

Getting the Best from Complaints

Consultation on the Changes to
the Social Services Complaints
Procedures for Children, Young
People and Other People
making a Complaint

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ISSUES

Change for Children – Every Child Matters



Ministerial Foreword



The key message from *Every Child Matters: Next Steps* is that children's and young people's views, wishes and feelings must be heard at all times. Children and young people can be especially vulnerable when they have a problem and want to make a complaint. The new procedures are all about getting complaints, concerns or problems about local authority services, resolved quickly and effectively.

Effective complaints procedures can help the whole local authority improve the delivery of children's services by highlighting where change is needed. It is important that issues raised by children and young people about their care lead to better design of services.

The new Regulations have come about as a result of changes made to the Children Act 1989 by the Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003.

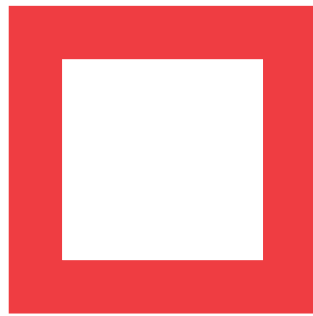
This document is designed to provide Directors of Social Services, Children's Services leads, Complaints Managers, NHS organisations and Primary Care Trusts with an understanding of the new procedures and to discuss the implications for policy and practice.

I hope you will take the time to read this document and look forward to receiving your response to the consultation.

Geoffrey Filkin

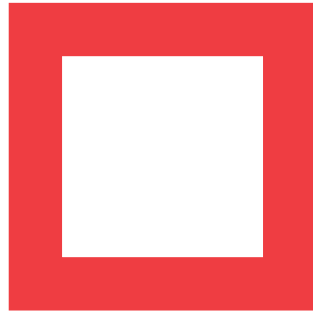
Parliamentary Under Secretary of State for Children and Families

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1



Introduction

1.1 SUMMARY

- 1.1.1 This draft guidance sets out changes to the children's social services representations procedure as a result of the Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003. It applies to England only.
- 1.1.2 The guidance is for representations, including complaints, made by children and young people. It also applies to parents, foster carers and other adults making a complaint. Throughout the guidance we use the term children and young people when referring to the complainant, however this includes adults making a complaint about services to a child.
- 1.1.3 This draft guidance builds on messages from the report of the Waterhouse inquiry *Lost in Care* which cited many examples of children who had attempted to complain but whose voices had not been heard. *Every Child Matters: Next Steps* sets out the Government's agenda for improving outcomes for every child. It is also about making sure vulnerable children and young people get the help they need, when they need it, however large or small their complaint. This guidance follows the core principles of the UN Convention on the Rights of the Child and *Every Child Matters: Next Steps* which puts children's views and wishes at the forefront of the decision-making process. The Children Bill, currently before Parliament, makes provision for a Children's Commissioner for England. Subject to the passage of the Bill, the Children's Commissioner can consider or research complaints procedures.

1.1.4 The Department of Health are consulting on the new adults social services complaints procedure (*Learning from Complaints*). Please see www.dh.gov.uk/consultations. Reference is made in this guidance to the draft adult regulations (*The Social Services Complaints Regulations*) and you may also wish to refer to these.

1.1.5 This document also asks your views on complaints and adoption related functions.

1.2 IMPACT ON LOCAL AUTHORITIES

1.2.1 The new procedure is expected to come into force on 1 April 2005. However, local authorities with social services responsibilities should consider the implications of the Regulations and guidance now. The final guidance will be issued as Section 7 guidance under the Local Authority Social Services Act 1970 which requires local authorities to act under the general guidance of the Secretary of State. Only in exceptional circumstances may local authorities justify a variation.

1.3 WHY ARE WE INTRODUCING THE NEW REGULATIONS?

Adoption and Children Act 2002

1.3.1 Section 117 of the Adoption and Children Act 2002 amends sections 24D and 26 of the Children Act 1989 by giving a power to make regulations which:

- allow for an initial resolution stage without involving an Independent Person;
- extend the scope or application of the Children Act 1989 procedure to services provided under Part IV (Care and Supervision) and Part V (Protection of Children) of that Act, as may be specified in regulations; and
- impose time limits for the making of representations.

1.3.2 The Adoption and Children Act 2002 also inserted a new section 26A into the Children Act 1989, which requires local authorities to make arrangements for the provision of advocacy services to children and young people making or intending to make representations, including complaints, under section 26 or section 24D of the Children Act 1989. These changes came into effect on 1st April 2004.

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

1.3.3 The Act gives powers to the Commission for Social Care Inspection (CSCI) which will replace the 'review panel' stage currently operated by local authorities. This is currently undergoing consultation. Copies of the consultation document are available at www.csci.org.uk

1.4 WHAT WILL CHANGE UNDER THE NEW PROCEDURE?

- 1.4.1 This guidance replaces that contained in *The Children Act 1989 Guidance and Regulations Volume 3 – Family Placements* and *Volume 4 – Residential Care* (Department of Health, 1991).
- 1.4.2 The guidance accompanies the draft *Representations Procedure (Children) Regulations*. These Regulations revoke and replace the *Representations Procedure (Children) Regulations 1991*.
- 1.4.3 The major differences between the procedure established under the 1991 Regulations and that established under the new Regulations are the:
- extension of local authority functions about which representations can be made under the procedure;
 - duty upon local authorities to seek informal resolution of all representations and complaints;
 - referral of complaints cases to the Commission for Social Care Inspection if children, young people or their representatives are unhappy about the way the council has handled their complaint; and
 - introduction of a 12 month ‘time limit’ to make representations (there is no limit at present).

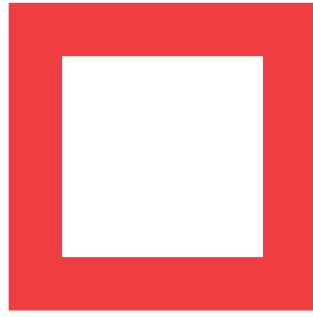
1.5 HOW TO RESPOND

- 1.5.1 A list of consultation questions are set out in the consultation response form included with this document. Completed response forms should be sent by **21 January 2005** to:
- Children’s Complaints Consultation, Participation Team, Department for Education and Skills, 2U Sanctuary Buildings, Great Smith Street, London, SW1P 3BT or by email to: complaints.consultation@dfes.gsi.gov.uk.
- 1.5.2 Alternatively, responses can be made via the DfES e-consultation website at www.dfes.gov.uk/consultations.
- 1.5.3 If you have any questions on policy issues, please email complaints.consultation@dfes.gsi.gov.uk.

1.6 ADDITIONAL COPIES

- 1.6.1 This document can be downloaded from www.dfes.gov.uk/consultations. To request hard copies please email complaints.consultation@dfes.gsi.gov.uk.

2



Scope of the 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)'. While it is anticipated that this procedure is for children and young people making a complaint, it covers representations which are not complaints. For example, children and young people should be able to put forward representations for a change to be made in the service they receive, or the establishment they live in, without this having to be framed as a complaint.
- 2.1.2 A complaint may be generally defined as 'An expression of dissatisfaction or disquiet in relation to an individual child or young person, which requires a response'. Children and young people often express complaints as 'problems not being sorted out'. A common theme amongst children and young people is the need for complaints procedures to be both fast and effective. Complaints procedures should 'get it sorted' and should do this straight away.

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 1989 Act may form the subject of a complaint. In addition, the draft Regulations provide that the following new functions may be the subject of a complaint:
- applications for care and supervision orders (section 31);

- duties where a care order is made (section 33);
- parental contact with children in care (section 34);
- duties where a supervision order is in force (section 35);
- applications for and duties in relation to child assessment orders (section 43);
- applications for and duties in relation to emergency protection orders (section 44); and
- local authority's duty to investigate (section 47).

2.2.2 A complaint may arise as a result of a number of concerns and issues, e.g. concerns about:

- a placement;
- a care plan or review;
- a social worker, teacher or foster carer;
- care, education or health;
- leaving care services;
- abuse and/or poor practice;
- an unwelcome or disputed decision;
- delay in decision making;
- quantity, frequency or cost of a service;
- application of eligibility and assessment criteria; and/or
- delivery or non-delivery of services.

Q1 Do you agree with the extension of functions which may be the subject of a complaint as set out in paragraph 2.2.1?

Adoption Services

2.2.3 We propose to make further regulations as part of the implementation of the Adoption and Children Act 2002 setting out that the following adoption-related 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 in respect of:
 - 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 in relation to 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
 - assistance where disruption of an adoption placement/arrangement has occurred or is in danger of occurring.

Complaints and Special Guardianship Support Services

2.2.4 We have also already consulted on draft regulations setting out the functions relating to special guardianship support services which may be the subject of a complaint. We are currently analysing the responses to that consultation exercise and the final regulations may be amended to reflect the comments received. The functions that were proposed as the possible subject of a complaint 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.

Q2 Do you agree with the proposed functions on adoption services as set out in paragraph 2.2.3?

2.3 WHO MAY COMPLAIN?

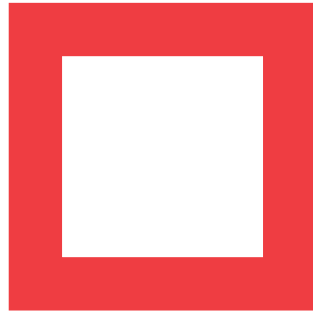
2.3.1 Section 26(3) and section 24D of the Children Act 1989 require the responsible authority to establish a procedure for considering representations including complaints made to it by:

- any child who is being looked after by them or is not looked after by them but is in need;
- a parent of his;
- any person who is not a parent but who has parental responsibility for him;
- any local authority foster carer (including those caring for children placed through independent fostering agencies);
- such other person as the authority considers has a sufficient interest in the child's welfare to warrant his representations being considered by them; and
- children leaving care.

2.4 COMPLAINTS MADE ON BEHALF OF A CHILD

2.4.1 The Children Act 1989 gives local authorities discretion 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 their decision, the local authority should always check with the child or young person that he or she is happy with the person making a complaint on his or her behalf and that the complaint submitted reflects his or her views.

3



Publicity

3.1 INFORMATION – ENABLING CHILDREN TO ACCESS COMPLAINTS PROCEDURES

3.1.1 Regulation 7 requires local authorities to give children and young people details of the complaints and representations procedure and, when requested, information and assistance in obtaining an advocate. Section 26A of the 1989 Act requires local authorities to make arrangements for the provision of advocacy services to children or young people making or intending to make complaints under section 26 or section 24D of the Children Act 1989.

3.2 AGE APPROPRIATE PUBLICITY MATERIALS

3.2.1 Many children and young people have told the Government that they are not aware how to make a complaint. Many are not aware of the complaints procedures of the services where they live¹. Local authorities must have robust communication and publicity mechanisms to ensure children and young people, including those with additional communication needs, are aware of how the complaints system works and who to contact. They must also be aware of their right to advocacy when making or intending to make a complaint. Publicity materials should be developed for children with learning difficulties and those with additional communication needs.

3.2.2 Information should be available using plain language and where relevant in other appropriate languages. Children and young people should be involved in developing and reviewing materials, for example through participation in a reference group.

¹ Morgan, Roger. *Children's Views on Complaints Procedures and Advocacy: Report of the Children's Rights Director*. National Care Standards Commission, 2003.

- 3.2.3 Local authorities should have a programme of regularly updating information and publicity about complaints procedures to staff and foster carers to ensure that new staff and carers are able to inform children and young people of the support they can access.
- 3.2.4 When a local authority first becomes aware that a child or young person wants to make a complaint, they should provide age-appropriate materials about children's rights, advocacy and complaints services and talk to the child or young person to explain these materials. In addition, local authorities may wish to develop electronic methods of communication and explore innovative methods; for example, CD's, personal organisers and tapes.

3.3 ANONYMOUS COMPLAINTS

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

Q3 Is the guidance clear about arrangements for making children and young people aware of complaints procedures?

4



The Role of the Complaints Manager or Equivalent and Other Officers involved in the Procedure

4.1 INTRODUCTION

4.1.1 As soon as possible after receiving representations the Complaints Manager or equivalent officer must provide the child or young person with:

- details of the representations procedure;
- information about advocacy services; and
- assistance and help with following the procedure and, where appropriate, help in obtaining an advocate.

4.2 COMPLAINTS MANAGER OR EQUIVALENT OFFICER

4.2.1 Under the new Regulations local authorities are still required to appoint a designated complaints officer (DCO), or equivalent officer, responsible for the management of the complaints system².

4.2.2 Every local authority must ensure that the role has sufficient clarity of purpose and authority to enable complaints to be dealt with effectively and speedily.

4.2.3 The key tasks of the Complaints Manager or equivalent officer include overall responsibility for:

- maintaining a written record of complaints made, the procedure followed and the outcome;
- overseeing the receipt and investigation of complaints that cannot be resolved initially;
- appointment of any Investigating Officer;
- appointment of the Independent Person;
- appointment of advocates;
- monitoring the progress of the investigation and ensuring its smooth running;
- ensuring the complainant and key people are kept informed at all stages, offering advice where required, particularly on the response of the authority;
- ensuring time scales are adhered to;
- making recommendations to the local authority on any action to take following an investigation;
- commissioning appropriate training;
- establishing, resourcing and monitoring the procedure, overseeing the arrangements for training and publicity;
- evaluating and reporting on the numbers, types, outcomes and trends of complaints to inform practice development and service planning;
- contributing to relevant training and practice development; and
- compiling an annual report.

Q4 Is the guidance clear about the role and responsibilities of the Complaints Manager or equivalent officer?

² The draft adult regulations (*The Social Services Complaints Regulations*) for adult services require local authorities to appoint a Complaints Manager.

4.3 INDEPENDENT PEOPLE (IPs)

4.3.1 The Regulations require local authorities to involve an Independent Person (IP) in the 'formal consideration' stage of the procedure. The person appointed should neither be a member nor an officer of the local authority. The key tasks of the IP are to ensure that the process of investigation is open, transparent and fair and to work alongside the Investigating Officer to provide an independent, objective view to the investigation.

4.4 INVESTIGATING OFFICERS

4.4.1 An Investigating Officer must be appointed by the council with social services responsibility to carry out an investigation. This does not remove the requirement to appoint an Independent Person, as these are two distinct roles.

4.5 THE ROLE OF ADVOCATES IN THE COMPLAINTS PROCEDURE

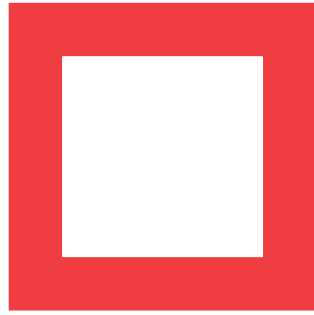
4.5.1 Advocates provide independent and confidential:

- information
- advice
- representation; and
- support.

4.6 INDEPENDENT REVIEWING OFFICERS (IROs)

4.6.1 New Regulations and guidance on Independent Reviewing Officers (IROs) came into force in September 2004 (*Independent Reviewing Officers Guidance, Adoption and Children Act 2002: The Review of Children's Cases (Amendment)(England) Regulations*). There should be close working between the IRO, Complaints Manager or equivalent and the advocate. The process for complaints resolution must run alongside the IRO's actions in resolving an issue and it will be good practice for the IRO, Complaints Manager and advocate to agree channels of communications and their respective roles in trying to resolve a complaint.

5



The New Procedure: Stage One – Handling and Consideration by Local Authorities

5.1 INTRODUCTION

5.1.1 The major difference between the current procedure and the one set out in this draft guidance is the condensing of the 'informal' process of stage one and the investigation process of stage two into one. The local authority resolution stage consists of two parts:

- initial attempt to resolve matters informally; and
- formal investigation.

(See diagram at Appendix B)

5.1.2 The formal investigation may begin either if the initial problem solving has not achieved resolution or if the complainant wishes to go directly to a formal investigation. The formal investigation stage must include the appointment of an Independent Person.

5.2 MAKING A COMPLAINT

- 5.2.1 The Regulations require local authorities to put in place systems for complaints to be made verbally to a member of staff or in writing. Complaints systems must be child and young person friendly and appropriate to the age and understanding of the child. The concerns of children and young people should be listened to and recorded. Information and assistance should be given about advocacy services and local authorities should ensure that they make arrangements for services which are geared up to respond quickly.
- 5.2.2 As soon as it becomes apparent that a child or young person wishes to make a complaint, they should be given information about the authority's complaints procedure and help in finding an advocate.

5.3 INITIAL ATTEMPT TO RESOLVE MATTERS INFORMALLY ('FIRST PART')

- 5.3.1 It is in no one's interest for complaints to proceed to the formal stages of the complaints procedure, where with sufficient attention and appropriate support at an early stage, problems can be resolved quickly and effectively. The Regulations require the local authority to resolve representations as soon as reasonably practicable and in any event within 10 working days. This period is where staff and the child or young person will discuss and attempt to resolve the issue as quickly as possible. This period may be extended at the request of the child or young person and where the child or young person has requested an advocate, the local authority may extend this period until an advocate has been appointed, provided that this is for no more than 10 working days.
- 5.3.2 A complaint may be made to any member of staff or direct to the Complaints Manager. If a member of staff or foster carer receives a complaint, they should notify the complaints service immediately and the Complaints Manager should record in writing the fact that the complaint was made, any action taken to resolve it, whether it was resolved and the date the complaint was received.
- 5.3.3 If the matter is resolved at this stage, a letter must be sent by the authority to the complainant (or, if this is a child or young person, a meeting set up, if more appropriate) confirming the agreed resolution and the Complaints Manager should be informed of the outcome as soon as possible.

5.3.4 If, however, after this time has elapsed the matter has not been resolved to the complainant's satisfaction, the complainant should be told 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 (for example, if the reason that something has not been resolved is that a key person has been off sick or on holiday) so this period can be extended upon request by the complainant or with the complainant's agreement. However, if at any time the complainant decides that he wants to move things on and start an investigation, then the Complaints Manager must be told immediately.

Q5 Do you think that 10 working days is sufficient for the initial attempt to resolve representations?

5.4 FORMAL INVESTIGATION ('SECOND PART')

5.4.1 The formal investigation may begin if the initial problem solving stage has not achieved resolution, or if the child or young person wishes to go straight to a formal investigation from the start. It is important to note that the decision rests with the person making the complaint. Once the child or young person has decided that he wants an investigation, the Complaints Manager must ensure that the subject of the complaint and the complainant's desired outcome is recorded in writing and agreed with the complainant. This may be achieved either by correspondence or by meeting the complainant to discuss, followed by a written record of what was agreed. It is at this point that the complaint becomes 'Registered'.

5.4.2 The Complaints Manager must arrange for the investigation of the complaint to take place so that it is resolved speedily and efficiently. He may also request (in writing) any person or body to produce information or documents to facilitate consideration, and consideration must be given to matters of disclosure and confidentiality.

5.4.3 The Complaints Manager must ensure that the authority appoints an Investigating Officer to investigate the complaint and prepare a written report for adjudication by the authority. The Investigating Officer plays the leading role in the investigation at this stage of the process. It is up to the authority to decide who will conduct an investigation; the Investigating Officer may be employed by the local authority subject to the complaint or from outside the authority, to carry out an investigation and prepare a report. The Investigating Officer must not, however, be in direct line management of the service or person about whom the complaint is being made.

5.4.4 The Complaints Manager must also ensure that an Independent Person is appointed to the investigation (see paragraph 4.3).

- 5.4.5 At the point it is agreed that the complaint will proceed to formal investigation, it will be necessary for the Investigating Officer, Independent Person and the Complaints Manager to plan how the investigation is to be carried out and to ensure that all those concerned in the process understand it. The Complaints Manager must ensure that the complainant understands how the investigation will be conducted. He must also send a copy of the complaint to the person who is the subject of the complaint, unless this has already been done or notification at that time would prejudice the consideration of the complaint, and keep the complainant informed of progress throughout.
- 5.4.6 It is recommended that the Independent Person should provide written comments to the authority in the form of a brief account. It should consider whether in his or her opinion the procedures have been conducted entirely in a fair, impartial, comprehensive and effective manner where all those concerned have been able to express their views fully and without duress. The Independent Person will also need to provide oversight of the Investigating Officer's report and confirm in his or her brief account that it provides an accurate and complete picture of the investigation. It should be stressed that, in the interests of maintaining confidentiality, the number of those involved should be kept to an essential minimum.

Q6 Do you agree with the role of the Independent Person in the formal investigation stage?

5.5 FORMAL INVESTIGATION TIMESCALE

- 5.5.1 The formal investigation should be completed and the response sent to the child or young person within 15 working days from the date on which the local authority begins its formal consideration of the representations. However, it is recognised that this will be impractical in some cases. The 15 'working day' time limit may be extended:
- where there is difficulty in establishing the nature of the complaint; or
 - where the child or young person or their representative has agreed to a later response.
- 5.5.2 The aim should be to complete investigations within the 15 working day period, with extensions only being used where necessary. All extensions must be agreed by the Complaints Manager or equivalent. The important thing is to maintain dialogue with the complainant and, where possible, reach a mutual agreement as to what is reasonable where the 15 working day time limit is not feasible. For example, if time is needed to bring together those involved in the complaint, such as the child or young person or a key member of staff, or if there is initial lack of clarity about the nature of the complaint, it may be reasonable to suggest that the time be extended if this would allow for the investigation to be completed thoroughly.

5.5.3 Where it is not possible to complete the investigation in the 15 working day period, it must be done no later than 2 calendar months from the date on which the complaint was made. The authority should inform the child or young person or their representative as soon as possible in writing of the:

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

Q7 Do you agree with the timescales for formal investigation, in particular:

- a) the time limit of 15 working days for this part of the procedure?
- b) the proposed 2-month extension from when the complaint was made?

5.6 RESPONSE TO THE FORMAL INVESTIGATION

5.6.1 If the complaint proceeds to the formal investigation stage, the Investigating Officer and the Independent Person will need to report the findings of their investigation and make recommendations. A senior service manager must respond to the complaint, outlining what action they are intending to take to address the findings of the investigation. This process is often referred to as the adjudication. The senior manager may wish to meet with the Investigating Officer and Independent Person to clarify aspects of the report. The response should be in writing, however when the complaint has been made by a child or young person, the senior manager should consider meeting with the child or young person and their advocate to explain the outcome of the complaint and any actions that they propose.

5.6.2 The Complaints Manager must be kept informed of the decisions made and should then notify all those who have been involved with the investigation, and any other person whom the local authority consider has a sufficient interest in the complainant, of the proposed result of their consideration. The Complaints Manager should ensure that any recommendations contained in the response are implemented.

5.6.3 The formal response letter should also remind the child or young person of his right, if he is unhappy with the authority's decision, to request that the complaint be considered by the Commission for Social Care Inspection.

5.7 RESOLVING A COMPLAINT

5.7.1 There are a number of ways of achieving resolution other than through a full investigation. These include the provision of an apology or explanation, mediation and conciliation, reassessment of the child's or young person's needs and, in some circumstances, a consideration of the need for financial compensation.

5.8 DEFERRING (FREEZING) DECISIONS

- 5.8.1 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 resolved. Consideration should always be given to deferring a decision that will have a significant effect upon the life chances of the child until the complaint has been resolved.
- 5.8.2 The decision to defer will normally be made through detailed discussion and risk assessment between the Complaints Manager and the line manager 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, the Director of Social Services or children’s services lead should be consulted to provide an ultimate decision.

5.9 TIME LIMIT FOR MAKING A COMPLAINT

- 5.9.1 Under the new Regulations, local authorities will be required to introduce a one year ‘time limit’ for making representations. This is being introduced to assist local authorities concentrate on sorting out current complaints and putting them right, rather than historic matters which can relate to complaints made by children who have left the authority many years before. It is intended that complaints of this nature are dealt with by the Criminal Injuries Compensation Authority. The time limit can be extended at the local authority’s discretion if it is still possible to consider the representations effectively and efficiently or there are other circumstances where it is possible to sort out the complaint. For example, where the child was not able to make the complaint or did not feel confident in bringing it forward in the 12 month period.

Q8 Is the guidance clear about the one year time limit for representations and complaints?

5.10 WITHDRAWING A REPRESENTATION OR COMPLAINT

- 5.10.1 The Regulations set out that representations may be withdrawn orally or in writing at any time by the complainant or by an advocate. The local authority must, as soon as possible, write to the complainant and any advocate under section 26A to confirm the withdrawal of the representations. In these circumstances, it would also be good practice for the local authority to consider whether or not the issue of concern requires further consideration under appropriate internal management review systems.

6



The New Procedure: Stage Two – Independent Review by the Commission for Social Care Inspection

6.1 COMMISSION FOR SOCIAL CARE INSPECTION (CSCI) – INDEPENDENT REVIEW

- 6.1.1 In April 2005, the independent review of complaints made about local authority social services for both children and adults will become a new function of CSCI. Proposals are currently undergoing consultation. This draft guidance should be read in conjunction with the Commission's consultation document *An Independent Voice – Proposals for the Independent Review Stage of the New Social Services Complaints Procedure* (Commission for Social Care Inspection, September 2004). See www.csci.org.uk.
- 6.1.2 CSCI plans to establish a complaints review service (CRS) to assess whether CSCI needs to investigate a case. Referral back to the local authority may occur where the complaint is premature or where the possibility for local resolution is identified. Complaints meeting the relevant criteria will be eligible for review and the action taken may include:

- Convening an Independent Complaints Panel to consider the complaint. This will be a Panel of three independent persons whose role will be to focus on the desired outcomes with a view to resolution for the complainant.
- Commissioning a CSCI Investigation in circumstances where the substance of the complaint and the local process for investigating that complaint give cause for concern.
- Referral to the Local Government Ombudsman in circumstances agreed between CSCI and the Ombudsman.
- A decision of no further action where a consideration of the complaint through review will not provide a demonstrably different outcome.

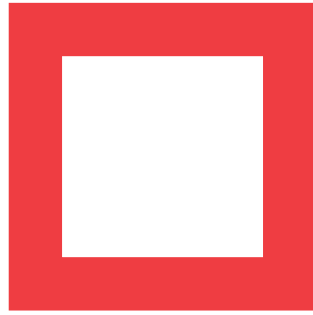
6.2 CSCI – REVIEW RECOMMENDATIONS

- 6.2.1 CSCI will report the findings, conclusions and recommendations of their review to the child or young person and the local authority.
- 6.2.2 The Complaints Manager should liaise with the Director of Social Services or relevant Chief Officer in the adjudication of recommendations where made, in order to determine the necessary action to be taken by the local authority. The local authority's subsequent decision should be communicated in writing to the complainant and the Commission and, where appropriate, any Independent Person, advocate, representative or person with a sufficient interest as determined by the local authority.
- 6.2.3 The Commission will ensure that the statutory requirements in respect of advocacy and Independent Persons in matters of complaint are observed, and that they are appropriately involved during the course of any CSCI review activity.
- 6.2.4 Where a complaint has not been resolved after six months of the date on which the complaint was made under Local Resolution arrangements, then the complainant may request that CSCI consider the complaint. The complainant may approach CSCI direct or through their local authority who must provide CSCI with all relevant documentation in the complaint.
- 6.2.5 Where it appears appropriate to the local authority, and with the agreement of the complainant and CSCI, the Complaints Manager may refer a complaint to CSCI.

Q9 Does the guidance make clear the role of CSCI and its relationship to the local authority complaints function?

Q10 Do you agree with the new two stage procedure as outlined in sections 5 and 6?

7



Monitoring

7.1 RECORDING

7.1.1 Regulation 12 requires local authorities to monitor the arrangements they have made by keeping a record of:

- each representation received;
- the outcome of each representation; and
- whether there was compliance with the time limits.

7.1.2 It is important to record complaints clearly, including the method of resolution and the eventual outcome. All complaints must be recorded, including those which are resolved at an initial stage. Recording must include details of the complaint, the decisions made, the action taken and any consequential issues that arose.

7.1.3 Clear communication throughout will help prevent any misunderstanding and will maximise the opportunity for resolution. The overall purpose of recording is to enable:

- children and young people to see that a thorough and fair investigation has taken place;
- the organisation to demonstrate that complaints are taken seriously and how they are resolved; and
- feedback from representations and complaints to lead to improvement in service design and delivery.

7.2 INVESTIGATION REPORT WRITING

7.2.1 It is important to remember that reports will serve a range of purposes and can have a powerful effect on those involved in the complaint.

7.2.2 In the case of complaints involving disabled children and children with special educational needs, it is established best practice to meet with the complainant to explain the report in person. This might involve the provision of reports in large print, in Braille or in the form of a translation. Those reading the report will have a range of interests:

- the complainant will want to see evidence of a thorough and fair investigation, 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; and
- managers will be concerned with achieving a balance of listening to children and young people and supporting staff, and with the balance between individual staff competence and implications for policy and procedures.

7.2.3 Reports should:

- include evidence from all the people involved;
- be clear about what, if any, aspects of the complaint are founded;
- identify ways to remedy the complaint;
- be written in plain English, avoiding jargon, so that everyone can understand them; and
- distinguish between fact, feelings and opinion.

7.2.4 A report should be prepared which is appropriate to the child's age, literacy and language. The authority should ensure that the report is explained to the child, involving the child's advocate if the child has used one.

7.3 REGISTRATION OF A COMPLAINT

7.3.1 Registering a complaint is distinct from recording one and covers the administrative part of the complaints handling process. Whilst complaints will need to be recorded at all stages for monitoring purposes, local authorities are expected to register a complaint which involves a formal investigation, so that the subject of the complaint and desired outcome are agreed before investigation takes place.

7.4 ANNUAL REPORT

7.4.1 The Regulations require local authorities to publish a report every 12 months. This will be arranged by the Complaints Manager and will provide a mechanism by which the local authority can be kept informed about the operation of their complaints procedure. The report should provide information about:

- the number of complaints received;
- the types of complaints made;
- details about advocacy services provided under the arrangements;
- compliance with timescales;
- the outcome of complaints;
- a summary of statistical data about the age, gender, disability and ethnicity of complainants;
- a review of the effectiveness of the complaints procedure.

7.4.2 Preparation of the report should include consultation with those who use the complaints procedure and those who have an interest in promoting it, for example, children and young people, staff and advocacy projects.

7.5 QUALITY ASSURANCE

7.5.1 Authorities will need to monitor the operation and effectiveness of their complaints procedure as well as how information about complaints made is being used to improve services and delivery. An anonymous record should be kept of each complaint received, including the nature of the complaint, the action taken and the outcome, including whether there was compliance with the time periods specified in the Regulations. All local authorities need to provide a system for:

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

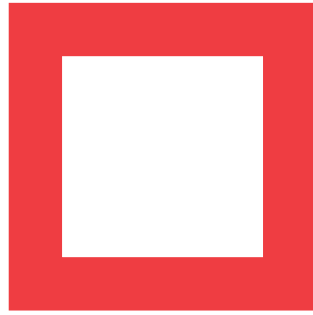
7.6 DATA PROTECTION AND CONFIDENTIALITY

7.6.1 All functions of the complaints procedure must adhere to the requirements of the Data Protection Act 1998.

- 7.6.2 Particular attention is drawn to the need to ensure that information provided in relation to a complaint is only used for that purpose, and that information is not sought on matters outside the agreed scope of the complaint.
- 7.6.3 Section 119 of *The Health and Social Care (Community Health and Standards) Act 2003* makes an amendment relevant to the complaints functions to section 31 of the Data Protection Act 1998.

Q11 Are the arrangements for recording and monitoring the complaints procedure clear?

8



Relationship with Other Procedures

8.1 WORKING WITH OTHER PROCEDURES

8.1.1 Every authority will have other procedures which take precedence over complaints procedures, for example:

- child protection; and
- litigation, grievance and disciplinary procedures.

8.1.2 It is important that the relationships between procedures are clear and that the content is consistent. There will be a need for links with other procedures including those within strategic health authorities 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 child care services include local education authorities, housing authorities, voluntary and private child care organisations, the probation service and the police. It is essential that local authority arrangements cover both the separating out of complaints appropriate to other procedures and cases where some joint action is appropriate.

8.2 SERIOUS COMPLAINTS

8.2.1 It may also be appropriate for serious complaints to be dealt with through other procedures (for example, where legal action is threatened or where matters relevant to the disciplinary procedure are raised).

8.2.2 Where serious allegations are made, senior staff need to be involved at the outset. Where such allegations suggest that a criminal offence may have been committed, the relevant local procedure should be followed. Where an allegation is serious and substantial, the police must be notified immediately.

8.3 CHILD PROTECTION AND CHILD PROTECTION CONFERENCES

8.3.1 The welfare of children is a corporate responsibility of the entire local authority, working in partnership with other public agencies, the voluntary sector, and service users and carers. The local authority has the lead responsibility for the establishment and effective functioning of the Area Child Protection Committees (ACPCs), in which agencies such as police, education and housing work together on safeguarding children. ACPCs will in time be replaced by Local Child Safeguarding Boards (LCSBs) but the same principle will apply.

8.3.2 After 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 look at aspects of the child's needs such as health and development.

8.3.3 Complaints about the child protection work of individual agencies, their performance and the provision or non-provision of services should be handled in line with the particular agency's complaints process. Occasionally, however, parents or carers, or sometimes children, may have concerns about an aspect of the functioning of child protection conferences and wish to complain. This might 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.

8.3.4 Complaints about these aspects of the functioning of conferences should be addressed to the conference Chair. Such complaints should be passed to the Complaints Manager or equivalent officer.

8.3.5 In considering and responding to complaints about these specific functions of the child protection conference, the local authority should form an inter-agency panel made up of senior representatives from ACPC member agencies. The inter-agency panel should consider whether the relevant inter-agency protocols and procedures have been observed correctly, and whether the decision that is being complained about follows reasonably from the proper observation of the relevant protocols and procedures.

- 8.3.6 If, following the process, the complaint is upheld, the inter-agency panel should refer any recommendation about registration, de-registration, continuing registration or change of category to a reconvened child protection conference. This should be held as quickly as possible under a different Chair and should again consider, taking fully into account any recommendation made, whether the test for registration (namely the risk of continuing significant harm) is met and, if so, the relevant category for registration. A complainant who continues to be dissatisfied with the outcome of the reconvened child protection conference may seek a review of the position from the inter-agency panel.
- 8.3.7 The inclusion of a child's name on a child protection register is an administrative action not carried out under any statutory provision (even where the decision is linked to a recommendation to seek a court order). It is part of an inter-agency process for which the local authority is in the lead but does not carry full responsibility.
- 8.3.8 On any of these child protection matters, it is important for the local authority to recognise that in general, only complaints about any of the specific functions of the child protection conference (outlined above) should be considered through the specially convened 'inter-agency' panel as specified here. All other complaints will need to be conducted through the relevant complaints procedure that applies to the respective agency.

8.4 CHILD PROTECTION AND COMPLAINTS HANDLING

- 8.4.1 Complaints about the broader aspects of child protection and individual agencies, their performance and provision (or non-provision) of services, should be responded to in accordance with the relevant agency's complaints handling process. For example, Social Services Departments are required (by section 26 of the Children Act 1989) to establish complaints procedures to deal with complaints arising in respect of Part III (and now certain aspects of Parts IV and V) of the Act. This procedure is covered in this guidance.

8.5 COURT ORDERS

- 8.5.1 The procedure outlined in this guidance 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 legal advice should be sought in such cases.

8.5.2 However, dissatisfaction about a local authority's management or handling of a child's case, even where related to a court order, may be appropriate to the procedure. The inclusion of a child's name on a child protection register is an administrative action not carried out under any statutory provision (even where the decision is linked to a recommendation to seek a court order). It is part of an inter-agency process for which the local authority is in the lead but does not carry full responsibility. While the requirements of section 26 are confined to the local authority's functions under the Children Act 1989, local authorities may wish to consider providing, with the agreement of the ACPC, an appropriate procedure to handle complaints about inter-agency case conferences and their recommendations.

Q12 Do you think the guidance is clear on complaints handling and child protection?

8.6 COMPLAINTS, GRIEVANCES AND DISCIPLINARY MATTERS – CONCURRENT INVESTIGATIONS

8.6.1 The handling of a complaint may coincide with action under the disciplinary procedures or child protection action and on occasion, police investigation. Decisions on how to proceed with these should be based on individual cases and local guidance will be necessary on how priorities are identified and decisions made in relation to them.

Q13 Is this guidance clear and easy to read?

2005 No. XXX

CHILDREN AND YOUNG PEOPLE, ENGLAND

The Representations Procedure (Children) Regulations 2005

<i>Made</i> - - - -	2005
<i>Laid before Parliament</i>	2005
<i>Coming into force</i> - -	2005

ARRANGEMENT OF REGULATIONS

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2. Interpretation

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The Secretary of State for Education and Skills in the exercise of the powers conferred upon him by sections 24D(1A), 24D(2), 26(3A)(b), 26(4A), 26(5), 26(5A), 26(6), 26A(3), 59(4), 59(5) and 104(4) of, and Schedule 7, paragraph 6 to the Children Act 1989(a) and all other powers enabling him in that behalf, hereby makes the following Regulations:—

PART 1 INTRODUCTION

Citation, commencement and application

1.—(1) These Regulations may be cited as the Representations Procedure (Children) Regulations 2005 and shall come into force on XX 2005.

(2) These Regulations shall apply to England only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Children Act 1989;

“the 2002 Act” means the Adoption and Children Act 2002(b);

“the 1991 Regulations” means the Representations Procedure (Children) Regulations 1991(c);

“advocate” means a person who provides assistance under arrangements made by a local authority under section 26A(1) of the Act;

“advocacy services” means assistance provided under arrangements made by a local authority under section 26A(1) of the Act;

“the Advocacy Services Regulations” means the Advocacy Services and Representations Procedure (Children)(Amendment) Regulations 2004(d);

“complainant” 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;

“to consider representations” means to consider representations under the procedure set out in these Regulations;

“independent person” 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;

“representations” means representations under section 24D or section 26 of, or paragraph 6(2) of Schedule 7 to, the Act;

“working day” 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(e).

(2) Any notice required under these Regulations is to be given in writing and may be sent by post.

(a) 1989 c. 41; section 24D(1A) was inserted by section 117(1) of the Adoption and Children Act 2002 (c. 38), section 24D(2) was inserted by section 5 of the Children (Leaving Care) Act 2000 (c.35), section 26(3A) was inserted by section 117(4) of the Adoption and Children Act 2002 (c.35); section 26(4A) was inserted by section 117(6) of the Adoption and Children Act 2002 (c. 38) and section 26(5A) was inserted by section 117(7) of the Adoption and Children Act 2002 (c.38).

(b) 2002 c. 38

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

(d) S.I. 2004/719.

(e) 1971 c.80.

PART 2

CONSIDERATION OF REPRESENTATIONS

Subject of representations

3. The following functions of a local authority are specified for the purposes of section 26(3A)(b) of the Act—

- (a) functions under section 31 (Care and supervision orders);
- (b) functions under section 33 (Effect of care order);
- (c) functions under section 34 (Parental contact, etc. with children in care);
- (d) functions under section 35 (Supervision orders);
- (e) functions under section 43 (Child assessment orders);
- (f) functions under section 44 (Orders for emergency protection of children); and
- (g) functions under section 47 (Local authority's duty to investigate).

Local authority action

4.—(1) The local authority must appoint one of their officers to assist the authority in the co-ordination of all aspects of their consideration of the representations.

(2) The local authority must take all reasonable steps to ensure that everyone, including any independent person, who is involved in the handling and consideration of the representations is familiar with the procedure set out in these Regulations.

Time limit for making representations

5.—(1) Subject to paragraph (2) and (3), representations must be made within one year of the date on which the matter which is the subject of the representations came to the notice of the complainant.

(2) A local authority may consider any representations made after the end of the period mentioned in paragraph (1) if they are of the opinion that—

- (a) having regard to all the circumstances it would not be reasonable to expect the complainant to have made the representations within the period mentioned in paragraph (1); and
- (b) notwithstanding the time that has elapsed it is still possible to consider the representations effectively, efficiently and fairly.

(3) This regulation does not apply to representations made under paragraph 6 of Schedule 7 to the Act.

Form of representations

6. The complainant may make his representations in writing or orally.

Action to be taken by a local authority on receipt of representations

7.—(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 may obtain it; and

- (ii) where appropriate, help in obtaining an advocate.

Specific action to be taken by local authority where representations have been made under section 26(3)(e) of the Act

8.—(1) Where a local authority have received representations from a complainant falling within section 26(3)(e) of the Act they must as soon as possible decide whether he has a sufficient interest in the welfare of the child concerned to warrant the representations being considered by them.

(2) In reaching their decision under paragraph (1) the local authority must ascertain the views of the child concerned if they consider it appropriate to do so having regard to his age and understanding.

(3) If the local authority decide that the complainant does have sufficient interest then they shall cause the representations to be considered.

(4) If they decide that the complainant does not have sufficient interest then they must notify him of their decision and tell him that no further action will be taken.

(5) The local authority must tell the child concerned of their decision if they consider it appropriate to do so having regard to his age and understanding.

Withdrawal of representations

9.—(1) Representations may be withdrawn orally or in writing at any time by the complainant or by any advocate.

(2) The local authority must as soon as possible write to the complainant and any advocate to confirm the withdrawal of the representations.

Initial attempt to resolve matters informally

10.—(1) The local authority shall attempt to resolve the representations as soon as is as reasonably practicable and, in any event, 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 his representations being considered by them;
- (b) in any other case, on the date on which the representations were received by the local authority.

(2) The procedure followed by the local authority in trying to resolve matters under paragraph (1) need not involve an independent person.

(3) The period specified in paragraph (1) may at the request of the complainant be extended for such a period as the complainant agrees with the local authority.

(4) Where a complainant has requested an advocate the local authority shall extend the period specified in paragraph (1) until such time as an advocate has been appointed provided that—

- (a) each such extension is for no more than 10 working days;
- (b) the local authority notify the complainant of the extension;
- (c) the local authority notify the complainant of—
 - (i) the steps they have taken to date to arrange an advocate;
 - (ii) the complainant's right to have his representations considered without an advocate.

(5) Where the local authority and the complainant have resolved matters in accordance with paragraph (1) then the local authority must as soon as possible provide the complainant with written details of the terms of the resolution.

(6) Where the complainant has made his representations orally and he and the local authority have not been able to resolve matters in accordance with paragraph (1), then the local authority must as soon as possible prepare a written record of the representations which they must amend as

they consider necessary to accommodate the complainant's comments on the accuracy of the written record.

(7) The agreed written record prepared under paragraph (6) shall be treated for the purposes of the following regulations as the representations.

(8) The complainant may at any time request orally or in writing that the representations be formally considered under regulation 11.

Formal consideration

11.—(1) Where the complainant has made a request under the provisions of regulation 10(8) the local authority must make arrangements for the formal consideration of the representations.

(2) The arrangements made under this regulation must include the appointment of an independent person.

(3) The local authority must formally consider the representations under this regulation with the independent person and formulate a response within 15 working days beginning with the date on which the local authority received the complainant's request under regulation 10(8).

(4) 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 its findings in relation to the representations and the conclusions it draws from them.

(5) As soon as the local authority have formulated its response to the representations it must give notice of its response to the complainant and his advocate.

(6) The response given to the complainant under paragraph (5) must include information about the complainant's right to request that the representations be further considered in accordance with provisions in regulations made by the Secretary of State under section 26ZA of the Act and the procedure for making such a request.

PART 3

MISCELLANEOUS

Monitoring of operation of representations procedure

12.—(1) Every local authority must monitor the arrangements that they have made with a view to ensuring that they comply 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 these Regulations.

(2) For the purposes of such monitoring, each local authority must at least once in every period of 12 months, compile a report on the operation in that period of the procedure set out in these Regulations.

(3) The first report referred to in paragraph (1) must be compiled within 12 months of the date of coming into force of these Regulations.

Representations falling to be considered by more than one local authority

13. Where representations would fall to be considered by more than one local authority, they shall 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.

Revocation

14.—(1) The Representations Procedure (Children) Regulations 1991(a) are revoked save to the extent necessary for the purposes of regulation 15.

(a) S.I. 1991/894.

(2) Regulation 4(1) of the Advocacy Services and Representations Procedure (Children)(Amendment) Regulations 2004(a) is revoked.

Transitional and saving provisions

15.—(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 shall be considered in accordance with the 1991 Regulations.

(3) If in accordance with regulation 8(2) of the 1991 Regulations the complainant has given notice to the local authority of his 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 Secretary of State under section 26ZA 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 wish that the matter be referred to a panel and he still has time to do so in accordance with regulation 8(2) of the 1991 Regulations 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 Secretary of State under section 26ZA of the Act.

EXPLANATORY NOTE

(This note is not part of the Order)

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.

The major differences between the procedure established under the 1991 Regulations and that established under these, are: imposition of a 12 month time limit on making representations (there is no time limit at present); extension of local authority functions about which representations can be made under section 26 (they are limited at the moment to functions under Part 3 of the Act); introduction of a requirement on local authorities to attempt informal resolution of all representations under the Act procedure (at present local resolution only applies to representations made under section 24D); and removal of the panel stage of the procedure (complainants may now have their representations further considered under a procedure established in separate regulations made under section 26ZA of the Act).

Regulation 3 lists those functions which are qualifying functions, that is functions of the local authority which alongside all its functions under Part 3 of the Act may form the subject matter of a complaint. Each of these functions may only form the subject of representations in so far as it has been discharged in relation to the child who is the complainant, or on whose behalf the representations have been made.

Regulation 5 imposes a time limit for making representations: local authorities need not consider representations made more than 12 months after the complainant became aware of the event which gives rise to the representations. Local authorities may consider such representations if it would not be reasonable to expect the complainant to have made his representations earlier and it would

(a) S.I. 2004/719.

still be possible to consider the representations in a way that would be effective and fair to those involved. This does not apply to private fostering complaints.

Regulation 7 sets out the procedure to be followed by the local authority when it has received representations. In particular it requires local authorities to give the complainant details of the representations procedure and, where appropriate, information about and assistance in obtaining an advocate. Section 26A of the Act requires local authorities to make arrangements for the provision of advocacy services to children and young people making or intending to make complaints under section 26 or section 24D of the Act.

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 (that is to say other than the child, a parent of his, any person who is not a parent but has parental responsibility, and any local authority foster parent) as the local authority consider has a sufficient interest in the child's welfare to warrant his representations being considered by them. Regulation 8 requires the local authority when it has received representations from such a person to decide as soon as possible whether the complainant does indeed have such an interest: if they decide he does then they will consider the representations; if not then they must tell the complainant. Whatever their decision the local authority should notify the child considered if he is old enough and of sufficient understanding.

Representations may be withdrawn by the complainant or his advocate at any time (regulation 9) and the local authority is required to confirm the withdrawal in writing.

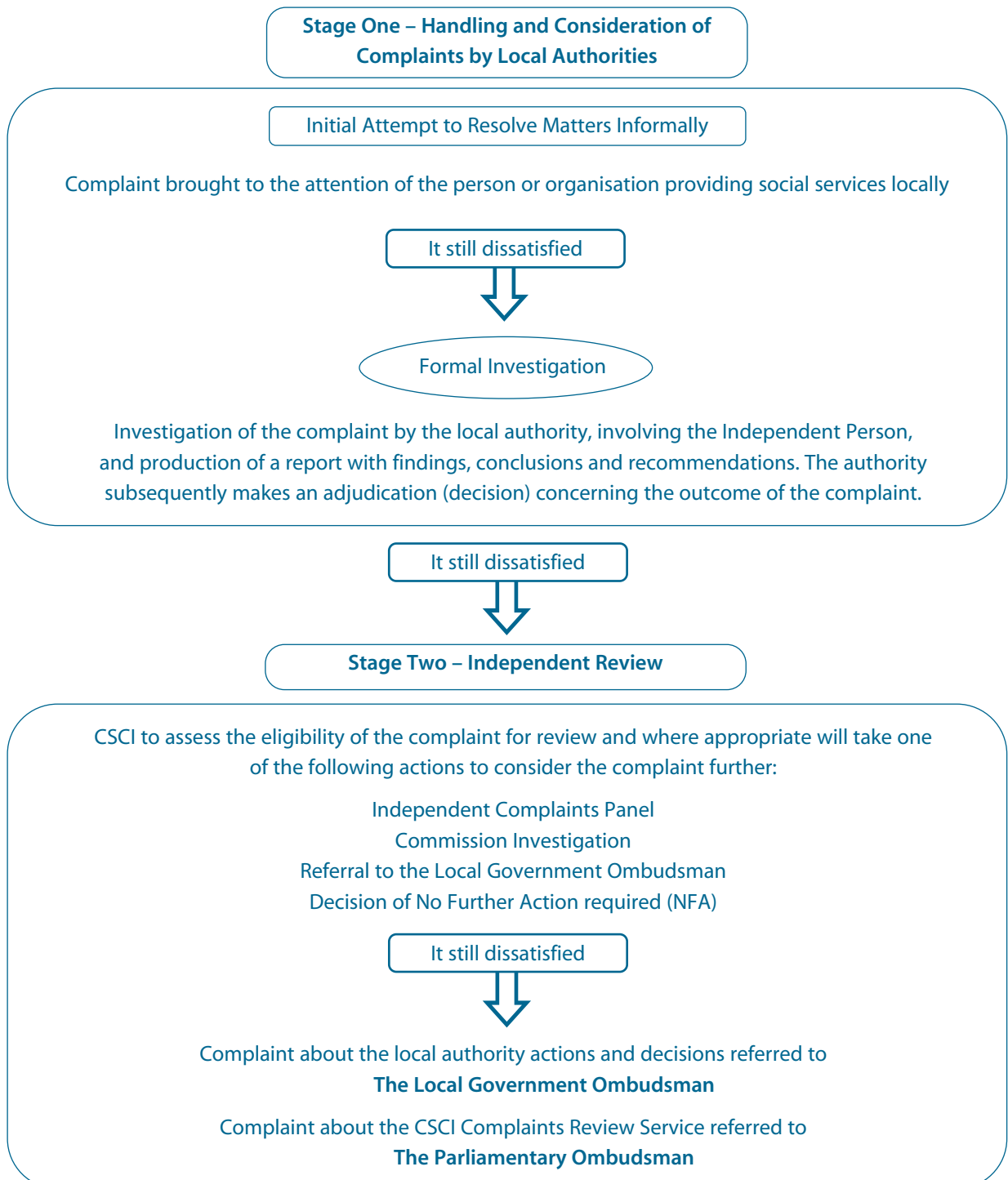
Regulation 10 establishes the procedure for an attempt at the informal resolution of representations, whether made under section 24D or section 26 of the Act. In particular the procedure need not involve the independent person who is required to participate in the formal consideration of representations under regulation 11. The initial period allowed for informal resolution is ten working days (starting on a variety of specified days, depending on the circumstances surrounding the making of the representations) but this period may be extended indefinitely at the request of the complainant (regulation 10(3)) or ended at any time by the complainant (regulation 10(8)) so that the representations fall to be considered through the formal procedure under regulation 11.

Formal consideration of the representations under regulation 11 must involve the independent person. The outcome of the consideration must be notified to specified individuals and include details for the complainant about how he can ask for the representations to be further considered under the procedure established under section 26ZA of the 1989 Act.

Regulation 13 sets out how local authorities are to monitor the arrangements they have made with a view to ensuring that they comply with the Regulations.

Any representations which are being considered under the procedure established under the 1991 Regulations at the time that these Regulations come into force will be dealt with in accordance with the transitional provisions made by regulation 16: consideration of any such representations will be continued under the 1991 procedure, unless the complainant has reached the stage where he may ask for a panel to be convened or has asked but no panel has been appointed, in which case any request he has made or does make is to be taken as a request for further consideration under the procedure for the further consideration of representations established under section 26ZA of the Act.

Appendix B: – The New Procedure for Social Services Complaints



Appendix C: Other Relevant Publications, Guidance and Contacts

PUBLICATIONS

Commission for Social Care Inspection. *An Independent Voice: Proposals for the Independent Review Stage of the New Social Services Complaints Procedure*. London: Commission for Social Care Inspection, 2004.

Department of Health. *Learning from Complaints*. London: Department of Health, 2004.

Children Act 1989. London: HMSO, 1989.

Department of Health, Home Office, Department for Education and Employment. *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*. London: HMSO, 1999.

Morgan, R. *Children's Views on Complaints Procedures and Advocacy: Report of the Children's Rights Director*. London: National Care Standards Commission, 2003.

Department for Education and Skills. *Independent Reviewing Officers Guidance, Adoption and Children Act 2002: The Review of Children's Cases (Amendment)(England) Regulations*. London: Department for Education and Skills, 2004.

Department for Education and Skills. *Get it Sorted: Providing Effective Advocacy Services for Children and Young People making a Complaint under the Children Act 1989*. London: Department for Education and Skills, 2004.

Department for Education and Skills. *Young People's Guide to Advocacy Guidance*. London: Voice for the Child in Care/The Who Cares? Trust, 2004.

Department of Health. *National Standards for the Provision of Children's Advocacy Services*. London: Department of Health, 2002.

WEBSITES

Commission for Social Care Inspection:	www.csci.org.uk
Department for Education and Skills:	www.dfes.gov.uk
Department of Health:	www.dh.gov.uk
National Complaints Officers Group:	www.ncog.org

Copies of this publication can be obtained from:

www.dfes.gov.uk/consultations

Email: complaints.consultation@dfes.gsi.gov.uk

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