



Apprenticeships, Skills, Children and Learning Act 2009

2009 CHAPTER 22

PART 10

SCHOOLS

CHAPTER 2

COMPLAINTS: ENGLAND

206 Complaints to which this Chapter applies

- (1) This Chapter applies to a complaint against a school made by—
 - (a) a parent of a pupil at a qualifying school in England; or
 - (b) a pupil at such a school.
- (2) In subsection (1) “a complaint against a school” means (subject to subsection (3)) a complaint that the pupil or a parent of the pupil has sustained injustice in consequence of—
 - (a) an act of the governing body of the school; or
 - (b) an exercise of, or failure to exercise, a prescribed function of the head teacher of the school.
- (3) A “complaint against a school” does not include a complaint that relates to—
 - (a) a decision about admissions to the school;
 - (b) a matter in respect of which the complainant has or had a prescribed right of appeal.
- (4) An act is to be treated as an act of the governing body of a school for the purposes of subsection (2) if it is an act of—
 - (a) a person acting on behalf of the governing body; or

Status: This is the original version (as it was originally enacted).

- (b) a person to whom the governing body has delegated any functions.
- (5) An act is also to be treated as an act of the governing body of a school if—
- (a) the governing body exercises a function by means of an arrangement with another person; and
 - (b) the act is done by or on behalf of the other person in carrying out the arrangement.
- (6) In this section—
- (a) “function” includes a power and a duty;
 - (b) “head teacher” has the meaning given by section 579(1) of the [Education Act 1996 \(c. 56\)](#);
 - (c) “qualifying school” means a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school (within the meaning given by section 22(9) of the [School Standards and Framework Act 1998 \(c. 31\)](#)) or a short stay school;
 - (d) references to a pupil at a qualifying school are (subject to section 207(6)) references to a person who is, or was within a prescribed period ending with the date of the complaint, a registered pupil (within the meaning of the [Education Act 1996](#)) at the school;
 - (e) “parent”, in relation to a pupil, has the meaning given by section 576 of the [Education Act 1996](#) in relation to a child or young person.
- (7) In this Chapter a reference to an act includes an omission.

207 Power of Local Commissioner to investigate complaint

- (1) This section applies where a complaint to which this Chapter applies, and which meets the requirements of section 208—
- (a) is made by the complainant to a Local Commissioner; or
 - (b) is made by the complainant to a governor, the governing body or the head teacher of the school and referred to a Local Commissioner, with the complainant’s consent, by the governing body or the head teacher of the school.
- (2) Where this section applies, a Local Commissioner may under this Chapter investigate the complaint.
- (3) But before investigating a complaint to which this Chapter applies, a Local Commissioner must be satisfied—
- (a) that the matter was brought to the notice of the governing body by or on behalf of the complainant and that the governing body was given a reasonable opportunity to investigate the matter and respond; or
 - (b) that, in the particular circumstances, it is not reasonable to expect the matter to be brought to the notice of the governing body or for the governing body to be given a reasonable opportunity to investigate the matter and respond.
- (4) Whether to initiate, continue or discontinue an investigation is a matter for the discretion of the Local Commissioner dealing with the complaint.
- (5) A Local Commissioner may in particular decide not to investigate a complaint under this Chapter, or to discontinue an investigation—

- (a) if satisfied with the action that the governing body has taken or proposes to take; or
 - (b) if satisfied that the complaint is vexatious.
- (6) Regulations prescribing a period for the purposes of section 206(6)(d) may prescribe circumstances in which a Local Commissioner may determine that a person who has not been a registered pupil at the school within the prescribed period is to be treated as a “pupil” for the purposes of that section.
- (7) In this Chapter “Local Commissioner” has the meaning given by section 23 of the [Local Government Act 1974 \(c. 7\)](#).

208 Time-limit etc for making complaint

- (1) The requirements referred to in section 207(1) are that the complaint is made—
- (a) in writing; and
 - (b) within 12 months beginning with the day the complainant first had notice of the matter complained of;
- but this is subject to subsection (2).
- (2) A Local Commissioner may disapply either or both of the requirements in subsection (1) in relation to a particular complainant.

209 Procedure in respect of investigations

- (1) A Local Commissioner who proposes to investigate a complaint to which this Chapter applies must give the following an opportunity to comment on the matter—
- (a) the respondent;
 - (b) any other person who is alleged in the complaint to have done or authorised the act which would be the subject of the investigation;
 - (c) any person who otherwise appears to the Local Commissioner to have done or authorised the act.
- (2) Every investigation under this Chapter is to be conducted in private.
- (3) Subject to subsection (2), the procedure for conducting an investigation is to be such as the Local Commissioner considers appropriate in the circumstances of the case.
- (4) The Local Commissioner may, in particular—
- (a) obtain information from such persons and in such manner as the Local Commissioner thinks fit;
 - (b) make such inquiries as the Local Commissioner thinks fit; and
 - (c) determine whether any person may be represented (by counsel, solicitor or otherwise) in the investigation.
- (5) The Local Commissioner may, if the Local Commissioner thinks fit, pay to the complainant, and to any other person who attends or provides information for the purposes of an investigation under this Chapter—
- (a) sums in respect of the expenses properly incurred by them;
 - (b) allowances by way of compensation for the loss of their time.
- (6) In this Chapter a reference to the “respondent” is a reference to the governing body or head teacher about whose act a complaint to which this Chapter applies was made.

210 Investigations: further provisions

- (1) For the purposes of an investigation under this Chapter a Local Commissioner may require the following persons to provide information or produce documents relevant to the investigation—
 - (a) the respondent;
 - (b) any other person who in the Local Commissioner’s opinion is able to provide any such information or produce any such documents.
- (2) For the purposes of an investigation under this Chapter a Local Commissioner has the same powers as the High Court in respect of—
 - (a) the attendance and examination of witnesses; and
 - (b) the production of documents.
- (3) To assist in any investigation, a Local Commissioner may obtain advice from any person who in the Local Commissioner’s opinion is qualified to give it.
- (4) A Local Commissioner may pay to a person giving advice such fees or allowances as the Local Commissioner may determine.
- (5) A Local Commissioner may appoint and pay a mediator or other appropriate person to assist in the conduct of an investigation under this Chapter.
- (6) Any person appointed under subsection (5) is deemed to be an officer of the Commission for Local Administration in England in carrying out functions under that appointment.
- (7) No person may be compelled for the purposes of an investigation under this Chapter to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (8) If any person, without lawful excuse—
 - (a) obstructs a Local Commissioner in the performance of the Local Commissioner’s functions under this Chapter;
 - (b) obstructs a person discharging or assisting in the discharge of those functions; or
 - (c) is guilty of an act in relation to an investigation under this Chapter which, if that investigation were a proceeding in the High Court, would constitute contempt of court,the Local Commissioner may certify the offence to the High Court.
- (9) Where an offence is certified under subsection (8), the High Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged (“D”), and after hearing any statement that may be offered in D’s defence, deal with D in any manner in which the High Court could deal with a person who had committed the offence in relation to the High Court.

211 Statements about investigations

- (1) A Local Commissioner must prepare a written statement in accordance with subsections (2) to (4) if the Local Commissioner—
 - (a) decides not to investigate a matter under this Chapter;
 - (b) decides to discontinue an investigation; or
 - (c) completes an investigation.

- (2) In a case falling within subsection (1)(a) or (b), the statement must set out the Local Commissioner's reasons for the decision.
- (3) In a case falling within subsection (1)(c), the statement must—
 - (a) set out the Local Commissioner's conclusions on the investigation; and
 - (b) include any recommendations the Local Commissioner considers it appropriate to make.
- (4) The recommendations the Local Commissioner may make are recommendations with respect to action which, in the Local Commissioner's opinion, the governing body should take—
 - (a) to remedy any injustice sustained by the complainant in consequence of the act which was the subject of the investigation; and
 - (b) to prevent injustice being caused in the future in consequence of a similar act.
- (5) The Local Commissioner must send a copy of a statement prepared under this section to—
 - (a) the complainant (or, if the complainant is the pupil and the Local Commissioner thinks it appropriate, a parent of the complainant);
 - (b) the respondent; and
 - (c) the governing body, if the respondent is the head teacher.
- (6) If, on consideration of the statement, it appears to the governing body that a payment should be made to or in respect of a person who has suffered injustice in consequence of the act which was the subject of the investigation, the governing body may make such a payment.
- (7) The statement must identify the school concerned.
- (8) The statement must not—
 - (a) mention the name of any person; or
 - (b) contain any particulars which, in the opinion of the Local Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the statement.
- (9) But, after taking into account the public interest as well as the interests of that person, the complainant and other persons, the Local Commissioner may mention the name of a person, or include in the statement any particulars which are likely to identify the person, if the Local Commissioner considers it necessary to do so.
- (10) Nothing in subsection (8) prevents a statement mentioning the name of, or containing particulars which are likely to identify, the head teacher of the school concerned.

212 Adverse findings notices

- (1) This section applies where a governing body receives a statement prepared under section 211 which contains recommendations.
- (2) The governing body must—
 - (a) consider the statement; and
 - (b) notify the Local Commissioner, within the notification period, of the action which the governing body has taken or proposes to take.

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

- (3) The Local Commissioner may by notice require the governing body to arrange for an adverse findings notice to be published in accordance with subsections (4) and (5) if the Local Commissioner—
- (a) does not receive the notification mentioned in subsection (2)(b) within the notification period or is satisfied before the end of that period that the governing body has decided to take no action;
 - (b) is not satisfied with the action which the governing body has taken or proposes to take; or
 - (c) does not within the period of one month beginning with the end of the notification period, or such longer period as the Local Commissioner may agree in writing, receive confirmation that the governing body has taken action, as proposed, to the satisfaction of the Commissioner.
- (4) An adverse findings notice is a notice, in such form as the governing body and the Local Commissioner may agree, consisting of—
- (a) details of any action recommended in the statement which the governing body has not taken;
 - (b) such supporting material as the Local Commissioner may require;
 - (c) if the governing body so requires, an explanation of the reasons for having taken no action, or for not having taken the action recommended in the statement.
- (5) The adverse findings notice must be published by the governing body in such a way as the Local Commissioner may direct.
- (6) If the governing body—
- (a) fails to arrange for the publication of the adverse findings notice in accordance with subsections (4) and (5); or
 - (b) is unable, within the publication period, to agree with the Local Commissioner the form of the adverse findings notice to be published,
- the Local Commissioner must arrange for an adverse findings notice to be published in such a way as the Local Commissioner considers appropriate.
- (7) The governing body must reimburse the Local Commissioner on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under subsection (6).
- (8) In this section—
- “notification period” means—
- (a) the period of one month beginning with the date on which the governing body received the statement; or
 - (b) such longer period as the Local Commissioner may agree in writing.
- “publication period” means—
- (a) the period of one month beginning with the date on which the governing body received the notice under subsection (3); or
 - (b) such longer period as the Local Commissioner may agree in writing.

213 Publication of statements etc. by Local Commissioner

- (1) A Local Commissioner may—
- (a) publish all or part of a statement under section 211; or

- (b) publish a summary of a matter which is the subject of a statement under section 211,
if, after taking into account the public interest as well as the interests of the complainant and of other persons, the Local Commissioner considers it appropriate to do so.
- (2) A Local Commissioner may—
 - (a) supply a copy of all or part of a statement or summary mentioned in subsection (1) to any person who requests it; and
 - (b) charge a reasonable fee for doing so.
- (3) Where a Local Commissioner publishes all or part of a statement or summary mentioned in subsection (1), the governing body of the school concerned must, on demand, reimburse the Local Commissioner the reasonable expenses of publication.
- (4) Subsections (8) to (10) of section 211 apply to a summary of a matter which is published, or a copy of which is supplied, under this section as they apply to a statement prepared under that section.

214 Disclosure of information

- (1) Information obtained by a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, in the course of or for the purposes of an investigation under this Chapter must not be disclosed except—
 - (a) for the purpose of the investigation and of any statement, adverse findings notice or summary under section 211, 212 or 213;
 - (b) for the purposes of any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Chapter;
 - (c) for the purposes of proceedings under section 210(9).
- (2) A Local Commissioner and a person discharging or assisting in the discharge of a function of a Local Commissioner may not be called upon to give evidence in any proceedings (other than proceedings within paragraph (b) or (c) of subsection (1)) of matters coming to their knowledge in the course of an investigation under this Chapter.

215 Permitted disclosures of information by Local Commissioner

- (1) A Local Commissioner may disclose to Her Majesty's Chief Inspector of Education, Children's Services and Skills any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to a matter in respect of which the Chief Inspector has functions.
- (2) A Local Commissioner may disclose to the Parliamentary Commissioner for Administration any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to a matter in respect of which the Parliamentary Commissioner has functions.
- (3) A Local Commissioner may disclose to the Information Commissioner any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to—
 - (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
 - (i) Part 5 of the [Data Protection Act 1998 \(c. 29\)](#) (enforcement);

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

- (ii) section 48 of the [Freedom of Information Act 2000 \(c. 36\)](#) (practice recommendations); or
 - (iii) Part 4 of that Act (enforcement); or
 - (b) the commission of an offence under—
 - (i) any provision of the [Data Protection Act 1998](#) other than paragraph 12 of Schedule 9 (obstruction of execution of warrant); or
 - (ii) section 77 of the [Freedom of Information Act 2000](#) (offence of altering etc. records with intent to prevent disclosure).
- (4) A Local Commissioner may disclose to a local education authority (within the meaning given by section 12 of the [Education Act 1996 \(c. 56\)](#)) any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to a matter in respect of which the authority has functions.
- (5) A Local Commissioner may disclose to the Secretary of State any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to the Secretary of State’s functions under section 220.
- (6) Nothing in section 214(1) applies in relation to the disclosure of information in accordance with this section.

216 Law of defamation

- (1) For the purposes of the law of defamation the following are absolutely privileged—
 - (a) the publication of any matter in communications between a governing body and a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, for the purposes of this Chapter;
 - (b) the publication of any matter by a Local Commissioner or by any person discharging or assisting in the discharge of a function of a Local Commissioner, in communicating for the purposes of this Chapter with a person mentioned in subsection (2);
 - (c) the publication of any matter in preparing, making and sending a statement in accordance with section 211;
 - (d) the publication of any matter by inclusion in an adverse findings notice published in accordance with section 212(3), (4) and (5) or (6);
 - (e) the publication of any matter by inclusion in a statement or summary published or supplied under section 213;
 - (f) the publication of any matter contained in a report by a Local Commissioner which has been made available to the public, being publication by inclusion in a report made or published under section 219.
- (2) The persons mentioned in subsection (1)(b) are—
 - (a) the governing body;
 - (b) the complainant (or, if the complainant is the pupil, a parent of the complainant);
 - (c) Her Majesty’s Chief Inspector of Education, Children’s Services and Skills;
 - (d) the Parliamentary Commissioner for Administration;

- (e) a local education authority (within the meaning given by section 12 of the [Education Act 1996 \(c. 56\)](#));
- (f) the Secretary of State.

217 Consultation with Parliamentary Commissioner for Administration

- (1) Subsection (2) applies if, at any stage in the course of an investigation under this Chapter, a Local Commissioner forms the opinion that the matters which are the subject of the investigation include a matter which could be the subject of an investigation by the Parliamentary Commissioner for Administration in accordance with the [Parliamentary Commissioner Act 1967 \(c. 13\)](#) (“the 1967 Act”).
- (2) The Local Commissioner—
 - (a) must consult the Parliamentary Commissioner for Administration about the matter; and
 - (b) where a complaint was made about the matter must, if the Local Commissioner considers it necessary, inform the complainant of the steps necessary to initiate a complaint under the 1967 Act.
- (3) Consultation under subsection (2)(a) in relation to a matter under investigation under this Chapter may be about anything relating to the matter, including—
 - (a) the conduct of any investigation into the matter; and
 - (b) the form, content and publication of any report or statement of the result of such an investigation.
- (4) Subsection (5) applies if, at any stage in the course of conducting an investigation under the 1967 Act, the Parliamentary Commissioner for Administration forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Chapter.
- (5) The Parliamentary Commissioner for Administration—
 - (a) must consult the appropriate Local Commissioner about the complaint; and
 - (b) where the Parliamentary Commissioner considers it necessary, must inform the person initiating the complaint of the steps necessary to initiate a complaint under this Chapter.
- (6) Where a Local Commissioner is consulted about a complaint under the 1967 Act by virtue of subsection (5), subsection (3) applies (with the necessary modifications) as it applies in relation to consultations held by virtue of subsection (2).
- (7) Section 11(2) of the 1967 Act (secrecy) does not apply in relation to the disclosure of information in the course of consultations held in accordance with this section.

218 Arrangements etc. to be made by Commission

- (1) The Commission for Local Administration in England (“the Commission”) must—
 - (a) divide the matters which may be investigated under this Chapter into such categories as it considers appropriate; and
 - (b) allocate, or make arrangements for allocating, responsibility for each category of matter to one or more of the Local Commissioners.
- (2) The Commission—

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

- (a) must make arrangements for Local Commissioners to deal with matters for which they do not have responsibility pursuant to subsection (1); and
 - (b) must publish information about the procedures for making complaints under this Chapter.
- (3) The information published under subsection (2)(b) must include details of assistance available to each of the following—
- (a) a pupil at a qualifying school (see section 206(6)(d)) who is, or has been, looked after by a local authority (within the meaning given by section 22(1) of the [Children Act 1989 \(c. 41\)](#));
 - (b) a person who has a disability (within the meaning of section 1(1) of the [Disability Discrimination Act 1995 \(c. 50\)](#));
 - (c) a person who has special educational needs (within the meaning of section 312 of the [Education Act 1996 \(c. 56\)](#)).

219 Annual reports

- (1) Every Local Commissioner must for each financial year—
- (a) prepare a general report on the discharge of the Local Commissioner’s functions under this Chapter; and
 - (b) submit it to the Commission.
- (2) The Commission must, for each financial year, prepare a general report on the discharge of the Local Commissioners’ functions under this Chapter (an “annual report”).
- (3) The annual report must be prepared as soon as practicable after the Commission has received the reports for the year from the Local Commissioners under subsection (1).
- (4) The Commission must arrange for the publication of—
- (a) the annual report; and
 - (b) the reports which are submitted under subsection (1).
- (5) The Commission must lay a copy of the annual report before Parliament.
- (6) In this section “financial year” means the period of 12 months ending with 31st March in any year.

220 Secretary of State’s power of direction

- (1) This section applies where—
- (a) a Local Commissioner has made recommendations under section 211(4); and
 - (b) the governing body of the school concerned has not complied with them.
- (2) The Secretary of State may direct the governing body to comply with the recommendations within the period specified in the direction.
- (3) A direction under subsection (2) is enforceable, on an application made on behalf of the Secretary of State, by a mandatory order.

221 Disapplication of certain powers of Secretary of State

- (1) In section 496 of the [Education Act 1996 \(c. 56\)](#) (power of Secretary of State to prevent unreasonable exercise of functions), after subsection (2) insert—

“(3) The Secretary of State may not make a direction under this section in respect of a matter that—

- (a) has been complained about to a Local Commissioner in accordance with Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (parental complaints against governing bodies etc.), or
- (b) in the Secretary of State’s opinion, could have been so complained about.

(4) Regulations may disapply subsection (3) in relation to cases where a complaint about the matter has been made to the Secretary of State by—

- (a) a prescribed person, or
- (b) a person of a prescribed description.”

- (2) In section 497 of that Act (general default powers of Secretary of State), after subsection (3) insert—

“(4) The Secretary of State may not make an order under this section in respect of a matter that—

- (a) has been complained about to a Local Commissioner in accordance with Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (parental complaints against governing bodies etc.), or
- (b) in the Secretary of State’s opinion, could have been so complained about.

(5) Regulations may disapply subsection (4) in relation to cases where a complaint about the matter has been made to the Secretary of State by—

- (a) a prescribed person, or
- (b) a person of a prescribed description.”

- (3) In section 28M of the [Disability Discrimination Act 1995 \(c. 50\)](#) (directions by Secretary of State and Welsh Ministers) after subsection (7) insert—

“(7A) The Secretary of State may not, unless subsection (7B) applies, give a direction under this section to a responsible body in England in respect of a matter that—

- (a) has been complained about to a Local Commissioner in accordance with Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (parental complaints against governing bodies etc.), or
- (b) in the Secretary of State’s opinion, could have been so complained about.

(7B) This subsection applies if—

- (a) the Local Commissioner has made a recommendation to the responsible body under section 211(4) of the Apprenticeships, Skills, Children and Learning Act 2009 (statement following investigation) in respect of the matter, and

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

(b) the responsible body has not complied with the recommendation.”

222 Power to amend meaning of “qualifying school”

- (1) The Secretary of State may by order amend the definition of “qualifying school” in section 206(6)(c).
- (2) An order under this section may make consequential amendments of this Chapter.

223 Amendments consequential on Chapter 2

- (1) The following provisions of the [Education Act 1996 \(c. 56\)](#) cease to have effect—
 - (a) section 408(4)(g) (provision of information);
 - (b) section 409 (complaints and enforcement: maintained schools);
 - (c) paragraph 6(3) and (4) of Schedule 1 (complaints and enforcement: short stay schools).
- (2) In paragraph 1 of Schedule 4 to the [Local Government Act 1974 \(c. 7\)](#) (the Commission), after sub-paragraph (2B) (inserted by the [Health Act 2009 \(c. 21\)](#)) insert—

“(2C) A Local Commissioner may not investigate a complaint against a school under Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 if the Local Commissioner—

 - (a) is a governor of the school;
 - (b) is a parent of—
 - (i) a registered pupil at the school, or
 - (ii) a person who has been a registered pupil at the school within the five years ending with the making of the complaint; or
 - (c) works at the school or has worked at the school within those five years.

(2D) In sub-paragraph (2C) “registered pupil” has the same meaning as in the Education Act 1996.”

224 Interpretation of Chapter 2

In this Chapter—

- (a) “act” has the meaning given by section 206(7);
- (b) “the Commission” has the meaning given by section 218(1);
- (c) “Local Commissioner” has the meaning given by section 207(7);
- (d) “respondent” has the meaning given by section 209(6).