

20 PLEDGES FOR 2020

"We are setting out a plan to bring about real change - not just about what can be achieved, but in the manner in which we will deliver it."


Cllr Phil Davies, Leader of Wirral Council

WIRRAL

SPECIAL EDUCATIONAL NEEDS AND DISABILITIES (SEND)

COMPLAINTS POLICY AND PROCEDURE

WIRRAL PLAN 2020

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November 2019

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1. INTRODUCTION

- 1.1 Wirral Council is committed to providing excellent services within special educational needs and disability services (SEND); but on some occasions individual customers, e.g. children/young people and families, may not be satisfied with the decision made by a Department, the provision of a service or an action taken on an individual case. The Council has put this in place a procedure for responding to concern or complaints to ensure that they are properly dealt with and that any lessons learnt are used to improve services.
- 1.2 The Council's SEND services will welcome and react positively to all feedback from children/young people, families and educational settings whether this is in the form of complaints, comments or suggestions and will use this customer feedback to continuously improve its services.
- 1.3 The complaints policy and procedure will be openly publicised including through the Council's website and in the Department's publicity material. The Local Offer website will also contain information about the procedure.

2. SEND CODE OF PRACTICE

- 2.1 The SEND Code of Practice was published in 2015 and provides statutory guidance on the responsibilities set out in the Children and Families Act 2014 in relation children and young people with special educational needs and disabled children and young people.
- 2.2 Included within the Code of Practice are the relevant duties, procedures and policies required to resolve disagreements between parents or young people and early years providers, schools, colleges, local authorities or health commissioners. This includes disagreement resolution and mediation arrangements, local authority complaints processes, tribunals and other avenues for dispute resolution.
- 2.3 Information regarding these avenues is available on the Local Offer and provided through the local authority's Information, Advice and Support Service, in line with the Code of Practice.

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3. PURPOSE OF THE POLICY

- 3.1 The purpose of this policy is to outline Wirral local authority's approach for dealing with concerns and complaints made to the local authority in relation to services provided to children and young people with special educational needs and disabilities.

SECTION 1: COMPLAINTS MADE TO THE LOCAL AUTHORITY

4. DEFINITION OF A CONCERN AND COMPLAINTS

- 4.1 A concern is...

"an expression of worry or disquiet about an event or incident which is usually current and can be addressed within a short period of time"

- 4.2 A complaint is...

"An expression of dissatisfaction about the council's action or lack of action or about the standard of a service, whether the action taken, or the service was provided by the council itself or a body acting on behalf of the council"

- 4.3 A complaint is not a request for a service.

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5. WHO CAN COMPLAIN?

5.1 The following people have the right for their complaint to be considered:

- Parent or carers of children with a special educational need or disability.
- A young person (a person over compulsory school age and under 25): Some young people, and possibly some parents, will not have the mental capacity to make certain decisions or express their views. Decisions about mental capacity are made on an individual basis and may vary according to the nature of the decision. Someone who may lack capacity to decide in one area of their life may be able to do so in another. In cases where a person lacks mental capacity to make a decision, that decision will be taken by a representative on their behalf. The representative will be a deputy appointed by the Court of Protection, or a person who has a lasting or enduring power of attorney for the person. (Further information and guidance are available in the Mental Capacity Act 2005) and the Mental Capacity Act Code of Practice: Protecting the vulnerable (2005).
- Advocates acting on behalf of parents or carers of children with a special educational need or disability who have written permission / consent from parents to make a complaint.

6. WHAT CAN BE COMPLAINED ABOUT?

6.1 The local authority Complaints Service will deal with concerns and complaints in relation to the following:

- Request for Education, Health and Care (EHC) needs assessments or re-assessment

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- Concerns about delays in commissioning services
- Concerns about delays in production of EHC plans
- Communication issues

6.2 The SEN Code of Practice sets out specific avenues for complaint and redress with regards to SEND.

7. WHAT WILL NOT BE CONSIDERED A COMPLAINT

7.1 The following complaints will not be considered:

- a) **Anonymous Complaints:** Anonymous complaints cannot be considered within the Children's Services complaints procedures. However, dependant on the nature of the complaint, the SEND Resolution Officer will decide what action, if any, should be taken.
- b) **Complaints about access to information** where procedures and remedies are set out in legislation e.g. Freedom of Information Act, Data Protection Act
- c) **Statutory complaints about Children's Social Care**
- d) **Statutory complaints about Adult Social Care**

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- e) **Complaints against decisions made by the Council where there are concurrent proceedings** e.g. disagreement resolution procedures, mediation or tribunal*. This is to prevent proceedings being compromised. Complaints will be received regarding a decision made by the Council only once proceedings have concluded. After this time, the complainant may submit a complaint **within one year** of the conclusion.

**First-tier Tribunal (SEN and Disability) about:*

- i. a decision by a local authority not to carry out an EHC needs assessment or re-assessment*
- ii. a decision by a local authority that it is not necessary to issue an EHC plan following an assessment*
- iii. the description of a child or young person's SEN specified in an EHC plan (Section B EHC plan), the special educational provision specified (Section F EHC plan), the school or other institution or type of school or other institution (such as a mainstream school/college) specified in the plan or that no school or other institution is specified (Section I)*
- iv. an amendment to these elements (Sections B, F and I) of the EHC plan*
a decision by a local authority not to amend an EHC plan following a review or re-assessment
a decision by a local authority to cease to maintain an EHC plan

- f) **Complaints about schools or early years providers:** Providers and schools should have their own complaints procedures and policies in place.

8. TIME LIMIT FOR MAKING COMPLAINTS

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- 8.1 Complaints made more than one year after the grounds to make the representation arose will not usually be considered. In these cases, the SEND Resolution Officer will write to advise the complainant that their complaint will not usually be considered and advise the complainant of their right to approach the Local Government Ombudsman.
- 8.2 The time limit can be extended at the discretion of the Head of Service for SEND and Inclusion if there are reasonable grounds for the complainant not being able to have made the complaint earlier; and it is still possible to consider the representations effectively and efficiently.

9. ASSISTANCE AND SUPPORT

- 9.1 The Local Offer includes information on how concerns or complaints can be made about services and the Information, Advice and Guidance Service can direct people to the local authority or relevant provider regarding complaints.
- 9.2 The SEND Resolution Officer will offer information and, where necessary, support so that children/young people and families can understand the procedures and take part in concerns/complaints processes. This may include information and signposting to the Disagreement Resolution Service and to mediation.
- 9.3 Individuals are entitled to access their own advocacy and support through WIRED, an independent organisation commissioned to provide advocacy for parents.
- 9.4 For children and young people making a complaint in their own right, they will be given information regarding advocacy services which are available. The local authority acknowledges that some young people may require support in expressing their views, including whether they may need support from an advocate (who could be a family member or a professional). The local authority will not use the views of parents as a proxy for young people's views. The majority of Young people will have their own perspective and the local authority will have arrangements in place to engage with them directly.

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10. COMPLAINTS MADE DIRECTLY TO THE SERVICE

- 10.1 If a complaint is made directly to a member of staff, the SEND Resolution Officer should be informed so the complaint can be recorded and monitored. There may be no need to engage the complaints procedure if the matter can be resolved quickly (within 5 working days).

All frontline staff are empowered to try to resolve service user concerns at the point of first contact. If a concern expressed by a service user is not resolved at the point of service delivery (frontline staff) and agreement cannot be reached on how the matters are to be resolved, the issue should be dealt with as a complaint under this procedure.

11. ON RECEIPT OF A COMPLAINT

- 11.1 Concerns or complaints should be made to the SEND Resolution Officer via email at sendresolution@wirral.gov.uk, by letter to address below or by telephoning 0151 691 8262.

PO Box 290
Brighton Street
Wallasey
Wirral
CH27 9FQ

- 11.2 On receipt of a SEND related concern or complaint, the SEND Resolution Officer will;
- Discuss the nature of the concern/complaint

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- Treat the concern/complaint in confidence
- Advise on whether the concern/complaint is inside of the remit of the complaint policy
- Log the details of the concern or complaint

the SEND Resolution Officer may also;

- Refer the individual onto the relevant service if the matter can be resolved informally
- Signpost the individual to other teams or organisations to assist

12. INITIAL CONTACT – DEALING WITH A CONCERN

- 12.1 The SEND Resolution Officer will explore with the individual whether their concern can be resolved informally prior to formally entering a stage 1 complaints process.

13. STAGE 1

- 13.1 The agreed points of the complaint will be logged by the SEND Resolution Officer and details of the complaint and desired remedy will be forwarded to the appropriate Team Manager within the SEND Service.
- 13.2 Managers tasked with responding to Stage 1 complaints should be open and flexible in their attempt to resolve the complaint and should examine how best to approach resolution, this could include meeting with the complainant to discuss their issues of concern rather than only communicating in writing.

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- 13.3 The Manager undertaking Stage 1 must write to, or meet with, the complainant to inform them of the outcome of their enquiries and any action they propose to take to try and resolve the complaint. If a meeting takes place the Manager must write to the complainant to confirm the outcome of the meeting. The response to stage 1 will be sent to the SEND Resolution Officer who will record and send to complainant .
- 13.4 If the complainant believes the matter remains unresolved the complainant may wish to have their complaint considered at Stage 2 of the Complaints Procedures; in this case the complainant must write to the SEND Resolution Officer **within 20 days** of receiving the response to stage 1. The letter must include:
- the issue(s) which remain unresolved;
 - an outline of why the complainant is dissatisfied with the response.
 - what remedy would resolve their complaint

14. TIMESCALES

- 14.1 The local target for completing stage 1 is within 10 working days of the complaint being logged by the SEND Resolution Officer, however in some cases more time is needed to give a full response and this procedure allows up to 20 working days for stage 1 to be completed. If stage 1 is likely to take more than 10 days, the SEND Resolution Officer will keep the complainant informed.
- 14.2 If a response has not been received by the complainant within the agreed timescale for stage 1 the SEND Resolution Officer will liaise with the complainant and appropriate manager to expedite a response in a timescale agreeable to the complainant. If after the intervention of the Officer, a response is not received, the complainant may elect to have the complaint considered at Stage 2 of the Complaints Procedure.

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15. STAGE 2 – FORMAL REVIEW

- 15.1 Complaints which are to be considered at Stage 2 of the procedure need to be registered in writing and the complainant's desired outcomes / remedy noted. The Complaints Manager will liaise with the complainant to ensure that proposed complaints are within the remit of the complaints procedure and agree the wording of complaints to be registered; It may be that the Complaints Manager can offer alternative resolution if this is in agreement with the complainant and this would not preclude the complaint from progressing to a formal investigation if resolution was not achieved.
- 15.2 The consideration of complaints at Stage 2 is normally achieved via a formal review undertaken by the SEND Resolution Officer acting as Investigating Officer.
- 15.3 The Investigating Officer will have access to all relevant Local Authority records and staff. If records from other agencies are required to facilitate a thorough investigation the Investigating Officer will make a written request that the agency in question produce relevant information within the bounds of normal confidentiality and with regard to the Data Protection Act 2018.
- 15.4 in line with our local target it is expected that formal review will be completed within 25 working days, however this may be impractical in some cases, particularly if the complaint is lengthy, complex or key witnesses are unavailable. Where it is not possible to complete the review within 25 working days, Stage 2 may be extended to a maximum of 65 working days with the agreement of the Head of Service SEND and Inclusion.
- 15.5 The Investigating Officer will maintain communication with the complainant and keep them advised of any unavoidable delays. The reason for the delay and the revised timescale for completion will be confirmed in writing by the SEND Resolution Officer.
- 15.6 On completion of the review the Investigating Officer will produce a report detailing:
- Findings, conclusions and outcomes against each point of complaint;
 - Recommendations on how to remedy any fault found to the complainant (if appropriate).

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- Suggested learning points for the Local Authority

15.7 The Complaints Manager will receive the reports, provide quality assurance and produce an action plan in relation to any recommendations made by the investigation and consider any appropriate remedy.

16. ADJUDICATION - HEAD OF SERVICE SEND AND INCLUSION

16.1 The Investigating Officer and the Complaints Manager will present the reports, action plan and any recommendations regarding a remedy to the Head of Service for SEND and Inclusion who will consider:

- The Registered Complaints;
- The Investigating Officer's findings, conclusions and recommendations;
- Complainants desired outcomes;
- Action Plan;
- Any recommendation regarding remedy.

16.2 The Head of Service for SEND and Inclusion may wish to meet the complainant as part of the adjudication process or afterwards to explain his/her decision.

16.3 The Head of Service for SEND and Inclusion will prepare a formal response to the report, including his/her decision on the complaint and any actions that will be taken with timescales for implementation. The formal response will be sent to the complainant together with copies of the Investigating Officer's report.

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- 16.4 The Head of Service for SEND and Inclusion is responsible for ensuring that the action plan is implemented. The SEND Resolution Officer will monitor implementation and report to the Assistant Director for Education.

This is the conclusion of the SEN Complaints procedure

The Stage 2 response will provide complainants with details of the Local Government Ombudsman if they remain dissatisfied.

17. UNREASONABLE AND PERSISTENT COMPLAINANTS

- 17.1 Children's Services are committed to dealing with all concerns and complaints fairly. However, there are a small minority of individuals who hinder the consideration of their or other people's complaints; or use unacceptable behaviour. Some examples of actions and behaviours which are designated as unreasonable or unreasonably persistent are:

- Abusive, offensive or threatening behaviour;
- Refusing to specify the grounds of a complaint despite offers of assistance from staff;
- Refusing to accept that issues are not within the remit of the complaints procedure despite having been provided with information about the scope of the procedure;
- Insisting complaints are dealt with in ways which are incompatible with the complaint's procedure;
- Introducing trivial or irrelevant new information which the complainant expects to be considered and commented on; or raising large numbers of detailed but unimportant questions and insisting they are all fully answered;
- Making unnecessarily excessive demands on the time and resources of staff, for example by excessive telephoning; sending e-mails to numerous council staff or writing lengthy complex letters every few days and expecting immediate responses.

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- 17.2 When it is considered that a complainant is unreasonable or unreasonably persistent the Complaints Manager, in consultation with the Head of Service for SEND and Inclusion, may take a decision to restrict access to the complaint's procedure. Any restrictions imposed will be appropriate and proportionate, the options most likely to be considered are:
- Requesting contact in a particular form (for example letters only);
 - Requiring contact to take place with a named officer;
 - Restricting telephone calls to specified days and times; and/or
 - Asking the complainant to enter into an agreement about their conduct.
- 17.3 In all cases the Complaints Manager will write to the complainant to inform them why his or her behaviour falls into the category of unreasonable or unreasonably persistent, what action will be taken and the duration of such action.
- 17.4 Where a complainant whose complaint is closed persists in communicating a decision can be made to terminate all contact with the complainant. In such cases the complaints manager will read all correspondence, place it on file and take no further action.

SECTION 2: COMPLAINTS RELATING TO OTHER SERVICES/PROVIDERS

18. Information about the Council's statutory complaint procedures and corporate complaints procedure is available to view at www.wirral.gov.uk.

19. COMPLAINTS TO EARLY YEARS PROVIDERS AND SCHOOLS

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- 19.1 Early years and schools' complaints procedures should be followed in relation to children and young people who have SEN but are without EHC plans.
- 19.2 All Ofsted registered childminders should have complaints procedures in place. Where the childcare provision is run by a school, the school's complaints procedure should be used. Procedures should outline that concerns should be raised directly with the manager and a response provided within 28 days.
- 19.3 State-funded schools must have and publish their procedure for dealing with complaints. Governing bodies should ensure that anyone who wishes to make a complaint, including a complaint in relation to children and young people with SEN, whether they have EHC plans or not, is treated fairly, given the chance to state their case, provided with a written response (including the rationale for any decisions) and informed of their appeal rights.
- 19.4 Academies, free schools and independent schools must have a complaints procedure which is made available to parents. The procedure must allow for a complaint to be considered informally in the first instance and then, if the parent remains dissatisfied, there should be a formal procedure for the complaint to be made in writing.

20. POST-16 INSTITUTION COMPLAINTS

Complaints at general further education colleges can be made informally to the teacher or the Principal, or through the college's formal complaints procedure. If the complainant is dissatisfied after going through the college's own procedure, they can take this up with the Skills Funding Agency.

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