



## Managing Complaints – Notes

24 February 2021

### 1. Why do schools need to have a complaints procedure?

- This is a legal requirement, see:
  - Part 7 of the Education (Independent School Standards) (England) Regulations 2014 (for Academies) and
  - [Section 29 of the Education Act 2002](#) (for maintained schools)
- As well as the legal requirements, schools must *'have regard to any guidance given from time to time by the Secretary of State'* when establishing and publishing complaints procedures relating to their school and any community facilities/services the school provides. This guidance can be found on the Department for Education (DfE) website and must be considered when reviewing and/or updating the complaints procedure. All references to the Secretary of State are references to the Education Secretary.
- A recent update can be found on the DfE website which makes reference to dealing with complaints during the Covid-19 period.
- Third party providers: it is the responsibility of the school to ensure that third party providers making use of the school's facilities and premises to offer community facilities/services have their own complaints procedures. Where there is a complaint about a third party provider, the school should direct the complainant to the relevant complaints procedure.

**\*\*Top Tip:** ask for a copy of the complaints procedure at the time of entering into an agreement with the third party provider.

- The duty to establish procedures for dealing with complaints lies with the Governing Board.
- If the school does not purchase the Schools HR Co-operative Model Policies, a complaints procedure can easily be drawn up based on the DfE guidance.
- The complaints procedure, like all school policies, will require ratification by the Governing Board before it can be implemented by the school. Ratification of policies should not be unduly delayed.

## 2. Requirement for schools to publish their Complaints Procedure

- This is also a legal requirement - it is the responsibility of the school to decide how it will publicise its complaints procedure in addition to publishing it on the school website. E.g. via newsletters, school prospectus, governor reports, social media.
- For federation schools, the Governing Board must ensure that each school in the federation publishes the complaints procedure on their individual websites. Where the school does not have its own individual website it would suffice for the procedure to be published on the federations website or other hosting platforms.
- This requirement does not apply to community or foundation special schools that are established in hospitals or to maintained nursery schools.

## 3. Complaints Co-ordinators

- The school may wish to have a designated complaints co-ordinator.
- The role of the co-ordinator would be:
  - to receive the complaint and re-direct as appropriate
  - to ensure that the complainant is fully updated at each stage of the procedure
  - to liaise with staff members, headteacher, Chair of Governors, Clerk and LAs (if appropriate) to ensure the smooth running of the complaints procedure
  - having an awareness of issues regarding sharing third party information and the provision of additional support. This may be needed by complainants when making a complaint including interpretation support or where the complainant is a child or young person
  - to keep records
- The advantages of having such a co-ordinator (ideally this should be at SLT level) are:
  - there is one designated person dealing with all the correspondence and co-ordinating the complaint
  - an easier tracking process
  - a reduced risk of data breaches and the containment of sensitive information/material

**\*\*Top Tip:** consider setting up a separate and independently managed complaints mailbox with regular monitoring. Details of a Co-ordinator should be provided in the procedure or any relevant correspondence relating to a complaint.

## 4. Scope of a Complaints Procedure

- The Complaints Procedure isn't just about parental complaints. It can apply to any party complaining or wishing to complain about the school (unless separate procedures apply).
- Out of scope complaints: what cannot be presented as a complaint under this procedure is listed in Appendix 2 found at the back of the Model Procedure. Also see DfE guidance.
- Anonymous complaints: will not usually be entertained because the source is not identified and it would be difficult to establish factors such as ulterior motives or whether the complaint is simply designed to be a nuisance to the school.

**\*\*Top Tip:** you may wish to investigate an anonymous complaint where it would be negligent not to, for example subject matter too serious to ignore. The investigation should inform any changes or steps to be taken by the school to address issues raised.

- Historical complaints: there is no obligation for the school to consider complaints that go back many months or years.
  - The procedure stipulates that complaints must be raised within three months of an incident although earlier complaints may be considered if exceptional circumstances apply.
  - Time limits referred to within the procedure are there to assist an effective investigation. Historical complaints would be difficult to investigate because witnesses may have left or may not have a clear recollection; documentary evidence may no longer be available.
  - Timings may be impacted by external processes and investigations.

**\*\*Top Tip:** you may wish to investigate a historical complaint where it would be negligent not to, for example subject matter too serious to ignore.

- Duplicate complaints:
  - After closing a complaint (having completed the complaints procedure), the school may receive the same/similar complaint from another party who may be related to the original complainant (e.g. spouse/partner/grandparent).
  - The school should, in the first instance, treat with caution if the nature of the relationship is not known or not verified (e.g. estranged parents of a child). No assumptions should be made.
  - Details of the original complaint or the outcome should not be disclosed to the third party unless agreed (this is to avoid a data breach and/or to protect the welfare of one or all the parties involved).
  - Where the nature of the relationship is verified, the new complainant:
    - can be advised that the matter has already been looked at by the school or

- can be advised that new aspects of the complaint which couldn't reasonably be looked at in the original investigation will be investigated or
  - can be directed to the DfE or the ESFA
- Withdrawn complaints: at any time during the process, a complainant can withdraw their complaint. Where this is the case, the complainant should be asked to confirm this in writing and the withdrawal should be acknowledged by the school, also in writing. It would not be reasonable to resurrect that complaint at a later stage unless there are exceptional reasons for doing so.

## 5. Distinguishing between a complaint and a concern

- It can be useful to distinguish between the two because a concern can be quickly disposed of without engaging the Complaints Procedure.
- A **concern** may be defined as “an expression of worry or doubt over an issue considered to be important for which reassurances are sought”.
- A **complaint** may be defined as “an expression of dissatisfaction however made, about actions taken or a lack of action”.
- It's in everyone's interest that complaints are resolved at the earliest opportunity. Many issues can be resolved informally, without the need to follow formal procedures. Schools should take informal concerns seriously and make every effort to resolve the matter as quickly as possible.
- There will be occasions when complainants want to raise their concerns formally. In those cases, the complaints procedure should be followed.
- The school cannot insist on the informal route being followed first in order to get to the formal process. This is not a necessary step for the complainant to take.
- The member of staff receiving the complaint should be competent enough to decide on the appropriate course of action and confirm this to the complainant. In some cases, it will be obvious from the content e.g. very serious allegations would warrant only a formal process being followed.

## 6. Written or oral?

- Complaints can be raised in different ways; by a parent visiting the school, by email, by letter and by telephone.
- The Model Complaints procedure has a template complaint form included.
- Whilst the ideal situation is to ask for a written complaint to be submitted, this may not always be possible. Complainants may have communication preferences due to a number of reasons including learning difficulties, disabilities and English not being the first language.
- Where the complaint is made orally, this should be accurately recorded and sent to the complainant straight away as confirmation of the school's understanding of the complaint to be investigated.

## 7. How to acknowledge the complaint?

- The complaint should be acknowledged in writing.
- The complaint should be acknowledged within 5 working days of receipt.
- NB: the model procedure stipulates that a written response should be provided to the complainant within 10 working days of the date of acknowledgement. This is a quick turnaround and in most cases, if not all, it will not be possible to provide a response (i.e. an outcome) within that period due to the investigation process. Where this is the case, the complainant should be advised accordingly.
- An indication should be given as to how long the investigation is expected to take (this should take into account factors such as witness availability, school closure periods and waiting for external investigations/proceedings to conclude).
- A copy of the Complaints Procedure should be enclosed with the acknowledgement.

**\*\*Top Tip:** when corresponding by email be careful not to disclose the complainant's personal email address to others unless you have consent. The same will apply to sending correspondence by post to a home address etc.

## 8. Who will deal with the complaint?

- An appropriate member of staff.
- Where the complaint is against a Headteacher, the complaint should go to the Chair of Governors.
- Where the complaint is against any member or all the Governing Board it should, in the first instance, be directed to the Clerk to the Governing Board:
  - The clerk should be offered professional advice and guidance on who is to be appointed to deal with the complaint. This advice can be sought from the Local Authority, the Governor Support Service or the Diocese
  - Complaints against individual governors can be heard by a suitably skilled and impartial member of the Governing Board and then a committee of members of the Governing Board
  - Complaints against the entire Governing Board or complaints involving both the Chair and Vice Chair should be determined according to the nature of the complaint. The complaint may involve sourcing an independent investigator and/or co-opted governors from other schools to hear the complaint at the appeal stages.
- Independent complaint panels (Appeals)
  - Schools with a small Governing Board may find it hard to source governors for the panel. In this case, the Governing Board of a maintained school may look to external governors (without having a formal collaborative arrangement under the

School Governance (Collaboration) (England) Regulations 2003) to sit on the panel as long as the governors are suitably skilled and can demonstrate impartiality.

- Maintained schools can ask governors in academies to serve on a complaints panel and vice versa.
- Where a governor is sourced in this way, it is advisable to have a pre-meet to highlight respective roles and expectations of the panel. Are there any risks?
- The main requirement is for you to source governors who are suitably skilled and can demonstrate their independence.
- All governors must be impartial when dealing with complaints. Details of complaints should not be shared with the whole Governing Board at any stage while they are still being considered, in case a complaints committee needs to be convened.
- Even after an investigation has been completed, the details should not be shared with all the Governing Board and if they do need to be shared, consider redacting and anonymising information to protect the complainant and witnesses and personal data.
- If the whole Governing Board is aware of the significant detail of a complaint before the final stage has been completed, you can consider arranging an independent committee to hear the complaint.
- Persons who have a conflict of interest should not take part in the complaints process, including proceedings of Governing Board meetings and committees.
- If there's any reasonable doubt as to a person's ability to act impartially, they should withdraw from considering the complaint. Where a governor has a financial interest in any related matter, they should also withdraw.

## 9. The Investigation Meeting

- **Is a meeting required with the complainant?**

- This will depend...
- The investigator should decide whether they need to meet with the complainant for example because the nature of the complaint is unclear and not understood or whether further information is required. This could equally be done via correspondence which may save on time and cost. This may be the preferred option in any event if dealing with a particularly difficult complainant.
- Where a detailed and lengthy complaint has been submitted it will not be necessary to meet with the complainant and just to proceed with the investigation

- **Interviewing witnesses**

- You should identify the appropriate witnesses. The complainant may have their own list of witnesses. The witness must be able to provide relevant evidence to the complaint.
- Where a witness (staff member) is about to leave the employment of the school, their interview should be prioritised. If a complaint is against a staff member, they should be advised of the complaint against them so they can provide a response. There is no need and it is not advisable for the written complaint to be shown to the staff member or for them to have a copy. The investigator can summarise the complaint to them and invite their response.
- Additional requirements where the witness is a child (consent, interviewing with a member of staff present, consult the LADO if relevant).
- Witnesses should be asked to keep matters confidential.
- Personal or sensitive data (details in the complaint) must not be disclosed to the witnesses unless the witness already has knowledge of those matters and they are relevant to the complaint.
- Witnesses should be asked to sign and date notes/statements.

- **Purpose of meeting and interviews**

- Fact finding exercise to enable you to make a decision on each aspect of the complaint.

- **Allowing representation and companions at the meetings**

- Consider whether the complainant or witnesses should be allowed representation or a companion to accompany them to meetings.
- See paragraph below on practical tips.

- **Recording Meetings**

- When to record meetings and how.
- See paragraph below on practical tips.

## 10. Decision making

- Decisions made at any stage of the process must be compliant with the principles of administrative law. Decisions must be:
  - Lawful (e.g. complies with education, human rights and equalities legislation)
  - Rational
  - Reasonable
  - Fair
  - Proportionate

- Decisions must also be compliant with the Nolan Principles (7 principles of public life and ethical standards). These are:
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - Honesty
  - Leadership
- You should ask yourself the question: *If my decision is challenged would I be able to legitimately defend it?*
- The outcome decision must be provided in writing with advice on how and when to appeal or next steps. The DfE recommends that copies of the minutes of the meeting are issued to the complainant. NB: complainant may be entitled to see them in any event (subject to the necessary redactions being made) under the Data Protection Act 2018/UK General Data Protection Regulation.

## 11. What are the outcomes?

- The model procedure lists the outcomes open to a school in resolving a complaint. These are:
  - an apology
  - an explanation
  - an admission that the situation could have been handled differently or better
  - an assurance that the event complained of will not reoccur
  - an explanation of the steps that have been taken to ensure that it will not happen again
  - an undertaking to review school policies in light of the complaint.
- The DfE guidance additionally refers to mediation although it is clear that the decision about whether this is to be offered to complainants rests with the school.
- Professional mediation can be costly and may not result in the desired outcomes or a resolution. Schools can consider any form of mediation; this can be less formal as long as it is independently managed and transparent.
- NB: Mediation should not be used as a substitute for an investigation during the formal stages of the complaints procedure. The complainant should not be prevented from moving to the next stage of the complaints procedure if the offer of mediation is rejected or where the mediation does not result in the desired outcomes.



## 12. Appeals to an Appeal Panel

- The DfE recommends that the complaint is considered afresh by the Governing Board at the appeal stage to ensure decisions are considered independently.
- The DfE recommends that the role of the appeal panel should be to look beyond the handling of the complaint at the earlier stages.
- The Appeal Panel should not review any new complaints at this stage or consider evidence unrelated to the complaint being reviewed.
- New evidence and witnesses relevant to the complaint may necessitate an adjournment of the appeal meeting.
- Roles and responsibilities:
  - Chair of Panel
  - Panel
  - Clerk

## 13. Going to the DfE or ESFA

- Complainants are expected to have exhausted the school's complaints procedures before taking matters further to the DfE (schools) or the ESFA (academies)
- The exceptions to this include when:
  - children are at risk of harm
  - children are missing education
  - a complainant is being prevented from having their complaint progress through the published complaints procedure
  - there is evidence that the school is proposing to act or is acting unlawfully or unreasonably

## 14. Serial, persistent, unreasonable, and vexatious complainants

- See DfE Guidance and recommendation for this to be included within the procedure
- Serial/Persistent complaints can be identified by looking at the subject matter and whether the matter is repeated again in later correspondence or complaints. You should not mark a complaint as 'serial' before the complainant has had a chance to complete the procedure
- Unreasonable complaints extends to looking at the behaviour of the complainant during the process

- Frivolous or vexatious complaints can be identified by looking at both the subject matter and the behaviour of the complainant
- How to deal with these types of complainants will depend on each individual case where the ultimate action taken by the school can be to stop all communication with the complainant. This action will need to be justified and the last resort.

## 15. Complaint Campaigns

- The DfE has additional guidance on what to do where the school becomes the focus of a campaign.
- Where this is the case and a school receives large volumes of complaints all based on the same subject and from complainants unconnected with the school, the recommendation is that you include a separate procedure in your complaints procedure to handle complaints of this nature. This could include:
  - sending a template response to all complainants
  - publishing a single response on the school's website

## 16. Monitoring and Reviewing Complaints

- The school must record the progress of the complaint and the final outcome including details of whether the complaint was resolved and how it was resolved.
- Action taken as a result of the complaint/lessons learnt must also be recorded.
- Determine who is responsible for these records and for ensuring all data is securely stored and retained by the school for the necessary length of time (ensuring data protection compliance).
- The Governing Board should monitor the level and nature of the complaints and review outcomes on a regular basis. This will:
  - Highlight effectiveness of the procedure
  - Inform of any changes to be made by the school
  - Highlight any patterns/underlying issues emerging requiring action
  - Contribute to school improvement
- The Governing Board should determine how often to review the complaints procedure. The DfE recommendation is at least every two to three years, to take into account any:
  - legislative changes
  - new guidance issued by the DfE
- Responsibility for reviewing the complaints procedure can be delegated to:
  - a committee of the Governing Board

- an individual governor
- the headteacher

## 17. Practical tips for investigators and appeal panels

- Consider whether any **adjustments** are required to assist the complainant and the process, for example, the use of a translator, companion, facilitating breaks and/or adjournments.
- In terms of **companions**, where the complaint reaches the appeal panel stages, it is the DfE recommendation not to allow legal representation by either party because the aim of the panel meeting is reconciliation and to put things right. There may be exceptional cases however where legal representation may be appropriate. Further advice should be sought. The school can decide on the appropriateness of allowing a (non-legal) companion at earlier meetings where for example, this may facilitate process and/or serve as a reasonable adjustment.
- **Redact or anonymise** confidential material (personal or sensitive data, names of children/pupils, safeguarding information, personal email addresses, home addresses etc).
- Avoid using group emails which disclose **personal email addresses** of the complainant and governors unless consent has been provided. The blind copy option can be used to send emails to the intended recipients without the email addresses being displayed to others. This is a good reason for governors to have activated school email accounts. Do not forward emails from the complainant to third parties unless agreed.
- Consider whether the use of the complainant's full name is necessary in internal correspondence. They can be referred to as the complainant. You should be mindful at all times of the fact that the school may receive a request under the **Data Protection Act** requesting access to personal data which could cover correspondence from which the complainant could be identified or is identified.
- You should bear in mind that complainants may have a right to access records or their data under the [Freedom of Information Act 2000](#), the [Data Protection Act 2018](#).
- Consider whether meetings should be **recorded**:
  - All parties should agree in advance to meetings being recorded and the reasons for it.
  - Where there are communication difficulties, you may wish to use recording devices to ensure the complainant is able to access and review the discussions at a later point.
  - Schools are data controllers in their own right and have the discretion via their policies to decide for themselves whether to allow complainants to record meetings, where this is not required for the purposes of a reasonable adjustment.
  - Schools are also responsible for ensuring there is a fair and reasonable purpose for allowing complainants to record meetings, as there may be various levels of identifiable personal information recorded. The DfE recommends that you consider

- (i) how any decision to allow recordings may affect any third parties called to act as witnesses and (ii) the impact and consequences on the individuals involved in the complaint in the event recordings are lost or leaked.
- Complainants should make sure they **obtain informed consent** from all parties present before recording conversations or meetings.
  - Similar to the DfE's position, where a complainant wishes to rely on a recording as evidence in support of their complaint, this should not normally be accepted. If it is critical to the investigation, you should consider accepting an independently notarised transcription of recordings. You should also ask for the written consent of all recorded parties. This may give rise to logistical problems.
  - Recordings of conversations that were obtained **covertly** and without informed consent of all parties being recorded should not be accepted as evidence.
  - It is standard practice for most schools to have a minute taker present at the Appeal Panel Meetings where the meeting is recorded and transcribed and the record deleted thereafter. Minutes are sent to the complainant with the outcome letter.
- **Manage expectations** of all those involved in the process by giving an indication of timeframes and keeping them informed of progress.
  - **Document any deviation** from the published complaints procedure and have good grounds for doing so and notify all parties concerned.

## 18. Useful Links

**DFE** – <https://www.gov.uk/government/publications/school-complaints-procedures>

\*Best practice guidance for school complaints procedure

\*Model complaints procedure

\*Model policy for managing serial and unreasonable complaints

**ICO** - <https://ico.org.uk/>

**Governor Support Service** – [www.governor.support](http://www.governor.support)

**Ends.**