

REGULATORY APPRAISAL

THE REPRESENTATIONS PROCEDURE (CHILDREN) (WALES) REGULATIONS 2005

Background

1. There are currently two separate procedures for handling local authority social services complaints:
 - Children Act representations and complaints procedure: There is one procedure for representations, including complaints, about social services actions under Part III of the Children Act 1989. This is set out in the Representations Procedure (Children) Regulations 1991 and guidance; and
 - The Local Authority Social Services Act (LASS Act) complaints procedure: The NHS and Community Care Act 1990 introduced a second complaints procedure. This covers all complaints about social services for adults and children's services apart from those under Part III of the Children Act 1989. The requirements are set out in the Complaints Procedure Directions 1990 and guidance.
2. The Assembly has powers under the Children Act 1989 to regulate on the handling of complaints in social services for children. The Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003 amended these powers and gave the Assembly the opportunity to overhaul the arrangements last revised in 1991.

Purpose and intended effect of the measure

3. These Regulations, together with the matching set on services for adults (The Social Services Complaints Procedure) (Wales) Regulations 2005) and the associated guidance, will have the effect of putting into place a new framework for handling complaints in local authority social services. The main changes are:
 - the separate children's and community care procedures have been brought more closely together into a common framework. To provide a single volume of guidance covering all complaints about social services. In the Regulations, unnecessary differences have been eliminated wherever possible, although of course the differences required by the two pieces of primary legislation have been retained;
 - both sets of Regulations strengthen the duties on local authorities to operate their complaints procedures in a way, which will safeguard and promote the welfare of the service user concerned;
 - both complaints procedures now have the same three stages. This has been achieved by introducing into the children's procedure a clear, time limited first stage giving a chance for local resolution;

- the Regulations put all of the time-scales for handling complaints on a statutory footing. They require authorities to keep complainants informed of progress with their complaint;
 - the scope of the Children Act 1989 procedure has been extended to services under Part IV (care and supervision) and Part V (protection of children) of that Act;
 - the Regulations provide arrangements for managing complex situations where there are concurrent investigations by for instance the police, the Care Standards Inspectorate for Wales (CSIW) or the Care Council; and
 - in perhaps the biggest single change, the Regulations introduce an independent stage where local consideration has failed to secure resolution of the matter. Under the old arrangements, the local authority convened a panel hearing with, typically, one of the three members being independent. Under the new arrangements, complainants will still have the same right to a panel hearing – but both the membership and the convening arrangements will be wholly separate from the complained against authority.
4. The Regulations and guidance set out new arrangements for links between local authorities and the CSIW and, through the guidance, the same principles have been extended to cover links with other complaints procedures in the NHS, education and other local authority services. Together, these changes will represent a major step towards a seamless complaints service for users of public services in Wales.

Risk Assessment

5. Recent research commissioned by the Assembly, responses to a consultation carried out in 2001 and representations from service users have suggested a number of problems with the present regime:
- people who use services see the arrangements as too complicated;
 - authorities have not always dealt with complaints promptly and sympathetically;
 - authorities have not always met the requirements on time-scales;
 - authorities have not always kept complainants informed about the handling of their complaint;
 - the separate arrangements for children and adults have created confusion;
 - there has been no framework for handling complaints that involve both social services and the NHS;
 - the lack of any independent stage to the procedure has undermined confidence among some service users, especially children and young people; and
 - a small, but growing number of people have felt the need to take their concerns to the Public Service Ombudsman for Wales and to the Children's Commissioner.

Options

6. There are three options:

- Option 1: Do Nothing;
- Option 2: Wait for the planned NHS Regulations currently on hold; and
- Option 3: Make the Legislation

Option 1: Do Nothing

7. This would mean that the present arrangements would continue – with all of the risks and shortcomings outlined in paragraph 6 above. In particular, the vulnerable children and young people who rely on social services would still have no access to an independent panel hearing when the local authority's handling of the complaint has failed to resolve the issue.

Option 2: Wait for the NHS Complaints Procedure Regulations currently on hold

8. This would mean that the health and social services Regulations could be considered together, as originally planned. However, the issues for the two services are rather different. While the Assembly overhauled the NHS complaints arrangements in April 2003, the social services arrangements are still in the form in which they were first introduced for England and Wales in the early 1990's. The Assembly held its own major consultation on social services complaints in 2001 and has waited on Westminster legislation in 2002 and 2003 for the powers to make the changes proposed then. The Shipman recommendations, which have delayed what would have been the NHS Complaints Procedure Regulations 2005, do not have a direct bearing on the social services arrangements. It will still be possible to build more of a seamless service across the NHS and local authorities through guidance. There is little justification for delay on these grounds.

Option 3: Make the Legislation

9. The Assembly has an opportunity through recently acquired powers in the Adoption and Children Act 2002 and the Health and Social Care (Community Care and Standards) Act 2003 to reform complaints arrangements in social services. Making the legislation now means that the reforms in Wales can come into force on 1 April 2006, at the same time as the matching reforms in England.

Benefits

10. The main beneficiaries of the new framework will be the children and young people who use social services. It will also benefit the family members and advocates who might need to pursue complaints on their behalf, because:

- the Regulations create unified and more coherent arrangements;
- the Regulations create duties on authorities to place the well being of the person using the service at the heart of their work on handling complaints;
- the Regulations put the time-scales for handling complaints on a statutory footing;
- they place duties on authorities to keep complainants informed about the handling of their complaint;

- they provide arrangements for managing situations where for instance the police, the CSIW or the Care Council are also investigating the matters raised in the complaint;
 - most importantly, the Regulations give children and young people who use the service, the opportunity to have an independent review of their concerns when the local authority's handling of the complaint has failed to resolve the issue; and
 - if implemented successfully, the new framework should mean that fewer people with concerns about social services would feel the need to take their concerns to the Public Service Ombudsman for Wales or the Children's Commissioner.
11. The Regulations and guidance will also be of benefit to local authorities and their staff. It will give them a single, comprehensive framework of Regulations and guidance on complaints for the first time.

Costs

12. The Regulations will, in line with the Children and Adoption Act 2002, broaden the scope of the complaints procedure and could give rise to additional local authority expenditure. Any additional costs will be met from within the resources provided for local authorities within the 'Children First' grant and in the revenue settlement.
13. It is not anticipated that local authorities will need additional resources to meet their duties under the new Regulations and guidance. The overall intention is to secure improvements in practice within existing resources. Local authorities have had statutory duties to establish and operate complaints procedures since 1991. They have had duties since then to publicise the procedures among service users and the public and they have had duties to train their own staff to use the procedures properly.
14. Under the new arrangements, authorities will no longer be responsible for operating the third or panel stage of the procedure. Local authorities will be able to re-deploy any modest savings they make at this stage to developing the quality of their practice in the two earlier stages.
15. This change creates limited financial implications for the Assembly, which will have responsibility under the Regulations for running the new independent panel stage. The Assembly has concluded an agreement with the NHS Business Services Centre that the role will be performed on its behalf by the existing Independent Review Secretariat for the NHS – albeit with a radically simpler procedure than the NHS one. This will have a recurrent cost from 2006-07 of £100k for the combined children's and adult's procedures. This will pay for the administrative costs of running the panel, as well as 'day fees' for the panel members. This funding will be found from within the Health & Social Care Main Expenditure Group.

Consultation

With Stakeholders

16. The draft Regulations – together with the guidance - implement most of the main proposals to come out of the Assembly’s wide-ranging consultation on complaints in 2001. The main findings of which were:
 - there was “particular support” for the proposal to bring the two separate procedures into a common three-stage framework;
 - there was support for at least part of the procedure to be more independent of the authority complained against;
 - respondents generally supported a greater emphasis on local resolution;
 - those who responded wanted stronger guidance on the need to defer or freeze decisions while complaints about them are considered;
 - those who responded wanted better follow-up of the undertakings given by authorities in response to complaints; and
 - respondents wanted to see clearer links between social services procedures and other processes in, for example, health, education and housing.
17. The present Regulations and the associated guidance were drafted with the help of a Complaints and Representations Advisory and Implementation Group (CRAIG). This brought together a range of key interests to consider the main policy options, the drafting instructions for the Regulations and the draft guidance.
18. There has been extensive consultation over the last 18 months, with children and other service users, local authority complaints officers and advocacy providers, on how we can improve the arrangements for handling complaints and move towards a more seamless response across different services. Extensive work with children and young people was completed during 2004-05 and informed the development of the draft Regulations and guidance.
19. In addition, a public consultation was carried out on the draft Regulations, draft Regulatory Appraisal and draft guidance between 16 May 2005 and 5 August 2005. 52 responses were received from relevant organisations, including bodies representing services users, local authorities and local health boards and Public Services Ombudsman, the Children’s Commissioner and the Care Council. (A list of consultees is attached at Annex 1.) While a number of helpful suggestions were made, there was overwhelming endorsement for most of the Assembly Government’s proposals. Just one proposal was rejected - a suggestion that the regulations should be amended to require all complaints officers to have a social work qualification. Respondents felt that in selecting the best people to be complaints officers, local authorities should be able to draw on a wider pool than social workers.
20. In the light of the consultations, a number of amendments were made to the consultation drafts of both sets of Regulations. These amendments:

- adjust some of the time-scales for individual stages of the procedure;
- strengthen the requirements on authorities to keep complainants informed about their rights under the procedures;
- strengthen the requirements on authorities to keep complainants informed about the progress of their complaint; and
- make provision for cases where the Care Council may also be investigating the matter raised in a complaint.

With Subject Committee

21. These Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation on 25 May 2005 and were identified for detailed scrutiny (HSS (2) 07-07 Paper 1: item no: HSS 77 (04)).
22. The Committee scrutinised these Regulations at its meeting on 5 October 2005 (HSS (2)-10-05 (p.7)). No amendments were proposed or points of clarification raised. The Committee recommended approval of the draft Regulations.

Review

23. The impact of the Regulations will be monitored systematically. The Regulations require each authority to produce an annual report on its work with complaints. The guidance associated with the Regulations, which is currently in preparation, specifies the scope of the report and it should include, at the minimum, data on:
- the numbers of complaints resolved at each stage - local resolution, formal consideration and independent review panel;
 - adherence to time-scales;
 - who made the complaints;
 - what they were about;
 - how they were resolved; and
 - confirmation that promises made as part of the resolution have been kept.
24. The 22 annual reports should provide a good basis for compiling a clear picture of performance across Wales.
25. The independent panel hearings will create new opportunities to look at how well the local arrangements are working.
26. The Social Services Inspectorate for Wales (SSIW) will be including new indicators of the handling of complaints within the developing framework for Performance Management. Beyond this, it would be open to the Assembly to ask SSIW to inspect the handling of complaints. This could be done either as one of its regular thematic inspections or as a one-off investigation if there was a local cause for concern.

Summary

27. The proposed Regulations will benefit people who use social services in Wales. They will bring together the separate arrangements for services to children and services for adults. They will give children and young people who use services the chance to take their concerns to an independent panel hearing wherever the local authority's handling of the complaint has failed to resolve the issue.

**COMPLAINTS AND REPRESENTATIONS PROCEDURES IN LOCAL
AUTHORITY SOCIAL SERVICES: LIST OF RESPONDENTS TO THE
CONSULTATION HELD MAY TO AUGUST 2005**

Local Authorities

Blaenau Gwent County Borough Council
Bridgend County Borough Council
City & County of Cardiff
Carmarthenshire County Council
Ceredigion County Council
Conway County Borough Council
Denbighshire County Council
Flintshire County Council
Merthyr Tydfil County Borough Council
Monmouthshire County Council
Neath Port Talbot County Borough Council
Newport City Council
Pembrokeshire County Council
Powys County Council (2)
Rhondda Cynon Taf County Borough Council (2)
City & County of Swansea
Torfaen County Borough Council
Wrexham County Borough Council
Cyngor Sir Ynys Môn

Organisations representing service users and other voluntary bodies

Age Concern Cymru
All Wales People First
Barnardos Cymru
Cartrefi Cymru
Crossroads Wales
CWMPAS
Mencap Cymru
Mind Cymru
NCH and NCH Cymru
NSPCC
Parkinson's Disease Society of the UK
TGWU Retired Members Association
Torfaen Voluntary Alliance
Vale of Glamorgan Older People's Forum

Continued

NHS bodies

Board of Community Health Councils in Wales
Bridgend Local Health Board
Cardiff Local Health Board
Conway and Denbighshire NHS Trust
Neath Port Talbot Community Health Council
Neath Port Talbot Local Health Board
North Glamorgan NHS Trust

Other bodies and individuals

All Wales Complaints Officer Group
Association of Directors of Social Services Cymru
Cardiff University – School of Social Science
Care Council for Wales
Children's Commissioner for Wales
An Independent Chair within the existing complaints procedure
An Independent Person within the existing complaints procedure
An Independent Person within the existing complaints procedure
Public Services Ombudsman for Wales