



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Listening and Learning

A guide to handling complaints and representations in local authority social services in Wales



Ministerial Foreword



There are two key messages in this new guidance on handling complaints in social services:

- The first message is that everyone who makes a complaint about social services in Wales has a right to be listened to properly. Their best interests must be safeguarded and promoted. Their views, wishes and feelings must be heard. And their concerns should be resolved quickly and effectively.
- The second message is a wider one. Complaints can highlight where services need changing. So good local authorities will want to learn from these concerns and use the experience to improve services for everyone who uses them.

This is the first opportunity we have had to replace the Regulations, Directions and guidance made for England and Wales in the early 1990's. We held a major consultation on social services complaints in 2001 and since then new primary legislation has given the Assembly powers to make changes - many of which were proposed and widely supported then.

I am particularly pleased that, overall, we have been able to bring the separate children's and community care procedures more closely together into a common framework. There are still - for legal reasons - two sets of regulations, although wherever the law allows we have removed the differences between them.

There is now this single body of guidance. I want to thank everyone who has contributed to it. I hope you will take time to read it and that - with the new Regulations - it will help us all to listen more effectively to concerns about social services and learn from what the users of those services have to say.

A handwritten signature in cursive script, appearing to read 'Brian Gibbons'.

Dr Brian Gibbons

Minister for Health and Social Services, National Assembly for Wales



Listening and Learning

A Guide to Handling Complaints and Representations in Local Authority Social Services in Wales

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Chapter 1 - Introduction to the New Arrangements

“I wanted to get it off my chest. It was hurting inside and I needed to get it out.”

“Everything was too late for me, the decisions and things. There isn’t anything the complaint’s going to change, but I want an apology and a reason why. It might make things better for others.”

Service users, Wales, 2004

1.1 Introduction

1.1.1 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. Good local authorities will want to learn from these concerns and use the experience to improve services for everyone who uses them.

1.1.2 This guidance, “Listening and Learning”, provides a new framework for handling and considering complaints about local social services authorities in Wales. It covers complaints about services for children, young people and adults. The aim is to assist authorities to build arrangements that best suit the needs of the local communities they serve.

1.1.3 The guidance seeks to help authorities to implement the legal changes made through the Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003. These changes in the law are outlined in Chapter 2.

1.1.4 This guidance builds on and replaces the guidance on complaints procedures issued in the early 1990’s. The guidance for children’s services appeared in ‘The Children Act 1989 Guidance and Regulations, Volume 3 - Family Placement’ and ‘Volume 4 - Residential Care’. The guidance on services for adults was in ‘Community Care in the Next Decade and Beyond, Policy Guidance 1990’ and in ‘The Right to Complain’.

1.1.5 The new guidance is issued under Section 7 of the Local Authority Social Services Act 1970. This means that authorities must comply with it - unless they can show good reason to depart from it.

1.1.6 Local authorities are legally required to have complaints procedures that meet the minimum requirements of the new regulations. The new regulations appear as appendices to this guidance. There are separate sets of regulations for services to children and adults.

- The Representations Procedure (Children) (Wales) Regulations 2005 are made under section 24D and 26 of the Children Act 1989. (These are cited as “RPC” in the rest of the guidance.)
- The Social Services Complaints Procedure (Wales) Regulations 2005 are made under the Assembly’s new powers in the Health and Social Care (Community Health and Standards) Act 2003. (These are cited as “SSCP” in the rest of the text.)

1.1.7 The new complaints procedures must be in place by 1 April 2006. By then, publicity must be available for people who use services and the staff who work in them.

1.1.8 The two sets of regulations include transitional arrangements for dealing with complaints that are in progress when the new regulations come into force.

1.1.9 Regulations made under the Care Standards Act 2000 and the Children Act 1989 require providers and managers of registered services to have their own complaints procedures. They must also take into account the national minimum standards. This guidance does not alter the procedures set up under those regulations and standards. It does, however, seek in Chapter 5 to sort out some of the boundary issues where people who use services have rights to complain under a number of different procedures. The Welsh Assembly Government has announced that it intends during 2006 - subject to consultation and approval by the Assembly - to amend the complaints provisions in the care standards regulations in the light of the changes in the local authority procedures.

1.1.10 Many people have contributed to the regulations and guidance and the Welsh Assembly Government would like to record its thanks for this help. It has been particularly grateful for the work of the Complaints and Representations Advisory and Implementation Group (CRAIG) which brought together a range of key interests to develop proposals for the new arrangements. The membership of the Group is set out at Annex 2.

1.1.11 The Assembly Government believes it is crucial to listen and respond to those who use services and those who work with them. This is especially important for the most vulnerable children and adults who may want to make

a complaint because a concern or a problem is not being resolved. We have, therefore, been consulting widely with different groups of service users, local authority Complaints Officers and advocacy providers on how we can produce the most helpful regulations and guidance on handling complaints. We would especially like to thank all the children and young people, older people and adults with disabilities who have given us their views and helped to shape the new arrangements.

1.2 Background

1.2.1 Most local authorities in Wales have sought to develop complaints procedures that are accessible and easy to use. The National Complaints Officers Group has helped by producing useful models of good practice.

1.2.2 In 2001, the National Assembly issued a consultation document, “Listening to People, A Consultation on Improving Social Services Complaints Procedures”. The response to the consultation identified several areas for improvement.

- There was “particular support” for the proposal to bring the separate children’s and community care procedures into a common three-stage framework.
- There was support for parts of the procedure to be more independent of the authority complained against.
- People who responded generally wanted a greater emphasis on local resolution. They specifically supported the proposal for a time-limited first stage giving a chance for local resolution in the procedure for children. They felt this might avoid the need for unnecessary or inappropriate formal investigations.
- There was felt to be a need for clearer guidance on the roles of the Complaints Officer and the Independent Person.
- Those who responded wanted stronger guidance on the need to defer or freeze decisions while complaints about them are considered.
- Those who responded were eager to see clearer rights of access to independent advocacy services for children making a complaint.
- There was support for extending the time limit for formal consideration from 28 calendar days to 35 calendar days.
- People who responded wanted better follow-up of the promises that authorities made in response to complaints.

- Respondents wanted to see clearer links between social services procedures and other processes in, for example, education and housing.

1.2.3 The guidance builds on messages from the report on the North Wales Child Abuse Inquiry “Lost In Care” (2000). This cited many cases of children who attempted to complain - but whose voices were never heard. Since then, several studies - not least the review “Telling Concerns” (2003) by the Children’s Commissioner for Wales - have raised concerns about how well complaints procedures are working. “Rights to Action” (2004) set out the Government’s agenda for children - and emphasised the need to develop a listening culture which would put the views and wishes of children at the heart of the decision making process.

1.2.4 There are common themes now from a number of sources:

- People who use services see the arrangements as too complicated.
- Authorities have not always dealt with complaints promptly and sympathetically.
- Authorities have not always met the requirements on time-scales.
- Authorities have not always kept complainants informed about the handling of their complaint.
- The separate arrangements for children and adults have undermined cohesion.
- The lack of any properly independent stage to the procedure has undermined confidence in some quarters.
- And a small - but growing - number of people have felt the need to take their concerns to the Public Services Ombudsman for Wales (PSOW). (Further information on this service is set out in section 5.9.) And - as young people using services have become aware of the work of the Children’s Commissioner for Wales - some have felt the need to take unresolved issues to him.

1.3 The Key Changes

1.3.1 The new arrangements for Wales have been developed in the light of the 2001 consultation exercise in Wales and the subsequent research. The consultation in Wales and a broadly similar exercise in England both helped to inform the 2002 Act - the changes here are set out in Chapter 2. Other changes have been made through the two new sets of regulations, and in a few cases through this guidance.

1.3.2 In summary the key changes are:

- Overall, the separate children's and community care procedures have been brought more closely together into a common framework. There are still - for legal reasons - two sets of regulations, but there is now this one body of guidance. Unnecessary differences between the two sets of regulations have been removed wherever possible, although of course the differences required by the Acts themselves have been retained.
- Both sets of regulations set out the same three-stage procedure. This has been achieved by introducing into the children's procedure a clear, time limited first stage giving a chance for local resolution.
- The new regulations extend the duties on local authorities to safeguard and promote the welfare of the service user in handling complaints. And they have to ascertain and take into account the user's wishes and feelings. These important new duties apply at every stage in the handling of a complaint.
- The regulations put all the time-scales for handling complaints on a statutory footing. And they require authorities to keep complainants informed about progress with their complaint.
- The scope of the Children Act 1989 procedure has been extended to services under Part IV (care and supervision) and Part V (protection of children) of that Act. The 2002 Act has further extended the scope of the procedure in the area of adoption.
- The automatic right to a panel hearing has been kept. But, in perhaps the biggest single change, people who complain will be able to go to an Independent Panel, wherever the local authority has failed to resolve the complaint. Both the panel membership and the administrative arrangements for the panel will be wholly separate from the authority.
- Ever since the passage of the 2003 Act, the Assembly Government has wanted to build clearer links between the social services and NHS procedures. But work on the new NHS regulations has been delayed, following the recommendations of the Fifth Report of the Shipman Inquiry. This volume of guidance outlines the new arrangements for links between the two procedures - and the Assembly Government proposes to give these arrangements the force of regulation when the new NHS regulations are made.
- Through this guidance, the same principles have been extended to cover links with other complaints procedures in local government and in the

Care Standards Inspectorate for Wales. Together, all of these changes will be a major step towards a seamless complaints service for users of public services in Wales.

1.3.3 In summary then, the new arrangements envisage broadly the same three-stage procedure for handling all social services complaints. This will consist of local resolution, formal consideration and the Independent Panel hearing. The procedure - with key time-scales - is summarised in Figure One at the end of this chapter.

1.3.4 These changes complement the new rights of access to independent advocacy services for children and young people making complaints, introduced in June 2004.

1.4 Fifteen Key Principles

1.4.1 A good procedure will ensure that most people who complain have their concerns resolved swiftly and wherever possible by the people who provide the service locally. The complaints procedure should be viewed as a useful tool for indicating where services may need adjusting. It is a positive aid to inform and influence service improvements, not a negative process to apportion blame.

1.4.2 Authorities should aim to develop a listening and learning culture where lessons learned are fed back to people who use services - and fed into the system for driving improvement. The same listening and learning culture should shape wider opportunities for working in partnership with service users, such as individual reviews and systematic quality assurance. It should give people opportunities to tell the authority about both their good and bad experiences of the service.

1.4.3 CRAIG developed these ideas into a set of fifteen “Key Principles” to guide its work on the regulations and guidance. In turn, the Welsh Assembly Government has endorsed these Key Principles as the main policy aims behind the reform of complaints procedures. They are commended to authorities as a benchmark against which they can judge the effectiveness of their local arrangements.

1. In developing and operating an effective complaints procedure the local authority must make sure that safeguarding and promoting the welfare of the service user is the paramount consideration.
2. The complaints procedure should be clear and easy to use for the service user, and for those making a complaint on their behalf.

3. It should make sure that the people who use the service are treated with dignity and respect, are not afraid to make a complaint, and have their concerns taken seriously.
4. It should ensure, as far as is possible, even-handedness in the handling of complaints across all types of service, across all sectors and for both children and adults.
5. It should ensure that any concerns about the protection of children or vulnerable adults are referred straightaway to social services or to the police, and that the handling of the complaint can be suspended if need be.
6. It should make sure, wherever possible, that as many complaints as possible are resolved swiftly and satisfactorily resolved at the local level.
7. It should ensure a fair process and adequate support for people who complain, for staff and for anyone else involved in the complaint.
8. It should ensure that the user of the service - or anyone who makes a complaint on their behalf - gets a full response without delay.
9. It should ensure that at least one part of the process is fully independent from the authority complained against.
10. It should enable any local authority or local health board purchasing services in the independent sector to exercise its continuing duty of care.
11. It should enable the Care Standards Inspectorate for Wales to carry out its enforcement duties in regulated services, wherever needed.
12. It should ensure that the complaints procedures for social services and the National Health Service should operate as far as possible so that for the complainant it appears as one system.
13. It should secure sensible and effective links with other complaints procedures in local government.
14. It should safeguard the service user's rights of access to other means of redress, such as the Public Services Ombudsman for Wales, the Children's Commissioner for Wales and the Commissioner for Older People in Wales.
15. It should ensure that authorities monitor their performance in handling complaints, deliver what they have promised, learn from complaints and use this learning to improve services for everyone who uses them.

1.4.4 The new regulations enshrine for the first time the most important of these key principles. Both sets of regulations (RPC reg. 3, SSCP reg. 3) extend the duties on local authorities to safeguard and promote the welfare of the service user. There are also wider duties to find out the wishes and feelings of the service user and take these into account. These important new duties apply at all three stages in the handling of a complaint.

1.5 The structure of the guidance

1.5.1 Chapter 2 outlines the legal background to handling complaints. This sets out the recent changes in the law on complaints about social services. It also seeks to alert authorities to some of the wider legal issues that might apply in individual cases. These include human rights, data protection and freedom of information.

1.5.2 Chapter 3 provides advice for authorities on setting up the new procedures. It outlines the role of the senior officer who must take overall responsibility for the effective operation of the authority's procedures. It emphasises the need to make sure that both people who use services and those who work in them know what they need to about the new arrangements.

1.5.3 Chapter 4 gives guidance on the scope of the new procedures. It discusses who can complain and what they can complain about. It explains where complaints procedures may not apply.

1.5.4 Chapter 5 looks beyond the complaints procedures in social services. It considers links with other processes, other parts of local authorities and other organisations. It explains the new arrangements for working with other social services authorities and with NHS bodies on complaints of common concern. It also looks beyond this, to provide guidance on links with complaints procedures in education and the corporate procedures run by local authorities.

1.5.5 The next two chapters deal with the core of what service users can expect from their local council when they make a complaint. **Chapter 6** focuses on local resolution and provides guidance on such issues as freezing decisions and providing support for people making complaints. It suggests a range of approaches to resolution, including mediation. **Chapter 7** looks at the formal consideration stage. This centres on investigation, but again suggests the need to consider other ways of resolving complaints. Both chapters emphasise the need for effective recording.

1.5.6 Chapter 8 introduces perhaps the most important change in the new arrangements. This is the creation of a third stage wholly independent of the authority. The chapter outlines how people who make complaints will have a new

right to have their case reviewed by an Independent Panel. And it describes how the new panels will operate and conduct their hearings.

1.5.7 Finally, **Chapter 9** looks at learning from complaints. It suggests how authorities should be monitoring complaints and following up responses. It suggests, too, how the knowledge learned from complaints should be fed back to improve services for everyone who uses them.

1.5.8 **Annex 1** provides a list of references, relevant publications and further reading. **Annex 2** shows the membership of CRAIG.

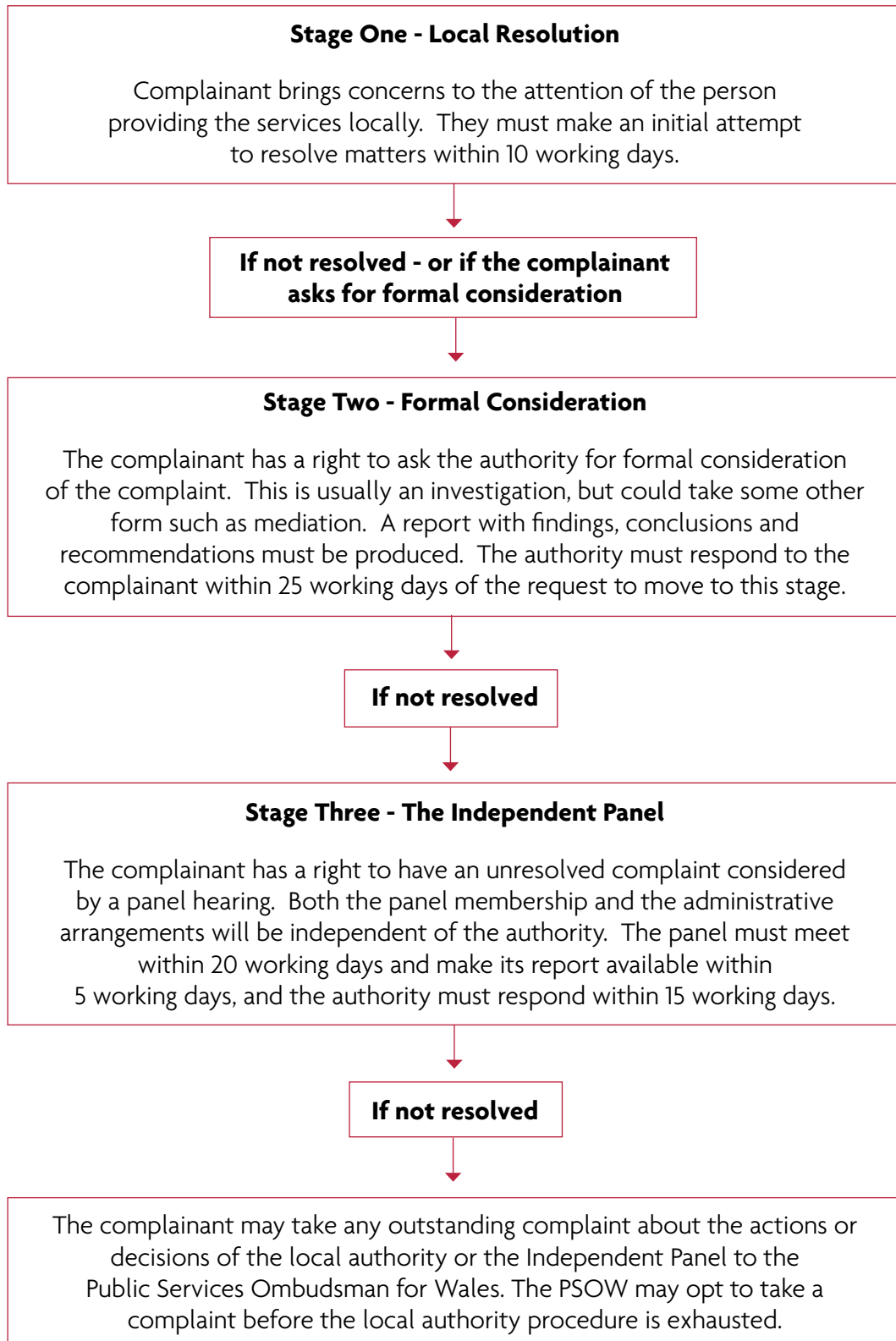
1.5.9 The next two Annexes seek to provide quick guides to the new arrangements for service users and other members of the public. **Annex 3** deals with complaints about services for children under the 1989 Act - and **Annex 4** looks at services for adults.

1.5.10 **Annex 5** looks at some of the training implications of the new arrangements - and reproduces some materials to support the training of staff most likely to have the first contact with service users and their concerns.

1.5.11 **Annex 6** is a follow-up questionnaire for complainants.

1.5.12 The two sets of regulations appear in bilingual form at **Annex 7** and **Annex 8**.

Figure 1: The New Social Services Complaints Procedure



Chapter 2 - The Law on Complaints

“Confidentiality? The whole Department knew about my complaint - especially in residential care.”

Service user, Wales, 2004

2.1 Adoption and Children Act 2002

2.1.1 The sections on complaints in the Adoption and Children Act 2002 were framed in response to “Listening to People” in Wales and a similar consultation in England. The Act paved the way for five main changes to the representations and complaints procedures set up under the Children Act 1989.

- Section 117 created powers for the Assembly to make regulations imposing time limits on the making of representations. The Assembly has decided not to impose time limits of this kind.
- It allowed a local resolution stage to be included in the Children Act 1989 procedure.
- It allowed the Assembly, by regulation, to extend the scope of the Children Act 1989 procedure to services under Part IV (care and supervision) and Part V (protection of children) of that Act.
- It overhauled the law on adoption and created new patterns of service. These in turn alter the scope of the complaints procedure.
- It empowered the Assembly to make regulations requiring councils arrange independent advocacy for ‘looked after’ children, ‘young people leaving care’ or ‘children in need’ making a complaint.

2.1.2 The advocacy provisions were introduced in The Advocacy Services and Representations Procedure (Children) (Wales) Regulations 2004. They came into force on 1 June 2004. The remaining changes will come into force from 1 April 2006 along with the other changes set out in the new regulations and this guidance.

2.2 Health and Social Care (Community Health and Standards) Act 2003

2.2.1 The Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”) set out a range of measures to raise standards in health and social

care. Chapter 9 of Part 2 deals with complaints procedures in the NHS and in local authority social services (sections 113 to 119).

2.2.2 In the social services, the main sections that provide the basis for the new complaints framework are:

- Section 114 gives the Assembly new powers to make regulations about the handling and consideration of complaints about social care. These powers replace those in the Local Authority Social Services Act 1970 and complement the powers in the Children Act 1989 (as amended by the 2002 Act). S.114 provides for social services to work more closely with the NHS on complaints relevant to them both. (Section 113 provides a matching power for the NHS.) S.114 also provides for a new Independent Panel to consider any unresolved complaint.
- Section 115 sets out the coverage of the regulations that the Assembly can make. The regulations can lay down such matters as who may make a complaint and what they may or may not complain about. They may also - if the Assembly chooses - set out the period within which a complaint must be made, the procedure for considering a complaint and the action the authority should take as a result of the complaint.
- Under subsection 115(4), the Assembly can require councils to publish information about complaints procedures. Under subsection 115(5), the Assembly can use the regulations to authorise the disclosure of information about a complaint to anyone considering it under the regulations - or to whom a complaint has been referred. This can be done even where a common law duty of confidentiality would otherwise prevent it.
- Under subsection 115(6), regulations can provide for matters raised in a complaint to be considered under more than one statutory complaints procedure. The intention here is that anyone who complains should experience the social services and NHS procedures as a single, seamless service.
- Section 116 inserts a new section 26ZB into the 1989 Act. This provides for further consideration of complaints about children's services, where these have not been resolved by the authority. Under these powers, the Assembly can use the regulations to set up an Independent Panel to consider unresolved complaints.

- Under subsection 26ZB(4)(c), the Assembly can use the regulations to authorise the disclosure of information about a complaint under the 1989 Act to anyone considering it under the regulations - or to whom a complaint has been referred. Again, this can be done even where a common law duty of confidentiality would otherwise prevent it.
- Section 117 empowers the Assembly so that it can require complaints about special guardianship support services to be considered under the Children Act representations procedure.
- Section 119 changes the law on data protection in the handling of complaints. It makes the processing of personal data by people who are considering complaints exempt from the subject information provisions of the Data Protection Act 1988. It does so only where access under the DPA would be likely to prejudice the proper discharge of the complaints functions. The section below on data protection discusses this in more detail.

2.3 Human Rights Act 1998

2.3.1 The Human Rights Act 1998 (HRA) came into force in October 2000. It builds into UK law the European Convention on Human Rights (ECHR) to which the UK has been committed since 1951. Convention principles already underpin legislation and policies - and inform best practice in health and social care. The Act modernises relationships between people, and between people and the State. It enshrines values of fairness, respect for human dignity and inclusiveness in the heart of public services.

2.3.2 The Act enables people in the UK to enforce their Convention rights and freedoms in UK courts, and to avoid the cost and delay of going to the European Court. It is still open to people to petition the European Court if they exhaust all the remedies in the UK. It makes it unlawful for public authorities to act in a way that is incompatible with Convention rights - unless they are acting under legislation that made it impossible to act differently.

2.3.3 Laws, policies, practices and procedures in health and social care have the potential to affect some of the rights and freedoms in the ECHR. For example, they could affect the right to respect for private and family life, the right to life and the right not to be subjected to inhuman and degrading treatment. Authorities should always consider Convention rights in the action that they take. If their work interferes with Convention rights, they will need to ensure that they can justify this to the Courts.

2.4 The UN Convention on the Rights of the Child

2.4.1 The UN Convention on the Rights of the Child (UNCRC) is an international agreement that seeks to set a global standard for the way children are treated. The UK Government ratified the Convention in 1991 and the National Assembly has formally adopted it as the basis for all its dealings with children and young people in Wales.

2.4.2 The Convention states that all children everywhere, without discrimination, have the right:

- to survival,
- to develop their full potential,
- to be protected from harmful influences, abuse and exploitation, and
- to participate fully in family, cultural and social life.

2.4.3 The Convention sets out a wide range of measures to safeguard and to promote the physical, mental, emotional, social and behavioural development of children.

2.4.4 Article 12 of the Convention requires States to ensure that children capable of forming a view have the right to express their views freely in all matters that affect them. The child's views must be given due weight in line with their age and maturity. The Convention gives children a specific right to be heard in any judicial and administrative proceedings that affect them.

2.4.5 Article 13 gives children rights to seek, receive and impart information. Providing effective complaints procedures for children is a means of implementing both Articles 12 and 13. Children need access to complaints procedures in all aspects of their lives and should be able to make complaints independently of their parents or carers. Access to an effective complaint procedure is an essential element of safeguarding children and young people.

2.4.6 Local authorities need to continue to ensure best practice. If they are working with other organisations or providers, they should make sure that their partners are alert to their duties under the HRA and the UNCRC. Councils should consult their lawyers for further advice on these matters.

2.5 The UN Principles for Older People

2.5.1 The Welsh Assembly Government has also decided to take the UN Principles for Older People into account in carrying out all of their responsibilities for older people. The principles underpin the Strategy for Older People in Wales.

2.5.2 The 18 Principles were adopted by the UN in 1991. Three in particular might have a bearing on the provision of care services and the handling of complaints about them:

- Older persons should have access to social and legal services to enhance their autonomy, protection and care.
- Older persons should be able to utilise appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.
- Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.

2.5.3 In judging the effectiveness of local complaints procedures, the UN Principles will assume an increased significance with the creation of the post of Commissioner for Older People (see section 5.13). Subject to Parliamentary approval, the Bill provides that - for the purpose of safeguarding and promoting the interests of older people - the Commissioner will be able to review, and monitor the operation of, any advocacy, complaints or whistle-blowing arrangements. In looking at how a local authority has handled complaints, for example, the Commissioner would have to consider whether they reflected the UN Principles, such matters as independence, participation, care, self-fulfilment and dignity.

2.6 Mental Capacity Act 2005

2.6.1 The Mental Capacity Act is expected to come into force early in 2007. It has three aims:

- to provide **empowerment** - for adults who may lack capacity enabling them to maximise their autonomy;
- to provide **protection** - for adults who lack capacity and for those who care for them;

- to provide **choice** - by allowing people to appoint those they trust to take decisions for them if they should lose capacity.

2.6.2 The Act enshrines five key principles which will be valuable to complaints staff and others in discharging the council's duty to safeguard the welfare of service users. They will be helpful, too, in thinking about situations where it may be right for someone else to act on behalf of a service user (see section 4.4):

- A person must be assumed to have capacity unless it is established that he or she lacks capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him or her to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he or she makes an unwise decision.
- An act done, or decision made, on behalf of a person who lacks capacity must be done or made in his or her best interests.
- Before the act is done, or the decision is made, regard must be had to whether the purposes for which it is needed can be achieved in a way that is less restrictive of the person's rights and freedom of action.

2.7 Data Protection Act 1998

2.7.1 The way an authority handles complaints must be in line with the requirements of the Data Protection Act 1998. Under the Act, any data - in any format - must be:

- fairly and lawfully processed;
- processed for limited purposes only;
- adequate, relevant, and not excessive;
- accurate;
- not kept for longer than necessary;
- processed in line with the data subject's rights;
- secure; and
- not transferred to countries without adequate protection (outside the European Union).

2.7.2 Authorities should not seek information on matters beyond the agreed scope of the complaint. And they need to make sure that they do not use for any other purposes information that they collect in pursuing a complaint.

2.7.3 Section 119 of the Health and Social Care (Community Health and Standards) Act 2003 created a new subject information exemption in the Data Protection Act 1998. The 1998 Act allows people to seek and obtain information that is held on them by others - except in certain defined situations. Section 119 adds a new exception to section 31 of the 1998 Act.

2.7.4 The right for individuals to gain access to the information held about them is enshrined in European law. The UK is bound by this legislation, so any exemptions to that right need careful consideration. It is important to recognise that this new provision is not a blanket exemption. It concerns only data processed in handling a complaint. And the exemption is available on a case by case basis - only where to allow access to data might prejudice the proper investigation of a complaint.

2.7.5 The new provisions are there to ensure that councils can consider complaints - without the risk that they would have to reveal data and so undermine the investigation. For example, a council could use the exemption where it suspected misconduct and disclosure might lead to a risk that someone would interfere with evidence. Or they could use it where there was a risk that someone would harass or intimidate complainants or potential witnesses.

2.7.6 Authorities should view this provision as very much the exception rather than the rule. Authorities will need to consider the case very carefully before refusing access to data. And they must be able to show justifiable reasons for doing so. It is important to note that this amendment provides an exemption only as far as is needed to safeguard the consideration of the complaint. In this way, the law seeks to protect the rights of the data subject while minimising the risks to the investigation.

2.8 Freedom of Information Act 2000

2.8.1 The 2000 Act provides for the disclosure of information held by public authorities or by people providing services for them. It amends the Data Protection Act 1998 and the Public Records Act 1958. Authorities will need to consult their legal departments for further advice.

2.8.2 Further details and advice on data protection and freedom of information can be obtained from the Office of the Information Commissioner (www.informationcommissioner.gov.uk).

2.9 Other legislation

2.9.1 Local authority staff developing and operating the new complaints procedures will need to take account of other relevant statutes. They will need to be mindful of the Welsh Language Act 1993 and ensure that their actions comply with the council's scheme under the Act. The Assembly Government wants Wales to be a truly bilingual nation - where people can choose to live their lives through the medium of either Welsh or English or both. In developing and operating complaints procedures, authorities will need to bear in mind that sometimes, failure to respond properly to Welsh speaking service users puts them at an additional disadvantage and could on occasions put them at risk.

2.9.2 In developing new procedures, councils will need to consider the principles of the Race Relations (Amendment) Act 2000 and other equal opportunities legislation which requires consultation with groups reflecting the racial and cultural diversity of the local community.

2.9.3 Complaints staff could also encounter the Public Interest Disclosure Act 1998. This provides some protection for workers if they are victimised by an employer for 'blowing the whistle' on certain kinds of wrongdoing in the workplace.

2.9.4 Although unlikely, in a few cases the Regulation of Investigatory Powers Act 2000 might be relevant to the formal investigation of a complaint.

2.9.5 These are just examples - there could well be others. Staff handling complaints should be careful to take the advice of the authority's legal advisers at each stage of the consideration.

Chapter 3 - Setting up the New Procedures

“When I first moved into supported lodgings, I felt the booklet they gave me was more for seven or eight year olds so I didn’t really look at it.”

Service user, Wales, 2004

3.1 Engaging with implementation

3.1.1 Authorities have a duty to have complaints procedures that measure up to the new regulations. In the case of the Children Act procedure, the duty is on the face of the 1989 Act. For the procedure on services for adults, the matching duty is in the regulations (SSCP reg. 4).

3.1.2 For their procedures to be effective in practice, councils will need to secure the commitment of everyone involved. Plans for bringing in the new procedures should centre on the need to consult people who use services, including children. Procedures should be developed in the wider context of encouraging everyone who uses services to speak out and to be full partners in their service. Councils will also need to talk with carers, community groups, voluntary and other organisations that have an interest and staff at all levels.

3.1.3 All those involved will need to understand and agree the principles that underpin a successful approach to managing complaints. Complaints procedures do not stand alone. They should be considered within the context of the service, the organisation and related procedures - such as service specifications and quality assurance systems.

3.2 The senior officer with overall responsibility for complaints

3.2.1 One of the first tasks will be to identify the senior officer with overall responsibility for complaints. The 1991 guidance on social services complaints procedures suggested that handling complaints must have senior management endorsement in this way. Otherwise, it may not be seen as intrinsic to the business of social care - and may not survive, develop and evolve. The 1991 guidance suggested (paragraph 6.16) that the overall organisation, effectiveness and accountability of the complaints procedure should be the responsibility of one senior manager.

3.2.2 The new regulations for Wales (RPC reg. 4, SSCP reg. 5) build on this and require each authority to designate a senior officer to be directly accountable for the social services complaints procedure. This is a vital role, and the regulations give the senior officer the specific duty of seeking to ensure compliance with the arrangements made under the regulations. The designated senior officer will need have sufficient influence within the organisation to ensure he or she can discharge this statutory duty.

3.2.3 In practice, these duties are likely to mean a broad involvement in the development, operation and monitoring of the new arrangements. The person should be accountable for:

- directing and overseeing the setting up of the procedure;
- ensuring that there are adequate resources for the procedure;
- monitoring the procedure;
- directing and overseeing the arrangements for training;
- directing and overseeing the arrangements for publicity;
- ensuring that management information about complaints - including the Quarterly Management Report - is collected and distributed;
- ensuring that the work of the Complaints Officer(s) is effectively supervised; and
- overseeing the production of the Annual Report.

3.2.4 The location of this senior role within the local authority's staffing structure is a matter for each individual authority. There should be no conflict of interest, nor should the arrangements be open to this perception. So the officer should **not** have operational responsibility for the delivery of any the authority's services that might be the subject of a complaint. Some authorities might choose to locate the role with a Senior Management Team member directly accountable to the Director of Social Services. Alternatively, the role could be located centrally in the authority - with complaints functions for other departments. Each authority will need to decide which location is best for the effective discharge of the duties under the Regulations and for the tasks set out in the previous paragraph.

3.3 The Complaints Officer

3.3.1 The regulations require local authorities to appoint at least one Complaints Officer to carry out or manage the duties attached to this role in the regulations

(RPC reg. 5, SSCP reg. 6). Again, it will be for each authority to determine its own structure and the regulations are deliberately flexible on these structural questions:

- An authority must appoint a Complaints Officer under each set of regulations. This may be the same person or may be two different people - maintaining, for example, a separate designated Complaints Officer for children's services, in line with the recommendations of "Lost in Care" and "Telling Concerns".
- An authority may appoint someone who is not an employee of the authority.
- An authority may share a Complaints Officer with another body, such as another social services authority or a local NHS body.
- An authority may authorise any other person to perform functions of the Complaints Officer (such as that of investigating officer) on their behalf.

3.3.2 While the regulations are flexible about structure, the post will need to be at a sufficiently senior level to reflect the importance of the task and the authority's commitment to it.

3.3.3 Again, there should be no conflict of interest or any perception of one. A Complaints Officer should be independent of both professional line management and direct service providers. The same should be true for anyone who takes on a part of the role, for example in investigating a complaint. If located within the social services, they will probably report to a Senior Management Team member who is not responsible for operational service delivery. It is essential to ensure that the post holder has sufficient authority and independence to manage the process of complaints - and to contribute to service development. There will need to be suitable administrative support.

3.3.4 The key responsibilities of the Complaints Officer are likely to 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 investigation of complaints that cannot be resolved locally;

- maintaining a pool of people with the skills and training needed to conduct and prepare reports on investigations;
- selecting from this pool for each complaint;
- maintaining a pool of Independent Persons who have had appropriate training for the role;
- selecting Independent Persons for individual complaints;
- referring the complainant to any advocacy service available locally;
- monitoring the progress of the investigation and ensuring its smooth running;
- keeping the complainant and key people informed at all stages, offering advice where required, particularly on the response of the authority;
- ensuring time-scales are met;
- making recommendations to the local authority on any action to take following an investigation;
- ensuring that all recommendations - at whichever stage - are considered and a response issued;
- monitoring the procedure;
- ensuring that commitments in responses are implemented;
- evaluating the numbers, types, outcomes and trends of complaints;
- commissioning appropriate training;
- overseeing the arrangements for training and publicity;
- using the information to contribute to better services;
- contributing to relevant training and practice development;
- compiling quarterly management reports; and
- compiling an annual report.

3.3.5 Councils will need a clear idea of the skills and competencies required by all those involved in the complaints process. In selecting the people who will carry out the key roles outlined in this Chapter, they will need to consider existing skills and the need for 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. Authorities will need to think about how children and adults with particular language or communication needs can pursue their complaints and communicate with staff.

3.3.6 The competencies required should include interpersonal skills such as listening skills, interview techniques and managing conflict. Complaints Officers will also need a knowledge of the legal framework for the relevant groups of service users, and the relevant local policies and procedures. The safeguarding of vulnerable children and adults is crucial. So a Complaints Officer must be able to show a sound working knowledge of policies and procedures in child or adult protection.

3.3.7 Similar issues about knowledge and skills arise when appointing people to the roles of investigating officer and Independent Person; these are discussed further in Chapter 7. Councils must ensure, of course, that anyone undertaking any of these four crucial roles - the Senior Officer, Complaints Officer, investigating officer and Independent Person - has the appropriate level of Criminal Records Bureau (CRB) disclosure. In the case of employees who could have regular unsupervised access to children or vulnerable adults, this must be the Enhanced disclosure.

3.3.8 For complaints made by children and young people, the Complaints Officer will need to work with the advocate and the Independent Reviewing Officer (IRO). Since June 2004, children in need, those looked after and care leavers have a right to an independent advocate when making a representation or complaint. And in September 2004 new regulations and guidance on the responsibilities of IROs came into force (see Annex 1). The IRO will not usually become involved with minor complaints about day-to-day care, but they should be involved in more serious complaints about a child's care plans. Where this happens, the arrangements for handling the complaint should run alongside the IRO's actions in resolving the issue. It will be good practice for the Complaints Officer, IRO and advocate to agree channels of communication and their different roles in trying to resolve a concern.

3.4 Producing local guidance and documentation

3.4.1 Authorities will need to revise their existing policies so that they reflect the requirements of the regulations and this guidance. Good practice suggests that councils will need to produce examples of documents for complainants at each stage of the process. These examples will need to highlight suitable wording for different situations, and could be included in the local guidance as a series of appendices. This would certainly help those new to the procedure and promote best practice.

3.4.2 A suite of specimen documents might include at minimum:

- leaflets about the new procedures for service users and staff;
- material on the authority's child and adult protection policies and how these will apply to the complaints procedure;
- posters advertising the new procedures;
- a form for logging complaints resolved locally;
- an acknowledgement letter;
- a holding letter explaining any delay wherever this is necessary;
- a framework for a response letter;
- a letter and questionnaire for the Complaints Officer to use in inviting feedback from complainants; and
- a letter for the Complaints Officer to use in following up the response with the line manager.

3.4.3 Authorities will need different versions to make sure that they are accessible to different groups of service users.

3.5 Information and training for staff

3.5.1 A complaints procedure will be effective only if the local authority shows commitment to it. Each authority will need to make sure that their procedures are known and understood by elected members, staff, investigating officers, Independent Persons, service users, their carers and representatives. The new regulations (RPC reg. 6, SSCP reg. 8) place a duty on each authority to ensure that its staff are informed about and trained in the new procedures.

3.5.2 Staff may have concerns about workload, their own ability to operate within the procedure or their vulnerability to unfounded complaints. An unequivocal policy statement on the scope and benefits of the procedure should help to reassure staff on these issues. And authorities will need to reassure staff, too, that there will be training and management support to match the demands of the policy.

3.5.3 Discussions with staff and their associations will identify areas of concern and provide opportunities for addressing them. Some authorities will have procedures in place that will require little modification to meet the new requirements. Where this is the case, staff will need to know of any changes,

including the scope of the new requirements. In general, authorities and their staff are more likely to operate the procedure fairly and properly if they see it as one aspect of working in partnership with people who use services.

3.5.4 Training will be required at different levels, depending on the role of the people concerned. A training strategy is likely to include induction training, basic awareness of the principles and working of the complaints procedure along with skill development. It will also need to explore the relationships between the complaints procedures and related policies on children and adults protection. It will need to look at whistle blowing, including the duties of staff under the “Code of Conduct for Qualifying Employees of Relevant Authorities in Wales” to report improper behaviour and wrong-doing. Refresher training will also be needed to keep staff up to date with changes.

3.5.5 Annex 5 provides some materials designed to help in training those staff most likely to have the first contact with the public - and to help them to respond in the most constructive way. The materials were developed for use in Pembrokeshire County Council and have been updated to reflect the changes to the framework introduced on 1 April 2006. The Welsh Assembly Government is grateful to the officers of the County Council for permission to re-print them as an Annex to this guidance. It hopes that individual authorities will adapt the materials to meet their local needs and circumstances, so local training reflects local policies and includes information about local contacts.

3.5.6 For many children and young people who are looked after, foster carers will have an important role to play in promoting the use of complaints procedures. Authorities will need to make sure they give foster carers suitable information about the new procedures and opportunities to talk through their concerns. And they will need to consider foster carer awareness and support of the complaints process when purchasing placements from independent foster care agencies.

3.5.7 Foster carers will also need to know how complaints will be handled where they are the subject of a complaint. They will need to know, too, how they will be supported through the process.

3.6 Information and publicity for service users

3.6.1 Many people who use services have told us that they lacked the information and understanding they needed on how to make a complaint - and on what they could expect to happen as a result. Legislation requires local authorities to publicise their complaints procedures. In the case of the Children Act procedure,

the duty is on the face of the 1989 Act. For the procedure on services for adults, the matching duty is in the regulations (SSCP reg. 7).

3.6.2 It is good practice to involve people who use services in developing and reviewing materials, for example through participation in a reference group. In turn, the council should publicly launch its new procedure and materials - and invite service users, community groups, elected members and others to take part.

3.6.3 The publicity should provide clear answers to the following questions:

- Who is entitled to make use of the procedure?
- What does the procedure cover - and what does it not cover?
- How can someone make a complaint or representation?
- Who is available to provide support and advice?
- What stages are there in the consideration of a complaint?
- What are the new rights to an independent review?
- What are the time-scales for each stage of the process?
- And how and when can someone turn to the Public Services Ombudsman for Wales?

3.6.4 The publicity should make clear that the procedure is a part of the authority's wider commitment to working in partnership with service users, their families, friends and communities. All material should present a positive and friendly view of using the procedure. It should seek to deal with any fears that using the procedure could cause problems for a complainant in their day to day contact with local staff.

3.6.5 Information material might also explain very briefly the roles of the Care Standards Inspectorate for Wales, the Care Council for Wales, the Public Services Ombudsman for Wales, the Children's Commissioner for Wales and the Commissioner for Older People in Wales. Material should give the name, address and telephone number of organisations to whom service users might turn for advice. Information on complaints for children and young persons should also set out their rights to an independent advocate.

3.6.6 Information leaflets and booklets will need to use plain language. And they will need to be in languages used in the local community other than English and Welsh. They will need to be tailored to the reader - some for instance will need to appeal to young children and be easy for them to read. It may be useful to include photographs of, for example, Complaints Officers. The council will need

to provide the information in other formats - such as in large print, Braille, on audio or video tape or on the Internet. It may be helpful to discuss these issues with voluntary bodies and other community groups.

3.6.7 Information on the complaints and advocacy procedures should be given to every service user when their needs are first assessed. This should be recorded on the file and checked out at each subsequent review - in the case of children by the Independent Reviewing Officer. Children and young people placed away from their home communities are particularly vulnerable and authorities will want to make special efforts to ensure that they are kept informed about complaints and advocacy arrangements.

3.6.8 Information should be available free of charge to all sectors of the community in the form of written leaflets and posters. They should be placed in social services offices, children's homes, residential and nursing homes, health service clinics, schools, libraries, family centres, doctors' surgeries, Citizens Advice Bureaux and other suitable places.

3.6.9 While the statutory duty to publicise their own procedures rests with local authorities, the Welsh Assembly Government has produced two quick guides to its new guidance and Regulations. These seek to summarise for service users and other members of the public their rights under the new arrangements.

Annex 3 deals with complaints about services for children under the 1989 Act - and **Annex 4** looks at services for adults.

Chapter 4 - The Scope of the Complaints Procedure

“Often, staff members know things aren’t right. They don’t need to be fearful but you try to get them to come with you and it’s another matter. It should be in their job descriptions to help young people to make complaints.”

Service user, Wales, 2004

4.1 What is a complaint?

4.1.1 The regulations do not try to define a complaint. The aim here is not to be too rigid in the way we define complaints - if we were too rigid, we may exclude real concerns for people who use services. As a rule of thumb, a complaint is a complaint when the person making it says it is.

4.1.2 As a working guide, authorities should consider as a complaint, “Any written or verbal expression of dissatisfaction or disquiet about something that has happened to an individual child or adult, on which they require response”.

4.1.3 Complaints of a general nature, not concerned with an individual service user, will usually fall outside the statutory procedure. So will anonymous complaints. Councils can choose to deal with a complaint not covered by procedure - they can choose to follow all or part of the statutory procedure.

4.1.4 People can complain about any aspect of social service that the authority has the power or duty to provide. They can complain, too, about any service being provided on behalf of an NHS body. They can also complain to the council about social services provided by other bodies if they are part of a contract with the council. More advice about handling complaints in regulated services appears in Chapter 5.

4.1.5 Most complaints arise when the people who use services feel that they are not being listened to properly by the people who run them. A complaint may arise as a result of many things, for example:

- refusal of a service;
- quantity, frequency or cost of a service;
- an unwelcome or disputed decision;

- concern about the quality or appropriateness of a service;
- delay in decision making about services;
- delivery or non-delivery of services;
- aftercare and decisions about placement or the handling of a case;
- attitude or behaviour of staff; and
- application of eligibility and assessment criteria.

4.1.6 Authorities will also need to be clear about how to respond when children make representations that are not complaints. For example, children and young people should be able to put forward suggestions for a change to be made to a service they receive or the setting they live in, without this having to be seen as a complaint. The right response may be just a matter of adjusting the particular service. There will be no need for a representation that is not a complaint to go through the various stages of the procedure - unless of course a dispute arises which needs resolution.

4.2 Is there a time limit on making a complaint?

4.2.1 The recent legislation on complaints gives the Assembly powers to set time limits on making a complaint. But sometimes people - especially children and young people - who have had bad experiences of services do not find the courage to raise their concerns until a long time afterwards. The Assembly does not want to create barriers for people raising concerns where this has happened, so it is not proposing to set time limits about when complaints can be made. The Assembly expects that, wherever possible, eligible complaints will be accepted and dealt with through the complaints procedure.

4.2.2 Sometimes, however, it will not be realistic or feasible to deal with historical concerns through the complaints procedure. It might, for example, be difficult - and sometimes impossible - to mount a proper investigation where:

- staff concerned have left the organisation;
- staff concerned have died; or
- records of the issues complained about are not available.

4.2.3 The authority will need to judge on a case by case basis whether or not it is realistic to deal with a historical complaint through the complaints procedures. If the authority decides not to deal with the matter through the complaints procedures, it should write to the complainant to inform them of the decision. It

should explain the reasons for its decision, and it should set out the steps it will take to deal with the issues raised.

4.3 Who can complain and what can they complain about - services for children

4.3.1 Section 26(3) and section 24D of the Children Act 1989 require the responsible authority to establish a procedure for considering representations, including complaints, made to it by:

- (a) any child who is being looked after by them or is not looked after by them but is in need;
- (b) any parent of such a child;
- (c) any person who is not a parent but who has parental responsibility for such a child;
- (d) any local authority foster carer;
- (e) such other person as the authority considers has a sufficient interest in the child's welfare to warrant it considering their representations; and
- (f) care leavers.

4.3.2 The new regulations (RPC reg. 13) tell authorities how they must handle approaches from "other persons" as in (e) above. The local authority must decide as quickly as possible whether the person has a sufficient interest in the child's welfare to warrant it considering their representations. In making this decision, the authority must seek the views of the child, provided they can given the understanding of the child. If the Complaints Officer concludes that the "other person" does not have sufficient interest, they must notify them in writing and explain that the council will not be taking any further action.

4.3.3 The Children Act procedure for handling representations, including complaints, was originally limited to functions under Part III of the 1989 Act. As outlined in Chapter 2, the Adoption and Children Act 2002 gave the Assembly new powers to extend the scope of the procedure to include care and supervision, and the protection of children.

4.3.4 The 2005 regulations (RPC reg. 7) make that extension. As a result, Children Act procedure now covers the following functions from Parts IV and V of the Act:

- section 31 (Care and supervision orders);
- section 33 (Effect of care order);

- section 34 (Parental contact etc. with children in care);
- section 35 (Supervision orders);
- section 43 (Child assessment orders);
- section 44 (Orders for emergency protection of children); and
- section 47 (Local authority's duty to investigate).

4.3.5 It is important to remember, however, that the complaints procedure is not an appeals procedure. Appeals against court orders will be to the court. (Such court procedures need not exclude the processing of a complaint, but authorities should seek legal advice in such cases.) However, dissatisfaction about an authority's management or handling of a child's case, even where linked to a court order, may fall within the complaints procedure. More guidance on this appears in Chapter 5.

4.3.6 Under the Adoption and Children Act 2002, further regulations will be made setting out that the following adoption functions may be the subject of a complaint:

- assessments and related decisions for adoption support services (section 4 of the 2002 Act);
- placing children for adoption, including parental responsibility and contact issues (sections 18, 19, 22, 25, 26 and 27 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); and
- duties to be set out in regulations to be made under the 2002 Act on:
 - a local authority considering adoption for a child (part 3 of draft Adoption Agency Regulations);
 - a proposed placement of a child with prospective adopters (part 5 of draft Adoption Agency Regulations);
 - placement and reviews (part 6 of draft Adoption Agency Regulations);
 - records (part 7 of draft Adoption Agency Regulations);
 - modification of the Children Act 1989, parental responsibility and contact (part 8 of draft Adoption Agency Regulations);

- financial support for adoptive parents;
- support groups for adoptive children;
- assistance with arrangements for contact between an adoptive child and another person;
- services in relation to the therapeutic needs of an adoptive child;
- assistance to ensure the continuance of the relationship between the child and his adoptive parent; and
- assistance where disruption of an adoption placement or arrangement has occurred or is in danger of occurring.

4.3.7 Regulations are also planned which will set out those aspects of special guardianship support services that may be the subject of a complaint. So far, the functions that have been proposed as falling within the scope of the complaints procedure are:

- financial support for special guardians;
- support groups for children;
- assistance in relation to contact;
- therapeutic services for children; and
- assistance to ensure the continuation of the relationship between the child and their special guardian or prospective special guardian.

4.4 Who can complain and what can they complain about - services for adults

4.4.1 Regulation 9 of The Social Services Complaints Procedures (Wales) Regulations 2005 sets out who may make a complaint about services for an adult. A person may make a complaint if:

- the local authority has a power or a duty to provide, or to secure the provision of, a service for them; and
- their need or possible need for such a service has (by whatever means) come to the attention of the local authority.

4.4.2 A complaint cannot be made under the social services regulations if it qualifies to be made under the Children Act regulations. Apart from that, Regulation 10 means that a complaint can be made to the local authority about:

- the discharge by a local authority of any of its social services functions;

- the provision of a service by anyone else on behalf of a local authority in discharging its social services functions;
- the provision of services by a local authority - or any other person - under arrangements made by the authority under section 31 of the Health Act 1999 in relation to functions of an NHS body.

4.4.3 Who can complain on behalf of someone else? There are two starting points. First, is the service user alive? And, second, does the service user have the capacity to nominate a representative? Regulation 9(2)(b) provides that the local authority must consider any complaint where a capable service user has asked a representative to act on their behalf. Where the person using the service is alive and capable of making a nomination, but has not nominated the would-be representative, the authority has no duty to consider the complaint

4.4.4 The authority may receive a complaint where the service user is a child, lacks capacity, or has died. In this case, Regulation 9(4) requires the authority - in practice usually the Complaints Officer - to decide:

- whether the person had or has a sufficient interest in the service user's welfare; and
- whether they are a suitable person to act on the service user's behalf.

4.4.5 Where the authority decides that the would-be representative has sufficient interest and is suitable, then it must consider the complaint. If the authority decides that the would-be representative does not qualify under the terms of the Regulation, it must notify them and set out its reasons. And it must copy in the service user wherever appropriate (SSCP reg. 9 (5) & (6)).

4.5 Matters excluded from consideration - services for adults

4.5.1 The regulations on services for adults (SSCP reg. 11) exclude from consideration any matter that has already been considered under this, or a previous, social services complaints procedure. This does not rule out consideration if the Complaints Officer decides that enough new information to warrant a fresh investigation has now come to light.

4.5.2 It is possible that a matter previously investigated under the terms of the Public Interest Disclosure Act 1998, or a council's own whistle blowing procedure, might resurface as a complaint. Councils will need to make sure that there is no conflict between their policies on complaints and whistle blowing.

4.5.3 As with children's services, it is important to remember, however, that the complaints procedure is not an appeals procedure. For example, the decisions made by an Approved Social Worker under the Mental Health Act 1983 will be subject to review by the Mental Health Review Tribunal (MHRT). However, dissatisfaction about the practice of a social worker, even where linked to a matter that is subject to review by the MHRT, may fall within the local authority complaints procedure.

4.6 Anonymous Complaints

4.6.1 Anonymous complaints should always be recorded and referred to the Complaints Officer in the same way as other complaints. Anonymous complaints fall outside of the scope of the statutory procedure and it is for the authority to decide what action it should take. The fact that the complaint is from an anonymous source is not enough in itself to justify a decision not to pursue the matter. Nor should it rule out referral to the adult or child protection procedures.

Chapter 5 - Working with other procedures, other parts of the Local Authority and other Organisations

“It was different response times for different complaints. The one about the social worker was quick, within a week. Voluntary agency was about two weeks or so. Education never responded to me. And the wheelchair one went on for ages until we said we’d take them to court”

Service user, Wales, 2004

5.1 Concurrent Investigations

5.1.1 Whenever anyone makes a complaint, the Complaints Officer should consider the wider links to other procedures. Where serious allegations are made, senior staff will need to be involved at the outset. Where the allegations suggest that someone may have committed a criminal offence, the council should immediately consider its duty to notify the police.

5.1.2 Local guidance will need to be clear on the different procedures that may apply. Staff will wish to be reassured that any revised complaints procedure will not automatically lead to the bypassing of existing disciplinary procedures. And people who use services will need to know which procedure is the right one, at which stage and why.

5.1.3 The regulations (RPC reg. 8, SSCP reg.12) identify five situations in which a complaint may be “subject to concurrent consideration”:

- The complainant may have indicated they intend to start legal proceedings.
- The local authority may be taking or proposing to take disciplinary proceedings.
- The authority may be aware that someone - for example the police or the Care Standards Inspectorate for Wales - is investigating with a view to a criminal prosecution.
- The authority may be aware that the Care Council for Wales or the General Social Care Council is investigating with a view to sanctions against a registered worker.

- An inter-agency meeting may have been convened to discuss the protection of children or vulnerable adults.

5.1.4 Where any of these things has happened, the authority must consider how to handle the complaint. And the regulations require that it must do so in consultation with the complainant and any other person or body it believes it should consult. This might include for example the police, the CSIW or the Care Council.

5.1.5 The regulations give authorities a large measure of discretion about concurrent investigations - and an inflexible application would not be helpful. The regulations allow other procedures to run alongside the complaints procedure where this would be right. For example, a complaint about a deficiency in service may also bring to light issues that are appropriate for a disciplinary procedure. If there are still issues about the service to be resolved, the disciplinary action is not of itself a reason for halting the complaints process.

5.1.6 On the other hand, the same regulations give the authority the option not to start the complaints investigation - if to do so would compromise an investigation under another statutory or internal procedure. Or the authority can suspend the complaints investigation.

5.1.7 If the authority decides to look into matters raised in a complaint using another procedure, the Complaints Officer will need to keep in touch with progress. They must then take all reasonable steps to ensure that they keep the complainant up to date. The authority must, under the regulations, notify the complainant when the other investigation is discontinued or completed. Once this has happened, they may look at the matter under the complaints procedure - and they must do so if the complainant asks. The Complaints Officer should make sure that the final response is as comprehensive as possible.

5.2 Child Protection and Adult Protection

5.2.1 Protecting children and vulnerable adults from abuse has to be the paramount consideration. Child abuse or the abuse of vulnerable adults will include in this context physical abuse, sexual abuse, psychological or emotional abuse, financial or material abuse, and neglect. The current guidance on child protection (CP) is set out in "Working Together to Safeguard Children" (2000). The matching guidance on adult protection (AP) is in "In Safe Hands"(2000)

Child Protection

5.2.2 Any complaint or representation that raises concerns about child protection should be referred immediately to social services or, where a criminal act is known or suspected, the police. There should be no complaints investigation while there is any chance of compromising the CP investigation. This does not rule out aspects of the complaint being pursued at a later date where and when this is right.

5.2.3 Complaints about bullying and peer abuse - especially from children and young people living away from home - will need special care. Policies and procedures should clearly explain how staff should deal with these issues in the first instance, as a criminal offence may have been committed.

5.2.4 Local machinery for safeguarding and promoting the welfare of children is currently being overhauled in the light of the provisions in the Children Act 2004. Area Child Protection Committees are due to be replaced by Local Safeguarding Children Boards (LSCBs) on 1 October 2006. New guidance - which will replace "Working Together" - is being finalised alongside these changes.

5.2.5 "Working Together" makes clear that complaints about the child protection work of individual bodies, their services and performance should be handled in line with the body's own complaints procedure. The new guidance, "Safeguarding Children", is likely to reinforce this line.

5.2.6 But sometimes, parents, carers or on occasions children may have concerns about an aspect of the work of child protection conferences and might wish to complain. This could concern:

- the process of the conference;
- the outcome, such as a decision to register or maintain registration; and/or
- a decision not to register, or to de-register.

5.2.7 Complaints about the work of a conference should go to the conference Chair. The Chair should pass on the complaint to the local authority's social services for children and they should deal with it as set out below. They should do so in line with time-scales in the regulations on complaints.

5.2.8 In considering complaints about the functions of the child protection conference, the authority should form an inter-agency panel made up of senior representatives from ACPC/LSCB member agencies. The panel should consider whether the conference correctly followed the relevant inter-agency protocols

and procedures. And it should decide whether the disputed decision follows reasonably from the proper observation of the relevant protocols.

Adult Protection

5.2.9 Similarly, any complaint that raises concerns about the protection of a vulnerable adult should be referred immediately to the local multi-agency adult protection procedure. It is for the adult protection staff to determine whether the adult protection process should be triggered. There should be no complaints investigation while there is any chance of compromising the AP investigation. Again, this does not rule out aspects of the complaint being pursued at a later date, where and when this is right.

5.2.10 Where there is a complaint about the handling of an adult protection investigation, this should be raised in the first instance with the relevant adult protection manager. If the complaint cannot be resolved at this level, a formal complaint should be made and should be dealt with in line with the regulations and this guidance.

5.3 Complaints involving more than one local authority

5.3.1 Sometimes a complaint crosses over boundaries between different local authorities. Where this happens, people who use services should not have to worry about where to go with complaints about different aspects of their problem. The aim should be that anyone who wants to make a complaint can make it to the Complaints Officer of either authority.

5.3.2 The regulations for children's services and adults services are different here - reflecting the Assembly's different powers in the primary legislation. Regulation 13 of the Social Services Complaints Procedure Regulations puts a duty on local authorities to ensure that there is co-operation in handling complaints with other local authorities. It also gives authorities the duty of agreeing who will take the lead.

5.3.3 The precise role of the authority will depend upon which acts as the 'lead body'. The lead body will keep the complainant informed about progress on the complaint, contribute to the single response and co-ordinate its production. The council not the lead will simply contribute to the investigation and response. However, nothing in the regulations or guidance removes the duty of care that each body has for the person using the service.

5.3.4 The aim is that the person who complained should get a single response. However, this will not always be possible where, for example, some aspects of the complaints are straightforward but others may take much longer to resolve. The essential thing is to make sure that the complainant knows who is doing what - and when they can expect to get a response to the various elements of their complaint.

5.3.5 Occasionally, the one of the two authorities involved might be in Wales and the other in England, where for instance one council is purchasing a place in a specialist resource or in a home near to the service user's relatives. The Welsh Assembly Government and the Department of Health will expect the same arrangements to apply - the two authorities will need to agree which will take the lead and which will contribute to the single response.

5.3.6 The 1989 Act gives the Assembly different powers to regulate on complaints about children's services which involve two authorities. RPC reg. 9 itself identifies which will take the lead wherever a complaint would fall to be considered by more than one authority. The lead authority is the one looking after the child - or where no authority has had that responsibility, the one where the child is ordinarily resident. The new Regulations on complaints in children's services made by the Department for Education and Skills contain matching provision - so the same arrangements will apply when one authority is in Wales and one in England.

5.4 Complaints involving a local authority and an NHS body

5.4.1 Sometimes a complaint crosses over boundaries between a local authority and a part of the NHS. Again, where this happens, people who use services should not have to worry about where to go with complaints about different aspects of their problem.

5.4.2 Since the debates on the 2003 Act, the Welsh Assembly Government has intended to use its new powers to set out in regulation a new framework for co-operation between local authorities and NHS bodies. This is still the plan - but with the delay on the NHS regulations following the Shipman Inquiry - it has not been possible to set out reciprocal duties on local authorities and NHS bodies at this stage. Instead, the proposed arrangements are being set out in this guidance as - at this stage - a model of good practice.

5.4.3 On links with the NHS, the Assembly has different powers in the primary legislation. For services for adults, it intends to regulate for co-operation in handling complaints between authorities and the NHS, when new regulations on

NHS complaints are made. This will follow the same lines as the arrangements set out between local authorities in section 5.3.

5.4.4 In most cases, the amended regulations will give local authorities and NHS bodies the job of agreeing who will take the lead. This will include cases where services are provided in a “package” but delivered separately, some by the NHS and some by a local authority. The role of each body will depend on which acts as the ‘lead body’, as in section 5.3. The lead body must make sure that they keep the complainant informed and, wherever possible, pull together a single joint reply. The body not the lead will simply contribute to the investigation and response. However, nothing in the regulations or guidance removes the duty of care that each body has for the person using the service.

5.4.5 Where services are delivered by one body acting on behalf of another, the 2003 Act allows that body to look at the whole complaint, under its own complaints procedure. This would happen where, for example, a local authority was delivering NHS functions delegated to it under section 31 of the Health Act 1999. In this case, the local authority could use the social services complaints procedure to deal with all aspects of the complaint.

5.4.6 The Assembly’s powers under the 1989 Act do not enable it to make the same provision for complaints about children’s services. The Welsh Assembly Government will expect local authorities as a matter of good practice to handle any complaints that are about children’s services and involve an NHS body along the lines set out in this section.

5.5 Complaints made to one social services authority or NHS body about another

5.5.1 The arrangements set out in 5.3 and 5.4 above for identifying a lead authority will apply only where the matters raised concern both bodies. Sometimes, one body will receive a complaint about the actions of another. This might happen in several ways. The complainant might not fully understand which organisation is responsible for which service. But, in some cases, it might be an important issue of trust - someone might, for example, speak to a social worker they trust about their concerns over their treatment in a part of the NHS.

5.5.2 In theory, there are several options where a complainant approaches one social services authority or NHS bodies with a complaint about another. At one extreme, the Complaints Officer who has been approached could simply redirect the complainant towards the Complaints Officer in the other body. This would

not be an adequate response - it would fail to provide any kind of seamless service for people who use the NHS and social services. At the other extreme, the Complaints Officer in the first authority could assume responsibility for handling the complaint and secure a response from the second authority to pass back to the complainant. This would be a seamless service - but it would be an unrealistic and cumbersome expectation.

5.5.3 The Welsh Assembly Government would like to see authorities adopt a middle course. The Complaints Officer of the body receiving the complaint should record the outline of the complaint and - with the consent of the complainant - refer it formally to the other. It will then be for the Complaints Officer of the body complained against to make sure it deals with the complaint properly.

5.6 Building links with complaints procedures in education

5.6.1 The Welsh Assembly Government is eager to see this seamless service on complaints operate beyond social services and the NHS. Crucially, we need clear links with complaints procedures in education, so that there is a satisfactory response where, for example, a child raises with their social worker concerns about the responsibilities of the education department. The Welsh Assembly Government is looking to see the kind of links established in sections 5.3, 5.4 and 5.5 extended to complaints involving Local Education Authorities (LEAs). It will be seeking to do this through this guidance and matching guidance in the NHS and education. However, these links will not apply to complaints about individual schools on issues for which the school governing body is responsible.

5.6.2 With a complaint that involves both parts of the authority, social services and education departments should follow the broad approach of section 5.3. The member of staff responsible for handling the complaint in the receiving department should contact the member of staff responsible for handling the complaint in the other. It is for these two members of staff to sort out who will take the lead, to make sure that the complainant is kept informed and, wherever possible, gets a single reply that covers all aspects.

5.6.3 Similarly, where someone makes a complaint in a social services department about an education department - or vice versa - then the principles of section 5.5 will apply. It is not good enough simply to redirect the complainant to approach the other department of the council. Instead, the member of staff responsible for complaints in the department that received it should make a record of the outline

of the complaint. Then - where they have the consent of the complainant - they should refer it formally to the other department. It will be the job of staff there to make sure the department complained against deals with the complaint properly.

5.7 Building links with corporate complaints procedures in local government

5.7.1 The Welsh Assembly Government would like to see this seamless complaints service extended into a second area. This involves the corporate complaints procedures operated by local councils. Again, the Assembly has no statutory basis it can use to do this, but it would like to encourage councils through this guidance to adopt the broad approaches of the preceding sections.

5.7.2 Where someone makes a complaint that involves both social services and for instance housing, the authority should follow the broad approach of section 5.3. The member of staff responsible for handling the complaint in the receiving department should make contact with the member of staff responsible for handling the complaint in the other. These two should sort out who will take the lead. The lead officer should ensure that they keep the complainant informed and, wherever possible, secure a single reply covering all aspects of the complaint.

5.7.3 Similarly, where a complaint is received in a social services department about for example a housing service - or vice versa - then the two departments should apply the approach of section 5.5. Again, it is not good enough simply to redirect the complainant to the other part of the authority. Instead, the member of staff responsible for handling the complaint in the receiving department should make a record of the outline of the complaint. And - with the consent of the complainant - they should refer it formally to the other part of the authority.

5.8 Building a seamless service

5.8.1 Full implementation of the guidance in the four preceding sections could do much to provide the substance of a seamless service for complainants. This could run across social services, the NHS locally, education and the other departments of the local authority, together with the local office of the Care Standards Inspectorate for Wales.

5.8.2 Several further suggestions have been made for building on these arrangements to broaden and deepen the pattern of local cooperation. Authorities and their partners might wish to consider three specific ideas:

- Local authorities and their partners could work together to produce joint complaints materials for service users - leaflets and posters for example. These could contain all of the contact details for all of the local services.
- Local authorities and their partners could work together to produce joint reference materials for staff - a modest handbook for instance. This could provide an outline of each of the local procedures, guidance on how to operate the links between them and perhaps information on local advocacy resources.
- Local authorities could convene meetings - say twice a year initially - which would bring together complaints staff from all of the partners in its area. Such a forum would give partners a chance to make sure that they are doing all they can to coordinate a seamless service locally. And it would give them a chance to look at issues of common concern.

5.9 Complaints about services regulated by the CSIW

5.9.1 Regulations made under the Care Standards Act 2000 and the Children Act 1989 (as amended by the 2000 Act) require all registered services to have their own complaints procedures. These requirements apply, for example, to services such as care homes for adults, children's homes, day care for children under eight and domiciliary care agencies. This guidance does not apply to those procedures. But it does seek to clarify the links between the provider, the regulator, and the local authority as the purchaser.

5.9.2 The Care Standards Inspectorate for Wales (CSIW) expects that all registered providers will provide a local resolution stage and will make a real effort to resolve any complaint as near as possible to the point of service delivery. This is the minimum requirement for discharging their duty under the regulations. The CSIW and the local authorities will underline this duty by first passing any complaint they receive back to the provider for local resolution - unless they judge that this would not be appropriate.

5.9.3 Some of the largest providers may want to offer a complaints service that goes beyond local resolution. Where this happens, the CSIW will expect the provider to keep it in touch with the progress of the complaint. And the provider must make it clear to complainants that they have the right at any time to take up their complaint with the CSIW - or the authority that commissioned the service - if they are unhappy with the provider's handling of their concerns.

5.9.4 There are small differences between the regulations for different kinds of service. But, generally, they require the service to provide a response to the complainant within 28 calendar days, “or such shorter period as may be reasonable in the circumstances”. The CSIW Complaints Procedure suggests that, in normal circumstances, most complaints at this local resolution stage should be resolved within 14 days (normally 10 working days). If this is not possible, then the service should send a progress report to the complainant - and explain the need for a longer time-scale.

5.9.5 Where it has been possible to resolve the complaint at this, the initial resolution stage, the manager should write to the complainant with the outcome. This letter should include the decisions, together with an apology if appropriate, the reasons for the decisions and any recommendations. It should outline the complainant’s right to request a formal investigation into the complaint and advice on how to do so. This must, under the care standards regulations, include details of how to contact the CSIW.

5.9.6 The CSIW has advised registered providers that, where any complaint has not been resolved within 28 calendar days (normally 20 working days), it will expect the registered provider to inform the local CSIW office. The Inspectorate will also expect a progress report at this point - and a copy of the outcome when it is available.

5.9.7 There are, then, several ways in which a complaint about a regulated provider might end up with the CSIW.

- The complainant might decide to by-pass the local resolution stage completely and refer the matter immediately to the CSIW.
- The complainant might be dissatisfied with the handling of the complaint at any point during the local resolution stage and decide to refer the matter to the CSIW.
- The complainant might be dissatisfied with the outcome at the end of the local resolution stage and decide to refer the matter then to the CSIW.
- The CSIW might take up the complaint when it learns from the provider - or the complainant - that after 28 calendar days there has been no resolution.
- In some cases, another statutory body - perhaps the purchaser - will refer to the CSIW a complaint that appears to raise regulatory issues.

5.9.8 At the same time, as the law stands, anyone who uses a service arranged or provided by a local authority can also access the local authority social services complaints procedure. This might be for example, a placement in a children's home or a care home. And a service user can go to the NHS complaints procedure if a local health board (LHB) provides financial support - as will be the case where the LHB funds nursing in a care home. Or they can access both of these procedures.

5.9.9 As a result, a complaint about a single issue in, say, a care home could at any one point be considered by the provider, the LA, the LHB and the CSIW - or any combination of them. In the past, service users have been confused about where best to go with their concerns - and the bodies involved have found themselves duplicating their efforts looking into identical or similar concerns.

5.9.10 There is a real tension here. On the one hand, arrangements are needed that provide ease of access for service users and those making complaints on their behalf. This points to some streamlining of the arrangements to avoid confusion and duplication of effort. On the other hand, any simplification should not prevent the statutory authorities from carrying out their enduring duties. The CSIW must be able to do its job as regulator - and the LA and LHB must be able to carry out the duties that flow from having arranged the service. In the most serious cases, the local authority or LHB might need to purchase a different service or make a different placement. The arrangements need to make sure that each authority has a chance to be involved and to consider such a possibility.

5.9.11 In trying to resolve these tensions, the Welsh Assembly Government has drawn on the wider thinking of CRAIG about inter-agency working (see sections 5.3 to 5.7 above). On this basis, it has developed the following model of good practice for co-ordinating the handling of a complaint that involves the CSIW as the regulator and the local authority and/or the local health board as purchaser. The Welsh Assembly Government intends during 2006 - subject to consultation and approval by the Assembly - to amend the complaints provisions in the care standards regulations to reinforce this model of working::

- Where a local authority first receives a complaint about a regulated service, it should consider first whether there are any issues of child or adult protection raised or suspected. Where this is the case, it should refer the matter to the local CP or AP machinery. The CSIW will do likewise.
- Where a local authority first receives the complaint and decides that it does not need to be handled through the CP or AP machinery, it will have

a duty (RPC reg.10, SSCP reg. 14) to decide whether referring the matter to the provider would be likely to compromise or prejudice the investigation of the complaint or any investigation by the CSIW. The CSIW will do likewise.

- Where the authority decides that it would be proper for the provider to attempt local resolution, it will have a duty (RPC reg. 10, SSCP reg. 14) to refer the complaint to the registered provider. It must ask the provider to notify the authority within 10 working days of the outcome of their consideration of the complaint. It must also notify the complainant that this has been done. The same duty will exist whether the regulated service is in the public or independent sector. The CSIW will do the same.
- Where the local authority finds out that resolution has been attempted and failed, it will have a duty (RPC reg. 10, SSCP reg. 14) to notify the local office of the CSIW, with a view to discussing the handling of the complaint. In the matching situation, the CSIW will notify the local authority.
- The statutory authorities should then discuss and decide together how they will co-ordinate the handling of the complaint. This will include agreeing on:
 - the arrangements for interviewing the complainant;
 - the arrangements for keeping the complainant informed about the roles of the different authorities in the investigation and about its progress;
 - which authority will co-ordinate and chase progress on the investigation and the production of a single report on the investigation, wherever practicable;
 - which other authorities need to contribute to the investigation and the report.
- (Sometimes, this will mean that the local authority will formally consider a complaint about a service it runs itself. This may not seem even-handed, but it is inescapable - it flows from the primary legislation which gives service users the same right to complain to the LA procedure whether the LA provides or purchases the service. In situations like this, the CSIW will expect the LA to keep it informed in exactly the way it would expect of any other provider offering a two-stage complaints process - see paragraph 5.9.3 above. The investigation is unlikely to result in a joint report.)

- The authorities will in the course of the investigation share between themselves information relevant to the investigation. This sharing of information will be subject to:
 - their wider legislative duties and powers; and
 - their having obtained the consent of the service user or complainant as necessary - this will be the responsibility of the authority maintaining contact with the complainant.
- The aim will be to produce a report that deals, wherever practicable, with all aspects of the complaint. This will normally bring together under one cover the separate sections written by the different authorities on those aspects of the complaint they have investigated.
- The authorities will issue separate letters setting out their responses to the complaint - and will set out in the letter how the complainant can seek redress if they remained dissatisfied. These responses will be subject to different forms of review. In the case of a local authority or NHS body, the next stage would be the independent review stage. In the case of the CSIW, the next stage would be the wider procedure for complaints against staff of the National Assembly.

5.10 The Care Council for Wales

5.10.1 The Care Council for Wales is the regulatory body for those working in the social care sector in Wales. It was established under the Care Standards Act 2000. The Act requires the Council to maintain a register of social workers and social care workers, including those students undertaking the degree in social work. The Council must define the circumstances and means by which it can remove an individual from the register. The Council has also published Codes of Practice for Social Care Workers and Codes of Practice for Social Care Employers. Those individuals registered with the Care Council agree to abide by the standards set in the codes of practice.

5.10.2 The register of social care workers was opened on 1 June 2003, with qualified social workers being the first group to be registered. The Care Council for Wales Registration Rules 2005 and the Care Council for Wales (Conduct) Rules 2005 govern the processes of the Care Council in regulating the workforce. They are available on the Care Council web-site www.ccwales.org.uk or from the Care Council. Protection of Title for social workers was introduced in April 2005 which in effect makes registration compulsory for social workers. The Act also makes

provision for job reservation for social care workers to be introduced when the Welsh Assembly Government decides this is right.

5.10.3 The Care Council has set up processes for mounting investigations into alleged misconduct by social care workers. Where the Council believes that misconduct has occurred which could be proven, it will hold conduct hearings. If misconduct is proven, the panel hearing a case has three sanctions that can be imposed:

- admonishment;
- suspension from the register;
- removal from the register.

5.10.4 The Care Council should be notified of any matter which may call into question the suitability of an individual to remain on the register of social care workers. The Council will normally investigate a matter drawn to its attention following any action by the employer or another body. But, in situations where there is concern regarding public protection, the Council may place an interim suspension order on an individual's registration as soon as the matter is brought to its attention.

5.10.5 The following chapters of this guidance give guidance on situations where it may be appropriate in the handling of a complaint to refer a matter to the Care Council.

5.11 The Public Services Ombudsman for Wales

5.11.1 The Public Services Ombudsman for Wales is, at present, the non-statutory title for the holder of the separate offices of the Local Government Ombudsman, Health Service Commissioner for Wales and Welsh Administration Ombudsman. When the Public Services Ombudsman (Wales) Act 2005 comes into force on 1 April 2006, these separate offices will be abolished and the statutory office of Public Services Ombudsman for Wales created.

5.11.2 Under existing legislation, the Ombudsman can - in the field of local government services - investigate:

- complaints from members of the public that they have suffered an injustice as a consequence of maladministration by local authorities in Wales, under provisions in the Local Government Act 1974; and

- allegations that local authority members have breached their authority's code of conduct for members, under the terms of the Local Government Act 2000.

5.11.3 When the Public Services Ombudsman (Wales) Act 2005 comes into force on 1 April 2006 the Ombudsman will be able to:

- consider complaints from members of the public that they have suffered injustice or hardship as a consequence of maladministration or service failure by most public service providers in Wales;
- consider allegations that local authority members have breached their authority's code of conduct; and
- question the merits of a decision taken in consequence of the exercise of professional judgement in the field of health and social care.

5.11.4 The law does not define the term maladministration. But the Act makes it clear that - in the absence of maladministration - the Ombudsman is not to question the merits of a decision taken by an authority in exercising its discretion. So he cannot investigate a decision simply because a complainant disagrees with it - he is concerned with the way in which a decision has been reached. Examples of maladministration include delay, bias, basing a decision on improper or irrelevant considerations and giving incorrect or misleading information.

5.11.5 However, from 1 April 2006 the Ombudsman will be able to question the merits of a decision taken in consequence of the exercise of "professional judgement in the field of health and social care". This will be an exception to the general rule that the Ombudsman cannot investigate a decision simply because someone disagrees with it.

5.11.6 Certain matters are - and will remain - outside the Ombudsman's jurisdiction, whether or not they involve maladministration that has given rise to injustice to the complainant. One example is any issue to do with conduct, the curriculum, the internal organisation of, the management of, or discipline within any school maintained by a local authority. Similarly, the Ombudsman cannot usually investigate complaints where the complainant has a remedy through legal proceedings in a court of law.

5.11.7 The Ombudsman will expect anyone who makes a complaint to have referred it to the authority concerned and given the authority a reasonable opportunity to investigate and respond to it before sending it to him. This does not mean that the Ombudsman will expect a complainant to have exhausted

the authority's internal complaints procedure before coming to him. Sometimes, an authority might want to suggest to a complainant that they should go to the Ombudsman - rather than continue with the authority's complaints procedure - if it seems likely that the complaint will be referred to the Ombudsman in any event.

5.12 The Children's Commissioner for Wales

5.12.1 The Children's Commissioner has extensive powers to investigate complaints raised with him by any young person.

5.12.2 The Commissioner's statutory office, appointment and initial functions were set up under Part V of the Care Standards Act 2000. These powers cover all of the services regulated under the Act, such as:

- children's homes;
- residential family centres;
- local authority fostering and adoption services;
- fostering agencies;
- voluntary adoption agencies;
- domiciliary care;
- private and voluntary healthcare;
- day care and childminding for all children under the age of eight; and
- the welfare of children living away from home in boarding schools.

5.12.3 The functions include:

- the review and monitoring of arrangements for dealing with complaints, whistle-blowing and advocacy;
- the examination of the cases of particular children;
- the provision of assistance, including financial assistance, and representation, in respect of proceedings or disputes or in relation to the operation of procedures and arrangements monitored by the Commissioner;
- the provision of advice and information;
- making reports, including an annual report on the exercise of his functions to the National Assembly; and
- the power to require the provision of information and the disclosure of documents.

5.12.4 The Children's Commissioner for Wales Act 2001 came into force in August 2001. This amended the Care Standards Act 2000 by introducing new functions and extending his existing functions:

- The 2001 Act provides that the principal aim of the Commissioner in exercising his functions is to safeguard and promote the rights and welfare of children.
- The 2001 Act gives the Commissioner a power to consider, and make representations to the National Assembly for Wales about, any matter affecting the rights or welfare of children in Wales. (This means the Commissioner will have a statutory role in matters that do not lie within the areas devolved to the Assembly.)
- The Act gives the Commissioner a new power to review the effect on children in Wales of any existing or proposed legislation or any function of the Assembly. And the same power extends to any public person exercising statutory functions or providing statutory services in Wales in an area devolved to the Assembly. It is this power to review the effect of policies and delivery of services across the board that is expected to support the bulk of the Commissioner's activity.
- The Act extends the Commissioner's functions under the Care Standards Act to a wide range of public bodies operating in Wales, including the Assembly, who have statutory functions or provide statutory services in areas devolved to the Assembly.

5.13 The Commissioner for Older People

5.13.1 Legislation is currently going through Parliament, which would establish a new, independent Commissioner for Older People in Wales. It is envisaged that the Commissioner will have an important role to play in assisting older people to take forward any complaints they might have about the public services they receive.

5.13.2 It is proposed that the Commissioner will be able to act on behalf of older people aged 60 or more, who are ordinarily resident in Wales. Broadly, he or she would have a range of functions which will enable him/her to:

- (a) promote awareness of the interests of older people in Wales;
- (b) promote the provision of opportunities for, and the elimination of discrimination against, older people in Wales;
- (c) encourage good practice in the treatment of older people in Wales;

- (d) keep under review the adequacy and effectiveness of law affecting the interests of older people in Wales;
- (e) consider, and make representations to the Assembly about, any matter relating to the interests of older people in Wales;
- (f) make reports on the exercise of his functions to the Assembly;
- (g) make reports generally following the discharge of any of his functions;
- (h) review the effect on older people in Wales of the discharge of, or failure to discharge, functions by the Assembly or by persons listed in Schedule 2;
- (i) review and monitor arrangements made by certain bodies for dealing with advocacy, complaints and whistle-blowing to ascertain whether, and to what extent, the arrangements are effective in safeguarding and promoting the interests of older people in Wales; and
- (j) enter any premises, other than a private dwelling, to interview an older person in private, with their consent and in connection with his powers of review.

5.13.3 It is intended that the Commissioner's function of review and monitoring of whistle-blowing and complaint arrangements will apply to:

- the providers of regulated services (in essence, certain care services) in Wales;
- organisations that provide statutory services directly to, or in respect of, older people in Wales; and
- bodies which provide such services on behalf of these organisations.

5.13.4 The Assembly will also be subject to the Commissioner's function of review and monitoring of arrangements.

5.13.5 The Bill gives the Assembly a power to make regulations, which may confer a power on the Commissioner to give assistance, including financial assistance, to an older person in Wales in making complaints in certain circumstances. Regulations may also make provision for the Commissioner to examine, in certain circumstances, individual cases of older people in Wales.

5.13.6 The Bill sets out arrangements for the Commissioner to work together with other appropriate bodies as necessary - especially the Public Services Ombudsman for Wales and the Children's Commissioner for Wales. It also requires the Commissioner to establish an internal complaints procedure for his or her own office.

Chapter 6 - Stage One: Local Resolution

“It could be easier if staff that look after young people can sort it out with them. It’s better to sort it out inside than making a problem far away”

Service user, Wales, 2004

6.1 Receiving a Complaint

6.1.1 People who use services need complaints procedures that are as accessible as possible. Therefore, the regulations (RPC reg.11, SSCP reg. 15) allow people to make a complaint or representation in a number of ways. They can raise their complaint orally, in writing or by other means such as email, audio-tape or videotape if that is what they prefer. No one should ever be told - as has been reported in the past - that they must put their concerns into writing for it to be registered as a complaint.

6.1.2 People can make their complaint to any member of the authority’s social services staff. They do not have to make their complaint direct to the Complaints Officer, although of course they can. If another member of staff receives a complaint, they should inform the Complaints Officer immediately, so that he or she can monitor progress.

6.1.3 The service user may simply want to make a suggestion - this would not be a complaint. Or the matter may be resolved then and there - in which case there would be no need to engage the rest of the complaints procedure.

6.1.4 Where anyone asks for it, the local authority must give them information about its complaints procedure. This information - including the name and contact details of the Complaints Officer - must be available free of charge.

6.2 Recording complaints

6.2.1 All complaints should be recorded. This is vital if the authority is going to monitor and scrutinise what complaints have been made and how it has dealt with them. Recording the date on which the matter was first raised is vital to ensure that there is no drift in the process and that the authority complies with the prescribed time-scales for each stage.

6.2.2 Wherever there is a formal investigation, the Complaints Officer should arrange for a file to be set up that will eventually contain letters, notes of all communication, interview notes and reports. Those involved in the investigation will see notes of their own interview in order to confirm the accuracy of the content - and they will normally have a copy of the final report.

6.2.3 Local authorities will need to be clear about security and retention of information on complaints. The handling of all data in either paper or electronic format is subject to the Data Protection Act 1998. Authorities will need to seek legal advice on this matter.

6.3 Deferring or freezing decisions

6.3.1 If the complaint 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 is resolved. Councils should always consider deferring a decision that will have a significant effect on the life of a service user until the complaint has been resolved, taking into account the welfare and safety of the person concerned.

6.3.2 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 Manager 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.

6.4 Advocacy and Support

6.4.1 The authority will need to think about what type of help and support it can offer to complainants, both to make use of the system and to pursue their complaint through the procedure. 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.

6.4.2 The law on advocacy is different for children and adults. Where the complainant is a looked after child, a child in need or a care leaver, the local authority has a duty under the Children Act 1989 to arrange for the provision of an advocate. They have duty under the new regulations (RPC reg. 12) to provide

information about advocacy services and offer help in finding an advocate. The Welsh Assembly Government issued further guidance on implementing the new regulations on this in “Providing Effective Advocacy Services for Children Making a Representation or a Complaint under the Children Act 1989” in May 2004.

6.4.3 For complaints about services for adults, the Assembly has no powers to require as much help with advocacy. Here, the regulations (SSCP reg. 16) place a duty on the authority to make available to any complainant information on how to contact such advocacy services as may be available. Of course, this does not stop an authority from helping an adult complainant to find an advocate. Or the authority could arrange this support itself.

6.4.4 Staff, too, may need increased support and supervision from line managers to help them play their part in the procedure and to work positively with the person making the complaint.

6.5 Local Resolution

6.5.1 A stage for local resolution (historically called “informal” resolution) in the procedure for adults existed in the “Complaints Procedure Directions 1990”, but without any time-scale attached to it. There has been a similar stage for complaints made by care leavers under the Children Act 1989 since 2001. Now, councils have to offer a local resolution stage for all complaints under the Children Act procedure. The duty to provide information and help with advocacy is triggered at this point, but there is no need to involve an Independent Person.

6.5.2 The idea of problems being resolving by the staff immediately concerned - without a formal and time-consuming investigation - is a popular one. Experience of operating complaints procedures suggests that early resolution at this first stage is most likely to produce a good outcome for the person making the complaint as well as for the staff. It is important, therefore, that authorities and staff invest time and effort in trying resolve complaints at this stage.

6.5.3 But there are concerns that - without some constraints - this stage can drag on and prevent people taking their complaints to the more formal stages when they need to do this to make progress. So the 2005 regulations (RPC reg. 15, SSCP reg. 18) allow for a first stage where the authority must try to resolve the complaint as quickly as they can - and if at all practicable within ten working days. This is when staff and service users can discuss the issue, exchange information and thinking behind decisions, negotiate where possible and try to agree on a way forward. The local authority can, if the complainant agrees, arrange for

conciliation, mediation or other services to help resolve matters (see section 6.6 below).

6.5.4 If the matter is resolved at the local resolution stage, the authority must send a letter to the complainant confirming the agreed resolution. The staff involved should inform the Complaints Officer of the outcome as soon as possible. If, however, after ten days the matter has not been resolved to the complainant's satisfaction, the council should remind them that they have a right to move things on to a formal investigation if that is what they want. It may be that the complainant is happy to put this off for the time being - if for example a key person has been off sick or on holiday. So the authority can extend this period by up to a further 10 working days - but only if the complainant agrees. This should always be confirmed in writing to the complainant, setting out clearly the agreed time-scale for the extension.

6.5.5 But - from the outset - the complainant can decide at any time to dispense with local resolution and move things on to the next stage. If the authority believes that there should be a formal investigation straightaway, it can suggest this to the complainant - but it remains the complainant's decision. In either case, the Complaints Officer must be told immediately and must trigger the formal consideration stage.

6.6 Approaches to resolution

6.6.1 Resolution is when the complainant and the council agree on a way forward. Even where the complaint is not upheld, is based on a misunderstanding or cannot be proved one way or the other, a clear conclusion should be reached.

6.6.2 Efforts to resolve matters will include discussion and reconsideration, as well as explanations of decisions made and actions taken. The aim should be to resolve dissatisfaction as near as possible to the point at which it arose. However, attempts at problem solving should not be used to divert someone from taking their complaint to the formal consideration stage of the procedure.

6.6.3 Social services staff will need advice and training on handling complaints. The Complaints Officer can 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 consideration. Involving the Complaints Officer from the outset will help to ensure that nobody prolongs the local resolution stage beyond any positive period of action, and so delays or prevents formal consideration.

6.6.4 Attempts at resolution should not end because a complaint has moved to formal consideration. At every stage, there are a number of methods of resolution. These may include:

- **Agreeing not to take the matter further:** The complainant may decide at any point not to pursue their complaint.
- **Conciliation and mediation:** A skilled mediator may be able to help the parties involved to reach resolution. This approach is more likely to achieve success if used early in the process and is underpinned with professional commitment and resources. Such a person should not be involved with the problem - nor have any management responsibility for the service.
- **Explanation:** Sometimes people complain because they do not feel they have enough information about the reason for a decision. In these circumstances, an explanation along with an apology for the absence of information may be all that is needed - especially if it comes from the staff involved in the process.
- **Apology:** Sometimes the complainant may only be seeking an apology. And in other cases - where the substance of a complaint is upheld - it may be right for the authority to apologise. The authority needs to think about who should offer the apology and how they should do it. If a written apology is to be made, wording should be checked with the authority's legal advisers.
- **Action:** Sometimes an authority will need to take action to change a decision it has made about delivering a service - or to provide an alternative. This may involve changing something for an individual service user or perhaps changing the authority's practice to show that it is taking action to prevent the same thing happening to someone else. If action is agreed but cannot be carried out for some time, the council should reach an agreement with the complainant about whether they wish to be kept informed.
- **Remedy:** In circumstances where an apology is insufficient and events cannot be changed, the authority may need to offer an alternative remedy. This may be additional help for the service user in dealing with the consequences of the complaint. In some cases, this may involve financial compensation. Section 92 of the Local Government Act 2000 gives local authorities powers to pay compensation where someone has been adversely affected by action that may amount to maladministration.

In certain circumstances, authorities may wish to consider making “ex gratia” payments, in recognition of the distress felt by the complainant, or the time, trouble and expense involved in pursuing their complaint.

6.7 Withdrawing a Complaint

6.7.1 Under the regulations (RPC reg. 14, SSCP reg. 17), the complainant can decide at any time not to pursue their complaint further. Where this happens, the local authority should satisfy itself that the complaint has not been withdrawn through fear of adverse consequences. And it should decide if the matter has been satisfactorily concluded. If the authority considers there are still issues to be investigated or addressed, they should follow these up. However, this cannot be done using the complaints procedure. In these cases, the authority should think about whether to consider the issue of concern under its internal systems for management review.

Chapter 7 - Stage Two: Formal Consideration

“I thought it was going to be quick and simple. It took ages. No one came. Things got lost in the post.”

Service user, Wales, 2004

7.1 Formal Consideration

7.1.1 The formal consideration, usually an investigation, can begin either if the initial discussion has not achieved resolution and the complainant requests formal consideration, or if the complainant wishes to go straight to this stage from the start. The decision rests with the person making the complaint.

7.1.2 Once the complainant has decided that they want the authority to give their complaint formal consideration, the authority - usually the Complaints Officer - must under the regulations (RPC reg. 16, SSCP reg. 19) ensure that there is a written record. This should cover the subject of the complaint and the outcome that the complainant would like to see. The complainant and the authority must agree on this - and the person making the complaint or his or her advocate should sign the final version to confirm agreement. This can be done by letter or email - or in a meeting, followed by a written record of what was agreed.

7.1.3 The Complaints Officer may also ask any person or body to produce information or documents to help with considering the complaint. However, they will need to bear in mind the issues of disclosure and confidentiality as outlined in both sets of regulations.

7.1.4 The formal consideration will usually take the form of an investigation - but this is not the only option. Where mediation or conciliation was not tried at the local resolution stage - and where the complainant is agreeable - these approaches can be used at the second stage (RPC reg. 16(4), SSCP reg. 19(4)).

7.2 The Role of the investigating officer

7.2.1 Where the formal consideration takes the form of an investigation, the authority will need to find an investigating officer. He or she may be employed by the council - or contracted by it to carry out the investigation and prepare the

report. In some authorities, the Complaints Officer will undertake the role of investigating officer for at least some complaints.

7.2.2 Whatever the local arrangements, the investigating officer must not be in direct line management of the service or person about whom the complaint has been made. Having an independent investigating officer does not remove the requirement to appoint an Independent Person for complaints under the Children Act 1989. These are two distinct roles and they are not interchangeable.

7.2.3 Investigating officers have a number of tasks:

- They need to clarify the nature of the complaint.
- They need to interview those concerned and find out the facts.
- They need to find out how the complaint can be resolved.
- They should prepare a report for the council to consider.
- They should complete their work within the time-scale laid down.
- They need to do their job in a way that helps both complainant and staff members to move forward and not to get stuck.
- They need to take account of - and work with - the feelings around the complaint, as well as the facts.
- They should make sure the people involved feel listened to and understood.
- They need to make constructive, proportionate and achievable recommendations.
- And they need to be objective and as open as possible about their methods - and about the reasons behind their conclusions.

7.3 The role of the Independent Person under the Children Act 1989

7.3.1 Wherever a representation falls to be considered under the Children Act 1989, the council must involve at least one person who is not one of its members or officers (RPC reg. 17). This is the Independent Person. The law requires that he or she must take part in the formal consideration and any discussion about the action the authority should take.

7.3.2 The Independent Person provides separate oversight of how the authority handles the complaint and responds to it. The council has to appoint an

Independent Person only when a complaint moves on to formal consideration. Independent Persons need not be involved in the local resolution stage.

7.3.3 The person appointed must be independent of the service that is subject to the complaint. The person must not be related in any way to the person handling the child's case. Nor, where the authority has delegated any of its social services functions to another organisation, must they be a person who is a member of or employed by that organisation, nor the spouse of any such person. People who live with those excluded from being Independent Persons should also be excluded.

7.3.4 The Independent Person has three main tasks:

- They should take part in the formal consideration to make sure it is fair, unbiased, effective and covers all the aspects.
- They should make sure that everyone involved is able to express their views fully and without any pressure.
- They should oversee the report and confirm that it provides an accurate and complete picture of the handling of the complaint.

7.3.5 To do this job, the Independent Person must play a full part in the process. They should discuss with the Complaints Officer and the investigating officer early on how the tasks will be carried out. It is important to remember the Independent Person is not an advocate for the complainant. Their 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 investigating officer.

7.3.6 Councils will need to make clear to prospective Independent Persons the nature of the task and the degree of commitment required. To do this, they should provide training about the role. Each authority will need to lay down essential criteria for being an Independent Person. It will need to maintain a pool of suitable people. Or it can have a joint pool of people who meet the criteria, either with another local authority or with a local NHS body. Either way, a council needs to be able to identify quickly Independent Persons with the particular skills or knowledge required for a particular case.

7.3.7 The council should give Independent Persons a letter of appointment explaining the duties they have to carry out. This should draw attention to important issues such as confidentiality, and should make clear the working arrangements involved in considering complaints. The letter should also describe the expenses and other payments that may be paid.

7.4 Managing the Investigation

7.4.1 Wherever there is going to be an investigation, the investigating officer will need to plan with the Complaints Officer (and the Independent Person where there is one) how they will carry this out. They need to make sure that all those concerned in the process understand it. The authority - in practice usually the Complaints Officer - must explain to the complainant how the investigation will be done. They must send a copy of the complaint to the person who is the subject of the complaint, unless this has already been done - or unless notification at this time would prejudice the investigation. (See the section on data protection in Chapter 2 of this guidance.) The council - in practice usually the Complaints Officer - must keep the complainant informed of progress throughout.

7.4.2 Many authorities have procedures that provide instructions or guidance for those appointed to investigate complaints. The National Complaints Officers Group provides, via their web-site (www.ncog.org), specific and comprehensive guidance on investigation best practice. There should be some degree of consistency in how authorities investigate complaints, and they may wish to consult this source as a 'best practice' benchmark.

7.4.3 Those managing the investigation will need to sort out how to meet the varying needs of the different people who make complaints. Everyone who complains should feel that the process has been fair and that they have had a proper chance to express their views:

- Authorities should consider how they will respect the language choices of complainants.
- Councils should sort out how best to meet the needs of those whose first language is neither English nor Welsh - usually through arranging an interpreter.
- Councils should decide, too, how best to meet the needs of those with communication difficulties.
- Investigating officers should make sure that any child or vulnerable adult has the chance to have a friend or supporter with them at any interview.
- They will need to make sure, too, that interviews are held in a setting in which the complainant is comfortable.

7.4.4 The new regulations place one other important new duty on the local authority, enshrining what is already the good practice in many authorities. They place a duty on the authority - in practice normally the investigating officer - to

check the record of any interview with anyone who has been interviewed (RPC reg. 16(7), SSCP reg. 19(7)). They must:

- (a) send a copy of the draft record of any interview to the person interviewed;
 - (b) invite them to say whether the draft record is accurate;
 - (c) consider any comments made by the person who was interviewed; and
 - (d) amend the record if need be to make sure that it is accurate.
- They should note any unresolved disagreements.

7.4.5 Checking interview records in this way should help the investigating officer to produce a report that accurately reflects and takes into account the views of everyone involved. This should minimise the risk of the report being challenged - and minimise the risk of delaying the final product.

7.5 The Time-scale for Formal Consideration

7.5.1 Other than in exceptional cases, the formal consideration must be completed - and the written response sent to the complainant - within 25 working days. This time-scale starts when the authority receives the request for formal consideration. However, this time-scale will be impractical in some cases, and both sets of regulation allow for extension in certain situations.

7.5.2 There are slight differences here between the two sets of regulations. RPC reg. 18 allows for the 25 working day time-scale to be extended:

- where there has been difficulty in determining the nature and substance of the complaint;
- where all or some of the matters raised are the subject of a concurrent investigation, such as a disciplinary process; or
- wherever the complainant has agreed to a later response.

7.5.3 SSCP reg. 20 adds a fourth basis on which the response may be delayed:

- where the complaint involves more than one body.

7.5.4 These are the only grounds on which the council itself can extend the time-scale. But - these apart - the complainant can agree to an extension. The crucial thing is to keep in touch with the complainant and to reach a shared view about how quickly the matter can be resolved. For example, the complainant may agree an extension if a key person has been unavailable for part of the time.

7.5.5 If it is not possible to complete the second stage in 25 working days, the council must tell the person who has complained in writing as soon as they can. The letter must tell the complainant:

- the reason for the delay; and
- the date by which they will receive a response.

7.5.6 The second stage cannot be extended indefinitely. Under the regulations, complainants have the right to ask for a Panel hearing if they have not had a response to their complaint after three months.

7.5.7 All delays should be reported - with the reasons - to the Director of Social Services in the Quarterly Management Report (see Chapter 9). They should also be summarised in the Annual Report.

7.6 The report of the investigation

7.6.1 It is important to remember that reports will serve a range of purposes. They can have a powerful effect on the lives of everyone involved in the complaint - the people who complained, the people they complained against, and other people involved. It should be normal practice for the report on the investigation to be made available in full to the person who complained. In many cases, it will be helpful to meet with them in person to go through the report and the council's response. This of course might involve the provision of reports in large print, in Braille, on audio-tape, on videotape or in the form of a translation.

7.6.2 Those reading the report will have a range of interests.

- People who have complained will want to see evidence of a thorough and fair investigation. They will want a clear and logical conclusion and recommendations for the future.
- Staff will be concerned with the outcome and comments on their practice. They will be concerned about the implications of the recommendations for themselves and the organisation.
- Managers will be concerned with achieving the right balance between listening to people who use services and supporting staff who work in them. They will be concerned with individual staff competence and the implications for policy and procedures.

7.6.3 The report, therefore, should meet a number of tests.

- It should include evidence from all the people involved.

- It should be as clear as is possible about the facts in each aspect of the complaint.
- It should be concise and clearly written, avoiding jargon, so that everyone can understand it.
- It should distinguish between fact, feelings and opinion.
- It should reach clear conclusions.
- It should make recommendations for resolving the complaint.
- It should make any recommendations for improving the service and making sure that other service users do not have to make the same complaint.

7.7 The authority's response

7.7.1 Where any complaint has been formally considered, the person who undertook the work will need to report their findings and make recommendations for action. It is the responsibility of the authority to reach a clear decision on whether or not the complaint is upheld. This will usually fall to a member of the senior management team.

7.7.2 The Complaints Officer should be kept informed of the decisions made and should then notify the service user (or the person who complained for them), the person who undertook the investigation, any Independent Person and any independent advocate. All of this should be in writing.

7.7.3 The response should be clear and simple. It should be in the language preferred by the complainant - and may need to be in a format such as Braille or audio-tape. The regulations (RPC reg.18(1), SSCP reg. 20(1)) set out the minimum content:

- The response must summarise the complaint.
- It must describe the investigation or other approach and summarise the conclusions.
- It must explain what action the authority will take to resolve the complaint.
- It must contain, where appropriate, an apology to the complainant.
- It must identify any further action the authority will be taking in the light of the complaint.

7.7.4 The regulations (RPC reg.18(4), SSCP reg. 20(4)) also require the authority to tell the complainant about their right to ask for an Independent Panel hearing if they are still unhappy with the authority's response. The response must describe how such a request can be made - and the time-scale within which this must be done (see section 8.2).

7.7.5 Usually, it will be good practice to offer a meeting with the complainant to discuss the report of the investigation and the proposed response from the authority. The letter could follow the meeting. It may also help at this point to remind the complainant about the whole procedure - so they are clear where they stand. In some instances - where a dispute about notification might occur - it might help to send the letter by 'recorded delivery' so that everyone can be clear about whether the complainant has received it.

7.7.6 Some people who have complained may feel that the authority has not given them the full picture in their final response. Some may want to have sight of the complete file on the complaint investigation. Local authorities must deal with any request of this kind in line with their duties under the Data Protection Act. They will need to keep in mind, too, the DPA rights of their staff.

Chapter 8 - Stage Three: The Independent Panel

“They (the social workers) took a back seat. They can’t challenge their own Department. They’d say ‘I’m not saying I agree with the Department but at the end of the day they pay my wages.’”

Service user, Wales, 2004

8.1 The right to an Independent Panel hearing

8.1.1 Most complaints are resolved locally. However, in some cases the complainant may not be satisfied, even after a formal investigation. In the past, where this has happened, the complainant has had the right to go to a panel hearing. Typically, the panel has involved one elected member of the authority complained about, one of its officers and one Independent Person.

8.1.2 The new arrangements for the panel are set out in the social services regulations (SSCP reg. 21 to 28) - but they will apply to services for both children and adults. They transform the panel stage.

8.1.3 Now, when a complainant is not satisfied - whether the service is provided or purchased by the council - they will have the right to have their complaint reviewed by an Independent Panel (SSCP reg. 22). There are three situations in which this might arise:

- where - under the procedure in services for adults - a would-be representative has made a complaint, but the authority has refused to consider it (SSCP reg. 9(5));
- where the authority has not completed its consideration within three months; and
- where, after the completion of the consideration, the complainant is dissatisfied.

8.1.4 The Panel will consist of a Chair, one member with a background in social services and one lay member. All three will be wholly independent of the council against which the complaint has been made. They will come from lists of people recruited by the National Assembly for Wales.

8.1.5 In addition, all of the administrative and financial arrangements for Panel hearings will be wholly independent of the council. For the first time, these arrangements will be the statutory responsibility of the National Assembly for Wales (SSCP reg. 21), and the Regulations refer throughout to “the Assembly” when describing the process. The Assembly has agreed with the NHS Wales Business Services Centre, a part of Powys Local Health Board, that this work will be carried out on the Assembly’s behalf by the NHS Independent Review Secretariat.

8.1.6 One key element of the pre-2006 arrangements will stay the same. Under the regulations and guidance from the early 1990’s, authorities were required to set up Panel hearings within four weeks. The Assembly recognises that complainants - especially children and young people - need things to be sorted out promptly. The time-scale for convening Panel hearings will stay the same (SSCP reg. 24).

8.1.7 The old regulations required the panel to decide on their recommendations within 24 hours of the end of the hearing - but the regulations did not say how soon the panel had to issue its report. Nor did they say how soon the local authority had to issue its response to the panel’s recommendations. The new regulations (SSCP reg. 26(3)) require the Panel to have its report available for issue within five working days. And they require the council to respond within 15 working days (SSCP reg. 27)

8.2 Requesting a Panel hearing

8.2.1 When a local authority writes to tell complainants about the outcome of the formal consideration stage, it must give complainants three key pieces of information (RPC reg. 18(4), SSCP reg. 20(4)):

- It must tell complainants that they have the right to have their complaint reviewed by an Independent Panel.
- The authority must advise complainants that they need to make this request within 20 working days from the date of the letter at the end of the second stage.
- The authority must tell complainants how to contact the Secretariat.

8.2.2 The complainant can ask for an Independent Panel hearing orally or in writing. The complainant should do so within 20 working days of the authority’s response. However, if the request is made after the 20 days, someone drawn from the list of lay persons will consider whether there are reasonable grounds for the delay. They can decide to set aside the time limit and set up a Panel hearing. If

there is any doubt, it will be normal to go ahead with a hearing. If they refuse to do this, the complainant can take up the case with the Ombudsman.

8.2.3 If the complainant makes the request to the council, the council - usually Complaints Officer - must inform the Secretariat as quickly as possible. This will usually mean that the request is forwarded to the Secretariat the same day by email or fax. If the request is made orally, then the authority should produce a written summary as soon as possible, give a copy to the complainant - and email or fax it to the Secretariat.

8.2.4 The request for a Panel hearing can come from the service user or anyone else who is qualified under the relevant regulations to make a complaint to the local authority.

8.3 Setting up the Panel - the role of the Secretariat

8.3.1 When the Secretariat gets a request for a Panel hearing, it must (SSCP reg. 24) write to the complainant to acknowledge the request within two working days.

- The Secretariat will ask for a statement of supporting information (if it has not been included with the request) and provide guidance on what to include in the statement.
- The Secretariat will tell the complainant that their request and statement will be sent to the council.

8.3.2 With this letter, the Secretariat will send an information sheet that outlines the work of the Independent Panel and the options for further action. This will explain that all relevant information will need to be disclosed to the council, the Panel members and the staff of the Secretariat. The leaflet will explain the time-scale for coming to a decision.

8.3.3 The Secretariat will inform the Director of Social Services for the council in writing and send a copy of the complainant's statement and the letter requesting the hearing. The Director is responsible for notifying any individual who is the subject of the complaint. The Secretariat will also ask the council for the complaints file and copies of any relevant records.

8.3.4 The Regulations (SSCP reg. 23) place a general duty on authorities to co-operate with the Panel. They should, therefore, avoid any delay in making available any papers that the Secretariat has requested. And they will need to release any member of staff who may need to attend the hearing as a party to the complaint or as a witness.

8.3.5 The authority should appoint a senior officer - generally the Complaints Officer - to liaise with the Secretariat. The liaison officer will inform any person mentioned in the complaint who may be required to attend the Panel.

8.3.6 Sometimes the Secretariat will receive a complaint that has not been raised locally at all. In such a case, the Secretariat will refer the complainant back directly to the authority for local resolution - unless they believe there is good reason for not doing so. Where it appears that the authority complained against may not have had reasonable opportunity to deal with the complaint, the Secretariat will ask a lay member to rule on whether it should be referred back or go forward to the Panel.

8.4 Appointment of the Panel Members

8.4.1 The Secretariat will convene a Panel. This must (SSCP reg. 24) have an independent lay Chair and two other independent Members - one will have a background in social services, the other will be a lay member. The Regulations (SSCP reg. 25(4)) say that the Panel can make any enquiries and take any advice it feels it needs. This could be useful where, for example, the panel needs expertise in more than one area - for instance in a case raising both complex child care and mental health issues. In such a case, it would be open to the Panel to involve a second "expert" member on a non-voting basis.

8.4.2 The National Assembly will be responsible for the recruitment, induction and ongoing training of Panel members (SSCP reg. 21). They will all be required to sign a Code of Conduct - including a confidentiality statement - before they can serve on any Panel. The lay members will be provided with appropriate indemnity; the "expert" members from the list of persons with social services experience will be expected to have their own professional indemnity.

8.4.3 The Secretariat will select the Panel Chair and the Members from lists maintained by the National Assembly. The composition of the Panel will need to take into account the issues raised by the complaint - and it will need to be sensitive to any cultural and gender issues that could emerge. Where the complainant is from an ethnic minority community, every effort will be made to include a Panel member from that community.

8.4.4 The Secretariat will ensure that the Chair and the other Panel members have no family or business connection with any of the parties - and no other link that would call into question their impartiality. Sometimes, there may have been a link in the past - where for instance the individuals were at school together or have

once worked together. Where this happens, the Secretariat will ask the parties if they think their involvement would be unfair. Where anyone objects on these grounds, the Secretariat will seek a replacement.

8.4.5 It is the job of the Secretariat to support the Chair and Panel members. The Secretariat will:

- provide administrative support;
- find suitable place for the Panel to meet, which should be as convenient as possible for those taking part and certainly in the same local authority area;
- distribute papers;
- arrange for translation or signing where needed;
- arrange for note-taking in meetings where needed; and
- handle claims for fees, travel and subsistence.

8.4.6 Where Panel Chairs find it more convenient to make their own arrangements for typing their reports, they will need to agree this with the Secretariat in advance.

8.4.7 The Chair and the other Panel Members will receive fees and expenses as laid down by the National Assembly.

8.5 The purpose of the Panel hearing

8.5.1 Under the Regulations, the job of the Panel is to “consider” the complaint. This is likely to involve three main tasks:

- The Panel should review the handling of the complaint, the conclusions and recommendations of the investigation and the response of the authority in the light of the written statement provided by the complainant.
- It should consider the facts of the case, taking into account relevant information and reports from the previous stages of the procedure, any additional material it considers relevant and the views of all parties to the complaint. These may be obtained orally or, if more appropriate, in writing.
- It must set out its findings of matters of fact and conclusions, with appropriate comments and recommendations, in a written report.

8.5.2 The Panel will decide if there are any matters in the complainant's statement that it cannot consider - and inform the complainant. This might include, for example, matters that are already subject to disciplinary investigation. The complainant may complain to the Ombudsman about any issues excluded by the Panel.

8.5.3 It is not the job of the Panel to mount a fresh investigation of the complaint. However, it may conclude - as part of its consideration of the complaint - that the original investigation was so flawed that it cannot now reach a conclusion. Where this happens, it can refer the complaint back to the council to carry out a new investigation. It will be good practice, where this happens, for someone entirely new to the complaint to mount the fresh investigation. And the authority should appoint a new Independent Person, where there has to be one. The Panel may then need to meet again if the second consideration fails to solve matters.

8.6 The conduct of the hearing

8.6.1 The Regulations do not prescribe how Panels should conduct their hearings - although they do make some requirements. The Panel should seek to uphold principles of fairness, openness and natural justice. The Panel can decide within the framework set out below how to conduct its proceedings. But before it decides, it must consult with the parties.

- All meetings must take place in private (SSCP reg. 25(10)).
- Hearings should take place at a time and place that are convenient for all parties.
- Both the complainant and any person complained against must have a reasonable opportunity to express their views on the how the Panel should go about its business (SSCP reg. 25(2)).
- If there is any disagreement about how a Panel should conduct the hearing, the Chair's decision will be final (SSCP reg. 25(3)).
- Both the complainant and any person complained against must have a reasonable opportunity to express their account of the events and their views on the complaint (SSCP reg. 25(5)).
- The panel may interview a third party who is neither the complainant nor the complained against (SSCP reg. 25(6)). However, where this happens, and the complainant nor the complained against are not present, the regulations require that a summary is prepared and made available to the two parties (SSCP reg. 25(7)).

- Exceptionally, the panel may decide it would be best to hold smaller meetings involving just one member of the Panel.
- The panel may adjourn the hearing and meet again if it decides that it needs more information or advice.
- Good records will need to be kept, given the possibility of a future investigation by the Ombudsman.

8.6.2 The Chair will decide whom the Panel would like to interview. It is not a tribunal - nor is it its job to conduct a fresh investigation. It should not involve formal cross-examination of witnesses. Nor should it be confrontational or legalistic. Panel Chairs should introduce themselves to the parties before any interviews to put them at their ease and explain how the interviews will be conducted. Throughout the hearing, the Panel should always be aiming to sort out the grievance in a reconciliatory way, while at the same time taking a view on the facts.

8.6.3 Panels may work in different ways. The panel can hear the two sides separately. Or it may decide that resolution would be more likely by bringing the complainant and the complained against together at the same meeting to hear each other's points of view and the evidence of others. Some people may find the second approach too stressful or intimidating. The crucial factor must be the wishes of the parties. They both have the right to talk to the Panel without the other being there, if that is what they prefer.

8.6.4 Some complaints may involve more than one local authority. Where the local authority stages have been exhausted, the Chair has the discretion to hold a joint Panel hearing. This might be more likely to enable a thorough review of the complaint - and it may be more convenient for people who would otherwise have to attend two hearings. The Chair will need to obtain the agreement of all parties to holding a single Panel hearing. The report will need to identify clearly the different actions required from the different bodies involved.

8.6.5 The role of the Panel Chair is to:

- oversee the preparations for the hearing;
- chair the Panel when it meets;
- draft the report (see section 8.7 below) and secure the agreement of Panel Members, taking account of their comments and suggested amendments;
- make sure that the report reaches the Secretariat within the time limit.

8.6.6 The Panel Chair will decide what papers the Panel needs. They will ensure that the complainant and complained against receive the same documents, including relevant extracts from the service user's records. People who are involved in only one aspect of a complaint will receive only the papers relevant to their part in the events leading up to the complaint. On the same basis, anyone who is interviewed - other than the two parties - will be present only for those parts of the hearing that concern them.

8.6.7 The Secretariat will tell all parties to the complaint that, if they have any additional information, they should provide this in advance. If they produce new information on the day of the Panel, this may not be accepted. Sometimes the complainant or complained against may produce new evidence at the hearing. The Chair should find out why this information was not produced earlier and decide whether it is relevant and whether to circulate it. There are two options:

- The Chair can adjourn the Panel until the other party and Panel members have had time to examine the additional evidence and agree to its introduction at this stage.
- Or the Chair can refuse to accept the new evidence and proceed as planned.

8.6.8 Any case records relevant to the complaint - or legible copies - should be available at the Panel hearing so that the Panel can refer to them. The Panel should also have access to all the papers held by the authority about their handling of the complaint - or useable copies.

8.6.9 When considering whom to interview, the Chair will need to decide if there are policy or procedural issues where a more senior member of staff may need to give information to the Panel. People suggested by the complainant who were present when the incident occurred - or when there have been meetings about it since - will be invited to interview, wherever relevant.

8.6.10 The Panel cannot compel individual local authority officers to appear before a Panel hearing. Nor can it compel them to provide information. If members of staff refuse a reasonable request, the Panel will record this in its report. It will be normal practice for the panel to recommend to the authority as employer that they should refer the member of staff to the Care Council for Wales. It is for the authority to decide whether to take any disciplinary action.

8.6.11 When interviewed by any Panel Member, the complainant and any individual complained against have the right under the Regulations (SSCP reg. 25(8)) to be accompanied by a person of their choosing. A child or young person will have a right to the support of an advocate. The person who accompanies the party

may, with the agreement of the Chair, speak to the Panel (SSCP reg. 25(9)). It is not the intention that anybody involved should have legal representation. If a legally qualified person comes with any of the parties or witnesses, it will be for the Chair to decide how they can contribute.

8.6.12 A complainant attending with an advocate or other adviser may, if they choose, have a second person such as a relative with them for emotional support.

8.6.13 The Secretariat will offer travel expenses to the complainant and anyone who comes with them to the Panel.

8.7 The report of the Panel

8.7.1 The Panel may, if they feel it appropriate, make their decision - and announce it - at the hearing. Otherwise, they will need to reconvene after the hearing to do so.

8.7.2 It is the Chair's job to prepare a brief report on the conclusions and the recommendations of the Panel - and to make sure it is ready for issue within five working days (SSCP reg. 26(3)). The report must set out the results of its considerations on 'matters of fact', outlining its conclusions on each of the matters raised in the complainant's statement. The report might include recommendations to the authority about redress in the particular case - and about improving services to avoid problems in the future.

8.7.3 While the panel may make recommendations to the authority, it has no authority over the organisation or the individual complained against. However, in the most serious cases, it may recommend to the authority that it should consider taking disciplinary action or referring a member of staff to a professional regulatory body, usually the Care Council for Wales. This is still a recommendation - it is for the local authority as employer to decide what action to take.

8.7.4 The aim of the Chair will be to secure a report agreed by all three members of the Panel. Sometimes, this may be impossible. Where only two members of the Panel can agree the text of the report, then this majority report will stand as the report of the Panel.

8.7.5 The Secretariat will send the Panel's report to:

- the complainant;
- the service user, if a different person from the complainant and competent to receive it;
- The Chief Executive, the Director of Social Services and the Complaints Officer of the authority. The Director will be responsible for making sure the report goes to any individual complained against; and

- the Panel Members.

8.7.6 The Chair will need to decide whether any of the report needs to be anonymous to protect the confidentiality of third parties. Exceptionally, the Chair may decide for the same reason to withhold a part of the Panel's report - or he or she may decide to share some information but with a duty to maintain confidentiality. However, it is essential that all information that the authority needs to develop its service is included in the report or a covering letter.

8.7.7 Authorities should not share the report with any other person or body. Complainants, however, are not bound by a duty of care - they may show the final report to anyone they wish, including the media.

8.8 The response of the local authority

8.8.1 The complainant and the authority complained against will receive a copy of the Panel's report directly from the Independent Review Secretariat. The Director of Social Services - or where more appropriate the Chief Executive - must respond to the complainant within 15 working days of getting the Panel's report (SSCP reg. 27). Once the council has sent its response to the complainant, the complaints procedure will have reached its end.

8.8.2 The authority's response might include:

- a formal apology;
- an outline of any immediate action the organisation is taking as a result of the Panel's deliberation;
- any time-scale in which the authority has agreed to consider other service issues;
- approval of any compensation or ex-gratia payment (see Chapter 6); and
- a statement of why it has not accepted any conclusion or recommendation of the Panel.

8.8.3 The local authority's response must under the regulations (SSCP reg. 28) explain the right of the complainant to refer their complaint to the Ombudsman.

8.8.4 The authority will copy its response to the Secretariat. The Secretariat will inform the Chair and Panel Members of the results as a way of providing feedback and learning for them. The authority is responsible for agreeing action and following up the recommendations - further guidance on this appears in the next chapter.

Chapter 9 - Learning from Complaints

“It took much longer – more than twenty months until the stage of the Ombudsman was finished. Then my care plan changed and my complaint was forgotten.”

Service user, Wales, 2004

9.1 Recording and monitoring complaints

9.1.1 An effective complaints procedure will benefit not only the people who make complaints. Where an authority is learning from complaints and using this learning to improve its service, an effective procedure will benefit everyone who uses the service.

9.1.2 It will be impossible for an authority to learn from complaints unless it records and monitors them properly. Effective monitoring is a duty under the regulations (RPC reg. 19, SSCP reg. 29) and must include - at minimum - details of the complaints received, the outcome and whether the authority complied with the time-scales for the local resolution and formal consideration stages. Staff managing the complaints procedure need to be able to pull this information together so that a picture can be produced of a service, a locality or the authority as a whole.

9.1.3 Good recording is a basic requirement of professional practice. There are three main purposes:

- Good recording can help everyone involved to see that a thorough and fair investigation has taken place.
- Good recording can help the authority to show that it takes complaints seriously and resolves them.
- Good recording can enable the authority to compile evidence from complaints so that helps them to develop better policies and better practice.

9.1.4 All complaints must be recorded, including those that are resolved at the local resolution stage. There should be a mechanism within each authority for ensuring that the Complaints Officer can collate information on the local resolution stage and include it in an annual report. This part of the report should - at minimum - describe:

- the numbers of complaints resolved at an initial stage;
- who made the complaints;
- what they were about; and
- how they were resolved.

9.1.5 In turn, each authority should have a procedure detailing how the formal investigation stage is to be recorded and collated. The method of recording should provide evidence about:

- the nature of the complaint;
- the desired outcome;
- how the investigation was carried out;
- the content of interviews undertaken;
- the conclusion of the investigating officer;
- the conclusion of any Independent Person; and
- the outcome of the complaint.

9.1.6 The record may include letters, details of day to day activity and phone calls, as well as notes of interviews and reports. The National Complaints Officers Group has developed core competencies and best practice standards for this. These are available on their web-site at www.ncog.org.

9.2 Following up responses

9.2.1 A complaints procedure is of limited use if the undertakings that are given are never delivered. Authorities will need to make sure that they have in place systematic arrangements for checking that the actions promised have been implemented.

9.2.2 There are two key roles here - the line manager of the service and the Complaints Officer. In developing their local procedures for following up responses, authorities may wish to place the initial onus on the line manager for ensuring that promised action is taken and for notifying the Complaints Officer.

9.2.3 The Complaints Officer will need to be responsible for collating this information into a suitable summary for senior management. To do this, it may be best to give the Complaints Officer the job of taking up any instance where the line manager has not notified them of the promised action being taken. Local

procedures could to advantage specify time-scales after which the Complaints Officer should follow-up action with the managers responsible.

9.3 Feedback from complainants

9.3.1 It will be difficult to gauge the effectiveness of a complaints procedure unless authorities take regular soundings of service users and those who make complaints on their behalf. Many authorities in Wales already provide each complainant with an opportunity - once their complaint has been concluded - to comment on their experience. Such arrangements should be normal practice.

9.3.2 One example of a simple questionnaire like this appears at Annex 6. In many cases, the most appropriate course will be to use it as a postal questionnaire. In other instances, it may be more appropriate to use it over the telephone.

9.3.3 In some Welsh authorities, Complaints Officers have also found ways of talking to service users who have not made complaints, by for example visiting residential and day care settings. Such an approach can help to spread information about the local arrangements. It can also help the authority to learn why some groups of service users, such as people with learning difficulties, may not be making many complaints. Such activities should be seen as an integral part of the job of the Complaints Officer.

9.4 Feedback from staff

9.4.1 Authorities will also want to be sure that their staff fully understand the complaints arrangements and how to work within it. They may want to mount from time to time simple exercises to check that staff understand the principles behind the local procedures and know what action they should take if they receive a complaint.

9.5 The Quarterly Management Report

9.5.1 Authorities will need to build procedures for making sure that senior managers have systematic and regular opportunities to check on the operation of the procedures. This will apply in particular to the Director of Social Services and the senior officer with overall responsibility for complaints.

9.5.2 Some Complaints Officers in Wales already produce brief management reports, say four times a year, on the operation of the complaints procedure.

These quarterly management reports should become normal practice. They could be based largely on the statistical information being compiled for the annual report. And they could usefully include key findings on the feedback from complainants.

9.6 The Annual Report

9.6.1 Local authorities are required by the Regulations (RPC reg. 20, SSCP reg. 30) to produce an Annual Report. This will help the authority keep itself informed about the operation of its complaints procedure. Its production should be a job for the Complaints Officer(s).

9.6.2 The Annual Report should provide both:

- a summary of the statistical and other information which may have been supplied at more frequent intervals; and
- a review of the effectiveness of the social services complaints procedure, bringing together views from a range of perspectives.

9.6.3 The basic information in the report should include:

- the numbers of complaints resolved at each stage; local resolution, formal consideration and independent review panel;
- adherence to time-scales;
- who made the complaints;
- what they were about;
- how they were resolved;
- confirmation that actions agreed as part of the resolution have been implemented; and
- a summary of the lessons learned by the authority from the complaints it received.

9.6.4 The report's evaluation of the procedure should draw on the views of people who used the complaints procedure during the year. This should draw on the regular soundings taken from people who made complaints, as outlined at section 9.3 above. It could include, too, the views of people who have an interest in setting it up, promoting it and improving it - for example, service users, staff, Independent Persons and advocacy projects.

9.6.5 The Annual Report should be sent to all of the authority's elected Members. It should be normal practice for it to be discussed in the appropriate Scrutiny Committee of the authority.

9.6.6 The authority should share the report its key partners. In children's services, for instance, given the corporate nature of planning for children's services, copies should go routinely to the members of the Children and Young People's Framework Partnership.

9.6.7 Local authorities will want to think about how best to make the report - or key extracts from it - available to different groups of people who use services and the bodies that represent them locally.

9.6.8 Periodic reports by local authorities should be open to inspection by members of the public, under the terms of the Local Government (Access to Information) Act 1985. They should be anonymous where needed to make sure there is no breach of confidentiality.

9.7 Complaints and Quality Assurance

9.7.1 Authorities will need to create their own mechanisms for ensuring that the lessons from complaints are available to - and learned by - the wider organisation:

- They will need systems for sharing information about complaints in their own services with line managers.
- They will need systems for sharing information about complaints in services they purchase with the person who has to monitor the contract.
- And they will develop the use of this information as a measure of performance and means of quality control in both provided and purchased services.

9.7.2 For these purposes, information about complaints resolved at the first stage may be of just as much value as information about the smaller number of complaints that need further consideration. Where such 'first stage' complaints raise significant policy, resource management, staffing or other issues, line managers should always be informed.

9.7.3 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 authority is in communicating to its staff and to the public. It will show where the authority needs to focus staff training. And it might shed light on whether the authority is targeting its resources correctly.

9.7.4 One of the essential reasons for having a complaints procedure is that the knowledge gleaned should be used to drive improved policy and practice. In this way, an effective complaints procedure can secure a better service for all the people who need it.

Annex 1

References, Relevant Publications and Further Reading

Mental Capacity Act 2005 (The Stationery Office)

Public Services Ombudsman (Wales) Act 2005 (The Stationery Office)

Health and Social Care (Community Care and Standards) Act 2003
(The Stationery Office)

The Children Act 2004 (The Stationery Office)

Adoption and Children Act 2002 (The Stationery Office)

Children's Commissioner for Wales Act 2001 (The Stationery Office)

Care Standards Act 2000 (The Stationery Office)

Freedom of Information Act 2000 (The Stationery Office)

Local Government Act 2000 (The Stationery Office)

Human Rights Act 1998 (The Stationery Office)

Data Protection Act 1998 (The Stationery Office)

Welsh Language Act 1993 (The Stationery Office)

Children Act 1989 (The Stationery Office)

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Complaints Procedure Directions 1990

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Welsh Assembly Government: *A Study of Advocacy Services for children and young people in Wales*. 2005

Welsh Assembly Government: *Providing Effective Advocacy Services for Children Making a Representation or Complaint under the Children Act 1989*, 2004

Welsh Assembly Government: *Independent Reviewing Officers Guidance Wales*, 2004

Welsh Assembly Government: *National Standards for the Provision of Children's Advocacy Services*, 2004

Children's Commissioner for Wales: *Telling Concerns - Report of the Children's Commissioner for Wales' Review of the Operation of Complaints and Representations and Whistleblowing Procedures and Arrangements for the Provision of Children's Advocacy Services in Social Services*, 2003

Welsh Assembly Government: *Too Serious a Thing - The Review of Safeguards for Children and Young People treated and cared for by the NHS in Wales*, 2002

Welsh Assembly Government: *The Welsh Assembly Government's response to the Carlile report on Safeguards for Children and Young People treated and cared for by the NHS in Wales*, 2002

National Assembly for Wales: *Listening to People - A Consultation on Improving Social Services Complaints Procedures*, 2001

The Stationery Office: *Lost in Care: Report of the Tribunal of Inquiry into the abuse of children in care in the former counties of Gwynedd and Clwyd*, 2000

Welsh Assembly Government: *Working Together to safeguard children. A guide to inter-agency working to safeguard and promote the welfare of children*, 2000

Welsh Assembly Government: *Safeguarding Children - Working Together for Positive Outcomes*, 2000

National Assembly for Wales: *In Safe Hands - Protection of Vulnerable Adults*, 2000

Department of Health: *A Matter for Investigation - developing skills to investigate complaints in social services settings*. 1996

Department of Health: *The Children Act 1989 Guidance and Regulations Volume 4 Residential Care*, 1991

Department of Health: *The Right to Complain - Practice Guidance on Complaints Procedures in Social Services Departments*, 1991

Annex 2

The Complaints and Representations Advisory and Implementation Group (CRAIG)

MEMBER

Lynda Bransbury (until October 2004)

Ronnie Cleland

Rhian Davies

Eileen Habbijam

Glyn Hughes

Deborah Jones or Eugene Rourke

Ana Palazon or Martyn Pengilley

Jane Roberts

Liz Thomas

National Assembly for Wales

Joy Seculer

Welsh Assembly Government

Colin Vyvyan (Chair)

Pat Vernon

Natalie Cooper

REPRESENTING

Welsh Local Government Association

All Wales Complaints Officers Group

Children's Commissioner for Wales

Independent Review Secretariat -
NHS Wales

Association of Directors of Social Services

Voices from Care Cymru

Age Alliance Wales

All Wales Complaints Officers Group

Local Government Ombudsman for Wales

Directorate of Legal Services

Older People & Long Term Care Policy
Directorate

Quality, Standards and Safety
Improvement Directorate

Care Standards Inspectorate for Wales

Martin Price (until July 2004)

Social Services Inspectorate for Wales

Lucy Orgill (Secretary)

Older People & Long Term Care Policy
Directorate

Your Rights to Complain

A quick guide to social services complaints procedures for children and young people

As a child or a young person using social services in Wales, you have the right:

- to have information that you can understand about how to make a complaint and who to contact
- to have an complaints procedure that will be clear and easy to use
- to make a complaint, even about something that happened a long time ago
- to choose someone else to make a complaint for you
- to be treated with dignity and respect
- to have your concerns taken seriously
- to have your concerns dealt with properly - whatever your communication needs
- to be told what is going on with your complaint and to be kept up to date
- to withdraw your complaint at any time

You can expect that the council will always:

- safeguard and promote your welfare
- find out what you want and how you feel about things
- offer you help to find an advocate - someone to help you through the procedure

Stage 1: Trying to sort things out with the local service

You have the right to make your complaint in the way that's best for you - by talking to someone face-to-face or on the phone, or in writing or by email, or on audio-tape or videotape.

Sometimes, you might want to complain because someone wants to change your service and you don't want this to happen. In this case, you have the right to have any changes to your service put off ("frozen") until the council has looked into your complaint - except where such a delay would put you at risk.

You have the right to have your concerns sorted out by the local service within two weeks. You have the right to increase this to four weeks if you want to. The service doesn't.

You have the right to expect a letter telling you how things have been sorted out - and telling you what you can do next if you're still unhappy about things.

Stage 2: Getting someone else to look into your complaint

If you're not happy with the way the local service has dealt with things, you have the right to have your complaint looked at by someone who's not involved in the local service.

You have a right to ask the council to go to Stage 2 as soon as you complain, if that's what you prefer.

You have the right to expect that the Council will appoint an Independent Person - who is nothing to do with the Council - to make sure that your complaint is handled properly.

You have the right to have a friend or relative with you to support you at any meeting with the person looking into your complaint.

You have the right to have any meeting like this held somewhere where you feel comfortable.

You have the right to check the notes of the meetings.

You have the right to have the full report of the person who looks into your complaint.

You have the right to a report that is clearly written, without any jargon, so that everyone can understand it.

You have the right to expect the council to respond to your complaint within five weeks. You have the right to extend this. But the council can extend this five-week period only where the law says it can.

You have the right to have the report and the council's response in a form you can understand.

You have the right to be told in the council's response that you can ask for a Panel hearing if you are still unhappy about your complaint.

Stage 3: Taking your complaint to the Independent Panel

If you're still not happy with the way the council has dealt with things, you have the right to ask for a Panel to look into your complaint.

You have the right to go to the Panel anyway, if the council hasn't sorted out your complaint after three months.

Once you ask, you have the right to a Panel hearing within four weeks.

You can expect that the three people on the Panel will have nothing to do with the council you've complained about. They will all be independent and not work for any council in Wales. You can expect one of them to know about running social services.

You have the right to expect that the council will help the people running the Panel by - for example - letting them have the papers about your complaint.

You have the right to expect that the Panel hearing will take place in private and near to where you live.

You have the right to have a say on how the Panel hearing will be run.

You have the right to tell the Panel about why you complained, what has happened since and how you feel about things. You have the right to do all this in private if you want to.

You have the right, at the Panel hearing, to have an advocate to speak up for you. And you have the right to have a second person such as a friend or relative with you to support you.

Once the Panel hearing has taken place, you have the right to see the Panel's report on your complaint in just over a week.

Once the Panel's report has been sent out, you have a right to see a response from the council within three weeks.

Complaints involving other services

Sometimes, when children and young people make a complaint, other things might be going on at the same time. For example, in a very serious case, the Police might be looking into what has taken place and thinking about taking someone to Court:

In cases like this, you have the right to have a say about how your complaint is handled. You might want the council to look into your complaint straightaway. Or you might be happy to put this off, if for example the Police are looking into it.

You have the right to expect that the council will keep you up to date with what is going on - and tell you when for example the Police have finished looking into what took place.

You have the right, where this happens, to expect the council to start looking into your complaint again, if you ask them to.

... and afterwards

If you're still not happy, you have the right to ask the Ombudsman to look into your concerns. (The Ombudsman is someone appointed by the Queen who investigates citizens' complaints against public bodies such as councils - and tries to make sure that everything is settled fairly if things have gone wrong.)

You have the right to expect that the council will do whatever it promised to as a result of your complaint - and that it will check to make sure this has happened.

You have the right to expect that - once the complaint is finished with - the council will get in touch and find out what you feel about how your complaint was handled.

You have the right to expect that the council will learn from the complaints it gets - and go on to improve the services for all children and young people who need them.

Annex 4

Your Rights to Complain:

A quick guide to complaints procedures for adults using social services

As adult using social services in Wales, you have the right:

- to have information that you can understand about how to make a complaint and who to contact
- to have an complaints procedure that will be clear and easy to use
- to make a complaint, even about something that happened a long time ago
- to choose someone else to make a complaint for you
- to be treated with dignity and respect
- to have your concerns taken seriously
- to have your concerns dealt with properly - whatever your communication needs
- to be told what is going on with your complaint and to be kept up to date
- to withdraw your complaint at any time

You can expect that the council will always:

- safeguard and promote your welfare
- find out what you want and how you feel about things
- tell you about any help you might have from an advocate - someone to help you through the procedure

Stage 1: Trying to sort things out with the local service

You have the right to make your complaint in the way that's best for you - by talking to someone face-to-face or on the phone, or in writing or by email, or on audio-tape or videotape.

Sometimes, you might want to complain because someone wants to change your service and you don't want this to happen. In this case, you have the right to have any changes to your service put off ("frozen") until the council has looked into your complaint - except where such a delay would put you at risk.

You have the right to have your concerns sorted out by the local service within two weeks. You have the right to increase this to four weeks if you want to. The service doesn't.

You have the right to expect a letter telling you how things have been sorted out - and telling you what you can do next if you're still unhappy about things.

Stage 2: Getting someone else to look into your complaint

If you're not happy with the way the local service has dealt with things, you have the right to have your complaint looked at by someone who's not involved in the local service.

You have a right to ask the council to go to Stage 2 as soon as you complain, if that's what you prefer.

You have the right to have a friend or relative with you to support you at any meeting with the person looking into your complaint.

You have the right to have any meeting like this held somewhere where you feel comfortable.

You have the right to check the notes of the meetings.

You have the right to have the full report of the person who looks into your complaint.

You have the right to a report that is clearly written, without any jargon, so that everyone can understand it.

You have the right to expect the council to respond to your complaint within five weeks. You have the right to extend this. But the council can extend this five-week period only where the law says it can.

You have the right to have the report and the council's response in a form you can understand.

You have the right to be told in the council's response that you can ask for a Panel hearing if you are still unhappy about your complaint.

Stage 3: Taking your complaint to the Independent Panel

If you're still not happy with the way the council has dealt with things, you have the right to ask for a Panel to look into your complaint.

You have the right to go to the Panel anyway, if the council hasn't sorted out your complaint after three months.

Once you ask, you have the right to a Panel hearing within four weeks.

You can expect that the three people on the Panel will have nothing to do with the council you've complained about. They will all be independent and not work for any council in Wales. You can expect one of them to know about running social services.

You have the right to expect that the council will help the people running the Panel by - for example - letting them have the papers about your complaint.

You have the right to expect that the Panel hearing will take place in private and near to where you live.

You have the right to have a say on how the Panel hearing will be run.

You have the right to tell the Panel about why you complained, what has happened since and how you feel about things. You have the right to do all this in private if you want to.

You have the right, at the Panel hearing, to have an advocate to speak up for you. And you have the right to have a second person such as a friend or relative with you to support you.

Once the Panel hearing has taken place, you have the right to see the Panel's report on your complaint in just over a week.

Once the Panel's report has been sent out, you have a right to see a response from the council within three weeks.

Complaints involving other services

Sometimes, when you make a complaint, other things might be going on at the same time. For example, in a very serious case, the Police might be looking into what has taken place and thinking about taking someone to Court.

In cases like this, you have the right to have a say about how your complaint is handled. You might want the council to look into your complaint straightaway. Or you might be happy to put this off, if for example the Police are looking into it.

You have the right to expect that the council will keep you up to date with what is going on - and tell you when for example the Police have finished looking into what took place.

You have the right, where this happens, to expect the council to start looking into your complaint again, if you ask them to.

... and afterwards

If you're still not happy, you have the right to ask the Ombudsman to look into your concerns. (The Ombudsman is someone appointed by the Queen who investigates citizens' complaints against public bodies such as councils - and tries to make sure that everything is settled fairly if things have gone wrong.)

You have the right to expect that the council will do whatever it promised to as a result of your complaint - and that it will check to make sure this has happened.

You have the right to expect that - once the complaint is finished with - the council will get in touch and find out what you feel about how your complaint was handled.

You have the right to expect that the council will learn from the complaints it gets - and go on to improve the services for all adults who need them.

Training on Complaints

Introduction

1. Background

1.1 Local authorities have duties under the legislation to make sure that their staff are properly informed about their complaints procedures - and trained in their use.

1.2 One of the keys to success in handling concerns will be the response of the first member of staff who receives it. At this point, many concerns can be resolved to the service user's satisfaction without ever turning into complaints. This Annex provides some materials designed to help in training those staff most likely to have that first contact with the public - and to help them to respond in the most constructive way.

1.3 The materials were originally developed for use in Pembrokeshire County Council and have been updated to reflect the changes to the framework introduced on 1 April 2006. The Welsh Assembly Government is grateful to the officers of the County Council for permission to re-print them as an Annex to this guidance.

1.4 The materials envisage a half-day training session, lasting about three and a half hours. It is assumed that the training will be delivered by a local Complaints Officer with a detailed working knowledge of the local procedures. But it might be possible for it to be delivered by a trainer without specialist knowledge - provided they have suitable briefing.

2. The target group for the training

2.1 These materials are intended to support training to those staff who have the most direct contact with service users and their families. This will include social workers and other staff involved in assessment and care planning, and staff in domiciliary services, day services and residential care. It will also include staff such as receptionists who meet the public in council offices.

2.2 Experience in Pembrokeshire has suggested that the training is best delivered to groups of between 15 and 20.

2.3 The training is not intended to meet the needs of Complaints Officers and other people carrying out the roles described in the guidance, such as investigating

officers and Independent Persons in complaints about children's services. They all need specific training in their roles - though it might be helpful to involve them in the more general training.

3. The aims of the training

3.1 The training supported by these materials is intended to help front-line staff look at their attitudes, skills and knowledge:

- It should help staff to reflect on their own attitudes and beliefs towards complaints of different kinds - and what it feels like to make them.
- It should help them to be aware of what might be a complaint - and what might be best handled in some other way.
- It should help staff to respond to concerns empathetically and effectively - so that they do not always turn into complaints.
- It should help staff with no experience of the complaints procedure to understand the three stages and the time-scales - and who is responsible for what at each stage. And it should help staff already familiar with complaints procedures to be alert to the changes introduced on 1 April 2006.
- It should help staff to think about the benefits of effective complaints handling and the opportunities to improve the service.

4. Using and adapting the materials

4.1 The materials are rooted in the experience of social services in Pembrokeshire. They include forms in use in Pembrokeshire - and they reflect procedures there. Some elements of the procedures - such as the arrangements for notifying the Complaints Officer about Stage 1 complaints - will be handled differently in different parts of Wales.

4.2 Welsh Assembly Government hopes that individual authorities will adapt the materials to meet their local needs and circumstances. Local training should reflect local policies and include information about local contacts. Beyond that, local training may need to highlight good practice locally or to address a particular problem.

4.3 Some case studies - or scenarios - are included to illustrate how best to respond to different kinds of concern. Local training may want to draw on local examples - provided of course that no parties can be identified.

4.4 The materials suggest that it might be helpful to invite someone who has made a complaint to discuss their experience. The 2005 consultation with service user groups on the new Regulations and guidance suggested that many service users would welcome this opportunity.

Training Programme

- 9:00** Start
- Housekeeping
 - Introductions
- 9:15** Slides 2 + 3 - Aims and today's objectives
- Slides 4 + 5 - What is a complaint
- 9:30** Beliefs Questionnaire and discussion
- 10:00** Slide 6 - What is not a Complaint
- Slides 7 + 8 - Who Can Complain and How
- 10:30** Coffee Break
- 10:45** Complainant talks to group
- 11:15** Slide 9 - The New Social Care Complaints Procedure
- Slide 10 - Stage 1
 - Slide 11 - Stage 2
 - Slide 12 - Stage 3
 - Slide 13 - Ombudsman
 - Slide 14 - Receiving a complaint
 - Slide 15 - Other Procedures to be aware of
- 11:50** Scenarios and Responses
- Slide 16 - Compliments and Suggestions
- 12:25** Evaluation
- 12:30** Finish

Trainer's Notes

Preparation needed beforehand:

- Beliefs Posters
- List of Handouts
 - Handout 1 - Power Point Slides
 - Handout 2 - Beliefs Questionnaire
 - Handout 3 - The Complaint Form ⁽¹⁾
 - Handout 4 - Dealing with Complaints (Flowchart) ⁽¹⁾
 - Handout 5 - The Scenarios
 - Handout 6 - The responses to Scenarios
 - Handout 7 - Compliments & Suggestions form ⁽¹⁾
 - Handout 8 - Evaluation Sheet

Setting up:

- Place copies of Handout 1 (PowerPoint slides) and Handout 2 (Beliefs Questionnaire) on the tables.
- Place the Beliefs posters on wall giving staff sufficient space to access the posters.
- Count out sets of 12 small post-it notes for each person attending.

Course:

Ask all attendees to sign the attendance sheet, and write their names on badges/name plates

Housekeeping:

Give any details for the following:

- Fire Exits/Assembly Points
- Toilets
- Smoking Areas
- Refreshments (times of break etc.)

Introductions:

Introduce yourself and anyone assisting with the training.

¹ The three items marked (1) are specific to the Pembrokeshire County Council complaints procedure and have not been reproduced in this Annex.

- Ask attendees to introduce themselves by giving their name and where they work. (Some staff may prefer not to do this, so you may want to check before starting.)
- Explain why staff have been asked to attend and that the course is aimed at all staff, not those specifically dealing with complaints.
- Refer to the handouts in front of them.

Go through Slides 2 + 3 - the Aims and Today's Objectives

- Ask staff if any of them has ever made a complaint.
- Ask if they would explain the situation to the group.

Quite often people will have problems with large organisations such as a telephone company. A number of the issues are around communication and the complainant having to constantly chase the complaint to see what's happening, constantly having to go through the issues time and time again as they don't get to speak to the same person.

Others may have problems with large companies, for example stating that goods will be delivered on a certain date and they aren't.

- Explain that Communication and how we communicate with customers is very important. Customers need to be kept informed even if there isn't a lot to tell them. They will know that they haven't been forgotten.
- Discuss a restaurant scenario - If you don't like the food or the way you are being treated, you can walk out and not go there again, telling your friends all about it. Our customers won't normally be in that position. They will have to continue to receive the service, as they probably haven't got a choice.

Go through Slide 4 - A Complaint may be about.

Go through Slide 5 - A complaint may be as a result of

Go through Handout 2 - Beliefs Questionnaire

- Explain they need to score each question using the numbers at the top of the sheet stating whether they agree or disagree and how strongly.
- Explain there are no right or wrong answers - it is what they feel about complaints.
- Ask them to go to the posters and place a sticky in the relevant columns for their answers.

This gives a good visual effect.

- Chose some answers to discuss with the group and why people feel that way (e.g. No.'s 1, 4, 7, 8).
- Reflect on your experiences dealing with complaints when you are doing this.
- Explain to staff that complaints are about perceptions and give a scenario, such as:

An elderly man is leaving a shop and as he approaches the door, a woman is coming in. He holds the door open for her. She says "Thank you" and he says, "That's alright love". She turns to him and says, "I'm not your love. I'm not anyone's love. Don't call me love." He felt that he was being polite and being a gentleman. She was offended by what was said.

Go through Slide 6 - A Complaint is not

- Explain and give examples of each one, such as:

Reporting a fault - Street lamp is broken

First request for information/service - being asked for a leaflet or asked if something is available.

A matter for which there is a right of appeal - Decision to place a child on the Child Protection Register. Parents can appeal about the decision if they are not happy, this would not be a complaint

The level of charging in the fairer charging process. The customer can appeal to try and change the amount they pay - this would not be a complaint.

N.B. If someone wasn't happy with the way the process was handled in either case, that would be a complaint.

A matter where the complainant had decided to take legal action - if there was a court case that directly related to the subject being complained about this would not be accepted into the complaint's procedure.

A disagreement with the Council's policies - Policies are either set by cabinet or because of legislation. The law doesn't permit the council to refuse this as a complaint, and the complaint might highlight that a policy needs to be reviewed. The aim should be to secure local resolution through a fuller explanation of the situation.

Disagreement with the actions of an elected member - if a customer wasn't happy with the way they had been dealt with by an elected member, this would not fall within the scope of the complaints procedure.

Go through Slide 7 - Who Can Complain?

- Explain about needing consent from the complainant where they have capacity before you can accept a complaint on their behalf. In some cases, a representative has raised issues, but the customer is happy and doesn't want to complain.
- Explain that provided there isn't a conflict of interest a member of staff could make a complaint on a customer's behalf. If there is a conflict of interest then staff would be able to accept the details, and pass to the Complaints Officer or onto the Manager who would be handling the complaint, but not act on behalf of that customer.

Go through Slide 8 - A complaint can be made:

- There should be a break around this point.
- Explain after the break that a customer or carer will be coming in to give their viewpoint, so that staff can see it from the other side of the coin.

Coffee Break

After the break

- Introduce the complainant/carer, explain that they will tell staff something of their experience and that then staff will have the opportunity to ask questions. (It is important to check beforehand that the complainant/carer is happy for staff to ask questions)
- After the complainant has completed what they want to say and there are no more questions, thank the complainant for coming and walk with them to the exit.
- Ask the group how they found the session. Normally staff will find this part a benefit.
- Show staff the literature on complaints that is available within the Authority.
 - Complaints leaflets for Adults
 - Complaints leaflets for Children
 - Complaints leaflets for those with learning difficulties
 - Complaints leaflets in other formats (such as tapes, and Braille)
 - Corporate complaints leaflet
- Check that all staff have seen the leaflet relevant to their service. Leaflets should be given to the customer at the first point of contact with the service. If staff aren't aware of the complaints leaflet and haven't seen it, Customers may not have seen it.

Go through Slide 9 - The New Social Care Complaints Procedure

- Explain there are three stages

Go through Slide 10 - Stage 1: Local Resolution Stage

Explain that, when the complaint comes in:

- Mediation by a third party and resolution by the local manager should both be considered as options.
- The complaint is acknowledged and the acknowledgement tells them who from the local service will be trying to resolve the complaint and when they can expect to receive a response.
- Explain how long they have to attempt local resolution (10 working days, which can be extended only with the agreement of the complainant by a further 10 working days)
- Explain that the response would normally be in writing in the form of a letter and would confirm what has been discussed while trying to resolve the matter. It would be sent to the complainant and copied to the Complaints Officer for the complaint file.
- Complainant then has a set time to request that they proceed to Stage 2 if they are not satisfied.

Go through Slide 11 - Stage 2: Formal Consideration Stage

Explain:

- Request to proceed to Stage 2 received.
- Request to proceed acknowledged
- The Complaints Officer will need to consider whether formal consideration should take the form of an Investigation or whether an alternative such as mediation should be pursued.
- Otherwise, an investigating officer is arranged, who is independent of the service being complained about.
- Explain when an Independent Person is required and that their role is to oversee the process and ensure that it is fair and unbiased.
- Explain that they will need to investigate the complaint and a report will be produced and sent to the complainant. A response should be sent to the complainant within 25 working days of starting the investigation.

- The complainant then has a set period of time to indicate whether they want to proceed to Stage 3.

Go through Slide 12 - Stage 3: Independent Panel

- Give staff information about the process.
- Explain that it is totally independent of the Authority.
- It should be set up within 20 working days of receiving the request to proceed to Stage 3.
- Explain that the remit of the panel is to look at all the relevant paperwork, speak to both parties, to draw conclusions and make any recommendations that they feel are necessary to address the issue. They may add any further recommendations that will help the Local Authority to learn lessons.
- Recommendations are passed to the Director of Social Care and he will have a set time to respond to the complainant.

Go through Slide 13 – The Ombudsman

- Explain that this is the end of the social services complaints procedure and that if the complainant is still not satisfied they will have the option of going to the Ombudsman or for a Judicial Review.

Go through Slide 14 - Receiving a complaint

- Explain that most staff would only be involved at Stage 1, and what is expected of them.
- Explain that they are not expected to get involved in the complaint, but only to accept the responsibility of taking the details and passing them on to the complaints officer or onto the manager who would be handling the complaint.
- Discuss how the complainant feels if they are told to 'phone back when my manager is here' or 'you need to phone someone else as I don't deal with that' or that they will 'have to put the complaint in writing'. The customer will feel that staff don't want to know and are not taking the matter seriously.
- Explain that the member of staff should give their name
- Log the details of the complainant

Give out Handout 3 - Complaint Form

- Log the details of the complainant.
- Log the details of any representative.

- Take the details of the complaint:
 - Try and summarise what the complaint is about (e.g. quality of care)
 - Ask staff to try and put the details in chronological order as the complainant may be jumping from one thing to another.
 - Ask them to say which are the most important aspects of the complaint. Resolving one major issue could in turn resolve a number of smaller ones.
 - NB. Staff may only be able to do this after the conversation.**
 - Ask the complainant how they feel the Council can resolve their complaint.
 - Explain that it is not always possible to do what they ask, but at least you will know what the Council is aiming for.
- Confirm/Repeat details
 - This is very important as contact will need to be made and if the address is incorrect or a telephone number is incorrect, it will be difficult to get in touch with the complainant. This could result in a further complaint for lack of response. It also shows the complainant that staff have listened to them.

Inform them of the next steps. Tell them who you are passing the information to and what will happen.

Go through Slide 15 - Other Procedures to be aware of:

- Run through the list one by one and explain what each one is.
- *Adult or Child Protection Procedures* - Explain to staff that if they observe anything or are made aware of anything where they feel that someone is at risk, this can be either physically, sexually, emotionally or financially, they need to talk to the relevant staff in the teams.
- *Corporate Complaints* - briefly cover the differences in the procedure, the time scales and the difference in the stages, and who deals with them.
- *Education Complaints* - Cover complaints in schools, being dealt with by the teachers, head teachers and board of governors, before entering the corporate Stage 2.
- *Code Of Conduct for Elected Members* - If someone is unhappy with the actions of an elected Member, the Monitoring Officer should be contacted in the first place. An allegation that a Member may have breached the Members' Code of Conduct must be made to the Public Services Ombudsman for Wales. The Monitoring Officer is able to provide details concerning the procedure for making allegations to the Ombudsman.

- *Grievance/Disciplinary Procedures/Capability* -
 - Grievance is where there are issues between members of staff, staff against staff. It is dealt with by Personnel.
 - Disciplinary Procedures are where someone is alleged to have acted inappropriately for whatever reason. This is dealt with by Personnel and the manager of the member of staff involved.
 - Capability Procedures, this is when a member of staff may be doing a job, but not quite reaching the required standard. It could be that a specific training course is needed or support or advice. This is dealt with by Personnel and the line manager of the member of staff involved, through supervision etc.
- *Insurance Claim* - where someone is making a claim against the authority, the Risk Management Unit would deal this with.
- *Dignity at Work* - This is where staff feel that they may not be being treated fairly by their manager or another member of staff. This would be dealt with by Personnel and the manager. Initially they would try and resolve through mediation and then progress from there.
- *Whistleblowing* - Explain that this is where staff observe or are aware of something that is felt to be inappropriate action from another member of staff. Explain that this could be anything from fraudulent mileage claims, to someone feeling uncomfortable with the way a member of staff is treating customers. Give staff the name of the contact person.
- Explain that, where causes for concern don't come under the complaints procedure, the Authority may need to consider other means of addressing the concern. Examples of this could be anonymous complaints or complaints made by a person without consent or not classed as having significant interest in the customer.

Give out Handout 4 - Dealing with complaints flowchart - shows text material which in Pembrokeshire is reproduced in the form of a plastic card for staff to keep the contact number next to the phone.

Give out Handout 5 - Social Care Complaints Case Studies - Scenarios

- Depending on the size of the group, you can either split them up into pairs and ask them to go through two or three case studies per pair. Or with a smaller group, you can ask them to look at them all.
- Allow approximately 10 - 15 minutes for this part.

- Go through each case study and ask whether they thought the scenario was a complaint. Run through the responses and discuss. Check that everyone is happy with the response and that they understand and there are no questions.
- Certain case studies are there to highlight various things, such as:
 - 1 Consent for a representative.
 - 8 That a complaint is accepted from a child at any age, if that child has the capacity and the ability to complain.
 - 9 Process for dealing with aggressive or abusive callers.
 - 14 Anonymous complaints, highlight the need for a proper investigation even if it doesn't fall within the formal consideration procedure.

After running through the responses and ensuring there are no further questions, **give out Handout 6** - Social Care Complaint Case Studies - Responses

Go through Slide 16 - Compliments & Suggestions

- Explain that it is important for staff to log compliments as well as complaints. If something is working well then we need to know so that it isn't changed. We need to acknowledge where a customer has taken the time and trouble to give us feedback.
- Explain that suggestions could benefit a number of people if they result in a change to a policy or process.

Give out Handout 7 - Compliments & Suggestion sheet.

Ask the group if they have any questions, thank them for coming and ask them to do one final thing before leaving, fill in the evaluation sheet.

Give out Handout 8 - Course Evaluation.

- Collect the sheets in at the end and give out attendance certificates.

Handout 1 - Powerpoint Slides

Social Care Services

Complaints



Compliments



Suggestions



1

Aim

"To raise awareness of the purpose and benefits of the complaints procedure, compliments and suggestions for social care."

2

Today's Objectives

- Review existing beliefs about complaints.
- Discuss the purpose and definition of a complaint.
- Develop familiarity with the system for handling complaints, compliments & suggestions.
- Review the benefits of complaints.
- Understand the 3 stages of the process and how to make the initial response.

3

A complaint may be about:

Any service supplied by or on behalf of Pembrokeshire County Council e.g.

- Day Care
- Support services at home
- Accommodation for children
- After Care

4

A complaint may be as a result of:

- A problem that has not been resolved.
- Lack of action/communication.
- The behaviour or actions of a member of staff e.g. handling of cases, rudeness.
- A disagreement over a decision reached e.g. relating to placements.
- The way in which a decision is implemented.
- The quality and appropriateness of services - their delivery or non delivery.
- Purchased services and the purchasing of placements.

5

A complaint is NOT:

- The reporting of a fault e.g. a broken piece of equipment.
- A 1st request for information.
- A matter for which there is a right of appeal.
- A matter where there is legal course of action.
- A disagreement with the Council's policies.
- Disagreement with the actions of an elected member.

6

Who can complain?

- **A service user** - anyone who receives a service including a carer, a looked after child or young person, a foster carer.
- **A potential service user** - anyone whose request for a service has been refused.
- **A representative acting on behalf of an individual** of either of the above and nominated by them e.g. a relative, a neighbour, a friend, AM, MP or MEP, elected member, staff with the person's permission, independent visitors, advocates including NSPCC advocates and anyone representing the person's interest e.g. solicitor.
- **Whoever has parental responsibility** for a looked after child or young person.

7

A complaint can be made:

- In person
- In letter
- By telephone
- By fax
- By e-mail
- Via the Pembrokeshire County Council website
- On Video Tape
- On Audio Tape



8

The New Social Care Complaints Procedure

9

Stage One - Local Resolution

- Complainant raises concerns.
- Dealt with locally by the person or team providing the service.
- Try to resolve in 10 working days.
- Can be extended by another 10 working days **only if complainant agrees.**
- Proceeds to formal consideration stage if not resolved.
- Complainant can request to proceed to formal consideration stage at any time.

10

Stage Two - Formal Consideration

- Complainant asks to proceed to formal consideration stage.
- Usually an investigation by someone not involved with the local service.
- Mediation should be considered at each stage.
- A report is produced including findings, conclusions and recommendations.
- The authority has 25 working days to respond.
- This time starts from the date the request to proceed to stage 2 is made.
- This can be extended only where it is provided for within the regulations.
- Proceed to Stage 3 if not resolved.
- Or if there has been no response after 3 months.

11

Stage Three - The Independent Panel

- Any unresolved complaints can be considered by a panel hearing.
- The panel and administration is independent of the Council.
- The panel must meet within 20 working days.
- The panel must produce a report within 5 working days.
- The Authority must respond to the complainant within 15 working days.
- The end of the Social Care procedure.

12

The Ombudsman

If the complaint is still not resolved:

- The complainant can take their complaint to the public Service Ombudsman for Wales (PSOW).
- PSOW may opt to accept a complaint before the local authority procedure is exhausted.
- Or the Complainant could decide to go for a Judicial Review.

13

Receiving A Complaint

- Complaint comes in.
- Give your name.
- Log contact details & details of any representative.
- Complaint details:
 - Summarise - Phrase.
 - Chronological Order.
 - Prioritise.
 - How can we resolve.
- Confirm/Repeat details.
- Inform of next steps and give contact details.

14

Other procedures to be aware of :

1. Adult/Child Protection Procedures
2. Corporate Complaints Procedure
3. Education Complaints Procedure
4. Code of conduct for elected members
5. Grievance/Disciplinary/Capability Procedures
6. Insurance Claims
7. Dignity at Work
8. Whistleblowing

15

Compliments & Suggestions

Compliments & Suggestions can be received in the same way as complaints.



Compliments

- If made verbally, take contact details and note name & details of staff/service in receipt of compliment.
- Forward both verbal and any written/e-mail compliments to Joy Hughes to log. Joy will also inform relevant members of staff/managers where necessary.



Suggestions

- If made verbally, take contact details, note the suggestion made and name & details of staff/service in receipt of suggestion.
- Forward both verbal and any written/e-mail suggestions to Joy Hughes who will inform the relevant officer.

16

Handout 2: Beliefs Questionnaire

Give a score to each statement according to your beliefs as follows:

- Strongly Agree = 4
 Agree = 3
 Disagree = 2
 Strongly Disagree = 1
 Don't Know = 0

		Score
1.	Most complaints are never made - people keep grievances to themselves.	
2.	When a complaint is made those in a position to take corrective action don't find out about it.	
3.	People have to fight through barriers placed deliberately in order to make it hard to complain.	
4.	Some people have nothing better to do than complain.	
5.	Complaints are viewed as negative personal criticisms and are therefore not welcomed.	
6.	When someone complains to me I never defend the organisation or myself.	
7.	People who complain can be turned relatively easily into loyal happy customers.	
8.	Complaints are a valuable source of organisational learning.	
9.	It's all well and good to suggest we spend time sorting out complaints but time is precious and other priorities are more important.	
10.	Complaints bring things that need urgent attention to the notice of the organisation.	
11.	Many complaints are the rantings of a small unrepresentative minority of customers.	
12.	It makes me angry when people complain about what we do - after all we are all trying to do our best.	

Handout 5: Social Care Complaints - Scenarios

1. A son, Max Hobert, complains about the level of care received by his mother, Mrs Josey Hobert. He feels that the amount of care should be increased. His mother is elderly and living on her own and is capable of making a complaint in her own right. On contacting the mother, you find out that she is happy with her care.

Is it a complaint or not? What should you do?

2. Mr David Jones has phoned you to explain that due to his medical condition deteriorating he is unable to cope with general hygiene and running of the house. Mr Jones has asked for assistance previously, but has not had a recent assessment. The Authority has been aware of Mr Jones for six years. Mr Jones complains that he hasn't been re-assessed and no one is helping him. His last assessment was over a year ago.

Is it a complaint or not? What should you do?

3. Mrs Sian Price receives home care twice a day to help with preparing meals and general duties such as shopping. Her normal carer was off on leave and a relief carer turned up at the house. Mrs Price phones you to inform you that she isn't happy that a total stranger had turned up at the house. She stated that she had no introduction to the new carer and no one informed her of the change.

Is it a complaint or not? What should you do?

4. Jack Andrews has written to you to inform you that due to an accident, he has suddenly developed a hearing problem. He is aware of equipment that is available, which would help his situation. He has asked if he can have a hearing loop at home to help him continue to enjoy life in a similar manner to what he was used to.

Is it a complaint or not? What should you do?

5. A very irate Madeline Boswell calls you to complain that she is living on her own and has a visual impairment. She states that she asked for some information and that when it arrived it wasn't in the format she needed. She isn't happy and indicates that staff should have known.

Is it a complaint or not? What should you do?

6. Aled George, the father of a young adult with a learning disability contacts you to say he's not happy. His daughter, Sioned George, has been assessed as needing a specialist residential facility to cope with her needs. This type of school isn't available within her home county. Her father complains that the service should be provided within the county.

Is it a complaint or not? What should you do?

7. Sandra Thomas has mental health problems. She has asked for assistance to move house. Although this is not normal practice, the Council agreed to support her in this way. During the move, a member of staff tried to explain that the new property would not be of sufficient size to accept all of Sandra's belongings. It was decided that some belongings should be disposed of before she moved in. After living in the new property for some time, Miss Thomas complains that the member of staff has disposed of the wrong belongings.

Is it a complaint or not? What should you do?

8. Tristan Hart, a 9-year-old child in foster care, complains about the condition of the foster home he lives in. He says that the quality of care he is receiving isn't adequate and wants to move. You are told that the parents of the child are happy for the child to remain in the foster home and don't want to change.

Is it a complaint or not? What should you do?

9. Mr Stuart Garfield writes to your office to complain about a member of staff with whom he'd had a telephone conversation. When he previously telephoned to report a problem, the officer he spoke with (Brian Bagworth) was very obstructive. The officer would not say how or when the problem would be dealt with, was rude in his manner and put the phone down on Mr. Garfield.

Is it a complaint or not? What should you do?

10. You receive the following letter:

Mrs Joy Smith
32 Milford Terrace
Milford Haven
Pembrokeshire

"Dear Sir,

My mother lives in a council bungalow in Milford and is in fear of her life because of the large tree overhanging her bedroom. She is so frightened that she now sleeps in a chair in the living room.

I have been promised for months that the tree would be chopped down, but still nothing has happened. When I last spoke to your parks officer, he told me that the tree was not on housing land and that he would be speaking to your estates officer that day. But he said that that in any event there was no rush because the man employed by your contractor to chop down trees was on the sick.

Frankly I don't care who is responsible for what; I just want that tree taken away. You lot should sort yourselves out. If I don't get a satisfactory answer by the end of the week I shall be going to see my MP."

Is it a complaint or not? What should you do?

11. On her way to visit her mother, Miss Susan Black tripped over a defective step and broke her ankle whilst walking across the car park of the residential home. She decides to phone Mr Steve Red, an officer within Social Care & Housing, complaining about the state of the premises and informing Mr Red of her injury.

Is it a complaint or not? What should you do?

12. Mr Christopher Smith, who works in the Social Care & Housing Directorate, asked the Information Technology Division to repair his computer a week ago. His machine is still broken and there is no sign of IT.

Is it a complaint or not? What should you do?

13. Mr Calvin James has noted that his secretary, Miss Muriel Griffiths, is becoming increasingly interested in her computer screen after gaining access to the Internet. Several of his staff have joked that Miss Griffiths is viewing inappropriate material. When walking passed her desk one morning he glances over and notices lurid scenes on the computer. Feeling slightly flustered, he is confused about what to do next.

Is it a complaint or not? What should you do?

14. You arrive for work in the area office and the caretaker tells you that he found a note pushed through the letterbox when he unlocked that morning. It reads:

"Something needs to be done about the so-called care that the old people get who live in Maesglas. The County Council should be ashamed to run such a place. I've been there to visit people. They can't use their own rooms because they're always too cold. You can smell the downstairs toilets from the other end of the corridor. And all the people who live there say the Matron shouts at everyone, the

staff and the residents. We don't pay our Council Tax expecting this sort of thing to happen. If something isn't done, I will be contacting the editor of the Pembroke Gazette."

Is it a complaint or not? What should you do?

15. Tracey Williams used to work at The Old Vicarage, a privately run home for adults with learning difficulties. The Old Vicarage has been operating for some years - there are 12 beds and the Council has one young man placed there. Tracey says that she resigned because there were never enough staff on duty. Tracey alleges that when inspectors came from "the Care Standards people", the Owner showed them staff rotas which had been made up to show more staff than there really were on duty.

Is it a complaint or not? What should you do?

16. You are the social worker for Damien Jones, a 12-year-old boy who is looked after by the authority. One day he tells you that he wants to make a complaint against his PE teacher. The teacher has been making Damien stay behind after school and has recently started to touch him inappropriately. Damien doesn't trust anyone in the school to deal with it and he wants you to get something done.

Is it a complaint or not? What should you do?

Handout 6: Social Care Complaints – Responses

N.B. If you are unsure whether or not something is a complaint, then always pass the details to the Social Care & Housing Complaints Officer for a decision.

1. Issue: Complaining on behalf of, or as a representative of, someone else

The mother, Josey Hobert is the person receiving the service and she is able to complain in her own right. She has stated that she is happy with the level of care that she receives. This would therefore not be accepted as a complaint unless she authorised her son to make the complaint on her behalf. This would need to be explained to the son.

2. Issue: Failure to deliver a service resulting in a complaint

As this is a complaint you should take the details and pass them to the Complaints Officer who will log and acknowledge the complaint and then pass it to the manager or a senior officer within the Adult Care Assessment Team for them to investigate.

3. Issue: Failure to communicate resulting in a complaint

Mrs. Price should have been informed that there would be a different carer attending her home. As her normal carer was on leave, it would have been good practice for the normal carer to introduce the relief carer before going on leave. This is not always possible if it is an emergency and there isn't sufficient time. As this is a complaint, you should take the details and pass them to the Complaints Officer who will log and acknowledge the complaint and will forward it to the Manager or a senior officer in the Independent Living Team for them to investigate.

4. Issue: Request for Service

This is a request for a service and not a complaint. You should take all the contact details and forward them to the Hearing Impairment Officer or to the administrative staff in the Disabilities Team for Physical and Sensory Impairment.

5. Issue: Poor communication resulting in incorrect service provision leading to a complaint

Mrs Boswell should have informed staff what format was required, but as good practice staff should also ask. If the information wasn't available in the required format, but was obtainable, then reasonable time should have been allowed for this to happen. If staff were already aware of the required format but didn't provide it as requested, then this would be considered as a complaint. You would

need to take the details and forward them to the Complaints Officer so that it can be discussed with the relevant team.

6. Issue: Service not meeting customer requirement, resulting from a policy decision

You would need to take all of the contact details and pass them to Complaints Officer. This is a complaint ultimately against a policy decision not to provide a particular kind of service within the county. The law does not exclude complaints of this type from the procedure – but it would be unhelpful to suggest to complainants that policies can necessarily be overturned through the complaints procedure. The Community Team for Learning Disabilities (CTLD) should try to secure local resolution by providing a fuller explanation. This might include explaining:

- that all options within the county were properly considered,
- that all options available out of county were considered, and
- that the decision not to provide the service in county is a policy matter, to be reviewed by elected members rather than officers.

7. Issue: Complaints Procedure v. Insurance Claim, Capability or Disciplinary procedures

You need to take all the details and pass them to the Complaints Officer. She will log and acknowledge the complaint and forward it to the manager or senior officer in the Community Mental Health Team (CMHT). Initially this should be treated as a complaint. However:

- If the complainant wishes to claim for any loss incurred, the issue should be dealt as an insurance claim;
- If the member of staff was found to be at fault, the Capability or Disciplinary Procedures should be initiated.

8. Issue: Complaints made by children

Provided the child has the ability to make the complaint, this will be classed as a complaint from the child. You should take all the details and pass them to the Complaints Officer. She will log and acknowledge the complaint – and she will offer the child help to secure an advocate to speak on their behalf if they would like one.

9. Issue: Complaint against a member of staff

You should take all the details and pass them to the Complaints Officer. She will log and acknowledge the complaint and forward it to the relevant manager or senior officer to look into. The manager will contact the Mr Garfield, investigate the complaint and respond within the local resolution complaint timescales.

10. Issue: Corporate complaint from housing tenants about lack of service

You should take all the details and pass them to the relevant person who would deal with that section of work. If in doubt or you are unable to trace who should deal with it, pass it to the Complaints Officer, who would pass it on to the relevant officer.

11. Issue: Insurance Claim

This would be treated initially as a complaint and you would need to take all of the details. If the complainant decided to make an insurance claim, the complaint would be suspended. Mr Red should then discuss the matter with the Risk Manager as soon as possible to ascertain a way forward. Additionally, Mr Red should notify the Council's Safety Unit.

12. Issue: Internal complaints

The corporate complaints procedure can also be used internally. Mr. Smith should talk to the most relevant manager within IT and request that they look into his complaint. The IT manager should log the complaint and investigate the matter within 5 working days.

13. Issue: Disciplinary Procedure

As this is a disciplinary issue Mr. Jones should follow the disciplinary procedure. The matter should not be dealt with under the social services complaints procedure. It would still not qualify for the complaints procedure even if a customer had raised it.

14. Issue: Anonymous social care complaint

Because this is anonymous, it doesn't come within the scope of the statutory social services complaints procedure. However, the Council will want to make sure these concerns are fully investigated - and any lessons learned. So the Council would mount an investigation outside of the statutory procedure - drawing on elements of the procedure as appropriate. While the arrangement for consulting with the CSIW applies only to complaints that fall within the statutory procedure, it would be good practice to discuss the investigation with the CSIW Regional Office.

Whether the home is run by the Council or an independent provider makes no difference - they are registered on the same basis with the CSIW. You should pass the note to the Complaints Officer.

15. Issue: Care Standards complaint

This is a case that needs to be considered with the Regional Office of the Care Standards Inspectorate for Wales (CSIW). You should take down as much detail as possible and pass to the Complaints Officer. In a case like this, the first question is whether there is a child protection or adult protection issue. If there is, then it should be referred to the local Child Protection or Adult Protection Team. If not, it would be normal practice for the authority to ask the Registered Person in the home to investigate - **unless** passing it to the Registered Person would be likely to get in the way of an investigation by the CSIW or the Council. In this particular case, the allegation is against the owner - so clearly he can't be asked to investigate it. The Council should contact the CSIW and they should decide together how to investigate. These are decisions for the Complaints Officer.

16. Issue: Child Protection referral

Though Damien says he wants to make a complaint, this is of course a Child Protection referral, which should be handled through the ACPC/LCSB procedure. You need to take down as much detail as you can and pass it immediately to the Department's Child Protection Co-ordinator. If you don't know who that is, you should contact the Complaints Officer.

Handout 8: End of Course Evaluation Form - SCWDP (to be completed at the end of the session)

The Development Team would appreciate you taking some time to complete this evaluation form. It is the first part of the process we use to evaluate PCC's Training Provision. The comments you make will help us to revise our training to provide the best possible learning opportunities for our employees. Thank you for your time.

Name:

(It is NOT essential for you to complete your name)

Course Title: **Date:**

Venue: **Course time:**

Content	Yes	To some extent	No	Don't know	If you have ticked 'To some extent' or 'No', we would appreciate you giving some details
1. The training covered all that I expected to learn					
2. The informatin was useful for my work					
3. I will apply what I learnt to my job					
4. What was the most useful part of the course?					
5. What was the least useful part of the course?					
Presentation	Yes	To some extent	No	Don't know	If you have ticked 'To some extent' or 'No', we would appreciate you giving some details
6. The course was well organised					
7. The course material was well presented					
8. The time allocated was appropriate to cover the content					
Inclusion	Yes	To some extent	No	Don't know	If you have ticked 'To some extent' or 'No', we would appreciate you giving some details
9. The presenter encouraged everyone to take part					
10. The presenter was aware of people with different needs and abilities					
The future	Yes	To some extent	No	Don't know	If you have ticked 'To some extent' or 'No', we would appreciate you giving some details
11. Would you recommend this course to your colleagues?					
12. I would be interested in some kind of follow-up to this course					
Facilities	Yes	To some extent	No	Don't know	If you have ticked 'To some extent' or 'No', we would appreciate you giving some details
13. The catering was good					
14. The venue was accessible and provided a good environment					
Any other comments you wish to add regarding this session or your future training needs:					

Following Up Complaints

An example of a questionnaire that could be used by post or by phone to seek the views of complainants once the complaints process is completed

Dear (Name of Complainant)

Improving the way we handle complaints

We recently looked into a complaint from you and we understand from our records that this is now closed. If this is not the case, please tell me using the envelope provided.

We know that complaining is never the easiest thing to do and when you complain things do not always go as you hoped. We would like to hear about how you got on and see if we can make things any easier and better for other people who want to raise concerns with us.

The short questionnaire attached will give you a further chance to help us improve the Council's social services by telling us about your experience after raising a concern with us. Please put a ring around the numbers on the questionnaire - and you can use the space provided to tell us more about your views, if you would like to. It shouldn't take more than a few minutes to fill in.

We will use the responses as part of a statistical report. The views you give us will not be linked to you - and it will not be possible to identify you in any report. The questionnaire has a reference number on it and we will use this to check with our own records so that we can see what parts of the complaints process you were involved with.

Please return the questionnaire to me in the prepaid envelope provided.

If you have any queries about any part of this follow-up and how we use the information you give us, please phone me on [.....]. Please ring me on this number if you have any problem with completing the questionnaire.

Thank you for your time and your views. These are very valuable to us.

(Name of Complaints Officer)
Complaints Officer

Improving the way we handle complaints

Please put a ring around the number that best shows how satisfied you feel about each aspect of the complaints procedure – either (1) very satisfied, (2) quite satisfied, (3) neither satisfied nor dissatisfied, (4) quite dissatisfied, or (5) very dissatisfied:

Q1. The way your complaint was handled

Thinking first about the handling of your complaint (rather than the outcome), how satisfied were you with your overall experience of how your complaint was handled?

Very Satisfied 1 2 3 4 5 Very Dissatisfied

Q2. The different stages

Thinking about particular aspects of your experience:

- how satisfied were you with the information you were given on how to make a complaint?

Very Satisfied 1 2 3 4 5 Very Dissatisfied

- How satisfied were you with the way staff treated you? Did they show you courtesy and respect?

Very Satisfied 1 2 3 4 5 Very Dissatisfied

- How satisfied were you with the information you were given on what was happening on your complaint?

Very Satisfied 1 2 3 4 5 Very Dissatisfied

- How satisfied were you with the length of time taken to reach a decision?

Very Satisfied 1 2 3 4 5 Very Dissatisfied

- Were you satisfied with the information given to you at each stage about what you could do if your complaint was still not resolved?

Very Satisfied 1 2 3 4 5 Very Dissatisfied

Q3. The outcome of your complaint

Thinking now about the outcome of your complaint, how satisfied are you about what happened in the end?

Very Satisfied 1 2 3 4 5 Very Dissatisfied

Please use this box to make any other comments you feel would help us to improve our handling of complaints:

Thank you for taking the time to tell us about your experience of making a complaint. We will use the help you have given us to try and improve the way we handle complaints in the future.

Our reference no: _____



CYNULLIAD CENEDLAETHOL CYMRU

NATIONAL ASSEMBLY FOR WALES

OFFERYNNAU STATUDOL

STATUTORY INSTRUMENTS

2005 Rhif 3365 (Cy.262)

2005 No. 3365 (W.262)

**GOFAL CYMDEITHASOL,
CYMRU**

**SOCIAL CARE,
WALES**

**PLANT A PHOBL IFANC,
CYMRU**

**CHILDREN AND YOUNG
PERSONS, WALES**

**Rheoliadau Gweithdrefn Sylwadau
(Plant) (Cymru)
2005**

**The Representations Procedure
(Children) (Wales) Regulations
2005**

NODYN ESBONIADOL

EXPLANATORY NOTE

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

(This note is not part of the Regulations)

Mae'r Rheoliadau hyn yn dirymu ac yn disodli Rheoliadau Gweithdrefn Sylwadau (Plant) 1991 i adlewyrchu'r newidiadau a wnaed gan Ddeddf Mabwysiadu a Phlant 2002 a Deddf Iechyd a Gofal Cymdeithasol (Iechyd Cymunedol a Safonau) 2003 i'r darpariaethau ar gyfer y gweithdrefnau o dan Ddeddf Plant 1989 (y Ddeddf) ar gyfer ystyried sylwadau, gan gynnwys cwynion.

These Regulations revoke and replace the 1991 Representations Procedure (Children) Regulations to reflect the changes made by the Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003 to the provisions for the procedures under the Children Act 1989 (the Act) for considering representations, including complaints.

Y canlynol yw'r prif wahaniaethau rhwng y gweithdrefnau a sefydlwyd o dan Reoliadau 1991 a'r rhai a sefydlir o dan y Rheoliadau hyn: estyn swyddogaethau awdurdodau lleol y gellir gwneud sylwadau arnynt o dan adran 26 (maent wedi'u cyfyngu hyd yn hyn i swyddogaethau o dan Ran 3 o'r Ddeddf)(rheoliad 7); cyflwyno gofyniad am i awdurdodau lleol geisio penderfynu'n anffurfiol ar yr holl sylwadau o dan weithdrefn y Ddeddf (ar hyn o bryd dim ond i sylwadau a wneir o dan adran 24D y mae penderfynu'n lleol yn gymwys) (rheoliad 15); a dileu'r cam o'r weithdrefn y mae panel ynghlwm wrtho (caniateir yn lle hynny ystyriaeth bellach o sylwadau achwynwyr gan banel annibynnol a sefydlir o dan reoliadau ar wahân a wneir o dan adran 26ZB o'r Ddeddf).

The major differences between the procedures established under the 1991 Regulations and those established under these Regulations are: extension of local authority functions about which representations can be made under section 26 (they are previously limited to functions under Part 3 of the Act)(regulation 7); introduction of a requirement on local authorities to attempt informal resolution of all representations under the Act procedure (presently local resolution only applies to representations made under section 24D) (regulation 15); and removal of the panel stage of the procedure (complainants may instead have their representations further considered by an independent panel established under separate regulations made under section 26ZB of the Act).

Mae rheoliad 4 yn ei gwneud yn ofynnol i'r awdurdod lleol ddynodi swyddog hyn a chanddo

Regulation 4 requires the local authority to designate a senior officer with responsibilities in relation to

gyfrifoldebau mewn perthynas â sylwadau ac mae rheoliad 5 yn ei gwneud yn ofynnol i'r awdurdod lleol benodi swyddog cwynion.

Mae rheoliad 6 yn gosod gofynion o ran hyfforddi staff awdurdod lleol.

Mae rheoliad 8 yn sefydlu gweithdrefn ar gyfer ystyried sut y mae'n rhaid ymdrin â sylwadau pan fo person neu gorff arall yn eu hystyried ar yr un pryd. Mae hyn y caniatáu i'r awdurdod lleol atal ystyriaeth dros dro pe byddai parhau â hi'n peryglu neu'n rhagfarnu'r ystyriaeth arall. Mae rheoliad 9 yn darparu ar gyfer penderfynu pa awdurdod lleol fydd yn ystyried sylwadau pan fo mwy nag un yn ymwneud â'r mater.

Caniateir gwneud sylwadau ar lafar neu'n ysgrifenedig (rheoliad 11) a chaniateir eu tynnu'n ôl ar lafar neu'n ysgrifenedig (rheoliad 14).

Un o'r categorïau o bobl a gaiff wneud sylwadau o dan adran 26 o Ddeddf 1989, yn unol ag adran 26(3)(e), yw unrhyw bersonau eraill (ond nid y plentyn, y rhiant, y rhiant maeth neu berson â chyfrifoldeb rhiant dros y plentyn) y mae ganddynt, ym marn yr awdurdod lleol, fuddiant digonol yn lles y plentyn i warantu bod sylw'r person hwnnw'n cael ei ystyried gan yr awdurdod. Mae rheoliad 13 yn ei gwneud yn ofynnol i'r awdurdod lleol benderfynu a oes gan yr achwynydd fuddiant digonol o'r fath ac iddo hysbysu'r achwynydd a'r plentyn os yn briodol o'r penderfyniad hwnnw.

Mae rheoliad 16 yn sefydlu'r weithdrefn ar gyfer ystyriaeth ffurfiol o'r sylwadau pan na chafwyd penderfyniad lleol o dan reoliad 15. Rhaid i'r weithdrefn o dan reoliad 16 gynnwys person annibynnol a benodir o dan reoliad 17; nid oes angen i'r weithdrefn o dan reoliad 15 gynnwys y person annibynnol.

Mae rheoliad 18 yn nodi'r gofynion mewn perthynas â'r ymateb sydd i'w anfon gan yr awdurdod lleol gan gynnwys ymateb ynghylch hawl yr achwynydd i ofyn am i banel annibynnol ystyried y sylwadau ymhellach o dan y weithdrefn a sefydlir o dan adran 26ZB o'r Ddeddf.

Mae rheoliad 19 yn nodi sut y mae awdurdodau lleol i fonitro'r trefniadau y maent wedi'u gwneud a hynny gyda'r bwriad o sicrhau eu bod yn cydymffurfio â'r Rheoliadau.

representations and regulation 5 requires the local authority to appoint a complaints officer.

Regulation 6 imposes requirements as to training of local authority staff.

Regulation 8 establishes a procedure for consideration of how representations shall be dealt with where there is a concurrent consideration by another person or body. This allows for the local authority to suspend consideration temporarily where to continue would compromise or prejudice the other consideration. Regulation 9 provides for determination of which local authority will consider representations where more than one is involved.

Representations may be made orally or in writing (regulation 11) and may be withdrawn orally or in writing (regulation 14).

One of the categories of people who may make representations under section 26 of the 1989 Act are, by section 26(3)(e) such other persons (not being the child, parent, foster parent or person with parental responsibility for the child) as the local authority consider has a sufficient interest in the child's welfare to warrant that person's representation being considered by the authority. Regulation 13 requires the local authority to decide whether the complainant has such sufficient interest and to notify that decision to the complainant and to the child if appropriate.

Regulation 16 establishes the procedure for formal consideration of the representations where there has been no local resolution achieved under regulation 15. The procedure under regulation 16 must involve an independent person appointed under regulation 17; the procedure under regulation 15 need not involve the independent person.

Regulation 18 sets out requirements in relation to the response to be sent by the local authority including as to the complainant's right to request further consideration of the representations by an independent panel under the procedure established under section 26ZB of the Act.

Regulation 19 sets out how local authorities are to monitor the arrangements they have made with a view to ensuring that they comply with the Regulations.

2005 Rhif 3365 (Cy.262)

2005 No. 3365 (W.262)

**GOFAL CYMDEITHASOL,
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**SOCIAL CARE,
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PERSONS, WALES**

Rheoliadau Gweithdrefn Sylwadau
(Plant) (Cymru)
2005

The Representations Procedure
(Children) (Wales) Regulations
2005

Wedi'u gwneud *6 Rhagfyr 2005*
Yn dod i rym *1 Ebrill 2006*

Made *6 December 2005*
Coming into force *1 April 2006*

TREFN Y RHEOLIADAU

ARRANGEMENT OF REGULATIONS

RHAN I

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GENERAL

1. Enwi, cychwyn a chymhwyso.
2. Dehongli.
3. Egwyddorion cyffredinol o ran ymdrin â sylwadau.

1. Title, commencement and application
2. Interpretation
3. General principles in handling representations

RHAN II

PART II

SEFYDLU'R WEITHDREFN SYLWADAU

SETTING UP THE REPRESENTATIONS
PROCEDURE

4. Uwch-swyddog â chyfrifoldeb am gwynion.
5. Swyddog cwynion.
6. Gwybodaeth a hyfforddiant i staff.

4. Senior officer responsible for complaints
5. Complaints officer
6. Information and training for staff

RHAN III

PART III

NATUR A CHWMPAS Y WEITHDREFN
SYLWADAU

NATURE AND SCOPE OF THE
REPRESENTATIONS PROCEDURE

7. Cwmpas y weithdrefn sylwadau
8. Sylwadau darostyngedig i ystyriaeth gyddredol

7. Scope of the representations procedure
8. Representations subject to concurrent consideration

9. Sylwadau y mae'n dod i ran mwy nag un awdurdod lleol i'w hystyried
10. Ymdrin â sylwadau safonau gofal

RHAN IV

YMDRIN Â SYLWADAU A'U HYSTYRIED

11. Gwneud sylwadau
12. Dyletswydd yr awdurdod lleol i ddarparu gwybodaeth a chymorth i achwynwyr
13. Sylwadau a wneir gan "bersonau eraill" ("other persons") o dan adran 26(3)(e) o'r Ddeddf
14. Tynnu sylwadau'n ôl
15. Penderfyniad Lleol
16. Ystyriaeth Ffurfiol
17. Penodi person annibynnol
18. Ymateb

RHAN V

DYSGU O SYLWADAU

19. Monitro'r modd y gweithredir y weithdrefn sylwadau
20. Adroddiad Blynyddol

RHAN VI

DARPARIAETHAU TROSIANNOL A DIRYMU

21. Darpariaethau Trosiannol ac Arbedion
22. Dirymu

Mae Cynulliad Cenedlaethol Cymru drwy arfer y pwerau a roddwyd iddo gan adrannau 24D(1A), 24D(2), 26(3A)(b), 26(4A), 26(5), 26(5A), 26(6), 26A(3), 59(5) a 104(4) o Ddeddf Plant 1989(1) a pharagraff 6 o Atodlen 7 iddi drwy hyn yn gwneud y Rheoliadau a ganlyn:-

(1) 1989 p.41. Mae'r pwerau hyn yn arferadwy gan yr Ysgrifennydd Gwladol o ran Lloegr. Trosglwyddwyd y gwaith o arfer y pwerau o ran Cymru i Gynulliad Cenedlaethol Cymru yn rhinwedd erthygl 2 o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672) a'r cyfeiriad at Ddeddf Plant 1989 yn Atodlen 1 iddo.

9. Representations falling to be considered by more than one local authority
10. Handling of care standards representations

PART IV

HANDLING AND CONSIDERATION OF REPRESENTATIONS

11. Making representations
12. Duty of the local authority to provide information and assistance for complainants
13. Representations made by "other persons" ("bersonau eraill") under section 26(3)(e) of the Act
14. Withdrawal of representations
15. Local Resolution
16. Formal Consideration
17. Appointment of independent person
18. Response

PART V

LEARNING FROM REPRESENTATIONS

19. Monitoring the operation of the representations procedure
20. Annual Report

PART VI

TRANSITIONAL PROVISIONS AND REVOCATION

21. Transitional Provisions and Savings
22. Revocation

The National Assembly for Wales in exercise of the powers conferred upon it by sections 24D(1A), 24D(2), 26(3A)(b), 26(4A), 26(5), 26(5A), 26(6), 26A(3), 59(5) and 104(4) of, and Schedule 7, paragraph 6 to the Children Act 1989(1) hereby makes the following Regulations:-

(1) 1989 c.41. These powers are exercisable by the Secretary of State in relation to England. Their exercise in relation to Wales has been transferred to the National Assembly for Wales by virtue of article 2 of, and the entry for the Children Act 1989 in Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

RHAN I
CYFFREDINOL

Enwi, cychwyn a chymhwyso

1.-(1) Enw'r Rheoliadau hyn yw Rheoliadau Gweithdrefn Sylwadau (Plant) (Cymru) 2005 a deuant i rym ar 1 Ebrill 2006.

(2) Mae'r Rheoliadau hyn yn gymwys o ran Cymru.

Dehongli

2.-(1) Yn y Rheoliadau hyn-

ystyr "achos disgyblu" ("*disciplinary proceedings*") yw unrhyw weithdrefn ar gyfer disgyblu cyflogeion a gaiff ei mabwysiadu gan awdurdod lleol;

ystyr "achwynydd" ("*complainant*") yw person sy'n gwneud sylwadau o dan adran 24D o'r Ddeddf neu berson sy'n dod o dan adran 26(a) i (e) o'r Ddeddf, neu berson sy'n gwneud sylwadau o dan baragraff 6 o Atodlen 7 i'r Ddeddf;

ystyr "awdurdod lleol" ("*local authority*") yw cyngor sir neu gyngor bwrdeistref sirol;

ystyr "Cynulliad Cenedlaethol" ("*National Assembly*") yw Cynulliad Cenedlaethol Cymru;

ystyr "Deddf 2002" ("*the 2002 Act*") yw Deddf Mabwysiadu a Phlant 2002(1);

ystyr "diwrnod gwaith" ("*working day*") yw diwrnod nad yw'n ddydd Sadwrn, yn ddydd Sul, yn Ddydd Nadolig, yn Ddydd San Steffan, yn Ddydd Gwener y Groglith, neu'n ddiwrnod sy'n wyl y banc o dan Ddeddf Bancio a Thrafodion Ariannol 1971(2);

ystyr "y Ddeddf" ("*the Act*") yw Deddf Plant 1989;

ystyr "eiriolwr" ("*advocate*") yw person sy'n darparu cymorth o dan drefniadau a wneir gan awdurdod lleol o dan adran 26A(1) o'r Ddeddf;

ystyr "person annibynnol" ("*independent person*") yw'r person, ac yntau heb fod yn un o aelodau nac yn un o swyddogion yr awdurdod lleol, sy'n cymryd rhan yn yr ystyriaeth o'r sylwadau ac mewn unrhyw drafodaethau dilynol, yn unol ag adran 26(4) o'r Ddeddf;

ystyr "Rheoliadau 1991" ("*the 1991 Regulations*") yw Rheoliadau Gweithdrefn Sylwadau (Plant) 1991(3);

(1) 2002 p.38.

(2) 1971 p.80.

(3) O.S. 1991/894; yr offerynnau diwygio perthnasol yw O.S. 1991/2033, 2001/2874.

PART I
GENERAL

Title, commencement and application

1.-(1) The title of these Regulations is the Representations Procedure (Children) (Wales) Regulations 2005 and they come into force on 1 April 2006.

(2) These Regulations apply in relation to Wales.

Interpretation

2.-(1) In these Regulations-

"the Act" ("*y Ddeddf*") means the Children Act 1989;

"the 2002 Act" ("*Deddf 2002*") means the Adoption and Children Act 2002(1);

"the 1991 Regulations" ("*Rheoliadau 1991*") means the Representations Procedure (Children) Regulations 1991(2);

"advocate" ("*eiriolwr*") rmeans a person who provides assistance under arrangements made by a local authority under section 26A(1) of the Act;

"the Advocacy Services Regulations" ("*y Rheoliadau Gwasanaethau Eirioli*") means the Representations Procedure and Advocacy Services (Children) (Wales) Regulations 2004(3);

"appropriate office" ("*swyddfa briodol*") means in relation to an establishment or agency-

(a) if an office has been specified under regulation 10(3) for the area in which the establishment or agency is situated, that office;

(b) in any other case, any other office of the National Assembly;

"complainant" ("*achwynydd*") means a person making representations under section 24D of the Act or a person falling within 26(a) to (e) of the Act, or a person making representations under paragraph 6 of Schedule 7 to the Act;

"complaints officer" ("*swyddog cwynion*") means the person appointed under regulation 5;

"to consider representations" ("*ystyried sylwadau*") means to consider representations under the procedure set out in these Regulations;

"disciplinary proceedings" ("*achos disgyblu*") means any procedure for disciplining employees adopted by a local authority;

(1) 2002 c.38.

(2) S.I. 1991/894; relevant amending instruments are S.I. 1991/2033, 2001/2874.

(3) S.I. 2004/1448 (W.148).

ystyr "y Rheoliadau Gwasanaethau Eirioli" ("*the Advocacy Services Regulations*") yw Rheoliadau Gweithdrefn Sylwadau a Gwasanaethau Eirioli (Plant) (Cymru) 2004(1)";

ystyr "swyddfa briodol" ("*appropriate office*") mewn perthynas â sefydliad neu asiantaeth-

- (a) os yw swyddfa wedi'i phennu o dan reoliad 10(3) ar gyfer yr ardal lle y lleolir y sefydliad neu'r asiantaeth, yw y swyddfa honno;
- (b) mewn unrhyw achos arall, yw unrhyw un o swyddfeydd eraill y Cynulliad Cenedlaethol;

ystyr "swyddog cwynion" ("*complaints officer*") yw'r person a benodir o dan reoliad 5;

ystyr "sylwadau" ("*representations*") yw sylwadau o dan adran 24D neu adran 26 o'r Ddeddf neu baragraff 6(2) o Atodlen 7 iddi;

ystyr "ystyried sylwadau" ("*to consider representations*") yw ystyried sylwadau o dan y weithdrefn a geir yn y Rheoliadau hyn.

(2) Mae unrhyw hysbysiad sy'n ofynnol o dan y Rheoliadau hyn i'w roi'n ysgrifenedig a chaniateir ei anfon drwy'r post.

Egwyddorion cyffredinol o ran ymdrin â sylwadau

3.-(1) Rhaid i unrhyw weithdrefn sylwadau a sefydlir o dan y Ddeddf gael ei gweithredu'n unol â'r egwyddor y dylai lles yr achwynydd, pan wneir sylwadau gan berson y mae adran 24D neu 26(3)(a) yn gymwys iddo, gael ei ddiogelu a'i hybu.

(2) Pan ellir canfod beth ydynt, dylid ystyried dymuniadau a theimladau'r achwynydd.

RHAN II

SEFYDLU'R WEITHDREFN SYLWADAU

Uwch-swyddog â chyfrifoldeb am gwynion

4. Rhaid i bob awdurdod lleol ddynodi uwch-swyddog i fod yn gyfrifol am geisio sicrhau y cydymffurfir â'r trefniadau a wneir gan yr awdurdod lleol o dan y Rheoliadau hyn.

Swyddog cwynion

5.-(1) Rhaid i bob awdurdod lleol benodi person, y cyfeirir ato yn y Rheoliadau fel swyddog cwynion, i reoli'r gweithdrefnau ar gyfer ymdrin â'r sylwadau a'u hystyried ac yn benodol-

"independent person" ("*person annibynnol*") means the person, being neither a member nor officer of the local authority, who takes part in the consideration of the representations and in any subsequent discussions, in accordance with section 26(4) of the Act;

"local authority" ("*awdurdod lleol*") means a county council or county borough council;

"National Assembly" ("*Cynulliad Cenedlaethol*") means the National Assembly for Wales;

"representations" ("*sylwadau*") means representations under section 24D or section 26 of, or paragraph 6(2) of Schedule 7 to, the Act;

"working day" ("*diwenod gwaith*") means a day except Saturday, Sunday, Christmas Day, Boxing Day, Good Friday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(1).

(2) Any notice required under these Regulations is to be given in writing and may be sent by post.

General principles in handling representations

3.-(1) Any representations procedure set up under the Act must be operated in accordance with the principle that, where representations are made by a person to whom section 24D or 26(3)(a) applies, the welfare of the complainant should be safeguarded and promoted.

(2) Account should be taken of the ascertainable wishes and feelings of the complainant.

PART II

SETTING UP THE REPRESENTATIONS PROCEDURE

Senior officer responsible for complaints

4. Each local authority must designate a senior officer to be responsible for seeking to ensure compliance with the arrangements made by the local authority under these Regulations.

Complaints officer

5.-(1) Each local authority must appoint a person, in the Regulations referred to as a complaints officer, to manage the procedures for handling and considering representations and in particular-

(1) O.S. 2004/1448 (Cy.148).

(1) 1971 c.80.

- (a) i gyflawni swyddogaethau'r swyddog cwynion o dan y Rheoliadau hyn;
- (b) i gyflawni unrhyw swyddogaethau eraill a fynir gan yr awdurdod lleol mewn perthynas â sylwadau; ac
- (c) i gydweithredu ag unrhyw bersonau neu gyrff eraill ag y gall fod yn angenrheidiol er mwyn ymchwilio i sylwadau.

(2) Caiff unrhyw berson a awdurdodir gan yr awdurdod lleol i weithredu ar ran y swyddog cwynion gyflawni swyddogaethau'r swyddog cwynion.

(3) Caniateir i swyddog cwynion-

- (a) bod yn berson nad yw'n un o gyflogwyr yr awdurdod lleol; a
- (b) cael ei benodi'n swyddog cwynion ar gyfer mwy nag un corff.

Gwybodaeth a hyfforddiant i staff

6. Rhaid i bob awdurdod lleol sicrhau y caiff ei staff eu hysbysu ynghylch gweithredu'r weithdrefn sylwadau ac y cânt eu hyfforddi'n briodol i'w gweithredu.

- (a) to perform the functions of the complaints officer under these Regulations;
- (b) to perform such other functions in relation to representations as the local authority may require; and
- (c) to co-operate with such other persons or bodies as may be necessary in order to investigate representations.

(2) The functions of the complaints officer may be performed by any person authorised by the local authority to act on behalf of the complaints officer.

(3) A complaints officer may be-

- (a) a person who is not an employee of the local authority; and
- (b) appointed as complaints officer for more than one body.

Information and training for staff

6. Each local authority must ensure that their staff are informed about and appropriately trained in the operation of the representations procedure.

RHAN III

NATUR A CHWMPAS Y WEITHDREFN SYLWADAU

Cwmpas y weithdrefn sylwadau

7. Mae swyddogaethau canlynol awdurdod lleol yn swyddogaethau cymwys at ddibenion adran 26(3) o'r Ddeddf-

- (a) swyddogaethau o dan adran 31;
- (b) swyddogaethau o dan adran 33;
- (c) swyddogaethau o dan adran 34;
- (ch) swyddogaethau o dan adran 35;
- (d) swyddogaethau o dan adran 43;
- (dd) swyddogaethau o dan adran 44; ac
- (e) swyddogaethau o dan adran 47.

Sylwadau darostyngedig i ystyriaeth gydredol

8.-(1) Pan fo sylwadau'n ymwneud ag unrhyw fater-

- (a) y mae'r achwynydd wedi datgan yn ysgrifenedig ei fod yn bwriadu dwyn achos mewn unrhyw lys neu dribiwnlys yn ei gylch, neu
- (b) y mae'r awdurdod lleol yn dwyn achos disgyblu neu'n bwriadu dwyn achos disgyblu yn ei gylch, neu

PART III

NATURE AND SCOPE OF THE REPRESENTATIONS PROCEDURE

Scope of the representations procedure

7. The following functions of a local authority are qualifying functions for the purposes of section 26(3) of the Act-

- (a) functions under section 31;
- (b) functions under section 33;
- (c) functions under section 34;
- (d) functions under section 35;
- (e) functions under section 43;
- (f) functions under section 44; and
- (g) functions under section 47.

Representations subject to concurrent consideration

8.-(1) Where representations relate to any matter-

- (a) about which the complainant has stated in writing that he or she intends to take proceedings in any court or tribunal, or
- (b) about which the local authority are taking or are proposing to take disciplinary proceedings, or

- (c) y mae'r awdurdod lleol wedi'i hysbysu bod ymchwiliad yn cael ei gynnal iddo gan unrhyw berson neu gorff gyda'r bwriad o ddwyn achos troseddol, neu
- (ch) y galwyd cyfarfod yn ei gylch o gyrff eraill gan gynnwys yr heddlu i drafod materion sy'n ymwneud ag amddiffyn plant neu oedolion hawdd eu niweidio, neu
- (d) yr hysbyswyd yr awdurdod lleol yn ei gylch, fod ymchwiliadau cyfredol yn mynd rhagddynt gyda'r bwriad o ddwyn achosion o dan adran 59 o Ddeddf Safonau Gofal 2000(1),

rhaid i'r awdurdod lleol ystyried, drwy ymgynghori â'r achwynydd ac ag unrhyw berson neu gorff arall y mae'n briodol ymgynghori ag ef ym marn yr awdurdod, sut y dylid ymdrin â'r sylwadau. Cyfeirir at sylwadau o'r fath at ddibenion y rheoliad hwn fel "sylwadau darostyngedig i ystyriaeth gydredol".

(2) Caniateir rhoi'r gorau i ystyried sylwadau darostyngedig i ystyriaeth gydredol os ymddengys i'r awdurdod lleol ar unrhyw adeg y byddai parhau i'w hystyried yn peryglu neu'n rhagfarnu'r ystyriaeth arall.

(3) Pan fydd yr awdurdod lleol yn penderfynu rhoi'r gorau i ystyried cwyn o dan baragraff (2) rhaid i'r awdurdod lleol hysbysu'r achwynydd o'r penderfyniad hwnnw.

(4) Pan fydd yr awdurdod lleol yn rhoi'r gorau i ystyried unrhyw sylwadau o dan baragraff (2), caiff fynd yn ôl i'w hystyried ar unrhyw adeg.

(5) Pan roddwyd y gorau i ystyried cwyn o dan baragraff (2) rhaid i'r awdurdod ganfod a yw'r ystyriaeth gydredol yn mynd rhagddi a rhaid iddo hysbysu'r achwynydd pan fydd wedi dod i ben.

(6) Rhaid i'r awdurdod lleol fynd yn ôl i ystyried unrhyw sylwadau pan roddir y gorau i'r ystyriaeth gydredol neu os daw'r ystyriaeth gydredol i ben a bod yr achwynydd yn gofyn am i'r sylwadau gael eu hystyried o dan y Rheoliadau hyn.

Sylwadau y mae'n dod i ran mwy nag un awdurdod lleol i'w hystyried

9. Pan fyddai'r sylwadau'n rhai y byddai'n dod i ran mwy nag un awdurdod lleol i'w hystyried, rhaid iddynt gael eu hystyried gan-

- (a) yr awdurdod sy'n gofalu neu a oedd yn gofalu am y plentyn y mae'r sylwadau'n ymwneud ag ef neu a oedd yn gofalu am y cyn-blentyn y mae'r sylwadau'n ymwneud ag ef; neu

- (c) about which the local authority have been notified that an investigation is being conducted by any person or body in contemplation of criminal proceedings, or
- (d) about which a meeting involving other bodies including the police has been convened to discuss issues relating to the protection of children or vulnerable adults, or
- (e) about which the local authority have been notified that there are current investigations in contemplation of proceedings under section 59 of the Care Standards Act 2000(1),

the local authority must consider, in consultation with the complainant and any other person or body which they consider appropriate to consult, how the representations should be handled. Such representations shall be referred to for the purposes of this regulation as "representations subject to concurrent consideration".

(2) The consideration of representations subject to concurrent consideration may be discontinued if at any time it appears to the local authority that to continue would compromise or prejudice the other consideration.

(3) Where the local authority decide to discontinue the consideration of a complaint under paragraph (2) the local authority must give notice of that decision to the complainant.

(4) Where the local authority discontinue the consideration of any representations under paragraph (2), they may at any time resume their consideration.

(5) Where the consideration of a complaint has been discontinued under paragraph (2) the local authority must ascertain the progress of the concurrent consideration and notify the complainant when it has been concluded.

(6) The local authority must resume consideration of any representations where the concurrent consideration is discontinued or completed and the complainant requests that the representations be considered under these Regulations.

Representations falling to be considered by more than one local authority

9. Where representations would fall to be considered by more than one local authority, they shall be considered by-

- (a) the authority which is or was looking after the child or former child concerned in the representations; or

(1) 2000 p.14.

(1) 2000 c.14.

- (b) pan nad oes gan neu pan nad oedd gan unrhyw awdurdod y cyfrifoldeb hwnnw, gan yr awdurdod y mae'r plentyn yn preswyllo'n arferol neu yr oedd y plentyn yn preswyllo'n arferol ddiwethaf yn ei ardal.

Ymdrin â sylwadau safonau gofal

10.-(1) Ac eithrio pan fydd paragraff (2) yn gymwys, mewn unrhyw achos pan fydd sylwadau'n ymwneud yn gyfan gwbl neu'n rhannol â gwasanaethau a ddarperir gan sefydliad neu asiantaeth y mae person wedi'i gofrestru gan y Cynulliad Cenedlaethol mewn cysylltiad ag ef neu â hi o dan Ddeddf Safonau Gofal 2000 neu Ddeddf Plant 1989, rhaid i'r awdurdod lleol y daw sylwadau o'r fath i'w law, o fewn 2 ddiwrnod gwaith i'r sylwadau ddod i law-

- (a) anfon manylion am y sylwadau cyfan neu am y rhan honno o unrhyw sylw sy'n ymwneud â'r gwasanaeth cofrestredig at y person a gofrestrwyd fel darparwr mewn cysylltiad â'r sefydliad hwnnw neu'r asiantaeth honno;
- (b) gofyn i'r person yr anfonir ato fanylion o dan is-baragraff (a) hysbysu'r awdurdod o fewn 10 niwrnod gwaith o ganlyniad ei ystyriaeth o'r gŵyn; a
- (c) hysbysu'r achwynydd o'r camau sydd wedi'u cymryd o dan is-baragraffau (a) a (b).

(2) Mae'r paragraff hwn yn gymwys-

- (a) pan fo sylwadau eisoes wedi'u hystyried gan y person cofrestredig; neu
- (b) pan fo'r awdurdod lleol o'r farn y byddai mynd ymlaen o dan baragraff (1) yn debygol o beryglu neu ragfarnu'r ymchwiliad i'r sylwadau o dan Ran IV o'r Rheoliadau neu y byddai'n peryglu neu'n rhagfarnu ymchwiliad gan y Cynulliad Cenedlaethol.

(3) Mewn unrhyw achos pan fo sylwadau'n ymwneud yn gyfan gwbl neu'n rhannol â gwasanaethau a ddarperir gan sefydliad neu asiantaeth y mae person wedi'i gofrestru gan y Cynulliad Cenedlaethol mewn cysylltiad ag ef neu hi, rhaid i'r awdurdod lleol hysbysu swyddfa briodol ("appropriate office") y Cynulliad Cenedlaethol os na fu'n bosibl dod i benderfyniad ar y sylwadau o dan reoliad 15.

RHAN IV

YMDRIN Â SYLWADAU A'U HYSTYRIED

Gwneud sylwadau

11. Caniateir gwneud sylwadau ar lafar neu'n ysgrifenedig (gan gynnwys eu gwneud yn electronig).

- (b) where no authority has or had that responsibility, by the authority within whose area the child is or was last ordinarily resident.

Handling of care standards representations

10.-(1) Except where paragraph (2) applies, in any case where representations relate wholly or partly to services provided by an establishment or agency in respect of which a person is registered by the National Assembly under the Care Standards Act 2000 or Children Act 1989, the local authority receiving such representations must, within 2 working days of receipt-

- (a) send details of the whole of the representations or that part of any representation which relates to the registered service to the person registered as provider in respect of that establishment or agency;
- (b) request the person to whom details are sent under sub-paragraph (a) to notify the authority within 10 working days of receipt of the outcome of their consideration of the representations; and
- (c) inform the complainant of the action taken under sub-paragraphs (a) and (b).

(2) This paragraph applies where-

- (a) representations have already been considered by the registered person; or
- (b) the local authority are of the opinion that to proceed under paragraph (1) would be likely to compromise or prejudice the investigation of the representations under Part IV of the Regulations or might compromise or prejudice an investigation by the National Assembly.

(3) In any case where representations relate wholly or partly to services provided by an establishment or agency in respect of which a person is registered by the National Assembly, the local authority must notify the appropriate office ("swyddfa briodol") of the National Assembly if it has not been possible to resolve the representations under regulation 15.

PART IV

HANDLING AND CONSIDERATION OF REPRESENTATIONS

Making representations

11. Representations may be made orally or in writing (including electronically).

Dyletswydd yr awdurdod lleol i ddarparu gwybodaeth a chymorth i achwynwyr

12.-(1) Cyn gynted â phosibl ar ôl i'r sylwadau ddod i law rhaid i'r awdurdod lleol-

- (a) darparu'r canlynol ar gyfer yr achwynydd-
 - (i) manylion y weithdrefn a geir yn y Rheoliadau hyn; a
 - (ii) gwybodaeth am wasanaethau eirioli, pan fo'n briodol; a
- (b) cynnig i'r achwynydd-
 - (i) cymorth a chanllawiau ynghylch dilyn y weithdrefn neu ei gynghori ym mha le y gall eu cael; a
 - (ii) cymorth i gael eiriolwr, pan fo'n briodol.

Sylwadau a wneir gan "bersonau eraill" ("other persons") o dan adran 26(3)(e) o'r Ddeddf

13.-(1) Pan ddaw sylwadau gan achwynydd sy'n dod o fewn adran 26(3)(e) o'r Ddeddf i law'r awdurdod lleol, rhaid iddo benderfynu, cyn gynted â phosibl, a oes gan y person hwnnw fuddiant digonol yn lles y plentyn o dan sylw i warantu bod yr awdurdod lleol yn ystyried y sylwadau.

(2) Wrth ddod i benderfyniad o dan baragraff (1) rhaid i'r awdurdod lleol ystyried barn y plentyn pan ellir canfod beth ydyw.

(3) Os bydd yr awdurdod lleol yn penderfynu bod gan yr achwynydd fuddiant digonol yna rhaid iddo ystyried y sylwadau.

(4) Os bydd yr awdurdod lleol yn penderfynu nad oes gan yr achwynydd fuddiant digonol yna rhaid iddo hysbysu'r achwynydd o'r penderfyniad a'i hysbysu na chymerir unrhyw gamau pellach i ystyried y sylwadau.

(5) Rhaid i'r awdurdod lleol hysbysu'r plentyn o dan sylw o'r penderfyniad a wneir o dan baragraff (1) os yw o'r farn ei bod yn briodol iddo wneud hynny o ystyried beth yw dealltwriaeth y plentyn.

Tynnu sylwadau'n ôl

14.-(1) Caiff yr achwynydd neu eiriolwr dynnu sylwadau'n ôl ar lafar neu'n ysgrifenedig ar unrhyw adeg.

(2) Rhaid i'r awdurdod lleol ysgrifennu cyn gynted â phosibl at yr achwynydd ac at unrhyw eiriolwr i gadarnhau bod y sylwadau wedi'u tynnu'n ôl.

Penderfynu'n Lleol

15.-(1) Rhaid i'r awdurdod lleol gymryd pob cam rhesymol i benderfynu ar y sylwadau cyn gynted ag y bo'n rhesymol ymarferol ac, yn ddarostyngedig i

Duty of the local authority to provide information and assistance for complainants

12.-(1) As soon as possible after receiving the representations the local authority must-

- (a) provide the complainant with-
 - (i) details of the procedure set out in these Regulations; and
 - (ii) where appropriate, information about advocacy services; and
- (b) offer the complainant-
 - (i) assistance and guidance on following the procedure or advice on where he or she may obtain it; and
 - (ii) where appropriate, help in obtaining an advocate.

Representations made by "other persons" under section 26(3)(e) of the Act

13.-(1) Where a local authority receive representations from a complainant falling within section 26(3)(e) of the Act, they must as soon as possible decide whether that person has a sufficient interest in the welfare of the child concerned to warrant the representations being considered by the local authority.

(2) In reaching a decision under paragraph (1) the local authority must take into account the ascertainable views of the child concerned.

(3) If the local authority decide that the complainant does have sufficient interest then they shall consider the representations.

(4) If the local authority decide that the complainant does not have sufficient interest then they must notify the complainant of the decision and that no further action will be taken to consider the representations.

(5) The local authority must notify the child concerned of the decision made under paragraph (1) if they consider it appropriate to do so having regard to the understanding of the child.

Withdrawal of representations

14.-(1) Representations may be withdrawn orally or in writing at any time by the complainant or by an advocate.

(2) The local authority must as soon as possible write to the complainant and any advocate to confirm the withdrawal of the representations.

Local Resolution

15.-(1) The local authority must take all reasonable steps to resolve the representations as soon as is reasonably practicable and subject to paragraphs (2)

baragraffau (2) a (4), o fewn 10 niwrnod gwaith gan gychwyn-

- (a) yn achos sylwadau sy'n dod o fewn adran 26(3)(e), ar y dyddiad y mae'r awdurdod lleol yn penderfynu bod gan yr achwynydd fuddiant digonol i warantu bod y sylwadau'n cael eu hystyried;
- (b) mewn unrhyw achos arall, ar y dyddiad y daeth y sylwadau i law'r awdurdod lleol.

(2) Caniateir estyn y cyfnod y cyfeirir ato ym mharagraff (1) pan geir cais gan yr achwynydd am wneud hynny neu gyda chytundeb yr achwynydd hyd at 10 niwrnod gwaith ychwanegol.

(3) Nid oes angen i'r weithdrefn a ddilynir gan yr awdurdod lleol pan fydd yn ceisio penderfynu ar faterion o dan baragraff (1) gynnwys person annibynnol.

(4) Pan fo achwynydd wedi gofyn am eiriolwr caiff yr awdurdod lleol estyn y cyfnod a bennir ym mharagraff (1) hyd at 10 niwrnod gwaith ychwanegol er mwyn galluogi eiriolwr i gael ei benodi ar yr amod-

- (a) bod yr awdurdod lleol yn hysbysu'r achwynydd o'r estyniad;
- (b) bod yr awdurdod lleol yn hysbysu'r achwynydd-
 - (i) o'r camau a gymerwyd hyd y dyddiad hwnnw i drefnu eiriolwr; a
 - (ii) o hawl yr achwynydd i fynnu cael ystyried y sylwadau heb gynnwys eiriolwr.

(5) At ddibenion paragraff (1), mewn unrhyw achos pan fyddai'n briodol gwneud hynny, a chyda chytundeb yr achwynydd, caiff yr awdurdod lleol wneud trefniadau ar gyfer cymodi, cyfryngu neu ar gyfer cymorth arall at ddibenion penderfynu ar y sylw.

(6) Os penderfynir ar y sylw o dan baragraff (1), rhaid i'r awdurdod lleol roi cadarnhad ysgrifenedig i'r achwynydd o'r penderfyniad y cytunir arno.

(7) Os na phenderfynwyd ar y sylwadau o fewn 20 o ddiwrnodau gwaith, rhaid i'r awdurdod lleol, cyn gynted ag y bo'n ymarferol, hysbysu'r achwynydd yn ysgrifenedig:

- (a) o hawl yr achwynydd i ofyn am i'r sylwadau gael eu hystyried yn ffurfiol;
- (b) o'r weithdrefn ar gyfer gofyn am ystyriaeth bellach o'r fath; ac
- (c) o'r dyddiad erbyn pryd y mae'n rhaid gwneud cais o'r fath gan roi sylw i ddarpariaethau paragraff (8).

(8) Caiff yr achwynydd ofyn ar lafar neu'n ysgrifenedig am i'r sylwadau gael eu hystyried yn ffurfiol o dan reoliad 16, a hynny ar unrhyw adeg o

and (4), within 10 working days beginning-

- (a) in the case of representations falling within section 26(3)(e), on the date on which the local authority decide the complainant has a sufficient interest to warrant the representations being considered;
- (b) in any other case, on the date on which the representations were received by the local authority.

(2) The period referred to in paragraph (1) may be extended upon request by the complainant or with the complaint's agreement by up to a further 10 working days.

(3) The procedure followed by the local authority in trying to resolve matters under paragraph (1) need not involve an independent person.

(4) Where a complainant has requested an advocate the local authority may extend the period specified in paragraph (1) by up to a further 10 working days to enable an advocate to be appointed provided that-

- (a) the local authority notify the complainant of the extension;
- (b) the local authority notify the complainant of-
 - (i) the steps taken to date to arrange an advocate; and
 - (ii) the complainant's right to have the representations considered without involvement of an advocate.

(5) For the purposes of paragraph (1), the local authority may in any case where it would be appropriate to do so, and with the agreement of the complainant, make arrangements for conciliation, mediation or other assistance for the purposes of resolving the representation.

(6) Where the representation is resolved under paragraph (1), the local authority must confirm in writing to the complainant the agreed resolution.

(7) Where the representations have not been resolved within 20 working days, the local authority must, as soon as practicable, notify the complainant in writing of:

- (a) the complaint's right to request that the representations be formally considered;
- (b) the procedure for requesting such further consideration; and
- (c) the date by which such a request must be made having regard to the provisions of paragraph (8).

(8) The complainant may request orally or in writing that the representations be formally considered under regulation 16 at any time within 30 working days of

fewn 30 o ddiwrnodau gwaith i'r dyddiad y gwnaed y sylwadau gyntaf.

Ystyriaeth Ffurfiol

16.-(1) Pan fo'r achwynydd wedi gofyn am i'r sylwadau gael eu hystyried yn ffurfiol, yn ddarostyngedig i reoliadau 8, 9 a 10, rhaid i'r awdurdod lleol ymchwilio i'r sylwadau i'r graddau y mae hynny'n angenrheidiol ac yn y dull mwyaf priodol ym marn yr awdurdod ar gyfer penderfynu ar y sylwadau'n gyflym ac yn effeithlon.

(2) Rhaid i'r awdurdod lleol lunio cofnod ysgrifenedig ffurfiol o'r sylwadau cyn gynted ag y bo'n rhesymol ymarferol a'i anfon at yr achwynydd ynghyd â gwahoddiad i'r achwynydd wneud sylwadaeth ar ba mor gywir yw'r cofnod.

(3) Rhaid i'r awdurdod lleol ystyried unrhyw sylwadaethau a wneir gan yr achwynydd o dan baragraff (2) a rhaid iddo, yng ngoleuni'r sylwadaethau hynny, wneud unrhyw ddiwygiadau sy'n angenrheidiol i'r cofnod er mwyn sicrhau ei fod, ym marn yr awdurdod, yn gofnod cywir o'r sylwadaethau.

(4) Ac eithrio pan wnaed trefniadau o dan reoliad 15(5), caiff yr awdurdod lleol, mewn unrhyw achos pan fyddai'n briodol gwneud hynny, a chyda chytundeb yr achwynydd, wneud trefniadau ar gyfer cymodi, cyfryngu neu ar gyfer cymorth arall at ddibenion penderfynu ar y sylwadau.

(5) Rhaid i'r awdurdod lleol-

- (a) egluro i'r achwynydd sut yr ymchwilir i'r sylwadau; a
- (b) anfon copi o'r sylwadau at unrhyw berson sy'n destun y sylwadau-
 - (i) oni wnaed hyn eisoes; neu
 - (ii) oni fyddai rhoi hysbysiad ar yr adeg honno'n rhagfarnu'r ystyriaeth o'r sylwadau.

(6) Caiff yr awdurdod lleol-

- (a) gwahodd yr achwynydd ac unrhyw berson arall a allai ym marn yr awdurdod gynorthwyo gyda phenderfynu ar y sylwadau i gael eu cyf-weld; a
- (b) gofyn am unrhyw gyngor sy'n ofynnol ym marn y swyddog cwynion.

(7) Pan gaiff unrhyw berson ei gyf-weld yn unol â pharagraff 6(a) rhaid i'r awdurdod lleol-

- (a) anfon copi o'r cofnod drafft o'r cyf-weliad at y person a gafodd ei gyf-weld;
- (b) gwahodd y person hwnnw i ddatgan pa mor gywir yw'r cofnod drafft;
- (c) ystyried unrhyw sylwadaethau a wneir gan y person; ac

the date on which the representations were first made.

Formal Consideration

16.-(1) Where the complainant has requested formal consideration of the representations, subject to regulations 8, 9 and 10, the local authority must investigate the representations to the extent necessary and in the manner which appears to the authority most appropriate to resolve the representations speedily and efficiently.

(2) The local authority must compile a formal written record of the representations as soon as is reasonably practicable and send it to the complainant with an invitation to the complainant to comment on its accuracy.

(3) The local authority must consider any comments made by the complainant under paragraph (2) and in the light of those comments make any amendments to the record which are necessary to ensure it is, in the opinion of the authority, an accurate record of the representations.

(4) Except where arrangements have been made under regulation 15(5) the local authority may in any case where it would be appropriate to do so, and with the agreement of the complainant, make arrangements for conciliation, mediation or other assistance for the purposes of resolving the representations.

(5) The local authority must-

- (a) explain to the complainant how the representations will be investigated; and
- (b) send a copy of the representations to any person who is the subject of the representations unless-
 - (i) this has already been done; or
 - (ii) notification at that time would prejudice the consideration of the representations.

(6) The local authority may-

- (a) invite the complainant and any other person whom the authority considers may be able to assist with the resolution of the representations to be interviewed; and
- (b) take such advice as appears to the complaints officer to be required.

(7) Where any person is interviewed in accordance with paragraph 6(a) the local authority must-

- (a) send a copy of the draft record of the interview to the person interviewed;
- (b) invite that person to comment on the accuracy of the draft record;
- (c) consider any comments made by the person; and

(ch) yng ngoleuni'r sylwadaethau hynny, gwneud unrhyw ddiwygiadau i'r cofnod sy'n angenrheidiol ym marn yr awdurdod er mwyn sicrhau bod y cofnod yn un cywir.

(8) Rhaid i'r awdurdod lleol gymryd pob cam rhesymol i roi gwybod i'r achwynydd am hynt ei ystyriaeth ffurfiol o'r sylwadau.

Penodi person annibynnol

17.-(1) Rhaid i'r trefniadau a wneir o dan reoliad 16 gynnwys penodi person annibynnol.

(2) Rhaid i'r person annibynnol gymryd rhan mewn unrhyw ystyriaeth o sylwadau gan yr awdurdod lleol o dan reoliad 16.

(3) Rhaid i'r person annibynnol gymryd rhan mewn unrhyw drafodaethau a gynhelir gan yr awdurdod lleol ynghylch y cam i'w gymryd yng ngoleuni ei ganfyddiadau mewn perthynas â'r sylwadau a'r casgliadau y mae'n dod iddynt.

Ymateb

18.-(1) Rhaid i'r awdurdod lleol baratoi ymateb ysgrifenedig i'r sylwadau-

- (a) sy'n crynhoi natur a sylwedd y sylwadau;
- (b) sy'n disgrifio'r ymchwiliad o dan reoliad 16 ac yn crynhoi'r casgliadau;
- (c) sy'n egluro pa gam a fydd yn cael ei gymryd i benderfynu ar y sylwadau;
- (ch) sy'n cynnwys ymddiheuriad i'r achwynydd, pan fo'n briodol, a
- (d) sy'n nodi pa gam arall, os o gwbl, a fydd yn cael ei gymryd yng ngoleuni'r sylwadau.

(2) Yn ddarostyngedig i baragraff (3) a rheoliad 13, rhaid anfon yr ymateb at yr achwynydd o fewn 25 o ddiwrnodau gwaith yn cychwyn ar y dyddiad y daeth cais gan yr achwynydd am ystyriaeth ffurfiol i law'r awdurdod lleol.

(3) Os, yn achos-

- (a) unrhyw sylwadau pan gafwyd anhawster i benderfynu ar eu natur neu eu sylwedd;
- (b) sylwadau yr ymdriniwyd â hwy fel sylwadau darostyngedig i ystyriaeth gyddredol o dan reoliad 8; neu
- (c) unrhyw sylwadau eraill pan fo'r achwynydd wedi cytuno i'r ymateb fod yn hwyrach,

nad yw'n bosibl anfon yr ymateb o fewn 25 o ddiwrnodau gwaith, rhaid i'r awdurdod lleol hysbysu'r achwynydd o'r rheswm am yr oedi, o'r dyddiad y mae'n disgwyl anfon yr ymateb a rhaid iddo anfon yr ymateb hwnnw cyn gynted ag y bo'n rhesymol ymarferol.

(d) in the light of those comments make any amendments to the record which, in the opinion of the authority, are necessary to ensure that the record is accurate.

(8) The local authority must take all reasonable steps to keep the complainant informed about the progress of its formal consideration of the representations.

Appointment of independent person

17.-(1) The arrangements made under regulation 16 must include the appointment of an independent person.

(2) The independent person shall take part in any consideration of the representations by the local authority under regulation 16.

(3) The independent person shall take part in any discussions which are held by the local authority about the action to be taken in light of their findings in relation to the representations and conclusions they draw from them.

Response

18.-(1) The local authority must prepare a written response to the representations which-

- (a) summarises the nature and substance of the representations;
- (b) describes the investigation under regulation 16 and summarises the conclusions;
- (c) explains what action will be taken to resolve the representations;
- (d) where appropriate, contains an apology to the complainant; and
- (e) identifies what other action, if any will be taken in the light of the representations.

(2) Subject to paragraph (3) and to regulation 13, the response must be sent to the complainant within 25 working days beginning on the date on which the local authority received the request from the complainant for formal consideration.

(3) If, in the case of-

- (a) any representations where there has been difficulty in the determination of their nature or substance;
- (b) representations which have been treated as subject to concurrent consideration under regulation 8; or
- (c) any other representations where the complainant has agreed to a later response,

it is not possible for the response to be sent within 25 working days the local authority must notify the complainant of the reason for the delay, the date by which it expects to send the response and must send that response as soon as reasonably practicable.

- (4) Rhaid i'r ymateb gynnwys gwybodaeth am-
- (a) hawl yr achwynydd i ofyn am i'r sylwadau gael eu hystyried ymhellach gan banel annibynnol yn unol â darpariaethau mewn rheoliadau a wneir gan y Cynulliad Cenedlaethol o dan adran 26ZB o'r Ddeddf(1);
 - (b) y weithdrefn ar gyfer gofyn am ystyriaeth bellach o'r fath; ac
 - (c) o fewn pa gyfnod o amser y mae'n rhaid gwneud cais o'r fath.

(5) Rhaid anfon copïau o'r ymateb a baratoir yn unol â pharagraff (1)-

- (a) at eiriolwr yr achwynydd;
- (b) at y person annibynnol a benodir o dan reoliad 17;
- (c) at unrhyw berson oedd yn destun y sylwadau;
- (ch) os sylwadau safonau gofal a grybwyllir yn rheoliad 10 yw'r sylwadau, at y person a gofrestrir o dan Ddeddf Safonau Gofal 2000 neu Ddeddf Plant 1989 fel darparwr mewn cysylltiad â'r sefydliad neu'r asiantaeth.

(4) The response must include information about-

- (a) the complainant's right to request that the representations be further considered by an independent panel in accordance with provisions in regulations made by the National Assembly under section 26ZB of the Act(1);
- (b) the procedure for requesting such further consideration; and
- (c) the time within which such request must be made.

(5) Copies of the response prepared in accordance with paragraph (1) must be sent to-

- (a) the complainant's advocate;
- (b) the independent person appointed under regulation 17;
- (c) any person who was the subject of the representations;
- (d) where the representations are care standards representations mentioned in regulation 10, to the person registered under the Care Standards Act 2000 or Children Act 1989 as provider in respect of the establishment or agency.

RHAN V

DYSGU O SYLWADAU

Monitro'r modd y gweithredir y weithdrefn sylwadau

19. Rhaid i bob awdurdod lleol fonitro'r trefniadau y mae wedi'u gwneud gyda'r bwriad o sicrhau bod yr awdurdod lleol yn cydymffurfio â'r Rheoliadau hyn drwy gadw cofnod o bob un o'r sylwadau a ddaeth i law, o ganlyniad pob un o'r sylwadau, a pha un a gydymffurfiwyd â'r terfynau amser a bennir yn rheoliadau 15 a 18.

Adroddiad Blynyddol

20.-(1) Rhaid i bob awdurdod lleol baratoi adroddiad blynyddol ar ei berfformiad o ran ymdrin â sylwadau a'u hystyried, a hynny at ddibenion-

- (a) monitro'r modd y cydymffurfiwyd â'r Rheoliadau hyn, a
- (b) gwella'r modd yr ymdrinnir â'r sylwadau ac y'u hystyriar.

(2) Rhaid llunio'r adroddiad cyntaf y cyfeirir ato ym mharagraff (1) o fewn 12 mis i ddyddiad dod i rym y Rheoliadau hyn.

PART V

LEARNING FROM REPRESENTATIONS

Monitoring the operation of the representations procedure

19. Each local authority must monitor the arrangements that they have made with a view to ensuring that the local authority complies with these Regulations by keeping a record of each representation received, the outcome of each representation, and whether there was compliance with the time limits specified in regulations 15 and 18.

Annual Report

20.-(1) Each local authority must prepare an annual report on their performance in handling and consideration of representations for the purposes of-

- (a) monitoring compliance with these Regulations, and
- (b) improving the handling and consideration of representations.

(2) The first report referred to in paragraph (1) must be compiled within 12 months of the date of the coming into force of these Regulations.

(1) O.S. 2005/3366 (Cy.263).

(1) S.I. 2005/3366 (W.263).

RHAN VI
DARPARIAETHAU TROSIANNOL A
DIRYMU

Darpariaethau Trosiannol ac Arbedion

21.-(1) Pan na orffennwyd ystyried y sylwadau hyn yn unol â Rheoliadau 1991 ar yr adeg pan ddaw'r Rheoliadau hyn i rym yna bydd y paragraffau canlynol yn gymwys i'r weithdrefn.

(2) Yn ddarostyngedig i baragraffau (3) a (4) bydd y sylwadau'n cael eu hystyried yn unol â Rheoliadau 1991 yr arbedwyd eu darpariaethau perthnasol at y diben hwnnw'n unig.

(3) Os bod yr achwynydd, yn unol â rheoliad 8(2) o Reoliadau 1991, wedi hysbysu'r awdurdod lleol ei fod yn dymuno i'r mater gael ei gyfeirio at banel ond nad oes panel wedi'i benodi yn unol â'r rheoliad hwnnw, yna rhaid i'r awdurdod lleol drin hysbysiad yr achwynydd fel cais am i'r sylwadau gael eu hystyried ymhellach yn unol â darpariaethau mewn rheoliadau a wneir gan y Cynulliad Cenedlaethol o dan adran 26ZB o'r Ddeddf.

(4) Os bydd yr awdurdod lleol wedi rhoi hysbysiad yn unol â rheoliad 8(1) o Reoliadau 1991 ac nad yw'r achwynydd wedi hysbysu'r awdurdod lleol ei fod yn dymuno i'r mater gael ei gyfeirio at banel ac nad yw'r amser ar gyfer rhoi hysbysiad o'r fath wedi dod i ben, yna rhaid i unrhyw hysbysiad y mae'r achwynydd yn ei roi fod yn gais am i'r sylwadau gael eu hystyried ymhellach, neu fel cais am i'r sylwadau gael eu hystyried ymhellach y mae'n rhaid ei drin, a hynny'n unol â darpariaethau mewn rheoliadau a wneir gan y Cynulliad Cenedlaethol o dan adran 26ZB o'r Ddeddf.

Dirymu

22.-(1) Dirymir Rheoliadau'r Weithdrefn Sylwadau (Plant) 1991(1) ac eithrio i'r graddau sy'n angenrheidiol at ddibenion rheoliad 21.

(2) Dirymir rheoliad 4(2) o Reoliadau Gwasanaethau Eiriolaeth a Gweithdrefn Sylwadau (Plant) (Cymru) 2004(2)

PART VI
TRANSITIONAL PROVISIONS AND
REVOCAATION

Transitional Provisions and Savings

21.-(1) Where the consideration of representations in accordance with the 1991 Regulations has not been concluded at the time that these Regulations come into force then the following paragraphs will apply to the procedure.

(2) Subject to paragraphs (3) and (4) the representations will be considered in accordance with the 1991 Regulations the relevant provisions of which have been saved only for that purpose.

(3) If, in accordance with regulation 8(2) of the 1991 Regulations the complainant has given notice to the local authority of his or her wish that the matter be referred to a panel but no panel has been appointed in accordance with that regulation, then the local authority must treat the complainant's notice as a request for the further consideration of the representations in accordance with provisions in regulations made by the National Assembly under section 26ZB of the Act.

(4) If the local authority have given notice in accordance with regulation 8(1) of the 1991 Regulations and the complainant has not given notice to the local authority of his or her wish that the matter be referred to a panel and the time for giving such notice has not expired then any notice that the complainant does give in accordance with regulation 8(2) must be or must be treated as being a request for the further consideration of the representations in accordance with provisions in regulations made by the National Assembly under section 26ZB of the Act.

Revocation

22.-(1) The Representations Procedure (Children) Regulations 1991(1) are revoked save to the extent necessary for the purposes of regulation 21.

(2) Regulation 4(2) of the Advocacy Services and Representations Procedure (Children) (Wales) Regulations 2004(2) is revoked.

(1) O.S. 1991/894.

(2) O.S. 2004/1448 (Cy.148).

(1) S.I. 1991/894.

(2) S.I. 2004/1448 (W.148).

Llofnodwyd ar ran Cynulliad Cenedlaethol Cymru o dan adran 66(1) o Ddeddf Llywodraeth Cymru 1998(1).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(1).

6 Rhagfyr 2005

6 December 2005

D. Elis-Thomas

Llywydd y Cynulliad Cenedlaethol

The Presiding Officer of the National Assembly

(1) 1998 p.38.

(1) 1998 c.38.

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