Education & Skills Funding Agency

Guidance

Best practice guidance for academies complaints procedures

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1. Introduction

This best practice document is aimed at academies and academy trusts and the person(s) with delegated responsibility for drafting complaints procedures and/or handling complaints.

All academies and trusts **must** have a complaints procedure, which must meet the requirements in the standard at the Education (Independent School Standards (England) Regulations 2014 Schedule 1, Part 7.

2. Who can make a complaint?

As the complaints policy is based upon Part 7 of the Education (Independent School Standards) Regulations 2014, it only applies to complaints from parents/carers of pupils at your school, regarding their child.

In accordance with administrative law principles, complainants should be given the opportunity to complete the complaints procedure in full, unless you possess clear evidence that the complaint meets the criteria of a serial or persistent complaint.

3. Complaints outside of this policy

As public bodies, the Secretary of State for Education expects academies to handle complaints from people who are not parents of children at the school respectfully and expediently. They are not obliged to follow the complaints policy though.

Some types of complaint are covered by other procedures. Examples are:

- exclusions
- staff grievances
- disciplinary procedures

Please refer to the list of Complaints not in scope that are not covered by this procedure.

4. Third parties

You should make sure that any third-party supplier has its own complaints procedures in place if they are using your premises or facilities to offer:

- community facilities
- services

5. Your complaints procedure

You must have your own distinct complaints procedures in place that complies with Part 7 of the Education (Independent School Standards) Regulations 2014.

The duty to establish procedures for dealing with complaints lies with proprietors and, whilst you are free to adopt either our model policy for single academies or model policy for academies within a multi-academy trust, you should tailor the policy to your individual school or trust.

You should make sure that your complaints procedure:

- is simple to understand and use
- is impartial
- is non-adversarial
- enables a full and fair investigation
- where necessary respects confidentiality
- addresses all the points at issue and provides an effective response and appropriate redress, where necessary provides information to your senior management team so that services can be improved

To be compliant with Part 7 of the Education (Independent School Standards) Regulations 2014, the complaints procedure must consist of at least three stages:

1. informal (usually a meeting with the complainant)
2. formal (the complaint is put in writing)
3. a panel hearing, with an independent panel member

You are free to add more stages, if these are appropriate and offer more opportunity for informal/local resolution. For example, if you are part of a diocese or multi-academy trust.

To make sure your complaints procedure is effective, we recommend that:

- you ask the complainant at the earliest stage what they think might resolve the issue – an acknowledgement that the school could have handled the situation better is not the same as an admission of unlawful or negligent action
- when responding to a complaint, you advise the complainant of any escalation options at each stage of the procedure – for example, when communicating the outcome of the stage 1 process, include the details of the stage 2 process
- wherever possible, procedures state what you 'will' do rather than what you 'should' or 'may' do

Try to avoid using ambiguous language in your complaints procedures, as not doing something the procedure states the school should or may do, can cause disappointment/dissatisfaction for complainants and lead to further complaints.

Your complaints procedure must not state that a complaint can only be escalated to the next stage only if the school or trust permits it. To comply with the standard set out in the regulations, where the parent is not satisfied with the response they must be allowed to escalate to the next stage and be given the opportunity to complete the complaints procedure in full. If a parent is obstructed from completing the complaints procedure, they could contact the ESFA.

6. Requirements for complaints procedures

The standard about the manner in which complaints are handled is met if the proprietor (the trust) ensures that a complaints procedure is drawn up and effectively implemented which deals with the handling of complaints from parents of pupils and meets the requirements listed within the standard:

(a) is in writing – we would recommend this should be published on the website, but can be in hardcopy

(b) is made available to parents of pupils – The complaints procedure must be available to parents / carers of children attending an academy. For non-parental complainants (no child enrolled at the school / no parental rights) there is no requirement for the policy to cover these complaints, however, we would still expect you to handle them respectfully and expediently.

(c) sets out clear time scales for the management of a complaint – Complaints need

to be considered and resolved as quickly and efficiently as possible. Your procedure must set realistic and reasonable time limits for each action within each stage. Where further investigations are necessary and clear published timescales cannot be met, we recommend you:

- set new time limits
- send the complainant details of the new deadline and explain the delay
- allow a reasonable timeframe for complaints to be raised after an incident arises

We recommend 12 months to be an acceptable time frame in which to lodge a complaint. If your procedure includes a cut-off time frame, you should make it clear that you'll take exceptional circumstances into account when deciding whether to accept or progress a complaint.

(d) allows for a complaint to be made and considered initially on an informal basis – Complainants must be able to initially raise the complaint in person, in writing or via a phone call with the appropriate person to resolve their initial complaint

(e) where the parent is not satisfied with the response to the complaint made in accordance with sub-paragraph (d), establishes a formal procedure for the complaint to be made in writing; – A formal complaint must be in writing, unless the complainant has a sufficient reason to request a reasonable adjustment be made to amend this. You should make sure you have written consent from the complainant before disclosing information to a third party. It is common practice to have a complaints form as an annex to the complaints policy.

(f) where the parent is not satisfied with the response to the complaint made in accordance with sub-paragraph (e), makes provision for a hearing before a panel appointed by or on behalf of the proprietor and consisting of at least three people who were not directly involved in the matters detailed in the complaint, – Complaints policies must allow for the provision of a panel hearing.

(g) ensures that, where there is a panel hearing of a complaint, one panel member is independent of the management and running of the school; – The panel should consist of at least 3 members, who have had no prior connection with the complaint and at least one of these must be an independent panel member. This is to ensure that the panel has the benefit of an external source of scrutiny and challenge in its consideration of the complaint. The independent panel member should not be a member, trustee or employee of the school. We also advise that you should not use as an independent member any person who has a clear connection with the school (for example, a solicitor who routinely handles legal matters for the school).

For schools within a multi-academy trust (MAT), the ESFA would still suggest that the independent member should have no association with the trust. However, with the exception of the MAT's trustees, we are satisfied that a governor, from a local governing body at a different school within the MAT, who has no conflict of interest or prior knowledge of the complaint, can be an independent panel member. This is because such person would have no direct involvement with the management and running of the school being complained about.

(h) allows for a parent to attend and be accompanied at a panel hearing if they wish – In the event that a complaint progresses to a panel hearing, you must allow for a parent to attend and be accompanied at a panel hearing if they wish. However, we recommend that neither the complainant nor the school bring legal representation. These committees are not a form of legal proceedings.

The aim of the panel hearing should be:

- reconciliation
- to put right things that may have gone wrong

We recognise there are occasions where legal representation may be appropriate during panel hearings. For example, if a school or trust employee is a witness in a complaint, they may be entitled to bring union or legal representation.

(i) provides for the panel to make findings and recommendations and stipulates that a copy of those findings and recommendations is

(i) provided to the complainant and, where relevant, the person complained about; and

(ii) available for inspection on the school premises by the proprietor and the head teacher – We recommend that you inform the complainant of:

- the conclusion and reasons for any decisions in writing
- any further rights of appeal

We also recommend that copies of the minutes are issued to the complainant. Failure to do so may lead to a further complaint. They may also be entitled to them, subject to any necessary redactions, under the Data Protection Act 2018 and GDPR.

(j) provides for a written record to be kept of all complaints that are made in accordance with sub-paragraph (e) and

(i) whether they are resolved following a formal procedure, or proceed to a panel hearing; and

(ii) action taken by the school as a result of those complaints (regardless of whether they are upheld) – you must:

- record the progress of the complaint and the final outcome
- record whether the case progressed to a panel hearing
- record the action taken by the school or the trust, regardless of outcome
- determine who is responsible for these records and make sure the data is kept secure

As academies are data controllers in their own right, you must decide for yourselves how long to keep records, unless statutory regulations apply. For example, copies of attendance registers must be retained for 3 years.

Under the General Data Protection Regulations (EU) 2016/679 (GDPR), data must not be kept longer than is necessary.

You should consider that complainants may have a right to copies of these records under the Freedom of Information Act 2000, the Data Protection Act 2018 and GDPR.

Refer to our Data protection: toolkit for schools or the Information Commissioner's Guide to GDPR for more information.

(k) provides that correspondence, statements and records relating to individual complaints are to be kept confidential except where the Secretary of State or a body conducting an inspection under section 109 of the 2008 Act requests access to them. – There may be occasions where complaints are made or continue to be escalated after a child has left the school. On changing schools, the pupil's educational record is transferred to the new school and no copies are retained. Schools can consider holding records of complaints separate to their pupil records (while a complaint is ongoing) so that access to them can be maintained. As information generated by a complaint may not form part of the pupil record, you should consider how best to store this information.

Personal data should only be kept for as long as is necessary for the immediate purpose of processing. The data should be stored securely and, where appropriate, encrypted to maximise security.

7. Types of complaints

7.1 Complaints about the head teacher or governing body

The complaints procedure should also set out the steps to follow if the subject of the complaint is:

- the head teacher
- a member of the governing body
- the entire governing body

There may be occasions when it's necessary or reasonable to deviate from the published complaints procedure. This includes not doing something the procedure states you will, should or may do. We recommend that you document any deviation from the published procedure.

If the complaint is escalated to us for consideration and the complaint is about any deviation from the published policy, we will ask you for an explanation for doing this, unless one is already included in the evidence provided. If we do not consider the explanation reasonable, or the deviation justified, we may ask you to revisit the complaint and comply with the published complaints procedure.

7.2 Complaints about staff

You should ensure:

- complaints against staff are dealt with by the head teacher or someone they designate too, such as a deputy, then follow the complaints procedure including a panel hearing if applicable.
- complaints against the head teacher are dealt with by the chair of governors and then a panel hearing, if applicable

7.3 Complaint about governors

You should ensure:

- complaints against individual governors are made to the clerk to the governing body, the clerk should then arrange for the complaint to be heard. This should be by the chair of governors and then a panel hearing if applicable.
- complaints against the chair, the entire governing body or complaints involving both the chair and vice chair should also be sent to the clerk, who should then determine the most appropriate course of action. This will depend on the nature of the complaint and type of trust.

For a SAT, this may involve sourcing an independent investigator to complete the formal stage and governors from other schools to hear the panel hearing. For an academy in a MAT this may involve escalating the complaint to the trust board to investigate the complaint and hold the panel hearing.

7.4 Complaints about the CEO and/or MAT

For multi-academy trusts, the Education (Independent School Standards) Regulations 2014 still apply.

We recommend that:

- your policy includes how to complain specifically about the CEO and the MAT
- you state who will manage the complaint at each stage of the process.

7.5 Complaint campaigns

Occasionally, you may become the focus of a campaign and receive large volumes of complaints:

- all based on the same subject
- from complainants unconnected with the school

You should include a separate procedure in your complaints policy to handle complaints of this nature. This could include:

- sending a template response to all complainants
- publishing a single response on the school's website

Any alternative process to manage campaigns must be included in the complaints procedure published on the school's website.

You can continue to signpost complainants to the Department if they're dissatisfied with your response.

7.6 Parental responsibility

Conflict between estranged parents over the application of parental responsibility is a common cause of complaints made to academies.

Understanding and dealing with issues relating to parental responsibility contains specific advice about how to approach issues concerning parental responsibility.

8. Good practice suggestions

8.1 Recording meetings

Where there are communication difficulties, you may wish to use recording devices to ensure the complainant is able to access and review the discussions at a later point. All parties should agree in advance to being recorded.

Schools are data controllers in their own right and you have the discretion via your policies to decide for yourselves whether to allow complainants to record meetings, if it's not required for the purposes of a reasonable adjustment.

You're also responsible for ensuring there is a fair and reasonable purpose for allowing complainants to record meetings, as there may be various levels of identifiable personal information recorded. We recommend you consider:

- how any decision to allow recordings may affect any third parties called to act as witnesses
- the impact and consequences on the individuals involved in the complaint in the event recordings are lost or leaked

8.2 Audio or video evidence

Complainants should make sure they obtain informed consent from all parties present before recording conversations or meetings.

We do not normally accept electronic recordings as evidence when we are asked to consider a complaint. However, we may accept independently notarised transcriptions of recordings. We may also ask for the written consent of all recorded parties.

Unless exceptional circumstances apply, we'll support schools who refuse to accept, as evidence, recordings of conversations that were obtained covertly and without informed consent of all parties being recorded. We recommend this is made clear in complaints procedures.

8.3 Handling complaints fairly

You should make sure that complainants are treated fairly and offered a chance to state their case either in person or in writing, at each stage of the procedure.

If you've made reasonable attempts to accommodate complainants with dates for complaint meetings and they refuse or are unable to attend you can:

- convene meetings in their absence
- reach a conclusion in the interests of drawing the complaint to a close.

8.4 Bias in the proceedings

Complainants are entitled to a fair meeting or review and can request an independent panel if they believe there is likely to be bias in the proceedings. They should provide you with evidence of bias in support of their request, as it's your decision whether to agree to it. If the appearance of bias is sufficient to taint the decision reached, then you should grant such requests.

Persons who have a conflict of interest should not take part in the complaints process, including proceedings of governing body meetings and committees. If there's any reasonable doubt as to a person's ability to act impartially, they should withdraw from considering the complaint. Where a governor / trustee has a financial interest in any related matter, they should also withdraw.

When making decisions, you must not act in a way that is biased. The appearance of bias may be sufficient to taint a decision even if there is no actual bias. This concept derives from the principle that justice must not only be done, but be seen to be done.

Occasionally, complainants contact ESFA because they do not believe the head teacher or governors will consider their complaint impartially.

We generally consider that governors with no prior exposure to the complaint are suitably impartial, unless the complainant provides us with evidence to the contrary. However, this does not mean they are the independent panel member. The independent panel member is there to ensure that the panel has the benefit of an external source of scrutiny and challenge in its consideration of the complaint to ensure the decision is not biased.

We require complainants to submit evidence of bias if they complain of this to ESFA.

8.5 Reviewing your procedure

You should determine how often to review the complaints procedure. We recommend at least every two to three years, as this should enable you to take into account any:

- legislative changes
- new guidance issued by us.

You may delegate responsibility for reviewing the complaints procedure to:

- a committee of the governing body / trust
- an individual governor / trustee
- the head teacher.

You should adhere to projected review dates set out in the complaints procedure. Failure to do so could constitute a failure to adhere to the procedure.

9. Complaints not in scope

A complaints procedure should cover all complaints about any provision of community facilities or services that you provide, other than complaints for which there are separate (statutory) procedures, including those listed below.

9.1 Admissions to schools

For school admissions, please refer to our published guidance

9.2 Statutory assessments of special educational needs

Concerns about statutory assessments of special educational needs should be raised directly with local authorities.

9.3 Matters likely to require a child protection investigation

Complaints about child protection matters should be handled:

- under the school's child protection and safeguarding policy
- in accordance with relevant statutory guidance

Refer to your local authority designated officer (LADO) or the multi-agency safeguarding hub (MASH) for further information on this.

9.4 Exclusion of children from school

Further information about raising concerns about exclusions is available in the School discipline and exclusion guidance.

Complaints about the application of the behaviour policy can be made through the school's complaints procedure.

9.5 Whistleblowing

You must have an internal whistleblowing procedure for your employees, including temporary staff and contractors.

We deem a whistle-blower to be someone with privileged knowledge. These may be:

1. Members of staff (eg teachers, principal, administration support employees)
2. Volunteers (eg trustees, governors)

The Secretary of State for Education is the prescribed person for matters relating to education for whistleblowers who do not want to raise matters direct with their employer. Concerns can be raised with ESFA using our contact form

You can read further information about how esfa handles whistleblowing disclosures

9.6 Staff grievances

Complaints from staff should be dealt with under the school's internal grievance procedures.

9.7 Staff conduct complaints

Complaints about staff are dealt with under the school's or trust's internal disciplinary procedures, if appropriate. However, a parent may raise a complaint about a staff member directly or indirectly.

Complainants will not be informed of any disciplinary action taken against a staff member as a result of a complaint. However, you should notify complainants that the matter is being addressed and allow the parent to progress through the school's complaint procedure.

9.8 Complaints about services provided by other supplier who may use school premises or facilities

You should direct complainants to follow the external provider's own complaints procedure for those hiring the academy facilities.

9.9 Withdrawal from the curriculum

Parents and carers can withdraw their child from any aspect of Religious Education (RE), including the Daily Act of Collective Worship (DACW). They do not have to explain why.

If parents or carers are not satisfied with the handling of a request to withdraw their child from RE or the DACW, you should advise them to follow your complaints procedure.

The right of withdrawal does not apply to other areas of the curriculum where religious matters may be spontaneously raised by pupils or arise in other subjects such as history or citizenship.

10. Managing serial and persistent complaints

You should do your best to be helpful to people who contact you with:

- a complaint or concern
- a request for information

However, there will be occasions when, despite all stages of the complaint procedure having been followed, the complainant remains dissatisfied. If a complainant tries to re-open the same issue, you can inform them that the procedure has been completed and that the matter is now closed.

If the complainant contacts you again on the same issue, the correspondence may then be viewed as 'serial' or 'persistent' and you may choose not to respond. However, you should **not** mark a complaint as 'serial' before the complainant has completed the procedure.

Under no circumstances should a complainant be marked as 'serial' for exercising their right to refer their complaint to their MP, regardless of which stage the complaint has reached.

You may receive complaints you consider to be vexatious. The characteristics of a 'frivolous' or 'vexatious' complaint are:

- complaints which are obsessive, persistent, harassing, prolific, repetitious
- insistence upon pursuing unmeritorious complaints and/or unrealistic outcomes beyond all reason
- insistence upon pursuing meritorious complaints in an unreasonable manner
- complaints which are designed to cause disruption or annoyance
- demands for redress that lack any serious purpose or value

Academies should not refuse to accept further correspondence or complaints from an individual they have had repeat or excessive contact with. The application of a 'serial or persistent' marking should be against the subject or complaint itself rather than the complainant.

Academies may find it useful to establish a policy for managing serial and unreasonable complaints, which we recommend is included in the school's published procedure.

10.1 When to stop responding

The decision to stop responding should never be taken lightly. You need to be able to say yes to all of the following:

- you have taken every reasonable step to address the complainant's concerns
- the complainant has been given a clear statement of your position and their options
- the complainant contacts you repeatedly, making substantially the same points each time

The case to stop responding is stronger if you agree with one or more of these statements:

- their letters, emails, or telephone calls are often or always abusive or aggressive
- they make insulting personal comments about or threats towards staff
- you have reason to believe the individual is contacting you with the intention of causing disruption or inconvenience

You should not stop responding just because an individual is difficult to deal with or asks complex questions.

10.2 Communication strategy for persistent correspondents

If an individual's behaviour is causing a significant level of disruption, regardless of whether or not they have raised a complaint, academies can implement a tailored communication strategy. For example, they can:

- restrict the individual to a single point of contact via an email address
- limit the number of times they can make contact, such as a fixed number of contacts per term

However, regardless of the application of any communication strategy, you must provide parents and carers with the information they are entitled to under The Education (Pupil Information) (England) Regulations 2005, within the statutory time frame.

Different procedures apply to freedom of information (FOI) and data protection (DP) correspondence. You should talk to your FOI and DP advisor about those or approach the Information Commissioner's Office for further advice.

You need to make sure that you act reasonably and consider any new complaint. Anyone has the right to raise a new complaint at any time and failure to respond could result in the school failing to act reasonably.

You can also suggest that the complainant asks a third party to act on their behalf, such as the local Citizen's Advice Bureau.

If an individual persists to the point that may constitute harassment, you should seek legal advice. In some cases, injunctions and other court orders have been issued to individuals preventing them from contacting academies direct.

Once you've decided that it's appropriate to stop responding, you will need to inform the individual.

10.3 Barring from school premises

Although fulfilling a public function, academies are private places. The public has no automatic right of entry. Schools will therefore need to act to ensure they remain a safe place for pupils, staff and other members of their community.

If an individual's behaviour is a cause for concern, a head teacher can ask them to leave school premises. In some cases, individuals can be barred from entering school premises. You should always give the individual the opportunity to express formally their views on a decision to bar.

The head teacher's decision to bar should then be reviewed by either:

- the chair of governors
- a committee of governors

They should take into account any representations made by the individual and decide whether to either confirm or lift the bar. If the decision is confirmed, the individual should be notified in writing, explaining:

1. how long the bar will be in place
2. when the decision will be reviewed

Once the school's appeal process has been completed, individuals may be able to apply to the Courts. Individuals wishing to exercise this option should seek independent legal advice.

Controlling access to school premises provides more guidance on access to school premises.

11. ESFA's role in relation to complaints about academy schools

Anyone can raise a complaint about a school or a member of the school's staff to us.

Before escalating an academy complaint to us, we expect that complainants will have completed local complaints procedures first. Our contact form clearly explains this and advises them to complete local procedures before submitting their complaint.

The exceptions to this include when:

- children are at risk of harm
- missing education

We cannot overturn the decision about a complaint. Our role is to make sure the complaint is handled properly by following a published procedure that complies with part 7 of the Education (Independent School Standards) Regulations 2014.

We will only consider the complaint if the complainant can provide evidence that the school or trust:

- does not have a complaints procedure
- did not provide a copy of its complaints procedure when requested
- does not have a procedure that complies with statutory regulations
- has not followed its published complaints procedure
- has not allowed its complaints procedure to be completed

We inform the complainant that we are **not** able to:

- overturn the governing body's decision
- re-investigate the original complaint
- review the accuracy of minutes taken or documents provided
- order that compensation is paid
- direct the school to discipline / exclude pupils
- force the school to discipline / dismiss staff
- instruct the school to apologise

11.1 Action ESFA can take against a school or trust

We'll intervene when a school or trust has:

- breached a clause in its funding agreement
- failed to act in accordance with its duties under education law
- acted (or is proposing to act) unreasonably when exercising related education functions

When considering a complaint, we review all the evidence provided to us, including the school's published policies, to determine whether it is appropriate to take any action. Action taken by us, where appropriate, typically involves explaining the legislative framework and what it means in practice at the trust level or recommending improvements to statutory policies.

However, in some instances it may be appropriate to issue a warning notice (where leadership and governance has broken down or safety is threatened) and then issue a Financial Notice to Improve (FNtI). The FNtI would set out the conditions that would need to be fulfilled for the FNtI to be lifted.

If serious failings are identified, we may share information about the complaint and our findings with relevant bodies, such as local authorities and Ofsted, to make sure that appropriate safeguarding, remedial or preventative action is taken.

If an immediate safeguarding concern is raised, we will always refer this immediately to the LADO.

12. General assistance

You can contact us for general assistance on complaint handling by:

- calling the National Helpline on 0370 000 2288
- using ESFA's contact form
- writing to us at the address below

Academy Complaints and Customer Insight Unit
Education and Skills Funding Agency
Cheylesmore House
Coventry
5 Quinton Road
Coventry
CV1 2WT

We will not provide explicit advice on what you should do, unless we are asked to provide a view on any relevant legislative underpinning, but we can explain what options may be open to you.

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