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STATUTORY INSTRUMENTS

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**2009 No. 309**

**The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009**

**Persons who may make complaints**

- 5.—(1) A complaint may be made by—
- (a) a person who receives or has received services from a responsible body; or
  - (b) a person who is affected, or likely to be affected, by the action, omission or decision of the responsible body which is the subject of the complaint.
- (2) A complaint may be made by a person (in this regulation referred to as a representative) acting on behalf of a person mentioned in paragraph (1) who—
- (a) has died;
  - (b) is a child;
  - (c) is unable to make the complaint themselves because of—
    - (i) physical incapacity; or
    - (ii) lack of capacity within the meaning of the Mental Capacity Act 2005(1); or
  - (d) has requested the representative to act on their behalf.
- (3) Where a representative makes a complaint on behalf of a child, the responsible body to which the complaint is made—
- (a) must not consider the complaint unless it is satisfied that there are reasonable grounds for the complaint being made by a representative instead of the child; and
  - (b) if it is not so satisfied, must notify the representative in writing, and state the reason for its decision.
- (4) This paragraph applies where—
- (a) a representative makes a complaint on behalf of—
    - (i) a child; or
    - (ii) a person who lacks capacity within the meaning of the Mental Capacity Act 2005; and
  - (b) the responsible body to which the complaint is made is satisfied that the representative is not conducting the complaint in the best interests of the person on whose behalf the complaint is made.
- (5) Where paragraph (4) applies—
- (a) the complaint must not be considered or further considered under these Regulations; and
  - (b) the responsible body must notify the representative in writing, and state the reason for its decision.
- (6) In these Regulations any reference to a complainant includes a reference to a representative.

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**Status:** *This is the original version (as it was originally made).*

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