

Representations and Complaints Procedure

Children & Young People's Services
Information & Guidance



ST HELENS
BOROUGH COUNCIL

Children & Young People's Services

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1. INTRODUCTION

- 1.1 The Children Act 1989 requires local authorities to operate a procedure for considering representations, including complaints, about its Children's Services. In St. Helens, this procedure will be referred to as "Representations and Complaints Procedure - Children & Young People's Services". These notes are intended to offer guidance to staff who deal with the procedure.
- 1.2 Complaints legislation was reviewed by the Government following a public consultation exercise in 2004. This resulted in the introduction of The Children Act 1989 Representations Procedure (England) Regulations 2006. The Regulations came into force on 1st September 2006.
- 1.3 This document is based on the Guidance issued by the Department for Education & Skills 'Getting the Best from Complaints'. The Guidance 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 variation from it. A copy of the Guidance is accessible in the Guidebooks section of the Council's website.
- 1.4 **It is important to note that complaints about the Department's Community Care Services provided or requested in respect of children with special needs fall within the remit of this procedure.**

2. DEFINING COMPLAINTS AND REPRESENTATIONS

- 2.1 For the purposes of this guidance, a complaint is taken to mean a verbal or written expression of dissatisfaction or disquiet, which requires a response. This is distinct from the day-to-day problems and queries raised by children and families, which are usually dealt with by staff at the time they occur.
- 2.2 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.
- 2.3 Representations may not always be complaints; they might also be positive remarks or ideas that require a response from the Department. 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.
- 2.4 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 Department should ensure that it responds to the issues raised, setting out what action should be taken. Children and young people should be made 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.
- 2.5 When the representation is not a complaint and the Department fails to respond to the child or young person's satisfaction, they will then be entitled to make a complaint at Stage 1 about this failure.
- 2.6 The Department has produced two leaflets explaining the process for adults / young people and children.
- 2.7 The Department has also produced a small laminated aide memoire for staff (Appendix 2), which outlines the procedural requirements. For A4 copies contact the Performance Management Team, Unit 3 Tolver House, Tolver Street, St. Helens, WA10 1JE

3. WHO MAY COMPLAIN?

3.1 Section 26(3) and section 24D of the Children Act 1989 and section 3(1) of the Adoption and Children Act 2002 require the Department 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 Department consider has sufficient interest in the child or young person's welfare to warrant his representations being considered by them

3.2 The Department may also receive complaints by adults that relate to a child or young person but are not made on the child's behalf. The Department has the discretion to decide in cases where eligibility is not automatic, whether the 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 Department may wish to check with the child or young person that he is happy with the person making a complaint.

3.3 The Department has the discretion to decide whether or not a representative is suitable to act in this capacity or has sufficient interest in the child's welfare. If complaints staff consider that the representative does not have sufficient interest they will notify the representative in writing, explaining that no further action should be taken. Operational managers will be consulted during this process.

4. WHAT MAY BE COMPLAINED ABOUT?

4.1.1 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. 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, case management and review

This is not an exhaustive list, and the Complaints Officer may seek legal advice if necessary.

4.1.2 In addition, the 2006 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 that 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)

4.1.3 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 to 35 of the 2002 Act);
- Removal of children in non-agency cases (sections 36 to 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);
 - 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)

4.1.4 **Special Guardianship Regulations 2005** came into force on 30 December 2005, under those Regulations the following 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

4.2 What is exempt from the complaints procedure?

4.2.1 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 Department or of any body acting on its behalf; or
- The same complaint has already been dealt with at all stages of the procedure

4.2.2 The regulations provide the Department 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;
- Safeguarding Investigations.

4.2.3 If the Department decides not to consider or further consider subject to these concurrent investigations, the Complaints Officer must write

to the complainant explaining the reason for their decision and specifying the relevant concurrent investigation (regulation 8(3)).

4.3 Safeguarding of Children

4.3.1 It is essential that a complaint involving any element of child abuse or suspected child abuse should be referred immediately via the Department's Safeguarding Procedures.

4.3.2 If, during the complaints procedure, the Complaints Officer, Investigating Officer or Independent Person becomes concerned that there is an element of child abuse or suspected child abuse, he or she must consult with the Manager of the Safeguarding Children Unit. **If safeguarding procedures are invoked, the complaints investigation will be suspended.** The Manager of the Safeguarding Unit will determine when the complaints investigation may be resumed/reconsidered.

4.4 Corporate Complaints (See Appendix 6)

4.4.1 Complaints made about the Department's Children's Services which do not relate to the welfare of an individual or group of service users are likely to be more appropriately processed through the Authority's Corporate Complaints Procedure.

4.5 Complaints relating to more than one Local Authority

4.5.1 In such cases 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 co-operate. Good practice would suggest the local authority responding to the complaint should ensure good communication with other local authority/authorities.

4.6 Anonymous Complaints

4.6.1 Anonymous complaints should always be recorded and referred to complaints staff in the same way as other complaints.

4.6.2 Complaints staff, on receipt of an anonymous complaint will inform the relevant team/service manager.

4.7 NHS Complaints Procedures

16.2.1 A complaint involving children's and health services can be made in its' entirety to any one of the organisations involved. Local authorities and the NHS have a duty to co-operate with each other in responding to complaints. At Stage 1 a 'lead' organisation can be appointed with a view to providing a single joint response.

However, separate procedures apply at Stage 2 and beyond.

4.8 Complaints About Regulated Services & Contracted Services

- 4.8.1 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 as outlined in this document.
- 4.8.2 The Care Standards Act 2000 and the Health and Social Care (Community Health & Standards Act 2003) define the role of the regulator in social care (currently the Office for Standards in Education (Ofsted)). However, it does not have statutory powers to investigate complaints. Its role is to regulate in accordance with minimum standards and not to investigate complaints.
- 4.8.3 In respect of those services purchased by the Council on behalf of service users, the Department's Contract Officer also has a major role to play. It will ensure that each contracted agency has its own service specific complaints procedure and agrees to participate in investigations of complaints undertaken in accordance with this guidance.
In view of the above, confusion may sometimes arise about which procedure is appropriate. Complaints are likely to emerge in respect of the following issues:
- Commissioning
 - Placement arrangements
 - Placement Monitoring
 - Reassessment of personal needs
 - Funding
 - Service agreements
 - Service quality
- 4.8.4 Where a complaint is received about a regulated and/or contracted service, the service provider should be given the opportunity to use his/her own procedure to attempt to resolve the issue(s). The complainant should be asked to consider this. If they agree then this should be sent to the proprietor/manager. If the complainant does not agree then the complaint would be dealt with under the Department's procedure.
- 4.8.5 Where the complaint is both about a regulated service and about a social services function, the aim should be to provide a co-ordinated response to the complainant.
- 4.8.6 Where the complaint investigation is conducted under the Department's procedure the proprietor/manager of the concerned regulated/contracted service will be expected to respond positively to recommendations for service improvement.
- 4.8.7 Complaints staff will liaise with such service providers and the Contract Officer throughout the process of registration and investigation of complaints.
- 4.8.8** Complaints staff may also liaise directly with Ofsted to ensure clarity in handling complaints involving regulated care services. Ordinarily

Ofsted will not seek involvement in the resolution of individual complaints.

5. PRE-STAGE – THE PROBLEM SOLVING APPROACH

- 5.1 There are three prescribed stages in the Complaints Procedure, but for most workers and service users, the time before an issue is labelled as a problem or complaint is very important.
- 5.2 Before Stage 1 of the Procedure is initiated, positive management practice will usually resolve the majority of queries and grumbles as part of the Department's day-to-day operations.
- 5.3 The aim of all staff should be to resolve dissatisfaction as near as possible to the point where it arises. It may be that discussion, reconsideration of issues and explanation of actions and decisions will help to resolve many problems. It is important for staff to respond positively to expressions of dissatisfaction and to try to resolve issues before they become labelled as 'registered complaints'.
- 5.4 Front-line staff need to be pro-active in their acknowledgement of problems and need to make their immediate managers aware of such problems.
- 5.5 Local Managers have a key role to play in recognising potential complaints, tackling issues in a problem-solving vein and notifying Service Managers of potential registered complaints.
- 5.6 If the problem-solving approach is unsuccessful, all staff have the responsibility to ensure that those concerned are given appropriate information about the complaints procedure, and put in touch with the Complaints Officer if necessary.

6. AVENUES OF COMPLAINT

- 6.1 In order to ensure that the Complaints Procedure is readily accessible and user-friendly, it is important to recognise that complaints will be made in a variety of ways:
- Over the telephone or in a face-to-face interaction with the immediate worker, the local manager, with higher management or another member of staff
 - In a letter or e-mail sent to the immediate worker, the local manager or to higher management
 - In submitting a complaints form (Appendix 4)
 - Contacting the Complaints Officer via Performance Management Section directly or by any of the means referred to above
 - Contacting non-departmental bodies
 - Anonymous contact
 - Complaints leaflet / form
- 6.2 Staff should respond positively and sensitively to expressions of dissatisfaction and disquiet. Handling of complaints should be child and young person friendly, and appropriate to the age and understanding of the child. Information about the Complaints Procedure should be readily available both to children and adults and should be given in a manner that is appropriate.
- 6.3 All Looked After Children should be provided with information on how to make a complaint when they become looked after. This should be recorded on their file and confirmed during the statutory review process.**
- 6.4 In line with the Department's commitment to Equal Opportunities, staff should recognise factors which inhibit certain children and families accessing the Complaints Procedure. It is the responsibility of all staff to strive to make the Complaints Procedure accessible for such service users. Efforts should be made to overcome communication difficulties that may arise. Staff need to be sensitive to complainants with special needs and always be mindful of the equality issues.
- 6.5 Staff should be aware that a service user or carer may be reticent in complaining and that he/she may find pursuing a complaint through the procedure daunting and stressful; in such cases, increased levels of support and/or the provision of advocacy should be considered.
- 6.6 Where a complaint relates to the action of a member or members of staff, Managers should arrange for alternative staff members to assist the complainant, within the context of the hierarchy of processes that initially apply, i.e., safeguarding procedures and management intervention. Prior to considering the complaint, a decision will be made as to whether or not the disciplinary process needs to be invoked.
- 6.7 Using the Complaints Procedure does not affect the right of a person to complain via other avenues. This includes the right to approach the Local Government Ombudsman.

7. Relationships with other Council Procedures

- 7.1 Other procedures take a precedence over the complaints procedure:
- Safeguarding Procedures
 - Court Proceedings – civil, criminal or family
 - Grievance Procedures
 - Disciplinary Procedures
- 7.2 A complaint might raise issues of a child protection nature or of inappropriate conduct by a member of staff.
- 7.3 If it appears that a complaint is one which requires management intervention the Complaints Officer will inform the appropriate Senior Assistant Director on receipt.
- 7.4 The Senior Assistant Director will determine whether or not the issues within the complaint require a management investigation.
- 7.5 If this course of action is taken, the complaints procedure will be suspended until the management investigation has been completed.
- 7.6 The Senior Assistant Director will inform the Complaints Officer of the outcome of the investigation. At this stage, the complainant will be informed of the action taken in response to the issues they raised and will be provided with the opportunity of pursuing their complaint in the Complaints Procedure if they remain dissatisfied with the outcome of the management investigation.

8. RECEIVING A COMPLAINT

- 8.1 Children and relevant adults are free to contact the Complaints Officer if they have a matter they want to bring to his attention. Contact with the Complaints Officer may be by telephone, face-to-face contact or in writing – letter of complaint or e-mail, or completed complaints form.
- 8.2 If a complaint is made to a member of staff, the Complaints Officer should be informed and sent copies of relevant correspondence 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. **Within the constraints of usual working practices, child complainants will be contacted within twenty-four hours of their complaint being received by the Complaints Officers or other members of the Performance Management Team.**
- 8.3 The Complaints Officer will acknowledge contact from complainants in writing.
- 8.4 Where a complaint is made by a child or young person, a suitable person, usually the Complaints Officer should discuss the complaints process with the child, and ensure that any questions or concerns that they have are fully addressed.
- 8.5 Where a complaint is made by a parent or other adult, the Complaints Officer may inform the child of the complaint, being mindful at all times, of the child's age understanding and situation. The child's view on the complaint may be considered. However, the substance of the complaint may indicate that the Department may wish to proceed with an investigation against the child's stated views.
- 8.6 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. **Every child or young person will be offered an Advocacy Service.**
- 8.7 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 the child or young person and only with his/her 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 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.

- 8.8 Complaints staff are required to ensure that a suitable person is provided to act as advocate for any child or young person requesting or assessed to need such assistance.
- 8.9 It is essential when engaging with children and young people under this procedure that communication is made in a way that is understandable to them.
Staff will need to have equal regard for complainants whose first language is not English or those with learning disabilities or communication difficulties. Where a complainant, the child or young person has specific needs such as for translation or interpretation, assistance must be offered to aid them in making their complaint and supporting them through the process. The Department has therefore contracted with a number of organisations to provide such assistance.

9. TIME LIMITS

9.1 Time limit for making a complaint

- 9.1.1 The Department does not need to consider complaints made more than one year after the grounds to make the representation arose. In such cases, the Complaints Manager should write to advise the complainant that their complaint cannot be considered and explaining the reasons why he/she 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.
- 9.1.2 The time limit can be extended at the Department's discretion, if it is still possible to consider the representations effectively and efficiently. The Department will also wish to consider such complaints if it would be unreasonable to expect the complainant to have made the complaint earlier. For example, where a child was not able to make the complaint or did not feel confident in bringing it forward in the year time limit.
- 9.1.3 Though not exclusive, possible grounds for accepting a complaint made after one year are:
- Genuine issues of vulnerability;
 - The Department 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

9.2 Procedure Timescale

- 9.2.1 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 a 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.

10. DEFERRING (FREEZING) DECISIONS AND RESOLUTION

10.1 If the complaint is about a proposed change to a care plan, placement or service, the decision may need to be deferred until the complaint is resolved.

10.1.1 The decision to freeze will normally be made through detailed discussion and risk assessment between the complaints staff and the responsible Service Manager. Where an agreement cannot be reached, the case will be referred to the Senior Assistant Director.

10.1.2 Decisions to freeze can only be made on a case by case basis, but there should 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).

10.2 Resolution

10.2.1 The Department should also consider ways of resolving the complaint while any stage in ongoing.

10.2.2 There are a number of methods of resolution that can be applied without full investigation:

- Provision of an apology or explanation
- Conciliation and mediation
- A reassessment of the child or young person's needs
- Practical action specific to the complainant
- A review of practice/policy
- The assurance that the Department will monitor the effectiveness of its remedy

10.3 Financial Redress

10.3.1 In some cases financial redress may be appropriate for the following reasons:

- Compensation
- Quantifiable loss
- Loss of a non-monetary benefit
- Loss of value
- Lost opportunity
- Distress
- Time and trouble

10.3.2 Consideration should be given to the need to pay for loss of interest as well.

10.3.3 There is no definitive guidance for calculating the amount of financial redress and where this is considered appropriate by the Department it will be determined on a case by case basis.

11. STAGE 1 – LOCAL RESOLUTION

- 11.1 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 Department to resolve a complaint as close to the point of contact with the complainant as possible (i.e. through front line management of the service). In doing so the Department 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.
- 11.2 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 Department is obliged to ensure that the complaint proceeds to Stages 2 and 3 of this procedure, if that is the complainant's wish.
- 11.3 A complaint is registered on the date on which it is first received by the Department.
- 11.4 The expectation is that the majority of complaints should be considered (and resolved) at Stage 1. However, if the Department 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, complaints staff have delegated responsibility in this respect.
- 11.5 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 the issue and exchange information and thinking behind decisions and try to agree a way forward.
- 11.6 The Regulations place a **10 working day** time limit on this part of the process. Most Stage 1 complaints should ideally be concluded within this time limit.
- 11.7 Where the Department cannot provide a complete response it can implement a further 10 days extension (regulation 14(5)). If necessary, the Department may also suspend Stage 1 until an advocate has been appointed. **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.
- 11.8 The Complaints Officer will 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. In that event the details will be confirmed in writing by complaints staff.

- 11.9 If the matter is resolved, the relevant Manager must write to the complainant confirming the agreed resolution and the Complaints Officer should be sent a copy of this without delay. Otherwise, a letter should be sent by the Manager to the complainant (or a meeting offered, if this is more appropriate), responding to the complaint. If the matter is then resolved by a meeting, a confirmatory letter should be sent, copy to the Complaints Officer.
- 11.10 Where the matter is not resolved locally, the complainant has the right to request consideration of the complaint under Stage 2. There is no time limit within which he must request this, but the Complaints Officer may recommend that the complainant does this within 20 working days, so that momentum in resolving the complaint is not lost. The Department is under a duty to operate expeditiously throughout the complaints handling process.
- 11.11 In accordance with the Local Resolution principle, the Manger responsible for responding to a Stage 1 complaint is usually the appropriate Team Manager. However, if that Manager is included in the complaint, the Complaints Officer may direct the complaint to the Service Manager. Potentially serious complaints may be directed to the Senior Assistant Director.
- 11.12 Where responsibility for a complaint is transferred subsequent to allocation by the Complaints Officer, the Manager who decides on the transfer must inform the Complaints Officer. If a complaint involves more than one Manager within the Department, those involved should agree on who will provide a co-ordinated response, and inform the Complaints Officer of this.

12. STAGE 2 – INVESTIGATION

Role of the Complaints Officer

- 12.1 When a complaint has been registered at Stage 2 by the Complaints Officer, he will contact the Senior Assistant Director for Children & Young People's Services for a decision as to whether the Investigating Officer should be an internal or external appointment. If internal, the Investigating Officer should be at operational Manager level or above. The Investigating Officer should neither have nor recently have had, line management responsibility for the services and staff complained about. It may be necessary to arrange an adjustment to the officer's workload to ensure that timescales be met.
- 12.2 The Complaints Officer will appoint an Independent Person to monitor the investigation of the complaint(s).
- 12.3 The Complaints Officer will confirm the appointment of external Investigating Officers and Independent Persons in writing. The Complaints Officer's letters will include the following:
- Explanation of the Investigating Officer / Independent Person's duties and the Department's expectation of his or her services
 - A clear statement about confidentiality
 - A summary of the fees and expenses that will be paid
 - The name and other details of the Investigating Officer / Independent Person
 - Relevant documentation about the complainant's representations

The Complaints Officer will write to the complainant with the names and details of the Investigating Officer and the Independent Person.

- 12.4 The Complaints Officer will inform relevant Managers about the investigation of the complaint. Those Managers are responsible for informing any staff who are named in the complaint, or who will clearly need to be involved in the investigation.

Role of the Investigating Officer

- 12.5 General requirements for the Investigating Officer to bear in mind are:-
- Be aware of the timescale and the importance of providing a thorough investigation;
 - Work closely with the Complaints Officer, Independent Person and advocate where appropriate on all aspects of the investigation and report writing including keeping the complainant informed of progress;
 - If the media is involved (e.g. local / national press, television or radio) notify the Complaints Officer and maintain strict confidentiality;
 - Consider the environment the investigations are conducted in – some places may be intimidating or distressing for children and young people in particular;
 - Question whether an unannounced visit to the establishment complained of, to check normal practice would be helpful; and

- Adhere to relevant conventions and legislation such as Data Protection Act, Health and Safety and the Human Rights Act and the United Nations Convention on the Rights of the Child
- 12.6 The Investigating Officer's initial responsibility is to become acquainted with the substance of the complaint(s) and contact the Independent Person to discuss their joint consideration of the complaint and identify the process for the investigation.
 - 12.7 Once appointed, the Investigating Officer should contact the complainant, within three working days of their appointment, to explain the timescales and procedures involved and arrange to meet the complainant. They should remind the complainant that they can bring a friend or supporter to this meeting.
 - 12.8 The Investigating Officer should contact the Complaints Officer about independent advice for the complainant if this is requested or required.
 - 12.9 Detailed guidance on the conduct of investigations and the format of reports is contained in the separate document "Practice Guidance for Investigating Officers and Independent Persons", (Appendix 3) which should be read by any Investigating Officers and Independent Persons acting for the Department.
 - 12.10 The Investigating Officer will arrange to discuss the details of the complaints with the officer responsible for the service at issue and their Line Manager, if necessary.
 - 12.11 Before seeing staff, the Investigating Officer should read for reference, the section on Staff Rights (see section 14) of this manual.
 - 12.12 It is in the interest of all concerned that investigations are conducted promptly, but with allowance being made for setting up appropriate meetings at mutually convenient times. Staff will be expected to treat interviews as a high priority.
 - 12.13 The Complaints Officer will send a copy of the complaint 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 Officer should advise senior management, who should inform staff of the details of the complaint through normal line management.
 - 12.14 The Investigating Officer should have access to all relevant records and staff. These should be released within the bounds of normal confidentiality and with regard to relevant legislation in the Freedom of Information Act 200 and the Data Protection Act 1998.
 - 12.15 The investigation should be completed and the response sent to the complainant 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.

- 12.16 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 Officer. 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. The Complaints Officer 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)).
- 12.17 Where one of 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.
- 12.18 If, at any stage of the investigation, the Investigating Officer discovers significant new information, which could indicate the need for a management or disciplinary investigation, he or she should cease their investigation forthwith, and refer the information to the Senior Assistant Director and/or complaints officer. If a management or disciplinary investigation is decided upon, the complaints investigation will be suspended, but the Investigating Officer may be required to continue at a later date.
- 12.19 **Role of the Independent Person**
The Independent Person is required to:
- 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/her own report on the investigation;
 - Comment on each of the complaints and state whether he/she agrees with the Investigating Officer's findings on them; and
 - Explain, where necessary, any reasons for considering an investigation to be unfair or incomplete and to advise the complainant of these in his/her report.
- 12.20 **Stage 2 Investigation Report**
- 12.20.1 On completion of his consideration of the complaint, the Investigating Officer should write a report on his investigations including:
- Details of findings, conclusions and outcomes against each point of complaint; and
 - Recommendations on how to remedy any injustice to the complainant as appropriate;
 - Any recommendations to improve practice, policy or procedures;

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 Appendix 3.

- 12.20.2 The Independent Person should also provide a report to the Department once he has read the Investigating Officer's final report. He may wish to comment on:
- Whether he thinks the investigation has been conducted entirely in an impartial, comprehensive and effective manner;
 - Whether all those concerned have been able to express their views fully and fairly;
 - Whether the Investigating Officer's report provides an accurate and complete picture of the investigation; and
 - The nature of the recommendations or make his own recommendations as necessary;
 - The Investigation report and Independent Person's report should then be submitted to the Complaints Officer, who will discuss any perceived deficiencies with the Investigating Officer and agree an amended report, if necessary.

12.21 **The Adjudication and formal response**

- 12.21.1 Once the Investigating Officer has finished the report, the Senior Assistant Director should act as Adjudicating Officer and consider the complaints, the Investigating Officer's findings, conclusions, and recommendations, any report from the Independent Person and the complainants desired outcomes. The Complaints Officer will have drafted a suitable response, liaising with the Senior Assistant Director as necessary.
- 12.21.2 The purpose of adjudication is for the Department 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).
- 12.21.3 The Adjudicating Officer will be responsible for the response to the reports, with decisions on each complaint and actions he will be taking, with timescales for implementation – this is the adjudication.
- 12.21.4 The response letter to the complainant in tandem with a copy of the investigation report and Independent Persons report, constitutes the Department's formal response.

- 12.21.5 The response letter will conclude with a statement on the complainants rights to present their complaints to a Review Panel if they are not satisfied with the outcome of the investigation and will include a form to complete requesting a Review Panel. This letter will be sent with a copy of the investigation report by recorded delivery.
- 12.21.6 The Complaints Officer will ensure that copies of the response and reports are forwarded to relevant Managers and others, as recommended by the Investigating Officer.
- 12.21.7 If the complainant does not request to present his or her complaints to a Review Panel, the Complaints Officer will record this outcome accordingly and close the complainant's file.
- 12.21.8 The Senior Assistant Director will ensure that recommendations are implemented with due speed, in the context of the Council's general policy and resource constraints. The Complaints Officer will inform Performance Management colleagues of any recommendations – implementation will then be monitored and reported to Senior Management on a quarterly basis.

13. STAGE 3 – REVIEW PANEL ARRANGEMENTS

- 13.1 If the complainant remains dissatisfied having received the Department's final response to the complaints, he has 20 working days in which to request a Review Panel, by completing and returning the "Request for a Complaints Review Panel form" (Appendix 5).
- 13.2 Further consideration of the complaint can include, in a limited number of cases, early referral to the Local Government Ombudsman. Otherwise, the complainant retains the right to proceed to a Review Panel.
- 13.3 The Review Panel consists of three independent persons, one of whom is appointed as chair. Independent means a person who is neither a member nor an officer of the Council, nor the spouse or civil partner of such a person. Neither should any Panel member have been an officer or a Member of the local authority during the three years preceding the Panel.
 - 13.3.1 In order that the Chair may contribute to the organisation of the Panel, the Complaints Officer 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. The Complaints Officer should confer with the Chair, following the Chair's appointment, regarding arrangements for the Panel.

13.3.2 Summary of Stage 3 timescales

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

13.4 The Complaints Officer will advise the complainant in writing of the following:

- His/her right to make oral submissions to the Panel whilst it meets as well as to make written submissions before it meets;
- His/her right to be accompanied by a friend, representative or advocate;
- Details of the three panellists, their names and designations;
- Details of the venue;
- Details of others present at the Panel, i.e. the Adjudicating Officer, the Investigating Officer, Independent Person and the Clerk to the Panel

13.5 Purpose of the Review Panel

13.5.1 The Review Panel is 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 Department 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 Department

13.5.2 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.

13.5.3 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. In some situations it may be inevitable that the complainant is legally represented.

13.6 General Principles

13.6.1 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 Department representatives attending to a workable minimum to avoid the possibility of overwhelming the complainant.

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

- The Department 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 the Department;
- Panels should uphold a commitment to objectivity, impartially and fairness, and ensure that the rights of complainants and all other attendees are respected at all times;
- The Department 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 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.

13.6.3 The Department should be mindful of the specific needs of children and young people either using or affected by complaints. We 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 sufficient interest in the child's welfare, they should where appropriate, seek the child or young person's views with regard to the complaint.

13.7 Conduct of the Panel

13.7.1 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.

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

13.7.3 **Pre-meeting** – 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.

13.7.4 **Presentations** – 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.

13.7.5 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.

13.7.6 The full Panel meeting should begin with presentations on the points of complaint and desired outcomes by the complainant and the Department. Normally, the first presentation should be by the complainant (or advocate/representative) who should be invited to address 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.

13.7.7 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 Department and other attendees to ask questions and raise points of information and opinion as relevant to the complaint.

13.8 **Deliberations**

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

13.8.2 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)). The Complaints Officer must send this to the complainant, the Director of Children & Young People's Services, the Investigating Officer and 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.

13.9 **After the Panel**

13.9.1 The Director of Children & Young People's Services must send the response to the Panel's recommendations to the complainant (and other participants as necessary) within **15 working days** of receiving the Panel's report (regulation 20(3)). The response should set out how the Council will respond to the recommendations, and what action will be taken. If the Director deviates from the Panel's recommendations the reasoning for this should be demonstrated in the response. In developing the response, the Director should invite comment from attendees, including the Independent Person from Stage 2 (regulation 20(3)).

13.9.2 The response should advise the complainant of his right to refer his complaints (if still dissatisfied) to the Local Government Ombudsman (regulation 20(3)).

13.10 Withdrawing a Complaint

- 13.10.1 The complaint may be withdrawn verbally or in writing at any time by the complainant (regulation 7). The Complaints Officer must write to the complainant to confirm the withdrawal of the complaint. In these circumstances, it would also be good practice for the Senior Assistant Director to decide on whether or not to continue considering the issues that gave rise to the complaint, through an internal management review. The Department should then use this work to consider the need for any subsequent actions in the services it delivers.
- 13.10.2 Should the complainant then seek to reinstate the complaint, the Department could use the review to produce a response as necessary.

13.11 Post Review Panel

- 13.11.1 Having accepted the recommendations of the Review Panel, the Director will ensure the Senior Assistant Director for Children's Services implements the Panel's recommendations with due speed in context of the Council's general policy and resource constraints.
- 13.11.2 The Complaints Officer will inform Performance Management colleagues of Panel recommendations – implementation will then be monitored and reported to Senior Management on a quarterly basis.

14. STAFF RIGHTS, GRIEVANCES AND DISCIPLINE

- 14.1 The Government's Policy Guidance states that complaints procedures should be kept clearly separate from grievance and disciplinary procedures.
- 14.2 Grievance procedures concern staff issues, i.e. conditions of service, management and support.
- 14.3 Disciplinary procedures apply to the actions of staff in relation to alleged failures to comply with codes of conduct, job descriptions, practice instructions or other relevant professional or administrative guidance.
- 14.4 Staff are not personally liable for carrying out resource decisions or allocations of service, according to Departmental criteria.
- 14.5 The rights of Service Users are the Department's first priority, but staff rights also have to be protected.
- 14.6 The Department acknowledges the stress that the complaints process can cause for staff. It is the responsibility of Line Managers' to ensure that staff are properly supported, and a named individual Manager will be allocated this responsibility where requested.
- 14.7 During the investigation of a complaint, staff have the following rights:
 - The staff member(s) mentioned or criticised in a complaint will be informed through Line Management, before their involvement in the investigation.
 - The staff member(s) will generally be informed of the name of the complainant, the nature of the complaint, and the name of the Investigating Officer; wherever appropriate, staff will be allowed to see the recording of the registered complaint.
 - Staff will generally have access to any Departmental recording relevant to their involvement in the complaint.
 - Staff have the right to be accompanied by a representative of their trade union or work colleague (not mentioned in the complaint) during interview(s) with the Investigating Officer.
 - The Investigating Officer will give staff at least two working days notice of an interview.
- 14.8 The investigation report, together with the Department's response, should be made available by the Senior Assistant Director to the appropriate Line Manager(s), who should share this with those staff who have been involved in the investigation, paying due regard to confidentiality requirements. The same process should be adopted with the record of any Review Panel and the Department's response, if the complaint proceeds to this stage.
- 14.9 No record of complaints will be filed on personnel files. If disciplinary procedures become invoked then files will be compiled accordingly.

15. THE LOCAL GOVERNMENT OMBUDSMAN

- 15.1 A complainant is free to approach the Ombudsman at any time but normally he/she will not intervene until the complaints procedure has been exhausted.
- 15.2 On completion of Stage 3 (Review Panel) the complainant will be informed by the Director of the right of referral to the Local Government Ombudsman.
- 15.3 There will be some situations in which the Department has the option to fast track the complaint to the Ombudsman but only at the conclusion of Stage 2.

To do so the Department will need to demonstrate:

- A very robust Stage 2 report
 - A complete adjudication
 - An outcome where all the complaints have been upheld and;
 - A clear action plan for delivery and;
 - Agreement to meet the majority of all the desired outcomes presented by the complainant
- 15.4 If the above criteria is met the complaints staff will seek the written agreement of the complainant and advise the Ombudsman.
- 15.5 The Ombudsman will then apply a test of reasonableness to the decision to fast track. Should the Ombudsman conclude that early referral was inappropriate, he/she may select from a range of responses. This may include proposing that the complaint is considered by the Department at Stage 3 in the normal manner.
- 15.6 Such early referral of a complaint will not restrict the Ombudsman from late consideration of the complaint if he/she so chooses.

16. COMPLAINTS MONITORING & RECORDING

16.1 Monitoring

16.1.1 Local authorities are requested to publish an Annual Report at the end of the financial year.

The report will be presented to the Council and be available to staff and the general public. It will provide information about:

- The number of representations and complaints made to the Department at each stage and any that were considered by the Local Government Ombudsman
- The types of complaints made
- The outcomes of complaints
- The services complained about
- Details of advocacy services
- Compliance with timescales
- The changes made to services as a result of complaints
- A summary of statistical data about the age, gender, disability and ethnicity of complainants
- The effectiveness of the complaints procedure

16.1.2 In addition to the Annual Report complaints staff will provide:

- A quarterly summary to the Senior Management Team of complaints activity (as above) and outcomes
- A weekly progress report on ongoing complaints to the Senior Management Team
- A quarterly report to the Senior Management Team detailing the implementation of recommendations for each investigation and details of outstanding issues

16.2 Recording

16.2.1 Complaints staff will monitor records in accordance with Council Policy and requirements of the Data Protection Act 1998 and the Freedom of Information Act 2000.

The main principle being that any personal information obtained in relation to a complaint is used only for that purpose.

16.2.2 Complaints records will be maintained in electronic form only.

Complaints files will be destroyed after five years as per guidance in the retention and destruction of files section in the Case Recording Policy.

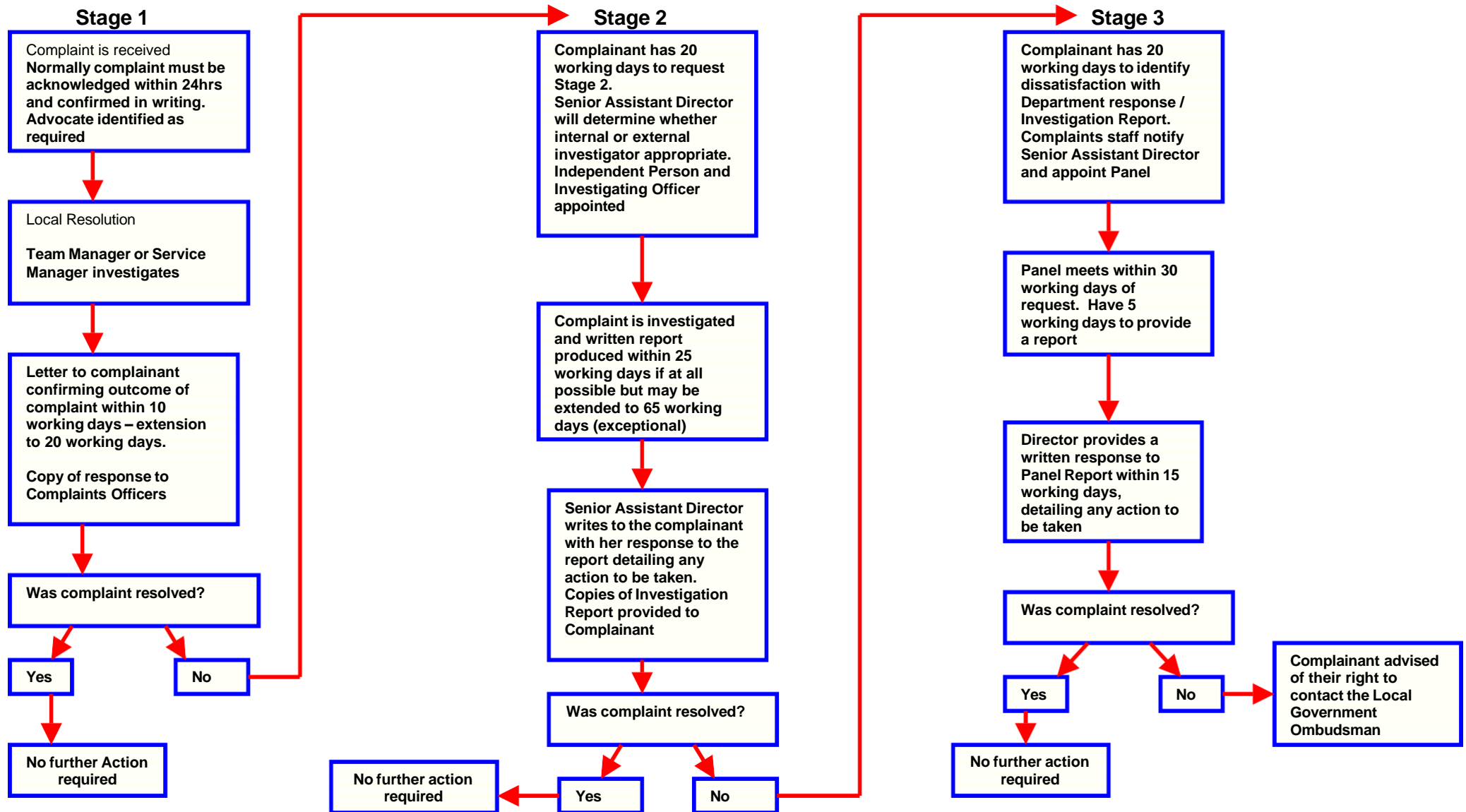
16.2.3 Records of complaints, investigation reports and letters of response from the Council should be placed on the relevant service user's file unless there are specific reasons not to do so. For example, if the reports could cause distress to the young person or child. It may also be appropriate to record details of complaints on foster carers' files.

16.2.4 Each complaint will be entered on the Council's Contact Centre database, which will issue reminders to the Team Manager/Service Manager responsible for providing the response to the complainant under Stage 1. A laminated aide memoire has been produced for staff itemising operating instructions for the database. (See Appendix 8)

NB: The Contact Centre will collect anonymised details of gender, age, disability and ethnicity in accordance with the Council's Equalities Policy.

COMPLAINTS PROCEDURE CHILDREN & YOUNG PEOPLE'S SERVICES

Appendix 1





Complaints Procedures Adult Social Care & Health / Children & Young People's Services

Stage 1

Response to stage 1 complaints:

Target time - 10 working days
Maximum time - 20 working days

from the receipt of the complaint

It is the responsibility of the responding officer to inform the complainant if the response will not be available within the 10 working day limit (copy to complaints officer)

Please note that the complaints database will generate daily reminders 10 days after the complaint is sent to the responding manager.

The complainant has the option of progressing to stage 2 if the response is not sent within this timescale.

The responding officer must include, in their response, a statement advising the complainant of their right to move to Stage 2 if they are not satisfied with the response.

Stage 2

At this stage an investigating officer is appointed, who may be a Departmental manager (with no direct responsibility for the service complained about) or an external investigator.

Target Time – 25 working days
Maximum time – 65 working days

following the registration of the complaint. Extensions to the timescale must be agreed with the complainant & complaints officers

If the complainant is not satisfied with the outcome of the investigation they can proceed to **Stage 3** Independent Review Panel.

GOOD PRACTICE FOR INVESTIGATING OFFICERS

General Points

1. Observe strict confidentiality in respect of their investigations and any associated records. Share information concerning the complaint with departmental staff only in accordance with this guidance;
2. Be aware of the timescale and the importance of providing a thorough investigation;
3. Work closely with the Complaints Officer, Independent Person and advocate where appropriate on all aspects of the investigation and report writing including keeping the complainant informed of progress;
4. If the media is involved (e.g. local / national press, television or radio) notify the Complaints Officer and maintain strict confidentiality. This will normally be known before the investigation is commissioned. Any issues in this respect will be considered by the responsible Senior Assistant Director and the Council's Press Officer;
5. Consider the environment the investigations are conducted in – some places may be intimidating or distressing for children and young people in particular;
6. Question whether an unannounced visit to the establishment complained of to check normal practice would be helpful;
7. Adhere to relevant conventions and legislation such as Data Protection Act, Health and Safety Act, the Human Rights Act and the United Nations Convention on the Rights of the Child;
8. If significant new information should come to light at any stage of the complaints investigation, which might indicate the need for safeguarding or disciplinary procedures to be invoked, the investigation should cease forthwith. The issue should be referred to the Complaints Officer, who will consult with the Manager, Safeguarding Unit. If a disciplinary or child protection investigation is decided upon, then the complaints investigation must be suspended; and
9. Familiarise yourself with the section on "Staff Rights, Grievances and Discipline" in this guidance.

Getting Started

10. Contact the complainant ideally by phone, to offer a meeting in person. Confirm that the complainant can bring a friend or supporter to the meeting. This meeting should explain the investigation procedure and;
 - a. Allow the complainant to explain how he feels and express any strong emotions – he should know if his complaint has been accepted;
 - b. Clarify the complaint and all its individual parts and produce a written record if this has not already been done by the Complaints Officer, or if the complainant wishes to vary the complaint recorded by the Complaints Officer;
 - 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;
 - e. Determine whether he wishes to have support during the process e.g. an advocate; and
 - f. Check that the complainant understands the Complaints Procedure, clarifying the stage that the process has reached, and explaining the complainant's right to pursue their complaint up to a Review Panel, if he is dissatisfied with the outcome of the investigation.
11. Read the background on the complaint and the relevant legal and administrative policies and procedures;
 12. Consider whether the complaint could be resolved without further investigation; and
 13. 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 Officer.

Planning the Investigation

14. Obtain or examine on site, all documentation needed including original versions of documents such as files, log books and timesheets;
15. 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;
16. Analyse and categorise the complaint into its different elements;
17. Identify a list of interviewees and notify them via their Line Manager, 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;
18. Arrange the order of interviews in a logical sequence as relevant to the particular complaint;
19. Inform all staff 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 or conflict of interest;
20. Consider whether a witness of a particular difficult interview is needed and if so consult with the complaints staff; and
21. Prepare the line of questioning for each interviewee.

Interviewing

22. Explain the complaint and your role clearly to the interviewee and confirm that they understand the complaints procedure and their role in it;
23. Conduct the interviews in an informal and relaxed 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;
24. Try to separate hearsay evidence from fact by asking interviewees how they know a particular fact;
 25. Persist with questions if necessary. Do not be afraid to ask the same question twice. Make notes of each answer given;
 26. Deal with conflicting evidence by seeking corroborative evidence. If this is not available, discuss with the Complaints Officer the option of a meeting between the conflicting witnesses; and
 27. 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

28. Draft your report and discuss it with the Complaints Officer. A proforma model for reports follows:

Stage 2 Draft Report Layout

Investigating Officers should use the following layout for organising their reports. State clearly and in bold print that this is a **DRAFT** until it has been read and agreed by the Complaints Officer.

Dos and Don'ts

1. Do give as much detail as needed to reflect your investigation, but please be as succinct as possible.
2. Do demonstrate your conclusions and recommendations with sufficient evidence to support what you say.
3. Don't include unnecessary personal information about people (including addresses).
4. Don't include copies of notes from the file. Files should be quoted as needed in the report.
5. Don't include notes of interviews with staff. These also should be cited as relevant.
6. Don't express unnecessary or unsupported opinions.

Please note that this list is not exhaustive.

INVESTIGATING OFFICER'S REPORT
NAME OF COMPLAINANT
(Date)

Confidential

1. **Complainant**
Name of complainant
2. **Service User**
Name of Service User if different
3. **Advocate**
Name (where applicable)
4. **Investigating Officer**
Name
5. **Independent Person**
Name (where applicable)
6. **Legislation**
State which Act or procedure the investigation was conducted under (i.e. Children Act 1989, Local Authority Social Services Act 1970, or Corporate Complaints procedure) and any other relevant legislation / documents that you have referred to
7. **Statement Regarding this Report**
State that this report is written for the Department and can only be released to any other party with the permission of the Director
8. **Progress of Complaint**
Stage 1: date
Stage 2: date
Stage 2 report completed: date
9. **Chronology of Key Events**
History of the complaint in chronological order, including the complainant's involvement with the Department as far as is relevant, or that clarifies the matters referred to in the report
10. **Outline of the Investigation**
Dates and details of those interviewed, including their roles. Outline any decisions made, e.g. to interview a child or decision not to, and comment on any key people that were not seen, and the reasons for this

information about files and other records seen (indicate if some files could not be seen for any reason)

Comment on any delays that may have arisen
11. **Consideration of the Complaint**
In bold, list each complaint individually from the final version of the Statement of Complaint. If the complaints are particularly long, embolden the numbers instead, e.g. **Complaint 1**, **Complaint 2** etc. Then state your findings and response to the complaint. Give your reasoning clearly and succinctly.

Each separate complaint should be dealt with in a discrete section indicating:

- a. The complaint being considered;
- b. The relevant facts;
- c. Information from the complainant, staff and any other parties;
- d. Information from the case files; and
- e. Your evaluation of the complaint and conclusions

Below this, **in bold**, state “**complaint upheld**”, “**not upheld**”, “**partly upheld**” or “**irresolvable**” as appropriate.

12. Summary of Findings

Identify each complaint as:

Upheld;

Not upheld;

Partially upheld; or

Irresolvable.

13. Desired Outcomes

State each of the complainant’s Desired Outcomes and respond with your view as to whether these have been met by your investigation, or should be met by the Department in response to your report

14. Recommendations

Outline ways in which resolution to the complaints may be found, referring to the Desired Outcomes above. Offer other recommendations for the Department to consider as appropriate

15. Any Other Relevant Remarks

Add anything else you would like to raise about the complaint or the process of your experience of the investigation

You may wish to create a discrete addendum marked “Confidential to the Department” for these remarks, as necessary

16. Sign and Date the report

When you have agreed the final version with the Complaints Officer, sign and date it

Delete any entries that are not applicable (i.e. “Independent Person” etc)

Add as a appendix the Statement of Complaints / Terms of Reference that the complainant signed when the investigation commenced



Children and Young People's Services

Registered Complaints Form

1. Your Name _____

Your Address _____

Your Telephone Number _____

E-mail Address _____

2. If you are complaining on behalf of or in connection with someone else, please state his/ her details,

Name _____

Address _____

Telephone Number _____

3. What is the nature of your complaint(s)? (Please continue overleaf if you need to do so)

Signed _____

Date _____

Please forward this form to the complaints officer, Children and Young People's Services, Apartment 5, Tolver House, St Helens, WA10 1JE.



**REQUEST FOR COMPLAINTS REVIEW PANEL
Children & Young People's Services**

Complaint Log Number _____

1. Your name _____

Your address _____

Your telephone number _____

E-mail address _____

2. When did you receive the response to your complaint(s)? _____

3. Please state why you are dissatisfied with the Department's response to your complaint(s)

4. Do you have any preferences or availability problems for attending a Review Panel? (Such as disability, caring responsibilities and fixed working hours)

5. Will you be attending alone?

YES/NO

Do you need help in getting someone to accompany you?

YES/NO

6. Do you have anything to say to the Panel Members before they meet?
(Please attach extra sheets if you need to do so)

7. You will normally be given ten days notice for a Review Panel.
Will this be enough time for you?

YES/NO

8. Review Panels are held at very few venues in the Borough, will getting a Panel some distance away from your home present any difficulties?

YES/NO

9. Will your companion experience any difficulty or discomfort in climbing stairs?

YES/NO

10. Do you have any suggestions to make about the arrangements for your Review Panel?

Signed _____

Date _____

Please forward this form with copies of relevant correspondence attached to:

Children & Young People's Services, The Complaints Officer, Performance Management,
Apartment 5 Tolver House, Tolver Street, St.Helens, WA10 1JE



Corporate Complaints Procedure

The Corporate procedure is simpler in nature than the procedures for Children & Young People's Services and Adult Social Care & Health. It consists of two stages beyond the initial informal attempt to resolve issues raised by the complainant.

1. Investigation and full written answer.
This is managed within the Department concerned.
2. Review by the Chief Executive.
At this stage the Chief Executive nominates an appropriate senior officer from another Department to undertake the review on her behalf. The Chief Executive, on receipt of the report will write to the complainant.
If still not satisfied, the complainant is directed to the Ombudsman.

Guidance for handling Corporate Complaints is available in the Guidebooks and Procedure manuals on the Council's Intranet.

The leaflet "Comments, compliments and complaints" provides access to the Procedure for complaints with a free post card.

Procedures for Managers

Complaints staff have responsibility for management and monitoring of Corporate complaints and will, on receipt of them, determine whether the complainant is eligible to use the Department's statutory procedure.

If a complainant is not eligible to use the Department's procedure, the complainant will be given details of the Corporate process. If appropriate, a Team / Service Manager will then be asked to complete the initial investigation and write to the complainant with the findings. The response should indicate the right, if still dissatisfied, to involve the Chief Executive.

Unreasonably Persistent Complainants

Introduction

This term does not apply to the majority of complainants, but to those few who, because of the frequency of their contact with the Authority, hinder the consideration of their own complaints. It is important to distinguish between those people who make a number of complaints because they really think that things have gone wrong, and those who are unreasonably persistent.

An initial question to ask therefore is “Why is the complainant persisting with their complaint?” If the answer to this is that the complaints have not been considered fully by the authority then this should be addressed. If, however the authority has already done this, then a discussion should take place between the Complaints Manager and the Manager for the service to decide whether the complainant is inappropriately persistent.

Features of persistent complainants

These may include:

- A person who makes the same complaint repeatedly (with minor differences) but never accepts the outcome
- A person who seeks an unrealistic outcome and persists in pursuing it
- A person with a history of making other unreasonably persistent complaints

Other elements might also be present:

- The complaint arises from a historic and irreversible decision or incident
- Contact with the Department is frequent, lengthy, complicated and stressful for staff
- The complainant escalates the pressure on the Department by approaching the authority through other routes, such as via their MP, County Councillor, Chief Executive etc, in the hope of getting a different response
- The complainant changes aspects of the complaint partway through the investigation of their complaints
- The complainant makes or breaks contact with the authority on an ongoing basis
- The complainant can become aggressive or threatening to staff if their requests are refused

The most important principle in managing these situations is that the complainant should receive the same standard of response as any other service user, and that it can show that it has not discriminated in any way against the persistent complainant.

Prevention

Early identification of situations where a complainant might become unreasonably persistent is essential so that the complaints staff and the Team/Service Managers' can devise strategies to control the situation in the early stages. It is important in all complaints to do the following:

- Be clear about the nature of the complaint, and agree this in writing with the complainant
- Co-ordinate multiple complaints or complaint involving more than one part of the organisation
- Support staff who might be the subject of personalised complaints

- Follow the procedure
- Be thorough at each stage and try not to exceed timescales
- Bring the complaint to an end with a written response, including any redress necessary, such as an apology, a re-assessment, and explanation, provision of or restoration of a service, changes in practice or procedure, financial redress in some cases

These key principles are of increased importance where the complainant may be becoming unreasonably persistent.

Action in Response

A discussion will take place between the Complaints Officer and the Managers' for the service concerned, with a view to agreeing the action that the Department will take in terms of managing the situation. These discussions should take into account:

- What actions have already been taken to resolve the complaints
- What still remains to be done in terms of the complaints procedure
- Evaluation of why the complainant is persisting
- Examination of whether we can demonstrate that we have acted fairly and reasonably
- Evaluation of the effects on staff of the contact with the complainant
- Is the complainant's behaviour a cause for concern
- Risk assessment of plan made for managing the complaint
- Discussion of options to manage the complainant

The Complaints Manager should warn the complainant that they are considered to be unreasonably persistent, and that the Department may be considering restricting access to the complaints procedure.

Where a decision is taken to restrict access the following can be considered:

- Requesting contact in a particular form e.g. letters only
- Appointing a named officer to deal with all enquiries
- Restricting telephone calls to particular times or days
- Asking the complainant to enter into an agreement about their behaviour towards staff
- Restricting access to its buildings
- Setting the duration of the action being taken
- Informing the complainant that they can challenge the decision that they have been deemed to be unreasonably persistent (this would normally be to advise them to contact the Local Government Ombudsman)

Once the action being taken has been agreed, the Complaints Officer should write to the complainant telling them:

- Why the Department believes that they are being unreasonably persistent
- What action the Department is taking to manage the situation
- How long the action will last
- That they can challenge the decision through the Local Government Ombudsman

Managing Continuing Contact

Often even when a complainant has been deemed to be unreasonably persistent it is likely that they will continue to contact the Department. It is essential that all staff who might be in contact with the complainant know how they should respond.

In terms of telephone contact, this will only be to the named officer who is acting as the lead person in the complaint. All other contacts should advise the complainant to contact the named officer.

If the complainant is rude or abusive on the telephone, then staff should advise that they do not have to take the call in these circumstances and that they will put the phone down if the abuse continues. If it does continue staff should put the phone down. The contact should be recorded and the Complaints Officer informed.

In terms of further correspondence, this should be checked to ensure that there are no new areas of complaint to be dealt with. If there are none, then the letters should be acknowledged as follows "Thank you for your letter dated... the contents of which have been noted."

Conclusion

The strategy is designed to take a strong management line with unreasonably persistent complainants, to control the complainants and reduce the amount of management time being taken to deal with these situations.