

Cyngor Bwrdeistref Sirol



# **SOCIAL SERVICES REPRESENTATIONS & COMPLAINTS POLICY**

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# **SOCIAL SERVICES REPRESENTATIONS & COMPLAINTS POLICY**

## **1. Purpose**

To set out the Council's policy aims regarding the management and handling of complaints and representations received about its social services functions and to clarify the responsibilities of staff when dealing with complaints and representations.

## **2. Commitment/Policy Statement**

The Council is committed to ensuring that everyone who makes a complaint about its social services functions is listened to, and have their concerns resolved quickly, effectively and fairly. The Council aims for high standards, but acknowledge that sometimes things go wrong, and we can learn from mistakes made. The lessons learned from complaints, provide vital information that is used to inform future service improvements.

## **3. Legislation/Statutory Basis**

This Policy has been produced in line with the requirements of the Social Services and Wellbeing (Wales) Act 2014 ('the Act') and the Representations Procedure (Wales) Regulations 2014 ('the Regulations').

The Social Services Complaints Procedure (Wales) Regulations 2014 introduced a new procedure which local authorities must follow in the consideration of complaints made to them about the discharge of certain functions under the Children Act 1989 and the Adoption and Children Act 2002.

The Welsh Government Guidance entitled 'A guide to handling complaints and representations in local authority social services' ('the Guidance'), which came into force in August 2014, must be followed by local authorities, unless they can show good reason to depart from it. The Guidelines should therefore be used in conjunction with this Policy.

## **4. Complaint Definition**

For the purposes of this Policy and as set out in the Guidance, a complaint can be defined as:

- an expression of dissatisfaction or concern;
- either written or spoken or made by any other method of communication;
- made by one or more members of the public;
- about a public service provider's action or lack of action; or
- about the standard of service provided.

Complainants have the right to choose to use the Welsh language when they make their complaint. The Council is responsible for ensuring that an 'Active Offer' is made for the complainant to progress their complaint through the medium of Welsh. This should not affect the timescales for provision of the Council's complaint response.

A complaint is **NOT**:

- an initial request for a service;
- a formal review or appeal against a decision or determination, the procedure for which is set out in legislation or regulations;
- a means to seek change to legislation or “properly made” policy decision; or
- a means for lobbying groups/organisations to seek to promote a cause.

Additionally, the following matters are excluded from consideration:

- a complaint which has already been investigated under the current Social Services Complaints Procedure or any previous social services complaints procedure;
- a complaint which is being or has been investigated by the Public Services Ombudsman for Wales;
- a complaint about alleged failure to comply with a request under the Freedom of Information Act 2000; or
- a complaint that is made orally which has already been resolved to the satisfaction of the person who made the complaint, by the end of the following day on which the complaint was made.

## **5. Officer Roles**

**Director:** The Director of Social Services (‘Director’) will have formal oversight of the complaints process and will report annually on the Council’s performance, handling, and investigation of social services complaints.

The Director will appoint a Complaints Manager who will be responsible for day-to-day management of complaints and ensuring compliance with the Social Services Complaints Procedure, associated Acts, Regulations and Guidance.

**Complaints Manager:** The Compliments and Complaints Resolution Manager (‘Complaints Manager’) is responsible for advising complainants, managers and staff regarding the complaints process and will strive to ensure that the Council follows the requirements of the regulations and guidelines. For example, monitoring and ensuring the timescales set out in the regulations and the guidelines are met, whilst also keeping the complainant updated.

The Complaints Manager will be responsible for maintaining a list of approved Independent Investigators and Independent Persons and will identify and commission services as appropriate on a case-by-case basis at Stage 2 (Formal Investigation) of the complaints process. The Complaints Manager will ensure that necessary checks are completed prior to approving individuals for inclusion on the approved list.

**Managers:** As far as practicably possible, Managers should always aim to resolve complaints, at Stage 1 (the local/informal stage) of the complaints process. They are responsible for attempting to de-escalate and resolve complaints to the satisfaction of the complainant. They must contact complainants to clarify and discuss their concerns with them. Managers must investigate concerns, identify corrective actions to resolve

complaints (where necessary) and clearly communicate their findings and decisions to complainants. They must also keep the Complaints Manager updated.

**All Staff:** All staff are responsible for ensuring complaints are not overlooked. Therefore, in those instances where they have been unable to resolve an issue directly themselves, they must ensure they refer the concern(s) immediately to the Compliments and Complaints Resolution Manager, Team Manager or Group Manager (in the absence of the Team Manager).

All staff are responsible for ensuring that service users and/or their families are given information about the complaints process.

Managers and staff are responsible for ensuring that complaints are addressed and resolved in a timely manner and as swiftly as possible. It is hoped that this approach will prevent the majority of complaints from escalating.

Full details of the roles and responsibilities of Council staff, Independent Investigators and Independent Persons can be found in the Guidance via the following link:

<https://gov.wales/sites/default/files/publications/2019-05/a-guide-to-handling-complaints-and-representations-by-local-authority-social-services.pdf>

## **6. Who Can Complain?**

Any member of the public (including a child) can make a complaint if they have received (or were entitled to receive) a service from social services and/or have suffered due to the inappropriate actions of social services.

A representative can make a complaint on behalf of someone where that person is:

- a child (a representative can include the child, their parent, foster carer or someone who has parental responsibility);
- has requested the representative to act;
- lacks capacity within the meaning of the Mental Capacity Act 2005; or
- has died.

The Complaints Manager in consultation with the appropriate Senior Manager will assess whether the representative has sufficient interest in the person's welfare and is a suitable person.

The Complaints Manager will set out in writing the reasons for not accepting a complaint from someone who considers themselves a representative but is not suitable to act in that capacity.

## **7. Advocacy Provision**

Children receiving care and support, looked after children and care leavers have a right to an Independent Advocate when making a complaint. If a child/young person does not have an advocate the Complaints Manager can arrange the appointment of

a suitable independent advocate who will be able to assist and support the child/young person through the complaints process.

The Complaints Manager should inform adult complainants about the availability of advice and assistance which can include advocacy services. An offer of referral to the advocacy service on behalf of the complainant can be made, particularly in those cases whereby it is felt that the individual lacks capacity to self-refer.

## **8. Concurrent Investigations**

The Regulations specify that where matters are subject to concurrent consideration the Council must not consider or further consider a complaint under the Social Services Complaints Procedure if this would prejudice the conduct of certain proceedings or investigations.

Those matters include:

- the complainant indicates in writing that they are taking or intend to start legal proceedings;
- the local authority is considering legal proceedings, for example, care proceedings or Court of Protection proceedings;
- the local authority is taking or proposing to take disciplinary proceedings against a staff member;
- the local authority is aware that a prosecuting authority – for example the police or the Care and Social Services Inspectorate for Wales – is investigating with a view to a criminal prosecution; or
- while there is a danger of compromising any adult or child protection process.

The Complaints Manager will seek clarification from the relevant department on a case-by-case basis in order to determine whether any of the circumstances above apply.

If a case is open under the remit of child protection and/or the child is registered on the Child Protection Register, the Complaints Manager will seek clarification from the Head of Service to determine if a complaints investigation will compromise the child protection process.

The Complaints Manager will then notify the complainant of the Council's consideration in writing and the reason(s) for the decision.

Complainants may re-submit their complaint or representation no later than six months

after the concurrent consideration is discontinued or completed. In most cases the complainant will be aware when a concurrent investigation has been completed. Where appropriate, however, the Council will consider whether to notify a complainant once the concurrent investigation is completed.

The Council is excluded from intervening in matters that are being or have been considered in the courts and/or where the most appropriate recourse is for further consideration by the courts.

## 9. Deferring/Freezing Decisions

There may be occasions when a complainant requests a change to a care plan, placement or service. The outcome of the complaint may therefore have a significant effect on the complainant.

Serious consideration must therefore be given by the Complaints Manager in consultation with the relevant Team Manager/Group Manager to the possibility of deferring/freezing a decision. Decisions must be taken on a case-by-case basis. The needs of the individual and any risks which may occur from deferring or not deferring must be assessed as part of the decision-making process.

A general presumption favouring the freezing of a decision (unless there is good reason not to) should be adopted. Where need be, the Director will make the final decision.

The Complaints Manager will write to the complainant as soon as possible advising of the Council's decision.

## 10. Time Limit for Making Complaints

The Regulations provide that a complaint or representation must be made **no later than 12 months** after:

- the date on which the matter complained about occurred; or
- if later, the date on which the matter complained about came to the complainant's attention.

The Complaints Manager will assess (in consultation with the relevant Team Manager/Group Manager) and be satisfied that the complainant has good reason for not submitting their concern(s) within these timescales. They will also need to be satisfied that it would still be possible to investigate the matter effectively (this may depend upon availability of the staff involved in the case at the time and the availability of historical records held by the Council).

## 11. Informal Resolution

To fulfil the Council's commitment to achieving swift and effective complaint resolutions, Team Managers (or Group Managers) must attempt to contact the complainant with a view to resolving their complaint informally (wherever possible) **by the end of the working day following the day on which the complaint was made**. This requirement will apply (in the main) to those complaints made orally and, in those cases where the issue(s) raised can be easily resolved. Managers must contact the complainant to communicate their findings and decision(s).

A written record of the manager's discussion with the complainant together with their findings and details of the complaint resolution must be made by the manager and forwarded to the Complaints Manager for their records.

**N.B.** In cases where informal resolution **has not been reached by the end of the working day following the day on which the complaint was made**, the complainant will be contacted to request an extension, and in some cases the matter will be escalated by the Complaints Manager to Stage 1 of the formal complaints procedure.

## **12. Two Stage Procedure**

### **Stage 1 – Local Resolution:**

Stage 1 of the complaints process adopts a more formal approach to local complaint resolution .

The Complaints Manager will provide the complainant with a formal written acknowledgement of their complaint **no later than 2 working days after the date of its receipt**.

In an attempt to resolve the complainant's concerns swiftly, Team Managers/Group Managers will be responsible for contacting the complainant to offer to discuss their complaint (face-to-face or over the telephone). This discussion must take place within **10 working days** of the date of the acknowledgement (or from the date the advocate is appointed). **This timescale may only be extended in exceptional circumstances and with the complainant's agreement.** The Complaints Manager will write to the complainant setting out the reason for this and seek the complainant's agreement to the timescale extension.

The Team Manager/Group Manager is responsible for investigating the concern, identifying corrective actions (where necessary) to resolve the complaint. Managers must provide complainants with a formal written response, setting out their findings within **5 working days** of the date on which the complaint was resolved. Their investigation and response should be fair and impartial. A copy of the formal response must be forwarded to the Complaints Manager for their records as soon as possible.

The formal written **complaint response** must:

- clearly set out the issues raised by the complainant;
- include clear findings of fact and details of any corrective actions identified;
- apologies for any shortcomings in services and support should also be included; and
- advice to the complainant of their right to request their complaint be escalated to Stage 2 of the complaints procedure (should they remain dissatisfied).

### **Stage 2 – Formal Investigation**

The Regulations state that Stage 2 of the complaints process requires an independent investigation be undertaken by someone independent of the Council.

Most complaints should be resolved during the early stages of the process, however, a complainant can ask to escalate their complaint to Stage 2 at any point during the process. The Complaints Manager will assist with this.



Complainants that remain dissatisfied with the outcome of their complaint, having received a response during the earlier stages of the process, can request escalation of their complaint for independent investigation. The Complaints Manager and/or advocate will establish with the complainant which concerns they consider **not** to have been resolved and their reason(s) for this.

The Complaints Manager will consider the request (in consultation with the relevant the Group Manager/Head of Service) and will provide advice and support to the complainant to help determine when and if the complaint should move to stage 2. Where it is determined that the request will not move to Stage 2, the Complaints Manager will provide the complainant with written details of the reason(s) for the decision.

The Complaints Manager must advise the complainant of their right to complain to the Public Services Ombudsman for Wales in this communication.

Complainants have the right to ask the Council to consider their complaint at Stage 2 without it having first been considered at Stage 1. The Complaints Manager also has the discretion to take a complaint directly to Stage 2 if it is considered to be inappropriate to be dealt with initially at Stage 1.

The Complaints Manager must write to the complainant as soon as possible confirming acceptance of the Stage 2 request. This communication should include advice regarding the independent investigation process.

The Complaints Manager will contact and commission the services of an appropriate Independent Investigator (and Independent Person where appropriate).

The Complaints and Complaints Resolution Manager, Independent Investigator and Independent Person (where appropriate) will plan how the formal investigation will be carried out. The investigation must allow the complainant to have a meaningful input into the investigation process.

The Formal Investigation must be completed, and a full written response issued to the complainant within **25 working days**. Investigations may exceed this timescale which can be due to the nature and complexities of most complaints which reach the Formal Investigation stage.

The Complaints Manager will provide regular updates to the complainant about progress of the investigation and explain reasons for any delays experienced during the process. The complainant's agreement to any timescale extension must be sought by the Complaints Manager. An indication of when the full written response will be issued should be communicated to the complainant.

The Complaints Manager will keep a record of all delays and seek the approval of the Director to these.

The Complaints Manager will receive the Independent Investigation Report and check to ensure that it:

- is concise, clearly written and understandable;
- is evidence based and distinguishes between fact, feelings and opinions;
- is clear about the facts and findings for each element of complaint;
- details clear conclusions/outcomes;
- offers recommendations to achieve complaint resolution(s) and possible service improvement(s) which could prevent similar complaints being received in the future.

The Council's formal response will be drafted by the Complaints Manager on behalf of the Director. The response must be signed by the Director and must:

- summarise the elements of complaint;
- describe the investigation undertaken;
- describe the findings of the investigation and whether they are accepted by the Council, if not, the reason(s) for this;
- clearly set out whether each complaint has been 'Upheld', 'Partially Upheld' or 'Not Upheld';
- provide an apology as appropriate (usually where a complaint has been 'Upheld' or 'Partially Upheld');
- include explanation of any recommended corrective actions identified by the independent investigator and confirmation that the actions will be implemented by the Council;
- include a copy of the Independent Investigator's Report (unless there is good reason not to include it – in which case the reason(s) must be included in the response);
- include advice about the complainant's right to complain to the Public Services Ombudsman if they remain dissatisfied (relevant contact details must be included); and;
- include an offer for the complainant to discuss the response and Independent Investigation Report (this can be the Complaints Manager and/or Team/Group Manager).

The Complaints Manager must forward the Council's response with a copy of the Independent Investigation Report as soon as possible and **no later than 6 months from the date on which the complaint was received**.

**Action Plan** – The Complaints Manager should develop an Action Plan incorporating the recommended corrective actions. This can be done in consultation with the relevant Team Manager/Group Manager (see Lessons Learned).

### **13. Public Services Ombudsman for Wales**

If the complaint has not been resolved by the end of the Council's complaints process (Stage 2 – Formal Investigation), the Complaints Manager must remind the complainant of their right to complain to the Public Services Ombudsman for Wales.

The Complaints Manager will manage and co-ordinate requests for information and response received from the Public Services Ombudsman.

## **14. Complaint Withdrawal**

Complaints can be withdrawn by the Complainant at any point during the complaints process (orally or in writing). The Complaints Manager will write to the complainant to confirm the complaint withdrawal.

The Complaints Manager will also consult with the relevant Team Manager/Group Manager to assess and decide whether it is necessary to continue to investigate the issues raised.

## **15. Annual Report**

The Complaints Manager must record details of complaints received throughout the year and monitor the Council's performance.

The Complaints Manager will draft the Annual Report on behalf of the Director ensuring the following is included:

- numbers of complaints received and resolved at each stage;
- performance regarding the Council's adherence to timescales;
- details of the nature of complaints and how they were resolved; and
- summary of lessons learned and actions implemented by way of resolution.

Evaluation of the complaints procedure should draw on the views of complainants and their experience of using it. Feedback could be obtained through a variety of methods, for example, questionnaires, telephone contact.

## **16. Lessons Learned**

Team Managers/Group Managers and Heads of Service must ensure that all agreed corrective actions are taken forward and implemented to achieve continuous improvement of services. This applies to all stages of the complaints process and should serve to prevent repeats of similar complaints in the future.

Action Plans should be developed by the Complaints Manager and relevant Team Manager/Group Manager (particularly in respect of more complex complaints at Stage 2).

It is important that Team Managers/Group Managers inform the Complaints Manager when corrective actions have been implemented to allow the Action Plan to be updated.

## **17. Collaborative Working**

**Complaints Involving More than One Local Authority:** The Complaints Manager will liaise with any other local authority involved in a complaint to agree which local authority will take the lead in co-ordinating and managing the complaint. The lead authority will be responsible for keeping the complainant informed and ensuring that a single comprehensive response (as far as is practicable) is provided.

**Complaints Involving other Public Bodies:** The Complaints Manager will liaise with other public bodies involved in a complaint (for example Health) and ensure that a co-ordinated approach is adopted.

The aim is to provide a seamless service for the complainant as far as possible.

### **18. Complaints in line with the Registration of Inspection of Social Care (Wales) Act 2016 (“RISCA”)**

The Complaints Manager should refer complaints to establishments registered under the RISCA to allow the Provider to investigate and respond to the complaint in accordance with their own complaints process.

The Complaints Manager should also make the Contracting & Commissioning Team aware of the details of any complaints received about provider establishments.

The Complaints Manager must request a copy of the provider’s response in those instances whereby the complainant remains dissatisfied and must liaise with the Contracting & Commissioning Team to assess whether the response is sufficient or requires further investigation by the Council (either via the complaints process or by the Contracting & Commissioning Team via their monitoring process).

### **19. Staff Conduct**

Concerns raised about the alleged conduct of staff members will be addressed in accordance with the Council’s internal management procedures. The outcome of any internal investigation must **not** be shared with the complainant due to the duty of confidentiality implied in the employees’ contract of employment and the Data Protection Act 2018.

The Complaints Manager is responsible for ensuring that details of complaints of this nature are referred immediately to the appropriate Team Manager/Group Manager for their consideration.

Team Managers/Group Managers must produce a brief report of their discussion(s) with the staff member and include details of the findings and their decision as to whether any further action is required (or not) together with the reason for the decision.

There will be occasions when complainants also submit their complaint to the Public Services Ombudsman and/or Social Care Wales. The Complaints Manager will therefore need to be confident that Team Managers have addressed the complaint with the member of staff and be able to provide evidence of this to satisfy them that the Council has taken the complaint seriously.

### **20. Training**

To ensure that the complaints process is operated effectively, relevant information and training material should be developed and delivered to Managers and their teams to enable them to be confident when receiving, handling and investigating complaints

(during the early stages of the process). The training material will need to explain the complaints process, timescales etc., and stress the importance of them being accountable for actively attempting to resolve complaints swiftly, effectively and fairly.

Staff should also be trained to enable them to deal with people who are angry or upset.

## **21. Expectations**

**Staff:** All complaints should be taken seriously, therefore, the Council expects all staff to listen to complainants and ensure they treat individuals with dignity and respect at all times.

**Complainants:** The Council will not tolerate any unreasonable demands, behaviour or actions towards its staff. Any unreasonable demands or unacceptable behaviour towards staff will need to be considered in accordance with the Council's Unreasonable Behaviour and / or Vexatious Policy.