

CYPA 2001
Schedule 2 5(3)

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CHAPTER 10

REPRESENTATIONS PROCEDURE

INTRODUCTION

- 1 The Act requires the Department to set up a procedure for considering representations (including complaints) about the treatment of a child who is, or has been, looked after by it. The people who may make complaints are listed below.

See Who May Complain, p.160

- 2 It also requires that the procedures for making representations are set out in writing and made publicly available.

DEFINITIONS

- 3 The following definitions are used in this guidance:
 - a. 'Representations' include enquiries and statements about matters such as the availability, delivery and nature of services. They need not necessarily be critical,
 - b. A 'complaint' is a written or oral expression of dissatisfaction or disquiet in relation to an individual child about the Departments exercise of its functions under CYPA 2001, in looking after a child,
 - c. A complaint may arise as a result of:
 - i. an unwelcome or disputed decision,
 - ii. concern about the quality or appropriateness of services,
 - iii. delay in decision-making about services, or
 - iv. about the delivery or non-delivery of services
 - d. The precise meaning of "complaint" is a matter for interpretation by the Court,
 - e. The 'complainant' is the child or a person making the complaint on his or her behalf,
 - f. The 'procedure' is the representations and complaints procedure which the Department is required to set up under Schedule 2 5(3),
 - g. The 'designated officer' is the officer appointed by the Department to assist in co-ordinating the consideration of complaints.

WHO MAY COMPLAIN

- 4 The Act requires the Department to set up a procedure for considering any representations (including any complaint) made to it

	<p>by:</p> <ol style="list-style-type: none"> a. the child, b. his or her parents, c. anyone who has parental responsibility, d. anyone else whose views the Department considers to be relevant, e. any official foster parent, or f. any other person who appear to the Department to have a sufficient interest in the child's welfare to warrant his or her representations being considered. <p>5 The Department should always check with a child (subject to his or her understanding) that:</p> <ol style="list-style-type: none"> a. a complaint submitted on his or her behalf reflects his or her views, and b. that he or she does wish the person submitting the complaint to act on his or her behalf. <p>6 If it is decided that the person submitting the complaint is not acting on the child's behalf, he or she may still be eligible to have the complaint considered under the procedure.</p> <p>7 The Department has discretion to decide whether or not an individual has sufficient interest in the child's welfare to justify his or her involvement. There should be a flexible approach to ensure that people who are significant to the child, or have a positive contribution to make to planning for the child's future, are able to contribute in this way.</p> <p>WHAT MAY BE COMPLAINED ABOUT</p> <p>8 The Department's procedures must cater for complaints from the people mentioned above about:</p> <ol style="list-style-type: none"> a. services provided under Part 3 of the CYPA 2001, b. decision-making processes, c. the denial of a service. <p>9 Homes should set up representations procedures in line with this guidance to consider representations from children accommodated by them and others eligible to make representations.</p> <p>10 The procedures should allow representations to be made about matters which affect a group of children.</p> <p>11 Examples might include inappropriate restrictions on the lives of children in residential care, such as:</p>
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- i. preventing children's activities for the convenience of staff,
- ii. fixing meal times to suit staff rather than to fit in with the normal needs of children, or
- iii. preventing children's normal activities outside the home.

12 Representations or complaints about child care matters which fall outside Part 3 of the Act are not covered by this procedure, although dissatisfaction about the Department's management or handling of a child's case, even where related to a court order, may be appropriate to the procedure.

OBJECTIVES

13 Arrangements for representations and complaints provide a process which:

- a. gives an accessible and effective means of making complaints,
- b. which is close to the point at which the problem arose, and
- c. acted on in the shortest possible time.

14 To inspire confidence in the procedure there should be:

- a. a commitment to the procedure, and
- b. an opportunity to challenge the outcome.

15 It is not intended that all the problems that arise in the day to day handling of child care services should become the subject of a complaint. Matters promptly resolved to everyone's complete satisfaction when drawn to the attention of an officer of the responsible authority do not require referral to the procedure.

PROBLEM SOLVING

16 When a problem arises, the aim should be to resolve it as near to the point where it arose as possible, and avoid the need for a complaint to be made.

17 Efforts to resolve matters will include:

- a. discussion and reconsideration, and
- b. explanations of decisions made and actions taken.

18 Advice and support should be available to people expressing dissatisfaction at this stage.

19 This can be provided by an advocacy service to support children and their representatives in participating in decision-making and voicing their concerns.

20 An appointment may be made within the Department or provided by another agency

21 Advocacy and advice should not be used to divert someone who

wishes to make a complaint from doing so.

- 22 Setting a time limit to efforts to resolving problems may help to ensure that:
- a. problems capable of simple resolution do not become complaints,
 - b. the problem solving stage is not prolonged beyond any positive period of action, delaying or preventing recourse to the representations procedure.
- 23 Efforts to resolve dissatisfaction should continue after a complaint has been registered, so that the cause of complaint may be resolved during the time while the complaint is being considered.

PUBLICITY

- 24 Publicity material about the representation and complaints procedure should be made available to all children in registered children's homes. The Department may wish to follow the same practice in its own homes.
- 25 It should be freely available to children (where they are of sufficient understanding) parents, and others who may be eligible to use the procedure.
- 26 The Department will present a positive view of the use of the procedure, and seek to diminish fears that making a complaint will cause problems for the person who complains in their daily contact with staff.
- 27 It should cover:
- a. who is entitled to make use of the procedure,
 - b. how they may do so,
 - c. what the procedure covers,
 - d. to whom a representation or complaint should be addressed,
 - e. who is available to give advice,
 - f. the stages in consideration of a representation or complaint, and
 - g. the timescale for each stage.
- 28 The material should consist of leaflets. It should use plain language and, where relevant, other languages in addition to English possibly including video tapes or Braille.
- 29 Every child in a home should have access to information about the complaints procedure.

MANAGEMENT ISSUES

- 30 Information should make clear that the procedure is an aspect of service provision intended to promote partnership.
- 31 The Department recognises that the use of the procedure will give rise to the need for management structures and staff training which reflect the demands on staff.

REPRESENTATIONS INVOLVING AUTHORITIES OFF THE ISLAND

- 32 If a representation is made which involves another authority in addition to the Isle of Man, it should be considered by the authority which is looking after the child.
- 33 If the child is not being looked after by the Department but provided with other services, the authority in whose area the child normally lives may also consider the complaint. The respective designated officers should work together and maintain good liaison.

LINKS WITH OTHER PROCEDURES WITHIN THE DEPARTMENT

- 34 The procedure for dealing with child care matters is linked directly with the Department's procedures for hearing other representations and complaints.

OTHER AGENCIES' PROCEDURES

- 35 Other agencies which may be involved in child care services, and have their own representations or complaints procedures include:
- i. the Education Department,
 - ii. the Housing Department,
 - iii. organisations which run registered children's homes,
 - iv. the probation service, and
 - v. the police.
- 36 It is essential that the Department's arrangements cover both the separating out of:
- a. representations or complaints appropriate to another procedure, and
 - b. cases where some joint action is appropriate.

OTHER AVENUES OF COMPLAINT, INCLUDING APPEALS

Appeals against the “usual fostering limit” exemption

For information about CYPA procedure, see Volume G of this guidance

Appeals against court orders

- 37 Appeals should be made to the court, although this need not exclude the possibility of complaining under the Department's procedures. Legal advice should be sought.

Appeals re child minding (day care registrations Section 68), Children with disabilities

- 38 Complaints about the discharge by the Department of any of their functions under Part 3 of the CYPA 2001, including those in relation to children with disabilities will be dealt with under the procedure described in this chapter. This applies whether the complaint is about:
- a. the services provided, or
 - b. decisions on what services are or are not to be provided following an assessment of a child's needs.

PROCEDURE WHERE THE COMPLAINT FORMS PART OF ANOTHER PROCEDURE ISSUE

- 39 Whenever a complaint is made the implications for other procedures should be considered and addressed.
- 40 A clear distinction should be made between:
- a. a complaint,
 - b. disciplinary procedures, and
 - c. the reporting of a criminal offence.
- 41 Specific decisions will be made on how to proceed in any case where the handling of a complaint is concurrent with:
- a. action under the disciplinary procedures or
 - b. child protection action, or
 - c. a police investigation.
- 42 Guidance on how to determine the priority to be given to each case should consider:
- a. the need to protect a child, which should have first priority, and
 - b. the need for child protection action, when the complaint has been made by a child.
- 43 If child protection action is necessary, the inter-agency Child Protection Procedure should be implemented immediately

See IOM Child Protection Committee Agency Procedures and Working Together to Safeguard Children (The Stationery Office, 1999).

- 44 If a complaint is linked to a matter being dealt with under the disciplinary procedure the Department should:
- a. make it clear to the staff concerned and their representatives that consideration of the complaint is a separate issue, and
 - b. keep them informed of progress, within the limits required by confidentiality.

SUPPORT FOR THOSE USING THE PROCEDURE

Children

- 45 A child accommodated in residential care may need assistance with:
- a. invoking the procedure,
 - b. giving him or her the confidence in making a complaint.
- 46 Awareness should be raised, by means of information leaflets and open letters, for example.
- 47 Advice and confidential support should be offered in:
- a. making a representation or complaint,
 - b. pursuing it,
 - c. understanding the administrative process, and
 - d. coping with the outcome.
- 48 Support may be provided by making someone available who has no line management or service delivery responsibility or involvement in the child's case to work with the child in the matter of a representation.
- 49 Small registered children's homes and small homes need to take special care that their arrangements provide the children with appropriate support and the necessary independent element.

Staff

- 50 Anyone directly involved in a matter complained about, or with the child in another situation, should be informed of:
- a. the complaint, and
 - b. the actions taken during the course of the procedure.
- 51 Whatever their involvement, staff may need increased support and supervision from line managers to help them co-operate with the procedure and work positively with the child.

STAFF TASKS

- 52 The tasks relating to receipt of complaints include:
- a. receiving and investigating complaints that cannot be resolved informally (or overseeing these processes),
 - b. giving advice on the response to individual complaints,
 - c. ensuring the smooth running of the procedure.

SETTING UP THE PROCEDURE

- 53 The complaints procedures should:
- a. be straightforward,
 - b. be accessible to those who might wish to use them, and
 - c. be understood by all members of staff,
 - d. reflect the need for confidentiality at all stages.

PROCEDURES FOR HANDLING COMPLAINTS

Receipt of complaint

- 54 When the Department receives a complaint about the discharge of any of its functions under Part 3 of the Act, made by any of the people eligible to make a complaint, an acknowledgement should be sent to the complainant.

See p.160, Who may Complain, and Schedule 2 5(3) CYPA 2001

- 55 A leaflet should be enclosed with the letter, describing how the representations procedure works, and giving the name of the designated officer with responsibility for co-ordination. The leaflet should be easy to understand.

See p.166, Staff Tasks

Oral complaints

- 56 The Department should arrange for an oral complaint to be recorded in writing and agreed with the complainant.
- 57 Consideration will need to be given to how to meet children's varying needs, especially children:
- a. with communication difficulties, and
 - b. those whose first language is not English.
- 58 Similar consideration will also be needed in relation to adults from these groups who may wish to make a complaint.
- 59 Facilities available for people from these groups should be well publicised including to local community or self-help groups and voluntary organisations.

	<p>Eligibility to complain</p> <p>60 The Department may receive complaints from people other than those automatically entitled to complain under the Act, for example: relatives, friends, teachers, GPs.</p> <p>61 To determine his or her eligibility to have their complaint considered the Department has to consider whether the complainant has sufficient interest in the child.</p> <p>62 The Department should consider the views of the child (where he or she is of sufficient understanding) and of the other people mentioned in Schedule 2 5(3) to help to decide whether it is important to consider the representation in order to promote and safeguard the welfare of the child.</p> <p>Notification of eligibility</p> <p>63 Once the Department has decided whether or not the complaint is eligible for handling under the procedure, the complainant should be notified in writing and provided with a copy of the leaflet on the procedure.</p> <p>64 When the child is not the complainant, he or she should also be notified (if of sufficient understanding) whether or not the complaint is deemed to be eligible.</p> <p>65 In these circumstances, the date of receipt of a complaint is the day on which the Department makes its decision about eligibility.</p> <p>66 When it is decided that an individual is not eligible to pursue a complaint on behalf of a child, the Department should consider whether or not the substance of the complaint still needs to be addressed as if the child had complained.</p> <p>Steps in the complaints procedure</p> <p><i>Step 1</i></p> <p>67 The complaint will initially usually be dealt with by a manager who has some knowledge of the area.</p> <p><i>Step 2</i></p> <p>68 If the complainant is dissatisfied with the Department's reply he or she can request that the complaint be considered by the Assistant Director.</p> <p>69 A manager who has had nothing to do with the case so far will be appointed to report to the Assistant Director.</p> <p>70 If a written request is not received from the complainant then consideration of the complaint is ended.</p> <p><i>Step 3</i></p>
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	<p>71 If the complainant remains dissatisfied after step 2 the matter will be considered by the Deputy Director.</p> <p>72 A senior manager who has had nothing to do with the case so far will be appointed to report to the Deputy Director.</p> <p>Step 4</p> <p>73 If the complainant remains dissatisfied then the matter will be referred to the Director of Social Services who will respond to the complaints.</p> <p>74 A senior manager who has had nothing to do with the case so far will be appointed to report to the Director.</p> <p>Notification of the Department's decision</p> <p>75 The Department should notify the following people of its decision at each stage:</p> <ul style="list-style-type: none"> a. the complainant, b. the child (if he or she is considered to have sufficient understanding) and it is in his best interests, c. anyone else whom it considers appropriate (e.g. an independent visitor) <p>76 The notification should be clear and simple, and explain the Department's reasons for the decision.</p> <p>77 The letter should give:</p> <ul style="list-style-type: none"> a. the reasons for the decision, whether or not it changes the decision which gave rise to the complaints, and b. the proposed action. <p>78 It should remind the complainant of his or her right to request that the complaint is further considered where all stages have not yet been exhausted.</p> <p>79 If the complainant wishes to take advantage of this, he or she should be asked in the letter to make a formal written request, to reach the Department no later than 28 days after the date on which the letter of notification was sent.</p> <p>80 Whether or not the outcome is one that the child and the complainant welcome, the child, in particular, may need reassurance. He or she should be given opportunities to discuss his or her feelings about the outcome.</p> <p>81 Where appropriate, the Department should let the complainant know, with the notification of the outcome, about the other steps in the complaints procedure.</p> <p>82 The members of staff involved in the matter complained of should</p>
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also receive an explanation of the outcome.

Subsequent action

- 83 The Department should take action decided as a result of the findings as quickly as possible, to avoid another complaint.
- 84 Action might involve:
- a. identifying other procedures,
 - b. looking at the wider implications for policies or practice, and
 - c. altering arrangements with other authorities.

Timescales for action should be set.

MONITORING

- 85 The Department should monitor the operation and effectiveness of its representations procedure. Following this:
- 86 A record of all complaints received should be kept, covering:
- a. the nature of the complaint,
 - b. the action taken,
 - c. the outcome of each complaint, and
 - d. whether or not the time limits were met
- 87 The information collected during consideration of complaints (both first stage and subsequent stages) and the monitoring process will provide feedback on management and operational matters. This might include:
- a. how policies are interpreted by staff and service users,
 - b. how effective communication is within the Department and to the public,
 - c. where staff training is required, and
 - d. whether resources are targeted correctly.
- 88 The information should therefore be:
- a. disseminated to line managers,
 - b. used as a measure of performance and means of quality control,
 - c. used to provide information about services subject to statutory regulation, and
 - d. for services purchased under contract, passed to the person who monitors the contract.
- 89 An annual report on the operation of the procedures should be produced. It should include:

	<ul style="list-style-type: none">a. a summary of the statistical and other information, andb. a review of the effectiveness of the procedure.
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