

31

Challenging decisions and making complaints

References

- CA:** *Children Act 1989*
CARP(E)R: *The Children Act 1989 Representations Procedure (England) Regulations 2006*
GTBFC: *Getting the best from complaints – DfES statutory guidance 2006*
LASSC(E)R: *Local Authority Social Services Complaints (England) Regulations 2006*
HRA: *Human Rights Act 1998*
LGA: *Local Government Act 1974*
LFC: *Learning from complaints – DoH statutory guidance 2006*

Introduction

This advice sheet sets out what you can do if you do not agree with a decision made by a local authority or if you want to make a complaint. It applies to the **complaints processes in England only**. All the legal references are listed in the narrow column on the right

What can I do if I am not satisfied with a decision of a local authority?

If you are not satisfied with a decision made by a local authority or you want to make a complaint, there are a number of steps that you can take depending on the circumstances of your case. You can:

1. Make a formal complaint to the local authority;
2. Ask your local councillor and/or MP to intervene on your behalf;
3. Ask the Local Government Ombudsman to investigate your case (You can only do this if you have already made a formal complaint to the local authority and the matter has not been resolved satisfactorily);
4. Contact the Department for Education and Skills or the Secretary of State;
5. Apply to the court under the Human Rights Act 1998 (or exceptionally to the European Court) if there has been a

- breach of your human rights; and/or
6. Apply to the court for judicial review of the local authority's decision.

How do I make a formal complaint to the local authority?

If you do not agree with a local authority decision or want to make a complaint the first step you should usually take is to make a formal complaint to the local authority. Every local authority must have a formal procedure for making complaints, but the procedures are different for complaints made about children's services and those made about adult services.

The procedure for a local authority to deal with complaints about children's services is set out in the Children Act 1989 Representations Procedure (England) Regulations 2006 ('CARP(E)R').

S26(3) CA

For adult services (or any other social services function not dealt with under the children's services procedures) the relevant regulations are the Local Authority Social Services Complaints (England) Regulations 2006.

The local authority must publish information about their complaints procedure and appoint a Complaints Manager to handle all complaints.

The aim of the complaints procedure is to put right bad decisions rather than to offer financial compensation. This means that the local authority does not have to pay compensation if your complaint is upheld, although some local authorities will do so.

Children's Services: Who can make a complaint?

S26(3) CA

A complaint can be made by:

- ❑ a child who is 'in need'- see advice sheet 4 for more information.
- ❑ a child who is 'looked after' either because s/he is 'in care' (under a court order) or 'in accommodation' (with the agreement of the parents/carers) or is leaving care
- ❑ a child who is subject to a Special Guardian order

s17 CA

s22 CA

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- ❑ the child's parent, Special Guardian, or any other person with parental responsibility s26(3C) CA
- ❑ any person who has applied for Special Guardian support services
- ❑ a local authority foster carer
- ❑ a child who is or may be adopted, their parents, natural parents, guardians or a person wishing to adopt a child s26(3B) CA
- ❑ anyone else who the local authority considers has a 'sufficient interest' in the child's welfare.

What can I complain about?

The law that sets out what local authorities must do when they become involved in the lives of children and their families is called the Children Act 1989. You can make a complaint about any of the decisions, services, or lack of services, provided by the local authority under their powers to support children and families. Complaints can be about a wide range of problems and can include things like:

Part III CA

- ❑ services to support families of children 'in need' who are living at home,
- ❑ the arrangements for looking after a child whilst s/he is in care or accommodation, or after s/he has left the care system,
- ❑ the arrangements about contact, return home, or review meetings,
- ❑ the way you or others were treated,
- ❑ delays in making decisions or providing services
- ❑ when you do not agree with a local authority decision.

You can also complain about local authority actions and decisions in respect of care and supervision orders, such as

*Part IV & V CA
CARP(E)R 3*

- ❑ problems with supervisors
- ❑ parental contact
- ❑ local authority actions and decisions in respect of emergency protection orders.

Generally complaints about local child protection procedures should be made to the Local Safeguarding Children Board (LSCB), not the Complaints Manager (see section below). But complaints about the conduct of Children's Services in the child protection process can be dealt with under Children's Services the complaints procedure (see below).

*CARP(E)R reg 4
GTBFC 2.3, 2.4*

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You can also complain about local authority actions and decisions in respect of adoption and adoption support services and Special Guardianship support services.

The local authority does not have to deal with your complaint if it would affect another investigation, such as a court case, which is already under way. However, the authority must write to you and tell you the reason for their decision. Once the other investigation has finished you can make a complaint to the local authority as long as it is not more than a year after the end of the other investigation.

CARP(E)R Reg 8

Is there a time limit for making a complaint?

CARP(E) R, Reg 9

Yes. Local authorities do not have to consider complaints more than a year after the action or decision you want to complain about. However, the local authority should consider your complaint if it is more than a year late if there is a good reason, for example, a child was not able to make a complaint earlier or the outcome of the complaint is still important. If the local authority decides that your complaint has been made too late you can complain to the Local Government Ombudsman.

What happens when I make a complaint?

There are three stages in the handling of your complaint:

- Stage 1 – This is the informal problem-solving stage
- Stage 2 – This is the formal investigation stage
- Stage 3 – This is the Review Panel stage.

Local authorities must deal with all complaints as quickly as possible and should follow set time limits. You can make your complaint verbally or in writing.

When the local authority receives a complaint from you, they must provide you with

- details of their complaints procedure
- how to contact the Complaints Manager
- information about advocacy services

CARP(E)R reg 11

GTBFC 3.2.3

And offer you

- assistance on following the representations procedure
- if you are a child or young person, help and advice in obtaining an advocate

CARP(E)R reg 11(b)(ii)

Note: A child or young person who wishes to make a complaint about the way they are being looked after by the local authority or leaving care services has **the right** to an advocate to help them with their complaint.

CA 26A, 24D

Stage 1 – the informal problem-solving stage

You can send your complaint as a letter, an email (a written complaint) or you can tell someone what your complaint is (i.e.: a verbal complaint).

CARP(E)R reg 14

At the first stage of the complaints procedure your complaint will be referred back to the social worker or his/her manager to see if the matter can be discussed and solved immediately. Your complaint should be resolved by the local authority within 10 working days, but this time limit may be extended by the local authority for 10 more working days in a complex case.

If your complaint is resolved to your satisfaction at this stage, the local authority must provide you with written details of the terms of the resolution (how your complaint has been dealt with).

CARP(E)R Reg 15

If it is not possible to come to a satisfactory solution, you can ask to move on to stage 2.

Stage 2 - The formal investigation stage:

Stage 2 will start when you ask to move on to the formal investigation stage. If you made a verbal complaint, the local authority must write down what you say and send you a copy for you to check or change. They must also send you a written explanation of their complaints procedure.

CARP(E)R reg 16

If you are not one of the people listed on page 3 as having an automatic right to complain, the local authority will decide whether they regard you as having 'sufficient interest' in the child's welfare before processing your complaint. You therefore need to explain when you make your complaint why you think you have 'sufficient interest'.

At stage 2 the local authority must appoint an Investigating Officer to carry out a full investigation of your complaint and must appoint an Independent Person to look at your complaint with them. The Independent Person must not be a worker or member

GTBFC 3.6.4

CARP(E)R Reg 17(2)

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of the local authority or married to a worker or member of the authority.

The Investigating Officer should carry out a full investigation and write a report for an Adjudicating Officer, a senior manager who will make a final decision about your complaint. The investigation should be completed and a response sent to you within 25 working days.

CARP(E)R Reg 17(3)

If the local authority are unable to complete their investigation within 25 working days (5 weeks), they must write to you and tell you why. They must also give you a new date by which they will have completed their investigation. This must be no more than 65 working days (13 weeks) from the start of the stage 2 process.

CARP(E)R Reg 17(6)

The local authority must write to you to tell you the outcome of your complaint, any decisions the authority has made and any action to be taken. You are entitled to have a full copy of the investigation report and any report from the Independent Person. The letter must tell you that if you do not agree with the local authority's view you can have your complaint passed to a panel of people who will consider it.

GTBFC 3.8.6

CARP(E)R Reg 17(8)

You must tell the local authority if you want your complaint to be considered by a panel within 20 working days (4 weeks) from the date you receive the letter.

CARP(E)R Reg 18

Stage 3 - The Review Panel stage:

If you tell the local authority that you want a panel meeting, they must arrange for it to take place within 30 working days.

CARP(E)R Reg 19(4)

The panel must include three independent people who are not members or officers of the local authority or the spouse or civil partner of a member or officer of the authority. The independent person involved at stage 2 cannot be a member of the Review Panel.

CARP(E)R Reg 19(2),(3)

GTBFC 3.13

You must be notified of the date and location of the panel meeting at least 10 days before the meeting. You should also be sent copies of all the reports and other papers that the panel will see.

GTBFC 3.14.2

You can attend the panel meeting and can be accompanied or represented by anyone you choose. The local authority will be

CARP(E)R Reg 19(6)

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there too.

GTBFC 3.10.3

The panel should consider what you and the local authority have already written and also what is said during the meeting by you, the local authority and the independent person involved at stage 2. You will have an opportunity to ask questions during the meeting.

CARP(E)R Reg 19(5)

GTBFC 3.16.7

The panel hearing should be conducted in an open and fair way. This includes taking account of special communication or mobility needs. The panel must take account of the Human Rights Act 1998.

GTBFC 3.11.2

The panel must make a written report with their recommendations. The panel must send the report to you, the local authority and the independent person within 5 working days of the panel meeting. The panel recommendations can include suggestions of ways that the local authority may deal with your complaint, such as particular action or compensation.

CARP(E)R Reg 20(2)

GTBFC 3.12.2

After the panel meeting:

The local authority must consider the panel's recommendations very carefully and must have good reasons if they decide not to follow the recommendations made. The local authority must write to you with its response within 15 days of receiving the panel's report.

CARP(E)R Reg 20(3)

If the local authority seems to ignore the recommendations made by the panel, you might have grounds to complain to the Local Government Ombudsman or apply for judicial review in the High Court (see below).

CARP(E)R Reg 20(3)

How do I complain about local child protection procedures?

Complaints about local child protection procedures are dealt with under the complaints process for adult services. The process is very similar to that set out above, but some of the time limits are different.

Complaints about the child protection conference can be made to the chair of the conference, who should pass it on to the local authority, or directly to the local authority. It could be about things

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like:

- ❑ the way the conference was conducted,
- ❑ the fact that the child was made the subject of a child protection plan or the category under which this was done, and/or
- ❑ the fact that the child was not made the subject of a child protection plan or that the plan was ended.

However, if you have a complaint about the conduct of a particular agency involved in the child protection procedure (such as a health professional or the school) you should approach that agency directly and follow their complaints procedure.

How must a complaint about the child protection conference be dealt with?

The complaint is dealt with in three stages, just like the process set out above in relation to children's services:

- ❑ At **stage 1, the informal stage**, the local authority must consider the complaint and respond to you within 20 working days (4 weeks). The complaint must be made not more than a year after the event complained of. *LASSC(E)R Reg 7*
- ❑ If the complaint is not resolved to your satisfaction at this stage, you can go on to **stage 2, the formal investigation stage**. You have to make a request that your complaint be formally investigated; either when you are notified of the resolution of your informal complaint, or after the 20 working days has expired. *LASSC(E)R Reg 5(2)*
- ❑ When you make a complaint at stage 2, the local authority has to put your complaint in writing and ask you for any comments or amendments, just like the stage 2 process set out above. *LASSC(E)R Reg 8*
- ❑ The local authority must appoint an investigating officer to investigate your complaint and must also tell you what is happening with your complaint after 25 working days. The adjudicating officer must send you a report of the outcome of their investigation within 65 working days. *LASSC(E)R reg 9*
- ❑ You should be given a copy of the investigating officers *LASSC(E)R reg 10*

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report, any report from an independent person and the decision of the adjudicating officer.

LFC 3.9.5

- ❑ If you are not happy with the way the local authority proposes to deal with your complaint in the report, you can request that the complaint goes to **stage 3, the review panel**. This request must be made within 20 working days of you receiving the report.
- ❑ The panel must meet within 30 working days of your request. The purpose of the panel is to decide whether the local authority investigation dealt adequately with your complaint. They should notify you of their decision within 5 working days of the panel meeting. If the panel thinks that the local authority had not dealt adequately with your complaint, the local authority must then notify you of what action it proposes to now take.

LASSC(E)R reg 11

*LASSC(E)R reg 12,
13, 14*

If you are still not happy with the outcome, you can consider going to the Local Government Ombudsman (see below).

How do I ask my local councillor or MP to intervene?

- ❑ You can write to your local councillor and/or MP and ask them to make enquiries on your behalf to children's services.
- ❑ Your letter should explain what your complaint is about and what you have done so far.
- ❑ You should normally have followed the local authority's complaints procedure first, but you could still ask your local councillor or MP to intervene whilst your complaint is being dealt with through the complaints procedure.

Details of your local councillor or MP can be obtained by telephoning your local authority, by visiting your local authority's website, or at your local library. You can also find out their names from: www.upmystreet.co.uk.

Who is the Local Government Ombudsman?

The Local Government Ombudsman is an independent person appointed by Parliament to investigate complaints of injustice against the local authority. The Ombudsman does not take sides when investigating a complaint.

S23 LGA

When can I make a complaint to the Ombudsman?

Before asking the Ombudsman to investigate the matter you must first have followed the local authority complaints procedure. It is only if this has not provided a satisfactory result that the matter can be referred to the Ombudsman.

S26(5) LGA

A complaint to the Ombudsman should normally be made within 12 months of the event that you are complaining about. The Ombudsman can extend this time limit if s/he thinks it would be fair to do so.

S26(4) LGA

What can I complain about?

The Ombudsman deals with complaints of injustice as a result of the local authority's bias, neglect, inattention, delay and incompetence. This means that the local authority has done something wrong or has failed to do something that it should have done.

The Ombudsman cannot question whether a local authority decision or action is right or wrong simply because you disagree with the decision.

The Ombudsman cannot deal with complaints about court proceedings.

What are the advantages of referring the matter to the Ombudsman?

The Ombudsman has access to all relevant files and records held by the local authority and s/he has the power to compel the production of documents and the attendance of witnesses.

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Following the investigation, the Ombudsman will prepare a report that will be sent to you and to the local authority.

If the local authority does not act on the Ombudsman's recommendations s/he may publish a further report and a statement that must be published in the local press.

Asking the Local Government Ombudsman to investigate a matter is free of charge.

The Ombudsman can make a recommendation that the local authority should pay you compensation if your complaint is upheld.

Where can I get further information about the Ombudsman?

If you need more advice or help on how to make a complaint to the Local Government Ombudsman you should telephone their Adviceline on Lo-call 0845 602 1983 or look up their website on www.lgo.org.uk. A leaflet on how to make a complaint is available at <http://www.lgo.org.uk/pdf/howcompouncil.pdf> This is available in a number of ethnic minority languages.

How do I contact the Department for Children Schools and Families or the Secretary of State?

You can write to the Department for Children Schools and Families or to the Secretary of State for Children Schools and Families. His/her details can be found at your local library or at <http://www.dfes.gov.uk/communicate/contactus/>

Your letter should explain what your complaint is about and what steps you have taken so far.

If the Secretary of State thinks that the local authority has not done something that it should have done without a reasonable excuse (for example, refusing to make an assessment or failing to provide services when they have the resources to do so) s/he can tell the local authority to do something or s/he can hold an inquiry. But **note:** if the Secretary of State uses this power, it may prevent you from taking action in the courts.

S84(1) CA

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How do I apply to the court under the Human Rights Act 1998?

Any decision made by a local authority and/or a court must take account of a person's rights under the European Convention of Human Rights. The rights which are most relevant to decisions about children are:

s6 HRA

Article 6: the right to a fair trial in relation to decisions which affect a person's civil rights; and

Article 8: the right to respect for privacy and family life. Article 8 is not an absolute right. The State may interfere with family life provided that it is "necessary in a democratic society for the protection of health or morals, or the protection of the rights and freedoms of others", and that the interference is "proportionate" in the circumstances of the case.

s. 7 HRA

Re L (Care: Assessment: Fair Trial) [2002] EWHC 1379; Re: C (A Child) [2007] EWCA Civ 2; Re: J (Care: assessment: fair trial)[2006] 2 FCR 107

The rights apply to children and to adults. You can apply to a court for an injunction to stop a breach of your human rights and/or ask for compensation. There have been several recent court decisions which have established that, in order to comply with the Human Rights Act, the decision-making procedures in the courts and local authorities must be fair and must involve the parents.

You can find a solicitor local to you by visiting www.lawsociety.org.uk or the Community Legal Services Directory www.clsdirect.org.uk.

If you think that a local authority decision has breached your human rights, you should take advice from a solicitor.

What is judicial review?

Judicial review is a process where the High Court can look at whether the local authority's actions and decisions are legal and valid. It is not an appeal process, as the High Court does not swap its decision for the decision made by the local authority, but it does have the power to tell the local authority to make a new decision or act lawfully (see below).

When can I apply for judicial review of a local authority decision?

Complaints must normally be made within 3 months of the event that you want to complain about. However, an application for

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judicial review will normally only be considered after you have followed the local authority complaints procedure and referred the matter to the Ombudsman. As the local authority complaints procedure and Ombudsman investigations often take longer than 3 months, you may need to contact the local authority and get them to guarantee in writing that they will not challenge your application for judicial review being made late if the complaints procedure and/or Ombudsman investigation do not provide a satisfactory result.

What can I complain about in a judicial review?

The types of case that may be appropriate for judicial review are where:

- ❑ the local authority is in breach of its statutory duty, which means that it has done something illegal or has not done something that the law requires it to do,
- ❑ the local authority decision was based on a misunderstanding of the law,
- ❑ the local authority decision was unreasonable or irrational, and/or
- ❑ the local authority has failed to follow the correct procedures or applied the procedures unfairly

Note: If your complaint is about the placement of a child who is subject to care proceedings, the proper course of action is for you to challenge the care plan within the care proceedings and not to proceed by way of judicial review. You should also discuss your concerns with the Independent Reviewing Officer allocated to your child's case.

For further information about the role of the IRO see FRG advice sheet on making plans for looked after children.

Can the High Court change the local authority's decision in judicial review proceedings?

Before the final hearing takes place, the court may grant an injunction to make the local authority do something (such as providing a service) or to stop the local authority doing something. They will then review the position at the final hearing.

At the final hearing, the court may make an order to:

- ❑ reverse the local authority decision,

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- ❑ prevent the local authority doing something it should not do; or
- ❑ make the local authority do something it should have done.

The court may also order the local authority to pay compensation. However, you should note that in some cases, even if the judicial review is successful and the court believes that the local authority acted wrongly, it may still refuse to grant the order that you are seeking if there is delay in your application or the order would not have any practical effect.

You can find a solicitor local to you by visiting www.solicitors-online.com or the Community Legal Services Directory www.clsdirect.org.uk.

Judicial review is a complicated area of the law and can be very expensive. You should consult a solicitor specialising in this area of the law.

Useful tips

It can be very difficult to make a complaint. Many people are afraid that it might be used against them or their child, or they don't trust the local authority to investigate their own workers properly. Don't let this stop you trying to get things right for your child and yourself. The Complaints Manager and other managers should understand that you might be worried and should be doing their utmost to be fair.

- ❑ Before making a complaint it may help you to obtain the relevant sections of the local authority file. You have a right to see information held by the local authority on you.
- ❑ If you feel that the Independent Person is not truly independent get advice about whether you should press for someone else to look at your complaint.
- ❑ Try and cover everything in one letter, rather than having to make several complaints. Keep your letter as clear and as brief as you can and, if possible, say what legal requirements the local authority has broken and what you would like the local authority to do to put things right.
- ❑ Keep a copy of your complaint and a note of the date you sent it in case you need them later.
- ❑ Try and get someone such as a friend or an advocate to accompany you or represent you at each stage of the procedure, including any informal meetings. Children and

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young people are entitled to independent, confidential advocacy support.

- ❑ Don't be put off making a complaint because there is a court case going on. For example, there is nothing in the law to stop you making a complaint about contact arrangements at the same time that you are waiting for a court hearing about contact.
- ❑ When your case is over, if you feel your experience could help other people you may want to consider approaching the local authority and putting yourself forward as an independent person to be involved in dealing with other people's complaints.

Where can I get further help?

Family Rights Group

The Print House
18 Ashwin Street
London E8 3DL

020 7923 2628

Advice Line on Freephone 0808 801 0366

Monday-Friday 10-3:30pm

<http://www.frg.org.uk>

National Association of Citizen's Advice Bureaux

115 Pentonville Road

London N1

020 7833 2181

www.nacab.org.uk

Can give details of your local CAB. Your local CAB can provide details of local groups that could help.

The Local Government Ombudsman

10th Floor

Millbank Tower

Millbank

London SW1P 4QP

Tel: 020 7217 4620

Fax: 020 7217 4621

Adviceline: 0845 602 1983

Website: www.lgo.org.uk

Will investigate complaints about local authorities

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Law Centres Federation

293-299 Kentish Town Road

London NW5 2TJ

020 74288 4400

www.lawcentres.org.uk

Can give details of local law centres

The Law Society

113 Chancery Lane,

London WC2A 1PL

020 7242 1222

www.lawsociety.org.uk

email: <mailto:contact@lawsociety.org.uk>

Can give details of solicitors firms on Children Panel & Family Panel

Parentline Plus

520 Highgate Studios

53-79 Highgate Road

London NW5 1TL

0808 800 2222 helpline

0800 783 6783 text phone

The Grandparents' Association

Moot House

The Stow

Harlow

Essex

CM20 3AG

0845 434 9585 helpline

01279 428040 admin line

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