
WELSH STATUTORY INSTRUMENTS

2014 No. 1794 (W. 187)

**SOCIAL CARE, WALES
CHILDREN AND YOUNG PERSONS, WALES**

The Social Services Complaints
Procedure (Wales) Regulations 2014

<i>Made</i>	- - - -	<i>7 July 2014</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>9 July 2014</i>
<i>Coming into force</i>	- -	<i>1 August 2014</i>

The Welsh Ministers, in exercise of the powers conferred by sections 114(3), (4) and (5)(b) and (c), 115(1), (2), (4), (5) and (6) and 195(1)(b) of the Health and Social Care (Community Health and Standards) Act 2003⁽¹⁾, make the following Regulations:

PART 1
GENERAL

Title, commencement and application

1.—(1) The title of these Regulations is the Social Services Complaints Procedure (Wales) Regulations 2014 and they come into force on 1 August 2014.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“complainant” (“*achwynnydd*”) means a person making a complaint under regulation 9 and any reference to a complainant includes a reference to his or her representative.

“complaints officer” (“*swyddog cwynion*”) means the person appointed under regulation 5;

(1) [2003 c.43](#). The functions of the National Assembly for Wales under the Health and Social Care (Community Health and Standards) Act 2003 were transferred to and now vest in the Welsh Ministers by virtue of section 162 and paragraph 30 (2) (c) of Schedule 11 to the Government of Wales Act [2006 c.32](#).

“complaints procedure” (“*gweithdrefn gwynion*”) means the arrangements made under regulation 3;

“former complaints procedure” (“*gweithdrefn gwynion flaenorol*”) means the complaints procedure established under the provisions of the Social Services Complaints Procedure (Wales) Regulations 2005⁽²⁾ pursuant to sections 114 and 115 of the Health and Social Care (Community Health and Standards) Act 2003⁽³⁾;

“independent investigator” (“*ymchwilydd annibynnol*”) means a person who is neither a member nor officer of the local authority to which complaints have been made, or the spouse or civil partner of such a member or officer but does include a person with whom the local authority has entered into a contract for services in order to conduct an investigation.

“local authority” (“*awdurdod lleol*”) means a county council or county borough council in Wales;

“staff” (“*staff*”) means any person who is employed by or engaged to provide services to a local authority; and

“working day” (“*diwrnod gwaith*”) means a day except Saturday, Sunday, Christmas Day, Boxing Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽⁴⁾.

PART 2

SETTING UP THE COMPLAINTS PROCEDURE

Duty to establish a complaints procedure

3.—(1) Each local authority must make arrangements in accordance with these Regulations for the handling and consideration of complaints.

(2) The arrangements made in accordance with paragraph (1) must be in writing.

Senior officer responsible for complaints

4. Each local authority must designate a senior officer of the local authority to be responsible for ensuring compliance with the complaints procedure made by the local authority under these Regulations.

Complaints officer

5.—(1) Each local authority must appoint a person, in these Regulations referred to as a complaints officer.

(2) The function of the complaints officer is to manage the procedures for handling and considering complaints.

(3) The function of the complaints officer may be performed by any person authorised by the local authority to act on behalf of the complaints officer.

(4) A complaints officer need not be an employee of the local authority and may be appointed as a complaints officer for more than one local authority.

(2) S.I. 2005/3366 (W.263).

(3) 2003 c.43.

(4) 1971 c.80.

Publicity

6.—(1) Each local authority must ensure that there is effective publicity, in a variety of media, formats and languages, about its complaints procedure.

(2) Each local authority must take all reasonable steps to ensure that information about its complaints procedure is available to service users and their carers, if any.

(3) The information referred to in paragraph (2) must include the name of its complaints officer and an address at which the complaints officer can be contacted.

(4) A copy of the complaints procedure must be given free of charge to any person who requests it, in the format that has been requested.

Form of communication

7.—(1) Any communication which is required by these Regulations to be made to a complainant may be sent to the complainant electronically where the complainant—

- (a) has consented in writing ; and
- (b) has not withdrawn such consent in writing; and
- (c) has provided the local authority with a suitable electronic mail address.

(2) Any requirement in these Regulations for a document to be signed by a person is satisfied, in the case of a document which is sent electronically in accordance with these Regulations, by the individual who is authorised to sign the document typing their name or producing their name using a computer or other electronic means.

Information and training of staff

8. Each local authority must ensure that its staff are informed about and appropriately trained in the operation of the arrangements for the handling and investigation of complaints.

PART 3

NATURE AND SCOPE OF THE COMPLAINTS PROCEDURE

Persons who may make complaints

9.—(1) A complaint may be made by any person—

- (a) (i) in relation to whom the local authority has or had a power or duty to provide, or secure the provision of, a service in exercise of a social service function⁽⁵⁾; and
- (ii) whose need, or possible need for a service has (by whatever means) come to the attention of the local authority; or

- (b) to whom the local authority provides or has failed to provide a service under arrangements made under section 33 of the National Health Service (Wales) Act 2006⁽⁶⁾ in relation to the functions of an NHS body⁽⁷⁾ (within the meaning of that section).

(5) “Social services functions” are defined in section 148 of the Health and Social Care (Community Health and Standards) Act 2003 by reference to the Local Authority Social Services Act 1970 c.42 (see section 1A and Schedule 1).

(6) 2006 c.42. Section 114(3)(c) of the Health and Social Care (Community Health and Standards) Act 2003 makes reference to section 31 of the Health Act 1999 c.8 (“the 1999 Act”). Section 31 of the 1999 Act has been repealed by the National Health Service (Consequential Provisions) Act 2006 c.43 (“the 2006 Act”), see section 6 of Schedule 4. The provision has been re-enacted in section 33 of the National Health Service (Wales) Act 2006. Note the effect of section 4, Schedule 2, paragraph 1 of the 2006 Act which provides for continuity of the law in the case of re-enacted provisions.

(7) For the meaning of NHS body see section 148 of the Health and Social Care (Community Health and Standards) Act 2003.

(2) A complaint may be made by a person (“a representative”) acting on behalf of a person mentioned in paragraph (1) in any case where the person so mentioned—

- (a) is a child; or
- (b) has requested the representative to act; or
- (c) lacks capacity within the meaning of the Mental Capacity Act 2005⁽⁸⁾; or
- (d) has died.

(3) A child means a person under the age of 18.

(4) Any representative making a complaint under paragraph (2) must, in the opinion of the local authority have, or have had, an interest in the person’s welfare and be a suitable person to act as a representative.

(5) If in any case the local authority is of the opinion that any person making the complaint under paragraph (2) does not have sufficient interest in the person’s welfare or is not a suitable person to act as representative, the authority must notify the person in writing, stating the reasons for that opinion.

(6) Where notification is given under paragraph (5) and the person referred to in paragraph (1) in respect of whom the complaint has been made is alive the local authority must, if it considers it appropriate to do so having regard to the understanding of the person referred to in paragraph (1), provide that person with a copy of the notification.

Matters about which complaints may be made

10. Subject to regulation 11, a complaint to a local authority may be made about the exercise of its social services functions including—

- (a) the discharge by a local authority of any of its social services functions or a failure to discharge any of those functions;
- (b) the provision of services by another person or body in accordance with arrangements made by the local authority in the discharge of those functions;
- (c) the provision of services by the local authority in pursuance of arrangements made by that local authority under section 33 of the National Health Service (Wales) Act 2006 in relation to the functions of an NHS body (within the meaning of that section).

Matters excluded from consideration

11.—(1) A complaint must not be dealt with under any procedure established under these Regulations in relation to the exercise of functions that are the subject of the Representations Procedure (Wales) Regulations 2014.

(2) These Regulations do not require arrangements to be made for the investigation of—

- (a) a complaint which is or has been investigated under the former complaints procedure;
- (b) a complaint, the subject matter of which has previously been considered in accordance with arrangements made under these Regulations;
- (c) a complaint which is being or has been investigated by the Public Services Ombudsman for Wales under the Public Service Ombudsman (Wales) Act 2005⁽⁹⁾;
- (d) a complaint arising out of an alleged failure by a local authority to comply with a request for information under the Freedom of Information Act 2000⁽¹⁰⁾;

⁽⁸⁾ 2005 c.9.
⁽⁹⁾ 2005 c.10.
⁽¹⁰⁾ 2000 c.36.

- (e) a complaint which is made orally, either in person, or on the telephone and is resolved to the satisfaction of the person who made the complaint not later than the next working day after the day on which the complaint was made.

Matters subject to concurrent consideration

12.—(1) A local authority must not consider, or further consider, a complaint under these Regulations to the extent that—

- (a) it concerns any matter in relation to which—
 - (i) the complainant has stated, in writing, an intention to take proceedings in any court or tribunal; or
 - (ii) the local authority is taking or proposing to take disciplinary proceedings against any person; or
 - (iii) the local authority is aware that criminal proceedings are pending; or
 - (iv) civil proceedings (including section 31 Children Act 1989(11) proceedings or Court of Protection proceedings) are contemplated, and
- (b) the local authority decides that consideration, or further consideration, of the complaint under these Regulations would prejudice the conduct of the proceedings or investigation falling under this paragraph.

(2) In this regulation, “disciplinary proceedings” means any procedure for disciplining employees adopted by a local authority.

(3) Any proceedings or investigation falling under paragraph (1) is to be referred to as a “concurrent consideration” for the purposes of this regulation.

(4) Where a local authority decides that it will not consider, or further consider a complaint in accordance with paragraph (1), the local authority must give notice in writing to the person making the complaint which explains—

- (a) the reasons for its decision; and
- (b) the relevant concurrent consideration; and
- (c) the ability to resubmit the complaint in accordance with paragraph (5).

(5) Where the concurrent consideration has been discontinued or completed the complainant can resubmit the complaint to the local authority no later than 6 months after the concurrent consideration is discontinued or completed so that regulation 13(1) will not apply.

(6) Any complaint that is resubmitted in accordance with paragraph (4) of this regulation must be considered by the local authority in accordance with regulations 16 to 19.

Time limit for making complaints

13.—(1) Subject to paragraph (2), a complaint must be made no later than 12 months after—

- (a) the date on which the matter which is the subject of the complaint occurred; or
- (b) if later, the date on which the matter which is the subject of the complaint came to the notice of the complainant.

(2) The time limit in paragraph (1) will not apply if the local authority is satisfied that—

- (a) the complainant has good reasons for not making the complaint within that time limit; and
- (b) despite the delay, it is still possible to investigate the complaint effectively and fairly.

Withdrawal of complaints

14.—(1) A complaint may be withdrawn at any time by the person who made the complaint and the withdrawal may be notified—

- (a) in writing; or
- (b) orally, either by telephone or in person.

(2) A local authority must as soon as reasonably practicable write to the person who has withdrawn a complaint orally to confirm the oral withdrawal of a complaint.

(3) Where a complaint has been withdrawn, a local authority may nevertheless continue to investigate any issues raised by a complaint in accordance with Part 4, should the local authority consider that it is necessary to do so.

PART 4

HANDLING AND INVESTIGATION OF COMPLAINTS BY LOCAL AUTHORITIES

Local authority action upon receiving a complaint

15.—(1) A complaint may be made orally or in writing.

(2) A local authority must acknowledge receipt of the complaint not later than 2 working days after the day on which it receives it.

(3) Where a complaint is made orally, the local authority must, at the same time that it acknowledges receipt of the complaint —

- (a) make a formal written record of the complaint; and
- (b) provide a copy of the written record to the complainant.

(4) At the same time that it acknowledges receipt of the complaint the local authority must—

- (a) provide the complainant with details of its complaints procedure;
- (b) offer assistance and guidance to the complainant on following the complaints procedure or advice on where such assistance and guidance may be obtained;
- (c) notify the person making the complaint that they may request that the local authority investigate the complaint in accordance with regulation 17.

Local Resolution

16.—(1) The procedure followed by the local authority in considering complaints under this regulation need not involve an independent investigator.

(2) The local authority must offer to discuss the complaint with the complainant in an attempt to informally resolve the complaint.

(3) Any discussion that takes place in accordance with paragraph (2) must be held within 10 working days of the date upon which the local authority acknowledges receipt of the complaint.

(4) The time limit for any discussion that takes place in accordance with paragraph (2) may, in exceptional circumstances, be extended by agreement between the local authority and the complainant.

(5) Where the local authority resolves the matter to the satisfaction of the complainant then the local authority must provide the complainant with written details of the terms of the resolution within 5 working days of the date upon which the complaint is resolved.

Formal Investigation

17.—(1) Where—

- (a) the complainant has—
 - (i) made a request in accordance with regulation 15(4)(c); or
 - (ii) refused an offer of discussion under regulation 16(2); or
- (b) the complaint has not been resolved to the satisfaction of the complainant following any discussion that has taken place in accordance with regulation 16(2);

the local authority must consider the complaint in accordance with this regulation.

(2) The local authority must compile a formal written record of the complaint and send it to the complainant with an invitation to the complainant to comment on its accuracy.

(3) The local authority must consider any comments made by the complainant under paragraph (2) and in the light of those comments make any amendments to the record that are necessary to ensure it is, in the opinion of the local authority, an accurate record of the complaint.

(4) The local authority must—

- (a) appoint an independent investigator; and
- (b) together with the independent investigator, investigate the complaint in a manner appropriate to resolve it speedily and efficiently; and
- (c) during the investigation, keep the complainant informed, as far as reasonably practicable, as to the progress of the investigation.

Response

18.—(1) The local authority must within 25 working days of the “start date” as defined in paragraph (2) send the complainant a written response which—

- (a) summarises the nature and substance of the complaint;
- (b) describes the investigation undertaken in accordance with regulation 17(4)(b);
- (c) where appropriate, contains an apology;
- (d) identifies what action if any, will be taken in light of the outcome of the investigation;
- (e) contains details of the right to complain to the Public Services Ombudsman for Wales;
- (f) offers the complainant the opportunity to discuss the contents of the response with the complaints officer or a person acting on his or her behalf; and
- (g) is signed by the Director of Social Services or a person acting on his or her behalf.

(2) For the purposes of this regulation, the “start date” means the date on which the local authority produces the final written record of the complaint in accordance with regulation 17(2) or 17(3).

(3) If exceptional circumstances mean that the local authority is not able to send a written response in accordance with the time limit in paragraph (1) then it must advise the complainant of the reasons for the delay and when a response may be expected.

(4) A response sent in accordance with paragraph (3) must be sent to the complainant as soon as reasonably practicable and no later than 6 months beginning on the day upon which the local authority received the complaint.

Complaints involving more than one local authority

19.—(1) In any case where it appears to the complaints officer that a complaint is or may be a complaint which relates to the exercise of functions by more than one local authority the complaints officer must, as soon as reasonably practicable—

- (a) notify the other local authority or local authorities involved and decide with the complaints officer of each of them which local authority will take the lead in handling the complaint; and
 - (b) notify the complainant.
- (2) The complaints officer of a local authority which is the lead local authority must ensure that—
- (a) any part of the complaint relating to the actions of the lead local authority is considered under this Part of the regulations;
 - (b) the complainant is kept informed about the progress of the investigation;
 - (c) the response required under regulations 16(5) or 18(1) so far as reasonably practicable includes a response on any matter which was the responsibility of another local authority mentioned in paragraph (1).
- (3) The complaints officer of a local authority which is not the lead local authority must—
- (a) ensure that any part of the complaint relating to the actions of its local authority is considered under these Regulations; and
 - (b) advise the complaints officer of the lead local authority of any resolution of the complaint under regulations 16(5) or 18(1).

PART 5

LEARNING FROM COMPLAINTS

Monitoring

- 20.** Each local authority must keep a record of—
- (a) each complaint it receives;
 - (b) the outcome of each complaint;
 - (c) whether the local authority has complied with the time limits specified in regulations 16 to 19;

with the intention of monitoring its compliance with these Regulations.

Annual Report

21.—(1) Each local authority must prepare an annual report, which must include details of the records kept in accordance with regulation 20, on its performance in the handling and investigation of complaints for the purposes of—

- (a) monitoring compliance with these Regulations; and
- (b) improving the handling and consideration of complaints.

(2) The first report referred to in paragraph (1) must be compiled within 12 months of the date of the coming into force of these Regulations.

PART 6

REVOCATION, TRANSITIONAL PROVISION AND AMENDMENTS

Transitional provision

22. Where the consideration of a complaint in accordance with the former complaints procedure has not been concluded at the time that these Regulations come into force then it must continue to be considered in accordance with that procedure.

Revocation

23. The Social Services Complaints Procedure (Wales) Regulations 2005⁽¹²⁾ are revoked save to the extent necessary for the purposes of regulation 22.

Amendments

24.—(1) In Schedule 1 paragraph 10 of the Local Authority Adoption Service (Wales) Regulations 2007⁽¹³⁾ for “The Social Services Complaints Procedure (Wales) Regulations 2005” substitute—

“The Social Services Complaints Procedure (Wales) Regulations 2014.”

(2) In regulation 9(1)(b)(iii) of the Social Care Charges (Review of Charging Decisions)(Wales) Regulations 2011⁽¹⁴⁾ for “The Social Services Complaints Procedure (Wales) Regulations 2005” substitute—

“The Social Services Complaints Procedure (Wales) Regulations 2014.”

Gwenda Thomas
Deputy Minister for Children and Social
Services under the authority of the Minister for
Health and Social Services, one of the Welsh
Ministers

7 July 2014

⁽¹²⁾ S.I. 2005/3366 (W.263).

⁽¹³⁾ S.I. 2007/1357 (W 128).

⁽¹⁴⁾ S.I. 2011/964 (W. 138).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Social Services Complaints Procedure (Wales) Regulations 2005 (“the 2005 Regulations”) and introduce a new procedure which makes provision for complaints to local authorities about the exercise of their social services functions, with the exception of certain functions capable of being considered as representations under the Children Act 1989 and under the Adoption and Children Act 2002 which are dealt with in accordance with the Representations Procedure (Wales) Regulations 2014.

The major difference between the procedures established under the 2005 Regulations and those established under these Regulations is the removal of the independent panel stage and the introduction of a two stage process involving local resolution and if this is not achieved, the requirement for an investigation and response.

Part 2 makes provision about the arrangements for the setting up of a complaints procedure. Regulation 3 sets out the duty on the local authority to establish the complaints procedure. Regulation 4 requires the local authority to designate a senior officer to be responsible for ensuring compliance with arrangements made by the local authority. Regulation 5 requires the local authority to appoint a complaints officer to manage the procedures for handling and considering complaints. Regulation 6 imposes an obligation on the local authority to ensure that its complaints procedure is effectively publicised. Regulation 7 provides for electronic communication. Regulation 8 requires the local authority to ensure that its staff are appropriately trained.

Part 3 (regulations 9 to 14) sets out the nature and scope of the complaints procedure including matters that will not be considered by the local authority under its complaints procedure as well as specifying how a local authority must deal with matters that are determined as being subject to concurrent consideration. This Part also sets out the time limits for making a complaint (regulation 13) and the ability of the complainant to withdraw a complaint (regulation 14).

Part 4 (regulations 15 to 19) sets out the procedure for considering complaints. Regulation 15 requires that a complaint must be acknowledged within 2 working days. Regulation 16 requires that the complainant must be offered a discussion in an attempt to informally resolve the complaint. That discussion must take place within 10 working days of the date upon which the local authority acknowledges receipt of the complaint. If the complaint is made orally then the complaint must be committed to writing and sent to the complainant. If informal resolution of the complaint is achieved then the local authority must write to the complainant with details of the terms of such resolution. The 10 day time limit may be extended in exceptional circumstances by agreement between the local authority and the complainant.

Regulations 17 and 18 prescribe the second formal stage of the process that involves the local authority investigating the complaint together with an independent investigator. This stage will apply if the complainant refuses an offer of a discussion; if the complainant elects to have the complaint dealt with under this procedure; or if the complaint has not been resolved to the satisfaction of the complainant at the local resolution stage. Regulation 18 requires the local authority to send a written response which must be signed by the Director of Social Services to the complainant within 25 working days of the production of a final written record of the complaint. Regulation 19 sets out the procedure in the event that a complaint concerns the actions of more than one local authority.

Part 5 sets out the duty upon local authorities to monitor the arrangements they have made with a view to ensuring that they comply with these Regulations and makes provision for an annual report to be prepared.

Part 6 contains provision for revocation, transitional arrangements and amendments.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Social Services Strategy and Improvement Division, Department for Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.