

Guidance to Local Authorities on Complaints Handling



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Introduction

1. This guidance is issued under s.31 of the Public Services Ombudsman (Wales) Act (“the Act”) which empowers the Ombudsman to issue guidance to listed authorities about good administrative practice. It has been developed in partnership with the Welsh Local Government Association, Citizens Advice Cymru, and SOLACE Wales.
2. The guidance covers local authorities’ own complaints handling systems and the way in which they relate to the citizen’s right to complain to the Ombudsman.

Why good complaints handling matters

3. A good complaints handling system is a vital part of ensuring that customers receive the service to which they are entitled. It helps to avoid discrimination and inequity in public service delivery. Effective monitoring of complaints may act as a valuable source of feedback to an authority, highlighting aspects of service delivery which fall below the standard the authority aims to achieve. Complaints handling which is prompt, efficient and responsive will greatly enhance the authority’s image with its customers and may turn critics into admirers. Conversely, complaints handling which is long-winded, inefficient or defensive will damage the authority’s reputation with its customers. It is also likely to lead to complaints to the Ombudsman.

The elements of a good complaints handling system

4. Complaints handling systems should be developed to suit authorities’ own particular circumstances. However, there are certain elements that should be common to all. A good complaints process:
 - is comprehensive, covering all of the services provided by or on behalf of the authority
 - is clearly defined, with procedures which are easy to understand and straightforward to use
 - is quick but sufficiently thorough
 - is fair and objective
 - is sensitive to the special needs and circumstances of the complainant
 - ensures effective communication with the customer
 - is decisive and capable of putting things right where necessary
 - is effectively managed and regularly analysed to spot patterns of complaint and lessons for service improvement

These key points are discussed in more detail below.

A comprehensive complaints system

5. It is clearly desirable to have a comprehensive complaints system which covers complaints about all of the authority's services (with the exception of those covered by (a) the statutory social services complaints procedure (which is dealt with at paragraphs 35-36 below) and (b) by local arrangements for complaints handling within schools between school governing bodies and local education authorities). This maximises the effectiveness of the complaints system and in particular makes it easier to deal with complaints which concern more than one service area.
6. Complaints may relate to the actions of a contractor or commissioned agency working on behalf of the authority, rather than to the actions of the council's own staff. Specifications in contracts should refer to the handling of such complaints, and ensure that the authority has adequate monitoring information, and that arrangements are suitably integrated with the council's complaints system.
7. Some complaints may relate to the actions of a 'partnership' between the authority and another organisation. There can be significant confusion for complainants if complaints are not handled appropriately. 'Partnership' documents should specify clearly how complaints are to be handled, and where the responsibility for putting matters right will lie in the event of a justified complaint. The system for looking into complaints under a partnership arrangement should be just as good as the authority's own system.
8. The complaints system also needs to be comprehensive in the sense that it ensures through guidance and staff training that everything which it defines as being a complaint is in practice recognised as such by members of the authority's staff - even if the complaint has been made informally - and properly dealt with in accordance with the authority's approved procedure. It is clearly for each authority to decide upon the appropriate level of training for its staff, however, it is suggested that basic information on complaints handling should be included in the induction programme of all employees. Similarly, it is also important that councillors should understand how the complaints system works and have confidence that it can deal satisfactorily with their constituents' concerns.

A clearly defined, straightforward complaints procedure

9. The first essential is to define what the authority understands by a "complaint" which it will deal with under its complaints procedure and to do so consistently across the authority. Recognising that it is generally appropriate to treat an expression of dissatisfaction about a service, however made, as a complaint is fundamental to good complaints handling. An initial request for a service to be provided is not a complaint. Nor are representations about the merits of the authority's major policy decisions (e.g. the level at which the council tax is set) or about decisions in respect of which the person has a formal right of appeal (e.g. planning appeals) or a request for an explanation of a decision. However an expression of concern that an expected service has not been delivered or that a service provided has been below standard in some way should be recognised and recorded as a complaint even if the customer has not said expressly that they wish to complain.

10. Authorities should incorporate a clear definition of what they regard as a complaint in their complaints procedure. A suggested definition is:

“A complaint is an expression of dissatisfaction by one or more members of the public about the council’s action or lack of action or about the standard of a service, whether the action was taken or the service provided by the council itself or by a person or body acting on behalf of the council.”

11. Authorities may also wish to explain in their policy what will not be regarded as a complaint. Suggested wording that councils may wish to include is:

“Complaints in respect of this procedure do not include requests for services (e.g. reporting a broken street lamp or a damaged pavement.)

Such matters only become complaints when they have been reported and the Council, having given assurances to resolve the situation, fails to do so.

Likewise complaints to the Council about third parties (e.g. about noisy neighbours), do not constitute a complaint for the purposes of this policy, unless the matter has been reported to the Council and the Council failed to respond effectively.”

12. Authorities may wish to explain too that since it can be difficult to look into things that happened a long time ago, it is necessary to establish a time limit for considering a complaint. Councils may, therefore, wish to state in their policy that they will normally expect complainants to bring their complaint to them within 6 months of becoming aware of the problem. They should, however, be prepared to be flexible when there are exceptional circumstances.
13. It should also be explained that complaints about the conduct of councillors cannot be handled through the corporate complaints system. Complaints about councillors’ conduct should always be reported to the monitoring officer in the first instance, who will then advise the complainant about making a complaint to the Public Services Ombudsman for Wales.
14. Reference should also be made within complaints procedures to alternative avenues of complaint resolution. Where there is a right of appeal to, or review by, a Minister at the Welsh Assembly (for example in respect of a planning application), or a tribunal, or within the council, it is reasonable to expect the complainant to use those ways to challenge the Council’s decision rather than by making complaint via the corporate complaints system. Similarly, if the complainant could go to court to seek a remedy and if it would be reasonable to expect the complainant to do that, the complaint would probably not be suitable for the complaints system. However, the council should consider any aspect of the complaint which was not, or could not be, dealt with in alternative proceedings.

15. The authority also needs to define clearly both for the public and for its councillors and staff what the processes are for recording and dealing with a complaint; what the complainant can do if dissatisfied with the outcome at any stage; and define roles and responsibilities for staff.

Dealing with complaints quickly

16. It is the interests of the complainant and the authority alike that routine complaints should be dealt with quickly and with a minimum of formality. Most complaints about the authority's services are likely to be received in the first instance by frontline staff who should in most cases be able to resolve them effectively. However it is vital that informal complaint resolution by frontline staff should take place, and be recorded, as an integral part of the authority's complaints handling system rather than outside it. Frontline staff should not be left to attempt complaint resolution unaided, but should be given training and guidance on their role in the authority's complaints handling process. They should be encouraged to find out at the outset what the customer thinks should be done to set matters right, and empowered with an appropriate level of authority to settle most routine complaints. They should be clear about the limits of their authority and know whom to turn to when a complaint is too serious for them to attempt to resolve, or when there is a need to engage a more formal stage of the process because attempted informal resolution has failed to satisfy the customer.
17. Long-winded complaints procedures are frustrating to complainants and are also costly to the authority. Later stages in a multi-stage complaints process may in any event be redundant in practice if the complainant can short-cut them by complaining to the Ombudsman. The Act provides that the Ombudsman may investigate a complaint:

“if he is satisfied:

- (a) that the matter has been brought to the attention of the listed authority ...and
- (b) the authority has been given a reasonable opportunity to investigate and respond to it.”

In the Ombudsman's view this test will have been met at the latest, once the Authority has made a formal response to the complaint. The Ombudsman also has discretion under the Act to investigate even where this test is not met, if there are particular circumstances which make it reasonable to do so.

18. Bearing all this in mind, it is recommended that an authority's complaints handling system should comprise either two or three stages:

Stage 1: attempted resolution by frontline staff.

Stage 2 (optional): a more senior member of staff – possibly the head of the relevant service department or an independent manager from another department - reconsiders the complaint and tells the complainant in writing what the outcome is.

Stage 3: the complaint is considered by someone independent of the service department acting on behalf of the authority corporately. Some authorities may wish to provide for the involvement of councillors in this stage of the process.

Where an authority opts to have a two stage system it is stage 2 above which should be omitted. Where it opts to have a three stage process, it should be careful to advise the complainant at the outcome of stage 2 of their right to complain immediately to the Ombudsman if dissatisfied, as an alternative to proceeding to stage 3 (still having the right to complain to the Ombudsman if dissatisfied with the stage 3 outcome). Irrespective of whether the authority has opted for a two or three stage system, its procedure should make clear that stage 1 can and should be skipped if the complaint is a serious one.

19. Stage 1 is an opportunity for an informal and reasonably quick resolution of a complaint. Sometimes it is the officer responsible for the original action or decision who is able to resolve the complaint. But at the more formal stage or stages it becomes important to separate roles, and the complaint should always be considered by someone who did not have any involvement in the action or decision complained of.
20. Authorities should set timescales for each stage of the complaints procedure; these should be published and all complainants should be informed of them. It is recommended that the timescales that councils set for the corporate complaints procedure should not be any longer than those laid down in the social services statutory complaints procedure. Some complaints necessarily take longer to deal with than others. Councils should ensure that if the time target cannot be met, the complainant will be told why.
21. Complaints which allege poor performance or inappropriate behaviour by employees of the authority may raise the issue of disciplinary action against the individuals concerned, even if the complainant has not specifically requested that such action be taken. Consideration of the merits of the complaint against the authority needs to be kept separate from any disciplinary issues and should not normally wait upon or be seen as prejudicing, nor be prejudiced by, the outcome of any disciplinary proceedings which the authority may decide to institute.

Good investigative practice

22. Useful advice on good investigative practice is set out in the document 'Running a Complaints System' published by the Commission for Local Administration in England, which can be found on their website: www.lgo.org.uk. Councils are encouraged to adopt and follow this.

Setting performance indicators in respect of complaints

23. The need for time targets in complaints handling has already been discussed. Some authorities set performance indicators in relation to the absolute number of complaints received by service area, i.e. the fewer complaints the better. This is **not** recommended – it creates a perverse incentive for complaints not to be recorded, or for customers to be actively discouraged from making a complaint. A low level of complaints received does not in any event necessarily mean that a good service is being delivered – it could be that customers have learnt through bitter experience that complaining doesn't get you anywhere! So a better performance indicator would be the proportion of complaints received which were resolved to the customer's satisfaction.

Considering complaints fairly and objectively

24. A good complaints system will make it clear that complaints will be dealt with impartially, objectively and professionally; and that citizens need have no fear that there might be adverse treatment of themselves or their families because they have made a complaint.
25. It is also necessary to ensure so far as possible that the system is seen to be impartial by complainants, particularly when a complaint is not upheld. Authorities should seek to ensure through guidance and training that the attitude of staff towards customers who complain is helpful and receptive, not adversarial or defensive.
26. It can be difficult for members of staff to retain objectivity in considering a complaint by a complainant who is rude, aggressive or threatening, or contacts them at unreasonably frequent intervals. Authorities may wish to adopt a suitable policy for dealing with unacceptable actions by complainants while continuing to assess their complaint on its merits. A possible model is the Ombudsman's own policy which can be found on the website: www.ombudsman-wales.org.uk

Being sensitive to the complainant's needs

27. Authorities should recognise that some people need help to make a complaint and to pursue it. The authority's system should be able to respond to any special needs complainants may have, enabling complaints to be made either directly by the people concerned or by someone acting on their behalf. Authorities should however always check that the person aggrieved has indeed authorised the person making the complaint on their behalf to do so, and is content for relevant personal information to be shared with them; or alternatively that the person putting forward the complaint has the appropriate authority to act without the express consent of the person aggrieved (e.g. parental responsibility).

28. Consideration should be given to putting people in touch with a suitable agency which can provide advocacy, or providing appropriate help from the council itself. It is important that no-one should be excluded from the complaints system because of any difficulties they may have in representing themselves. Some people may feel that they need help because they find the subject about which they are complaining complicated and difficult. Groups who may particularly need help include people with certain disabilities; children and young people; and some people from ethnic minorities who have difficulty in communicating in English or Welsh. Authorities should also recognise that sometimes people may have a significant difficulty which may not be immediately apparent (for example, limited ability to read and/or write).

Ensuring effective communication with the customer

29. Effective communication is a two way process which involves listening as well as telling.

Authorities should:

- be clear with customers about their service standards and individual levels of entitlement
- tell customers about the right to complain to the authority and to the Ombudsman in any publicity material about the authority's services
- provide clear guidance about how to make a complaint and how the complaint will be dealt with;
- enables citizens to complain in writing, by e-mail, over the phone or in person
- be alert to any expression of customer dissatisfaction however made and treat it as a complaint wherever appropriate
- give the complainant clear contact details;
- enable complaints to be dealt with confidentially, as far as possible
- keep the complainant informed of progress on the complaint
- seek from the outset the complainant's view of what should be done to put matters right
- give complainants clear explanations when a complaint is not upheld
- inform complainants about their right to go to the Ombudsman when responding to a complaint
- seek to capture a complainant's feedback on the way that their complaint has been handled. This should form part of a quality assurance framework to ensure that the authority's complaints procedure is working.

A decisive complaints system, which can put things right if necessary

30. There is little point in having a complaints system if the person dealing with the complaint does not have the authority to say if things have gone wrong and to try to put them right. That includes making an apology on behalf of the authority and offering appropriate redress, including but not limited to financial redress. So the complaints system needs to define what authority staff have, and what they should do if they think they have not got enough authority to deal with the complaint.

A system which is effectively managed and monitored

31. Complaints systems do not run themselves. Someone is needed who can give guidance to staff and see that staff are doing what they are supposed to do. And complaints need to be analysed to see whether there are patterns and useful lessons to be learned. There needs to be a corporate capacity to oversee the system.

The officer with lead responsibility for the complaints system needs the status and authority to be able to:

- set standards for the system
- ensure the system is well understood and properly implemented by staff at all levels within the Council
- challenge staff who are not complying with the system
- get improvements made; and
- say if the system is not adequately resourced.

This role could be taken by a senior officer, with easy access to the Chief Executive. It could be taken by the monitoring officer, or even by the Chief Executive personally. In any event the Chief Executive needs to give leadership in ensuring that councillors and leading officers support and value the complaints handling system, and that it is adequately resourced.

32. A Council must ensure it has effective systems for logging and monitoring complaints. Otherwise it will miss the opportunity for learning where and how its services may be in need of improvement. Councillors and leading officers should receive regular reports through some formal process of reporting (e.g. to the Cabinet/Council Board and/or a Standards Committee). Reports should analyse complaints by, for example, number, subject and outcome. Trends can be identified together with lessons of general importance. The action that councillors and leading officers take on these reports will have an important influence on the way staff and the public regard the complaints system.
33. No matter how well the complaints system is written, councillors and staff need training in how the system works. Staff need to be encouraged to say if they are having difficulties and need to know to whom they can go if they need help. And the training needs to be refreshed at regular intervals.

At what stage is the Ombudsman likely to become involved?

34. Under s.33 of the Act, Councils now have a duty to inform members of the public about their right to make a complaint to the Ombudsman. In particular, they have a duty to do so in responding to any complaint made to the authority. The possible stages at which the Ombudsman is likely to become involved, if an authority has adopted a complaints procedure based on the preceding guidance, are set out in the table below. However, it should be borne in mind that the Ombudsman does have a discretion to accept a complaint at any time if it appears reasonable to him to do so in the particular circumstances.

<i>Stage reached in authority's complaints procedure when complaint made to Ombudsman</i>	<i>Ombudsman's likely involvement</i>
Complainant has not raised matter with authority at all	Ombudsman will not accept complaint save in exceptional circumstances
Complainant has raised matter with authority but it has not been recognised and dealt with as a complaint	Ombudsman likely to intervene, especially if matter appears serious
Authority still dealing with complaint at stage 1	Ombudsman unlikely to intervene unless authority apparently dealing inappropriately with serious complaint or taking too long
Complainant not satisfied with authority's response at stage 1	Ombudsman likely to refer most complaints back to authority for consideration under a formal stage of its procedure if stage 1 has been dealt with properly and promptly
Authority still dealing with complaint at first formal stage of its procedure	Ombudsman unlikely to intervene unless authority apparently dealing inappropriately with complaint or taking too long
Complainant not satisfied with outcome at any formal stage	Ombudsman will normally accept complaint for consideration (not necessarily leading to an investigation)

Complaints about Social Services

35. There is a statutory complaints procedure for Social Services which is laid down in primary legislation and in The Representations Procedure (Children) (Wales) Regulations 2005 and The Social Services Complaints Procedure (Wales) Regulations 2005. The Regulations are accompanied by guidance entitled "Listening and Learning" issued by the Welsh Assembly Government in December 2005

Some of the general guidance given in preceding paragraphs (e.g. that on effective communication) is equally relevant to complaints about Social Services and authorities may wish to take account of it as complementing “Listening and Learning”. The statutory procedure has three stages –

- Stage 1: Local Resolution
- Stage 2: Formal Consideration
- Stage 3: The Independent Panel

36. The duty upon Councils to inform members of the public about their right to make a complaint to the Ombudsman, in particular in responding to any complaint made to the authority, applies equally to complaints about Social Services. Unless there are particular circumstances which make it reasonable to do so, the Ombudsman will not normally look into a complaint about Social Services until the complainant has been through Stage 1 and Stage 2 of the statutory complaints procedure provided that there is no undue delay and the complaint appears to be being handled satisfactorily in line with the procedure. If the complainant remains dissatisfied after Stage 2 the Ombudsman will be prepared to consider the complaint. It follows that complainants should be advised of their right to go to the Ombudsman if they are dissatisfied with the way in which their complaint is being handled. On completion of Stage 2 of the statutory procedure, authorities should be careful to advise complainants that they have the option of taking their complaint to Stage 3: the Independent Panel (with the right to go to the Ombudsman thereafter) or of taking their complaint direct to the Ombudsman.

**Public Services Ombudsman for Wales
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