CHILDREN ACT 1989
GUIDE 3

Statutory representations (including complaints) procedure

ARTICLE 39 GUIDES FOR ADVOCATES

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Please note: The information we provide is for general guidance. It is not legal advice.

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Background

The ability to speak out when things go wrong is a crucial safeguard for all children and young people. It is also a fundamental right granted to all children from birth to 18 through Article 12 of the United Nations Convention on the Rights of the Child.

- In England, the right to make representations, including complaints, about local authority care, protection and support services for children and young people is set out in **Section 24D** and **Section 26 of the Children Act 1989**.
- The procedure that must be followed by local authorities when considering representations is outlined in **The Children Act 1989 Representations Procedure (England) Regulations 2006** and supporting statutory guidance, **Getting the best from complaints: Social care complaints and representations for children, young people and others 2006**.
- Crucially, the 2006 Regulations require local authorities to provide children and young people wishing to make a representation with information about advocacy services and they must offer help in accessing an advocate.

Representations are very widely interpreted in the statutory guidance, to incorporate any expression of views, wishes and feelings – not only complaints.

Despite these protections in law, still today many children and young people don't know how to make a complaint or that they are entitled to access advocacy to help them through the process. For many children and young people who have experience of children's social care, lack of trust in services, concerns about privacy, fear of not being believed, delays and worries about repercussions can all act as barriers that stop them speaking out.

> *"I'd say what stopped me from making complaints were mainly the reason I kind of felt like I was asking for too much even though I was entitled to it… Young people don't want to feel like they're hassling people over the simplest question… You don't want people to see you different or needy… you're made to feel to make a complaint it has to be life-threatening serious but really a complaint can be anything."*
>
> Jameela, 20

At times when things go wrong, children and young people can feel especially vulnerable and powerless[1] and independent advocates play a vital role in empowering children and young people, helping them to be heard and to seek redress where they have been failed.

The Children Act 1989 representations procedure offers a route to resolving concerns, acknowledging children and young people's views and experiences, redressing injustice, and putting things right. It is also a unique and positive opportunity for local authorities to learn and improve.

Local complaints procedures should be seen "*in the wider context of encouraging children to speak out and encouraging decision-makers to hear their views*"[2], ensuring children and young people are not afraid to make complaints, and that they feel respected and properly supported throughout the process[3]. Information about the statutory representations procedure should be made freely available to children and young people using a variety of methods and communication channels and considering the specific needs of different groups of children, including young children, children who have learning disabilities, and children who are speakers of languages other than English.

What are representations?

The term used in the Children Act 1989, representations (including complaints), is defined in 'Getting the best from complaints' (statutory guidance): [4]

> *"Representations may not always be complaints; they might also be positive remarks or ideas that require a response from the local authority. Enquiries or comments about the availability, delivery or nature of a service which are not criticisms are likely to constitute representations, for example, children and young people should be able to put forward ideas or proposals about the service they receive, or the establishment they live in, without having this framed as a complaint"*.

A complaint is defined as: [5]

> "*An expression of dissatisfaction or disquiet in relation to an individual child or young person, which requires a response*".

There is an expectation that representations which are not complaints should also be recorded and responded to.[6] If a local authority fails to respond in a way that the child or young person is happy with, the response, or lack thereof, can be the subject of a complaint at Stage 1 of the statutory procedure.[7]

Independent advocates within the representations procedure

Section 26A of the Children Act 1989 places a duty on local authorities to make arrangements for the provision of advocacy assistance to children and young people who make or intend to make a representation under Section 26 or Section 24D. Statutory guidance states clearly that children and young people are entitled to seek help from an advocate regardless of whether the representation is a complaint or not.[8]

Regulation 11 of The Children Act 1989 Representations Procedure (England) Regulations 2006 requires local authorities to provide the child/young person with information about advocacy services and to offer help in obtaining an advocate.

Local authorities are required to publicise their arrangements for the provision of advocacy services[9] and the local procedure for considering representations.[10] The need to make the local procedure known and understood is further stressed in statutory guidance which states that local authorities "should not rely on the advocate to ensure the child or young person understands the procedure".[11]

Statutory guidance defines the role of advocates in the complaints (representation) procedure as:[12]

- Empowering the child or young person by enabling them to express their views wishes or feelings;
- Seeking the resolution of any problems or concerns identified by the child or young person by working in partnership with the child or young person and only with their agreement;
- Supporting the child or young person to pursue a complaint through every stage of the complaints procedure and providing them with information about their rights and options, helping them clarify the complaint and the outcomes they are seeking; and
- Speaking for or representing the child or young person at any stage of the complaints process, including at the informal stage or at any formal hearing or interviews.

The importance of advocacy:

What practical support would make it easier for children and young people to complain?

"Having someone there that is on the child's side!" AK, 23

Who can make representations?

The following individuals are entitled to make representations:

- Children who are looked after by the local authority or who are in need, their parents and other persons with parental responsibility;[13]
- Young people who were in care;[14]
- Local authority foster parents;[15]
- Children who are the subject of a special guardianship order, their parents and special guardians;[16]
- Children who may be adopted, their parents and guardians, and prospective adopters;[17]
- Any other person considered (by the local authority) to have "a sufficient interest in the child's welfare".[18]

What can be the subject of representations?

Matters that are likely to be the subject of representations concern various aspects of local authorities' statutory functions and how they are fulfilled (or not). Complaints can relate to, for instance, unhappiness with individual decisions (e.g., where a child will live or move to), delays or inaction by the local authority, the quality or cost of services, or the attitude or behaviour of staff.

Representations can also be made about policy matters, for instance the impact of a local authority policy on children and young people in the area – an example of this could be a leaving care policy or a policy relating to overnight stays with friends or school trips and holidays.

More specifically, the law defines which local authority functions can be complained about under the statutory representations procedure:

- All functions under Part III of the Children Act 1989 (Support for children and families provided by local authorities in England);[19]
- Specified functions under Part IV of the Children Act 1989: Care and supervision;[20]
- Specified functions under Part V of the Children Act 1989: Protection of children;[21]
- Specified functions related to Section 14F of the Children Act 1989: Special guardianship support services;[22] and
- Specified functions related to adoption and set out in the Adoption and Children Act 2002.[23]

Regulations[24] list the circumstances where local authorities are given discretion to decide whether to consider representations that relate to ongoing or planned court or tribunal proceedings, or disciplinary proceedings. If a local authority concludes that considering a complaint might jeopardise any proceedings, it can refuse the complaint. This should be explained in writing to the child/young person, including the reasons why their representation cannot be considered at this time.

In addition, the representations procedure does not apply when the same complaint has already been dealt with at all stages of the procedure.[25]

While representations, including complaints, made anonymously fall outside the scope of the statutory procedure, they should still be recorded and forwarded to the local authority complaints manager.[26]

Examples of representations made under the Children Act 1989 procedure:

Local authority failing to provide material support to a looked after child living at home with her mum and missing essentials such as bedding.

Young person being informed about a planned move from his foster home to independent accommodation during his school exams.

A child in custody not being supported by the local authority (as a child in need) in preparation for their release from custody.[27]

A child not being able to participate in her statutory looked after child review meeting because it is scheduled during school hours.

It is vital for advocates to understand the relationship between the statutory representations procedure and statutory child protection duties, and act in a way that always safeguards the safety and well-being of children and young people.

Getting the best from complaints states:[28]

"Where consideration of a complaint leads to concerns about the welfare of children, these should be referred immediately to local authority children's social care or the police."

Advocates should have good working knowledge of Working together to safeguard children, including the local authority's duty to investigate where a child is suffering or is likely to suffer significant harm in order to decide whether action is necessary to safeguard or promote the child's welfare (Section 47 of the Children Act 1989) and the role of the local authority designated officer (LADO)[29] in managing allegations against people who work with children.

Similarly, it will often be necessary to consider whether the child or young person requires legal advice before any decisions are made about using the representations procedure. The involvement of a specialist lawyer may be necessary due to the gravity of rights breaches, or because there is an imminent threat of the child's or young person's rights being breached. The role of advocates in referring children and young people for "legal and other specialist advice" is addressed in the national standards.[30] Advocates should discuss this with the child or the young person to allow them to make an informed decision. Examples where legal advice could be very beneficial include situations where a young adult wishes to seek compensation for abuse suffered during their time in care, or where arrangements for a child in care to see their sister or brother have been repeatedly cancelled over an extended period of time.

Independent reviewing officers (IROs) also have an important legal duty to consider referring a child's situation to Cafcass when their rights are not being fulfilled[31] – so advocates will wish to consider this with the child or young person too.

General rules and time limit for making representations

Representations can be made in writing or orally.[32] Oral representations, including complaints, must be recorded in writing and agreed with the person making the representation. In cases where the representation relates to more than one local authority, it should be considered (reviewed) by the local authority which is looking after a child or, in all other cases, the authority in which the child lives ("is ordinarily resident").[33]

Representations may be withdrawn at any time, in writing or orally, by the person who made it initially.[34] Withdrawal of a representation must be confirmed by the local authority in writing to the child/young person and their advocate.

Representations must be made within one year from the point when the matter being complained about arose (e.g., when a specific action was taken or failed to be taken or when specific behaviour took place). However, representations made after the one-year timeframe can still be considered (and local authorities can apply discretion) if:

- It would be unreasonable to expect the child/young person to have made the complaint sooner (including because of the child's or young person's vulnerability); or
- If, despite the time that has passed since the matter arose, the complaint can still be considered effectively and fairly.[35]

Statutory guidance advises that decisions need to be made on a case-by-case basis and there should be a presumption in favour of accepting a late complaint unless there is good reason against doing so.[36]

If a local authority refuses to consider a late complaint, it should inform the child/young person in writing and set out the reasons for refusal. At that point, the child/young person should also be advised about their right to approach the Local Government and Social Care Ombudsman (LGSCO).

Statutory guidance on considering late complaints: examples from the Local Government Ombudsman's casework

In September 2021, the Ombudsman found fault in a local authority refusing to consider a complaint made by a 17-year-old young woman (referred to as Miss X) about events which occurred more than 12 months earlier (connected to a child in need assessment). Citing statutory guidance, the Ombudsman said: "*When deciding whether to investigate, the Council needs to show it has considered Miss X's age, any issues of vulnerability, any potential benefit to Miss X of now investigating the complaint, and whether a fair and effective investigation can still take place. (The Council) did not do so, and this was fault"*. In line with the agreed recommendations, the local authority was asked to reconsider the request and, if it decides not to investigate, to show how it has taken account of the statutory guidance in deciding this and to write to Miss X explaining the reasons for its decision. See (21 002 897)

Also in September 2021, the Ombudsman found that a local authority wrongly refused to consider a 'late' complaint when a special guardian for a looked after young person, referred to as Mr D, complained about lack of support for D when he turned 18. The complaint was 'late' because D's carer believed a different council had responsibility towards D and initially pursued the complaint there. The Ombudsman found that the local authority "*has not fully explained its reasons for refusing to consider the complaint so (it) has not complied with (paragraph) 3.3.1 of the (statutory) guidance*". The Ombudsman also concluded that it is still possible to consider the complaint effectively and efficiently. Finally, the Ombudsman noted that "*the Council also has duties as a corporate parent to help Mr D gain access to services and overcome barriers but has put a barrier in his way by refusing to consider his complaint*". In line with agreed remedial actions, the local authority was asked to accept Mr D's complaint. See (20 013 809)

Deferring (freezing) decisions

Statutory guidance states that:

"If the complaint is about a proposed change to a care plan, a placement or a service, the decision may need to be deferred (frozen) until the complaint is considered".

It also states:

"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."[37]

In situations when decisions are met with opposing views, advice about freezing should be sought from the local authority's Director of Children's Services (or other, appropriate Director).[38]

Examples of situations where proposed changes could be deferred (frozen) pending consideration of the child/young person's representation:

A child has been informed that they will be moving to a different local authority, away from their family and friends.

A local authority informs a foster parent that weekly therapeutic support provided to the child they are caring for is being reduced.

A young person realises that their personal education plan (PEP, which forms part of a care plan) has been amended and prevents them from pursuing their chosen course at college.

The process for considering representations

The process for considering representations, including complaints, is set out in Part 4 of The Children Act 1989 Representation Procedure (England) Regulations 2006, with detailed, supplementary information available in statutory guidance (Chapter 3: Handling and consideration by local authorities). It is very important for advocates to have a good working knowledge of both the law (regulations) and the statutory guidance (the table on the next page highlights the key points only).

The general principles that should underpin the local procedure for considering representations include:

- A good representation procedure is one that resolves concerns quickly and is seen as an opportunity for service improvement.
- Local authorities should deal with representations as quickly as possible. [39]
- Children/young people's right to privacy should be respected and personal details obtained during the complaints process should not be included in complaints reports/books that are more widely available.
- Complaints procedures must be appropriate to the age, understanding and needs of the child.[40]
- Investigation reports should be written in plain language and should be jargon-free.
- Representations that reach Stage 3 of the procedure, should be handled with extra care and compassion, recognising that participation in the process can be a very stressful experience.

Statutory timescales for considering complaints: examples from the Local Government Ombudsman's casework

In June 2021, after a local authority failed to comply with the statutory timescales for considering representations (delaying complaint investigation by five weeks at stage 1, 19 weeks at stage 2, and nine weeks at stage 3), the Ombudsman recommended an apology, a payment of £250 and a reminder to all relevant staff of the timescales set out in law. See (20 006 912)

In August 2021, the Ombudsman recommended the allocation of an Investigating Officer (IO) and Independent Person (IP), and a payment of £300 after a local authority failed to respond to a request for complaint consideration at stage 2 and later cited a lack of IOs and IPs as the reasons for the delay. See (21 004 346)

For more examples of LGSCO decisions where local authorities were found at fault for not adhering to the statutory timescales, see (20 001 094), (21 009 640), (20 013 250), (21 001 852), (21 006 846), (21 008 551), (21 006 868), (20 011 937), (20 008 770), (21 003 333), and (21 007 563).

Statutory duty to consider complaints at stages 2 and 3: examples from the Local Government Ombudsman's casework

In October 2021, the Ombudsman found fault in a local authority's actions after it advised a complainant who was unhappy with the outcome of stage 1 to approach the Ombudsman instead of explaining that the complainant had the right to escalate her complaint to stage 2. See (21 008 282)

In November 2021, a different local authority was found at fault after it had refused a request for consideration of a complaint at stage 2 of the Children Act 1989 procedure citing staffing difficulties and saying stage 2 would not change the outcome and would not be a good use of public money. See (21 005 963)

Stage 1: Local resolution

Overview

There is an expectation that most complaints should be considered and resolved at this stage.
Stage 1 involves a discussion between key staff (e.g., the social worker and the IRO) and the child (and their advocate) to agree resolution and a way forward (in practice, this often happens before the complaints process is formally initiated).

There is no duty to appoint an independent person (IP) at this stage.

If either the child/young person or the local authority believes that it would not be appropriate to consider the complaint at Stage 1, both parties can agree to move directly to Stage 2.[41] This could be because the matter is complex or because the child/young person wishes for an independent person to be involved from the start.

Timescales

A complaint is made (starts) on the date when it's first received by the local authority.[42]

A representation must be considered and resolved within 10 working days from when it was received or from when an advocate was appointed if that happened after the representation was first made.[43]

The local authority can suspend Stage 1 until an advocate has been appointed.

The process can be extended by 10 more days if the matter is complex but must not exceed 20 days in total.

The right to proceed to Stage 2

If the matter is not resolved, or if the 20-day deadline for response has passed, the child can request consideration at Stage 2. This request cannot be denied and there is no time limit for making it (though local authorities can suggest a recommended timeframe).[44]

Stage 2: Investigation

Overview

Stage 2 is an investigation conducted by an investigating officer (IO) and an independent person (IP).[45] The complaint should be considered fairly, thoroughly, and transparently, with clear and logical outcomes[46] and the IO's report should detail all findings, conclusions and outcomes, along with remedy recommendations.

This is followed by adjudication which involves a senior manager (adjudicating officer) considering the IO's and IP's reports[47] and formulating the local authority's response – which will include the proposed outcomes and connected timescales.

Timescales

Stage 2 starts when the child requests it[48] or when it is agreed that Stage 1 is not appropriate[49] (but if the written record of an oral complaint is amended, the complaint will start when the written record is agreed[50]).

The local authority must consider the representation and send notice of its response to the child/young person and their advocate within 25 working days from when Stage 2 started.[51]

This deadline can be extended but the process cannot take more than 65 working days in total, and any delays must be communicated to the child, along with the reason/s for the delay and the date by which a response will be sent.

The right to proceed to Stage 3 or refer the complaint to the Ombudsman

If the child/young person is dissatisfied, they have 20 days to request their complaint is considered by a panel (Stage 3). The request must explain why the child/young person is dissatisfied with the outcome of Stage 2.

Alternatively, in some circumstances, an early referral can be made to the Local Government and Social Care Ombudsman. You'll find more information here.

Stage 3: Review panel

Overview

The purpose of the panel is not to reinvestigate the complaints but to consider the quality of the Stage 2 investigation and the local authority's response, obtain new information if needed and reach new findings and issue recommendations where necessary.

A panel of 3 independent persons, including an independent chair, must be appointed (and cannot include the IP who was involved in Stage 2).

Timescales

The panel must meet within 30 working days from when the request for a Stage 3 was made. The child should be informed of the date of the review panel in writing at least 10 days before it is held.

The panel must produce a report and send to the child and the local authority within 5 working days of the panel meeting. The local authority must respond to it within 15 working days and let the child/young person know what they propose to do.

The right to complain to the Ombudsman

If the child/young person is dissatisfied with the outcome, they have the right to make a complaint to the Local Government and Social Care Ombudsman and they should be advised of this by the local authority.[52]

Local Government and Social Care Ombudsman

See Appendix 3 more information about the LGSCO.

Where a complaint is accepted at Stage 1, the child/young person is entitled to pursue their complaint further through the procedure and the local authority is required to ensure that the complaint proceeds to Stages 2 and 3 if that is the child/young person's wish.[53] [The only exception to this concerns cross-boundary complaints[54]].

Statutory timescales for considering representations (including complaints)

▼ **Stage 1 starts** on the date the local authority first receives it.

STAGE 1 must not exceed 20 working days

The local authority must consider and respond to the representation within **10 working days** from when it was received OR from the date an advocate was appointed if that fell after the representation was received.	The process **can be extended by 10 working days** if the matter is complex. In total, the entire stage 1 must not exceed 20 days in total.

Stage 1 completed ▲

If the child/young person is unhappy with the outcome of stage 1, or if response has not been received within 20 working days, they have the right to request consideration at stage 2. There is no time limit for making it (though local authorities can suggest a recommended timeframe).

Stage 2 starts on the date the child/young person requests it, or on the date it is agreed that Stage 1 is not appropriate and should be omitted. If, however, the written ▼ record of an oral complaint is amended, the complaint will start on the date the written record is agreed.

STAGE 2 must not exceed 65 working days

The local authority must consider the representation and send its response to the child/young person within **25 working days** from when stage 2 started.	The process **can be extended but it cannot take more than 65 working days in total.**

Stage 2 completed ▲

if the child/young person is dissatisfied with the outcome of stage 2, they have the right to request consideration at Stage 3. The request must be made within 20 working days. (For information about an early referral to the Local Government Ombudsman - after stage 2 - see appendix 3).

▼ **Stage 3 starts** on the date the child/young person requests it (this request should be acknowledged by the Complaints Manager within 2 working days).

STAGE 3 must not exceed 50 working days

The panel must meet within 30 working days from the start of Stage 3. The Chair of the Panel should be appointed, and all attendees confirmed, within **10 working days** from the day a request for stage 3 was made. The child/young person should be notified of the date of the panel at least **10 working days** before it is held.	The panel must produce and share its report within **5 working days.**	The local authority must respond to the panel's report within **15 working days.**

▲

Stage 3 completed

(If the child/young person is unhappy with the outcome, they have the right to take their complaint to the Local Government Ombudsman (see appendix 3).

Redress

Local authorities have the power under the Local Government Act 2000 to remedy injustices arising from maladministration. This includes payment as compensation or for quantifiable loss, distress, missed opportunities and more. We cover this in more detail in Appendix 3.

Monitoring local arrangements and learning from complaints

Local authorities are required by law to monitor their arrangements, including keeping records of all representations/complaints received, their outcomes and resulting actions, and information about compliance with statutory timescales.[55]

This should not be seen as a bureaucratic tick-box exercise but an activity which shows children and young people that their concerns and suggestions are being heard and taken seriously and that learning from representations leads to improvements for others.[56] A common motivation for complaining about serious failures is to prevent others having to endure similar experiences – that it will make things better for others. As expressed in statutory guidance:

"Local authorities should develop a listening and learning culture where learning is fed back to children and young people who use services – and fed into internal systems for driving improvement".[57]

Local authorities are additionally required to publish an annual report of representations/complaints. These reports should include information about:

- The number and types of complaints;
- Learning and service improvement resulting from complaints;
- An analysis of the effectiveness of the local procedure;
- Information about advocacy services available under local arrangements; and
- A summary of demographic data about complainants.[58]

Each local authority should also have a system in place whereby learning from complaints is disseminated to managers and learning and insights from complaints feed into practice development, commissioning and service planning.[59]

Advocates who support Children in Care Councils, Care Leaver Forums and other self-advocacy groups and organisations may suggest an annual presentation, attended by the Director of Children's Services and Lead Member for Children's Services, from the local authority complaints manager about the matters raised by care experienced people during the year and how these were resolved. This can help to positively promote the representations procedure and provide assurance that children and young people's concerns are taken seriously – at the individual level and in wider service improvement and policy development.

What would you say children and young people want from making a complaint?

"Justice;
bettering of services;
bettering of services for others;
to bring to light things that are going wrong."
AK, 23

Acts of Parliament (Primary legislation) | Regulations (Secondary legislation) | Statutory guidance

APPENDIX 1: A visual map to relevant legislation and statutory guidance

Children Act 1989

Section 24D
Section 26
Duty to establish a procedure for considering representations (including any complaint)

Representations can be made about the following local authority functions:

All functions under Part 3
(Support for children and families provided by local authorities in England)

Specified functions under Part 4 & 5
(for details see Regulation 3)

Specified functions related to adoption and special guardianship
(for details see Regulations 4 and 5)

Section 26A
Statutory entitlement to advocacy in the representations procedure
(also consider Regulation 11)

The Children Act 1989 Representations Procedure (England) Regulations 2006

Three-stage process:

1. Local resolution
2. Investigation
3. (Independent) review panel

Regulation 20(3)
Local Government and Social Care Ombudsman

Regulation 11
Duty to provide information about advocacy services and to offer help in obtaining an advocate

Also consider:

Getting the best from complaints: Social care complaints and representations for children, young people and others 2006

'Getting the best' will help you understand the entirety of the representations procedure. In addition to providing a detailed, accessible overview of the Representations Regulations 2006 and relevant sections of the Children Act 1989, the guidance contains crucial information about e.g.:

- Deferring (freezing) decisions when a representation is made
- The role of advocates in the procedure
- Early referral to the Ombudsman

Get it sorted: Providing Effective Advocacy Services for Children and Young People making a Complaint under the Children Act 1989

'Get it sorted' sets out local authority duties relating to the arrangements for the provision of advocacy services for children and young people making or wishing to make representations under sections 24D and 26 of the Children Act 1989.

APPENDIX 2: Tips from advocates

♦ Keep the child, their views, wishes and feelings, at the centre

Advocates consistently stress the paramount importance of exploring and acting in accordance with the child's views, wishes and feelings and expressing these clearly within the complaint. Children should be given the opportunity to read through and comment on draft written complaints. The advocate should support the child to identify the desired outcomes, and these should be clearly included in the complaint.

> *"Use the young person's words as much as possible - these often have the strongest impact."*

> *"Make sure you specify the outcome the young person wants."*

> *"Avoid any own judgements within the complaint."*

Before the complaints process is initiated, the advocate should ensure that it is in fact the child's wish to use the complaints process rather than assume this is the case based on information from e.g., another professional or a parent.

It is important to ensure that the local authority understands the advocate is acting with the child/young person's authority. Failing to demonstrate it from the outset risks delays and additional follow-up communication, all of which can put further pressure and strain on the child/young person:

> *"Local authorities often want to see a document to show the advocate is writing a complaint on behalf of the child. Sometimes they provide a form [while] others will accept the child's signature on the letter."*

Some advocates have found complaint resolution meetings useful, more child-centred and more likely to produce change.

Advocates should be mindful, however, that some children may not want this to happen and their wish to take a complaint forward to the next stage should be respected and acted upon.

It is also vital to keep children informed and involved throughout the process, ensuring that all actions are led by children's views, wishes and feeling and never by advocates' assumptions (or own priorities) about the desired course of action.

> *"Even if the young person gets a response at the first stage, check with them if they want to progress the complaint rather than assume it is resolved."*

♦ Explore and discuss alternative approaches with the child

One advocate advised considering with the child or young person what alternatives they may have to making a complaint. This does not preclude a formal complaint being initiated at a later point (though be mindful of timescales – see page 6):

> *"Try other representation alternatives to going straight to the complaints process (if the young person consents) such as emailing the manager etc. If other alternatives are tried the complaints process still remains an option. However, once a complaint is made and the outcome is not acceptable to the young person, other alternatives may not be possible or the response will be that the issue has been resolved via a complaint."*

♦ Structure your complaint well and communicate clearly

Many advocates stressed the importance of structuring complaints clearly, following a consistent format, and remaining focused on the specific issues being raised:

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Please note: the information we provide is for general guidance. It is not legal advice.

"Divide a complaint letter into sections - background - complaints - desired outcomes."

"Use templates that clearly outline in number format what each specific issue is and what the desired outcome is; clarify who and how [the complaint should be] responded to; [set out the] timescales for response as outlined in regulations."

"Use bullet points in writing complaints - helps keeps things clear."

"Stay focussed on the specific complaint issue."

The complexity of the situations that form the bases of complaints, along with the fact that oftentimes a single complaint pertains to multiple failings, mean that clarity and coherence are of great importance; it also helps ensure nothing gets 'lost'.

"Often complaints are about several issues. It is surprising how often the respondents overlook an issue. To prevent this, have a section called 'Summary of complaint/s' - a list of the key issues being raised in the complaint that need a response. Structure the complaint so that each issue is outlined in separate paragraphs. Put the summary of the complaint at the top of each section e.g., 'Failure to provide safe accommodation putting me at risk'. Then put the detail relating to that complaint, including evidence and reference to legislation/procedures etc."

Setting out the desired outcomes clearly and explicitly asking for the advocate to be kept informed throughout the process were also highlighted:

"Clearly ask for the advocate to be kept updated on the complaint and included in any response."

"Be clear about what the desired outcomes are and list them in a closing paragraph."

Advocates shared differing opinions about the level of detail that should be included in the complaint, with some advising to *"give as much detail as possible"* and other advising against it: *"Don't struggle to get all the detail in the complaint (dates etc) – […] I see it as the job of the person looking into the complaint to verify some of the factual detail. Getting some of the details wrong could weaken the complaint"*.

Finally, be prepared for the complaint you have developed and written with the child/young person to be amended when it reaches Stage 2. This is part of the process and is designed to ensure all individual complaint points are communicated clearly to enable investigation:

"The stage 2 complaint letter is often changed after meeting the investigating officer (IO) and the independent person (IP). This is sometimes called a statement of complaint or terms of reference."

♦ Use the law to strengthen your complaint

Many advocates shared that, in their experience, identifying specific unmet legal entitlements, naming where the local authority failed in its statutory duties and citing corresponding legislation make complaints stronger and more effective. References to legislation and statutory guidance should be seen as complementing, not replacing, the child's views, wishes and feelings. Legal references should include local authority duties to ascertain and give due consideration to the child's wishes and feelings.

"Include the legislation that the local authority is contravening to make the complaint as powerful as possible."

"Create a sandwich effect: your role [advocate's input], the child's words, their rights."

"Remind the reader they are the corporate parent and what any good parent would do for their child."

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Advocates also highlight the importance of considering local policies and procedures and the local authority's compliance with these.

♦ Prepare yourself, think ahead and document everything

It is important for advocates to understand the law that governs the statutory representations/ complaints procedure, and the associated statutory guidance, so that they can make the most of it as well as identify where the local authority is not following the prescribed procedure: *"Make sure you have a good understanding of 'Getting the Best from Complaints'"*.

It's useful to think in advance of the possible objections the local authority may raise in response to the child's complaint. This will allow the advocate to consider in advance how to respond to this and incorporate relevant information into the complaint to *"shoot the argument down before it is raised".* Similarly, it is useful to consider any challenge that the local authority may level against the child (for instance, the child caused physical damage to their room). The advocate should proactively discuss this with the child, explore how they felt and what led to their actions and reflect this in the complaint. It is likely that the child felt upset, hurt or not listened to and this should be communicated well in their complaint.

Finally, it is important to document the entire process and any outcomes: *"Keep records of everything"*.

♦ Other advice

One advocate shared that, in their experience, it is useful to alert key professionals to the complaint to make them aware of the situation: *"Make sure you [copy in] social workers managers, assistant directors and directors in your complaint submission. This will highlight your complaint and increase awareness"*. We think this is potentially good advice with a couple of caveats. Firstly, it will obviously be necessary to obtain the child's permission before including professionals beyond the complaints team. Secondly, each local authority, just like each complaint, is different and while e.g., copying in directors may help to achieve a speedy resolution in some instances, in others it may be counterproductive. As ever, this will depend on advocates' knowledge of the local area and prior experience of supporting children and young people to raise concerns.

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APPENDIX 3: Local Government and Social Care Ombudsman

Role, powers and jurisdiction

The LGSCO is a free and independent public service regulated by the Local Government Act 1974 and responsible for investigating and **resolving complaints about local authorities and adult care providers in England.**

The law limits the scope of LGSCO investigations to two types of matters:

- **Maladministration**, i.e., poor performance of administrative duties; and
- **Service failure**, i.e., failings in how a service is provided or failure to provide a service.

Examples of maladministration and service failure, commonly referred to in LGSCO decisions as 'faults', include delays, poor communication, inadequate record-keeping, failure to take action, failure to follow procedure (including local policy) or the law, giving out wrong or misleading information, or failure to investigate.[60]

Alongside determining whether there are faults in a local authority or care provider's actions, the LGSCO must consider whether these faults have caused injustice to the person at the centre of the complaint. The LGSCO cannot recommend remedies in situations where the faults have not directly caused injustice to the complainant.

Additionally, the law prevents the LGSCO from considering certain types of complaints. These include:

- Matters that are going to court (civil or criminal) or are subject to existing court proceedings;
- Criminal matters;
- Employment issues (e.g., staff appointments, dismissals or disciplinary measures); and
- Some education matters (e.g., exclusions or the curriculum, BUT school admissions and transport are within jurisdiction).[61]

The process and timescales for complaining to the LGSCO

Complaints submitted to the LGSCO must meet certain general criteria:

- The complaint must be made by a member of the public of their representative (e.g., advocate);
- The local complaints procedure should be completed (but there are exceptions);
- The complaint should be made in time (but the LGSCO can use discretion in certain circumstances and consider complaints outside of the set timescales); and
- There is no alternative, better route for seeking redress (e.g., the courts).

The law states that a complaint to the LGSCO must be made in writing and within 12 months from when the person making the complaints learned about the faults[62] but the LGSCO has the power to apply discretion and accept complaints outside of the 12-month timeframe[63] if there is a good reason why the complaint was not made earlier. The LGSCO recognises and understands there may be very good reason why care experienced young people can't approach the LGSCO sooner and each case is considered on its merits. However, the LGSCO is unlikely to consider matters which occurred many years ago.

The complaint can be made directly by the person who suffered injustice or by their representative, such as an independent advocate.

The law requires the LGSCO to check that the local authority which is the subject of the complaint knows about it and that it has been given an opportunity to investigate and respond.[64] However, the LGSCO has the power to disregard this requirement if it considers it would be unreasonable to notify the local authority of the complaint and give it an opportunity to investigate and reply.[65]

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Early referral to the Ombudsman

Secondary legislation[66] gives the complainant who is dissatisfied with the outcome of a Children Act 1989 Stage 2 investigation the right to request that the complaint/s be further considered under Stage 3. However, statutory guidance[67] allows for an early referral to the Ombudsman if certain conditions are met.

The local authority complaints manager should discuss with the complainant the possibility of making an early referral to the Ombudsman if two general conditions and several additional 'safeguards' are met:

General condition:

1. The complainant is dissatisfied with the outcome of Stage 2; and
2. Based on facts, the complaints manager believes that despite a "reasonable and appropriate" consideration of the complaint at Stage 2, progressing to Stage 3 would not produce "a demonstrably different outcome";

Additional conditions ('safeguards'):

3. Stage 2 must have delivered:
    a. a very robust report;
    b. a complete adjudication;
    c. an outcome where all complaints have been upheld (or all significant complaints about service delivery);
4. The local authority has provided a clear action plan for delivery;
5. The local authority has agreed to meet the majority, or all the desired outcomes presented by the complainant regarding social services functions.

This means that if conditions 1, 2, 3a-c, 4 and 5 are all met, an early referral can be discussed and agreed, bypassing Stage 3 of the statutory procedure. If this is agreed, then the local authority and the complainant will need to agree a written statement of complaint.

When reviewing an 'early complaint', the LGSCO can accept and consider it, or conclude that the 'early complaint' does not meet the necessary conditions, in which case the LGSCO can propose consideration of the complaint by the local authority at Stage 3.

It is important to note that even if the LGSCO 'returns' an early complaint back to the local authority for a Stage 3 review, the complainant retains the right to approach the LGSCO after the completion of Stage 3. This right is set out in Regulation 20(3) of the Children Act 1989 Representations Procedure (England) Regulations 2006.

LGSCO decisions

LGSCO investigators assess each individual complaint on its merits.

When a complaint is received by the LGSCO, two tests are applied to decide whether to accept it:[68]

1. The jurisdiction test: Is the complaint within the LGSCO's jurisdiction (does the law allow the LGSCO to consider the complaint)?
2. The discretion test:
    - Is there public interest in considering the case?
    - Has the complainant suffered significant injustice directly linked to faults?
    - Have there been faults?
    - Can the LGSCO achieve a meaningful outcome for the complainant?

If the 'tests' reveal that a complaint is outside the LGSCO's jurisdiction or there is a different reason why it would not be reasonable for the LGSCO to investigate, the LGSCO can refuse to consider it. This is always communicated to the complainant and a clear reason for the refusal is given. If the two tests are 'passes' and an LGSCO investigation takes place, it can lead to several possible outcomes. The LGSCO can:

- Uphold a complaint in full and recommend remedies to put things right;
- Uphold a part of a complaint and recommend remedies;
- Uphold a complaint but not make any recommendations (e.g., because either the local

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authority has already remedied its faults and the LGSCO considers the remedies suitable and sufficient, or because there is no direct link between the faults and injustice);
- Not uphold a complaint.[69]

LGSCO recommendations and remedies

Where the LGSCO's investigation finds fault (by the local authority) which has caused injustice (to the complainant) it can recommend a remedy to rectify the injustice, as well as recommend actions that the authority should take to prevent future injustice.

While each complaint is considered individually and on its own merits, LGSCO's guidance on remedies provides a framework for ensuring consistency and fairness. Local authorities and care providers can draw on this guidance to inform the remedies they offer in their own complaint investigations.

Remedies need to be proportionate, appropriate, and reasonable. The key principle followed by the LGSCO is that "*the remedy should, as far as possible, put the complainant back in the position he or she would have been in*"[70] if it had not been for the (council's/care provider's[71]) fault. Where this is not possible, financial redress may be offered. When considering remedies, LGSCO investigators take into account, among other factors:

- The outcome the complainant wants to achieve;
- The personal injustice that's been caused; and
- The severity of distress, harm or risk experienced by the complainant.

Recommended remedies are not meant as punitive measure but as a means of redress. They can include a combination of:

- Apology;
- Review of council/provider policies and procedures;
- Practical remedial actions (e.g., fulfilment of previously made commitments or unmet statutory duties);
- Payment for a quantifiable financial loss;
- Financial redress in acknowledgement of loss of non-monetary benefit; and/or
- Financial redress in acknowledgement of avoidable distress, harm, risk, or other unfair impact.

If, during the course of an investigation, the LGSCO becomes aware that others may have also been adversely affected by the faults, the LGSCO can extend its investigations and include recommendations to remedy their injustice too.

The LGSCO has broad discretion to recommend remedies considered suitable. While the recommendations to put things right are not binding (and therefore not enforceable), local authorities' compliance with remedies is very high (99.5% in 2020-21[72]). In cases where local authorities fail to comply or fail to do so within the set timescales, the LGSCO has the power to issue a 'public interest report' to publicise the matter or to open a new investigation focused on the failure to provide the agreed remedy.

Useful resources:

You can find a step-by-step guide to making a complaint to the LGSCO here and the online complaint form here, along with LGSCO top tips for making a complaint.

The LGSCO runs a helpline which offers general advice on the complaints process – 0300 061 0614 (10am – 4pm, Monday – Friday, excluding public holidays).

LGSCO guides and thematic reports are also a useful source of information:

Guidance on effective complaint handling for local authorities

Children's statutory complaints process. Guide for practitioners (click on children's services and education)

Careless: Helping to improve council services to children in care (click on children's services and education)

Guidance on remedies

We also regularly cover LGSCO decisions in our **children's rights legal digest**.

Endnotes

[1] Get it sorted: Providing effective advocacy services for children and young people making a complaint under the Children Act 1989, para 2.1.

[2] Get it sorted, para 2.1.

[3] Getting the best from complaints: social care complaints and representation for children, young people and others 2006, page 3.

[4] Getting the best from complaints, para 2.1.4.

[5] Getting the best from complaints, para 2.1.3.

[6] Getting the best from complaints, para 2.1.5.

[7] Getting the best from complaints, para 2.1.6.

[8] Getting the best from complaints, para. 2.1.5.

[9] Section 26A(5) of the Children Act 1989.

[10] Section 26(8) of the Children Act 1989.

[11] Getting the best from complaints, para. 3.4.2.

[12] Getting the best from complaints, page 38.

[13] Section 26(3) of the Children Act 1989.

[14] Section 24D(1) the Children Act 1989.

[15] Section 26(3) od the Children Act 1989.

[16] Section 26(3C) of the Children Act 1989.

[17] Section 26(3B) of the Children Act 1989.

[18] Section 26(3) od the Children Act 1989. It is worth noting that local authority have the discretion to decide whether the representative has sufficient interest in the child's welfare. For more information, see para 2.7.2 of Getting the best from complaints.

[19] Section 26(3A), Children Act 1989.

[20] Sections 31(1); 33(3), (4) and (6) to (9); 34(6) and (8); and 35(1) and (2). See Regulation 3 of The Children Act 1989 Representations Procedure (England) Regulations 2006.

[21] Sections 43(1) and 44(1), (10) and (11). See Regulation 3 of The Children Act 1989 Representations Procedure (England) Regulations 2006.

[22] Regulation 5 of The Children Act 1989 Representations Procedure (England) Regulations 2006.

[23] For details of the functions under the Adoption and Children Act 2002, see Regulation 4 of The Children Act 1989 Representation Procedure (England) Regulations 2006.

[24] Regulation 8 of the Children Act 1989 Representation Procedure (England) Regulations 2006.

[25] Getting the best from complaints, para. 2.5.1.

[26] Getting the best from complaints, para. 2.9.

[27] To learn more about local authority duties to support children and young people leaving custody, read the February 2021 issue of our children's rights legal digest.

[28] Getting the best from complaints, para. 7.9.1.

[29] Working together to safeguard children, A guide to inter-agency working to safeguard and promote the welfare of children, 2018, p.109.

[30] Standard 2, para. 2.2., of the National standards for the provision of children's advocacy services states: "*Children and young people are referred for legal and other specialist advice when appropriate. The service keeps an up-to-date and comprehensive referral list and takes active steps to identify legal and specialist advisers who provide a good service".*

[31] Regulation 45(3) of The Care Planning, Placement and Case Review (England) Regulations 2010.

[32] Regulation 6 of The Children Act 1989 Representations Procedure (England) Regulations 2006.

[33] Getting the best from complaints, para. 2.10.

[34] Regulation 7 of the Children Act 1989 Representation Procedure (England) Regulations 2006.

[35] Regulation 9 of The Children Act 1989 Representation Procedure (England) Regulations 2006.

[36] Getting the best from complaints, para. 3.3.1.

[37] Getting the best from complaints, para. 6.5.

[38] Getting the best from complaints, para. 6.5.2.

[39] Regulation 10(c) of The Children Act 1989 Representation Procedure (England) Regulations 2006.

[40] Getting the best from complaints, para. 3.2.1.

[41] Regulation 17(1) of The Children Act 1989 Representation Procedure (England) Regulations 2006.

[42] Getting the best from complaints, para. 3.5.1.

[43] Regulation 14(3)(b) of The Children Act 1989 Representation Procedure (England) Regulations 2006.

[44] Getting the best from complaints, para. 3.5.8.

[45] Regulation 2 of The Children Act 1989 Representation Procedure (England) Regulations 2006 defines 'independent person" as "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". Statutory guidance (para 3.6.4) says the independent person "may be employed by the local authority or be brought in from outside the authority […] [and] should not, however, be in direct line management of the service or person about whom the complaint is being made".

[46] Getting the best from complaints, para. 3.6.3.

[47] While the independent person (IP) is not required to prepare a report, statutory guidance confirms it is considered good practice for the IP to prepare a report for the local authority, sharing their views on the investigation process and the outcomes. For more information, see para 3.7.2 in Getting the best from complaints.

[48] Regulation 17(4)(b) of The Children Act 1989 Representation Procedure (England) Regulations 2006.

[49] Regulation 17(4)(a) of The Children Act 1989 Representation Procedure (England) Regulations 2006.

[50] Regulation 17(5) of The Children Act 1989 Representation Procedure (England) Regulations 2006.

[51] Regulation 17(3)-(5) of The Children Act 1989 Representation Procedure (England) Regulations 2006.

[52] Regulation 20(3) of The Children Act 1989 Representation Procedure (England) Regulations 2006.

[53] Getting the best from complaints, para. 3.1.5.

[54] Getting the best from complaints, para. 3.1.5 and para 7.4 onwards.

[55] Regulation 13 of the Children Act 1989 Representation Procedure (England) Regulations 2006

[56] Getting the best from complaints, para. 5.1.3.

[57] Getting the best from complaints, para. 1.5.2.

[58] Regulation 13(3) of The Children Act 1989 Representation Procedure (England) Regulations 2006 and section 5.6 of Getting the best from complaints.

[59] Getting the best from complaints, para 5.7.1.

[60] https://www.lgo.org.uk/make-a-complaint/what-we-can-and-cannot-look-at [Accessed 20 September 2021]

[61] The LGSCO's role in considering exclusion appeals is limited and admission appeals for academies and free school are outside its jurisdiction. See more at: https://www.lgo.org.uk/information-centre/staff-guidance/guidance-on-jurisdiction?chapter=10#109%2bSch%2b5%2bpara%2b5%2b%2bCertain%2beducational%2bmatters [Accessed 18 September 2021]

[62] Section 26B(1)(b) of the Local Government Act 1974.

[63] Section 26B(3) of the Local Government Act 1974.

[64] Section 26(5)(a) of the Local Government Act 1974.

[65] Section 26(5)(b) of the Local Government Act 1974.

[66] Regulation 18 of The Children Act 1989 Representation Procedure (England) Regulations 2006.

[67] Getting the best from complaints, Annex 3.

[68] https://www.lgo.org.uk/information-centre/staff-guidance/assessment-code?chapter=2#Stage%2bTwo%2bThe%2bdiscretionary%2bstage [Accessed 20 September 2021]

[69] https://www.lgo.org.uk/make-a-complaint/possible-outcomes [Accessed 20 September 2021]

[70] Local Government and Social Care Ombudsman (updated January 2021), Guidance on good practice: Remedies, p.5.

[71] Please note that LGSCO jurisdiction is limited to care providers who deliver adult social care and excludes privately funded children's social care. We are flagging this gap with the Government

[72] Local Government and Social Care Ombudsman (July 2021), Review of Local Government Complaints 2020-21, p.6.