

Complaints & Representations Procedure

**For the Social Services function of
Carmarthenshire County Council**

Adults' and Children's Social Care



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1. Introduction

Introduction and background

County Councils are legally required to have complaints procedures in place that meet the minimum requirements of the current regulations. There are separate sets of regulations for service to children and adults;

- The Representation Procedure(Children)(Wales)Regulations 2005 and;
- The Social Services Complaints Procedure (Wales) Regulations 2005.

These separate regulations have been brought together into a common framework and there is now one body of guidance called “Listening and Learning”. This policy reflects the key themes and principles contained in the guidance.

Relationship to the Corporate Policy

The County Council is also required to have a Corporate Complaints Procedure. In this Authority the Corporate Procedure is managed by the Chief Executive’s Department. This Procedure and Guidance document is separate from the Corporate Procedure and applies only to the Social Services function. In normal circumstances it will not be appropriate for a complaint to be investigated under both processes, and for Social Services functions, the statutory complaints policy will have precedence.

The Council welcomes comments on its services

The County Council seeks to provide a range of quality Adult and Children’s social services for the people of Carmarthenshire. To achieve this we are going listen to those who use our services. We know they may wish to:

- Make a comment, positive or negative, about the nature, availability or delivery of a service;
- Suggest improvements;
- Complain about a service being provided; or
- Complain about a decision to provide a service (an appeal having been considered).
- The aim of this procedure is to ensure that there is a proper, timely response to comments and complaints.

The County Council's commitment:

- Comments and complaints will be viewed positively as an opportunity for users or potential users of services to express their views and challenge decisions;
- Information gained from the procedure, both positive and negative, will be used to improve the quality of service delivery and will assist in the development of services which respond flexibly and sensitively to the needs of those who use services and their carers;
- The provision of a service will not be subject to delay, suspension or withdrawal whilst a complaint is being dealt with under the procedure;
- The procedure will be well publicised;
- The training will be provided for all people involved in the procedure;
- The procedure will be reviewed on a regular basis.

Legal Framework

The current regulations regarding complaints that came into force in April 2006 were the first overhaul of the Complaints Procedures since the early 1990s. They follow a major consultation conducted in 2001 called 'Listening to People', involving professionals and service users. The aim is to provide as far as is possible, a seamless complaints service for users of public services by establishing links with other complaints processes in the council, with contracted out services and with NHS bodies and CSSIW so that the process of making a complaint is straightforward.

NHS and Community Care Act 1990

Section 50 of the Act inserts a new Section (7B) into the Local Authority Social Services Act 1970. This Section (7B) authorises the Secretary of State to require local authorities to establish a Complaints Procedure.

Children Act 1989

Under the above Act, local authorities, voluntary organisations and registered Children's Homes are required to have established a Complaints Procedure. The two sections of the Act, Section 24 and Section 26, cover all young people who have been recognised as being in need under Part III of the Act. Complaints can be made about:

- day care;
- support for children living at home;

- support for children who are accommodated;
- after care support;
- decisions about placements;
- case management.

Complaints that fall outside of Part III of the Children Act 1989 are dealt with under the procedure laid down for the NHS and Community Care Act 1990.

2. The scope of the Complaints Procedure

What is a Complaint?

When a concern is raised, a decision must be made as to whether it is a complaint which needs to be dealt with under the Complaints Procedure, or is it a matter which normal day to day good practice should seek to resolve.

A complaint is a verbal or written expression of dissatisfaction, about the standard of service, the actions, or lack of action by the Authority or its staff in relation to an individual or group of service users. To sum up 'a complaint is a complaint when the person making it says it is' – Welsh Assembly Government (2006) 'Listening and Learning' – A guide to handling complaints and representations in Local Authority Social Services in Wales.

Complaints of a general nature, not concerned with an individual service user, will usually fall outside the statutory procedure as will anonymous complaints.

Resolution of Complaints

The County Council takes the issue of the resolution of complaints very seriously and recognises that complainants may have a variety of expectations regarding the outcomes of complaint investigations including:

- a need for justice;
- a recognition of shortcomings;
- that providers should consider what went wrong in the process of the provision of a service;
- that the complaint highlights a need for a revised judgement on the provision of a service previously refused.

The achievement of resolution is complicated by the differing expectations of the parties to a complaint.

The council recognises that once a complaint has been logged there may be competing pressures or drives to:

- achieve an outcome that is satisfactory to all parties;
- defend actions that have been taken;
- call people to account;
- change decisions; and
- bring about changes to policy and practice.

With regard to the resolution of complaints the county council would always seek to achieve an outcome where both parties to the complaint are pleased with the result. However, that is not always possible and other solutions might be where:

- both parties agree that the outcome is not what they would have preferred but it is acceptable;
- both parties agree that all has been done that can be done and that nothing further can be achieved;
- “agree to disagree”.

The county council recognises that the process of the resolution of complaints is more likely to be successful when a number of factors are addressed, namely:

- the complaint is understood;
- the intended outcomes are noted;
- staff are equipped/trained;
- staff have the responsibility/status to implement change;
- the complainant is involved and informed;
- the complaint is dealt with quickly but effectively;
- the complainant receives support to access and guide them through the process;
- resolution has evidence-based reasons; and
- complainants are informed about the progress of recommendations.

Time limits on making a complaint

There are no time limits imposed on making complaints. A decision will be made on a case-by-case basis if it is practicable to investigate historical complaints. It may be difficult to investigate if staff concerned have left the organisation or have died or if records about the issues are not available.

A decision not to investigate will be explained in writing giving details of the steps the county council will take to deal with the issues raised.

The time limits at Stages 1 & 2 of the procedure are intended to ensure that the county council ensures that complaints do not get lost or drag on for too long. However, the county council recognises that an over emphasis on quick resolution can detract from ensuring that proper consideration is given to complaints, and that an agreeable outcome is achieved. Indeed complex complaints are likely to need more time for consideration. The county council is aware that the way a complaint is dealt with at Stage 1 may well set the tone for the way the whole process is perceived by the complainant.

Services for Children: who can complain?

- a) any child who is being '*looked after*' by a local authority, or, is not looked after by them but is '*in need*';
- b) any parent of such a child;
- c) any person who is not a parent but who has parental responsibility for such a child;
- d) any foster carer;
- e) such other person as the authority considers has sufficient interest in the child's welfare to warrant it considering their representations;
- f) care leavers.

In relation to e) above, the Complaints Manager will decide whether the person has sufficient interest in the child's welfare to warrant their representation being considered.

In making this decision, the Complaints Manager will seek the views of the child, provided they can be sure the child understands. If the Complaints Manager concludes that the "other person" does not have sufficient interest, they will be notified in writing explaining that the county council will not be taking any further action.

The 2005 regulations cover the following functions from Parts IV and V of the Children Act:

- Section 31 (Care and Supervision orders)
- Section 33 (Effect of Care order)
- Section 34 (Parental contact etc. with children in care)
- Section 35 (Supervision orders)
- Section 43 (Child Assessment orders)
- Section 44 (Orders for Emergency Protection of Children) and
- Section 47 (County Council's duty to investigate)

The complaints procedure is not an appeals procedure. Appeals against court orders will be made to the court. However, dissatisfaction about the management or handling of a child's case, even where linked to a court order, may be considered under the Complaints Procedure, if the Complaints Manager deems it appropriate.

Services for Adults: who can complain?

Regulation 9 of the Social Services Complaints Procedure (Wales) Regulations 2005 states who can make a complaint about services for an adult. A person may complain if:

- the county council has a power of duty to provide, or to secure the provision of a service for them, and
- their need or possible need for such a service has (by whatever means) come to the attention of the County Council.
- they are a nominated representative of a person who meets the above criteria.

The Complaints Manager must consider any complaint where a capable service user, with capacity, has asked a representative to act on their behalf. Where the person using the service is alive and capable of making a nomination, but has not nominated the would-be representative, the county council has no duty to consider the complaint.

In the case of a service user who lacks capacity, or is deceased, the county council will consider the relationship between the representative and the service user as the basis for deciding if the complaint will be considered.

Complaints excluded from consideration

The Regulations on Services for Adults (Social Services Complaints Procedure (Wales) Regulations 2005 reg 11) exclude the following:

- repeat complaints that have already been considered under this or previous procedures cannot be considered unless the Complaints Manager decides enough new information has come to light to warrant a fresh investigation;
- appeals against court orders and matters that have already been considered by the courts;
- complaints about Child Protection Conferences that should be addressed to the chair and referred to an inter-agency panel of senior representatives from the Area Child Protection Committee (ACPC);

- complaints about Protection of Vulnerable Adult conferences that should be addressed to the chair of the conference;
- decisions made by the Approved Mental Health Professionals (AMHPs) under the Mental Health Act 1983. These will be subject to review by the Mental Health Review Tribunal. However, dissatisfaction about the practice of a social worker, even where linked to a matter that is subject to review by the Mental Health Review Tribunal, may fall within the county council's complaints procedure.

Anonymous complaints

Anonymous complaints will always be recorded and referred to the Complaints Manager in the same ways as other complaints. Anonymous complaints fall outside of the scope of the statutory procedure and it is for the county council to decide what action it should take. The fact that the complaint is from an anonymous source is not enough, in itself, to justify a decision not to pursue the matter. Nor should it rule out a referral to the Adult or Child Protection Procedures.

What is a representation?

Carmarthenshire County Council considers that a representation is an expression of dissatisfaction made by a service user (or group or organisation representing service users) where they are clear that they do not wish to follow the complaints process, or a suggestion as to how services may be improved.

As such representations may result in immediate action being taken to improve services for the individual user, and will also be used to inform service improvement and development

Compliments

Compliments are an important source of service user feedback that tells the county council when they are doing things well. All compliments should be forwarded to the Complaints Section where they will be collated and will form part of a report to the council's Scrutiny Committee.

3. Working with other procedures, other parts of the Council and other organisations

Concurrent investigations

Whenever someone makes a complaint, the Complaints Manager will consider the implications for other procedures and for other bodies. Where serious allegations are made, senior managers will need to be involved at the outset. Where such allegations suggest that a criminal offence may have been committed, they should immediately consider their duty to notify the police.

The regulations regarding complaints procedures identify five situations in which a complaint may be subject to concurrent consideration:

- the complainant may have indicated they intend to start legal proceedings;
- the county council may be taking or proposing to take disciplinary proceedings;
- the county council may become aware that some other organisation, for example the police or the Care and Social Services Inspectorate Wales, is investigating with a view to criminal prosecution;
- the county council may be aware that the Care Council for Wales is investigating with a view to sanctions against a registered worker; and
- an inter-agency meeting has been convened to discuss the protection of children or vulnerable adults.

Wherever any of the above scenarios occur, the county council must consider how to handle the complaint. The regulations require that it must do so in consultation with the complainant and any other person or body it believes it should consult.

The county council will use its discretion and flexibility regarding concurrent investigations. The regulations allow other procedures e.g. disciplinary procedures to run concurrently with the complaints procedure where appropriate. The complaints investigation can go ahead unless it would compromise or prejudice the other investigation.

The county council will use its discretion as to whether initiating the complaints process would compromise a concurrent investigation under another statutory or internal procedure. In these situations, a decision can be made to suspend the complaints investigation.

Where a decision is made to investigate matters raised in a complaint using another procedure, the Complaints Manager will monitor progress. The Complaints Manager will take all reasonable steps to ensure that they keep the complainant up to date and will notify the complainant when the other investigation is discontinued or completed. Once this has happened, they may resume the consideration of the matter under the complaints procedure and they must do so if the complainant requests it. The Complaints Manager will ensure that the person responsible for the other procedure is aware that they are fully accountable for the final response.

Child Protection and Adult Protection

Protecting children and vulnerable adults from abuse has to be the paramount consideration. Child abuse, or the abuse of vulnerable adults, will include in this context: physical abuse, sexual abuse, psychological or emotional abuse, financial or material abuse, and neglect. The current guidance on child protection is set out in “Working Together to Safeguard Children” (2000). The matching guidance on adult protection is “In Safe Hands” (2000).

Child Protection

Any complaint or representation that raises concerns about child protection should be referred immediately to social services or, where a criminal act is known or suspected, the police. There should be no complaints investigation while there is any chance of compromising the child protection investigation. This does not prevent aspects of the complaint being pursued at a later date where and when it is appropriate.

It is recognised that sometimes parents, carers or, on occasions, children may have concerns about an aspect of the work of child protection conferences and might wish to complain. This could concern:

- the process of the conference;
- the outcome, such as a decision to register or maintain registration; and/or
- a decision not to register, or to de-register.

Complaints about the work of a conference should be directed to the Conference Chair. The Chair should then refer the complaint to the Child Protection Co-ordinator, and they should deal with it, as set out below. They should do so in line with time-scales in the regulations on complaints.

In considering complaints about the function of the child protection conference, consideration will be given to whether the conference correctly followed the

relevant protocols and procedures. It should decide whether the disputed decision followed reasonably from the proper observation of the relevant protocols.

Adult Protection

Any complaint that raises concerns about the protection of a vulnerable adult should be referred immediately to the local multi-agency adult protection procedure. It is for the Adult Protection Manager to determine whether the adult protection process should be instigated. There should be no complaints investigation if there is any possibility of compromising the adult protection investigation.

However, this does not rule out aspects of the complaint being pursued at a later date, as appropriate.

Where there is a complaint about the handling of an adult protection investigation, this should be raised in the first instance with both the Chair of the Conference and Adult Protection Manager. If the complaint cannot be resolved at that level, a formal complaint should be made.

The relationship between Child Protection and Adult Protection Services and the Complaints Procedure

Where child protection/adult protection conferences have taken place, and any investigations concluded, there may be still be some matters that remain to be addressed under the statutory complaints procedure. In such circumstances, the complainant should be advised by the Chair of the Conference, that issues in their original complaint relating to protection have now been concluded. This correspondence should state that where any matters remain outstanding they will become the subject of a complaint investigation. A copy of this letter should be sent to the Complaints Manager responsible for managing the statutory complaints procedure.

Further information on this issue is available in a county council document entitled 'Protocol for operational arrangements where there is an interface between the Protection of Vulnerable Adults and the Management of Complaints' January 2010.

Complaints involving more than one council

Where a complaint crosses over boundaries between different local authorities, people who use services should not have to worry about where to go with complaints about different aspects of their problem. A complaint can be made to the complaints officers of any of the local authorities involved. The role of this county council will depend upon whoever is the 'lead authority' as it is their responsibility to keep the complainant informed about progress of the complaint, to contribute to the single response and also to co-ordinate the response. If it is not the lead authority, this council will contribute to the investigation and response.

For complaints from children and young people, the lead Council is the one that is looking after the child – or where no council has had that responsibility, the council where the child is ordinarily resident.

Complaints involving the county council and the health service

Complaints may cross boundaries between a local authority and a part of the health service. The same approach as complaints involving more than one local authority will apply.

Where services are delivered by one body acting on behalf of another, the Act allows for the whole complaint to be considered by the body delivering the services, under its own complaints procedure.

The county council will, as a matter of good practice, handle any complaints that are about children's services and that involve a health service body along the same lines as set out in this section.

Complaints made to one social services authority or health service organisation about another

Where the Complaints Manager receives a complaint about another local authority or health service body they will record sufficient detail of the complaint to enable them, with the consent of the complainant, to refer it formally to another body. It will then be the responsibility of the Complaints Officer of the organisation complained against, to ensure that it deals with the complaint properly.

Complaints about services regulated by the Care and Social Services Inspectorate Wales (CSSIW)

The Care and Social Services Inspectorate Wales (CSSIW) requires that all registered providers will ensure they have a local complaint resolution stage, and will attempt to resolve any complaint at the point of service delivery. This is the minimum requirement for discharging their duty under the regulation. Both the CSSIW and the county council will underline this requirement by first referring any complaint they receive about a regulated service back to the provider for local resolution, unless there are indications that this would not be appropriate.

Where the county council's statutory Complaints Manager first receives the complaint and decides it should be handled through the complaints procedure, they will have a duty to ascertain whether there has been an attempt at local resolution. The CSSIW will do likewise.

Where the Complaints Manager discovers that resolution has been attempted and failed, they will notify the local office of the CSSIW, and discuss the handling of the complaint. The CSSIW will notify the Complaints Manager.

The county council and the CSSIW should then discuss and decide together how they will co-ordinate the handling of the complaint.

The Care Council for Wales

The Care Council for Wales is the regulatory body for those working in the social care sector in Wales. The Head of Service will normally be the officer who notifies the Care Council of any matter which may call into question the suitability of an individual to remain on the register of social care workers.

The Care Council will investigate a matter drawn to its attention following any action by the employer or another body.

The Public Services Ombudsman for Wales

On 1st April 2006, when the Public Services Ombudsman (Wales) Act 2006 came into force, the statutory office of Public Services Ombudsman for Wales was created.

The Ombudsman will be able to:

- consider complaints from members of the public that they have suffered injustice or hardship as a consequence of maladministration or service failure by most public service providers in Wales;
- consider allegations that county council members have breached their council's code of conduct, and;
- question the merits of a decision taken in consequence of the exercise of professional judgement in the field of health and social care.

The Ombudsman will expect anyone who makes a complaint to have referred it to the county council concerned and that they have given that council a reasonable opportunity to investigate and respond to it before sending it to him. This does not prevent the complainant referring the matter to the Ombudsman at any stage if they are dissatisfied with the county council's handling of their complaint.

4. The Social Services Statutory Complaints Procedure for Adults and Children's Services

Making a Complaint

The aim of the county council is to make the process of making a complaint about adults' and children's social care services as simple and straightforward as possible. Booklets have been published which detail the variety of ways in which complaints can be made including:

- direct telephone contact with the Designated Complaints Officer;
- a dedicated email address for Social Care Complaints;
- fax;
- text phone;
- DVD/video or CD/audio recording;
- freepost letter

Help is also available for people who require information in large print and for those who use Braille. If individual service users and or their carers want to make a complaint but have health or well being issues that prevent them from doing so, the Complaints Manager should be approached for advice.

All complaints must be passed to the Complaints Section upon receipt.

Recording Complaints

All complaints must be recorded. It is essential that the date on which the matter was first raised is recorded in order to ensure that the process is managed effectively, and that the council complies with the prescribed timescales for each stage.

Deferring and freezing decisions

If the complaint is about a proposed change to a care plan or a replacement of a service, the county council may need to defer or freeze the decision until the complaint is resolved. The county council will always consider deferring a decision that will have a significant effect on the life of a service user until the complaint has been resolved, taking into account the welfare and safety of the person concerned. The decision will normally be made after detailed discussion between the Complaints Manager and the Line Manager or Head of Service about the assessment. Decisions will be made on a case-by-case basis. There is a general presumption in favour of freezing a decision, unless, there is a good reason for not doing so e.g. if leaving a child or adult where they are would put them at risk; where necessary, the Director of Social Care, Health and Housing should make the final decision.

Advocacy and support

It is recognised that some people will need advice and confidential support in order to make their complaint, to pursue it, to handle the process, and to cope with the outcome.

Where the complainant is a looked after child, a child in need or a care leaver, the Complaints Manager will arrange for the provision of an advocate. The Complaints Manager will provide information about advocacy services and offer help in finding an advocate for both children and adult complainants.

Staff may well need increased support and supervision from their Line Managers to help them play their part in the procedure and to work positively with the person making the complaint.

Approaches to resolution

Resolution is when the complainant and the county council agree on a way forward. Where the complaint is based on a misunderstanding or cannot be proved one way or the other, a clear conclusion should be reached on how matters are to be finalised.

Efforts to resolve matters will include discussion and reconsideration, as well as explanations of decisions made and actions taken. The aim should be to resolve dissatisfaction as near as possible to the point at which it arose. However, attempts at problem solving should not be used to divert someone from taking their complaint to the formal consideration stage of the procedure.

Attempts at resolution should not end because a complaint has moved to formal consideration. At every stage there are a number of methods of resolution. These may include:

- agreeing not to take the matter further
- conciliation and mediation
- explanation
- apology
- action
- remedy
- compensation

Withdrawal of complaint

The complainant can decide at any time not to pursue their complaint further. Where this happens, the Complaints Manager will need to be satisfied that the complaint has not been withdrawn through fear of adverse consequences and should decide if the matter has been satisfactorily concluded. If the Complaints Manager considers there are still issues to be investigated or addressed, these should be followed up through other internal process, for example internal systems for management review.

The Complaints Procedure has three stages:

- Stage 1 - Local Resolution
- Stage Two - Formal Consideration
- Stage Three - The Independent Panel

Detailed overleaf is a flowchart detailing the links between the three stages.

Stage 1 – Local Resolution

Complainant brings concerns to the attention of the person providing the services locally. They must make an initial attempt to resolve matters within 10 working days.



If not resolved – or if the complainant asks for formal consideration



Stage Two – Formal Consideration

The complainant has a right to ask the council for formal consideration of the complaint. This usually involves an investigation, but could take some other form such as mediation. A report with findings, conclusions and recommendations must be produced. The council must respond to the complainant within 25 working days of the request to move to this stage. The complainant will receive both a copy of the Stage 2 Investigation together with a response from the council to that investigation.



If not resolved



Stage Three – The Independent Panel

The complainant has a right to have an unresolved complaint considered by a Panel hearing. Both the panel membership and the administrative arrangements will be independent of the council. The panel must meet within 20 working days and make its report available within 5 working days; the council must respond to the report from the panel within 15 working days.



If not resolved



The complainant may take any outstanding complaint about the actions or decisions of the county council or the independent panel to the Public Services Ombudsmen for Wales. The PSOW may also decide to consider a complaint before the county council's procedure is exhausted.

Local Resolution – Stage 1

Complaints at Stage 1 should be dealt with as quickly as possible and, if at all practicable, within 10 working days. At this stage, staff should attempt to resolve the matter through discussion and negotiation and try to agree a way forward. The Complaints Manager can, if the complainant agrees, arrange for conciliation, mediation or other services to help resolve matters.

On receipt of a complaint, the relevant manager should pass a copy immediately to the Complaints Unit so it can be logged and monitored.

Where a manager receives a complaint at this stage and is aware that it may not be practicable to meet the 10 day timescale then they must notify the Complaints Manager immediately so that an extension may be negotiated with the complainant. This should always be confirmed in writing to the complainant, setting out clearly the agreed time-scale for the extension.

If the matter is resolved at the local resolution stage, the relevant manager must then send a letter to the complainant confirming the agreed resolution, with a copy to the Complaints Unit.

If, after 10 days, the matter has not been resolved to the complainant's satisfaction, the Complaints Manager should remind them that they have a right to a formal investigation if that is what they want.

Formal consideration – Stage 2

Formal consideration usually, but not necessarily, involves some form of investigation. However, where mediation or conciliation were not tried at the local stage, and the complainant is agreeable, these approaches can be used at the second stage. Formal consideration can begin either if the initial discussion has not achieved resolution, or when the complainant states they wish to go straight to this stage from the start, or when the Complaints Manager deems it appropriate.

Once the complainant has decided that they want the council to give their complaint formal consideration, the Complaints Manager must ensure that there is a written record. This should cover the subject of the complaint and the outcome that the complainant would like to see. The complainant and the Complaints Manager must agree on this and the person making the complaint or his/her advocate, should sign the final version to confirm agreement. This can be done by letter or email – or in a meeting, followed by a written record of what was agreed.

Where the complainant has requested formal consideration of the complaint, the county council must investigate the complaint to the extent necessary and in the manner, which appears to the county council to be most appropriate in order to resolve it speedily and efficiently. The Complaints Manager may also ask any person or body to produce information or documents to help with the consideration of the complaint, bearing in mind issues of disclosure and confidentiality.

Where the formal consideration takes the form of an investigation, the Complaints Manager will need to appoint an Investigating Officer (see Appendix 1: The Role of the Independent Investigating Officer). He/she may be employed by the County Council or contracted by it to carry out the investigation and prepare the report.

Whatever the local arrangements, the Investigating Officer must not be in direct line management of the service or person about whom the complaint has been made. Having an independent Investigation Officer does not remove the requirement to appoint an Independent Person for complaints under the Children Act 1989. These are two distinct roles and they are not interchangeable.

The role of the Independent Person under the Children Act 1989

Wherever a representation is to be considered under the Children Act 1989, the Complaints Manager must involve at least one person who is not one of its members or officers; this is the Independent Person. The law requires that he/she must take part in the formal consideration and any discussion about the action the council should take. The Independent Person provides separate oversight of how the council handles the complaint and responds to it. The council has to appoint an independent person only when a complaint is the subject of a formal consideration. Independent Persons need not be involved in the local resolution stage. The person appointed must be independent of the service that is subject to the complaint.

Although it is not a legislative requirement, the Complaints Manager can use his/her discretion in relation to appointing an Independent Person in relation to adult cases.

For more detail on the role of the Independent Person, see Appendix 2.

Timescales for formal consideration

Other than in exceptional cases, the formal consideration must be completed with a written response sent to the complainant within 25 working days. This

time-scale starts when the Complaints Manager receives the request for formal consideration.

The time-scales will be impractical in some cases and both sets of regulations allow for extension in certain situations. These are as follows:

- where there has been difficulty in determining the nature and substance of the complaint;
- where all, or some of, the matters raised are the subject of a concurrent investigation, such as a disciplinary process, or;
- wherever the complainant has agreed a later response.
- where the complaint involves more than one organisation.

Where it is not possible to complete the second stage in 25 days, the Complaints Manager should discuss this with the complainant and reach a shared understanding about how quickly the matter can be resolved. Where an extended timescale has been agreed, the Complaints Manager must confirm the decision in writing to the complainant as soon as possible; this will include the reason for the delay, and the date by which they will receive a response.

The second stage cannot be extended indefinitely. Complainants have a right to ask for a panel hearing if they have not had a response to their complaint after three months.

Managing the Investigation

Whenever there is going to be an investigation, the Investigating Officer will need to plan with the Complaints Officer (and the Independent Person where there is one) how they will carry this out. They will need to ensure that all those concerned in the process understand it. The Complaints Manager will explain to the complainant how the investigation will be conducted. They will send a copy of the complaint to the person who is the subject of the complaint, unless this has already been done or unless notification at this time would prejudice the investigation. The Complaints Manager will keep the complainant informed of progress throughout.

The Investigating Officer should check their record of any interview with anyone who has been interviewed. They must:

- send a copy of the draft record of any interview to the person interviewed,
- invite them to say whether the draft record is accurate,
- consider any comments made by the person who was interviewed, and

- amend the record if need be to make sure that it is accurate. They should note any unresolved disagreements.

Checking interview records in this way should help the Investigating Officer to produce a report that accurately reflects and takes into account the views of everyone involved. This should minimise the risk of the report being challenged and minimise the risk of delaying the final product.

The Report of the Investigation

It is important to remember that reports will serve a range of purposes. They can have a powerful effect on the lives of everyone involved in the complaint. It is normal practice for the report on an investigation to be made available in full to the person who complained. In some cases, the Complaints Manager may decide that it would be helpful to meet the complainant in person to go through the report with them, together with the county council's response. This might involve the provision of reports in large print, Braille, audio-tape, videotape or in the form of a translation.

It should be remembered that those reading the report will have a range of interests:

- people who have complained will want to see evidence of a thorough and fair investigation. They will want a clear and logical conclusion and recommendations for the future;
- staff will be concerned with the outcome and comments on their practice. They will be concerned about the implications of the recommendations for themselves and the organisation;
- managers will be concerned with achieving the right balance between listening to people who use services, and supporting staff who work in them. They will be concerned with individual staff competence and the implications for policy and procedures.

The report, therefore, should meet a number of tests:

- it should include evidence from all the people involved;
- it should be as transparent as possible about the facts in each aspect of the complaint;
- it should be concise and clearly written, avoiding jargon, so that everyone can understand it;
- it should distinguish between fact, feelings and opinion;
- it should make recommendations for resolving the complaint;

- it should make any recommendations for improving the service and making sure that other service users do not have to make the same complaint.

The county council's response

Where any complaint has been formally considered, the person who undertook the work will need to report their findings and make recommendations for action.

On receipt of the Investigating Officer's report, the Head of Service will respond by notifying:

- the complainant or their representative;
- the person who undertook the investigation;
- the Independent Person;
- any advocate.

of the decisions that have been reached; all of this will be in writing. The response should be clear and simple. It should be in the language preferred by the complainant and may need to be in a format such as Braille or audio tape.

The regulations set out the minimum content as follows:

- the response must summarise the complaint;
- it must describe the investigation, or other approaches used;
- it must summarise the conclusions;
- it must explain what action the county council will take to resolve the complaint;
- it must contain, where appropriate, an apology to the complainant;
- it must identify any further action the county council will be taking in the light of the complaint.

The Complaints Manager will inform the complainant of their right to ask for an Independent Panel Hearing if they are still unhappy with the Council's response. The response must describe how such a request can be made and the time-scale within which this must be done.

Some people who have complained may consider that the county council has not given them the full picture in their final response. Some may want to have sight of the completed file on the complaint investigation. The county council will respond to any request of this kind in line with their duties under the Data Protection Act. As part of this process they will need to consider the Data Protection Act rights of their staff.

The Independent Panel – Stage 3

Most complaints are resolved locally. However, in some cases the complainant may not be satisfied, even after a formal investigation. In the situation where a complainant is not satisfied in relation to services provided or purchased by the county council, they will have the right to have their complaint reviewed by an Independent Panel.

There are three situations in which this might arise:

- where, under the procedure in relation to services for adults, a would-be representative has made a complaint, but the county council have refused to consider it (SSCP reg. 8 (5));
- where the county council has not completed its consideration within three months, or
- where, after completion of the consideration, the complainant is dissatisfied.

The panel will be wholly independent of the county council. Panel members will come from lists of people recruited by the National Assembly for Wales.

In addition, all the administrative and financial arrangements for panel hearings are also independent of the county council. These arrangements are the statutory responsibility of the National Assembly for Wales. The Assembly has agreed with the NHS Wales Business Service Centre, a part of Powys Local Health Board that this work will be carried out on the Assembly's behalf by the NHS Independent Review Secretariat.

Requesting a Panel Hearing

When the Complaints Manager writes to tell the complainant about the outcome of the formal consideration stage, they will give the complainant three important pieces of information namely:

- that they have the right to have their complaint reviewed by an Independent Panel;
- that they need to make this request within 20 working days from the date of the letter at the end of the second stage;
- how to contact the Secretariat.

The complainant can ask for an Independent Panel hearing verbally or in writing. The complainant should do so within 20 working days of the county council's response. However, if the request is made after 20 days, someone drawn from

the list of lay persons will consider whether there are reasonable grounds for the delay.

If the complainant makes the request to the county council, the Complaints Manager will inform the Secretariat as quickly as possible. This will usually mean that the request is forwarded to the Secretariat the same day, by email or fax. If the request is made verbally, then the Complaints Manager should produce a written summary of the issues as quickly as possible; a copy of the summary will be sent to the complainant.

Setting up the panel

When the Secretariat gets a request for a panel hearing, it must write to the complainant to acknowledge the request within two working days. The Regulations (SCCP reg.23) place a general duty on Councils to co-operate with the panel. The county council will ensure that they respond promptly to any requests for papers from the Secretariat. When required to do so by the panel, the council will also make available any member of staff who may need to attend the hearing as a party to the complaint.

When the Secretariat receives a complaint that has not been referred locally they may refer the complaint back to the council for local resolution unless they believe there is good reason for not doing so. Where it appears that the council that has been complained against, may not have had a reasonable opportunity to deal with the complaint, the Secretariat will ask a lay member to rule on whether it should be referred back or go forward to the panel.

Appointment of Panel Members

The Secretariat will convene a panel hearing. This will have an Independent Lay Chair and two other independent members. One will have a background in social services and the other will be a lay member. The panel can make enquiries and take any advice if it feels the needs.

The Secretariat will ensure that the Chair and other panel members have no family or business connections with any of the parties and no other links that would call into question their impartiality.

The Purpose of the Panel Hearing

The job of the panel is to 'consider' the complaint. This is likely to involve three main tasks:

- the panel should review the handling of the complaint, the conclusions and recommendations of the investigations and the response of the council in the light of the written statement provided by the complainant.
- it should consider the facts of the case taking into account relevant information and reports from the previous stages of the procedure and any additional material it considers relevant, and the views of all parties to the complaint. These may be obtained verbally, or, if more appropriate, in writing.
- it must set out its findings of matters of fact and conclusions, with appropriate comments and recommendations, in a written report.

The panel will decide if there are any matters in the complainant's statement that they cannot consider and if so they will inform them accordingly. This might include for example, matters that are already subject to disciplinary investigation. The complainant may complain to the Ombudsman about any issues excluded by the panel.

It is not the job of the panel to undertake a fresh investigation of the complaint. However, it may conclude as part of the consideration of the complaint that the original investigation was so poor that it cannot now reach a conclusion. Where this happens, the panel can refer the complaint back to the Council to carry out a new investigation.

In preparation for a panel hearing, their Secretariat will tell all parties to the complaint that if they have any additional information, they should provide this in advance. If new information is produced on the day of the panel, this may not be accepted.

When considering whom to interview, the Chair of the Panel will need to decide if there are policy or procedural issues which may indicate that a more senior member of staff may need to give information to the panel.

The panel cannot compel individual county council officers to appear before a panel hearing. Nor can it compel them to provide information. If members of staff refuse a reasonable request, the panel will record this in its report. It will be normal practice for the panel to recommend to the council, as the employer, that they should refer the member of staff to the Care Council for Wales. It is for the county council to decide whether to take any disciplinary action.

When interviewed by any panel member, the complainant and any individual complained against, have the right to be accompanied by a person of their choosing; it is not the intention that these should have legal representation. If a

legally qualified person attends with any of the parties or witnesses, it will be for the Chair to decide how they can contribute.

The Report of the panel

The panel may, if they feel it appropriate, make their decision and announce it on the day of the hearing.

It is the Chair's responsibility to prepare a brief report on the conclusions and the recommendations of the panel and to make sure it is ready to be issued within five working days. The report will set out the results of the panel's considerations on 'matters of fact', outlining its conclusions on each of the matters raised by the complainant.

Whilst the panel may make recommendations to the council, it has no authority over the organisation or the individual who is the subject of the complaint.

The Secretariat will send the panel's report to:

- the complainant;
- the service user, if this is a different person from the complainant and is competent to receive it;
- the Chief Executive, the Director of Social Services and the Complaints Manager of the council. The Complaints Manager will be responsible for making sure the report goes to any individual complained against;
- the Panel Members

The county council will not share the report with any other person or body. Complainants, however, are not bound by a duty of care and they may show the report to anyone they wish.

The response of the county council

The Director of Social Services must respond to the complainant within 15 working days of receiving the panel's report. Once the county council has sent its response to the complainant, the complaints procedure will have reached its end.

The council's response might include:

- a formal apology;
- an outline of any immediate action the council is taking as a result of the panel's report;

- any time-scales in which the council has agreed to consider other service issues;
- approval of any compensation or ex-gratia payment, and
- a statement of why it has not accepted any conclusion or recommendation of the panel.

Under the regulations, the county council's response must explain the right of the complainant to refer their complaint to the Ombudsman.

The council will copy its response to the Secretariat. The Secretariat will inform the Chair and Panel Members of the response to their report as a way of providing feedback and learning for them.

Learning from complaints

Complaints are a valuable source of feedback that helps the county council to learn and to understand the needs of its services users. The information obtained from complaints should inform service developments through the commissioning process and identify areas where service improvements can be made. However, the county council recognises the challenge it faces in trying to create change from the accumulated learning arising from individual complaints. On a quarterly basis, information on complaints is provided to each Head of Service and a report is submitted to the Scrutiny Committee.

It is the responsibility of all managers whose area of service is the subject of a complaint to ensure that any recommendations that are made as a result of a complaint investigation are undertaken.

Feedback from complainants is routinely sought in order to evaluate the effectiveness of the complaints procedure itself.

5. Additional opportunities to raise concerns

Elected Members

The county council's procedure for dealing with statutory complaints involving adults' and children's social care does not affect the right of an individual to approach their local Member of Parliament, Assembly Member or Local Councillor for advice or assistance. Where that person subsequently contacts the county council, a decision will need to be made by the Director of Social Services regarding the status of that representation.

The Public Service Ombudsman for Wales

The Social Services Representation and Complaints procedure does not affect an individual's right under Part III of the Local Government Act 1974 at any stage of the complaints process, to refer their concerns to the Public Services Ombudsman. The Public Service Ombudsman for Wales will generally investigate a complaint that relates to the county council not having properly followed a policy or procedure, or where there has been maladministration. This can also apply to the representation and complaints policy not having been properly followed in investigating a complaint.

The address of the Public Services Ombudsman for Wales is:

1 Ffordd yr Hen Gae
Pencoed
Bridgend
CF35 5LJ

Judicial Review

In certain circumstances the county council's action can be the subject of a judicial review. There are strict timescales for following judicial review and complainants will need to take their own legal advice in relation to this matter.

Corporate Procedure

The county council as a whole has a complaints policy that broadly follows a similar process as the social services function. However, where a representation is made about a service that relates to social services functions, it will be investigated under the statutory procedure. If a complaint falls outside of the definition of a statutory complaint, it may still be considered under the corporate procedure if appropriate to do so.

Opportunities for staff to raise concerns:

Whistleblowing

The county council is committed to achieving the highest possible standards of service to the people of Carmarthenshire. In line with that commitment, the council encourages employees and others with serious concerns about any aspects of the council's work to come forward and voice these concerns. However, it is recognised that certain cases will have to proceed on a confidential basis. The county council seeks to create a working environment in which staff feels able to participate without fear of reprisals.

A Whistleblowing Policy has been produced in order to encourage staff to raise concerns within the council rather than overlooking a problem or blowing the whistle outside the authority. It has been written in accordance with the Public Interest Disclosure Act and is supported by the recognised trade unions.

As a first step, staff should normally raise concerns with their immediate manager. This depends, however, on the seriousness and sensitivity of the issues involved and who is thought to be involved in the matter. If staffs want to raise the matter with someone else, they should approach the relevant Head of Service or their union representative.

Grievance Procedure

If an employee has a grievance relating to his/her employment, he/she has the right to express it. Any grievance should be resolved as close to the point of origin as is possible.

Disciplinary Procedures

The purpose of the disciplinary rules and procedures is to enable employees to be aware of the general standards of work and behaviour expected of them and the means whereby guidance and instruction may be given and, where necessary, formal disciplinary action may be taken.

When undertaking an investigation under the Social Services Complaints procedure, if a matter comes to light that needs to be considered under the council's disciplinary procedures this will usually have precedence. The complaint investigation may be held in abeyance until the disciplinary matter has been resolved.

Care & Social Services Inspectorate for Wales (CSSIW)

The Care & Social Services Inspectorate for Wales is responsible for registering and inspecting social care services such as:

- care homes for adults
- children's homes
- domiciliary care services
- day care services for children
- residential family centres

A service user (or their representative) receiving any of the above regulated services may exercise their right to directly contact CSSIW to register any concerns they may have in relation to care provided by such services.

Independent Providers

It is expected that agencies providing services on behalf of the Community Care and Children and Young People Divisions under a Service Lead Agreement, will operate their own complaint procedure at least to an equivalent of the first stage of the statutory procedure. Service users who wish to complain should be encouraged to submit a complaint or representation to the agency in the first instance. However, they have the right to refuse this course of action, in which case, the statutory procedure will be instigated. It is expected that independent providers will promote the statutory complaints procedure to service users.

Links to other procedures

The complaint procedure may be suspended or dismissed if there are other procedures or processes which may need to be considered. The following is not an exhaustive list but such procedures may include:

- Protection of Vulnerable Adult procedures
- Child Protection procedures
- Legal or civil procedures
- Disciplinary or Grievance procedures
- Whistleblowing
- Professional abuse procedures

6. Managing Unreasonable Conduct by Complainants

Unreasonable conduct by complainants generally takes five main forms:

- unreasonable persistence
- unreasonable demands
- unreasonable lack of co-operation
- unreasonable arguments
- unreasonable behaviour

It is often not possible to devise a single strategy to deal with such conduct. Each complaint submitted will need to be looked at on its merits. However it is not necessary to undertake detailed and lengthy investigations into matters which

could be regarded as trivial. The amount of time invested in a complaint should be determined by the nature of the complaint.

Further guidance on the process of dealing with unreasonable complaints and complainants' conduct can be obtained by referring to the County Council's document entitled 'Managing Unreasonable Conduct by Complainants' policy (January 2010)

Appendix 1: The Role of the Independent Investigating Officer

- The Independent Investigating Officer (IIO) may be employed by the council, or contracted by it to carry out the investigation and prepare the report.
- The IIO must not be in the direct line management of the service or person about whom the complaint has been made.
- IIOs have a number of key tasks:
 - they need to clarify the nature of the complaint.
 - they need to interview those concerned and find out the facts.
 - they need to find out how the complaint can be resolved.
 - they should prepare a report for the council to consider.
 - they should complete their work within the timescale laid down.
 - they need to do their job in a way that helps both complainant and staff members to move forward and not to get stuck.
 - they need to take account of – and work with – the feelings around the complaint, as well as the facts.
 - they should make sure the people involved feel listened to and understood.
 - they need to make constructive, proportionate and achievable recommendations.
 - they need to be objective and as open as possible about their methods – and about the reasons behind their conclusions.

Appendix 2: The Role of the Independent Person

- Wherever a representation is to be considered under the Children Act 1989, the Complaints Manager must involve at least one person who is not one of its members or officers: this is the Independent Person (IP). The law requires that he/she must take part in the formal consideration and any discussion about the action the Council should take.
- The IP provides separate oversight of how the council handles the complaint and responds to it. The council has to appoint an IP only when a complaint is the subject of a formal consideration. IPs need not be involved in the local resolution stage.
- The person appointed must be independent of the service that is subject to the complaint. The IP must not be related in any way to the person handling the child's case. Nor, where the authority has delegated any of its social services functions to another organisation, must they be a person who is a member of, or employed by, that organisation, nor the spouse of any such person. People who live with those excluded from being IPs should also be excluded.
- The IP has three main tasks:
 - they should take part in the formal consideration to make sure it is fair, unbiased, effective and covers all aspects;
 - they should make sure that everyone involved is able to express their views fully and without any pressure;
 - they should oversee the report and confirm that it provides an accurate and complete picture of the handling of the complaint.
- To do this job, the IP must play a full part in the process. They should discuss with the Complaints Manager and the IIO early on how the tasks will be carried out. It is important to remember the IP is not an advocate for the complainant. Their report should be very brief, simply saying whether the formal consideration has met the tests set above – it should not be confused with the report of the IIO.
- The council will need to make it clear to prospective IPs the nature of the task and the degree of commitment required. To do this, training about the role will be provided. Essential criteria for being an IP will be set out, and a pool of suitable people will be maintained.

- Although it is not a legislative requirement, the Complaints Manager can use his/her discretion in relation to appointing an Independent Person in relation to adult cases.