**Consultation Questions**

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| Your name: Melanie MintyOrganisation (if applicable): Care Forum WalesE-mail: melanie@careforumwales.co.ukTelephone number: 01873 880816Your address: Hillbury House, Hillbury Road, WrexhamPostcode: LL13 7ETCare Forum Wales is happy for this response to be published. |

**Two Stage Process**

This is being introduced following the *Making Things Better* consultation to clarify and simplify the process for citizens.

The introduction of the All Wales Model, particularly the removal of a panel stage from the NHS process has further reinforced the need to remove this stage for social services complaints.

**Q1**

Is the two stage process set out in the guidance and regulations clear?

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| **Yes or No?** | **Comments** |
| Yes | If the informal/local resolution stage is Stage 1 of the process, this should be made clearer by adding “stage 1” to the subheading on page 20 of the guidance.Some clarification would be helpful in respect of the basis for ‘by-passing’ the local resolution stage/stage. The procedure makes provision for the complainant to ask for a formal resolution – does that mean if it is felt that an independent investigation is needed then the complaint moves straight to Stage 2? Or should all complaints go to stage 1 and if not resolved go to stage 2? |

**Informal Resolution**

The first stage of the new process seeks to enable local resolution. Regulation 16 of The Social Services Complaints Procedure (Wales) Regulations 2013 and 17 of The Representations Procedure (Wales) Regulations 2013 set out the procedure to be followed at this stage. We expect that the new emphasis on this stage will impact upon the number of complaints that go forward to formal investigation.

**Q2a**

Is the Local Resolution Stage clear?

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| **Yes or No?** | **Comments** |
| Yes | This stage would potentially benefit from a greater profile as it is generally accepted from practice that this can be the most effective stage for an effective and timely resolution of a complaint. As such where appropriate complainants should be encouraged and supported to use the local resolution which is particularly relevant to children and young people.Point 101 should read “with**in**” 10 working days. |

**Q2b**

Do you agree that the introduction of the requirement to acknowledge receipt of complaints and representations will improve the overall management of the system?

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| **Yes or No?** | **Comments** |
| Yes | Acknowledgment of complaints is generally considered best practice in complaints handling. An acknowledgment establishes a ‘framework’ for a complaint to be dealt with in an effective and efficient way and therefore not left to drift. It is also an acknowledgment to the person bringing the complaint that it is being taken seriously and going to be dealt with.The acknowledgment can also manage expectations and should include a target date for response/the next phase. |

**Q2c**

Do you agree that the new framework should ensure that more complaints are resolved at the local resolution stage?

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| **Yes or No?** | **Comments** |
| Yes | See comments at Q2a. There should be very specific circumstances for when this would not be appropriate as the local resolution stage, if working effectively, should be able to deal with the majority of complaints. |

**Independent Investigator**

Independent investigators are being introduced at the formal investigation stage. This is in response to the concerns raised in the *Making Things Better* consultation.

The regulations specify that independent investigator means a person who is neither a member nor an officer of the local authority to which complaints have been made, or the spouse or civil partner of such a person, but does include a person with whom the local authority has entered into a contract for services in order to conduct an investigation.

This provision is being put in place in response to concerns that the current stage 2 lacks sufficient independence and in itself can lead to dissatisfaction with the process and a desire to request a stage 3 panel.

This is a new duty on local authorities although we know that under the current arrangements local authorities do call on the services of independent investigators where they think that is appropriate. This will still be an option under the new regulations.

To further enable the availability of independent investigation we expect that local authorities will work together to put in place reciprocal arrangements for the sharing of suitable staff to act in these roles.

This requirement should be set against the removal of the stage 3 panel process. Whilst that arrangement is currently provided by the Welsh Government, removing this arrangement will also remove administrative and resource burdens on local authorities themselves.

We believe this process, as well as providing for greater independence, will also lead to better shared learning about the investigation of complaints. We do not believe this process will increase the costs of the local authority.

We will want to consider the consultation responses on this matter as we finalise the guidance that will underpin implementation.

**Q3a**

Do you agree that the introduction of the requirement for independent investigators will provide for greater independence in the handling of complaints?

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| **Yes or No?** | **Comments** |
| Yes | Having an independent person involved in the investigation and conclusion of a complaint at the formal stage should support achieving the time scales outlined: this will be their specific focus and role rather than being an additional responsibility or duty of a Manager within the Local Authority. It will also provide a measure of confidence for the complainant that the outcome will not be a foregone conclusion.If the independent investigator is under contract to the Local Authority they may not be regarded as totally independent but it is difficult to see how this could be avoided.As the ultimate decision to accept the recommendations of the independent investigator rests with the “senior officer” of the Local Authority, it may be appropriate to proscribe the level at which the office is set at section 135, rather than leave it open to varied interpretation across the Local Authorities.There needs to be further clarification whether the senior officer if the same person as the senior officer referred to at sections 51-53. |

**Q3b**

Do you agree that local authorities can work together to introduce this arrangement on a reciprocal basis?

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| **Yes or No?** | **Comments** |
| Yes | Local Authorities should already be considering innovative and reciprocal ways of working under the integration agenda. A reciprocal arrangement may be an effective way of creating a pool of independent people and would overcome a conflict of interest i.e. if Local Authority partners set up a contract to investigate each other’s complaints the process would become more independent. It might be helpful to include guidance at 141-142 on who should take the lead where the complaint covers more than one Local Authority. For instance, should this be the Local Authority that receives the complaint? If responsibility is not clear there may be disputes or misunderstandings leading to delays in dealing with the complaint.The principle of reciprocity could easily be extended, for instance to peer review and audit arrangements for complaints. |

**Simplifying the processes**

The guidance and regulations simplify the process at each of the two stages.

They significantly reduce the complexity of each stage particularly at the local resolution stage providing for a discussion in an attempt to resolve the complaint informally.

The regulations provide for a formal agreed ‘start date’ of a formal investigation, allowing for agreement between the authority and the complainant. In itself this will aid the investigation and the resolution.

In addition it will ensure that the formal investigation does not start until the complaint to be investigated has been agreed.

This provision is included at the local resolution stage in the representations process also, in order to allow for the appointment of an advocate if appropriate.

**Q4a**

Are the guidance and regulations simple and clear?

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| **Yes or No?** | **Comments** |
| No | Some further clarification has already been suggested in response to questions 1, 2a, 3a and 3b. In particular clarification is needed of the basis for a complaint going straight to the formal stage (108). Greater clarification would be helpful for complainants’ reference as to the different roles fulfilled by the Independent Investigator and the Independent Person (110) and where an Advocate fits within the overall process. This would be of particularly relevance for children and young people who ideally would need to have one person to liaise with. A guide for those using services including children and young people which is clear and straightforward would help and would be supported with a flow chart. Similarly, an easy read version could be produced for people with learning disabilities.There is discrepancy between the two sets of regulations regarding provider involvement in an investigation where a complaint relates to care provided under the Care Standards Act. Whereas this is specifically covered by 4 (22) of Handling of Care Standard Representations, it is not covered in the adult regulations or the guidance. Specific guidance needs to be included as many complaints will revolve around care commissioned under contract by the Local Authority. We would particularly like this to address the rights of the person under investigation to be accompanied or represented at interview. We would not want care practitioners to be treated by Investigating Officers in the same way as they are currently treated during safeguarding investigations, where meetings are often held without prior disclosure and conducted very formally and in a way that can be very intimidating for fairly junior staff. |

**Q4b**

Is it helpful to have a provision to allow for agreement of the complaint and an agreed start date before the independent investigation begins?

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| **Yes or No?** | **Comments** |
| Yes | If that is part of a process for determining with the complaint whether or not they are likely to need an Advocate and/or if the anticipated process of the investigation is going to be longer than the identified timescales due to the complexities of the complaint. However, this needs to be monitored to ensure that it is not resulting in delays in resolving more straightforward complaints. |

**Q4c**

Is it helpful to have an agreed start date in the local resolution stage in the representation process?

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| **Yes or No?** | **Comments** |
| Yes | Again it provides a structure and accountability for the complaint investigation to follow and will avoid potential drift. The effectiveness of this stage does rest on a timely and effective resolution. It is important that complaints are dealt with at this level effectively and efficiently as this can avoid the issue escalating to a more formal complaint. |

**Timescales**

New timescales have been set out in the regulations.

All complaints must be **acknowledged** within two working days of receipt. There is no provision for this timescale to be extended.

At the **Local Resolution** stage a local authority must have a discussion to informally resolve the complaint with the complainant within **ten** working days of the date of the acknowledgement and must provide written details of the terms of the resolution within **five** working days of the date upon which the complaint was resolved. In exceptional circumstances the ten day timescale can be extended with agreement from the local authority and the complainant.

At the **Formal Investigation Stage** the local authority must issue a response to the complainant within 25 working days of the start date. This is longer than the current timescale of 20 days for the second stage, but we know that authorities have difficulty in adhering to the current timescales and that it is better for complainants for their complaints to be investigated well – and investigated once.

In many cases we would expect that responses are issued well within the time limit, but this approach should ensure that the very greatest majority of complaints can be dealt with within the timescale.

There is provision at this stage for exceptional circumstances and where this applies, responses must be issued no later than six months beginning on the day upon which the local authority received the complaint.

Finally, citizens will have 12 months from the **date on which the matter which is the subject of the complaint occurred to make a complaint**.

There are exceptions set out to this time limit to ensure that in particular circumstances, people are still able to have their complaint considered.

This is a new provision which is being introduced in order to aid clarity and transparency.

Overall the new streamlined process and timescales will better align the process in social services with other public bodies, particularly the NHS, bringing greater clarity and transparency to the system and making it more straightforward for public service organisations to co-ordinate their work for the benefit of citizens.

**Q5a**

Do you agree with the timescales set out at each stage?

1. Acknowledgement

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| **Yes or No?** | **Comments** |
| Yes | These appear realistic and appropriate. |

2. Local resolution

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| **Yes or No?** | **Comments** |
| Yes | As already stated the success of this stage is for a timely and effective resolution. |

3. Formal Resolution

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| **Yes or No?** | **Comments** |
| Yes | The timescale appears realistic and clearly has an option for a longer period to be agreed with the complainant. However it will depend on the local authority having people available to act as the independent person and independent investigator. |

4. Time limit for having a complaint investigated

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| **Yes or No?** | **Comments** |
| Yes | The longer the time lapse from the issue arising and a complaint being made the more difficult it can be to carry out an effective investigation and subsequent resolution. This may become an issue given the proposed timescale and may well need to be reviewed over time.It needs to be clear that the time limits are the minimum acceptable standard and Local Authorities should be encouraged to surpass them. The guidance should remind complaint handlers to take immediate action with “live” cases where action needs to be taken to protect someone. |

**Q5b**

Do you agree that the provisions for exceptions are necessary?

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| **Yes or No?** | **Comments** |
| Yes | Again this is a necessary and realistic provision as there will always be the potential for situations to arise that require an exception to be considered and agreed. It is sensible to place this authority at Director level and to require reports on performance to ensure that the provision is not abused to improve figures. This is something else that might benefit from peer review to establish a consistent understanding of what makes an exception. |

**Q5c**

Do you agree that the new streamlined process and greater consistency of timescales will make it easier for public service organisations to co-ordinate their work for the benefit of citizens?

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| **Yes or No?** | **Comments** |
| Yes | As previously stated it should reduce drift and ensure complaints are concluded within specified timescales which will give citizens reassurance that their issues are taken seriously and being resolved. For children and young people the less complicated and the more straightforward the process the better. |

**Independent Person in Representations**

At this stage we are of the view that it is necessary to retain the requirement to have an independent person involved in representations. Their role will remain as it is in the current system and will be in addition to the requirement to have an independent investigator.

We are proposing to retain the independent person role in order to ensure that the voice of the child or young person is fully represented in the process. We will consider removing this requirement when the regulations are updated to reflect the provision for advocacy in the Social Services and Well-Being (Wales) Bill when that is implemented. We will consult on that matter at that time.

**Q6**

Do you agree that we should retain the requirement to appoint an independent person as part of the consideration of representations?

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| **Yes/No?** | **Comments** |
| No | Potentially having an Independent Person to oversee the process as well as an Independent Investigating person to investigate the complaint and also a Complaints Officer within the Local Authority and, in some cases, an Advocate could lead to the process becoming ineffective and / or unmanageable in terms of the number of people. It also does not lend itself to the intention to streamline the process into something that is more responsive and effective. However much will depend on the nature and complexity of the complaint as well as who or what aspect of the service the complaint is brought against. |

**Extending the scope of the representations procedure**

We are taking the opportunity to formally extend the scope of the representation process to specified functions under the 2002 Act and the 1989 Act. These matters have been introduced since the publication of the 2005 Regulations.

**Q7**

Is the scope of The Representations Procedure (Wales) Regulations 2013 clear?

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| **Yes or No?** | **Comments** |
| Yes | The guidance as laid out between (15) to (19) is clear. |

**Transitions**

The regulations provide specifically for transitional arrangements in order that any complaint being considered under the former procedure when the new regulations come into force will continue to be considered under the former procedure until it is concluded. This means particularly that complainants who have made a complaint under the previous regulations will continue to have access to the Stage 3 panel process in line with those regulations.

**Q8**

Are the transition arrangements clear?

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| **Yes or No?** | **Comments** |
| Yes | The arrangements appear reasonable. |

**Other**

**Q9a**

Do you agree that the new procedure will not increase costs for local authorities?

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| **Yes or No?** | **Comments** |
| Yes  | Potentially yes but probably needs to be measured in practice. Removing the Independent Panel could reduce costs but is likely to be replaced by the costs of the Independent Investigator and Person therefore potentially the costs could remain roughly the same.  |

**Q9b**

Do you think that the strategy set out in *More than just words,* the Welsh Government’s framework for Welsh language services within health, social care and social services can be applied to the complaints and representations procedure?

<http://wales.gov.uk/topics/health/publications/health/guidance/words/?lang=en>

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| **Yes or No?** | **Comments** |
| Yes | Particularly if little or no effort has been made to provide services in language of choice. UK Government departments already measure complaints about their own Welsh Language Services and this should be built into local authority complaints processes. |

Do you have any other comments?

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| **Comments** |
| Overall, the new procedure should streamline and make the whole process more time responsive. It will be important to have information in a clear and straightforward style which will make it accessible to all service users including children and young people.Point 137 of the guidance makes no reference to recompense or redress. Local Authorities should have a compensation policy in place that ensures that complainants are not left out of pocket as a direct result of their failures.There is, of necessity, an emphasis on recording and measuring time scales, but there is little mention of quality. To some extent this should follow through having appropriately skilled and independent officers, but complaints procedures should incorporate how the Local Authority will quality assure its service. Normally this would require spot checks by senior staff and follow up contact with the complainant. Point 163 refers to “regular soundings” but could provide more explicit advice. It would also be good to encourage peer review across Local Authorities.It would be helpful to give more guidance to Local Authorities on the data sets required so that trends in complaints can be measured locally and aggregated at national level, helping to inform best practice and lessons learned in a more meaningful way.More emphasis needs to be given on the training or awareness sessions that need to be delivered to those providing services under contract to the Local Authority e.g. care providers.Finally, although the guidance encourages Local Authorities to work together to establish reciprocal arrangements and share best practice, more could be done to encourage integrated working by encouraging Local Authorities to do this on an Local Health Board foot print. |