

CITY OF WOLVERHAMPTON COUNCIL

**CHILDREN'S SERVICES
SOCIAL CARE COMPLAINTS AND
REPRESENTATIONS PROCEDURES**

**Produced in Accordance with the
Children Act 1989 Representations Procedure
(England) Regulations 2006**

NOVEMBER 2011

The new Regulations replace the Representations Procedure (Children) Regulations 1991 and new Guidance 'Getting the Best from Complaints' has replaced all that previously issued under the Children Act 1989.

**Complaints Manager
Customer Feedback
Telephone Number: 01902 553215 or 551901**

Contents

Sections:

- 1 Background**
- 2 Policy**
- 3 Scope and Eligibility – Who may complain**
- 4 Procedures: Stage One
 Stage Two
 Stage Three**
- 5 Other Relevant Procedures**
- 6 Problem Solving**
- 7 Monitoring Performance**

Attachments:

- **Flow Chart Complaint Process**
- **Standard Model Complaint Response Letter**
- **Guidance for Stage 2 Independent Investigation Report format**
- **CP1 Template for Recording of Informal complaints/
representations and Compliments received by service area**

Social Care Complaints and Representations **Procedures for Children's Services**

1. BACKGROUND

- 1.1 These procedures outline the system within this Directorate for receiving and responding to complaints relating to Children's Services. They are primarily aimed at representations by service users.

The Children's Services are required to have a complaints and representations procedure as defined in The Children Act 1989 Representations Procedure (England) Regulations 2006. The Local Authority functions covered by these procedures now include services provided under parts 3, 4 and 5 of the Children Act 1989.

The guidance "Getting the Best from Complaints" accompanies The Children Act 1989 Representations Procedure (England) Regulations 2006. This guidance follows the core principles of the UN Convention on the rights of the Child and Every Child Matters: Change for children which puts children's views at the forefront of the decision making process. The guidance makes particular reference to the importance of creating a listening culture among local service providers and their managers and dealing effectively and fairly with concerns at the earliest stage.

2. POLICY

- 2.1 City of Wolverhampton Council welcomes representations, including complaints, as a means of learning about the quality of services and of making sure that matters, which may have gone wrong, can be corrected.

- 2.2 In order to achieve these objectives, we will ensure that:

- The Complaints Procedure is clear and easy to use.
- A complaints and representations procedure is published and available to staff and services users
- Appropriate publicity and guidance are used in promoting access to all who may need it
- Appropriate information is provided to staff and service users, where the entitlement to respond to a complaint resides with another body such as a school or other service provider
- Training in the requirements and responsibilities of the procedure is available to those who may need it
- Compliments as well as complaints are recorded and monitored
- Systems and personnel are available to deliver the procedures in a

timely and constructive manner

- Systems are developed to ensure that new information, or learning from complaints and compliments, is fed back into the relevant parts of the authority as a means of improving services.
- 2.3 Complaints or representations are about the service provided by the authority, not about an individual member of staff. However, issues raised in complaints may be discussed with members of staff and recorded during one to one supervision with their manager, as this provides an opportunity to reflect on lessons to be learnt or to pursue other actions as identified.
- 2.4 All staff members, and others associated with services provided by the Council, such as advocates or sessional staff, are required to promote access to the complaints and representations procedures. It is important that all are given any necessary support or re-assurance in carrying out this part of their role. Staff who are involved in a complaint allegation may receive support if required.
- 2.5 Children and young people are issued with leaflets about complaints and representations. Safeguarding Review Managers in their roles as Chairs of Statutory Reviews remind children and young people of their right to complain and where necessary ensure they are able to use the procedure.
- 2.6 An eligible child or young person wishing to make a complaint may require the support of an advocate. This possibility will always form part of the authority's consideration of the appropriate response to a complaint.
- 2.7 Whilst all comments, including critical complaints, are welcome, by no means all are upheld following investigations. The policy of receiving, recording and responding to all complaints should not be seen to imply that every complaint or allegation is valid or justified. The procedure is intended to promote a speedy review and resolution of all complaints and in so doing to recognise the rights of all involved in the process, staff and service users alike.
- 2.8 The regulations require Local Authorities to designate an Officer, known as a Complaints Manager to undertake certain functions - The Complaints Manager should be independent of operational line management and of direct service providers.

3. SCOPE AND ELIGIBILITY

- 3.1 A complaint may arise as a result of many things relating to statutory social care functions such as:
- an unwelcome or disputed decision;
 - concern about the quality or appropriateness of a service;

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

However, this is not an exhaustive list.

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

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

3.3 The complaints procedure does not apply when:

- the person wishing to complain does not meet the requirements of "who may complain" and is not acting on behalf of such an individual;
- the complaint is not in regard of the actions or decisions of the local authority complained to, or of any body acting on its behalf; or
- the same complaint has already been dealt with at all stages of the procedure.

- 3.4 Regulation 8 specifies circumstances where a local authority shall not consider a representation or complaint, or shall not continue to do so. The authority may use discretion in deciding whether to consider complaints where to do so would prejudice any of the following concurrent investigations:
- Court proceedings
 - Tribunals
 - Disciplinary proceedings
 - Criminal proceedings.
- 3.5 Where the Local Authority decides not to consider complaints subject to any of these concurrent investigations, the complainant must be informed of the reason for the decision. Once any concurrent investigation is complete, the complainant may resubmit the complaint for investigation, but must do so within one year of completion.
- 3.6 A complaint must be made no later than one year after the grounds for the complaint arose, but the authority may consider a complaint which has been made outside the specified time limit, where it considers that it would be reasonable to do so, and that it remains possible to consider the complaint fairly and effectively.
- 3.7 Representations of dissatisfaction that do not become formal complaints that have already been resolved by front line service providers, along with compliments received, should still be recorded on form CP1 and returned at the end of each month to the Complaints Manager in order to inform good practice and service development.
- 3.8 Anonymous complaints should always be recorded and referred to the Complaints Manager in the same way as other complaints.

The fact that the complaint is from an anonymous source should not in itself justify a decision not to pursue the matter, nor should it rule out referral to other procedures as relevant.

4 PROCEDURES

- 4.1 Nothing in these procedures should be taken to remove the duty of the authority to seek to resolve the matter complained about by other means, such as mediation or any other form of problem solving. A complainant may withdraw the complaint at any stage.

Where the matter is not resolved locally, the complainant has the right to request consideration of the complaint at Stage 2. There is no time limit within which they must request this, but this Authority recommends that the complainant does this within 20 working days so that momentum in resolving the complaint is not lost. The Local Authority is

under a duty to operate expeditiously throughout the complaints handling process (regulation 10).

4.2 STAGE ONE: LOCAL RESOLUTION

- 4.2.1 A complaint is made on the day on which it is first received by the Local Authority.
- 4.2.2 The expectation is that the majority of complaints should be considered (and resolved) at Stage 1. However, if the Complaints Manager and the complainant believe it would not be appropriate to consider the complaint at Stage 1, this will be discussed by the Complaints Manager and the complainant together. Where both parties agree, the complainant can move directly to Stage 2.
- 4.2.3 At Stage 1, staff at the point of service delivery - including the Safeguarding Review Manager where appropriate - and the child or young person should discuss and attempt to address the complaint as quickly as possible. They should discuss the issue and exchange information and thinking behind decisions and try to agree a way forward.
- 4.2.4 Regulation 14 (1) places a 10 working day time limit for this part of the process, most Stage 1 complaints should ideally be concluded within this time limit.
- 4.2.5 Where the service cannot provide a complete response it can implement a further 10 day's extension (regulation 14(5)). If necessary, the Complaints Manager may also suspend Stage 1 until an advocate has been appointed (regulation 14 (3)). The maximum amount of time that Stage 1 should take is 20 working days. After this deadline the complainant can request consideration at Stage 2 if they so wish.
- 4.2.6 The Complaints Manager will inform the complainant that he/she has the right to move on to Stage 2 if they feel that they have not received a satisfactory outcome. It may be that the complainant is happy to put this off for the time being (for example, if the reason that resolution is delayed due to a key person being off sick or on leave), so this period can be extended with the complainant's agreement or request.
- 4.2.7 If the matter is resolved, the relevant service manager must write to the complainant confirming the agreed resolution, using the standard format, and the Complaints Manager should be informed of the outcome.
- 4.2.8 Where the matter is not resolved locally, the complainant has the right to request consideration of the complaint at Stage 2. There is no time-limit within which he/she must request this, but the complainant will be advised to do this within 20 working days so that momentum in

resolving the complaint is not lost. The Local Authority is under a duty to operate expeditiously throughout the complaints handling process (Regulation 10).

- 4.2.9 If the complainant is satisfied with the response to the complaint at this stage, no further action is required other than to ensure that any actions promised as a resolution are followed up and completed. Any learning from complaints, such as unmet needs or training requirements, may suggest a wider trend and should form part of the Directorate's learning and improvement strategy.
- 4.2.10 Each service area manager should ensure that copies of complaint resolution letters, together with completed action forms pertaining to complaints dealt with by their teams are sent to the Complaints Manager. This will enable these to be analysed and a quarterly report produced to highlight any emerging trends as part of learning lessons from complaints activity.

4.3 SECOND STAGE: INVESTIGATION

- 4.3.1 Where a request to have the complaint considered at this stage has been received, the Complaints Manager must ensure that a written record of the complaint is prepared and amended in the light of the complainant's comments. This will form the basis of the complaint to be investigated and the start date of the time scale at this stage. Undue delay in agreeing the written record, or terms of reference, of the complaint must be avoided. The Complaints Manager will usually ensure that arrangements for investigation commence on the date the request is received.
- 4.3.2 The Complaints Manager will arrange for an Investigating Officer (IO) to investigate the complaint and prepare a report as to their findings. The person appointed to conduct the investigation must not have had previous involvement in the matter, which is the subject of the complaint, and should not have line management responsibility for the service concerned. The Investigating Officer will have access to all staff, files and written records necessary for the conduct of the investigation.
- 4.3.3 The Complaints Manager will also arrange for an Independent Person (IP) to be appointed, in addition to the IO. He/she must be involved in all aspects of the consideration of the complaint, including any discussions in the authority about the actions to be taken.
- 4.3.4 On completion of their consideration of the complaint, the IO should write a report on their investigations including:
- details of findings, conclusions and outcomes are against each point of complaint i.e. "upheld" or "not upheld"; and
 - recommendations on how to remedy any injustice to the

complainant as appropriate.

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

4.3.5 Good practice suggests that the IP should also provide a report to the local authority once they have read the IO's final report. He/she may wish to comment on:

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

4.3.6 Once the IO has finished the report, the Adjudicating Officer will consider the complaints, the IO's findings, conclusions, and recommendations, any report from the IP and the complainant's desired outcomes. The Adjudicating Officer will be a Head of Service responding on behalf of Children's Services. The Adjudicating Officer will prepare a response to the reports, with their decision on the complaint, actions they will be taking with timescales for implementation – this is the adjudication. The purpose of adjudication is for the local authority to consider the reports and identify:

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

4.3.7 The investigation should be completed and the response sent to the child or young person within 25 working days. However, this may be impractical in some cases. Stage 2 may be extended to a maximum of 65 working days, by agreement with the Complaints Manager. Dialogue must be maintained with the complainant and mutual agreement reached. Delay should be avoided wherever possible.

4.4 THIRD STAGE: REVIEW PANELS

4.4.1 Where Stage 2 has been concluded and the complainant is still dissatisfied, they may request further consideration of the complaint by a Review Panel (Regulation 18). The request must be made within 20 working days of the Stage 2 adjudication and acknowledged by the Complaints Manager within 2 working days of receipt.

4.4.2 The Complaints Manager will normally arrange for a Review Panel on request but must assess requests on a case by case basis. If the

Complaints Manager considers that a further review at this stage would not produce a demonstrably different outcome to the complaint, the matter may be referred to the Local Government and Social Care Ombudsman, otherwise the complainant retains the right to proceed to a Review Panel.

4.4.3 Review Panels are designed to:

- listen to all parties;
- consider the adequacy of the Stage 2 investigation;
- obtain any further information and advice that may help resolve the complaint to all parties' satisfaction;
- focus on achieving resolution for the complainant by addressing his clearly defined complaints and desired outcomes;
- reach findings on each of the complaints being reviewed;
- make recommendations that provide practical remedies and creative solutions to complex situations;
- support local solutions where the opportunity for resolution between the complainant and the local authority exists;
- to identify any consequent injustice to the complainant where complaints are upheld, and to recommend appropriate redress; and
- recommend any service improvements for action by the authority.

4.4.4 As a general rule, the Review Panel should not reinvestigate the complaints, nor should it be able to consider any substantively new complaints that have not been first considered at Stage 2. It is not a quasi-judicial process and no party should feel the need to be represented by lawyers. However, the complainant has the right to bring a representative to speak on his/her behalf.

4.4.5 The Complaints Manager should be mindful of the specific needs of children and young people and ensure that:

- the Review Panel acts in accordance with the United Nations Convention on the Rights of the Child;
- the Review Panel safeguards and promotes the rights and welfare of the child or young person concerned;
- the wishes and feelings of such children and young people are ascertained, recorded and taken into account;
- the best interests of such child or young person are prioritised at all times.

4.4.6 The Panel must consist of three independent people (regulation 19(2)). Independent means a person who is neither a member nor an officer of the Local Authority to which the representations have been made, nor the spouse or civil partner of such a person. The Independent Person (IP) appointed to Stage 2 may not be a member of the Panel.

4.4.7 In selecting the Panel the Complaints Manager should consider:

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

4.4.8 One member of the Panel will be appointed by the Complaints Manager as Chair of the Panel. The person appointed as Chair should not have been an officer or a Member of the local authority during the three years preceding the Panel.

4.4.9 The Review Panel must be held within 30 working days of the request for a Review. The complainant will be notified of the Panel's date and location in writing at least 10 working days before the Review Panel meets.

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

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

4.4.12 The Adjudicating Officer will attend as the authority's representative if he/she has rejected any of the Investigating Officers findings at Stage 2. Where he/she has accepted all of them, it is usually acceptable to delegate this responsibility. The Chair should make the final decision on attendees (including asking the Local Authority to make specific members of staff available to provide specialist advice or opinion). He/she will also decide whether additional policies or procedures should be circulated with the Panel's papers. The Complaints Manager and anyone providing administrative support will also attend.

4.4.13 The Panel is required to produce a written report containing a brief summary of the representations received and their recommendations for resolution of the issues. They must send this to the complainant, the local authority, the Independent Person from Stage 2 and any other person with sufficient interest within 5 working days of the Panel meeting.

4.4.14 The Local Authority must send its response to the Panel's recommendations to the complainant (and other participants as necessary) within 15 days of receiving the Panel's report. The Executive Director Community will set out how the local authority will respond to the Panel's recommendations and what action will be taken. If the Director deviates from the Panel's recommendations they should demonstrate their reasoning in the response. In developing their response comments should be invited from all attendees.

4.4.15 The complainant will be advised of his/her right to refer his/her complaints if still dissatisfied to the Local Government and Social Care Ombudsman (Regulation 20(3)).

4.4.16 Summary of Stage 3 Timescales

ACTION	TIME
Complainant requests Review Panel	Up to 20 working days after receipt of the Stage 2 adjudication.
Complaints Manager acknowledges request.	Within 2 working days
Complaints Manager appoints Chair and confirms attendees and content of Panel papers with Chair.	Within 10 working days of the complainants request for review Panel.
Complaints Manager agrees the other Panellists and date for Review Panel.	Within 30 working days of the complainants request for review Panel.
Complaints Manager circulates Panel papers.	Within 10 working days of the date for the Review Panel.
Review Panel produces its written report (including any recommendations).	Within 5 working days of the review Panel.
Director of Children's Services responsible for providing a response.	Within 15 working days of receiving the Review Panel's report.

5. OTHER RELEVANT PROCEDURES

5.1 The protection of children will always take priority over other procedures. Where information is received in the course of the consideration of any complaint, which suggests that procedures to protect a child or young person should be implemented, the complaint investigation process will be delayed.

5.2 Mediation, or conflict resolution and other forms of problem solving, may be used at any time during a complaint investigation process, especially at Stage 1. Where this occurs, all parties should agree in writing to suspend the complaint investigation until such time as the

matter has been satisfactorily resolved, or the complaint process resumed.

- 5.3 Disciplinary and Grievance procedures do not form part of any complaint investigation or resolution. Where it becomes necessary to delay a complaint process as a consequence of any such concurrent investigation, the complainant will not be given information, which is confidential to a staff member or to the authority.
- 5.4 Managers of multi-disciplinary teams should ensure that there is a clear understanding of how complaints about a service, which is provided by staff from a range of disciplines, will be considered. This may involve managers reviewing the practice of any team member, regardless of discipline/qualification. Alternatively, it may be necessary to reach agreement with colleagues from different disciplines regarding responsibility for reviewing different aspects of any complaint.
- 5.5 Elected Members and Members of Parliament frequently act to seek information on behalf of their constituents. Such an information request should not be seen as a complaint, although following the receipt of any further information, a constituent may choose to make a complaint, or to ask an elected member to complain on his behalf.

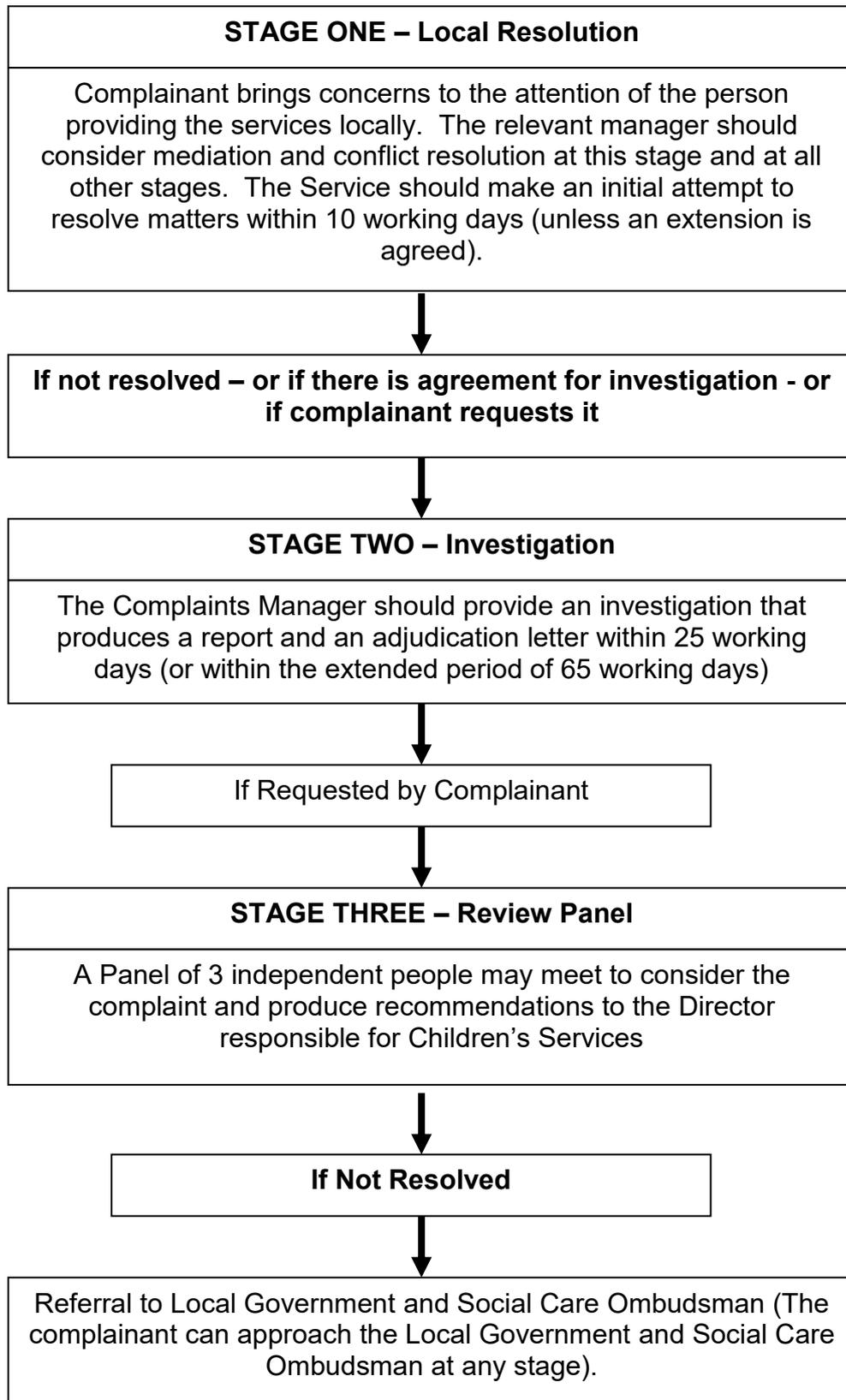
6. PROBLEM SOLVING

- 6.1 Staff should consider when an unresolved problem becomes a complaint. Involving people and agencies in the community who provide independent advice can assist problem solving and may prevent dissatisfaction developing into a complaint. There are a number of methods of resolution that do not require a full investigation than can be applied, including:
 - The provision of an apology;
 - Conciliation and mediation;
 - A reassessment of the service user's needs;
 - Practical action specific to the particular complainant;
 - An assurance that the local authority will monitor the effectiveness of its remedy; and
 - Consideration of the need for a financial payment
- 6.2 Involving people and agencies in the community who provide independent advice can assist problem solving and may prevent dissatisfaction developing into complaints. Attempts at problem solving should not be used to divert an eligible person from making a complaint under the statutory procedure.

7. MONITORING PERFORMANCE

- 7.1 The Complaints Manager will keep a record of the nature and number of complaints and representations received, including compliments. Individual services should continue to be proactive in capturing information of informal representations, compliments and problem solving responses in order to get a picture of service trends
- 7.2 The Complaints Manager will record performance in terms of complaints resolved within and outside the statutory timescales, the manner in which complaints were resolved and any corrective action which may have been taken or remain required.
- 7.3 The Complaints Manager will prepare an annual report within three months of the end of each financial year, which provides information about the provision of the complaints and representations procedures, with specific reference to the learning and improvements which may have taken place.

THE NEW PROCEDURE FOR COMPLAINTS



STAGE ONE – Local Resolution

Pro-forma Model Letter - Manager's Response to Complainant

New letter templates are now given with all complaints as part of the toolkit when allocating complaints to investigating officers

STAGE TWO – Independent Investigation

Format for investigation report and guidance for independent person

Complaints format

Separate front cover to include as relevant:

Name of Complainant(s)

Name of Service User(s)

Name of Investigating Officer

Name of Independent Person

Statement of complaint

- Summary of complaint – full statement elsewhere in the report
- Summary of findings against each complaint: upheld/not upheld etc.

Report

Statement of complaint

- Agreed with complainant(s) at outset
- Specific to matter for which authority has responsibility
- Refers to any linked complaint e.g. Health Trust, Care standards

Desired outcome

- Within the power of the authority to provide
- Within the power of the complaint procedure to recommend
- Include reference to desired outcome which cannot be determined by LA procedures, e.g. care standards

Legislation policy and procedures

- Legislation under which actions complained about were taken
- Legislation under which services complained about were provided

It is helpful for the report to identify clearly what the local authority is required to do under legislation relevant to the complaint, and to refer to relevant standards, national or local.

- Policy or procedural guidance provided to staff on the implementation of legislation
- Information about how the policy or guidance is provided within the local authority

Context of the complaint

- Summary of services provided or refused relevant to this complaint
- Factual account with reference to dates and source of information
- Information about investigation, mediation or other form of attempted problem solving either offered, failed or refused

Investigation

If required, a summary of persons named in report and their work roles. This can help in complex complaints reports.

- Statement of persons interviewed
- Presence of independent person or advocate
- Dates and locations of interviews
- Files, reports and other sources of evidence consulted
- Investigator must prepare questions or areas of concern in advance of the interview(s). Some authorities will wish to provide these to the interviewees in advance
- Investigation must focus on the areas of complaint
- Interviewees should have access to investigator's notes or summary in order to check fact

Conclusions

- Reference to each aspect of the complaint
- Reference to evidence accepted or discarded in reaching conclusion
- Clear statements where investigator has been unable to reach a conclusion
- Clear distinction between opinion, 'balance of probability' conclusions and substantiated facts
- Each complaint should be upheld, not upheld or determined as not possible to establish

Recommendations

- Define actions required to respond to complaint, put matters right
- Define actions required to avoid a recurrence
- Identify where an apology is appropriate
- Identify person with responsibility for undertaking actions recommended
- Identify any suggestions for redress
- Include time scales for action

Independent person comments, if separate report not submitted

Signature

Date

FORM CP1 – FOR THE MONTH OF:.....

TEAM NAME:

*** Code Analysis (Type of Complaint/Compliment)**

A: An unwelcome or disputed decision; **B:** Concern about the quality or appropriateness of a service; **C:** Delay in decision-making or provision of services; **D:** Delivery or non-delivery of services; **E:** Quantity, frequency, change or cost of a service; **F:** Attitude or behaviour of staff; **G:** Application of eligibility and assessment criteria; **H:** Impact on a child/young person of a policy; **I:** Assessment, care management and review; **J:** Other; **K:** Compliments

RECORD OF COMPLIMENTS AND INFORMAL COMPLAINTS RECEIVED AND RESOLVED BY SERVICE STAFF WITH 24 HOURS

Date Received	Name of complainant/ person giving compliment and name of service user if different	Address	Ethnic Origin	Gender (M/F)	Type * (insert code from list above)	Outcome/Action	Date of Response

All forms to be returned by the 6th of the month for compliments/informal complaints received during the previous month.

Please Return Completed forms to: CUSTOMER FEEDBACK, CUSTOMER SERVICES, GROUND FLOOR, CIVIC CENTRE or EMAIL TO CUSTOMER ENGAGEMENT OFFICER haveyoursay@wolverhampton.gov.uk