

# **Disability Law Service**

advice and legal representation for disabled people

## **English Social Services Complaints Procedure**

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## Complaints Procedure

The relevant rules for complaints about social care are contained in a set of regulations called the **Local Authority, Social Services and National Health Service Complaints (England) Regulations 2009 SI 2009 No. 309**

These regulations create a single complaints procedure for complaints about both social care and complaints about NHS healthcare. These regulations removed the three stage process which applied to complaints made before April 2009.

### **Who can complain?**

Anyone who has been affected by the actions of Local Authority or a Primary Care Trust ('PCT') can make a complaint about this. This can be a disabled service user themselves, or the disabled person's family, friends and carers.

# How to Complain

Any complaint can be made in writing or verbally (over the phone). If the complaint is verbal, the Local Authority or PCT should make a written note of the complaint and send the person complaining (the 'complainant') a copy.

The Local Authority or PCT should have a Complaints Manager who will be responsible for investigating complaints. In addition, the Local Authority or PCT should have designated a responsible person, whose duty will be to ensure that the Local Authority abides by the regulations above.

## Time Limits

Any complaint needs to be made within **12 months** of the event or actions complained about. The Local Authority can set aside this time limit if there are good reasons for the delay in making the complaint, and if it is still possible to investigate the complaint efficiently.

Once the complaint has been made, the Local Authority should acknowledge they have received the complaint within three working days. When they acknowledge receipt of the complaint, the Local Authority should also offer to discuss with the complainant the manner in which the complaint will be dealt with and the time in which the investigation of the complaint is likely to be completed. If the complainant does not want to discuss this with the Local Authority, then this information should be provided in writing.

The Local Authority should then resolve the complaint speedily and efficiently. Once the investigation is completed, the Local Authority should send the complainant a report which should include:

1. An explanation of how the complaint has been considered;
2. The conclusions reached;
3. Confirmation that any action needed in consequence of the complaint has been taken;
4. Details of the complainant's right to take their complaint to a Commissioner.

The Regulations state that this report should be sent to the complainant within six months of the complaint being made. If the report is not sent to the complainant within this time limit, the Local Authority should notify the complainant that this is the case, and explain why.

Each Local Authority should make information on their complaints procedure available to the public. Each Local Authority should also keep a record of each complaint they have received.

## Further Action

If you have made a formal complaint to a Local Authority or a Primary Care Trust but this has not resolved your problem, there are a variety of alternative routes which you may want to consider. However it is recommended you get additional legal advice before considering any of the options below.

## **Local Government Ombudsman or Health Service Ombudsman**

The Local Government Ombudsman looks into complaints about Local Authorities where the complaint is about 'maladministration'. The Health Service Ombudsman looks into similar complaints about PCTs.

Maladministration is where the Local Authority or PCT has or has not done something which has had a negative effect on you. Before the Ombudsman can look into your complaint, they normally give the Local Authority or PCT a chance to consider the complaint in line with its own procedures. So, you will not normally be able to complain to the Ombudsman until you have gone through the complaints procedure first.

In certain cases, the Ombudsman may look into your complaint beforehand if, for example, the Local Authority or PCT has unreasonably delayed in dealing with your complaint. The Ombudsman has indicated that a delay of three months or more in the investigation of a complaint could be considered unreasonable.

You must complain to the Ombudsman within 12 months of the matter you are complaining about. The Ombudsman may take a long time to look into your complaint. The Ombudsman regularly recommends that the local authority pay you compensation if they consider it appropriate.

## **Judicial Review**

This is the process by which the High Court looks into how a Local Authority or PCT made a decision and decides whether that decision was lawful.

Before you can ask for a judicial review, the court will normally expect you to have gone through the complaints procedure and possibly the relevant Ombudsman. You may be able to apply for a judicial review without having done this, but this will depend on the circumstances of your case.

You must apply for a judicial review within three months of the decision you are complaining about. The court can extend this time limit in exceptional cases, but you should not rely on this.

If you are granted a judicial review, the court doesn't have to make an order in your favour. The orders that are available do not necessarily provide a practical solution for the kinds of problems disabled people might have. The orders mainly look at the decision-making process itself. Although the court can order an authority to pay you damages (compensation), this is also unusual in judicial reviews.

**This is a very complicated area and you should get specialist legal advice if you are considering making an application for a judicial review.**

#### **Claiming Compensation**

It is possible but rare to claim for compensation at the High Court or County Court if your local authority has broken their legal responsibilities to you. Unfortunately, it is very rare that you would be awarded compensation.



### **European Court of Human Rights**

The European Court of Human Rights hears complaints made by people whose government has broken their responsibilities to them under the European Convention on Human Rights 1950. You can only complain to this court once you have gone through all the other relevant complaints procedures and within six months of the final decision made by the highest domestic court or authority. Often, the process can take several years from start to finish.

### **Legal Disclaimer**

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For further advice on these matters please contact:

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