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A guide to handling complaints and representations by local authority social services



Ministerial Foreword



Local authority social services across Wales work hard, often in very difficult situations, and routinely deliver effective support that makes a real difference in people's lives. However sometimes, for a variety of reasons, people will make a complaint about the service they have received. Everyone who makes a complaint about social services has a right to be listened to and have their concerns addressed quickly and effectively. In addition, it is important that local authorities learn from these complaints and where necessary use them to identify where services should be changed and improved.

I am publishing this new complaints guidance, *A guide to handling complaints and representations by local authority social services* to improve the experience for people making complaints.

Improving the way in which complaints are dealt with has been a key priority across public services. A key issue for me has been ensuring the social services complaints process is aligned with those adopted across public services, and particularly the process in place for the NHS *Putting Things Right*.

I have undertaken two consultation exercises over recent years in order to strengthen and improve the handling of concerns, complaints and representations in social services. An initial consultation in 2012, *'Making Things Better'* considered whether the existing complaints process should be updated to meet the needs of service users. That consultation overwhelmingly supported the need to transform the current social services complaints process.

As a result, a further consultation undertaken in 2013– 14 sought views on draft guidance and regulations to support a new social services complaints and representations process.

The focus of this new complaints and representations process is on early, local resolution and on tackling issues quickly and effectively. Where matters need to progress to a formal investigation, all complaints considered at this second, formal stage will be investigated by a person who is independent of the local authority. As now, citizens will continue to have recourse to the Public Services Ombudsman for Wales at any stage.

I would like to thank everyone who has contributed to the development of the new complaints procedure. Alongside the new Regulations, I am confident that this guidance will enable local authorities to significantly improve the experience for people making complaints about social services.

A handwritten signature in black ink that reads "Gwenda Thomas".

Gwenda Thomas AM

Deputy Minister for Social Services

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Section 1 – Introduction

Purpose

1. This guidance supports the implementation of the *Social Services Complaints Procedure (Wales) Regulations 2014* and the *Representations Procedure (Wales) Regulations 2014*, (“the Regulations”). The guidance **MUST** be used alongside those Regulations.
2. The Regulations introduce a new two stage process to deal with complaints and representations about local authority social services. It brings the process for social services in line with the *Model Concerns and Complaints Policy and Guidance* and the NHS Complaints Procedure *Putting Things Right*.
3. This guidance replaces *Listening and Learning* which was introduced in 2006. The major difference between the previous procedures and these new arrangements is the removal of the independent panel stage.
4. This new complaints process will provide for a more straightforward and citizen centred approach. It will also enable a more consistent approach for citizens across public services and mean that complaints involving more than one public authority are handled in a co-ordinated way.
5. The new procedure focuses on an initial Local Resolution stage where all those who raise a complaint are offered a discussion to resolve the matter, and we would expect the vast majority of complaints to be resolved at this early stage. The second formal stage prescribed in this guidance provides for clear independent involvement. If issues have not been resolved by the local authority within the two stage process, individuals will have recourse to the Public Services Ombudsman for Wales.
6. Everyone who makes a complaint about social services in Wales has a right to be listened to properly and to have their concerns resolved quickly and effectively. Local authorities must learn from these concerns and use the experience to improve services for everyone who uses them.
7. We recognise that local authorities already have well developed complaints processes and procedures that reflect *Listening and Learning* that can be refined and modernised to reflect the new process.

Statutory Basis and Scope

8. This guidance is issued under Section 7 of the *Local Authority Social Services Act 1970*. This means that local authorities must comply with it – unless they can show good reason to depart from it.
9. The *Social Services Complaints Procedure (Wales) Regulations 2014* introduce a new procedure which makes provision for complaints to local authorities about the exercise of their social services functions, with the exception of certain functions capable of being considered as representations under the *Children Act 1989* and under the *Adoption and Children Act 2002* which are dealt with

in accordance with the *Representations Procedure (Wales) Regulations 2014*. These are referred to as "Complaints Procedures" in the rest of the text.

10. The *Representations Procedure (Wales) Regulations 2014* establish a new procedure which local authorities must follow in the consideration of representations made to them about the discharge of specific functions under the *Children Act 1989* ("the 1989 Act") and under the *Adoption and Children Act 2002* ("the 2002 Act"). These are referred to as "Representation Procedures" in the rest of the text.

11. This guidance applies to both sets of Regulations. We expect both Complaints Procedures and Representation Procedures to be handled under this guidance and for the procedures to be the same.

12. Both sets of Regulations make provision for the:

- setting up of a procedure;
- designation of a senior officer to be responsible for ensuring compliance with arrangements made by the local authority;
- appointment of a Complaints Officer to manage the procedure for the handling and consideration of complaints and representations;
- the training of staff; and
- the production of an Annual Report.

13. The scope of the procedure is set out in the Regulations and includes:

- matters that will and will not be covered under the procedure;
- the time limit for making and responding to complaints and representations;
- the first Local Resolution stage; and
- the second Formal Investigation stage – which will involve an investigator who is independent of the local authority.

14. The new Regulations and this guidance will come into effect from **1 August 2014**.

15. The two sets of Regulations include transitional arrangements for dealing with complaints and representations that are in progress when the new Regulations come into force.

16. These Regulations are made under the *Children Act 1989* and the *Health and Social Care (Community Health and Standards) Act 2003*. The intention is that these regulations will be re-made following the enactment of the *Social Services and Well-being (Wales) Act 2014*.

Section 2 – Definition and Principles

What is a Complaint?

17. This guidance covers all complaints and representations to a local authority about the exercise of its social services functions

18. Based on the definition in the *Model Concerns and Complaints Policy and Guidance* a complaint is:

- an expression of dissatisfaction or concern;
- either written or spoken or made by any other communication method;
- made by one or more members of the public;
- about a public service provider's action or lack of action; or
- about the standard of service provided.

A complaint requires a response, whether about the public service provider itself, a person acting on its behalf, or a public service provider partnership.

A complaint is not:

- an initial request for a service;
- a formal review or appeal against a decision or determination, the procedure for which is set out in legislation or regulations;
- a means to seek change to legislation or a "properly made" policy decision; or
- a means for lobbying groups/organisations to seek to promote a cause.

19. This definition provides clarity to the public and to staff who deal with these matters.

The Regulations further clarify that the **following matters are excluded from consideration** as complaints:

- a complaint which has previously been investigated under this or the former complaints procedure;
- a complaint which is being or has been investigated by the Public Services Ombudsman for Wales;
- a complaint about alleged failure to comply with a request under the *Freedom of Information Act 2000*;
- a complaint that is made orally, and is resolved to the satisfaction of the person who made the complaint, by the end of the working day following the day on which the complaint was made.

What is a Representation?

20. A representation can be distinguished from a complaint only by reference to the functions to which that complaint relates that are provided for in section 26(3), section 36(3B) and 26(3C) of the *Children Act 1989* and regulations made under those provisions. Those functions are set out in

Regulations 8, 9 and 10 of the *Representations Procedure (Wales) Regulations 2014*. Complaints Officers should consult their legal departments for advice if they are uncertain whether a complaint received relates to a function that requires it to be dealt with as a representation as opposed to a complaint.

Concurrent Investigations

21. The Regulations specify that where matters are subject to concurrent consideration a local authority **must not consider or further consider a complaint** under this process if such consideration would prejudice the conduct of certain proceedings or investigations.

22. Those matters include:

- The complainant indicates in writing that they are taking or intend to start legal proceedings;
- The local authority is considering legal proceedings, for example, care proceedings or Court of Protection proceedings;
- The local authority is taking or proposing to take disciplinary proceedings against a staff member;
- The local authority is aware that a prosecuting authority – for example the police or the Care and Social Services Inspectorate for Wales – is investigating with a view to a criminal prosecution;
- There should be no complaints investigation while there is a danger of compromising any adult or child protection process.

23. If the local authority decides not to consider the complaint at that stage it must notify the complainant in writing. The local authority must explain the reason for its decision and advise the complainant that they may re-submit the complaint or representation no later than six months after the concurrent consideration is discontinued or completed. In most cases the complainant will be aware when a concurrent investigation has been completed. Where appropriate, however, a local authority should consider whether to notify a complainant once the concurrent investigation is completed.

Complaints in the Welsh Language

24. The aim of the Welsh language strategic Framework '*More than just words...*' is to improve frontline health and social services provision for Welsh speakers, their families and carers. Service users have the right to choose to use the Welsh language to proceed through the complaints process within local authority social services in Wales.

25. It is the responsibility of local authorities to be sensitive to users' language needs and to take account of the strategic framework especially the need to provide an 'Active Offer' for them to proceed through the medium of Welsh. The complaints process should achieve the same standard, treating the Welsh language no less favourably than the English language and responding within the same timescales in English and in Welsh.

Principles for dealing with complaints and representations

26. When someone complains they inevitably have an issue about a service which has been received or not received. Usually, the making of a complaint is a last resort. People may be concerned that by complaining they may lose access to a service or they may be treated somehow less favourably. People who use social services and their families need to be able to have confidence that their complaint will be dealt with positively.

27. Complaints should be handled in such a way that the complainant is the focus, and not the process itself, and so as to take account of the particular circumstances of the complainant (including their age or any disability). This includes ensuring that access to the process is easy and that complainants are treated with dignity and respect by trained staff.

28. The welfare of the person making the complaint or representation should be safeguarded and promoted.

29. Well publicised and accessible material about the complaints procedure should be available free of charge in a variety of formats, including easy-read and specifically for children and young people. The Children's Commissioner for Wales can provide support in developing appropriate material. This information must include details of the Complaints Officer's name and how to contact them. New service users should always receive information about the complaints procedure at their first contact with social services and all service users (including those receiving services in their own homes) should be reminded of the procedure at appropriate intervals. The material should address the misconception that the complainant will be in any way disadvantaged.

30. Within this context the following principles for dealing with complaints, which are informed by those set out in the *Model Concerns and Complaints Policy and Guidance*, should be applied:

(i) Accessible and Simple

Well publicised.

Easy to find, understand and use – both for public and staff.

Bi-lingual and reflecting *More than just words*.

Simple and clear instructions for the public about how to make a complaint.

Has flexibility to meet the different needs of different people, ensuring that those who face challenges in access are not excluded.

Provides information on advocacy and support services.

The stages in the complaint handling process are kept to a minimum.

(ii) Fair and Impartial

Concerns are dealt with in an open-minded and impartial way.

Complainants are assured that making a complaint will not adversely affect their future dealings and contacts with the body concerned.

Ensures that complainants get a full response and that decisions are proportionate, appropriate and are fair.

The staff complained about are treated as fairly as complainants.

(iii) Timely, Effective and Consistent

Within the parameters of what is appropriate and possible, frontline staff themselves should seek to resolve complaints.

“Investigate Once, Investigate Well” – when a complaint requires formal investigation, this should be done thoroughly to establish the facts of the case.

Dealt with as quickly as possible.

Consistent so that people in similar circumstances are treated in similar ways.

Concerns involving more than one public service provider are dealt with in such a way that the complainant’s experience is of one system.

(iv) Accountable

Provides honest, evidence– based explanations and gives reasons for decisions.

Information is provided in a clear and open way.

When concerns are found to be justified, as appropriate, local authorities:

- acknowledge mistakes;
- apologise in a meaningful way;
- put matters right; and
- provide prompt, appropriate and proportionate redress.

Follow up to ensure any decisions are properly and promptly implemented.

Where appropriate, the complainant is told about the lessons learnt and changes made to the service, guidance or policy.

Ensures that complainants are informed of their right to complain to the Public Services Ombudsman for Wales (or of other appropriate routes open to them, for example, the Welsh Language Commissioner in respect of complaints about compliance with Welsh Language Schemes, Equality and Human Rights Commission).

(v) Delivers Continuous Improvement

Lessons learnt from complaints are gathered and feedback is used to improve service design and delivery.

Systems are in place to record, analyse and report on the learning from concerns.

The leadership of the local authority (which includes the Director of Social Services) :

- takes ownership of the complaints and representations process;
- regularly reviews and scrutinises its effectiveness;
- receives regular monitoring reports;
- demonstrates what the organisation has done to improve service delivery as a result of complaints and representations.

Directors of Social Services should report regularly to Cabinet on these matters

Local authorities must publish an Annual Report on these matters.

Regulators have an important role in ensuring that lessons learnt from concerns are implemented satisfactorily and sustained.

Section 3 – Complaints Handling Arrangements

The people who may put forward a complaint

31. Any member of the public, including a child, who has received, or was entitled to receive, a service from social services may make a complaint. The same applies if they have suffered due to the inappropriate action of social services. The *Social Services Complaints Procedure (Wales) Regulations 2014* make provision for a representative to make a complaint on a person's behalf. A representative may make a complaint on a person's behalf where that person:

- is a child; or
- has requested the representative to act; or
- lacks capacity within the meaning of the *Mental Capacity Act 2005*; or
- has died.

32. Any representative making a complaint on a person's behalf must be considered by social services to have sufficient interest in that person's welfare and be a suitable person.

The people who may put forward a representation

33. Details of those who may bring forward a representation are set out in the *Children Act 1989*. (See Sections 26(3), 26(3B) and 26(3C) of the *Children Act 1989*). They include the child, their parent, foster carer or someone who has parental responsibility.

34. The local authority should set out in writing the reasons for not accepting a complaint or representation from someone who considers themselves a representative but is not considered suitable to act in that capacity. When the person in respect of whom the complaint has been made is still alive, the local authority should also consider whether it is appropriate to provide that person with a copy of this letter.

35. Children in need, looked after children and care leavers have a right to an independent advocate when making a complaint or representation.

Roles

36. The **Director of Social Services** should have formal oversight of the complaints process and should report annually on complaints in the Director's Annual Report.

37. **Senior officer responsible for complaints** – Each local authority must designate a senior officer to be responsible for ensuring compliance with the organisation's social services complaints and representations procedures. The post holder will require sufficient authority and seniority within the organisation to ensure that he or she can discharge this statutory duty effectively.

38. The senior officer is accountable for:

- directing and overseeing the setting up of the procedures;
- ensuring that there are adequate resources for the procedures;
- monitoring the implementation of the procedures;

- directing and overseeing the arrangements for training;
- directing and overseeing the arrangements for publicity;
- ensuring that lessons learned are reported and implemented;
- ensuring that an Annual Report is prepared and published; and,
- ensuring that the work of the Complaints Officer(s) is effectively supervised.

39. **Complaints Officer** – each local authority must appoint a Complaints Officer to manage the procedures for handling and considering complaints and for handling and considering representations. It is open to local authorities to appoint a Complaints Officer in respect of each procedure. The Complaints Officer can cover complaints and representations from adults and children or separate officers can be appointed.

40. A local authority may appoint a person who is not an employee of the local authority. A Complaints Officer may be appointed as a Complaints Officer for more than one local authority.

41. The Complaints Officer should have sufficient capacity, authority and independence to manage the complaints and representations process effectively, to deliver a child-centred service where appropriate and to contribute to service development. There should be no conflict of interest or any perception of one. The Complaints Officer must be independent of both professional line management and direct service providers. If located within the local authority's Social Services Department, they should report to a Senior Management Team member who is not responsible for operational service delivery. There will need to be suitable administrative support.

42. The **key responsibilities** of the Complaints Officer will include:

- setting up the procedure;
- keeping a written record of complaints made, the procedure followed and the outcome;
- promoting and supporting the local resolution of as many complaints as possible;
- receiving and managing the formal investigation of complaints that cannot be resolved locally;
- maintaining a pool of Independent Investigators and Independent Persons who are appropriately skilled and have had appropriate training for the role;
- selecting Independent Investigators and Independent Persons for individual complaints and representations;
- referring the complainant to any advocacy service available locally;
- monitoring the progress of the investigation and ensuring timescales are met;
- keeping the complainant and key people informed at all stages, offering advice where required, particularly on the response of the local authority;
- evaluating the numbers, types, outcomes and trends of complaints

43. **Independent Investigator** – where a complaint or representation is subject to the Formal Investigation stage the local authority must appoint an Independent Investigator.

44. The Independent Investigator, as defined in the regulations, is:

'a person who is neither a member nor officer of the local authority to which complaints have been made, or the spouse or civil partner of such a person but does include a person with whom the local authority has entered into a contract for services in order to conduct an investigation.'

45. An Independent Investigator may be an employee of another local authority, an employee of a Local Health Board or an independent expert in the matter being investigated.

46. Independent Investigators should be skilled and knowledgeable in the field that they are investigating. They should be excellent communicators and skilled in the investigation process itself with the ability to gather, manage and analyse a wide range of material from a variety of sources.

47. Local authorities must ensure that they have arrangements in place to access Independent Investigators with the ability to conduct investigations through the medium of Welsh. They should also have access to investigators who are skilled in alternative communication methods, such as braille, BSL, visual representations, Makaton and Talking Mats. Local authorities may also wish to ensure that they are able to access Independent Investigators who are able to conduct investigations in other languages that they are aware are spoken in their area.

48. Local authorities must ensure that Independent Investigators are suitable to undertake this task. They must arrange for appropriate, and where necessary enhanced, checks to be completed before the investigator is appointed. Local authorities must ensure that Independent Investigators are aware of their obligations under the *Data Protection Act 1998*. More detail on the role of the Independent Investigator is at paragraph 78.

49. **Independent Person in Representations** – where a representation falls to be considered under the *Children Act 1989* and is subject to the Formal Investigation stage the local authority must also appoint an Independent Person.

50. The Independent Person is a separate role to that of the Independent Investigator. Both of these roles are required when representations reach the Formal Investigation stage but they cannot be carried out by the same person.

51. The Independent Person provides separate oversight of how the local authority handles the representation and responds to it. They must take part in the investigation of the representation and any discussion held by the local authority about action to be taken in light of the investigation. The person appointed must be independent of the service that is subject to the representation. Local authorities must ensure that Independent Persons are aware of their obligations under the *Data Protection Act 1998*. More detail on the role of the Independent Person is at paragraph 81 and 82.

52. In appointing to these roles local authorities will need to consider both existing skills and the need for further training. For example, direct work with children or with some groups of vulnerable adults will require specialist knowledge and skills. Service users who are anxious, distressed or reticent will need help to express their views. Local authorities will need to address how children and adults with particular language or communication needs can pursue their complaints and communicate with staff.

Working Collaboratively

53. Local authorities should work together to have efficient and effective arrangements in place. Collaborative arrangements should be established across Local Health Board areas. This may include establishing reciprocal arrangements to share staff for the purpose of investigations and creating shared lists of external experts to act as Independent Investigators and Independent Persons.

Help and Support and Advocacy

54. The local authority will need to consider what help and support it can offer to complainants, both to access the system and to pursue their complaint or representation through the process. Some people will need advice and confidential support to make their complaint, to pursue it, to handle the process and to cope with the outcome.

55. Where the complaint relates to a looked after child, a child in need or a care leaver, the local authority has a duty under the *Children Act 1989* to provide an advocate as required. When acknowledging receipt of the representation / complaint in these circumstances, the local authority has a duty to provide information about advocacy services and to offer help, where relevant, in obtaining an advocate. The Welsh Government issued guidance on this matter in *Providing Effective Advocacy Services for Children Making a Representation or a Complaint under the Children Act 1989* in May 2004. This may still be used to support good practice.

56. Under the *Care Standards Act 2000* and the *Children's Commissioner for Wales Regulations 2001*, the Children's Commissioner can provide "assistance" to a relevant child in some cases which can include where the relevant child is making a complaint or representation to or in respect of a provider of regulated children's services in Wales. "Assistance" can include arranging for the representation and/or the giving of advice or assistance to any person.

57. Where the complainant is an adult in relation to adult services, the local authority should inform the complainant about the availability of advice and assistance, which can include advocacy services. This does not prevent a local authority from helping an adult complainant to find an advocate or from arranging this support itself.

Receiving a Complaint or Representation

58. A complaint or representation may be made up to 12 months after the date on which the matter which is the subject of a complaint or representation occurred; or, if later, the date on which the matter which is the subject of the complaint or representation came to the notice of the complainant or the person making the representation. The time limit will not apply if the local authority is satisfied that there are good reasons for a complaint or representation not being made within these time limits and despite the delay it is still possible to investigate the complaint or representation effectively and fairly.

59. A complaint or representation can be made to a local authority orally or in writing, including electronically.

60. The local authority (usually the Complaints Officer) must acknowledge receipt of the complaint or representation to the complainant in writing no later than 2 working days after the date of receipt. Where a complaint or representation is made orally, the local authority must make a formal written record of the complaint or representation and provide the complainant with a copy of that written record when acknowledging receipt.

61. When acknowledging receipt of the complaint or representation the local authority must also provide the complainant with details of the complaints or representations procedure and offer assistance and guidance to the complainant on following that procedure or advice on where such assistance and guidance may be obtained.

62. Whilst the majority of complaints and representations should be resolved by Local Resolution, the complainant should be made aware that they have the right to choose that their complaint be dealt with as a Formal Investigation.

63. The local authority must inform the complainant in writing of its reasons for not considering a complaint or representation, for example, if a complaint or representation is made outside the time limit.

64. If serious allegations are made, senior staff will need to be involved at the outset. If the allegations suggest that someone may have committed a criminal offence, the local authority should immediately consider its duty to notify the police. The complainant should be notified if their concern is being dealt with as a safeguarding issue and should be informed that there may be no complaints investigation while there is a danger of compromising any adult or child protection process

65. If a complaint or representation identifies a safeguarding issue for either a child or an adult at risk of abuse, the local authority must immediately take steps to protect that child or adult in line with normal procedures. Guidance entitled *Safeguarding Children: Working Together under the Children Act 2004* sets out how all agencies and children should work together to safeguarding and promote children's welfare and protect them from harm. The Welsh Government has issued *In Safe Hands* to help develop multi-agency local arrangements for adult protection. This has been underpinned by the *All-Wales Interim Policy and Procedures for the Protection of Vulnerable Adults*.

66. A record must be kept of all complaints and representations received, all acknowledgements issued and the timescales within which they were issued. This information must be included in the Annual Report.

Stage One – Local Resolution

67. The local authority must offer to discuss (either face-to-face or by telephone) the complaint or representation with the complainant in an attempt to resolve matters. This approach should allow for the quick and successful resolution of most complaints, to the satisfaction of the complainant, and can be promoted to the complainant on this basis. The emphasis should be on achieving service user satisfaction rather than avoiding a Formal Investigation.

68. In relation to **complaints** any such discussion must take place within 10 working days of the 'date of acknowledgment' (i.e. the date of the acknowledgement of the complaint). In relation to **representations** the discussion must take place within 10 working days of the Local Resolution stage 'start date' as set out in the Regulations. The Local Resolution stage 'start date' is governed by (a) the date of acknowledgment; (b) the date on which an advocate is appointed; or (c) where a representation is made by 'other persons', the date on which the local authority decides that the person has sufficient interest to warrant consideration; whichever is later. This timescale may only be extended in exceptional circumstances with the agreement of the complainant.

69. Where this approach leads to the mutually acceptable resolution of the matter, the local authority must write to the complainant (and where one has been appointed, that person's advocate) with details of the terms of the resolution within 5 working days of the date on which the complaint or representation was resolved.

70. The Local Resolution stage does **not** involve an Independent Investigator or an Independent Person.

Stage Two – Formal Investigation

71. The Formal Investigation stage may commence if the seriousness of the complaint means that it is inappropriate to deal with at Local Resolution Stage, or the complainant remains dissatisfied at the end of the Local Resolution Stage, or the complainant has asked that their complaint be progressed immediately to the Formal Investigation Stage (without consideration at the Local Resolution Stage). The Complaints Officer will provide advice and support and will help to determine, through discussion with the complainant, if and when the complaint should move from Local Resolution to Formal Investigation.

72. A complaint or representation subject to a Formal Investigation must be investigated by an Independent Investigator. Where a representation is dealt with by a Formal Investigation it must also involve an Independent Person. More details on these roles are provided later in this section.

73. The local authority (usually the Complaints Officer) must compile a formal written record of the complaint or representation within 5 working days of the date that it is received as a Formal Investigation or moves from the Local Resolution stage to a Formal Investigation. The formal written record should cover the subject of the complaint or representation and the outcome that the complainant would like to achieve. It must be sent to the complainant with an invitation for the complainant to comment on its accuracy. At this stage the local authority should also provide details of how the complaint or representation will be investigated and give information about the Independent Investigator and, if appropriate, the Independent Person.

74. The local authority must consider any comments made by the complainant, or his or her advocate, and ensure that a consensus can be formed about an accurate record of the complaint or representation. This consensus with the complainant about what they are complaining about will ensure that the local authority does not embark upon a Formal Investigation that does not address the issue that is the subject of the matter of the complaint or representation. Therefore, even if there is some disagreement about the details, it is important to establish the substance of the complaint in order to provide a proper basis of the formal investigation to take place. The date on which the written record of the subject matter of the complaint or representation is

agreed in writing between the local authority and the complainant is the **start date** of the Formal Investigation stage.

75. The Formal Investigation stage must be completed, and a full written response issued to the complainant, within **25** working days of the start date. In the case of a representation, the response should also be sent to the Independent Person and any advocate appointed

76. If, due to exceptional circumstances, the local authority is not able to send a written response within 25 working days it must write to the complainant and tell them why there is a delay and when the response will be issued. This full response must be issued as soon as possible and no later than six months from the date on which the complaint was received.

77. All instances of delay due to exceptional circumstances must be agreed by the Director of Social Services. A record of the Director's decision must be made and retained. The local authority must record each occasion where exceptional circumstances have applied, the reason for the exceptional circumstances and that date that a full response was issued. Exceptions and exceptional circumstances are a matter for the Director of Social Services' professional judgement and all such occasions will be recorded in the Annual Report. Local authorities may wish to share practice to ensure a consistent approach.

78. Paragraph 43 set out details of the requirement for an **Independent Investigator** where a complaint or representation is subject to a Formal Investigation. During the Formal Investigation the Independent Investigator will:

- Investigate the complaint by undertaking a fact finding exercise which is impartial, open and transparent and proportionate to the seriousness of the complaint;
- Work with the Complaints Officer to ensure the all parties are kept fully involved and informed;
- Set out a plan for the investigation including the completion of the report;
- Interview those concerned and find out the facts;
- Provide a record of the interview to those interviewed and to the Complaints Officer;
- Make constructive, proportionate and achievable recommendations;
- Keep accurate records;
- Prepare a report of the investigation for the local authority to consider; and;
- Complete the work within the specified time– scale.

79. The Independent Investigator should ensure that the people involved in the process feel that they have been listened to and understood. The Independent Investigator should be objective and as open as possible about their methods and about the reasons underlying their conclusions.

80. When a Representation Procedure progresses to a Formal Investigation, then the local authority **MUST ALSO** provide an **Independent Person**. This Independent Person provides separate oversight of how the authority handles the investigation of the representation and responds to it. Paragraph 51 set out further details of the requirements for an Independent Person.

81. The Independent Person must play a full part in the process. They should be involved at an early stage in discussions with the Complaints Officer and the Independent Investigator about the approach to be taken. The Independent Person is **not** an advocate for the complainant. The Independent Person's report should be very brief, simply saying whether the formal consideration has met the tests set above – it should not be confused with the report of the Independent Investigator.

82. The Independent Person has four main tasks:

- to take part in the Formal Investigation and ensure that it is fair, unbiased, effective and covers all appropriate aspects;
- to ensure that everyone involved is able to express their views fully and without any pressure;
- to oversee the Independent Investigator's report and confirm that it provides an accurate and complete picture of the handling of the representation;
- to take part in any discussions which are held by the local authority about the action to be taken in light of its investigation of the representation.

Managing the Formal Investigation

83. The Independent Investigator and the Complaints Officer (and where applicable the Independent Person) will plan how the Formal Investigation is to be carried out. This must take full account of the needs and circumstances of the complainant and be focussed on enabling them to take a full and meaningful part in the process.

84. The local authority (usually the Complaints Officer) must explain to the complainant how the Formal Investigation will be carried out and must keep the complainant informed of progress throughout the investigation.

85. Any interview conducted as part of the Formal Investigation must be recorded in writing and the record checked for accuracy with the interviewee. The record should be amended if necessary. If there are unresolved disagreements these should be recorded.

The report of the Formal Investigation

86. The Independent Investigator's report will form the basis of the local authority's response. The report should meet a number of tests and should:

- be evidence based with contributions from all the people involved;
- be as clear as is possible about the facts in each aspect of the complaint;
- be written concisely and clearly, avoiding jargon, and easily understandable;
- distinguish between fact, feelings and opinion;
- reach clear conclusions;
- make recommendations for resolving the complaint; and
- make recommendations for improving the service so that other service users do not have cause to make the same complaint.

87. It should be normal practice for the Independent Investigator's report to be made available in full to the complainant.

The local authority's response

88. The local authority must take responsibility for determining whether or not the complaint is upheld and the action to be taken as a consequence. This decision should be made by a member of the senior management team and the organisation's procedures must set out who will make these decisions.

89. The response should be clearly expressed and easily understandable. It should be made in writing unless the complainant has requested an alternative method of communication such as Braille or audio– tape.

90. The response must be signed by the Director of Social Services and must:

- summarise the complaint or representation;
- describe the investigation undertaken;
- state whether the complaint or representation is upheld or not upheld;
- explain what action will be taken, if any, in light of the complaint or representation;
- contain, where appropriate, an apology to the complainant;
- enclose the Independent Investigator's report unless there is a specific reason why it should not. In that case this should be explained;
- contain details of the right to complain to the Public Services Ombudsman for Wales;
- offer the complainant an opportunity to discuss the response and the Independent Investigator's report with an appropriate officer, usually the Complaints Officer.

91. Should a complainant request sight of any part of the file on the complaint investigation, the local authority must deal with such a request under the provisions of the *Data Protection Act 1998*.

If the complaint or representation is not resolved

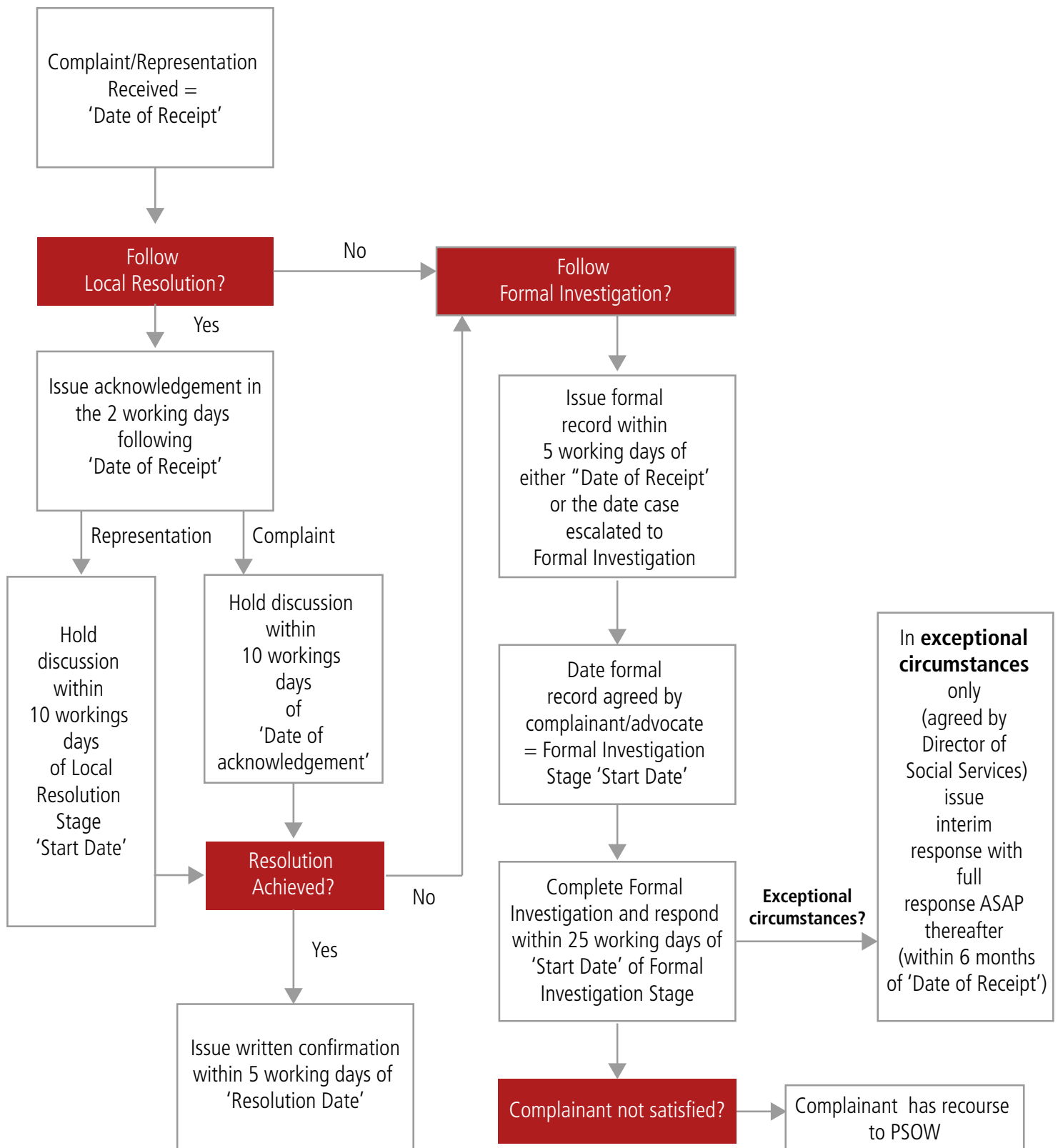
92. If the complaint or representation is not resolved at the Formal Investigation stage the complainant must be reminded that they have the right to complain to the Public Services Ombudsman for Wales. The Ombudsman's office aims to complete all investigations within 12 months but most are concluded sooner.

If the complaint or representation is withdrawn

93. A complaint or representation can be withdrawn at any point orally (either in person or by telephone) or in writing. When a complaint or representation is withdrawn orally, the local authority should write to the person as soon as possible to confirm the oral withdrawal of their complaint or representation.

94. A local authority may decide to continue to investigate any issues raised by a complaint or representation if it thinks it necessary.

Complaints and Representations Procedure: Flowchart



Complaints involving more than one local authority

95. When a complaint or representation involves more than one local authority the Complaints Officers will be central to ensuring that a full and meaningful investigation is undertaken and that the complainant is kept informed.

96. The Regulations require that one local authority takes the lead and that the complainant, as far as is practicable, receives one comprehensive response.

Complaints that cross public bodies

97. Where a complaint crosses a number of public bodies it is essential that each public body understands its responsibilities and accountabilities. Local authorities must work within the complaints framework provided here but should, unless there are very good reasons not to do so, co-ordinate their investigations and responses with the other public bodies involved.

98. This guidance has been aligned, where appropriate, with the NHS complaints procedure *Putting Things Right* and the *Model Concerns and Complaints Policy and Guidance*. This should enable a more streamlined and citizen focussed approach.

99. Public organisations should work together and share good practice and lessons learned.

Local Authority handling of Care Standards Complaints and Representations

100. Where a complaint or representation is made by a service user who has been placed by the local authority in an establishment registered under the *Care Standards Act 2000*, there may be a dual responsibility for dealing with such a complaint or representation. Similarly, the local authority may be involved in arranging the provision of a service by an agency registered under the 2000 Act.

101. Where it receives such a complaint or representation the Regulations set out how that complaint or representation should be handled. The fact that the service provider is responsible for dealing with any aspect of the complaint or representation that relates to the provision of the service does not negate a local authority's responsibilities or duties toward that service user.

102. An example of a circumstance under which a local authority would not be required to conduct a formal investigation is where there is a private contractual arrangement as between the service user and the service provider and there is no statutory duty on the part of the local authority toward that service user.

103. If a service provider fails to adequately respond or address a complaint or representation by a service user then the local authority's Social Services Complaints Procedure should deal with the complaint or representation insofar as it relates to its duties toward that service user. It may be the case, for example, that following a local authority investigation into the complaint or representation, the provision of service to the complainant by the service provider is no longer appropriate for that service user.

104. The Regulations require that the local authority should send details of the complaint or representation to the registered provider. If the whole of the complaint or representation relates to them then the whole of the complaint or representation can be sent. If the complaint or representation relates only partly to the registered provider then only that part of the complaint or representation that relates to the registered provider should be sent.

105. When a local authority sends either the whole or any part of the complaint or representation to a provider it must request the provider to notify the local authority of the result of its consideration of the complaint or representation.

106. The local authority must then notify the person making the complaint or representation of the above. In some cases, the registered provider may fail to notify the local authority in the relevant time period. If that is the case the Regulations require that the local authority must inform the person making the complaint or representation of the position. If the registered provider does respond then the local authority must inform the person making the complaint or representation of the response that has been received.

107. However, the local authority is not under an obligation to comply with the above if:

- (a) it is apparent to the local authority that the matter has already been dealt with by the registered provider or
- (b) the local authority considers that by informing the registered provider that a complaint or representation has been made against them this would be likely to compromise or jeopardise its own investigation of the complaint or representation or might compromise an investigation which is being undertaken by CSSIW.

Deferring or freezing decisions

108. If the complaint or representation is about a proposed change to a care plan, a placement or a service, the authority may need to defer or freeze the decision until the complaint or representation is resolved. Local authorities should always consider deferring a decision that will have a significant effect on the life of a service user until the complaint or representation has been resolved, taking into the account the welfare and safety of the person concerned.

109. The decision to defer should follow a careful assessment of the needs of the individual, including the different risks that might flow from deferring or not deferring. The decision should normally be made after detailed discussion between the Complaints Officer and the Line Manger about the assessment. Decisions should be made on a case– by– case basis. But there should be a general presumption in favour of freezing a decision, unless, there is a good reason against it – for example, if leaving a child where they are would put them at risk. Where need be, the Director of Social Services should make the final decision.

Unacceptable Actions by complainant

110. The starting point for dealing with all complaints and representations must be to do so in partnership with the complainant, acting in their best interests and following the procedures set out in this guidance. Staff should be trained to deal with people who are feeling angry or upset or feel that they are having difficulty in getting their opinions heard

111. The actions of complainants may occasionally result in unreasonable demands on an organisation or unacceptable behaviour towards staff. Organisations should have in place a policy to deal with these situations and ensure that staff receive appropriate associated training. The Public Services Ombudsman for Wales has a policy on these matters (available at www.ombudsman-wales.org.uk). Local authorities, currently without such a policy, may wish to consider this as a basis for their own procedure.

Producing local guidance

112. Local authorities must develop local procedures to implement the Regulations and this guidance. The procedures must include management and reporting processes and arrangements as well as arrangements for making information about the process available to the public.

Section 4 – Learning Lessons

Recording and monitoring complaints and representations

113. Complaints and representations information should be used to monitor the local authority's compliance with the regulations, improve the local authority's service delivery and increase its effectiveness.

114. All complaints and representations must be recorded, including those that are resolved at the Local Resolution stage. There should be a mechanism within each local authority for ensuring that the Complaints Officer can collate information on the Local Resolution stage and include it in an annual report on complaints and representations which is published.

115. This record should – at minimum – describe:

- The number and nature of complaints and representations received;
- The number of those complaints and representations that were acknowledged in the statutory timescale (2 working days);
- The numbers of complaints and representations resolved at the Local Resolution stage;
- The number of complaints and representations that exceeded the statutory timescale for Local Resolution (10 working days);
- The number of written details of resolution issued;
- The number of those written details that were issued within the statutory timescale (5 working days of the resolution);
- The number of complaints and representations received outside the 12 month time limit and accepted for investigation;
- The number of complaints and representations received outside the 12 month time limit and not accepted for investigation; and
- How the complaints and representations were resolved.

The Annual Report

116. The local authority must prepare and should publish an Annual Report on its performance in the handling and investigation of complaints and representations. It should be produced by the Complaints Officer(s) for the Director of Social Services.

117. The Annual Report should provide a review of the effectiveness of the social services complaints procedure and a summary of statistical information relating to the complaints and representations dealt with.

118. The basic information in the report should include:

- numbers of complaints and representations received and resolved at each stage;
- adherence to time– scales, including any complaints dealt with under the provision for exceptional circumstances;
- the nature of the complaints and representations and how they were resolved; and
- a summary of the lessons learned and actions taken by the local authority in relation to the complaints and representations it received.

119. The evaluation of the procedure should draw on the views of people who have used the complaints procedure during the year.

120. This Annual Report should be discussed in the appropriate Scrutiny Committee of the authority. It should be a core element of the Director of Social Service's Annual Report and should be made available in full to the Care and Social Services Inspectorate Wales and the Wales Audit Office.

121. The first Annual Report should be produced no later than 1 August 2015.

Complaints, Representations and Quality Assurance

122. Local authorities will need to create their own mechanisms for ensuring that the lessons from complaints and representations are available to – and learned by – the wider organisation. Systems should be established in order to share information about complaints and representations relating to their own services with relevant line managers.

123. Systems should be established in order to share information about complaints and representations relating to purchased services with the person who monitors the contract. This will allow for use of this information as a measure of performance and means of quality control in both provided and purchased services.

124. The information collected during the handling of individual complaints will provide feedback on performance management and operational matters. A good monitoring arrangement will help to make these lessons available. It will show, for example, how policies are interpreted by the people who run the services – and by the people who use them. It will highlight how effective the local authority is in communicating to its staff and to the public. It will show where the local authority needs to focus staff training. And it might shed light on whether the local authority is targeting its resources correctly.

Section 5 – Transition

125. Any complaints or representations made prior to the introduction of the new procedure on 1 August 2014 will be investigated under the procedures set out in: *The Social Services Complaints Procedure (Wales) Regulations 2005*; and, *The Representations Procedure (Children) (Wales) Regulations 2005*; and, *Listening and Learning*.

126. A complaint or representation made on or after 1 August 2014 about a matter which occurred or which came to the notice of the complainant up to 12 months before 1 August 2014 should be dealt with under the arrangements contained in this guidance.

127. It is anticipated that consideration of complaints under previous arrangements will be concluded by August 2015.

References and Links

NHS Complaints Procedure – *Putting Things Right*.

<http://www.wales.nhs.uk/sites3/page.cfm?orgid=932&pid=50738>

Model Concerns and Complaints Policy and Guidance

<http://www.ombudsman-wales.org.uk/en/public-body-information/model-concerns-and-complaints-policy-guidance.aspx>

Listening and Learning

<http://wales.gov.uk/topics/health/publications/socialcare/guidance1/listening/?lang=en>

More than just words

<http://wales.gov.uk/topics/health/publications/health/guidance/words/?lang=en>

Lost in Care and Telling Concerns

<http://tna.europarchive.org/20040216040105/http://www.doh.gov.uk/lostincare/20102a.htm>
www.childcom.org.uk/uploads/publications/29.pdf

Public Services Ombudsman for Wales

<https://www.ombudsman-wales.org.uk/>

Children's Commissioner for Wales

<http://www.childcom.org.uk/>

Older People's Commissioner

<http://www.olderpeoplewales.com/en/Home.aspx>

Welsh Language Commissioner

<http://www.comisiynyddygyraeg.org/english/Pages/Home.aspx>

