Wokingham Borough Council
Social Care Complaints and Representations for Children, Young People and Others

1.1 Key principles

1.1.1 A good complaints procedure should ensure that children and young people who make representations have their concerns resolved swiftly and, wherever possible, by the people who provide the service locally. The complaints procedure should be a useful tool for indicating where services may need improving. It is a positive aid to inform and influence service improvements, not a negative process to apportion blame.

1.1.2 Wokingham Borough Council seeks to develop a listening and learning culture where learning is fed back to children and young people who use services – and fed into internal systems for driving improvement. The same listening and learning culture should shape wider opportunities for working in partnership with children and young people, such as individual reviews and systematic quality assurance. It should give children and young people opportunities to tell the local authority about both their good and bad experiences of the service.

1.1.3 Wokingham Borough Council is committed to providing a robust and successful complaints procedure to children and young people, based on the following principles:

| 1. | The complaints procedure should be clear and easy to use. |
| 2. | It should ensure 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. |
| 3. | It should ensure, as far as is possible, even-handedness in the handling of complaints. |
| 4. | It should ensure that any concerns about the protection of children are referred immediately to the relevant social services team or to the Police. |
| 5. | It should make sure that as many complaints as possible are resolved swiftly and satisfactorily at the local level. |
| 6. | It should ensure a fair process and adequate support for everyone involved in the complaint. |
| 7. | It should ensure that the child or young person receives a full response without delay. |
8. It should enable the local authority to exercise its continuing duty of care when purchasing services in the independent sector.

9. It should secure sensible and effective links with other procedures in local government.

10. It should safeguard the child or young person’s rights of access to other means of redress, such as the Local Government Ombudsman.

11. It should ensure that the Council monitors our performance in handling complaints, deliver what we have promised, learn from complaints and use this learning to improve our services for everyone who uses them.

1.1.4 The Senior Complaints Officer (SCO) is independent of operational line management and of direct service providers (e.g. children’s social work).

1.1.5 The Senior Complaints Officer should take an active role in facilitating resolution of complaints by identifying appropriate colleagues and external people (including Investigating Officers and advocates) to contribute to complaints work. The Senior Complaints Officer should also foster good working relationships with key bodies and partner agencies.

2 SCOPE OF THE REPRESENTATIONS AND COMPLAINTS PROCEDURE

2.1 Defining representations and complaints

2.1.1 The Children Act 1989 defines the representations procedure as being for ‘representations (including complaints)’.

2.1.2 The intention of this policy is to describe how the statutory procedure for a child or young person who wants to make representations, including complaints, about the actions, decisions or apparent failings of a local authority’s children’s social services provision, is applied in Wokingham Borough Council. It allows any other appropriate person to act on behalf of the child or young person concerned or make a complaint in their own right (see section 2.6). Complaints of a general nature which are not concerned with an individual case are likely to fall outside the statutory definition, as do anonymous complaints.

2.1.3 A complaint may be generally defined as an expression of dissatisfaction or disquiet in relation to an individual child or young person, which requires a response. Children and young people often express complaints as ‘problems not being sorted out’. The complaints procedures should be both fast and effective: so that problems ‘get sorted’ straight away.
2.1.4 Representations may not always be complaints; they might also be positive remarks or ideas that require a response from the local authority. Enquiries or comments about the availability, delivery or nature of a service which are not criticisms are likely to constitute representations, for example, ideas or proposals put forward by children and young people about the service they receive, or the establishment they live in, without having this framed as a complaint.

2.1.5 Representations should, as far as possible, be sought out and welcomed as a measure of satisfaction. Representations that are not complaints should also be recorded and handled at Stage 1 level. The service should ensure that it responds to the issues raised, setting out what action should be taken. Wokingham Borough Council will make children and young people aware of how they may make representations to the local authority and that they do not have to be complaints. The child or young person has the same right to advocacy whether the representation is a complaint or not.

2.1.6 When the representation is not a complaint and the service has failed to respond to the child or young person’s satisfaction, he will then be entitled to make a complaint at Stage 1 about this failure.

2.2 What may be complained about?

2.2.1 Section 26(3) of the Children Act, 1989 provides that all functions of the local authority under Part 3 of the Act may form the subject of a complaint. For example, a complaint may arise as a result of many things relating to statutory social services functions such as:

- an unwelcome or disputed decision;
- concern about the quality or appropriateness of a service;
- delay in decision making or provision of services;
- delivery or non-delivery of services including complaints procedures;
- quantity, frequency, change or cost of a service;
- attitude or behaviour of staff;
- application of eligibility and assessment criteria;
- the impact on a child or young person of the application of a local authority policy; and
- assessment, care management and review.

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

2.2.2 In addition, the Regulations provide that the following new functions may be the subject of a complaint:
Part 4 of the Children Act, 1989,

- the decision by the local authority to initiate care and supervision orders (section 31);
- the effect of the care order and the local authority's actions and decisions where a care order is made (section 33);
- control of parental contact with children in care (section 34);
- how supervisors perform their duties where a supervision order is in force (section 35);

Part 5 of the Children Act, 1989,

- matters that do not relate to the Court and which are specifically actions of the local authority can be considered, regarding applications for and duties in relation to child assessment orders (section 43); and
- matters relating to applications for emergency protection orders and decisions relating to the return of children who have been removed (section 44).

2.2.3 Where social work information or a social work report has gone to Court, the child or young person can make a complaint about the report, for example its quality or accuracy, distinct and separate to the subsequent actions of the Court. If this complaint is upheld, the local authority should advise the child or young person what action it proposes to take with regard to the Court action.

2.2.4 With complaints about regulated services under the Care Standards Act 2000 and where services are delivered on Wokingham Borough Council’s behalf or through an internal service that is regulated, the Council will satisfy itself that the complaint can be considered under this procedure.

2.3 Adoptive services

2.3.1 The Regulations also provide that the following adoptive-related functions may also be the subject of a complaint:

- Provision of adoption support services (as prescribed in regulation 3 of the Adoption Support Services Regulations 2005) insofar as these enable adoptive children to discuss matters relating to adoption;
- assessments and related decisions for adoption support services as prescribed in regulation 3 of the Adoption Support Services Regulations 2005 (Parts 4 and 5 of the Adoption Support Services Regulations 2005);
- placing children for adoption, including parental responsibility and contact issues (sections 18 to 29 of the 2002 Act);
- removal of children who are or may be placed by adoption agencies (sections 30-35 of the 2002 Act);
- removal of children in non-agency cases (sections 36-40 of the 2002 Act);
• duties on receipt of a notice of intention to adopt (section 44 of the 2002 Act);
• duties set out in regulations in respect of:
  o a local authority considering adoption for a child (part 3 of Adoption Agency Regulations 2005);
  o a proposed placement of a child with prospective adopters (part 5 of Adoption Agency Regulations 2005);
  o placement and reviews (part 6 of Adoption Agency Regulations 2005);
  o records (part 7 of Adoption Agency Regulations 2005);
  o contact (part 8 of Adoption Agency Regulations 2005); and
• parental responsibility prior to adoption abroad (part 3 of Adoptions with a Foreign Element Regulations 2005).

2.4 Complaints and Special Guardianship Support Services

2.4.1 Special Guardianship Regulations 2005 came into force on 30 December 2005, under those Regulations the following functions may be the subject of a representation or complaint:

• financial support for Special Guardians;
• support groups for children and young people to enable them to discuss matters relating to Special Guardianship;
• assistance in relation to contact;
• therapeutic services for children and young people; and
• assistance to ensure the continuation of the relationship between the child or young person and their Special Guardian or prospective Special Guardian.

2.5 What is exempt from the complaints procedure?

2.5.1 The complaints procedure does not apply when:

• the person wishing to complain does not meet the requirements of "who may complain" (paragraph 2.6) and is not acting on behalf of such an individual;
• the complaint is not in regard of the actions or decisions of the local authority complained to, or of any body acting on its behalf; or
• the same complaint has already been dealt with at all stages of the procedure.
• Where complaints are repeatedly made covering the same issues that have already been dealt with or are outside of the scope of the complaints process, the complainant may be deemed ‘unreasonably persistent’ and action taken by the Council under that policy.

2.5.2 Régulation 8 provides the local authority with discretion in deciding
whether to consider complaints where to do so would prejudice any of the following concurrent investigations:

- Court proceedings;
- Tribunals;
- Disciplinary proceedings; or
- Criminal proceedings.

2.5.3 If the Council decides not to consider or further consider complaints subject to these concurrent investigations, we will write to the complainant explaining the reason for our decision and specifying the relevant concurrent investigation (regulation 8(3)).

2.5.4 Once the concurrent investigation has been concluded the complainant may resubmit their complaint to the Council as long as it is within one year of the conclusion of the concurrent investigation.

2.6 Who may complain?

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

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

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

2.7.2 The Council has the discretion to decide whether or not the representative is suitable to act in this capacity or has sufficient interest in the child's welfare. If the Senior Complaints Officer considers that the representative does not have sufficient interest, they will be notified in writing, explaining that no further action will be taken. The Senior Complaints Officer will discuss this decision with relevant operational managers as appropriate.

2.8 Complaints relating to a child

2.8.1 The Council is also likely to receive complaints by adults that relate to a child or young person but are not made on the child's behalf. The Children Act, 1989 gives discretion to local authorities to decide in cases where eligibility is not automatic whether or not an individual has sufficient interest in the child's welfare to justify his own complaint being considered by them. In reaching a decision, where possible the local authority may wish to check that the child or young person is happy with the person making a complaint.

2.9 Anonymous complaints

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

2.10 Complaints relating to more than one local authority

2.10.1 Where a complaint relates to two or more local authorities, the complaint should be considered by the authority which is looking after the child or in any other case by the authority within whose area the child is ordinarily resident. Under Section 27 of the Children Act, 1989, there is a duty to cooperate. Good practice would suggest the local authority responding to the complaint should ensure good communication with the other local authority/authorities.
3 PROCEDURES AND TIMESCALES FOR COMPLAINT HANDLING

3.1 Introduction

3.1.1 There are three distinct stages to the complaints procedure which are dealt with by the Council. The regulations require the Council to attempt to resolve complaints and address representations as soon as reasonably practicable and within specific timescales. Where appropriate and with agreement from the child or young person making the complaint, the Council may arrange for conciliation, mediation or other services to help resolve matters.

3.1.2 The timescales in working days for the procedure are:

- 10 days at Stage 1 (with a further 10 days for more complex complaints or additional time if an advocate is required);
- 25 days at Stage 2 (with maximum extension to 65 days);
- 20 days for the complainant to request a Review Panel;
- 30 days to convene and hold the Review Panel at Stage 3;
- 5 days for the Panel to issue its findings; and
- 15 days for the local authority to respond to the findings.

**Please Note:** When representations and complaints are received, the service may ask to meet the complainant to discuss their concerns and how best to address them with a review to resolving their concerns before moving on to the formal complaint procedure. This meeting should take place within 10 working days, or at the complainant’s convenience. Wokingham Borough Council will deal with any subsequent complaint that arises if the complainant remains dissatisfied after this initial meeting stage.

3.1.3 The regulations place a duty on the Council to act expeditiously through the procedure; this is to ensure that the complaint is dealt with as swiftly as possible. The Initial Meeting is intended to resolve complaints wherever possible as part the local resolution stage.

3.1.4 The handling and consideration of complaints consists of three stages:

- Stage 1 - Local Resolution: Local Resolution requires the Council to resolve a complaint as close to the point of contact with the child or young person as possible (i.e. through front line management of the service). In doing so the Council will consider the wishes of the complainant about how the complaint should be dealt with. In most circumstances complaints should be considered at Stage 1 in the first instance.
- Stage 2 - Investigation
- Stage 3 - Review Panel.

3.1.5 Where a complaint is accepted at Stage 1, the complainant is entitled to pursue their complaint further through this procedure except in the case of cross
boundary issues. In all other instances, once a complaint has entered Stage 1, the local authority is obliged to ensure that the complaint proceeds to Stages 2 of this procedure, if that is the complainant’s wish. The Senior Complaints Officer will assess requests for a Stage 3 Review Panel as they are presented on a case by case basis. (see paragraph 3.9.3)

3.2 Receiving a complaint

3.2.1 Complaints may be made verbally to a member of staff or in writing (including electronically) (regulation 6). The Council seeks to handle complaints from Children in a friendly manner appropriate to the age and understanding of the child. The concerns of children and young people will be listened to. If a child or young person wishes to make a complaint, the Council will provide information about advocacy services and offer help to obtain an advocate if required (see section 3.4).

3.2.2 If a complaint is made to a member of staff, the Senior Complaints Officer should be informed as soon as possible so that the complaint can be recorded and progress monitored. There may be no need to engage the complaints procedure if the matter is resolved immediately.

As soon as it becomes apparent that someone wishes to make a complaint, the complainant should be given information about the Council’s complaints procedure including how to contact the Complaints Team.

3.2.3 The complainant retains the right to approach the Local Government Ombudsman at any time. However, the Ombudsman would ordinarily expect the Council to consider the complaint initially and may refer the complaint back to the Senior Complaints Officer if this has not been done.

3.3 Time limit for making a complaint

3.3.1 The Council does not need to consider complaints made more than one year after the grounds to make the representation arose (regulation 9). In these cases, the Senior Complaints Officer will write and advise the complainant that their complaint cannot be considered and explaining the reasons why. This response will also advise the complainant of their right to approach the Local Government Ombudsman. However, decisions will be made on a case by case basis and there will generally be a presumption in favour of accepting the complaint unless there is good reason against it.

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

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

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

3.4 Providing advocacy and support

3.4.1 During the course of making a complaint, the Council will support the child or young person by actively providing information and advice. As described in section 3.2.1, the child or young person is entitled to advocacy support that is independent and confidential. For statutory guidance on advocacy provision please refer to Get It Sorted: Providing Effective Advocacy Services for Children and Young People making a Complaint under the Children Act, 1989.

3.4.2 The Senior Complaints Officer will ensure that a suitable person meets the child or young person to discuss the complaints process and ensure that any questions or concerns that the complainant may have are fully addressed. Where an advocate is being used, the local authority needs to ensure that the advocate is acting with the informed consent of the young person. The Council will not rely on the advocate to ensure the child or young person understands the procedure.

3.4.3 Wokingham Borough Council will also consider how to meet the varying needs of complainants. This is particularly important in relation to complainants whose first language is not English and those with communication difficulties.

3.5 Stage 1 – Local Resolution

3.5.1 A complaint is made on the date on which it is first received by the Council, following any initial meeting to try and resolve the stated concerns.

3.5.2 The Council expects that the majority of complaints will be considered (and resolved) at Stage 1 and therefore has introduced the Initial Meeting phase in order to achieve a resolution as soon as possible, whenever this is feasible. However, if the Council or the complainant believes that it would not be appropriate to consider the complaint at Stage 1, they should discuss this together. Where both parties agree, the complaint can move directly to Stage 2.
3.5.3 At Stage 1, staff at the point of service delivery – including the Independent Reviewing Officer where appropriate – and the child or young person should discuss and attempt to address the complaint as quickly as possible. They should discuss the issue and exchange information and thinking behind decisions and try to agree a way forward.

3.5.4 Regulation 14(1) places a 10 working day time limit for this part of the process. Most Stage 1 complaints should ideally be concluded within this time limit.

3.5.5 Where the Council cannot provide a complete response it will implement a further 10 days’ extension (regulation 14(5)). If necessary, the Council may also suspend Stage 1 until an advocate has been appointed (regulation 14(3)). The maximum amount of time that Stage 1 should take is 20 working days. After this deadline the complainant can request consideration at Stage 2 if they wish.

3.5.6 The Senior Complaints Officer will inform the complainant of the right to move on to Stage 2 if the time scale has elapsed for Stage 1 and the complainant has not received an outcome. It may be that the complainant is happy to put this off for the time being (for example, if the reason that resolution is delayed due to a key person being off sick or on leave), so this period can be extended with the complainant’s agreement or request.

3.5.7 If the matter is resolved, the Council will write to the complainant confirming the agreed resolution and the Senior Complaints Officer should be informed of the outcome as soon as possible. Otherwise, a letter should be sent to the complainant (or a meeting offered, if this is more appropriate) responding to the complaint.

3.5.8 Where the matter is not resolved locally, the complainant has the right to request consideration of the complaint at Stage 2. There is no time-limit within which he must request this, up to the one-year deadline for consideration of a complaint, but Council recommends that the complainant does this within 20 working days so that momentum in resolving the complaint is not lost. The Council has a duty to operate expeditiously throughout the complaints handling process (regulation 10).

3.6 Stage 2 – Investigation

3.6.1 Consideration of complaints at Stage 2 is normally achieved through an investigation conducted by an independent investigating officer and an independent person. Stage 2 commences either when the complainant requests it or where the complainant and the local authority have agreed that Stage 1 is not appropriate (regulation 17(1)).

3.6.2 Wokingham Borough Council appoints two independent investigators to
deal with Stage 2 complaints. The Complaints Team will seek to appoint appropriately experienced investigators as quickly as possible, with a view to their availability. Once this has been done the independent investigating Officer (IO) will contact the complainant to arrange a meeting to discuss their complaint and produce a written ‘Statement of Complaint’ that will constitute the terms of the investigation into the complainants’ concerns. The timescale for the investigation starts from the date the signed Statement of Complaint is received by the Complaints Team. Should the complainant amend the written record of his complaint, the Stage 2 timescale will start from the date that the complaint is finalised.

3.6.3 The Senior Complaints Officer will arrange for a full and considered investigation of the complaint to take place without delay. The Investigating Officer and the Independent Person have a right to see all information or documents to facilitate investigation, and consideration should be given to matters of disclosure and confidentiality. Consideration of the complaint at Stage 2 should be fair, thorough and transparent with clear and logical outcomes.

3.6.4 An Independent Person (IP) must be appointed to the investigation (regulation 17(2)) (see Annex 1 on Definition of Roles). This person should be in addition to the IO and must be involved in all aspects of consideration of the complaint including any discussions in the authority about the action to be taken in relation to the child.

3.6.5 A copy of the Statement of Complaint will be sent to any person who is involved in the complaint, unless doing so would prejudice the consideration of the complaint. Where this may be the case, the Senior Complaints Officer will advise senior management, who will inform staff of the details of the complaint through normal line management.

3.6.6 The IO should have access to all relevant records and staff. These should be released within the bounds of normal confidentiality and with regard to relevant legislation in the Freedom of Information Act, 2000 and the Data Protection Act, 1998.

3.6.7 The investigation should be completed and the response sent to the child or young person within 25 working days (regulation 17(3)) and Wokingham Borough Council seeks to complete the process by this deadline. However, this may be impractical in some cases, e.g. where the complaint involves several agencies, all or some of the matters are the subject of a concurrent investigation (such as a disciplinary process), if the complaint is particularly complicated or if a key witness is unavailable for part of the time.

3.6.8 Where it is not possible to complete the investigation within 25 working days, Stage 2 may be extended to a maximum of 65 working days (regulation 17(6)). All extensions should be agreed by the Senior Complaints Officer. The
important thing is to maintain dialogue with the complainant and where possible reach a mutual agreement as to what is reasonable where a response in 25 working days is not feasible. The Council is committed to providing a robust and thorough investigation at Stage 2, in order to achieve a resolution of the complainants’ concerns.

3.6.9 The Council will inform the child or young person as soon as possible in writing of:

- the reason for the delay; and
- the date by which he should receive a response (regulation 17(6)).

3.6.10 Where one or more agencies are involved in considering the complaint, it would be good practice for these bodies to aim for whichever is the shorter of the timescales to produce their final responses.

3.7 Stage 2 investigation report

3.7.1 On completion of the consideration of the complaint, the IO should write a report on the investigations including:

- details of findings, conclusions and outcomes are against each point of complaint (i.e. “upheld” or “not upheld”; and
- recommendations on how to remedy any injustice to the complainant as appropriate.

The report should be written in plain language, avoiding jargon, so that everyone can understand it. It should distinguish between fact, feelings and opinion.

3.7.2 The IP should also provide a report to the local authority once they have read the IO’s final report. They may wish to comment on:

- whether they think the investigation has been conducted entirely in an impartial, comprehensive and effective manner;
- whether all those concerned have been able to express their views fully and fairly;
- whether the IO’s report provides an accurate and complete picture of the investigation; and
- the nature of the recommendations or make his own recommendations as necessary.

3.8 The adjudication process

3.8.1 Once the IO has finished the report, a senior manager should act as Adjudicating Officer and consider the complaints, the IO’s findings, conclusions, and recommendations, any report from the IP and the complainant’s desired
outcomes.

3.8.2 The purpose of adjudication is for the Council to consider the reports and identify:

- its response;
- its decision on each point of complaint; and
- any action to be taken (with timescales for implementation).

3.8.3 The Adjudicating Officer should normally be a senior manager, reporting to the Director responsible for Children’s Services. The Adjudicating Officer will prepare a response to the reports, with a decision on the complaint, actions the service will be taking with timescales for implementation – this is the adjudication.

3.8.4 The Adjudicating Officer may wish to meet the Senior Complaints Officer, IO and IP, to clarify any aspects of the reports. The Adjudicating Officer should also consider liaising with the Senior Complaints Officer in drafting the adjudication.

3.8.5 The Adjudicating Officer may wish to meet the complainant as part of the adjudication process or afterwards to explain the details of the adjudication i.e. the outcome of the complaint and any proposed actions.

3.8.6 The Council will then write to the complainant with their response containing:

- a complete copy of the investigation report;
- any report from the IP; and
- the adjudication.

This response must contain details of the complainant’s right to have the complaint submitted to a Review Panel if he is dissatisfied and that he has 20 working days to make this request to the Senior Complaints Officer (regulation 17(8)). The Senior Complaints Officer will assess requests for the Review Panel as they are presented on a case by case basis (Paragraph 3.9.3).

3.8.7 The Adjudicating Officer should ensure that any recommendations contained in the response are implemented. The Senior Complaints Officer should monitor implementation and report to the Director on what action has been taken on a regular basis.

3.9 Stage 3 – Review Panels

3.9.1 Where Stage 2 of the complaints procedure has been concluded and the complainant is still dissatisfied, they are eligible to request further consideration of the complaint by a Review Panel (regulation 18). As it is not possible to
review a complaint that has not yet been fully considered at Stage 2 (including providing the report(s) and adjudication to the complainant), it is essential that the local authority does not unnecessarily delay the conclusion of Stage 2.

3.9.2 Further consideration of the complaint can include, in a limited number of cases, early referral to the Local Government Ombudsman (see Annex 3). Otherwise, the complainant retains the right to request a Review Panel.

3.9.3 The Senior Complaints Officer should assess requests for the Review Panel as they are presented on a case by case basis, in accordance with the regulations in section 3.10. The Complaints Team will appoint a Chair for the Panel, ideally within 10 working days of the agreement to undertake a Review Panel and two panel members. The Senior Complaints Officer will confer with the Chair, following the Chair's appointment, regarding arrangements for the Panel.

3.10 Purpose of Review Panels

3.10.1 Review Panels are designed to:

- listen to all parties;
- consider the adequacy of the Stage 2 investigation;
- obtain any further information and advice that may help resolve the complaint to all parties' satisfaction;
- focus on achieving resolution for the complainant by addressing his clearly defined complaints and desired outcomes;
- reach findings on each of the complaints being reviewed – these will be any complaints that were 'not upheld' or 'partially upheld' by the Stage 2 report and/or the Adjudication response;
- make recommendations that provide practical remedies and creative solutions to complex situations;
- support local solutions where the opportunity for resolution between the complainant and the local authority exists;
- to identify any consequent injustice to the complainant where complaints are upheld by the panel, and to recommend appropriate redress; and
- recommend any service improvements for action by the authority.

3.10.2 The Review Panel will not reinvestigate the complaints, nor will it consider any substantively new complaints that have not been first considered at Stage 2.

3.10.3 Ideally, no party should feel the need to be represented by lawyers at the Review Panel. The purpose of the Panel is to consider the complaint and wherever possible, work towards a resolution. It is not a quasi-judicial process and the presence of lawyers can work against the spirit of openness and problem-solving. However, the complainant has the right to bring a
representative to speak on their behalf. The Council will appoint an advocate to help the complainant if they so wish.

3.11 General principles

3.11.1 The Review Panel should be alert to the importance of providing a demonstrably fair and accessible process for all participants. Many complainants, particularly children and young people, may find this stage a stressful experience. It is important that the Panel is customer-focused in its approach to considering the complaint and child or young person-friendly. This may include limiting the total number of local authority representatives attending to a workable minimum to avoid the possibility of overwhelming the complainant.

3.11.2 In particular, the following principles should be observed for the conduct of the panel:

- The local authority should recognise the independence of the Review Panel and in particular, the authority of the Chair;
- Panels should be conducted in the presence of all the relevant parties, including the IO and IP, with equity of access and representation for the complainant and local authority;
- Panels should uphold a commitment to objectivity, impartiality and fairness, and ensure that the rights of complainants and all other attendees are respected at all times;
- The local authority should consider what provisions to make for complainants, including any special communication or mobility needs or other assistance;
- Panels should observe the requirements of the Human Rights Act 1998, the Data Protection Act 1998, and other relevant rights-based legislation and conventions in the discharge of their duties and responsibilities;
- The standard of proof applied by Panels should be the civil standard of ‘balance of probabilities’ and not the criminal standard of ‘beyond all reasonable doubt.’ This standard will be based on evidence and facts; and
- It will be at the Chair’s discretion to suspend or defer proceedings in exceptional circumstances where required, including the health and safety of all present.

3.11.3 The local authority should be mindful of the specific needs of children and young people either using or affected by complaints. Local authorities should ensure that:

- the Review Panel acts in accordance with the United Nations Convention on the Rights of the Child;
- the Review Panel safeguards and promotes the rights and welfare of the child or young person concerned;
- the wishes and feelings of such children and young people are ascertained, recorded and taken into account;
- the best interests of such child or young person are prioritised at all times; and
- where the complaint is made by a person deemed to have a sufficient interest in the child's welfare, they should where appropriate, seek the child or young person's views with regard to the complaint.

3.12 Redress

3.12.1 Under Section 92 of the Local Government Act 2000, local authorities are empowered to remedy any injustice arising from maladministration.

3.12.2 The Review Panel must set out its recommendations to the Council on any strategies that can assist in resolving the complaint. These may include financial compensation or other action within a specified framework to promote resolution.

3.13 Make up of the Panel

3.13.1 The Panel must consist of three independent people (regulation 19(2)). Independent means a person who is neither a member nor an officer of the Council, nor the spouse or civil partner of such a person. The Independent Person appointed to Stage 2 may not be a member of the Panel (regulation 19(3)).

3.13.2 In selecting the Panel the Council will consider:

- the profile of the local population;
- how best to demonstrate independence of the procedure;
- the needs and circumstances of the individual complainant and the need for specialist skills, knowledge, or awareness regarding the presenting complaint;
- any real or perceived conflict of interest raised by either the substance of the complaint or the Panel process for considering that complaint; and
- due care regarding political sensitivity.

3.13.3 One member of the Panel should be assigned as Chair of the panel. The person appointed as Chair should not have been an officer or a Member of the Council during the three years preceding the Panel.

3.13.4 In order that the Chair may contribute to the organisation of the panel, the Senior Complaints Officer should appoint the Chair first – ideally within ten working days of the agreement to proceed to Stage 3 – before identifying other panel members.
3.14 Administration of the Panel

3.14.1 The Council will:

- demonstrate an ongoing commitment to supporting Panellists through regular training when requested;
- confirm references, Criminal Records Bureau referrals, confidentiality and disclosure protocols, declarations of interest, and provide other support as required;
- provide Panellists with a letter of appointment explaining the Review Panel process, their role as a Panellist and describing the expenses and other payment to which they may be entitled. Attention should also be drawn to important issues such as confidentiality;
- reimburse Investigating Officers, Independent Persons and any other external people involved in the earlier stages for their attendance at the Panel, as appropriate;
- provide complainants with information on attending the Panel and assistance that they can draw on; and
- facilitate the administrative support and advisory functions on the day of the Panel.

3.14.2 The Panel must be held within 30 working days of the receipt of the agreement for a Review (regulation 19(4)). The local authority should acknowledge the complainant’s request for a Review in writing within 2 days of receiving it. The Panel Review will be held locally and with due regard to the complainant’s availability and convenience. The complainant will be notified of the Panel’s date and location in writing at least 10 working days before the Review Panel meets and be invited to attend.

3.14.3 Panel papers will be sent to panellists and other attendees as soon as these have been agreed by the Chair and no later than ten working days before the date of the Panel. These will normally include: information on Stage 1 (as relevant), the Stage 2 investigation report(s), the local authority’s adjudication, any policy, practice or guidance information relevant to the complaint, and any written comments that the complainant has submitted to the Panel. The papers will also include information on any local practice around Panels, such as conduct, roles and responsibilities.

3.14.4 If any other written material is submitted for consideration by the panel outside of these timescales, it will usually be at the Chair’s discretion whether it is accepted.

3.14.5 If any complaint is logged on the day by the complainant about the proceedings, the Council will record it and the Panel should take a view on the need for further action and should record their decision.
3.15 Attendance at the Panel

3.15.1 The complainant has a right to attend the Panel and will be assisted in attending as appropriate. The complainant will also be informed of his entitlement to be accompanied by another person and for this person to speak on their behalf.

3.15.2 Those persons involved with the investigation at Stage 2 (e.g. the Investigating Officer, and the Independent Person) should be invited to attend and contribute as relevant to their roles. Should any of these persons' unavailability cause an inordinate delay in holding the Panel; the Chair should take a view on proceeding without them. The Council can also proceed with the Panel in the complainant's absence at the complainant's request.

3.15.3 The Adjudicating Officer will attend as the authority's representative if any of the Investigating Officers findings were rejected at Stage 2. Where all findings were accepted, it is usually acceptable to delegate this responsibility.

3.15.4 The Chair should make the final decision on attendees (including asking the local authority to make specific members of staff available to provide specialist advice or opinion). They should also decide whether additional policies or procedures should be circulated with the Panel's papers.

3.15.5 The Senior Complaints Officer and anyone providing administrative support should also attend the Panel.

3.16 Conduct of the Panel

3.16.1 The Panel will be conducted as informally as possible, but in a professional manner and in an atmosphere that is accommodating to all attendees. This is particularly important where the complainant is a child or young person. The need for other support in response to diversity and disability issues should be catered for, including (but not limited to) provision for sensory impairment, translation and interpretation.

3.16.2 Panels will normally be structured in three parts: pre-meeting; presentations and deliberation.

Pre-meeting

3.16.3 This is an opportunity for the Panellists and their administrative support to meet in closed session to discuss the order of business and any other relevant issues (e.g. taking legal advice). No deliberations on the complaint should commence at this meeting.
Presentations

3.16.4 Once all attendees are present, the Chair should commence the Review by explaining its purpose and the need for confidentiality. The Chair should advise the complainant of the respective roles and responsibilities of those present and address any questions or concerns that the complainant may have about the process.

3.16.5 The Chair should ensure that the Panel’s focus is on the agreed complaint and the complainant’s desired outcomes from the Stage 2 investigation. The purpose of hearing the presentations is to understand each party’s opinion of the complaint rather than an opportunity to cross-examine attendees. The Chair should also indicate how long the Panellists anticipate that the presentations should last.

3.16.6 The full Panel meeting should begin with presentations on the points of complaint and desired outcomes by the complainant and the local authority. Normally, the first presentation should be by the complainant (or advocate/representative) who should be invited to ‘talk’ to the complaint and expand upon any relevant themes that should aid the Panel’s deliberation. The Chair should ensure that this presentation is reasonable and relevant, exercising discretion in limiting its scope, substance or duration.

3.16.7 Panellists should then have sufficient opportunity to ask questions of all present and seek clarification on the issues being discussed so they are in a position to make recommendations regarding the outcome. The Chair should also invite the complainant, the local authority and other attendees to ask questions and raise points of information and opinion as relevant to the complaint. All questions should be asked through the Chair.

3.17 Deliberations

3.17.1 The Panel should then go into closed session to deliberate on their findings and conclusions. The Panel may need administrative support at this stage, but this should not unduly influence the Panel’s deliberations and no conflict of interest should arise.

3.17.2 The Panel is required to produce a written report containing a brief summary of the representations and their recommendations for resolution of the issues (regulation 20(1)). They must send this to the complainant, the local authority, the independent person from Stage 2 and any other person with sufficient interest within 5 working days of the Panel meeting (regulation 20(2)). The written record should set out simply and clearly a brief summary of the representations; their recommendations for the resolution of the issues and the reasons for them. If a Panellist disagrees with the majority recommendation, this should also be recorded and the reason for it given.
3.18 After the Panel

3.18.1 The local authority must send its response to the Panel’s recommendations to the complainant (and other participants as necessary) within 15 days of receiving the Panel’s report (regulation 20(3)). The response should be developed by the relevant Director / Director of Children’s Services setting out how the local authority will respond to the recommendations and what action will be taken. If the Director deviates from the Panel’s recommendations he should demonstrate his reasoning in the response. In developing the response comments can be invited from all the attendees including the Independent Person from Stage 2 (regulation 20(3)) if required.

3.18.2 The complainant will be advised of his right to refer his complaints (if still dissatisfied) to the Local Government Ombudsman (regulation 20(3)).

3.19 Summary of stage 3 timescales

<table>
<thead>
<tr>
<th>Action</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complainant requests Review Panel</td>
<td>Up to 20 working days after receipt of the Stage 2 adjudication</td>
</tr>
<tr>
<td>Senior Complaints Officer acknowledges request</td>
<td>Within 2 working days and gives decision regarding holding a review Panel.</td>
</tr>
<tr>
<td>Senior Complaints Officer appoints Chair and confirms attendees and content of Panel papers with Chair</td>
<td>Within 10 working days of the complainant’s request for Review Panel</td>
</tr>
<tr>
<td>Local authority agrees the other Panellists and date for Review Panel</td>
<td>Within 30 working days of the acceptance of the complainant’s request for Review Panel</td>
</tr>
<tr>
<td>Local authority circulates Panel papers</td>
<td>Within 10 working days of the date for the Review Panel</td>
</tr>
<tr>
<td>Review Panel produces its written report (including any recommendations)</td>
<td>Within 5 working days of the Review Panel</td>
</tr>
<tr>
<td>Relevant Director issues his response</td>
<td>Within 15 working days of receiving the Review Panel’s report</td>
</tr>
</tbody>
</table>
3.20 Withdrawing a complaint

3.20.1 The complaint may be withdrawn verbally or in writing at any time by the complainant (regulation 7). The Council will write to the complainant to confirm the withdrawal of the complaint. Consideration will be given to whether or not to continue considering the issues that gave rise to the complaint through an internal management review. The local authority should then use this work to consider the need for any subsequent actions in the services it delivers.

3.20.2 Should the complainant then seek to reinstate the complaint, the local authority could use the review to produce a response as necessary.

4 PROBLEM SOLVING AND RESOLUTION

4.1 Resolving the issue

4.1.1 Solving the problems that generate complaints will be at the forefront of the Council’s approach to responding to children and young people. Involving people and agencies in the community who provide independent advice can assist problem solving and may prevent dissatisfaction developing into complaints.

4.1.2 Staff should consider when an unresolved problem becomes a complaint. It is important to ensure that attempts at problem solving are not to be used to divert an eligible person from making a complaint under the statutory procedure.

4.1.3 Attempts at resolution should not end once a complaint has been made. Rather, there will be continued efforts to resolve the dissatisfaction of children and young people so that the matter complained about is resolved during consideration of the complaint. The Council will consider introducing alternative ways of resolving the complaint while any given stage is ongoing. In every case, resolution should be in the best interest of the child concerned, particularly if an adult has complained about children’s services, but not on the child’s behalf.

4.1.4 There are a number of methods of resolution that do not require a full investigation that can be applied, including:

- the provision of an apology or explanation;
- conciliation and mediation;
- a reassessment of the children or young person’s needs;
- practical action specific to the particular complainant;
- a review of practice; and,
- an assurance that the Council will monitor the effectiveness of its remedy.

4.2 Alternative Dispute Resolution (ADR)
4.2.1 Nothing in this procedure should preclude either the complainant or the Council from suggesting Alternative Dispute Resolution. If agreed by both complainant and Senior Complaints Officer, the Council will explore this option.

4.2.2 Entering into Alternative Dispute Resolution (ADR) will not restrict the complainant's right to request a Review Panel as long as this is within the 20 working day timescale. Once the final date of the particular resolution process is agreed (i.e. following the final mediation meeting) and should the complainant decide that he wants to invoke his right to a Review Panel, he can terminate ADR at any time.

4.3 **General principles of redress**

4.3.1 Under Section 92 of the Local Government Act 2000, local authorities are empowered to remedy injustice arising from maladministration. Remedies will include, but are not restricted to, financial redress.

4.3.2 Each case should be considered on its own merits. These should ensure that any remedies are implemented reasonably quickly or to take action within a defined framework.

4.3.3 Any application of remedies should:

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

4.4 **Financial redress**

4.4.1 There are different reasons why financial redress may arise. These include:

- compensation;
- quantifiable loss;
- loss of a non-monetary benefit;
- loss of value;
- lost opportunity;
- distress; and
- time and trouble.

4.4.2 When considering financial redress, the Council will also consider the
following issues:

- whether it is appropriate to offset compensation in instances where the complainant owes money to the authority. This would apply for any costs owed to the authority as a whole, rather than to a single service;
- guidance given by the Local Government Ombudsman;
- where the complainant has incurred expenses or suffered financial loss, the Council will consider whether it is appropriate to pay for loss of interest as well.
- it may also be appropriate to calculate a financial remedy as a formula which takes into account all known factors.

4.4.3 The Local Government Ombudsman provides helpful advice on a wide range of issues relating to redress on its website:

www.lgo.gov.uk.

4.5 Deferring (freezing) decisions

4.5.1 If the complaint is about a proposed change to a care plan, a placement or a service, the decision may need to be deferred (frozen) until the complaint is considered. However, care should be taken if deferring a decision is likely to have a significant effect upon the mental or physical wellbeing of an individual.

4.5.2 The decision to defer should normally be made through detailed discussion and risk assessment between the Senior Complaints Officer and the manager responsible for the service, within the context of the work being undertaken with the child or young person. Decisions need to be made on a case-by-case basis, but there should generally be a presumption in favour of freezing, unless there is a good reason against it (for example, if leaving a child or young person where they are would put them at risk). In cases where decisions are met with opposing views, advice should be sought from the appropriate Director in the local authority.

5 RELATIONSHIP WITH OTHER PROCEDURES

5.1 Working with other procedures

5.1.1 The Council has other procedures that have a significant bearing on the complaints procedures. These include:

- child protection;
- court proceedings;
- grievance procedures; and
- disciplinary procedures.
5.1.2 Procedures may also need to link with those within the NHS and other agencies contributing to services. For example, NHS staff may become involved in family support and child protection work. Other agencies who may be involved in services to children include education establishments, housing authorities, voluntary and private child care organisations, the Probation Service and the Police.

5.1.3 Where complaints are appropriate to other procedures and in cases where joint action is required. Consideration will be given whether to freeze social work decisions until any concurrent investigations are resolved. Wokingham Borough Council is committed to ensuring effective coordination between the agencies involved and complainants should be provided with clear information as to how inter-agency matters will be dealt with.

5.1.4 In considering a complaint which is subject to concurrent investigation under one of the above procedures, the Council will be careful not to do anything that may compromise or prejudice the other investigation. In such circumstances, the Senior Complaints Officer should be mindful of developments and liaise closely with other staff.

5.2 Grievance and disciplinary procedures

5.2.1 Complaints procedures must be kept separate from grievance procedures, (which concern staff issues e.g. conditions of service) and disciplinary procedures (which apply to the actions of staff in relation to failures to comply with job descriptions).

5.2.2 Where complaints contain an element of grievance or discipline, the Council will keep the child or young person and its staff informed about progress in handling both the complaints and the disciplinary or grievance elements as appropriate having regard to normal staff confidentiality.

5.2.3 Staff can feel confused and intimidated by systems which reinforce an implication of culpability if a member of staff is named in a complaint. Staff should be reassured that they will not be held personally liable for carrying out resource decisions or allocations of service, according to the authority's criteria. In most cases they will have been named because they are the person best known to the user or carer.

5.3 Concurrent investigations

5.3.1 The handling of a complaint may coincide with action under the disciplinary procedures or on occasion, Police investigation.

5.3.2 The Council will ensure that alternative procedures can run concurrently with the complaints procedure. For example, a complaint about a deficiency in
service may also bring to light issues of a disciplinary nature. If there are still substantive issues around the deficiency in service to be resolved, the fact that disciplinary procedures commence is not a reason to stop the complaints process carrying on in respect of the service issue (unless to do so would compromise or prejudice the concurrent investigation).

5.3.3 Decisions on how to proceed should be based on individual cases and on how priorities are identified and decisions made in relation to them. The Council makes clear distinctions between a complaint, a grievance, legal proceedings and the reporting of a matter that is a criminal offence. The Council will consider how best to inform children and young people which procedure is being applied in their case and why.

5.3.4 The Council will also make clear to staff (and trades unions and professional associations) that consideration of the complaint is separate to any necessary action under the grievance or disciplinary procedures. Staff will be kept informed of progress of the complaint, but not given any details that would breach confidentiality or work against the child or young person’s best interest.

5.3.5 The Council has discretion not to commence the complaints investigation where to proceed with it would compromise a concurrent investigation under another statutory or internal procedure (regulation 8). If the Council decides not to commence the complaints process, it must write to the complainant explaining the reasons for its decision and specifying the relevant concurrent investigation. The Council will also inform the complainant of the right to resubmit the complaint once the concurrent investigation is concluded and that he must do this within 1 year of the conclusion of the concurrent investigation (regulation 8(5)). The Council will keep the complainant up to date with progress on the concurrent investigation if requested.

5.4 Cross-boundary issues

5.4.1 A potential area of confusion can arise around boundaries between the Council’s responsibilities and those of other bodies delivering services on behalf of the authority. This can happen, for example, where the Council provides domiciliary care to the household of a child with disabilities through a private agency, and the child wishes to complain about aspects of this service.

5.4.2 Cross boundary issues can occur among:

- children’s homes;
- children’s day care providers;
- Domiciliary Care Services;
- contracted agencies and multi-agency services;
- multi-agency Health Service packages; and
- single or joint assessments.
5.4.3 The Council is alert to cross-boundary issues and has protocols in place for the successful handling of these complaints. Partner agencies should have appropriate procedures of their own in place for responding to complaints in the first instance.

5.5 Complaints made to a local authority about an NHS body

5.5.1 Sometimes a complaint crosses over boundaries between a local authority and the NHS. Where this happens, children and young people should not have to worry about who they should approach with complaints about different aspects of the service they receive. Instead, the complaint can be made in its entirety to any one of the bodies involved.

5.5.2 Wokingham Borough Council has a responsibility to work with other bodies to establish which agency should lead on handling the complaint and to ensure that the complainant is kept informed and receives as comprehensive a reply as possible. Both bodies should aim to address the complaints as fully as possible by answering questions, providing information and attending meetings in connection with the consideration of the complaints where appropriate. Both the local authority and the NHS staff should consider meeting the child or young person together if this will facilitate a more effective outcome.

5.5.3 Ideally, both investigations should be completed simultaneously and reports delivered to the child or young person together. In order to facilitate this, the two bodies should aim to work to the shorter of their respective complaints procedure timescales.

5.5.4 The arrangements set out above for identifying a lead body apply only where the matters raised concern both bodies. However, sometimes, one body receives a complaint about the actions of another. This can happen where the child or young person does not understand which organisation is responsible for which service, but can also happen where there is an important issue of trust – a child or young person might, for example speak to a trusted social worker about concerns over treatment by the NHS or approach a District Nurse about a carer employed by the local authority.

5.5.5 The Complaints Manager 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 should then be for the Complaints Manager of the body complained against to make sure the complaint is dealt with properly.

5.6 Complaints involving regulated services

5.6.1 With regard to those services that are regulated (including local authority functions) specific complaints procedures are required under separate regulations and National Minimum Standards under the Care Standards Act
2000. They are therefore distinct from the complaints procedures for local authorities that are outlined in this policy. Understandably, confusion may sometimes exist about which complaints procedure is appropriate for specific sets of circumstances.

5.6.2 Complaints are likely to arise from the following issues:

- commissioning;
- placement arrangements;
- placement monitoring;
- personal needs reassessments;
- funding;
- contractual arrangements;
- service agreements;
- service quality; and
- care regime matters not covered by regulations and National Minimum Standards.

5.6.3 If the Council receives such a complaint, it will need to consider whether it is most appropriately dealt with by any complaints process that is operated within the relevant regulated service or setting or whether it is a matter that relates more directly to the exercise of the Council's Children Act 1989 functions, covered by this policy. Where the local authority is responsible for the original assessment of need that led to a placement and associated funding, then the complainant will (in most instances) have recourse to this procedure. However, access to this complaints procedure does not apply to people with private self-funding arrangements.

5.6.4 The complainant should be able to make a single complaint to the provider or the Council and have this considered by the relevant parties as necessary. The Senior Complaints Officer should therefore ensure good communication with all other parties and organisations should discuss the details of the complaint to ensure a seamless response.

5.6.5 It is possible for someone to have two complaints ongoing at the same time. One to a residential placement, for example, about how it meets the regulations and/or Standards, and one to the Council about how it has fulfilled its function in relation to the provision of services to meet the needs of the child or young person.

5.6.6 The Council has responsibilities in terms of fulfilling its children's social services functions, and the regulator has the responsibility for ensuring that regulated providers (e.g. care homes) meet the appropriate Regulations and National Minimum Standards.

5.6.7 When the Council receives a complaint that is about services provided
under the Children's Homes Regulations, 2001, it will refer the relevant parts of the complaint to the registered provider within 5 working days. The Council should also inform the child or young person of this. Details of the relevant parts of the complaint should also be sent to the Council’s care management team and the contract monitoring team. Any issues of safeguarding and potential vulnerability of the child should be confirmed by a Council safeguarding officer with the child or young person before releasing the complaint to the relevant care service provider.

5.6.8 Where the complaint consists of elements relating to both social services functions and services provided under the Children's Homes Regulations, 2001 the Council will co-operate with the provider to ensure that the complainant receives one response dealing with all aspects of the complaint. The Council will, within 10 working days, send details of the complaint to the registered provider and determine which parts of the complaint relate to Council’s social services and which to services provided by the care provider. It will also advise the complainant which parts of the complaint it is considering.

5.6.9 If the child or young person considers that he has suffered an injustice as a result of any significant delay or failure by the authority to refer his complaint to the registered person he is entitled to raise concerns with the Council. The Council will then deal with this matter under the appropriate procedure.

5.6.10 Boundary issues also arise with regard to other regulated services, as listed above. The Council should apply the above guidance in a similar manner with regard to these services as well (see section 7.4 on cross-boundary issues).

5.7 The role of the regulator

5.7.1 The Care Standards Act 2000 and the Health & Social Care (Community Health & Standards) Act 2003 define the role of the regulator in social care. The regulator's role is to ensure compliance with the Regulations and associated National Minimum Standards.

5.7.2 Complaints Team has good communication with the regulator to ensure clarity in handling complaints involving regulated care services. Assumptions should not be made that a matter of complaint is the responsibility of one agency or another without agreeing the respective lines of accountability.

5.7.3 The regulator is not a complaints agency and has no statutory duties or powers for the investigation of complaints about either care services or local authority social services. It can only consider matters relating to the provider's compliance with regulations and National Minimum Standards. It should also not be seen as a mediator between care service providers and those commissioning or using a service.
5.7.4 Where the regulator receives information indicating a concern, complaint or allegation about a care service, it undertakes an assessment of that information and the accumulated evidence about the care service to determine the nature of its response. In the case of concerns and complaints, the regulator normally refers the matter to the care service provider and/or commissioning agency (where applicable). This highlights the importance of complaints procedures for both care services and local authorities.

5.7.5 However, in certain circumstances the regulator should undertake direct enquiries using its powers of inspection. This will most commonly be where there has been a breach of regulations indicating the need for the regulator to issue recommendations and requirements, or to take other enforcement action.

5.8 Building a seamless service with the Council's other complaints procedures

5.8.1 Where a complainant has other related complaints that do not fall within this statutory procedure, the Council may consider whether there are advantages in accepting these into a single investigation. If the Council does not feel that would be beneficial it will apply the following guidance.

5.8.2 Building links with the Council's other complaints procedures is an essential way to develop the overall corporate obligation of the Council to provide a high quality service. The Council will endeavour to offer a complete single response where possible, for example where a child or young person has complaints relating to both the Council's housing service and its children's services.

5.8.3 The Complaints Manager responsible for children's services should liaise with other staff as relevant. These members of staff should agree who will take the lead, to make sure that the complainant is kept informed and, wherever possible, gets a single, clear reply that covers all aspects.

5.8.4 The Council will respond as promptly as possible by meeting the shorter of whichever timescales apply and ensure that this process is not confusing for the child or young person.

5.9 Child protection and child protection conferences

5.9.1 Where consideration of a complaint leads to concerns about the welfare of children, these should be referred immediately to local authority children's social care or the Police. The handling of any associated complaint can be suspended if necessary.

5.9.2 The welfare of children is a corporate responsibility of the entire local authority. The Council works in partnership with other public agencies, the
voluntary sector, and service users and carers. Local authorities have the lead responsibility for the establishment and effective functioning of Local Safeguarding Children Boards (LSCBs), which co-ordinate the way local agencies including the Police, education services and housing services work together to safeguard and promote the welfare of children.

5.9.3 Where enquiries have been conducted under Section 47 of the Children Act, 1989, a Child Protection conference may be held. This brings together family members, the child (where appropriate), and those professionals most involved with the child and family to consider information about the child’s developmental needs (i.e. health and development) and decide what future action is required to safeguard and promote the welfare of the child.

5.9.4 If there are subsequent complaints about the work of individual agencies, or their performance or the provision or non-provision of services, these should be handled in line with the particular agency’s complaints process.

5.10 Court orders

5.10.1 The procedure outlined in this policy is not an appeals procedure. People wishing to appeal against Court orders should approach the Court. However, dissatisfaction about the Council’s management or handling of a child’s case, even where related to a Court order, may be appropriately considered by the complaints procedure, for example, the conduct of social work staff involved in Court procedures. It is for the Council to identify whether these circumstances might be considered under this procedure. The child or young person should also be informed that the complaints procedure cannot overturn a Court decision.

5.10.2 The Council will also consider whether any possible complaint relating to records used in Court may also constitute a challenge to accuracy of the records it holds under the Data Protection Act.
GUIDANCE FOR COMPLAINTS

EARLY REFERRAL TO THE LOCAL GOVERNMENT OMBUDSMAN

Where the presenting facts indicate that reasonable, appropriate consideration of the complaint has been undertaken at Stage 2 and that further consideration by the Review Panel would not produce a demonstrably different outcome, the Senior Complaints Officer should discuss with the complainant the possibility of referring the complaint to the Local Government Ombudsman.

The authority can only consider this option once Stage 2 has been concluded and the complainant has received the authority’s final position on the complaints.

There are a number of important safeguards that must be in place before proceeding with this option. Stage 2 must have delivered:

- a very robust report;
- a complete adjudication;
- an outcome where all complaints have been upheld (or all significant complaints relating to service delivery in respect of the qualifying individual);

and,

- the local authority is providing a clear action plan for delivery; and
- the local authority agrees to meet the majority or all of the desired outcomes presented by the complainant regarding social services functions.

Where this is the case, and the complainant agrees, the Senior Complaints Officer can then approach the Local Government Ombudsman and ask him to consider the complaint directly, without first going through a Review Panel.

It is important to note that the Ombudsman has the power to investigate complaints made by members of the public in writing. Therefore the Council and the complainant will need to agree a written statement of the complaint for release, by the authority, to the Ombudsman.

The Ombudsman will then apply a test of reasonableness to this decision. If the Ombudsman concludes that early referral was incorrect, he may select from a range of responses. This may include proposing that the complaint is considered by the local authority at a Stage 3 Review Panel in the normal manner.

Early referral of the complaint will also not restrict the Ombudsman from later consideration of the complaint if he so chooses.
GUIDANCE ON UNREASONABLY PERSISTENT COMPLAINANTS

The Council is committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who complain. We do not normally limit the contact complainants have with our offices. However, there are a small number of complainants who, because of the frequency of their contact with the local authority, hinder consideration of their own complaints.

Where the Council encounters irresolvable and persistent complaints, it will consider all aspects of why this situation may be developing.

It is also important to distinguish between people who make a number of complaints because they really think things have gone wrong, and people who make unreasonably persistent complaints.

If the complainant is persisting because his complaints have not been considered in full then the Council must address this (normally by invoking the next stage). However, if this has already been done and we have demonstrated this to the complainant, then the Senior Complaints Officer should consider whether the complainant is now inappropriately persistent. The following guidance will only be pursued where absolutely necessary.

Persistent complainants

Features of a "persistent complainant" may include:

- a person who makes the same complaint repeatedly (with minor differences), but never accepts the outcomes;
- a person who seeks an unrealistic outcome and persists until it is reached; or
- a person with a history of making other unreasonably persistent complaints.

Unreasonably persistent complaints

An unreasonably persistent complaint is likely to include some or all of the following:

- an historic and irreversible decision or incident;
- frequent, lengthy, complicated and stressful contact with Council staff;
- the complainant behaving in an aggressive manner to staff or being verbally abusive or threatening;
- the complainant changing aspects of the complaint partway through the investigation or Review Panel;
• the complainant making and breaking contact with the Council on an ongoing basis; and
• the complainant persistently approaching the Council through different routes about the same issue in the hope of getting different responses.

There are a number of principles that the Council can apply. The most important being that the complainant receives the same standard of response as any other service user, and that the Council can show that it has not discriminated against the persistent complainant.

If the situation is challenging but it is possible to proceed, staff should avoid giving unrealistic expectations on the outcome of the complaint.

Action in response

Where the relationship becomes unworkable, the Senior Complaints Officer should ensure that it is demonstrable that the complaints have been considered as fully as is appropriate. This should normally be through advising the complaint that:

• they do not constitute a person who may complain and/or that his complaints do not fall within the relevant criteria for what may be complained about;
• the Council has either offered or provided consideration of the issues through another procedure (e.g. the corporate complaints procedure);
• the Council will consider the substantive issues at all stages of the complaints procedure; or
• the matters raised are not sufficiently different to justify being considered as a new complaint.

Where the Council has attempted to move the complaint on to the next stage but the complainant has either refused or delayed such progression through excessive objection to the process rather than addressing the substantive issues of the complaint themselves, the Council will advise the complainant that this is causing delay and is unreasonable use of the complaints procedure.

In some instances, abusive, threatening or other unreasonable behaviour may be a feature of the complainant’s disease or mental illness (e.g. chronic anxiety). In such cases, if possible, the Council will consider securing a whole case review from all professionals involved. The Council will refer to the Mental Capacity Act.

In all cases where the Senior Complaints Officer decides to treat someone as an unreasonably persistent complainant, a letter will sent to tell the complainant why his behaviour falls into that category, what action is being taken and the duration of that action. The complainant will be informed how to challenge the decision if
they disagrees with it (this should normally include information regarding the Local Government Ombudsman).

Where a complainant’s complaint is closed and they persist in communicating about it, the Senior Complaints Officer may decide to terminate contact with that complainant.

Restricting access

The decision to restrict access to the complaints procedure should be taken by the Senior Complaints Officer and should follow a prior warning to the complainant. Any restrictions imposed should be appropriate and proportionate. The options that the Complaints Manager is most likely to consider are:

- requesting contact in a particular form (for example, letters only);
- requiring contact to take place with a named officer;
- restricting telephone calls to specified days and times;
- asking the complainant to enter into an agreement about his future contact with the local authority; and
- informing the complainant that if he still does not cooperate with the advice given, any further correspondence that does not present significant new matters or new information will not necessarily be acknowledged, but will be kept on file.

Any new complaints from people who come under this policy should be treated on their individual merits.

In extreme cases, the local authority may consider the following actions:

- Referring the complaint to the Local Government Ombudsman before the complaints procedure has been exhausted or
- Advising the complainant that it cannot assist further and informing them of their right to approach the Local Government Ombudsman.

The distinction between the two options above is that early referral to the Local Government Ombudsman is a positive action that can only be undertaken in agreement between the Council and the complainant. This is therefore the less likely option with persistent complainants.

Option 2 may arise where the local authority does not agree with the complainant that the complaints are substantively valid and the two parties disagree on the way forward. This is more likely with a persistent complainant. Should the Council take this option, it will not contact the Local Government Ombudsman directly, but will indicate to the complainant that they may make this approach. The Council will confirm to the complainant that it is not responding to the complaint further.
The Local Government Ombudsman is likely to apply the test of reasonableness over the Council's response in a similar manner to an early referral and will have a range of options open to him.
GUIDANCE ON UNACCEPTABLE BEHAVIOUR

It is anticipated that this guidance should only apply to a very small number of complainants. It covers the possible escalation of a situation between the Council and a complainant from unreasonably persistent behaviour to unacceptable behaviour.

Dealing with complainants

The Council is committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who complain. We will not normally limit the contact complainants have with our offices. However, the Council does not expect their staff to tolerate behaviour by complainants which is unacceptable. The Council will take action to protect staff from that behaviour, including that which is abusive, offensive or threatening.

When the Council considers that a complainant’s behaviour is unacceptable we will tell them why we find their behaviour unreasonable and ask them to change it. If the unacceptable behaviour continues, the Council may take action to restrict the complainant’s contact with our offices. In all cases, the Council will write to tell the complainant what action it is taking and the duration of that action. The authority should also tell the complainant how they can challenge the decision if they disagree with it (which is through approaching the Local Government Ombudsman rather than any procedure provided by the Council).

Restricting access

The decision to restrict access to its offices should be taken by the Senior Complaints Officer in consultation with colleagues. Any restrictions imposed should be appropriate and proportionate. The options the Council is most likely to consider are:

- requesting contact in a particular form (for example, letters only);
- requiring contact to take place with a named officer;
- restricting any telephone calls to be specified days and times;
- asking the complainant to enter into an agreement about their conduct; and
- applying our policy on unreasonably persistent complainants.

The Senior Complaint Officer will record the option selected and inform the Council’s senior management of the action being taken. The Council may set a time limit on the duration of any restrictions applied to the complainant.
Terminating contact

Where a complainant continues to behave in a way which is unacceptable, the Council may decide to terminate contact with the complainant and discontinue any investigation into the complaint.

Where the behaviour is so extreme that it threatens the immediate safety and welfare of staff, the Council will consider other options, for example reporting the matter to the Police or taking legal action. In such cases, the Council may not give the complainant prior warning of that action.

In following this guidance, the Complaints Manager should refer to the Mental Capacity Act and all relevant human rights based legislation.