

2006 No. 1681

SOCIAL CARE, ENGLAND

**The Local Authority Social Services Complaints (England)
Regulations 2006**

<i>Made</i>	- - - -	<i>27th June 2006</i>
<i>Laid before Parliament</i>		<i>29th June 2006</i>
<i>Coming into force</i>	- -	<i>1st September 2006</i>

The Secretary of State, in exercise of the powers conferred by sections 113(1), 114(1) and (2), 115(1), (2), (4), (5) and (6) and 195(1)(b) of the Health and Social Care (Community Health and Standards) Act 2003(a), makes the following Regulations:—

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Authority Social Services Complaints (England) Regulations 2006 and shall come into force on 1st September 2006.

(2) These Regulations apply in relation to England only.

Definitions

2. In these Regulations—

“care standards complaint” means a complaint which—

(a) relates to services provided by an establishment or agency in respect of which a person (“the registered person”) is required to be registered under section 11 of the Care Standards Act 2000(b); and

(b) is not about the discharge of, or the failure to discharge, a relevant function;

“relevant function” means—

(a) a social services function within the meaning of section 1A of the Local Authority Social Services Act 1970(c); or

(b) a function which is discharged by a local authority under arrangements made between a local authority and an NHS body under section 31 of the Health Act 1999(d),

but does not include any function which may be the subject of representations under sections

(a) 2003 c.43.

(b) 2000 c.14; section 11 was amended by the Adoption and Children Act 2002 (c.38) (“the 2002 Act”), Schedule 3, paragraph 106 and by the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”), Schedule 9, paragraph 20.

(c) 1970 c.42; section 1A was inserted by the Local Government Act 2000 (c.22), section 102(3).

(d) 1999 c.8; section 31 was amended by the Health and Social Care Act 2001 (c.15), section 48, the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 1, paragraph 53 and Schedule 5, paragraph 45 and the 2003 Act, Schedule 4, paragraph 109.

24D or 26 of, or paragraph 6 of Schedule 7 to, the Children Act 1989(a);

“working day” means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(b).

Duty to deal with complaints

3.—(1) Subject to regulations 5, 6, 15, 20 and 21 a complaint shall be handled in accordance with these Regulations where it is about the discharge of, or the failure to discharge, a relevant function and it is made—

- (a) on or after 1st September 2006;
- (b) by a person described in regulation 4; and
- (c) to an officer of the local authority in respect of which the complaint is made who discharges relevant functions on behalf of that authority.

(2) The reference in paragraph (1) to a complaint about the discharge of, or the failure to discharge, a relevant function includes a complaint which relates to both of the following—

- (a) a person with whom the local authority has made arrangements for the discharge of a relevant function; and
- (b) matters covered by those arrangements.

Persons who can make a complaint

4.—(1) A person may make a complaint under these Regulations about the discharge of, or the failure to discharge, a relevant function if he is a person to whom paragraph (2) applies (and such a person is referred to in these Regulations as the “complainant”).

(2) This paragraph applies if the person is—

- (a) someone in respect of whom—
 - (i) the relevant function is being, or has been, discharged, or
 - (ii) there has been a failure to discharge a relevant function; or
- (b) acting on behalf of another person to whom sub-paragraph (a) applies and that other person—
 - (i) is not able to make the complaint himself,
 - (ii) has asked him to act on his behalf, or
 - (iii) is under the age of 18.

Extent to which complaints shall not be considered

5.—(1) A complaint shall not be considered, or further considered, under these Regulations to the extent that—

- (a) it has been withdrawn by the complainant;
- (b) it repeats a complaint which was subject to these Regulations or, unless regulations 20 or 21 apply, a complaints procedure under section 7B of the Local Authority Social Services Act 1970(c);

(a) 1989 c.41; section 24D was inserted by section 5 of the the Children (Leaving Care) Act 2000 (c.35) and amended by section 117(1) of the 2002 Act. Section 26 was amended by sections 117 and 118 of, and Schedule 5 to, the 2002 Act, by section 117(1) of the 2003 Act and by the Children Act 2004 (c.31), Schedule 3, paragraph 8.

(b) 1971 c.80.

(c) Section 7B was inserted by section 50 of the National Health Service and Community Care Act 1990 (c.19), amended by the Health and Social Care Act 2001 (c.15), Schedule 5, paragraph 15(2) and repealed by the 2003 Act, Schedule 14.

- (c) it has been investigated by a Local Commissioner under section 26(1) of the Local Government Act 1974(a);
- (d) it is a care standards complaint;
- (e) it is unclear;
- (f) it is frivolous or vexatious;
- (g) the complainant has stated in writing that he intends to take legal proceedings in relation to the substance of the complaint;
- (h) the local authority is taking disciplinary proceedings in relation to the substance of the complaint against a person who is the subject of the complaint;
- (i) the local authority has been notified that criminal proceedings have been commenced in relation to the substance of the complaint; or
- (j) the local authority has been notified that proceedings have been commenced under section 59 of the Care Standards Act 2000(b) in relation to the substance of the complaint.

(2) Subject to paragraph (3), a complaint shall not be considered under these Regulations to the extent that it is about the discharge of, or the failure to discharge, a relevant function more than one year before the date on which the local authority received the complaint.

(3) Paragraph (2) shall not apply where the local authority is satisfied that—

- (a) it would not be reasonable to expect the complaint to have been made earlier than it was made; and
- (b) notwithstanding the delay, it is still possible to consider the complaint effectively and fairly.

(4) A complaint shall not be considered or further considered under these Regulations where—

- (a) the complaint is made by a person to whom regulation 4(2)(b) applies; and
- (b) the local authority in respect of whom the complaint is made is satisfied that the complainant is not conducting the complaint in the best interests of the person on whose behalf he is making the complaint.

(5) Where a local authority decides not to consider a complaint or any element of a complaint by virtue of this regulation, it must notify the complainant of the extent to which the complaint will not be considered and the reason why.

(6) Where any complaint contains a matter which makes the complaint subject to this regulation, nothing in this regulation prevents any other matter that may be contained in that complaint, which is not subject to this regulation, being considered in accordance with these Regulations.

Care standards complaints

6.—(1) Where a local authority receives a complaint which is in part about a relevant function and in part a care standards complaint, it must, as regards that part of the complaint which is the care standards complaint—

- (a) within 10 working days of receipt of the complaint ask the complainant whether he wishes details of that part of the complaint to be sent to the registered person for the establishment or agency to which it relates; and
- (b) if the complainant does so wish, send such details to the registered person as soon as reasonably practicable.

(2) Where paragraph (1) applies, the local authority must notify the complainant—

(a) 1974 c.7.

(b) 2000 c14 which was brought into force insofar as it relates to the General Social Care Council on 10th April 2001 by S.I. 2001/1536 and was brought into force for all other purposes on 7th March 2003 by S.I.2003/933.

- (a) which part of the complaint will be handled in accordance with the procedure described in these Regulations; and
- (b) in a case where it has sent details of the care standards complaint to the registered person, that it has sent such details.

(3) Where the local authority has sent details to the registered person under paragraph (1)(b), it must cooperate insofar as is reasonable and practicable with the establishment or agency which is the subject of the care standards complaint with a view to ensuring that the complainant receives a coordinated response to his complaint.

(4) Where a local authority receives a complaint which is a care standards complaint and not in part about a relevant function, it must within 5 working days of its receipt—

- (i) ask the complainant whether he wishes his complaint to be sent to the registered person for the establishment or agency to which it relates; and
- (ii) if the complainant does so wish, send the complaint to the registered person as soon as reasonably practicable.

Local resolution

7.—(1) Subject to paragraph (2) and to regulation 5, where a complaint falls to be handled under these Regulations, the local authority must within 20 working days from the date of receipt of the complaint or, where that is not possible, as soon as reasonably practicable—

- (a) take all reasonable steps to resolve the complaint informally;
- (b) notify the complainant of—
 - (i) the extent to which it considers the complaint to be well-founded,
 - (ii) its reasons for reaching that view, and
 - (iii) his rights under regulation 8;
- (c) where it considers the complaint to be to any extent well-founded, provide to the complainant an explanation of what action, if any, it proposes to take in consequence of that fact.

(2) A local authority must not, or must cease to, take any steps under this regulation once they commence investigation under regulation 9.

Request for investigation of the complaint

8.—(1) A complainant may at any time in the period specified in paragraph (2) request that his complaint be investigated under regulation 9.

(2) The period referred to in paragraph (1) is the period ending 20 working days after whichever is the earlier of—

- (a) the date on which notification is sent to the complainant under regulation 7(1)(b); or
- (b) expiry of the 20 working days referred to in regulation 7(1).

Investigation

9.—(1) Where a request is received under regulation 8, the local authority must—

- (a) as soon as reasonably practicable—
 - (i) record the complaint in writing,
 - (ii) invite the complainant's comments on it, and
 - (iii) amend it as it considers necessary in the light of any comments made by the complainant;
- (b) investigate the complaint; and

(c) keep the complainant informed, insofar as is reasonably practicable, as to the progress of its investigation.

(2) Paragraph (1)(a) does not apply where the complaint has been made in writing and the local authority is satisfied that it gives a clear account of the complaint in question.

Report of the outcome of investigation

10.—(1) The local authority must send a report of the outcome of the investigation to the complainant within the time limit specified in paragraph (2) or, where that is not possible, as soon as reasonably practicable.

(2) The time limit referred to in paragraph (1) is 65 working days after—

- (a) receipt of the complainant's request under regulation 8; or
- (b) if later, the date (if any) on which the record of the complaint was amended under regulation 9(1)(a)(iii).

(3) If the local authority has not already sent a report under paragraph (1) to the complainant within 25 working days of—

- (a) receipt of the complainant's request under regulation 8; or
- (b) if later, the date (if any) on which the record of the complaint was amended under regulation 9(1)(a)(iii),

it must, on expiry of that period, explain to the complainant why a report has not already been sent to him and notify him of the date by which it expects to send a report.

(4) Where the local authority considers the complaint to be to any extent well-founded, it must provide to the complainant an explanation of what action, if any, it proposes to take in consequence of that fact.

Request for a review panel

11.—(1) Where it receives a request to do so from the complainant within the period specified in paragraph (2), the local authority must establish a review panel in accordance with regulation 12.

(2) The period referred to in paragraph (1) is the period of 20 working days after whichever is the earlier of—

- (a) expiry of the period described in regulation 10(2); or
- (b) the sending of a report by the local authority under that regulation.

Review panel

12.—(1) Within 30 working days of the local authority receiving a request under regulation 11—

- (a) the local authority must appoint a review panel consisting of three persons for the purpose of deciding whether the local authority adequately dealt with the complaint under regulations 9 and 10; and
- (b) the review panel must convene.

(2) The following persons may not be members of the review panel—

- (a) an officer of the local authority; or
- (b) a spouse or civil partner of an officer of the authority.

(3) The review panel must include at least two persons who are neither members of the local authority nor spouses or civil partners of members of the local authority.

(4) The local authority must appoint a member of the review panel who satisfies the requirement in paragraph (3) to be its chairman.

Decision of Review panel

13. Within 5 working days of the date on which the review panel convened under regulation 12, the review panel must—

- (a) decide whether the local authority adequately dealt with the complaint under regulations 9 and 10; and
- (b) notify the complainant and the local authority of its decision.

Local authority response to recommendation by the review panel

14. Where the review panel decides that the local authority did not adequately deal with the complaint, the local authority must, within 15 working days of notification of the decision to it under regulation 13—

- (a) notify the complainant of what, if any, action it proposes to take in consequence of the decision of the review panel; and
- (b) provide such guidance to the complainant as to the power of a Local Commissioner to investigate a complaint under section 26(1) of the Local Government Act 1974^(a) as appears to the local authority to be relevant to the complainant.

Complaints made to a local authority about an NHS body

15.—(1) In this regulation—

“the 2004 Regulations” means the National Health Service (Complaints) Regulations 2004^(b); and

“NHS body” has the same meaning as in regulation 2(1) of the 2004 Regulations.

(2) Paragraph (3) applies where it appears to a local authority considering a complaint which falls within regulation 3 that the complaint contains material which, had the complainant sent it to an NHS body, would be a complaint which would fall to be handled by that body under the 2004 Regulations.

(3) The local authority must, as regards that part of the complaint which would appear to it be a complaint for the purposes of the 2004 Regulations (“the NHS complaint”)—

- (a) within 10 working days of receipt of the complaint, ask the complainant whether he wishes details of the NHS complaint to be sent to the NHS body to which it relates; and
- (b) if the complainant does so wish, send details of the NHS complaint to that NHS body as soon as reasonably practicable.

(4) In the case of a complaint to which paragraph (3) applies, the local authority must notify the complainant—

- (i) which part of the complaint will be handled in accordance with the procedure described in these Regulations; and
- (ii) in a case where it has sent details of the NHS complaint to the NHS body, that it has sent such details.

(5) Where an NHS body handles a complaint under the 2004 Regulations in consequence of having been sent details under paragraph (3)(b), the NHS body and the local authority must cooperate with a view to the complainant receiving a coordinated response to his complaint.

(6) The duty to cooperate in paragraph (5) includes, in particular, a duty to—

- (a) provide information relevant to the consideration of a complaint which is reasonably requested;
- (b) attend any meeting reasonably required in connection with the consideration of a complaint; and

(a) 1974 c.7.

(b) S.I.2004/1768.

- (c) seek to agree which of the two bodies should take the lead in—
 - (i) coordinating the handling of the complaints against them, and
 - (ii) dealing with the complainant.

(7) Where a local authority receives a complaint on or after 1st September 2006 which is not about the discharge of, or the failure to discharge, a relevant function and it appears to the local authority that the complaint contains material which, had the complainant sent it to an NHS body, would be a complaint which would fall to be handled by that body under the 2004 Regulations, it must—

- (a) within 5 working days of receipt of the complaint, ask the complainant whether he wishes that material to be sent to the NHS body to which it relates; and
- (b) if the complainant does so wish, send that material to that NHS body as soon as reasonably practicable.

(8) Where a complaint is referred to an NHS body in accordance with paragraph (3) or (7), the complainant shall be deemed to have made a complaint under regulation 9 of the 2004 Regulations (making of a complaint) for the purposes of those Regulations.

Complaints manager

16. Every local authority must appoint a complaints manager to assist it in the coordination of all aspects of its consideration of complaints under these Regulations.

Assistance

- 17.** Every local authority must, as far as reasonably practicable, provide the complainant with—
- (a) such assistance as he requires to follow the procedure in these Regulations; or
 - (b) advice on where he may obtain such assistance.

Monitoring of operation of procedure

18.—(1) Every local authority must monitor the arrangements that it has made for the handling of complaints with a view to ensuring that it complies with these Regulations by keeping a record of—

- (a) each complaint received;
- (b) the outcome of each complaint; and
- (c) whether there was compliance with the time limits specified in these Regulations.

(2) Every local authority must, as soon as reasonably practicable after the end of each financial year, compile a report on the exercise during that financial year of its functions under these Regulations.

Complaints: transitional provision

19. Subject to regulations 20 and 21, where, immediately before 1st September 2006 any representations fell to be considered under a procedure established pursuant to the Local Authority Social Services (Complaints Procedure) Order 1990^(a) (“the former procedure”), such representations shall be considered, or continue to be considered, under that former procedure as if section 7B of the Local Authority Social Services Act 1970^(b) (complaints procedure) had not been repealed.

- 20.—(1)** This regulation applies where—

^(a) S.I. 1990/2244.

^(b) Section 7B of the Local Authority Social Services Act 1970 (c.42) was repealed by Schedule 14 to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) see S.I. 2006/1680 (C.57) for commencement of that repeal.

- (a) immediately before 1st September 2006 any representations fell to be considered under the former procedure; and
- (b) on or after that date, the complainant (within the meaning of direction 2(1) of the Complaints Procedure Directions 1990(a) (“the Directions”)) sends a written representation pursuant to direction 5(2) of the Directions.

(2) Where this regulation applies—

- (a) the written representation referred to in paragraph (1)(b) shall be deemed to be a request for investigation of a complaint under regulation 8;
- (b) the representations shall cease to be considered under the former procedure; and
- (c) regulations 5(1)(a), 9 to 14 and 17 shall apply to the representations as if they were a complaint for the purposes of these Regulations.

21.—(1) This regulation applies where—

- (a) immediately before 1st September 2006 any representations fell to be considered under the former procedure; and
- (b) on or after that date, the complainant (within the meaning of direction 2(1) of the Directions) notifies the local authority in writing pursuant to direction 7(2) of the Directions that he is dissatisfied with the result of the local authority’s consideration of his representations under the former procedure.

(2) Where this regulation applies—

- (a) the notification referred to in paragraph (1)(b) shall be deemed to be a request for a review panel under regulation 11;
- (b) the representations shall cease to be considered under the former procedure and be referred to a review panel established in accordance with regulation 12; and
- (c) Regulations 5(1)(a), 12 to 14 and 17 shall apply to the representations as if the representations were a complaint for the purposes of these Regulations, subject to the modifications described in paragraph (3).

(3) The modifications referred to in paragraph (2)(c) are—

- (a) in regulation 12(1), the period of 30 days referred to shall run from the date on which the authority received notification under direction 7(2) of the Directions;
- (b) for regulation 13(a) there shall be substituted—
 - “(a) decide whether the local authority adequately considered, and responded to, the complainant’s representations under direction 6(1) of the Directions;”;and
- (c) in regulation 14, for “deal with the complaint” there shall be substituted “consider and respond to the complainant’s representations”.

Signed by authority of the Secretary of State for Health

Ivan Lewis
Parliamentary Under Secretary of State
Department of Health

27th June 2006

(a) The Complaints Procedure Directions 1990 were made under section 7B(3) of the Local Authority Social Services Act 1970 (and all other powers enabling them to be made). They are in Appendix C to “Community Care in the Next Decade and Beyond” (ISBN 0 11 321338 7).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the procedure for the handling of complaints made on or after 1st September 2006 about local authority social services.

Regulation 3 describes when the duty on the local authority to handle a complaint under these regulations arises.

Regulation 4 provides who can make a complaint under the Regulations. It allows a complaint to be made either by the service user (or prospective service user) or, in certain circumstances, by another person on his behalf.

Regulation 5 provides that complaints will not be considered under these Regulations to the extent that they are withdrawn, repeat complaints which have already been investigated, relate to care provided by an establishment or agency registered under the Care Standards Act 2000, relate to legal or disciplinary proceedings, relate to criminal proceedings or proceedings under section 59 of the Care Standards Act 2000, relate to matters over a year old when the complaint was made where such matters cannot be handled effectively or fairly because of the delay, or are unclear, frivolous or vexatious.

Regulation 6 provides for complaints which relate to care provided by an establishment or agency registered under the Care Standards Act 2000 to be referred to the registered person in respect of that establishment or agency where the complainant so wishes.

Regulation 7 requires local authorities to try to resolve complaints informally within 20 working days. Regulations 8 and 9 provide for the formal investigation of a complaint if the complainant does not want it to be investigated informally or if he does not like the outcome of the informal investigation.

Under regulation 10, a local authority which has investigated a complaint under regulation 9 must send a report of its investigation to the complainant and, where it finds the complaint to be well-founded, explain to the complainant what action, if any, it proposes to take.

After the complaint has been formally investigated or the period for such investigation has expired without a report on the outcome of the complaint being made, regulations 11 to 13 enable the complainant to require his case to be referred to a 3-person review panel (which will include at least two members independent of the local authority).

Under regulation 14, where the local authority is found by the review panel not to have dealt with the complaint adequately, the local authority must notify the complainant of what action, if any, it proposes to take and must provide guidance to the complainant as to the powers of a Local Commissioner to investigate a complaint under section 26(1) of the Local Government Act 1974.

Regulation 15 requires the local authority to send any complaint which is sent to it and which relates to an NHS body to the NHS body if the complainant so wishes. Where a complaint which relates to the local authority and the NHS body is so referred to an NHS body the local authority and the NHS body are required to cooperate with a view to providing the complainant with a comprehensive response to both elements of the complaint.

Regulation 16 requires each local authority to appoint a complaints manager to assist it in the coordination of its consideration of complaints under these Regulations. Regulation 17 requires each local authority to assist complainants to comply with the complaints procedure as necessary or to explain where such assistance can be found. Regulation 18 requires local authorities to monitor and report on the discharge of functions under these Regulations.

Regulations 19 to 21 make transitional provisions for complaints made before 1st September 2006. Such complaints are to be dealt with in accordance with the Complaints Procedure Directions 1990 (the Directions), unless, after 1st September 2006 the complainant makes written representations in accordance with the Directions, or the complainant wishes to have the local

authority's consideration of the complaint assessed by a review panel, in which case the provisions of these Regulations apply.

STATUTORY INSTRUMENTS

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SOCIAL CARE, ENGLAND

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