

## **Statutory Complaints Procedure**

### **Raising concerns & making a complaint regarding Children's Social Care**

(For public use)

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## 1 Introduction

This policy is for the use of everyone who may be involved in the application of Northumberland County Council's Statutory Complaints Procedure for Children's Social Care. Its aim is to provide a comprehensive but easily accessible guide to all aspects of the procedure. Complaints not covered by this process will be dealt with under this Authority's Corporate Complaints Procedure.

There are three stages of the statutory complaints procedure:

- Stage One – Local resolution
- Stage Two – Independent investigation
- Stage Three – Independent review panel hearing

A robust and responsive complaints procedure is a key factor in showing that professionals working with children, young people and families are open to challenge, are able to communicate effectively and demonstrate that they make decisions in a transparent, open and honest way.

It is strongly recommended that this procedure be read in conjunction with 'Getting the Best from Complaints' (link below). This guidance sets out changes to the children's social services representations procedure as a result of the Children (Leaving Care) Act 2000, Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003.

<https://www.education.gov.uk/publications/eOrderingDownload/Getting%20the%20best%20from%20complaints.pdf>

## 2 Key Principles

- The welfare of the child is paramount.
- The procedure should not detract from the Council's duty of care.
- People using the complaints procedure will be treated with dignity and respect.
- The complaints procedure is clear and easy to access.
- The complainant remains informed about the progress of their complaint.
- Complaints are viewed positively as a means of gaining feedback and information to improve the services we provide and not a negative process to apportion blame.

## 3 Definitions

The Children Act 1989 defines the complaints procedure as being for 'representations (including complaints)'. In this legislation a representation could also include a compliment or an enquiry on the nature, delivery or availability of a service. Therefore, for a clearer understanding and to benefit those required to use this document, the following terms will be used as a replacement to the phrase, 'Representation':

- **Complaint** – A complaint may generally be defined as an expression of dissatisfaction or disquiet, in relation to an individual child or young person, which requires an investigation and response.
- **Concern** – On a daily basis there are many instances where minor concerns can be addressed without further recourse to the complaints procedure. These are generally handled locally within the team, and resolved within a short space of time.

- **Compliment** – Many of those in receipt of a service wish to give a compliment.
- The department should welcome these and thank those who take the time and trouble to give them.

It should also be acknowledged that those in receipt of a service should be able to express their views with regards to the service they receive, or the establishment they live in, without having this framed as a complaint.

## 4 Who may complain?

Anyone who is in receipt of a service or think they should be in receipt of a service. Also their representative, known as a 'qualifying individual' may complain on their behalf.

The Local Authority has the discretion to decide whether or not the 'qualifying individual' is suitable to act on behalf of the child or young person or has sufficient interest in their welfare. If they do not meet this requirement, they should be notified in writing giving an explanation (the Complaints Manager should discuss this decision with relevant managers as appropriate).

## 5 How to make a complaint

Complaints can be accepted in any format which the complainant chooses – including

- orally
- in writing
- text message or
- website facility

## 6 What can be complained about?

Some examples are given below – this is not an exhaustive list.

- An unwelcome or disputed decision.
- Concern about the quality or appropriateness of a service.
- Delivery or non-delivery of services.
- Quantity, frequency, change or cost of a service.
- Attitude or behaviour of staff.
- Poor / lack of communication.
- Application of eligibility and assessment criteria.
- Assessment, care management and review.
- The quality or accuracy of a social work report.
- Control of parental contact.

## 7 What cannot be complained about?

Some examples are given – this is not an exhaustive list.

- Disciplinary proceedings.

- Criminal proceedings.
- Grievance proceedings.
- Complaints from staff about personal issues.
- Foster Carers on their own behalf (this is dealt with under the Foster Carers Grievance Procedure). However, they are able to support the 'looked after child' in making a complaint regarding services provided.
- Where an appeals process already exists.
- Complaints relating to independent providers (all independent service providers are required to have their own complaints procedure in place)
- Where a Court or Tribunal has made, is making, or is about to make a determination on the specifics of the complaint (in these instances it is usual to consult with the Legal Team for confirmation /clarification).
- Where the same complaint has previously been dealt with through all stages of the complaints procedure.
- Decisions made at Child Protection Case Conferences (this is covered by a separate procedure which is laid out in Chapter 2.6 of the Northumberland Safeguarding Children Board Procedures, this can be accessed via:

[http://northumberlandscb.proceduresonline.com/chapters/p\\_compl\\_appeal.html](http://northumberlandscb.proceduresonline.com/chapters/p_compl_appeal.html)

## 8 Where a complaint raises vulnerability or harm issues

The safety and protection of a child or young person is a higher priority than the investigation of the complaint. If they are at risk of harm, child protection procedures should be instigated immediately. Any other aspects of the complaint are put 'on hold' and if appropriate are resumed, as soon as the issue of protection and safety has been concluded.

## 9 Time limit for making a complaint

There is a time limit of 12 months from when the issue being complained about occurred, to when a complaint may be accepted. After this time, any complaints made are not usually considered. However, this is negotiable on a case by case basis and at the Local Authority's discretion.

The Complaints Manager will write to the complainant advising them of any decisions made and providing an explanation where required. The complainant should also be informed of their right to approach the Local Government Ombudsman if they disagree.

Possible grounds for extending the time limit are:

- There is a genuine reason why the complaint was not made sooner and the complaint can still be investigated effectively and efficiently.
- The child or young person was not able or confident to make the complaint earlier.
- Genuine issues of vulnerability.

## 10 Complaints and the media

Whilst complaints should remain strictly confidential, some may come to the attention of the media. The fact that the complainant has gone to the media (local or national) does not absolve the

Council from its responsibility to maintain confidentiality.

The media and complaints handling should remain separate. Media contact is managed by communications professionals within the Council.

## 11 The statutory complaints process

### Stage One – Local Resolution

The initial complaint that comes in can sometimes go directly to the Team Manager of the service rather than the Complaints Manager – either way the Complaints Manager should be informed to monitor and record the complaint. The stage one investigation and response is carried out by the Team Manager, or if the Team Manager has been named in the complaint, then the Head of Service may be approached. The following then applies:

- Acknowledge the complaint within 3 working days.
- 10 working days is the expected timescale for a full response to the complainant.
  - *This may need to be extended, hopefully following negotiation with the complainant if the complaint is complex, or an advocate is required.*
  - *If the complainant also raises concerns regarding a member of staff (for example; their conduct, decisions made, dispute over information contained in the assessment etc), at the very least, staff should be informed that a complaint is being investigated at stage one of the complaints process.*
  - *Good practice dictates that the staff member be interviewed as a matter of course and if the complaint progresses to stage two (where the staff member is required to be formally interviewed) they will already be prepared for this eventuality.*
- At the conclusion of the response, the complainant must be informed of their right to progress their complaint to stage two if they remain dissatisfied. They have 20 working days in which to request this.

### Stage Two – Independent Investigation

The Complaints Manager will oversee the stage two processes.

- The Complaints Manager will appoint an Independent Investigator to carry out the investigation, this will also involve the appointment of an Independent Person and / or an Advocate for the complainant where appropriate (e.g. where a young person is making the complaint).
- If at any stage during the investigation, the Investigator believes that the complaint is now capable of early resolution, then the department will suspend the complaint investigation.
  - *It should be recognised that this can be a very difficult period for staff, especially throughout the interview stage. They must be informed that they are able to bring a colleague for support to the interviews if they wish (their line manager cannot act in this role – also the department cannot fund the support arranged).*
  - *Staff should feel confident in expressing their views on the issues, and how procedures were followed in each case. They should feel able to either agree or disagree with each complaint.*
- The expected timescale for a response to the complaint is 25 working days. If the

complaint is complex, or an advocate is required, as with stage one, this may need to be extended. The Director will normally respond to the complainant in writing enclosing the Investigator's report (and the Independent Person's report where appropriate). However the department may consider that a discussion may more easily resolve the complaint and will offer a resolution meeting to the complainant in its written response.

- At the conclusion of the stage two response, the complainant must be informed of their right to progress to stage three if they remain dissatisfied. They have 20 working days in which to request this.

### **Stage Three** – Review Panel (*for further information, see Appendix 1*)

If the complainant remains unhappy and is in disagreement with the outcome reached, they are entitled to request that their complaint goes to review panel. This is the third and final stage of the Statutory Complaints Procedure.

The Panel will consider whether the complaint was properly investigated, whether the report has a clear logic and whether the evidence presented supports conclusions and recommendations made at stage two.

- The Panel will consist of three members (one to be Chair).
- The Panel will focus on the complainant's desired outcomes, with a view to a resolution.
- The Director will write to the complainant informing them of the final decision reached.
- On completion, should the complainant remain dissatisfied, they will be advised on how to contact the Local Government Ombudsman by the Complaints Manager.

## **12 Local Government Ombudsman (LGO)**

The LGO investigate complaints of injustice arising from maladministration by the Local Authority, which may include looking at complaints both in relation to the provision of social services and in relation to the operation of the complaints process. They can also investigate complaints about how the Local Authority has carried out these processes.

When necessary the LGO will inform the complainant that the Local Authority concerned must have an opportunity to investigate / respond to a complaint before they will become involved. For example, if the complainant goes direct to the LGO without having first made the complaint to the council allowing them the opportunity to investigate and respond. However in exceptional circumstances the LGO will consider an early referral from the council (this is done on a case by case basis).

The LGO are impartial. When they receive a complaint, they are on the side of neither the complainant nor the respondent Authority. They are there to defend Authorities against unjustified allegations as well as to seek remedies for those who have been wronged. Of course, if the LGO do find that something has gone wrong and that a person has suffered in consequence, they will do their utmost to obtain a satisfactory remedy. They will not question what has been done simply because the complainant does not agree with decisions made.

If the LGO is satisfied with the remedial action offered by the council, the complaint will be regarded as 'locally settled' and discontinue their investigation. Before reaching that decision,

the LGO will usually consult the complainant, but is not bound by their views.

### **13 Remedy, rectify – which may include financial recompense**

A decision to rectify matters can be made at any stage, where the Council is clearly at fault. Such forms of remedy can take the following:

- An apology – which is the correct outcome for most upheld complaints. These must be unambiguous. It is the Council that makes the apology, unless an individual member of staff wishes to apologise in their own right.
- Re-assessment of need – this will need to be done promptly, in order that the new service (if any) can be started promptly and the complaint closed.
- Provision or re-instatement of a service – this will need to be started as soon as possible and the complaint closed.
- Change of procedure to prevent reoccurrence – confirmation should be given to the complainant as to what the change will be, and when it will be implemented.
- An ex-gratia payment. Management may feel that it may be appropriate to recognise shortcomings either in the service provided, the way the complaint was handled, or the time involved for the complainant during the complaint process. The LGO provides advice on amounts applicable, to settle such local disputes.
- The payment of restitution. If a complaint is upheld, and the fault has resulted in material, calculable losses, then the Council can put matters right by paying the complainant a sum, which reflects that loss. This is called financial recompense. The Council's Solicitor provides further advice in this area.

### **14 Compensation**

The payment of compensation is an entirely different matter and involves a separate process. Complainants are entitled to seek compensation through a Court of law. Significant sums of money are possible and a number of people may be involved in the deliberations.

These are likely to be:

- The Council's insurer who will be responsible for advising on a fair settlement or the defence against a Court action.
- The Council's Solicitor or their representative who will be responsible for 'signing off' decisions on Court action or settlement.
- The Director who is responsible for providing information about level of operational compliance with policy and procedure within the complaint.
- The Complaints Manager who will advise on compliance with complaints handling policy / procedure and be the liaison for communications. They will also carry out the co-ordination and recording of decisions in relations to the compensation claim.



## 15 Advocacy support

Sometimes, the child or young person will need extra help to make their complaint, either just at the beginning or possibly throughout the whole procedure. This may be best provided by a relative or a friend, or arrangements can be made to provide independent advocacy support.

They can request this themselves or someone can do this on their behalf, e.g., their foster carer or social worker. Alternatively the Safeguarding & LAC Quality Assurance Officers (within Client Relations) can make all of the arrangements required.

## 16 Learning from complaints

It should be remembered that the formal complaint investigation process is not to 'find fault', but to look at the practices followed in relation to the complaint issues at hand. This also provides an insightful valuable source of information and we will use these experiences to:

- Identify service problems and make improvements.
- Improve / adapt staff learning and enhance professional development.

To this aim, a 'Learning from Complaints' form will be forwarded to the appropriate Manager, or Head of Service, for completion following the investigation and closure of a complaint.

## 17 Data Protection

All functions of the complaint procedure must adhere to the requirements of the Data Protection Act 1998 and the Freedom of Information Act 2000.

Under the Data Protection Act 1998, those who collect and use personal information need to follow rules of good practice for handling information called the 'data protection principles'. The Act also gives rights to individuals whose information they collect and use.

The Information Commissioner's Office (ICO) is responsible for regulating the Data Protection Act.

If a complaint is made direct to the ICO regarding the way we have handled or used personal information, the ICO will first establish that we have been given an opportunity to put things right. If we have been unsuccessful in resolving the situation to the satisfaction of the complainant, then the ICO will look into the matter concerned.

The ICO cannot award compensation. Their main aim is to advise on ways to change, which will enable personal information to be handled correctly in the future. Click on the following link for more information: [http://www.ico.gov.uk/complaints/data\\_protection.aspx](http://www.ico.gov.uk/complaints/data_protection.aspx)

## 18 Joint investigation (complaints that cross boundary issues)

Sometimes a complaint will cross the boundaries between organisations, for example, another local authority, an NHS body, the Police, a housing agency. Where a complaint crosses these boundaries, the services involved should try to assist the complainant to have their complaint dealt with efficiently whilst aiming to provide a joint resolution.

To enable the investigation to run more smoothly, one organisation should take the lead. There are many factors involved in making this decision, and the following should be taken in consideration:

- Which organisation has the most serious complaints about it?
- Whether a large number of the issues in the complaint relate to one organisation opposed to the other organisation
- Who originally received the complaint – relevant if the seriousness and number of complaints are about the same for each organisation.
- Whether the complainant has a clear preference for which organisation takes the lead.

## 19 Direct Payments (relevant to the Disabled Children's Team)

It is important to understand the difference between complaining about how the direct payments scheme is organised and dealing with problems that may occur with an employee or service provider. If there are problems around the employment of the carer, this is not something that the statutory complaints system can be used for, but advice can be obtained from the Direct Payments Team. If problems occur regarding the service provision, then the complaint needs to go direct to the service provider involved.

However if the complaint is regarding the information that has been given by the Council about direct payments, the way in which the payments are managed by the finance team or about the needs assessment, this can be taken up and looked into within the complaints procedure.

## 20 Persistent, unreasonable, vexatious complainants

A very small number of complainants fall within the definition of persistent, unreasonable or vexatious complainants. To define a complainant as such, staff should seek the advice of the Complaints Manager and have the verification and endorsement of a Senior Manager.

Here are some examples of unreasonable persistent complainants – this is not an exhaustive list:

- a) People who make frequent complaints about a variety of different things.
- b) People who persist in making the same complaint (or with minor differences) and reject the outcome of any investigation.
- c) People seeking unrealistic outcomes who intend to persist regardless.
- d) People who have a long history of making complaints.
- e) People who continually lodge their complaint from slightly different angles and at a variety of levels across and beyond the Council, in order to get a different response.
- f) People who change aspects of their complaint part way through the complaints process.
- g) People who regularly make or break contact with the Council (about their complaint) aiming to sabotage any conclusions.
- h) People who are aggressive, verbally abusive or threatening in the way they express their complaint.
- i) People who harass and abuse staff during the process of their complaint.
- j) People whose contact is frequent, lengthy, complicated and stressful and disrupts the care provision.

- k) People who are unable to deal with an historic and irreversible decision.

Before identifying a person described as above, the Council must ensure that we are satisfied that a series of things are not going wrong and that the complaint has been:

- i. properly and fully considered
- ii. robustly investigated and
- iii. appropriately responded to

To manage this behaviour, we must first write to the complainant, advising them that they will be categorised in this way. Giving explanations why, outlining any plans we intend to make and advise them on how the complaint will be managed.

Ideally each case should be discussed on an individual basis. Restricted access may help to alleviate the situation, which could take the form of:

- iv. contact by telephone only
- v. contact with a nominated / named person only
- vi. contact will only be responded to on specific times / days
- vii. restriction with the number of contacts made / accepted
- viii. Complaints Manager approaching the LGO to negotiate an early referral ix.  
advising the complainant to refer their complaint to the LGO

## **21 Performance report**

Local Authorities are required to publish an annual report every financial year which details complaints made for that year. It is the responsibility of the Complaints Manager to produce this and is an important part of governance function. The report is presented to the Executive Member, Overview & Scrutiny and the Northumberland Safeguarding Children Board to ensure activity is noted and any lessons learnt are shared.

Once accepted / agreed, the annual report should be available to both staff and the general public alike.

## **22 Status of this guidance**

The Northumberland Statutory Complaints Procedure should be seen as a public document and should be made available to those who request it and is readily obtainable on the public website. This procedure complies with the Statutory Complaints Guidance.

## 23 Appendix 1 - Further Information on Stage Three

The complainant has 20 working days (from the date of the stage two letter of response) in which to request to progress to stage three, the final stage of the Statutory Complaints Procedure.

Upon receipt of such a request being made, a Review Panel should be arranged to meet within 28 working days. This is usually the role of the Complaints Manager - time scales can be extended in certain circumstances in consultation with the complainant.

### General principle of a Review Panel

It is the Panel's task to re-examine the previous conclusions reached at the preceding stages. It can review the investigation itself, the outcome and whichever part of the Council's response is still in dispute (they will not need to review parts of the complaint which are no longer in dispute).

The Review Panel will be made up of three independent people who must not be:

- Employees of Northumberland County Council
- Elected members of Northumberland County Council
- A spouse or partner of either of the above.

One member will be appointed as the Panel Chair. Ideally the Chair should be appointed first (before identifying other Panel members) and will have had some relevant experience for this particular role.

### What the Complaints Review Panel will not do

- The Panel will not re-investigate the complaint.
- Will not consider a complaint unless it has already been investigated under stage two.
- Cannot directly consider matters which are, or have been placed before a Court of Law.

### What happens next?

The complainant should be notified of the location and date the Panel will be arranged in writing, providing them with at least 10 working days before the Panel meets. They will also be informed that they are able to bring a 'supporter' to the Review Panel hearing should they wish to do so. The 'supporter' can attend either to simply support the complainant by being present or by assisting the complainant by presenting the case on their behalf.

The Panel will also require the presence of certain other people in order to ensure that they are able to consider the whole matter in a robust and effective manner. Attendees should include those persons involved with the investigation at stage two (e.g., investigating officer / independent person) as well as a representative from the Department. This will usually be the member of staff who was responsible for writing the response for stage two.

The Chair should make the final decision on attendees (they may also request that specific members of staff be available to provide specialist advice or opinion).

*Ideally no party should feel the need to be represented by Solicitors. The purpose of the Panel is to consider the complaint and, wherever possible, work towards a resolution. It is not a judicial process and the presence of Solicitors may work against the spirit of openness and problem solving.*

Relevant documents should be sent to the 'Panel members' and other attendees as soon as these have been agreed by the Chair and no later than 10 working days before the date of the Panel. These should normally include:

- Information / response from stage one.
- Stage two investigation reports and subsequent outcome / decisions reached by the Director.
- Any policy, practice or guidance information relevant to the complaint.
- Any further (relevant) comments the complainant has made for submission to the Panel.

### Finally

The Review Panel's findings and any recommendations they wish to make should be recorded in the form of a written report and sent to the Director within 5 working days.

The Director must respond to the complainant within 15 working days (upon receipt of the above), providing an explanation behind the final decisions reached. The complainant is entitled to see the report provided by the Panel and should be enclosed with the response.