



# Are we getting the best from children's social care complaints?

**Focus report: learning lessons from complaints**

March 2015

# Contents

<b>Introduction</b>	<b>1</b>
<b>Current debate</b>	<b>2</b>
<b>Legal context</b>	<b>4</b>
<b>Common issues</b>	<b>6</b>
<b>Getting things right - good practice</b>	<b>11</b>
<b>Encouraging Local Accountability - questions for scrutiny</b>	<b>12</b>
<b>About the Local Government Ombudsman</b>	<b>13</b>

# 1 Introduction

The Local Government Ombudsman (LGO) puts things right when people have been let down by a council service and cannot resolve their complaint locally. But we also have a remit to raise awareness of systemic issues and share lessons from our cases, to help others learn and improve the quality of local services.

One topic currently provoking significant debate within local government is the children's social care complaints system. Councils must follow a statutory process for handling complaints from young people, or those acting on their behalf, about children's care services. It is a three stage process with set timescales, stages two and three being carried out independently, and complainants have the right to progress to every stage of the process.

The current debate is about how much this system is under pressure, and how much this is affecting the ability of councils to meet their statutory requirements. A number of years ago there was a similar debate about the statutory complaints process for adult social care. It was simplified by the introduction of a single local resolution stage, with the aim of resolving issues quickly.

Councils provide thousands of children and young people with crucial support services during difficult and sometimes traumatic times. Some types of support that can make a real difference to children's lives include providing care to those who are no longer able to be looked after by their parents, accommodation for potentially homeless young people and safeguarding against harm. Clearly, these are sensitive and complex areas so if things go wrong it is essential that problems are dealt with swiftly and openly.

This report doesn't take a view on whether the current system is fit for purpose. It has been written to inform the ongoing debate. We do this by highlighting some of the common issues we see through some stories from our investigations. The report also explains the role of the Ombudsman in the process, shares good practice and offers a number of questions that councillors and those who scrutinise local services can consider raising.

## 2 Current debate

### What we are hearing

In our experience, the children's social care complaints system is an important issue for those working with complaints. We conducted some informal research in preparation of this report by offering all councils with children's services responsibilities the opportunity to give their views on the subject.

The responses varied from those totally in favour of the process to those preferring to see it become non-statutory, with most somewhere in the middle – acknowledging the value of an independent review but believing some areas of it could be improved. The most common responses have been summarised below.

The procedure is robust because it:

- > is independent – it provides the assurance of an impartial investigation, and it removes the potential for discretionary decisions to be influenced by internal factors
- > has strict timelines, which ensures there is a focus on responding promptly
- > has clear guidelines and clarity about who can complain.

However, there are areas that could be improved.

- > Only a small proportion of complaints are from young people or those acting on their behalf. The majority are from parents, family or friends. This means that children's interests are sometimes not central to the complaint – they can be unaware of one being made – and the process can be used to further personal interests, like settling family disputes.
- > The system can become process driven rather than outcome focused. A satisfactory resolution should be reached at the earliest point.
- > There is no scope to exercise judgement about the benefit of progressing through the three stages, i.e to curtail the process even if it is apparent early on that resolution will not be likely.
- > Some councils are finding it difficult to find suitably qualified independent officers and independent people, and some question the best use of public funds when costs for these can run into thousands of pounds for each complaint.
- > There is a question about how much value the third stage (independent review panel) adds, when it is unlikely to significantly alter the outcome, and may raise expectations from the complainant that it is in fact another investigation.

## 2 Current debate

**“ Councils are committed to listening to the concerns of children and young people, either directly or through their advocates, and will want to reflect on the learning in this report to encourage them to share their views. We recognise there are always areas that can be improved and we will work hard to make the complaints system easier for young people to navigate and ensure that issues are resolved quickly and fairly. ”**

*Councillor David Simmonds,  
chair of the Local Government  
Association's (LGA) Children and  
Young People Board*

Many responses cited the lack of children and young people using the system themselves as evidence that the process isn't supporting the people it was designed to benefit. It could indicate that the process is too complex and therefore off-putting for this group, or it may be a sign that younger people prefer to raise issues through different structures, such as through trusted people or advocates.

We also received some suggestions of things that could be considered to improve the process. These included keeping the statutory three stages when complaints are from a young person but not if the complaint is by an adult; dropping the requirement of an independent person at stage two if an independent officer from outside the council is employed; and the option of referral to the LGO after Stage 2.

### What we are seeing

The case studies in this report include some of the common issues we see, including:

- > a failure to recognise a children's services complaint
- > unnecessary delays in the process
- > refusal to go through all stages of the procedure
- > choosing the wrong procedure.

Over the last few years we have often received informal requests from councils that complaints should be referred to us early rather than going through each stage of the statutory process.

We also receive complaints from people frustrated by delays, often finding the path through the statutory process to be littered with obstacles, coming to us hoping to find a swifter and simpler resolution.

Our view is that, as a statutory procedure, the Children Act complaints process should be adhered to. People should be encouraged to give the council chance to put things right before coming to us. And it follows that councils must make sure they administer the procedure properly and effectively, taking into account the extensive guidance available.

Children, young people and their parents deserve a complaints system that ensures their voices are heard and issues are resolved fairly and swiftly.

# 3 Legal context

The Children Act 1989 requires councils which provide children's services to set up a three stage complaints process.<sup>1</sup> Originally the scope of the complaints procedure was limited to children and young people receiving services under Part 3 of the 1989 Act. These include areas such as support to families and children in need, provision of accommodation, looked after children, support with education and training for older children and children leaving care. It was intended to address individuals' complaints but also to provide an opportunity for councils to improve services and learn from experiences.

The scope was later widened to incorporate specific functions under Parts 4 and 5 of the Act, which are based around care and supervision, and the protection of children. The Children (Leaving Care) Act 2000<sup>2</sup>, the Adoption and Children Act 2002<sup>3</sup> and the Health and Social Care (Community Health and Standards) Act 2003 added further functions relating to adoption and special guardianship.<sup>4</sup> Significant areas of the councils' functions are excluded from the procedure. For example, the procedure does not cover complaints from foster carers

about children they used to look after; or their working relationships with the council or decisions about whether to place or remove children. Similarly, Section 47 of the Children Act 1989 which gives councils a duty to investigate if they suspect a child is suffering or likely to suffer harm is not specifically covered by the complaints procedure<sup>5</sup>. These are all areas about which the LGO receives complaints. However, councils can, if they wish, extend the procedure to other areas of complaint.

Importantly, the procedure can consider areas of complaint which fall outside our jurisdiction. For example, the council can consider complaints about the content of reports submitted to court in the course of legal proceedings. We are expressly prevented by Schedule 5 of the Local Government Act 1974 from dealing with such matters as they concern the conduct of court proceedings.

The form the procedure should take is set out in the Children Act 1989 Representations (England) Regulation 2006. 'Getting the Best from Complaints', the accompanying statutory guidance, was issued in 2006.<sup>6</sup> It was drawn up with input from the LGO.

## Main Provisions

### It is a three stage procedure

**Stage 1** is a local resolution stage. When a complaint is first brought to the council, it should try to resolve it and provide a response.<sup>7</sup>

**Stage 2** is the investigation stage. If the complaint cannot be resolved at Stage 1, the complainant can request a full investigation leading to a report. The council must then provide a response to the report, either accepting or disputing its findings.<sup>8</sup>

**Stage 3** is the review stage. If the complainant remains dissatisfied, s/he can ask for the complaint to be considered by a Review Panel. Again the council has to respond to the Review Panel's findings.<sup>9</sup>

The complainant has a right to progress through all stages of the procedure if they so wish.<sup>10</sup>

<sup>1</sup> [Children Act 1989, Section 26\(3\)](#)

<sup>2</sup> [Children \(Leaving Care\) Act 2000, Section 5](#)

<sup>3</sup> [Adoption and Children Act 2002, Section 117](#)

<sup>4</sup> [Health and Social Care \(Community Health and Standards\) Act 2003, Section 116](#)

<sup>5</sup> [The Children Act 1989 Representations Procedure \(England\) Regulations 2006, Regulation 3](#)

<sup>6</sup> [Getting the Best from Complaints: Social care complaints and representations for children, young people and others](#) - Department for Education and Skills, 2006

<sup>7</sup> [Getting the Best from Complaints 3.5](#)

<sup>8</sup> [Getting the Best from Complaints 3.6-3.8](#)

<sup>9</sup> [Getting the Best from Complaints 3.9](#)

<sup>10</sup> [Getting the Best from Complaints 3.5.8 and 3.9.2](#)



# 3 Legal context

## It has fixed timescales

Stage 1 should be completed within 10 working days, unless the matter is very complex and an extension is agreed with the complainant.

Stage 2 should be completed (i.e. including the council's response) within 25 working days (or 65 if there are good reasons).

A request for a Review Panel must be made within 20 days of the council's adjudication. The Panel must meet within 30 days of a request.

This means that even the most complicated complaint should not take longer than six months to resolve. Simpler complaints should generally not take more than three months.<sup>11</sup>

## It is independent

A key principle of the procedure is its independence. At Stage 2 the investigation should be carried out by an investigating officer who does not have line management for anyone involved in the complaint. It should be overseen by an independent person who should not be an employee of the council. Many councils have also used independent investigating officers.<sup>12</sup>

The Review Panel should be made up of three independent people.<sup>13</sup>

It is this level of independence which makes for a robust and credible system, but has the potential to make the procedure expensive for councils when investigators from outside the authority are employed.

## It has limited scope for early referral to the LGO

Annex 3 of 'Getting the Best from Complaints' describes the circumstances in which the council can make an early referral to us. This can only happen if:

- > there has been a robust Stage 2 report upholding all of the complaint
- > the majority of the complainant's desired outcomes have been met, and
- > both parties agree to the referral.

The guidance says that:

"...once a complaint has entered Stage 1, the local authority is obliged to ensure that the complaint proceeds to Stages 2 and 3 of this procedure, if that is the complainant's wish".<sup>14</sup>

However, the guidance also makes it clear that someone can complain to the LGO at any time.<sup>15</sup> We would generally expect a request to accept a complaint from the complainant rather than the council. We then have to decide whether to accept it or insist the procedure is completed.

We might agree to consider a complaint at an earlier stage where, for example:

- > the relationship between the council and complainant has broken down to the extent that the complainant has no faith in the process.
- > the complaints process cannot possibly deliver the only outcome the complainant wants (for example, the return of a child who has been taken into care or a ruling that abuse has not taken place). In this instance we may prevent further delay by making a decision on the appropriate route to seek redress.
- > the complaints process has gone so far off track (for example because of unacceptable delay) that to continue with it risks compounding the complainant's potential injustice.

<sup>11</sup> [Getting the Best from Complaints 3.1.2](#)

<sup>12</sup> [Getting the Best from Complaints 3.6.4 and 3.6.5](#)

<sup>13</sup> [Getting the Best from Complaints 3.13.1](#)

<sup>14</sup> [Getting the Best from Complaints 3.1.5](#)

<sup>15</sup> [Getting the Best from Complaints 3.2.4](#)

# 4 Common issues

Many of the stories in this section involved wider substantive issues that were remedied as a result of the investigation. However we have specifically focused on the parts of the complaints that relate to the Children Act statutory procedure. Real names are not used.



## Becky's story - failure to consider the complaint at all

17 year old Becky ran away from home because of her father's abusive behaviour. She asked for help from the council in the area she was staying. It decided she should return to her home (which was in a different council area) or remain at a friend's house. However, she felt at risk at both addresses.

Becky's advocate made a complaint to the council that the council had failed to assess Becky as a 'child in need' or to provide her with accommodation. Becky received an acknowledgement to the complaint and two apologies for delay but no substantive response. She eventually made her complaint to us. We upheld her substantive complaints and found fault in the way the council dealt with the complaint.

In addition to the remedy we proposed for the substantive failings, we recommended the council should:

- > apologise to Becky for failing to deal with her complaint
- > pay her £100
- > review its practices.

Becky's complaint was from a child, was in writing and was about an area of the council's responsibilities which fell squarely within Part 3 of the Children Act 1989. These are exactly the circumstances that the statutory procedure was originally designed to address. This makes the council's failure even to provide a Stage 1 response even more serious.



# 4 Common issues



## Andrew's story – unreasonable delays in progressing the complaint

Andrew reported a violent incident to the council which he feared showed that his grandchildren were at risk. The council took too long to check out his concerns. He complained about this. The council responded quickly at Stage 1 but Andrew was not satisfied and asked for the complaint to go to Stage 2.

The council unreasonably decided that the Stage 2 'clock' should only begin when Andrew had submitted his notes of a meeting almost two months after he had made his request. It then took 56 days to respond to a comparatively straightforward complaint.

Andrew then complained to the Chief Executive before requesting a Review Panel. It took a further 100 days for the council to arrange one. In all, Andrew's complaint, which was upheld by us, spent more than one year at various stages of the statutory procedure.

The council paid £250 for the delay in progressing the complaint. We asked it to review its processes to ensure they were compliant with the guidance.

The guidance provides **maximum** time limits for each phase of the complaints procedure. It is clear that the intention is that the council should deal with each stage as quickly as possible and, as importantly, ensure that the transition period between each stage is also handled as quickly and smoothly as possible.

Complainants cannot be expected to know how the procedure operates as well as the council does. The council needs to guide complainants through the process, and not put unnecessary impediments in their way.

This is even more critical where the substantive complaint also relates to delay.

# 4 Common issues



## Natasha's story – refusal to go to Stage 3

Natasha complained that the council had failed to provide proper support for her and her son, a child in need. Her complaint falls directly within the council's area of responsibility set out in Part 3 of the Children Act and covered by the complaints procedure.

The council appointed an investigating officer to investigate her complaints but did not appoint an independent person. The investigating officer did a thorough and robust investigation. He found some fault on the part of the council but Natasha did not accept his conclusions. She said that he had misinterpreted the law as it applied to her case.

The council told her that her complaint had not been upheld at Stage 2 and that it agreed with the findings of the investigation. It did not agree to go to Stage 3 and it did not refer her to the LGO.

When we investigated, we found that by and large the stage 2 investigation was reasonable and we did not find that we would have reached significantly different conclusions. However, we found that the council should apologise to Natasha for the way in which it had failed to:

- > appoint an independent person
- > act on Natasha's request to go to Stage 3
- > explain properly its decision to refuse a Review Panel, and
- > tell Natasha she could complain to us

We also asked the council to pay £250 to Natasha for her time and trouble in pursuing her complaint with us.

Not only did the council fail to act on Natasha's request for a Review Panel, but it also effectively stripped out of the complaint the element of independence which makes it such a robust process. In this case the investigating officer did a thorough investigation and reached defensible conclusions. However, the failure to ensure independent oversight or to allow the case to proceed to the independent Review Panel stage must have made his conclusions less acceptable to Natasha.

Once the council has accepted Natasha's complaint, it was duty-bound to proceed to the Review Panel stage if that was what she wanted.

# 4 Common issues



## Celine's story - failure to identify a Children Act complaint

Celine is a citizen of a non-EU country. She has a small child who is a UK citizen. Her right to stay in the country depends on the fact that she is her son's primary carer. She can only stay in the country provided that she has no personal recourse to public funds.

Celine asked the council to help her pay her rent as her landlord was threatening to evict her. Where a child in a council's area is considered to be a child in need, the council has a duty to assess the child and can provide financial and other support if it is deemed necessary. This is a function which falls within Part 3 of the Children Act 1989.

Celine initially indicated that she was going to seek a judicial review of the council's decision not to provide support for her child. The Regulations allow a council to suspend the statutory process where there are legal proceedings. However, the judicial review did not happen. The council decided that Celine's complaint was primarily about housing matters and therefore decided to deal with it only through its own corporate complaints procedure.

We considered that there was a significant part of Celine's complaint – about the council's assessment of her child and its decisions about her requests for financial and other support – that should have been progressed through the statutory procedure. Whilst a temporary suspension was appropriate at first, once it was clear there were no ongoing legal proceedings, the statutory process should have been resumed.

We recommended that the council should investigate Celine's complaints through the statutory procedure. It agreed to appoint an investigator at Stage 2. We therefore stopped our investigation on the basis that this provided a suitable remedy to the complaint.

Where a complaint is about the council's duties under Part 3 of the Act, and the complaint is clearly made on behalf of a child, the complaint needs to be considered through the statutory procedure. The guidance makes it clear that where other aspects of the complaint relate to different legislation or different bodies, it is the responsibility of the council to make sure the complainant is not disadvantaged by this.

# 4 Common issues



## Audrey's story – choosing the wrong process

Audrey complained about how the council had responded to a safeguarding referral made about her grandchildren by a third party. The children were in the care of their parents, neither of whom had agreed to a complaint and from whom Audrey was estranged. Audrey had no parental responsibility for the children.

The council accepted a complaint from Audrey under the Children Act procedure. The guidance would have allowed the council to refuse to consider the complaint under the procedure. We did not criticise the council for using the procedure as the issues raised were potentially serious.

However, when Audrey disagreed with the council's Stage 1 response and asked in writing for it to go to Stage 2, the investigator refused to begin the investigation until he had had a meeting with Audrey. Statutory guidance says that a meeting is only necessary if the complaint is not in writing. In the end it took almost three months for a meeting and nearly three months more for the investigation to be completed.

The council apologised to Audrey for this failure.

Councils should ask themselves at the start whether a complaint should be dealt with through the Children Act procedure. In this case, it is possible that the interests of the children - who should always be at the centre of the process - might have been best served through a different approach. Those aspects of the complaint which directly affected the complainant could, perhaps have been dealt with through the corporate complaint procedure. Concerns about the council's approach to safeguarding (which we criticised) might have been identified sooner if the council had properly considered or reviewed its approach separately from its complaints handling.

The interests of the children were certainly not protected by effectively adding another stage into the complaints process. The statutory guidance promotes continuing attempts to resolve problems throughout the course of the procedure. Meetings clearly have their place both in resolving complaints and in promoting a better understanding of the complaint and any desired outcomes. However, they should never cause unnecessary delay or act as a further obstacle to the consideration of the complaint.

# 5 Getting things right - good practice

Based on our experience, we have drawn up a number of good practice recommendations for councils to consider. These aim to ensure that the interests of children are placed at the heart of the process, as the Children Act legislation intended, and help councils to understand where we are likely to find maladministration when considering complaints.

## Follow the process

The process is statutory so councils should follow the guidance and not depart from it without good reason. Once the process has started, the complainant has a right to have their complaint considered at each stage.

## Choose the appropriate procedure

Ensure from the outset that the complaint procedure is appropriate in the circumstances of the complaint. Explain in writing how the complaint is being dealt with and the right to approach the LGO if the complainant is unhappy with the outcome.

## Don't delay

The statutory timescales are designed to ensure complaints are handled effectively, fairly and swiftly throughout the process. Delays can happen at each of the three stages, but also moving from one stage to another. Building in additional stages, such as meetings, can also add an unnecessary delay.

## Make it a seamless service

A complaint should be progressed in as seamless a way as possible. Those complaints which involve different parts of the council should not require the complainant to make multiple complaints to different areas.

## Look for a swift resolution

Try to resolve a complaint at all times, but don't allow such attempts to delay or disrupt the statutory procedure. If faults on the part of the council are realised at any stage, seek to remedy any injustice caused when they arise. Some complaints do not need to be investigated at great length, even though they have to go through the whole process – make sure that stage two investigators understand that investigations should be proportionate.

## Early referral to the LGO?

We will continue to consider complaints brought early to us by complainants on a case by case basis. We are unlikely to accept early referrals from councils except in the circumstances set out in Annex 3 of the statutory guidance (see Legal Context section above).

## 6 Encouraging local accountability - questions for scrutiny

Councils and all other bodies providing local public services should be accountable to the people who use them. The LGO was established by Parliament to support this process. We recommend a number of key questions that councillors, who have a democratic mandate to scrutinise the way councils carry out their functions, can consider asking.

Does your council:

- > follow the good practice advice in the previous section?
- > ensure complaint handling staff are fully trained on the children's social care complaints system?
- > ensure independent investigators or people, employed from outside the council, are aware of the need for proportionate stage 2 investigation?
- > publish information about children's service complaints it receives, which is easily accessible to the public, including the outcomes and how the council uses them to improve services?
- > actively encourage scrutiny of complaints data in this area, and if so at what forum?



# About the Local Government Ombudsman

For 40 years the Ombudsman has independently and impartially investigated complaints about councils and other bodies within our jurisdiction. Our services are free of charge.

If we find something wrong, we can ask the council to take action to put it right. What we ask them to do will depend on the particular complaint, how serious the fault was and how the complainant was affected.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems do not happen again.

## Further information

Visit our website at [www.lgo.org.uk](http://www.lgo.org.uk)

If you have a complaint you would like to make about a council you can contact us on:

0300 061 0614.

## Local Government Ombudsman

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