



CHILDREN & YOUNG PEOPLE'S SERVICES

DIRECTORATE

COMPLAINTS AND REPRESENTATIONS

PROCEDURES AND GUIDANCE

REPRESENTATIONS AND COMPLAINTS PROCEDURE INDEX

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SECTION 1 – SCOPE OF THE REPRESENTATIONS AND COMPLAINTS PROCEDURE

1.1 Defining representations and complaints

- 1.1.1 The Children Act 1989 defines the representations procedure as being for 'representations (including complaints)'. The Children Act 1989 Representations Procedure (England) Regulations 2006 came into force on 1 September 2006: they are referred to in these procedures as the Regulations.
- 1.1.2 The intention of this procedure and guidance is to describe a statutory procedure for a child or young person who is likely to want to make representations, including complaints, about the actions, decisions or apparent failings of our Directorate and to allow any other appropriate person to act on behalf of the children or young people concerned or make complaints in their own right.
- 1.1.3 A complaint may be generally defined as an expression of dissatisfaction or disquiet in relation to an individual child or young person, which requires a response.
- 1.1.4 Representations may not always be complaints; they might also be positive remarks or ideas that require a response from the local authority. Enquiries or comments about the availability, delivery or nature of a service which are not criticisms are also welcomed and can help us to improve our services.

1.2 What may be complained about?

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

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

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

Part 4 of the Children Act, 1989,

- the decision by the local authority to initiate care and supervision orders (section 31);
- the effect of the care order and the local authority's actions and

- decisions where a care order is made (section 33);
- control of parental contact with children in care (section 34);
- how supervisors perform their duties where a supervision order is in force (section 35);

Part 5 of the Children Act, 1989,

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

1.2.3 Adoption services

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

- Provision of adoption support services (as prescribed in regulation 3 of the Adoption Support Services Regulations 2005) insofar as these enable adoptive children to discuss matters relating to adoption;
- assessments and related decisions for adoption support services as prescribed in regulation 3 of the Adoption Support Services Regulations 2005 (Parts 4 and 5 of the Adoption Support Services Regulations 2005);
- placing children for adoption, including parental responsibility and contact issues (sections 18 to 29 of the 2002 Act);
- removal of children who are or may be placed by adoption agencies (sections 30-35 of the 2002 Act);
- removal of children in non-agency cases (sections 36-40 of the 2002 Act);
- duties on receipt of a notice of intention to adopt (section 44 of the 2002 Act);
- duties set out in regulations in respect of:
 - a local authority considering adoption for a child (part 3 of Adoption Agency Regulations 2005);
 - a proposed placement of a child with prospective adopters (part 5 of Adoption Agency Regulations 2005);
 - placement and reviews (part 6 of Adoption Agency Regulations 2005);
 - records (part 7 of Adoption Agency Regulations 2005);
 - contact (part 8 of Adoption Agency Regulations 2005); and
- parental responsibility prior to adoption abroad (part 3 of Adoptions with a Foreign Element Regulations 2005).

Complaints and Special Guardianship Support Services

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

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

1.2.4 What is exempt from the complaints procedure?

1.3.1 The complaints procedure does not apply when:

- the person wishing to complain does not meet the requirements of "who may complain" and is not acting on behalf of such an individual;
- the complaint is not in regard of the actions or decisions of this local authority, or of any body acting on our behalf; or
- the same complaint has already been dealt with by our complaints procedure.

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

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

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

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

1.4 Who may complain?

1.4.1 Section 26(3) and section 24D of the Children Act, 1989 and section 3(1) of the Adoption and Children Act, 2002 require the local authority to consider representations including complaints made to us 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) 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;
- 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.

1.5 Complaints made on behalf of a child

1.5.1 Where a complaint is received from a representative acting on behalf of a child or young person, we will normally confirm where possible that the child or young person is happy for this to happen and that the complaint submitted reflects his/her views.

1.5.2 The local authority has the discretion to decide whether or not the representative is suitable to act in this capacity or has sufficient interest in the child's welfare. If our Complaints Manager considers that the representative does not have sufficient interest, he will notify the representative in writing, explaining that no further action will be taken.

1.6 Complaints relating to a child

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

1.7 Relationship to other Policies and Processes within the Directorate - Cross Referencing

1.7.1 This procedure may be suspended if any of the following procedures are invoked:-

- a) Disciplinary and Grievance Procedures
- b) Child Protection Procedures
- c) Harassment Procedures
- d) Police Investigation – Criminal

1.7.2 Other procedures may need to be viewed in relation to this document, eg. The Corporate Complaints Procedure.

1.7.3 This Procedure also has implications for the purchasing of services. Independent Service Providers should have a suitable Complaints Procedure

and service users should be advised that they have access to the authority's own procedure if necessary when their services are provided by, or on behalf of, the Local Authority.

1.8 Directorate Policy

1.8.1 The policy is framed to:-

- comply fully with the legislation described in Section 1 and their associated guidance and directions.
- be consistent with the Corporate Complaints Procedures and Policies.
- provide a high quality and responsive service.
- acknowledge that all people who receive services have a right to complain if they think that something that should have been done has not been done, or that something has been done badly or wrongly.

1.8.2 Complaints may be about services provided or purchased by the Children and Young People's Services Directorate. Complaints made under Corporate Procedures would concern the way that providing a service to others may impact upon non-service users.

1.9 Key Principles

1.9.1 These procedures are designed:

- to promote user satisfaction;
- to identify areas where services can be improved;
- to be accessible;
- to reflect the Directorate's desire to provide a high quality service.

1.9.2 Information regarding the Complaints Procedure will be widely available. Copies of the Complaints Procedure and Leaflets are available.

1.9.3 Complainants will receive whatever help and guidance they require to aid them in making a complaint or in understanding the procedure. Where appropriate this help will include the provision of interpreters and advocates.

1.9.4 Complaints will be investigated as quickly and thoroughly as possible, and in a positive problem-solving manner.

1.9.5 Deferring or Freezing Decisions

Complainants must not be discouraged from making their complaints. The status of the provision of a service which is the subject of complaint would not usually be subject to change, delay, suspension or withdrawal while a complaint is being dealt with under this procedure. However decisions may be frozen when a complaint has been made about such a decision/action which could have a significant impact on the life of an individual. The decision

would be considered by the relevant operational manager and unless good reason could be shown for doing otherwise (e.g. where the Council needs to obtain a Care or Supervision Order to protect a child), the decision would be frozen pending the outcome of the complaint. The manager would be expected to record the reasons for not freezing a decision and to provide a copy to the Complaints Manager.

1.9.6 The investigation of complaints must preserve confidentiality and reflect the Directorate's commitment to equal opportunities and anti-discriminatory practice.

1.10 Definitions

1.10.1 Complaint

An expression of dissatisfaction with the quality of service provided by or on behalf of the Directorate, or with the failure to provide a previously agreed service, or with the attitude or behaviour of members of staff.

For this Procedure Document, a complaint cannot be investigated where:-

- a) it is dissatisfaction with a Court Decision in e.g. Child Care Cases, or where a remedy to a complaint is through an appeal to Court
- b) the actions or events involving the Children and Young People's Services Directorate occurred more than 12 months prior to the date of the complaint unless one or more of the following circumstances apply:-
 - i. The complainants can demonstrate that they have been making efforts to resolve the matter with the Children and Young People's Services Directorate within those 12 months.
 - ii. The complainants/service users were not aware, until beyond the period of 12 months, of the actions of the Children and Young People's Services Directorate which now form the subject of the complaint.
 - iii. The complainant was incapacitated by ill-health beyond the 12 month period which prevented him/her from making a complaint within the allowed timescales.
 - iv. The complainant was a child at the time of the action or event and could not be expected to have made a complaint until becoming an older child or an adult.
- c) There is a special procedure which already exists for dealing with a particular type of complaint. e.g. Representations Procedure for adoptive applicants who are not approved (see Section 3.11) or an Employment Tribunal is available to examine complaints about recruitment.
- d) it has already been dealt with under the Complaints Procedure.

Where the complaint falls outside the time limit then the Complaints Manager must also decide whether the complaint can be considered effectively and efficiently. If the Complaints Manager considers that the complaint cannot be

considered within these procedures then the complainants will receive a written explanation. The letter will include information about being able to approach the Local Government Ombudsman (LGO) to consider our decision.

1.10.2 Complainant

Complainants are the Persons from whom complaints are received, whether they are acting on their own behalf as Service Users or on behalf of Service Users. Wherever possible permission will be sought from the Service User for the complaint to be made. If complainants are not Service Users, nor acting on behalf of Service Users, their complaints may be eligible under the Corporate Complaints Procedure.

1.10.3 Anonymous Complaints

'A complaint received where the complainant does not wish to be identified.' Anonymous complaints must be acted upon, as much as possible, in the same way as all other complaints, although a response, of course, could not be given to the Complainant.

1.10.4 Registered Complaints

A complaint made or directed to the Complaints Manager who has designated responsibility for the co-ordination of the Complaints Procedure. The Complaints Manager will register complaints on the Complaints database. There is also a Directorate procedure on destruction of records which complies with the Data Protection Act 1999.

1.10.5 Complaints Manager

Each Local Authority is required to appoint a "Complaints Manager" responsible for managing the complaints and representations process. In Shropshire Children and Young People's Services Directorate that person is also known as the Complaints & Scrutiny Manager who is independent from the operational services to the public.

1.10.6 Advisor to the Complaints Panel

This role is to serve as adviser on the process of the Review to the Review Panel at Stage 3 of the complaints process. In Shropshire Children and Young People's Services Directorate that person would normally be the Head of Communications and I.T. Where the Complaints Manager is not involved in an investigator capacity then the Complaints Manager can serve as adviser to the Review Panel.

1.10.7 Representations - Comments and Compliments

- Suggestions for improving services.
- Suggestions for new services.
- Thanks for something done, or done particularly well.
- To maintain a positive approach to this procedure all representations will be monitored and recorded.

1.10.8 Advocate

An Advocate is a person who is able to speak on behalf of a service user (not to be confused with a lawyer) in respect of a complaint or representation. For all children wishing to make a complaint about our services then we shall offer help through the NSPCC Children's Advice and Representations Service (CARS).

1.10.9 **Responsible Manager**

The Directorate Manager who is responsible for producing the written response to a complaint.

1.11 **Values**

This policy sets out certain values that the Directorate holds to be implicit in this process:-

- That services and information about services should be readily available and easy to understand.
- That children and young people, and their parents/carers, are involved as fully as possible in our processes to promote better services.
- That individual's have rights, and can ask the Directorate to account for its action or inaction on their behalf.
- That individual's have the right to redress when the services provided have not been good enough, and when there has been an injustice caused by the Directorate.

These values imply a number of things for Children and Young People's Services Directorates and for our staff:-

- That partnership in the caring process is central to providing appropriate, effective services.
- That the Directorate should be trying to provide a quality service. Where this does not happen, for any reason, then the Complaints Procedure offers a means of redress and of improving the quality of the service provided.
- The rights of individuals to complain is clear. However, the rights of staff to equally fair treatment is also explicit. This procedure does not provide a means of placing one person's "rights" above those of another.

Section 2 – Representations Procedure (including Complaints)

2.0 Introduction

This section details the Procedure for handling all Representations which must be registered with the Complaints Manager.

Positive Representations - Compliments It is important that the Directorate reflects the positive statements made by the general public as well as the negative comments about services. There is a separate internal process to acknowledge the compliment with the sender as well as recognising staff performance.

Representations - Comments, Suggestions Where these other forms of representation are made, including criticisms which the sender does not wish to regard as a complaint, a response will still be required. The Complaints Manager will forward these representations to the appropriate manager from whom a written response would be provided within 20 working days of receipt within the Children and Young People's Services Directorate. These comments/representations also present an opportunity to improve services.

Representations – Complaints

Issues to consider when receiving a complaint: Concerns or worries are often raised as part of normal everyday interaction between the Directorate and its customers. Normally these will be easily resolved by staff working on a day-to-day basis with the complainant. However, there may be complaints that cannot be sorted out in that way to the complainant's satisfaction. Factors which all staff should consider before a complaint is registered under the complaints procedure include:

- Has the concern been raised by the complainant before, and what action has been taken to resolve the complaint?
- Is the complainant still dissatisfied after they have discussed their concerns with the staff working with them on a day-to-day basis?
- Where a complaint can be resolved immediately, e.g. giving information or clarifying an enquiry, the complaint is resolved there and then (immediately). In these circumstances complaints do not have to be recorded for the Complaints Procedure. Where problems cannot be resolved immediately they fall into the Complaints Procedure.
- Does the issue raised require referral to a manager, or consideration at a higher management level?
- Are the issues raised by the complainant serious?
- Is the complainant making allegations about the conduct or attitude of staff?
- If the complaint is not being made by the service user, does the service user know of the complaint and is the complainant acting on the service user's behalf?
- If the complaint is about service received from an independent care provider we contract with, has the independent care provider been given the opportunity to put things right first?

- Is the complaints procedure the most effective way of dealing with the problem, e.g. should advocacy or conciliation be considered?
- Has the complainant had the complaints procedure explained?
- Have the people making the representation made it clear that they wish their representation to be regarded as a complaint to be investigated under the complaints procedure?

Advocacy for Children

It is a requirement that all Local Authorities arrange for advocacy for children and young people who make, or are considering making, a complaint about services received under the Children Act 1989. This will require that staff who are working with such children will have to help them find an advocate. This will usually mean helping the child or young person to contact the Children's Rights Officer at the NSPCC. The child or young person can choose to use another person such as a teacher, social worker or older friend as an advocate. The child or young person is not required to accept the offer of advocacy and can choose at any point whether to continue with an advocate or to take up the offer of advocacy when initially it was not accepted. Where there are doubts about the use of advocacy then staff should consult with the Complaints Manager.

Complaints Procedures

There are three Stages to the complaints process:-

- | | | |
|---------|---|--|
| Stage 1 | – | Local Resolution or Informal Problem Solving Stage |
| Stage 2 | – | Formal investigation |
| Stage 3 | – | Review Panel |

All complaints must be registered with the Complaints Manager.

2.1 STAGE 1 – Local Resolution Stage

- 2.1.1. Complaints made at a local level should be resolved at that level if at all possible.
- 2.1.2 All staff should promote the Directorate's Comments, Compliments and Complaints philosophy and procedures.
- 2.1.3 All staff have a duty to record complaints/representations and to ensure that the Complaints Manager is informed as soon as possible.
- 2.1.4 It is important that staff take a positive approach to resolving complaints and remember that trying to understand the complainant's position is vital to achieving resolution.
- 2.1.5 Service Users must be advised of their right to complain or to make a representation and should be given a copy of the appropriate complaints leaflet and/or a verbal explanation.
- 2.1.6 *A complainant can stop this process AT ANY POINT by withdrawing the complaint or by accepting a solution offered by staff. Complaints can be made verbally, in writing, by e-mail or by audio tape. When the complaint is*

taken verbally then a written account of the complaint would be sent to the complainant by the receiver of the complaint, unless this is not required by the complainant.

2.1.7 Procedure for Stage 1 Complaints

- a) All complaints must be forwarded to the Complaints Manager who would register the complaint.
- b) The Team/Unit Managers of the recipients of the complaint must inform their Line Managers and a copy of the complaint sent to the Complaints Manager. Complaints received by the Complaints Manager would be acknowledged in writing within 3 working days. The complainant will also be sent a complaints leaflet, including brief information on the procedure, if the complaint was not sent in by leaflet. The Complaints Manager would arrange with the appropriate Head of Service or Team Manager, as the 'Responsible Manager', for a written response to be sent within 10 working days of receipt of the complaint within the Directorate.
- c) For children in local authority residential care there is another option. (This option only applies where the complaint concerns the operation or management of the home and not the actions of other parts of the local authority). The Complaints Manager will inform complainants that they can, if preferred, have their complaints referred to the Care Quality Commission (CQC) and also provide details. Complainants will also be informed of their rights to have their complaints considered within the Residential Homes or Care Agency's own Complaints Procedures as well as the CQC. (The CQC's brief concerns all operations which have to be registered by them). **However it would normally be expected by CQC that where an agency provides a service on behalf of the Directorate that that agency has an opportunity to first redress any mistakes.**
- d) On receipt of the complaint from the Complaints Manager the responsible manager, normally Head of Service or Service Manager, should consider meeting, or contacting, the complainant as soon as possible, but in all cases within 7 working days, unless there is good cause not to do so, e.g. the matter is very simple and can be easily resolved. (Feedback from complainants reveals that more complaints are resolved when there is face to face communication).
- e) Information and an explanation of the Complaints Procedure should be given to the complainant.
- f) If the complainant is not the service user then the Manager of the person receiving the complaint should check that the service users, where appropriate, are aware of the complaint and asks them what are their desired outcomes from the complaint (NB: At the Local Resolution stage complainants often simply require an explanation of action taken by the Directorate).
- g) Any member of staff who is the subject of the complaint cannot act as the Responsible Manager and the complaint would be passed to the next Line Manager.

- h) If the matter cannot be responded to within 10 working days the Responsible Manager will write to the complainant to explain why an extension of up to another 10 working days is required. This would usually be because the complaint is more complicated or a vital person is not available. We will advise complainants that they can ask that the complaint be dealt with at the next stage if they feel that we are taking too long to respond outside of the time limits.
- i) The person looking into the complaint (the Responsible Manager) must advise the complainant(s), within the written response to the complaint, of their rights to proceed to Stage 2 if they are not satisfied with the outcome at this stage.
- j) The Responsible Manager at Stage 1 should advise the complainant in writing if s/he is having difficulties responding within the prescribed time, together with the reasons for the delay, and also inform the Complaints Manager.
- k) The Responsible Manager at Stage 1 should ensure that all staff who are involved in the complaint are consulted wherever possible when seeking a resolution and are, in all cases, kept up to date on the progress of the complaint.
- l) The outcome of the complaint must be discussed fully by the Responsible Manager with all staff who have been involved.
- m) A copy of the written response to the complainant should also be passed to the Complaints Manager and to the appropriate Assistant Director.
- n) The complainant has 28 days to decide whether or not to accept the offered resolution or response at this stage. The 28 days commence on the date that the complainant will have received the written outcome from the responding Manager. The complainant needs to be informed of this timescale in the manager's written response.

2.1.8 Resolution and Remedies

The aim in dealing with all complainants is to reach a resolution or remedy that satisfies the complainant and the Council, whether it is the remedy they were originally seeking or not. Where a complaint is found to be at all justified, consideration needs to be given to the question of appropriate remedy.

An apology or explanation will always be needed where any part of the complaint is upheld. The general principle is that, as far as possible, the complainant should be put in a position he or she would have been in had things not gone wrong. In some cases this may be quite simple. In others it may be necessary to determine:-

- who can provide remedial action;
- what arrangements are needed to carry out the remedy;

The Directorate would seek to operate within the Local Government Ombudsman's document 'Remedies - Guidance in Good Practice'.

The Directorate's Performance Management Group will operate to ensure that the approach to remedies is consistent.

The Council's guidance in the use of financial redress is that this should be made in exceptional circumstances where some direct financial loss had been incurred, and where agreement has been reached with the Corporate Director as well as the Corporate Complaints Monitoring Officer within Legal and Democratic Services.

This section of the process would apply to all 3 stages of the Complaints Process.

2.2 **STAGE 2 - Investigation Stage**

2.2.1 Complaints will be registered under stage 2 of the procedure if:-

- Resolution at Stage 1 has proved impossible.
- The complainant considers that we have taken too long outside of the timescales to respond to the complaint.
- If the Complaints Manager agrees with the complainant's request that a complaint should bypass stage 1.

2.2.2 **Procedure**

- a) On receipt of the Stage 2 request the Complaints Manager will ensure that the matter is registered and that all relevant parties are notified.
- b) Conciliation The Complaints Manager will continue to seek resolution of the problem throughout the process. The Complaints Manager will explore whether there is scope through acting as a conciliator between the complainant and Children and Young People's Services Directorate staff for an agreed resolution. The complainant will be asked to accept conciliation on the basis that if the complainant is not satisfied by the conciliation, and the resultant written record, then a request to resurrect the Stage 2 complaint would be acted on. Where the complainant makes this request it should be done in writing within 28 days of receipt of the written record produced from the conciliation process. This process would be agreed in writing in advance from the Complaints Manager to all those involved in the conciliation. Should the complainant not be satisfied by the conciliation then the Complaints Manager would consider whether s/he could still objectively consider a Stage 2 investigation. However, even if the Complaints Manager felt s/he could continue an investigation the complainant's views would be sought by the Complaints Manager in writing. A request by the complainant to appoint an alternative Investigating Officer would be considered by the line manager of the Complaints Manager. The timescales for the Stage 2 investigation would then start from the date of receipt by the Complaints Manager of the complainant's written request to resurrect Stage 2. NB: There is also scope for the Complaints Manager to be involved in conciliation at Stage 1 or for the Directorate to use completely independent conciliation/mediation at all stages.
- c) The Investigating Officer would normally be the Complaints Manager or, where appropriate, the Complaints Manager will seek to appoint an

alternative Investigating Officer within 7 working days to look into the matter and seek a positive resolution.

- d) All complaints involving childcare issues, within the Children Act 1989, require an Independent Person to be arranged by the Complaints Manager, through independent service provision. This is currently the NSPCC Children & Advice & Representations Service. The Independent Person would operate within the standards agreed with the NSPCC in the guidance for Independent Persons in Section 4.
- e) The Complaints Manager will ensure that the complainant and all appropriate staff are notified in writing of the registration of the complaint.
- f) The timescale allowed within legislation for the investigation and the response from the Children and Young People's Services Directorate's relevant Head of Service, i.e. a total of 25 working days. Where the complaint is more complex the Council can extend the timescale up to a total of 65 working days. If an extension is needed the Complaints Manager will write to the complainants and provide an explanation. The 25 working-day period includes:
 - a) appointments of an Investigator and Independent Person;
 - b) the investigation and report writing;
 - c) the I.P's consideration of the report and the writing of the I.P report;
 - d) the response from the relevant Assistant Director. Unless the complaint is uncomplicated then a response may often require some extension.
- g) The Investigating Officer, with the Independent Person, should meet with the complainant as a priority after being appointed in order to clarify the complaint, discuss the expected outcome and to produce an agreed written account of the complaint(s) being investigated.
- h) An external Investigating Officer, where appointed, must provide written confirmation of the complaint, signed and dated by the complainant to the Complaints Manager, as soon as possible after the first meeting with the complainant. This would not be necessary if the Complaints Manager has carried out this function prior to the appointment of the external investigator. This external officer must also act within the written contract/standards undertaken with the Council for this task
- i) The Complaints Manager/Investigating Officer must carry out the investigation in line with the **Guidance Documents** and write a report of the investigation following the **Report Format** in Section 4 of these procedures.
- j) Where an Independent Person is involved, s/he must confirm in writing, having seen the Investigating Officer's report, his/her view of the 'fairness' of the investigation and provide a brief written report of the complaint to the Complaints Manager.
- k) Both reports are then sent by the Complaints Manager to the appropriate Assistant Director for consideration. The Assistant Director is required to involve the Independent Person in discussions about conclusions drawn from the investigation and actions which are being considered. Copies of

the reports together with the Local Authority response will be sent by the Assistant Director to the complainant. The Assistant Director would also send a copy of the written response to the complainant's advocate and the Complaints Manager, who will forward to the Investigator and the Independent Person.

- l) The Assistant Director's response will reflect the Directorate's view of the recommendations and a copy of this will be available through the Complaints Manager for all those involved in the complaint.
- m) On receipt of the report the complainants have 20 working days to register dissatisfaction, either to the Assistant Director or the Complaints Manager, about the report and the Assistant Director's response; this right will be explained in the written response from the Assistant Director. If the complainants are dissatisfied they may request a Review Panel.

2.3 **STAGE 3 - The Review Panel – procedures and protocol**

- 2.3.1 Stage 3 allows people to have an independent review of the response to their complaints. The local authority is required to appoint the Review Panel which must comprise three people independent of the Local Authority. The Panel will be appointed to take account of the gender and ethnicity of the complainant and, wherever possible, some familiarity with the type of complaint under consideration.

The Directorate will ensure that the following arrangements are made for the Review Panel.

(If the Complaints Manager is not the Investigating Officer at Stage 2 then s/he can make the arrangements).

- a) Selection and appointment of the Independent Review Panel.
- b) Arranging an appropriate date and time.
- c) Arranging the venue.
- d) Secretarial support to the Review Panel.
- e) The conduct of the meeting.

2.3.2. **Key Principles of the Review Panel**

- a) The purpose of the Panel is to consider complaints under the Local Authority Social Services Act 1970, as amended by the Children Act 1989.
- b) The Panel should only consider:-
 - Whether or not the complaints process was carried out properly and fairly (**Process**).
 - Whether or not the conclusions reached by the investigators on the basis of the material available were reasonable and fair, (**Investigation**).

- Whether or not action taken by the Assistant Director on the basis of the report(s) was appropriate, having regard to all the circumstances **(Action)**.
- Whether or not the complainant's expectations for resolution have been met and whether or not more can be done to help achieve this. This includes seeking a remedy to any injustice to a complainant caused by the Local Authority's actions which they could reasonably have prevented **(Resolution)**.

It is **not** to:-

- Conduct a new investigation or re-hearing of the complaint (see above).
 - Deal with any new matters raised by a complainant which were not part of the original complaint or investigation. (In exceptional circumstances a new complaint could be considered if the Panel felt that they could deal appropriately with the new complaint, taking into account the views of the relevant Assistant Director.
 - Cover any decisions made by a Court or where an appeal against a decision lies through a Court process.
- c) The Panel will review the complaint; consider the reports, and the written response from the Assistant Director.
- d) A problem solving approach will be taken to the complaint.
- e) The Panel will not take an inquisitorial or legalistic approach to the review.
- f) The Panel may adjourn if necessary.
- g) The Panel will be held under the normal practices of confidentiality.

2.3.3 Procedure

- a) The complainants have 20 working days from the date they receive the Stage 2 report and the Assistant Director's written response in which to register dissatisfaction with the outcome and request that the matter be considered by a Review Panel. The Complaints Manager, within 2 days of receipt, will acknowledge receipt in writing of the request to proceed to Stage 3. The complainants will also be asked to make a written submission about their reasons for considering that the Local Authority response has not been satisfactory and to state what outcome is sought from a Review Panel. Such a written submission made by the complainants is helpful to the Panel in their preparation reading for the Review meeting. Any written submissions will be available to the Panel and all those attending.
- b) The Panel will be convened within 30 working days of the receipt of the request. Where not, the complainant will be kept informed.
- c) The Investigating Officer and the Independent Person will be expected to attend. The appropriate Assistant Director will present the Local Authority's case to the Panel. The complainants are entitled to bring a supporter or a representative who will present the case on behalf of the complainants.

- d) At least 10 days before the Panel the complainant(s), their representative and all other parties, including the Panel Members, will receive a letter of notification and papers submitted by the Directorate. Those papers will include information from Stage 1(as relevant), the Stage 2 reports, the Directorate response, any written submission from the complainants and copies of relevant policy or practice guidance including a copy of the Review Panel Procedure. If any written submissions are received outside of these timescales then the Chair will decide whether it can be accepted.
- e) All participants must be given the same information. (In very exceptional cases there may be information known to the Directorate's representative which relates to confidential issues related to another service user. In those circumstances that information could not be provided to the complainants or the Panel but may inform the Corporate Director in making the written response). Issues of race, language, culture, disability, age and gender must be taken into account in setting up the Panel.
- f) Letters and papers will be submitted by the Complaints Manager.
- g) The letter should clearly set out what is required and should set out the following:-
- date, time and venue of the Panel,
 - names and status of Panel Members,
 - names and status of all other participants,
 - the name of the person who will be taking the record of the meeting (to be nominated by Central Services),
 - the right of all participants to make written submissions to the Panel prior to the meeting.(subject to section d)

The Directorate will seek to ensure that the letter is written in another language if requested.

- h) The meeting will normally be constructed in three parts; pre-meeting, presentations and deliberation.
- i) **Pre-meeting**
The Panel and their administrative support, and the Advisor to the Panel if requested, will meet in closed session to discuss the order of the meeting and how they would operate as a Panel.
- j) **Presentations**
The Panel should be conducted in an informal way but with proper respect for all parties for the need for a fair and impartial process. The process will be as non-adversarial as possible; the Chair would be expected to ensure that informality is retained as much as possible. All parties should have had the opportunity to read submissions made to the Panel. All papers prepared for the Panel must be available for all participants to read.

The complainants may bring someone to speak on their behalf, or a supporter if conducting their own presentation to the Panel. The complainant may select a Solicitor, but must act in the manner referred to within the above paragraph. The Complaints Manager will offer advice as needed to the complainants about obtaining a supporter/advocate.

The Chair should open the proceedings by explaining the purpose of the meeting, setting timescales, advising participants of their right to speak and carrying out introductions, and confirming the principles of confidentiality.

Arrangements must be made for comfort breaks. Refreshments should be available. The meeting will not continue for more than three hours unless agreement is reached by all parties to an extension.

The complainant or the representative will be invited to speak to the Panel first, followed by the Assistant Director. The complainant or representative and the Assistant Director will be able to ask questions about what each state before the Panel. The Panel will be able to ask questions of both parties, the Investigating Officer and the Independent Person.

All comments should be received via the Chair.

The standard applied by the Panel is expected to be the civil standard of 'balance of probabilities' and not the criminal standard of 'beyond all reasonable doubt'. This standard should be based on evidence and facts

When all representations have been made to the Panel the meeting will end.

k) The Panel's Deliberation

The Panel, with assistance available from the Appointed Advisor to the Panel and the Clerk to the Panel, will then consider whether or not to uphold each complaint and what actions, if appropriate, they would recommend should follow from the information heard.

The Chair of the Panel will ensure that a written report is sent within 1 working day to the complainant, all parties to the Panel and also to the Corporate Director of the Children and Young People's Services Directorate. The Panel's report will include:

- i) a brief outline of each complaint and their detailed reasons for upholding or not upholding **each part of the complaint**;
- ii) where the Panel's view is to uphold a complaint then they would also include any recommendations they would wish to make about a resolution to the complaint;
- iii) should the Panel not wish to uphold a complaint they could still make a recommendation (arising from the Panel Hearing) which they feel may improve future services;
- iv) an explanation that the Corporate Director of the Children and Young People's Services Directorate will consider the Panel's conclusions and recommendations and therefore produce the Authority's response.

l) The Local Authority's Response to the Complainant

The Corporate Director should consider his/her response to the complainant in the light of the Panel recommendations. The Corporate Director is required by regulation to discuss with the Independent Person (I.P) appointed at Stage 2 what actions if any s/he would be considering. The Corporate Director is not bound to follow the recommendations of the Panel but if s/he chooses not to, must make his/her reasons clear in the written response.

The Corporate Director will notify the complainant, within 15 working days of receiving the Panel recommendations, the written actions which s/he proposes to the complainant with the aim of resolving the complaint.

The complainant(s) should be informed by the Corporate Director that this is the end of the Local Authority's Procedure. They should also be informed of their opportunity to approach the Ombudsman if they are still dissatisfied.

- m) Staff involved should also be notified by the Complaints Manager that the complaints process has been completed and be advised of the outcome proposed by the Corporate Director.
- n) All records will be stored within the Complaints Manager and kept confidentially, in line with other Authority procedures for safeguarding and managing records.
- o) The Complaints Manager will seek feedback from appropriate managers to ensure that actions proposed by the Corporate Director are acted on. This feedback process is a feature of all stages of the complaints process.

2.4 Evaluation and Monitoring

- 2.4.1 All Managers concerned must keep records of complaints and actions recommended from complaints and ensure that actions are carried out. The Complaints Manager will seek confirmation from the relevant manager of those proposed actions and will use this information in both an Annual Report and other reports required by the Corporate Director's Performance Management Group.
- 2.4.2 The Annual Report will be prepared by the Complaints Manager and will detail the complaints and representations received, their outcomes and compliance with timescales. In particular, the emphasis of the report would be on how the Directorate has learned from all types of representation and how changes in practice or procedures have resulted.

2.5 External Procedures

If the complainant remains dissatisfied following the Corporate Director's response at Stage 3 s/he may make representations to:

- a) The Local Government Ombudsman;
- b) The Secretary of State (Section 84 of the Children Act 1989; Section 7d of the Local Authority and Social Services Act 1970); or
- c) Seek legal advice on whether any further action through the Courts is available and appropriate. This may include, for example, an application for Judicial Review.

2.6 Complaints to the Local Government Ombudsman (LGO)

2.6.1 Introduction

The Local Government Ombudsman is independent and impartial, gives a service which is confidential and free of charge, and has the same powers as

the High Court to require people to provide information and to produce documents for investigation.

2.6.2 Any member of the public is able to complain to the Local Government Ombudsman if s/he feels there has been an injustice. However, the Ombudsman's office usually states that complainants should first take up their complaint with the relevant Department or Council before writing to that office.

2.6.3 If the complainants are dissatisfied with the Corporate Director's response to the Complaints Review Panel report, it remains open to them to make a formal written complaint to the Ombudsman. The Corporate Director's response at Stage 3 would include reference to contacting the Complaints Manager should a referral leaflet to the Local Government Ombudsman be required. The Ombudsman will decide whether or not to take up the complaint.

2.6.4 **Policy**

To ensure that staff are aware of the work of the Ombudsman and to ensure appropriate contact between the Directorate's staff and the Ombudsman.

2.6.5 **Referral to the Ombudsman**

If staff are asked by enquirers about an approach to the Ombudsman, they should first encourage them to use the appropriate Council Complaints Procedure.

If the enquirer still wishes to approach the Ombudsman, then the office which covers Shropshire is:-

Commission for Local Administration in England
The Oaks No2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB

If staff become aware that an enquirer will be writing to the Ombudsman, the Complaints Manager should be informed.

Section 3 – Complaints involving other agencies/ procedures or requiring variations of the Complaints Procedure

3.1 Procedure for complaints against Directorate Policy

- 3.1.1 Where a complaint is a single issue of a complaint made against Council Policy it would receive a different process. An officer in the relevant part of the Directorate would seek to explain the existing policy. If that was not satisfactory to the complainant then the complaint would be referred to the relevant Assistant Director and to the Complaints Manager who would register the complaint and acknowledge receipt in writing to the complainant. The Assistant Director would investigate whether action should be taken to recommend a change in policy or whether the matter should be referred to the Corporate Director for consideration by an appropriate Councillor Committee. All complaints and representations, including those concerning Council Policy, are also reported annually to Council Members.

3.2 Complaints involving Multi-Disciplinary Teams

Within the Directorate there are a number of Teams which operate on a multi-disciplinary basis with professionals from other agencies. In some Teams the management of that service rests with the Children and Young People's Services Directorate on behalf of other Agencies such as Health Trusts, Probation and Police. (A joint policy exists with the Youth Offending Service and policies are being developed for the Child & Adolescent Mental Health Team and the Joint Adoption Service.)

3.3 Complaints concerning staff of the Directorate

- 3.3.1 There is no reason to record a complaint made by a user or carer in a member of staff's file unless it becomes a disciplinary issue.
- 3.3.2 The Line Manager, as part of the normal supervision process, will in the first instance provide staff support.
- 3.3.3 If it becomes apparent that disciplinary procedures need to be invoked then investigation/resolution of the complaint would normally be suspended until those procedures have been completed.
- 3.3.4 Line Managers will inform staff of the outcome of all complaints in which they are involved. The Line Manager will have a copy of the report from Stage 2 to enable that feedback. A copy of the Report and response would not be kept on the service user's file; instead an entry would be made on the file with the complaint reference number and a reference to a copy being housed within the Complaints Manager's records.
- 3.3.5 Line Managers must maintain confidentiality in feedback, particularly in respect of other members of staff who may have been involved in the complaint.

3.4 Grievance and Disciplinary Procedures

- 3.4.1 The Complaints Procedure will be kept clearly separate from both Disciplinary and Grievance Procedures. Grievance Procedures concern staff issues, i.e.

conditions of service, management and support. Staff are not eligible to raise their concerns about Directorate services through the Complaints Procedure. The Grievance Procedure can be found in the Personnel Handbook which is also on Lotus Notes.

- 3.4.2 Disciplinary Procedures apply to the action of staff in relation to failures to comply with codes of conduct, job descriptions, practice instructions and procedures. (Please see, in the Guidance to Staff on How to Deal with Complaints, the sections on Disciplinary Action on Pages 7 and 8 for more details. The Guidance is in the Employee Induction Handbook).
- 3.4.3 Where a complaint procedure has been suspended, pending the outcome of a staff disciplinary process, then the manager dealing with that process should, at its completion, alert the Complaints Manager. This is to ensure that the complaint then receives appropriate action.

3.5 **Complaints concerning allegations of abuse by Children and Young People's Services Directorate 'staff' against children**

- 3.5.1 The Complaints Procedure will only apply to those allegations of abuse or ill-treatment made against Council staff, Council carers (foster children) or any agency that the Council has contracted to provide a service on behalf of the Council.
- 3.5.2 Any complaints received by the Complaints Manager which suggest that a child may have suffered, or be at risk of suffering, significant harm will be discussed with an appropriate manager to determine whether any of the following procedures should be followed prior to the Complaints Procedure:
- Child Protection procedures
 - Criminal investigations

The Complaints Manager will also inform the Care Quality Commission (CQC) if any complaint involves a service which is registerable with the Commission.

- 3.5.3 Any allegation of abuse or ill-treatment registered as a complaint would still require a written response under the Complaints Procedures. After the Child Protection Procedures have been carried out the relevant Manager would be expected to investigate further any outstanding matters from the complaint which were not dealt with within the protection procedures. The Manager would reply directly to the:
- the complainant and
 - the young person (unless he or she is not of sufficient understanding)
 - parent of child, or
 - advocate

The reply would also refer to any additional matters.

3.6 **Complaints concerning Child Protection Conferences**

Introduction

The only decision that may be made by a Child Protection Conference is that related to Child Protection Registration. This decision is a multi-agency one made by professionals in attendance on the basis of an analysis of the perceived degree of risk to a child. The Register is not intended to apportion any blame but to recognise a situation that constitutes a risk of significant harm, and indicates the agreed need for a Protection Plan.

Child Protection Conferences can be very emotive occasions for parents, carers and possibly children. They are faced with a number of professionals who consider very personal details of their lives. At the end of the Conference they reach conclusions as to whether or not there is risk of harm or abuse.

It is understandable, therefore, that sometimes there is discontent with the Conference or the outcome.

Councils with responsibility for social services functions are required by the Children Act 1989 to establish complaints procedures. Matters covered by Part V of the Children Act (which relates to the Protection of Children) must be responded to in accordance with the Children Act 1989 Regulations Procedure (England) Regulations 2006. Guidance in 'Working Together to Safeguard Children' (Department for Education and Skills 2006) has been issued on the subject of complaints in relation to Child Protection Conferences.

The successful operation of the Complaints process will, however, depend on making a distinction between disagreement with the decision, on the one hand, and defects in the process of the Conference on the other. Failure to accept a decision made in good faith to protect a child will not, in itself, be justification for the process to be used in full.

This procedure for making complaints may be used by:

- Parents or others with Parental Responsibility
- Carers
- Child/ren who are subject to the Child Protection Conference where they are of sufficient age or understanding. This could include someone acting on their behalf.

Procedure.

1. The information leaflets sent out prior to the Child Protection Conference shall include a statement about the right to comment and complain.
2. When the Chair receives a complaint s/he will pass the details within twenty-four hours to the Children and Young People's Services Directorate's Complaints Manager. Their responsibilities include the investigation of Complaints relating to the Children Act. The information will also be sent to the Head of Safeguards
3. If the Complaint relates to either any allegation that the Conference was not constituted as defined in Shropshire Safeguarding Children (SSCB) Procedures, or any reports with regard to the manner in which the meeting was chaired, then the Head of Safeguards will respond.

If however if the complaint concerns the actions of an agency representative during the Conference, then the Complaint will be passed to the relevant agency to be dealt with under that agency's own formal complaints procedures.

4. The Complaints Manager will, if necessary, clarify the details of the complaint and send an acknowledgement letter to the Complainant within 5 working days.
5. The Head of Safeguards will prepare a report on whether the relevant inter-agency protocols and procedures have been observed correctly, and whether the decision that is being complained about follows reasonably from the proper observation of the relevant protocols and procedures. The Head of Safeguards, as part of the investigation, will meet with the Complainant, and the Chair. S/he will meet with anyone else as necessary. The Head of Safeguards will decide whether the criteria to reconvene the Conference are met. See appendix for criteria for decision making.
6. The Head of Safeguards will provide a written response to the Complainant within twenty working days of the complaint being received. A copy of the response will be sent to the Complaints Manager. The response will include details of how to take the complaint further if not satisfied with the response.
7. If the Head of Safeguards considers that the criteria for a reconvened Conference are satisfied this will be held within 15 working days of the decision of the Head of Safeguards, under the authority of a different Chairperson. It should be recognised that the Conference is a dynamic process and any reconvened conference would need to consider the latest situation rather than attempt to rehear the information presented at the original meeting. Changes in circumstances, or additional information, would need to be taken into account by the reconvened Conference.
8. Following a reconvened Conference (if held) the Complaints Manager will contact the Complainant within 5 working days of their receiving the minutes to enquire whether the complaint is regarded as resolved. The prompt distribution of minutes will be regarded as a priority in cases subject to complaint.
9. If the Complainant does not regard the matter as resolved, the Complaints Manager will then convene a Panel, comprising three persons from a list of senior representatives of Shropshire Safeguarding Children Board (SSCB) member agencies. A report, prepared by the Head of Safeguards, will be considered by the members of the Panel. Details of the complaint will be sent to the members of the Panel, at least 5 working days in advance.
10. At the hearing the procedure to be adopted should be explained to the Complainant. The Complainant may have a person present to support them. This person can be a solicitor if the Complainant wishes.

The panel may decide to:

- Uphold the complaint and request a further Conference to be convened, or;
- Dismiss the complaint.

The only remedies available to the Complainant are an apology or explanation.

The Chair of the Panel will confirm the outcome to all parties and explain the reasons. The Chair of the Panel will also write to all parties within five working days to set out the decision and reasons in writing. A copy of the response will be sent to the Chair of the SSCB.

11. The Head of Safeguards will ensure that details of all complaints are reported annually to SSCB.

Summary

- I. Complaint received by Chair
- II. Complaint passed to Complaints Manager.
- III. Complaint investigated by Head of Safeguards.
- IV. Decision relayed to Complainant – possible reconvened Conference.
- V. If not resolved Panel consideration of matter
- VI. Decision relayed to Complainant – possible reconvened Conference.

Appendix

Criteria for decision making

- Was relevant information shared at the Child Protection Conference?
- Did the conference consider all the information presented?
- Was there discussion, to explore the significance of relevant risk/protective factors to ensure that the Conference was able effectively to analyse risks for the child?
- Did the registration decision reflect the information reasonably shared and the balance of risks?
- Were the procedural guidelines for registration followed?
- Was it made clear why an interagency Protection Plan was necessary to help manage risks?
- Was any disagreement/dissent by agency representatives recorded at the Conference **and** had there been sufficient discussion of these views?

3.7 Complaints from Foster Carers

3.7.1 Complaints by, or about, foster carers can be a complex and a sensitive area. The legislation and guidance is not specific as to how these complaints should be processed however, legislation and guidance relevant to matters of this nature is as follows:-

- a) **Children Act 1989, Schedule 7 as restated in the Fostering Services Regulations 2002):** Gives foster carers the right to complain under the Children Act statutory Complaints Procedure about the Local Authorities' refusal to exempt the foster carers from "the usual fostering limit".
- b) **Children Act 1989, Section 26(3) and Children Act Volume 3, 10.6.d:** Gives foster carers the right to complain under the statutory Children Act Complaints Procedure on **behalf of the child** in their care.
- c) The Local Authority can also consider foster carers making a complaint on their own behalf, for example if they feel they have not received the support, information or services they need i.e. complaints not covered by sections a) and b). In these circumstances foster carers registered with the Shropshire Children and Young People's Services Directorate may access the Statutory Complaints Procedure through the Corporate Complaints Procedures.

3.7.2 Foster Carers should record Complaints and Representations made to them by children in their care and register these with the Complaints Manager who will notify the relevant section.

3.8 Complaints about Foster Carers / Prospective Adopters

3.8.1 Complaints about foster carers and/or prospective adopters may be made by the child or young person, parents, teachers, independent persons, the community etc - or could be anonymously made.

3.8.2 When a complaint is received about foster carers by any Directorate staff then it should be referred to an appropriate a manager and "Allegations Against Foster Carers Procedures " (Chapter 3.23 in Tri-X procedures) should be acted on. The Manager who receives the complaint should first consider:

- a) Are the issues a child protection or criminal matter? If so, the complaint/allegation must be recorded as a complaint, referred to the Complaints Manager, and the complainant informed that there will be a delay in responding. The complaint must then be dealt with immediately by the child protection or criminal procedures.
- b) If the Complaint involves a Child Protection Investigation the complainant may wish to reserve the right to have the complaint looked into following the investigation.
- c) All decisions involving Foster Care Complaints must be carefully recorded and passed to the Head of Children's Placement Service **and** to the Assistant Director. Those involving prospective adopters should be passed to the Head of Adoption Services and to the Assistant Director for Social Care & Safeguards.

3.9 **Complaints from prospective adoptive applicants**

Prospective adopters may wish to complain about the accuracy of the assessment process, or the manner of staff conducting the assessments etc. These are all eligible complaints within these complaint procedures. However the recommendation by the Adoption Panel to approve or not to approve prospective adoptive parents **cannot** be considered under this Complaints Procedure. There is a separate Representations Procedure based on the Adoption Agency Regulations 1983 - Circular LAC (84)3 within the procedure Functions and Membership of the Adoption Panel. (See Policy and Procedures 10 in the Directorate's Adoption Policy and Procedure Documents).

3.10 **Representations or complaints about a child or adult placed in the area of another Authority by the Shropshire Children and Young People's Services Directorate**

- 3.10.1 These instructions will apply to both independent and local authority residential provisions in other local authority boundaries.
- 3.10.2 Contracts with other Local Authorities and/or with privately provided residential carers should contain details of the agreement as to which CQC Area Office will be responsible for receiving and responding to complaints from children placed by this Directorate.
- 3.10.3 Each residential home is required to have its own complaints procedure whilst the complainants also have the right to have their complaints considered by the CQC or the Children and Young People's Services Directorate as the purchasing authority. The arrangements should be clearly communicated in writing to the child and those with parental responsibility prior to, or on, placement and confirmed during each review. Regardless of the arrangement, children and young people placed by the Authority should also be given a copy of the Complaints Leaflet to take with them and they should be encouraged to contact this authority if they wish.
- 3.10.4 If a representation or complaint is received which involves more than one Local Authority, it should be considered by the Local Authority in whose area the child is being looked after unless a different arrangement was agreed in the contract. Nevertheless, a close watch should be kept by the Complaints Manager on these complaints and their handling and resolution monitored.
- 3.10.5 If necessary, the Care Quality Commission (CQC) of the Local Authority in whose area the child is being looked after should be informed by Shropshire Children and Young People's Services Directorate's staff and their assistance sought to retain an informed involvement. The links with the relevant CQC would be made through the CQC covering Shropshire. On completion, these complaints should be copied to the relevant Team/Unit Managers for collation and to the Complaints Manager for recording. Swift action may be necessary on occasions and should not be avoided.

3.11 **Compensation Claims**

When a complainant requests compensation, the Complaints Manager will pass the claim to the Council Insurers. The complaint is, therefore, considered as being withdrawn as it is dealt with by another procedure.

However, where the complaint involves other complaint issues not related to the claim these will be dealt with separately in accordance with the complaints procedure.

3.12 Complaints concerning Staff from other Agencies

The complaint should be recorded and acknowledged in the normal way. The Complaints Manager will make arrangements for the complaint to be passed to the relevant person who has responsibility for managing Complaints in the other Agency.

3.13 Complaints about the eligibility for a Service

3.13.1 The outcome of an assessment for eligibility for receipt of a service will be notified to the person being assessed and/or their representative. The written notification will include a reference as to how s/he may complain if the outcome is that the person is not eligible for a service.

3.13.2 As an assessment has occurred this is regarded as a service in itself which is covered within the complaints procedure. Therefore, where a complaint is received, the complaint will be dealt with in accordance with the 3 stages described in Section 2.

Section 4 – Guidance/Protocol Documents

4.1 Code of Practice for Frontline Staff

4.1.1 You have a vital role to play in the Complaints Procedure.

If someone tells you they want to make a complaint or representation you should do the following:-

- listen
- inform
- refer
- record

If a child or young person receiving a service wishes to make a complaint, or is considering whether to make a complaint, then you are required by regulation to help them find an advocate. This applies to all staff. That service would usually be through the Children's Rights Officer from the NSPCC. If in doubt please consult the Complaints Manager.

4.1.2 Listening

Everyone needs to be listened to when they have a problem. People should feel they can tell you as much or as little as they want. A good listener respects the complainant's decision about how much to tell them.

- Respect the complainant's right to tell you as much or as little as they want to.
- Concentrate on what the complainant is saying.
- Try to imagine how you would feel in their situation.
- Ask the person what they would like the department to do.

4.1.3 Informing

- When you know what the complaint is about you may be able to deal with it immediately by standard advice or information. If this is the case there is no need to contact the Complaints Manager.
- You should ensure that the complainant has a copy of the appropriate complaints leaflet. Should a complainant require information in another language, including Braille, then this will need to be obtained via the Complaints Manager. Leaflets in English are available in your office.
- When people are upset it can be tempting to reassure them by making promises. Do not make promises on behalf of the Directorate that you may not be able to keep.

4.1.4 Referring

- Any member of staff can record a complaint and then pass directly to the Complaints Manager.
- A complainant may request to see a particular Line Manager, in which case the member of staff can refer to that person and take advice as to whether or not it would be appropriate to arrange an informal meeting immediately to make an appointment.

- You should allow the complainants to decide which course of action they would be more comfortable with.

Options

- i. Informal discussion.
- ii. Appointment with Team/Unit Manager.
- iii. Taking the complaints leaflet and thinking about it
- iv. Having their complaint recorded
- v. Giving information with which the person can contact the Complaints Manager direct

4.1.5 Recording

Sometimes the complainants do not wish to take the matter any further as a complaint but would be satisfied with their complaint being recorded and sent to the Complaints Manager as a **Representation (Comment)**.

If this is the case, the Representation/Comment should then be sent as soon as possible to the Complaints Manager who will acknowledge receipt of the comment and arrange for a reply if one is required.

4.2 An aid for Managers dealing with complaints

These notes are intended as a reference for managers new to complaints but may be a useful reminder to those more experienced. They need to be considered in conjunction with Directorate procedures and other general information on 'How to Deal with Complaints' which is covered in the Employee Handbook.

4.2.1 Complaints Procedures Summary

These are available in the Directorate Procedures electronic files, and at least one hard copy should be available in each office.

Complaints can be made by a service user or parent/carer and, in children's cases, also by a child, foster carer or others regarded as having sufficient interest in a child to warrant complaints being made by them. These complaints are made by children and families within the Children Act 1989. (All complaints within the Children and Young People's Services Directorate are logged by the Complaints Manager on the Council Database).

People who do not qualify under the Children Act 1989 can make complaints under other processes. If a complaint is made by a non-qualifier about, for instance, the care provided to a particular person then the reply would need to be written in such a way as to provide no information that would breach confidentiality to the service users. If, however, the complainant raises a complaint about other operations of the Directorate that do not breach any individual confidentiality, e.g. the state of a Directorate building, then a full reply can be given. Complaints under this heading are called Corporate Complaints and do not have the same stages and procedures as under the

Children Act 1989. Please consult with the Complaints Manager about your response in these situations.

NB: Complaints made by parents about the care given to 'Gillick competent' young people would be dealt with under the Corporate process **when the young person does not wish the complaint to be made.**

For complaints under the Children Act 1989 there are 3 Stages:

Stage One- (Informal Response) - Response time is within 10 working days from receipt of the complaint in the Directorate to the day the written response is sent.

Where complaints are considered as more complex then an extension of up to a further 10 working days can be made. In those circumstances the Responding Manager must write to the complainant with an explanation.

N.B If the complainants consider that the response will be received outside the timescales then they have the right to request the complaint advance to the Investigation Stage.

The response is often prepared by the Team or Unit Manager to be sent out via the Head of Service.

Stage Two (Investigation Stage) - where the complainant is not satisfied with the response at Stage One. This involves a formal investigation usually conducted by the Complaints Manager. A complaint can be dealt with initially at Stage 2.

If the Complaints Manager considers that there are grounds to do so following a request from the complainant.

Response time - by which the Assistant Director responds in writing to the investigation report(s) – is 25 working days. This can be extended up to a total of 65 working days: The complainant would need to be informed of the reasons by the Complaints Manager.

The Assistant Director, before making a reply, will usually check out the report with the Head of Service concerned.

The Local Government Ombudsman (LGO) concedes that it is virtually impossible, other than in the simplest of matters, for a response at Stage 2 to be made within 25 working days for Children Act complaints.

Stage Three - or Review Panel Stage - Team Managers or Heads of Service are not usually involved at this stage. It is usually the Assistant Director as the responding manager at Stage 2, who provides the Local Authority case in response to the complainant's case as to why Stage 1 and/or 2 have not been satisfactory. Review Panels are arranged by the Complaints Manager or his/her line manager.

Local Government Ombudsman - Should the complainants not feel satisfied by the Corporate Director's response to the recommendations of the Review Panel (currently one Independent Chair and two Councillors) then they can refer their complaints to the Ombudsman in Coventry. This is usually done on a leaflet which can be supplied by the Complaints Manager.

4.2.2 Basic Principles of Complaints

- Most complaints arise from a genuine feeling of grievance and not of maliciousness.
- Small grievances can become large if not dealt with at the early stages.
- Complaints are about actual or perceived injustice to a complainant/service user/relative. Consider what is the effect of the Directorate's actions on the person. Has there been an injustice? The Directorate can sometimes make mistakes without it having any effect upon a complainant.
- Do not be defensive - keep an open mind. (This seems obvious but some responses have seemingly backed the Directorate's actions even when the service has not been adequate). Staff can perform to the best of their abilities but at times do not have the resources to provide the correct service. Even though the complaint may seemingly be about an individual it can often be the Directorate or Council that had failed.
- Complaints can serve to highlight service deficiencies and staffing levels.
- People have the right to complain, to be heard, and to have their complaints looked into as quickly as possible.
- Handling complaints properly is an important part of the way a Children and Young People's Services Directorate provides its services.
- If the complainant considers their comments as a complaint then it should be regarded as a complaint i.e. do not deny the right to complain.
- Complaints are part of the feedback system as to how services are provided - and it is free.
- Although the complaint may be directed at individual people seek to consider it as a complaint against the Directorate. However the individual(s) mentioned will need support as it is an unpleasant experience to feel implicated in a complaint.
- The confidentiality of the complainant and those persons mentioned (whether staff or others) should be appropriately protected e.g. Consider where correspondence/papers are kept. Who has access to them?
- Even persistent/vexatious complainants can have a new valid complaint. i.e. Consider each matter on its merits.

4.2.3 Prevention of Complaints

- Try to anticipate who is likely to be a regular complainant. As a guide see if the persons have complained before, have they exhibited obsessive or harassing tendencies, or are they easily dissatisfied.

- When this assessment is made then ensure that all dealings with that complainant are recorded, even to confirm the results of telephone calls, and confirmed in writing with the person.
- Do not feel tempted to tell someone that you do not feel that s/he has any grounds to complain. This has been done in this Authority and the LGO has severely criticised other authorities for such comments.
- A complainant persistently complaining about the same issue which has been responded to then that complaint may be covered by the Vexatious Complaints policy. Consult the policy through which a written strategy should be produced.
- Agree with service users/carers how you will communicate with them. This can be agreed initially, for instance, or in the making of a Care Plan or Review.
- Accept that responsibility for communication is always two-way.
- Keep complaints periodically on Team Meeting agendas. Discuss how people deal with awkward situations. Develop policy on how your Team/Division deals with difficult people. Rehearse how to deal with difficult service users or families.
- Try to encourage service users/carers to offer their comments in writing about the service as comments for the help of the Department. Asking for comments on how the Directorate can improve the services can sometimes not only serve to address their issues but can also lead to a complaint not being made.

4.2.4 Preparation for a Written Response at Stage 1

- Ensure that all staff referred to in a complaint are informed and given a copy of the complaint and their views clearly sought.
- Consider arranging a meeting with the complainant unless the matter is very simple and is easily resolved. A meeting can be productive because it is:
 - personal
 - gives the complainant a 'hearing'
 - allows for a more personal approach that can not be reached via a letter
 - it can be time effective.
- If a meeting can not be arranged a telephone call can be helpful.
- Seek to resolve the matter as quickly and informally as possible. Evidence suggests that a speedy response is more likely to produce a resolution to the complaint. A delayed response can serve to fuel the flames.
- Even when you have met with a complainant and resolved the matter it will still require a confirmation letter outlining how the complaint has been dealt with and the resolution which has been agreed.
- In your contact with the complainant confirm, or determine, the outcomes required by the complainant.

Time Limits

- Complaints at Stage One of the Complaints Process need to be responded to in writing within 10 working days from the moment it has been received and identified as a complaint within the Directorate - not when you receive it.
- NB: Where a complaint is received which is unclear then the time starts only after the clarification has been received. This will be indicated in the acknowledgement letter.
- Keep complainant informed of events which will mean you can reply within timescales - also send copy to the Complaints Manager. However every effort must be made to respond as soon as possible within timescales. You can have an extension of up to a further 10 working days should the complaint be 'complex'. (This probably means that there are many aspects to the complaint.) You will need to keep the complainant informed in writing of reasons for an extension. This would also apply if a vital person was on leave and you needed extra time to complete.
- In your preparation for the response consider all the points in the complaint even if some of them may refer to other parts of the Directorate service.
- NB: Your reply is on behalf of the Directorate and not just your service. An occasional response has been sent which places the blame upon another part of the Directorate - please remember your response is a Directorate one. Use the word "we" and not "they" to signify you own the reply.
- It is likely that complaints which involve more than your section will have been picked up at referral point. However if that is not the case, or fresh issues outside of your area of responsibility have arisen from your contact with the complainant, then please contact the Complaints Officer or liaise with the Manager responsible for that service.
- If through your contact with a complainant it emerges that the real outcome being sought is monetary compensation then this falls outside of the complaints arena. The complainant would then need to be redirected to the Insurance Officer Central Services, Shirehall. Please inform the Complaints Manager, Complaints & Scrutiny Unit (CSU). The CSU would then confirm this in writing to the complainant.
- If, during your examination of the complaint, it becomes apparent that disciplinary procedures concerning a member of staff need to be used then the complaints process must be deferred until the disciplinary procedures have been completed. If the complaint referred to the CSU clearly includes potential disciplinary procedures then the complaint will be deferred at that stage by the Complaints Officer.

4.2.5 The Written Response at Stage 1

- There is no formula for a response at Stage 1. A more personal, individual response is often better received. Standard replies can make matters worse.
- In your reply consider how members of your family would like to be responded to if they had made a complaint.
- Use jargon-free language or explain terms which can not be avoided.
- Write your response with compassion and consideration.
- Ensure staff who contribute to your response receive a copy of that response.
- Consider the size of the print in your reply i.e. does the recipient have a visual impairment?
- Tailor your reply to the understanding levels of the complainant. (This seems obvious but is sometimes missed).
- Deal with all the issues and not just the ones you wish to address. (Complainants rarely fail to spot the missed reply).
- If you are writing on behalf of the Manager named within the acknowledgement letter to the complainant please state that fact.
- If your letter includes an apology then state what you propose to do to seek to ensure that the complaint is not repeated. It is often the case that complainants say that they can not turn the clock back but wish to ensure that the same thing does not happen to others.
- If you offer an apology do not offer it in a qualified way or in a way which the complainant can perceive that you believe the fault still to be with the complainant. **Do not** say for example *“I apologise for what you consider was a poor service”* or *“I am sorry if you found the tone and content of the letters to be rude and insensitive”*. If you can not apologise then do not seek to offer it.
- If you propose action from your examination of the complaint then state whether you will be informing the complainant about this. (**NB:** It is part of the feedback loop to the Corporate Director’s Performance Management Group that CSU will follow up with you those promised actions i.e. the Directorate needs to ensure that proposed actions are followed through.
- In deciding on your proposals for redress take consideration of the outcomes requested by the complainant. Explain why if those outcomes are not appropriate.
- Give reasons for the conclusions you have reached in your reply. This is particularly required when you do not agree with the complainant. Remember to preserve the dignity of the complainant.

- Ensure that your reply is clear whether you are agreeing or not with each part of the complaint.
- **NB:** Compensation - In some cases a small compensation payment can be made where maladministration has occurred. Any offer of payment **can only be made with the approval of the Corporate Director through the Complaints Monitoring Officer after consultation with the Corporate Director.** It should always be tendered *“in full and final settlement of all claims arising out of or in connection with your complaint”* i.e. consult about compensation issues with the Corporate Director and the Complaints Monitoring Officer in advance of your response.
- **Final Paragraph of your Response** – to ensure that you are informing the complainants of their rights please use the following paragraphs or a variation to suit your style. (The omission of such a paragraph is usually criticised in any subsequent LGO investigation). There are two types assume that your complaint comes within the Children Act 1989 unless informed in the referral memorandum. The paragraph you require will be contained within the memo you receive from the Complaint’s Manager.

1. Children Act 1989:

"If you do not feel satisfied that this reply has been an acceptable response to your complaint, then you may wish to consider making a formal complaint, which would be investigated. I enclose a leaflet to explain more about this. If you did wish to take your complaint further, could you please, within 28 days of receiving this letter, write, telephone or email [*insert contact details*].

NB: The leaflet referred to is the Directorate’s complaints leaflet.

2. Corporate Complaints:

These are usually complaints from members of the public who are not service users or relatives/carers of the service user.

“If you remain dissatisfied with this response to your complaint you may write, within 28 days of receiving this reply, to the Complaints Monitoring Officer, c/o Legal and Democratic Services who will look into the handling of your complaint and in appropriate cases require your complaint to be reviewed.

In addition or alternatively you may refer your complaint to the Ombudsman at:

Commission for Local Administration in England
 Local Government Ombudsman
 The Oaks No2
 Westwood Way
 Westwood Business Park
 Coventry CV4 8JB

Complaints Referred Through Members of Parliament or Councillors

- Send draft replies to the Corporate Director, in her name, as she will send them out. This is the normal practice unless the original memo to the Responsible Manager from CSU says otherwise. Please remember that it is the Corporate Director's reply which has to be sent within the required timescales. Therefore your draft is needed as early as possible to the Corporate Director.
- **NB:** Should a Councillor or Member of Parliament write directly to you then write in your own name, or a named person other than the Corporate Director, directly to the Councillor or Member of Parliament, with a copy sent to the Corporate Director and to CSU.

4.2.6 Follow-up after Response

- **NB:** Where you are replying to a complainant who is not the service user - if you have upheld the complaint and propose an apology (or other action) it would be good practice to also write (or visit on occasions) to the service user.
- Develop a brought forward system to ensure that you follow up promises to complainants. In addition the Complaints Manager will follow up these actions in order to inform the Corporate Director's Performance Management Group on learning/changes from complaints.

4.2.7 Representations, Comments and Compliments

Although legislation refers to the term representations to cover all aspects of consumer feedback (including complaints, comments and compliments) it is generally used to mean comments on the operation of the Directorate. These comments, often amounting to advice from service users and carers, also require a response from the appropriate manager. The target for those replies is also 28 days.

Where there is doubt the CSU will seek clarification from the writer of the letter about whether a complaint or comment is intended; the information from CSU to you will clarify this.

4.3 Guidance for Staff involved in Investigations at Stage 2 of the Complaints Process

4.3.1 Complaints

It is essential that the Complaints and Representations procedure be promoted by staff in order to be effective. The Directorate recognises that staff often work with limited resources and difficult situations. There is an understanding that whenever work is reviewed or examined; areas for improvement can be identified. The Directorate also recognises that in order to have confidence in the procedure, you must feel that you will be fairly treated if you are complained about or involved in an investigation. Every effort will be made to ensure that everyone involved in a complaint investigation is treated fairly. This guidance has been prepared to acknowledge the difficulties of the complaints process investigation and to

assist you. If you wish to photocopy this guidance you are welcome to do so. It has also been prepared in leaflet form.

Wherever possible, complaints will be encouraged to be dealt with via the informal Stage 1 process.

4.3.2 **Your Rights**

You are entitled to:-

- a) have the complaint dealt with confidentially - providing this does not conflict with line management responsibilities, child protection, criminal or disciplinary proceedings;
- b) have your identity anonymised if any details of complaints are recorded on the client's file;
- c) not have complaints recorded on your Personnel file;
- d) be treated fairly and with respect;
- e) be given relevant details of the complaint in writing before you are interviewed;
- f) be given an opportunity to put your side of the situation and not have the complaint upheld against you before you have done so;
- g) be given line management support by your Line Manager or another Team/Unit Manager throughout the process.
- h) approach your Union Representative, the Personnel Department, your professional association and/or the Complaints Services Manager for support and advice;
- i) be accompanied during any interviews by someone of your choice, unless that person is being interviewed as part of the investigation.
- j) comment about the investigation process, including the Investigator and/or the Independent Person if you feel they have treated you inappropriately. You should do this via the line manager of the Complaints Officer.
- k) receive feedback on the outcome of the complaint from your Head of Service.

4.3.3 **Prepare Yourself**

When you are told that the Directorate has received a complaint and it is being investigated at the formal stage ("Stage 2"), you should:-

- a) read the Complaint and Representations Procedure and note particularly the sections on Disciplinary Procedures vis-a-vis Complaints and Guidance for Investigators and Independent Persons;
- b) try to remain as objective as possible even though this may be difficult;

- c) be co-operative in re-arranging work schedules to attend interviews with the Investigating Officer and the Independent Person. They will be working to very tight timescales and the Corporate Director requires that you make the investigation a priority;
- d) consider having a 'peer supporter' with you; many staff have found this helpful. You could ask a colleague, someone from a trade union, a professional association or the Complaints Manager who can put you in touch with staff who have been through the process. Your 'peer supporter' should not act as your advocate. They may attend your interview and take notes but not speak in relation to the complaint. They may suggest a break during the interview if it seems appropriate.
- e) prepare yourself for the interview by reading your case notes/records and the relevant procedures/operational instructions. The Investigating Officer/Independent Person will already have done so too;
- f) take the relevant records with you to the interview. These may include supervision records, log books, diaries, case record. They will refresh your memory and give you confidence and ensure that the interview is conducted efficiently. Having a supporter will help you to prepare for the interview and be a useful person with whom you can discuss what happened in the interview when it is concluded;
- g) be honest and volunteer information which will assist the investigation;
- h) remember that the record of the interview, including what you say, may be repeated in the Investigating Officer's or Independent Person's Report which will usually be given to the complainant and, if not, will be accessible to the complainant under the Data Protection Act. If the complaint continues to the Review Stage, the same records will be open for consideration there too;
- i) copies of the Investigating Officer's notes from the interview will be sent to you. You are required to agree or query the contents within 48 hours of receiving them as the process is very tightly restricted by time. Amended notes could then be sent, if necessary, for signing;
- j) if you know that you have made a mistake - say so - try not to be too defensive. You may also wish to make comments about how the service can be improved which could be incorporated either in the Investigation Report or in the separate Operational Practice Report to the Assistant Director.
- k) if you feel you are being unfairly criticised - say so;
- l) try to use the interview as an opportunity to reflect on your practice and see whether you could have done something better. The Investigating Officer will be well aware that when we look back on a piece of work we can all see how it could have been improved. There is no seeking to trick you but complaints can be an opportunity to improve practice;

m) bear in mind that many complaints are not upheld and, of those which are, many are the results of unclear policies or lack of resources and not about staff failures, inappropriate practice or maladministration.

4.3.4 **Following the Interview**

- a) Allow yourself time to reflect.
- b) Contact your Line Managers (if they do not contact you) and your supporter if they were not present with you during the interview.
- c) Do not express resentment to the complainants. They may not have found it easy to complain. They may be fearful that their complaining will affect the service they receive. If you think your first contact will be difficult arrange to be accompanied by a colleague.
- d) Your Line Manager may consider re-allocating the case to another worker if it is considered advisable. This should be discussed with you.
- e) Ask yourself why the person(s) complained. Is it possible that they feel unable to approach you with their dissatisfaction - had they tried and you had not listened?

4.3.5 You will be informed of the outcome of the investigation and the Directorate's response by the Assistant Director. If you do not receive feedback contact the Complaints Manager.

4.3.6 Remember, whilst disciplinary procedures are possible as a result of a complaint, this only happens rarely. This is not a matter which the service user has any influence over and they are not included in the process unless they were a witness. The decision to take disciplinary action is entirely the responsibility of the management. Remember also that a complaint investigation would only occur after a disciplinary process had been completed unless there were exceptional circumstances.

4.4 **Guidance for Complainants and Staff on the role of the Independent Person**

4.4.1 The Children Act 1989 requires the appointment of an Independent Person to take part in the Authority's consideration of a complaint made to them at the formal stage of the procedure i.e. at Stage 2 about services described in the Children Act 1989 Representation Procedures (England) Regulations 2006.

4.4.2 **An Independent Person is:-**

- a) not a current or former member or officer of the authority handling the child's complaint;
- b) not the spouse or partner of a Member or Officer of the Local Authority handling the complaint;
- c) not the advocate for the child, not an investigator; his/her role is to provide an objective element in the authority's considerations.

- d) appointed by law to every Stage 2 complaint, which involves services, described in the 2006 Regulations.
- e) impartial i.e. not on anyone's 'side';
- f) required to provide an objective element in the consideration of the complaint and to ensure the matter is dealt with fairly;
- g) good at listening to what people have to say;
- h) knowledgeable about children's social care so that s/he can understand the background to the complaint. S/he is not necessarily a social worker by training, and can come from any walk of life;
- i) in child care cases trained and supported by NSPCC in accordance with this procedure;
- j) usually appointed from a specialist agency;
- k) subject to checks by the Police before being approved;
- l) in possession of an Identification Card which you may request to see;
- m) reviewed every 2 years when they are appointed by the NSPCC.

4.4.3 The Independent Person Will:-

- a) have written consent from the Complaints Manager to have access to the complainant's files, should access not be with the Investigating Officer;
- b) treat all aspects of the complaint with strict confidentiality;
- c) begin by first meeting the Investigating Officer to plan the investigation;
- d) see the complainant with the Investigating Officer to hear about the complaint;
- e) with the Investigating Officer, see other people involved in the complaint - then be invited to attend any meetings in connection with the complaint;
- f) be informed of all information relevant to the complaint;
- g) have the right to give evidence to a Review Panel, if the complaint proceeds to that stage.

The Local Authority cannot direct the Investigating Officer and Independent Person to see or interview anyone. It is for them to decide how many interviews they will attend in order to satisfy themselves that the investigation has been thoroughly investigated.

4.4.4 **The Independent Person should not:**

- a) assume the complaint could not have happened;
- b) make promises they may not be able to keep;
- c) say that nothing can be done.

4.5 **Independent Persons Practice Guidance**

4.5.1 **First meeting with the Investigating Officer**

The purpose of this meeting is to discuss the complaint and to make a plan of action with the Investigating Officer. Make notes at this meeting and keep them for reference. Make a note of 'who's who', their names and positions.

The Independent Person will need to cover all the following points:-

- a) Be clear about this role.
- b) If the Investigator has previously been involved in the matter of the complaint or if s/he is the direct Line Manager, query this and if necessary refer to the Appointed Complaints Officer.
- c) If the complainant is a child or young person or is unable to represent themselves, ask if s/he has an advocate and if so note the name and means of contact. The Children's Rights Officer (NSPCC) would often act as advocate/support.
- d) Ask whether the complainant or the child has any special needs, e.g. language, access and communication difficulty.
- e) Find out what efforts have so far been made to resolve the problems and by whom.
- f) Set out a timetable remembering that the Directorate must seek to make a response to the complainant within 25 working days unless an extension has been explained. If the time limits cannot be met, the complainant should be advised of progress and of the further timescale at the end of the 25 working days. It will be necessary to liaise with the Investigating Officer on this.
- g) Find out who will be responsible for making the final decision and try to ensure an opportunity for consultation with that person and the Investigating Officer near the end of the timescale. Make clear that it is a right for the Independent Person to be present at all meetings about the complaint and especially at the final one (this is laid down in The Children Act itself).

If independent persons are uncertain of the response to any of these issues at the meetings, they must check them out with the complaints manager or the line manager of the agency appointing the independent person.

4.5.2 Subsequent Action

The Investigating Officer will probably study the records and make a chronology of events, which it will be useful to study before seeing any of the people involved. Read the relevant policy guidelines.

4.5.3 The Report

- a) The Independent Person will write a report to cover all aspects of the complaint where comment is relevant.
- b) The Report should be typed, with relevant headings and numbered paragraphs. It should be signed and dated.
- c) If the Independent Person is happy with the way the Investigating Officer has done his/her reports and with the conclusions, there is no need to repeat in the report the content of the Investigating Officer's report.
- d) When writing the report, distinguish between fact and opinion; make clear where information was obtained. Be sure to deal with the issues raised by the complainant but be concise and include only matters relating to the complaint and its investigations.
- e) Use simple, non-jargon language avoiding the use of unfamiliar abbreviations.
- f) Remember that the Independent Person's reports could be sensitive areas for the Children and Young People's Services Directorate and if there are any doubts about the appropriateness of any information to be included in the report, contact the Complaints Manager or the line manager.
- g) Finalise the report and send it to the Complaints Manager. Do not send this to anyone else unless this has been agreed with the Complaints Manager.
- h) If the study of the complaint highlights any internal problems not directly relevant to the complaint, please send your written comments to the Complaints Manager who, in discussion with the Independent Person, will decide how best to handle them.
- i) The report should be anonymised and a list of names should be provided separately.

4.5.4 Things to Remember

- a) Keep in mind the timescale.
- b) Keep clarifying the role.
- c) Remember the aim is to resolve the complaint in the best interest of the complainant, try to minimise conflict and find areas of agreement.

- d) Remember that there needs to be a duty of fairness to both the complainant and the Children and Young People's Services Directorate. If the report is critical of either, make sure that comments are objective and include supporting information.
- e) Keep a running record of all telephone calls, interviews, meetings and journeys, including how long each took, so that there is accurate information for an expenses claim. Keep a note of their content in case of the need to check back later.
- f) If Independent Persons are uncertain / anxious at any stage - they can contact the Complaints Manager or his line manager.

4.6 Guidance for Investigating Officers

All Investigations should be undertaken within the Guidance on the Roles and Responsibilities of the Investigating Officer. This guidance applies to the Complaints Manager as well as to other Investigating Officers when appointed.

4.6.1 Prior to the Investigation

- a) Ensure that the appropriate Head of Service and Assistant Director have been informed of the complaint. This should have been done by an official letter from the Complaints Manager.
- b) Consider the complaint carefully in the first instance and gain some initial information concerning the issues raised.
- c) Meet with the Independent Person to plan the referring agenda for the investigation.
- d) Check relevant case files if necessary.
- e) Check whether expert help or advice is needed or whether the complainant requires assistance with communication or an advocate.
- f) Make arrangements to ensure confidentiality in the production of letters and reports.
- g) Notify the Complaints Manager or the Complaints Manager's Line Manager of any difficulties in undertaking the investigations on time.

4.6.2 Investigation

- a) It is essential to fully explain your role to anybody you interview during the investigation.
- b) Always interview the complainant(s) first. This will enable you to (a) confirm the exact nature of the complaint and (b) establish the outcome expected by the complainant. **N.B** If the investigator is external and the complainant's statement has already been taken by the Complaints Manager then this section will not be necessary.

- c) It is generally good practice to interview the complainant(s) in a place of their choice, probably in their own home. You should allow sufficient time for them to feel you are taking their concerns seriously.
- d) Explain fully your role and the timescales involved if the Directorate cannot keep to the 25 working days allowed for completion. Advise them fully of the procedures and their rights.
- e) Ensure you have taken account of any difficulties in communication they may have.
- f) The Investigating Officer must report to the Complaints Manager's Line Manager immediately if the investigation uncovers issues that may require disciplinary action.
- g) The Investigating Officer may at all times attempt to resolve the complaint by negotiation or mediation between operations staff and the complainant.
- h) Keep to the issues involved and do not get side-tracked.
- i) Keep carefully a record of all interviews in case the complaint goes to the Review Panel.
- j) After interviewing the complainants, it is essential to write to them and to request they sign their confirmation notes from the complaint and the resolution they are seeking, or to seek amendments where necessary.
- k) After interviewing the complainants, it will be necessary to plan, with the Independent Person, who (and how) you wish to interview, as a consequence of the complainant's statement.
- l) You should develop some kind of framework of events and issues and questions to be looked at.
- m) You should interview all relevant Children and Young People's Services Directorate staff and anybody else who provides a service on the Directorate's behalf. It is probably best to seek to interview senior staff first. If staff from other agencies are involved, you should seek permission from their Line Managers before interviewing them. This would be expected unless there is an agreed Complaints Protocol with that Agency; in these circumstances good practice would require you to inform the Manager. If a complaint is subsequently made about a member of staff of another agency you should immediately inform the Complaints Manager who will deal with the situation.
- n) You have a right of access to all relevant case files, diaries and official reports and these should be checked as appropriate. It is appropriate to photocopy papers. They can be appended to the Report where appropriate.
- o) You can and should check out any statements with other key professions but ensure confidentiality at all times.

- p) Examine as required all relevant policies, procedures and legislation surrounding the complaint.

4.6.3 Reporting Your Findings

- a) The report should be written in the format as described in the “**Guide to Writing Investigation Reports**”.
- b) The report will be sent later to the complainants. Please check to see if they need help to read it.
- c) Keep to the facts when writing your report. Avoid any statements which are subjective. It is useful to write a chronological report so that the sequence of events is clear to the reader. There needs to be a duty of fairness to both the complainant and to the Children and Young People’s Services Directorate. If the report is critical of either, make sure that comments are objective and include supporting information.
- d) Be careful not to use jargon or abbreviations. Lay persons will read the report if it goes to a Review Panel and it must be understandable to them. The report will also be sent to the complainant.
- e) Findings should be listed in a clear simple way referring to each section of the complaint as agreed with the complainant at the beginning of the process. You should state whether each complaint has been upheld or not.
- f) You should finally make clear recommendations as to future actions and any possible resolutions of the complaint.
- g) You should make a supplementary report if the complaint has raised any issues that should be considered by the Directorate concerning policy procedures or good practice. This should be called the Operational Practice Issues report which is not sent to the complainant or the Independent Person.
- h) The Line Manager of the Complaints Manager will see the report in draft following which it will be forwarded to the Independent Person where one is used. The Complaints Manager will take this role where the investigator is external.
- i) The Complaints Investigation Report, the Independent Person’s Report and the Operational Practice Report will then be sent to the relevant Assistant Director for the Directorate response.
- j) The Assistant Director will send a copy of the Investigation Report (and the Independent Person’s report) with the Directorate response to the complainant and any advocate nominated. Consideration should be given to the appropriateness of sending copies also to the service user where the complainant is not the service user. The Assistant Director will also send copies of the response and the report(s) to the Head of Service who will provide copies to those staff involved in the complaint. Copies will also be provided for the Complaints Manager who will ensure that the Independent Person receives a copy of the Directorate response.

4.7 Guide to writing the Investigation Report

4.7.1 It is advised that a standard format be used when writing reports after your investigations are complete. This will assist greatly in producing and acting on these reports. **It is important to ensure that the report is anonymised and a list is enclosed of those people involved.** The reports should be written under the following headings:-

- a) **The Complaint.** The exact full complaint should be described in detail and be an accurate reflection of the complainant's problems. This would be an extract from the summary of the complaint(s) notes which are taken from the complaint. Those notes should be appended to the Investigating Report.
- b) **Background to the Complaint.** Descriptions of the events leading up to the complaint.
- c) **Relevant Legislation, Policy and Procedures (if any).** Brief descriptions only required.
- d) **Chronology of important issues relevant to the Complaint.**
- e) **The Investigation.** A short description of how the investigation was carried out, who was involved, who was interviewed and what files or documents were examined.
- f) **Detailed examination of each Complaint.**

For each complaint the following construction should be used:-

- i. The Summary of each complaint taken from the complaint notes.
- ii. A detailed factual record resulting from the interviews and examination of records. (Copies of the notes taken from the interviewees would not be acceptable. A synthesis of information gathered would be needed).
- iii. Conclusions and Findings of Each Complaint. The Investigating Officer's view on the complaint; including recommendations whether to uphold or not each complaint and the reasons for doing so.
- iv. Recommendations. This will contain suggestions as to how the complaint(s) could be resolved and what actions the Children and Young People's Services Directorate might take.

4.7.2 Supplementary Report - Operational and Practice Issues (where needed)

This must be a separate report and will include the Investigators observations/recommendations about the service with which the complaint was concerned. This report is intended to be helpful in improving the Directorate's services to customers. It may also highlight areas of good practice. This report is not sent to the complainant. It is merely the Investigation Officer's observations on policy/practice issues. The report is sent to the Assistant Director.

4.8 Guidance on purpose and remit of the Review Panel

4.8.1 The purpose of the Review Panel is to review the consideration and response to the complainant if the complainant remains dissatisfied after Stage 2 of the Complaints Procedure. The Review Panel will examine objectively and independently the facts and opinions presented by the complainant and the Children and Young People's Services Directorate and then make recommendations to the Corporate Director of Children and Young People's Services Directorate within 24 hours.

4.8.2 Handling Confidential Information

If the Directorate's representative is aware of any issues which have a bearing on the complaint but need to be kept confidential from the complainant and the Panel, the complainant and the Panel should be informed. The detailed information will be made available to the Corporate Director who may decide not to accept the Panel's recommendations in the light of the confidential information.

The facility for confidential evidence will be rarely used and will only be appropriate in situations where they are likely to have a bearing on the recommendations.

4.9 Guidance for Review Panel Members at Stage 3 of the Complaints Procedure

4.9.1 The primary task of the Panel is to decide whether the Stage 2 investigation was carried out properly and fairly, the conclusions and recommendations of that investigation were reasonable, and whether the response from the Head of Service was appropriate. The Panel would also consider whether any further action can be recommended which will resolve the complaint in such a way that both the complainant and the Directorate will feel that a positive conclusion has been reached. Equally, there is a responsibility on the Panel to identify and recommend action which they feel will enhance organisational learning from the complaint, perhaps by reviewing policy or practice guidance in the light of the issues raised by the complaint

4.9.2 Panel members should:

- be impartial at all times;
- be fair and polite to all those concerned with the complaint;
- be sensitive to the feelings of those involved;
- take into account Directorate and Council Policy, and take advantage of advice from the Appointed Complaints Officer wherever appropriate;
- maintain confidentiality;
- maintain the principles of "natural justice".

4.9.3 Checklist for Panel Members

- Make sure that you read the submissions by the complainant and the Directorate, as far in advance of the Panel meetings as practicable to ensure you are clear about the key issues, and have time to contact the Complaints Manager to request additional information.

- Arrange to be present at the Review venue 30 minutes in advance of the start time to meet your fellow Panel members and to agree your approach as a panel.
- Try to make sure that the atmosphere in the Panel meeting is kept as informal as possible, and the complainant is made to feel at ease.
- Focus on the issue of the complaint at Stage 2, and do not get side-tracked by new matters, which are raised which are not directly relevant to that investigation.
- A major part of the Review is to seek a resolution that is acceptable to the complainants and to the Children and Young People's Services Directorate's Assistant Director.
- Discuss with fellow Panel members the outcome of the Panel Meeting, and agree wherever possible Panel Recommendations.
- Consider whether there has been injustice to the complainant caused by the Local Authority actions which the Local Authority could reasonably have prevented.

4.9.4 Additional Checklist for Panel Chairperson

- Ensure the complainant is introduced to all those present, and understands what each person's role is.
- Ensure the complainants are given ample opportunity to voice their opinions.
- Guide discussions during the Panel Meeting to ensure full and fair coverage of all key issues.
- Ensure that all comments by people present are addressed and responded to through the Chairperson avoiding "cross-examination" by either the Directorate representative or the complainant.
- Ensure all Panel members have ample opportunity to follow up issues that they feel to be relevant to the case.
- Ensure Panel consideration is focused on the complaint investigation at Stage 2, and does not drift into new matters of complaint.
- There is no need to review parts of the complaint which are no longer in dispute.
- Explain to all those present that the Panel will need to meet privately to discuss your findings and give an indication of how long you would need.
- Guide discussion with Panel members after the closure of the meeting to come to clear decision on whether or not the Stage 2 investigation and response was acceptable, and what further action can be recommended to obtain resolution.

- Seek advice on behalf of the Panel from the Advisor to the Panel Officer if there are legal or procedural matters within the complaint that need clarifying.
- After hearing all the contributions the Chair should close the meeting and thank everyone for their contributions. The Chair would then explain that the Panel will consider their decisions and will write within 24 hours to all parties informing them of those decisions. An explanation of the Corporate Director responding to the complainants within 15 working days of receiving the Panel's findings and recommendations should also be given.