

**Children and Families Services Directorate
Learning Improvement Service**



Handling complaints

Guidance for schools

September 2016

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HANDLING COMPLAINTS: GUIDANCE FOR SCHOOLS

(Not to be published as part of the adopted complaints procedure)

Part one: introductory and general points

This document offers guidance about how any concern, complaint or allegation received by the school might be handled. It does not form part of any formally adopted procedure but may help where a school has adopted the local authority model and would like further guidance where the procedure allows discretion.

It is strongly recommended that schools take account of the DfE advice document “[Best Practice Advice for School Complaints Procedures 2016](#)”.

If, at any stage, a complaint is received making an allegation of child abuse against a member of staff or school volunteer, the member of staff or governor receiving the complaint should act in accordance with procedures adopted that are consistent with the statutory guidance [Keeping children safe in education \(September 2016\)](#).

Any other allegation of misconduct or misbehaviour by a member of staff should not be treated using the school’s Complaints Procedure: the governing body should have adopted a separate disciplinary procedure for dealing with such matters.

This guidance may also be used to support the handling of any complaints raised about volunteers, including governors, where employment procedures are not appropriate.

Preparation

Before finally adopting the procedure and this guidance, the staff or governors responsible for preparing the procedure must choose from available options (indicated in square brackets and yellow highlighted):

- There are no specific time limits suggested. The DfE strongly recommends clarity about timescales. We recommend that a timescale is inserted, using the general guidelines in the “Timescales” section of Annex 1 below. What is important is that school complies with whatever deadlines are published in their procedure and that those dealing with complaints are clear that the deadlines they need to comply with are those in the procedure and not necessarily the suggested deadlines in the guidance
- The appeal stage may be by hearing or review (see below for further details)

Child protection first

If a complaint is received against a member of staff or volunteer working in the school that amounts to an allegation of child abuse, the advice of the Local Authority Designated Officer (LADO) must be immediately sought.

Which procedure?

The school should always try to resolve concerns at the earliest possible stage, but should not prolong the use of an informal approach in order to delay or avoid a formal investigation. It may reserve the right to deal with a concern by using the “investigating complaints” stage of the Procedure, if this will resolve matters more speedily.

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The school is not required to investigate anonymous complaints, but may choose to do so and retain any written material submitted anonymously for future reference and to ensure any warning signs are considered that should secure the safety of pupils and staff.

Complainants may not determine how a complaint should be investigated. Where a statutory or local authority procedure does not have to be followed, the school should use the relevant procedure most recently adopted by the governing body. Any variation to the procedure by the school should be agreed with the complainant in advance.

If a complaint is about a governor, this may have implications for their continuing membership of the governing body. Regulations allow for some complaints about governors to be handled by other procedures.¹ Contact the Governor Support Team for further details and advice.

If the complainant has raised concerns about racist or homophobic incidents, staff should take advice from Allyson Carty, Partnership Partnership Development and Participation Officer (Equalities), email allyson.carty@cumbria.gov.uk.

Timescales

All concerns should be responded to swiftly and appropriate action taken, including making an apology where appropriate, so that concerns do not unnecessarily escalate to formal complaints.

It is recommended that holding or initial response letters should be issued within five school days. Investigations should be concluded within approximately 30 school days. Outcome or decision letters should take no longer than 10 school days. Circulation of papers should be no later than five school days prior to meetings.

All references to “days” are to school days. The school should recognise that there may be circumstances for both parties that prolong the procedure – such as sickness absence or holiday – and it would be reasonable to expect some variation or flexibility. The complainant should be informed of any change to timescales as soon as possible.

When a complaint is being handled, the investigator should arrange provisional dates for all stages in the procedure, allowing the school to plan for the appeal stage in advance.

Note also the advice in this extract from the DfE document “[Best Practice Advice for School Complaints Procedures 2016](#)”.

“Expect complaints to be made as soon as possible after an incident arises (although three months is generally considered to be an acceptable time frame in which to lodge a complaint);

“Ensure that, if the policy includes a cut-off timeframe, the school will consider exceptions and that their complaint procedure reflects this. Schools must not have blanket policies of refusing to consider any complaints not lodged within the stated period.”

Investigators / panel members / “tainted” governors

The Headteacher should ensure that those senior staff who may be delegated to act as an investigator have this duty included in their job description and provide suitable training and/or support.

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¹ See s 17 *Suspension of governors* in [The School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#) and s 20-25 *Removal of governors* in [The School Governance \(Constitution\) \(England\) Regulations 2012](#)

The governing body should either

- nominate annually, a governor who will normally act as the investigator and another governor as a reserve OR
- delegate to the Chair and Clerk, the power to appoint any suitable governor at the time a complaint is received.

If any complaint is being investigated by a governor, either the Chair or the investigating governor should also ensure that arrangements for any potential appeal are provisionally made at the outset of the investigation.

All categories of governor may be regarded as suitable to be appointed as investigators or to a panel, provided that a governor is not previously “tainted” or has a *personal* conflict of interest that might prevent them from acting impartially.

A governor should only be regarded as “tainted”, and therefore ineligible to act as investigator or member of an appeal panel, if s/he has had either

- substantial personal involvement in the matter, or
- substantial prior knowledge of the details of the complaint that would render them incapable of acting impartially (eg the investigator could not also sit on the appeal panel).

The fact that the *complainant* (or any individual who is the subject of the complaint) might deem a governor tainted should not be regarded as a sole determination of their ineligibility.

Relevant staff and governors should attend training to ensure that complaints can be handled appropriately.

Confidentiality / records / communication

A complaint received by a member of the governing body should be referred only to the Clerk or the Chair (or Vice Chair if the complaint is about the Chair). It should not be circulated to all governors, or taken to a governing body meeting.

Governors approached personally by a complainant should advise them of the school’s procedure and refer them either to the Headteacher, or to the Chair of Governors, or to put their complaint in writing to the Clerk to the Governors, whichever is appropriate.

Complainants should be advised that they may harm the fair hearing of their complaint if they write to all members of the governing body.

All correspondence should use the school address. All letters from the governing body should normally be signed from and by the Clerk to the Governors, even where it is the Chair of Governors or other member of the governing body that is the investigator, or the Chair of an appeal panel. There may be specific occasions where it is more appropriate for the Chair to sign the letter, for example, when dealing with a vexatious complaint or an unreasonable complainant.

As part of its process of self-evaluation, the governing body should monitor records to review the effectiveness of the procedure and how the process of resolving concerns can contribute to school improvement.

The school should retain records of complaints for at least six years.

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Part two: implementing the procedure

Receiving and responding to a concern or complaint

1. Anyone who has dealings with the school can make a complaint, whether a pupil (including past pupils), a parent or carer (of present and past pupils), a visitor, a neighbour, or a provider of a service to the school, on matters for which the school is directly responsible. For the purposes of this guidance, a complaint may be regarded as the formal registering of what may previously have been raised informally as a concern, either by the complainant requesting that the school use the formal procedure, or the school determining that it should use the procedure.
2. It is expected that those wishing to raise a concern about an aspect of their child's education will arrange through the office to meet with the relevant member of staff (or their manager) about whom the concern is being raised. It may be appropriate to arrange for staff to have a senior colleague present for the meeting. Members of staff should
 - deal with and resolve the concern if they can;
 - report to the Headteacher that they have been notified about a concern;
 and
 - explain what action they have taken to deal with it.
3. If the concern is about a matter of school policy, then this should be referred to the Headteacher.
4. If a member of the school (staff or governor) receives any concern, complaint, or allegation which is not about them personally, it should be referred in the first instance to the Headteacher² so that a decision can be made about how to respond. If the complaint is about the Headteacher, it should be referred to the Chair of Governors; if it is about the Chair of Governors, it should be referred to the Clerk to the Governing Body.
5. Many concerns can be resolved by giving the complainant the opportunity to discuss matters with the individual concerned, whether a member of staff or the Headteacher.
6. Care should be taken in involving the Chair or other governors in trying to reach informal resolutions; governors have a specified role in the school's formal procedure and it is therefore not recommended that they be used at the informal stage.
7. The conclusions of any meeting with the complainant and the outcomes of any informal investigation by a member of staff should be put in writing and copied to the complainant within [school days] following the meeting. The letter to the complainant should also explain that if they remain dissatisfied, they have [school days] to request that their concern is investigated as a complaint.

Investigating a complaint

8. This refers to either
 - (1) An investigation by the Headteacher or a senior member of staff (for complaints against members of staff other than the Headteacher) OR

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² or relevant senior member of staff or line manager

- (2) An investigation by a nominated member of the governing body (for complaints against the Headteacher or a governor).

In the following paragraphs, the word “investigator” refers to either the Headteacher, senior member of staff, or governor as appropriate.

Making a complaint

9. The complainant should put his/her complaint in writing. The complainant may make a request for formal consideration of their complaint in person, or by telephone. In this case, the person receiving the request should record the details, confirm with the complainant that the written record correctly reflects their complaint, and then pass it to the relevant manager, or the Headteacher, or the Chair of Governors, or the Clerk, whichever is appropriate.
10. If, on receipt of the complaint, the manager or governor dealing with the complaint believes it to be either a wholly trivial matter, or that it has been dealt with before and might therefore be deemed “unreasonable”, or originating from a serial or unreasonably persistent complainer, they should take legal advice to confirm whether to proceed.

(See “*Is it time to stop responding?*” in the DfE best practice advice.)

Initial response to a complaint

11. However the complaint is notified, it should be acknowledged within [school days] by the Chair or Clerk, or by the investigator if s/he is appointed quickly enough to meet the timescale.
12. The investigator should normally offer an opportunity to meet the complainant as soon as possible to discuss the complaint, confirm what will be investigated and what outcome the complainant seeks. The investigator should provide the complainant with a copy of the procedure. The outcomes of this meeting should then be confirmed in writing with the complainant and signed by both the complainant and the investigator. A copy of the outcomes should be sent to the complainant within [school days] of the meeting.
13. If it emerges at the meeting that the complainant is expecting to know that disciplinary action will be taken against staff as a result of the complaint, or that a decision taken as part of another statutory process (eg an exclusion) will be overturned, then the investigator should make clear that this is not possible (as disciplinary procedures are confidential and exclusions are subject to statutory appeal) and close the meeting. They should then take advice to make sure that the right procedure is being used.

Investigation

14. The complaint should then be investigated. The investigation may include:
 - (1) interviews with the person against whom the complaint is made (whether staff, governor, visitor, volunteer);
 - (2) interviews with any other relevant witnesses;
 - (3) a review of any written papers;
 - (4) referring to any relevant school policies or procedures.

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The investigator may also wish to contact the local authority to check what procedures the school should have in place and what is regarded as good practice.

15. **Interviews with children should only be undertaken by professionals (such as teachers or support staff who have a clearly established working relationship with the child) and not by governors. Permission normally needs to be obtained from pupils' parents for such interviews to take place. The school may take advice from the local authority to ensure that such interviews are conducted appropriately.**
16. The investigation should usually be concluded within [school days] dating from the school's acknowledgement of receipt of the complaint and a written response sent to the complainant at the end of the investigation. If there is to be a delay in concluding the investigation, a letter should be sent to the complainant explaining the reason for the delay and providing a revised date.
17. The written response should explain *briefly*
 - (1) what the investigation entailed (but not details of what was said or written by witnesses);
 - (2) whether the complaint has been upheld and, if it hasn't, the main reasons for not upholding;
 - (3) any action the school proposes to take to resolve the complaint where it is upheld, including offering a resolution meeting (but not including any subsequent, specific actions against any individual);
 - (4) any policy or procedure recommendations to be made to the Headteacher or governing body in the light of the investigation (whether the complaint is upheld or not);
 - (5) that there is a right of appeal to the governing body;
 - (6) that any appeal should be made in writing within [school days] of their receiving the outcome letter;
 - (7) that if the right of appeal is not exercised, the matter is closed.
18. Where a member of staff or volunteer (eg a governor) is the subject of the complaint, s/he should also receive a copy of the written response.
19. The complainant is not normally entitled to see any written records, notes or minutes made by the investigator during the investigation, except notes of meetings where the complainant was present. (The school may nevertheless be required to comply with a release of information through a Data Protection disclosure or Freedom of Information request.)

Resolution meeting

The school might offer or agree to a resolution meeting at any time.

20. Where a complainant agrees to attend a resolution meeting after either the investigation or appeal outcome has been notified to the complainant, this should usually be arranged no later than [school days] after the date of the letter to the complainant. The purpose of the meeting is to give the opportunity for all parties to meet and agree any restorative actions.

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21. Matters raised in this resolution meeting would be confidential to that meeting with the only minutes being agreed outcomes. The meeting should be chaired or conducted by the investigator or the Chair of Governors or a third party external to the school. (This might be a representative of the local authority, the diocese, a governor of another school, a retired headteacher or other professional known in the community.) The chair of the meeting may be nominated by either party, but should be acceptable to both.
22. Should the meeting not produce a resolution, then the complainant can still appeal to a panel of the governing body against the outcome of the investigation. This request should be made within [school days] of the resolution meeting.

Appeal to the governing body

23. Whilst it is expected that complainants should normally write direct to the Clerk, a recorded verbal notification of the complainant's request for an appeal hearing is acceptable, provided it is given within the relevant timescale.
24. If, on receipt of the notification of the appeal, the manager or governor dealing with the appeal believes it to be a wholly trivial appeal, they should take legal advice to confirm whether to proceed.

(See "*Is it time to stop responding?*" in the DfE best practice advice.)
25. A letter should be sent to the complainant acknowledging that they have exercised their right to an appeal. This letter should:
 - (1) acknowledge that the complainant has exercised their right to appeal;
 - (2) confirm the grounds for the appeal;
 - (3) notify the complainant of the date when the appeal should be [heard or reviewed] (which should be within [school days] of receiving the appeal request);
 - (4) explain the format of the appeal [hearing or review];
 - (5) inform the complainant of his/her right to submit a written response to the outcome of the investigation not later than [school days] prior to the [hearing or review];
 - (6) explain the complainant's right to be accompanied at the hearing.
26. Your procedure should adopt a consistent approach to the appeal process, choosing EITHER an appeal hearing, to which the complainant, the investigator and any relevant witnesses are invited, OR an appeal review, where the panel considers the paperwork on the matter without the complainant, the investigator or witnesses being present. The panel should not include the investigator.
27. The investigator should also be invited to prepare a written report in response to the appeal for submission to the review panel and/or be invited to attend the hearing. They have the same rights as the complainant.
28. All relevant correspondence and any additional written materials produced by either side should be circulated to all parties not later than [school days] before the date of the appeal. Any such material should not divulge confidential information relating to individual employees or children other than the complainant's.

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Option 1 – appeal review – suggested process

29. The panel should meet and review all the written evidence presented to them. Their remit is to consider:
 - (1) whether the previous handling of the complaint was sound;
 - (2) whether the previous judgement reached was justifiable;
 - (3) whether to uphold or overturn the appeal.
30. The panel can:
 - (1) dismiss the complaint in whole or in part;
 - (2) uphold the complaint in whole or in part;
 - (3) decide on the appropriate action to be taken to resolve the complaint;
 - (4) recommend changes to the school's systems or procedures to ensure that problems of a similar nature do not recur.
31. The panel may agree to adjourn to enable them to consider any significant written evidence not previously considered, such as advice from the local authority, legal adviser or additional written communications from the complainant. If it is felt that there was a significant defect in the previous investigation, the panel should adjourn and take further external advice on what is the best course of action.
32. The panel should draft a response to the appeal. The written response should summarise
 - (1) what evidence the appeal panel considered;
 - (2) whether the appeal has been upheld and, if it hasn't, the main reasons for not upholding;
 - (3) any policy or procedure recommendations to be made to the Headteacher or governing body in the light of the appeal (whether the complaint is upheld or not);
 - (4) that this concludes the school's complaints procedure.

If the school has decided to adopt an appeal hearing, the following is suggested.

Option 2 – appeal hearing – suggested process

33. The chair of the appeal panel should give at least [school days] notice confirming to the complainant, the investigator and members of the panel, the time and venue for the hearing.
34. In the exceptional circumstances of the complainant or the investigator being legally represented, the chair of the appeal panel should be informed of this at least [school days] before the appeal is heard. The appeal panel may also be legally represented if it so chooses.
35. The appeal hearing should be held in accordance with the separate procedure attached (Annex 2).

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36. The complainant, the investigator of the complaint and any member of staff or volunteer who is the subject of the complaint should be notified of the outcome as soon after the appeal as possible by the Clerk in writing. The chair of the panel may do this in person as well.

Once this point is reached, the complainant will have exhausted the school's complaints procedure. The following information about other complaint mechanisms is included for the information of the school and should be given to the complainant. They do not form part of the governing body's own complaints procedure.

The Secretary of State

The complainant has a separate right to complain to the Secretary of State if they believe that the governing body or the LA is acting unreasonably or is failing to carry out its statutory duties properly.

What will the Secretary of State (via the Department for Education) do?

"The School Complaints Unit (SCU) considers complaints relating to LA maintained schools in England on behalf of the Secretary of State. The SCU will look at whether the complaints policy and any other relevant statutory policies were adhered to. The SCU also looks at whether statutory policies adhere to education legislation. However, the SCU will not normally re-investigate the substance of the complaint. This remains the responsibility of schools.

"The SCU will not overturn a school's decision about a complaint except in exceptional circumstances where it is clear the school has acted unlawfully or unreasonably. If the SCU finds that the school has not handled a complaint in accordance with its procedure, we may request that the complaint is looked at again.

"If legislative or policy breaches are found, the SCU will report them to the school and the complainant, and where necessary, ask for corrective action to be taken. The SCU normally also seeks written assurances as to future conduct. Failure to carry out remedial actions or provide written assurances could ultimately result in a formal Direction being issued by the Secretary of State in accordance with her powers under sections 496 and 497 of the Education Act 1996."

(From the DfE document "[Best Practice Advice for School Complaints Procedures 2016](#)")

Ofsted

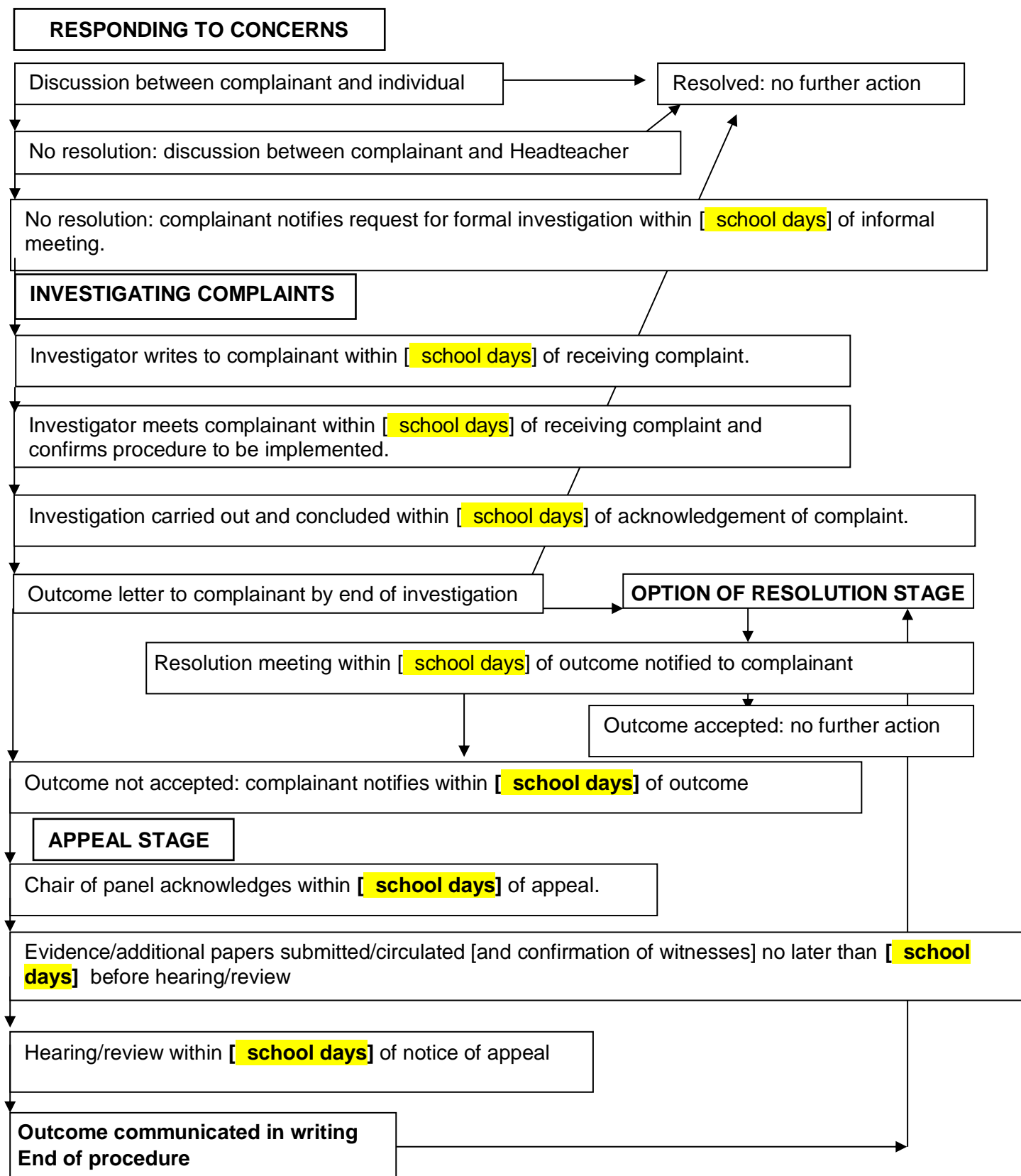
The complainant has a separate right to complain to the Office for Standards in Education (Ofsted). Contact details can be found at www.ofsted.gov.uk. Note, however, that Ofsted do not consider complaints relating to individual children but that they may use the information to bring forward an inspection.

SANDY CAMERON
Senior Adviser

EHL/LIS/SC
14 September 2016

FLOWCHART

[Note that a resolution meeting could be held at any point in the procedure if appropriate.]



ANNEX 2

POSSIBLE CONDUCT OF APPEAL HEARING (WHERE THE SCHOOL HAS NOT CHOSEN AN APPEAL REVIEW)General principles

1. The aim of the hearing is to resolve the complaint and achieve reconciliation between the school and the complainant.
2. It is the responsibility of the Chair of the panel to ensure that arrangements are made for the hearing to be properly minuted by the Clerk to the Governors.
3. The complainants may be unused to dealing with groups of people in formal situations. It is recommended that the Chair ensures that the procedures are as informal as possible. Complainants should have been informed of their right to be accompanied.
4. The panel, the complainant, the investigator and any individual who is the subject of the complaint, should all have access to the same information at least [school days] before the hearing. The introduction of previously undisclosed evidence or witnesses would be reason to adjourn the meeting so that the other side has time to consider and respond to the new evidence.
5. Witnesses may be called to the appeal by either party subject to the approval of the Chair of the panel, which should be sought at least [school days] before the hearing.
6. The Chair of the panel, at least [school days] days before the hearing, should let all parties know of the witnesses who are eligible to be called. It should be for the Chair to decide whether a child may be present at any part of the meeting.
7. Only the complainant and his/her representative, the panel, and the investigator and his/her representative should be present throughout the hearing. Any witnesses who appear at the hearing should be called into the meeting to give evidence, at the appropriate time.
8. Prior to the beginning of the hearing, the panel should convene to confirm the procedure to be followed, and consider any requests for variations to procedure.

Order of hearing

9. Welcome and introduction by Chair of the panel.
10. Confirmation of the procedure to be followed.
11. Complainant, or their accompanying person, presents the appeal.
12. Questions to complainant may be asked by the panel and the investigator.
13. Any witnesses for the complainant are then called to give their evidence. Questions may be asked of any witnesses, as they appear, by the panel and the investigator.
14. The investigator responds to the complaint.
15. Questions to the investigator may be asked by the complainant and the panel.

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16. Witnesses may be called by the investigator to give their evidence. Questions may be asked of any witnesses, as they appear, by the panel and the complainant.
17. At the end of these stages, no further evidence can be offered.
18. Summing up by the investigator of the evidence presented.
19. Summing up by the complainant of the evidence presented.
20. Concluding remarks by the Chair of the appeal panel. Explanation of what happens next by the Chair of the panel.
21. The complainant and the investigator and any companions are asked to leave, and the panel deliberates. The Clerk will record the deliberations, but only provide the outcome and reasons in the letter to the complainant.
22. At any point in the proceedings, the Chair may agree to an adjournment, subject to the proviso that it does not cause an unreasonable delay.

The decision

23. The panel should either:
 - uphold the complaint in full and inform the complainant of the grounds for its decision and if appropriate recommend a remedy, or
 - uphold it in part and give reasons why, or
 - dismiss it and inform of the reasons why it did not uphold the complaint.

Whatever the decision, the panel may also invite all parties to a resolution meeting.

24. The outcome of the appeal hearing should be confirmed in writing within [school days] of the hearing. The investigator should receive a copy of the letter, as should any individual named as part of the complaint.
25. The Chair of the appeal panel should inform the governing body of any general outcomes or recommendations, provided that details of the complaint are not disclosed and employee confidentiality are not compromised.

SUGGESTED POLICY FOR UNREASONABLE COMPLAINANTS

This could be adopted as a formal procedure by the governing body.

<...School> is committed to dealing with all complaints fairly and impartially, and to providing a high quality service to those who complain. We will not normally limit the contact complainants have with the school. However, we do not expect our staff to tolerate unacceptable behaviour and will take action to protect staff from that behaviour, including that which is abusive, offensive or threatening.

<...School> defines unreasonable complainants as “those who, because of the frequency or nature of their contacts with the school, hinder our consideration of their or other people’s complaints”.

A complaint may be regarded as unreasonable when the person making the complaint:

- refuses to articulate their complaint or specify the grounds of a complaint or the outcomes sought by raising the complaint, despite offers of assistance;
- refuses to co-operate with the complaints investigation process while still wishing their complaint to be resolved;
- refuses to accept that certain issues are not within the scope of a complaints procedure;
- insists on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice;
- introduces trivial or irrelevant information which the complainant expects to be taken into account and commented on, or raises large numbers of detailed but unimportant questions, and insists they are fully answered, often immediately and to their own timescales;
- makes unjustified complaints about staff who are trying to deal with the issues, and seeks to have them replaced;
- changes the basis of the complaint as the investigation proceeds;
- repeatedly makes the same complaint (despite previous investigations or responses concluding that the complaint is groundless or has been addressed);
- refuses to accept the findings of the investigation into that complaint where the school’s complaints procedure has been fully and properly implemented and completed including referral to the Department for Education;
- seeks an unrealistic outcome;
- makes excessive demands on school time by frequent, lengthy, complicated and stressful contact with staff regarding the complaint in person, in writing, by email and by telephone while the complaint is being dealt with.

A complaint may also be considered unreasonable if the person making the complaint does so either face-to-face, by telephone or in writing or electronically:

- maliciously;
- aggressively;
- using threats, intimidation or violence;
- using abusive, offensive or discriminatory language;

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- knowing it to be false;
- using falsified information;
- publishing unacceptable information in a variety of media such as in social media websites and newspapers.

Complainants should limit the numbers of communications with a school while a complaint is being progressed. It is not helpful if repeated correspondence is sent (either by letter, phone, email or text) as it could delay the outcome being reached.

Whenever possible, the Headteacher or Chair of Governors will discuss any concerns with the complainant informally before applying an “unreasonable” marking.

If the behaviour continues the Headteacher will write to the complainant explaining that their behaviour is unreasonable and asking them to change it. For complainants who excessively contact <...School> causing a significant level of disruption, we may specify methods of communication and limit the number of contacts in a communication plan. This will usually be reviewed after six months.

In response to any serious incident of aggression or violence, the concerns and actions taken will be put in writing immediately and the police informed. This may include banning an individual from <...School>.

EHL/LIS/SC
14 September 2016