

Children and Young People's Department

Complaints Policy and Procedure

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Introduction

The Government's key message from Every Child Matters: Change for Children is that we all work 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.

Where our service does not meet expectations, our service users or their representatives are encouraged to (and in many cases are entitled to by law) bring this to our attention so that we can take appropriate action.

The Children Act 1989 Representation Procedure (England) Regulations 2006 came into force in England on 1st September 2006, their aim is to provide a clear and consistent process for representations (including complaints).

This Policy and Procedure sets out the way in which we fulfil our responsibilities and all staff are required to ensure that it is followed.

Scope

This policy applies to all social care services provided by the Children & Young People's Department.

School appeal or tribunal procedures such as Admissions, Exclusions and Special Educational Needs are subject to their own statutory framework and are not considered as part of this policy.

Complaints

Who can complain?

The following people have the right for their complaint to be considered by the Children and Young Peoples Department:

- any child or young person who has received a social care service from the Department either as a looked after child or a child in need
- a parent or someone who has parental responsibility for a child or young person who has received a social care service from the Department either as a looked after child or a child in need
- any local authority foster carer
- 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) (Special Guardianships);

- any child or young person who may be adopted, their parents and guardians
- prospective adopters who have been matched with a child
- adopted children/young people, natural parents and former guardians
- 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.

Complaints made by a Child or Young Person

Where the complaint is made by a young person aged up to 18 years, or from a Care Leaver about a service they received as a child or young person, a Children's Complaints Officer will be appointed to undertake local resolution.

Complaints made on behalf of a Child or Young Person

Where the complaint is made by an adult on behalf of a competent child aged 12 years or above the Complaints Manager will seek to confirm that the young person is in agreement with the complaint being made on their behalf and that the complaint reflects their views. If the young person is not in agreement with the adult making a complaint on their behalf the Complaints Manager will inform the adult that their complaint will not be considered and why. The young person will be given information regarding the Children's Complaints Officer and encouraged to make their own complaint if they are dissatisfied.

Complaints made by an adult which relate to a Child or Young Person

Where the complaint is made by an adult who has the right to have their complaint considered by the Children and Young People's Department the Complaints Manager will seek to ascertain that any competent young person aged 12 years or over is in agreement with the adult making a complaint and give their consent for their personal information to be accessed and shared via the investigation process. If a competent young person does not want their personal information accessed and/or shared the Complaints Manager will inform the adult as to which parts of their complaint cannot be investigated fully and why.

Where the complaint is made by an adult who does not have a right to have their complaint considered by the Children and Young People's Department, the Department will exercise discretion as to whether the adult concerned has sufficient interest in the child's welfare for the complaint to be considered. If it is decided that the complaint will not be considered the Complaints Manager will write to the adult to inform them of the decision.

Anonymous Complaints

Anonymous complaints cannot be considered within the Children & Young People's Department complaints procedures. However, dependant upon the

nature of the complaint the Children's Complaints Manager will decide what action, if any, should be taken.

What can be complained about

All functions of the local authority under Part 3 of the Children Act 1989 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:

- quality or appropriateness of a service
- delay in decision making or provision of services
- non-delivery of services
- quantity, frequency, change or cost of a service
- attitude or behaviour of staff*
- application of eligibility and assessment criteria
- assessment, care management and review.

* Where a complaint is received regarding the attitude or behaviour of staff the Complaints Manager will decide, in consultation with the Principal Manager Child Care, if the complaint is to be investigated under the Complaints Procedure or Capability/Disciplinary procedures and will inform the complainant.

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

- matters relating to Care and Supervision Orders
- matters relating to Child Assessment Orders
- matters in relation Emergency Protection Orders
- certain adoption related functions (from the Adoption Support Regulations 2005 and some sections of the Adoption and Children Act 2002)
- certain aspects of Special Guardianship Support Services (Regulations 2005).

The Department will exercise discretion in deciding whether to consider complaints where to do so may prejudice any of the following proceedings which are ongoing:

- court proceedings
- tribunals
- disciplinary proceedings
- criminal proceedings.

If the Department decides not to consider complaints subject to ongoing proceedings, the Complaints Manager will write to the complainant explaining the reason for their decision. Once the ongoing proceedings have been concluded the complainant may resubmit their complaint to the Department as long as it is within one year of the conclusion of the concurrent investigation.

Time limit for making complaints

The Department will not normally consider complaints made more than one year after the grounds to make the representation arose. In these cases, the Complaints Manager will write to advise the complainant that their complaint cannot be considered and advise the complainant of their right to approach the Local Government Ombudsman.

The time limit can be extended at the Complaints Manager's discretion if there are reasonable grounds for the complainant not being able to have made the complaint earlier; and it is still possible to consider the representations effectively and efficiently.

Assistance and support

The Customer and Resolution Team will offer assistance to complainants with regard to explaining the complaints procedures and ensuring they are aware of the date, time and location of any meeting or Panel that they are invited to attend.

Individuals are entitled to access their own advocacy and support via such organisations as Citizen's Advice Bureau.

For children and young people making a complaint in their own right, they will be given information regarding advocacy services which are available.

Receiving a complaint

If a complaint is made directly to a member of staff the Complaints Manager should be informed so the complaint can be recorded and monitored. There may be no need to engage the complaints procedure if the matter can be resolved quickly (within 5 working days).

Complaints received by the Customer Resolution and Information Team will initially be dealt with at Stage 1 (Local Resolution) in order that the appropriate Manager has the opportunity to address the concerns raised, account for the actions of their staff and attempt to offer resolution.

It will be at the discretion of the Complaints Manager as to whether a complaint is serious enough to warrant bypassing Local Resolution and be Registered at Stage 2 of the complaints procedure.

Relationship with corporate complaints procedure

Any of Wirral's citizens can make a complaint to the Council using the corporate complaints procedure if they are unhappy with a service they have received.

If such a complaint, or complainant, does not come within the remit of Children Act Representations Regulations they will be dealt with under stage 1 of this procedure (see page 6); if the complainant remains dissatisfied they can request

that their complaint is reviewed by a senior member of staff; if they remain dissatisfied they can request that the complaint is reviewed by the Director.

Local Resolution (Stage 1)

It is expected that the majority of complaints should be resolved through Local Resolution.

The Customer Resolution and Information Team will discuss with the complainant which issues they want registered as a complaint, advise the complainant if any of the issues are outside the remit of the Children's Representations and Complaints procedure, and ask what remedy would resolve their complaint.

The agreed points of complaint will be logged by the Customer Resolution and Information Team and details of the complaint and desired remedy will be forwarded to the appropriate Team Manager. Where the complaint is regarding a Team Manager, the complaint will be forwarded to the appropriate District Manager for action. If the complaint is regarding a District Manager the complaint will be forwarded to the appropriate Principal Manager for action.

For issues which are outside of the remit of the Children's Complaints Regulations and/or are an expression of dissatisfaction which does not constitute a complaint the Customer Resolution Team will liaise with the appropriate Social Worker or Team Manager to try and resolve the issue informally, for example ensuring that someone receives a telephone call back from an appropriate member of staff.

Managers tasked with responding to Stage 1 complaints should be open and flexible in their attempt to resolve the complaint and should examine how best to approach resolution, this could include meeting with the complainant to discuss their issues of concern rather than only communicating in writing.

The Manager undertaking local resolution must write to, or meet with, the complainant to inform them of the outcome of their enquiries and any action they propose to take to try and resolve the complaint. If a meeting takes place the Manager must write to the complainant to confirm the outcome of the meeting. A copy of the response to local resolution must be sent to the Customer Resolution and Information Team.

If the matter remains unresolved the complainant may wish to have their complaint registered at Stage 2 of the Complaints Procedures, in this case the complainant must write to the Complaints Manager within 20 days of receiving the response to local resolution. The letter must include the issue(s) which remain unresolved and an outline of why the complainant is dissatisfied with the response to local resolution.

A Children's Complaints Officer will liaise with children and young people who wish to make a complaint and will undertake local resolution together with the appropriate worker or manager.

Time Limits

We aim to complete Local Resolution within 10 working days of the complaint being logged by the Customer Resolution and Information Team where possible, however in some cases more time is needed to give a full response and the regulations allow up to 20 working days for stage one to be completed. If resolution is likely to take more than 10 days the Manager should keep the complainant informed and agree a date by which they will receive their response.

If a response has not been received by the complainant within the agreed timescale for local resolution the Complaints Manager will liaise with the complainant and appropriate manager to expedite a response in a timescale agreeable to the complainant. If after the intervention of the Complaints Manager a response is not received the complainant may elect to have the complaint considered at Stage 2 of the Complaints Procedure.

Investigation (Stage 2)

Complaints which are to be considered at Stage 2 of the procedure need to be registered in writing and the complainant's desired outcomes noted. The Customer Resolution and Information Team will liaise with the complainant to ensure that proposed complaints are within the remit of the complaints procedure and agree the wording of complaints to be registered; this will be achieved either via correspondence or a meeting with the complainant.

The consideration of complaints at Stage 2 is normally achieved via a formal investigation undertaken by an Investigating Officer and Independent Person. The Complaints Manager can offer alternative resolution, in agreement with the complainant, which would be undertaken by the Complaints Manager or Investigating Officer; this would not preclude the complaint from progressing to a formal investigation if resolution was not achieved.

All formal stage 2 investigations will have an Investigating Officer and Independent Person appointed by the Complaints Manager. The Investigating Officer will normally be an employee of the Children and Young People's Department but will have no direct line management of the service or person about whom the complaint is being made. The Independent Person will have no direct link to Metropolitan Borough of Wirral, i.e. they will not be an elected member or employee of the local authority, nor a spouse of an employee or member of the authority.

The Investigating Officer and Independent Person will have access to all relevant local authority records and staff. If records from other agencies are required to facilitate a thorough investigation the Complaints Manager will make a written request that the agency in question produce relevant information within the bounds of normal confidentiality and with regard to the Freedom of Information Act 2000 and the Data Protection Act, 1998.

It is expected that formal investigations will be completed within 25 working days, however this may be impractical in some cases, particularly if the complaint is lengthy, complex or key witnesses are unavailable. Where it is not possible to

complete the investigation within 25 days, Stage 2 may be extended to a maximum of 65 working days with the agreement of the Complaints Manager.

The Investigating Officer will maintain communication with the complainant and keep them advised of any unavoidable delays; and where possible agree with the complainant a reasonable timescale for completion. The reason for the delay and the revised timescale for completion will be confirmed in writing by the Complaints Manager.

On completion of the investigation the Investigating Officer will produce a report detailing:

- findings, Conclusions and Outcomes against each point of complaint
- recommendations on how to remedy any injustice to the complainant (if appropriate).

The Investigating Officer's report will be forwarded to the Independent Person for their consideration.

The Independent Person will provide a report detailing:

- whether the investigation has been thorough and fair
- whether everyone concerned has been able to express their views fully
- whether the Investigating Officer's report provides an accurate and complete picture
- whether there is agreement with the recommendations made by the Investigating Officer
- any further recommendations the Independent Person wishes to make.

Adjudication – Head of Branch for Social Care

The Investigating Officer and Independent Person's reports will be forwarded to the Head of Branch (Social Care) who will consider:

- the Registered Complaints
- the Investigating Officer's findings, conclusions and recommendations
- the Independent Person's report
- complainants desired outcomes.

The Head of Branch may wish to meet the complainant as part of the adjudication process or afterwards to explain his/her decision.

The Head of Branch will prepare a formal response to the reports, including his/her decision on the complaint and any actions that will be taken with timescales for implementation. The formal response will be sent to the complainant together with copies of the Investigating Officer and Independent Person's reports. The response will also contain details of the complainant's right to request that the complaint is reviewed by an Independent Review Panel (Stage 3) if they remain dissatisfied.

The Head of Branch is responsible for ensuring that any recommendations contained in the response are implemented.

The Complaints Manager will monitor implementation and report to the Director of Children's Services via Children and Young People's Management Team.

Independent Review Panel (Stage 3)

Where Stage 2 of the complaints procedure has been concluded and the complainant remains dissatisfied they can request further consideration of the complaint by an Independent Review Panel. The request must be made in writing to the Complaints Manager within 20 working days of receiving the formal response.

The Complaints Manager will acknowledge and assess requests for Independent Review Panel on a case by case basis, ensuring that complainants are aware of the Panel's remit and have realistic expectations regarding outcomes. If appropriate the Complaints Manager will discuss other options available for resolution with the complainant

The Panel should be held within 30 working days of the request, if the Complaint Manager is aware of any delays in organising panel dates they will inform the complainant in writing giving the reason for any delay.

The Complaints Manager will appoint an independent person (who must not have been involved in the Stage 2 investigation) to Chair the Panel and will work with the Chair regarding the arrangements for Panel.

Purpose of Panel

The purpose of Panel is to:

- listen to all parties
- consider the adequacy of the stage 2 investigation
- focus on achieving resolution
- reach a finding on each of the complaints reviewed
- consider making recommendations, including appropriate redress where complaints are upheld.

The Review Panel cannot re-investigate complaints, nor can it consider any new complaints which have not been investigated at Stage Two of the complaints procedure.

Papers for Panel

The Complaints Manager will confer with the Chair of Panel to produce a set of panel papers which give panel members sufficient information regarding the

complainant's issues of concern and/or dissatisfaction; and the response they have received from the Children and Young People's Department.

The panel papers will consist of:

- Stage 1 information (if relevant)
- Stage 2 Investigation Reports and Response
- any relevant policy, procedure or practice guidance referred to in the investigation
- comments submitted from the complainant which focus on the complaints investigated at Stage 2, or the investigation itself.

Papers will be circulated no later than 10 working days before Panel. It is at the Chair's discretion whether any information received outside of this timescale is heard.

Attendance

The Complaints Manager will write to invite the following to attend Panel:

- Complainant (with advocate or representative if desired)
- Investigation Officer who conducted Stage 2
- Head of Branch – if s/he has rejected any of the Investigating Officers findings at Stage 2. (If s/he accepted all findings s/he may delegate this responsibility)
- Complaints Manager or representative who will advise Panel regarding complaints legislation.

A Borough Solicitor will be available to advise panel members regarding any relevant legislation or legal issues which arise

No party will be allowed to be represented by lawyers at the Panel.

Panel Chair makes the final decisions on attendees (including specific members of staff to provide specialist advice or opinion).

If key attendees are unavailable the Complaints Manager will consult with the Chair of Panel regarding whether the Panel has enough information to proceed.

Conduct of the Panel

Panels will consist of a pre-meeting; presentations and deliberation:

Pre-Meeting

Panel members, Borough Solicitor and Minute Taker will meet in a closed session to discuss the order of business and any other relevant issues. No deliberations on the complaint will happen during this meeting.

Presentations

The Chair will open Panel by explaining its purpose and the need for confidentiality and advise the complainant of the respective roles and responsibilities of those.

Presentations on the points of complaint and desired outcomes by the complainant and the local authority will then begin. The first presentation should be by the complainant (if attending) who should be invited to talk about the complaint and expand on any relevant themes that would aid Panel's deliberation. The Chair must ensure that presentations are reasonable and relevant, exercising discretion in limiting their scope, substance or duration.

Panel Members will be given the 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 may invite the complainant, the local authority and any other attendees to ask questions and raise points of information and opinion relevant to the complaint. Again the Chair must ensure that questions are reasonable and relevant and use their discretion to limit the scope, substance or duration of such questions.

The purpose of hearing presentations is to understand each party's opinion of the complaint; it is not an opportunity to cross-examine attendees.

Deliberations

The Panel Members will then go into a closed session to deliberate on their findings and conclusions.

The standard of proof applied by Panels will be the civil standard of 'balance of probabilities', this standard will be based on evidence and facts.

Panel Report

The Panel is required to produce a written report containing a brief summary of the representations, their recommendations for resolution of the issues and the reasons for them. If any panel member disagrees with the majority, this should be recorded and the reason given for it.

The report will be sent to the complainant; the Director of Children and Young People's Department; the Head of Branch for Social Care; the Children's Complaints Manager and the independent person from the stage 2 investigation within 5 working days of the Panel meeting.

After Panel

The Children and Young People's Department will produce a formal response to the Panel's recommendations. The response will be developed by the Director of the Children and Young People's Department and will be sent to the complainant

(and other participants as necessary) within 15 working days of receiving the Panel Report. In developing the response the Director may invite comment from all attendees.

The response will include how the Department will respond to the recommendations and what action will be taken. If the Director deviates from the Panel's recommendations the reason for this will be included.

The response will include information on the complainant's right to approach the Local Government Ombudsman if they remain dissatisfied.

Unreasonable and Unreasonably Persistent Complainants

The Children and Young People's Department are committed to dealing with all complaints fairly. However there are a small minority of complainants who hinder the consideration of their or other people's complaints; or use unacceptable behaviour.

Some examples of actions and behaviours which the Department designate as unreasonable or unreasonably persistent are:

- abusive, offensive or threatening behaviour
- refusing to specify the grounds of a complaint despite offers of assistance from staff
- refusing to accept that issues are not within the remit of the complaints procedure despite having been provided with information about the scope of the procedure.
- insisting complaints are dealt with in ways which are incompatible with the complaints procedure
- introducing trivial or irrelevant new information which the complainant expects to be taken into account and commented on; or raising large numbers of detailed but unimportant questions and insisting they are all fully answered
- making unnecessarily excessive demands on the time and resources of staff, for example by excessive telephoning; sending e-mails to numerous council staff or writing lengthy complex letters every few days and expecting immediate responses.

When we consider that a complainant is unreasonable or unreasonably persistent the Children's Complaints Manager may take a decision to restrict access to the complaints procedure. Any restrictions imposed will be appropriate and proportionate, the options most likely to be considered 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 and/or
- asking the complainant to enter into an agreement about their conduct.

In all cases the Children's Complaints Manager will write to the complainant to inform them why his or her behaviour falls into the category of unreasonable or unreasonably persistent, what action will be taken and the duration of such action.

Where a complainant whose complaint is closed persists in communicating with the Children and Young People's Department about it, we may decide to terminate contact with the complainant. In such cases the Children's Complaints Manager will read all correspondence from the complainant but unless there is fresh evidence which affects the decision on the complaint we will simply place it on file.