
WELSH STATUTORY INSTRUMENTS

2014 No. 1794

**The Social Services Complaints
Procedure (Wales) Regulations 2014**

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⁽¹⁾; 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⁽²⁾ in relation to the functions of an NHS body⁽³⁾ (within the meaning of that section).
- (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⁽⁴⁾; 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

(1) “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).

(2) 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 Section 31 of the 1999 Act has been repealed by the National Health Service (Consequential Provisions) Act 2006 c.43 (“the 2006 Act”), see section 6 of Schedule 4.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.

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

(4) 2005 c.9.

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⁽⁵⁾;
 - (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⁽⁶⁾;
 - (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⁽⁷⁾ proceedings or Court of Protection proceedings) are contemplated, and

(5) 2005 c.10.
(6) 2000 c.36.
(7) 1989 c.41.

(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.