



# Cumbria Information, Advice & Support Service

## SEN & Disabilities

Offering impartial information, advice and support to children and young people with special educational needs and or disabilities and their parents & carers.

### Factsheet #25: Making complaints

This factsheet aims to provide an overview of the process of making complaints in relation to:

- Education
- Health
- Social care

It does not intend to replace legal advice and parents and young people should consult with a specialist advisor if they consider that their legal rights are being breached.

Further information on complaints procedures should be set out in the Local Offer.

#### **Complaints about social care:**

Complaints are most commonly made on behalf of a child or young person by their parent, carer or a representative. However, children and young people can make comments and complaints in their own right.

There is separate local authority complaints procedures depending on whether the complaint is made in relation to a child's social services provision or any other matter – for example adult social care.

- **Complaints on behalf of a child or young person** – local authorities have a statutory duty to have a complaints procedure for children's services which involves three stages:
  - o **Stage one – Local Resolution.** Parents, children or young people should start by directly contacting the Manager of the service responsible either verbally, electronically or in writing. The local authority must make a written record of a verbal complaint and must also provide a copy. Complaints should be acknowledged within three working days of receipt and a response should be made within 10 working days of receipt. If it is not possible to give a full response in this time it is possible to extend this timescale by 10 days.
  - o **Stage two – Investigation.** Complaints can be escalated to stage two if stage one has not resolved the matter. This should be requested within 20 working days of receiving the stage one response. This stage involves an

independent investigation, usually by an external investigating officer who will meet with the parent, young person or child to better understand the issues and expected outcomes. They will write a report with their recommendations to the Head of Service who will adjudicate the case. A response at this stage should be made within 25 working days but this may extend to 65 working days. This is because the investigation process at this stage is more formal.

o **Stage three – Review Panel.** Anyone who is not satisfied with the stage two response has the right to request a 'review panel' which must be held within 30 working days of receiving the request. The panel must send their report along with their recommendations to the local authority within 5 working days who then have 15 days to respond.

- **Local authority complaints process for adult social care** – currently, if the complaint is not about children's social care provision, for example, it relates to a decision regarding adult social care, then the law does not prescribe that a local authority must follow a particular process and each local authority will have its own complaints procedure which can be requested in writing. However, the law does require the following:
  - o The timescale for acknowledging a complaint should usually be three working days after the date the complaint is received.
  - o The complainant must be given the opportunity to discuss the matter complained of.
  - o The complaint must be investigated in a manner appropriate to resolve it speedily and efficiently.
  - o Once the complaint has been investigated, the complainant must be sent a response which explains the investigation process, the conclusion reached and any remedial action the local authority proposes to take.
  - o The response must also inform the complainant of their right to refer the matter to the Local Government Ombudsman.
  - o There is a maximum response period of 6 months from the date the complaint was received, which can be extended by agreement.

From 2016 there will be a new system for appealing local authority decisions regarding adult social care made under part 1 of the Care Act 2014.

### **Complaints to the Local Government Ombudsman**

Anyone who feels that their complaint has not been resolved to their satisfaction by the local authority can make a complaint to the Local Government Ombudsman. This must be made within 12 months of the date of the incident or matter being raised as the subject of complaint.

The 12 month time limit may be extended with good reason providing it is still possible to efficiently investigate the complaint.

The local authority must have been given the opportunity to resolve the matter first and their must not be any legal action in process in relation to the complaint. However, the Ombudsman will consider a complaint without the completion of the full complaints procedure if the matter is urgent, there has been unreasonable delay or there has been a complete breakdown of trust.

The Ombudsman can also only investigate complaints resulting in maladministration that has resulted in injustice (e.g. discrimination, unnecessary delay, failure to abide by fair procedure). In addition, the Ombudsman may not investigate a complaint if they consider that there is an alternative remedy, such as a legal challenge by way of judicial review.

The Local Government Ombudsman has a number of powers which include:

- The ombudsmen are allowed access to information held by the local authority.
- The ombudsman can make recommendations to the local authority to put things right – this can include an award of compensation or an apology, or to put in place different policies and practices.

Because complaints can be dealt with in a variety of ways, there is an estimated timescale of three months to a year for a complaint resolution, depending on the complexity of the case.

### **Complaints about health services:**

Complaints to the NHS can be made in relation to all health services which a child or young person receives under an EHC plan.

A complaint may be made to a service provider (for example, the NHS Hospital Trust), where there are concerns about the service provided, or to the CCG, where there is a concern about the way in which a service is commissioned or provided, and this might include concerns about the appropriateness of the services in an EHC plan.

Support in making a complaint about health services can also be provided by NHS Complaints Advocacy Services (each local authority will have details of services in their own local areas).

If a complainant is dissatisfied with the way in which the NHS has dealt with their complaint, they can contact the Parliamentary and Health Service Ombudsman (PHSO).

The PHSO and the Local Government Ombudsman, which covers local authorities, have the same status. The role of the PHSO is to investigate complaints that individuals have been treated unfairly or have received a poor service from government departments and other public organisations in the UK, and the NHS in England.

The PHSO can investigate complaints about the commissioning and provision of healthcare and can conduct joint investigations with the LGO where a complaint includes concerns about the delivery of the health provision in EHC plans. They will normally investigate a complaint only once the NHS organisation has had a chance to resolve the issue first.

The PHSO can also investigate a number of other organisations: Ofsted, the Education Funding Agency, the Skills Funding Agency, and the Department for Education (including its School Complaints Unit and the Secretary of State for Education). The PHSO will generally expect the individual to have completed the organisation's own complaints procedure first.

### **Education:**

The primary method of resolving disputes regarding education provision if dispute resolution has not succeeded will be through the mediation and appeals processes which are outlined in separate factsheets.

However, complaints on educational issues can be made to a number of different organisations who each have different functions as follows:

- **Local authority's complaints procedures:** local authorities must consider complaints made in relation to admissions, exclusions, child protection/allegations of child abuse, school transport and actions of the Governing Body. These complaints proceed in different specified stages if matters are not resolved at each stage.
- **Local Government Ombudsman:** can investigate complaints against local authorities where the complaint has not been resolved by the local authority's own complaints procedure. The LGO does not investigate matters which can be appealed to the Tribunal, such as a decision not to carry out an assessment.
- **Complaints to Ofsted:** Ofsted can consider complaints from parents and others about early years providers and schools, but only where the complaint is about the early years provision or the school as a whole rather than in relation to individual children, and where the parent or other complainant has tried to resolve the complaint through the early years provider's or school's own complaints procedure. This might include where the school is not being well led, or wasting money, or not providing a good enough education.
- **Complaints to the Secretary of State:** complaints can be made to the Secretary of State for Education that either the governing body of a maintained school or a local authority has acted unreasonably or has failed to carry out one of its duties under the Education Acts, including their SEN duties. The Secretary of State can issue directions to remedy the matter, but cannot intervene where there is another remedy available, such as Tribunal.
- **Skills Funding Agency:** can consider complaints in relation to further education colleges although complaints should be made through the **colleges own complaints procedure** in the first instance.

