

# Getting the Best from Complaints

## Social Care Complaints and Representations for Children, Young People and Others

*Change for Children – Every Child Matters*

## Ministerial Foreword

The Government's key message from *Every Child Matters: Change for Children* is that we are all working together so that every child and young person is able to achieve better outcomes and that those who are facing problems and challenges are well supported to overcome them.

*Getting the Best from Complaints* provides guidance for local authorities on implementing the new Children Act 1989 complaints procedures for children and young people with an emphasis on resolving problems quickly and effectively and learning from them.

We all want to improve the access children and young people have to all the public services on offer to them and to improve the standards that they can expect – an effective complaints procedure will ensure that their voices are heard and that as a result, service delivery will improve.

The new procedures build on the extensive good practice that has been developed across services, local authorities and regions and we have listened to what works and how children and young people think the process can work better for them.

As a complaints profession, you have demonstrated commitment and dedication to helping us getting this process right through various consultations mechanisms. I am confident that when you implement these procedures we will achieve significant headway in improving the outcomes for an all too often compromised group of children and young people.

PARMJIT DHANDA

Parliamentary Under Secretary of State for Children, Young People and Families

## Contents

### **1 Introduction to the New Arrangements**

- 1.1 Summary
- 1.2 Other helpful information
- 1.3 Impact on local authorities
- 1.4 Why are we introducing the new Regulations?
- 1.5 Key principles
- 1.6 The Complaints Manager

### **2 Scope of the Representations and Complaints Procedure**

- 2.1 Defining representations and complaints
- 2.2 What may be complained about?
- 2.3 Adoption services
- 2.4 Complaints and Special Guardianship support services
- 2.5 What is exempt from the complaints procedure?
- 2.6 Who may complain?
- 2.7 Complaints made on behalf of a child
- 2.8 Complaints relating to a child
- 2.9 Anonymous complaints
- 2.10 Complaints relating to more than one local authority

### **3 Handling and Consideration by Local Authorities**

- 3.1 Introduction
- 3.2 Receiving a complaint
- 3.3 Time limit for making a complaint
- 3.4 Providing advocacy and support
- 3.5 Stage 1 – Local Resolution
- 3.6 Stage 2 – Investigation
- 3.7 Stage 2 Investigation Report
- 3.8 The adjudication process
- 3.9 Stage 3 – Review Panel
- 3.10 Purpose of Review Panels
- 3.11 General principles
- 3.12 Redress
- 3.13 Make up of the Panel
- 3.14 Administration of the Panel
- 3.15 Attendance at the Panel
- 3.16 Conduct of the Panel
- 3.17 Deliberations
- 3.18 After the Panel
- 3.19 Summary of Stage 3 timescales
- 3.20 Withdrawing a complaint

### **4 Publicity**

- 4.1 Communicating and publicising the complaints and representations procedures
- 4.2 Age appropriate publicity materials
- 4.3 Information and training for staff

### **5 Monitoring Arrangements for Local Authorities**

- 5.1 Recording

- 5.2 Record management and data protection
- 5.3 Confidential complaints
- 5.4 Making complaints information accessible
- 5.5 Diversity monitoring
- 5.6 Annual report
- 5.7 Monitoring and quality assurance

## **6 Problem Solving and Resolution**

- 6.1 Resolving the issue
- 6.2 Alternative Dispute Resolution
- 6.3 General principles of redress
- 6.4 Financial redress
- 6.5 Deferring (freezing) decisions

## **7 Relationship with Other Procedures**

- 7.1 Working with other procedures
- 7.2 Grievance and disciplinary procedures
- 7.3 Concurrent investigations
- 7.4 Cross-boundary issues
- 7.5 Complaints made to a local authority about an NHS body
- 7.6 Complaints involving regulated services
- 7.7 The role of the regulator
- 7.8 Building a seamless service with the local authority's other complaints procedures
- 7.9 Child protection and child protection conferences
- 7.10 Court orders

## **Annexes**

- 1 Definition of roles
- 2 Good practice for Investigating Officers
- 3 Early referral to the Local Government Ombudsman
- 4 Guidance on unreasonably persistent complainants
- 5 Guidance on unacceptable behaviour

## **Appendices**

### **Appendix A**

Diagram – The Complaints Procedure

### **Appendix B**

Complaints Working Group

# 1 INTRODUCTION TO THE NEW ARRANGEMENTS

## 1.1 Summary

1.1.1 This guidance sets out changes to the children's social services representations procedure as a result of the Children (Leaving Care) Act 2000, Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003. It applies to England only.

1.1.2 This guidance accompanies *The Children Act 1989 Representations Procedure (England) Regulations 2006*. References to these regulations are made in brackets throughout the text. The Regulations revoke and replace the *Representations Procedure (Children) Regulations 1991* and this guidance replaces that contained in *The Children Act 1989 Guidance and Regulations Volume 3 – Family Placements* and *Volume 4 – Residential Care* (Department of Health, 1991).

1.1.3 This guidance is for representations, including complaints, made by children and young people. It also applies to parents, foster carers and other adults making a complaint. Throughout the guidance the term children and young people is used when referring to the complainant, however this term includes adults making a complaint about services to a child. Where "he" is used, it refers equally to he or she.

1.1.4 This guidance builds on messages from the report of the Waterhouse inquiry, *Lost in Care*, which cited many examples of children who had attempted to complain but whose voices had not been heard. *Every Child Matters: Change for Children* sets out the Government's agenda for improving outcomes for every child. It is also about making sure vulnerable children and young people get the help they need, when they need it, however large or small their complaint. This guidance follows the core principles of the UN Convention on the Rights of the Child and *Every Child Matters: Change for Children* which puts children's views and wishes at the forefront of the decision-making process.

1.1.5 The Regulations and guidance have been drawn up following a public consultation in November 2004 (*Getting the Best from Complaints – Consultation on the Changes to Social Services Complaints Procedures for Children, Young People and Other People Making a Complaint*) and since then, further detailed consultation with a broad range of stakeholders including children and young people, complaints officers in local authorities and from the National Complaints Officers Group, the Commission for Social Care Inspection, voluntary organisations, the Local Government Ombudsman, the Local Government Association and the Association of Directors of Social Services.

1.1.6 The Department of Health's *Learning from Complaints* - guidance on the social services complaints procedure for adults - should be read in parallel (please see [www.dh.gov.uk](http://www.dh.gov.uk)).

## 1.2 Other helpful information:

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

- *National Minimum Standards*, published by the Secretary of State under the Care Standards Act 2000.
- *Performance Assessment Standards*, published by the Department of Health.
- *Learning from Complaints*. Department of Health, 2006.

- *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children.* HM Government, April 2006.
- *Children's Views on Complaints Procedures and Advocacy: Report of the Children's Rights Director,* National Care Standards Commission, 2003.
- *"Getting the Best from Complaints" the Children's View:* Children's Rights Director, Commission for Social Care Inspection, 2005.
- *Independent Reviewing Officers Guidance, Adoption and Children Act 2002: The Review of Children's Cases (Amendment)(England) Regulations.* Department for Education and Skills, 2004.
- *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.
- *Get it Sorted: Getting help if you have a problem.* Young People's Guide to Advocacy Guidance. Department for Education and Skills, Voice for the Child in Care / The Who Cares? Trust, 2004.
- *National Standards for the Provision of Children's Advocacy Services.* Department of Health, 2002.

1.2.2 Useful relevant websites to this guidance include:

Children's Commissioner:	<a href="http://www.childrenscommissioner.org">www.childrenscommissioner.org</a>
Children's Rights Director:	<a href="http://www.rights4me.org">www.rights4me.org</a>
Commission for Social Care Inspection:	<a href="http://www.csci.org.uk">www.csci.org.uk</a>
Every Child Matters:	<a href="http://www.everychildmatters.gov.uk">www.everychildmatters.gov.uk</a>
Department for Education and Skills:	<a href="http://www.dfes.gov.uk">www.dfes.gov.uk</a>
Department of Health:	<a href="http://www.dh.gov.uk">www.dh.gov.uk</a>
Local Government Ombudsman:	<a href="http://www.lgo.org.uk">www.lgo.org.uk</a>

### 1.3 Impact on local authorities

1.3.1 The new Regulations come into effect on 1 September 2006. This document is issued as Section 7 Guidance under 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 regulation 24. For example, where a complaint reaches the end of Stage 2 under the former procedures and the complainant then requests Stage 3, as long as the panel is yet to be appointed, the Stage 3 Review Panel should be provided under the new Regulations.

### 1.4 Why are we introducing the new Regulations?

1.4.1 Section 117 of the Adoption and Children Act 2002 amends sections 24D and 26 of the Children Act 1989 by giving a power to make regulations which:

- allow for an initial resolution stage without involving an Independent Person;
- extend the scope or application of the Children Act 1989 procedure to services provided under Part IV (Care and Supervision) and Part V (Protection of Children) of that Act; and
- impose time limits for the making of representations.

1.4.2 The Adoption and Children Act 2002 also inserted a new section 26A into the

Children Act 1989, which requires local authorities to make arrangements for the provision of advocacy services to children and young people making or intending to make representations, including complaints, under section 26 or section 24D of the Children Act 1989.

## **1.5 Key principles**

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

1.5.2 Local authorities should develop a listening and learning culture where learning is fed back to children and young 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 children and young people, such as individual reviews and systematic quality assurance. It should give children and young people opportunities to tell the local 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 service users' experiences. Meeting these principles should assist local authorities in providing a successful complaints procedure to children and young people.

1. The complaints procedure should be clear and easy to use.
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 children 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 the local level.
6. It should ensure a fair process and adequate support for everyone involved in the complaint.
7. It should ensure that the child or young person 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 child or young person'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 a Complaints Manager, to undertake certain functions. 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 swiftly and effectively. 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 The Complaints Manager should be independent of operational line management and of direct service providers (e.g. children's social work). 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 children and young people 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 partner agencies.

## **2 SCOPE OF THE REPRESENTATIONS AND COMPLAINTS PROCEDURE**

### **2.1 Defining representations and complaints**

2.1.1 The Children Act 1989 defines the representations procedure as being for 'representations (including complaints)'.

2.1.2 The intention of this guidance is to describe a statutory procedure for a child or young person who is likely to want to make representations, including complaints, about the actions, decisions or apparent failings of a local authority's children's social services provision; and to allow any other appropriate person to act on behalf of the child or young person concerned or make a complaint in their own right (see section 2.6). Complaints of a general nature which are not concerned with an individual case are also likely to fall outside the statutory definition, as are anonymous complaints.

2.1.3 A complaint may be generally defined as an expression of dissatisfaction or disquiet in relation to an individual child or young person, which requires a response. Children and young people often express complaints as 'problems not being sorted out'. A common theme amongst children and young people is the need for complaints procedures to be both fast and effective: complaints procedures should 'get it sorted' straight away.

2.1.4 Representations may not always be complaints; they might also be positive remarks or ideas that require a response from the local authority. Enquiries or comments about the availability, delivery or nature of a service which are not criticisms are likely to constitute representations, for example, children and young people should be able to put forward ideas or proposals about the service they receive, or the establishment they live in, without having this framed as a complaint.

2.1.5 Representations should, as far as possible, be sought out and welcomed as a measure of satisfaction. Representations that are not complaints should also be recorded and handled in the first instance locally (Stage 1). The local authority should ensure that it responds to the issues raised, setting out what action should be taken. Local authorities should make children and young people aware of how they may make representations to the local authority and that they do not have to be complaints. The child or young person has the same right to advocacy whether the representation is a complaint or not.

2.1.6 When the representation is not a complaint and the local authority fails to respond to the child or young person's satisfaction, he will then be entitled to make a complaint at Stage 1 about this failure.

### **2.2 What may be complained about?**

2.2.1 Section 26(3) of the Children Act, 1989 provides that all functions of the local authority under Part 3 of the Act may form the subject of a complaint. For example, a complaint may arise as a result of many things relating to statutory social services functions such as:

- 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 a child or young person 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.

2.2.2 In addition, the Regulations provide that the following new functions may be the subject of a complaint:

Part 4 of the Children Act, 1989,

- the decision by the local authority to initiate care and supervision orders (section 31);
- the effect of the care order and the local authority's actions and decisions where a care order is made (section 33);
- control of parental contact with children in care (section 34);
- how supervisors perform their duties where a supervision order is in force (section 35);

Part 5 of the Children Act, 1989,

- matters that do not relate to the Court and which are specifically actions of the local authority can be considered, regarding applications for and duties in relation to child assessment orders (section 43); and
- matters relating to applications for emergency protection orders and decisions relating to the return of children who have been removed (section 44).

2.2.3 Where social work information or a social work report has gone to Court, the child or young person can make a complaint about the report, for example its quality or accuracy, distinct and separate to the subsequent actions of the Court. If this complaint is upheld, the local authority should advise the child or young person what action it proposes to take with regard to the Court action.

2.2.4 With complaints about 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 Adoption services**

2.3.1 The Regulations also provide that the following adoption-related functions may also be the subject of a complaint:

- Provision of adoption support services (as prescribed in regulation 3 of the Adoption Support Services Regulations 2005) insofar as these enable adoptive children to discuss matters relating to adoption;
- assessments and related decisions for adoption support services as prescribed in regulation 3 of the Adoption Support Services Regulations 2005 (Parts 4 and 5 of the Adoption Support Services Regulations 2005);
- placing children for adoption, including parental responsibility and contact issues

- (sections 18 to 29 of the 2002 Act);
- removal of children who are or may be placed by adoption agencies (sections 30-35 of the 2002 Act);
- removal of children in non-agency cases (sections 36-40 of the 2002 Act);
- duties on receipt of a notice of intention to adopt (section 44 of the 2002 Act);
- duties set out in regulations in respect of:
  - a local authority considering adoption for a child (part 3 of Adoption Agency Regulations 2005);
  - a proposed placement of a child with prospective adopters (part 5 of Adoption Agency Regulations 2005);
  - placement and reviews (part 6 of Adoption Agency Regulations 2005);
  - records (part 7 of Adoption Agency Regulations 2005);
  - contact (part 8 of Adoption Agency Regulations 2005); and
- parental responsibility prior to adoption abroad (part 3 of Adoptions with a Foreign Element Regulations 2005).

## **2.4 Complaints and Special Guardianship Support Services**

2.4.1 Special Guardianship Regulations 2005 came into force on 30 December 2005, under those Regulations the following functions may be the subject of a representation or complaint:

- financial support for Special Guardians;
- support groups for children and young people to enable them to discuss matters relating to Special Guardianship;
- assistance in relation to contact;
- therapeutic services for children and young people; and
- assistance to ensure the continuation of the relationship between the child or young person and their Special Guardian or prospective Special Guardian.

## **2.5 What is exempt from the complaints procedure?**

2.5.1 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 of the actions or decisions of the local authority complained to, or of any body acting on its behalf; or
- the same complaint has already been dealt with at all stages of the procedure.

2.5.2 Regulation 8 provides the local authority with discretion in deciding whether to consider complaints where to do so would prejudice any of the following concurrent investigations:

- Court proceedings;
- Tribunals;
- Disciplinary proceedings; or
- Criminal proceedings.

2.5.3 If the local authority decides not to consider or further consider complaints subject to these concurrent investigations, they must write to the complainant explaining the reason for their decision and specifying the relevant concurrent investigation (regulation 8(3)).

2.5.4 Once the concurrent investigation has been concluded the complainant may resubmit their complaint to the local authority as long as it is within one year of the conclusion of the concurrent investigation.

## **2.6 Who may complain?**

2.6.1 Section 26(3) and section 24D of the Children Act, 1989 and section 3(1) of the Adoption and Children Act, 2002 require the responsible authority to consider representations including complaints made to it by:

- any child or young person (or a parent of his or someone who has parental responsibility for him) who is being looked after by the local authority or is not looked after by them but is in need;
- any local authority foster carer (including those caring for children placed through independent fostering agencies);
- children leaving care;
- Special Guardians;
- a child or young person (or parent of his) to whom a Special Guardian order is in force;
- any person who has applied for an assessment under section 14F(3) or (4);
- any child or young person who may be adopted, their parents and guardians;
- persons wishing to adopt a child;
- any other person whom arrangements for the provision of adoption services extend;
- adopted persons, their parents, natural parents and former guardians; and
- such other person as the local authority consider has sufficient interest in the child or young person's welfare to warrant his representations being considered by them.

## **2.7 Complaints made on behalf of a child**

2.7.1 Where a complaint is received from a representative acting on behalf of a child or young person, the local authority should normally confirm where possible that the child or young person is happy for this to happen and that the complaint submitted reflects his views.

2.7.2 The local authority has the discretion to decide whether or not the representative is suitable to act in this capacity or has sufficient interest in the child's welfare. If the Complaints Manager considers that the representative does not have sufficient interest, he should notify the representative in writing, explaining that no further action should be taken. The Complaints Manager should discuss this decision with relevant operational managers as appropriate.

## **2.8 Complaints relating to a child**

2.8.1 The local authority is also likely to receive complaints by adults that relate to a child or young person but are not made on the child's behalf. The Children Act, 1989 gives discretion to local authorities to decide in cases where eligibility is not automatic whether or not an individual has sufficient interest in the child's welfare to justify his own complaint being considered by them. In reaching a decision, where possible the local authority may wish to check with the child or young person that he is happy with the person making a complaint.

## **2.9 Anonymous complaints**

2.9.1 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 local authority to decide what action it should take. The fact that the complaint is from an anonymous source should not in itself justify a decision not to pursue the matter. Nor should it rule out referral to other procedures as relevant.

## **2.10 Complaints relating to more than one local authority**

2.10.1 Where a complaint relates to two or more local authorities, the complaint should be considered by the authority which is looking after the child or in any other case by the authority within whose area the child is ordinarily resident. Under Section 27 of the Children Act, 1989, there is a duty to cooperate. Good practice would suggest the local authority responding to the complaint should ensure good communication with the other local authority / authorities.

### **3 HANDLING AND CONSIDERATION BY LOCAL AUTHORITIES**

#### **3.1 Introduction**

3.1.1 The consultation document, *Getting the Best from Complaints*, originally proposed a two stage process. A major difference between the draft and final regulations is the resumption of three distinct stages to the procedure; local authorities continue to have responsibility for all three stages locally. The regulations require the local authority to attempt to resolve complaints and address representations as soon as reasonably practicable and within specific timescales. Where appropriate and with agreement from the child or young person making the complaint, the local authority may arrange for conciliation, mediation or other services to help resolve matters.

3.1.2 The timescales in working days for the procedure are:

- 10 days at Stage 1 (with a further 10 days for more complex complaints or additional time if an advocate is required);
- 25 days at Stage 2 (with maximum extension to 65 days);
- 20 days for the complainant to request a Review Panel;
- 30 days to convene and hold the Review Panel at Stage 3;
- 5 days for the Panel to issue its findings; and
- 15 days for the local authority to respond to the findings.

3.1.3 The regulations place a duty on the local authority to act expeditiously through the procedure; this is to ensure that the complaint is dealt with as swiftly as possible.

3.1.4 The handling and consideration of complaints consists of three stages: Stage 1 - Local Resolution, Stage 2 - Investigation and Stage 3 - Review Panel. Local Resolution requires the local authority to resolve a complaint as close to the point of contact with the child or young person 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.

3.1.5 Where a complaint is accepted at Stage 1, the complainant is entitled to pursue their complaint further through this 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 of this guidance.

#### **3.2 Receiving a complaint**

3.2.1 Local authorities are required to put in place systems for complaints to be made verbally to a member of staff or in writing (including electronically) (regulation 6). Complaints handling by local authorities must be child and young person friendly and appropriate to the age and understanding of the child. The concerns of children and young people should be listened to. If a child or young person wishes to make a complaint, local authorities are required to provide him with information about advocacy services and offer help to obtain an advocate (see section 3.4).

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. It should be remembered that there may be no need to engage the complaints procedure

if the matter is resolved immediately.

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 including 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. 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 Local authorities do not need to consider complaints made more than one year after the grounds to make the representation arose (regulation 9). 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, decisions need 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 The time limit can be extended at the local authority's discretion if it is still possible to consider the representations effectively and efficiently. Local authorities may also wish to consider such complaints if it would be unreasonable to expect the complainant to have made the complaint earlier. For example, where the child was not able to make the complaint or did not feel confident in bringing it forward in the year time limit.

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, the local authority should support the child or young person by actively providing information and advice. As described in section 3.2.1, the child or young person is entitled to advocacy support that is independent and confidential. For statutory guidance on advocacy provision please refer to *Get It Sorted: Providing Effective Advocacy Services for Children and Young People making a Complaint under the Children Act, 1989*.

3.4.2 The Complaints Manager should ensure that a suitable person meets the child or young person to discuss the complaints process and ensure that any questions or concerns that the complainant may have are fully addressed. Where an advocate is being used, the local authority needs to ensure that the advocate is acting with the informed consent of the young person. The local authority should not rely on the

advocate to ensure the child or young person understands the procedure.

3.4.3 The local authority should also 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. 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.

3.5.2 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.

3.5.3 At Stage 1, staff at the point of service delivery – including the Independent Reviewing Officer where appropriate – and the child or young person 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.

3.5.4 Regulation 14(1) places a 10 working day time limit for this part of the process. Most Stage 1 complaints should ideally be concluded within this time limit.

3.5.5 Where the local authority cannot provide a complete response it can implement a further 10 days' extension (regulation 14(5)). If necessary, the local authority may also suspend Stage 1 until an advocate has been appointed (regulation 14(3)). The maximum amount of time that Stage 1 should take is 20 working days. After this deadline the complainant can request consideration at Stage 2 if he so wishes.

3.5.6 The Complaints Manager should inform the complainant that he has the right to move on to Stage 2 if the time scale 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 the reason that 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.

3.5.7 If the matter is resolved, 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 offered, if this is more appropriate) responding to the complaint.

3.5.8 Where the matter is not resolved locally, the complainant has the right to request consideration of the complaint at Stage 2. There is no time-limit within which he must request this, but local authorities may wish to recommend that the complainant does this within 20 working days so that momentum in resolving the complaint is not lost. The local authority is under a duty to operate expeditiously throughout the complaints handling process (regulation 10).

### **3.6 Stage 2 – Investigation**

3.6.1 Consideration of complaints at Stage 2 is normally achieved through an

investigation conducted by an investigating officer and an independent person. Stage 2 commences either when the complainant requests it or where the complainant and the local authority have agreed that Stage 1 is not appropriate (regulation 17(1)).

3.6.2 If the complaint has been submitted orally, the Complaints Manager must 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. He may wish to do this in conjunction with the Investigating Officer and Independent Person appointed to conduct Stage 2 (see below). Should the complainant amend the written record of his complaint, the Stage 2 timescale will start from the date that the complaint is finalised.

3.6.3 The Complaints Manager should arrange for a full and considered investigation of the complaint to take place without delay. He may also request (in writing) any person or body to produce information or documents to facilitate investigation, and consideration should be given to matters of disclosure and confidentiality. Consideration of the complaint at Stage 2 should be fair, thorough and transparent with clear and logical outcomes.

3.6.4 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. The IO may be employed by the local authority or be brought in from outside the authority, appointed specifically for this piece of work. The IO should not, however, be in direct line management of the service or person about whom the complaint is being made.

3.6.5 An Independent Person (IP) must be appointed to the investigation (regulation 17(2)) (see Annex 1 on Definition of Roles). This person should be in addition to the IO and must be involved in all aspects of consideration of the complaint including any discussions in the authority about the action to be taken in relation to the child.

3.6.6 A copy of the complaint should be sent to any person who is involved in the complaint, unless doing so would prejudice the consideration of the complaint. Where this may be the case, the Complaints Manager should advise senior management, who should inform staff of the details of the complaint through normal line management.

3.6.7 The IO 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 in the Freedom of Information Act, 2000 and the Data Protection Act, 1998.

3.6.8 The investigation should be completed and the response sent to the child or young person within 25 working days (regulation 17(3)). However, this may be impractical in some cases, e.g. where the complaint involves several agencies, all or some of the matters 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.

3.6.9 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 (regulation 17(6)). 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.

3.6.10 The local authority must inform the child or young person as soon as possible in writing of:

- the reason for the delay; and
- the date by which he should receive a response (regulation 17(6)).

3.6.11 Where one or more agencies are involved in considering the complaint, 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 Stage 2 investigation report**

3.7.1 On completion of his consideration of the complaint, the IO should write a report on his investigations including:

- details of findings, conclusions and outcomes are against each point of complaint (i.e. “upheld” or “not upheld”); and
- recommendations on how to remedy any injustice to the complainant as appropriate.

The report should be written in plain language, avoiding jargon, so that everyone can understand it. It should distinguish between fact, feelings and opinion. For further guidance on this report see Annex 2.

3.7.2 Good practice suggests that the IP should also provide a report to the local authority once he has read the IO’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 IO’s report provides an accurate and complete picture of the investigation; and
- the nature of the recommendations or make his own recommendations as necessary.

### **3.8 The adjudication process**

3.8.1 Once the IO has finished the report, a senior manager should act as Adjudicating Officer and consider the complaints, the IO’s findings, conclusions, and recommendations, any report from the IP and the complainant’s desired outcomes.

3.8.2 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).

3.8.3 The Adjudicating Officer should normally be a senior manager, reporting to the Director responsible for Children’s Services. 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.

3.8.4 The Adjudicating Officer may wish to meet the Complaints Manager, IO and IP, to clarify any aspects of the reports. The Adjudicating Officer should also consider liaising with the Complaints Manager in drafting the adjudication.

3.8.5 The Adjudicating Officer may wish to meet the child or young person 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.

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

- a complete copy of the investigation report;
- any report from the IP; and
- 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 (regulation 17(8)).

3.8.7 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.

### **3.9 Stage 3 – Review Panels**

3.9.1 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 (regulation 18). 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.

3.9.2 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.

3.9.3 The Complaints Manager should assess 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.

### **3.10 Purpose of Review Panels**

3.10.1 Review Panels are designed to:

- listen to all parties;
- consider the adequacy of the Stage 2 investigation;
- obtain any further information and advice that may help resolve the complaint to all parties' satisfaction;
- focus on achieving resolution for the complainant by addressing his clearly defined complaints and desired outcomes;
- reach findings on each of the complaints being reviewed;

- make recommendations that provide practical remedies and creative solutions to complex situations;
- support local solutions where the opportunity for resolution between the complainant and the local authority exists;
- to identify any consequent injustice to the complainant where complaints are upheld, and to recommend appropriate redress; and
- recommend any service improvements for action by the authority.

3.10.2 As a general rule, the Review Panel should not reinvestigate the complaints, nor should it be able to consider any substantively new complaints that have not been first considered at Stage 2.

3.10.3 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.

### **3.11 General principles**

3.11.1 The Review Panel should be alert to the importance of providing a demonstrably fair and accessible process for all participants. Many complainants, particularly children and young people, 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 and child or young person-friendly. This may include limiting the total number of local authority representatives attending to a workable minimum to avoid the possibility of overwhelming the complainant.

3.11.2 In particular, the following principles should be observed for the conduct of the 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 will 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.

3.11.3 The local authority should be mindful of the specific needs of children and young people either using or affected by complaints. Local authorities should ensure that:

- the Review Panel acts in accordance with the United Nations Convention on the Rights of the Child;
- the Review Panel safeguards and promotes the rights and welfare of the child or young person concerned;
- the wishes and feelings of such children and young people are ascertained, recorded and taken into account;
- the best interests of such child or young person are prioritised at all times; and
- where the complaint is made by a person deemed to have a sufficient interest in the child's welfare, they should where appropriate, seek the child or young person's views with regard to the complaint.

### **3.12 Redress**

3.12.1 Under Section 92 of the Local Government Act 2000, local authorities are empowered to remedy any injustice arising from maladministration. Further details on remedies and redress are discussed in section 6.2.

3.12.2 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.

### **3.13 Make up of the Panel**

3.13.1 The Panel must consist of three independent people (regulation 19(2)). Independent means a person who is neither a member nor an officer of the local authority to which the representations have been made, nor the spouse or civil partner of such a person. The Independent Person appointed to Stage 2 may not be a member of the Panel (regulation 19(3)).

3.13.2 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.

3.13.3 One member of the Panel should be assigned as Chair of the panel. The Chair's role is described in Annex 1. Good practice suggests that the person appointed as Chair should not have been an officer or a Member of the local authority during the three years preceding the Panel.

3.13.4 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.

### **3.14 Administration of the Panel**

3.14.1 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;
- provide Panellists with a letter of appointment explaining the Review Panel process, their role as a Panellist and describing the expenses and other payment to which they may be entitled. Attention should also be drawn to important issues such as confidentiality;
- reimburse Investigating Officers, Independent Persons and any other external people involved in the earlier stages for their attendance at the Panel, as appropriate;
- 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.

3.14.2 The Panel must be held within 30 working days of the receipt of a request for a Review (regulation 19(4)). The local authority should acknowledge the complainant's request for a Review in writing within 2 days of receiving it. The Panel Review should be provided locally and with due regard to the complainant's availability and convenience. The complainant should be notified of the Panel's date and location in writing at least 10 working days before the Review Panel meets and be invited to attend.

3.14.3 Panel papers should be sent to panellists and other attendees as soon as these have been agreed by the Chair and no later than ten 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 any local practice around Panels, such as conduct, roles and responsibilities.

3.14.4 If any other written material is submitted for consideration by the panel outside of these timescales, it will usually be at the Chair's discretion whether it is accepted.

3.14.5 If any complaint is logged 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 should record their decision.

### **3.15 Attendance at the Panel**

3.15.1 The complainant has a right to attend the Panel and should be assisted in attending as appropriate. The complainant should also be informed of his entitlement to be accompanied by another person and for this person to speak on his behalf.

3.15.2 Those persons involved with the investigation at Stage 2 (e.g. the Investigating Officer, and the Independent Person) should be invited to attend and contribute as relevant to their roles. Should any of these persons' unavailability cause an inordinate delay in holding the Panel; the Chair should take a view on proceeding without them. The local authority can also proceed with the Panel in the complainant's absence at the complainant's request.

3.15.3 The Adjudicating Officer should attend as the authority's representative if he has rejected any of the Investigating Officers findings at Stage 2. Where he has accepted all

of them, it is usually acceptable to delegate this responsibility.

3.15.4 The Chair should make the final decision on attendees (including asking the local authority to make specific members of staff available to provide specialist advice or opinion). He should also decide whether additional policies or procedures should be circulated with the Panel's papers.

3.15.5 The Complaints Manager and anyone providing administrative support (see Annex 1) should also attend the Panel.

### **3.16 Conduct of the Panel**

3.16.1 The Panel should be conducted as informally as possible, but in a professional manner and in an atmosphere that is accommodating to all attendees. This is particularly important where the complainant might be a child or young person. 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.

3.16.2 Panels should normally be structured in three parts: pre-meeting; presentations and deliberation.

#### **Pre-meeting**

3.16.3 This is an opportunity for the Panellists and their administrative support to meet in closed session to discuss the order of business and any other relevant issues (e.g. taking legal advice). No deliberations on the complaint should commence at this meeting.

#### **Presentations**

3.16.4 Once all attendees are present, the Chair should commence the Review by explaining its purpose and the need for confidentiality. 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.

3.16.5 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. The purpose of hearing the presentations is to understand each party's opinion of the complaint rather than an opportunity to cross-examine attendees. The Chair should also indicate how long the Panellists anticipate that the presentations should last.

3.16.6 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 'talk' to the complaint and expand upon any relevant themes that should aid the Panel's deliberation. The Chair should ensure that this presentation is reasonable and relevant, exercising discretion in limiting its scope, substance or duration.

3.16.7 Panellists should then have sufficient opportunity to ask questions of all present and seek clarification on the issues being discussed so they are in a position to make recommendations regarding the outcome. The Chair should also invite the complainant, the local authority and other attendees to ask questions and raise points of information and opinion as relevant to the complaint.

### 3.17 Deliberations

3.17.1 The Panel should then go into closed session to deliberate on their findings and conclusions. The Panel may need administrative support at this stage, but this should not unduly influence the Panel's deliberations and no conflict of interest should arise.

3.17.2 The Panel is required to produce a written report containing a brief summary of the representations and their recommendations for resolution of the issues (regulation 20(1)). They must send this to the complainant, the local authority, the independent person from Stage 2 and any other person with sufficient interest within 5 working days of the Panel meeting (regulation 20(2)). The written record should set out simply and clearly a brief summary of the representations; their recommendations for the resolution of the issues and the reasons for them. If a Panellist disagrees with the majority recommendation, this should also be recorded and the reason for it given.

### 3.18 After the Panel

3.18.1 The local authority must send its response to the Panel's recommendations to the complainant (and other participants as necessary) within 15 days of receiving the Panel's report (regulation 20(3)). The response should be developed by the relevant Director / Director of Children's Services 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. In developing his response he should invite comment from all the attendees including the Independent Person from Stage 2 (regulation 20(3)).

3.18.2 The complainant should be advised of his right to refer his complaints (if still dissatisfied) to the Local Government Ombudsman (regulation 20(3)).

### 3.19 Summary of stage 3 timescales

Action	Time
Complainant requests Review Panel	Up to 20 working days after receipt of the Stage 2 adjudication
Complaints Manager acknowledges request	Within 2 working days
Complaints Manager appoints Chair and confirms attendees and content of Panel papers with Chair	Within 10 working days of the complainant's request for Review Panel
Local authority agrees the other Panellists and date for Review Panel	Within 30 working days of the complainant's request for Review Panel
Local authority circulates Panel papers	Within 10 working days of the date for the Review Panel
Review Panel produces its written report (including any recommendations)	Within 5 working days of the Review Panel
Relevant Director issues his response	Within 15 working days of receiving the Review Panel's report

### 3.20 Withdrawing a complaint

3.20.1 The complaint may be withdrawn verbally or in writing at any time by the

complainant (regulation 7). 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.

3.20.2 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 and representations procedures**

4.1.1 As soon as possible after receiving a complaint or representation, the local authority must provide the complainant with details of its procedure for dealing with representations and information about advocacy services (regulation 11).

4.1.2 Section 26A of the Children Act, 1989 requires local authorities to make arrangements for the provision of advocacy services to children or young people making or intending to make complaints under section 26 or section 24D of the Act.

4.1.3 As with Section 2.1, if the child or young person is not making a complaint but wishes to make a representation, the local authority should ensure that the young person has sufficient information on how to proceed.

### **4.2 Age appropriate publicity materials**

4.2.1 Many children and young people have told the Government that they are not aware how to make a complaint. Many are not aware of the complaints procedures and 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.

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

4.2.3 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;
- information on complaints in other council leaflets, such as leaflets on social work; and
- visual and oral presentations.

4.2.4 Written information should explain the procedure in straightforward terms, and be tailored to meet the needs of children and young people with learning disabilities, sensory impairments, limited mobility and those who do not have English as 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.

4.2.5 Once the local authority has received a representation, it should ensure that the child or young person receives:

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

### **4.3 Information and training for staff**

4.3.1 Staff may need increased support and supervision from line managers to help

them co-operate with the procedure and to work positively with the complainant.

4.3.2 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.

4.3.3 Tailored training should be available to staff at all levels of the authority. 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.

4.3.4 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 (regulation 13). They must keep a record of:

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

5.1.2 The Complaints Manager should liaise with Independent Reviewing Officers and any other members of staff to compile the total number of representations. The Complaints Manager may wish to add these to his annual report (see section 5.6).

5.1.3 The overall purpose of recording is to enable:

- Children and young people to see that their concerns and suggestions are being dealt with and that a thorough and fair consideration has taken place;
- the organisation to demonstrate that complaints are taken seriously and how they are resolved; and
- feedback from representations and 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](http://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 Useful information about record management and Data Protection can be found on the Information Commissioner's website:

[www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

5.2.5 Records of complaints, 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 child). Those involved in the investigation should have access to notes of their own interview in order to confirm the accuracy of the content. The investigation report and all other relevant papers should be held by the Complaints Manager in a separate complaints file.

### **5.3 Confidential complaints**

5.3.1 A frequent worry of children and young people is that details of the complaint might be given to other people who do not need to know about it. Children see privacy and confidentiality as vital, and must be able to make 'confidential complaints' – sometimes to avoid 'come-backs' on themselves. Therefore details of a child's personal complaint should not be put into a complaints book that others can read.

5.3.2 Particular attention is drawn to the need to ensure that personal information obtained in relation to a complaint is used only for that purpose.

### **5.4 Making complaints information accessible**

5.4.1 For children and young people with difficulty reading, writing or speaking English, the local authority should identify a suitable method of communication so that these children can express and follow progress on their complaint in full, this might involve the provision of information (including responses to complaints) in large print, translation or in other formats. In the case of complainants with special needs or within specific community groups, the local authority should meet the complainant to explain any reports in person.

5.4.2 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 section 3.4 on Providing Advocacy and Support). The child or young person should have confidence that the authority can provide as thorough consideration as for any other service user.

### **5.5 Diversity monitoring**

5.5.1 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 for the complaints procedure:

- an accurate picture of use by ethnic origin, age, gender, sexual orientation and disability;
- where take-up or use could be improved or reviewed;
- a base-line for planning, target-setting and measuring change;
- that it is accessible equally to all sections of the community;
- whether any distinct needs exist amongst members of minority groups, for which special provision may be necessary; and
- that it does not inadvertently discriminate against any particular group.

### **5.6 Annual report**

5.6.1 Local authorities must each financial year publish an Annual Report (regulation 13(3)). This should draw upon the information already gathered under section 5.1 for recording purposes. However, this Annual Report is a separate requirement and should

not contain personal information that is identifiable about any individual complainant.

5.6.2 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:

- representations made to the local authority;
- 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 complainants; and
- a review of the effectiveness of the complaints procedure (see section 5.7 on Monitoring and Quality Assurance).

5.6.3 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 with relevant key agencies. For more information and good practice in producing Annual Reports, please visit the Commission for Social Care Inspection's website at:

[www.csci.gov.uk](http://www.csci.gov.uk)

## **5.7 Monitoring and quality assurance**

5.7.1 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.

5.7.2 Monitoring should also highlight how effective communication is within the authority and to the children and young people receiving their services, where staff training is required and whether resources are targeted appropriately. This should be fed back into the system 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 children and young people. 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 are not to be used to divert an eligible person from making a complaint under the statutory procedure.

6.1.3 Attempts at resolution should not end once a complaint has been made. Rather, there should be continued efforts to resolve the dissatisfaction of children and young people so that the matter complained about is resolved during consideration of the complaint. Local authorities should also consider introducing alternative ways of resolving the complaint while any given stage is ongoing. In any case, resolution should be in the best interest of the child concerned, particularly if an adult has complained about the children's services, but not on the child's behalf.

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 children or young person's needs;
- practical action specific to the particular complainant;
- a review of practice; and,
- an assurance that the local authority will monitor the effectiveness of its remedy.

### **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 Entering into Alternative Dispute Resolution (ADR) should not restrict the complainant's right to request a Review Panel as long as this is within the 20 working day timescale. Once the final date of the particular resolution process is agreed (i.e. following the final mediation meeting) and should the complainant decide that he wants to invoke his right to a Review Panel, he can terminate ADR at any time.

### **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 will 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 or to take action 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 recommends 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 provides helpful advice on a wide range of issues relating to redress on its website:

[www.lgo.gov.uk](http://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 child or young person. 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 leaving a child or young person where they are would put them 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 is likely to have other procedures that have a significant bearing on the complaints procedures. These might include:

- child protection;
- court proceedings;
- grievance procedures; and
- disciplinary procedures.

7.1.2 It is important that relationships between procedures are clear and that the content is consistent. Procedures may also need to link with those within the NHS and other agencies contributing to services. For example, NHS staff may become involved in family support and child protection work. Other agencies who may be involved in services to children include education establishments, housing authorities, voluntary and private child care 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 joint action is required. The Complaints Manager should provide advice to staff, including consideration of whether to freeze social work decisions 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 e.g. 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 child or young person and its staff informed about progress in handling both the complaints and the disciplinary or grievance elements as appropriate having regard to normal staff confidentiality.

7.2.3 Staff can feel confused and intimidated by systems which reinforce an implication of culpability if a member of staff is named in a complaint. Staff should be reassured that they should not be held personally liable for carrying out resource decisions or allocations of service, according to the authority's criteria. In most 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 children and young people 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. Staff should be kept informed of progress of the complaint, but not given any details that would breach confidentiality or work against the child or young person'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 statutory or internal procedure (regulation 8). If the local authority decides not to commence the complaints process, it must write to the complainant explaining the reasons for its decision and specifying the relevant concurrent investigation. The local authority should also inform the complainant of his right to resubmit his complaint once the concurrent investigation is concluded and that he must do this within 1 year of the conclusion of the concurrent investigation (regulation 8(5)). The local authority should also keep the complainant up to date with progress on the concurrent investigation.

## **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 to the household of a child with disabilities through a private agency, and the child wishes to complain about aspects of this service.

7.4.2 Cross boundary issues can occur among:

- children's homes;
- children's day care providers;
- Domiciliary Care Services;
- contracted agencies and multi-agency services;
- multi-agency Health Service packages; and
- single or joint assessments.

7.4.3 It is important that the local 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, children and young people should not have to worry about who they should approach with complaints about different aspects of the service they receive. Instead, the complaint can be made in its entirety to any one of the bodies involved.

7.5.2 The local authority has a responsibility to work with other bodies to establish which agency should lead on handling the complaint and to ensure that the complainant is kept informed and receives as comprehensive a reply as possible. 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 complaints where appropriate. Both the local authority and the NHS staff should consider meeting the child or young person together if this will facilitate a more effective outcome.

7.5.3 Ideally, both investigations should be completed simultaneously and reports delivered to the child or young person together. In order to facilitate this, the two bodies should aim to work to the shorter of their respective complaints procedure timescales.

7.5.4 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 child or young person does not understand which organisation is responsible for which service, but can also happen where there is an important issue of trust – a child or young person might, for example speak to a social worker he trusts about concerns over his treatment by the NHS or approach a District Nurse about a carer employed by the local authority.

7.5.5 The Complaints Manager of the body receiving the complaint should record the outline of the complaint and, with the consent of the complainant, refer it formally to the other. It should then be for the Complaints Manager of the body complained against to make sure the complaint is dealt with properly.

## **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 will need to consider whether it is most appropriately dealt with by any complaints process that is operated within the relevant regulated service or setting or whether it is a matter that relates more directly to the exercise of the local authority's Children Act 1989 functions, covered by this procedure. Where the local authority is responsible for the original assessment of need that led to a placement and associated funding, then the complainant will (in most instances) have recourse to this procedure. However, access to this complaints procedure does not apply to people with private self-funding arrangements.

7.6.4 The complaint should be 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 residential placement, 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 child or young person.

7.6.6 The local authority has responsibilities in terms of fulfilling its children's 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 When local authorities receive a complaint that is about services provided under the Children's Homes Regulations, 2001, they should refer the relevant parts of the complaint to the registered provider within 5 working days. The local authority should also inform the child or young person of this. 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 child should be confirmed by the Complaints Manager with the child or young person 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 Children's Homes Regulations, 2001 the local authority should co-operate with the provider to ensure that the complainant receives one response dealing with all aspects of the complaint. The local authority should, within 10 working days, send details of the complaint to the registered provider and determine which parts of the complaint relate to local authority social services and which to services provided by the care provider. It should also advise the complainant which parts of the complaint the local authority is considering.

7.6.9 If the child or young person considers that he has suffered an injustice as a result of any significant delay or failure by the authority to refer his 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 section 7.4 on cross-boundary issues).

## **7.7 The role of the regulator**

7.7.1 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 Commission for Social Care Inspection). The regulator's role is to ensure compliance with the Regulations and associated National Minimum Standards.

7.7.2 Complaints Managers should also 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.

7.7.3 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.

7.7.4 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.

7.7.5 However, in certain circumstances the regulator should 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 this statutory procedure, the local authority may wish to consider whether there are advantages in accepting these into a single investigation. 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 where possible, for example where a child or young person has complaints relating to both a local authority's housing service and its children's services.

7.8.3 The Complaints Manager responsible for children's 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, clear reply that covers all aspects.

7.8.4 The local authority should also respond as promptly by meeting the shorter of whichever timescales apply and should ensure that this process is not confusing for the child or young person.

## **7.9 Child protection and child protection conferences**

7.9.1 Where consideration of a complaint leads to concerns about the welfare of

children, these should be referred immediately to local authority children's social care or the Police. The handling of any associated complaint can be suspended if necessary.

7.9.2 The welfare of children is a corporate responsibility of the entire local authority. The local authority should work in partnership with other public agencies, the voluntary sector, and service users and carers. Local authorities have the lead responsibility for the establishment and effective functioning of Local Safeguarding Children Boards (LSCBs), which co-ordinate the way local agencies including the Police, education services and housing services work together to safeguard and promote the welfare of children.

7.9.3 Where enquiries have been conducted under Section 47 of the Children Act, 1989, a Child Protection conference may be held. This brings together family members, the child (where appropriate), and those professionals most involved with the child and family to consider information about the child's developmental needs (i.e. health and development) and decide what future action is required to safeguard and promote the welfare of the child.

7.9.4 If there are subsequent complaints about the work of individual agencies, or their performance or the provision or non-provision of services, these should be handled in line with the particular agency's complaints process.

## **7.10 Court orders**

7.10.1 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 child'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 Complaints Manager to identify whether these circumstances might be considered under this procedure. The child or young person should also be informed that the complaints procedure cannot overturn a Court decision.

7.10.2 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.

## DEFINITIONS 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 will receive more effective responses to the complaint where he:

- cooperates with the local authority in seeking a solution to the complaint;
- expresses the 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 arise from problems that could not be resolved initially;
- liaising with the Independent Reviewing Officer where appropriate to identify options for resolution;
- appointing Investigating Officers, Review Panellists and Independent Persons;
- ensuring that there are no conflicts of interest at any stage between parties involved in delivering the procedure;
- co-operating 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; and
- compiling the annual report.

*Maintaining a customer focus by:*

- providing a sensitive, customer-focused service for representations and complaints, appropriate to the needs of children and young people;
- providing help and advice to children and young people and others who may wish to make a complaint so that they understand the options available for resolution both within the complaints procedure or alternatives routes of remedy and redress;
- ensuring that advocacy services are explained, offered and provided when

- required;
- ensuring the complainant is kept informed at all stages;
- offering advice on the response of the authority; and
- providing practical support to complainants.

*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; and
- 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.

The Investigating Officer's undertakings may include:

- 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;
  - interviewing with staff and other people relevant to the complaint; and
  - analysing information;
- preparation of the report of the investigation in a clear, plain language;
- effectively liaising with the complainant or his advocate, the Independent Person and the Complaints Manager as appropriate; and
- identifying solutions and recommending courses of action to resolve problems.

Given the importance of providing an efficient response to the complainant, the Investigating Officer will need to prioritise his work effectively and have due regard to the regulated timescales for investigation.

### **Independent Persons (IPs)**

Local authorities must involve an Independent Person (IP) in the investigation of complaints at Stage 2. The person appointed 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 local authority staff are eligible, but good practice would suggest at least three years have elapsed since they were employed by the local authority.

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

The Independent Person should:

- 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 to the child or young person making the complaint. The role of the advocate in the complaints procedure is:

- to empower the child or young person by enabling him to express his views wishes or feelings, or by speaking on his behalf;
- to seek the resolution of any problems or concerns identified by the child or young person by working in partnership with child or young person and only with his agreement;
- to support the child or young person pursuing a complaint through every stage of the complaints procedure and to provide him with information about his rights and options, helping him clarify the complaint and the outcomes he is seeking; and
- to speak for or represent the child or young person at any stage of the complaints process, including at the informal stage or at any formal hearing or interviews.

Further detailed guidance 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.

### **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 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 should invite 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 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 will be taking and their timescale for implementation;
- confirms the complainant's right to request Stage 3 within 20 working days; and
- reminds the complainant of his right to approach the Local Government Ombudsman at any time.

The Adjudicating Officer should issue the details of the adjudication with the investigation report and the Independent Person's report.

He should also release the reports to his staff as appropriate.

### **Local authority representative at the Review Panel**

The local authority should ordinarily be represented at the Stage 3 Review Panel 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 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 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, but 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. All Panel members must be independent – this means people who are neither members nor officers of the local authority to which the representations have been made, nor the spouse or civil partner of such people. In appointing the Panel Chair, former members or officers of the local authority may be considered on a case-by-case basis, but good practice suggests that three years should have elapsed since.

The 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 opinion based on any specialist skills, knowledge and awareness that they have in respect of the presenting complaint.

### **Independent Chair of the Review Panel**

The role of the Chair is to:

- confer with the Complaints Manager about the specific needs of the complainant;
- agree who will 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 member;
- 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 local authority will need to provide administrative support for the operation of the panel which may be in the form of a clerk. It may be sensible for this role to be filled by a separate officer to that of the Complaints Manager. The clerk should assist in the appointment of the Panel through to the production of its final recommendations to the local authority.

Tasks the clerk might undertake include:

- organising the venue, facilities and refreshments;
- distributing written submissions from the complainant and the authority;
- supporting the Complaints Manager and Chair as required;
- ensuring that procedure on the day is adhered to;
- taking notes to facilitate the Panellists' decisions;
- specifying with the complainant whether he will be bringing any representatives or witnesses with him and assist as necessary; and
- providing administrative support to the Chair and Panel to produce and issue the final recommendations to the local authority complainant and other attendees within five working days.

### **Independent Reviewing Officers**

Independent Reviewing Officers (IROs) do not have a role in instigating the complaints

procedure themselves, and should not stand in the way of complaints being made. They will have a role when they meet children to inform them that they have a right to make complaints to the local authority, and of the local authority's responsibility to provide them with an independent advocate should the child so wish.

The IRO may be part of the solution to the problem, and the Complaints Manager may consult with the IRO to determine what options are available. An outstanding formal complaint using the local authority's complaints procedure should not prevent the IRO from fulfilling their role in resolving problems by negotiation. The IRO may have a role in communicating both with the child and with the Complaints Manager. The IRO should not prejudice the complaints procedure but their work may help to speed up the process or even hold a key to its resolution. The IRO should become involved in serious complaints concerning children's care plans. They should not usually need to get involved in more minor complaints about a child's day to day care.

In all cases the welfare of the child is the primary concern. IROs will need to make a judgement about whether a problem raised via a complaint is serious enough to constitute a breach of the child's human rights such as to justify making a referral to CAFCASS, or whether it would be reasonable to await a resolution through the complaints procedure, with or without additional support of the IROs own negotiation.

For more information on the role of the Independent Reviewing Officer, please refer to *Independent Reviewing Officers Guidance: Adoption and Children Act 2002*. Department for Education & Skills 2004.

## GOOD PRACTICE ON INVESTIGATIONS 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, 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 (e.g. local / national press, television or radio) notify the Complaints Manager and maintain strict confidentiality;
4. Consider the environment the investigations are conducted in – some places may be intimidating or distressing for children and young people in particular;
5. Question whether an unannounced visit to the establishment complained to check normal practice would be helpful; and
6. Adhere to relevant conventions and legislation such as Data Protection Act, Health and Safety Act and the Human Rights Act and the United Nations Convention on the Rights of the Child.

### *Getting Started*

7. Contact the complainant, ideally by phone, to offer a meeting in person. This meeting should explain the investigation procedure and;
  - a. allow the complainant to explain how he feels and express any strong emotions – he should feel as if his complaint has been accepted;
  - b. clarify the complaint and all its individual parts and produce a written record;
  - c. ask what the complainant wants in terms of solution or outcome;
  - d. check whether the complainant needs support of any kind, in order to understand the discussion properly; and
  - e. determine whether he needs support during the process e.g. an advocate.
8. Read background on the complaint and the relevant legal and administrative policies and procedures;
9. Consider whether the complaint could be resolved without further investigation; and
10. 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), appeals to tribunals, legal action and police involvement. If the complaints procedure is not appropriate, discuss the alternatives with the Complaints Manager.

### *Planning the Investigation*

11. Obtain all documentation needed including original versions of documents such as files, log books and timesheets;
12. Produce a chronology of the sequence of events from the files and identify the names of the individuals most directly involved in content of the complaint;
13. Analyse and categorise the complaint into its different elements;
14. Identify a list of interviewees and notify them that you wish to hold interviews with as much notice as possible. Supply them with relevant information on the complaint in advance of the interview;
15. Arrange the order of interviews in a logical sequence as relevant to the particular

- complaint;
16. 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;
  17. Consider whether a witness of a particularly difficult interview is needed – this is also a good way of training new investigating officers; and
  18. Prepare the line of questioning for each interviewee.

### *Interviewing*

19. Explain the complaint and your role clearly to the interviewee and confirm that they understand the complaints procedure and their role in it;
20. Conduct the interviews in an informal and relaxed a manner, while ensuring that due process is adhered to;
  - use open not leading questions;
  - do not express opinions in words or attitude; and
  - ask single not multiple questions, i.e. one question at a time;
21. Try to separate hearsay evidence from fact by asking interviewees how they know a particular fact;
22. Persist with questions if necessary. Do not be afraid to ask the same question twice. Make notes of each answer given;
23. Deal with conflicting evidence by seeking corroborative evidence. If this is not available, discuss with the Complaints Manager the option of a meeting between the conflicting witnesses; and
24. 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 to sign the record as accurate.

### *The Investigation Report*

25. Draft your report and show it to the Complaints Manager. The Complaints Manager will advise on local practice. The draft report should include:
  - Chronology;
  - List of interviewees;
  - The complaints set out in a numbered list;
  - Your analysis and findings for each point of complaint;
  - A record of relevant policy, practice and legislation;
  - Your recommendations and response to the complainant's desired outcomes;
  - Any other relevant information; and
  - A separate addendum for any other issues for the local authority;
  - Consider comments from relevant persons such as the Complaints Manager, Independent Person and amend the report as necessary; and
  - Notify the Complaints Manager that the final report is complete, he will advise you 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).

## 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 with the complainant the possibility of referring the complaint to the Local Government Ombudsman.

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 must be in place before proceeding with this option. Stage 2 must 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 providing a clear action plan for delivery; and
- 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 will need to 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 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 of the complaint will also not restrict the Ombudsman from later consideration of the complaint if he so chooses.

## **GUIDANCE ON UNREASONABLY PERSISTENT COMPLAINANTS**

When local authorities are committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who complain, they will 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.

If the complainant is persisting because his complaints have not been considered in full then the local authority must 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:

- an historic and irreversible decision or incident;
- frequent, lengthy, complicated and stressful contact with the local authority staff;
- the complainant behaving in an aggressive manner to staff or being verbally abusive or threatening;
- the complainant changing aspects of the complaint partway through the investigation or Review Panel;
- the complainant making and breaking contact with the local authority on an ongoing basis; and
- the complainant persistently approaching 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; or
- the matters raised are not sufficiently different to justify being considered as a new complaint.

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.

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). 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.

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.

### **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 cooperate with the advice given, any further correspondence that does not present significant new matters or new information will not necessarily be acknowledged, but will 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:

- Referring the complaint to the Local Government Ombudsman before the complaints procedure has been exhausted (see Annex 3); or
- 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 Local Government 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.

## **GUIDANCE ON UNACCEPTABLE BEHAVIOUR**

It is anticipated that this guidance 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 from unreasonably persistent behaviour to unacceptable behaviour.

### **Dealing with complainants**

When local authorities are committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who complain, they will not normally limit the contact complainants have with their offices. However, the authority should not expect their 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 may wish to take action to restrict the complainant's contact with its offices. In all cases, the local authority should write to tell the complainant 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 record the option selected and 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 will ensure that there is an avenue for consideration of the restrictions.

### **Terminating contact**

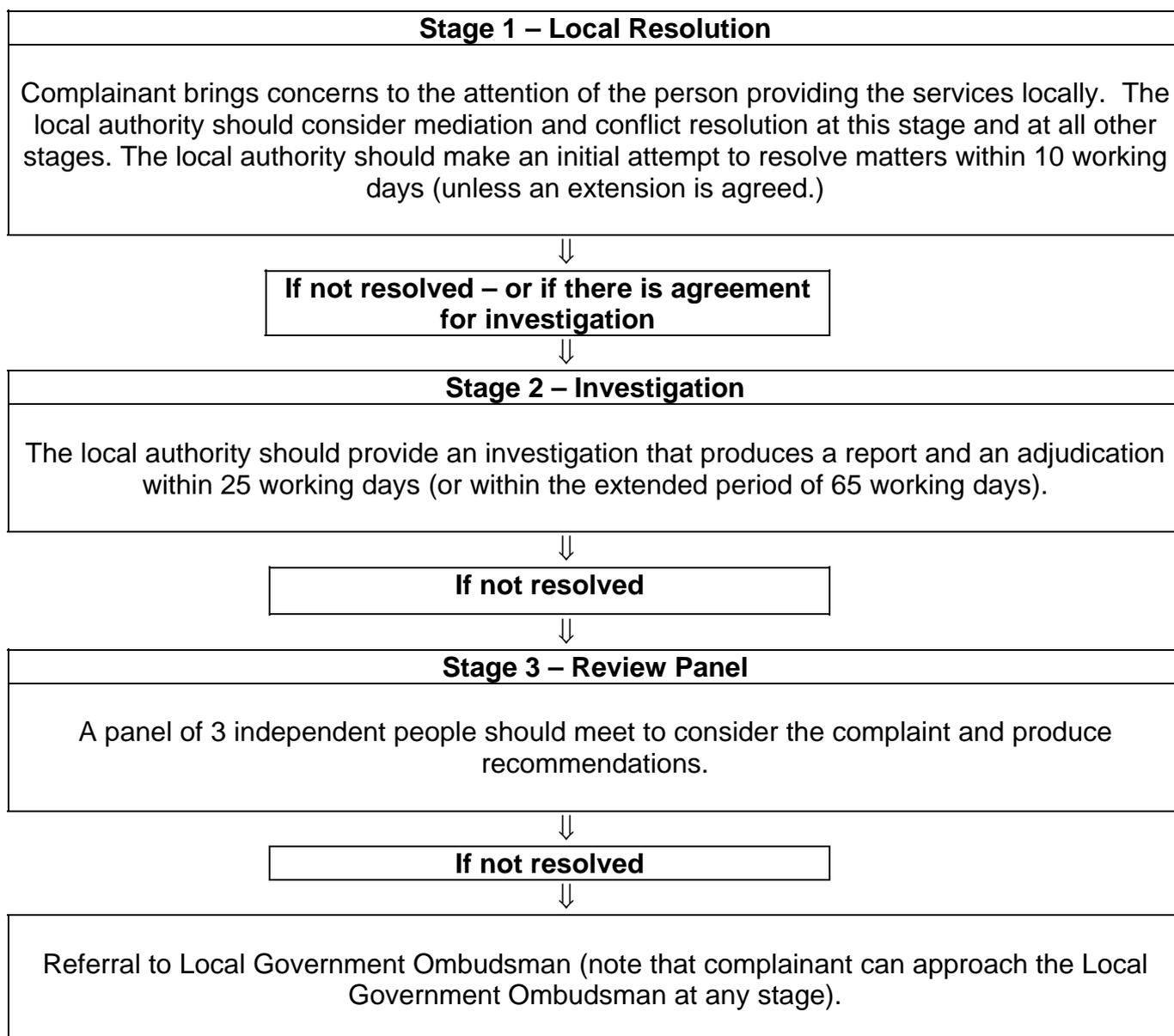
Where a complainant continues to behave in a way which is unacceptable, the local authority may decide to terminate contact with the complainant and discontinue any investigation into the complaint.

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 CHILDREN ACT 1989 COMPLAINTS



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