Learning from Complaints

Social Services Complaints Procedure for Adults
Document Purpose: Best Practice Guidance

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**Description:** This guidance sets out changes to the adult's social services complaints procedure which come into force on 1 September 2006. The guidance is issued as Section 7 guidance under the Local Authority Act 1970 which requires local authorities to act under the general guidance of the Secretary of State.

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**Contact Details:**
Older People & Disability Division
Policy Management Unit
Room 119
Wellington House
133-155 Waterloo Road
London SE1 8UG

Email: opdenquiries@dh.gsi.gov.uk

**For Recipient's Use:**

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For Recipient's Use
Ministerial Foreword

The reforms to the Department of Health’s statutory social services complaints procedures for adults are the most significant since their introduction in 1991. They come into effect on 1 September 2006 and are drawn from the good practice already established by the complaints profession itself, and the views of respondents to our public consultation in 2004.

This guidance and the underpinning regulations are a foundation for local authorities to build on a culture of listening to, and learning from, complaints in order to drive up improvements in service provision.

It is important to emphasise the significance of providing an accessible, customer-focused service that encourages service users to speak out about their experiences - both good and bad - and to challenge poor practice when they come across it.

In putting service users at the heart of the process, we must ensure that the procedure is fair to all those involved, including members of staff, and that people with concerns, or who wish to complain, have access to effective support. Most importantly, everyone should be treated justly - with due dignity and respect. This is particularly relevant for people who are vulnerable, or who find it difficult to make their views heard.

I hope, therefore, that you find this guidance and regulations a valuable and positive aid to delivering a more effective complaints system - ensuring that people who complain have their concerns resolved swiftly and, wherever possible, by the people who provide the service locally.

Ivan Lewis
Parliamentary Under Secretary of State for Care Services

July 2006
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1 Introduction to the New Arrangements

1.1 Summary

1.1.1 This guidance sets out changes to the adult’s social services complaints procedure following consultation with stakeholders and as a result of the Health and Social Care (Community Health and Standards) Act 2003. It applies to England only.

1.1.2 This guidance accompanies the Local Authorities’ Social Services Complaints (England) Regulations, 2006. The guidance replaces that contained in Community Care in the Next Decade and Beyond, Policy Guidance 1990 (TSO, ISBN 0 11 321338 7), and the new regulations replace the Complaints Procedure Directions 1990. Where "he" is used, it refers equally to he or she.

1.1.3 The Care Standards Act, 2000 (www.legislation.hmsp.gov.uk/acts.htm) requires regulated providers to have their own complaints procedures, which are themselves subject to regulations and National Minimum Standards. This guidance is not applicable to procedures established under those regulations and standards, but it does clarify the boundary issues that have caused confusion between the two complaints procedures.

1.1.4 The Department for Education and Skills are issuing guidance separately on the social services complaints and representations procedure for children, young people and others, Getting the Best from Complaints (see www.dfes.gov.uk).

1.2 Other helpful information

1.2.1 It is strongly recommended that this guidance is read alongside other appropriate guidance and standards including:

- Performance Assessment Standards, published by the Department of Health.

1.2.2 Useful websites include:

Department of Health: www.dh.gov.uk
Department for Education and Skills: www.dfes.gov.uk
Local Government Ombudsman: www.lgo.org.uk
Commission for Social Care Inspection: www.csci.org.uk

1.3 Impact on Local Authorities

1.3.1 The new Regulations come into effect on 1 September 2006. This guidance is issued
under Section 7 of the Local Authority Social Services Act, 1970, which requires local authorities to act under the general guidance of the Secretary of State. Only in exceptional circumstances may local authorities justify a variation.

1.3.2 Transitional arrangements for complaints in progress at the time the new regulations come into force are set out in the regulations. For example, where a complaint reaches the end of Stage 2 (investigation) under the former procedure and the complainant then requests Stage 3, the Stage 3 Review Panel should be provided under the new regulations.

1.4 What’s Changed under the New Procedure?

1.4.1 Key features of the new procedure include:

- Introduction of a 12 month time limit to make complaints;
- Requirement for local authorities to appoint a Complaints Manager; and
- Review Panels are to be retained by local authorities but with a more precise and focused brief on constituting and running them. This should ensure less variation between authorities and a more consistent response to complainants against measurable frameworks.

1.5 Key Principles

1.5.1 A good procedure should ensure that people who complain have their concerns resolved swiftly and, wherever possible, by the people who provide the service locally. The complaints procedure should be viewed as a useful tool for indicating where services may need adjusting. It is a positive aid to inform and influence service improvements, not a negative process to apportion blame.

1.5.2 Local authorities should aim to develop a listening and learning culture where learning is fed back to people who use services – and fed into internal systems for driving improvement. The same listening and learning culture should shape wider opportunities for working in partnership with service users, such as individual reviews and systematic quality assurance. It should give people opportunities to tell the authority about both their good and bad experiences of the service.

1.5.3 The following principles are drawn from ideas developed by the Welsh Assembly Government and based on Welsh service users’ experiences. Meeting these principles should assist local authorities in providing a successful complaints procedure to service users. The Department of Health is applying these principles in England.

1. The complaints procedure should be clear and easy to use for service users.

2. It should ensure that the people who use the service are treated with dignity and respect, are not afraid to make a complaint, and have their concerns taken seriously.

3. It should ensure, as far as is possible, even-handedness in the handling of complaints.
4. It should ensure that any concerns about the protection of vulnerable adults are referred immediately to the relevant social services team or to the Police.

5. It should make sure that as many complaints as possible are resolved swiftly and satisfactorily at local level.

6. It should ensure a fair process and adequate support for everyone involved in the complaint.

7. It should ensure that the complainant using the service receives a full response without delay.

8. It should enable any local authority purchasing services in the independent sector, to exercise its continuing duty of care.

9. It should secure sensible and effective links with other procedures in local government.

10. It should safeguard the service user’s rights of access to other means of redress, such as the Local Government Ombudsman.

11. It should ensure that local authorities monitor their performance in handling complaints, deliver what they have promised, learn from complaints and use this learning to improve services for everyone who uses them.

1.6 The Complaints Manager

1.6.1 The regulations require local authorities to designate an officer, known as the Complaints Manager, to manage the authority’s complaints process. However, this does not mean that one person is responsible for carrying out all actions. The role of Complaints Manager should meet the existing role of Designated Complaints Officer, as set out in previous guidance.

1.6.2 Every local authority should ensure that the Complaints Manager has sufficient clarity of purpose and authority to enable complaints to be dealt with effectively and speedily. It is recognised that the variety and level of responsibilities for Complaints Managers may differ depending upon local structures. Annex 1 sets out key tasks which a Complaints Manager might be given responsibility for.

1.6.3 In order to contribute effectively to service development, the Complaints Manager should be independent of operational line management and of direct service providers (e.g. Primary Care and social work services). However, issues around possible ‘conflict of interest’ need to be considered when organising local structures.

1.6.4 Complaints Managers should be sensitive to the particular challenge of regular involvement with complainants who are likely to be distressed or angry. The Complaints Manager should also take an active role in facilitating resolution of complaints by identifying appropriate colleagues and external people (including Investigating Officers and advocates) to contribute to complaints work. The Complaints Manager should also foster good working relationships with key bodies and
through partner agencies.

2 Scope of the Complaints Procedure

2.1 What is a Complaint?

2.1.1 As a working guide, a complaint may be generally defined as “an expression of dissatisfaction or disquiet about the actions, decisions or apparent failings of a local authority’s adult’s social services provision which requires a response”. The intention here is not to be too rigid in the way that complaints are defined.

2.1.2 If it is possible to resolve the matter immediately, there is no need to engage the complaints procedure.

2.2 What May be Complained About?

2.2.1 A complaint may arise as a result of many things relating to statutory social services functions, Social Services’ functions are set out in Section 1A and Schedule 1 of the LASS Act (1970). Care Standards complaints are not covered by this procedure.

2.2.2 Complaints may relate to the following:

- an unwelcome or disputed decision;
- concern about the quality or appropriateness of a service;
- delay in decision making or provision of services;
- delivery or non-delivery of services including complaints procedures;
- quantity, frequency, change or cost of a service;
- attitude or behaviour of staff;
- application of eligibility and assessment criteria;
- the impact on an individual of the application of a local authority policy; and
- assessment, care management and review.

However, this is not an exhaustive list and the Complaints Manager should seek legal advice, as necessary.

2.2.3 Complaints should be considered under this procedure when they are about relevant services provided under any “joined up” arrangements that the local authority may have with third party providers. This includes those that fall outside the formal arrangements under Section 31 of the Health Act 1999. For example where a person’s assessed needs are met by a contract with another public body, agency or voluntary body. Such arrangements do not absolve the authority from their duty of care. See further information in Section 7.

2.2.4 Where social work information or a social work report has been used in Court proceedings, the complainant can make a complaint about the report (i.e. its quality/accuracy), distinct and separate to the subsequent actions of the Court. If this complaint is upheld, the local authority should advise the complainant what action it proposes to take with regard to the Court action.
2.2.5 With complaints involving regulated services under the Care Standards Act 2000 and where services are delivered on the local authority’s behalf or through an internal service that is regulated, the local authority will need to satisfy itself that the complaint can be considered under this procedure.

2.3 What is Exempt from the complaints procedure?

2.3.1 The complaints procedure does not apply when:

- the person wishing to complain does not meet the requirements of "who may complain," and is not acting on behalf of such an individual;
- the complaint is not in regard to the actions or decisions of the local authority complained to, or of any body acting on its behalf;
- where the same complaint has already been dealt with at all stages of the procedure;
- the same complaint has already been investigated by a local commissioner;
- the complaint is unclear, or it is frivolous or vexatious;
- matters should be dealt with under other proceedings such as:
  - disciplinary proceedings;
  - grievance procedure;
  - complaints from staff about personnel issues;
  - complaints that should be considered under the local authority’s corporate complaints procedure;
  - services for which an alternative statutory appeals process already exists; and
  - criminal investigation where Court action is pending.

2.3.2 A decision made by an Approved Social Worker regarding the making of an application under the Mental Health Act, 1983, is an action taken independently of the local authority and therefore falls outside of the complaints procedure. However, complaints made about the process of the assessment and the Approved Social Worker's actions during the process would be covered by this guidance.

2.3.3 Where the complainant has stated in writing that he intends to take legal proceedings in relation to the substance of the complaint, the local authority may wish to restrict his access to the complaints procedure. The local authority may wish to apply this restriction only in instances where the complainant has commenced legal action or where the complainant is certain that the complaint cannot be resolved through the complaints procedure, and that he intends to take legal proceedings in relation to the substance of the complaint.

2.4 Who May Complain?

2.4.1 A person is eligible to make a complaint where the local authority has a power or a duty to provide, or to secure the provision of, a service for him, and his need or possible need for such a service has (by whatever means) come to the attention of the local authority. This also applies to a person acting on behalf of someone else.
2.5 Who May Complain on Behalf of Someone Else?

2.5.1 A complaint may be made by a representative acting on behalf of an eligible person where that person is a child, has asked the representative to act on his behalf or is not capable of making the complaint himself (this includes a person who has died).

2.5.2 Where a complaint is received from a representative acting on behalf of a service user, (i.e. his advocate) the authority has the discretion to decide whether or not the person is suitable to act as a representative, in the individual’s best interests. If the Complaints Manager considers the representative to be unsuitable, he should notify the representative accordingly in writing, explaining why no further action is being taken. The Complaints Manager should discuss this decision with relevant operational managers as appropriate.

2.6 Complaints from Self-funded users of Independent Services

2.6.1 Complaints from self-funded users of independent services cannot be considered under the local authority complaints procedures. The Care Standards Act, 2000 requires providers to have their own complaints procedure in place, and these service users can access that procedure. Also, see section 7.6 on Complaints Involving Regulated Services.

2.6.2 The local authority should therefore advise self-funded users of their rights as above.

2.7 Anonymous Complaints

2.7.1 Anonymous complaints should always be recorded and referred to the Complaints Manager in the same way as other complaints. Anonymous complaints fall outside of the scope of the statutory procedure and it is for the authority to decide what action it should take. The fact that the complaint is from an anonymous source should not in itself to justify a decision not to pursue the matter nor should it rule out referral to other procedures as appropriate.

3 Handling and Consideration by Local Authorities

3.1 Introduction

3.1.1 The handling and consideration of complaints consists of three stages – Stage 1 - Local Resolution, Stage 2 - Investigation and Stage 3 - Review Panel.

3.1.2 Local resolution requires the local authority to resolve a complaint as close to the point of contact with the service user as possible (i.e. through front line management of the service). In doing so the local authority should consider the wishes of the complainant about how the complaint should be dealt with. In most circumstances complaints should be considered at Stage 1 in the first instance.
3.1.3 Where a complaint is considered at Stage 1, the complainant is entitled to pursue their complaint further through the authority’s complaints procedure except in the case of cross boundary issues. In all other instances, once a complaint has entered Stage 1, the local authority is obliged to ensure that the complaint proceeds to Stages 2 and 3 of this procedure, if that is the complainant’s wish. For cross-boundary issues, see section 7.4 of this guidance.

3.2 Receiving a Complaint

3.2.1 A complaint is made on the date on which it is first received by the local authority, Local authorities are required to put in place systems for formally recording all complaints received (whether orally or in writing, including electronically). Complaints services need to be sensitive, service user-friendly and fully accessible and information about advocacy services should be readily available if required by a service user (see Section 3.4 Providing Advocacy and Support).

3.2.2 If a complaint is made to a member of staff, the Complaints Manager should be informed as soon as possible, so that he can record the complaint and monitor progress.

3.2.3 As soon as it becomes apparent that someone wishes to make a complaint, the complainant should be given information about the authority’s complaints procedure. He should also be given details on how to contact the Complaints Manager. Section 4 describes publicity strategies.

3.2.4 The complainant retains the right to approach the Local Government Ombudsman at any time and the local authority should make this clear in its publicity to service users. However, the Ombudsman would ordinarily expect the local authority to consider the complaint initially and may refer the complaint back to the relevant Complaints Manager if this has not been done.

3.3 Time Limit for Making a Complaint

3.3.1 The regulations impose a time limit for making complaints. Local authorities need not consider complaints made more than one year after the date of the event that gives rise to the complaint. In these cases, the Complaints Manager should write to advise the complainant that their complaint cannot be considered and explaining the reasons why he has adopted this position. This response should also advise the complainant of their right to approach the Local Government Ombudsman. However, as with freezing decisions, judgement needs to be made on a case by case basis, and there should generally be a presumption in favour of accepting the complaint unless there is good reason against it.

3.3.2 Local authorities may consider such complaints if it would not be reasonable to expect the complainant to have made the complaint earlier and it would still be possible to consider the complaint in a way that would be effective and fair to those involved. For example, if a service user was particularly vulnerable and did not complain due to fear of reprisal.

3.3.3 Though not exclusive, possible grounds for accepting a complaint made after one year
are:

- genuine issues of vulnerability;
- the local authority believes that there is still benefit to the complainant in proceeding;
- there is likely to be sufficient access to information or individuals involved at the time, to enable an effective and fair investigation to be carried out; and
- action should be taken in light of human rights-based legislation.

3.4 Providing Advocacy and Support

3.4.1 During the course of making a complaint, a service user may request assistance from an advocate. The local authority should support this request by facilitating independent and confidential advocacy and actively providing information and advice.

3.4.2 The local authority should consider where appropriate, what type of support and encouragement it should offer to service users while their complaint is being processed. Some complainants may need advice and confidential support from an independent advocate to make their complaint, to pursue it, to understand the process and to cope with the outcome.

3.4.3 The local authority should consider how to meet the varying needs of complainants. This should be particularly important in relation to complainants whose first language is not English and those with communication difficulties. This is particularly relevant for people who are vulnerable, or who find it difficult to make their views heard. The authority may wish to consider publicising any facilities available to complainants from voluntary organisations and local community or self-help groups.

3.5 Stage 1 - Local Resolution

3.5.1 A complaint is made on the date on which it is first received by the local authority. The expectation is that the majority of complaints should be considered (and resolved) at Stage 1. However, if the local authority or the complainant believes that it would not be appropriate to consider the complaint at Stage 1, they should discuss this together. Where both parties agree, the complaint can move directly to Stage 2.

3.5.2 At Stage 1, staff at the point of service delivery and the complainant should discuss and attempt to address the complaint as quickly as possible. They should discuss the issue and exchange information and thinking behind decisions and try to agree a way forward.

3.5.3 It is envisaged that most complaints will be concluded within 10 working days. The period of 10 working days may be extended where:

- the local authority cannot provide a complete response, in which case it can implement a further ten days’ extension; or
- the complainant has requested an advocate, the local authority may also suspend Stage 1 until an advocate has been appointed, provided that this suspension does not last more than 10 working days.
3.5.4 The total maximum amount of time that Stage 1 should take is 20 working days.

3.5.5 The Complaints Manager should inform the complainant that he has the right to move on to Stage 2 if the timescale has elapsed for Stage 1 and the complainant has not received an outcome. It may be that the complainant is happy to put this off for the time being (for example, if resolution is delayed due to a key person being off sick or on leave), so this period can be extended with the complainant’s agreement or request.

3.5.6 If the matter is resolved at Stage 1, the local authority must write to the complainant confirming the agreed resolution and the Complaints Manager should be informed of the outcome as soon as possible. Otherwise, a letter should be sent by the local authority to the complainant (or a meeting set up if this is more appropriate), responding to the complaint.

3.5.7 Where the matter is not resolved locally, or the complainant is dissatisfied with the local authority’s response, the complainant then has 20 working days from the expiry of the Stage 1 time limit or the date the local authority response was sent in which to request consideration at Stage 2.

3.6 Stage 2 - Investigation

3.6.1 Once the complainant has decided that he wants an investigation the Complaints Manager should ensure that the details of the complaint and the complainant’s desired outcome are recorded in writing and agreed with the complainant. This may be achieved either by correspondence or by meeting the complainant to discuss, followed by a written record of what was agreed.

3.6.2 The Complaints Manager should arrange for a full and considered investigation of the complaint to take place without delay. The Complaints Manager may also request (in writing) any person or body to produce information or documents to facilitate the investigation. Consideration should be given to matters of disclosure and confidentiality.

3.6.3 The Complaints Manager should ensure that the authority appoints an Investigating Officer (IO) to lead the investigation of the complaint and prepare a written report for adjudication by a Senior Manager. It is up to the local authority to decide who should conduct the investigation; the Investigating Officer may be employed by the local authority or be someone wholly independent of the local authority, appointed specifically for this piece of work. The Investigating Officer should not, however, be in direct line management of the service or person about whom the complaint is being made.

3.6.4 It is often the Investigating Officer, rather than the Complaints Manager, who agrees the detail of the complaint with the complainant.

3.6.5 It is likely to be necessary for the Investigating Officer and the Complaints Manager to plan how the investigation is carried out and to ensure that all those concerned in the process understand it. The Complaints Manager should ensure that the complainant also understands how the investigation will be conducted and is informed of progress.
throughout. A copy of the complaint should be sent to any person who is involved in the complaint, unless where doing so would prejudice consideration of the complaint. Where this may be the case, the Complaints Manager should advise senior management, who should then inform staff of the details of the complaint through normal line management.

3.6.6 The Investigating Officer should have access to all relevant records and staff. These should be released within the bounds of normal confidentiality and with regard to relevant legislation on Freedom of Information and Data Protection.

3.6.7 The investigation should be completed and the response sent to the complainant within 25 working days from the date on which the claimant’s request for an investigation was received. However, this could be impractical in some cases, and the regulations allows for the 25 working day time limit to be extended. Should the complainant amend the written record of his complaint, the Stage 2 timescale commences from the date that the record was amended.

Possible reasons for an extension might include:

- where the complaint involves several agencies or all or some of the matters concerned are the subject of a concurrent investigation (such as a disciplinary process);
- if the complaint is particularly complicated; or
- If a key witness is unavailable for part of the time.

3.6.8 Where it is not possible to complete the investigation within 25 working days, Stage 2 may be extended to a maximum of 65 working days. All extensions should be agreed by the Complaints Manager. The important thing is to maintain dialogue with the complainant and where possible reach a mutual agreement as to what is reasonable where a response in 25 working days is not feasible.

3.6.9 The local authority must inform the complainant as soon as possible in writing of:

- the reason for the delay; and
- the date by which the complainant should receive a response.

3.6.10 Where one or more agencies are involved in considering the complaint, then it would be good practice for these bodies to aim for whichever is the shorter of the timescales to produce their final responses.

3.7 Independent Person

3.7.1 Where there are significant concerns about the vulnerability of the complainant and the seriousness of the complaint, the Complaints Manager should consider appointing an Independent Person (IP) as well as an Investigating Officer. When considering this option, the local authority should refer to No Secrets, the guidance on multi-agency procedures to protect vulnerable adults from abuse.

3.7.2 Where an Independent Person is used, this role must be filled by a separate person in addition to the person fulfilling the role of Investigating Officer (see Annex 1 for further
details of the role).

3.8 **Stage 2 - Investigation Report**

3.8.1 On completion of his consideration of the complaint, the Investigating Officer should write a report on his investigations. The report should:

- include all relevant information;
- be clear about what the findings and outcomes are against each point of complaint (i.e. “upheld” and “not upheld,”);
- distinguish between fact, feelings and opinion;
- contain details of findings, conclusions and recommended actions, and address all three areas;
- recommend how to remedy any injustice to the complainant as appropriate; and
- be written in plain language, avoiding jargon, so that everyone can understand it.

(See Annex 2 for further guidance)

3.8.2 Good practice suggests that the Independent Person should also provide a report to the local authority once he has read the Investigating Officer’s final report. He may wish to comment on:

- whether he thinks the investigation has been conducted entirely in an impartial, comprehensive and effective manner;
- whether all those concerned have been able to express their views fully and fairly;
- whether the Investigating Officer’s report provides an accurate and complete picture of the investigation; and
- the nature of the recommendations, or make his own recommendations as necessary.

3.9 **The Adjudication process**

3.9.1 The purpose of adjudication is for the local authority to consider the reports and identify:

- its response;
- its decision on each point of complaint; and
- any action to be taken (with timescales for implementation).

3.9.2 The Adjudicating Officer will prepare a response to the reports, with his decision on the complaint, actions he will be taking with timescales for implementation – this is the adjudication.

3.9.3 The Adjudicating Officer may wish to meet the Complaints Manager, Investigating Officer and Independent Person to clarify aspects of the report. The Adjudicating Officer should also consider liaising with the Complaints Manager in drafting the adjudication.
3.9.4 The Adjudicating Officer may wish to meet the complainant as part of the adjudication process or afterwards to explain the details of the adjudication i.e. the outcome of the complaint and any actions that he proposes.

3.9.5 The local authority should then write to the complainant with their response containing:

- a complete copy of the investigation report;
- any report from the Independent Person;
- the adjudication;

This response must contain details of the complainant’s right to have the complaint submitted to a review panel if he is dissatisfied and that he has 20 working days to make this request to the local authority / Complaints Manager.

3.9.6 The Adjudicating Officer should ensure that any recommendations contained in the response are implemented. The Complaints Manager should monitor implementation and report to the Director on what action has been taken on a regular basis.

3.10 Stage 3 Review Panel

3.10.1 Where Stage 2 of the complaints procedure has been concluded and the complainant is still dissatisfied, he will be eligible to request further consideration of the complaint by a Review Panel. As it is not possible to review a complaint that has not yet been fully considered at Stage 2 (including providing the report(s) and adjudication to the complainant), it is essential that the local authority does not unnecessarily delay the conclusion of Stage 2.

3.10.2 Further consideration of the complaint can include, in a limited number of cases, Early Referral to the Local Government Ombudsman (see Annex 3). Otherwise, the complainant retains the right to proceed to a Review Panel.

3.10.3 The Complaints Manager should consider requests for the Review Panel as they are presented on a case by case basis. The Complaints Manager should also confer with the Chair, following the Chair’s appointment, regarding arrangements for the Panel.

3.11 Purpose of Review Panels

3.11.1 Review Panels are designed to consider whether the local authority adequately dealt with the complaint in the Stage 2 investigation. They should do this by:

- listening to all parties;
- obtaining any further information and advice that may help resolve the complaint to all parties’ satisfaction;
- focusing on achieving resolution for the complainant by addressing his clearly defined complaints and desired outcomes;
- reaching findings on each of the complaints being reviewed;
- making recommendations that provide practical remedies and creative solutions to complex situations;
• supporting local solutions where the opportunity for resolution between the complainant and the local authority exists;
• identifying any consequent injustice to the complainant, where complaints are upheld, and to recommend appropriate redress; and
• recommending any service improvements for action by the authority.

3.11.2 The Review Panel should not reinvestigate the complaints, nor should it consider any substantively new complaints that have not been first considered at Stage 2.

3.11.3 Ideally, no party should feel the need to be represented by lawyers at the Review Panel. The purpose of the Panel is to consider the complaint and wherever possible, work towards a resolution. It is not a quasi-judicial process and the presence of lawyers can work against the spirit of openness and problem solving. However, the complainant has the right to bring a representative to speak on his behalf.

3.12 General Principles

3.12.1 The Review Panel should be alert to the importance of providing a demonstrably fair and accessible process for all participants. Many complainants may find this stage to be a stressful experience. It is important that the Panel is customer-focused in its approach to considering the complaint. This may include limiting the total number of local authority representatives attending to a workable minimum to avoid the possibility of overwhelming the complainant.

3.12.2 In particular, the following principles should be observed for the conduct of the Review Panel:

• The local authority should recognise the independence of the Review Panel and in particular, the authority of the Chair;
• Panels should be conducted in the presence of all the relevant parties with equity of access and representation for the complainant and local authority;
• Panels should uphold a commitment to objectivity, impartiality and fairness, and ensure that the rights of complainants and all other attendees are respected at all times;
• The local authority should consider what provisions to make for complainants, including any special communication or mobility needs or other assistance;
• Panels should observe the requirements of the Human Rights Act 1998, the Data Protection Act 1998, and other relevant rights-based legislation and conventions in the discharge of their duties and responsibilities;
• The standard of proof applied by Panels should be the civil standard of ‘balance of probabilities’ and not the criminal standard of ‘beyond all reasonable doubt.’ This standard should be based on evidence and facts; and
• It will be at the Chair’s discretion to suspend or defer proceedings in exceptional circumstances where required, including the health and safety of all present.

3.13 Redress
3.13.1 Under Section 92 of the Local Government Act 2000, local authorities are empowered to remedy any injustice arising from a complaint. Further details on remedies and redress are discussed later in Section 6.3.

3.13.2 The Review Panel must set out its recommendations to the local authority on any strategies that can assist in resolving the complaint. These may include financial compensation or other action within a specified framework to promote resolution.

3.14 Make up of the Review Panel

3.14.1 The Review Panel consists of a Chair and two other people appointed by the local authority. The Chair should always be independent, as should at least one of the other two panellists. Depending on local arrangements the local authority may wish to use an elected member for the third panellist.

3.14.2 No member of the panel may be an officer, nor the spouse or civil partner of an officer of the local authority that is considering the complaint.

3.14.3 In selecting the panel the local authority should consider:

- the profile of the local population;
- how best to demonstrate independence of the procedure;
- the needs and circumstances of the individual complainant and the need for specialist skills, knowledge, or awareness regarding the presenting complaint;
- any real or perceived conflict of interest raised by either the substance of the complaint or the Panel process for considering that complaint; and
- due care regarding political sensitivity;

The Panel Chair

3.14.4 The Chair’s role is described in Annex 1. The person appointed should not have been an employee or member of the local authority (or spouse or civil partner of an employee or member) during the three years preceding the Panel.

3.14.5 In order that the Chair may contribute to the organisation of the panel, the Complaints Manager should appoint the Chair first – ideally within ten working days of the complainant’s request to proceed to Stage 3 – before identifying other panel members.

Independent Panellists

3.14.6 The second Panellist should also be independent of the local authority, meeting the criteria set out above in “Make up of the Panel.”

Elected Members

3.14.7 The third Panellist role can be filled either by a third independent Panellist or by an elected Member, depending on local practice.

3.14.8 Where the third Panellist is an elected Member, this should be in accordance with
existing legislation around the election and conduct of Members.

3.15 Administration of the Panel

3.15.1 Local authorities should:

- demonstrate an ongoing commitment to supporting Panellists through regular training;
- confirm references, Criminal Records Bureau referrals, confidentiality and disclosure protocols, declarations of interest, and provide other support as required;
- prepare relevant papers and background information for Panellists in advance of the hearing and distribute to attendees in a timely fashion;
- reimburse Investigating Officers, Independent Persons and any other external people involved in the earlier stages for their attendance at the Panel, as appropriate;
- provide Panellists with a letter of appointment explaining the Review Panel process, their role as a Panellist and what expenses or other payments to which they may be entitled. Attention should also be drawn to important issues such as confidentiality;
- provide complainants with information on attending the Panel and assistance that they can draw on; and
- facilitate the administrative support and advisory functions on the day of the Panel.

3.16 Organisation (setting up Panels)

3.16.1 The Complaints Manager has overall responsibility for delivering the Panel process.

3.16.2 The Panel must be held within 30 working days of the receipt of a request for a review. The local authority should acknowledge the complainant’s request for a review in writing within 2 days of receipt.

3.16.3 Panels should be provided locally and with due regard to the complainant’s availability and convenience.

3.16.4 The complainant should be notified of the Panel’s date and location in writing at least 10 working days before the Review Panel meets.

3.16.5 Panel papers should be sent to all attendees as soon as these have been agreed by the Chair and no later than 10 working days before the date of the Panel. These should normally include:

- information on Stage 1 (as relevant);
- the Stage 2 investigation report(s);
- the local authority’s adjudication;
- any policy, practice or guidance information relevant to the complaint; and
- any comments that the complainant has submitted to the Panel.
The papers should also include information on the local practice around Panels, such as start time, conduct, roles and responsibilities.

3.16.6 The Chair should make the final decision on circulating any further written material to the other attendees outside of the timescales.

3.16.7 If any complaint is lodged on the day by the complainant, about the proceedings, the local authority should record it and the Panel should take a view on the need for further action and record their decision.

3.17 Attendance at the Panel

3.17.1 The complainant has a right to attend the Panel and should be informed of this right and assisted in attending as appropriate. Complainants should be informed of their entitlement to be accompanied by another person and for this person to speak on his behalf. This person should not be a barrister or solicitor acting in a professional capacity.

3.17.2 The persons involved with the investigation at Stage 2 (i.e. the Investigating Officer and any Independent Person) should be invited to attend and contribute as relevant to their roles.

3.17.3 Should any of these persons’ unavailability cause an inordinate delay in holding the Panel, the Chair should take a view on proceeding without them present.

3.17.4 The local authority can proceed with the Panel in the complainant’s absence at the complainant’s request.

3.17.5 Should the complainant fail to attend a scheduled Panel on more than one occasion, the Panel should proceed without them.

3.17.6 The Adjudicating Officer should attend as the authority’s representative, if he has rejected any of the IO’s findings at Stage 2. Where he has accepted all of them, it is usually acceptable for him to delegate this responsibility.

3.17.7 The Chair should make the final decision as to who should be in attendance (including asking the local authority to make specific members of staff available to provide specialist advice or opinion).

3.17.8 The Chair should also decide whether additional policies or procedures should be circulated with the Panel’s papers.

3.17.9 The Complaints Manager and the Clerk should also attend the Panel.

3.18 Conduct of the Panel

3.18.1 The Panel should be conducted as informally as possible, but in a professional manner and in an atmosphere that is accommodating to all attendees.

3.18.2 The need for other support in response to diversity and disability issues should be
catered for, including (but not limited to) provision for sensory impairment, translation and interpretation.

3.18.3 Panels should normally be structured into the following three parts:

3.19 **Pre-meeting**

3.19.1 This is an opportunity for the Panellists and their administrative support (Complaints Manager and Clerk) to meet in closed session to discuss the order of business and any other relevant issues (e.g. taking legal advice).

3.19.2 No deliberations on the complaint should commence at this meeting.

3.20 **Presentations**

3.20.1 Once all attendees are present, the Chair should commence the Review by explaining its purpose and the need for confidentiality. The Chair should also indicate how long the Panellists anticipate that the presentations should last.

3.20.2 The Chair should advise the complainant of the respective roles and responsibilities of those present and address any questions or concerns that the complainant may have about the process.

3.20.3 The Chair should ensure that the Panel’s focus is on the agreed complaint and the complainant’s desired outcomes from the Stage 2 investigation. All attendees should understand that the presentations session is about clarifying what each party’s opinion of the complaint is rather than an opportunity to cross-examine attendees.

3.20.4 The full Panel meeting should begin with presentations on the points of complaint and desired outcomes by the complainant and the local authority. Normally, the first presentation should be by the complainant (or advocate/representative) who should be invited to expand upon any relevant themes that could aid the Panel’s deliberation. The Chair should ensure that this presentation is reasonable, and relevant, and should exercise discretion as required in limiting either the scope and substance of the presentation or its duration.

3.20.5 The Chair should ensure that the Panellists have opportunities to ask questions of all present and seek clarification on the issues being discussed. The Chair should invite the complainant, the local authority and other attendees to ask questions and raise points of information and opinion as relevant to the complaint.

3.20.6 The Chair should exercise discretion in determining when the proceedings have sufficiently achieved their objectives, and the Panellists are in a position to reach their findings and recommendations regarding the outcome. The Chair should draw the proceedings to a close and advise on the next steps.

3.21 **Deliberations**

3.21.1 The Panel should go into closed session to deliberate on their findings and conclusions. The Clerk and Complaints Manager should normally also attend to
provide administrative support (except where this may create a conflict of interest) but this should not unduly influence the Panel’s deliberations.

3.21.2 The Panel is required to record its findings of the meeting and to notify the complainant and the authority in writing within 5 working days. The findings should explain simply and clearly any recommendations and the reasons for them, and if a Panellist disagrees with the majority recommendation, the response should also record that Panellist’s view and the reason for it.

3.22 **After the Panel**

3.22.1 The local authority must send its response to the Panel’s recommendations to the complainant (and other participants as necessary) within 15 working days of receiving the Panel’s report. The response should be developed by the Director setting out how the local authority will respond to the recommendations and what action will be taken. If the Director deviates from the Panel’s recommendations he should demonstrate his reasoning in the response.

3.22.2 The complainant should be advised of his right to refer his complaints (if still dissatisfied) to the Local Government Ombudsman.

3.23 **Timescales**

<table>
<thead>
<tr>
<th>Action</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complainant requests Review Panel</td>
<td>Within 20 working days after receipt of the Stage 2 report or expiry of the timelimit</td>
</tr>
<tr>
<td>Complaints Manager acknowledges request</td>
<td>Within 2 working days</td>
</tr>
<tr>
<td>Complaints Manager appoints Chair and confirms attendees and content of Panel papers with Chair</td>
<td>Within 10 working days of the complainant’s request for Review Panel</td>
</tr>
<tr>
<td>Local authority agrees the other Panellists and date for Review Panel</td>
<td>Within 30 working days of the complainant’s request for Review Panel</td>
</tr>
<tr>
<td>Local authority circulates Panel papers</td>
<td>Within 10 working days of the date for the Panel</td>
</tr>
<tr>
<td>Review Panel produces its written report (including any recommendations)</td>
<td>Within 5 working days after the Panel has met</td>
</tr>
<tr>
<td>Relevant Director issues his response</td>
<td>Within 15 working days from receipt of the Panel’s report</td>
</tr>
</tbody>
</table>

3.24 **Withdrawing a Complaint**

3.24.1 The regulations set out that the complaint may be withdrawn verbally or in writing at any time by the complainant. The local authority must write to the complainant to confirm the withdrawal of the complaint. In these circumstances, it would also be good
practice for the local authority to decide on whether or not it wishes to continue considering the issues that gave rise to the complaint through an internal management review. The local authority should then use this work to consider the need for any subsequent actions in the services it delivers.

3.24.2 Should the complainant then seek to reinstate the complaint, the local authority could use the review to produce a response as necessary.

4 Publicity

4.1 Communicating and Publicising the Complaints Procedures

4.1.1 Many people who use services have stated that they lacked the information and understanding they needed on how to make a complaint and on what they could expect to happen as a result.

4.1.2 Information should be available free of charge to all members of the community. The foremost method of communicating with the public should be through staff talking to service users and their representatives to promote the right to complain.

4.1.3 Local authorities should also be alert to the benefit of websites, text messages on mobile phones, local media and traditional forms of advertising and publicity. They may wish to produce:

- leaflets and posters;
- visual and oral presentations; and
- information on complaints in other council leaflets, such as leaflets on Domiciliary Care.

4.1.4 Written information should explain the procedure in straightforward terms, and be tailored to a suitable format to meet the needs of those with learning disabilities, sensory impairments, limited mobility and those for whom English is not a first language. They should give details of how to contact the Complaints Manager, and include information on advocacy and how to approach the Local Government Ombudsman.

4.1.5 Once the local authority has received a complaint, it should ensure that the complainant receives:

- assistance in following this procedure and, where appropriate, help in obtaining an advocate; and
- an offer of a meeting with the Complaints Manager.

4.2 Information and training for staff

4.2.1 A complaints procedure will be effective only if the local authority shows commitment to it. Staff may also need increased support and supervision from line managers to help them cooperate with considerations under the procedure and to work
positively with the complainant.

4.2.2 Local authorities should make sure that their procedures are known and understood by all staff, Elected Members, Investigating Officers, Independent Persons, Review Panellists, service users, their carers and representatives. The Complaints Manager should consider the contributions that these groups can make to training and discussions about the delivery of the complaints procedure.

4.2.3 Training should be available to staff at all levels of the organisation and should be tailored to the roles staff are expected to fulfil. A training strategy is likely to include a basic introduction to the principles and working of the complaints procedure along with skills development. It should also explore the relationships between the complaints procedures and related policies, including whistle blowing and the duties of staff under the authority’s Code of Conduct to report improper behaviour and wrong-doing.

4.2.4 Training should also include raising understanding of the cultural and special needs of individual complainants so that practice can be tailored to suit their needs.

5 Monitoring Arrangements for Local Authorities

5.1 Recording

5.1.1 Local authorities must monitor the complaints arrangements that they have in place to ensure that they comply with the regulations. They must keep a record of:

- each complaint received;
- the outcome of each i.e. the decisions made in response to the complaint and any action to be taken; and
- whether there was compliance with the time limits;

5.1.2 The overall purpose of recording is to enable:

- service users to see that their concerns and suggestions are being dealt with and that a thorough and fair investigation has taken place;
- the organisation to demonstrate that complaints are taken seriously and how they are resolved; and
- feedback from complaints to lead to improvement in service planning and delivery.

5.2 Record Management and Data Protection

5.2.1 All functions of the complaints procedure must adhere to the requirements of the Data Protection Act, 1998 and the Freedom of Information Act, 2000. The Records Management Department of the Public Record Office has also developed guidance for Departmental Record Officers (see www.nationalarchives.gov.uk).

5.2.2 Particular attention is drawn to the need to ensure that any personal information obtained in relation to a complaint is only used for that purpose.
5.2.3 Section 119 of the Health and Social Care (Community Health and Standards) Act 2003, makes an amendment relevant to the complaints functions to Section 31 of the Data Protection Act 1998. This is that people charged under the regulations with consideration of complaints are exempt from the subject information provisions of the Data Protection Act 1998 to the extent to which application of these provisions would prejudice considering the complaint. The subject information provisions of the Data Protection Act allow for individuals to obtain information which is held on them by others. Section 31 of the Data Protection Act provides an exemption from these provisions by reference to a number of different categories of regulatory function exercised by public bodies.

5.2.4 The Information Commissioner also provides useful information about record management and Data Protection on their website: www.informationcommissioner.gov.uk

5.2.5 Those involved in the investigation should have access to the notes of their own interview in order to confirm the accuracy of the content.

5.2.6 Records of complaints received including any investigation reports, Panel reports and letters of response from the local authority should be placed on the relevant service user’s file, unless there are specific reasons not to do so (for example if the reports would cause distress to the service user). The complaints investigation report and all other relevant papers should also be held by the Complaints Manager in a separate complaints file.

5.3 Making complaints information accessible

5.3.1 For service users with difficulty reading, writing or speaking English, the local authority should identify a suitable method of communication so that these users can express their complaints in full. In the case of complaints involving people with special needs or within specific community groups, it is established best practice to meet the complainant to explain any report in person. Ensuring that the complainant understands the report as far as is possible, might also involve the provision of information (including responses to complaints) in large print, translation or in other formats.

5.3.2 For people with special needs, such as learning disabilities, sensory or physical impairment or with mental health problems, the Complaints Manager should liaise closely with the authority’s specialist teams and relevant voluntary bodies to ensure that the complainant is able to express their complaint in full. (See also Section 3.4 on Providing Advocacy and Support). The complainant should have confidence that the authority can provide as thorough a response as for any other service user.

5.4 Diversity Monitoring

5.4.1 Local authorities should, where possible and appropriate, ensure that they ask the complainant to define their own ethnic origin, gender, any disability and age. It is important that authorities seek to:

- identify an accurate picture of current service use by ethnic origin, age, gender,
sexual orientation and disability;

• highlight where take-up or use of services could be improved or reviewed;
• provide a base-line for planning, target-setting and measuring change in service use;
• ensure that services are accessible equally to all sections of the community who may be in need of them;
• highlight whether any distinct needs exist amongst members of minority groups in relation to a particular service, for which special provision may be necessary; and
• ensure that existing policies and procedures are not inadvertently discriminating against any particular group.

5.5 Annual Report

5.5.1 Local authorities are required to publish an Annual Report, covering the council year. The Annual Report should draw upon the information already gathered under section 5.1 for recording purposes. However, the Annual Report is a separate requirement and should not contain personal information that is identifiable about any individual complainant.

5.5.2 The Annual Report should be arranged by the Complaints Manager and should provide a mechanism by which the local authority can be kept informed about the operation of its complaints procedure. The report should be presented to staff, the relevant local authority committee and should be made available to the regulator and the general public. It should provide information about:

• the number of complaints at each stage and any that were considered by the Local Government Ombudsman;
• which customer groups made the complaints;
• the types of complaints made;
• the outcome of complaints;
• details about advocacy services provided under these arrangements;
• compliance with timescales, and complaints resolved within extended timescale as agreed;
• learning and service improvement, including changes to services that have been implemented and details of any that have not been implemented;
• a summary of statistical data about the age, gender, disability, sexual orientation and ethnicity of service users; and
• a review of the effectiveness of the complaints procedure (see section 5.6 on Monitoring and Quality Assurance).

5.5.3 In order to demonstrate learning from complaints, analysis of trends and closer working with relevant bodies (such as the NHS), individual local authorities may wish to agree a common format for their reports and reporting cycles. For more information and good practice in producing Annual Reports, visit the Commission for Social Care Inspections Website at: www.csci.gov.uk.

5.6 Monitoring and Quality Assurance
5.6.1 Local authorities should monitor the operation and effectiveness of their complaints procedure as well as how information about complaints is being used to improve services and delivery. Local authorities should ensure that their quality assurance systems include a cycle of planning with outcomes fed back into operational delivery. All local authorities should provide a system for:

- the dissemination of learning from complaints to line managers;
- the use of the complaints procedure as a measure of performance and means of quality control; and
- information derived from complaints to contribute to practice development, commissioning and service planning.

5.6.2 The information collected during the monitoring process and during consideration of individual complaints should provide invaluable feedback on performance management of the local authority’s services. It should also highlight how effective communication is within the local authority and to the public, where staff training is required and whether resources are being targeted appropriately. This should be fed back into systems in order to facilitate and improve policy and practice.

6 Problem Solving and Resolution

6.1 Resolving the Issue

6.1.1 Solving the problems that generate complaints should be at the forefront of the local authority’s approach to responding to its service users. Involving people and agencies in the community who provide independent advice can assist problem solving and may prevent dissatisfaction developing into complaints.

6.1.2 Staff should consider when an unresolved problem becomes a complaint. It is important to ensure that attempts at problem solving should not be used to divert an eligible person from making a complaint under the statutory procedure.

6.1.3 Attempts at problem-solving should not end once a complaint has been made. Rather, there should be continued efforts during Stage 1 to resolve the dissatisfaction of service users so that the matter complained about is resolved during consideration of the complaint. Local authorities should also consider alternative ways of resolving the complaint while any given Stage is ongoing.

6.1.4 There are a number of methods of resolution that do not require a full investigation that can be applied, including:

- the provision of an apology or explanation;
- conciliation and mediation;
- a reassessment of the service user’s needs;
- practical action specific to the particular complainant;
- an assurance that the local authority will monitor the effectiveness of its remedy; and
- consideration of the need for a financial payment.
These methods are commonly referred to as Alternative Dispute Resolution ADR).

6.2 Alternative Dispute Resolution (ADR)

6.2.1 Nothing in this procedure should preclude either the complainant or the local authority from suggesting Alternative Dispute Resolution. If agreed by both complainant and Complaints Manager, the local authority should explore this option.

6.2.2 A popular option to explore within ADR is mediation. Mediation is an intervention whereby a third party helps the parties to reach a new, common understanding. It gives space to resolve issues, preserve on-going relationships and time to defuse or calm heightened situations.

6.2.3 There are certain principles which must apply when mediation is adopted:

- it is confidential;
- it is without prejudice;
- the mediator/conciliator is impartial, independent and non-judgemental;
- it encourages collaboration, working with people (rather than against them);
- it offers a structured and open approach to conflict resolution;
- it seeks to help parties identify their own and others feelings and interests rather than defend positions; and
- all parties are willing to be involved and are committed to seeking a resolution.

6.2.4 The key to effective mediation is to:

- offer it as early as possible before positions become entrenched;
- promote an understanding of the benefits of mediation and conciliation among staff who may find themselves the subject of complaint; and
- be clear that this is a confidential process.

6.3 General Principles of Redress

6.3.1 Under Section 92 of the Local Government Act 2000, local authorities are empowered to remedy injustice arising from maladministration. Remedies should include, but are not restricted to, financial redress.

6.3.2 Each case should be considered on its own merits, and local authorities should develop their own policies to assure consistency across similar injustices. These should ensure that any remedies are implemented reasonably quickly and/or action taken within a defined framework.

6.3.3 Any application of remedies should:

- be appropriate and proportionate to the injustice;
- put the complainant in the position he would have been in except for the fault;
- consider financial compensation, where the above is not possible;
- take into account the complainant’s views and desired outcomes; and
• take into account the effect of the complainant’s own actions (such as delay on his part).

6.4 Financial Redress

6.4.1 There are different reasons why financial redress may arise. These include:

- compensation;
- quantifiable loss;
- loss of a non-monetary benefit;
- loss of value;
- lost opportunity;
- distress; and
- time and trouble

6.4.2 When considering financial redress, the local authority should also consider the following issues:

- whether it is appropriate to offset compensation in instances where the complainant owes money to the authority. This would apply for any costs owed to the authority as a whole, rather than to a single service;
- where the complainant has incurred expenses or suffered financial loss, the authority should also consider whether it is appropriate to pay for loss of interest as well. The Local Government Ombudsman has recommended the standard rate set by the County Court; and
- it may also be appropriate to calculate a financial remedy as a formula which takes into account all known factors.

6.4.3 The Local Government Ombudsman also provides helpful advice on a wide range of issues relating to redress on its website www.lgo.gov.uk.

6.5 Deferring (Freezing) Decisions

6.5.1 If the complaint is about a proposed change to a care plan, a placement or a service, the decision may need to be deferred (frozen) until the complaint is considered. However, care should be taken if deferring a decision is likely to have a significant effect upon the mental or physical wellbeing of an individual.

6.5.2 The decision to defer should normally be made through detailed discussion and risk assessment between the Complaints Manager and the manager responsible for the service, within the context of the work being undertaken with the service user. Decisions need to be made on a case-by-case basis, but there should generally be a presumption in favour of freezing, unless there is a good reason against it (for example, if it puts a service user at risk). In cases where decisions are met with opposing views, advice should be sought from the appropriate Director in the local authority.
7 Relationship with Other Procedures

7.1 Working with Other Procedures

7.1.1 Every local authority will have other procedures which have a significant bearing on the complaints procedures, for example:

- child protection;
- protection of vulnerable adults
- court proceedings,
- grievance procedures and
- disciplinary procedures.

7.1.2 It is important that the relationships between procedures are clear and that their content is consistent. Procedures may also need to link within the NHS and other agencies contributing to services. For example, NHS staff may become involved in residential homes and Protection of Vulnerable Adults work. Other agencies who may be involved in care services include, housing authorities, voluntary and private domiciliary organisations, the Probation Service and the Police.

7.1.3 It is essential that local authorities separate out complaints appropriate to other procedures and cases where some joint action is required. The Complaints Manager should provide advice to staff until any concurrent investigations are resolved. There should be effective coordination between the agencies involved and complainants should be provided with clear information as to how inter-agency matters will be dealt with.

7.1.4 In considering a complaint which is subject to concurrent investigation under one of the above procedures, local authorities should be careful not to do anything that may compromise or prejudice the other investigation. In such circumstances, the Complaints Manager should be mindful of developments and liaise closely with other staff.

7.2 Grievance and Disciplinary Procedures

7.2.1 Complaints procedures should be kept separate from grievance procedures (which concern staff issues, i.e. conditions of service) and disciplinary procedures (which apply to the actions of staff in relation to failures to comply with job descriptions).

7.2.2 Where complaints contain an element of grievance or discipline, the local authority should keep the complainant, and its staff, informed about progress in handling both the complaints and the disciplinary or grievance elements as appropriate and with regard to normal staff confidentiality.

7.2.3 Staff can feel confused and intimidated by systems which reinforce implications of culpability if a member of staff is named. It is important to be able to reassure staff that they should not be held personally liable for carrying out resource decisions or allocations of service, according to the authority’s criteria. In many cases they will have been named because they are the person best known to the user or carer.
7.3 Concurrent Investigations

7.3.1 The handling of a complaint may coincide with action under the disciplinary procedures or on occasion, Police investigation.

7.3.2 The local authority should ensure that alternative procedures can run concurrently with the complaints procedure. For example, a complaint about a deficiency in service may also bring to light issues of a disciplinary nature. If there are still substantive issues around the deficiency in service to be resolved, the fact that disciplinary procedures commence is not a reason to stop the complaints process carrying on in respect of the service issue (unless to do so would compromise or prejudice the concurrent investigation).

7.3.3 Decisions on how to proceed should be based on individual cases. Local guidance may be necessary on how priorities are identified and decisions made in relation to them. Local guidance should draw clear distinctions between a complaint, a grievance, legal proceedings and the reporting of a matter that is a criminal offence. The local authority will need to consider how best to inform service users which procedure is being applied in their case and why.

7.3.4 The local authority should also make clear to staff (and trades unions and professional associations) that consideration of the complaint is separate to any necessary action under the grievance or disciplinary procedures. In such cases, staff should be kept informed of progress of the complaint, but they should not be given any details that would breach confidentiality or work against the complainant’s best interest.

7.3.5 The local authority has discretion not to commence the complaints investigation where to proceed with it would compromise a concurrent investigation under another procedure. However, the complaints investigation should start or resume once the concurrent investigation is discontinued or completed. Where the local authority decides not to consider a complaint in this circumstance it must notify the complainant of the extent to which the complaint will not be considered and the reason why.

7.4 Cross-Boundary Issues

7.4.1 A potential area of confusion can arise around boundaries between the local authority’s responsibilities and those of other bodies delivering services on behalf of the authority. This can happen, for example, where the local authority provides domiciliary care through a private agency, and the service user wishes to complain about aspects of this service.

7.4.2 Boundary issues can occur among:

- Registered homes;
- Domiciliary Care Services;
- Contracted agencies and multi-agency services;
- Adult Placement Schemes;
- Social work reports submitted to Court;
- Protection Of Vulnerable Adults;
• Multi–agency Health Service packages; and
• Single or joint Assessments

7.4.3 It is important that the authority is alert to cross-boundary issues and that the Complaints Manager has protocols in place for the successful handling of these complaints. Partner agencies should have appropriate procedures of their own in place for responding to complaints in the first instance.

7.5 **Complaints made to a local authority about an NHS Body**

7.5.1 Sometimes a complaint crosses over boundaries between a local authority and the NHS. Where this happens, people who use services should not have to worry about who to approach with complaints about different aspects of the service that they receive. Instead, the complaint can be made in its entirety to any one of the bodies involved.

7.5.2 Where the complaint consists of elements relating to both social services functions and services provided by an NHS body, the local authority should, within 10 working days, ask the complainant if he wishes details of the NHS complaint to be sent to the relevant NHS body. If the complainant agrees, the local authority should send the NHS complaint to the NHS body as soon as reasonably practicable. It should also advise the complainant which parts of the complaint the local authority is considering.

7.5.3 The regulations place a duty on local authorities and NHS bodies to cooperate with each other and to agree which of the two bodies takes the lead in handling complaints against them in order to provide a coordinated response. Both bodies should aim to address the complaints as fully as possible by answering questions, providing information and attending meetings in connection with the consideration of the complaint where appropriate.

7.5.4 Ideally, both responses should be completed simultaneously and reports delivered to the complainant together. In order to facilitate this, the two bodies should aim to work to the shorter of their respective complaints procedure timescales.

7.5.5 The arrangements set out above for identifying a lead body apply only where the matters raised concern both bodies. However, sometimes, one body receives a complaint about the actions of another. This can happen where the complainant does not understand which organisation is responsible for which service, but can also happen where there is an important issue of trust – someone might, for example speak to a social worker he trusts about his concerns over his treatment by the NHS, or approach a District Nurse about a carer employed by the local authority.

7.5.6 Where local authorities receive a complaint that is about services provided by an NHS body, and is subject to consideration under the National Health Service (Complaints) Regulations 2004, they should, within 5 working days, ask the complainant if he wishes the NHS complaint to be sent to the NHS body. The complaints manager should, if the complainant agrees, then forward the complaint to the NHS body as soon as reasonably practicable. Any doubts or disagreement over which body is responsible for handling the complaint should be resolved in a timely manner before the complaint is despatched. This decision, and the action taken, should then be recorded in writing.
7.5.7 Services may be delivered by one body acting on behalf of another. For example, a local authority may deliver NHS functions delegated to it under Section 31 of the Health Act 1999. In such cases, it remains the NHS body's responsibility to receive complaints about the delegated service. However, no matter where the responsibility for receiving complaints rests, the local authority delivering the delegated service should make every effort to resolve the problem anyway. This may negate the need for the service user to use the NHS complaints procedure. However, if the service user wishes to make a complaint, he should be given information on how to access the complaints procedure of the NHS body that has delegated the service.

7.6 Complaints Involving Regulated Services

7.6.1 With regard to those services that are regulated (including local authority functions) specific complaints procedures are required under separate regulations and National Minimum Standards under the Care Standards Act, 2000. They are therefore distinct from the complaints procedures for local authorities that are outlined in this guidance. Understandably, confusion may sometimes exist about which complaints procedure is appropriate for specific sets of circumstances.

7.6.2 Complaints are likely to arise from the following issues:

- Commissioning;
- Placement arrangements;
- Placement monitoring;
- Personal needs reassessments;
- Funding;
- Contractual arrangements;
- Service agreements;
- Service quality; and
- Care regime matters not covered by regulations and National Minimum Standards.

7.6.3 If the Complaints Manager receives such a complaint, he should normally direct it to the service provider. Where the local authority is responsible for the original assessment of need that led to a placement and associated funding, then the complainant should, in most instances, have recourse to the local authority's complaints procedure. However, access to the local authority's complaints procedure does not apply to people with private self-funding arrangements (see section 2.6, Complaints from Self-funded Users of Independent Services).

7.6.4 The complainant should also feel able to make a single complaint to the provider or the local authority and have this considered by the relevant parties as necessary. The Complaints Manager should therefore ensure good communication with all other parties, and organisations should discuss the details of the complaint to ensure a seamless response.

7.6.5 It is possible for someone to have two complaints ongoing at the same time. One to a care home, for example, about how it meets the regulations and/or Standards, and one to the local authority about how it has fulfilled its function in relation to the provision of
services to meet the needs of the individual.

7.6.6 The local authority has responsibilities in terms of fulfilling its social services functions, and the regulator has the responsibility for ensuring that regulated providers (e.g. care homes) meet the appropriate regulations and National Minimum Standards.

7.6.7 Where local authorities receive a complaint that is about services provided under the Care Homes Regulations 2001, they should within 5 working days, ask the complainant if he wishes details of the complaint to be sent to the registered person. If the complainant agrees, the local authority should send the complaint to the registered person as soon as reasonably practicable. Details of the relevant parts of the complaint should also be sent to the local authority’s care management team and the contract monitoring team. Any issues of safeguarding and potential vulnerability of the user should be confirmed by the Complaints Manager with the service user before releasing the complaint to the relevant care service provider.

7.6.8 Where the complaint consists of elements relating to both social services functions and services provided under the Care Standards Act 2000, the local authority should cooperate with the provider to ensure that the complainant receives a coordinated response dealing with all aspects of the complaint. The local authority should, within 10 working days, ask the complainant if he wishes details of the Care Standards element of the complaint to be sent to the registered person. If the complainant agrees, the local authority should send the Care Standards element of the complaint to the registered person as soon as reasonably practicable. It should inform the complainant when it has done this as well as which element of the complaint the local authority is considering.

7.6.9 If the complainant considers that he has suffered an injustice as a result of any significant delay or failure by the authority to refer the complaint to the registered person, he is entitled to raise concerns to the local authority. The local authority should then deal with this matter under the appropriate procedure.

7.6.10 Boundary issues also arise with regard to other regulated services, as listed above. The Complaints Manager should apply the above guidance in a similar manner with regard to these services as well (see the section 7.4 on Cross-Boundary Issues).

7.6.11 The Complaints Manager should also be alert to Protection Of Vulnerable Adults (POVA) issues with regard to complaints relating to these services, as the customer groups are likely to be particularly vulnerable. The local authority has discretion to suspend the complaints process while the POVA process is ongoing. The complainant may wish to reinstate the complaint after the conclusion of any consideration under POVA regulations and should be informed of the right to do so. However, this may not be a reason to stop the complaints process carrying on in respect of any other element of the complaint, unless to do so would compromise or prejudice the POVA process.

7.7 The Role of the Regulator

7.7.1 The following information sets out the role and relationships of the regulator.

7.7.2 The Care Standards Act 2000 and the Health & Social Care (Community Health & Standards) Act 2003 define the role of the regulator in social care (currently the
The regulator’s role is to ensure compliance with the regulations and associated National Minimum Standards (NMS).

7.7.3 Complaints Managers should establish good communication with the regulator to ensure clarity in handling complaints involving regulated care services. Assumptions should not be made that a matter of complaint is the responsibility of one agency or another without agreeing the respective lines of accountability.

7.7.4 The regulator is not a complaints agency and has no statutory duties or powers for the investigation of complaints about either care services or local authority social services. It can only consider matters relating to the provider’s compliance with regulations and National Minimum Standards. It should also not be seen as a mediator between care service providers and those commissioning or using a service.

7.7.5 Where the regulator receives information indicating a concern, complaint or allegation about a care service, it undertakes an assessment of that information and the accumulated evidence about the care service to determine the nature of its response. In the case of concerns and complaints, the regulator normally refers the matter to the care service provider and/or commissioning agency (where applicable). This highlights the importance of complaints procedures for both care services and local authorities.

7.7.6 However, in certain circumstances the regulator may undertake direct enquiries using its powers of inspection. This will most commonly be where there has been a breach of regulations indicating the need for the regulator to issue recommendations and requirements, or to take other enforcement action.

7.8 Building a Seamless Service with the Local Authority's Other Complaints Procedures.

7.8.1 Where a complainant has other related complaints that do not fall within the statutory procedure, the local authority may wish to consider whether there are advantages in accepting these into a single investigation through this procedure. If the local authority does not feel that would be beneficial it should apply the following guidance.

7.8.2 Building links with the local authority’s other complaints procedures can be an essential way to develop the overall corporate obligation of the local authority to provide a high quality service. Local authorities are encouraged to offer a complete single response to complainants where possible, for example where a complainant has complaints relating to both a local authority’s housing and social services functions.

7.8.3 The Complaints Manager responsible for social services should liaise with other staff as relevant. These members of staff should agree who will take the lead, to make sure that the complainant is kept informed and, wherever possible, gets a single reply that covers all aspects of his complaint.

7.8.4 The local authority should also respond promptly by meeting the shorter of whichever timescales apply and should ensure that this process is not confusing for the complainant.
7.9 **Court Orders**

7.9.1 The procedure outlined in this guidance is not an appeals procedure. People wishing to appeal against Court orders should approach the Court. However, dissatisfaction about a local authority’s management or handling of a complainant’s case, even where related to a Court order, may be appropriately considered by the complaints procedure, for example, conduct of social work staff involved in Court procedures. It is for the local authority to identify whether these circumstances might be considered under this procedure. The complainant should also be informed that the complaints procedure cannot overturn a Court decision.

7.9.2 The local authority should also consider whether any possible complaint relating to records used in Court may also constitute a challenge to accuracy of the records it holds under the Data Protection Act.
Annex 1

Definition of roles

The Complainant

The following tasks are not binding with regard to the complainant. They should instead, be used as guidance for local authorities to communicate to people wishing to complain. The complainant should receive more effective responses to his complaint where he:

- cooperates with the local authority in seeking a solution to the complaint;
- expresses his complaint in full as early as possible;
- responds promptly to requests for information or meetings or in agreeing the details of the complaint;
- asks the Complaints Manager for assistance as needed; and
- treats all those involved in the complaint with respect.

Complaints Manager

Key tasks for the Complaints Manager may include:

Overseeing the Procedure by:

- managing, developing, resourcing and administering the complaints procedure;
- overseeing the receipt and investigation of complaints that cannot be resolved initially;
- appointing Investigating Officers, Review Panellists and Independent Persons (as appropriate);
- ensuring that there are no conflicts of interest at any stage between parties involved in delivering the procedure;
- cooperating with such other persons or bodies as may be necessary in order to investigate or resolve complaints;
- promoting local resolution;
- monitoring the progress of the investigation and ensuring its smooth running;
- making recommendations to the local authority on any other action to take following an investigation;
- working closely with the Panel Chair on the organisation of Stage 3 Review Panels;
- monitoring and reporting on time scales;
- maintaining a written record of complaints made, the procedure followed and the outcome;
- compiling the annual report;

Maintaining a customer focus by:

- providing a sensitive, customer-focused service for representations and complaints;
- providing help and advice to people who may wish to make a complaint so that they understand the options available for resolution, both within the complaints procedure
or through alternative routes of remedy and redress;

- ensuring that independent advocacy is explained, offered and provided, when required;
- ensuring the complainant and key people are kept informed at all stages, and offering advice where required, particularly on the response of the authority;
- offering advice on the response of the local authority;
- providing practical support to complainants;
- promoting the use of Independent Persons where necessary for vulnerable adults;

Supporting the local authority by:

- providing guidance, advice and support to staff on management of complaints;
- supporting staff involved in all stages of the complaints procedure;
- commissioning appropriate training;
- overseeing the arrangements for publicity;
- evaluating and reporting on the numbers, types, outcomes and trends of complaints to inform practice, development and service planning;
- maintaining a pool of people with skills and training needed to conduct investigations;
- ensuring that commitments given in responses (including adjudications) are implemented;

Investigating Officers (IOs)

The Investigating Officer has overall responsibility for investigating the complaint at Stage 2. Where a member of staff, the Investigating Officer should not be within line management of the service being complained about.

Local authorities may ask the Investigating Officer to undertake these tasks:

- providing a comprehensive, open, transparent and fair consideration of the complaint through:
  - sensitive and thorough interviewing of the complainant;
  - consideration of social work records and other relevant information;
  - appropriate interviews with staff and other people relevant to the complaint;
  - analysing information;
- working to tight timescales;
- prioritising work appropriately;
- writing a clear investigation report in plain language;
- effectively liaising with the complainant or his advocate, the Independent Person and the Complaints Manager as appropriate;
- providing an open, transparent and fair consideration of the complaint; and
- identifying solutions and recommending courses of action to resolve problems.

Independent Person (IP)

Legislation requires local authorities to involve an Independent Person (IP) in the investigation of complaints at Stage 2 of the Children Act procedures. The appointment of IPs should also be considered at Stage 2 of the Adult procedures on grounds of vulnerability of the complainant or the complexity of the complaint.
The person appointed should not be an employee of the local authority, or a spouse of an employee or member of the authority. Former local authority staff should be considered eligible as long as at least three years have elapsed since they were employed by the local authority.

The Independent Person cannot undertake any other roles in the consideration of the same complaint (such as Advocate, or Review Panellist).

The local authority should refer the Independent Person to the duties set out for the Investigating Officer above as appropriate.

The Independent Person should also:

- ensure that the process of investigation is open, transparent and fair;
- work alongside the Investigating Officer to provide an independent and objective view to the investigation of complaints;
- see the same relevant files and documents as the Investigating Officer;
- participate in all interviews and discussions relevant to the investigation;
- read the Investigating Officer’s report and produce his own report on the investigation;
- comment on each of the complaints and state whether he agrees with the Investigating Officer’s findings on them; and
- explain, where necessary, his reasons for considering an investigation to be unfair or incomplete and to advise the complainant of these in his report.

Advocates in the Complaints Procedure

The role of the advocate was established under the Advocacy Services Representations Procedure (Children) (Amendment) Regulations 2004.

The advocate should provide independent and confidential information, advice, representation and support. Further guidance on advocacy can be found in Get it Sorted: Providing Effective Advocacy Services for Children and Young People Making a Complaint under the Children Act, 1989. Department for Education and Skills, 2004. The local authority may wish to apply aspects from this for adults seeking to complain as appropriate.

Senior Managers

A Senior Manager, within the context of this guidance, is a manager in the local authority with a senior position to make strategic decisions regarding service delivery. This role would ordinarily be met by an Assistant Director or above (though specific designations will vary within each local authority).

Senior Managers fulfil two specific roles and should liaise with the Complaints Manager as necessary in delivering these:

Adjudicating Officer

The Adjudicating Officer should normally be a Senior Manager reporting to the Director responsible for Adult Services.
The purpose of the Adjudicating Officer is to consider the complaints, the Investigating Officer and Independent Person’s findings, conclusions, and recommendations, and the complainant’s desired outcomes.

The Adjudicating Officer normally invites the complainant to an adjudication meeting, either before or after writing his adjudication.

The Adjudicating Officer writes to the complainant at the end of Stage 2 to with details of the adjudication which:

- confirms the local authority’s response to the report;
- gives his view on whether the investigation has been thorough and complete;
- states his position on the Investigating Officer’s and Independent Person’s findings against each point of complaint;
- states any actions that he may be taking and their timescale for implementation;
- confirms the complainant’s right to request Stage 3 within 20 working days; and
- remind the complainant of his right to approach the Local Government Ombudsman at any time.

The Adjudicating Officer issues the investigation report and the IP’s report (where applicable) to the complainant, normally with his adjudication response.

He should also release the report(s) to his staff as appropriate.

**Local Authority Representative at the Panel Review**

This role refers specifically to the Stage 3 Review Panel and should ordinarily be filled by the same Senior Manager who acted as Adjudicating Officer. Where the Adjudicating Officer delegates this role, he should do so to a member of staff with sufficient status and authority in the local authority to represent it.

The Adjudicating Officer should represent the local authority, however, where he has rejected any of the Investigating Officer’s findings at Stage 2 or where the Panel Chair requests his attendance.

The Local Authority Representative should:

- provide further information to the Clerk to support the local authority’s position;
- consider whether any other member of staff should attend to address specific issues and request their attendance through the Chair;
- prepare a presentation to give to the Panel on the day;
- keep all staff involved in the complaint, who are not attending the Panel, informed of the proceedings; and
- act on any recommendations from the Panel (as required by the Director).

**Review Panellists**

The Panel consists of a Chair and two other people appointed by the local authority. The Chair should always be independent, as should at least one of the other two Panellists. Depending on local arrangements, the local authority may wish to use an elected Member for
the third Panellist. An elected Member is any person elected by popular vote by the local population of the local authority.

The independent Panellist should be neither an elected member nor an employee of the local authority, nor a spouse of an employee or member of the authority. Former members of local authority staff should be considered eligible on a case by case basis.

These Panellists should:

- read Panel papers in advance of the meeting;
- attend for the entirety of the Panel and contribute to the consideration of the complaint through the Chair;
- support the Chair by taking an active part in the decision making process;
- contribute to deliberations and the wording of the Panel's findings; and
- provide relevant expert opinion based on the specialist skills, knowledge and awareness that they have in respect of the presenting complaint.

**Independent Chair of the Review Panel**

The Chair should be appointed by the Complaints Manager and their role is to:

- confer with the Complaints Manager about the specific needs of the complainant;
- to agree who should attend as the Local Authority Representative and request the attendance of any other persons who may assist in understanding the complaint and its context;
- chair the Panel meeting by ensuring that the complaint is heard in full;
- operate flexibly in response to the individual needs of each Panel;
- ensure that the Panel runs smoothly and that each participant is given an opportunity to contribute appropriately;
- ensure that all participants are treated with respect throughout the process;
- in consultation with the other Panellists, ensure that the premeeting, presentations and deliberations are of proportionate length to ensure appropriate consideration of the complaint and to enable the Panel to reach its conclusions;
- manage the Panel’s deliberations to produce a timely and full response to the complainant and local authority within five working days of the Panel meeting;
- ensure that any disagreements of position among the Panellists are recorded and seek to reach a majority decision where necessary; and
- be available to meet local authority staff, if needed, after the Panel meeting to discuss any recommendations arising.

**Clerk to the Panel**

The Clerk’s role should be to provide administration support. This role should be filled by a separate officer to that of the Complaints Manager. The Clerk should facilitate the creation of the Panel through to the production of its final recommendations to the local authority.

The Clerk should:
• organise the venue, facilities and refreshments;
• organise the distribution of written submissions from the complainant and the authority;
• work closely with the Complaints Manager and Chair as required;
• ensure that procedure on the day is adhered to;
• take notes to facilitate the Panellists’ decisions;
• specify with the complainant whether he wishes to bring any representatives or witnesses with him and assist as necessary; and
• provide administrative support to the Chair and Panel to produce the final recommendations within five working days.
Annex 2

Good Practice for Investigating Officers

General Points

1. Be aware of the timescale and the importance of providing a thorough investigation;
2. Work closely with the Complaints Manager (and Independent Person and Advocate where appropriate) on all aspects of the investigation and report writing, including keeping the complainant informed of progress;
3. If the media is involved (local or national press, television or radio etc.) maintain strict confidentiality and notify the Complaints Manager;
4. Consider whether it is helpful to hold any meetings away from an environment that may be causing distress;
5. If appropriate, visit the establishment complained about unannounced to check normal practice;
6. IOs should adhere to all relevant legislation (e.g. Data Protection Act, Health and Safety Act and the Human Rights Act);
7. IOs should also work closely with all others involved in the investigation, especially where an Independent Person is involved.

Getting Started

8. Contact the complainant, ideally by phone, to offer a meeting in person. This meeting should explain the investigation procedure and:
   a) clarify the complaint and all its individual parts, and produce a written record;
   b) ask what the complainant wants in terms of solution or outcome;
   c) check whether the complainant needs support of any kind, in order to understand the discussion properly; and
   d) determine whether the complainant needs support during the process e.g. an advocate;
   e) allow the complainant to explain how he feels and express any strong emotions that he has. Accept how the complainant feels (Acceptance does not mean agreement);
9. Read background on the complaint and the relevant legal and administrative policies and procedures;
10. Consider whether the complaint could be resolved without further investigation;
11. Assess whether the complaints procedure is the most appropriate way of handling this complaint. Consider alternative possible procedures, for example alternative dispute resolution (such as mediation) or appeals to tribunals, legal action or police involvement. If the complaints procedure is not appropriate, discuss the alternatives with the Complaints Manager.

Planning the Investigation

12. Obtain the relevant documents, such as files, log books and timesheets, insist on seeing the originals, not copies, and obtain copies of all the documents needed;
13. Produce a chronology from the relevant sequence of events from the files and identify the names of the individuals most directly involved in the content of the complaint;
14. Analyse and categorise the complaint into its different elements;
15. Identify a list of interviewees, notify them with as much notice as possible that the IO wishes to hold interviews, and supply them with relevant information on the complaint;
16. Arrange the order of interviews in a logical sequence as relevant to the particular complaint;
17. Inform all those to be interviewed that they may be accompanied by a friend or trades union representative, provided that this person is not within normal line management arrangements with the interviewee and that there are no issues of confidentiality;
18. Consider whether a witness of a particularly difficult interview is needed – this is also a good way of training new investigating officers;
19. Prepare the line of questioning for each interviewee.

Interviewing

20. Explain the complaint and your role clearly to the interviewee and confirm that they understand the complaints procedure and their role in it;
21. Interviews should be conducted in an informal and relaxed manner, while ensuring that due process is adhered to:
   a. use open not leading questions;
   b. do not express opinions in words or attitude;
   c. ask single not multiple questions, i.e. one question at a time.

22. Try to separate hearsay evidence from fact by asking interviewees how they know a particular fact;
23. Persist with questions if necessary. Do not be afraid to ask the same question twice. Make notes of each answer given;
24. Deal with conflicts of evidence by seeking corroborative evidence. If this is not available, discuss with the Complaints Manager the option of a meeting between the conflicting witnesses;
25. Make a formal record of the interview from the written notes as soon as possible while the memory is fresh. Show the interviewee the formal record, ask if he has anything to add, and ask him to sign the record as accurate.

The Investigation Report

26. Draft the report and show it to the Complaints Manager. The Complaints Manager can advise on local practice. The draft report should include:
   a. chronology;
   b. list of interviewees;
   c. the complaints set out in a numbered list;
   d. the IOs analysis and findings for each point of complaint;
   e. record of relevant policy, practice and legislation;
   f. the IOs recommendations and response to the complainant’s desired outcomes;
   g. any other relevant information; and
   h. a separate addendum for any other issues for the local authority.

27. Consider comments from relevant persons such as the Complaints Manager and Independent Person and amend the report as necessary;
28. Notify the Complaints Manager that the final report is complete, he can advise as to how this will be released;

This annex is based on information originally published in *The Right to Complain* and compiled with the help of the Office of the Commission for Local Administration (the Local Government Ombudsman).
Annex 3

Early Referral to the Local Government Ombudsman

Where the presenting facts indicate that reasonable, appropriate consideration of the complaint has been undertaken at Stage 2 and that further consideration by the Review Panel would not produce a demonstrably different outcome, the Complaints Manager should discuss the possibility of Early Referral to the Local Government Ombudsman with the complainant.

The authority can only consider this option once Stage 2 has been concluded and the complainant has received the authority’s final position on the complaints.

There are a number of important safeguards that should be in place before proceeding with this option. Stage 2 should have delivered:

- a very robust report;
- a complete adjudication;
- an outcome where all complaints have been upheld (or all significant complaints relating to service delivery in respect of the qualifying individual);

and:

- the local authority is already providing a clear action plan for delivery; and/or
- the local authority agrees to meet the majority or all of the desired outcomes presented by the complainant regarding social services functions.

Where this is the case, and the complainant agrees, the Complaints Manager can then approach the Local Government Ombudsman and ask him to consider the complaint directly, without first going through a Review Panel.

It is important to note that the Ombudsman has the power to investigate complaints made by members of the public in writing. Therefore, the local authority and the complainant should agree a written statement of the complaint for release, by the authority, to the Ombudsman.

The Ombudsman will then apply a test of reasonableness to this decision. If the Ombudsman concludes that the Early Referral was incorrect, he may select from a range of responses. This may include proposing that the complaint is considered by the local authority at a Stage 3 Review Panel in the normal manner.

Early Referral will also not restrict the Ombudsman from later consideration of the complaint if he so chooses.
Annex 4

Unreasonably Persistent Complainants

Local authorities are committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who complain. As part of this service they do not normally limit the contact complainants have with their offices. However, there are a small number of complainants who, because of the frequency of their contact with the local authority, hinder consideration of their own complaints.

Where a local authority encounters unresolvable and persistent complaints, it should consider all aspects of why this situation may be developing.

It is also important to distinguish between people who make a number of complaints because they really think things have gone wrong, and people who make unreasonably persistent complaints.

An initial question to ask is: why is this complainant persisting with his complaint? If it is because the complaints have not been considered in full then the local authority should address this (normally by invoking the next stage). However, if the authority has already done so and has demonstrated this to the complainant, then the Complaints Manager should consider whether the complainant is now inappropriately persistent. The following guidance should only be pursued where absolutely necessary.

Persistent Complainants

Features of a "persistent complainant" may include:

- a person who makes the same complaint repeatedly (with minor differences), but never accepts the outcomes;
- a person who seeks an unrealistic outcome and persists until it is reached; or
- a person with a history of making other unreasonably persistent complaints.

Unreasonably persistent complaints

An unreasonably persistent complaint is likely to include some or all of the following:

- the complaint arises from a historic and irreversible decision or incident;
- contact with the local authority is frequent, lengthy, complicated and stressful for staff;
- the complainant behaves in an aggressive manner to staff when he presents his complaint or is verbally abusive or threatening;
- the complainant changes aspects of the complaint partway through the investigation or Review Panel;
- the complainant makes and breaks contact with the local authority on an ongoing basis; or
- the complainant persistently approaches the local authority through different routes about the same issue in the hope of getting different responses.

There are a number of principles that the authority can apply. The most important being that the complainant receives the same standard of response as any other service user, and that
the authority can show that it has not discriminated against the persistent complainant.

If the situation is challenging but it is possible to proceed, staff should avoid giving unrealistic expectations on the outcome of the complaint.

**Action in Response**

Where the relationship becomes unworkable, the Complaints Manager should ensure that he demonstrates that he has considered the complaints as fully as is appropriate. This should normally be through advising the complainant that:

- he does not constitute a person who may complain and/or that his complaints do not fall within the relevant criteria for what may be complained about;
- the local authority has either offered or provided consideration of the issues through another procedure (e.g. the corporate complaints procedure);
- the local authority will consider the substantive issues at all stages of the complaints procedure;
- where the local authority has attempted to move the complaint on to the next stage but the complainant has either refused or delayed such progression through excessive objection to the process rather than addressing the substantive issues of the complaint themselves, the local authority should advise the complainant that this is causing delay and is unreasonable use of the complaints procedure.

If the complainant does not pursue the complaint at the next stage, and continues nonetheless to correspond, the correspondence should be considered. If it raises no significant new matters and presents no new information, the complainant should be informed that the local authority is not entering into any further correspondence about the matter. If the complainant still does not take this advice, any further correspondence that does not present significant new matters or new information should only be acknowledged (rather than acted upon).

In some instances, abusive, threatening or other unreasonable behaviour may be a feature of the complainant’s disease or mental illness (e.g. chronic anxiety or stages of dementia). In such cases, if possible, the local authority should consider securing a whole case review from all professionals involved. The local authority should refer to the Mental Capacity Act.

However, this does not mean that the local authority does not continue to restrict access and each case should be considered on its individual merits.

**Restricting Access**

The decision to restrict access to the complaints procedure should be taken by the Complaints Manager and should follow a prior warning to the complainant. Any restrictions imposed should be appropriate and proportionate. The options that the Complaints Manager is most likely to consider are:

- requesting contact in a particular form (for example, letters only);
- requiring contact to take place with a named officer;
- restricting telephone calls to specified days and times;
- asking the complainant to enter into an agreement about his future contact with the
local authority; and

• informing the complainant that if he still does not follow this advice, (as stated above) any further correspondence that does not present significant new matters or new information will not necessarily be acknowledged, but should be kept on file.

Any new complaints from people who come under this policy should be treated on their individual merits.

In extreme cases, the local authority may consider the following actions:

1. Referring the complaint to the Local Government Ombudsman before the complaints procedure has been exhausted (see Annex 3);
2. Advising the complainant that it cannot assist further and informing them of their right to approach the Local Government Ombudsman.

The distinction between the two options above is that Early Referral to the Local Government Ombudsman is a positive action that can only be undertaken in agreement between the local authority and the complainant. This is therefore the less likely option with persistent complainants.

Option 2 may arise where the local authority does not agree with the complainant that the complaints are substantively valid and the two parties disagree on the way forward. This is more likely with a persistent complainant. Should the local authority take this option, it should not contact the Ombudsman directly, but should indicate to the complainant that he may make this approach. The local authority should confirm to the complainant that it is not responding to the complaint further.

The Local Government Ombudsman is likely to apply the test of reasonableness over the local authority’s response in a similar manner to an Early Referral and will have a range of options open to him.

In all cases where the Complaints Manager decides to treat someone as an unreasonably persistent complainant, he should write to tell the complainant why he believes his behaviour falls into that category, what action he is taking and the duration of that action. He should also inform the complainant how he can challenge the decision if he disagrees with it (this should normally include information regarding the Local Government Ombudsman).

Where a complainant’s complaint is closed and he persists in communicating about it, the Complaints Manager may decide to terminate contact with that complainant as mentioned above.

Any new complaints from people who come under this policy should be treated on their individual merits.
Annex 5

Guidance on Unacceptable Behaviour

It is anticipated that “Unacceptable Behaviour” is a category that should only apply to a very small number of complainants.

It covers the possible escalation of a situation between the local authority and a complainant who moves from unreasonably persistent behaviour to unacceptable behaviour.

Dealing with complainants

Local authorities should be committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who make them. As part of this service, the local authority should not normally limit the contact complainants have to their offices. However, the local authority should not expect its staff to tolerate behaviour by complainants which is unacceptable. The local authority should take action to protect staff from that behaviour, including that which is abusive, offensive or threatening.

When the authority considers that a complainant’s behaviour is unacceptable it should tell him why it finds his behaviour unreasonable and ask him to change it. If the unacceptable behaviour continues, the authority should take action to restrict the complainant’s contact with its offices. In all cases, the local authority should write to tell the complainant why it believes his behaviour is unacceptable, what action it is taking and the duration of that action. The authority should also tell the complainant how he can challenge the decision if he disagrees with it (which may be through approaching the Local Government Ombudsman rather than any procedure provided by the local authority itself).

Restricting Access

The decision to restrict access to its offices should be taken by the Complaints Manager in consultation with colleagues. Any restrictions imposed should be appropriate and proportionate. The options the authority is most likely to consider are:

- requesting contact in a particular form (for example, letters only);
- requiring contact to take place with a named officer;
- restricting any telephone calls to be specified days and times;
- asking the complainant to enter into an agreement about his conduct; and
- applying its policy on Unreasonably Persistent Complainants.

The Complaints Manager should put a note on the complainant’s file regarding the option selected. The Complaints Manager should also inform the authority’s senior management of the action being taken. The local authority may wish to set a time limit on the duration of any restrictions applied to the complainant.

The local authority may also invite the complainant to appeal this decision to the senior management. This should ensure that there is an avenue for consideration of the restrictions.
**Terminating contact**

Where a complainant continues to behave in a way which is unacceptable, the local authority may decide to terminate contact with the complainant and discontinue any investigation into the complaint.

Where the behaviour is so extreme that it threatens the immediate safety and welfare of staff, the authority should consider other options, for example reporting the matter to the Police or taking legal action. In such cases, the authority may not give the complainant prior warning of that action.

In following this guidance, the Complaints Manager should refer to the Mental Capacity Act and all relevant human rights based legislation.
### THE NEW PROCEDURE FOR ADULTS COMPLAINTS

<table>
<thead>
<tr>
<th>Stage 1 – Local Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complainant brings concerns to the attention of the person providing the services locally. The local authority should consider mediation and conflict resolution at this stage and at all other stages. The local authority should make an initial attempt to resolve matters within 10 working days (unless an extension is agreed.)</td>
</tr>
</tbody>
</table>

If not resolved – or if there is agreement for investigation – or if complainant requests it

<table>
<thead>
<tr>
<th>Stage 2 – Investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The local authority should provide an investigation that produces a report and an adjudication within 25 working days (or within the extended period of 65 working days).</td>
</tr>
</tbody>
</table>

If requested by complainant

<table>
<thead>
<tr>
<th>Stage 3 – Review Panel</th>
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</thead>
<tbody>
<tr>
<td>A panel of 3 people (at least two of whom should be independent of the local authority) should meet to consider the complaint and produce recommendations.</td>
</tr>
</tbody>
</table>

If not resolved

Referral to Local Government Ombudsman (note that complainant can approach the Local Government Ombudsman at any stage).
The Local Authority Social Services Complaints (England) Regulations 2006

Made 27th June 2006
Laid before Parliament 29th June 2006
Coming into force 1st September 2006

Citation, commencement and application

1. These Regulations may be cited as the Local Authority Social Services Complaints (England) Regulations 2006 and shall come into force on 1st September 2006.

(1) These Regulations apply in relation to England only.

Definitions

2. In these Regulations—

“care standards complaint” means a complaint which—

(a) relates to services provided by an establishment or agency in respect of which a person (“the registered person”) is required to be registered under section 11 of the Care Standards Act 2000; and

(b) is not about the discharge of, or the failure to discharge, a relevant function;

“relevant function” means—

(a) a social services function within the meaning of section 1A of the Local Authority Social Services Act 1970; or

(b) a function which is discharged by a local authority under arrangements made between a local authority and an NHS body under section 31 of the Health Act 1999, but does not include any function which may be the subject of representations under sections

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(1) 2003 c.43.
(2) 2000 c.14; section 11 was amended by the Adoption and Children Act 2002 (c.38) (“the 2002 Act”), Schedule 3, paragraph 106 and by the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”), Schedule 9, paragraph 20.
(3) 1970 c.42; section 1A was inserted by the Local Government Act 2000 (c.22), section 102(3).
(4) 1999 c.8; section 31 was amended by the Health and Social Care Act 2001 (c.15), section 48, the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 1, paragraph 53 and Schedule 5, paragraph 45 and the 2003 Act, Schedule 4, paragraph 109.
24D or 26 of, or paragraph 6 of Schedule 7 to, the Children Act 1989(5);  
“working day” means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(6).

Duty to deal with complaints

3.—o Subject to regulations 5, 6, 15, 20 and 21 a complaint shall be handled in accordance with these Regulations where it is about the discharge of, or the failure to discharge, a relevant function and it is made—
   (a) on or after 1st September 2006;  
   (b) by a person described in regulation 4; and  
   (c) to an officer of the local authority in respect of which the complaint is made who discharges relevant functions on behalf of that authority.

(2) The reference in paragraph (1) to a complaint about the discharge of, or the failure to discharge, a relevant function includes a complaint which relates to both of the following—
   (a) a person with whom the local authority has made arrangements for the discharge of a relevant function; and  
   (b) matters covered by those arrangements.

Persons who can make a complaint

4.—o A person may make a complaint under these Regulations about the discharge of, or the failure to discharge, a relevant function if he is a person to whom paragraph (2) applies (and such a person is referred to in these Regulations as the “complainant”).

(1) This paragraph applies if the person is—
   (a) someone in respect of whom—
      (i) the relevant function is being, or has been, discharged, or  
      (ii) there has been a failure to discharge a relevant function; or  
   (b) acting on behalf of another person to whom sub-paragraph (a) applies and that other person—
      (i) is not able to make the complaint himself,  
      (ii) has asked him to act on his behalf, or  
      (iii) is under the age of 18.

Extent to which complaints shall not be considered

5.—o A complaint shall not be considered, or further considered, under these Regulations to the extent that—
   (a) it has been withdrawn by the complainant;  
   (b) it repeats a complaint which was subject to these Regulations or, unless regulations 20 or 21 apply, a complaints procedure under section 7B of the Local Authority Social Services Act 1970(7);  
   (c) it has been investigated by a Local Commissioner under section 26(1) of the Local Government Act 1974(8);  
   (d) it is a care standards complaint;  
   (e) it is unclear;  
   (f) it is frivolous or vexatious;  
   (g) the complainant has stated in writing that he intends to take legal proceedings in relation to the substance of the complaint;

(5) 1989 c.41; section 24D was inserted by section 5 of the Children (Leaving Care) Act 2000 (c.35) and amended by section 117(1) of the 2002 Act. Section 26 was amended by sections 117 and 118 of, and Schedule 5 to, the 2002 Act, by section 117(1) of the 2003 Act and by the Children Act 2004 (c.31), Schedule 3, paragraph 8.

(6) 1971 c.80.

(7) Section 7B was inserted by section 50 of the National Health Service and Community Care Act 1990 (c.19), amended by the Health and Social Care Act 2001 (c.15), Schedule 5, paragraph 15(2) and repealed by the 2003 Act, Schedule 14.

(8) 1974 c.7.
(h) the local authority is taking disciplinary proceedings in relation to the substance of the complaint against a person who is the subject of the complaint;

(i) the local authority has been notified that criminal proceedings have been commenced in relation to the substance of the complaint; or

(j) the local authority has been notified that proceedings have been commenced under section 59 of the Care Standards Act 2000 in relation to the substance of the complaint.

(2) Subject to paragraph (3), a complaint shall not be considered under these Regulations to the extent that it is about the discharge of, or the failure to discharge, a relevant function more than one year before the date on which the local authority received the complaint.

(3) Paragraph (2) shall not apply where the local authority is satisfied that—

(a) it would not be reasonable to expect the complaint to have been made earlier than it was made; and

(b) notwithstanding the delay, it is still possible to consider the complaint effectively and fairly.

(4) A complaint shall not be considered or further considered under these Regulations where—

(a) the complaint is made by a person to whom regulation 4(2)(b) applies; and

(b) the local authority in respect of whom the complaint is made is satisfied that the complainant is not conducting the complaint in the best interests of the person on whose behalf he is making the complaint.

(5) Where a local authority decides not to consider a complaint or any element of a complaint by virtue of this regulation, it must notify the complainant of the extent to which the complaint will not be considered and the reason why.

(6) Where any complaint contains a matter which makes the complaint subject to this regulation, nothing in this regulation prevents any other matter that may be contained in that complaint, which is not subject to this regulation, being considered in accordance with these Regulations.

Care standards complaints

6.—o Where a local authority receives a complaint which is in part about a relevant function and in part a care standards complaint, it must, as regards that part of the complaint which is the care standards complaint—

(a) within 10 working days of receipt of the complaint ask the complainant whether he wishes details of that part of the complaint to be sent to the registered person for the establishment or agency to which it relates; and

(b) if the complainant does so wish, send such details to the registered person as soon as reasonably practicable.

(2) Where paragraph (1) applies, the local authority must notify the complainant—

(a) which part of the complaint will be handled in accordance with the procedure described in these Regulations; and

(b) in a case where it has sent details of the care standards complaint to the registered person, that it has sent such details.

(3) Where the local authority has sent details to the registered person under paragraph (1)(b), it must cooperate insofar as is reasonable and practicable with the establishment or agency which is the subject of the care standards complaint with a view to ensuring that the complainant receives a coordinated response to his complaint.

(4) Where a local authority receives a complaint which is a care standards complaint and not in part about a relevant function, it must within 5 working days of its receipt—

(i) ask the complainant whether he wishes his complaint to be sent to the registered person for the establishment or agency to which it relates; and

(ii) if the complainant does so wish, send the complaint to the registered person as soon as reasonably practicable.

Local resolution

7.—o Subject to paragraph (2) and to regulation 5, where a complaint falls to be handled under these Regulations,

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(9) 200 c14 which was brought into force insofar as it relates to the General Social Care Council on 10th April 2001 by S.I. 2001/1536 and was brought into force for all other purposes on 7th March 2003 by S.I.2003/933.
the local authority must within 20 working days from the date of receipt of the complaint or, where that is not possible, as soon as reasonably practicable—

(a) take all reasonable steps to resolve the complaint informally;
(b) notify the complainant of—
   (i) the extent to which it considers the complaint to be well-founded,
   (ii) its reasons for reaching that view, and
   (iii) his rights under regulation 8;
(c) where it considers the complaint to be to any extent well-founded, provide to the complainant an explanation of what action, if any, it proposes to take in consequence of that fact.

(2) A local authority must not, or must cease to, take any steps under this regulation once they commence investigation under regulation 9.

Request for investigation of the complaint

8. A complainant may at any time in the period specified in paragraph (2) request that his complaint be investigated under regulation 9.

(1) The period referred to in paragraph (1) is the period ending 20 working days after whichever is the earlier of—
(a) the date on which notification is sent to the complainant under regulation 7(1)(b); or
(b) expiry of the 20 working days referred to in regulation 7(1).

Investigation

9. Where a request is received under regulation 8, the local authority must—

(a) as soon as reasonably practicable—
   (i) record the complaint in writing,
   (ii) invite the complainant’s comments on it, and
   (iii) amend it as it considers necessary in the light of any comments made by the complainant;
(b) investigate the complaint; and
(c) keep the complainant informed, insofar as is reasonably practicable, as to the progress of its investigation.

(2) Paragraph (1)(a) does not apply where the complaint has been made in writing and the local authority is satisfied that it gives a clear account of the complaint in question.

Report of the outcome of investigation

10. The local authority must send a report of the outcome of the investigation to the complainant within the time limit specified in paragraph (2) or, where that is not possible, as soon as reasonably practicable.

(1) The time limit referred to in paragraph (1) is 65 working days after—
(a) receipt of the complainant’s request under regulation 8; or
(b) if later, the date (if any) on which the record of the complaint was amended under regulation 9(1)(a)(iii).

(2) If the local authority has not already sent a report under paragraph (1) to the complainant within 25 working days of—
(a) receipt of the complainant’s request under regulation 8; or
(b) if later, the date (if any) on which the record of the complaint was amended under regulation 9(1)(a)(iii),
it must, on expiry of that period, explain to the complainant why a report has not already been sent to him and notify him of the date by which it expects to send a report.

(3) Where the local authority considers the complaint to be to any extent well-founded, it must provide to the complainant an explanation of what action, if any, it proposes to take in consequence of that fact.
Request for a review panel

11. Where it receives a request to do so from the complainant within the period specified in paragraph (2), the local authority must establish a review panel in accordance with regulation 12.

(1) The period referred to in paragraph (1) is the period of 20 working days after whichever is the earlier of—
   (a) expiry of the period described in regulation 10(2); or
   (b) the sending of a report by the local authority under that regulation.

Review panel

12. Within 30 working days of the local authority receiving a request under regulation 11—
   (a) the local authority must appoint a review panel consisting of three persons for the purpose of deciding whether the local authority adequately dealt with the complaint under regulations 9 and 10; and
   (b) the review panel must convene.

(2) The following persons may not be members of the review panel—
   (a) an officer of the local authority; or
   (b) a spouse or civil partner of an officer of the authority.

(3) The review panel must include at least two persons who are neither members of the local authority nor spouses or civil partners of members of the local authority.

(4) The local authority must appoint a member of the review panel who satisfies the requirement in paragraph (3) to be its chairman.

Decision of Review panel

13. Within 5 working days of the date on which the review panel convened under regulation 12, the review panel must—
   (a) decide whether the local authority adequately dealt with the complaint under regulations 9 and 10; and
   (b) notify the complainant and the local authority of its decision.

Local authority response to recommendation by the review panel

14. Where the review panel decides that the local authority did not adequately deal with the complaint, the local authority must, within 15 working days of notification of the decision to it under regulation 13—
   (a) notify the complainant of what, if any, action it proposes to take in consequence of the decision of the review panel; and
   (b) provide such guidance to the complainant as to the power of a Local Commissioner to investigate a complaint under section 26(1) of the Local Government Act 1974(10) as appears to the local authority to be relevant to the complainant.

Complaints made to a local authority about an NHS body

15. In this regulation—
   “the 2004 Regulations” means the National Health Service (Complaints) Regulations 2004(11); and
   “NHS body” has the same meaning as in regulation 2(1) of the 2004 Regulations.

(1) Paragraph (3) applies where it appears to a local authority considering a complaint which falls within regulation 3 that the complaint contains material which, had the complainant sent it to an NHS body, would have been a complaint which would fall to be handled by that body under the 2004 Regulations.

(2) The local authority must, as regards that part of the complaint which would appear to it to be a complaint for the purposes of the 2004 Regulations (“the NHS complaint”)—

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(10) 1974 c.7.
(11) S.I.2004/1768.
(a) within 10 working days of receipt of the complaint, ask the complainant whether he wishes details of the NHS complaint to be sent to the NHS body to which it relates; and

(b) if the complainant does so wish, send details of the NHS complaint to that NHS body as soon as reasonably practicable.

(3) In the case of a complaint to which paragraph (3) applies, the local authority must notify the complainant—

(i) which part of the complaint will be handled in accordance with the procedure described in these Regulations; and

(ii) in a case where it has sent details of the NHS complaint to the NHS body, that it has sent such details.

(4) Where an NHS body handles a complaint under the 2004 Regulations in consequence of having been sent details under paragraph (3)(b), the NHS body and the local authority must cooperate with a view to the complainant receiving a coordinated response to his complaint.

(5) The duty to cooperate in paragraph (5) includes, in particular, a duty to—

(a) provide information relevant to the consideration of a complaint which is reasonably requested;

(b) attend any meeting reasonably required in connection with the consideration of a complaint; and

(c) seek to agree which of the two bodies should take the lead in—

(i) coordinating the handling of the complaints against them, and

(ii) dealing with the complainant.

(6) Where a local authority receives a complaint on or after 1st September 2006 which is not about the discharge of, or the failure to discharge, a relevant function and it appears to the local authority that the complaint contains material which, had the complainant sent it to an NHS body, would be a complaint which would fall to be handled by that body under the 2004 Regulations, it must—

(a) within 5 working days of receipt of the complaint, ask the complainant whether he wishes that material to be sent to the NHS body to which it relates; and

(b) if the complainant does so wish, send that material to that NHS body as soon as reasonably practicable.

(7) Where a complaint is referred to an NHS body in accordance with paragraph (3) or (7), the complainant shall be deemed to have made a complaint under regulation 9 of the 2004 Regulations (making of a complaint) for the purposes of those Regulations.

Complaints manager

16. Every local authority must appoint a complaints manager to assist it in the coordination of all aspects of its consideration of complaints under these Regulations.

Assistance

17. Every local authority must, as far as reasonably practicable, provide the complainant with—

(a) such assistance as he requires to follow the procedure in these Regulations; or

(b) advice on where he may obtain such assistance.

Monitoring of operation of procedure

18. Every local authority must monitor the arrangements that it has made for the handling of complaints with a view to ensuring that it complies with these Regulations by keeping a record of—

(a) each complaint received;

(b) the outcome of each complaint; and

(c) whether there was compliance with the time limits specified in these Regulations.

(2) Every local authority must, as soon as reasonably practicable after the end of each financial year, compile a report on the exercise during that financial year of its functions under these Regulations.
Complaints: transitional provision

19. Subject to regulations 20 and 21, where, immediately before 1st September 2006 any representations fell to be considered under a procedure established pursuant to the Local Authority Social Services (Complaints Procedure) Order 1990(12) (“the former procedure”), such representations shall be considered, or continue to be considered, under that former procedure as if section 7B of the Local Authority Social Services Act 1970(13) (complaints procedure) had not been repealed.

20. — o This regulation applies where—

(a) immediately before 1st September 2006 any representations fell to be considered under the former procedure; and

(b) on or after that date, the complainant (within the meaning of direction 2(1) of the Complaints Procedure Directions 1990(14) (“the Directions”)) sends a written representation pursuant to direction 5(2) of the Directions.

(2) Where this regulation applies—

(a) the written representation referred to in paragraph (1)(b) shall be deemed to be a request for investigation of a complaint under regulation 8;

(b) the representations shall cease to be considered under the former procedure; and

(c) regulations 5(1)(a), 9 to 14 and 17 shall apply to the representations as if they were a complaint for the purposes of these Regulations.

21. — o This regulation applies where—

(a) immediately before 1st September 2006 any representations fell to be considered under the former procedure; and

(b) on or after that date, the complainant (within the meaning of direction 2(1) of the Directions) notifies the local authority in writing pursuant to direction 7(2) of the Directions that he is dissatisfied with the result of the local authority’s consideration of his representations under the former procedure.

(2) Where this regulation applies—

(a) the notification referred to in paragraph (1)(b) shall be deemed to be a request for a review panel under regulation 11;

(b) the representations shall cease to be considered under the former procedure and be referred to a review panel established in accordance with regulation 12; and

(c) Regulations 5(1)(a), 12 to 14 and 17 shall apply to the representations as if the representations were a complaint for the purposes of these Regulations, subject to the modifications described in paragraph (3).

(3) The modifications referred to in paragraph (2)(c) are—

(a) in regulation 12(1), the period of 30 days referred to shall run from the date on which the authority received notification under direction 7(2) of the Directions;

(b) for regulation 13(a) there shall be substituted—

“(a) decide whether the local authority adequately considered, and responded to, the complainant’s representations under direction 6(1) of the Directions;”;

and

(c) in regulation 14, for “deal with the complaint” there shall be substituted “consider and respond to the complainant’s representations”.

Signed by authority of the Secretary of State for Health

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(12) S.I. 1990/2244.
(13) Section 7B of the Local Authority Social Services Act 1970 (c.42) was repealed by Schedule 14 to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) see S.I. 2006/1680 (C.57) for commencement of that repeal.
(14) The Complaints Procedure Directions 1990 were made under section 7B(3) of the Local Authority Social Services Act 1970 (and all other powers enabling them to be made). They are in Appendix C to “Community Care in the Next Decade and Beyond” (ISBN 0 11 321338 7).
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the procedure for the handling of complaints made on or after 1st September 2006 about local authority social services.

Regulation 3 describes when the duty on the local authority to handle a complaint under these regulations arises.

Regulation 4 provides who can make a complaint under the Regulations. It allows a complaint to be made either by the service user (or prospective service user) or, in certain circumstances, by another person on his behalf.

Regulation 5 provides that complaints will not be considered under these Regulations to the extent that they are withdrawn, repeat complaints which have already been investigated, relate to care provided by an establishment or agency registered under the Care Standards Act 2000, relate to legal or disciplinary proceedings, relate to criminal proceedings or proceedings under section 59 of the Care Standards Act 2000, relate to matters over a year old when the complaint was made where such matters cannot be handled effectively or fairly because of the delay, or are unclear, frivolous or vexatious.

Regulation 6 provides for complaints which relate to care provided by an establishment or agency registered under the Care Standards Act 2000 to be referred to the registered person in respect of that establishment or agency where the complainant so wishes.

Regulation 7 requires local authorities to try to resolve complaints informally within 20 working days. Regulations 8 and 9 provide for the formal investigation of a complaint if the complainant does not want it to be investigated informally or if he does not like the outcome of the informal investigation.

Under regulation 10, a local authority which has investigated a complaint under regulation 9 must send a report of its investigation to the complainant and, where it finds the complaint to be well-founded, explain to the complainant what action, if any, it proposes to take.

After the complaint has been formally investigated or the period for such investigation has expired without a report on the outcome of the complaint being made, regulations 11 to 13 enable the complainant to require his case to be referred to a 3-person review panel (which will include at least two members independent of the local authority).

Under regulation 14, where the local authority is found by the review panel not to have dealt with the complaint adequately, the local authority must notify the complainant of what action, if any, it proposes to take and must provide guidance to the complainant as to the powers of a Local Commissioner to investigate a complaint under section 26(1) of the Local Government Act 1974.

Regulation 15 requires the local authority to send any complaint which is sent to it and which relates to an NHS body to the NHS body if the complainant so wishes. Where a complaint which relates to the local authority and the NHS body is so referred to an NHS body the local authority and the NHS body are required to cooperate with a view to providing the complainant with a comprehensive response to both elements of the complaint.

Regulation 16 requires each local authority to appoint a complaints manager to assist it in the coordination of its consideration of complaints under these Regulations. Regulation 17 requires each local authority to assist complainants to comply with the complaints procedure as necessary or to explain where such assistance can be found. Regulation 18 requires local authorities to monitor and report on the discharge of functions under these Regulations.

Regulations 19 to 21 make transitional provisions for complaints made before 1st September 2006. Such complaints are to be dealt with in accordance with the Complaints Procedure Directions 1990 (the Directions), unless, after 1st September 2006 the complainant makes written representations in accordance with the Directions, or the complainant wishes to have the local authority’s consideration of the complaint assessed by a review panel, in which case the provisions of these Regulations apply.
Appendix C

Complaints Working Group

Dory Dickson National Childrens Homes
Kathryn Dowse Local Government Ombudsman
Peter MacMahon Local Government Ombudsman
Tom McAteer Southwark Social Services
Phill Sowter Association of Directors of Social Services
Steve Carney Commission for Social Care Inspection
Dilip Agarwal Commission for Social Care Inspection
Colin Vyvyan National Assembly for Wales
Tim Hind Local Government Association
Jack Kellett Office of the Parliamentary & Health Service Ombudsman
Meg Woollam National Complaints Officers’ Group
Stephen Lowe Age Concern

Thanks also to:

Ken Scott London Borough of Brent
Jacqui Butler Independent Consultant