



BEDFORD
BOROUGH COUNCIL

Children's Services, Schools
and Families Directorate

Complaints Compliments & Comments Procedure

April 2009

1. LEGAL REQUIREMENTS:

- 1.1 The Local Authority Social Services Act 1970 (as amended by the NHS & Community Care Act 1990) requires social services to establish a complaints procedure for considering 'any representation' including a complaint' to the Local Authority in relation to the discharge of, or any failure to discharge, any of their Social Services functions' in respect of a 'qualifying individual'.
- 1.2 The Children Act 1989 Representations Procedure (England) Regulations 2006 provides the legal framework for the procedures in relation to the social care functions. Where there is any inconsistency in these procedures and the Regulations the Regulations shall prevail.
- 1.3 The School Standards and Framework Act 1998 places a duty on the governing body of maintained schools to manage complaints about the school. These complaints are therefore not the responsibility of the Local Authority.
- 1.4 The Youth Offending Service (YOS) is delivered in partnership with other agencies. Complaints about practice issues will be dealt with under these procedures. Complaints relating to individuals conduct will be dealt with under the individual's own agency complaints procedure. Where complaints combine both elements there will be a joint investigation by the YOS local manager and the relevant manager from the partner agency.

2. TERMS USED AND THEIR MEANING:

- 2.1 Where there is reference to the Local Authority sending responses 'in writing' the Local Authority will, if required, also provide the information in a format to meet the needs of the customer.

Service user – is an individual to whom social services have a duty to discharge a function.

Days refers to working days, this excludes Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under Section 1 of the Banking and Financial Dealings Act 1971 (b).

3. POLICY:

- 3.1 Legislation promotes a fair and responsive representations procedure. It is central to ensuring that the Authority can evidence that it draws on the experience of its customers, positive or negative, to bring about change in services. Procedures need to be open, easy to access and responsive to enable customers and/or their representatives to make representations and complaints.
- 3.2 The Procedure is the method by which customers can express their concerns and be sure that they will be listened to and taken seriously. The Authority welcomes feedback and is concerned with improving services and promoting good practice.

- 3.3 Compliments about service delivery from customers and/or their representatives should be recorded and the information shared to promote learning and improvements.
- 3.4 Comments about services which do not present as a complaint or compliment may be statements about how services could be improved and should be recorded to enable the service to use suggestions to review the way services are provided. People may express disappointment, disagreement or observations about services without necessarily wanting to complain. Feedback of this nature will be recorded as a comment.
- 3.5 'Representations' may relate to policies of Children's Services. If someone raises a concern about a policy this should be recorded as a representation and those who have made the policy, very often Councillors, informed. Customers will receive feedback on their representations.
- 3.6 This Procedure is part of the Council's corporate framework for responding to customer feedback about its services under the Customer Feedback Policy and Procedure.
- 3.7 The Council is committed to promoting equality of opportunity for all people. It recognises that some people have concerns about making complaints for fear of losing a service if they 'rock the boat' or fear being treated unfavourably. Customers will not be harassed or victimised as a result of making a complaint.

Complainants will not be subject to withdrawal of a service or delay or suspension of a service as a result of making a complaint unless this is at the request of the complainant. See Section 10 Freezing a Decision.

4. OBJECTIVES OF THE PROCEDURE:

- 4.1 To provide an effective means for customers or their representatives to complain about the quality or nature of services and to satisfy those who complain or comment that they have been dealt with promptly, fairly, openly and honestly.
- 4.2 To ensure complaints are acted on with the focus on complainants desired outcomes where these are realistic and achievable.
- 4.3 To resolve complaints quickly and as close to the point of service delivery as acceptable and appropriate.
- 4.4 To provide managers and Councillors with information to assist in monitoring performance and quality of service delivery.
- 4.5 To maintain public accountability on the effectiveness of the procedure through production of an Annual Report.
- 4.6 All staff understand the objectives and requirements of the Complaints Procedure.
- 4.7 To ensure all children and young people making or wishing to make representations or complaints have access to independent advocacy support.

- 4.8 To promote problem solving and focus on improvements in complaints handling and to avoid apportioning blame. Emphasis on correcting failings or problems. The procedure includes the option to suspend the complaints process where alternative methods to resolve complaints may benefit the complainant. See Section 21.

5. DEFINITION OF COMPLAINTS:

- 5.1 Generally a complaint is an expression of dissatisfaction with the quality or nature of the service provided, or the failure to provide a previously agreed service, or with the attitude or behaviour of a member of staff. Appendix A details the social care functions that can be complained about.
- 5.2 The complaints procedure is not an appeals procedure. Appeals against court orders will be to the court. Complaints relating to legal/court proceedings must be made within those proceedings and cannot be dealt with under the complaints procedure.

6. WHO CAN MAKE A COMPLAINT ABOUT SOCIAL CARE SERVICES?

- 6.1 A complaint about the discharge of or failure to discharge a relevant function of social services (for legal definition see Appendix 1) can be made by a person who the relevant function relates to, OR;

Where someone states they are acting on behalf of a child or young person in relation to functions under section 26(3)(e), (3b)(b) of (3c)(c) of the Children Act 1989 the Local Authority will decide if they have sufficient interest in the welfare of the child to warrant the complaint being considered. In consideration of this matter, where it is appropriate to do so, the views of the child will be sought.

If the Local Authority has cause to believe that a person is not acting in the best interests of a service user or they are not a suitable person to represent the service user the complaint will not be considered.

Any decision that a person is not a suitable person to represent the service user will be sent in writing to the proposed 'representative' with, as far as possible, reasons for the decision. The service user, if of sufficient age and understanding will also be informed of the decision in writing.

- 6.2 Children or Young People making their own complaints about social care will be given information about advocacy support and assistance in obtaining an advocate if requested. The role of the advocate in the complaints procedure is to provide independent and confidential information, advice, representation and support.

7. WHO CAN MAKE A COMPLAINT NON SOCIAL CARE SERVICES?

- 7.1 This procedure is open to those people who receive, or ask for a service from Children's Services (non social care). This includes complaints from other agencies and organisations including community groups, voluntary organisations and other councils where there is no service level agreement in place. Where there is a service level agreement (SLA) in place complaints will be addressed in line with the management of the SLA.
- 7.2 Representing a Complainant
- 7.2.1 Where a representative makes a complaint on behalf of a customer:
- If there is evidence that the customer has not given explicit consent for someone to act on their behalf and it would be expected that they had done so the customer must be contacted to establish consent for someone to act on their behalf.
- Where a complaint is made on behalf of a child, young person or vulnerable adult their wishes and views should be sought where they are of sufficient age and understanding.
- 7.2.2 If a representative is not thought to be acting in the best interests of the customer or is not thought to be suitable to act on their behalf the complaint should not be pursued via the representative. The representative should be notified in writing of the decision and, where possible the reasons for the decision. Similarly the customer should be notified in writing of the Authority's decision.

8. MEMBER OF PARLIAMENT (MP) OR MEMBER FEEDBACK:

- 8.1 Complaints and Enquiries from MPs or Councillors will be actioned in line with this procedure.

9. EXCLUSIONS FROM THE PROCEDURE:

- 9.1 Complaints will not be considered, or further considered, in cases where:
- a) the complainant has stated in writing to the Local Authority that he is taking, or intends to take, proceedings in any court or tribunal
 - b) the Local Authority is taking, or proposing to take, disciplinary proceedings against any person
 - c) the Local Authority has been notified that any person is conducting an investigation in contemplation of criminal proceedings; or
 - d) the Local Authority has been notified that criminal proceedings are pending...

and the Local Authority decides that consideration, or further consideration, of the representations under these Regulations would prejudice the conduct of any proceedings or investigation falling under this section of the procedures. Where this is the case the action being taken under paragraphs a) – d) will be known as a 'concurrent consideration'.

The Local Authority will advise a complainant in writing why a complaint has been excluded from these procedures and state what the 'concurrent consideration' is that has resulted in the exclusion.

- 9.2 At the conclusion of a 'concurrent consideration' the complainant may resubmit the original complaint, no later than one year after the concurrent consideration has been concluded or discontinued.
- 9.3 Complaints about the following aspects of a child protection conference need to be addressed under the Local Safeguarding Children Board complaints procedure and should be addressed to the Chair of the conference in the first instance:
- the process employed by the conference
 - the outcome, in terms of the fact of and/or the category of initial or continuing registration
 - a decision not to register, to de-register or to continue registration
- 9.4 Complaints about schools are the responsibility of the school and not the Local Authority. See Sections 23 - 26 for more information on complaints about schools.

10. TIME LIMIT FOR MAKING A COMPLAINT:

- 10.1 Complaints will not be considered where the subject of complaint relates to events more than one year before the date the Local Authority receives the complaint unless:
- ... the Local Authority is satisfied that it would not have been reasonable to expect the complaint to have been made earlier than it was; and
 - ... although there had been delay in making the complaint it is still possible to consider the complaint effectively and fairly.

11. MAKING A COMPLAINT:

- 11.1 A complaint can be made to any member of staff orally or in writing.
- 11.2 Children or young people making their own complaints about social care will be given information about advocacy support and assistance in obtaining an advocate if requested. The role of the advocate in the complaints procedure is to provide independent and confidential information, advice, representation and support.
- 11.3 When a person makes a complaint they will be sent details of the complaints procedure.
- 11.4 Customer Relations will offer assistance to children and young people to follow the procedure and inform them of their rights.

12. WITHDRAWING A COMPLAINT:

- 12.1 A complaint can be withdrawn orally or in writing at any time by the complainant or their advocate. The withdrawal of a complaint will be acknowledged in writing.

13. FREEZING DECISIONS:

- 13.1 If a complaint is about a proposed significant change to a care plan, a placement or service, the decision may be deferred (frozen) until the complaint is resolved. Customer Relations in consultation with the service Assistant Director (AD) will consider the deferring of a decision that will have a significant effect upon the life of an individual until the complaint has been resolved, having regard to the best interests of the service user.

14. THE COMPLAINTS PROCEDURE:

- 14.1 The complaints procedure has three stages:

- Stage 1 – Local Resolution
- Stage 2 – Investigation
- Stage 3 – Independent Review Panel

Alternative options for resolving complaints are detailed in Section 20 and include conciliation and mediation.

15. STAGE 1 – LOCAL RESOLUTION:

- 15.1 The Local Authority will take all reasonable steps to consider and resolve the complaint at stage 1 as soon as is reasonably practicable. However, the complainant and the Local Authority may agree that the complaint should not be considered at stage 1 and should be considered at stage 2.
- 15.2 The timescales for completion at stage 1 are:
- a) 10 working days from the date on which the Local Authority make a decision that a person is suitable to make a complaint relating to Section 26(3)(e), (3b)(b) of (3c)(c) of the Children Act or;
 - b) in a case where the complainant is a child or young person and they have asked for an advocate to be appointed, 10 working days from the date on which the advocate is appointed
 - c) in any other case, 10 working days from the date the complaint was received by the Local Authority

- 15.3 The start date may be a date later than that defined above at the request of a complainant and in agreement with the Local Authority.
- 15.4 The timescale for completion at stage 1 may be extended up to a maximum of 10 working days where the Local Authority considers the complaint to be complex.
- 15.5 Complainants will be notified in writing of the outcome of the Authority's consideration of the complaint; whether the complaint has been upheld or not; the reasons why and the complainants right to investigation (stage 2).

16. STAGE 2 – INVESTIGATION:

- 16.1 Complaints will progress to stage 2, the registered stage:
- At the complainants request where the complaint has not been resolved at stage 1
 - The complainant and Local Authority are in agreement that the complaint should not be considered at stage 1.
- 16.2 When a complaint has been made orally and a) or b) above apply the Local Authority will, as soon as reasonably practicable; record the complaint in writing and invite the complainant to comment on it. The Local Authority may amend the written complaint in light of the complainant's comments.
- 16.3 The final written record will be the 'complaint' for the purposes of stage 2.
- 16.4 The complaint will be investigated by a person outside of line management of the service complained about. The complainant will be kept informed, as far as is reasonably practicable, of progress of the investigation.
- 16.5 For social care complaints an Independent Person will be appointed at stage 2. See Section 17.
- 16.6 The timescale for responding to stage 2 complaints is 25 working days from receipt of the request to move to stage 2 if the complaint has been received in writing and is clear; OR
- If the complaint was made orally, 25 working days after the date on which the record of the complaint was amended and signed.
- 16.7 The stage 2 response to the complaint will inform the complainant of their right to an independent review panel (stage 3) and detail how to make a request.

17. THE ROLE OF THE INDEPENDENT PERSON (IP) IN SOCIAL CARE COMPLAINTS:

- 17.1 To have an overview of the process at stage 2 and to work independently of the department and the complainant in order to ensure a full and fair investigation of the complaint

The independent person has a right of access to files in order to validate and scrutinise information that the complaints investigator has accessed and to ensure procedures have been adhered to.

The IP will provide a written comment to the Local Authority in the form of a brief account. The account will:

- consider whether the investigation has been conducted entirely in a fair, impartial, comprehensive and effective manner where all those concerned have been able to express their views fully and without duress.
- comment on whether the investigator's report provides an accurate and complete picture of the investigation.

- 17.2 The IP will be involved in any discussions about the action the Authority will take in response to findings and conclusions at stage 2.

- 17.3 The IP will be bound by a confidentiality undertaking.

18. ADJUDICATION:

- 18.1 Following the investigation and the report being presented to the Authority and the complainant, Customer Relations may offer and facilitate an adjudication meeting between the department and the complainant as a further opportunity to resolve the complaint before the department responds formally to the complainant.

- 18.2 At the meeting:

- There will be the opportunity to clarify aspects of the complaint. The report will be discussed, with the focus being on the complaint and the desired outcomes.
- The department will be asked to respond to any recommendations in the report.
- A resolution will be sought and actions, if any, agreed with timescales for completion.

The outcome of the meeting will be summarised and sent to the complainant.

- 18.3 A complainant not wishing to attend a meeting will be sent a written response.

- 18.4 An Adjudication meeting is optional and any difficulties setting up a meeting will result in a written response being provided. The final decision to hold a meeting or not will be made by the Complaints Manager.

- 18.5 The adjudication process should be completed within the timescales permitted to resolve a stage 2 complaint.

19. REVIEW PANEL – STAGE 3:

- 19.1 Any request for a stage 3 review panel must be made within 20 working days of receiving a response to a stage 2 investigation. The complainant must set out the reasons for dissatisfaction with the outcome at stage 2.
- 19.2 On receipt of a request from a complainant for a review panel the Local Authority will convene a review panel within 30 working days.
- 19.3 The panel will consider any oral or written submissions made by the complainant; his advocate on his behalf; the Local Authority and any person whom the panel consider has sufficient interest in the representations to merit submissions being considered by them.
- The panel will also consider any oral or written submissions made by the independent person appointed at stage 2.
- 19.4 If the complainant attends the panel he may be accompanied by an advocate and one other person nominated by the complainant to speak on his behalf.
- 19.5 The independent panel will consist of three independent people, one of whom will chair the panel meeting. The independent person appointed at stage 2 may not be a panel member. A member or officer of the Local Authority, or their spouse or civil partner, may not sit on the review panel.
- 19.6 At the conclusion of the meeting the panel will decide on their recommendations and write a report setting out a summary of the representations and any recommendations to resolve the issues raised in the representations.
- 19.7 Within 5 working days of the date the panel was convened the panel will send the report to the complainant and his advocate (if one has been appointed); the Local Authority; the independent person at stage 2; any other person the panel consider has sufficient interest to merit their receiving such a report.
- 19.8 Within 15 working days of the notification of the panel's decisions the Local Authority, together with the independent person appointed at stage 2, will consider the panel's recommendations and decide how the Authority will respond to them and what, if any action it proposes to take in response. The Authority's response will be sent to the complainant including information on the role of the Local Government Ombudsman and details of how to complain to him.

20. EARLY REFERRAL TO THE LOCAL GOVERNMENT OMBUDSMAN (LGO):

- 20.1 Where a request to proceed to stage 3 is received and the complaint has been subject to stage 2 and the following factors apply:
- A robust stage 2 report has been completed;
 - A complete adjudication has been completed where the outcome has upheld all significant complaints relating to service delivery in respect of the complainant;

- There is a clear plan in place to remedy the complaints;
- The adjudicator agrees to meet all or most of the desired outcomes presented by the complainant at stage 2; and
- The complaints manager believes that further consideration by a review panel would not produce a demonstrably different outcome.

The complaints manager can discuss the possibility of Early Referral to the Local Government Ombudsman with the complainant.

- 20.2 Where the complainant agrees, the complaints manager will approach the LGO and ask them to consider the complaint directly without first going through stage 3.

In order to refer the case the complaints manager will facilitate a written statement of complaint to be presented to the LGO.

- 20.3 The LGO will apply a test of reasonableness to the decision of early referral. A range of outcomes could include referral back to the Authority or LGO intervention.

21. 21 ALTERNATIVE DISPUTE RESOLUTION:

- 21.1 When dealing with complaints the focus should always be on resolution. This may mean that alternative methods to the complaints procedure could be considered such as conciliation or mediation. The clock for the purposes of the statutory complaints procedure will stop when the agreement to enter into conciliation/mediation is reached.
- 21.2 Conciliation is a meeting chaired by customer relations between a manager and the complainant (and/or their representative) at stage 1 to try to resolve the issues of complaint through discussion.
- 21.3 Mediation is a more formal process and is likely to be suitable for more complex cases where relationships between the complainant and the service are strained. The mediation process involves a number of stages including interviews of both parties with the aim of bringing them together in a face to face meeting to then reach agreement on resolution. Trained mediators will undertake mediation on complaints issues.
- 21.4 Where the complainant agrees to either conciliation or mediation as an alternative method of complaint resolution they retain the right to re-enter the complaints process if matters of complaint remain outstanding at the end of the process.

22. MONITORING THE OPERATION OF THIS PROCEDURE:

- 22.1 Records will be kept of each complaint received, the outcome of each complaint and whether there was compliance with the time limits defined in the 2006 Regulations.

A report will be compiled annually on the Authority's functions under the Regulations.

23. COMPLAINTS ABOUT SCHOOLS:

23.1 The Governing Body of a school is responsible for managing complaints from the school community about their individual school. The Local Authority has provided guidance for schools on a best practice complaints procedure which includes a number of stages that parents can escalate their complaint through should they remain dissatisfied with the initial response. Many schools have adopted this approach. Any request for copies of the schools complaints procedure should be made directly to the school.

23.2 School closure e.g. for holiday periods, is likely to mean that complaints will not be actioned until school restarts.

Officers of the council who receive verbal complaints that are the responsibility of the school to respond to should;

- advise complainants to make direct contact with the school and alert him or her to any potential delay due to school closure.

Officers of the council who receive written complaints that are the responsibility of the school to respond to should;

- write to the complainant advising that the letter has been forwarded to the school to respond directly to the complainant; and
- alert him or her to any potential delay due to school closure.

23.3 If a parent remains dissatisfied having been through all stages of the school's complaints procedure the next stage of appeal is to the Secretary of State for Children Schools and Families.

23.4 Officers of the Local Authority may advise parents on the route to follow in relation to complaints about the school and may take on a liaison role between schools and parents to support effective resolution.

23.5 Complaints about Governors cannot be addressed by the Local Authority but should be referred to the Governing Body of the school. In the event of the Governing Body being unable or failing to respond to the complaint then it should be referred to the Secretary of State for Children Schools and Families.

24. SCHOOL EXCLUSIONS:

24.1 There is a statutory process that says what parents/pupils can do if they are unhappy with a school's/Governing Body's decision to exclude. Complaints about exclusions cannot be dealt with through this complaints procedure.

25. SCHOOLS ADMISSIONS APPEAL PANEL:

25.1 The Local Authority is responsible for co-ordinating admissions to all maintained schools.

Appeals about admissions to schools cannot be dealt with through this complaints procedure. There is a clear appeals process in place briefly outlined below:

Parents applying for a school place cannot be refused admission unless the published admission number has been reached, except in very limited circumstances. If refused a place, parents can appeal against the decision. Appeals are heard by an independent Admission Appeals Panel. The Panel will make a decision either to allow the appeal or to dismiss it.

26. SPECIAL EDUCATIONAL NEEDS, NATIONAL CURRICULUM & CHILD PROTECTION MATTERS:

26.1 Some aspects of special educational needs, national curriculum and child protection have specialised statutory procedures for dealing with complaints which do not fall within the remit of the school's general complaints policy. Such complaints must be dealt with in line with the relevant statutory process. Child protection matters will be dealt with in line with the Local Safeguarding procedure.

26.2 Complaints about some aspects of special educational needs are dealt with by an independent panel: Special Educational Needs & Disability Tribunal (SENDIST). The tribunal will hear cases concerned with decisions to carry out statutory assessments and the contents of statements.

Appendix A

A complaint falls to be handled under these procedures where it relates to:

Section 26(3A)(b) for the Children Act 1989, the functions under Parts 4 and 5 of the act as specified below:

- (a) functions under section 31(1) (care and supervision orders);
- (b) functions under section 33(3), (4) and (6) to (9) (effect of care order);
- (c) functions under section 34(6) and (8) (parental contact etc with child in care);
- (d) functions under section 35(1) and (2) (supervision orders);
- (e) functions under section 43(1) (child assessment orders); and
- (f) functions under section 44(1), (10) and (11) (orders for emergency protection of children).

Specified functions under the 2002 Act

4. For the purposes of section 26(3B) of the Act, specified functions under the 2002 Act are:

- (a) the provision of adoption support services as prescribed in regulation 3 of the Adoption Support Services Regulations 2005[4] (for the purposes of this regulation, "the 2005 Regulations"). But the provision of services prescribed in regulation 3(1)(b) of the 2005 Regulations is only a specified function under this regulation in so far as it is to enable groups of adoptive children to discuss matters relating to adoption and in this sub-paragraph "adoptive child" has the same meaning given in regulation 2 of the 2005 Regulations;
- (b) functions under Parts 4 and 5 of the 2005 Regulations in so far as they relate to the adoption support services referred to in sub-paragraph (a);
- (c) functions under sections 18 to 29 (placement of children by adoption agency for adoption) of the 2002 Act;
- (d) functions under sections 30 to 35 (removal of children who are or may be placed by adoption agencies) of the 2002 Act;
- (e) functions under sections 36 to 40 (removal of children in non-agency cases) of the 2002 Act;
- (f) functions under Part 3 (duties of adoption agency where the agency is considering adoption for a child), Part 5 (duties of adoption agency in respect of a proposed placement of child with prospective adopter), Part 6 (placement and reviews), Part 7 (case records) in so far as those functions relate to a child's case record as defined in regulation 12 of the Adoption Agencies Regulations 2005[5], and regulations 46 and 47 (contact) of the Adoption Agencies Regulations 2005;

(g) functions under regulation 10 (requirements applicable in respect of giving parental responsibility prior to adoption abroad) and Chapter 3 (miscellaneous provisions) of Part 3 (adoptions under the Convention) of the Adoptions with a Foreign Element Regulations 2005[6].

Specified functions under section 14F of the Act

5. For the purposes of section 26(3C) of the Act, specified functions under section 14F of the Act are:

(a) the provision of special guardianship support services under regulations 3(1)(a), (b)(i) and (c) to (e) of the Special Guardianship Regulations 2005[7]; and

(b) functions under Chapter 2 of Part 2 of the Special Guardianship Regulations 2005 in so far as they relate to the special guardianship support services referred to in sub-paragraph (a).¹

Representations from foster carers concerning the limits on the number of children a person may foster complaints about foster placements

¹ The Children Act 1989 Representations Procedure (England) Regulations 2006