



Devon County Council

Children & Young Peoples Services
Directorate

Complaints & Representations Policy

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1. Introduction

This policy document provides the policy framework for the Directorate in operating the Children & Young People's Complaints and Representations Procedure. This document is supplemented by further operating procedures, instructions and guidance.

2. Legislative Background and National Policy Objectives

There have been 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*** which provides for regulations to be made about the handling and considering of complaints about the discharge by a local authority of its social services functions.

Guidance entitled "**Getting the best from complaints**" accompanies the ***Children Act 1989 Representations procedure (England) Regulations 2006***. These regulations revoke and replace the ***Representations Procedure (Children) Regulations 1991***.

This guidance builds on messages from the report of the Waterhouse inquiry, ***Lost in Care***, which cited many examples of children who had attempted to complain but whose voices had not been heard. ***Every Child Matters: Change for Children*** sets out the Government's agenda for improving outcomes for every child. It is also about making sure vulnerable children and young people get the help they need, when they need it, however large or small their complaint. This guidance follows the core principles of the UN Convention on the Rights of the Child and ***Every Child Matters: Change for Children*** which puts children's views and wishes at the forefront of the decision-making process.

It is recommended that this guidance is read alongside other appropriate guidance and standards including:

- ***National Minimum Standards***, published by the Secretary of State under the Care Standards Act 2000.
- ***Working Together to Safeguard Children***: A guide to inter-agency working to safeguard and promote the welfare of children. HM Government, April 2006.
- ***Children's Views on Complaints Procedures and Advocacy: Report of the Children's Rights Director***, National Care Standards Commission, 2003.
- ***Independent Reviewing Officers Guidance, Adoption and Children Act 2002: The Review of Children's Cases (Amendment)(England) Regulations***. Department for Education and Skills, 2004.
- ***Get it Sorted: Providing Effective Advocacy Services for Children and Young People making a Complaint under the Children Act 1989***. Department for Education and Skills, 2004.
- ***Get it Sorted: Getting help if you have a problem. Young People's Guide to Advocacy Guidance***. Department for Education and Skills, Voice for the Child in Care / The Who Cares? Trust, 2004.
- ***National Standards for the Provision of Children's Advocacy Services***. Department of Health, 2002.

The Care Standards Act, 2000 requires regulated social care providers to have their own complaints procedures, which are themselves subject to regulations and National Minimum Standards. Getting the best from complaints, July 2006 guidance is not applicable to procedures established under those regulations and standards, but it does clarify the boundary issues that have caused confusion between the two complaints procedures.

The new regulations introduce a duty for local authorities to cooperate with the National Health Service in the coordination of complaints spanning both health and social care. There were amendments to the NHS Complaint regulations as of 1st September 2006 to include within them a duty to co-operate with Local Authorities in the area of statutory complaints which crossed boundaries.

3. Our Aims and Objectives

Aims

1. To ensure services are developed and improved by listening to and learning from the people using them.
2. To ensure that our complaints and representations procedure is used as a positive aid to inform and influence service improvements, not a negative process to apportion blame.
3. To ensure any dissatisfaction or concern with a service is resolved swiftly, and, wherever possible, by the people who provide the service locally

Objectives

1. Procedures are clear, accessible and easy to use for service users, their carers or representatives and staff.
2. Service users are treated with dignity and respect, are not afraid to make a complaint, and have their concerns taken seriously
3. Ensure the process is fair, is undertaken in an even-handed way, and there is adequate support for all people involved.
4. To ensure that the child or young person or person complaining on their behalf receives a timely response without delay.
5. Any concerns about the protection of children and young people are referred immediately to the relevant social services team or to the Police.
6. The procedures are linked and co-ordinated with other relevant Statutory, County Council and National Health Service regulations & procedures
7. Service user's rights to access other means of redress are safeguarded such as the Local Government Ombudsman and OFSTED.
8. The handling and outcomes of complaints are monitored and regularly reported, and are a priority within the Directorate's performance management and improvement of its services.
9. Learning from complaints is positively and actively used in staff development and training, and informs the ongoing review of the Directorate's policies

4. What is a Complaint and a Representation?

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 likely to constitute representations, for example, children and young people should be able to put forward ideas or proposals about the service they receive, or the establishment they live in, without having this framed as a complaint.

Representations may be defined as “a comment about the County Council or Government Policy, allocation of resources, the nature or availability of services”.

Examples may include :

- Charging Policies
- How much resource is allocated to particular services, and as a result the delays in receiving services
- How services are commissioned and the transfer of services to the independent sector
- Eligibility Criteria

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. Children and young people often express complaints as ‘problems not being sorted out’. A common theme amongst children and young people is the need for complaints procedures to be both fast and effective: complaints procedures should ‘get it sorted’ straight away.

5. What May be Complained About?

Section 26 (3) of the Children Act 1989 provides that all functions of the Directorate 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.

However, this is not an exhaustive list and the Complaints Manager should seek legal advice as necessary.

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

Part 4 of the Children Act, 1989,

- the decision by the local authority to initiate care and supervision orders (section 31);
- the effect of the care order and the local authority's actions and decisions where a care order is made (section 33);
- control of parental contact with children in care (section 34);

- how supervisors perform their duties where a supervision order is in force (section 35);

Part 5 of the Children Act, 1989,

- matters that do not relate to the Court and which are specifically actions of the local authority can be considered, regarding 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).

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).

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.

It is important to note that **Care Standards complaints are not covered by this procedure**. This means a complaint relating to services provided by an agency or establishment of which a person ("the registered person") is required to be registered under section 11 of the Care Standards Act 2002.

However with complaints about regulated services under the Care Standards Act 2000 and where services are delivered on the Department's behalf or through an internal service that is regulated, the Department will need to satisfy itself that the complaint can be considered under this procedure

Complaints should be considered under this procedure when they are about relevant services provided under any "joined up" arrangements that the local authority may have with third party providers. For example where a person's assessed needs are met by a contract with another public body, agency or voluntary body. Such arrangements do not absolve the authority from their duty of care.

Where social work information or a social work report has been used in Court proceedings, the complainant can make a complaint about the report (i.e. its quality/accuracy), distinct and separate to the subsequent actions of the Court. If this complaint is upheld, the local authority should advise the complainant what action it proposes to take with regard to the Court action.

6. What Cannot Be Complained About

A complaint cannot be made or accepted where:

- 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 to the actions or decisions of the County Council, or of any body acting on its behalf;
- where the same complaint has already been dealt with at all stages of the procedure;
- the same complaint has already been investigated by a local commissioner;
- the complaint is unclear, or it is frivolous or vexatious;
- matters should be dealt with under other proceedings such as:
 - disciplinary proceedings;
 - grievance procedure;
 - complaints from staff about personnel issues;
 - complaints that should be considered under the County Council's corporate complaints procedure;
 - services for which an alternative statutory appeals process already exists; and
 - criminal investigation where Court action is pending.

Where the complainant has stated in writing that he /she intends to take legal proceedings in relation to the substance of the complaint, the local authority may wish to restrict his/her access to the complaints procedure. The local authority may wish to apply this restriction only in instances where the complainant has

commenced legal action or where the complainant is certain that the complaint cannot be resolved through the complaints procedure, and that he/she intends to take legal proceedings in relation to the substance of the complaint.

7. Who May Complain?

Section 26(3) and section 24D of the Children Act, 1989 and section 3(1) of the Adoption and Children Act, 2002 require the responsible authority to consider representations including complaints made to it by:

- any child or young person (or a parent of his or someone who has parental responsibility for him) who is being looked after by the local authority or is not looked after by them but is in need;
- any local authority foster carer (including those caring for children placed through independent fostering agencies);
- children leaving care;
- Special Guardians;
- a child or young person (or parent of his) to whom a Special Guardian order is in force;
- any person who has applied for an assessment under section 14F(3) or (4);
- any child or young person who may be adopted, their parents and guardians;
- persons wishing to adopt a child;
- any other person whom arrangements for the provision of adoption services extend;
- adopted persons, their parents, natural parents and former guardians; and
- such other person as the local authority consider has sufficient interest in the child or young person's welfare to warrant his representations being considered by them.

7.1 Complaints made on behalf of a child

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

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 the Complaints Manager considers that the representative does not have sufficient interest, he should notify the representative in writing, explaining that no further action should be taken. The Complaints Manager should discuss this decision with relevant operational managers as appropriate.

7.2 Who May Complain on Behalf of Someone Else?

A complaint may be made by a representative acting on behalf of an eligible person where that person is a child, has asked the representative to act on his/her behalf or is not capable of making the complaint him/herself (this includes a person who has died).

Where a complaint is received from a representative acting on behalf of a service user, (i.e. his advocate) the County Council has the discretion to decide whether or not the person is suitable to act as a representative, in the individual's best interests.

If the Complaints Manager considers the representative to be unsuitable, he should notify the representative accordingly in writing, explaining why no further action is being taken. The Complaints Manager should discuss this decision with relevant operational managers and take legal advice as appropriate.

7.3 Anonymous Complaints

Anonymous complaints should always be recorded and referred to the Complaints Manager in the same way as other complaints. Anonymous complaints fall outside of the scope of the statutory procedure and it is for the County Council to decide what action it should take. The fact that the complaint is from an anonymous source should not in itself justify a decision not to pursue the matter nor should it rule out referral to other procedures as appropriate.

8. Withdrawing a Complaint

A complaint may be withdrawn verbally or in writing at any time by the complainant. The Directorate must write to the complainant to confirm the withdrawal of the complaint.

9. Time Limit for Making a Complaint

The regulations impose a time limit for making complaints. The Directorate need not consider complaints made more than one year after the date of the event that gives rise to the complaint. In these cases, the Complaints Manager should write to advise the complainant that the complaint falls outside the time limit. However, judgements need to be made on a case by case basis, and there should generally be a presumption in favour of accepting the complaint unless there is good reason against it.

The time limit can be extended at the local authority's discretion if it is still possible to consider the representations effectively and efficiently. Local authorities may also wish to consider such complaints if it would be unreasonable to expect the complainant to have made the complaint earlier. For example, where the child was not able to make the complaint or did not feel confident in bringing it forward in the year time limit.

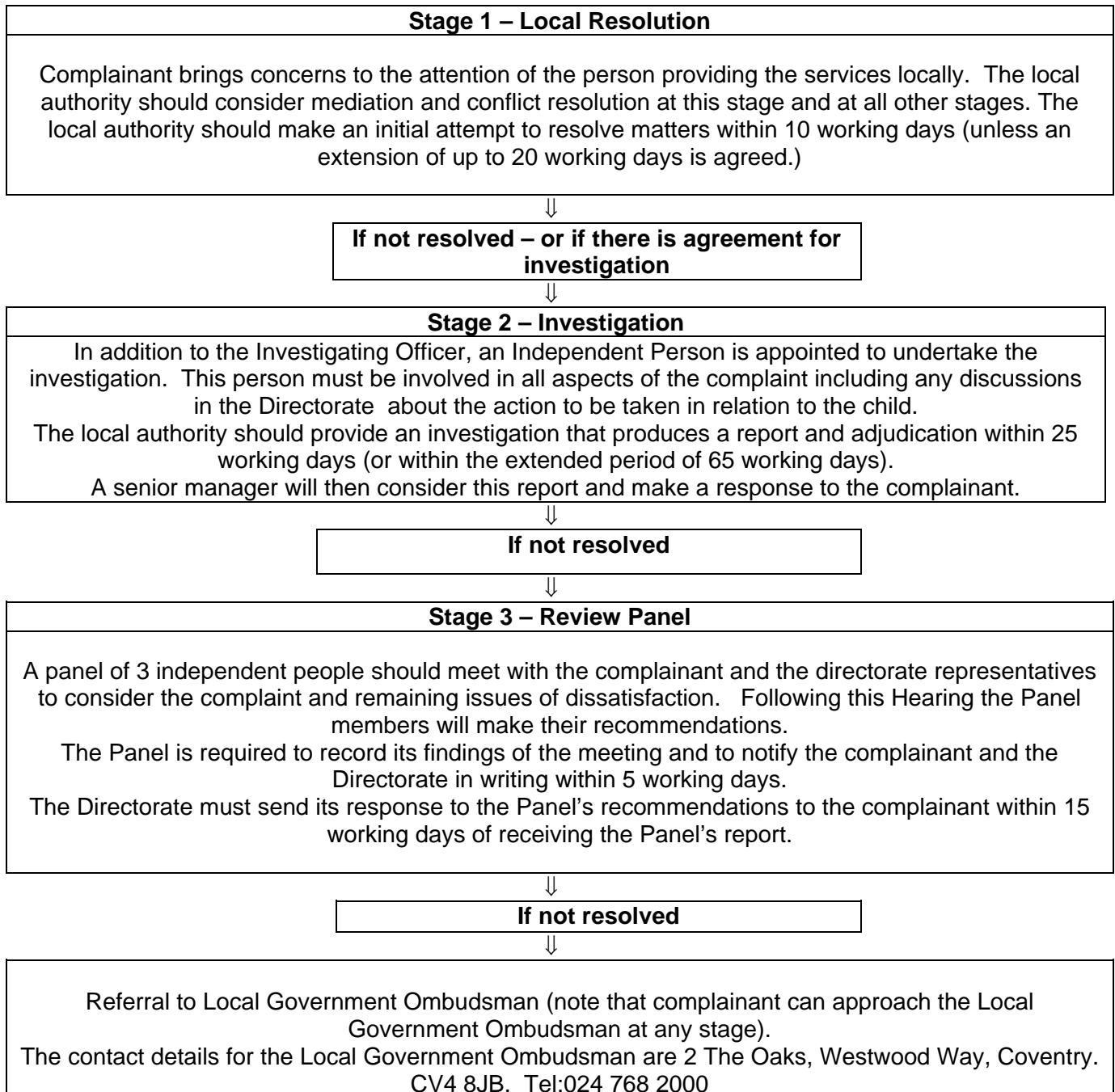
Though not exclusive, possible grounds for accepting a complaint made after one year are:

- genuine issues of vulnerability;
- the local authority believes that there is still benefit to the complainant in proceeding;
- there is likely to be sufficient access to information or individuals involved at the time, to enable an effective and fair investigation to be carried out; and
- action should be taken in light of human rights-based legislation.

10. Overview of the Procedure

The complaints procedure comprises three stages, however the objective is to achieve resolution at the earliest possible stage within the process.

THE PROCEDURE FOR CHILDREN ACT 1989 COMPLAINTS



11 Record Management and Data Protection.

All functions of the complaints procedure must adhere to the requirements of the Data Protection Act, 1998 and the Freedom of Information Act, 2000. The Directorate will ensure that any personal information obtained in relation to a complaint is only used for that purpose.

Section 119 of the Health and Social Care (Community Health and Standards) Act 2003, makes an amendment relevant to the complaints functions to Section 31 of the Data Protection Act 1998. This is that people charged under the regulations with consideration of complaints are exempt from the subject information provisions of the Data Protection Act 1998 to the extent to which application of these provisions would prejudice considering the complaint. The subject information provisions of the Data Protection Act allow for individuals to obtain information which is held on them by others. Section 31 of the Data Protection Act provides an exemption from these provisions by reference to a number of different categories of regulatory function exercised by public bodies.

Records of complaints, any investigation reports, Panel reports and letters of response from the local authority should be placed on the relevant service user's file, unless there are specific reasons not to do so (for example, if the reports would cause distress to the child). Those involved in the investigation should have access to notes of their own interview in order to confirm the accuracy of the content. The investigation report and all other relevant papers should be held by the Complaints Manager in a separate complaints file.

12 Recording and Monitoring

Local authorities must monitor the complaints arrangements that they have in place to ensure that they comply with the regulations (regulation 13). They must keep a record of:

- each representation / complaint received;
- the outcome of each i.e. the decisions made in response to the representation / complaint and any action to be taken; and
- whether there was compliance with the time limits.

The overall purpose of recording is to enable:

- Children and young people to see that their concerns and suggestions are being dealt with and that a thorough and fair consideration has taken place;
- the organisation to demonstrate that complaints are taken seriously and how they are resolved; and
- feedback from representations and complaints to lead to improvement in service planning and delivery.

12.1 Confidential complaints

A frequent worry of children and young people is that details of the complaint might be given to other people who do not need to know about it. Children see privacy and confidentiality as vital, and must be able to make 'confidential complaints' – sometimes to avoid 'come-backs' on themselves. Therefore details of a child's personal complaint should not be put into a complaints book that others can read.

Particular attention is drawn to the need to ensure that personal information obtained in relation to a complaint is used only for that purpose.

12.2 Making complaints information accessible

For children and young people with difficulty reading, writing or speaking English, the local authority should identify a suitable method of communication so that these children can express and follow progress on their complaint in full; this might involve the provision of information (including responses to complaints) in large print, translation or in other formats. In the case of complainants with special needs or within specific community groups, the local authority should meet the complainant to explain any reports in person.

For people with special needs, such as learning disabilities, sensory or physical impairment or with mental health problems, the Complaints Manager should liaise closely with the authority's specialist teams and relevant voluntary bodies to ensure that the complainant is able to express their complaint in full (see section 3.4 on Providing Advocacy and Support). The child or young person should have confidence that the authority can provide as thorough consideration as for any other service user.

12.3 Diversity monitoring

Local authorities should, where possible and appropriate, ensure that they ask the complainant to define their own ethnic origin, gender, any disability and age. It is important that authorities seek to identify for the complaints procedure:

- an accurate picture of use by ethnic origin, age, gender, sexual orientation and disability;
- where take-up or use could be improved or reviewed;
- a base-line for planning, target-setting and measuring change;
- that it is accessible equally to all sections of the community;
- whether any distinct needs exist amongst members of minority groups, for which special provision may be necessary; and
- that it does not inadvertently discriminate against any particular group.

12.4 Annual report

Local authorities must each financial year publish an Annual Report (regulation 13(3)). This should draw upon the information already gathered under section 5.1 for recording purposes. However, this Annual Report is a separate requirement and should not contain personal information that is identifiable about any individual complainant.

The Annual Report should be arranged by the Complaints Manager and should

provide a mechanism by which the local authority can be kept informed about the operation of its complaints procedure. The report should be presented to staff, the relevant local authority committee and should be made available to the regulator and the general public. It should provide information about:

- representations made to the local authority;
- the number of complaints at each stage and any that were considered by the Local Government Ombudsman;
- which customer groups made the complaints;
- the types of complaints made;
- the outcome of complaints;
- details about advocacy services provided under these arrangements;
- compliance with timescales, and complaints resolved within extended timescale as agreed;
- learning and service improvement, including changes to services that have been implemented and details of any that have not been implemented;
- a summary of statistical data about the age, gender, disability, sexual orientation and ethnicity of complainants; and
- a review of the effectiveness of the complaints procedure (see section 5.7 on Monitoring and Quality Assurance).

In order to demonstrate learning from complaints, analysis of trends and closer working with relevant bodies (such as the NHS), individual local authorities may wish to agree a common format for their reports and reporting cycles with relevant key agencies.

12.5 Monitoring and quality assurance

Local authorities should monitor the operation and effectiveness of their complaints procedure as well as how information about complaints is being used to improve services and delivery. Local authorities should ensure that their quality assurance systems include a cycle of planning with outcomes fed back into operational delivery. All local authorities should provide a system for:

- the dissemination of learning from complaints to line managers;
- the use of the complaints procedure as a measure of performance and means of quality control; and
- information derived from complaints to contribute to practice development, commissioning and service planning.

Monitoring should also highlight how effective communication is within the authority and to the children and young people receiving their services, where staff training is required and whether resources are targeted appropriately. This should be fed back into the system in order to facilitate and improve policy and practice.

13. Alternative Dispute Resolution (ADR)

Nothing in this procedure precludes either the complainant or the Directorate from suggesting Alternative Dispute Resolution. If agreed by both complainant and Complaints Manager, the Directorate should explore this option e.g. mediation.

However, entering into ADR should not restrict the complainant's right to use the complaints procedure and to request a panel hearing as long as it is within the 20 working day timescale. Once the final date of the particular resolution process is agreed (ie following the final mediation meeting) and should the complainant decide that he wants to invoke his right to a Review Panel, he can terminate ADR any time.

14. General Principles of Redress

Under Section 92 of the Local Government Act 2000, the County Council is empowered to remedy injustice arising from maladministration. Remedies should include, but are not restricted to, financial redress.

The Directorate will consider each case on its merit And any application of remedies should:

- be appropriate and proportionate to the injustice;
- put the complainant in the position he would have been in except for the fault;
- consider financial compensation, where the above is not possible
- take into account the complainant's views and desired outcomes;
- take into account the effect of the complainants own actions (ie delay).

15. Deferring (Freezing) Decisions

If the complaint is about a proposed change to a care plan, a placement or a service, the decision may need to be deferred (frozen) until the complaint is considered. However, care will be taken to ensure deferring a decision will not have a significant detrimental effect upon the mental or physical wellbeing of the child/young person.

The decision will normally be made through detailed discussion and risk assessment between the Complaints Manager and the manager responsible for the service, within the context of the work being undertaken with the service user.

16. Complaints made to a local authority about an NHS Body

The regulations place a duty on County Council and NHS bodies to cooperate with each other and to agree which of the two bodies takes the lead in handling complaints against them in order to provide a coordinated response

Where the complaint consists of elements relating to both social services functions and services provided by an NHS body, the Directorate will, within 10 working days, ask the complainant if he/she wishes details of the NHS complaint to be sent to the relevant NHS body. If the complainant agrees, the Directorate will send the NHS complaint to the NHS body as soon as reasonably practicable. It will also advise the complainant which parts of the complaint the Directorate is considering.

Where there are two responses they should be completed simultaneously and reports delivered to the complainant together. In order to facilitate this, the two bodies should aim to work to the shorter of their respective complaints procedure timescales.

Where County Council receives a complaint that is about services provided by an NHS body, and is subject to consideration under the National Health Service (Complaints) Regulations 2004, they should, within 5 working days, ask the complainant if he wishes the NHS complaint to be sent to the NHS body. The complaints manager will, if the complainant agrees, then forward the complaint to the NHS body as soon as reasonably practicable.

Services may be delivered by one body acting on behalf of another. For example, a County Council may deliver NHS functions delegated to it under Section 31 of the Health Act 1999. In such cases, it remains the NHS body's responsibility to receive complaints about the delegated service.

17. Complaints about an Independent Provider

The Care Standards Act, 2000 requires providers to have their own complaints procedure in place, and these service users can access that procedure.

