

SOCIAL SERVICES PROVISIONS FOR CHILDREN...

A justifiable complaint?

With the formation of Children's Services Departments within local authorities consequent on the Children Act 2004, questions might reasonably be asked whether the complaints procedures of social services and local education authorities respectively should be harmonised. Meanwhile, there is little doubt that the 2006 overhaul of the previous (1991) social services complaints procedures was, of itself, a "good thing". The Children Act 1989 Representations Procedure (England) Regulations have provided a generally reasoned and well-developed framework in a number of key areas, including realistic timescales for the bringing and investigating of complaints, and to ensure objective and ultimately independent scrutiny of more serious complaint issues.

It can be anticipated that the statutory obligation to not only retain but to promote a complaints 'unit' will throw up broadly common approaches to complaints management, with any differences being more apparent on the fringe of that obligation, such as in the seniority and compliment of personnel administering the complaints service. That said, anecdotally at least, the process and mechanics by which local authorities structure and deliver their social services complaints function would appear to be somewhat arbitrary, especially in, though not limited to, the quality of response when a complaint has ultimately been upheld.

The Regulations are to a large extent - with one critical exception - non-negotiable. Good practice suggests that they should be interpreted as follows¹:

1 1 1 At Stage 1, staff at the point of service delivery – including the Independent Reviewing Officer where appropriate – and the child or young person should discuss and attempt to address the complaint as quickly as possible. They should discuss the issue and exchange information and thinking behind decisions and try to agree a way forward.

1 1 2 Regulation 14(1) places a 10 working day time limit for this part of the process. Most Stage 1 complaints should ideally be concluded within this time limit.

1 1 3 Where the local authority cannot provide a complete response it can implement a further 10 days' extension (regulation 14(5)). If necessary, the local authority may also suspend Stage 1 until an advocate has been appointed (regulation 14(3)). The maximum amount of time that Stage 1 should take is 20 working days. After this deadline the complainant can request consideration at Stage 2 if he so wishes.

1 1 4 The Complaints Manager should inform the complainant that he has the right to move on to Stage 2 if the time scale has elapsed for Stage 1 and the complainant has not received an outcome. It may be that the complainant is happy to put this off for the time being (for example, if the reason that resolution is delayed due to a key person being off sick or on leave), so this period can be extended with the complainant's agreement or request.

When the Joseph Rowntree Foundation investigated² the workings of the previous complaints régime, it was reported that, amongst other shortcomings:

- there were problems in the way that complaints (were) handled in the early informal stages of the procedure
- there was considerable criticism from the complainants about formal investigations, particularly where they were carried out by managers too 'close' to the service being questioned
- there was widespread dissatisfaction with the outcome of complaints

Personal experience of many complex and disputed situations which currently give cause for a complaint to be raised with the authority suggests that the one critical element of the Regulations is already giving rise to prejudice, and the 'sanitising' of serious issues. The 1991 Directions were, in fact, never explicit about one key aspect of complaints, namely the entitlement of the complainant to enter the procedure directly at Stage 2, that is the formal stage of investigation. However, the Guidance accompanying them made explicit the *right* of complainants to enter the process directly at this second stage. Indeed, in my independent social work and, equally, in my legal practice, it was often my advice that entering the process at a 'formal' level was especially sensible where, for example, the complaint involved a serious shortfall in local authority resources, or in a different scenario a worker had conducted an assessment which clearly breached statutory guidelines and/or, (often more importantly for the client) fundamentally misunderstood or wrongly characterised the "problem" exhibited by the child. Whatever the particular concern, it was usually accepted by the local authority, either routinely or under threat of further action, that the complainant had the *right* to a formal investigation.

It is clearly important to understand the key reasons for such an approach in order to illustrate why the new Regulations are - perhaps unwittingly - misconceived.

First, it is important to acknowledge that complaints are made in all shapes and sizes, and for a host of differing reasons. For the avoidance of doubt, I am not here challenging the right of the local authority to deal informally with what might be regarded as minor, or in the scale of things, inconsequential complaints. The vast majority of complaints are, of course, legitimate expressions of concern, and are entitled to proper consideration. That of itself does not, however, equate to each of them being serious, complex and possibly urgent to varying degrees. I would suggest that a parent concerned by a worker's persistent lateness, or by a failure in administration - such as to effectively invite participants to (say) a multi-agency meeting to discuss urgent needs - would be examples of (at least initially) 'informal' or Stage 1 complaints.

Second, there clearly are sound reasons why a complainant would wish to utilise the complaints process in any reasonable way if so doing would effect a satisfactory remedy. Historically, the Commissioner for Local Administration (Local Government Ombudsman) has required matters to be dealt with by the authority first, and only subsequently within the Commission. Since the Ombudsman (LGO) provides, in generally terms, the 'next port of call' following the exhaustion of local complaint remedies, it has always been important to handle matters in accordance with established and fair protocols. A reminder of that obligation was forcefully handed down by the High Court in *Cowl*³. Following that

judgment, most if not all local authorities sought to deflect applications in judicial review on the grounds that the complainant had not previously exhausted local remedies, and that litigation was therefore premature and capable of being struck out. Indeed, the force of the judgment was demonstrated by it threatening parties considered by the Court to be litigating “too early” with the possibility of a Costs Order against them. In short, complainants had better make sure they follow the ‘rules’ and allow whatever local system may be in place to run its course.

That said, at least the complaint could, under the previous regime, be commenced at Stage 2, the formal stage, enabling the bringing together - in complaints by or on behalf of children - of both an Investigating Officer (often but not always from within the authority) and an Independent Person (always from without the authority). Why was this strategy potentially important? The following provide some pointers:

- Stage 1 involves the very people about whom you are complaining. Surely, it may be said, an individual with a genuine grievance, or worse, against an individual officer is entitled to take their complaint to someone with at least a modicum of independence or autonomy?
- The involvement of the ‘local’ service in managing a complaint against it provided an opportunity to rectify fundamental errors of procedure or policy without reference either to the complainant or the wider department.
- ‘local resolution’ may be synonymous with ‘protraction’ or ‘prevarication’. Some complainants known to me have seen Stage 1 in terms of a ‘cover up’.
- many parents of dependent, often very disabled children spend much time trying to secure a positive relationship with anyone in the local authority willing to offer help. In the event of that relationship failing, the situation is often seen as very entrenched, and frequently extremely serious. The concept of ‘local’ or ‘informal resolution’ sits uneasily in such territory.
- some complainants literally do not have the time to expend on a protracted and often inconsequential local investigation. They need expertise and clarity where none exists; they often feel the need for an advocate to help them fight their cause, and regard the Investigating Officer ‘route’ as the appropriate one upon which to rely. Speed may be of the essence, especially where services are insufficient and family structures and resilience are crumbling.

Many local authorities point to the perceived success of Stage One complaints by highlighting the fact that many of these do not proceed to Stage Two. The *inference*, but it is nothing more than that, is that the complainant is satisfied with the outcome. In fact, the Simons research (op cit) specifically confronts that view by reporting that...“*(there was) evidence on the part of some authorities...for example, many simply assumed that if individuals did not pursue a complaint to the next stage, they were satisfied that their complaint had been resolved*”.

I would suggest that the better construct for assessing the ‘worth’ of complaints would be analyse the outcomes of those complaints brought at Stage 2, for example, in terms of the proportion of complaints upheld when (or if) brought before the Panel at Stage 3 of the process. What appears to be unarguable is that many parents utilising local authority complaints procedures *at any level* find the process arduous, often complex, frequently

bemusing, and often a 'waste of time and energy', especially when these elements are in such short supply in terms of the essential parenting tasks which continue regardless.

So why are the new regulations problematic? The answer is found full-square in Regulation 14:

Local resolution - consideration

14. (1) Where a local authority have received representations from a complainant then unless the complainant and the local authority agree that the representations should not be considered in accordance with this regulation, the local authority must consider and try to resolve the representations as soon as is reasonably practicable and in any event within 10 working days of the start date

Re-phrased, it now expressly requires the complainant and the local authority *to agree* that informal Stage 1 investigation is inappropriate for the complaint to be dealt with at Stage 2 from the outset. Whilst there will no-doubt be examples of such agreements, I myself have not thus far in my practice discovered one. In all instances, the authority, which by this regulations holds the absolute discretion to agree or refuse direct access to Stage 2, has not only insisted on 'local resolution' but has, alarmingly, commenced Stage 1 investigations without even consulting with the complainant who has expressly requested formal consideration.

Given the above, it is neither surprising nor unexpected that the Guidance is somewhat muted on the point:

1 1 5 The expectation is that the majority of complaints should be considered (and resolved) at Stage 1. However, if the local authority or the complainant believes that it would not be appropriate to consider the complaint at Stage 1, they should discuss this together. Where both parties agree, the complaint can move directly to Stage 2.

It is in my submission a difficult time for complainants. Despite the progress of professional ethics in the field of human services, many anomalies exist when it comes to 'putting our own house in order'. For many parents, even the LGO represents, in practice, something of a 'long-shot' when it comes to obtaining an effective remedy⁴. This, with respect, is not the time to make the task of obtaining justice even harder for the very clients we seek to help.

Clive Yeadon

Footnotes:

1. From Getting the Best from Complaints Social Care Complaints and Representations for Children, Young People and Others: DfES

2. Simons, K: "Complaints procedures in social services departments"
Social Care Research 67 Joseph Rowntree Foundation, York (1995)
3. Cowl v Plymouth City Council: Times Law Report 08/01/02 [2002] 1 WLR 803 (CA)
4. The MORI research conducted on behalf of the LGO in 2007 states..*It is clear that the LGO's customer service operates in a challenging context, given that only one in four (26%) are satisfied with the final outcome of their complaint...By far the most commonly mentioned reason for dissatisfaction is a perceived lack of thoroughness of the investigation. Two in five complainants dissatisfied with the handling of their complaint (40%) say the Ombudsman should investigate things properly or look into the complaint more thoroughly.* Customer Satisfaction Survey for the Local Government Ombudsman: July - August 2007. MORI - IPSOS (London) 2007