

# Disability Law Service

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representation for disabled people

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## **English Social Services Complaint Procedure**

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All social services authorities are required by law to have a complaint procedure to deal with complaints about community care.

All authorities are required to publish details about their complaint procedures and the person who arranged for you to be assessed (or, if you have one, your care manager) should be able to provide you with this information. In any event local authorities are required to appoint a complaints manager with responsibility for co-ordinating the procedure. Complaints are to be registered as soon as they are made and complainants put in touch with the complaints manager and provided with information about the process and, if necessary, an advocate. If you have any concerns about how your complaint is being dealt with, contact the complaints manager.

The Local Authority Social Services Complaints (England) Regulations 2006 and Department of Health Guidance 'Learning from Complaints Social Services Complaints Procedure for Adults' 2006 prescribe the procedure.

Regulation 4 provides who can make a complaint under the Regulations. It allows a complaint to be made either by the service user (or prospective service user) or, in certain circumstances, by another person on his behalf.

Regulation 5 provides that complaints will not be considered under the Regulations to the extent that they are withdrawn, repeat complaints which have already been investigated, relate to care provided by an establishment or agency registered under the Care Standards Act 2000, relate to legal or disciplinary proceedings, relate to criminal proceedings or proceedings under section 59 of the Care Standards Act 2000, relate to matters over a year old when the complaint was made where such matters cannot be handled effectively or fairly because of the delay, or are unclear, frivolous or vexatious.

Regulation 6 provides for complaints which relate to care provided by an establishment or agency registered under the Care Standards Act 2000 to be referred to the registered person in respect of that establishment or agency where the complainant so wishes.

Regulation 7 requires local authorities to try to resolve complaints informally within 20 working days. Regulations 8 and 9 provide for the formal investigation of a complaint if the complainant does not want it to be investigated informally or if he does not like the outcome of the informal investigation.

Under regulation 10, a local authority which has investigated a complaint under regulation 9 must send a report of its investigation to the complainant and, where it finds the complaint to be well-founded, explain to the complainant what action, if any, it proposes to take.

After the complaint has been formally investigated or the period for such investigation has expired without a report on the outcome of the complaint being made, regulations 11 to 13 enable the complainant to require his case to be referred to a 3-person review panel (which will include at least two members independent of the local authority).

Under regulation 14, where the local authority is found by the review panel not to have dealt with the complaint adequately, the local authority must notify the complainant of what action, if any, it proposes to take and must provide guidance to the complainant as to the powers of a Local Commissioner to investigate a complaint under section 26(1) of the Local Government Act 1974. The review panel's recommendations will not be binding on the local authority – however it would have to provide adequate and intelligible reasons for not following the panel's recommendations. (*R v Avon CC ex p M* (1999) 2 CCLR 185).

Regulation 15 requires the local authority to send any complaint which is sent to it and which relates to an NHS body to the NHS body if the complainant so wishes. Where a complaint which relates to the local authority and the NHS body is so referred to an NHS body the local authority and the NHS body are required to cooperate with a view to providing the complainant with a comprehensive response to both elements of the complaint.

Regulation 16 requires each local authority to appoint a complaints manager to assist it in the coordination of its consideration of complaints under these Regulations. Regulation 17 requires each local authority to assist complainants to comply with the complaints procedure as necessary or to explain where such assistance can be found. Regulation 18 requires local authorities to monitor and report on the discharge of functions under these Regulations.

Regulations 19 to 21 make transitional provisions for complaints made before 1st September 2006. Such complaints are to be dealt with in accordance with the old Complaints Procedure Directions 1990 (the Directions), unless, after 1st September 2006 the complainant makes written representations in accordance with the Directions, or the complainant wishes to have the local authority's consideration of the complaint assessed by a review panel, in which case the provisions of the new Regulations apply.

Often local authorities will threaten that no progress can be made with a person's case (i.e. assessment or care plan preparation) until the complaint is resolved - i.e. the complainant will have to suffer further delays. This is not the case. Do note that just because a complaint has progressed to the formal stage, the local authority is still under a duty to try and resolve the problem (Local Government Ombudsman Complaint No 98/C/3591 against Liverpool (1999)).

Although authorities are supposed to deal with your complaint within fixed time limits under each of the three stages, many authorities exceed these limits. If yours does it is difficult to take any effective action to speed the process up although in exceptional cases an application to the court may be appropriate. You might also like to think about contacting your local government ombudsman (see below).

Some authorities, but by no means all will consider making a payment of compensation in appropriate cases.

### **Local Government Ombudsman**

A Local government ombudsman investigates complaints about councils where the complaint is about 'maladministration' i.e. where there has been a fault in the way a council has or has not done something and that you have suffered injustice as a result.

Before the ombudsman can investigate a complaint s/he normally requires that the council be given the chance to consider the complaint under its own procedures - it will therefore not normally be possible to complain to the ombudsman until after you have exhausted the council's procedure. The ombudsman though may investigate a complaint before the end of the council's procedure, for example if the council has unreasonably delayed in dealing with your complaint.

You must complain to the ombudsman within 12 months of the event you're complaining about occurring.

The ombudsman may take many months to investigate your complaint. Although the ombudsman cannot force the council to accept his findings almost all do. The ombudsman regularly recommends the payment of compensation in cases where maladministration causing injustice is found.

## Legal Disclaimer

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education / informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external web-sites have been carefully selected but are provided without any endorsement of the content of those sites.

For further advice on these matters please contact:

### The Disability Law Service

Telephone: **020 7791 9800**

Minicom: **020 7791 9801**

Fax: **020 7791 9802**

Email: [advice@dls.org.uk](mailto:advice@dls.org.uk)

Or write to us at: 39 – 45 Cavell Street, London E1 2BP



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