

Local Government &
Social Care
OMBUDSMAN

**Children's statutory
complaints process**



*Guide for
practitioners*

Updated November 2023

Children's statutory complaints process

Introduction

We investigate more than 400 complaints a year about the way councils deliver children's social care services, most involving the children's statutory complaints procedure. We also receive many queries from councils about this procedure.

We have developed this guide to share learning from our investigations about how councils should apply the regulations and statutory guidance and to address the most common questions we receive.

It is not possible to address every scenario councils may face, and they will continue to use their own judgement when assessing the complaints they receive. We hope this guide will result in greater consistency for those who complain about the service they receive from councils.

What is the children's statutory complaints procedure?

Most complaints about children's social care must follow a series of steps set out in law, known as the children's statutory complaints procedure:

- > stage one – local resolution
- > stage two – an investigation with an independent person overseeing it
- > stage three – a review panel with an independent chair

We see some common issues in our investigations:

- > failing to recognise a children's statutory complaint
- > unnecessary delays in the procedure
- > refusing to complete all stages of the procedure

The best approach for councils to take to avoid these issues is to follow the guidance, reduce delays and look for opportunities to resolve complaints swiftly.



What should be investigated under the statutory procedure?

The statutory guidance, [Getting the best from complaints](#), sets out which of a council's children's social care functions can be considered under the procedure. The guidance should always be read alongside the Children Act 1989, the Adoption and Children Act 2002 and the associated regulations referred to in the guidance itself. Councils should ensure any training delivered to staff who investigate complaints includes familiarising them with the statutory guidance.

The procedure covers complaints about councils' actions under Part 3 and some of Parts 4 and 5 of the Children Act 1989, as well as some adoption and special guardianship services. When deciding if a complaint should be considered under the procedure councils should check which part of the Act the service being complained about falls under. Generally, assessments and services in the following areas should be considered under the procedure:

- > Children in need
- > Looked after children
- > Special Guardianship support
- > Post-adoption support

And the following tend to be exempt:

- > Early Help
- > Child protection including S47 enquiries and conferences
- > Assessments of potential foster carers and adopters
- > Foster carer registration
- > Section 7 and Section 37 court reports

What should a council do if some of the complaint comes under the statutory complaints procedure and some does not?

Councils are likely to receive complaints where there is overlap between those areas which come under the statutory procedure and those which fall under the remit of other council complaints procedures. Complainants should not be disadvantaged by this.

Councils **must** use the statutory procedure to respond to the issues which fall under its remit. They may also choose to include issues which would normally come under a different complaint procedure within the statutory complaint response. We consider this to be good practice, where the matters are related. This means complainants can have a single investigation and response to their concerns.

Alternatively, councils can choose to address the issues which fall outside the statutory procedure separately using the relevant complaint procedures. Councils should consider which option would produce the best result for the complainant and the child or young person.

Councils should keep a written record of decisions they make about which procedure to use and explain their reasons to the complainant.



Do councils need the child or young person's consent to investigate a complaint?

No, not if the person complaining is listed under 'Who may complain?' in the guidance. This includes parents, special guardians, foster carers and adopters. These individuals can make a complaint in their own right and do not need the child's consent to do so. Councils may need to be cautious about sharing information about the child with the complainant.

While councils do not need to seek consent, we would be unlikely to find fault with a council for informing the child or young person about the complaint or seeking consent from them for their data to be accessed as part of a complaint investigation, as long as this did not lead to unnecessary delays in the process. We would also expect a council to consider if seeking consent or informing the child or young person was appropriate, taking into account their wellbeing.

If a young person does not consent, the council may still investigate but would need to consider balancing the rights of the young person to privacy against those of the other person to make a complaint under the statutory complaint procedure. We would expect to see evidence of the council's decision making.

If a council receives a complaint from a person who is not listed under 'Who may complain?' it must consider if that person has sufficient interest in the child's welfare to warrant investigating their complaint. If a council decides the person does not have sufficient interest, it should document the reasons for its decision and use an alternative complaints procedure, if appropriate.

David's story

David complained about a lack of support to enable him to care for his son when he came to live with him. The council accepted the complaint at stage one, but later refused to investigate his complaint at stage two. It said it would not usually investigate complaints at stage two when they were upheld at stage one. The council later agreed to accept the complaint at stage two but said it would need consent from David's son for an investigator to access his files.

We found the council had a legal obligation to investigate David's complaint and it did not need his son's consent to do so.

We recommended the council apologise and pay David a token amount to recognise his time and trouble in complaining. We also recommended the council trained its staff to ensure they followed the statutory complaints procedure in the future.



What should councils do if a case goes to court while a complaint is being investigated?

The guidance allows councils to decide not to investigate a complaint if it would prejudice a concurrent investigation, including court proceedings. However, the guidance also allows a complainant to resubmit their complaint to the council once the concurrent investigation has ended (and for up to one year afterwards). Before deciding to end an investigation already in progress, councils should consider if it is possible to investigate some or all of the complaint without prejudicing any other investigation. Detailed records should be kept of any decision to end an investigation.

Councils should tell complainants in writing the reason for the decision to end an investigation and explain which concurrent investigation is at risk of being prejudiced. Councils should also tell complainants about their right to resubmit the complaint.

We cannot investigate a complaint if the issues complained about have been heard in court. There is no such limit placed on councils (except for section 7 and section 37 reports). Therefore, councils should be open to considering complaints even when there are, or have been, court proceedings. If the council investigates and upholds the complaint, it should tell the complainant what it will do about any ongoing court action.

Does a complaint have to go to stage two even if it was upheld at stage one?

Yes, if the complainant asks the council to. The decision about progressing to stage two lies with the complainant, not the council. Neither the regulations nor the guidance allow a council to refuse a stage two complaint because the stage one complaint was upheld, or because the council thinks there is no substance to the complaint.

This is also the case for stage three, apart from the limited circumstances outlined later. The guidance says once a complaint has entered stage one, the council must ensure the complaint continues to stages two and three if the complainant wishes.

Jun's Story

Jun complained to the council about its refusal to carry out a child in need assessment when he was a child. He also complained the council did not protect him from homelessness or support him when he was in its care.

The council responded to Jun's complaint at stage one of the statutory procedure. However, when Jun asked for a stage two investigation, the council said the events he complained about took place seven years earlier so it would not do a stage two. We found the council was at fault. Once the council accepted Jun's complaint at stage one, the council had to complete a stage two investigation if Jun wanted one.

We recommended the council apologise to Jun, complete a stage two investigation without delay and carry out staff training.



What if the complainant takes a long time to ask for a stage two investigation or stage three panel?

There is no time limit for a complainant to ask for a complaint to move to stage two. The guidance suggests encouraging complainants to do this within 20 working days to keep the complaint moving forward. We would expect councils to consider if there are good reasons for any delay in seeking a stage two investigation. A council which refuses all requests received after a certain deadline may be at fault for applying its policy too rigidly and not considering the circumstances of a particular case.

While there is a statutory deadline of 20 working days to ask for a stage three review panel, we would again expect councils to consider the circumstances of each case which may mean a late request is reasonable.

With late requests the primary consideration should be: what is the best way of resolving the complaint. We expect councils to keep a record of their decisions on whether or not to accept a late request.

Councils should ensure any meetings arranged with the complainant after stage one or stage two to discuss their complaint do not unnecessarily delay progressing the complaint to the next stage. The law says councils must act swiftly when handling complaints.

What if the complainant will not agree a statement of complaint?

If a complainant made their complaint orally, the council must prepare a statement of complaint before beginning a stage two investigation. It should do this without delay; either by writing to the complainant or meeting with them.

If the complainant will not agree to the statement of complaint and the council is confident it understands what the complaint is, it should tell the complainant it intends to continue with the investigation. It should offer them a final chance to agree the details of the complaint to be investigated.

If the council cannot gather enough information to define the complaint it should write to the complainant explaining it cannot continue unless they can explain what they are unhappy about.

The council should keep detailed records of any decision to proceed with an investigation or to end it. If a council decides to end an investigation, it should signpost the complainant to us.

There is no requirement to prepare a statement of complaint where a complainant made their complaint in writing. However, it would be good practice where the written complaint lacks clarity.



What if it takes a long time to find an independent investigator or to carry out an adjudication?

The whole stage two process, including the adjudication, should be completed 25 working days from the start date. The start date is defined as the date the complainant requests the stage two or the date the complainant and council agree to a stage two without completing stage one.

Where the complaint was made orally and the complainant makes changes to the council's statement of complaint, the start date reverts to the date the complainant agrees to the amended statement of complaint.

The guidance already allows for an extension up to 65 working days where required. Therefore, councils should ensure the process of appointing investigating officers and independent people does not cause unnecessary delay, and that their reports are returned in time to complete the adjudication.

Officers carrying out the adjudication should be aware of the timescales for responding to the complaint.

Where a council cannot complete the stage two within 25 working days, it should keep the complainant informed. The council should explain the reason for the delay and confirm when it expects to complete the stage two response.

[Klaudia's story](#)

We previously considered a complaint from Klaudia about how the council supported her children. We found the council had delayed for eight months before beginning a stage two investigation into Klaudia's statutory complaint. We recommended the council begin the investigation within one month and complete it within 65 working days.

Klaudia submitted a new complaint when the council did not comply with our recommendations. We found the council took nine months too long to issue its stage two response. Eight of those months were due to delays waiting for the council's adjudication.

We recommended the council pay Klaudia a symbolic payment for her distress and frustration. The sum was greater than it might otherwise have been because Klaudia had been affected by the council's delay twice. We also recommended the council review its procedures and carry out staff training.



What if the complainant adds further issues to their complaint at stage two?

The stage two investigation should be proportionate to the issues complained about; it should not review the council's entire involvement with the child or young person. Usually the issues investigated at stage two will be the same as those complained about at stage one.

There may be times where a complainant raises new issues at stage two. Councils need to decide whether it is better to include those issues in the stage two investigation or consider them as a new complaint under the statutory procedure or through another process like the corporate complaints procedure. It may sometimes be preferable to consider the new issues at stage two than to have many concurrent investigations into different complaints from the same person.

Councils can ensure they capture all the issues a complainant is unhappy about at stage one by following the best practice in our [Guidance on Effective Complaint Handling](#). Councils should speak to the complainant early to define the complaint. Investing this time at stage one will help to prevent complaints escalating unnecessarily.

Will the Ombudsman look at complaints before councils complete the procedure?

Only in certain circumstances; when the complaint is eligible for an early referral or when it is not progressing as it should.

The guidance explains the conditions a complaint needs to meet after stage two, for it to be referred to us instead of continuing to a stage three review panel. This is an 'early referral'. The conditions are:

- > The stage two has delivered a robust report, a complete adjudication and all complaints (or all significant complaints) have been upheld; and
- > The council has provided a clear action plan for delivery and agrees to meet most or all the complainant's desired outcomes.

If the council agrees with a complainant that their case meets the criteria for early referral, we recommend the council writes to the complainant confirming the agreement and the reasons. Councils can tell the complainant to contact us, and we will accept the early referral if the criteria are met.

Where a council is not progressing a statutory complaint as it should, for example by taking too long to investigate at stage two, we will accept the complaint before it has gone through all three stages. In these cases, our focus is on identifying why the complaint has not been completed. The aim is to re-engage the council and complainant in the procedure. If we find fault, we will usually recommend the council complete the relevant stage without delay. We may recommend a symbolic financial remedy to recognise the frustration caused by any delay.

We may also exercise discretion (our choice) to investigate complaints when the complainant comes to us at other stages of the procedure. Our decision statements will explain why the investigator has chosen to exercise discretion.



Our investigation of complaints that have completed the procedure or been accepted early

Where someone has completed the statutory procedure and remains unhappy, or where we have agreed to accept their complaint early, we look to see if the council carried out the complaint procedure correctly. We consider factors including whether the stage two investigation was appropriately thorough and independent and whether the stage three panel properly balanced the arguments it heard. We look at whether recommendations stemming from the stage two investigation and stage three panel are suitable and whether the council considered them appropriately as part of the adjudication process. We also consider whether the council carried out the recommendations without delay.

If we find fault in the stage two investigation or stage three panel, we typically recommend the council reconsider the complaint at the relevant stage. We rarely investigate the matters complained about ourselves. Where a council has failed or delayed in completing agreed recommendations, we normally recommend the council complete any outstanding actions without delay and make a symbolic payment to the complainant to recognise their frustration. We may also recommend service improvements to prevent any fault happening again.

[Priya's story](#)

Priya complained about how the council arranged a placement for her child, Charlie, while Charlie was under its care.

The council's stage two investigation and stage three panel found it had not properly planned Charlie's placement. It offered Priya and Charlie a symbolic payment each, in recognition of the distress and uncertainty they had felt due to the fault.

The council also accepted it took too long to carry out the stage two investigation and offered Priya a further symbolic payment to recognise the injustice the delay caused.

We found the council had investigated the complaint properly and the findings could therefore be relied upon. We decided the council had appropriately remedied the injustice Priya and Charlie experienced due to its failure to properly plan Charlie's placement.

However, we noted the stage two investigation had taken over two years and decided the symbolic payment the council had offered Priya was not sufficient to remedy the injustice she felt due to the delay. We recommended a larger amount.



Key lessons from our investigations

Do

- > Invest time at the outset to decide if a complaint should be considered under the statutory complaints procedure or through an alternative procedure
- > Speak to the complainant at stage one to define their complaint and manage their expectations of what an investigation might achieve
- > Keep the complainant informed of any delays
- > Keep detailed records at each stage of the investigation, including any decision not to use the statutory complaints procedure or not to accept a late request to escalate a complaint
- > Keep track of agreed actions as a result of a complaint investigation and evidence of when the council completed them
- > Signpost to the Ombudsman once a complaint completes the statutory complaints procedure, or if the council decides not to investigate a complaint

Do not

- > Refuse to investigate a complaint at stage two or three or delay in doing so due to a lack of resources or because the council does not think there is merit to the complaint
- > Switch complaint procedures part-way through. If a council accepts a complaint under the statutory complaints procedure it must complete this if the complainant wishes it to
- > Make an early referral to the Ombudsman if the criteria set out in the guidance have not been met



Local Government and Social Care Ombudsman

PO Box 4771
Coventry
CV4 0EH

Phone: 0300 061 0614
Web: www.lgo.org.uk
X (formerly Twitter): [@LGOmbudsman](https://twitter.com/LGOmbudsman)