

Local Government &
Social Care
OMBUDSMAN

**Children's statutory
complaints process**



*Guide for
practitioners*

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Children's statutory complaints process

Introduction

We investigate more than 400 complaints a year about the way councils deliver children's social care services, most involving the children's statutory complaints procedure. We also receive many queries from councils about this procedure.

We have developed this guide to share learning from our investigations about how councils should apply the regulations and statutory guidance and to address the most common questions we receive.

It is not possible to address every scenario councils may face, and they will continue to use their own judgement when assessing the complaints they receive. We hope this guide will result in greater consistency for those who complain about the service they receive from councils.

What is the children's statutory complaints procedure?

Most complaints about children's social care must follow a series of steps set out in law, known as the children's statutory complaints procedure:

- > stage one – local resolution
- > stage two – an investigation with an independent person overseeing it
- > stage three – a review panel with an independent chair

We published a [focus report](#) about the statutory complaints procedure in 2015. The common issues we identified remain the same today:

- > failing to recognise a children's statutory complaint
- > unnecessary delays in the procedure
- > refusing to complete all stages of the procedure
- > choosing the wrong procedure

The advice we offered, still relevant today, was for councils to follow the guidance, reduce delays and look for opportunities to resolve complaints swiftly.



What should be investigated under the statutory procedure?

The statutory guidance, [Getting the best from complaints](#), sets out which of a council's children's social care functions can be considered under the procedure. The guidance should always be read alongside the Children Act 1989, the Adoption and Children Act 2002 and the associated regulations referred to in the guidance itself. Councils should ensure any training delivered to staff who investigate complaints includes familiarising them with the statutory guidance.

The procedure covers complaints about councils' actions under Part 3 and some of Parts 4 and 5 of the Children Act 1989, as well as some adoption and special guardianship services. When deciding if a complaint should be considered under the procedure councils should check which part of the Act the service being complained about falls under. Generally, assessments and services in the following areas should be considered under the procedure:

- > Children in need
- > Looked after children
- > Special Guardianship support
- > Post-adoption support

And the following tend to be exempt:

- > Early Help
- > Child protection including S47 enquiries and conferences
- > Assessments of potential foster carers and adopters
- > Foster carer registration
- > Section 7 and Section 37 court reports

While these may be excluded from the procedure, this should not prevent councils investigating them under other procedures, such as the corporate complaints procedure. We expect councils to assess each complaint on its own merits. We would not criticise a council for deciding to investigate these matters under the statutory complaint procedure.

What should a council do if some of the complaint comes under the statutory complaint procedure and some does not?

Councils are likely to receive complaints where there is an overlap between those areas which are inside and outside the scope of the procedure. The guidance allows councils to use their discretion to consider all parts of a complaint in a single investigation and response. Complainants should not be disadvantaged by any overlap between complaint procedures. Councils should consider which procedure is likely to produce the best result for the complainant and the child or young person. Councils should keep a written record of decisions they make about which procedure to use and explain their reasons.



Do councils need the child or young person's consent to investigate a complaint?

No, not if the person complaining is listed under 'Who may complain?' in the guidance. This includes parents, special guardians, foster carers and adopters. These individuals can make a complaint in their own right and do not need the child's consent to do so. However, the right to complain does not give a complainant a right to access a child's personal data.

The Data Protection Act 2018 says councils can process a person's data if processing is necessary for carrying out its statutory duties. Councils have a statutory duty to investigate complaints made by parents and others. Therefore, while councils may need to be cautious about sharing information about the child with the complainant, there are no restrictions on the person investigating seeing the child's records to respond to a complaint from a qualifying person.

If a council receives a complaint from a person who is not listed under 'Who may complain?' it must consider if that person has sufficient interest in the child's welfare to warrant investigating their complaint. If a council decides the person does not have sufficient interest, it should document the reasons for its decision.

David's story – consent

David complained about a lack of support to enable him to care for his son when he came to live with him. The council accepted the complaint at stage one, but later refused to investigate his complaint at stage two. It said it would not usually investigate complaints at stage two when they were upheld at stage one. The council later agreed to accept the complaint at stage two but said it would need consent from David's son for an investigator to access his files.

We found the council had a legal obligation to investigate David's complaint and it did not need his son's consent to do so.

We recommended the council apologise and pay David a token amount to recognise his time and trouble for complaining. We also recommended the council trained its staff to ensure they followed the statutory complaints procedure in the future.



What should councils do if a case goes to court while a complaint is being investigated?

The guidance allows councils to decide not to investigate a complaint if it would prejudice a concurrent investigation, including court proceedings. However, the guidance also allows a complainant to resubmit their complaint to the council once the concurrent investigation has ended (and for up to one year afterwards). Before deciding to end an investigation already in progress, councils should consider if it is possible to investigate some or all of the complaint without prejudicing any other investigation. Detailed records should be kept of any decision to end an investigation. Councils should tell complainants in writing the reason for the decision to end an investigation and the concurrent investigation at risk of being prejudiced. Councils should also tell complainants about their right to resubmit the complaint.

We can decide not to investigate a complaint because another body, such as the court, is better placed to consider it. There is no such limit placed on councils. Therefore, councils should be open to considering complaints even when there have been court proceedings. Councils can also investigate matters which we do not have jurisdiction to consider. For example, the guidance says councils can investigate reports presented in court (except for section 7 and section 37 reports) under the statutory complaints procedure, which we cannot. If the council investigates and upholds the complaint, it should tell the complainant what it will do about the court action.



Does a complaint have to go to stage two even if it was upheld at stage one?

Yes, if the complainant asks the council to. The decision about progressing to stage two lies with the complainant, not the council. Neither the regulations nor the guidance allow a council to refuse a stage two complaint because the stage one complaint was upheld, or because the council thinks there is no substance to the complaint.

This is also the case for stage three, apart from the limited circumstances outlined later. The guidance says once a complaint has entered stage one, the council must ensure the complaint continues to stages two and three if the complainant wishes.

Savita's story - failure to follow the procedure

Savita complained about the way the council assessed her disabled son and managed his personal budget. The council investigated her complaint at stage one. Despite Savita asking the council four times to carry out a stage two investigation the council failed to do so. Instead it repeatedly put the complaint through stage one. The council said it did not consider the complaint at stage two because it was satisfied Savita's complaint had been answered through previous investigations.

We found the council put unnecessary barriers in the way of Savita progressing her complaint. It failed to recognise the substantive matter in each complaint was the same. It was up to Savita to decide if the complaint had been answered satisfactorily, not the council. By the time Savita complained to us, the council had had over a year to begin a stage two investigation. If the council had followed the procedure, Savita's complaint could have been resolved much sooner. We also found evidence to suggest other people were similarly affected.

We recommended the council apologise and pay Savita £500 to recognise the impact of its delays. The council also agreed to train its staff about the statutory complaints procedure and review all complaints where a decision was made to refuse a stage two investigation or stage three review panel. The council agreed to reopen those cases where the refusal did not comply with the guidance



What if the complainant takes a long time to ask for a stage two investigation?

There is no time limit for a complainant to ask for a complaint to move to stage two. The guidance suggests encouraging complainants to do this within 20 working days to keep the complaint moving forward. We would expect councils to consider if there are good reasons for any delay in seeking a stage two investigation. A council which refuses all requests received after a certain deadline may be at fault for fettering its discretion.

While there is a statutory deadline to ask for a stage three review panel, we would again expect councils to consider the circumstances of each case which may mean a late request is reasonable. With late requests the primary consideration should be: what is the best way of resolving the complaint, rather than avoiding progressing complaints to the next stage.

Councils should ensure any meetings arranged with the complainant after stage one or stage two to discuss their complaint do not unnecessarily delay progressing the complaint to the next stage. The law says councils must act swiftly when handling complaints.

Andrew's story - delay in request for a stage three review panel

The council investigated Andrew's complaint about children's services' involvement with his son at stage one and two of the statutory complaints procedure. Andrew contacted the council some six months later asking for his complaint to be reviewed at stage three. He explained there was a delay in making his request because he had received a lot of information following a request for records held by the council. The council refused to hold a stage three review panel because Andrew's request was late.

We found the council at fault because it had not told Andrew he only had 20 working days to request a stage three review in its final response at stage two.

We recommended the council apologise to him, arrange a review panel and ensure its letters contained information about the deadline for requesting a stage three review.



What if the complainant will not agree a statement of complaint?

If the council is confident it understands what the complaint is, it should tell the complainant it intends to continue with the investigation. It should offer them a final chance to agree the details of the complaint to be investigated.

If the council cannot gather enough information to define the complaint it should write to the complainant explaining it cannot continue unless they can explain what they are unhappy about.

The council should keep detailed records of any decision to proceed with an investigation or to end it. If a council decides to end an investigation, it should signpost the complainant to us.

Councils should be mindful the guidance does not require complainants to send a request for a stage two investigation in a specific format. It is the council's responsibility to record the details of the complaint and the complainant's desired outcomes in writing and agree this with the complainant.

What if it takes a long time to find an independent investigator or to carry out an adjudication?

The whole stage two process, including the adjudication, should be completed 25 working days from the start date. The start date is defined as the date the complainant requests the stage two in writing, or where the complaint was made orally, the date on which the council produces a final written record of the complaint.

The guidance already allows for an extension up to 65 working days where required. Therefore, councils should ensure the process of appointing independent investigators and independent people does not cause unnecessary delay, and that their reports are returned in time to complete the adjudication.

Officers carrying out the adjudication should be aware of the timescales for responding to the complaint.



What if the complainant adds further issues to their complaint at stage two?

The stage two investigation should be proportionate to the issues complained about; it should not review the council's entire involvement with the child or young person. Usually the issues investigated at stage two will be the same as those complained about at stage one.

There may be times where a complainant raises new issues at stage two. Councils need to decide whether it is better to include those issues in the stage two investigation or consider them as a new complaint at stage one. It may sometimes be preferable to consider the new issues at stage two than to have many concurrent investigations into different complaints from the same person.

Councils can ensure they capture all the issues a complainant is unhappy about at stage one by following the best practice in our [Guidance on Effective Complaint Handling](#). Councils should speak to the complainant early to define the complaint. Investing this time at stage one will help to prevent complaints escalating unnecessarily.

Will the Ombudsman look at complaints before councils complete the procedure?

Only in very limited circumstances. The guidance explains the conditions a complaint needs to meet after stage two, to be considered by us instead of continuing to a stage three review panel. These are:

- > Stage two has delivered a robust report, a complete adjudication and all complaints (or all significant complaints) have been upheld; and
- > The council has provided a clear action plan for delivery and agrees to meet most or all the complainant's desired outcomes.

We may exercise discretion to investigate complaints when the complainant comes to us at other stages of the procedure. Our decision statements will explain why the investigator has chosen to exercise discretion.

Contrary to the guidance which suggests a complaints manager can approach us to consider a complaint early, the Local Government Act 1974 prevents us from accepting complaints from councils.

If the council agrees with a complainant that their case meets the criteria for early referral, we recommend the council writes to the complainant confirming the agreement and the reasons. Councils can tell the complainant to contact us and we will accept the referral early if the criteria are met.

If we investigate a complaint and find a council has not followed the statutory complaint procedure, we will usually recommend the council progress the complaint to the next stage. We may recommend a financial remedy for any delay. If the council concedes and agrees to progress the complaint before we complete our investigation, we will uphold the complaint and close the case with a finding of maladministration and injustice.



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Key lessons from Ombudsman investigations

Do

- > Invest time at the outset to decide if a complaint should be considered under the statutory complaints procedure or through an alternative procedure
- > Speak to the complainant at stage one to define their complaint and manage their expectations of what an investigation might achieve
- > Keep the complainant informed of any delays
- > Keep detailed records at each stage of the investigation, including any decision not to use the statutory complaints procedure or not to accept a late request to escalate a complaint
- > Signpost to the Ombudsman once a complaint completes the statutory complaints procedure, or if the council decides not to investigate a complaint

Do not

- > Refuse to investigate a complaint at stage two or three due to a lack of resources or because the council does not think there is merit to the complaint
- > Switch complaint procedures part-way through. If a council accepts a complaint under the statutory complaints procedure it must complete this to the complainant's satisfaction
- > Make an early referral to the Ombudsman if the criteria set out in the guidance have not been met



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