Yarmouth BC will only give another agency or organisation Warning Marker information relating to it's service user(s) if one or more of the following conditions has been satisfied:-

- a) The person concerned has given their explicit consent, or

- b) Great Yarmouth BC has notified the person concerned that Warning Marker details may be passed to other agency or organisations, and that the individual has had reasonable opportunity to appeal against the Warning Marker, or

Note:

In cases where it has been considered not desirable or expedient to notify the individual (see above), it will be taken, for the purposes of sharing information, that the person would ordinarily have been notified. The recipient must be advised that the individual has not been notified.

- c) Where failure to share such information may place staff of the other agency at risk of harm, or

- d) Great Yarmouth BC is required by law to pass such information on to the other agency/organisation.

- 4.8.5. If another agency or organisation passes Warning Marker details to Great Yarmouth BC, such information will be treated in the same manner as a normal internal Warning Marker request, as given in 4.2. to 4.5.
- 4.8.6. Details of any Warning Marker disclosure must be recorded on the individual's record, e.g. date of disclosure; agency/organisation information shared with and reasons for disclosure; details of who made the disclosure.

4.9. Warning Marker Records

- 4.9.1. All details relating to a Warning Marker e.g. original request form; supporting material; decision/review documentation etc should be retained with the individual's record after the marker has been removed.
- 4.9.2. If after a period of three years, from the date of the removal of the original Warning Marker, no further incidents/circumstances/situations have arisen that may warrant a new Warning Marker being applied to the individual's record, then all details of the original Warning Marker should be expunged from the individual's record.

4.10. Access to Records

- 4.10.1. Under section 7 of the Data Protection Act 1998, an individual is entitled to make a written application to the Data Controller for access to their record(s).
- 4.10.2. In the event of an individual exercising their right for access to their record(s), they will be given all details relating to the Warning Marker subject to the normal rules applicable to access to records, and in particular the need for third party consent to disclose, if appropriate.

Great Yarmouth Borough Council

CORPORATE POLICY ON THE USE OF WARNING MARKERS ON SERVICE USER'S RECORDS

APPENDIX 1 - LEGISLATION

1. The Data Protection Act 1998

1.1. Lawful Processing

The Data Protection Act 1998 requires that personal data shall not be processed unless one of the conditions in schedule 2 of the Act, and for sensitive personal data schedule 3, has been met.

The use of Warning Markers is covered by the Act in schedule 2 paragraph 3, in so far that processing is necessary for compliance with any legal obligation (other than an obligation imposed by contract) placed upon the authority, namely section 2 and 4 of The Health and Safety at Work Act 1974.

The use of sensitive personal information, in particular alleged or convicted offences can only be justified under schedule 3 of the Act if:-

- a) such processing is necessary for the purpose of exercising or performing any right or obligation which is conferred or imposed by law, or
- b) processing is necessary in order to protect the vital interests of the data subject or another person, in case where:
 - i) consent cannot be given by the data subject, or
 - ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
 - iii) in order to protect the vital interest of another person in cases where consent by the data subject has been unreasonably been withheld.

In all case where it is deemed that a Warning Marker is appropriate, a full factual record of the reason(s) why a marker should be applied, who authorised the marker and a review date should be maintained.

1.2. Fair Processing

To comply with the fairness element of the 1st principle of the Data Protection Act, the Information Commissioner recommends that the data subject should be informed that a Warning Marker has been applied, the reason(s) why, to who this information may be passed and when the situation will be reviewed or the marker removed.

Under section 7 of the Data Protection Act individuals have the right to make a subject access request e.g. to be given a copy of their record(s).

Under section 10 of the Act the individual also has the right to require the data controller to cease the processing of personal data which is likely to cause them substantial and unwarranted damage or distress.

If the data subject is not satisfied with the response from the data controller the data subject may make an application to court and the data controller may therefore find themselves having to justify their actions.

1.3. Accuracy and Up to date

The 4th principle of the Data Protection Act requires that personal data shall be accurate, and where necessary, kept up to date.

All Warning Markers should be reviewed on a regular basis to ensure that it's use is still applicable. Any decision(s) taken to retain, or remove, such markers should be fully recorded.

Note:

Although a decision has been taken to remove a Warning Marker from an individual's record, it may be necessary to retain some information on that record for historical purposes, e.g. behaviour monitoring.

1.4. Retention

The 5th principle of the Data Protection Act requires that personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

All records containing personal information should only be kept for as long as is necessary. In some cases the duration may be prescribed by law, in others it will be the decision of the data controller.

1.5. Security

The 7th principle of the Data Protection Act requires the data controller to take appropriate technical and organisational measures against unauthorized or unlawful processing of personal data.

The Data Controller should ensure that only those members of staff who are likely to come into contact with an individual who has a Warning Marker on their record should have access to that information and that steps must be taken to prevent unauthorized access to such information.

1.6. Sharing of Warning Marker Information

In some cases, the Data Controller may consider that other organisations who are likely to have contact with the individual should be made aware of the circumstances/facts.

The sharing of Warning Marker information must be justifiable and defensible. It should also be remembered that fair processing is necessary and the individual should be informed that such details will be passed on.

There are two situations when the sharing of such information is permissible, namely:-

a) the individual who is the subject of the Warning Marker has given their consent for such information to be shared, or

b) when there is a legal obligation to do so, for example, under the HSWA there is a legal obligation to make others aware – this would be applicable in the case of someone carrying out work on behalf of Great Yarmouth BC, e.g. service provider.

When receiving Warning Marker information from a third party, the data controller will be bound by the Data Protection Act as described above and will need to decide if such information should form part of the individual's record(s).

2. The Human Rights Act 1998

2.1. Article 8.1. of the **European Convention on Human Rights** (given effect via the Human Rights Act 1998), provides that “everyone has the right to respect for his private and family life, his home and his correspondence.”

This is, however, a qualified right, i.e. there are specified grounds upon which it may be legitimate for authorities to infringe or limit those rights.

2.2. Article 8.2 of the European Convention on Human Rights provides “there shall be no interference by a public authority with the exercise of this right except as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

2.3. In the event of a claim arising from the Act that an organisation has acted in a way which is incompatible with the Convention rights, a key factor will be whether the organisation can show, in relation to its decision(s), to have taken a particular course of action:-

a) that it has taken these rights into account;

b) that it considered whether any breach might result, directly or indirectly, from the action, or lack of action;

c) if there was the possibility of a breach, whether the particular rights which might be breached were absolute rights or qualified rights;

d) (if qualified rights) whether the organisation has proceeded in the way mentioned below.

“Evidence of the undertaking of a ‘proportionality test’, weighing the balance of the individual’s rights to respect for their privacy, versus other statutory responsibilities e.g. protection of others from harm, will be a significant factor for an organisation needing to account for its actions in response to claims arising from the Act”.

3. The Health and Safety at Work Act 1974

Section 2 (1) states:

“It shall be the duty of every employer to ensure, so far as it is reasonably practicable, the health, safety and welfare at work of all his employees.”

Section 7 states:

“It is the duty of all employees whilst at work:

- to take reasonable care for the health and safety of themselves and of other persons who may be affected by their acts or omissions at work, and;
- to co-operate with their employer in the fulfilment of their duties.”

4. The Crime and Disorder Act 1998

Section 17.1 states

‘Without prejudice to any other obligation imposed upon it, it shall be the duty of each authority to which the section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it reasonably can to prevent, crime and disorder in its area.’

The warning marker policy contributes to the corporate obligations under the aforementioned act and is included in the review of Great Yarmouth’s fulfilment of Section 17 – Crime and Disorder Act 1998.

Great Yarmouth Borough Council

CORPORATE POLICY ON THE USE OF WARNING MARKERS ON SERVICE USER'S RECORDS

APPENDIX 2 - SPECIMEN FORMS

1. Request Warning Marker Form
2. Review Warning Marker Form
3. Create/Amend/Remove Warning Marker Form

Confidential



REQUEST WARNING MARKER FORM

Date of request _____

No of pages _____

Details of person making the request:

Name:			
Service Unit:			
Team:		Directorate:	
Location:		Tel No:	

Details of person to whom Warning Marker should be applied:

Name:			
Address:			
Ref. No:			
Other information:			

Reasons for requesting Warning Marker:

Please give full details and continue on separate sheet if required:

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Authorising Manager:

Name:	
Service Unit:	

**This form, and any other supporting documents,
Must be retained on the individual's file**

Confidential



REVIEW WARNING MARKER FORM

Date of review _____

No of pages _____

Details of person making the review:

Name:			
Service Unit:			
Team:		Directorate:	
Location:		Tel No:	

Details of person to whom Warning Marker applies:

Name:	
Address:	
Ref. No:	
Other information:	

Reasons for requesting Warning Marker:

Please give full details information considered and reason for decision – continue on separate sheet if required:

Decision: _____

Date of next review (if applicable): _____

**This form, and any other supporting documents,
Must be retained on the individual's file**

Confidential



CREATE/AMEND/REMOVE WARNING MARKER FORM

Date: _____

No of pages _____

Details of authorising manager:

Name:			
Service Unit:			
Team:		Directorate:	
Location:		Tel No:	

Details of person to whom Warning Marker applies:

Name:			
Address:			
Ref. No:			
Other information:			

Details of Warning Marker creation/amendment/removal:

Please give full details information to be taken - continue on separate sheet if required:

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Details of person undertaking the above instructions:

Name:			
Service Unit:			
Team:		Directorate:	
Location:		Tel. No.	

Date instructions carried out: _____

**This form, and any other supporting documents,
Must be retained on the individual's file**

Great Yarmouth Borough Council

CORPORATE POLICY

ON THE USE OF WARNING MARKERS ON SERVICE USER'S RECORDS

APPENDIX 3 – COMPLAINTS PROCEDURE

1. Introduction

With few exceptions, Great Yarmouth Borough Council's policy and operational guidance on the use of Warning Markers on service user's users records requires that the individual who has had a Warning Marker appended to their record will be notified that a marker has been applied to their record, the reason why, when a review will be undertaken and that the Warning Marker information may be shared within the Council and with external agencies or organisations if deemed appropriate.

In order for "natural justice" to prevail, the individual affected by the Warning Marker must be given the opportunity to "appeal" against the decision(s) to place a Warning Marker on their record.

2. Complaints Procedure

Any service user feeling aggrieved by the decision to place a Warning Marker on their record should be encouraged to use the Corporate Complaints Procedure – for details contact the Customer Service Manager.

It is essential that those dealing with such complaints, in particular at the initial stage 1, maintain a good record of the action taken and decisions made and that such documentation is retained with the individual's record.